

Advisory

LABOR AND EMPLOYMENT PRACTICE GROUP | MARCH 2007

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Important Reminders for Our Clients with Prototype Plan Documents

Code Section 401(k) and 401(m) Final Regulations

Final regulations under Code Sections 401(k) and 401(m) were effective for Plan Years beginning on and after January 1, 2006. The regulations contained changes and clarifications to plan provisions relating to nondiscrimination testing, salary reduction elections, distributions, hardship withdrawals, and safe harbor contributions. Most changes were mandatory, but some were optional.

Your prototype sponsor should already have provided you with a plan amendment related to the 401(k) and 401(m) regulations. Some prototype sponsors do not require employer action to adopt amendments such as this, but some do.

If you did not receive information from your prototype sponsor about a plan amendment related to the 401(k) and 401(m) regulations, you should contact your sponsor immediately. If your prototype sponsor requires employer action to adopt amendments, the deadline for employers to adopt the mandatory provisions of the 401(k)/401(m) regulations is the employer's corporate tax filing date for the year that included the first day of the plan year that began in 2006. For example, where the employer's tax year and the plan year are both the calendar year, the deadline to adopt an amendment is the date the employer files its 2006 return. For a calendar year employer, the due date for that return would be March 15, 2007, unless an extension is sought. If the employer files before March 15, 2007, or before the end of the extended due (if applicable), its earlier filing date would be the deadline to adopt an amendment.

If your plan implemented the optional provisions of the final regulations (regarding two new hardship distribution events), in 2006, then the deadline to adopt the amendment would be the last day of the plan year that began in 2006.

Vesting Changes Under the Pension Protection Act of 2006

Under the Pension Protection Act of 2006, new vesting rules apply to employer contributions made in plan years beginning after December 31, 2006. All employer contributions (not just matching contributions) must vest at least as fast as one of the following schedules:

3-Year Cliff:

<u>YEARS OF SERVICE</u>	<u>VESTED PERCENTAGE</u>
1	0%
2	0%
3	100%

or 2-to-6-Year Graded:

<u>YEARS OF SERVICE</u>	<u>VESTED PERCENTAGE</u>
2	20%
3	40%
4	60%
5	80%
6	100%

The amendment may apply only to those participants who are credited with an hour of service in the plan year that begins after December 31, 2006, to avoid extending faster vesting to terminated participants.

If you move from a 5-Year Cliff schedule to the 2-to-6-Year Graded schedule, participants with more than 3 years of service as of the beginning of the 2007 plan year must be provided with the better

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of the two schedules, which means that at 5 years of service, those participants must be 100% vested, even under the 2-6-Year Graded schedule.

Your prototype sponsor should already have provided you with information on this change. If not, you should contact your sponsor.

An amendment to reflect the change in vesting is not required to be made until the last day of the plan year that begins in 2009, but plans must comply in operation with the new vesting rule as of the first day of the plan year that begins in 2007.

Delayed Effective Date for Leveraged ESOPs and Collectively Bargained Plans

If, as of September 26, 2005, your company's ESOP was leveraged, then the accelerated vesting provisions do not apply until plan years beginning on or after the earlier of (1) the date the loan is fully repaid, or (2) the date the loan was, as of September 26, 2005, scheduled to be repaid.

In certain circumstances, a plan maintained pursuant to a collective bargaining agreement ratified prior to August 17, 2006 may be eligible for a delayed effective date.

Please contact Sherry Dominick, Karen Clute or Rachel Arnedt if we may be of any assistance to you on these or other issues related to your prototype plan.

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