



A Law Firm in the People Business

Updated 409A Correction Program

Section 409A of the Internal Revenue Code ("409A") imposes strict new requirements on nonqualified deferred compensation plans and various other compensation programs (such as certain bonus and severance plans). Violating these strict rules can result in significant tax penalties to the participants, including a 20% penalty tax.

Last year, the IRS established a very limited program for correcting operational violations of 409A. Earlier this month, the IRS issued a new and expanded version of this program.

Under this new program, corrections for errors affecting a company's more senior officers are still significantly limited, but corrections for other participants have been made considerably more flexible. However, only operational errors (not errors in the written terms of 409A plans) may be corrected. And, any correction requires that a schedule be attached to both the company's and the participant's tax returns.

We will be providing additional details on this enhanced correction program shortly.



*A Benefits Consulting Firm affiliated
with Mazursky Constantine LLC*

THE WORKER, RETIREE, AND EMPLOYER RECOVERY ACT OF 2008

The Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA") was signed into law on December 23, 2008. It provides relief from certain pension funding requirements and makes some technical corrections to the Pension Protection Act of 2006 (the "PPA"). It also suspends minimum required distributions for 2009.

Limited PPA Funding Relief. In response to the current economic crisis, WRERA provides some relief from the PPA funding rules that had begun to phase in last year. First, WRERA increases the ability of pension plans to average out unexpected changes in the value of plan assets by permitting adjustments for expected future earnings. Previously, only adjustments for expected contributions and distributions were permitted.

Second, WRERA modifies the rules under which pension plans must amortize funding shortfalls. Under a PPA transition rule, plans are allowed to use a modified value of plan assets to determine a shortfall only if the plan did not previously have a shortfall. WRERA removes this restriction so that all pension plans will be able to use this transition rule.

Modification to PPA Benefit Restrictions. The PPA imposes restrictions on certain forms of benefit (most typically, lump sums) if a plan's funding status falls too low. WRERA permits plans that are subject to these restrictions to continue to cash out small benefits that do not exceed \$5,000.

If a plan's funding status falls below a lower threshold, the PPA prohibits future benefit accruals. WRERA suspends this provision until 2010.

Suspension of Minimum Required Distributions for 2009. WRERA suspends the age 70½ minimum required distribution rules for 2009. However, distributions that would be considered minimum required distributions but for the suspension are still not eligible for rollover, and no relief is provided for 2008 minimum required distributions (including an initial 2008 minimum required distribution that is due in April 2009).

Mandatory Nonspousal Rollovers Beginning in 2010. The PPA permitted plans to allow nonspousal beneficiaries to rollover distributions into IRAs. WRERA requires plans that permit nonspousal beneficiaries to offer this type of rollover beginning in 2010.

Contact Information. For additional information or for assistance with WRERA, please contact Toby Walls (404.888.8870) or Andrew Overway (404.888.8858).

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