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Invesco Aim Plan*Forward*℠ Washington Update

Invesco Aim Plan*Forward* **Washington Update** offers timely expert discussion and analysis of current and pending legislation, litigation and regulatory changes affecting retirement plans. Invesco Aim publishes **Washington Update** on an as-needed basis to help financial advisors and plan sponsors keep current with regulations, laws and court cases that may affect their retirement plans.

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Legislative Update

Near the end of 2008, several legislative changes were enacted that affect both defined contribution and defined benefit plans. This update discusses changes enacted by The Worker, Retiree and Employer Recovery Act of 2008 as well as the guidelines on ERISA fidelity bonding requirements issued by the Employee Benefits Security Administration (EBSA) in Field Assistance Bulletin 2008-04.

The Worker, Retiree and Employer Recovery Act of 2008

On Dec. 23, 2008, President Bush signed into law the Worker, Retiree, and Employer Recovery Act of 2008. The act includes technical corrections to the Pension Protection Act of 2006 (PPA) and pension recovery provisions intended to provide relief for individuals and plan sponsors to help them deal with the economic downturn.

A major provision of the act suspends required minimum distributions (RMDs) from qualified plans [including 401(k) plans], 403(a) and 403(b) plans, governmental 457(b) plans and IRAs for 2009. Ordinarily, RMDs must begin to be paid from tax-deferred retirement savings accounts by April 1 of the calendar year following the year in which an individual reaches 70½. After the first installment payment, RMDs must generally be made by the end of the current year. RMDs are calculated based on the account balance as of the last business day of the year prior to the year for which the RMD must be made. The IRS imposes an excise tax of 50% on the RMD amount not distributed by the deadline. Under the new law, that excise tax is waived on all 2009 underpayments otherwise distributed to retirees. This allows seniors 70½ or older to avoid a tax hit on distributions when the market is down. RMDs for 2008 (including initial RMD payments due by April 1, 2009) are *not* waived by the new law.

Other major relief provisions ease PPA defined benefit pension funding rules. For instance, PPA phases in full pension funding targets over a five year period (e.g. 92% for 2008 and 94% for 2009). If a plan misses its target in a phase-in year, the target automatically increases to 100%. Due to the economic downturn, many employers are unable to meet even the reduced phase-in amounts. Under the new law, plans that miss the target funding percentage for a particular year will be allowed to retain the same target and not jump to the 100% standard.

The act also permits employers to "smooth" the value of pension plan assets over 24 months, instead of having to apply the mathematical average that the IRS previously required. Smoothing allows employers to spread certain funding deficits over a period of time and, especially in a slowing economy, can help lower the immediate cost of meeting certain funding levels.

Prior to the new law, a single-employer pension plan that was less than 60% funded had to freeze all benefit accruals for plan participants. The act allows plans to look back to the plan's funding status during the previous plan year for purposes of determining whether the restrictions on benefit accruals would apply. This provision applies for plan years beginning on or after Oct. 1, 2008 and before Oct. 1, 2009. For plan years beginning Jan. 1, 2009, that means a look back to Jan. 1, 2008 conditions, before the market collapsed.

Similarly, for plans starting between Oct. 1, 2008 and Oct. 1, 2009, the new law allows multi-employer plans to elect to freeze their current funding status based on the previous year's level. This would freeze the terms of the funding improvement or rehabilitation plan adopted at any time during the previous plan year.

Troubled multi-employer plans must generally bring their funded position up to statutory standards within a specified correction period (10 years or 15 years). This allows stakeholders to phase in higher contributions or deeper benefit cuts over a period of time. The new law provides for a three year extension of the funding improvement or rehabilitation period, from 10 to 13 years and from 15 to 18 years. Electing this extended correction period would help offset 2008 equity losses.

Other PPA technical corrections of the act include:

- A provision allowing the IRS to prescribe rules for plans using dates other than the last day of the calendar year to value their assets
- A provision allowing lump sum distributions of $5,000 or less to be paid, even if an underfunded plan is otherwise prohibited from paying lump sums
- Rules clarifying that, effective for plan years beginning after Dec. 31, 2009, all plans must permit rollovers out of the plan for non-spouse beneficiaries and provide notice of the distribution
- A definition of a one-person retirement plan
- A provision stating that rollovers from a Roth 401(k) or 403(b) plan to a Roth IRA are not subject to the Roth IRA contribution adjusted gross income limits

Some pension experts believe the act represents only the first step in strengthening retirement plans, with further relief likely in 2009.

Field Assistance Bulletin 2008-04: ERISA Fidelity Bonding Requirements

Late last year, EBSA issued Field Assistance Bulletin 2008-04 regarding ERISA's fidelity bonding requirements. The guidance was issued to clarify the application of the bonding requirements, in part due to amendments to ERISA that were enacted in PPA.

Section 412 of ERISA and related regulations generally require that every plan fiduciary and every person who handles funds or other plan property must be bonded. The amount of the bond for each such person must be at least 10% of the amount of the plan funds or property handled (but not less than $1,000) and generally shall not be more than $500,000 (or $1,000,000 for plans that hold employer securities).

The guidance indicates that a person is generally considered to handle plan funds or property if the person (plan official) can cause a loss to the plan of those funds and property through fraud or dishonesty. These plan officials will usually include the plan administrator and those employees of the plan or plan sponsor who handle plan funds by virtue of their duties relating to the receipt, safekeeping and disbursement of funds. Plan officials may also include other persons such as service providers, whose duties and functions involve access to plan funds or decision-making authority that can give rise to a risk of loss through fraud or dishonesty.

A person who provides investment advice to a plan, but who does not exercise or have the right to exercise discretionary authority with respect to purchasing or selling securities or other property for the plan, is not required to be bonded solely by reason of providing such investment advice. If such person also performs any additional functions that constitute handling plan funds or other property, though, that person must be bonded.

The term "funds or other property" generally refers to all funds or property that the plan uses or may use as a source for the payment of benefits to plan participants or beneficiaries. It therefore includes contributions from any source (including employer, employees and employee organizations) that are received by the plan, or segregated from any employer or employee organization's general assets, or otherwise paid out or used for plan purposes.

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