

Legal Alert: IRS Issues Guidance on PPA Distribution-Related Provisions

March 10, 2008

IRS Notices 2008-29 and 2008-30, scheduled to be published on March 24, 2008, clarify a number of issues relating to the distribution provisions of the Pension Protection Act of 2006 (the “PPA”).

- Presented in a Question & Answer format, Notice 2008-30 (click [here](#) for a copy) addresses provisions relating to (i) rollovers from eligible retirement plans to Roth IRAs, (ii) additional survivor annuity options, (iii) interest rate assumptions for lump sum distributions and (iv) gap-period earnings.
- Notice 2008-29 (click [here](#) for a copy) provides guidance and requests comments regarding the mortality tables permitted for use in determining present values with respect to individuals entitled to disability benefits under a qualified defined benefit pension plan.

The following summarizes the guidance provided in both Notices.

Rollovers from Eligible Retirement Plans to Roth IRAs. Effective January 1, 2008, the PPA extends the variety of plans from which qualified rollover contributions can be made to Roth IRAs to include §§ 403(a) and (b) annuity plans as well as § 457(b) governmental plans (in addition to Roth IRAs, traditional IRAs, SIMPLE IRAs and designated § 402A Roth accounts, already allowed). Notice 2008-30 clarifies the following:

- **Generally.** Roth IRAs may now accept direct or indirect rollovers from qualified plans described in § 401(a). The amount rolled over must be an eligible rollover distribution, and gross income must include any amount of the distribution that would be includible but for the rollover. For taxable years beginning before January 1, 2010, qualified rollover contributions (other than from Roth IRAs) are not allowed for individuals with modified adjusted gross incomes exceeding \$100,000 or who are married filing single returns.

- **Section 72(t) Tax.** The § 72(t) tax does not apply to rollovers from eligible retirement plans other than a Roth IRA, unless those amounts are distributed within five years.
- **Direct Rollovers.** Plans must allow for distributees to have an eligible rollover paid directly to a specified eligible retirement plan (including a Roth IRA).
- **Administrator Responsibility.** The plan administrator is not responsible for confirming to the distributee that he or she is eligible to make a rollover to a Roth IRA.
- **Withholding.** Eligible rollover distributions paid directly to eligible retirement plans (including by nonspouse beneficiaries) are not subject to mandatory withholding, though a plan may allow voluntary withholding requested by the participant. Eligible rollover distributions paid to an employee or an employee's spouse are subject to 20% withholding.
- **Qualified Rollover Contributions by Beneficiaries.** A beneficiary may make qualified rollover contributions to a Roth IRA, assuming eligibility based on his or her modified adjusted gross income and filing status. Rollovers by nonspouse beneficiaries in the form of direct transfers may be permitted, but plans are not required to provide for this.

Qualified Optional Survivor Annuities. The PPA requires plans subject to § 401(a)(11) to offer a qualified optional survivor annuity ("QOSA") in addition to qualified joint and survivor annuities ("QJSA"). Participants who waive participation in QJSAs must be given an opportunity to elect a QOSA and must be provided with written explanation of terms and conditions. QOSAs must be in place by the last day of the first plan year beginning on or after January 1, 2009. Notice 2008-30 clarifies the following with regard QOSA administration:

- **Level of Survivor Annuity.** If the plan's QJSA provides a survivor annuity of less than 75 percent of the annuity payable during the joint lives of the participant and the participant's spouse, the QOSA must provide a spouse survivor annuity of 75 percent. If the QJSA provides a survivor annuity that is greater than or equal to 75 percent of the annuity payable during the joint lives of the participant and the participant's spouse, the QOSA must provide a spousal survivor annuity percentage of 50 percent.
- **Actuarially Equivalent Options.** If a plan subject to § 401(a)(11) has in place an optional joint and spouse survivor annuity that (i) is at least actuarially equivalent to the plan's single life annuity form of benefit payable at the same time as the optional

- joint and spouse survivor annuity, and (ii) provides a spouse survivor annuity percentage that is equal to the percentage required to be provided under a QOSA, the plan need not be amended to include an annuity designated as a QOSA.
- **QOSA Value.** A QOSA must be at least actuarially equivalent to the plan's single life annuity, but it need not be equivalent to the QJSA if the QJSA has a higher value.
 - **Spousal Consent.** Participants may elect out of a QJSA and into a QOSA without spousal consent, so long as the QOSA is actuarially equivalent to the plan's QJSA. Otherwise, spousal consent is required to waive the QJSA and elect the QOSA.
 - **Notice Requirement.** A plan can satisfy its obligation to provide a participant with a written explanation of the terms and conditions of a QOSA by satisfying the requirements of § 1.417(a)(3)-1, treating the QOSA as a presently available optional form of benefit.
 - **Preretirement Survivor Annuities.** There is no requirement for plans to offer participants a preretirement survivor annuity based on a QOSA.
 - **Amendment Timing.** Amendments to plans implementing QOSAs within the period established by the PPA, and being operated as if in effect for annuity starting dates in plan years beginning after December 31, 2007, are treated as being adopted on that effective date. However, an amendment that implements a QOSA is not eligible for relief from the requirements of § 411(d)(6).

Interest Rate Assumptions for Lump Sum Distributions. For plan years beginning on or after January 1, 2008, the PPA changes the determination of the present value of plan benefits for purposes of § 417(e). Generally, this includes defining the term "applicable interest rate" as the adjusted first, second and third segment rates applied under rules similar to the rules of § 430(h)(2)(C) for the month before the date of the distribution. Segment rates are determined without regard to the 24-month averaging period and are phased in over five years. Notice 2008-30 provides the following additional guidance:

- **Use of Pre- and Post-PPA Mortality Table and Interest Rate.** A plan may, without failing the requirement that a QJSA be at least as valuable as any other form of optional benefit, provide a benefit that is subject to the minimum present value requirement of § 417(e)(3), calculated as the more favorable to the participants of (i) the amount calculated using the pre-PPA applicable mortality table and interest rates, or (ii) the amount calculated by using the post-PPA applicable mortality table and interest rates.

- **Subsequent Amendments.** If a plan amendment is adopted to provide an optional form of benefit as discussed immediately above, and the plan is subsequently amended so that the amount payable is calculated without reference to the pre-PPA applicable mortality table and interest rates, PPA relief will apply with respect to the subsequent amendment so long as the initial amendment was adopted on or before June 30, 2008.
- **Plan References.** Relief provided by the PPA applies to amendments that replace a plan reference to the pre-PPA mortality table and interest rate with a reference to the post-PPA applicable mortality table and/or interest rates.

Gap-Period Earnings. Final regulations under § 402(g), applicable to both pretax excess deferrals and excess deferrals that are designated Roth contributions, provide that gap-period earnings must be distributed along with excess deferrals to the extent that the employee is or would be credited with an allocable gain or loss if the total amount were to be distributed. Notice 2008-30 provides the following additional guidance:

- **Cycles B and C.** Restated plans submitted in Cycle B or Cycle C are required to provide for the distribution of gap-period earnings, or filers will be asked to amend their plans.
- **Interim Plan Amendments.** Adoption of interim plan amendments providing for the distribution of gap-period income is required by the last day of the first plan year beginning after January 1, 2009.
- **Current Distribution.** Plans must include gap-period earnings in all distributions of excess deferrals attributable to taxable years beginning on or after January 1, 2007.

Alternative Disability Mortality Tables. Prior to enactment of the PPA, the IRS released Rev. Rul. 96-7, establishing mortality tables for use in determining a plan's current liability, effective for plan years beginning after December 31, 1994. Notice 2008-29 provides for the continued use of these mortality tables, as well as the rules set forth in this revenue ruling regarding determination of whether a benefit is payable on account of disability.

- The Notice requests comments regarding the potential construction of updated mortality tables that would be used with respect to individuals who are entitled to such benefits.

- Further, the IRS requests comments concerning the use of select and ultimate mortality tables under which mortality rates vary depending on the individual's age and the number of years that the individual has been disabled.

Comments are to be submitted by June 23, 2008.



If you are interested in more information about this development, or any of the services we provide, please contact any of the following attorneys:

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