

To: Clients and Friends  
From: Smith & Downey  
Date: June 16, 2008  
Re: Upcoming Deadlines

Here is a very brief overview of some of the upcoming deadlines with respect to which employers now should be taking action:

#### 1. 403(b) Plans

By December 31, 2008, 403(b) plans must be formalized in a plan document meeting the various requirements of the final 403(b) Regulations. The Regulations also impose various new operational requirements on 403(b) plans. Finally, beginning with 2009 plan years, 403(b) plans that are subject to ERISA will need to file complete annual Form 5500s and those with more than 100 participants (as defined in the applicable rules) will need to include an audit with their Form 5500s.

Therefore, 403(b) sponsors should be working on these issues now, including considering whether establishing a new, post-2008 403(b) plan is appropriate, any charges or other penalties that might be incurred for freezing investments in pre-2009 options, and the like.

#### 2. Tax-Exempt Entity Controlled Group Rules

Effective January 1, 2009, tax-exempt entities will become subject to new "controlled group" rules, generally in the same manner as multi-entity, affiliated, for-profit businesses have been in the past. The application of these new rules to tax-exempt entities that are "affiliated" with other tax-exempt entities that have in the past treated themselves as not subject to aggregation with one another under the "controlled group" rules may require retirement plan and health and welfare plan changes and new testing and reporting.

#### 3. Deferred Compensation Plans

December 31, 2008 is the deadline for final amendments to "deferred compensation plans," as very broadly defined in Code Section 409A. December 31, 2008 is also the deadline for making compliant distribution elections under deferred compensation plans.

Because of the very severe nature of 409A's penalties, it is critical that employers identify all of their deferred compensation plans, amend them to comply with the final 409A Regulations, and ensure that compliant distribution elections are submitted, all by December 31, 2008.

#### 4. Cycle C IRS Filings

Generally, all governmental employers, and all employers with EINs ending in 3 or 8, must file their amended and restated qualified plan documents with the IRS by January 31, 2009. Affected employers should be working on these restatements, and the related IRS filings, now.

## 5. Section 125 Plan Amendments.

The recently issued Section 125 Proposed Regulations are scheduled to become effective for plan years beginning on or after January 1, 2009. Under these Regulations, Section 125 plan amendments for 2009 changes must be in place by December 31, 2008 (because the Regulations provide that retroactive Section 125 plan amendments are no longer permissible). In addition, related changes to Section 125 operational procedures must be made by that date.

Please contact us if we can be of assistance on any of these issues.