



GREEN-SEIFTER  
ATTORNEYS, PLLC

# Year End Benefit Plan Compliance

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October 9, 2007

# Year End Benefit Plan Compliance

- Retirement Benefit Plans
  - Defined Benefit Plans
  - Defined Contribution Plans
    - 401(k) Plans
    - Profit Sharing Plans
    - 403 (b) Plans
- Health and Welfare Benefit Plans

- Routine Year-End Compliance Issues
- New Compliance Issues after Pension Protection Act (“PPA”)

# Routine Year-End Compliance Issues

## Employee Eligibility Review

- Review employee census to determine employees eligible as beginning of next plan year
- Summary plan description distribution
  - 90 days after an employee becomes a participant in the plan
- Summary of material modifications
  - Due 210 days after close of plan year in which modification is adopted, unless new SPD distributed

# Routine Year-End Compliance Issues

## Review Compliance with Minimum Distribution Requirements

- Review employee census to confirm that 5% owners have received annual RMDs
- Communicate with non-five percent owners who retired during the year - April 1<sup>st</sup> of following year deadline

# Routine Year-End Compliance Issues

## Plan Investment Matters

- Review current investment performance
- Announce any fund changes to employees
- Document due diligence process

# Routine Year-End Compliance Issues

## Special Issues Concerning 401(k) Plans

- Non-discrimination Testing
  - Review year-to-date deferrals to avoid excess deferrals
  - Confirm that corrective distributions have been made for any failures of the ADP/ACP Test

# Routine Year-End Compliance Issues

## Special Issues Concerning 401(k) Plans

- Safe-Harbor 401(k) Plans
  - Supplemental 401(k) Safe-Harbor Notice
    - Must be issued 30 days before the last day of the plan year
  - Issue Safe-Harbor Notice for 2008 plan year
    - 30-90 days before first day of the plan year
  - Contingent 401(k) Safe-Harbor Notice for 2008

# New Compliance Issues After PPA

Pension Protection Act (“PPA”) – of 2006

- Stated goal-strengthening employees’ retirement security
- Stricter defined benefit funding requirements
- More disclosure to employees
- Accelerated vesting of employer contributions
- Guidance regarding offering investment advice

## New Compliance Issues After PPA

- Periodic pension benefit statements must be provided in plan years beginning after December 31, 2006
- Previous rules required Plans to supply Individual Benefit Statements only upon a Participant's request
- Interim Guidance Provided by DOL Field Assistance Bulletin 2006-03

# New Compliance Issues After PPA

Frequency of Benefits Statements Depends on Type of Plan:

Plan Type	Required Benefit Statement
Participant Directed Defined Contribution Plan	Quarterly Statement
Other Defined Contribution Plan	Annual Statement
Defined Benefit Plan	Every three years to participant or upon request if Plan Administrator gives annual notice of the availability of these statements.

# New Compliance Issues After PPA

What do the statements have to contain?

- All Plans:
  - Total benefits accrued
  - Vesting information
    - Note: this only needs to be supplied annually
  - Explanation of permitted disparity or floor offset arrangement

# New Compliance Issues After PPA

What do the statements have to contain?

- All Defined Contribution Plans:
  - All of the previous info, **plus**
  - The value of each investment to which assets in the account have been allocated
    - Applies regardless of who contributed the asset-employer or participant

## New Compliance Issues After PPA

- Participant Directed D.C. Plans
  - All of the previous info, **plus**
  - Explanation of restrictions on participant's right to direct investment
  - Understandable explanation of the benefits of diversification
  - Use the model statement in the Field Assistance Bulletin No. 2006-03
  - [http://www.dol.gov/ebsa/regs/fab\\_2006-3.html](http://www.dol.gov/ebsa/regs/fab_2006-3.html)
- Notice of the DOL website for diversification info
  - <http://www.dol.gov/ebsa/investing.html>

## New Compliance Issues After PPA

- Benefit Statements – Miscellaneous
  - Owner-only plans are exempt
  - Statements can be provided electronically if reasonably accessible
- Penalties
  - \$100 per day for late benefit statements

# New Compliance Issues After PPA

## Defined Benefit Plan Notice

- For Plan years beginning on or after January 1, 2008, new notice replaces the Summary Annual Report (SAR)
- More detailed information being provided to participants regarding Plan's funded status, eg asset allocation of plan investments and plan amendments effecting benefits
- Notice required within 120 days after the end of the Plan year for plans with more than 100 participants
- Notice must be given to participants, beneficiaries, and labor organizations representing participants and beneficiaries
- DOL is required to issue a model notice

# New Compliance Issues After PPA

## Accelerated Vesting of Employer Contributions

- New vesting rules apply for all employer non-elective contributions (i.e., discretionary profit-sharing contributions) in plan years beginning after December 31, 2006
- Under the new rules profit-sharing contributions must vest as fast as:
  - Matching contributions; and
  - Top-heavy contributions

## New Compliance Issues After PPA

- If a plan uses cliff vesting, account balance must vest after three (3) years of service
- If the plan uses graded vesting, then vesting must be at the rate of 20% per year

# New Compliance Issues After PPA

New vesting schedules must look like one of these:

## Cliff Vesting

1<sup>st</sup> yr--0%  
2<sup>nd</sup> yr--0%  
3<sup>rd</sup> yr--100%

## Graded Vesting

1<sup>st</sup> yr--0%  
2<sup>nd</sup> yr--20%  
3<sup>rd</sup> yr--40%  
4<sup>th</sup> yr--60%  
5<sup>th</sup> yr--80%  
6<sup>th</sup> yr--100%

# New Compliance Issues After PPA

## Clarification Regarding Qualified Domestic Relations Orders ("QDROs")

- PPA required DOL to issue clarification regarding several QDRO issues
- Interim guidance issued by DOL on March 6, 2007
  - Subsequent DROs
  - timing of QDROs/DRO
  - must meet all general QDRO requirements

# New Compliance Issues After PPA

## PPA Plan Distribution Issues

- nonspousal rollovers
- hardship distributions
- joint and survivor annuity requirements
- Interest rate assumptions for lump sum distributions

# New Compliance Issues After PPA

## Rollovers by Nonspouse Beneficiaries

- Effective for distributions made after December 31, 2006
- Clarification and Confusion - IRS Notice 2007-7
- Not mandatory change - Plan amendment required

# New Compliance Issues After PPA

## Hardship Distributions

- PPA allows expansion of availability to spouses or dependents
- Discretionary not mandatory amendment
- Requires amendment by December 31, 2007 if operational for 2007 Plan year

# New Compliance Issues After PPA

## Investment Advice

- Prohibited transaction protection for Plan sponsor or other fiduciary offering investment advice
- Two eligible investment advice arrangements
  - Computer model arrangement
  - Fee neutral arrangement
- The new rules apply to advice given after December 31, 2006

# New Compliance Issues After PPA

## Investment Advice

- General requirements applicable to both arrangements
  - Investment advisor must receive only reasonable compensation
  - Detailed annual disclosure requirements
  - Annual audits of compliance with PPA requirements

# New Compliance Issues After PPA

## Plan Amendments

- A Plan Sponsor has until the last day of the 2009 plan year to amend the Plan retroactively for PPA changes
- However, Plan must comply operationally with PPA prior to the amendment through the end of the 2009 plan year
- Discretionary Plan amendments – amend by last day of Plan year
- Remedial amendment process – Revenue Procedure 2007-44

# Health and Welfare Plans

## Routine Year-End Compliance Issues

- Review existing health care and provider contracts
- Update plan documents, SPDs and electronic information where necessary to reflect 2008 changes
- Communicate 2008 HSA contribution limits to employees
- Review cafeteria plan and determine whether employer should adopt 2 ½ month extension period

## New Health Compliance Issues

- Proposed rules for HSA comparable contributions
- Final HIPAA non-discrimination rules
- Plan for review and implementation of proposed cafeteria plan regulations



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