

ClientAlert

July 30, 2009

Reminder -- Pension Protection Act Amendments Generally Due By End of 2009; Also, It May Not Be Too Late to Make Required Section 415 Amendments

The Pension Protection Act of 2006 ("PPA") made numerous changes to the rules governing tax-qualified retirement plans (including traditional pension plans, multiemployer pension plans, 401(k) plans, ESOPs, cash balance plans, profit sharing plans, and 403(b) plans). Operational compliance with the mandatory changes made by the PPA is already required (operational compliance with the voluntary changes made by the PPA is only required to the extent the voluntary change was approved).

Documentary compliance with the PPA is generally required by the end of 2009 (or soon thereafter for non-calendar year plans). ***For retirement plans that use the calendar year as the "plan year" (as most plans do), amendments to the underlying retirement plan document must be adopted no later than December 31, 2009.*** Employers should keep in mind that, in some cases, in order to formally amend the underlying plan document, approval by the employer's board of directors (or a similar committee) will be required. This approval process (including the availability of the board/committee members) must be factored in to the timeline for adopting the amendments on a timely basis. The failure to timely amend a plan document will generally require that an employer submit an application to the IRS to approve a retroactive amendment (the application must be accompanied by a filing fee), and could result in monetary penalties from the IRS or, in extreme cases, "disqualification" of the plan's tax-favored status by the IRS.

In addition, if employers have not already amended their retirement plans to comply with final regulations issued under Section 415 of the Internal Revenue Code, they should do so as soon as possible, as it may not be too late to meet the deadline for the required amendments. ***Required amendments under the Section 415 final regulations are generally not due until the date that the employer must file its tax return for 2008, including any extensions that the employer obtains.*** Many employers obtain an extension for filing their tax return, and for those employers, the deadline for the required Section 415 amendments likely has not yet passed (that extension will typically continue until September 15, 2009).

If you would like to discuss the changes made by the PPA or the Section 415 final regulations, or would like to seek our assistance in preparing the necessary amendments, please do not hesitate to contact one of the Chadbourne professionals listed on the following page.

Our client alerts are for general informational purposes and should not be regarded as legal advice.

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