

eBenefits Alert: Year End Reminder for 403(b) Plans and 409A Compliance

October 29, 2008

The final regulations under Section 403(b) of the Internal Revenue Code, issued on July 23, 2007, apply to taxable years beginning after December 31, 2008. The regulations require Plan Sponsors of 403(b) to take many new compliance actions, including:

- The 403(b) plan has a written document that complies with the regulations (even if the Plan has not been subject to that requirement through ERISA)
- Any direct transfers must be limited to authorized funding vehicles
- In-service distributions of employer contributions are limited to a 403(b)(1) annuity
- Any good faith or safe harbor alternatives to statutory nondiscrimination testing have been eliminated
- If the Plan Sponsor is a tax-exempt entity, the controlled group rules now apply to nondiscrimination testing

403(b) Plans should be reviewed for operational compliance and appropriate written plan documentation under the final regulations. Plans that have not historically been required to have a written plan document will need to have one drafted and in place by December 31, 2008.

December 31, 2008, also marks the end of the transitional relief for 409A compliance that was extended under IRS Notice 2007-86. In 2008, taxpayers have generally been required to operate deferred compensation plans in compliance with the plan terms, provided that those terms are consistent with the requirements of Internal Revenue Code Section 409A and applicable guidance.

The end of the transition period means that employers must have their deferred compensation arrangements reviewed and amended to ensure compliance with Code Section 409A by December 31, 2008. If you would like assistance with Code Section 403(b) or 409A compliance, please contact a member of the Gray Plant Mooty **Employee Benefits and Executive Compensation** group.

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