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Preparing Your Benefit Plans for Year End

by **B. David Joffe**



As the end of the year approaches, employers need to be aware of year-end deadlines that may affect their benefit plans. The list below covers some of the key deadlines.

Health and Welfare Plans

- **Medicare Part D Notices.** Creditable coverage disclosure notices are required to be provided to Medicare eligible participants annually by November 15th (and on an ongoing basis for newly eligible participants).
- **Final HIPAA Nondiscrimination and Wellness Program Regulations.** Final regulations regarding HIPAA nondiscrimination and wellness programs are generally applicable to plan years beginning on or after July 1, 2007. Although the final regulations do not substantially change the interim rules, plans should be reviewed to ensure that the eight “health factors” set forth in the regulations are not used to discriminate with respect to health coverage. In addition, wellness programs should be reviewed carefully to ensure compliance with the nondiscrimination rules.

Qualified Retirement Plans

- **Safe-Harbor Notice.** 401(k) plans that utilize a safe-harbor matching or nonelective contribution formula must provide certain notice to eligible employees informing them of the safe-harbor contribution feature. The notice must be distributed to eligible employees no earlier than 90 days and no later than 30 days before the first day of the 2008 plan year.
- **Automatic Enrollment Notice.** The Pension Protection Act (“PPA”) generally requires that plans utilizing automatic enrollment provide notice to participants within a reasonable period (at least 30 days) before each plan year that explains the participant’s right to opt out and how contributions will be invested if no investment election is made. In 2008, such notices should also be provided if a qualified automatic contribution arrangement (“QACA”) is used. The IRS is scheduled to post a model notice for QACAs.
- **Default Investment Alternatives.** The Department of Labor regulations on default investment alternatives are effective December 24, 2007. Under the PPA, participants must generally be notified of the plan’s qualified default investment alternative (“QDIA”) at least 30 days before eligibility or any first investment in a QDIA and at least 30 days in advance of each subsequent year. If a QDIA will be utilized beginning on December 24, 2007, notice must be provided by November 24, 2007.
- **Hurricane Katrina Relief.** Employers who utilized the relief provisions granted to Hurricane Katrina victims by the Katrina Emergency Tax Relief Act of 2005 (extended to Hurricane Rita and Wilma victims by the Gulf Opportunity Zone Act of 2005) must adopt a good-faith amendment to comply with the statutory hurricane relief provisions. If a plan granted loans or hardship distributions outside of the scope of the plan document as part of the hurricane relief, the sponsor

must adopt an amendment by the last day of the plan year that begins in 2007 (i.e., December 31, 2007 for calendar year plans).

- **Discretionary Amendments.** For plans that made discretionary changes in 2007, discretionary plan amendments must be adopted by December 31, 2007.

Deferred Compensation Plans

- **Deferral Elections.** Generally, written elections to defer 2008 compensation must be made by December 31, 2007.
- **Form of Payment Elections.** Generally, elections to change the time or form of payment for compensation payable in 2008 must be made by December 31, 2007.

If you have any questions about the deadlines, please contact one of the [Employee Benefits and Executive Compensation](#) attorneys at Boulton, Cummings, Conners & Berry PLC:

Martha L. Boyd
615.252.2357
mboyd@boultoncumplings.com

Charles M. Cain II
615.252.2330
ccain@boultoncumplings.com

Andrew Elbon
615.252.2378
aelbon@boultoncumplings.com

B. David Joffe
615.252.2368
djoffe@boultoncumplings.com

Gordon Earle Nichols
615.252.2387
gnichols@boultoncumplings.com

John M. Scannapieco
615.252.2352
jscannapieco@boultoncumplings.com

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Roundabout Plaza, 1600 Division Street, Suite 700 Nashville, TN 37203
615.244.2582 www.boultoncumplings.com

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