



Year-End Benefits Wrap Up

12.21.2010

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As 2010 draws to a close, it is time to review recent employee benefits developments and upcoming compliance deadlines. The following paragraphs summarize some key issues that plan sponsors and administrators should keep in mind.

Welfare Benefit Plans

- **CHIP Premium Assistance Notice.** The CHIP premium assistance notice must be issued *by January 1, 2011* for health plans with calendar year plan years. The Department of Labor model notice is provided here: <http://www.dol.gov/ebsa/>
- **Health Flexible Spending Accounts.** Health flexible spending accounts may not reimburse the cost of over-the-counter drugs obtained without a prescription *effective January 1, 2011*.
- **Mental Health Parity and Addiction Equity Act of 2008 (MHPAE).** Financial requirements and treatment limitations of mental health and substance use disorder benefits must be the same as medical and surgical benefits. Final regulations were issued in 2010 that clarify many of the requirements. Plans must comply with these final regulations for plan years beginning on or after July 1, 2010, or *January 1, 2011, for calendar year plans*.
- **Health Care Reform.** Group health plans with calendar year plan years must comply with the Patient Protection and Affordable Care Act of 2010 (PPACA) as of *January 1, 2011*. PPACA affects coverage, disclosure and notice requirements for plans. For additional information regarding PPACA compliance [please see our guidance](#).

Qualified Retirement Plans

- **Amendment Deadline Extension.** The Internal Revenue Service (IRS) extended the deadline for adopting certain plan amendments required under the Pension Protection Act of 2006, the Worker, Retiree, and Employer Recovery Act of 2008, and the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010. The deadline is extended to *December 31, 2011* (for calendar year plans). Plans sponsors should watch for additional guidance in 2011 on the following amendments:
 - Funding-based limits on benefits and benefit accruals under Internal Revenue Code (Code) sections 436 and 401(a)(29); and
 - Vesting and other special rules under Code section 411(a)(13) applicable to cash balance plans and other applicable defined benefit plans.
- **In-Plan Roth Rollovers.** Under the Small Business Jobs Act of 2010, a 401(k) plan participant

may make an in-plan rollover from a non-Roth account to a Roth account under certain circumstances. The plan must have a Roth deferral option and allow the in-plan rollover. The rollover generally is taxed as though distributed to the participant. In-plan Roth rollovers made in 2010, however, are eligible for special two-year delayed tax treatment. A 2010 in-plan Roth rollover is treated as distributed half in 2011 and half in 2012. Plans may be amended retroactively, no later than **December 31, 2011**, to allow for the 2010 in-plan Roth rollovers. Roth deferrals and Roth rollovers must be operationally available in the plan in 2010.

- **PBGC Reportable Event Interim Guidance Extended.** Non-publicly traded companies with defined benefit pension plans that, in the aggregate, have more than \$50 million in underfunding, must provide a "Reportable Event Notice" to the PBGC. PBGC Technical Update 10-4 extends the temporary rules used to determine the need for such a Reportable Event Notice through 2011.
- **Annual Funding Notice.** On November 18, 2010, the Department of Labor released proposed regulations on the annual funding notice requirements for defined benefit plans. The proposed regulations incorporate previously issued guidance and provide a model notice that can be used by plan sponsors.

Nonqualified Deferred Compensation. The IRS recently issued additional guidance regarding the correction of Code section 409A failures. Notice 2010-80 modified Notice 2010-6, which provided Code section 409A correction methods, as follows:

- Clarifies that a nonqualified plan linked to a qualified plan or another nonqualified plan may be eligible for correction relief;
- Provides that correction relief is now available for stock rights intended to comply with Code section 409A;
- Includes a new correction method for failures involving payments at separation from service subject to certain actions by the service provider (such as the execution of a release); and
- Provides information reporting relief for operational errors corrected in the same year.

Education Assistance Exclusion Extended for Two Years. Employer-provided educational assistance of up to \$5,250 is currently excludable from gross income, but was set to expire on December 31, 2010. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the Tax Act) delays the expiration of the Code section 127 exclusion until **December 31, 2012**.

Transportation Fringe Benefit Parity Extended Through 2011. Employer-provided qualified transportation fringe benefits are excluded from an employee's gross income. Currently, the amount excludable for vanpool and transit passes is the same as the amount excludable for employer-provided parking (\$230 per month for 2010). The parity between vanpool, transit passes and parking benefits was set to expire on December 31, 2010. The Tax Act, however, extended the parity in qualified transportation fringe benefits through **December 31, 2011**.

For more information about this topic, please contact any member of the Williams Mullen Employee Benefits & Executive Compensation Team.

Please note:

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