

LEGAL UPDATES

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Service

Employee Benefits &
Executive
Compensation

Professionals

ALAN H. KANDEL
ST. LOUIS:
314.345.6463
ALAN.KANDEL@
HUSCHBLACKWELL.COM

CRAIG A. KOVARIK
KANSAS CITY:
816.983.8249
CRAIG.KOVARIK@
HUSCHBLACKWELL.COM

MARK D. WELKER
KANSAS CITY:
816.983.8148
MARK.WELKER@
HUSCHBLACKWELL.COM

Upcoming Deadlines for Qualified Retirement Plans

Sponsors of qualified retirement plans should be aware of a number of quickly approaching deadlines for their plans, and some important guidance recently issued by the Department of Labor (DOL) and Internal Revenue Service (IRS). The following checklist includes guidance on the need to amend qualified retirement plans to comply with recent Internal Revenue Code Section 415 regulations and the Pension Protection Act of 2006 (PPA). This checklist also contains information regarding the deadline for restating and requesting determination letters for certain individually designed plans and all pre-approved plans. Finally, these materials explain recently issued guidance by the DOL and IRS regarding 403(b) annual reporting and required minimum distributions.

Section 415 Amendment: In 2007, the Treasury issued final regulations interpreting the Internal Revenue Code Section 415 limit on benefits and contributions. Qualified plans must adopt a good faith amendment to comply with these regulations in order to maintain qualified status. The amendment must be adopted no later than the extended due date for the employer's 2008 tax return, which generally is September 15, 2009, for plan sponsors who operate their plan year and fiscal year on a calendar year basis.

Pension Protection Act of 2006 (PPA) Amendments

Required Amendments: The PPA requires both defined benefit and defined contribution plans to be amended by the last day of the first plan year beginning on or after January 1, 2009 (December 31, 2009, for calendar year plans). For governmental plans, the deadline is the last day of the first plan year beginning on or after January 1, 2011 (December 31, 2011, for calendar

year plans). Among other required provisions, plans will need to be amended for the following:

- **Both Defined Benefit Plans and Defined Contribution Plans**
 - Allow direct rollovers by non-spouse beneficiaries.
 - Allow rollovers to Roth IRAs from non-Roth accounts in qualified plans.
 - Allow after-tax contributions to be rolled out of qualified plans into a defined benefit plan or a 403(b) tax-sheltered annuity that will accept and account for after-tax contributions.
 - If a plan is subject to the qualified joint and survivor annuity requirements of Internal Revenue Code Section 412 (Defined Benefit Plan and Money Purchase Pension Plans), a qualified optional survivor annuity option meeting specific requirements must be offered unless the plan already offers an option that complies.
- **Defined Contribution Plans**
 - Eliminate gap period income in calculating "excess" and "excess aggregate" contributions for 401(k)/401(m) nondiscrimination testing provisions and with regard to contributions in excess of 402(g) limits that are returned to participants.
 - Provide for a maximum of three-year cliff or six-year graded vesting for employer non-elective contributions.
 - Add diversification rights for publicly-traded employer securities (ESOPs are not subject to this requirement).
- **Defined Benefit Plans**
 - Comply with changes regarding actuarial assumptions and mortality tables.
 - Interest rate assumptions for lump sum distributions must mirror assumptions that are used to determine funding target.
 - Provide for accelerated funding if plan is in "at risk" status.
 - Impose benefit limitations for underfunded plans.

Optional Amendments: Plan sponsors may also want to consider adopting optional amendments provided for in the PPA. Optional provisions include the following:

- **Defined Contribution Plans**
 - **Distribution Notice:** Increase the period for the plan distribution notice from 90 days to 180 days prior to distribution.
 - **Hardship Distributions for Certain Events Relating to a Participant's Beneficiary:** Extend hardship distributions to also include hardships involving a participant's primary beneficiary.
 - **Reservist Distributions:** Permit participants who serve in the military reserve and are ordered or called to active duty to elect to receive a 401(k) distribution, which would not be subject to the 10% early withdrawal penalty. This provision may apply to participants ordered or called to active duty on or after September 11, 2001.
- **Defined Benefit Plans**
 - **In-service Distributions:** Allow in-service distributions to participants after attaining age 62.

IRS Determination Letters

Cycle D Filers-Individually Designed Plans: Under the IRS's determination letter program, the deadline for restating an individually designed retirement plan maintained by a non-governmental employer with an employer tax ID number ending in 4 or 9, and submitting the plan to the IRS for a determination letter, is January 31, 2010.

Volume Submitter and Prototype Plans: Under the IRS's determination letter program, the deadline for restating pre-approved plans based on a volume submitter or prototype document is April 30, 2010. Generally, an individual determination letter for each plan is required to have reliance on IRS approval. The determination letter application is also due April 30, 2010. If the restatement is adopted by December 31, 2009, the PPA amendments can be incorporated into the restatement and a separate PPA amendment will not be necessary. Therefore, we recommend that you authorize your attorney to prepare your plan restatement as soon as possible.

403(b) Plans

Written Plan Document Deadline: The deadline for a 403(b) plan to be in writing is December 31, 2009.

Annual Reporting Requirement: According to the DOL's Field Assistance Bulletin 2009-02, a form 5500 for a 403(b) plan does not need to treat annuity contracts and custodial accounts as part of the employer's plan or as plan assets if the contract or account was issued to a current or former employee before January 1, 2009, and no contributions were made to the account after December 31, 2008.

Required Minimum Distributions: The Summer 2009 edition of the Internal Revenue Service "Retirement News for Employers" newsletter confirms that the 2009 required minimum distribution waiver applies only to 401(k) and other individual account plans and therefore does not apply to defined benefit plans. Individual account plan sponsors must operate the plan in compliance with the waiver this year, but plans need not be amended to reflect the 2009 waiver until the end of the 2011 plan year.

Contact Info

Please contact a member of the Employee Benefits & Executive Compensation Group if you need our assistance in completing the notices or have any questions.

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