

May 18, 2010

Plan Amendments Required in 2010

As we approach the midway point of 2010, plan sponsors should be aware of amendments that may be required to be made by the end of the year under the Pension Protection Act of 2006 (PPA), the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act), the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA), and the Patient Protection and Affordable Care Act (PPACA).

Pension Protection Act of 2006

The deadline for most amendments under PPA was the last day of the first plan year that began on or after January 1, 2009 (December 31, 2009 for calendar year plans). In [Notice 2009-97](#), the IRS extended the deadline to the last day of the first plan year that begins on or after January 1, 2010 for amendments related to:

- Limits on benefits and benefit accruals for single-employer defined benefit plans based on a plan's funding status. (§§ 401(a)(29) and 436)
- Vesting and other special rules, such as rules relating to the prohibition on ceasing or limiting accruals on account of an individual's age, applicable to cash balance and other applicable defined benefit plans. (§§ 411(a)(13) and 411(b)(5))
- Diversification requirements for certain defined contribution plans that include investments in employer securities. (§ 401(a)(35)(E))

Non-calendar year plans may have additional PPA amendments that need to be made in 2010 (e.g., for plans that have a fiscal plan year, the deadline for most PPA amendments is June 30, 2010).

Heroes Earnings Assistance and Relief Tax Act of 2008

Amendments under the HEART Act must be made by the last day of the first plan year beginning on or after January 1, 2010 (the 2012 plan year for governmental plans). The HEART Act requirements include amendments related to:

- Inclusion of differential wage payments in compensation for purposes of the Code section 415 limits. (§ 414(u)(12))
- Optional inclusion of differential wage payments when calculating plan benefits and contributions and for certain non-discrimination testing. (§ 414(u)(12))
- Eligibility of individuals who are on active duty for more than 30 days to receive distributions of elective deferrals. (§ 414(u)(12)(B))
- Additional benefits for survivors of participants who die while performing qualified military service. (§ 401(a)(37))
- Optional benefit accruals for individuals who die or become disabled while performing qualified military service. (§ 414(u)(9))

[Notice 2010-15](#) provides additional guidance on amendments required under the HEART Act.

© 2010 Sutherland Asbill & Brennan LLP. All Rights Reserved.

This communication is for general informational purposes only and is not intended to constitute legal advice or a recommended course of action in any given situation. This communication is not intended to be, and should not be, relied upon by the recipient in making decisions of a legal nature with respect to the issues discussed herein. The recipient is encouraged to consult independent counsel before making any decisions or taking any action concerning the matters in this communication. This communication does not create an attorney-client relationship between Sutherland and the recipient.

Worker, Retiree, and Employer Recovery Act of 2008

The amendment deadline for the suspension of required minimum distributions in 2009 under WRERA for defined contribution plans is the last day of the first plan that begins on or after January 1, 2011. However, some plan sponsors are choosing to adopt this amendment with the amendments under the HEART Act. [Notice 2009-82](#) provides a sample amendment for prototype plans that can be modified for individualized plans.

Patient Protection and Affordable Care Act

Under the [interim final rule](#) regarding the implementation of the age 26 adult coverage extension under PPACA, a cafeteria plan may immediately allow employees to change an election related to an adult child that becomes newly eligible to participate in the employer's health plan. If a cafeteria plan allows this change in an election, the plan must be amended to reflect the change no later than December 31, 2010. The amendment must be effective as of the first day on which employees were permitted to make the election change.

For more information on PPACA, see Sutherland's May 12, 2010 [Legal Alert](#) (discussing the age 26 adult coverage extension) and Sutherland's May 5, 2010 [Legal Alert](#) (discussing the grandfather rules.)



If you have any questions about this Legal Alert, please feel free to contact the attorneys listed below or the Sutherland attorney with whom you regularly work.

Daniel M. Buchner	202.383.0869	daniel.buchner@sutherland.com
Adam B. Cohen	202.383.0167	adam.cohen@sutherland.com
Jamey A. Medlin	404.853.8198	jamey.medlin@sutherland.com
Alice Murtos	404.853.8410	alice.murtos@sutherland.com
Joanna G. Myers	202.383.0237	joanna.myers@sutherland.com
Robert J. Neis	404.853.8270	robert.neis@sutherland.com
Vanessa A. Scott	202.383.0215	vanessa.scott@sutherland.com
W. Mark Smith	202.383.0221	mark.smith@sutherland.com
William J. Walderman	202.383.0243	william.walderman@sutherland.com
Carol A. Weiser	202.383.0728	carol.weiser@sutherland.com