

EMPLOYEE BENEFITS UPDATE

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New Rules Amend Truth in Lending Act to Exclude Plan Loans

On December 18, 2008, the Federal Reserve Board (the "Board") approved final rules amending Regulation Z, which implements the Truth in Lending Act ("TILA"). The Board amended Regulation Z to exempt plan loans taken from employer-sponsored retirement plans qualified under section 401(a) of the Internal Revenue Code (the "Code"), tax-sheltered annuities under section 403(b) of the Code, or government-sponsored deferred compensation arrangements under section 457(b) of the Code, from the TILA requirements. However, the exemption only applies if the loan proceeds are comprised of fully-vested funds from the participant's account and are made in compliance with the Code. The final rules are effective July 1, 2010.

TILA was originally enacted to promote the informed use of consumer credit. Regulation Z requires lenders to disclose certain information to borrowers about the terms of the loan (e.g., finance charges, interest rates) and to provide borrowers with periodic loan statements. Prior to this change, employer-sponsored retirement plans that allowed participants to take plan loans were considered lenders

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and were subject to detailed Regulation Z disclosure requirements. The amendment will provide significant relief to plan administrators who will no longer have to comply with certain disclosure requirements.

Plans were exempted from the notice and disclosure rules because: (1) the participant's interest and principal payments on the loan are reinvested in the participant's own account and there is no third-party creditor imposing finance charges on the participant; and (2) the costs of a loan taken against assets invested in a plan are not comparable to a third-party loan because participants pay the interest to

themselves rather than to a third party. Additionally, the Department of Labor already requires employer-sponsored retirement plans subject to ERISA to disclose plan administration fees (including fees for participant loans).

If you have any questions regarding this article, please feel free to contact Marvin Swift at 602.382.6211 or Eva Kerr at 602.382.6245.

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