

September 23, 2005

MEMORANDUM TO CLIENTS

Re: Round-Up of Legislative and Regulatory Relief For Plan Sponsors, Administrators, and Participants and Beneficiaries Affected by Hurricane Katrina

In the wake of Hurricane Katrina,

- the Internal Revenue Service (the “Service”), Department of Labor (“DOL”) and the Pension Benefit Guaranty Corporation (“PBGC”) have issued guidance extending numerous deadlines for specific acts related to pension and employee benefit plans affected by the Hurricane, along with certain acts otherwise required to be met by plan participants and beneficiaries adversely affected by Katrina.
- the Service issued guidance intended to encourage taxpayers to donate paid leave to charities assisting victims of Hurricane Katrina through employer-provided leave-based donation programs.
- the Service and the DOL announced liberalized hardship procedures and allowed plans that currently do not permit hardship distributions and loans to make such distributions to participants directly affected by Katrina, and
- Congress passed targeted tax relief measures for those businesses and individuals located in the Hurricane Katrina disaster area, including some pension provisions.

The Congressional and Agency focus on providing relief for Katrina-affected businesses and individuals has so dominated the agenda this month that little attention has been devoted to other matters. In the process, action has been delayed on a host of

other regulatory and legislative priorities. Most notably, in the benefits area, the release of expected guidance on the new deferred compensation rules (Code sec. 409A) has been delayed for several weeks, and is currently anticipated by the week of October 3.

We collect and highlight all of the recent guidance below, and also note relevant provisions of existing law, including Code provisions allowing tax-free payments to affected individuals.

A. Background – Code Section 7508A

1. In General

Generally, Code section 7508A gives the Service the authority to postpone the deadlines for specified acts otherwise required to be met under the Code for taxpayers affected by a Presidentially declared disaster (as defined under Code section 1033(h)(3)). More specifically, Code section 7508A(b) allows the Service to postpone the date on which certain acts by a pension or other employee benefit plan – or by a plan sponsor, administrator, participant, beneficiary or other person – would otherwise be required to be completed. Such specified acts may be postponed for up to 1 year. In addition, a plan is not treated as failing to be operated under the terms of the plan solely as a result of disregarding any period designated by the Service. The DOL and the PBGC have parallel authority to postpone similar deadlines for acts relating to pension and employee benefit plans and plan participants and beneficiaries under ERISA sections 518 and 4002(i).

The legislative history of Code section 7508A(b) lists a number of acts that Congress believed could be postponed by the Service, DOL, and PBGC. Such acts include:

- the filing of a form with the Service, DOL or the PBGC;
- an employer's contribution to the plan of required quarterly amounts for the current year or the prior year minimum funding amounts;
- the filing of an application for a waiver of the minimum funding standard;
- the payment of premiums to the PBGC;
- a participant's election of a form of benefits under a plan;
- the plan administrator's distribution of benefits in accordance with a participant's election;
- notice to an employee of eligibility for continuation coverage under a group health plan (i.e., COBRA coverage); and
- an employee's election of COBRA coverage.

2. Regulations Under Code Section 7508A

The final regulations under Code section 7508A set forth, among other things, a list of certain acts that may be postponed by the Service (Treasury Regulation section 301.7508A-1). Specifically, Treasury Regulation section 301.7508A-1(c)(1)(iii) permits the Service to postpone the deadline for:

- making contributions to a qualified retirement plan;
- returning contributions made to an individual retirement account ("IRA") to a taxpayer;
- recharacterizing Roth IRA contributions; and
- making rollovers to a tax-qualified retirement plan, a tax-deferred annuity under Code sections 403(a) and 403(b), and an IRA.

The regulations also define several types of "affected taxpayers" eligible for relief under Code section 7508A (Treasury Regulation section 301.7508A-1(d)(1)). Among others, these taxpayers include:

- any individual whose principal residence is located in the covered disaster area;
- any business entity whose principal place of business is located in the covered disaster area;
- any individual whose principal residence, and any business entity whose principal place of business, is not located in the covered disaster area, but whose records necessary to meet a filing or paying deadline are maintained in the covered disaster area;
- any estate or trust that has tax records necessary to meet a filing or paying deadline in a covered disaster area; and
- any other person determined by the IRS to be affected by a Presidentially declared disaster.

3. Revenue Procedure 2005-27

Generally, Revenue Procedure 2005-27 expands the list of acts that the Service has determined may be postponed under Code section 7508A. (Revenue Procedure 2005-27 does not, by itself, provide any postponements under Code section 7508A, but supplements the list of acts that may be postponed under Treasury Regulation section 301.7508A-1(c)(1)). It provides that, in the event of a Presidentially declared disaster, the Service, in its discretion, will issue a Notice (or other applicable guidance) authorizing the postponement. Such guidance will describe the acts postponed, the duration of the postponement, and the location of the covered disaster area. The following are employee benefit-related acts that may be postponed (see Section 8 of Revenue Procedure 2005-27):

- plan loan repayments;
- 83(b) elections;
- cafeteria plan elections under Code section 125;
- written requirement for establishing preestablished performance goals under Code section 162(m);

- rollovers to an eligible governmental 457 plan, a Code section 529 plan, a Coverdell Educational Saving Account, or a Medical Savings Account;
- required minimum distribution under Code section 401(a)(9);
- distribution of excess deferrals;
- remedial amendment period;
- distribution of nondeductible contributions in order to avoid 10 percent penalty under Code section 4972;
- filing Form 5500s.

B. Guidance Extending Deadlines In Response to Hurricane Katrina

Pursuant to the authority under Code section 7508A and ERISA sections 518 and 4002(i), the Service, DOL, and PBGC have recently issued the following guidance.

1. Extension of Deadlines for Acts Listed Under Treasury Regulation Section 301.7508A-1(c)(1) and Revenue Procedure 2005-27

On August 30, the Service issued IRS News Release 2005-84 which extended the deadline for taxpayers located in the areas struck by Hurricane Katrina who are otherwise required to file tax returns and submit tax payments after August 29, 2005, to October 31, 2005. In three subsequent IRS news releases (IRS News Release 2005-91 (9/6/2005), 2005-96 (9/8/2005), and IRS News Release 2005-109 (9/21/2005)), the Service expanded the area to which the extension applies and extended the October 31, 2005 deadline to January 3, 2006. In other words, taxpayers located in the areas identified by the Service (see below for areas identified by the Service) who are otherwise required to meet certain filing or payment deadlines after August 29, 2005, have until January 3, 2006 to meet the respective deadlines (for Florida affected taxpayers, the period is August 24, 2005 to January 3, 2006).

IRS News Release 2005-84 also extended the deadline to perform the acts described in Treasury Regulation section 301.7508A-1(c)(1) and Revenue Procedure 2005-27. The extension of these acts is not explicitly addressed in the IRS news release. Instead, the extension is included (and rather obscurely worded) in a related link at the end of the electronic version of IRS News Release 2005-84 located on the Service's web site (see <<http://www.irs.gov/newsroom/article/0,,id=147055,00.html>> and <<http://www.irs.gov/newsroom/article/0,,id=141489,00.html>>). As a result, the January 3, 2006 extension also applies to *all* of the employee benefit-related acts listed in Treasury Regulation section 301.7508A-1(c)(1)(iii) and Section 8 of Revenue Procedure 2005-27.

Most recently, the Service issued Notice 2005-73 (9/21/2005) and IRS News Release 2005-109 (9/21/2005) which are intended to summarize and clarify the Katrina-related guidance issued by the Service. Of particular note, the Service included maps of the affected areas to which relief under the various pieces of Katrina-related guidance applies as links at the end of the electronic version of the IRS news release located on the Service's web site (see the below links). The maps are useful for practitioners, plan sponsors, and plan administrators to determine the specific areas granted relief by the Service.

- Louisiana - <<http://www.irs.gov/pub/irs-utl/louisiana.pdf>>
- Mississippi - <<http://www.irs.gov/pub/irs-utl/mississippi.pdf>>
- Alabama - <<http://www.irs.gov/pub/irs-utl/alabama.pdf>>
- Florida - <<http://www.irs.gov/pub/irs-utl/florida.pdf>>

Specifically, the Service indicated that those areas hardest hit by the Hurricane have been designated “Individual Assistance” areas by FEMA.¹ These areas will receive automatic tax relief, including the automatic postponement of all employee benefit-related acts listed in Treasury Regulation section 301.7508A-1(c)(1)(iii) and Section 8 of Revenue Procedure 2005-27. In those areas where damage from Katrina is more isolated (i.e., those areas designated for “Public Assistance” by FEMA),² taxpayers will need to identify themselves as Hurricane victims if and when the Service questions whether they are subject to any penalty taxes or interest for failure to meet the otherwise required employee benefit-related deadlines. Significantly, while the Service has not explicitly granted relief for taxpayers located outside of the affected areas but whose books, records, or tax professionals are located in areas affected by Katrina, the Service indicated that it will work with such taxpayers in determining whether they would be eligible for relief (i.e., whether they will be able to disregard the employee benefit-related deadlines identified by the Service). The Service has publicly stated that it may grant other relief under appropriate circumstances for affected taxpayers or affected areas. For example, the Service has extended relief to all workers assisting in the relief activities in

¹ Areas designated by FEMA for “Individual Assistance” include 31 parishes in Louisiana, 47 counties in Mississippi, and 10 counties in Alabama. See IRS News Release 2005-109 and Notice 2005-73 for a comprehensive list.

² Areas designated by FEMA for “Public Assistance” include 33 parishes in Louisiana, 35 counties in Mississippi, 12 counties in Alabama, and 11 counties in Florida. See IRS News Release 2005-109 and Notice 2005-73 for a comprehensive list.

the covered areas regardless of whether or not they are affiliated with, among others, the government or a charity (see IRS News Release 2005-103 (9/14/2005)).

2. Extension of Deadline for Filing Form 5500s

The DOL recently extended the deadline for filing Form 5500s for those plan sponsors and plan administrators affected by Hurricane Katrina (i.e., those entities located in all of the counties or parishes identified by the Service in IRS News Release 2005-109 and Notice 2005-73, including counties and parishes designated for “Individual Assistance” *and* “Public Assistance”) who are otherwise required to file a Form 5500 to January 3, 2006. This extension also applies to entities located outside of the affected areas who are unable to obtain information from service providers, banks, or insurance companies directly affected by Katrina (see DOL Release 05-1732-NAT (9/20/2005)). The deadline for filing Form 5500s with the DOL was originally limited to a smaller area and only extended the deadline to October 31, 2005 (see DOL Releases 05-1648-NAT, 05-1649-NAT, and 05-1650-NAT (8/29/2005)).

3. Extension of Deadline for Making Minimum Funding Contributions

The Service, DOL, and PBGC provided relief for plans required to make minimum funding contributions (or to apply for a waiver) between the dates of August 29, 2005 and October 30, 2005 by extending the due date for such contributions to October 31, 2005. The extension applies to plans whose (i) principal place of business of the employer that maintains the plan, (ii) the principal place of business of employers that employ more than 50 percent of the active participants covered by the plan, (iii) the office

of the plan or the plan administrator, (iv) the office of the primary recordkeeper serving the plan, or (v) the office or the plan's enrolled actuary, was located in one of the areas designated for "Individual Assistance" by FEMA (Notice 2005-60 (9/2/2005); see IRS News Release 2005-109 and Notice 2005-73 for a list of counties and parishes eligible for "Individual Assistance"). The Treasury Department has made it clear that this relief applies only to plans located in the areas designated for "Individual Assistance" by FEMA (see Treasury Department Press Release JS-2715 (9/13/2005)).

4. Extension of PBGC-Related Deadlines

The PBGC recently granted relief for persons responsible for meeting PBGC-related deadlines who are either located in areas affected by Hurricane Katrina (as identified by the Service in IRS News Release 2005-109) or who are unable to obtain needed information or other assistance from a service provider, bank, or other person with operations directly affected by Katrina. More specifically, this relief is extended to persons located in all of the counties or parishes identified by the Service in IRS News Release 2005-109 and Notice 2005-73 (i.e., those counties and parishes designated for "Individual Assistance" and "Public Assistance"). Among other deadlines, the announcement extends the deadline for (i) making premium payments, (ii) meeting certain requirements related to standard and distress terminations (e.g., filing termination notices and distributing plan assets), and (iii) providing certain notices (e.g., participant and reportable event notices). Consistent with the Service and the DOL, the deadlines are

extended to January 3, 2006 (see PBGC Disaster Relief Announcement 05-10 (8/31/2005), updated (9/14/2005)).

5. Extension of Deadlines Under HIPAA, COBRA, and ERISA Claims Procedures

On September 21, the Service and the DOL announced the extension of certain time frames under HIPAA, COBRA, and ERISA's claims procedures (see 70 Fed. Reg. 55500; 29 C.F.R. Parts 2560 and 2590). Specifically, the extension relates to certain acts that must otherwise be completed by plan participants and beneficiaries and group health plans, disability and other welfare plans, pension plans, and group health insurance issuers located in Hurricane Katrina disaster areas. The Hurricane Katrina disaster areas, for the purposes of the notice, include the counties and parishes in Louisiana, Mississippi, or Alabama that have been or are later designated as disaster areas eligible for "Individual Assistance" by FEMA. (Thus, this relief is not extended to, among others, areas in Florida that are eligible for "Public Assistance".)

a. Extension for Plan Participants and Beneficiaries

Plan participants and beneficiaries who lived and worked in the Hurricane Katrina disaster areas may disregard certain deadlines between August 29, 2005 through January 3, 2006. In other words, the following deadlines will not begin to run until January 3, 2006.

- the 63-day break in coverage period for determining a whether a group health plan may disregard a period of creditable coverage. Generally, if an individual has a 63-day break in health coverage, the individual's new group health plan may disregard his or her creditable coverage under any

prior plan for purposes of reducing the preexisting condition exclusion period.

- the 30-day period to secure creditable coverage without a preexisting condition exclusion for certain children. Generally, a newborn, adopted child, or child placed for adoption may not be subject to a preexisting condition exclusion period if covered under creditable coverage within 30 days of birth, adoption, or placement for adoption.
- the 30-day period to request special enrollment in a group health plan. Generally, ERISA and the Code allow certain individuals who have lost coverage to be eligible for special enrollment in other plans.
- the 60-day period to elect COBRA coverage. Generally, an individual has 60 days to elect COBRA coverage under a group health plan.
- the date for making COBRA premium payments. Generally, an individual electing COBRA coverage must pay COBRA premiums within 45 days of making an initial COBRA election (with a 30 day grace period after the expiration of 45 days) and no later than 30 days after the first day in the period for which payment is being made.
- the date for individuals to notify the plan of certain qualifying events or determination of disability. Generally, a participant is required to notify the plan of certain qualifying events (e.g., a divorce) or determination of disability within 60 days.
- the date within which individuals may file a benefit claim under the plan's claims procedures. Generally, plans may require claims for benefits to be filed within a specified period of time after a specified event (e.g., the receipt of medical treatment), but plans are prohibited from having provisions that unduly inhibit or hamper the initiation of processing of claims for benefits.
- the date within which individuals may file an appeal of a denied benefits claim. Generally, a participant may appeal a denied benefits claim within a specified period of time following the receipt of the adverse determination (i.e., within 60 days in the case of a pension plan and 180 days in the case of a group health or disability plan).

b. Extension for Plans

Group health plans, disability and other welfare plans, pension plans, and group health insurance issuers directly affected by Hurricane Katrina may disregard certain acts otherwise required to be completed between August 29, 2005 and January 3, 2006. Such acts include:

- the date for providing a certificate of creditable coverage. Generally, a certificate of creditable coverage must be provided within a reasonable period of time after an individual ceases to be covered under a group health plan.
- the date for providing a COBRA election notice. Generally, a group health plan must send a COBRA election notice to a participant ceasing coverage under the plan within 14 days after being informed of a qualifying event.

Plans are considered “directly affected” by the Hurricane if (i) the principal place of business of the employer that maintains the plan, (ii) the principal place of business of employers that employ more than 50 percent of the active participants covered by the plan, (iii) the office of the plan or the plan administrator, or (iv) the office of the primary recordkeeper serving the plan, was located in one of the Hurricane Katrina disaster areas (i.e., those areas eligible for “Individual Assistance”).

C. Employer Leave-Based Donation Programs and Tax-Free Qualified Disaster Relief Payments

1. Notice 2005-68

The Service recently issued Notice 2005-68 (9/8/2005) allowing employers to adopt leave-based donation programs. Specifically, Notice 2005-68 provides that amounts an employee elects to forego which are otherwise payable as vacation, sick, or

personal leave and which are subsequently paid to a charitable organization involved in relief efforts for victims of Hurricane Katrina will not be taxable to the employee.

Employees making the donations will not be able to claim a charitable deduction on their tax return. Employers may take a deduction for the contributions under Code section 162 (i.e., the limitations on corporate charitable donations under Code section 170 do not apply). The Notice extends this favorable tax treatment to donations made before January 1, 2007. Notice 2005-68 thus establishes a leave-based donation program similar to the one established under Notice 2001-69 (issued in response to the 9/11 terrorist attacks).

2. Code Section 139

Employers and other entities may provide direct tax-free relief to employees and individuals affected by a Presidentially declared disaster by making “qualified disaster relief payments” to such affected employees or individuals. Specifically, Code section 139 provides that qualified disaster relief payments are not taxable to the recipient. In addition, the payments are not subject to withholding or employment taxes. Moreover, such payments made by an employer or related entity are deductible despite the excludability of the payments by the recipients. This relief, however, does not include payments for any expenses compensated by insurance or otherwise.

A “qualified disaster relief payment” generally includes any amount paid to an individual:

- to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a “qualified disaster”;
- to reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence (including a rented residence) or repair or replacement of its contents to the extent that the need for that repair, rehabilitation, or replacement results from a “qualified disaster”;
- by a person who provides or sells transportation as a common carrier because of the death or personal physical injuries arising from a “qualified disaster”; or
- if the amount is paid by a federal, state, or local government, or an agency or instrumentality of those governments, in connection with a “qualified disaster” in order to promote the general welfare.

A “qualified disaster” means, among others, a Presidentially declared disaster (as defined under Code section 1033(h)(3)).

D. Guidance Relating to Hardship Distribution and Loan Rules

On September 15, the Service, in conjunction with the DOL, released Announcement 2005-70 (9/14/2005) permitting certain hardship or emergency withdrawals and loans from tax-favored retirement plans to employees or former employees whose principal residence or place of employment on August 29, 2005 was located in one of the counties or parishes in Louisiana, Mississippi, or Alabama that have been or are later designated as disaster areas eligible for “Individual Assistance” by FEMA. (Thus, this relief is not extended to, among others, areas in Florida that are eligible for “Public Assistance”.) Specifically, plans may make loans to affected employees or former employees whether or not the plan documents allow for such loans

to be made, so long as the requirements of Code section 72(p) are met. In addition, the relief essentially allows plans to rely on representations from affected employees or former employees as to the need for an amount of a hardship distribution, unless the plan administrator has actual knowledge to the contrary. Similar to the treatment of plan loans, this relief applies whether or not the plan otherwise provides for hardship distributions (except that money purchase pension plans would not qualify), but such relief is limited to amounts that could otherwise be distributed under a qualified 401(k), 403(b), or 457(b) hardship or emergency distribution. Plans need not follow the safe harbor conditions for hardship distributions for such withdrawals (e.g., 6-month contribution suspension).

In addition to distributions and loans to affected participants, the Announcement extends the relief to Katrina-related hardships of lineal ascendants or descendants of participants as well as spouses and dependents. In other words, a person who lives in another part of the country can assist a son, daughter, parent, grandparent or other dependent who lived and worked in the affected areas by taking out a plan loan or hardship withdrawal. Plans that do not currently provide for loans or hardship distributions may be amended to do so by the end of the 2006 plan year. The Announcement also allows administrators to follow good faith compliance procedures in administering their loan and hardship procedures in these respects through March 2006.

Contemporaneous with the Announcement, Assistant DOL Secretary Ann Combs issued a statement announcing a reasonable good faith approach to DOL enforcement in

areas such as transmitting elective deferrals or loan repayments and giving blackout notices (see DOL Release 05-1728-NAT (9/15/2005)). This guidance applies to employers, plan sponsors and service providers located in areas that have been or are later designated as disaster areas eligible for “Individual Assistance” by FEMA.

E. Relief Legislation

The following is a summary of the principal pension-related provisions included in the “Katrina Emergency Tax Relief Act of 2005” (H.R. 3768, as passed by the House and Senate on September 21), which are available to taxpayers located in areas declared as major disaster areas by the President on account of Hurricane Katrina. It is unclear from the legislative language whether such tax relief is available to taxpayers located in areas eligible for “Individual Assistance” and “Public Assistance,” but a Joint Committee on Taxation report (JCX-69-05 (9/22/2005)) provides that the States for which such a disaster has been declared are Louisiana, Mississippi, Alabama, and Florida. The President is expected to sign the tax relief package into law shortly.

1. Waiver of the 10 Percent “Early” Distribution Tax

Generally, a 10 percent penalty tax is imposed on participants who receive a distribution from an individual retirement account (“IRA”) or tax-favored retirement plan (e.g., Code sections 401(a) or 403(b) plans) before attaining age 59-1/2. Distributions from a governmental 457(b) plan are also subject to the 10 percent penalty if such distributions are attributable to rollovers from a 401(a) or 403(b) plan, or an IRA. Amounts distributed are taxable to the participant in the year in which they are received.

The legislation waives the 10 percent penalty tax for the receipt of an “early” distribution by IRA owners and those participants covered under a Code section 401(a) or 403(b) plan whose principal residence is located in the Hurricane Katrina disaster area and who sustained economic loss by reason of the Hurricane. The waiver is also applicable to affected governmental 457(b) participants who receive amounts attributable to rollovers from these plans. Principal features of this relief include the following –

- The waiver is (i) limited to amounts up to \$100,000 and (ii) only available for “early” distributions made on or after August 25, 2005 and before January 1, 2007.
- The mandatory withholding rules applicable to eligible rollover distributions would not apply. Thus, the “early” distributions would be subject to the elective withholding rules which require 10 percent of the distribution to be withheld unless the participant elects for withholding not to apply.
- Participants receiving an “early” distribution would be permitted to spread the income tax resulting from receipt of the distribution ratably over three years.
- Amounts distributed may be re-contributed to the plan over a three-year period following the distribution and such re-contributions would be treated as tax-free rollovers. In other words, amounts that are re-contributed (within the three-year period) would not be includible in income in the tax year in which the distribution was made (e.g., if a participant received an “early” distribution in 2005 and subsequently re-contributed the distribution amount in 2007, the participant may file an amended return requesting a refund for the amount taxable in 2005).

2. Re-Contribution of Withdrawals for Home Purchases

Generally, a participant may receive a hardship distribution under a Code section 401(k) or 403(b) plan (if the plan permits hardship distributions) for costs directly

relating to the purchase of a principal residence. If such amounts are distributed before the participant attains age 59-1/2, such amounts are includible in income and subject to a 10 percent penalty tax. In addition, distributions from IRAs for first-time homebuyers are generally subject to the 10 percent penalty to the extent the distributions exceed \$10,000.

The legislation allows distributions for home purchases that were made after February 28, 2005 and before August 29, 2005 and that were not finalized because of Hurricane Katrina to be re-contributed to the plan tax-free (i.e., the re-contributions would be treated as rollovers). Amounts must be re-contributed by February 28, 2006 in order to receive favorable tax treatment. In other words, a participant who received a hardship distribution (or IRA distribution) to purchase or construct a principal residence, but was unable to purchase or construct the principal residence on account of Hurricane Katrina, would not be required to include the amounts in income (nor would the 10 percent penalty apply), so long as amounts are re-contributed to the plan by February 28, 2006.

3. Plan Loans

Generally, if a tax-favored retirement plan allows loans to plan participants, the loan cannot exceed \$50,000 or 50 percent of the participant's total vested accrued benefit. The plan loan must be amortized in substantially level payments over the term of the loan, generally limited to 5 years.

The legislation effectively doubles the limitation on plan loans by allowing participants located in the Hurricane Katrina disaster area and who sustained economic loss by reason of the Hurricane to receive loans up to the lesser of \$100,000, or 100 percent of the vested accrued benefit for loans made after the date of enactment and before January 1, 2007. In addition, outstanding loan payments due on or after August 25, 2005 and before January 1, 2007 may be deferred an additional 12 months (which is similar to the time period in which loan repayments may be suspended for participants on a bona fide leave of absence), with appropriate adjustments for interest, etc.

4. Plan Amendments

The legislation allows certain retroactive plan amendments to effectuate the pension-related provisions included in the tax relief package. For example, plans that do not currently provide for loans may be amended retroactive to the effective date of the legislation to allow such loans to be made, up to the maximum loan amount and limited to the time period set forth under the legislation (see the discussion on Plan Loans, above). In other words, plans that do not otherwise allow loans to be made may make such loans to affected participants, and subsequently be amended retroactive to the effective date of the legislation. In addition, plans that do not currently accept rollovers may be amended retroactively to accept such rollovers. More specifically, because re-contributions of an “early” distribution or distributions to purchase or construct a principal residence are treated a “rollovers” under the legislation, plans that do not otherwise accept rollovers must be amended to accommodate any re-contributions to the

plan. Generally, plans must be amended by December 31, 2007 (for calendar year plans) (which is later than the deadline in IRS Announcement 2005-70). Governmental plans must be amended by December 31, 2009.

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We hope this information is helpful. Please call Lou Mazawey or Chris Condeluci with any questions.