

## Employee Benefits and Executive Compensation

December 22, 2009

### Plan Sponsor Year-End Alert: IRS Extends Some, But Not All, Year-End Amendment Deadlines

The IRS recently issued Notice 2009-97, which extends the deadline for amending qualified retirement plans to incorporate certain requirements added to the Internal Revenue Code of 1986 (the "Code") and the Employee Retirement Income Security Act of 1974 (ERISA) by the Pension Protection Act of 2006 (PPA).

The deadline for adopting most amendments mandated by PPA is, in general, the last day of the first plan year beginning on or after January 1, 2009 (December 31, 2009, for calendar year plans).

Notice 2009-97 extends this deadline until the last day of the first plan year beginning on or after January 1, 2010 (December 31, 2010, for calendar year plans), for the following provisions:

- Amending single-employer defined benefit plans to comply with Code Sections 401(a)(29) and 436, which impose limits on benefit accruals and payments for plans that fail to meet specified funding targets
- Amending "applicable defined benefit plans" (cash balance and similar defined benefit plans) to comply with vesting and other special rules applicable to these plans
- Amending defined contribution plans that hold publicly traded employer securities to comply with the diversification rules of Code Section 401(a)(35)

The Notice also provides limited relief from anti-cutback rules of Code Section 411(d)(6) for amendments that are adopted by the extended deadline.

The extension to adopt amendments applies only to the provisions listed above. Other amendments required to be adopted by the last day of the first plan year beginning on or after January 1, 2009, must still be adopted by that date. These include, for example, applicable interest rate and mortality table requirements for defined benefit plans, more rapid vesting for defined contribution plans, non-spouse beneficiary direct rollovers to individual retirement accounts (IRAs) and designation of Roth IRAs as one of the eligible retirement plans for purposes of direct transfers and rollovers.

If you have any questions about these amendment deadlines, please contact your Katten attorney or any of the following members of the firm's Employee Benefits and Executive Compensation Practice.

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