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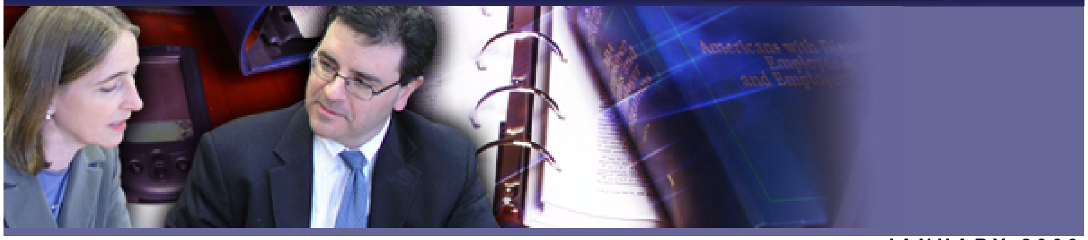

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JANUARY 2009

Benefits Legal Update

President Bush Signs Funding and Distribution Relief Measure

On December 23, 2008, President Bush signed the Worker, Retiree, and Employer's Recovery Act of 2008 (H.R. 7327) (the "Act"), which was passed by both houses of Congress earlier in December. The Act makes technical corrections to the Pension Protection Act of 2006 ("PPA"), and provides relief to businesses and individuals from certain pension funding and distribution requirements.

Suspension of Required Minimum Distributions for 2009

Employer-sponsored defined contribution retirement plans and individual retirement accounts and annuities ("IRAs") are subject to required minimum distribution ("RMD") rules. Generally, RMDs must begin by April 1 of the year following the later of the year in which an individual reaches age 70 ½ or retires, regardless of whether the participant or IRA holder consents to the distributions. Failure to receive a RMD when required triggers a 50 percent excise tax payable by the plan participant or the IRA owner on the amount that should have been distributed in that particular year.

Under the Act, no RMD is required for 2009 from IRAs and defined contribution plans. Therefore, any RMD that otherwise would have been required for 2009 need not be made. This relief applies to distributions to IRA owners, qualified plan participants, and beneficiaries.

Although this provision of the Act is effective for calendar years beginning after December 31, 2008, it does not apply to any RMD required to be paid for 2008, even if such RMD is actually paid in 2009.

Delay of Certain Pension Funding Requirements

Single-Employer Plans: Expansion of the Averaging Method
PPA allowed single-employer pension plans to value their assets using an averaging method, provided certain other requirements were met. The Act allows for the adjustment of valuations for expected earnings, which will allow plans to "smooth" the value of their assets over a twenty-four month period. This change is intended to soften the impact of recent heavy investment losses. However, the calculation will still be subject to the Internal Revenue Code's current requirement that the smoothed asset value fall within 90 to 110 percent of the fair market value as the assets as of the valuation date.

Single-Employer Plans: Extension of the PPA Funding Transition Rule
Under PPA, sponsors of single-employer pension plans that are less than 100 percent funded must make a contribution equal to the benefits accrued during the year, and amortize any shortfall over a seven year period. PPA provided a transition rule allowing plan sponsors a three year period over which to gradually increase the value of their plan's assets against the plan's funding target and the plan's target normal cost. Under the phase-in rule, a plan would not have a funding shortfall that needed to be amortized if it was funded up to 92 percent in 2008, 94 percent in 2009, and 96 percent in 2010. If a plan missed its target in a phase-in year, then the target automatically increased to 100 percent. The Act adjusted the phase-in transition to remove the automatic increase to 100 percent if the required target funded percentage is not achieved.

Single-Employer Plans: Funding Status
Under PPA, a single-employer defined benefit pension plan is required to comply with certain funding-based limits for plan years beginning after December 31, 2007. Among the limitations is the requirement that if the plan's adjusted funding target attainment percentage is less than

is the requirement that if the plan's adjusted funding target attainment percentage is less than 60 percent for a plan year, all future benefit accruals must be frozen. The Act modified this provision for the first plan year beginning during the period from October 1, 2008 through September 30, 2009 so that the future benefit accrual limitation rules for the plan year are applied by "looking back" to the plan's funding status for the previous plan year. Therefore, the future benefit accruals will not be frozen unless the plan's adjusted funding target attainment percentage for the preceding plan year is less than 60 percent.

Multiemployer Plans
Multiemployer defined benefit pension plans that are endangered or in critical status require the adoption of a funding improvement plan or rehabilitation plan. Typically, a plan will be considered endangered if is less than 80 percent funded and will enter critical status if the plan is less than 65 percent funded at the beginning of the plan year and the assets plus the present value of reasonably anticipated employer contributions for the next six plan years is less than the value of nonforfeitable benefits payable over that time period. The funding and rehabilitation improvement period ends on the date the plan is no longer in endangered or critical status, or if earlier, after ten years. Under the Act, for a plan year beginning in 2008 or 2009, the sponsor may elect to extend the plan's otherwise applicable funding improvement or rehabilitation period by three years.

The Act also allows multiemployer defined benefit pension plan sponsors to elect to treat the plan as having the same funding status as it had in the preceding plan year for plan years beginning on or after October 1, 2008 but before October 1, 2009.

If you have any questions regarding how the changes in the law described in this update affect your plan, please contact:

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