

PENSION PROTECTION ACT UPDATE

Recent IRS Notice 2008-30 provides some details about provisions of the Pension Protection Act of 2006 (the PPA) that are effective now. The currently applicable requirements that affect almost all qualified retirement plans and Section 403(b) annuity plans include:

(1) Rollover Distributions to Roth IRAs

A qualified retirement plan must now permit any recipient of an eligible rollover distribution (any lump sum distribution that is not a required minimum distribution or an in-service hardship distribution) to elect a direct rollover to a Roth IRA. The amount of any rollover to a Roth IRA will be taxed to the recipient, except to the extent of any after-tax contributions, in effect converting the distribution to an after-tax Roth IRA contribution. Previously, qualified plan distributions could not be transferred to a Roth IRA. Mandatory income tax withholding and the 10 percent penalty tax for distributions to those under age 59-1/2 will not apply if certain conditions are satisfied. For taxable years before 2010, only recipients with modified adjusted gross incomes that do not exceed \$100,000 can roll over to a Roth IRA. For taxable years starting on or after January 1, 2010, the income limit does not apply and all recipients of eligible rollover distributions can direct the distributions to their Roth IRAs. (Employers are not responsible for establishing a recipient's eligibility to elect a Roth IRA rollover.)

(2) Qualified Optional Survivor Annuity (QOSA)

The PPA requires plans subject to the qualified joint and survivor annuity (QJSA) requirement to provide an optional form of payment, the QOSA, for married participants. The level of the survivor benefit is 75 percent of the amount payable while the participant is alive if the QJSA provides a survivor benefit of less than 75 percent (this would be typical of most plans). If the survivor benefit under the Plan's QJSA is 75 percent or more, then the survivor benefit under the QOSA must be 50 percent of the amount payable while the participant is alive. If the plan already provides an annuity payment option that satisfies these requirements, no plan amendment or revised administrative forms may be required. However, if an employer's QJSA plan does not already provide a survivor annuity option that satisfies the QOSA requirements, steps must be taken to assure compliance with respect to all distributions on or after the start of the first plan year beginning on or after January 1, 2008 (that is January 1, 2008 for calendar year plans).

Recommendation: Plan administrative procedures and forms should be revised to include appropriate communication of the Roth rollover option to participants and beneficiaries as well as any required "explanation" of the QOSA option. The PPA may require other changes,

including those that relate to permitted actuarial assumptions for defined benefit plans. Plan amendments will also be required, but the deadline for formal plan compliance is the last day of the plan year starting on or after January 1, 2009 (that is December 31, 2009 for calendar plans). Notwithstanding the deadline for formal plan amendments, prudent plan administration may dictate earlier amendment so that plan documents correspond to current legal requirements, including the PPA.

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