

Client Alert

EMPLOYEE BENEFITS PRACTICE GROUP | NOVEMBER 2009

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Important Reminder

Action Required By Year End on Qualified Retirement Plans

This is a reminder that employers who sponsor qualified retirement plans (for example, defined benefit plans and 401(k) plans) need to amend those plans to comply with required provisions of the Pension Protection Act of 2006 by the end of the plan's 2009 plan year. For plans maintained on a calendar year basis, that means amendments are required to be adopted and signed no later than **December 31, 2009**. Any employer that has not yet adopted these amendments should take action soon.

Required Amendments. The Pension Protection Act of 2006 ("PPA") included certain mandatory provisions applicable to qualified plans. The following list of PPA requirements, while not exhaustive, is intended to provide a general overview of the issues that may need to be addressed in year-end amendments.

ALL PLANS

- Direct Rollovers of After-Tax Amounts. To the extent a plan permits or accepts after-tax contributions, the plan must permit rollover of those contributions out of the plan to a qualified trust or a 403(b) plan, if the transferee plan agrees to separately account for such rollovers.
- Direct Rollovers to Roth IRAs. Plans must permit any eligible rollover distribution to be rolled directly to a Roth IRA on an after-tax basis.
- Direct Rollovers by Non-Spouse Beneficiaries. All plans must permit a non-spouse beneficiary to rollover eligible rollover distributions to an inherited IRA.

DEFINED BENEFIT PLANS

- Interest Rate and Mortality Assumptions. Defined benefit plans must set forth the new PPA interest and mortality assumptions to be used in the calculation of lump sum benefits.
- Interest Rate Assumptions for Purposes of Applying Benefit Limitations. Defined benefit plans must also set forth new PPA interest rate assumptions that apply to the determination of lump sums for purposes of applying the maximum limitation on benefits.
- Qualified Optional Survivor Annuity. Defined benefit plans must provide a joint and 75% survivor annuity option if the plan's default survivor annuity provides less than a 75% survivor benefit.
- Limitations on Underfunded Plans. Defined benefit plans must provide that restrictions on benefit payments and accruals apply in the event a plan becomes funded at less than 80% of the target funding level. Restrictions become more stringent if a plan's funded status falls below 60%.

DEFINED CONTRIBUTION PLANS

- Diversification of Employer Securities. Non-ESOP plans that permit investment in publicly traded employer securities must be amended to permit participants to diversify out of such securities within certain parameters. *continued next page*

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- Faster Vesting of Employer Non-Elective Contributions. Employer non-elective contributions must be amended to vest on either a 3-year cliff or 6-year graded vesting schedule; faster vesting schedules are also permitted.
- Elimination of Gap Period Earnings. To the extent a participant has excess contributions to a 401(k) plan, the excess contributions must be returned with net allocable earnings. Under the PPA, plans must provide that those earnings can be calculated only through the end of the plan year in which the excess contributions were made.

Additional Information. Although these and other PPA-required amendments must be adopted by the end of a plan's 2009 plan year, many have earlier effective dates that must be addressed in the amendments. Additional details contained in PPA regulations and other guidance may also affect the amendments that must be made to your specific plan. Many employers have already adopted these required plan amendments. Those that have not should take action soon to avoid missing the compliance deadline. Employers with prototype plans should contact the prototype sponsor to obtain the required amendments.

If you have questions about any of these changes or would like assistance in preparing required amendments, please contact:

Rachel Arnedt at 203.498.4397 or rarnedt@wiggin.com
Sherry Dominick at 203.498.4331 or sdominick@wiggin.com
Karen Clute at 203.498.4349 or kclute@wiggin.com

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