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ClientAlert

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Year End Pension Relief

On December 23rd, President Bush signed a new law providing limited relief from minimum distribution and pension funding requirements. The new law, the Worker, Retiree, and Employer Recovery Act of 2008, was enacted to alleviate some of the adverse affects the recent financial downturn has had on retirement plans and retirement plan participants. The new law also makes a number of technical corrections to the Pension Protection Act of 2006 (PPA).

Relief from 2009 Minimum Required Distributions

Participants and beneficiaries in retirement plans such as 401(k), 403(b) and 457(b) plans, and individual retirement arrangements (IRAs), must take annual minimum distributions from the plan or IRA upon attaining age 70½. A 50% penalty tax is imposed on the amount of any minimum required distribution that is not withdrawn. Minimum required distributions are calculated based upon the value of plan account balances as of the last day of the immediately preceding year and the age of the participant or beneficiary. Because plan asset values have declined significantly in the last year, many participants and beneficiaries will be required to take minimum required distributions from plans and IRAs with significantly reduced assets.

The new law provides relief by waiving the minimum required distribution requirement for the **2009** year. It does not provide relief for minimum required distributions for the 2008 year. Participants and beneficiaries who have attained age 70½ must still take minimum required distributions for 2008. Minimum required distributions for 2008 are generally due by the end of 2008. Although Congress has asked the Treasury Department to provide relief from 2008 minimum required distributions, the Treasury Department has indicated that it will not issue relief for 2008.

Relief from Pension Plan Funding

The new law provides relief to sponsors of defined benefit pension plans to help alleviate the affects of the recent financial downturn. These changes are intended to help increase funding levels of and decrease minimum contributions required to pension plans.

- **Smoothing**. The new law permits pension plan sponsors to smooth the value of assets over a two year period rather than apply a mathematical average established by the Treasury Department.
- **Funding Targets**. The new law provides relief from the PPA's funding target rules. The PPA requires that pension plans be funded at least 92% in 2008, 94% in 2009 and 96% in 2010. Sponsors of pension plans that are not funded to the specified level for any of these years would be required to make additional plan contributions to bring funding levels to 100%. The new law allows plans that are at least 90% funded in 2007 to bring funding levels up to the specified funding target for 2008, 2009 and 2010 rather than the 100% target.
- **"At Risk" Status**. The PPA imposes additional requirements upon pension plans that are "at risk" (that is, plans that are not at least 80% funded (using general actuarial assumptions) or at least 70% funded (using special "at risk" assumptions)). The 80% level is phased in over four years from 65% in 2008 to 80% in 2011). The new law applies a similar phase in rule to

the 70% test. This may help some plans avoid "at risk" status.

- **"Look Back" Relief**. The PPA requires that sponsors of pension plans that are not at least 60% funded freeze future benefit accruals. The new law allows sponsors to "look back" to the funding status of the immediately preceding year to determine whether the plan is subject to the mandatory freeze rule. This look back relief applies only to plan years beginning on or before October 1, 2008 and before October 1, 2009. This means that most calendar year plans can look to the funding status as of January 1, 2008 to determine whether the plan is at least 60% funded for 2009.
- **Other Relief**. The new law provides other relief for pension plans, including (1) permitting lump sum distributions of $5,000 or less from significantly underfunded plans or plans whose sponsors are in bankruptcy, (2) clarifying the rules on calculating "target normal cost," (3) relief for multi-employer plans (generally plans sponsored by unions for employees of member employers) from certifying whether the plan's funding status is "endangered, critical or neither" and additional relief for multi-employer plans that are in endangered or critical status.

Other Changes

The new law also clarifies a number of provisions of the PPA. Most of these changes are highly technical. Of these changes, it is worth noting that:

- beginning after 2009, companies must offer non-spouse beneficiaries of tax-qualified retirement plans the option to roll over their inherited plan accounts to other tax-qualified retirement plans and IRAs and must provide the 402(f) rollover notice to non-spouse beneficiaries;
- plans with automatic enrollment features are no longer required to invest contributions made within the first 90 days of automatic enrollment in a "qualified default investment alternative" if the participant does not make an investment election; and
- it is no longer necessary to distribute "gap period income" (income from the last day of the year until the date of distribution) on excess deferrals (deferrals in excess of the 402(g) limit ($15,500 for 2008 and $16,500 for 2009).

For more information about the new law and how it affects your company's retirement plans or your minimum required distributions, please contact one of our partners listed below.

Our client alerts are for general informational purposes and should not be regarded as legal advice. If you would like additional information or have any questions, please contact:

William G. Cavanagh
+1 (212) 408-5388
wcavanagh@chadbourne.com

Marjorie M. Glover
+1 (212) 408-1016
mglover@chadbourne.com

Edward P. Smith
+1 (212) 408-5371
esmith@chadbourne.com

David Gallai
+1 (212) 408-1033
dgallai@chadbourne.com

Lauren D. Kelly
+1 (212) 408-5520
lkelly@chadbourne.com