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202.344.4466**Highlights of Retirement Plan Distribution Changes  
for 2008**

Recently issued IRS guidance deals with various changes to the rules governing retirement plan distributions that were made by the Pension Protection Act of 2006 ("PPA") and are effective this year. While plan amendments to implement the PPA changes are permitted up to the end of the 2009 plan year, plans must operationally comply with the new rules in making distributions this year. Here are some highlights of the new rules.

**Direct Rollovers to Roth IRAs Now A Required Alternative**

Qualified retirement plans, 403(b) annuity plans, and governmental 457 plans are required to give participants the opportunity to have a lump sum distribution rolled over directly to another retirement plan or an IRA. Before PPA, a direct rollover to a Roth IRA was generally not permitted. Instead, a participant was required to roll a lump sum over to a traditional IRA, then convert the traditional IRA to a Roth IRA, subject to the income and filing status limits on such conversions.

PPA permits a qualified retirement plan, 403(b) plan, or governmental 457 plan to make a direct rollover to a Roth IRA. However, IRS guidance goes further and requires such plans to give participants the option of making a direct rollover to a Roth IRA. A direct rollover to a Roth IRA is still subject to the income and filing status limits on traditional IRA to Roth IRA conversions, but a plan administrator is not responsible for assuring the participant is eligible for a conversion. A lump sum rolled over directly to a Roth IRA is fully taxable to the participant, but is not subject to mandatory income tax withholding.

**New Joint and Surviving Spouse Annuity Option Required**

Under defined benefit plans and certain defined contribution plans offering annuities, the default form of distribution to a married participant is a qualified joint and survivor annuity ("QJSA"). A QJSA provides a life annuity to the participant and a survivor's annuity to the participant's surviving spouse of between 50 and 100% of the participant's life annuity. A married participant can elect a form of benefit other than a QJSA only with spousal consent.

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PPA requires that an additional form of benefit, a qualified optional spousal annuity ("QOSA"), also be offered to a married participant. A QOSA is similar to a QJSA, but with a different survivor annuity rate. If the survivor annuity rate under the QJSA is 75% or higher, the survivor annuity rate under the QOSA must be 50%. If the survivor annuity rate under the QJSA is less than 75%, the survivor annuity rate under the QOSA must be 75%.

Under IRS guidance, a plan that already offers a benefit that meets the QOSA requirements does not have to be amended specifically to designate it as a QOSA; merely offering it is sufficient. However, a plan that does not already offer a benefit that meets the QOSA requirements must begin offering the QOSA as an optional form of benefit. A participant can elect the QOSA form, rather than the QJSA form, without spousal consent, as long as the QOSA is actuarially equivalent to the QJSA, i.e., either the QJSA is not subsidized or the QJSA and QOSA have the same level of subsidy. Moreover, a plan that provides a subsidized QJSA is not required to provide a subsidized QOSA.

**New Assumptions for Determining Lump Sums under Defined Benefit Plans**

Defined benefit plans are required to use certain statutory interest and mortality assumptions in determining lump sum distributions. PPA changed the required interest and mortality assumptions, with the new assumptions being phased in over 2008-2012. The new assumptions will generally result in lower lump sums for most participants, but PPA provides anti-cutback relief for a plan amendment implementing the new assumptions. Under IRS guidance, the anti-cutback relief under PPA applies only to the first plan amendment implementing the new assumptions, but allows plan amendments adopted on or before June 30, 2008 to be disregarded for this purpose.

Some employers wish to transition to the new assumptions by providing participants, on a temporary basis, with the greater of the lump sum determined using the old, pre-PPA assumptions and the lump sum determined using the new PPA assumptions. IRS guidance permits this greater-of approach for lump sum distributions during the 2008 and 2009 plan years, provided that the time limit on the greater-of lump sum is reflected in the first plan amendment adopted after June 30, 2008. Use of the greater-of approach therefore requires close attention to the timing of plan amendments.

Please contact any member of our group regarding these or other employee benefits and executive compensation issues.

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