

To: Clients and Friends
From: Smith & Downey
Date: November 10, 2008
Re: **URGENT** -Imminent Deadlines

As we've noted in previous e-Alerts and at our Seminars, December 31, 2008 and January 31, 2009 are important compliance deadlines for many benefit plans. Here are some of the most important tasks that must be completed by those dates:

1. Deferred Compensation Plans. All "deferred compensation plans" -- as very broadly defined in new Code Section 409A -- must be amended (retroactively in many cases) on or before December 31, 2008 in order to avoid the extremely severe 409A penalties.

All employers should take steps immediately to ensure that they have identified all of their "deferred compensation plans," and that they have adopted amendments to those plans that reflect the most recent 409A guidance.

In addition, even for plans that already have been amended to reflect the most recent 409A guidance, the availability of important transition relief regarding operational compliance with 409A also will expire on December 31, 2008. Specifically, December 31, 2008 is the deadline for making changes to distribution elections due to begin after 2008. All employers should review all distribution elections currently in effect to determine if this transition relief opportunity is required or desired, because it will become very difficult to make distribution election changes after this year in most cases.

2. 403(b) Plans. All 403(b) plans (both ERISA-governed and non-ERISA-governed) must be amended on or before December 31, 2008 to reflect the extensive guidance in the recent 403(b) regulations. (These regulations also require changes to 403(b) administrative procedures.)

In addition, beginning with their 2009 years, ERISA-governed 403(b) plan sponsors also have to file "long-form" Form 5500s (and, unless exempt as small plans, meet the Form 5500 audit requirements).

3. Section 125 Plans. Some 125 plans must be amended on or before December 31, 2008 to reflect the extensive guidance in the recent 125 regulations. (These regulations also require changes to 125 administrative procedures.)

Employers should determine whether their 125 plan documents and administrative procedures reflect this guidance.

4. IRS Filings. Employers whose taxpayer identification numbers end in 3 and 8 (Cycle C filers) and who sponsor tax-qualified retirement plans must file their IRS determination letter requests for those plans on or before January 31, 2009. (The IRS announced this week that governmental plans have the option to file by January 31, 2009, or instead file in Cycle E, which runs from February 1, 2010 through January 31, 2011. Although there are incentives for a governmental plan to proceed with its filing by January 31, 2009, there are no penalties for waiting to do so until January 31, 2011.)

Please contact us immediately if we can be of assistance with respect to any of these upcoming deadlines.