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Benefits Legal Update

DECEMBER 2008

Deadline for Compliance with Final 403 (b) Regulations Extended to December 31, 2009

Background

In 2007, the Internal Revenue Service (IRS) issued long-awaited final regulations under Section 403(b) of the Code. The final regulations, which became effective January 1, 2009, contained a number of changes from the prior regulations. One of the most significant changes was the addition of a requirement that all Section 403(b) plans, regardless of their status under ERISA, be set forth in a written plan document (previously, a non-ERISA plan was not required to be in writing). All Section 403(b) plans were required to be amended to reflect the final regulations or, if they were not previously in writing, be set forth in a plan document that complied with the final regulations by January 1, 2009.

Deadline Extension

On December 11, 2008, the IRS issued Notice 2009-3 extending the deadline for plan sponsors to amend their plan documents, or adopt a document if the plan was not previously in writing, to satisfy the requirements of the final 403(b) regulations. The notice provides that Section 403(b) plans will be compliant with the final regulations during the 2009 calendar year if the following actions are taken:

- by December 31, 2009, the plan sponsor of the plan adopts a written Section 403(b) plan intended to satisfy the requirements of Section 403(b) and the regulations;
- during 2009, the plan sponsor operates the plan in accordance with a reasonable interpretation of Section 403(b) and the final regulations; and
- by the end of 2009, the plan sponsor makes its best effort to retroactively correct any failure to operate the plan in compliance with the terms of the document adopted to reflect the new regulations.

The Notice also states that the IRS plans to issue further guidance on 403(b) plans, including the establishment of the Section 403(b) plan determination letter program and the expansion of the Employee Plans Compliance Resolution System to address a larger number of Section 403(b) plan failures.

If you have any questions regarding the effect of this extension or the requirements under the final regulations, please contact one of the following attorneys:

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