

Publications

Current Issues Affecting Pension Plan 401(h) Accounts

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Over 50 years ago, Congress enacted a rather obscure provision (Code sec. 401(h)) that allowed pension plan sponsors to set aside a limited amount of funds in a separate account to fund post-retirement medical benefits within the pension plan. Over the years, many large employers have set aside funds in 401(h) accounts. In many cases, employers have chosen not to use the funds to pay retirees' medical benefits – perhaps because they prefer to use the assets to offset “OPEB” (“other post-employment benefits”) liabilities on their financial statements and because the tax treatment is so attractive. The bottom line is that many employers' 401(h) accounts are now overfunded.

Section 401(h) account overfunding has given rise to numerous issues for plan sponsors that have such accounts. Recent developments in financial accounting may affect plan sponsors with 401(h) accounts, too. We briefly discuss both topics in the attached memorandum, and recommend that affected plan sponsors work with legal counsel to identify reasonable approaches to maximize the use of 401(h) account assets consistent with the limited guidance currently available.

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