

Part III - Administrative, Procedural and Miscellaneous

Extension of Transitional Relief for Diversification Requirements for Certain Defined Contribution Plans

Notice 2008-7

I. PURPOSE

This notice extends the transitional guidance and transitional relief provided to certain defined contribution plans holding publicly traded employer securities under Notice 2006-107, 2006-51 I.R.B. 1114, until the regulations being issued under § 401(a)(35) of the Internal Revenue Code become effective.

II. BACKGROUND

Section 401(a)(35), added by section 901 of the Pension Protection Act of 2006, Public Law 109-280, 120 Stat. 780, provides diversification rights with respect to publicly traded employer securities held by a defined contribution plan. Section 401(a)(35) provides that, to remain qualified under § 401(a), a defined contribution plan (other than certain employee stock ownership plans) must provide applicable individuals with the right to divest employer securities in their accounts and reinvest those amounts in certain diversified investments, and generally prohibits a plan from imposing restrictions or conditions with respect to the investment of employer securities that are not imposed on the investment of other assets of the plan.

Notice 2006-107 provides transitional guidance with respect to § 401(a)(35). For example, Part III.D of Notice 2006-107 provides that a restriction or condition with respect to employer securities generally includes: (1) a restriction on an applicable individual's rights to divest an investment in employer securities that is not imposed on an investment that is not in employer securities; and (2) a benefit that is conditioned on investment in employer securities. Notice 2006-107 also provides certain transitional

relief with respect to the requirements of Part III.D of the notice. The relief set forth in paragraph 4 of Part III.D of Notice 2006-107 is limited to the period prior to January 1, 2008.

Notice 2006-107 also states that Treasury and the Service expect to issue regulations under § 401(a)(35) that will be consistent with the guidance in the notice and that will incorporate the transitional relief in the notice.

III. EXTENSION OF TRANSITIONAL RELIEF UNDER NOTICE 2006-107

The Treasury and the Service are issuing proposed regulations under § 401(a)(35). It is expected that these regulations, when finalized, will not be effective before plan years beginning on or after January 1, 2009. Except as otherwise provided in the proposed or final regulations, plans must continue to apply Notice 2006-107 until the regulations go into effect. For this purpose, the transitional relief provided for the period prior to January 1, 2008, in paragraph 4 of Part III.D of Notice 2006-107 will continue to apply after 2007 until the regulations go into effect.

IV. EFFECT ON OTHER DOCUMENTS

Notice 2006-107 is modified.

DRAFTING INFORMATION

The principal author of this notice is Robert M. Walsh of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please call the Employee Plans taxpayer assistance number between 8 a.m. and 4:30 p.m. Eastern time, Monday through Friday at (877) 829-5500 (a toll-free number) or email Mr. Walsh at RetirementPlanQuestions@irs.gov.