

**CUMULATIVE TABLE OF CONTENTS FOR eRISA UPDATE  
(COVERS ISSUES #1 THROUGH #56 OF eRISA UPDATE)**

<b>Issue Number</b>	<b>Pages covered by Current Developments Summaries</b>
Issue #1	Pages 1 through 83
Issue #2	Pages 84 through 140
Issue #3	Pages 141 through 224
Issue #4	Pages 225 through 267
Issue #5	Pages 268 through 314
Issue #6	Pages 315 through 386
Issue #7	Pages 387 through 442
Issue #8	Pages 443 through 510
Issue #9	Pages 511 through 621
Issue #10	Pages 622 through 695
Issue #11	Pages 696 through 770
Issue #12	Pages 771 through 848
Issue #13	Pages 849 through 971
Issue #14	Pages 972 through 1059
Issue #15	Pages 1060 through 1109
Issue #16	Pages 1110 through 1159
Issue #17	Pages 1160 through 1235
Issue #18	Pages 1236 through 1348
Issue #19	Pages 1349 through 1512
Issue #20	Pages 1513 through 1602
Issue #21	Pages 1603 through 1754
Issue #22	Pages 1755 through 1816
Issue #23	Pages 1817 through 1890
Issue #24	Pages 1891 through 1968
Issue #25	Pages 1968 through 2095
Issue #26	Pages 2096 through 2170
Issue #27	Pages 2171 through 2198
Issue #28	Pages 2199 through 2282
Issue #29	Pages 2283 through 2370
Issue #30	Pages 2371 through 2407
Issue #31	Pages 2409 through 2446
Issue #32	Pages 2447 through 2531
Issue #33	Pages 2532 through 2689
Issue #34	Pages 2690 through 2730
Issue #35	Pages 2731 through 2760
Issue #36	Pages 2761 through 2780
Issue #37	Pages 2781 through 2895
Issue #38	Pages 2896 through 2945
Issue #39	Pages 2946 through 2985
Issue #40	Pages 2986 through 3046
Issue #41	Pages 3047 through 3118
Issue #42	Pages 3119 through 3162

**Cumulative Table of Contents for eRISA Update**

Issue #43	Pages 3163 through 3229
Issue #44	Pages 3230 through 3267
Issue #45	Pages 3268 through 3310
Issue #46	Pages 3311 through 3347
Issue #47	Pages 3348 through 3398
Issue #48	Pages 3399 through 3476
Issue #49	Pages 3477 through 3550
Issue #50	Pages 3551 through 3576
Issue #51	Pages 3577 through 3662
Issue #52	Pages 3663 through 3746
Issue #53	Pages 3747 through 3806
Issue #54	Pages 3807 through 3932
Issue #55	Pages 3933 through 4020
Issue #56	Pages 4021 through 4092

**Cumulative Table of Contents for eRISA Update**

**LEGISLATION**

¶1.102 - Self-Employed Individuals

Effect of 2011 FICA tax holiday and post-2012 Medicare surcharge on self-employment income calculations [Citation: *Section 601 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Tax Relief Act of 2010)*, P.L. 111-312 (December 17, 2010), and *Section 1901(b)(1) of the Patient Protection and Affordable Care Act (PPACA)*, P.L. 111-148 (March 23, 2010)]. . . . . 2532

¶1.108(1) - Miscellaneous Definitions And Procedures: Disaster Relief

Congress provides liberalized distribution and loan rules for certain taxpayers affected by Hurricanes Katrina, Rita and Wilma; provides relief from premature distribution penalty [Citation: *Katrina Emergency Tax Relief Act of 2005*, H.R. 3768 (signed by the President on September 23, 2005), and *Gulf Opportunity Zone Act of 2005*, H.R. 4440 (signed by the President on December 21, 2005)] . . . . . 849

EESA extends special rollover/loan relief to certain victims of 2008 Midwest Storms [Citation: *Emergency Economic Stabilization Act of 2008 (P.L.110-343)*, §702, enacted on October 3, 2008] . . . . . 1969

¶1.145(3) - Distribution Restrictions: Permissible Distribution Events for Pension Plans

Congress provides limited relief for normal retirement ages based on years of service [Citation: *Division P, Section 2, of the Consolidated and Further Continuing Appropriations Act, 2015 (CROmnibus)* (December 16, 2014)]. . . . . 3477

¶1.150(3) - Limitations On Contributions And Benefits: Defined Benefit Plans

Pension Funding Equity Act of 2004 modifies IRC §415(b)(2)(E) to eliminate direct link between IRC §417(e) interest rate and certain maximum benefit adjustments [Citation: *Pension Funding Equity Act of 2004 (H.R. 3108)*, enacted April 10, 2004]. . . . . 318

¶1.170(2) - Minimum Funding Requirements: Interest Rate Assumptions

Pension Funding Equity Act of 2004 provides funding relief under IRC §412, and modifies IRC §415(b)(2)(E) to eliminate direct link between IRC §417(e) interest rate and certain maximum benefit adjustments [Citation: *Pension Funding Equity Act of 2004 (H.R. 3108)*, enacted April 10, 2004] . . . . . 315

Pension funding stabilization relief and PBGC reforms enacted as part of highway funding bill; IRC §420 transfers to the end of 2021 and expanded to include transfers to retiree group-term life insurance accounts [Citation: *Moving Ahead for Progress in the 21st Century Act ("MAP-21")*, P.L. 112-141 (July 6, 2012)]. . . . . 2986

Pension funding stabilization relief extended by the Highway and Transportation Funding Act of 2014 [Citation: *Highway and Transportation Funding Act of 2014*, §2003 of P.L. 113-159 (August 8, 2014)] . . . . . 3399

Pension funding segment rate stabilization relief extended [Citation: *Bipartisan Budget Act of 2015 (P.L. 114-74)*, enacted November 2, 2015]. . . . . 3747

¶1.170(3) - Minimum Funding Requirements: Mortality Assumptions

Congress makes use of substitute mortality tables more flexible [Citation: *Bipartisan Budget Act of 2015 (P.L. 114-74)*, enacted November 2, 2015]. . . . . 3748

**Cumulative Table of Contents for eRISA Update**

¶1.170(4) - Minimum Funding Standards: General Requirements  
 Congress enacts funding relief for defined benefit plans for 2008-2011 plan years [Citation: P.L. 111-192, Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (H.R. 3962) (enacted on June 25, 2010)]. . . . . 2409

¶1.170(7) - Minimum Funding Requirements: Multiemployer Plans  
 PPA changes to multiemployer plan funding rules made permanent; accruals may be reduced for plans in “critical and declining” status; other modifications to rules adopted [Citation: *Multiemployer Pension Reform Act of 2014* (Division O of the Consolidated and Further Continuing Appropriations Act, 2015) (December 16, 2014)]. . . . . 3478

¶1.172 - Benefit Restrictions For Underfunded Pension Plans  
 Congress enacts expanded lookback rule for determining AFTAP for certain plan years with respect to certain benefit restrictions, providing relief for certain plans that experienced a significant drop in plan assets due to market downturn [Citation: *P.L. 111-192, Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (H.R. 3962)* (enacted on June 25, 2010)]. . . . . 2416

¶1.178 - Retiree Medical Benefits (IRC §§401(h) and 420)  
 Highway funding extension bill extends IRC §420 transfer rules through 2025 [Citation: *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015* (HR 3236), P.L. 114-41 (July 31, 2015)]. . . . . 3663

¶1.193 - Bankruptcy  
 Revisions to the Bankruptcy Code provide uniform national standards for the exemption of retirement plan interests that are not otherwise excluded under section 541; clarify treatment of 401(k) withholding and participant loan repayments [Citation: *Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, P.L. 109-8 (April 21, 2005)]. . . . . 622

¶1.210(4) - Premature Distribution Penalty (IRC §72(t)): Public Safety Workers  
 Expanded premature distribution penalty exceptions for public safety workers [Citation: *Defending Public Safety Employees’ Retirement Act, §2*, P.L. 114-26 (June 29, 2015)]. . . . . 3577

¶1.222(1) - Special Rollover Rules for IRAs: SIMPLE-IRAs  
 Rollovers from workplace retirement plans may be made to SIMPLE-IRAs after December 18, 2015 [Citation: *Section 306 of the Protecting Americans from Tax Hikes Act (PATH Act) of 2015*, Division Q of the Consolidated Appropriations Act, 2016, P.L. 114-113 (December 18, 2015)]. . . . . 3748

¶1.232 - Timing of Employer Contributions: IRC §404(a)(6)  
 Highway funding extension bill changes due dates for corporate and partnership tax returns, which will affect contribution deadlines for deductions relating to qualified plan contributions [Citation: *Surface Transportation and Veterans Health Care Choice Improvement Act of 2015* (HR 3236), P.L. 114-41 (July 31, 2015)]. . . . . 3663

¶1.240(3) - Elective Deferrals: Designated Roth Contributions  
 Congress amends law to permit internal Roth conversions of distributable non-Roth funds held inside a 401(k), 403(b) plan or governmental 457(b) plan [Citation: *Small Business Jobs and Credit Act of 2010*, P.L. 111-240 (September 27, 2010)]. . . . . 2447  
 Congress expands in-plan Roth conversions to cover funds that are not currently distributable [Citation: *Section 1002 of the American Taxpayer Relief Act of 2012*, P.L. 112-240 (January 4, 2013)]. . . . . 3047

¶1.301(2) - IRS Reporting Rules and Forms (Other Than Form 5500): Form 1099-R  
 Penalties increased for late information returns and statements, including Form 1099-R [Citation: *Trade*

**Cumulative Table of Contents for eRISA Update**

*Preferences Extension Act of 2015, §806, P.L. 114-27 (June 29, 2015)]. . . . . 3578*

¶1.300(3) - Deadline for Filing Form 5500  
 Congress repeals lengthening of Form 5500 automatic extension period [Citation: *Fixing America's Surface Transportation (FAST) Act, §32104, P.L. 114-41 (December 4, 2015) ]..... 3749*  
**Note: The original statutory language that was repealed was summarized on p. 3665.**

¶1.317(1) - Title IV Disclosure Requirements: ERISA §4011 Participant Notice  
 Technical correction to the JCWAA incorporates use of 100% Treasury Rate to determine whether an ERISA §4011 Participant Notice is required for 2002 and 2003 plan years [Citation: *Working Families Tax Relief Act of 2004, HR 1308, §403]. . . . . 443*

¶1.371 - Title IV of ERISA: Coverage/Premiums  
 Premium rates increased effective January 1, 2006; premium surcharge for distress terminations [Citation: *Deficit Reduction Act of 2005, P.L. 109-171 (February 13, 2006)]. . . . . 972*  
 Premium rates for multiemployer plans increased for post-2014 plan years [Citation: *Multiemployer Pension Reform Act of 2014 (Division O of the Consolidated and Further Continuing Appropriations Act, 2015) (December 16, 2014)]. . . . . 3482*  
 Flat and variable rate premiums increased as part of budget compromise; acceleration of 2025 premium due date [Citation: *Bipartisan Budget Act of 2015 (P.L. 114-74), enacted November 2, 2015] . . . . . 3749*

¶1.377(1) - Title IV of ERISA - Miscellaneous: Cessation of Operations (ERISA §4062(e))  
 Restrictions on PBGC’s use of ERISA §4062(e) imposed [Citation: *Division P, Section 1, of the Consolidated and Further Continuing Appropriations Act, 2015 (CROmnibus) (December 16, 2014)] . . . . . 3482*

¶1.401 - IRAs: Contribution Limits  
 Compensation earned by military servicemembers in combat zone is included in IRA compensation for post-2003 years [Citation: *Heroes Earned Retirement Opportunities Act (HERO Act), P.L. 109-227, signed into law on May 29, 2006]. . . . . 1060*

¶1.404(1) - IRAs: Taxation Issues: Qualified Charitable Distributions (IRC §408(d)(8))  
 IRC §408(d)(8) extend through 2011, with special timing rule for distributions made in January 2011 [Citation: *Section 725 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Tax Relief Act of 2010), P.L. 111-312 (December 17, 2010)]. . . . . 2533*  
 IRC §408(d)(8) extend through 2013, with special timing rule for distributions made in December 2012 or January 2013 [Citation: *Section 208 of the American Taxpayer Relief Act of 2012, P.L. 112-240 (January 4, 2013)]. . . . . 3048*  
 IRC §408(d)(8) made permanent [Citation: *Section 112 of the Protecting Americans from Tax Hikes Act (PATH Act) of 2015, Division Q of the Consolidated Appropriations Act, 2016, P.L. 114-113 (December 18, 2015)]. . . . . 3750*

¶1.405 - Roth IRAs  
 Congress lifts income limit on Roth IRA conversions starting in 2010; 2-year income inclusion option for conversions in 2010 [Citation: *Section 512 of the Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222, May 17, 2006)]. . . . . 1061*

¶1.422(2) - Special Qualification Requirements or Exceptions: Church Plans  
 PATH Act modifies controlled group definition for church plans, grandfathers certain defined benefit 403(b) arrangements maintained by churches, protects auto-enrollment arrangements for church plans,

**Cumulative Table of Contents for eRISA Update**

allows mergers between qualified plans and 403(b) plans maintained by a church, and permits investment of church plan assets and assets of certain church organizations in a Rev. Rul. 81-100 group trust [Citation: *Section 336 of the Protecting Americans from Tax Hikes Act (PATH Act) of 2015*, Division Q of the Consolidated Appropriations Act, 2016, P.L. 114-113 (December 18, 2015)]  
 ..... 3750

¶1.440 - Puerto Rico Plans: General Rules  
 Amended Puerto Rico tax code includes changes to rules affecting pension plans [Citation: *2011 Puerto Rico Internal Revenue Code* (January 31, 2011) (particularly section 1081.01 (formerly section 1165 of the 1994 code; also see [http://www.groom.com/media/publication/918\\_The%20New%20Puerto%20Rico%20Internal%20Revenue%20Code.pdf](http://www.groom.com/media/publication/918_The%20New%20Puerto%20Rico%20Internal%20Revenue%20Code.pdf) (article by The Groom Law Group), and <http://www.mcvpr.com/CM/McVAlerts/Retirement-Plans-Impacted-by-New-PR-Internal-Revenue-Code.pdf> (article by McConnell Valdés LLC)]. ..... 2690

¶1.510 - Taxation Issues For Nonqualified Plans  
 New nonqualified plan rules modify distribution restrictions, timing on deferral elections, tax and reporting rules [Citation: *H.R. 4520*, The American Jobs Creation Act of 2004, §885]. ..... 444

¶1.514(1) - Section 457(b) Plans  
 Designated Roth contributions permitted under governmental 457(b) plans starting January 1, 2011 [Citation: *Small Business Jobs and Credit Act of 2010*, P.L. 111-240 (September 27, 2010)]. . 2450

¶1.520 - Health Savings Accounts (HSAs)  
 New legislation eliminates cap on contribution amount linked to plan deductible, allows contributions from flex accounts and IRAs [Citation: P.L. 109-432, Tax Relief and Health Care Act of 2006 (December 20, 2006)]. ..... 1160

¶1.607 - Tax Shelters: Listed Transactions Involving Retirement Vehicles. .... 1062  
 Excise tax and disclosure requirements on listed transactions involving retirement plans and other tax-exempt entities [Citation: *Section 516 of the Tax Increase Prevention and Reconciliation Act of 2005* (P.L. 109-222, May 17, 2006), adding IRC §§4965, 6033(a)(2) and 6652(c); *Notice 2006-65*, 2006-31 I.R.B.]. ..... 1062

¶1.707(1) - Veterans Benefits Improvement Act of 2004  
 Employer must furnish notice under amendments to USERRA [Citation: *Veterans Benefits Improvement Act of 2004*, P.L. 108-454 (December 10, 2004)]. ..... 511

¶1.710 - Servicemembers Civil Relief Act (SCRA)  
 Servicemembers Civil Relief Act amends and restates the Soldiers’ and Sailors’ Civil Relief Act of 1940, providing clearer guidance on interest rate relief affecting participant loans [Citation: *Servicemembers Civil Relief Act* (H.R. 100, 108<sup>th</sup> Congress)]. ..... 268

¶1.712 - Pension Protection Act of 2006  
 Pension reform law modifies minimum funding standards, prescribes new interest rate standards for lump sums, clarifies issues for hybrid plans, provides new prohibited transaction exemptions for certain investment advice and other transactions, and adopts miscellaneous changes to ERISA’s reporting and disclosure requirements, and certain tax rules relating to retirement plans [Citation: *Pension Protection Act of 2006*, P.L. 109-280 (August 17, 2006)]. ..... 1110  
 Part I. EGTRRA permanency..... 1110  
 Part II. Minimum Funding Standards..... 1111  
 Part III. Lump Sum Distributions..... 1136

**Cumulative Table of Contents for eRISA Update**

Part IV. PBGC rules.....	1138
Part V. Benefit accruals under hybrid plans. ....	1141
Part VI. Deduction Limits. ....	1144
Part VII. 401(k) Plans. ....	1147
Part VIII. Spousal protection. ....	1159
Part IX. Portability.....	1160
Part X. Reporting and Disclosure. ....	1163
Part XI. Investment Advice and Other Prohibited Transaction Exemptions .....	1174
Part XII. Miscellaneous ERISA issues.....	1184
Part XIII. Miscellaneous Qualification and Tax Issues.....	1190
Part XIV. Plan amendments.....	1200
Several clarifications and technical corrections to the PPA 2006 adopted by Congress [Citation: <i>U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007</i> , P.L. 110-28 (May 25, 2007)]. ....	1349
Technical corrections legislation amends PPA 2006 to make clarifications to minimum funding rules, provide minimum distribution relief for 2009, and adopt miscellaneous changes [ <i>Worker, Retiree, and Employer Relief Act of 2008</i> , P.L. 110-458, enacted on December 23, 2008]. ....	1971
¶1.713 - Heroes Earnings Assistance and Relief Tax Act Of 2008. ....	1817
New law modifies rights for military servicemembers [Citation: <i>H.R. 6081</i> , Heroes Earnings Assistance and Relief Tax Act of 2008 (June 17, 2008)]. ....	1817
¶1.714 - Financial Reform Legislation	
Financial reform legislation includes provisions regulating swaps, and establishing Bureau of Consumer Financial Protection, which may affect employee benefit plans [Citation: <i>Dodd-Frank Wall Street Reform and Consumer Protection Act</i> , P.L. 111-203 (July 21, 2010)]. ....	2451

**Cumulative Table of Contents for eRISA Update**

**TREASURY REGULATIONS**

¶2.120 - Nondiscrimination Testing Under IRC §401(a)(4)  
 Proposed regulations provide testing relief for certain closed DB plans, and modify testing rules for DB/DC plans; proposed regulations that would require allocation formulas or benefit formulas to reflect reasonable classification will be withdrawn [Citation: *Prop. Treas. Reg. §§1.401(a)(4)-2(c), 1.401(a)(4)-3(c), 1.401(a)(4)-4(d)(8), 1.401(a)(4)-8(b)(1), 1.401(a)(4)-9(b)(2), 1.401(a)(4)-12, and 1.401(a)(4)-13(a)(4)*, 81 F.R. 4976-4986 (January 29, 2016); *Announcement 2016-16* (April 14, 2016)]  
 ..... 3807

¶2.113(2) - Special Coverage Testing Issues for 401(k) and 401(m) Plans  
 Regulations incorporate Congressional directive to make permanent the special coverage testing rule for employees of tax-exempt organizations who are covered by 403(b) plan [Citation: *Treas. Reg. §1.410(b)-6(g)*, 71 F.R. 41357 (July 21, 2006)]..... 1066  
**Note: Replaces the proposed regulations that were summarized at page 320.**

¶2.121(1) - Nondiscrimination Testing: Cross-Testing  
 Proposed regulations address the application of cross-testing rules to certain cash balance plans [Citation: *Prop. Treas. Reg. §1.401(a)(4)-3(g) and §1.401(a)(4)-9(b)(2)(vi)*] Cf. See ¶1.e. of the summary at ¶2.700. .... 1  
 Proposed regulations addressing the application of cross-testing rules to certain cash balance plans are *withdrawn* [Citation: *Announcement 2003-22* (April 8, 2003)]..... 84

¶2.133(1) - Accrual of Benefits: Defined Benefit Plans  
 Proposed regulations provide exception for certain plans using “greater of” formulas that will allow the plan to satisfy 133-1/3% accrual method without aggregating the formulas [Citation: *Prop. Treas. Reg. §1.411(b)-1(b)(2)(ii)(G)*, 73 F.R. 34665 (June 18, 2008)]..... 1821

¶2.136 - Cash Balance Plans And Other Statutory Hybrid Plans  
 Regulations provide guidance on various PPA 2006 changes pertaining to statutory hybrid plans, and on the age discrimination testing safe harbor under IRC §411(b)(5); supplemental regulations proposed to address additional issues [Citation: *Treas. Reg. §§1.411(a)(13)-1 and 1.411(b)(5)-1*, 75 F.R. 64123(October 19, 2010), and *Prop. Treas. Reg. §§1.411(a)(13)-1(b)(2), (3), and (4) and (e)(2)(ii), 1.411(b)-1(b)(2)(ii)(G) and (H), and 1.411(b)(5)-1(c)(3)(iii), (c)(5) (Example 8), (d)(1)(iv)(D), (d)(2)(ii), (d)(4)(iv), (d)(5)(ii) and (iv), (d)(6)(ii) and (iii), (e)(2), (e)(3)(iii), (e)(4) and (f)(2)(i)(B)*, 75 F.R. 64197 (October 19, 2010); see <http://edocket.access.gpo.gov/2010/pdf/2010-25941.pdf> (final regulations) and <http://edocket.access.gpo.gov/2010/pdf/2010-25942.pdf> (proposed regulations)]. .... 2534  
**Note: These regulations finalize proposed regulations that were issued on December 28, 2007, which were summarized at page 1603.**  
 Regulations finalize proposed hybrid plan regulations issued in 2010 and propose additional amendments to the regulations to cover transitional amendments to satisfy the market rate of return rules [Citation: *Treas. Reg. §§1.411(a)(13)-1(b)(2), (3), and (4), (d)(3)(i), (d)(4)(ii)(A), (C) and (E), (d)(6) and (e)(2)(ii), 1.411(b)-1(b)(2)(ii)(G) and (H), and 1.411(b)(5)-1(b)(1)(i), (b)(ii), (b)(iii), (b)(2)(i), (c)(3)(i), (c)(3)(iii), (c)(5) (Example 8), (d)(1)(iv)(D), (d)(1)(v), (d)(1)(viii), (d)(2)(i), (d)(2)(ii), (d)(3), (d)(4)(ii), (d)(4)(iv), (d)(4)(v), (d)(5)(ii), (d)(5)(iv), (d)(6)(ii), (d)(6)(iii), (e)(2), (e)(3)(i), (e)(3)(ii)(B), (e)(3)(ii)(C), (e)(3)(ii)(D), (e)(3)(iii), (e)(3)(iv), (e)(3)(v), (e)(4), (e)(5) and (f)(2)(i)(B)*, 79 F.R. 56442-56469 (September 19, 2014); *Prop. Treas. Reg. §1.411(b)(5)-1(e)(3)(vi)*..... 3403  
**Note: These regulations finalize the 2010 proposed regulations that were issued on October 19, 2010, and summarized in the summary of the 2010 final regulations, beginning on page 2534.**



**Cumulative Table of Contents for eRISA Update**

Regulations finalize additional amendments to the regulations to cover transitional amendments to satisfy the market rate of return rules; delays applicability date and plan amendment deadline by one year [Citation: *Treas. Reg. §§1.411(a)(13)-1(e)(2)(ii), 1.411(b)(5)-1(d)(1)(iv)(A) and (E), (e)(3)(vi), and (f)(2)(i)(B)*, 80 F.R. 70680-70687 (November 16, 2015)]. . . . . 3755

¶2.141(1) - Notice and Consent Requirements: General Consent Requirements (IRC §411(a)(11))  
 Proposed regulations would amend regulations to reflect the 180-day notice maximum period and the requirement to explain the effect of failing to defer payment, as enacted by the PPA 2006 [Citation: *Prop. Treas. Reg. §§1.411(a)-11(c)(2)(i), (iii)(B)(3) and (vi), and 1.411(a)-11(h)*, 73 F.R. 59575 (October 9, 2008)]. . . . . 1980

¶2.141(2) - Joint and Survivor Annuities/Spousal Consent  
 Final regulations provide guidance for retroactive annuity starting dates, pursuant to IRC §417(a)(7) [*Treas. Reg. §1.417(e)-1(b)(3)*, 68 F.R. 41906 (July 16, 2003)]. . . . . 141  
 Final regulations modify notice requirements governing the explanation of QJSA and QPSA so participants receive better financial information, particularly about the relative value of subsidized benefit options [Citation: *Treas. Reg. §1.417(a)(3)-1*, 68 F.R. 70141 (December 17, 2003)]. . . . . 271  
 “Relative value” regulations amended to incorporate modifications described in Announcement 2004-58 [Citation: *Treas. Reg. §§1.401(a)-20, Q&A-16 and Q&A-36, and 1.417(a)(3)-1(c), (d) and (f)*, 71 F.R. 14798 (March 24, 2006)]. . . . . 974  
**Note: Announcement 2004-58 was summarized at page 512.**

¶2.141(3) - Notice and Consent Requirements: Use of Electronic Media  
 Regulations set uniform standards for using electronic media to provide notices to and obtain consents from participants and beneficiaries (including spousal consents); E-SIGN legislation incorporated [Citation: *Treas. Reg. §1.401(a)-21*, with conforming amendments in *Treas. Reg. §§1.72(p)-1, Q&A-3(b), 1.402(f)-1, Q&A-5, 1.411(a)-11(f), 1.417(a)(3)-1(a)(3), 1.7476-2(c)(2), 35.3405-1, d-35, and 54.4980F-1, Q&A-13(c)(1)(ii)*, 71 F.R. 61877 (October 20, 2006)]. . . . . 1201  
**Note: These regulations replace proposed regulations that were summarized at page 696.**

¶2.143 - Minimum Distribution Requirements  
 Final regulations issued for minimum distributions from defined benefit plans and from annuity contracts; modification made to separate share rule providing more time to establish separate shares after participant’s death [*Treas. Reg. §1.401(a)(9)-6, §1.401(a)(9)-8, Q&A-2(a)(2)*, 69 F.R. 33288 (June 15, 2004)]. . . . . 387  
 Proposed regulations would amend minimum distribution regulations to allow for deferred longevity annuities starting no later than age 85 payable from up to 25% of account balance [Citation: *Prop. Treas. Reg. §§1.401(a)(9)-5, Q&A-3(d) and (e), 1.401(a)(9)-6, Q&A-17, 1.403(b)-6(e)(9), 1.408-8, Q&A-12, 1.408A-6, Q&A-14(d), and 1.6047-2*, 77 F.R. 5443 (February 3, 2012)]. . . . . 2896  
 Minimum distribution regulations amended to allow for deferred longevity annuities starting no later than age 85 payable from up to 25% of account balance [Citation: *Treas. Reg. §§1.401(a)(9)-5, Q&A-3(d) and (e), 1.401(a)(9)-6, Q&A-17, 1.403(b)-6(e)(9), 1.408-8, Q&A-12, 1.408A-6, Q&A-14(d), and 1.6047-2*, 79 F.R. 37633-37643 (July 2, 2014)]. . . . . 3352  
**Note: These regulations replace proposed regulations that were summarized at page 2896.**

**Cumulative Table of Contents for eRISA Update**

¶2.143(1) - Minimum Distribution Requirements: General Requirements  
 Regulations implement PPA 2006 provision for good faith standard to apply to governmental plans [Citation: *Treas. Reg. §§1.401(a)(9)-1, Q&A-2(d), 1.401(a)(9)-6, 1.403(b)-8(e)(2) and (e)(8)*, 74F.R. 45993 (September 8, 2009)]..... 2199  
**Note: These regulations replace proposed regulations that were summarized at page 1891.**

¶2.145(3) - Distribution Restrictions: Permissible Distribution Events for Pension Plans  
 Phased retirement programs under pension plans would allow participants who haven't reached normal retirement age to commence pension without severing from employment [Citation: *Prop. Treas. Reg. §§1.401(a)-1(b)(1)(i) and (iv) and 1.401(a)-3*, 69 F.R. 65108 (November 10, 2004)]..... 515  
 IRS finalizes regulations requiring a reasonable normal retirement age under a pension plan and providing limited anti-cutback relief for amendments to modify in-service distribution rights due to a change in the normal retirement age [Citation: *Treas. Reg. §§1.401(a)-1(b), 1.411(d)-4, Q&A-12*, 72 F.R. 28604 (May 22, 2007)]..... 1350  
**Note: These regulations finalize the normal retirement age rules under the proposed regulations summarized at page 515. However, the proposed regulations on phased retirement remain in proposed form.**  
 Proposed regulations would amend the reasonable normal retirement age regulations to revise the safe harbors for governmental plans, postpone the effective date, and clarify when an NRA definition is needed in a governmental plan [Citation: *Prop. Treas. Reg. §1.401(a)-1(b)(2)(v) and (4)*, 81 F.R. 4599-4605 (January 27, 2016)]..... 3819

¶2.145(5) - Distribution Restrictions: Permissible Withdrawals Under IRC §414(w)  
 Final regulations on eligible automatic contribution arrangements (EACAs); permissible withdrawals under IRC §414(w) [Citation: *Treas. Reg. §§1.414(w)-1, 1.402(c)-2, Q&A-4(h), 54.4979-1(c)*, 74 F.R. 8200 (February 24, 2009)]..... 2096  
**Note: These regulations finalize the proposed regulations summarized at page 1620.**

¶2.146 - Distributions: Actuarial Assumptions/Present Value Determinations  
 Regulations make it simpler for a defined benefit plan to offer a payment option consisting of a partial annuity with lump sum remainder [Citation: *Treas. Reg. §1.417(e)-1(d)(7) and (8)*, 81 F.R. 62359-62365 (September 9, 2016)]..... 4021  
**Note: These regulations finalize the proposed regulations that were summarized at page 2906.**

¶2.150(1) - Limitations On Contributions And Benefits (IRC §415): General Rules  
 Comprehensive update of regulations reflects law changes and IRS guidance issued since 1981; makes significant changes to calculation of defined benefit plan limits; provides guidance on treatment of post-severance compensation; conforming amendments made to regulations under IRC §§401(a)(9), 401(k), 403(b) and 457 [Citation: *Treas. Reg. §§1.415(a)-1, 1.415(b)-1, 1.415(b)-2, 1.415(c)-1, 1.415(c)-2, 1.415(d)-1, 1.415(f)-1, 1.415(g)-1, 1.415(j)-1, §1.401(a)-2, §1.401(a)(9)-5, Q&A-9(b)(1), §1.401(k)-1(e)(8), §1.402(c)-2, Q&A-4(a), §1.416-1, Q&A-21, 1.457-4(d), 1.457-5(d) (Example 2), 1.457-6(a) and (c), 1.457-10*, 72 F.R. 16878 (April 5, 2007)]..... 1236  
**Note: These replace the proposed regulations that were summarized at page 703.**  
 Indian tribal fishing rights income under IRC §7873 included in section 415 compensation definition [Citation: *Prop. Treas. Reg. §1.415(c)-2*, 78 F.R. 68780-68782 (November 15, 2013)]. . . . . 3268

**Cumulative Table of Contents for eRISA Update**

¶2.160 - Section 401(k) Plans: General Rules

Comprehensive regulations issued for IRC §401(k) and IRC §401(m) arrangements [Citation: *Treas. Reg. §1.401(k)-1 through 1.401(k)-6 and §§1.401(m)-1 through 1.401(m)-5*, 69 F.R. 78144 (December 29, 2004)]. . . . . 525

Final regulations update 401(k) regulations to incorporate changes made by PPA 2006 [Citation: *Treas. Reg. §§1.401(k)-2, 1.401(k)-6 (“qualified matching contributions” definition), 1.401(m)-1, 1.401(m)-2, 1.411(a)-4*, 74 F.R. 8200 (February 24, 2009)]. . . . . 2106

**Note: These replace the proposed regulations that were summarized at page 1626.**

¶2.164 - Section 401(k) Plans: Roth 401(k) Contributions

Final regulations provide guidance on certain plan design, administrative, and tax issues relating to Roth 401(k) contributions [Citation: *Treas. Reg. §§1.401(k)-1(f), 1.401(k)-2(b)(1)(ii) and (b)(2)(vi)(B) and (C), 1.401(k)-6, 1.401(m)-2(b)(1)(vi)(C), 1.401(m)-2(b)(2)(vi)(B) and (C), and 1.401(m)-5*, 71 F.R. 6 (January 3, 2006)]. . . . . 851

**Note: These regulations finalize the regulations proposed on March 2, 2005, which were summarized at page 625.**

Amendments to regulations explain tax rules and reporting requirements applicable to the distribution of Roth 401(k) contributions [Citation: *Treas. Reg. §§1.402A-1 and 1.402A-2*, 72 F.R. 21103 (April 30, 2007)]. . . . . 1353

**Note: These regulations finalize the proposed regulations summarized at page 858.**

¶2.165 - Safe Harbor 401(k) Plans

Final regulations on qualified automatic contribution arrangements (QACAs) [Citation: *Treas. Reg. §1.401(k)-3(a), (e), (h), (j) and (k)*, 74 F.R. 8200 (February 24, 2009)]. . . . . 2109

**Note: These replace the proposed regulations that were summarized at page 1629.**

Proposed regulations permit a company to suspend or reduce the safe harbor nonelective contribution before the end of the year if the company incurs a substantial business hardship [Citation: *Prop. Treas. Reg. §§1.401(k)-3(g) and 1.401(m)-3(h)* (May 18, 2009)]. . . . . 2171

Regulations permit a company to suspend or reduce the safe harbor contribution before the end of the year if the company is operating at an economic loss or provides advance notice to employees of possibility of suspension or reduction [Citation: *Treas. Reg. §§1.401(k)-3(g) and 1.401(m)-3(h)* (November 15, 2013)]. . . . . 3268

**Note: These regulations finalize the proposed regulations summarized at page 2171.**

¶2.170(3) - Minimum Funding Requirements: Mortality Assumptions

Mortality assumptions used to calculate current liability; new tables effective for the 2007 plan year [Citation: *Treas. Reg. §1.412(l)(7)-1*, 72 F.R. 4955 (February 2, 2007)]. . . . . 1301

**Note: These regulations finalize the regulations proposed on December 2, 2005, which were summarized at page 869.**

Mortality tables for post-2007 plan years; guidelines established for developing substitute mortality tables [Citation: *Treas. Reg. §§1.430(h)(3)-1, 1.430(h)(3)-2, and 1.431(c)(6)-1*, 73 F.R. 44632 (July 31, 2008)]. . . . . 1892

**Note: These regulations finalize the regulations proposed on May 29, 2007, which were summarized at page 1371.**

**Cumulative Table of Contents for eRISA Update**

¶2.170(4) - Minimum Funding Requirements: General Requirements  
 Final regulations on calculation of funding target, target normal cost, interest rates, valuation of assets, and at-risk plans [Citation: *Treas. §§1.430(d)-1, 1.430(g)-1, 1.430(h)(2)-1, and 1.430(i)-1*, 74 F.R. 53004 (October 15, 2009)]..... 2283  
**Note: These regulations finalize proposed regulations that were summarized at page 1633.**  
 Final regulations on calculation of the minimum required contribution, contribution deadlines, quarterly contribution requirements, and excise taxes on late contributions for post-2007 plan years (reflecting PPA 2006 requirements) [Citation: *Treas. Reg. §§1.430(a)-1, 1.430(f)-1(iii), 1.430(h)(2)-1(b)(2), 1.430(j)-1 and 54.4971(c)-1*, 80 F.R. 54374-54402 (September 9, 2015)]. . . . . 3666  
**Note: These regulations finalized proposed regulations that were summarized at p. 1823**

¶2.170(6) - Minimum Funding Requirements: Funding Balances  
 Final regulations explain effect of prefunding balance and funding standard carryover balance [Citation: *Treas. Reg. §1.430(f)-1*, 74 F.R. 53004 (October 15, 2009)]. . . . . 2286  
**Note: These regulations finalize proposed regulations that were summarized at page 1513.**

¶2.170(7) - Minimum Funding Requirements: Multiemployer Plans  
 Proposed regulations to implement requirements under IRC §432 for multiemployer plans that are in critical or endangered status [Citation: *Prop. Treas. Reg. §§1.432(a)-1 and 1.432(b)-1*, 73 F.R. 14417 (March 18, 2008)]. . . . . 1755  
 Final regulations regarding the approval of a proposed benefit suspension under a multiemployer defined benefit plan in critical and declining status, as permitted under IRC §432(e)(9) [Citation: *Treas. Reg. §1.432(e)(9)-1*, 81 F.R. 25540-25573 (April 28, 2016), and *Treas. Reg. §1.432(e)(9)-1(d)(8)*, 81 F.R. 27011-27015 (May 5, 2016)]. . . . . 3933  
**Note: The temporary and proposed versions of these regulations were summarized at p. 3579.**

¶2.172 - Benefit Restrictions For Underfunded Pension Plans  
 Final regulations provide guidance on restrictions under IRC §436 [Citation: *Treas. Reg. §1.436-1*, 74 F.R. 53004 (October 15, 2009)]. . . . . 2288  
**Note: These regulations finalize proposed regulations that were summarized at page 1520.**

¶2.179 ERISA §204(h) and IRC §4980F Notice Requirements  
 Final regulations explain notice requirements under ERISA §204(h) and IRC §4980F for amendments that significantly reduce the rate of future benefit accrual and/or early retirement benefits or retirement-type subsidies [Citation: *Treas. Reg. §54.4980F-1*, 68 F.R. 17277 (April 9, 2003)]. . . 85  
 Regulations clarify notice requirements for retroactive amendments, treat certain notice requirements in other tax code and ERISA sections as satisfying 204(h) notice [Citation: *Treas. Reg. §§1.411(d)-3 and 54.4980F-1, Q&As-1, -7 -8, -9, -10, -11 and -18*, 74 F.R. 61270 (November 24, 2009)]. . . 2292  
**Note: These regulations finalize proposed regulations that were summarized at page 1757.**

¶2.184(1) - S Corporation ESOPs: Prohibited Allocations Under IRC §409(p)  
 Temporary and proposed regulations define synthetic equity under IRC §409(p)(5) to include nonqualified deferred compensation and certain rights to acquire interests in related entities [Citation: *Treas. Reg. §1.409(p)-1T*, (July 21, 2003)]. . . . . 147  
 Temporary regulations expand guidance with respect to prohibited allocations and determination of nonallocation years [Citation: *Treas. Reg. §1.409(p)-1T*, 69 F.R. 75455 (December 17, 2004)]  
 . . . . . 542  
 Final regulations on prohibited allocations under IRC §409(p) and determination of nonallocation years [Citation: *Treas. Reg. §1.409(p)-1*, 71 F.R. 76134 (December 20, 2006)]. . . . . 1165

**Cumulative Table of Contents for eRISA Update**

¶2.185 - Employer Securities: Diversification Rights Under IRC §401(a)(35)  
 Final regulations issued under IRC §401(a)(35), effective for post-2010 plan years [Citation: *Treas. Reg. §1.401(a)(35)-1*, 75 F.R. 27927 (May 19, 2010)]. . . . . 2417  
**Note: These regulations replace the proposed regulations issued on January 3, 2008, which were summarized on p. 1648.**

¶2.195(3) - Anti-cutback Rules: Protecting Optional Forms of Benefit/Early Retirement/Retirement-Type Subsidies  
 Regulations eliminate need for 90-day advance notice of elimination of periodic form of benefit under defined contribution plan [Citation: *Treas. Reg. 1.411(d)-4, Q&A-2(e)*, 70 F.R. 3475 (January 25, 2005)]. . . . . 555  
 Final regulations prescribe rules under IRC §411(d)(6)(B), allowing elimination of certain optional forms of benefit (including early retirement benefits and retirement-type subsidies) under defined benefit plans [Citation: *Treas. Reg. §§1.411(d)-3 and §54.4980F-1, Q&A-8, with conforming amendments to §1.411(d)-4*, 70 F.R. 47109 (August 12, 2005)]. . . . . 775  
 Regulations amend anti-cutback regulations to clarify the interaction between IRC §411(a) and IRC §411(d)(6), pursuant to the *Central Laborers’* opinion; add utilization test for the elimination of certain optional forms of benefit [Citation: *Treas. Reg. §1.411(d)-3(a)(3) and (4), 1.411(d)-3(b)(4), 1.411(d)-3(c)(6), 1.411(d)-3(f), 1.411(d)-3(h), and 1.411(d)-3(j)(3), (4) and (5)*, 71 F.R. 45379 (August 9, 2006)] . . . . . 1212  
**Note: These regulations replaced the proposed regulations issued on August 12, 2005, and summarized on page 802.**  
 Regulations allow elimination of certain accelerated forms of benefit under DB plan maintained by sponsor who is a debtor in bankruptcy [Citation: *Treas. Reg. §1.411(d)-4, Q&A-2(b)(2)(xii)*, 77 F.R. 66915 (November 8, 2012)]. . . . . 3049  
**Note: These regulations replaced the proposed regulations issued on June 21, 2012, and summarized on page 2946.**

¶2.203 - Payments by Plan for Medical or Accident Insurance  
 Clarification of tax treatment of qualified plan assets used to pay premiums for accident or health insurance [Citation: *Prop. Treas. Reg. §1.402(a)-1(e)*, 72 F.R. 46421 (August 20, 2007)]. . . . . 1546  
 Clarification of tax treatment of qualified plan assets used to pay premiums for accident or health insurance [Citation: *Treas. Reg. §1.402(a)-1(e) and 1.402(c)-2, Q&A-4(j)*, conforming amendments to *Treas. Reg. §§1.72-15, 1.106-1, 1.402(a)-1(e), 1.403(a)-6(g), and 1.403(b)-6(g)*, 79 F.R. 26838-26843 (May 12, 2014)]. . . . . 3348  
**Note: These regulations finalize the proposed regulations that were summarized at p. 1546.**

¶2.206 - Withholding and Employment Taxes  
 IRS mandates electronic deposit of employment taxes starting in 2011; FTD coupon system is discontinued [Citation: *Treas. Reg. §§1.6302-1 through 1.6302-4, 31.6302-1, 31.6302-2, and 31.6302-4*, 75 F.R. 75897 (December 7, 2010)]. . . . . 2576  
**Note: This regulations finalized proposed regulations that were published on August 23, 2010, and were summarized at p. 2455.**

¶2.220(7) - Rollovers Involving After-Tax Amounts  
 IRS finalizes change in designated Roth account regulations to eliminate “separate determination” rule when determining the character of partial direct rollovers of plan disbursements that include both after-

**Cumulative Table of Contents for eRISA Update**

tax and pre-tax amounts distributed from a designated Roth account [Citation: *Treas. Reg. §1.402A-1, Q&A-5(a)*, 81 F.R. 31165-31166 (May 18, 2016)]. . . . . 3939

¶2.232 - Timing of Employer Contributions/IRC §404(a)(6) Period  
 Procedures simplified for unincorporated taxpayers to obtain filing extension; extension period for partnerships reduced from 6 months to 5 months [Citation: *Treas. Reg. §§1.6081-2T and 1.6081-4*, 73 F.R. 37362 (July 1, 2008)]. . . . . 1844

¶2.233 - Deduction Rules: Dividend Deduction Under IRC §404(k)  
 Proposed regulations clarify when IRC §404(k) deduction is available for employer securities held by ESOP that are not issued by the corporation that maintains the plan; would disallow deduction for redemption of employer securities held by an ESOP [Citation: *Prop. Treas. Reg. §§1.162(k)-1, 1.404(k)-2, and 1.404(k)-3*, 70 F.R. 49897 (August 25, 2005)]. . . . . 808  
 Regulations disallow deduction for redemption of employer securities held by an ESOP [Citation: *Treas. Reg. §§1.162(k)-1 and 1.404(k)-3*, 71 F.R. 51471 (August 30, 2006)]. . . . . 1211  
**Note: The regulations replace the corresponding portion of the proposed regulations issued on August 25, 2005. See summary on page 808.**

¶2.236 - Employer Deductions: Welfare Benefit Plans (IRC §§419 and 419A)  
 Final regulations on multiple employer welfare arrangements (MEWAs) eligible for deduction limit exception under IRC §419A(f)(6) [Citation: *Treas. Reg. §1.419A(f)(6)-1*, 68 F.R. 42254 (July 17, 2003)]. . . . . 152

¶2.240(1) - Elective Deferrals: Limits on Deferrals  
 Regulations under IRC §402(g) are amended to add “gap period” earnings rule to corrective distributions of excess deferrals, add reference to SIMPLE-IRAs, incorporate IRC §402(g)(7), and address new indexing rules [Citation: *Treas. Reg. §1.402(g)-1*, 72 F.R. 21103 (April 30, 2007)]. . . . . 1377  
**Note: These regulations finalize the proposed regulations summarized at page 871.**

¶2.240(2) - Elective Deferrals: Catch-up Contributions  
 Final regulations on catch-up contributions [*Treas. Reg. §1.402(g)-2 and §1.414(v)-1*, 68 F.R. 40510 (July 8, 2003)]. . . . . 156

¶2.240(3) - Elective Deferrals: Designated Roth Contributions  
 Regulations under IRC §402(g) are amended to address designated Roth contributions under a 401(k) or 403(b) plan [Citation: *Treas. Reg. §1.402(g)-1*, 72 F.R. 21103 (April 30, 2007)]. . . . . 1379  
**Note: These regulations finalize the proposed regulations summarized at page 872.**

¶2.242 - Participant Loans (IRC §72(p))  
 Regulations issued to cover loan refinancing, loan repayment suspensions due to military service leave, and loans made after default on prior loan; restriction on multiple loans dropped [Citation: *Treas. Reg. §1.72(p)-1, Q&A-9, Q&A-19, Q&A-20, Q&A-22(d)*, 67 F.R. 71821 (December 3, 2002)]. . . . . 2

¶2.244(1) - Nonrecognition of Gain: Sale of Employer Securities to ESOP (IRC §1042)  
 Regulations extend period for notarized statement of purchase of qualified replacement property [Citation: *Treas. Reg. §1.1042-1T, Q&A-3(b)(6)*, 68 FR 41087 (July 10, 2003)]. . . . . 165

¶2.247(1) - Distributions Involving Insurance Contracts  
 Valuing insurance contracts that are distributed from or transferred by a qualified plan; valuations for §79 and §83 also affected [Citation: *Treas. Reg. §1.402(a)-1(a)(1)(iii) and (a)(2), §1.79-1(d)(3), §1.83-3(e)*, 70 F.R. 50967 (August 29, 2005)]. . . . . 810

**Cumulative Table of Contents for eRISA Update**

¶2.253 - Loss Deductions  
 Final regulations describe effect under IRC §382 of a distribution from a qualified plan of an ownership interest in a loss corporation [Citation: *Treas. Reg. §1.382-10*, 71 F.R. 30640 (May 30, 2006)]  
 ..... 1069

¶2.300 - Form 5500 Reporting Requirements  
 Plan administrators and employers that file more than 250 returns of any type in a calendar year are required to file Form 5500, Form 8955-SSA and Schedule SB/MB electronically or on other magnetic media [Citation: *Treas. Reg. §§301.6057-3, 301.6058-2 and 301.6059-2*, 79 F.R. 58256-58261 (September 29, 2014)]. ..... 3438  
**Note: These regulations finalize the proposed regulations issued on August 30, 2013, that were summarized beginning on page 3230.**

¶2.300(3) - Deadline For Filing Form 5500  
 Procedures for extending filing deadline for Form 5500 are simplified [Citation: *Treas. Reg. §1.6081-11T*, 70 F.R. 67356 (November 7, 2005)]. ..... 874

¶2.301 - IRS Reporting Rules and Forms (Other Than Form 5500)  
 Procedures simplified for obtaining automatic 30-day extension to file information returns [Citation: *Treas. Reg. §1.6081-8T*, 68 F.R. 34797 (June 11, 2003) (identical text issued in proposed form as Prop. *Treas. Reg. §1.6081-8*)]. ..... 166  
 Revisions to FBAR regulations to provide clarification of filing requirements; revisions to FBAR instructions [Citation: *FinCEN Reg. §1010.350 (redesignation of former §103.24)*, 76 F.R. 10234 (February 24, 2011) (issued by the Financial Crimes Enforcement Network (FinCEN), a bureau of the Treasury Department)].. ..... 2691  
**Note: These regulations finalize the proposed regulations summarized at page 2371.**  
 IRS eliminates the signature requirement for extending filing deadline for Form 8955-SSA; regulations revised to incorporate Form 8955-SSA [Citation: *Prop. Treas. Reg. §§1.6081-11(a), (b)(3) and (e)(2), 301.6057-1(a)(4), (b)(2) and (b)(3), and 301.6057-2(c)*, 77 F.R. 37352 (June 21, 2012)]. . . . 2947  
 Proposed regulations would broaden and simplify the FBAR filing requirements for certain persons who only have signature or other authority over foreign accounts, but no financial interest in such accounts [Prop. *FinCEN Reg. §§1010.306(c) and (e), 1010.350(a) and (f)(2) and 1010.420*, 81 F.R. 12613-12622 (March 10, 2016)]. ..... 3822

¶2.301(1) - Form 8955-SSA  
 Plan administrators and employers that file more than 250 returns of any type in a calendar year would be required under proposed regulations to file Form 5500, Form 8955-SSA and Schedule SB/MB electronically or on other magnetic media [Citation: *Prop. Treas. Reg. §§301.6057-3, 301.6058-2 and 301.6059-2*, 78 F.R. 53704-53709 (August 30, 2013)]  
 See summary at ¶2.300.. ..... 3232

¶2.405 - Roth IRAs  
 Regulations address coordination between designated Roth accounts and Roth IRAs [Citation: *Treas. Reg. §1.408A-10*, 72 F.R. 21103 (April 30, 2007)]. ..... 1381  
**Note: These regulations finalize the proposed regulations summarized at page 874.**  
 Rules prescribed for valuing non-Roth IRA annuity in a conversion of the IRA to a Roth IRA [Citation: *Treas. Reg. §1.408A-4, Q&A-14*, 73 F.R. 43860 (July 29, 2008)]. ..... 1899

**Cumulative Table of Contents for eRISA Update**

¶2.407 - Roth Conversions and Recharacterization of IRA Contributions  
 Method for calculating allocable income on IRA contributions recharacterized pursuant to IRC §408A(d)(6) or IRA contribution refunded pursuant to IRC §408(d)(4) [Citation: *Treas. Reg. §1.408-11 and §1.408A-5, Q&A-2(c)*, 68 F.R. 23586 (May 5, 2003)]..... 166

¶2.409 - Deemed IRAs  
 Final regulations explain application of tax code requirements to deemed IRAs and to other contributions made to the underlying employer plan, and the consequences of failing to satisfy applicable requirements; non-bank trustee rules modified for governmental plans [Citation: *Treas. Reg. §§1.408(q)-1, 1.408-2(e)(5)(v)(A), 1.408-2T*, 69 F.R. 43735 (July 22, 2004)]. ..... 448  
**Note: Replaces the proposed regulations summarized at page 169.**  
 Final regulations modify nonbank trustee rules for governmental plans [Citation: *Treas. Reg. §1.408-2(e)(8)*, 72 F.R. 33387 (June 18, 2007)]. ..... 1383

¶2.420 - Definition of Governmental Entity or Governmental Plan  
 Notice of advance rulemaking on definition of governmental plans [Citation: *Determination of Governmental Plan Status*, 76 F.R. 69172 (November 8, 2011)]. ..... 2781

¶2.424 - Indian Tribal Governments  
 Notice of advance rulemaking on definition of Indian tribal government plans [Citation: *Indian Tribal Government Plans*, 76 F.R. 69188 (November 8, 2011)]. ..... 2785

¶2.500 - Section 403(b) Arrangements: General Requirements  
 Proposed regulations explain the rules for section 403(b) plans, reflecting all law changes through EGTRRA; clarifications made to controlled group rules and to FICA rules as well [Citation: *Prop. Treas. Reg. §§1.403(b)-1 through 1.403(b)-11, 1.402(g)(3)-1, 1.414(c)-5*, 69 F.R. 67075 (November 16, 2004), and *Treas. Reg. §31.3121(a)(5)-2T*, 69 F.R. 67100 (November 16, 2004)]..... 556

¶2.503 - Section 403(b) Plans: Taxation  
 Application of FICA to salary reduction contributions under a section 403(b) plan [Citation: *Treas. Reg. §31.3121(a)(5)-2*, 72 F.R. 64939 (November 19, 2007)]. ..... 1652

¶2.508 - Section 403(b) Arrangements: Roth 403(b) Contributions  
 Final regulations explain the rules for section 403(b) plans, reflecting all law changes through PPA 2006; clarifications made to controlled group rules and to FICA rules as well [Citation: *Treas. Reg. §§1.403(b)-1 through 1.403(b)-11, 1.402(b)-1, 1.402(g)(3)-1, 1.402A-1, Q&A-1, 1.414(c)-5*, 72 F.R. 41128 (July 26, 2007)]..... 1549  
**Note: These regulations replace the proposed regulations that were issued on January 26, 2006, and summarized on p. 876.**

¶2.510 - Taxation Issues For Nonqualified Plans  
 Final regulations on IRC §409A requirements for nonqualified plans provide for more flexibility for stock rights, expand the categories of plans for purposes of the aggregation rules, and adopt other important clarifications to the proposed regulations [Citation: *Treas. Reg. §§1.409A-1 through 1.409A-6*, 72 F.R. 19234 (April 17, 2007)]. ..... 1384  
**Note: These regulations finalize the proposed regulations summarized at page 878.**  
 Proposed regulations provide guidance on calculating the amounts includible in income under IRC §409A(a) and the additional taxes imposed by that tax code section [Citation: *Prop. Treas. Reg. §1.409A-4*, 73 F.R. 74380 (December 8, 2008)]. ..... 1983  
 Proposed regulations under IRC §409A would modify certain sections of the 2007 final regulations dealing with the definition of deferred compensation, deferral elections and permissible payments, and



**Cumulative Table of Contents for eRISA Update**

replace part of the 2008 proposed regulations on income inclusion under IRC §409A(a) [Citation: *Prop. Treas. Reg. §§1.409A-1(a)(4), (b)(1), (b)(3), (b)(4), (b)(5), (b)(9), (b)(11), (b)(13), (h)(4), (h)(5), (q), 1.409A-2(b)(2)(i), 1.409A-3(b), (d), (i)(5), (j)(1), (j)(2), (j)(4)(iii)(B), (j)(4)(ix), (j)(4)(xiii), 1.409A-4(a)(1)(ii)(B), and 1.409A-6(b)*, 81 F.R. 40569-40584 (June 22, 2016)]..... 3943

**Note: These proposed regulations would amend the final regulations summarized at p. 1384 and would modify the proposed regulations summarized at p. 1983.**

¶2.514 - Section 457 Plans

Final regulations provide comprehensive guidance for section 457 plans; recent legislation and other guidance incorporated [Citation: *Treas. Reg. §§1.457-1 through 1.457-12*, 68 F.R. 41230 (July 11, 2003)]..... 173

Proposed amendments to IRC §457 regulations would update the regulations for law changes enacted since the publication of the 2003 regulations, address exceptions under IRC §457(e) and provide clarifications of the 2003 regulations [Citation: *Prop. Treas. Reg. §§1.457-1, 1.457-2, 1.457-4, 1.457-6, 1.457-9, 1.457-10, 1.457-11, 1.457-12 and 1.457-13*, 81 F.R. 40548-40569 (June 22, 2016)] ..... 3951

**Note: These proposed regulations would modify the final regulations summarized at p. 173.**

¶2.520 - Health Savings Accounts (HSAs)

Regulations provides guidance on the comparability requirement of IRC §4980G where an employee does not establish an HSA by December 31 [Citation: *Treas. Reg. §54.4980G-4, Q&A-14 through Q&A-16*, 73 F.R. 20794 (April 17, 2008)]..... 1845

Additional guidance on comparability requirement for HSA contributions; special rule for testing contributions made for nonhighly compensated employees; guidance on paying excise tax [Citation: *Treas. Reg. §§54.4980G-1, 54.4980G-3, 54.4980G-4, 54.4980G-6, 54.5980G-7, 54.6011-2, 54.6061-1, 54.6071-1, 54.6091-1, 54.6151-1*, 74 F.R. 45994 (September 8, 2009)]..... 2200

**Note: These regulations replace proposed regulations that were summarized at page 1901.**

¶2.605(1) - Practice Before the IRS

Regulations set forth best practices for tax advisors providing advice to taxpayers relating to Federal tax issues or submissions to the IRS [Citation: *Treas. Reg. §§10.33, 10.35-10.38, 10.52, 10.93*, 31 C.F.R. Part 10 (Practice Before the IRS), 69 F.R. 75839 (December 20, 2004)]..... 570

Amendments to Circular 230 regulations adds exceptions for certain written advice and clarifies tax avoidance [Citation: *Treas. Reg. §§10.35(b)(2)(ii), (b)(8), (b)(10)*, 31 C.F.R. Part 10 (Practice Before the IRS), 70 F.R. 28824 (May 19, 2005)]..... 756

Preamble to proposed regulations formally announce plans to create enrolled agent classification for retirement plan professionals [Citation: *Preamble to Proposed Regulations Governing Practice Before the IRS (Circular 230)*, 71 F.R. 6421 (February 8, 2006)]..... 980

Amendments adopted Circular 230 that formally adopts a new enrolled category (ERPA) for retirement plan professionals and adopts amendments in response to the American Jobs Creation Act of 2004; proposed amendments to tax return standards [Citation: *31 CFR Part 10 (Circular 230), §10.1-10.7, 10.22, 10.25, 10.27, 10.29-10.30, 10.34, 10.50-10.53, 10.60-10.63, 10.65, 10.68, 10.70-10.73, 10.76-10.78, 10.82, 10.90*, 72 F.R. 54540 (September 26, 2007); Prop. §10.34, 72 F.R. 54621 (September 26, 2007)]..... 1573

Regulations require all tax return preparers to have a preparer tax identification number (PTIN); conforming amendments to Circular 230 proposed; public outreach by IRS to alert practitioners to the

**Cumulative Table of Contents for eRISA Update**

impending requirements [Citation: *Treas. Reg. §1.6109-2*, 75 F.R. 60309 (September 30, 2010); *Treas. Reg. §300.9*, 75 F.R. 60316 (September 30, 2010); *Prop. Treas. Reg. §10.0-10.9*, 10.30, 10.34, 10.36, 10.51, 10.90 (amendments to Circular 230), 75 F.R. 51713 (August 23, 2010); <http://www.irs.gov/taxpros/article/0,,id=218611,00.html> (FAQs); IR-2010-91 (August 19, 2010) and IR-2010-99 (September 29, 2010); <http://www.irs.gov/taxpros/article/0,,id=210909,00.html> (IRS' overview of these changes, with links to relevant pages of its website)]. . . . . 2457

Amendments to Circular 230 finalized; registered tax return preparer practitioner designation established [Citation: *Treas. Reg. §10.0-10.9*, 10.20, 10.25, 10.30, 10.34, 10.36, 10.38, 10.50-10.53, 10.60-10.69, 10.72, 10.76-10.82, 10.90, 31 C.F.R. Part 10, 76 F.R. 32286 (June 3, 2011), available at <http://www.gpo.gov/fdsys/pkg/FR-2011-06-03/pdf/2011-13666.pdf>]. . . . . 2731

Regulations set fees for the RTRP competency exam and fingerprinting [Citation: *Treas. Reg. §300.12 and redesignation of §300.12 (relating to PTIN user fees) as §300.13*, 76 F.R. \_\_\_\_ (November 25, 2011), *Prop. Treas. Reg. §300.14*, 76 F.R. 59329 (September 26, 2011), available at <http://www.gpo.gov/fdsys/pkg/FR-2011-09-26/pdf/2011-24771.pdf>]. . . . . 2788

**Note: These regulations replace proposed regulations that were summarized at p. 2761.**

Amendments to Circular 230 would consolidate and clarify standards for written advice and expand internal compliance procedures for affected firms [Citation: *Treas. Reg. §§10.1*, 10.22, 10.31, 10.35, 10.36, 10.37, 10.52, 10.81, 10.82, 10.91, 77 F.R. 57055 (September 17, 2012)]. . . . . 3050

Amendments to Circular 230 consolidate and clarify standards for written advice and expand internal compliance procedures for affected firms [Citation: *Treas. Reg. §§10.1*, 10.22, 10.31, 10.35, 10.36, 10.37, 10.52, 10.81, 10.82, 10.91, 79 F.R. 33685-33695 (June 12, 2014)]. . . . . 3364

**Note: These regulations replace proposed regulations that were summarized at p. 3050.**

Decrease in application fees for PTINs [Citation: *Treas. Reg. §300.13T*, 80 F.R. 66792-66795 (October 30, 2015)]. . . . . 3764

¶2.605(2) - Joint Board for the Enrollment of Actuaries

Final regulations update standards for enrolled actuaries to reflect changes in the law and industry practice [Citation: *20 C.F.R. Part 201, Reg. §§901.0*, 901.1, 901.10-901.12, 901.20, 901.31, 901.32, 901.47 and 901.72, 76 F.R. 17762 (March 31, 2011)]. . . . . 2694

**Note: These regulations finalize the proposed regulations summarized at page 2203.**

¶2.607 - Tax Shelters: Listed Transactions Involving Retirement Vehicles

Final regulations regarding disclosure requirements for prohibited tax shelter transactions and excise taxes on such transactions [Citation: *Treas Reg. §§1.6033-5*, 53.4965-1 through 53.4965-9, 53.6071-1, 54.6011-1, 301.6011(g)-1, 75 F.R. 38700 (July 6, 2010)]. . . . . 2465

Temporary and proposed regulations regarding disclosure requirements for prohibited tax shelter transactions and excise taxes on such transactions [Citation: *Treas Reg. §§1.6033-5T*, 53.4965-1 through 53.4965-9, 53.6071-1T, 54.6011-1T, 301.6011(g)-1, 72 F.R. 36869, 36871, 36927 (July 6, 2007)]. . . . . 1576

¶2.700 - Age Discrimination Issues

Proposed regulations would modify current proposed regulations relating to application of age discrimination rules to qualified plans; special rules for cash balance plans proposed [Citation: *Prop. Treas. Reg. §1.401(a)(4)-3(g)*, *§1.401(a)(4)-9(b)(2)(vi)*, and *§1.411(b)-2* (December 11, 2002)]. . . 3

Cumulative Table of Contents for eRISA Update

DOL REGULATIONS

¶3.104 - Establishment of Plan/Coverage Under ERISA

DOL adds new exemption from the definition of an ERISA employee pension benefit plan for an auto-enrollment IRA savings program mandated by State law for nongovernmental employees; proposes to expand exception to allow for IRA savings programs mandated by political subdivisions of a State [Citation: *DOL Reg. §2510.3-2(a) and (h)*, 81 F.R. 59464-59477 (August 30, 2016); *Prop. DOL Reg. §2510.3-2(h)*, 81 F.R. 59581-59592 (August 30, 2016)]. . . . . 4031

**Note: These regulations finalize the proposed regulations that were summarized at p. 3765 and added new proposed regulations to expand the program to political subdivisions.**

¶3.192 - QDROs

Final regulations implement PPA 2006 directive to clarify status of QDROs without regard to timing or that a prior QDRO already exists [Citation: *DOL Reg. §2530.206*, 75 F.R. 32846 (June 12, 2010)] . . . . . 2424

**Note: These regulations replace the interim regulations that were issued on March 7, 2007, and were summarized on p. 1302.**

¶3.220(3) - Automatic Rollovers

Final regulations provide fiduciary relief for automatic rollovers and implement a March 28, 2005, effective date for IRC §401(a)(31)(B) [Citation: *DOL Reg. §2550.404a-2*, 69 F.R. 58018 (September 29, 2004)] (*replaces proposed regulations summarized on page 349*). . . . . 456

Fiduciary safe harbor provided for automatic rollovers made with respect to terminated defined contribution plans (including abandoned plans) [Citation: *DOL Reg. §2550.404a-3*, 71 F.R. 20820, 20828-20830, 20850-20853 (April 21, 2006)]. . . . . 981

**Note: These regulations replace the regulations that were proposed on March 10, 2005, which were summarized at page 628.**

Fiduciary safe harbor for automatic rollovers made by terminated defined contribution plans (including abandoned plans) is amended to require benefits of missing nonspouse beneficiaries to be rolled over to inherited IRAs [Citation: *DOL Reg. §2550.404a-3(d) and (e)*, *DOL Reg. §2578.1(d)(2)(vi)(A)*, 73 F.R. 58459 (October 7, 2008)]. . . . . 2003

¶3.273 - Plan Termination: Orphan Plans

Regulations permit “qualified termination administrator” to terminate and liquidate abandoned or orphan plans; simplified final report filed [Citation: *DOL Reg. §2578.1, Appendixes A through D to §2578.1, §2520.103-13*, 71 F.R. 20820, 20828-20830, 20850-20853 (April 21, 2006)]. . . . . 985

**Note: These regulations replace the regulations that were proposed on March 10, 2005, which were summarized at page 631.**

Proposed regulations would expand orphan plan termination program to allow bankruptcy trustees to terminate plans maintained by plan sponsors who are liquidating under Chapter 7 of the Bankruptcy Code; other technical changes to orphan plan program also proposed [Citation: . . . . . 3054

¶3.300 - Form 5500 Reporting Requirements

DOL supplements proposed revisions to Form 5500 series, in light of the PPA 2006 [Citation: Proposed Revision of Annual Information Return/Reports, 71 F.R. 71562 (December 11, 2006)]. . . . . 1169

DOL requires mandatory electronic filing of Form 5500 for plan years or reporting years that begin on or after January 1, 2009; adopts significant revisions to forms; 2008 effective date for certain changes relating to the PPA 2006 [Citation: *DOL Reg. §§2520.103-1, 2520.104-44, 2520.104-46, 2520.104a-2,*

**Cumulative Table of Contents for eRISA Update**

72 F.R. 64710 (November 16, 2007), and *Revision of Annual Information Return/Reports*, 72 F.R. 64731 (November 16, 2007)]..... 1653  
**Note: Replaces proposed regulations that were summarized at p. 816 and final regulations that were summarized at p. 1071. The DOL has announced that, due to the PPA, the effective date for mandatory electronic filing has been pushed back to 2009.**

Special reporting requirements added for multiple employer plans [Citation: *Changes to Form 5500 and 5500-SF and Instructions for Multiple Employer Plans*, 79 F.R. 66617-66621 (November 10, 2014)] ..... 3487

Substantial revisions of the Form 5500 series proposed for 2019 reporting year and corresponding amendments to DOL regulations proposed [Citation: *Proposed Revision of Annual Information Return/Reports (Joint Release from DOL/IRS/PBGC)*, 81 F.R. 47534 (July 21, 2016); *Prop. DOL Reg. §§2520.103-1 - 2520.103-4, 2520.103-6, 2520.103-8, 2520.103-10, 2520.103-20, 2520.104-26, 2520.104-42, 2520.104b-10, 2590.715-2715A, 2590.715-2717*, 81 F.R. 47534-47681 (July 21, 2016)] ..... 3977

¶3.302 - DOL Reporting Rules and Forms (Other than Form 5500)  
 Proposed regulations would require registration statements filed for top hat plans to be filed electronically at DOL website; same requirements for apprenticeship and training welfare benefit plans [Citation: *Prop. DOL Reg. §§2520.104-22(c) and 2520.104-23(c)*, 79 F.R. 58720-58724 (September 30, 2014)]..... 3441

¶3.311 - Employee Benefit Statements  
 DOL issues advance notice of proposed regulations that would require employee benefit statements for DC plans to include equivalent annuity information with respect to current and projected account balances [Citation: *Advance Notice of Proposed Rulemaking (ANPRM) Prop. DOL Reg. §2520.105-1*, 78 F.R. 26727-26739 (May 8, 2013)]. ..... 3163

¶3.318 - Miscellaneous Disclosure Requirements under Title I of ERISA  
 Final regulations provide guidance on annual funding notice required of multiemployer plans under ERISA §101(f) [Citation: *DOL Reg. §2520.101-4*, 71 F.R. 1904 (January 11, 2006)]..... 997  
 Final regulations on annual funding notices under ERISA §101(f) [Citation: *DOL Reg. §2520.101-5, Appendixes A and B to §2520.101-5, §2520.104-46(b)(1)(i)(B), §2520.104b-10(g)(9)*, 80 F.R. 5626-5663 (February 2, 2015)]. ..... 3551  
**Finalized proposed regulations summarized at p. 2578**

¶3.320(1) - Fiduciary Requirements: Definition of a Fiduciary  
 DOL will re-propose in early 2012 its regulations that would expand the definition of a fiduciary with respect to persons who provide investment advice for a fee [Citation: *Prop. DOL Reg. §2510.3-21(c)*, 75 F.R. 65263 (October 22, 2010), announcement of re-proposal in News Release dated September 19, 2011 (available at the DOL website - <http://www.dol.gov/opa/media/press/ebsa/EBSA20111382.htm>..... 2762  
 Proposed regulations would expand the definition of a fiduciary with respect to persons who provide investment advice for a fee [Citation: *Prop. DOL Reg. §2510.3-21*, 80 F.R. (April 20, 2015)] ..... 3583  
 Final regulations expand the definition of a fiduciary with respect to persons who provide investment advice for a fee [Citation: *DOL Reg. §2510.3-21*, 81 F.R. 20946-21002 (April 8, 2016)]. .... 3824  
**Note: The proposed version of these regulations was summarized at p. 2585.**

**Cumulative Table of Contents for eRISA Update**

¶3.320(3) - Definitions: Investment Manager  
 Electronic registration requirements for investment advisers to be investment managers under Title I of ERISA [Citation: *DOL Reg. §2510.3-38*, 69 F.R. 52120 (August 24, 2004)]..... 457

¶3.321(1) - Fiduciary Duties and Liability: Prudence and Diversification  
 Economically targeted investments - DOL updates its position [Citation: *DOL Reg. §2509.08-1 (Interpretive Bulletin 08-1)*, 73 F.R. 61735 (October 17, 2008)]..... 2004  
 Interpretive bulletin outlines DOL positions on proxy voting, investment policies, and shareholder activism [Citation: *DOL Reg. §2509.08-2 (Interpretive Bulletin 08-2)*, 73 FR 61731 (October 17, 2008)]..... 2006

¶3.321(6) - Fiduciary Duties and Liability: Selection of Annuity Providers  
 Proposed regulations prescribe fiduciary standards for selection of annuity providers for defined contribution plans; “safest annuity standard” in Interpretive Bulletin 95-1 amended to restrict its application to defined benefit plans [Citation: *DOL Reg. §2509.95-1*, 72 F.R. 52004 (September 12, 2007); *Prop. DOL Reg. §2550.404a-4*, 72 F.R. 52021 (September 12, 2007)]..... 1583  
 Regulations prescribe fiduciary standards for selection of annuity providers for defined contribution plans; “safest annuity standard” in Interpretive Bulletin 95-1 amended to restrict its application to defined benefit plans [Citation: *DOL Reg. §2509.95-1*, 73 F.R. 58445 (October 7, 2008); *DOL Reg. §2550.404a-4*, 73 F.R. 58447 (October 7, 2008)]..... 2010  
**Note: The regulations finalize the proposed regulations summarized at page 1583.**

¶3.322 - Participant-Directed Investments  
 Blackout notices: final regulations implement provisions of Sarbanes-Oxley Act of 2002 relating to advance notice of blackout periods on investment direction, loans or distribution rights, and to civil penalties under ERISA §502(c)(7) for noncompliance; model notice provided [Citation: *DOL Reg. §2520.101-3*, 68 F.R. 3716 (January 24, 2003) (notice requirements and model notice), and *DOL Reg. §§2560.502c-2, 2560.502c-5, 2560.502c-6, 2560.502c-7, 2570.61, 25701.64, 2570.94, 2570.114, and 2570.130 through 2570.141 (new Subpart G of Part 2570)*, 68 F.R. 3729 (January 24, 2003) (civil penalties for noncompliance)]..... 24

**Cumulative Table of Contents for eRISA Update**

¶3.322(1) - Participant-Directed Plans: Disclosures

Final regulations impose fiduciary requirements for disclosure in participant-directed plans [Citation: *DOL Reg. §§2550.404a-5, 2550.404c-1*, 75 F.R. 64910 (October 20, 2010)]. . . . . 2590  
**Note: These regulations finalize the proposed regulations issued on July 23, 2008, and reported at page 1904.**

Extension of transition rule for initial disclosures required under participant fee disclosure regulations [Citation: *DOL Reg. §2550.404a-5(j)(3)(i)*, 76 F.R. 42539 (July 19, 2011), available at <http://www.gpo.gov/fdsys/pkg/FR-2011-07-19/pdf/2011-18029.pdf>]. . . . . 2763

Delayed affective date for service provider fee disclosure requirements also delays the effect of the extension of the transition rule for initial disclosures required under the participant fee disclosure regulations [Citation: *DOL Reg. §2550.404a-5(j)(3)(I)*, 76 F.R. 42539 (July 19, 2011), analyzed in conjunction with *DOL Reg. §2550.408b-2(c)*, 77 F.R. 5632 (February 3, 2012)]. . . . . 2913

Annual disclosure timing is satisfied if disclosure is within 14 months of prior annual disclosure, creating 60-day grace period [Citation: *DOL Reg. §2550.404a-5(h)(1)*, 80 F.R. 14301-14304 (March 19, 2015)] . . . . . 3559

**Cumulative Table of Contents for eRISA Update**

¶3.322(4) - Participant-Directed Investments: Default Investments  
 Final regulations implement the default investment directive under the PPA 2006 and provide fiduciary relief for investment of participant accounts in qualified default investment alternatives (QDIAs) [Citation: *DOL Reg. §2550.404c-5*, 72 F.R. 60452 (October 24, 2007)]. . . . . 1664  
**Note: Supersedes proposed regulations summarized at p. 1220.**  
 Clarifying amendments adopted to final QDIA regulations [Citation: *DOL Reg. §2550.404c-5*, 73 F.R. 23349 (April 30, 2008)]. . . . . 1847  
 Proposed regulations would prescribe additional disclosures for QDIAs that are target date funds, and expand disclosures for QDIAs in general to conform to participant fee disclosure regulations under DOL Reg. §2550.404a-5 [Citation: *Prop. DOL Reg. §§2550.404a-5(i)(4), and 2550.404c-5(c)(4), (d)(3), (d)(4) and (d)(5)*, 75 F.R. 73987 (November 30, 2010) (full text is available at . . . . . 2610

¶3.325(3) - Claims Procedures  
 DOL proposes to update claims procedures for disability benefits to coordinate with ACA procedures [Citation: *Prop. DOL Reg. §2560.503-1(b)(7), (g)(1)(v), (g)(1)(vii) and (viii), (h)(4), (i)(3)(i), (j)(5), (l), (m)(4), (m)(9), and (p)*, 80 F.R. 72014-72028 (November 18, 2015)]. . . . . 3769

¶3.326(1) - Definition of Plan Assets: Participant Contributions  
 Safe harbor deadline for depositing participant contributions to plans with fewer than 100 participants [Citation: *DOL Reg. §2510.3-102*, 75 F.R. 2068 (January 14, 2010)]. . . . . 2373  
**Note: These regulations finalize the proposed regulations summarized at p. 1759.**

¶3.332 - ERISA Enforcement: Civil and Criminal Penalties  
 Assessment procedures for the ERISA §502(c)(4) penalty [Citation: *DOL Reg. §2550.502c-4*, 74 F.R. 17 (January 2, 2009)]. . . . . 2012  
**Note: These regulations finalize the proposed regulations summarized at p. 1675.**

¶3.355 - Prohibited Transactions - Exemption Procedure/ Administrative Exemptions  
 DOL updates its application procedures for administrative and class exemptions from the prohibited transaction rules, and consolidates DOL guidance regarding exemption applications [Citation: *DOL Reg. §§2570.30-2570.52*, 76 F.R. 66637 (October 27, 2011)]. . . . . 2789  
**Note: These regulations replace proposed regulations that were summarized at p. 2472.**

¶3.362 - Prohibited Transaction Exemptions Relating to Investment Transactions  
 Final regulations prescribe requirements for statutory exemption under ERISA §408(b)(14) and IRC §4975(d)(17) with respect to investment advice rendered by a fiduciary adviser and incorporate class exemption into text of regulations; effective date postponed [Citation: *DOL Reg. §§2550.408g-1 and 2550.408g-2*, 74 F.R. 3822 (January 21, 2009), 74 F.R. 11847 (March 20, 2009) (delay of effective date)]. . . . . 2117  
**Note: These replace the proposed regulations that were summarized at page 1913. They were later withdrawn in November 2009 before ever becoming effective. See page 2117.**  
 Effective date of final regulations under ERISA §408(b)(14) and IRC §4975(d)(17) further postponed to November 18, 2009 [Citation: *DOL Reg. §§2550.408g-1 and 2550.408g-2*, 74 F.R. 23951 (May 22, 2009)]. . . . . 2174  
 DOL withdraws final regulations prescribing requirements for statutory exemption under ERISA §408(b)(14) and IRC §4975(d)(17) with respect to investment advice rendered by a fiduciary adviser and incorporating class exemption that would have expanded scope of relief [Citation: *Withdrawal of DOL Reg. §§2550.408g-1 and 2550.408g-2*, 74 F.R. 60156 (November 20, 2009)]. . . . . 2294

**Cumulative Table of Contents for eRISA Update**

**Note: The regulations that were withdrawn had been summarized at page 2117. See next entry for re-proposed regulations.**

Regulations prescribe requirements for statutory exemption under ERISA §408(b)(14) and IRC §4975(d)(17) with respect to investment advice rendered by a fiduciary adviser, replacing withdrawn regulations issued by the prior Administration [Citation: *DOL Reg. §§2550.408g-1 and 2550.408g-2*, 76 F.R. 66136 (October 25, 2011)]. . . . . 2797

**Note: These regulations replace the proposed regulations summarized at p. 2375.**

¶3.364 - Prohibited Transaction Exemptions: Exemptions Relating To Services

Regulations impose new disclosure requirements on service providers in order to qualify for the statutory exemption under ERISA §408(b)(2) [Citation: *DOL Reg. §2550.408b-2(c)*, 75 F.R. 41600 (July 16, 2010)]. . . . . 2479

**Note: These regulations replace the proposed regulations that were summarized at page 1677.**

Effective date of ERISA §408(b)(2) regulations delayed [Citation: *DOL Reg. §2550.408b-2(c)(1)(xii)*, 76 F.R. 42539 (July 19, 2011), available at <http://www.gpo.gov/fdsys/pkg/FR-2011-07-19/pdf/2011-18029.pdf>]. . . . . 2763

Regulations imposing disclosure requirements on service providers in order to qualify for the statutory exemption under ERISA §408(b)(2) are issued in final form, with some clarifications, delayed effective date, and deferral of any requirement to provide summary or “road map” [Citation: *DOL Reg. §2550.408b-2(c)*, 77 F.R. 5632 (February 3, 2012)]. . . . . 2914

Proposed regulations would require a separate guide to locate specific required information for lengthy or multi-document 408(b)(2) disclosures [Citation: *Prop. DOL Reg. §§2550.408b-2(c)(1)(iv)(H) and 2550.408b-2(c)(1)(v)(B)(2)*, 79 F.R. 13949-13962 (March 12, 2014)]. . . . . 3311

¶3.707 - Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)

Final regulations provide guidance to clarify the rights and obligations of employers and employees with respect to USERRA, including make-up benefits under employee pension benefit plans [Citation: *20 CFR Part 1002, Subparts A through F, §§1002.1 - 1002.314*, 70 F.R. 75246 (December 19, 2005)] . . . . . 915

**Note: These regulations finalized regulations that were proposed on September 20, 2004, and were summarized at page 459.**

Model notice issued regarding USERRA rights, as required by Veterans Benefits Improvement Act of 2004 [Citation: *20 CFR Part 1002, Appendix A* (Veterans’ Employment and Training Service, Department of Labor), 70 F.R. 12106 (March 10, 2005)]. . . . . 637



**Cumulative Table of Contents for eRISA Update**

**PBGC REGULATIONS**

¶4.303(2) - Annual Financial and Actuarial Information (ERISA §4010)

Changes to ERISA §4010 reporting requirements including requirement to file electronically in a standardized format [Citation: *PBGC Reg. §§4000.3, 4000.4, 4000.23, 4000.29, 4010.3-4010.9*, 70 F.R. 11540 (March 10, 2005)] (*replaces proposed regulations summarized on page 574*). . . . . 639  
 PBGC modifies regulations under ERISA §4010 to implement PPA 2006 changes [Citation: *PBGC Reg. §§4010.1-4010.14*, 74 F.R. 11022 (March 16, 2009); *PBGC Technical Update 09-2* (March 25, 2009)] . . . . . 2130

**Note: These replace the proposed regulations that were summarized at page 1761.**

Final regulations incorporate statutory changes made by MAP-21 and HATFA and technical guidance issued by the PBGC with respect to such statutes; additional waivers added [Citation: *PBGC Reg. §§4010.2, 4010.4, 4010.8 and 4010.11*, 81 F.R. 15432-15440 (March 23, 2016)]. . . . . 3844

**Note: The proposed version of these regulations was summarized at p. 3705.**

¶4.303(3) - PBGC Reporting Rules: Reportable Events (ERISA §4043)

Regulations revise reportable event rules to create a low-default-risk safe harbor for financially-sound companies, a revised well-funded plan waiver, a public company waiver, a revised small plan waiver, and other revisions to the reporting and waiver rules, including mandatory electronic filing requirement for required notices [Citation: *PBGC Reg. §§4000.3(b)(3), 4043.1-4043.10, 4043.20-4043.35, 4043.61-4043.68, 4043.81*, 80 F.R. 549080-55010 (September 11, 2015)]. . . . . 3707

**Note: The regulations finalize proposed regulations that were summarized on p. 3170.**

¶4.371 - Title IV of ERISA - Coverage/Premiums

PBGC requires electronic filing of premium declarations beginning with 2006 plan years [Citation: *PBGC Reg. §§4000.3, 4006.4, 4006.5, 4007.3, 4007.4*, 71 F.R. 31077 (June 1, 2006)]. . . . . 1073

**Note: Replaces proposed regulations that were summarized at p. 642.**

Regulations reflect changes made by the Deficit Reduction Act of 2005 and the Pension Protection Act of 2006 with respect to PBGC premium obligations [Citation: *PBGC Reg. §§4006.3, 4006.7, 4007.8, 4007.10, 4007.13*, 72 F.R. 71222 (December 17, 2007)]. . . . . 1681

**Note: Replaces proposed regulations that were summarized at p. 1306.**

Final regulations prescribe methodology and due dates for paying variable rate premiums (VRPs) for post-2007 plan years [Citation: *PBGC Reg §§4006.2, 4006.4, 4006.5, 4007.3, 4007.7, 4007.8, 4007.10, 4007.11*, 73 F.R. 15065 (March 21, 2008)]. . . . . 1768

**Note: Replaces proposed regulations that were summarized at p. 1467.**

PBGC finalizes portion of premium proposal to extend deadline for large plan flat-rate premiums [Citation: *PBGC Reg. §4007.11(a)(3)*, 79 F.R. 347 (January 3, 2014)]. . . . . 3274

PBGC finalizes regulations to simplify premium payment due dates, add variable rate premium exemptions for new plans and standard termination plans, codify 7-day grace period for premium penalty waivers [Citation: *PBGC Reg. §§4006.2-4006.6 and 4007.2, 4007.3, 4007.8, 4007.11, 4007.12, 4007.13, Appendix to Part 4007*, 79 F.R. 13547-13562 (March 11, 2014)]. . . . . 3314

**Note: Replaces proposed regulations that were summarized at p. 3233.**

Regulations cut penalties in half for late payment of premiums; substantially reduced penalty for plans with good premium compliance records that correct promptly upon notification by PBGC [Citation: *PBGC Reg. §4007.8*, 81 F.R. 65542-65545 (September 23, 2016)]. . . . . 4038

**Note: Replaces proposed regulations that were summarized at p. 3982.**

**Cumulative Table of Contents for eRISA Update**

¶4.372 - Title IV: Plan Termination Procedures  
 Regulations implement additional disclosure requirements under section 506 of the PPA 2006 pertaining to distress and involuntary terminations under Title IV [Citation: *PBGC Reg. §§4041.51, and 4042.1-4042.5*, 73 F.R. 68333 (November 18, 2008)]..... 2015  
**Note: These regulations finalize the proposed regulations summarized at p. 1685.**  
 Regulations finalized that implement section 404 of the PPA 2006 regarding substitution of an employer’s bankruptcy filing date for the plan’s termination date to make certain determinations [Citation: *PBGC Reg. §§4001.2, 4022.2, 4022.3, 4022.4, 4022.6, 4022.21, 4022.22, 4022.23, 4022.24, 4022.25, 4022.51, 4022.61, 4022.62, 4022.63, 4022.81, 4022.82, 4044.1, 4044.2, 4044.3, 4044.10, 4044.13*, 76 F.R. 34590 (June 14, 2011), available at <http://www.gpo.gov/fdsys/pkg/FR-2011-06-14/pdf/2011-14241.pdf>]. ..... 2739  
**Note: These regulations finalize the proposed regulations summarized at p. 1848.**  
 Benefit determinations and plan valuations for statutory hybrid plans, allocation of assets under terminated statutory hybrid plan that is trustee by the PBGC [Citation: *Prop. PBGC Reg. §§4022.120-4022.123, 4041.28(c)(3), 4044.52(e), 4044.76*, 76 F.R. 67105 (October 31, 2011)]..... 2810

¶4.373 - Title IV of ERISA: PBGC Enforcement  
 Final regulations on assessment and relief from penalties on late payment or nonpayment of premiums [Citation: *PBGC Reg. §4007.8, Appendix to Part 4007, 29 C.F.R. Part 4007, 71 F.R. 66867* (November 17, 2006)]..... 1171

¶4.374 - Title IV: PBGC Administrative Procedures  
 PBGC centralizes regulations regarding methods of filing with PBGC and issuing Title IV disclosures, when documents are treated as received, counting time for deadline purposes, and electronic record retention requirements [Citation: *29 C.F.R. Part 4000 (PBGC Reg. §§4000.1 through 4000.54)*, 68 F.R. 61344 (October 28, 2003)]..... 225  
 Administrative review of PBGC decisions: referral of certain decisions to other departments or Appeals Board staff [Citation: *PBGC Reg. §4003.58*, 73 F.R. 38117 (July 3, 2008)]. ..... 1853

¶4.375 - Title IV: Payments of Benefits from PBGC-Trusteed Plans  
 Regulations implement PPA 2006 amendments requiring 5-year phase-in for guaranteed benefits to be applied to unpredictable contingent event benefits as if amendment is adopted on the date the event occurs [Citation: *PBGC Reg. §4022.27* (with conforming amendments to §§4022.2, 4022.24 and 4022.62 and redesignation of former §4022.27 as §4022.28, 79 F.R. 25669 (May 18, 2014)]  
 ..... 3369  
**Note: The regulations replace proposed regulations that were summarized at p. 2701.**  
 Regulations clarify the treatment of benefits attributable to rollover amounts under an underfunded terminated plan covered by the PBGC [Citation: *PBGC Reg. §§4001.2, 4022.2, 4022.7(b)(2) and (c)(2), 4022.8(f), 4022.22(d), 4022.24(g) and 4044.12(b)(4) and (c)(4)*, 79 F.R. 70090-70095 (November 25, 2014)]. ..... 3489  
**Note: The regulations replace proposed regulations that were summarized at p. 3321.**

¶4.376 - Title IV of ERISA: Multiemployer Plans  
 Proposed amendments to regulations on allocating unfunded vested benefits to implement provisions of the PPA 2006 [Citation: *PBGC Reg. §§4001.2, 4211.2, 4211.4, 4211.12, 4219.1, 4219.2, 4219.15*, 73 F.R. 14735 (March 19, 2008)]. ..... 1774

**Cumulative Table of Contents for eRISA Update**

¶4.377(1) - Title IV of ERISA - Miscellaneous: Cessation of Operations (ERISA §4062(e))  
 PBGC prescribes method for calculating employer’s expected liability when a section 4062(e) event occurs [Citation: *PBGC Reg. §§4062.1 and 4062.8* (redesignating §§4062.8 through 4062.10 as §§4062.9 through 4062.11), 71 F.R. 34819 (June 16, 2006)]..... 1074  
**Note: Replaces proposed regulations that were summarized at p. 642.**  
 PBGC proposes rules for determining when a section 4062(e) event occurs, notifying PBGC, and calculating the employer’s liability when a section 4062(e) event occurs [Citation: Prop. PBGC Reg. §§4062.1, 4062.21-4062.35, 75 F.R. 48283-48294 (August 10, 2010)]..... 2500

¶4.378 - Title IV of ERISA: Missing Participants. .... 1175  
 Missing participant annuity assumptions [Citation: PBGC Reg. §4050.2, 71 F.R. 75115 (December 14, 2006)]..... 1175  
 PBGC proposes to add optional participation in missing participant transfer program for most DC plans and non-covered DB plans; modifies missing participant procedures for terminated Title IV-covered plans; and extends missing participant procedures to terminated multiemployer DB plans [Citation: *Prop. PBGC Reg. §§4050.101-4050.407*, 81 F.R. 64700-64726 (September 20, 2016)]. . . . . 4040

¶4.707 - Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)  
 Regulations determine guaranteed benefits with respect to USERRA-covered participants who are in military service as of the termination date by including military service benefits that would be restored through the termination date if reemployment occurs after termination [Citation: *PBGC Reg. §4022.11*, 74 F.R. 59093 (November 17, 2009)]. . . . . 2299  
**Note: These regulations finalize the proposed regulations summarized at p. 2207.**

Cumulative Table of Contents for eRISA Update

COURT CASES

¶5.101 - Definition of Employee  
Shareholder of three-person medical practice was not employee for ERISA purposes using common law employer-employee principles; ERISA does not preempt claim for disability benefits [Citation: *Pearl v. Monarch Life Insurance Co.*, 31 EBC 1936 (E.D.N.Y. October 30, 2003)]. . . . . 277

¶5.104 - Establishment of Plan/Coverage Under ERISA  
Grocery voucher program for retirees was an employee pension benefit plan [Citation: *Musmeci v. Schwegmann Giant Super Markets, Inc.*, 30 EBC 1833 (5<sup>th</sup> Cir. June 11, 2003)]. . . . . 234

¶5.110 - Minimum Age and Service Requirements: General Rules  
Exclusion of hourly paid employees does not violate ERISA’s minimum age and service requirements [Citation: *Bauer v. Summit Bancorp*, 30 EBC 1225 (3<sup>rd</sup> Cir. March 25, 2003)]. . . . . 111

¶5.113(3) - Minimum Coverage Requirements: Union Exclusion. . . . . 998  
District court has jurisdiction over lawsuit alleging ERISA violations surrounding Wal-Mart’s adoption of union exclusion in its ERISA-covered retirement plans [Citation: *Lupiani v. Wal-Mart Stores, Inc.*, 36 EBC 2089 (8<sup>th</sup> Cir. January 19, 2006)]. . . . . 998

¶5.117 - Eligibility Conditions Not Related to Age or Service  
Individual performing services through contract arrangement properly excluded from plan [Citation: *Scruggs v. Exxonmobil Pension Plan*, 585 F.3d 1356 (47 EBC 2938) (10<sup>th</sup> Cir. 2009)]. . . . . 2302

¶5.130(1) - Vesting: General Requirements - Amendment to the Vesting Schedule  
Elimination of plan’s reduction-in-force (RIF) vesting provision was an amendment to the vesting schedule for purposes of the ERISA §203(c)(1)(B) election [Citation: *Zhu v. Fujitsu Group 401(k) Plan*, 34 EBC 2221 (N.D.Calif. March 22, 2005)]. . . . . 758

¶5.130(2) - Definition of Normal Retirement Age  
Cash balance plan’s definition of normal retirement age as earlier of age 65 or completion of 5 years of service violates ERISA; SPD was deficient because of failure to describe normal retirement age [Citation: *Laurent v. PriceWaterhouseCoopers LLP*, 2006 U.S. Dist. LEXIS 62624 (S.D.N.Y. September 5, 2006)]. . . . . 1225  
Cash balance plan’s definition of normal retirement age as the earlier of age 65 or completion of 5 years of service violates ERISA because it does not bear a reasonable relationship to when employees normally retire [Citation: *Laurent v. PriceWaterhouseCoopers LLP*, 794 F.3d 272 (2<sup>nd</sup> Cir. July 23, 2015)]. . . . . 3724

¶5.132 - Vesting: Forfeitures  
Failure to adjust participant’s pension for delayed start of benefits, due to the plan’s application procedures, resulted in an impermissible forfeiture [Citation: *Contilli v. Local 705 Intern. Broth. of Teamsters Pension Fund*, 559 F.3d 720 (7<sup>th</sup> Cir. March 23, 2009)]. . . . . 2175

¶5.133 - Accrual of Benefits  
Pre-ERISA break in service rule applicable to vesting service, not benefit accrual service credited by plan; retroactive application of ERISA’s 1,000-hour standard to pre-ERISA years remanded to district court for consideration [Citation: *McDonald v. NYSA-ILA Pension Trust Fund*, 29 EBC 2587 (2<sup>nd</sup> Cir. February 10, 2003)]. . . . . 112

¶5.133(1) - Accrual of Benefits: Defined Benefit Plans  
Phantom account used by defined benefit plan to value prior distributions under floor-offset arrangement violates ERISA because it overstates value of distribution attributable to DB plan [Citation: *Miller v.*

**Cumulative Table of Contents for eRISA Update**

*Xerox Corp. Retirement Income Guarantee Plan*, 464 F.3d 871 (37 EBC 2089) (9<sup>th</sup> Cir. 2006), cert. denied, 40 EBC 1288 (Sup. Ct. March 19, 2007)]... 1075

“Greater of” formula does not violate 133-1/3% rule where each formula individually satisfies the rule [Citation: *Wheeler v. Pension Value Plan for Employee of the Boeing Company*, 40 EBC 1792 (S.D. Ill. March 13, 2007)]. . . . . 1585

COLA was part of accrued benefit that had to be taken into account in valuing single-sum payment option [Citation: *Williams v. Rohm and Haas Pension Plan*, 41 EBC 1585 (7<sup>th</sup> Cir. August 14, 2007)] . . . . . 1586

Release forms regarding ERISA claims were valid regarding challenges against method of determining offset under defined benefit plan for amounts distributed from profit sharing plan [Citation: *Frommert v. Conkright*, 535 F.3d 111 (44 EBC 1461) (2<sup>nd</sup> Cir. 2008)]. . . . . 1921

Plan administrator acted reasonably in determining that participant had elected cash balance formula instead of continuing on plan’s traditional benefit formula [Citation: *Durbin v. Columbia Energy Group Pension Plan*, 2013 WL 1663110 (6<sup>th</sup> Cir. Ohio April 17, 2013) (not for publication in the Federal Reporter)]. . . . . 3188

¶5.134(1) - Minimum Vesting Standards: Partial Termination

On remand, *Matz* applies “significant reduction” standard by taking into account only nonvested participants [Citation: *Matz v. Household International Tax Reduction Investment Plan*, 31 EBC 1442 (N.D.Ill. September 22, 2003)] (reversed by 7<sup>th</sup> Circuit case at page 576). . . . . 278

Seventh Circuit reverses earlier opinion and rules that significant reduction for partial termination purposes is based on all participants, not just nonvested participants [Citation: *Matz v. Household International Tax Reduction Investment Plan*, 33 EBC 2569 (7<sup>th</sup> Cir. November 5, 2004)]. . . . . 576

¶5.140 - Distributions: Procedures

Court upholds administrative committee’s decision to require participant withdrawals to be taken on a pro rata basis from each investment account [Citation: *Hickey v. Pennywitt*, 33 EBC 1064 (N.D. Ohio May 20, 2004)]. . . . . 476

¶5.140(1) - Distribution Procedures: Valuation

Delay in making distribution due to participant’s failure to complete proper forms; not entitled to higher value of assets as of earliest date distribution could have been elected [Citation: *Rego v. Westvaco Corporation*, 29 EBC 2680 (4<sup>th</sup> Cir. February 10, 2003)]. . . . . 113

Use of special valuation date following September 11, 2001, terrorist attack was not unreasonable action by plan administrator where participant’s benefit was over 90% of the total plan assets [Citation: *Jasper v. M.H. & B.L. Jasper D.D.S., PC Profit Sharing Plan*, 33 EBC 2497 (E.D.Mo. September 30, 2004)]. . . . . 577

Participant granted summary judgment on her claim that her 401(k) account should be distributed on the basis of its value at the time of her actual retirement [Citation: *Marrah v. Boord*, 35 EBC 1536 (S.D. Ohio June 28, 2005)]. . . . . 818

¶5.141(2) - Joint and Survivor Annuities/Spousal Consent

QJSA waiver was timely even though plan paid early retirement benefit as of a retroactive early retirement date [Citation: *Shields v. Reader’s Digest*, 30 EBC 1769 (6<sup>th</sup> Cir. June 9, 2003)]. . . . . 178

Plan administrator acted unreasonably in paying out death benefits to nonspouse beneficiaries after it learned that a stipulation was pending in an Indian tribal court to determine whether the decedent was validly married on the date of his death [Citation: *Smith v. New Mexico Coal 401(k) Personal Savings*

**Cumulative Table of Contents for eRISA Update**

*Plan*, 46 EBC 2702 (10th Cir. June 9, 2009) (not selected for publication in the Federal Reporter)] ..... 2176

Spouse’s consent was valid where the participant, as the plan’s representative, witnessed the spouse’s signature [Citation: *Burns v. Orthotek, Inc. Employees’ Pension Plan and Trust*, 657 F.3d 571 (7<sup>th</sup> Cir. September 15, 2011)]..... 2764

“First” wife entitled to survivor annuity rather than “second” wife if first marriage was never dissolved [Citation: *IBEW Pacific Coast Pension Fund v. Lee*, 52 EBC 2378 (6<sup>th</sup> Cir. February 13, 2012)] ..... 2948

Preuptial agreement not effective in waiving spousal benefit because it failed to satisfy the acknowledgment requirement in the statutory waiver provision [Citation: *Midamerican Pension and Employee Benefits Plans Administrative Committee v. Cox*, 720 F.3d 715 (8<sup>th</sup> Cir. (Iowa) July 12, 2013)]..... 3239

¶5.142 - Death Benefits

Plan administrator’s interpretation of plan’s default beneficiary provision that “children” did not include unadopted stepchildren was reasonable [Citation: *Herring and Herring v. Campbell*, 690 F.3d 413 (5<sup>th</sup> Cir. August 7, 2012)]..... 2997

Beneficiary designation procedures in SPD are enforceable by plan and not in conflict with *Amara* opinion [Citation: *Liss v. Fidelity Employer Services Company, LLC*, 2013 WL 677280 (6<sup>th</sup> Cir. February 26, 2013) (not selected for publication in the Federal Register)]..... 3119

Plan’s procedures did not preclude unmarried participants from changing beneficiary designations by telephone [Citation: *Becker v. Williams*, 777 F.3d 1035 (9<sup>th</sup> Cir. January 28, 2015)]..... 3560

¶5.146 - Distributions: Actuarial Assumptions/Present Value Determinations

Cash balance plan violates ERISA when it uses a lower interest rate than the plan’s floor interest rate to project cash balance account for purposes of determining the present value of accrued benefits [Citation: *Berger v. Xerox*, 30 EBC 2505 (7<sup>th</sup> Cir. August 1, 2003)]..... 235

IRS properly exercised authority to extend deadline for amending plan to reflect GATT interest rates under IRC §417(e) without violating anti-cutback rule [Citation: *Stepnowski v. Commissioner*, 38 EBC 1718 (3rd Cir. July 27, 2006)]..... 1228

45-day delay in paying lump sum from defined benefit plan was unreasonable; participants owed interest for delayed payment [Citation: *Stephens v. US Airways Group, Inc.*, 644 F.3d 437 (D.C. Cir. July 15, 2011)]..... 2765

¶5.147 - Life Insurance

Tax Court rules that reference to “entire cash value” of insurance contracts in pre-2005 regulatory rules regarding taxation of plan distributions should be read to mean cash value determined *without regard to surrender charges* [Citation: *Matthies v. Commissioner*, 134 T.C. No. 6 (2010)]..... 2386

¶5.152(1) - Controlled Group (IRC §414(b) and (c))

Right to acquire stock held in escrow under stock redemption agreement resulted in attribution of additional shares necessary to create brother-sister relationship [Citation: *Central States, Southeast and Southwest Areas Pension Fund v. CLP Venture LLC*, 760 F.3d 745 (7<sup>th</sup> Cir. July 29, 2014) (appealed from N.D.Ill.)]. ..... 3442

¶5.173 - Benefit Restrictions to HCEs for Underfunded Pension Plans (Treas. Reg. §1.401(a)(4)-5)

Plan properly refused lump sum distribution to HCE due to regulatory restrictions triggered by plan’s underfunded status; not required to offer security option for receiving distribution [Citation: *Wetzler*

**Cumulative Table of Contents for eRISA Update**

*v. Illinois CPA Society & Foundation Retirement Income Plan*, 47 EBC 2857 (7<sup>th</sup> Cir. November 10, 2009)]..... 2303

¶5.179 - ERISA §204(h) and IRC §4980F Notice Requirements  
 Failure to take steps to cure known deficiencies in 204(h) notice was egregious failure that results in higher benefit being payable to affected participants [Citation: *Brady v. Dow Chemical Retirement Board*, 46 EBC 1089 (4<sup>th</sup> Cir. February 19, 2009) (not designated for publication in the Federal Reporter)]..... 2177

¶5.182 - ESOPs: Exempt Loans  
 Trustees do not breach duty to participants by using proceeds from sale of employer securities to repay loan, even though loan was not secured [Citation: *Saint-Gobain Corp. Benefits Committee v. Key Trust Co. of Ohio, N.A.*, 29 EBC 1897 (6<sup>th</sup> Cir. December 16, 2002)]. . . . . 115

¶5.183(1) - Employer Securities: Fiduciary Issues Under Title I of ERISA  
 Employer did not breach fiduciary duty by failing to diversify ESOP with respect to its holdings of employer securities during the 18-month period during which a determination letter application on the plan's termination was pending with the IRS [Citation: *Steinman v. Hicks*, 31 EBC 2415 (7<sup>th</sup> Cir. December 12, 2003)]. . . . . 352  
 Claim against ESOP trustee may proceed with respect to alleged breach of fiduciary duty involving valuation of closely-held employer securities [Citation: *Armstrong v. LaSalle Bank National Association*, 37 EBC 2256 (7<sup>th</sup> Cir. May 4, 2006)]. . . . . 1077  
*Moench* case establishes a working presumption for dealing with fiduciary duties relating to the holding of company stock where plan documents compel such investments [Citation: *Kirschbaum v. Reliant Energy, Inc.*, 2008 WL 1838324, No. 06-20157 (5<sup>th</sup> Cir. April 25, 2008)]. . . . . 1854  
 Process used by fiduciaries to carry out ERISA duties with respect to decision to sell employer stock held by the plan met ERISA standard of care [Citation: *Bunch v. Grace & Co.*, 555 F.3d 1 (45 EBC 2505) (1<sup>st</sup> Cir. January 29, 2009)].. . . . 2139  
 Ninth Circuit's decides to adopt the *Moench* presumption [Citation: *Quan v. Computer Sciences Corporation*, 623 F.3d 870 (49 EBC 2642) (9<sup>th</sup> Cir. September 30, 2010)]. . . . . 2613  
 Fiduciaries held liable for imprudent conduct with respect to failure to divest some of participant's holdings in closely-held employer securities in a non-404(c) participant-directed plan [Citation: *Peabody v. Davis*, 636 F.3d 368 (7<sup>th</sup> Cir. April 12, 2011)]. . . . . 2745  
*Moench* presumption not applicable during motion to dismiss stage; 404(c) not defense to duty to select prudent investment menu [Citation: *Pfeil v. State Street Bank and Trust Company*, 671 F.3d 585 (52 EBC 1641) (6<sup>th</sup> Cir. February 22, 2012)]. . . . . 2925  
*Moench* presumption applied during pleading stage; fiduciaries under no obligation to provide plan participants non-public information that could pertain to the employer securities investment option in the plan; false or misleading statements in SEC filings do not constitute ERISA breaches [Citation: *Fisher v. JP Morgan Chase & Co.*, 2012 WestLaw 1592208 (2<sup>nd</sup> Cir. May 8, 2012) (not selected for publication in the Federal Reporter)]. . . . . 2949  
 Eleventh Circuit adopts *Moench* presumption with respect to fiduciary's decision to invest in Home Depot stock; fiduciaries not required to disclose non-public information to plan participants [Citation: *Lanfeear v. Home Depot, Inc.*, \_\_\_ F.3d \_\_\_ (2012 WL 1580614) (11<sup>th</sup> Cir. May 8, 2012)]. . . . 2950

**Cumulative Table of Contents for eRISA Update**

*Moench* presumption not applicable during motion-to-dismiss stage; fiduciary breach claim may be based on statements made in SEC filings *that are cross-referenced in SPD* [Citation: *Dudenhoefer v. Fifth Third Bancorp*, 692 F.3d 410 (6<sup>th</sup> Cir. September 5, 2012)]. . . . . 2998

Allegations did not overcome *Moench* presumption, resulting in dismissal of stock drop case in Seventh Circuit where employer stock dropped by 54%; document contained strong language about maintaining an employer stock investment option [Citation: *White v. Marshall & Ilsley Corporation*, 714 F.3d 980 (7<sup>th</sup> Cir. Wisc. April 19, 2013)]. . . . . 3190

*Moench* presumption applicable at motion to dismiss stage; non-public information may be the basis for discontinuing investments in employer securities but not for divesting such investments [Citation: *Kopp v. Klein*, 722 F.3d 327 (5<sup>th</sup> Cir. (Tex.) July 9, 2013)]. . . . . 3240

*Moench* presumption not overcome by factual allegations mostly involving public information; fiduciaries not obligated to seek out or act on non-public information in carrying out their ERISA duties [Citation: *Rinehart v. Akers*, 722 F.3d 137 (2<sup>nd</sup> Cir. (N.Y.) July 12, 2013)]. . . . . 3242

*Moench* presumption of prudence doesn't apply where plan neither requires nor encourages investment in employer securities; fraud-on-the-market theory applies to establish presumption of detrimental reliance by ERISA participants on misrepresentations [Citation: *Harris v. Amgen, Inc.*, 738 F.3d 1026 (9<sup>th</sup> Cir. (Cal.) October 23, 2013) (replacing original opinion published at 717 F.3d 1042 on June 4, 2013)]. . . . . 3275

Supreme Court rejects *Moench* presumption, finding that ESOP fiduciary duties regarding employer stock held to same prudence standard, except for diversification, as other investments; establishes pleading standard for stock drop cases [Citation: *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. \_\_\_, 134 S.Ct. 2459 (June 25, 2014)]. . . . . 3376

On remand after the Supreme Court's rejection of the *Moench* presumption, the Ninth Circuit determines that the plaintiffs have stated a claim for fiduciary breach with respect to the fiduciary's retention of the employer stock as an investment option [Citation: *Harris v. Amgen*, \_\_\_ F.3d \_\_\_ (9<sup>th</sup> Cir. (May 26, 2015), amending and replacing 770 F.3d 865 (October 30, 2014) (summarized at p. 3492); *rehearing en banc denied*]. . . . . 3597

In the absence of special circumstances to warrant challenging of market pricing, the Sixth Circuit dismissed plaintiffs' claims over fiduciary's decision to divest the plan's employer stock fund [Citation: *Pfeil v. State Street Bank and Trust Company*, 806 F.3d 377 (6<sup>th</sup> Cir. November 10, 2015)] . . . . . 3774

Ninth Circuit reversed for the second time by the Supreme Court; specific pleading standards discussed by the Supreme Court regarding fiduciary claims involving the retention of employer stock as an investment option [Citation: *Amgen, Inc. v. Harris*, 136 S.Ct. 758 (January 25, 2016)]. . . . . 3847

Fifth Circuit addresses procedural issues regarding fiduciary breach suits involving ESOP transactions [Citation: *Perez v. Bruister*, 823 F.3d 250 (5<sup>th</sup> Cir. May 3, 2016)]. . . . . 3984

¶5.184(1) - S Corporation ESOPs: Prohibited Allocations Under IRC §409(p)  
 Excise tax applies to IRC §409(p) transaction even though company not actually an S corp because taxpayer claimed S corporation status and tax year is closed to modify classification; information on S corporation's Form 1120S and ESOP's Form 5500 provided IRS sufficient information to know that statute of limitations started running [Citation: *Ries Enterprises, Inc. v. Commissioner*, T.C. Memo 2014-14 (Tax Ct. January 27, 2014); *John H. Eggertsen P.C. v. Commissioner*, 142 T.C. No. 4 (Tax Ct. February 12, 2014)]. . . . . 3324



**Cumulative Table of Contents for eRISA Update**

¶5.191 - Assignment of Benefits/Creditor Protection

Antiassignment rule resulted in an equitable tolling of statute of limitations on federal government’s action seeking forfeiture of pension plan funds held for the benefit of participant who pleaded guilty to Medicare fraud [Citation: *U.S. v. All Funds Distributed to Weiss*, 31 EBC 1134 (2<sup>nd</sup> Cir. September 17, 2003)]..... 279

Federal court recognizes anti-assignment exception for garnishment under federal Mandatory Victims Restitution Act of 1996 [Citation: *U.S. v. Novak*, 37 EBC 1172 (9<sup>th</sup> Cir. 2006)] ..... 1000

Ninth Circuit recognizes anti-assignment exception for garnishment under federal Mandatory Victims Restitution Act of 1996 [Citation: *U.S. v. Novak*, 39 EBC 2825 (2007 U.S. App. LEXIS 3804) (9<sup>th</sup> Cir. February 22, 2007)]. ..... 1310

**Note: This opinion, issued after a rehearing *en banc*, affirms the 2006 opinion summarized at page 1000.**

Divorce settlement could not act as waiver of former spouse’s right to death benefits under a pension plan; QDRO is exclusive exception to anti-assignment rule in this context [Citation: *Kennedy v. DuPont de Nemours & Co.*, 497 F.3d 426 (41 EBC 1588) (5<sup>th</sup> Cir. 2007)]..... 1587

Beneficiary designation naming former spouse controlled disposition of death benefits even though divorce decree stated spouse had waived interest in plan benefits [Citation: *Kennedy v. Dupont*, 129 S.Ct. 865 (45 EBC 2249) (January 26, 2009)]..... 2141

Kennedy principles apply to welfare benefit plan; divorce decree did not invalidated existing beneficiary designation [Citation: *Matschiner v. Hartford Life and Accident Ins. Co.*, 622 F.3d 885 (49 EBC 2723) (8<sup>th</sup> Cir. October 7, 2010)]. ..... 2613

Estate may attempt to enforce surviving spouse’s waiver of interest in retirement benefits after benefits have been distributed from the plan [Citation: *Estate of Kensinger v. URL Pharma, Inc.*, 674 F.3d 131 (3<sup>rd</sup> Cir. March 20, 2012)]. ..... 2927

Court allows consideration of plan’s operation to conclude that one-person plan was not qualified and, thus, not exempt from bankruptcy estate [Citation: *Daniels v. Agin*, 736 F.3d 70 (1<sup>st</sup> Cir. (Mass.) November 25, 2013)]. ..... 3278

¶5.192 - QDROs

*Nunc pro tunc* order, entered after participant’s death, retroactively modifying QDRO to recognize previously omitted pension plan, is a valid amendment to the order [Citation: *Patton v. Denver Post Corp.*, 30 EBC 1393 (10<sup>th</sup> Cir. April 23, 2003), affirming, 179 F.Supp. 2d 1232 (27 EBC 1353) (D.Colo. 2002)]. ..... 179

State law procedures for perfecting lien are not applicable to perfecting alternate payee’s interest under QDRO; date domestic relations order entered is relevant date to determine if IRS lien is superseded [Citation: *U.S. v. Taylor*, 30 EBC 2624 (8<sup>th</sup> Cir. July 31, 2003)]..... 236

Precedent in Fourth Circuit requires review of divorce decree to determine if former spouse relinquished rights to survivor benefit under pension that had already commenced in the form of a joint and survivor annuity before the participant’s death [Citation: *Walsh v. Woods*, 30 EBC 2994 (S.Car.Ct.Apps. June 2, 2003)]. ..... 280

Plan’s decision not to accept domestic relations order that was submitted to plan after retirement pension commenced to participant was proper since current spouse vested in survivor benefits payable under such pension [Citation: *Singleton v. Singleton*, 31 EBC 2223 (W.D.Ky. November 10, 2003)] ..... 354

**Cumulative Table of Contents for eRISA Update**

Third Circuit permits domestic relations order obtained before participant’s death to be qualified as a QDRO after the participant had died; Samaroo decision clarified [Citation: *Files v. ExxonMobil Pension Plan*, 428 F.3d 478 (36 EBC 1005) (3rd Cir. 2005), cert. denied 37 EBC 2888 (Sup. Ct. May 22, 2006)] . . . . . 936

QDRO may treat only a former spouse (not other alternate payees) as surviving spouse for QPSA; marital dissolution agreement requiring participant to name minor children as death beneficiaries did not satisfy the requirements of a QDRO [Citation: *Hamilton v. Washington State Plumbing & Pipefitting Industry Pension Plan*, 36 EBC 2025 (9th Cir. January 10, 2006); , cert. denied by the Supreme Court (October 2, 2006)]. . . . . 1001

QDRO may address rights of domestic partner because her quasi-marital relationship with the participant gave rise to marital property rights under applicable state law [Citation: *Owens v. Automotive Machinists Pension Trust*, 2007 U.S. Dist. LEXIS 7797 (W.D.Wash. January 19, 2007)]. . . . 1312

Ninth Circuit rules that state courts have subject matter jurisdiction to decide that a domestic relations order is a QDRO [Citation: *Mack v. Kuckenmeister, CPA*, 619 F.3d 1010 (49 EBC 1818) (9th Cir. July 22, 2010)]. . . . . 2508

ERISA does not authorize an administrator to consider or investigate the subjective intentions or good faith underlying a divorce when determining whether a domestic relations order is a QDRO [Citation: *Brown v. Continental Airlines, Inc.*, 647 F.3d 221 (5<sup>th</sup> Cir. July 18, 2011)]. . . . . 2766

Nunc pro tunc QDROs entered after death of participant superseded current spouse’s survivor rights because the retroactive effective date caused the orders to be deemed in effect before the participant’s death; substantial compliance doctrine does not apply to orders entered after 1984 [Citation: *Yale-New Haven Hospital v. Nicholls*, \_\_\_ F.3d \_\_\_ (2<sup>nd</sup> Cir. June 4, 2015)]. . . . . 3599

¶5.193 - Bankruptcy

IRS’ tax lien against ERISA plan interest is not a secured claim in bankruptcy because ERISA interest is excludable under Bankruptcy Code §541(c)(2) [Citation: *IRS v. Snyder*, 31 EBC 1236 (9<sup>th</sup> Cir. September 15, 2003)]. . . . . 237

Working owner of corporation is covered by ERISA if plan covers at least one employee. [Citation: *Yates v. Hendon*, 32 EBC 1097 (Sup. Ct. March 2, 2004), reversing *Hendon v. Yates*, 287 F.3d 521 (27 EBC 2430) (6<sup>th</sup> Cir. 2002)]. . . . . 355

Section 403(b) plans were not excludable from bankruptcy estate because they were not trusts within the meaning of Bankruptcy Code §541(c)(2) [Citation: *Adams v. Rhiel (In re Adams)*, 302 B.R. 535 (Bankr. App. Panel, 6<sup>th</sup> Cir. 2003)]. . . . . 357

Treatment of 401(k) contributions as part of disposable income to determine whether to dismiss Chapter 7 bankruptcy petition [Citation: *Behlke v. Eisen*, 32 EBC 1193 (6<sup>th</sup> Cir. February 20, 2004)]. . . . 396

IRAs are eligible for federal exemption under Bankruptcy Code §522(d)(10)(E) [Citation: *Rousey v. Jacoway*, 34 EBC 1929 (S.Ct. April 4, 2005)]. . . . . 644

Amendment to defined benefit plan to increase benefits prior to the plan sponsor’s bankruptcy was a fraudulent transfer under Bankruptcy Code §548 [Citation: *Pension Transfer Corp. v. Beneficiaries Under Third Amendment to Fruehauf Trailer Corp. Retirement Plan No. 003*, 37 EBC 1796 (3<sup>rd</sup> Cir. April 12, 2006), affirming 34 EBC 1361 (D.Del. January 7, 2005)]. . . . . 1078

**Note: The district court opinion was summarized at p. 645.**

**Cumulative Table of Contents for eRISA Update**

Evidence of misuse of plan funds by employer could establish that plan was not qualified for purposes of bankruptcy exemption [Citation: *Plunk v. Yaquinto (In re Plunk)*, 40 EBC 1168 (5<sup>th</sup> Cir. March 12, 2007)]. . . . . 1313

Employer’s obligation to transmit contributions to collectively-bargained plan was dischargeable in bankruptcy [Citation: *Ohio Carpenters’ Pension Fund v. Bucci (In re Bucci)*, 493 F.3d 635 (6<sup>th</sup> Cir. July 3, 2007)]. . . . . 1588

Calculation of disposable income in Chapter 13 proceeding where participant loan from 401(k) plan is involved [Citation: *In re Lasowski (Coop v. Lasowski)*, 384 B.R. 205 (B.A.P. 8<sup>th</sup> Cir. March 31, 2008)] . . . . . 1855

Withholding of business owner’s pension to satisfy judgment for unpaid contributions to a union pension fund violated automatic stay provisions under Bankruptcy Code [Citation: *Radcliffe v. International Painters and Allied Trades Industry Pension Fund (In re Radcliffe)*, 563 F.3d 627 (46 EBC 1897) (7<sup>th</sup> Cir. April 23, 2009)]. . . . . 2178

Unpaid employer contributions to multiemployer plan are not plan assets, so debtor’s obligation to make contributions is dischargeable in bankruptcy [Citation: *Rahm v. Halpin (In re Halpin)*, 566 F.3d 286 (46 EBC 2153) (2<sup>nd</sup> Cir. 2009)]. . . . . 2179

401(k) loan payments cannot be deducted from a debtor’s monthly income to determine whether the means test under Bankruptcy Code §707(b)(2) is met with respect to a Chapter 7 bankruptcy petition [Citation: *Egebjerg v. Anderson (In re Egebjerg)*, 46 EBC 2441 (9<sup>th</sup> Cir. May 29, 2009)]. . . . . 2180

Inherited IRA is *not* eligible for federal bankruptcy exemption under Bankruptcy Code §522(d)(12) [Citation: *In re Chilton*, 2010-1 U.S.T.C. ¶50,275 (Bankrtcy Ct. E.D. Tex. March 5, 2010)]. . . . . 2388

Chapter 13 debtor may not start deferrals under 401(k) plan following amortization of outstanding participant loan because deferral election was not in place at time of bankruptcy petition [Citation: *In re Seafort*, 437 B.R. 204 (49 EBC 2459) (6<sup>th</sup> Cir. B.A.P. September 14, 2010)]. . . . . 2614

**Note: This case was affirmed by the Sixth Circuit. See *Seafort vs. Burden*, 669 F.3d 662 (6<sup>th</sup> Cir. February 15, 2012).**

Inherited IRAs *not* entitled to bankruptcy protection under Bankruptcy Code §522(d)(12) [Citation: *In the Matter of Clark*, 714 F.3d 559 (7<sup>th</sup> Cir. (Wisc.) April 23, 2013)]. . . . . 3196

Bankruptcy trustee cannot bring suit seeking recovery of plan termination liability against former controlled group member [Citation: *Durango-Georgia Paper Co. v. H.G. Estate, LLC*, 739 F.3d 1263 (11<sup>th</sup> Cir. January 7, 2014)]. . . . . 3325

Supreme Court says inherited IRAs are *not* entitled to bankruptcy protection under Bankruptcy Code §522(d)(12) [Citation: *Clark v. Rameker*, 573 U.S. \_\_\_, 134 S.Ct. 2242 (June 12, 2014)]. . . . . 3378

Bankruptcy court does *not* have jurisdiction to award compensation to bankruptcy trustee from ERISA plan assets [Citation: *In re Robert Plan Corporation (Kirschenbaum v. DOL)*, 777 F.3d 594 (2<sup>nd</sup> Cir. February 5, 2015)]. . . . . 3561

Liability for employer’s contribution obligation to a multiemployer plan is dischargeable in bankruptcy because employer not acting in a fiduciary capacity [Citation: *Bos v. Board of Trustees*, 795 F.3d 1006 (9<sup>th</sup> Cir. July 30, 2015)]. . . . . 3725

**Cumulative Table of Contents for eRISA Update**

¶5.195 - Anti-Cutback Rules  
 Amendment to add an employment category that would be subject to the plan’s ERISA §203(a)(3)(B) suspension-of-benefit provision was a cutback in violation of ERISA §204(g) [Citation: *Heinz v. Central Laborers’ Pension Fund*, 28 EBC 2505 (7<sup>th</sup> Cir. September 13, 2002)]. . . . . 38

¶5.195(4) - Anti-Cutback Rules: Elective Transfers  
 Elective transfers from DC plan to DB plan could not eliminate the separate account feature of the transferred DC benefits Citation: *Pender v. Bank of America Corporation*, \_\_\_ F.3d \_\_\_ (4<sup>th</sup> Cir. June 8, 2015)]. . . . . 3601

¶5.195(1) - Anti-Cutback Rules: Reduction of Accrued Benefit  
 Post-retirement COLA provision not protected accrued benefit for participants who were already retired when the amendment adding the COLA was effective [Citation: *Board of Trustees of the Sheet Metal Workers’ National Pension Fund v. Commissioner*, 29 EBC 2377 (4<sup>th</sup> Cir. January 31, 2003), affirming 117 T.C. No. 19 (2001) (27 EBC 1001)]. . . . . 117  
 Wear away provision under cash balance conversion does not violate anti-cutback rule [Citation: *Campbell v. BankBoston, N.A.*, 30 EBC 1001 (1<sup>st</sup> Cir. March 7, 2003)]. . . . . 118  
 Change in trust’s investment allocation under a cash balance plan does not result in violation of anti-cutback rule even though trust’s investment experience is one factor in determine annual interest crediting rate [Citation: *Thompson V. Retirement Plan for Employees of S.C. Johnson & Sons, Inc.*, 47 EBC 2518 (E.D.Wisc. October 2, 2009)]. . . . . 2304  
 Amendment to modify social security offset calculation was not a reduction of accrued benefits in violation of ERISA §204(g) [Citation: *Cinotto v. Delta Airlines, Inc.*, 674 F.3d 1285 (11<sup>th</sup> Cir. March 23, 2012)]. . . . . 2928  
 Enhanced accruals for “banked hours” were protected under IRC §411(d)(6) [Citation: *Bonneau v. Plumbers and Pipefitters Local Union 51 Pension Trust Fund*, 736 F.3d 33 (1<sup>st</sup> Cir. (R.I.) November 15, 2013)]. . . . . 3278

¶5.195(2) - Anti-Cutback Rules: Early Retirement Benefits and Retirement-Type Subsidies  
 Challenge of amendment curtailing early retirement benefit not moot merely because amendment was reversed if there is a likelihood of recurrence [Citation: *Adams v. Bowater, Inc.*, 29 EBC 1914 (1<sup>st</sup> Cir. December 17, 2002)]. . . . . 120

¶5.195(3) - Anti-cutback Rules: Protecting Optional Forms of Benefit/Early Retirement/Retirement-Type Subsidies  
 Amendment eliminating participants’ put option rights with respect to non-publicly-traded employer stock held in their 401(k) accounts violated the anti-cutback rule [Citation: *Goodin v. Innovative Technical Solutions, Inc.*, 2007 WL 1240204 (D. Hawaii April 27, 2007)]. . . . . 1473  
 Reversal of defined benefit plan termination did not violate anti-cutback rule merely because it resulted in loss of plan distributions on account of plan termination [Citation: *Carter v. Pension Plan of A.Finkl & Sons Co. for Eligible Office Employees*, \_\_\_ F.Supp.3d \_\_\_ (2010 WL 3516079) (N.D.Ill. September 1, 2010)]. . . . . 2509  
 Elimination of transfer option between employer’s defined benefit and profit sharing plans does not violate anti-cutback rule even though effect is to diminish participant’s annuity payment under the defined benefit plan [Citation: *Tasker v. DHL Retirement Savings Plan*, 621 F.3d 34 (49 EBC 2635) (1<sup>st</sup> Cir. October 6, 2010)]. . . . . 2615

**Cumulative Table of Contents for eRISA Update**

Reversal of defined benefit plan termination did not violate anti-cutback rule merely because it resulted in a loss of the right to plan distributions on account of plan termination [Citation: *Carter v. Pension Plan of A.Finkl & Sons Co. for Eligible Office Employees*, 654 F.3d 719 (7<sup>th</sup> Cir. August 153, 2011), *affirming* \_\_\_ F.Supp.3d \_\_\_ (2010 WL 3516079) (N.D.Ill. September 1, 2010)]. . . . . 2767

Terminated participants who can “grow into” conditions of early retirement subsidy are protected under ERISA §204(g) anti-cutback rule from amendment that would require continued employment to qualify for the subsidy [Citation: *Alcantara v. Bakery and Confectionery Union and Industry International Pension Fund Pension Plan*, 751 F.3d 71 (2<sup>nd</sup> Cir. May 1, 2014)]. . . . . 3379

¶5.195(4) - Anti-Cutback Rules: Elective Transfers

    Elective transfers from DC plan to DB plan could not eliminate the separate account feature of the transferred DC benefits Citation: *Pender v. Bank of America Corporation*, \_\_\_ F.3d \_\_\_ (4<sup>th</sup> Cir. June 8, 2015)]. . . . . 3601

¶5.210(1) - Premature Distribution Penalty (IRC §72(t)): Substantially Equal Payments Exception

    Receipt of additional distribution that qualified for higher education expenses exception did not result in a modification of the substantially equal payments that would trigger penalty taxes [Citation: *Benz v. Commissioner*, 132 T.C. \_\_\_\_ (No. 15) (May 11, 2009)]. . . . . 2181

¶5.212 - Nondeductible Contributions (IRC §4972)

    Plan contributions taken into account to determine if compensation is reasonable under IRC §162; unreasonable compensation results in disallowance of qualified plan deduction and excise tax under IRC §4972 [Citation: *Thousand Oaks Residential Care Home I, Inc. v. Commissioner*, T.C. Memo 2013-10 (January 14, 2013)]. . . . . 3120

¶5.222 - Special Rollover Rules for IRAs (IRC §408(d))

    Once-per-year limitation on IRA rollovers applies to individual’s IRAs in the aggregate [Citation: *Bobrow v. Commissioner*, T.C.Memo 2014-21 (Tax Ct. January 28, 2014)]. . . . . 3326

¶5.223 - Miscellaneous Rollover Issues

    Purported rollover to CSRS not recognized for tax purposes because CSRS does not accept rollovers [*Bohner v. Commissioner*, 143 T.C. No. 11 (September 23, 2014) (strong dissent filed)]. . . . . 3443

¶5.233 - Dividend Deduction Under IRC §404(k)

    Redemption payments to terminated participants were properly characterized as deductible dividends under IRC §404(k) [Citation: *Boise Cascade Corp. v. U.S.*, 30 EBC 1581 (9<sup>th</sup> Cir. May 20, 2003), *affirming*, 22 EBC 2097 (D.Idaho November 24, 1998)]. . . . . 181

¶5.242 - Participant Loan Limits (IRC §72(p))

    Deemed distribution occurred when no payments were made on participant’s loan due to failure of payroll department to deduct loan payments [Citation: *Leonard v. Commissioner*, T.C. Summary Opinion 2004-11 (Tax Ct. February 4, 2004)]. . . . . 358

¶5.242(1) - Participant Loan Limits: Application of IRC §72(p) to Assignment of Benefits

    Use of retirement plan annuity contracts as collateral for bank loan resulted in taxable deemed distribution under IRC §72(p)(1) [Citation: *Armstrong v. U.S.*, No. 03-2662 (8<sup>th</sup> Cir. May 3, 2004)] . . . . . 397

¶5.247(3) - Corporate-owned Life Insurance (COLI)

    Under controlling state law, employer did not have insurable interest on deceased employee for purposes of its COLI program; statute of limitations for unjust enrichment applies [Citation: *Mayo v. Hartford Life Insurance Company*, 31 EBC 2601 (5<sup>th</sup> Cir. January 5, 2004)]. . . . . 359

**Cumulative Table of Contents for eRISA Update**

¶5.260 - Estate Tax Issues Relating to Retirement Plans  
 Valuation of retirement plan interest may not be discounted for anticipate income tax liability [Citation: *Smith v. U.S.*, 33 EBC 2931 (5<sup>th</sup> Cir. November 15, 2004)]. . . . . 578

¶5.271 - Plan Termination: Surplus Assets and Reversions  
 Employees being paid benefits under group annuity purchased by terminated plan are entitled to demutualization proceeds from the insurer [Citation: *Bank of New York v. Janowick*, 470 F.3d 264 (6<sup>th</sup> Cir. 2006)]. . . . . 1314  
 IRC §4980 excise tax does not apply to a tax-exempt organization, even if the organization was subject to UBTI during certain years [Citation: *Research Corp. v. Commissioner*, 138 T.C. No. 7 (February 29, 2012)]. . . . . 2952

¶5.274 - Plan Termination: Fiduciary Issues  
 Supreme Court rules that employer did not breach duty by failing to consider terminating collectively-bargained defined benefit plans by merging them into multiemployer plans in lieu of annuitizing accrued benefits because merger is not a form of termination [Citation: *Beck v. PACE International Union*, 127 S.Ct 2310 (40 EBC 2281) (Sup.Ct. June 11, 2007)]. . . . . 1474

¶5.310 - Summary Plan Description  
 Employer’s established administrative practices served as evidence that SPD was furnished [Citation: *Hunter v. Lockheed Martin Corp.*, 202 U.S. Dist. LEXIS 13797 (N.D.Ca. 2002)]. . . . . 39  
 Method of distributing SPDs was not designed to reasonably ensure receipt [Citation: *Leyda v. AlliedSignal, Inc.*, 29 EBC 2857 (2<sup>nd</sup> Cir. February 28, 2003)]. . . . . 121  
 Summaries prepared by employer in addition to SPD, which failed to mention effect of the IRC §415 limits on benefits, do not override plan and SPD, which referred to such benefit limitations [Citation: *Helfrich v. Carle Clinic Association, P.C.*, 30 EBC 1587 (7<sup>th</sup> Cir. May 12, 2003)]. . . . . 182  
 Information in Enrollment Guide that conflicted with SPD was not controlling because the SPD is the primary disclosure document [Citation: *Bailey v. CIGNA*, 32 EBC 1720 (5<sup>th</sup> Cir. February 3, 2004)] . . . . . 360

¶5.311 - Employee Benefit Statements  
 Incorrect information in a separate enrollment sheet with respect to amended benefit did not override proper information contained in booklet that served as summary of material modifications [Citation: *Crosby v. Rohm & Haas Company*, 480 F.3d 423 (40 EBC 1449) (6<sup>th</sup> Cir. March 16, 2007)]. . 1475

¶5.313 - Information Requests Under ERISA  
 ERISA §104(b)(4) does not compel fiduciary to furnish itemized list of aggregated compensation items reported on first line of Schedule C (Part 1); but fiduciary breach claim seeking injunctive relief regarding failure to keep proper records may proceed to trial [Citation: *Shaver v. Operating Engineers Local 428 Pension Trust Fund*, 30 EBC 1937 (9<sup>th</sup> Cir. June 18, 2003)]. . . . . 238  
 Penalty of \$35,000 upheld for employer’s failure to respond timely to document request made by surviving spouse [Citation: *Lowe v. McGraw-Hill Companies, Inc.*, 32 EBC 1513 (7<sup>th</sup> Cir. March 15, 2004)]. . . . . 398  
 Employer subject to penalty under ERISA §502(c)(1) when it failed to provide requested documents pertaining to former employee’s eligibility for benefits under severance pay plan [Citation: *Gorini v. Amp Inc.*, 32 EBC 2036 (3<sup>rd</sup> Cir. 2004)]. . . . . 399

**Cumulative Table of Contents for eRISA Update**

Request did not clearly indicate that the participant was requesting a copy of the SPD or the plan; participant’s malpractice claim against plan actuary is preempted by ERISA [Citation: *Kollman v. Hewitt Associates*, 487 F.3d 139 (3<sup>rd</sup> Cir. May 14, 2007)]. . . . . 1476

Investment guidelines not subject to disclosure under ERISA §104(b) unless they are legally binding on the plan; scope of ERISA §104(b) discussed [Citation: *Murphy v. Verizon Communications*, 587 Fed.Appx. 140 (5<sup>th</sup> Cir. October 14, 2014) (not for publication in the Federal Register - limited precedential value)]. . . . . 3493

¶5.315 - Fiduciary Duties Regarding Disclosure

    “Serious consideration” test is *not* a bright-line test for determining whether employer made material misrepresentations regarding the future plan changes; fact-specific approach must determine whether there is a substantial likelihood that alleged misrepresentation would affect decision to retire [Citation: *Martinez v. Schlumberger, Ltd.*, 30 EBC 2249 (5<sup>th</sup> Cir. July 9, 2003)]. . . . . 239

    Providing inaccurate benefit statements due to computer error does *not* amount to a breach of fiduciary duty [Citation: *Hart v. Equitable Life Assurance Society*, 31 EBC 1242 (2<sup>nd</sup> Cir. September 18, 2003)] . . . . . 280

    Employer did not breach fiduciary duties when it failed to tell retiring employee of the company’s future plans to establish a new severance pay plan, since the employee was not a participant in the plan yet to be established [Citation: *Beach v. Commonwealth Edison Co.*, 33 EBC 1577 (3<sup>rd</sup> Cir. August 24, 2004)]. . . . . 477

    Claim for equitable relief based on inaccurate information in benefits statements is remanded to fashion appropriate remedy that considers actions plaintiff might have taken with accurate information [Citation: *Schaffer v. Westinghouse Savannah River Co.*, 35 EBC 1400 (4<sup>th</sup> Cir. 2005) (*designated as an “unpublished” opinion, which is not binding preceding in this circuit*)]. . . . . 820

    Fiduciaries had no duty to affirmatively disclose to participants non-material information regarding their conduct with respect to shares of employer securities held outside of the plan; effect of presence of independent investment adviser weighs into analysis [Citation: *Nelson and Wycoff v. Hodowal*, 512 F.3d 347 (7<sup>th</sup> Cir. January 2, 2008)]. . . . . 1775

¶5.316 - Conflicts Between SPD and Plan Document

    SPD for cash balance plan described a fully funded account maintained for a participant’s benefit; detrimental reliance need not be shown to bring suit to enforce terms of SPD [Citation: *Burstein v. Retirement Account Plan for Employees of Allegheny Health Education and Research Foundation*, 30 EBC 2121 (3<sup>rd</sup> Cir. July 2, 2003)]. . . . . 241

    Participant could not enforce benefit claim on basis of typographical error in SPD where there is no showing of detrimental reliance [Citation: *Greeley v. Fairview Health Services*, 479 F.3d 612 (8<sup>th</sup> Cir. 2007)]. . . . . 1315

    Reliance on SPD need not be shown where there is a direct conflict between the SPD and the plan [Citation: *Washington v. Murphy Oil USA, Inc.*, 497 F.3d 453 (5<sup>th</sup> Cir. 2007)]. . . . . 1589

    Appropriate equitable relief under ERISA §502(a)(3) is the appropriate authority for fashioning a remedy to address harm suffered by participants for misleading disclosure documents [Citation: *CIGNA v. Amara*, 131 S.Ct. 2900 (50 EBC 3016) (2011)]. . . . . 2746

    Plaintiffs failed to meet *post-Amara* standard for equitable relief to avoid summary judgment [Citation: *Skinner v. Northrop Grumman Retirement Plan*, 673 F.3d 1162 (9<sup>th</sup> Cir. March 16, 2012)]. . . 2929

**Cumulative Table of Contents for eRISA Update**

Sixth Circuit will allow ERISA §502(a)(3) action to go forward where conflict between SPD and plan is established [Citation: *Pearce v. Chrysler Group, LLC Pension Plan*, \_\_\_ F.3d. \_\_\_ (6<sup>th</sup> Cir. June 18, 2015)]. . . . . 3603

¶5.320(1) - Fiduciary Requirements: Definition of a Fiduciary

Attorney was not acting as fiduciary when he rendered legal opinion about prohibited transaction [Citation: *Mellon Bank, N.A. v. Levy*, 30 EBC 2522 (3<sup>rd</sup> Cir. August 6, 2003)]. . . . . 242

Concession by defendant that it was acting as a fiduciary for purposes of motion to remove case to federal court and to dismiss state law claims as preempted is binding with respect to the ERISA claims alleging breach of fiduciary duty [Citation: *Meyer v. Berkshire Life Insurance Co.*, 372 F.3d 261 (32 EBC 2764) (4<sup>th</sup> Cir. 2004)]. . . . . 479

Human resources employee was not acting as fiduciary when she failed to inform dying participant’s wife that a COBRA continuation coverage election was still available, so ERISA fiduciary liability does not attach [Citation: *Estate of Perry Weeks v. Advance Stores Company, Inc.*, 32 EBC 2768 (4<sup>th</sup> Cir. June 1, 2004) (designated as “unpublished” opinion)]. . . . . 480

Service provider was not a fiduciary merely because it furnished blackout notices to plan participants [Citation: *Milofsky v. American Airlines, Inc.*, 34 EBC 1801 (5<sup>th</sup> Cir. March 16, 2005)]. . . . . 647

**Note: The Fifth Circuit, on March 2, 2006, vacated and remanded this case for further proceedings with respect to the claim for breach of fiduciary duty against the employer (American Airlines) and other fiduciaries of the plan.]**

Control over plan assets made accountant a fiduciary with respect to plan [Citation: *David P. Coldesina, D.D.S., P.C., Employee Profit Sharing Plan and Trust v. Estate of Greg P. Simper*, 34 EBC 2633 (10<sup>th</sup> Cir. May 19, 2005)]. . . . . 759

Neither actions taken by recordkeeper nor authority reserved by recordkeeper to substitute or delete funds made it a functional fiduciary; actions or exercise of authority must involve the basis of the claims that allege the fiduciary breach [Citation: *Leimkuehler v. American United Life Insurance Co.*, 713 F.3d 905 (7<sup>th</sup> Cir. (Ind.) April 16, 2013)]. . . . . 3197

Registered representative was not acting in a fiduciary capacity [Citation: *Tiblier v. Dlabal*, 743 F.3d 1004 (5<sup>th</sup> Cir. (TX) February 28, 2014)]. . . . . 3327

Group variable annuity contract provider to defined contribution plan was not acting in fiduciary capacity with respect to the alleged excessive fees [Citation: *Santomenno v. John Hancock Life Insurance Company*, 768 F.3d 284 (3<sup>rd</sup> Cir. September 26, 2014) (appealed from the District Court of New Jersey)]. . . . . 3444

Consultant did not assume fiduciary status merely by calculating participant’s projected retirement benefit upon participant’s request [Citation: *Lebahn v. National Farmers Union Uniform Pension Plan*, 828 F.3d 1180 (10<sup>th</sup> Cir. July 11, 2016)]. . . . . 4066

¶5.321(1) - Fiduciary Duties and Liabilities: Prudence and Diversification

Amendment to plan to convert existing plan assets into stock of acquiring company was a fiduciary action under ERISA; original plan design to limit investments in employer securities is non-fiduciary action [Citation: *Nelson v. IPALCO Enterprises, Inc.*, 29 EBC 2665 (S.D.N.Y. February 13, 2003)] . . . . . 123

Court rules in favor of plaintiffs on most motions to dismiss ERISA-related claims in *Enron* litigation; details important legal theories relating to definition of fiduciary, fiduciary duties, directed trustees,



**Cumulative Table of Contents for eRISA Update**

and 404(c) relief [Citation: *Tittle v. Enron*, Civil Action No. H-01-3913 (S.D.Tex. October 2003)]  
 ..... 243

Plan amendment did not clearly remove investment option; fiduciary duties implicated with respect to  
 decision not to retain investment [Citation: *Tatum v. R.J. Reynolds Tobacco Company*, 34 EBC 1071  
 (4<sup>th</sup> Cir. December 14, 2004)]. ..... 579

Accountant who was a fiduciary with respect to assets over which he had control was liable for funds  
 stolen by another fiduciary to whom he transferred plan assets, but is entitled to reduction of judgment  
 for amount obtained from other settling defendants [Citation: *David P. Coldesina, D.D.S., P.C.,  
 Employee Profit Sharing Plan and Trust v, Estate of Simper*, 38 EBC 1028 (D.Utah June 16, 2006)]  
 ..... 1083

**Note: This case is related to an earlier decision reported at ¶5.320(1), p. 759**

Causation of loss due to failure to review investment strategy must be shown before recovery against  
 fiduciary is warranted [Citation: *Plasterers’ Local Union No. 96 Pension Plan v. Pepper*, 663 F.3d 210  
 (4<sup>th</sup> Cir. December 1, 2011)]. ..... 2930

Reliance on decline of market price of mortgage-backed securities not enough to sustain claim for  
 fiduciary breach regarding the continued investment in such securities by an ERISA plan [Citation:  
*PBGC on behalf of Saint Vincent Catholic Medical Centers Retirement Plan v. Morgan Stanley  
 Investment Management, Inc.*, 712 F.3d 705 (2<sup>nd</sup> Cir. N.Y. April 2, 2013)]. ..... 3200

Discretionary decision whether the make employer contribution in the form of stock or cash is *not* a  
 fiduciary action [Citation: *Coulter v. Morgan Stanley & Co., Inc.*, 753 F.3d 361 (2<sup>nd</sup> Cir. May 29,  
 2014)]. ..... 3380

Where fiduciary engaged in an imprudent process, the fiduciary must show by a preponderance of the  
 evidence that a prudent fiduciary would have made the same decision in order to avoid liability for the  
 loss to the plan [Citation: *Tatum v. RJR Pension Investment Committee*, 761 F.3d 346 (4<sup>th</sup> Cir. August  
 4, 2014) (appealed from Middle District of North Carolina)]. ..... 3446

¶5.321(2) - Fiduciary Duties and Liabilities: Exclusive Purpose Rule/Payment of Fees

Reimbursement of fiduciary for litigation expenses, pursuant to indemnification agreement, must be  
 consistent with the exclusive purpose rule of ERISA §404 [Citation: *State Street Bank and Trust Co.  
 v. Salovaara*, 30 EBC 1385 (2<sup>nd</sup> Cir. April 15, 2003)]. ..... 183

Insurer’s motion of summary judgment denied in action seeking monetary damages and equitable relief  
 relating to revenue-sharing arrangements in insurer’s contractual arrangements with mutual funds or  
 their affiliates [Citation: *Haddock v. Nationwide Financial Services, Inc.*, 36 EBC 2953 (D.Conn.  
 March 7, 2006)]. ..... 1003

Suit against employer for fiduciary breach relating to excessive fees paid through plan investments and  
 failure to disclose revenue-sharing arrangement is dismissed; fiduciary breach claims against  
 investment provider dismissed because provider was not a functional fiduciary of plan [Citation:  
*Hecker v. Deere & Co.*, 556 F.3d 575 (45 EBC 2761) (7<sup>th</sup> Cir. February 12, 2009) (as modified by  
 “clarification” made in denial of rehearing *en banc* issued on June 24,2009)]. ..... 2209

**Note: before the rehearing, this case had been summarized at page 2143.**

Participant may pursue claims against Wal-Mart for excessive fees [Citation: *Braden v. Wal-Mart Stores,  
 Inc.*, 48 EBC 1097 (8<sup>th</sup> Cir. November 25, 2009)]. ..... 2306

Fiduciaries breached duties to 401(k) plan by failing to monitor recordkeeping costs, failing to negotiate  
 rebates on revenue sharing, selecting investments with higher expense ratios, allowing plan to pay

**Cumulative Table of Contents for eRISA Update**

excessive fees to subsidize corporate services, and failing to transfer float income to plan [Citation: *Tussey v. ABB, Inc.*, 52 EBC 2826 (W.D.Mo. March 31, 2012) (not reported in Federal Supplement 2d)]..... 2954

Fidelity not liable for fiduciary breach or prohibited transaction sanction with respect to alleged excessive fees because it was not a fiduciary or service provider at time fees were negotiated and had no discretion over fee structure at time fees were collected [Citation: *Danza v. Fidelity Management Trust Company*, 56 EBC 1230 (3<sup>rd</sup> Cir. (N.J.) July 29, 2013) (not for publication in the Federal Register)]. . . . . 3244

Fiduciaries breached duties to 401(k) plan by failing to monitor recordkeeping costs, failing to negotiate rebates on revenue sharing, and allowing plan to pay excessive fees to subsidize corporate services; administrator entitled to *Firestone* standard of review on decision to replace fund; float income not plan asset [Citation: *Tussey v. ABB, Inc.*, 746 F.3d 327 (8<sup>th</sup> Cir. March 19, 2014), affirming in part, reversed and remanded in part and vacated and remanded in part, 52 EBC 2826 (W.D.Mo. March 31, 2012)]. . . . . 3328

Trustee acted reasonably in using plan funds to pay attorney’s fees to defend benefits claim by surviving spouse who was charged with the murder of the participant [Citation: *Futral v. Chastant*, 2014 WL 1509572 (5<sup>th</sup> Cir. April 18, 2014) (not selected for publication in the Federal Register)]. . . . . 3380

Investment platform provider was not acting in a fiduciary capacity when it negotiated its management and investment fees with the plan sponsor, resulting in dismissal of fiduciary breach action for excessive fees [Citation: *McCaffree Financial Corp. v. Principal Life Ins. Co.*, 811 F.3d 998 (8<sup>th</sup> Cir. January 8, 2016)]. . . . . 3848

¶5.321(3) - Fiduciary Duties and Liability: Following Governing Documents

Rise in stock value following corporate merger alone does not dictate that fiduciaries should override plan’s limits regarding the extent to which participants’ accounts may be divested of employer securities where plan calls for specified minimum percentage of account in such securities [Citation: *Wright v. Oregon Metallurgical Corp.*, 32 EBC 1417 (9<sup>th</sup> Cir. March 11, 2004)]. . . . . 399

Trustee of plan violated fiduciary duties when he unilaterally increased his compensation, in violation of the governing agreements [Citation: *La Scala v. Scruafari*, 479 F.3d 213 (40 EBC 1011) (2<sup>nd</sup> Cir. 2007)]. . . . . 1316

Plan amendment that would have affected surviving spouse’s right to benefits under ERISA plan invalidated because plan’s amendment procedures not followed [Citation: *Overby v. NALC*, 595 F.3d 1290 (48 EBC 2255) (D.C. Cir., February 26, 2010)]. . . . . 2388

Participant could not recover benefits from plan that had been withdrawn by his ex-wife, where procedures for electronic distribution requests was sent to participant’s last known mailing address [Citation: *Foster v. PPG Industries, Inc.*, (49 EBC 2289) (N.D.Okla. August 31, 2010) (not reported in F.Supp. 2d)]. . . . . 2510

Asset purchase agreement effected a valid amendment to company’s ERISA plans [Citation: *Evans v. Sterling Chemicals, Incorporated*, 660 F.3d 862 (5<sup>th</sup> Cir. October 13, 2011)]. . . . . 2818

Participant could not recover benefits from plan that had been withdrawn by his ex-wife, where information relating to electronic distribution requests was sent to participant’s last known mailing address in accordance with plan’s administrative procedures [Citation: *Foster v. PPG Industries, Inc.*, 693 F.3d 1226 (10<sup>th</sup> Cir. September 5, 2012), *affirming* 49 EBC 2289 (N.D.Okla. 2010)]. . . . . 2999

**Cumulative Table of Contents for eRISA Update**

¶5.321(4) - Fiduciary Duties and Liability: Trustee Duties  
 ERISA confers upon trustee the duty to collect contributions owed to the plan and to obtain loan repayments withheld from participants’ paychecks [Citation: *Best v. Cyrus*, 29 EBC 1481 (6<sup>th</sup> Cir. November 19, 2002)]. . . . . 40

¶5.321(5) - Fiduciary Duties and Liability: Directed Trustees  
 Directed trustee of WorldCom plan did not have duty to refuse instructions with respect to continued investments in WorldCom stock; DOL Field Assistance Bulletin cited with approval [Citation: *In re WorldCom Inc. ERISA Litigation*, 34 EBC 1545 (S.D.N.Y. February 1, 2005)]. . . . . 648

¶5.322(2) - Participant-Directed Investments: Restrictions on Investment Options/Rights  
 Investment manager’s imposition on market timing activities did not violate terms of governing group annuity contract; genuine factual dispute regarding whether employee’s subsequent termination was due to his exercise of market timing rights in violation of ERISA §510 [Citation: *Borneman v. Principal Life Insurance Co.*, 31 EBC 2190 (S.D.Iowa November 25, 2003)]. . . . . 361

¶5.322(3) - Participant-Directed Investments: Fiduciary Liability/Scope of Relief under ERISA §404(c)  
 Summary judgment granted to employer with respect to claims for fiduciary breach regarding participant-directed investments where plan did not satisfy ERISA §404(c) requirements [Citation: *Jenkins v. Yager*, 37 EBC 1609 (7<sup>th</sup> Cir. April 14, 2006)]. . . . . 1007

6-year statute of limitations on fiduciary breach claims involving investment menu selection generally runs from time menu option is added; 404(c) relief doesn’t apply to fiduciary decisions regarding selection of investment menu options [Citation: *Tibble v. Edison International*, 711 F.3d 1061 (9<sup>th</sup> Cir. March 21, 2013); amended 729 F.3d 1110 (9<sup>th</sup> Cir. August 1, 2013)]. . . . . 3246

6-year statute of limitations on fiduciary breach claims involving investment menu selection generally runs from time menu option is added unless changed circumstances are alleged [Citation: *Fuller v. SunTrust Banks, Inc.*, 744 F.3d 685 (2014 WL 718309) (11<sup>th</sup> Cir. (GA) February 26, 2014))] . . . . . 3332

¶3.322(4) - Participant-Directed Investments: Default Investments  
 ERISA §404(c)(5) safe harbor for QDIA applies even though funds transferred to QDIA had been invested by affirmative participant election, provided notice and other requisite conditions are satisfied [Citation: *Bidwell v. University Medical Center, Inc.*, 685 F.3d 613 (6<sup>th</sup> Cir. June 29, 2012)] . 3001

¶5.323 - Co-Fiduciary Liability  
 Texas court does not recognize an ERISA fiduciary’s right to contribution or indemnity from other responsible fiduciaries in *Enron* litigation, but approves settlement proposal that would credit non-settling defendants with respect to a portion of the settlement proceeds [Citation: *Tittle v. Enron Corp.*, 35 EBC 1242 (S.D.Tex. May 24, 2005)]. . . . . 821

¶5.324(1) - Fiduciary Insurance  
 Errors and omissions insurance did not cover employer’s liability for failure to contribute for employees of non-signatory subsidiaries who became eligible due to unintentional plan amendment [Citation: *Pacific Insurance Co. v. Eaton Vance Management*, 32 EBC 2477 (1<sup>st</sup> Cir. May 27, 2004)]. . . . 400

¶5.324(2) - Exculpatory Provisions (ERISA §410): Indemnification Agreements  
 District court did not abuse discretion in enjoining advancement of litigation expenses to defendants under indemnification agreement when assets of corporation expended under agreement directly affected value of ESOP assets; impact of agreement on company assets is germane consideration

**Cumulative Table of Contents for eRISA Update**

because of direct effect on ESOP participants [Citation: *Johnson v. Couturier*, No. 08-17369 (9<sup>th</sup> Cir. July 27, 2009)]. . . . . 2213

Union’s agreement to indemnify employer for Title IV withdrawal liability is enforceable [Citation: *Shelter Distribution, Inc. v. General Drivers, Warehousemen & Helpers Local Union No. 89*, 2012 WL 880601, 674 F.3d 608 (6<sup>th</sup> Cir. March 16, 2012)]. . . . . 2931

Arbitrator’s decision that indemnification agreements violate ERISA §410 should not have been vacated by district court [Citation: *Schafer v. Multiband Corp.*, 551 Fed.Appx. 814 (6<sup>th</sup> Cir. January 6, 2014) (not selected for publication in Federal Register)]. . . . . 3381

¶5.325(1) - Plan Administration: Interpretation of Plan Document

Plan administrator’s interpretation of the term “layoff” not to include employees acquired in the sale of a division was reasonable [Citation: *Morgan v. SFK USA, Inc.*, 33 EBC 2195 (6<sup>th</sup> Cir. 2004)]. . . . . 580

Provision in disability plan that reduced the benefit by the amount of benefits received from the employer’s retirement plan held not to include amounts directly rolled over from the retirement plan to an IRA [Citation: *Blankenship v. Liberty Life Assurance Co. of Boston*, 40 EBC 2239 (9<sup>th</sup> Cir. May 18, 2007)]. . . . . 1477

Abuse of discretion standard of review applies to plan administrator’s interpretation of a “top hat” plan document [Citation: *Sznewajs v. U.S. Bancorp Amended and Restated Supplemental Benefits Plan*, 572 F.3d 727 (47 EBC 1315) (9<sup>th</sup> Cir. 2009)]. . . . . 2215

Plan administrator doesn’t lose right to deferential standard of review under Firestone merely because initial determination is ruled to be unreasonable [Citation: *Conkright v. Frommert*, 130 S.Ct. 1640 (48 EBC 2569) (S.Ct. April 21, 2010)]. . . . . 2428

Plan administrator’s second interpretation of document also ruled to be unreasonable in *Fommert* case [Citation: *Fommert v. Conkright*, 738 F.3d 522 (2<sup>nd</sup> Cir. (NY) December 23, 2013)]. . . . . 3279

Administrator unreasonably interpreted plan language that granted enhanced benefits for a participant’s termination from employment with the controlled group [Citation: *Adams v. Anheuser-Busch Companies, Inc.*, 758 F.3d 743 (6<sup>th</sup> Cir. July 11, 2014), appeal from S.D.Ohio]. . . . . 3447

Supreme Court reverses Sixth Circuit lines of cases that favored assumption of continued retiree health benefits beyond the end of a collective-bargaining agreement rather than relying on ordinary principles of contract law [Citation: *M&G Polymers USA, LLC v. Tackett*, 135 S.Ct. 926 (January 26, 2015)] . . . . . 3562

An explanation-free decision as to the proper definition of compensation for computing pension benefits was arbitrary and capricious; substitution by court of earlier pension estimate was unreasonable [Citation: *Reilly v. Continental Casualty*, 785 F.3d 261 (7<sup>th</sup> Cir. May 6, 2015)]. . . . . 3604

Administrator’s interpretation that sign-on bonus was not part of plan compensation used to determine benefits was not arbitrary or capricious [Citation: *Ingram v. Terminal Railroad Association of St. Louis Pension Plan for Nonschedule Employees*, 812 F.3d 628 (8<sup>th</sup> Cir. January 29, 2016)]. . . . . 3849

Plan language was *not* sufficiently specific to confer discretion on the plan administrator to interpret the plan document, so *de novo* review of administrator’s decision was warranted [Citation: *Stephanie v. Blue Cross Blue Shield of Massachusetts HMO Blue, Inc.*, 813 F.3d 420 (1<sup>st</sup> Cir. February 17, 2016)] . . . . . 3850

**Cumulative Table of Contents for eRISA Update**

¶5.325(3) - Plan Administration: Claims Procedures  
 Plan-imposed statute of limitations not applicable because denial of claim letter failed to state the plan’s limitation on bringing suit [Citation: *Mirza v. Insurance Administrator of America, Inc.*, \_\_\_ F3d \_\_\_ (3<sup>rd</sup> Cir. August 26, 2015)]..... 3726

¶5.326(1) - Definition of Plan Assets: Participant Contributions  
 Unpaid prevailing wage contributions were not plan assets [Citation: *Pantoja v. Edward Engel & Son Express, Inc.*, 54 EBC 1977 (2012 W.L. 6117886) (11<sup>th</sup> Cir. December 11, 2012) (not selected for publication in the Federal Reporter)]..... 3059

¶5.330 - ERISA Enforcement: Claim For Benefits  
 Participant who intentionally evades receipt of pension benefits not entitled to interest on late payments made by plan [Citation: *Twomey v. Delta Airlines Pilots Pension Plan*, 30 EBC 1513 (1<sup>st</sup> Cir. May 7, 2003)]..... 184  
 Plan may seek recoupment of overpayment of benefits pursuant to contractual provisions of the plan; equitable relief limitation under ERISA §502(a)(3) not applicable [Citation: *Northcutt v. General Motors Hourly-Rate Employee Pension Plan*, 467 F.3d 1031 (7<sup>th</sup> Cir. 2006), rehearing denied, 2007 U.S. App. LEXIS 468 (7<sup>th</sup> Cir. January 5, 2007)]..... 1317  
 Employer’s statements regarding its intentions to restart funding of frozen defined contribution plans when the company became financially stable did not create enforceable rights to future funding [Citation: *Kalda v. Sioux Valley Physician Partners, Inc.*, 481 F.3d 639 (8<sup>th</sup> Cir. March 29, 2007)] ..... 1478  
 Employee claiming status as participant cannot be held to have waived administrative rights if relevant documents to establish eligibility are not furnished; failure of administrator to interpret language in plan in rendering decision on claim results in *de novo* review of decision [Citation *Strom v. Siegel Fenchel & Peddy P.C. Profit Sharing Plan*, 497 F.3d 234 (41 EBC 1484) (2<sup>nd</sup> Cir. 2007)].... 1589  
 Supreme Court reaffirms *Firestone* holding; provides analysis regarding impact of conflicts of interest [Citation: *Metropolitan Life Ins. Co. v. Glenn*, 554 U.S. \_\_\_ (June 19, 2008)]. . . . . 1856  
 Third Circuit revokes its “sliding scale” analysis for standard of review in light of *Glenn* case [Citation: *Schwing v. Lilly Health Plan*, 562 F.3d 522, (46 EBC 2370) (3<sup>rd</sup> Cir. 2009)]..... 2182  
 Anti-alienation provisions are not violated when judgment is enforced against the plan for improper payment of participant’s benefits to ex-spouse, even though account balances will be affected as a result of the loss [Citation: *Milgram v. Orthopedic Associates Defined Contribution Pension Plan*, 662 F.3d 187 (2<sup>nd</sup> Cir. November 29, 2011)]. . . . . 2819  
 Administrator abused its discretion in denying participant’s claim for retroactive benefits resulting from a failure of the plan to timely inform her of her right to elect full benefits under an early retirement provision [Citation: *Helton v. AT&T, Inc.*, \_\_\_ F.3d \_\_\_ (2013 WL 812118) (4<sup>th</sup> Cir. March 6, 2013)] ..... 3125  
 ERISA §4044 does not create ERISA cause of action for alleged violation of IRC §401(a)(4); fiduciaries entitled to rely on advice of counsel in making benefits determination [Citation: *Clark v. Feder Semo and Bard, P.C.*, 739 F.3d 28 (D.C. Cir. January 7, 2014)]. . . . . 3333  
 Exhaustion of administrative remedies not required to bring claim based on statutory violations rather than violations of the terms of the plan [Citation: *Stephens v. PBGC*, 755 F.3d 959 (D.C. Cir. June 24, 2014)]..... 3382

**Cumulative Table of Contents for eRISA Update**

Burden of proof shifts to plan if claimant makes prima facie case of benefit entitlement, in spite of deferential standard of review with respect to plan administrator’s benefits claim denial [Citation: *Estate of Bruce H. Barton v. AFT Security Services Pension Plan*, 820 F.3d 1060 (9<sup>th</sup> Cir. April 21, 2016)]. . . . . 3985

De novo standard of review applies when plan fails to adopt claims procedures that are in full compliance with the law, except for inadvertent *and* harmless deviations [Citation: *Halo v. Yale Health Plan*, 819 F.3d 42 (2<sup>nd</sup> Cir. April 12, 2016)]. . . . . 3986

¶5.331 - Statute of limitations for ERISA actions

3-year statute under ERISA §413 not applicable unless plaintiff has actual knowledge of the facts that will support the plaintiff’s cause of action [Citation: *Richard B. Roush Inc. Profit Sharing Plan v. New England Mutual Life Insurance Co.*, 29 EBC 1641 (3<sup>rd</sup> Cir. November 27, 2002)]. . . . . 126

State’s statute for penalty or forfeiture claim applied to determine limitations period for civil suit seeking penalty under ERISA §502(c)(1) for untimely response to information request [Citation: *Iverson v. Ingersoll-Rand Co.*, 34 EBC 1193 (8<sup>th</sup> Cir. December 30, 2004) (designated as unpublished opinion)] . . . . . 650

Plan may establish a contractual statute of limitations period with respect to benefit claims under ERISA §502(a)(1)(B) [Citation: *Heimeshoff v. Hartford Life & Accident Insurance, Co.*, 134 S.Ct. 604 (December 16, 2013)]. . . . . 3280

Pendency of motion on fees and costs does not mean judgment on merits fails to be a final decision for purposes of 30-day appeal requirement [Citation: *Ray Haluch Gravel Company v. Central Pension Fund of International Union of Operating Engineers and Participating Employers, et al.*, 134 S.Ct. 773 (S.Ct. January 15, 2014)]. . . . . 3280

Since fiduciary claims also involve the process by which the fiduciary makes its decision, actual knowledge was needed of the process in order for the 3-year statute of limitations under ERISA §413 to begin [Citation: *Fish v. GreatBanc Trust Company*, 749 F.3d 671 (7<sup>th</sup> Cir. May 14, 2014)] . . . . . 3383

Statute of limitations on benefits claim began to run 12 months after payments ceased since participant at that point had reason to believe his claim was denied [Citation: *Witt v. Metropolitan Life Insurance Co. Shell Oil Long Term Disability Trust Plan*, 772 F.3d 1269 (11<sup>th</sup> Cir. November 25, 2014)] . . . . . 3494

Because of fiduciary’s continuing requirement to remove imprudent investments, the 6-year ERISA statute on fiduciary breach is not closed if plaintiffs allege the breach related to imprudent review within the last 6 years with respect to investment menu options selected more than 6 years earlier [Citation: *Tibble v. Edison International*, 135 S.Ct. 1823 (May 18, 2015)]. . . . . 3605

¶5.332 - ERISA Enforcement: Civil and Criminal Penalties

Criminal penalties upheld with respect to conversion of 401(k) deferrals and false statements on valuation report [Citation: *U.S. v. Eriksen*, 639 F.3d 1138 (50 EBC 2193) (9<sup>th</sup> Cir. 2011)]. . . . . 2708

Criminal conviction for conversion/embezzlement involving employer’s failure to fund discretionary contribution authorized by board is overturned [Citation: *U.S. v. Smith*, 641 F.3d 1200 (10<sup>th</sup> Cir. 2011)] . . . . . 2750

**Cumulative Table of Contents for eRISA Update**

¶5.333 - ERISA Enforcement: Standing

Participants who have been paid out of the plan have standing if they may become entitled to additional payments due to fiduciary breaches negatively affecting their account balances in a defined contribution plan [Citation: *Harzewski v. Guidant*, 489 F.3d 799 (7<sup>th</sup> Cir. June 5, 2007)]. . . . . 1479

Participant’s suit to recover for fiduciary breach, on behalf of a terminated plan, may be brought even though the plan is trustee by the PBGC [Citation: *Wilmington Shipping Company v. New England Life Insurance Co.*, 496 F.3d 326 (41 EBC 1338) (4<sup>th</sup> Cir. 2007)]. . . . . 1590

Participant had standing to bring suit for losses due to imprudent investments even though he had cashed out of the plan in a lump sum [Citation: *In re Boston Scientific Corporation ERISA Litigation*, 2007 WL 2412164 (No. CIV.A.06-10105-JLT) (D.Mass. August 27, 2007)]. . . . . 1591

Participants who were transferred to plan maintained by corporate entity spun-off from prior employer, could not sue prior employer’s plan for claim for benefits [Citation: *Chastain v. AT&T*, 558 F.3d 1177 (46 EBC 1289) (10<sup>th</sup> Cir. March 9, 2009)]. . . . . 2183

Claims against fiduciaries of distress-terminated defined benefit plan under ERISA §502(a)(2) lacked constitutional standing because recovery would go to PBGC rather than plan, and ERISA §502(a)(3) lacked ERISA standing because spin-off decision was not fiduciary action and monetary recovery sought was not equitable relief [Citation: *Paulsen v. CNF, Inc.*, 559 F.3d 1061 (46 EBC 1481) (9<sup>th</sup> Cir. March 20, 2009)]. . . . . 2184

PBGC’s discretionary decision not to pursue claims against plan fiduciaries or service provider not subject to judicial review [Citation: *Paulsen v. CNF, Inc.*, 559 F.3d 1061 (9<sup>th</sup> Cir. March 20, 2009)]. . . . . 2185

Participant could not bring suit for fiduciary breach since she had earned profits on investments she was challenging [Citation: *Taylor v. KeyCorp.*, 680 F.3d 609 (6<sup>th</sup> Cir. May 25, 2012)]. . . . . 2958

Case lacked constitutional standing where alleged breach occurred in an *overfunded* defined benefit plan [Citation: *David v. Alphin*, 704 F.3d 327 (4<sup>th</sup> Cir. January 14, 2013)]. . . . . 3127

Contributing employer to multiemployer fund does not have standing to sue fiduciaries for negligent management of plan [Citation: *DiGeronimo Aggregates, LLC v. Zemla*, 763 F.3d 506 (6<sup>th</sup> Cir. August 14, 2014) (appeal from the N.D. Ohio)]. . . . . 3448

¶5.334(1) - ERISA Enforcement: Attorney’s Fees

Plan awarded attorney’s fees against participant in suit to collect overpayment of benefits [Citation: *North American Coal Corp. Retirement Savings Plan v. Roth*, 33 EBC 2214 (D.N.Dak. June 4, 2004)]. . . . . 580

ERISA attorney’s fees claimants must show some degree of success on the merits before court may award fees, but need not be a “prevailing party” [Citation: *Hardt v. Reliance Standard Life Insurance Co.*, 130 S.Ct. 2149 (49 EBC 1001) (May 24, 2010)]. . . . . 2430

After determination that attorney’s fee claimant has achieved “some degree of success on the merits” a district court may evaluate the traditional five factors under the Hummell case to determine if a fee award is warranted [Citation: *Simonia v. Glendale Nissan/Infiniti Disability Plan*, 608 F.3d 1118 (9<sup>th</sup> Cir. June 24, 2010)]. . . . . 2431

Five-factor test for determining whether to award attorney’s fees continues to apply in the Second Circuit in a post-*Hardt* world; bias is still in favor of not awarding attorney’s fees to defendants who have at least some degree of success on the merits in the absence of bad faith on the part of the plaintiffs [Citation: *Toussaint v. JJ Weiser, Inc.*, 648 F.3d 108 (2<sup>nd</sup> Cir. June 6, 2011)]. . . . . 2768

**Cumulative Table of Contents for eRISA Update**

Dismissal of claims (including voluntary dismissal of claims against person seeking attorney’s fees) can be basis for “success on the merits” to determine whether an award of attorney’s fees is appropriate [Citation: *Scarangella and Scarangella & Sons, Inc. v. Group Health, Inc.*, 731 F.3d 146 (2<sup>nd</sup> Cir. (NY) September 10, 2013)]..... 3249

¶5.334(2) - ERISA Enforcement: Equitable Relief Under ERISA §502(a)(3)

Cash balance plan’s improper application of a preretirement mortality discount to calculate a participant’s lump sum distribution does not entitle the participant to recoup the additional lump sum amount in a suit under ERISA §502(a)(3) for equitable relief [Citation: *Crosby v. Bowater Incorporated Retirement Plan for Salaried Employees of Great North Paper Inc.*, 382 F.3d 587 (33 EBC 1769) (6<sup>th</sup> Cir. 2004)]..... 481

ERISA §502(a)(3) action may be brought to seek rescission of lump sum distribution due to incorrect information about tax consequences of lump sum payment from nonqualified plan [Citation: *Griggs v. E.I. Dupont de Nemours & Co.*, 33 EBC 2089 (4<sup>th</sup> Cir. September 29, 2004)]..... 581

Reimbursement provision in health plan for third-party recovery created a lien in favor of plan with respect to litigation settlement proceeds, so plan could seek equitable restitution with respect to its share of litigation proceeds [Citation: *Sereboff v. Mid Atlantic Medical Services*, 37 EBC 1929 (126 S.Ct. 1869) (S.Ct. May 15, 2006)]..... 1085

Participant entitled to equitable relief to have benefits calculated on earlier service crediting date because he reasonably relied to his detriment on repeated representations from employers’ agents that his benefits were to be based on such date [Citation: *Pell v. Dupont*, 539 F.3d 292 (3<sup>rd</sup> Cir. 2008)].1923

Participant not entitled to incorrectly computed late actuarial adjustment on his retirement benefit where communication materials didn’t even mention an adjustment [Citation: *Bocchino v. Trustees of District Council Ironworkers Funds of Northern New Jersey*, 47 EBC 1594 (3<sup>rd</sup> Cir. 2009) (not selected for publication in the Federal Reporter)]..... 2217

Participant may be entitled to equitable relief with respect to additional pension benefits improperly reflected on certified benefits calculation statement [Citation: *Bloemker v. Laborers’ Local 265 Pension Fund*, 605 F.3d 436 (49 EBC 1175) (6<sup>th</sup> Cir. May 19, 2010)]..... 2432

Equitable remedies of surcharge and estoppel are available in claim against insurer for accepting life insurance premiums on ineligible person [Citation: *McCravy v. Metropolitan Life Insurance Company*, 690 F.3d 176 (4<sup>th</sup> Cir. July 5, 2012)]. . . . . 3002

ERISA plan terms, not just equitable principles, govern administrator’s action to enforce equitable lien; common-fund rule provides appropriate default where plan is silent on allocation of attorney’s fees [Citation: *US Airways, Inc. v. McCutchen*, 133 S.Ct. 1537 (April 16, 2013)]. . . . . 3202

Ninth Circuit describes scope of equitable relief under ERISA §502(a)(3) in light of Supreme Court’s *Amara* decision [Citation: *Gabriel v. Alaska Electrical Pension Fund*, 755 F.3d 647 (9<sup>th</sup> Cir. June 6, 2014)]..... 3384

Ninth Circuit describes scope of equitable relief under ERISA §502(a)(3) in light of Supreme Court’s *Amara* decision [Citation: *Gabriel v. Alaska Electrical Pension Fund*, 773 F.3d 945 (9<sup>th</sup> Cir. December 16, 2014), replacing 755 F.3d 647 (9<sup>th</sup> Cir. June 6, 2014)]. . . . . 3495

On remand, district court in *Amara* case finds basis for plan reformation [Citation: *Amara v. CIGNA*, 775 F.3d 510 (2<sup>nd</sup> Cir. December 23, 2014)]..... 3497



**Cumulative Table of Contents for eRISA Update**

Supreme Court clarifies that enforcement of a plan’s remedy for equitable recovery against third-party payments made to participant is limited to identifiable funds [Citation: *Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan*, 136 S.Ct. 651 (January 20, 2016)]. . . . 3852

¶5.334(3) - ERISA Enforcement: Claim For Fiduciary Breach (ERISA §409)

Participants may bring derivative action on behalf of plan to recover losses due to fiduciary breach, even if the alleged violation affected only a subset of participants [Citation: *In re Schering-Plough Corporation ERISA Litigation*, 35 EBC 1801 (3<sup>rd</sup> Cir. August 19, 2005)]. . . . . 823

Plan’s suit to recover overpayment to participant was dismissed because remedy sought was not equitable relief within the meaning of ERISA §502(a)(3) [Citation: *Verizon Employee Benefits Committee v. Adams*, 36 EBC 2878 (N.D.Tex. January 11, 2006)]. . . . . 1011

Participant may recover losses incurred by his account due to fiduciary’s failure to implement the investment strategy he had selected for the account [Citation: *LaRue v. DeWolff, Boberg & Associates*, 128 S.Ct. 1020 (2008)]. . . . . 1777

**Note: This case overrules the Fourth Circuit decision summarized at p. 1086.**

*LaRue* case dictates that former employees who were cashed out of the plan have standing to bring suit under ERISA §502(a)(2) that would result in additional benefits payable if successful [Citation: *In re Mutual Funds Investment Litigation (Wangberger v. Janus Capital Group)*, 529 F.3d 207 (4<sup>th</sup> Cir. June 16, 2008); *Evans v. Akers*, 534 F.3d 65 (44 EBC 1385) (1<sup>st</sup> Cir. 2008)]. . . . . 1926

First Circuit rules that ERISA §502(a)(3) is available to enforce ERISA minimum funding requirements [Citation: *Gastronomical Workers Union Local 610 & Metropolitan Hotel Association Pension Fund v. Dorado Beach Hotel Corporation*, 617 F.3d 54 (1st Cir. August 11, 2010)] . . . . . 2511

Non-employee spouse’s decision to retire cannot be basis for detrimental reliance on misinformation provided by plan regarding participant’s benefits could not sustain claim for fiduciary breach and estoppel [Citation: *Shook v. Avaya*, 625 F.3d 69 (50 EBC 1128) (3<sup>rd</sup> Cir. November 2, 2010)] . . . . . 2617

Participant awarded losses incurred by his account due to delayed distribution as a result of fiduciary’s breach with respect to a failure to furnish distribution information [Citation: *Kujanek v. Houston Poly Bag I, Limited*, 658 F.3d 483 (5<sup>th</sup> Cir. September 27, 2011)]. . . . . 2820

Fiduciary claims brought with respect to annuitization of benefits under a defined benefit plan failed to state a claim for relief and, in the case of non-retirees, lacked constitutional standing [Citation: *Lee v. Verizon Communications, Inc.*, 2015 WL 4880972 (5<sup>th</sup> Cir. August 17, 2015) (not selected for publication in the Federal Register)]. . . . . 3727

¶5.334(5) - ERISA Enforcement: Reformation of Documents/Scrivener’s Error

Group insurance plan could not be amended retroactively under the doctrine of equitable reformation to fix a scrivener’s error that would eliminate beneficiary’s right to death benefit provided under the policy’s original terms [Citation: *Blackshear v. Reliance Standard Life Insurance Co.*, 509 F.3d 634 (4<sup>th</sup> Cir. December 7, 2007)]. . . . . 1779

Plan administrator must petition court to seek reformation of plan document to correct alleged scrivener’s error; drafting mistake may not be dealt with as an ambiguity [Citation: *Young v. Verizon’s Bell Atlantic Cash Balance Plan*, 2008 WL 4066517 (No. 05 C-7314) (N.D.Ill. August 28, 2008)] . . . . . 1927

**Note: See the second trial opinion for this case (below), which is summarized at page 2307.**

**Cumulative Table of Contents for eRISA Update**

Court denied request for equitable reformation of document, determining there was no sufficient evidence of mutual understanding that new benefit formula was an error [Citation: *Cross v. Bragg*, 47 EBC 1784 (4<sup>th</sup> Cir. 2009) (not selected for publication in the Federal Reporter)]. . . . . 2218

Second trial with *de novo* standard of review yields judgment for defendant-employer; employer’s petition for reformation of document granted due to evidence of a scrivener’s error [Citation: *Young v. Verizon’s Bell Atlantic Cash Balance Plan (Phase II)*, 48 EBC 1011 (N.D.Ill. November 2, 2009)] . . . . . 2307

**Note: The Seventh Circuit has affirmed this opinion (see below), which is summarized at page 2512.**

Seventh Circuit affirms lower court’s grant of equitable relief to reform document due to evidence of a scrivener’s error [Citation: *Young v. Verizon’s Bell Atlantic Cash Balance Plan*, 615 F.3d 808 (7<sup>th</sup> Cir. August 10, 2010), affirming 667 F.Supp.2d 850 (48 EBC 1011) (N.D.Ill. 2009)] . . . . . 2512

¶5.335 - ERISA Enforcement: Recovery Against Non-Fiduciaries

Responsibility to perform ADP testing did not make service provider an ERISA fiduciary; preemption of breach of contract claim but no preemption for negligence claim; limitation clause in service contract protects service provider from negligence claim [Citation: *Flanagan Lieberman Hoffman & Swaim v. Transamerica Life and Annuity Company*, 29 EBC 1853 (S.D. Ohio August 26, 2002)] . . . . . 42

¶5.336 - Interference With Rights (ERISA §510)

Denial of opportunity to receive enhanced retirement benefits by failing to discharge employees from company facing imminent dissolution was *not* an ERISA §510 violation [Citation: *Bodine v. Employers Casualty Company*, 31 EBC 2409 (5<sup>th</sup> Cir. December 12, 2003)]. . . . . 364

ERISA §510 does not limit an employer’s ability to amend a plan to benefit one individual while refusing to amend the plan in the same manner to benefit other individuals [Citation: *Coomer v. Bethesda Hospital Inc.*, 32 EBC 2578 (6<sup>th</sup> Cir. June 1, 2004)]. . . . . 401

Back pay award is not appropriate relief for ERISA §510 violation because a back pay award does not constitute equitable relief within the meaning of ERISA §502(a)(3) [Citation: *Millsap v. McDonnell Douglas Corp.*, 32 EBC 2586 (10<sup>th</sup> Cir. May 21, 2004)]. . . . . 402

Plaintiffs could not sue under ERISA §510 for employer’s decision to structure business transaction as stock sale rather than asset sale, thereby affecting their rights to severance benefits under severance pay plan [Citation: *La Fata v. Raytheon Co.*, 35 EBC 1976 (3<sup>rd</sup> Cir. August 12, 2005) (*designated as an “unpublished” decision (i.e., nonprecedential)*)]. . . . . 825

Statute of limitations on ERISA §510 claim started when notice of termination was furnished to employees; elements of ERISA §510 claim and burden-of-proof shifting is outlined by court [Citation: *Jakimas v. Hoffman-LaRoche, Inc.*, 485 F.3d 770 (40 EBC 2217) (3<sup>rd</sup> Cir. May 14, 2007)]. . . 1480

ERISA’s anti-retaliation statute does not extend to unsolicited comments by employee regarding plan violations [Citation: *Edwards v. A.H. Cornell & Sons, Inc.*, 610 F.3d 217 (3<sup>rd</sup> Cir. June 24, 2010)] . . . . . 2434

Spinoff did not violate ERISA §510 because it was not motivated by desire to interfere with ERISA benefits [Citation: *Nauman v. Abbott Laboratories*, 669 F.3d 854 (7<sup>th</sup> Cir. February 3, 2012)] . . . . . 2932

**Cumulative Table of Contents for eRISA Update**

ERISA’s anti-retaliation statute extends to participant’s unsolicited statements made to the employer [Citation: *George v. Junior Achievement of Central Indiana, Inc.*, 694 F.3d 812 (7<sup>th</sup> Cir. September 4, 2012)]. . . . . 3003

Unsolicited email complaining about the employer’s practices affecting an ERISA plan is not an “inquiry” within the meaning of ERISA §510 [Citation: *Sexton v. Panel Processing, Inc.*, 754 F.3d 332 (6<sup>th</sup> Cir. May 9, 2014)]. . . . . 3386

ERISA equitable relief for retaliatory discharge under ERISA §510 may not duplicate jury award in parallel State law claim; interaction between right to jury trial under Seventh Amendment and resolution of ERISA equitable relief addressed [Citation: *Teutscher v. Woodson*, \_\_\_ F.3d \_\_\_ (9<sup>th</sup> Cir. August 26, 2016)]. . . . . 4066

¶5.337 - ERISA Preemption

Maryland wrongful discharge law not preempted where claim asserts that plaintiff was discharged for complaining about and for refusing to violate ERISA [Citation: *King v. Marriott International, Inc.*, 30 EBC 2619 (4<sup>th</sup> Cir. July 28, 2003)]. . . . . 246

No ERISA claim is available against nonfiduciary actuary regarding errors made by the actuary in its actuarial report to the trustee regarding the funding status of a defined benefit plan; state law claims not preempted [Citation: *Gerosa v. Savasta*, 30 EBC 1855 (2<sup>nd</sup> Cir. May 19, 2003), reversing 189 F.Supp.2d 137 (27 EBC 1929) (S.D.N.Y. March 13, 2002)]. . . . . 247

ERISA did not preempt state securities law claims relating to failure of majority shareholder to disclose material information about pending merger to minority shareholder, which could have affected the minority shareholder’s decision to exercise put option with respect to shares distributed from the ESOP [Citation: *Ervast v. Flexible Products Co.*, 31 EBC 1321 (11<sup>th</sup> Cir. September 24, 2003)]. . . . . 281

State law claims relating to improper plan administration with respect to erroneous distributions are preempted by ERISA [Citation: *Information Systems & Networks Corp. v. Principal Life Insurance Co.*, 32 EBC 2859 (4<sup>th</sup> Cir. June 8, 2004) (designated as “unpublished” opinion)]. . . . . 482

ERISA preemption suit not barred by Eleventh Amendment to US Constitution, but Eleventh Amendment precludes refund claim for taxes already paid [Citation: *Hattem v. Schwarzenegger*, 33 EBC 1556 (S.D.N.Y. May 26, 2004)]. . . . . 483

Complete preemption doctrine is limited to causes of action that are duplicated under ERISA §502(a); state court must determine if fraud claim is preempted by ERISA §514 [Citation: *Felix v. Lucent Technologies, Inc.*, 33 EBC 2486 (10<sup>th</sup> Cir. October 26, 2004)]. . . . . 582

Malpractice suit against non-fiduciary service provider for failure to timely furnish EGTRRA amendments is *not* preempted by ERISA [Citation: *Milkis Enterprises, Inc. v. Retirement Plan Consultants*, 34 EBC 2318 (E.D.Pa. April 19, 2005)]. . . . . 762

New York court rules city law requiring contractors to provide comparable benefits to domestic partners is preempted by ERISA [Citation: *In the Matter of Council of the City of New York v. Bloomberg*, 2006 N.Y. LEXIS 149 (36 EBC 2732) (N.Y.Ct.ofApps. February 14, 2006)]. . . . . 1012

ERISA does not preempt California UBTI statute with respect to ERISA-covered plans that have unrelated business taxable income [Citation: *Hattem v. Schwarznegger*, 37 EBC 2436 (2<sup>nd</sup> Cir. May 23, 2006), affirming 35 EBC 1540 (2005)]. . . . . 1088

Employee’s state law claims alleging he is entitled to “reliance damages” for misrepresentations is *not* preempted [Citation: *Thurman v. Pfizer Inc.*, 484 F.3d 855 (40 EBC 2089) (6<sup>th</sup> Cir. May 8, 2007)] . . . . . 1481

**Cumulative Table of Contents for eRISA Update**

State law negligence claims against plan actuary not expressly preempted by ERISA; plaintiffs must show that employees were intended third-party beneficiaries of contract with actuary, in accordance with California law [Citation: *Paulsen v. CNF, Inc.*, 559 F.3d 1061 (46 EBC 1481) (9<sup>th</sup> Cir. March 20, 2009)]. . . . . 2186

ERISA does not preempt a state court order requiring former spouse to turn over benefits received under ERISA plan [Citation: *Andochick, M.D. v. Byrd*, 709 F.3d 296 (4<sup>th</sup> Cir. March 4, 2013)]. . . . . 3127

ERISA does *not* preempt a state-law claim for tortious interference with contractual obligations relating to employer’s declaration that SERP was invalid in order to close acquisition [Citation: *Gardner v. Heartland Industrial Partners, LP*, 715 F.3d 609 (6<sup>th</sup> Cir. (Mich.) May 10, 2013)]. . . . . 3204

ERISA preempts Texas law that would allow participant to seek constructive trust over ex-spouse’s survivor annuity in favor of his estate in the event of his death [Citation: *Vanderkam v. Vanderkam*, 776 F.3d 883 (D.C.Cir. January 20, 2015)]. . . . . 3563

State law prohibiting provisions purporting to reserve discretion to insurers to interpret health and disability insurance policies was not preempted by ERISA [Citation: *Fontaine v. Metropolitan Life Insurance Co.*, 2015 WL 5173039 (7<sup>th</sup> Cir. September 4, 2015)]. . . . . 3729

Vermont law requiring reporting of claims information preempted by ERISA [Citation: *Gobeille v. Liberty Mutual Insurance Co.*, 136 S.Ct. 936 (March 1, 2016)]. . . . . 3854

¶5.340 - Jurisdiction/Venue

Plan’s venue limitation provision is permissible under ERISA [Citation: *Smith v. Aegon Companies Pension Plan*, 769 F.3d 922 (6<sup>th</sup> Cir. October 14, 2014)]. . . . . 3498

¶5.341(1) - Class Actions

Only named plaintiff needs to exhaust administrative remedies in class action for benefits due to alleged partial termination [Citation: *Matz v. Household International Tax Reduction Investment Plan*, 36 EBC 2525 (N.D. Ill. 2005), affirmed, *In re Household International Tax Reduction Plan*, 37 EBC 1016 (7<sup>th</sup> Cir. March 20, 2006)]. . . . . 1013

Individualized monetary damages for affected plans precludes certification under Rule 23(b)(2) [Citation: *Nationwide Life Insurance Company v. Haddock*, 460 Fed.Appx. 26 (52 EBC 1161) (2<sup>nd</sup> Cir. February 6, 2012)] . . . . . 2933

Seventh Circuit clarifies parameters for class actions relating to fiduciary breach actions under ERISA §502(a)(2) [Citation: *Abbott v. Lockheed Martin Corporation*, 725 F.3d 803 (7<sup>th</sup> Cir. (Ill.) August 7, 2013)]. . . . . 3250

¶5.341(2) - ERISA Enforcement: Choice of Law

Plan’s choice of law provision was disregarded in determining which State law applied to identify the proper surviving spouse for a participant’s benefits [Citation: *DaimlerChrysler v. Durden*, 37 EBC 2429 (6<sup>th</sup> Cir. May 26, 2006)]. . . . . 1089

¶5.341(3) - Attorney-Client Privilege. . . . . 1482

Fiduciary exception does not apply to insurance companies who act as fiduciaries to pay health benefit claims from their own assets [Citation: *Wachtel v. Health Net, Inc.*, 482 F.3d 225 (40 EBC 1545) (3<sup>rd</sup> Cir. 2007)]. . . . . 1482

DOL’s administrative document subpoenas enforceable; fiduciary exception to attorney-client privilege applied [Citation: *Solis v. Food Employers Labor Relations Association*, 644 F.3d 221 (4<sup>th</sup> Cir. May 4, 2011)]. . . . . 2751

**Cumulative Table of Contents for eRISA Update**

¶5.341(4) - ERISA Enforcement: Miscellaneous Procedural Issues - Arbitration  
 Retirees entitled to presumption of arbitrability with respect to claims for shutdown benefits [Citation: *United Steelworkers of America v. ASARCO*, 512 F.3d 555 (9<sup>th</sup> Cir. January 7, 2008)]. . . . . 1781

¶5.341(5) - Successor Liability  
 Third Circuit adopts Seventh Circuit approach to determining whether successor liability transfers in an asset sale with respect to contribution obligations under a multiemployer plan [Citation: *Einhorn v. M.L. Rubertson Construction Company*, 632 F.3d 89 (3<sup>rd</sup> Cir. January 21, 2011)]. . . . . 2710

¶5.341(6) - Miscellaneous Enforcement and Procedural Issues: Waiver of ERISA Claims  
 Anti-alienation provision under ERISA doesn't preclude waiver of contested ERISA pension claims; plaintiff was sufficiently apprised of claim at time he signed the release [Citation: *Hakim v. Accenture United States Pension Plan*, 717 F.3d 1042 (7<sup>th</sup> Cir. May 23, 2013)] . . . . . 3205  
 Beneficiaries of participant who died before annuity starting date but after his last day of work were not entitled to benefits under the guaranteed payment period under the annuity; release from claims signed by participant to receive early retirement incentive precluded equitable relief claim by beneficiaries [Citation: *O'Shea v. UPS Retirement Plan*, \_\_\_ F.3d \_\_\_ (1<sup>st</sup> Cir. September 13, 2016)]. . . . . 4068

¶5.345 - Recovery of Delinquent Contributions to a Multiemployer Plan (ERISA §515)  
 Written notice to a multiemployer plan of an oral agreement between employer and the union president to cease contributions as of a certain date could not be given effect over the written terms of the collective bargaining agreement [Citation: *Central States, Southeast and Southwest Areas Pension Fund v. Aufferberg Ford, Inc.*, 637 F.3d 718 (7<sup>th</sup> Cir. March 11, 2011)]. . . . . 2712

¶5.350(1) - Prohibited Transactions: Self-Dealing By A Fiduciary  
 Payment of compensation to IRA owner by company partly owned by the IRA was indirect use of plan assets under prohibited transaction rules for the benefit of a disqualified person/fiduciary [Citation: *Ellis v. Commissioner*, \_\_\_ F.3d \_\_\_ (8<sup>th</sup> Cir. June 5, 2015)]. . . . . 3606

¶5.350(3) - Use Of Plan Assets For Benefit Of Disqualified Person/Party-In-Interest  
 Loans made to companies in which owner of plan sponsor had a minority interest were prohibited transactions because the loans enhanced the value of securities in these companies, providing a benefit to a disqualified person in violation of IRC §4975(c)(1)(D) [Citation: *Rollins v. Commissioner*, 34 EBC 2523 (Tax Ct. November 15, 2004)]. . . . . 763

¶5.350(4) - Lending Transactions/Extensions of Credit (Other than Participant Loans)  
 Guarantee provided by IRA owner on financing needed for IRA to purchase start-up company with rollover assets resulted in prohibited transaction and disqualification of IRA [Citation: *Peek and Fleck v. Commissioner*, 140 T.C. No. 12 (May 9, 2013)]. . . . . 3207

¶5.371 - Title IV of ERISA (PBGC): Coverage/Premiums  
 Termination premium under ERISA §4006(a)(7) is not dischargeable in bankruptcy for employer seeking reorganization under Chapter 11 [Citation: *PBGC v. Oneida, Ltd.*, 562 F.3d 154, (2<sup>nd</sup> Cir. April 8, 2009)]. . . . . 2187

¶5.372 - Title IV: Plan Termination Procedures  
 Weekend/holiday rule does not apply to amendment adopted after the plan's termination date to determine the terms of the plan as of the termination date [Citation: *PBGC v. Town & Country Bank and Trust Company*, 54 EBC 2508 (W.D.Ky. October 4, 2012) (not reported in F.Supp.2d)]. . . . . 3059

¶5.404 - IRAs: Taxation Issues

**Cumulative Table of Contents for eRISA Update**

IRA may restrict permissible investments; taxpayer’s argument that he acted as conduit for IRA failed [Citation: *Dabney v. Commissioner*, 2014-108 T.C.M. (June 5, 2014)]. . . . . 3387

¶5.405 - Roth IRAs

Roth IRA cannot be a shareholder of an S corporation [*Taproot Administrative Services, Inc. v. Commissioner*, 133 T.C. No. 9 (2009)]. . . . . 2310

Tax Court rules that IRS may not take inconsistent positions on income tax issues and excise tax issues involving DISCs owned by Roth IRAs; rejects IRS contention that Notice 2004-8 applies [Citation: *Hellweg v. Commissioner*, 2011-58 T.C.M. (Tax Ct. March 9, 2011)]. . . . . 2713

¶5.421 - Definition of Church or Church Plan

A church agency, as described in ERISA §3(33)(C)(i), may maintain but cannot establish a church plan [Citation: *Kaplan v. Saint Peter’s Healthcare System*, \_\_\_ F.3d \_\_\_ (2015 WL 9487719) (3<sup>rd</sup> Cir. December 29, 2015)]. . . . . 3776

A church agency, as described in ERISA §3(33)(C)(i), may maintain but cannot establish a church plan [Citation: *Stapleton v. Advocate Health Care Network*, No. 15-1368, \_\_\_ F.3d \_\_\_ (7<sup>th</sup> Cir. March 17, 2016)]. . . . . 3855

¶5.510 - Taxation Issues For Nonqualified Plans

Electively deferred compensation under a nonqualified plan is subject to current taxation under Pennsylvania law, even if election is irrevocable [Citation: *Ignatz v. Commonwealth of Pennsylvania*, No. 136 F.R. 2003 (Commonwealth Ct. Pa. May 12, 2004)]. . . . . 403

¶5.513 - Title I of ERISA Issues for Nonqualified Plans

Nonqualified plan could not be read to require employer to fund the plan prior to filing for bankruptcy, so there is no secured, priority interest in bankruptcy with respect to the benefits owed under the plan [Citation: *Accardi v. IT Litigation Trust (In Re IT Group)*, 37 EBC 2589 (3<sup>rd</sup> Cir. May 25, 2006)] . . . . . 1091

Plan was not a top hat plan because plan covers employees who have no supervisory responsibility and little ability to negotiate their benefits and compensation [Citation: *Bakri v. Venture Mfg. Co.*, 473 F.3d 677 (6<sup>th</sup> Cir. 2007)]. . . . . 1318

¶5.630 - Disqualification of the Plan

Tax Court cases uphold IRS’ retroactive disqualification of plans for failure to amend timely for law changes [Citation: *Christy & Swan Profit Sharing Plan v. Commissioner*, T.C. Memo 2011-62 (Tax Ct. March 15, 2011); *Michael C. Hollen, D.D.S., P.C. v. Commissioner*, T.C. Memo 2011-2, 101 T.C.M. 1004 (January 4, 2011)]. . . . . 2715

Lack of evidence of ESOP having bank or brokerage account suggested that acquisitions of employer securities were annual additions, rather than attributable to a rollover account; no evidence of compensation or services by owner to justify treatment as eligible employee under the plan [Citation: *Fleming Cardiovascular, P.A. v. Commissioner*, T.C. Memo 2015-224 (Tax Ct. November 23, 2015)] . . . . . 3777

¶5.644 - Mergers, Transfers, Spinoffs

Broad language in spin-off documents unambiguously transferred assets and liabilities of a now-terminated plan to the spin-off company, even though the transferor company continued to administer the plan [Citation: *Lockheed Martin Corporation v. Retail Holdings*, 639 F.3d 63 (2<sup>nd</sup> Cir. April 26, 2011)]. . . . . 2753

¶5.700 - Age Discrimination Issues

**Cumulative Table of Contents for eRISA Update**

State disability plan was not age discriminatory even though deemed service credit was linked to an age-based normal retirement age [Citation: *Kentucky Retirement Systems v. EEOC*, 128 S.Ct. 2361 (2008)] ..... 1858

¶5.700(1) - Age Discrimination Issues: Cash Balance Plans  
 District court sides with *Onan* case, holding that cash balance plan may test for age discrimination on a contributions basis [Citation: *Tootle v. ARINC, Inc.*, 32 EBC 2665 (D.Md. June 2004)]. . . . . 404  
 Appellate court reverses age discrimination ruling on IBM cash balance plan, finding support in age discrimination statutes for analogizing cash balance plan to defined contributions [Citation: *Cooper v. IBM Personal Pension Plan*, 38 EBC 1801 (7th Cir. August 7, 2006), reversing, 274 F.Supp. (S.D.Ill. 2003)]. . . . . 1229  
**Note: The district court opinion that was reversed by this opinion is summarized at page 248.**

¶5.701 - Securities Laws  
 Court vacates SEC’s final rule expanding exemption for broker-dealers from the Investment Advisers Act [Citation: *Financial Planning Association v. SEC*, 482 F.3d 481 (D.C. Cir. March 30, 2007)] ..... 1484  
 Plan may not be party to a class action in a securities law litigation case because the plan is an “affiliate” of the employer [Citation: *In re Motorola Securities Litigation*, 644 F.3d 511 (7th Cir. May 4, 2011)] ..... 2754  
 Plans maintained by entity involved in securities litigation are not considered to be “affiliates” of the employer and may share in the litigation settlement [Citation: *In re American International Group, Inc. Securities Litigation (Rothstein v. American Internal Group, Inc. Incentive Savings Plan, et al)*, 837 F.3d 195 (2nd Cir. September 20, 2016)]. . . . . 4069

¶5.702 - Civil Rights Laws  
 Statute of limitations starts when retirement occurs with respect to suit brought under Title VII of Civil Rights Act seeking credit under plan’s bridging provisions with respect to the termination of employment in the 1950s and 1960s due to pregnancy [Citation: *Maki v. ALLETE Inc.*, 33 EBC 1868 (8th Cir. September 7, 2004)]. . . . . 584  
 Pregnancy Discrimination Act not necessarily violated when pension benefits are calculated in part on pre-PDA policy that gave less retirement credit for pregnancy leave than for general medical leave [Citation: *AT&T Corp. v. Hulteen*, 129 S.Ct. 1962 (46 EBC 2281) (May 18, 2009)]. . . . . 2188

¶5.707 - Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)  
 Sovereign immunity does not apply to USERRA cases brought against a State; money damages awarded to servicemember for improper failure to rehire [Citation: *U.S. v. Alabama Department of Mental Health and Mental Retardation*, 673 F.3d 1320 (11th Cir. March 16, 2012)] ..... 2933

¶5.715 - Defense of Marriage Act (DOMA)  
 Supreme Court strikes down section 3 of DOMA as unconstitutional; effect on ERISA plans and tax code spousal rights not clear without guidance [Citation: *U.S. v. Windsor*, 133 S.Ct. 2884 (June 26, 2013)]. . . . . 3209  
 State law of domicile recognized Canadian same-sex marriage through its civil union statute; surviving spouse entitled to survivor benefits under ERISA plan; governing state law in document not controlling [Citation: *Cozen O’Connor, P.C. v. Tobits*, 56 EBC 1213 (E.D.Pa. July 29, 2013)]. . . . . 3251

**Cumulative Table of Contents for eRISA Update**

**IRS FORMAL GUIDANCE: ANNOUNCEMENTS, NOTICES, PROCEDURES, RULINGS**

¶6.101 - Definition of Employee  
 Voluntary reclassification of workers relief program [Citation: *Announcement 2011-64*, I.R.B. 2011-41 (October 7, 2011), available at <http://www.irs.gov/pub/irs-drop/a-11-64.pdf>]. . . . . 2769  
 Voluntary reclassification of workers relief program [Citation: *Announcement 2012-45*, 2012-51 I.R.B. (December 17, 2012)]. . . . . 3061

¶6.108(1) - Miscellaneous Definitions And Procedures: Disaster Relief  
 IRS response to Katrina, Rita and Wilma Hurricanes which affects employee benefit plans and retirement savings vehicles [Citation: *Notice 2005-84, Notice 2005-73, Notice 2005-60, Announcement 2005-70, IR-2005-84, IR-2005-88, IR-2005-91, IR-2005-96, IR-2005-105, IR-2005-110, IR-2005-112, IR-2005-128*]. . . . . 826  
 Guidance on the implementation of KETRA with respect to special hardship, taxation, rollover, and loan rules provided to certain persons affected by Hurricane Katrina [Citation: *Notice 2005-92*, 2005-51 I.R.B. (December 19, 2005) (advance release on November 30, 2005)]. . . . . 938  
 Hurricane Katrina deadline further extended to August 28, 2006, for certain affected taxpayers [Citation: *Notice 2006-20*, 2006-10 I.R.B. (March 6, 2006) (advance release on February 17, 2006)]. . . 1014  
 Further extension is provided with respect to 2004 and 2005 individual income tax returns for Notice 2006-20 taxpayers affected by Katrina [Citation: *Notice 2006-56*, I.R. B. 2006-28 (July 10, 2006)] . . . . . 1093  
 October 16, 2006, extension date applies to additional taxpayers affected by Katrina [Citation: *IR-2006-135* (August 25, 2006)]. . . . . 1230  
 IRS provides relief from certain verification procedures that may be required for participant loans and hardship distributions to victims of Hurricane Sandy [Citation: *Announcement 2012-44*, 2012-49 I.R.B. (December 3, 2012)]. . . . . 3062  
 IRS provides relief from certain verification procedures that may be required for participant loans and hardship distributions to victims of Louisiana Storms [Citation: *Announcement 2016-30*, I.R.B. 2016-37 (September 12, 2016)]. . . . . 4071

¶6.108(2) - Miscellaneous Definitions and/or Procedures: Virtual Currency  
 IRS issues FAQs on the tax implications of virtual currency [Citation: *Notice 2014-21*, 2014-16 I.R.B. (April 14, 2014)]. . . . . 3335

¶6.109 - Definition of a Spouse  
 Effective date and plan amendment guidance for compliance with the *Windsor* decision recognizing same-sex marriages [Citation: *Notice 2014-19*, 2014-17 I.R.B. (April 21, 2014); *FAQs Regarding the Application of the Windsor Decision and Post-Windsor Published Guidance to Qualified Retirement Plans* ([www.irs.gov](http://www.irs.gov))]. . . . . 3336  
 IRS updated same-sex marriage guidance to incorporate the *Obergefell* decision and to clarify timing of amendments [Citation: *Notice 2015-86*, I.R.B. 2015-52 (December 28, 2015)]. . . . . 3778

¶6.113(1) - Minimum Coverage Requirements (IRC §410(b)): Transition Rule Under IRC §410(b)(6)(C)  
 Deemed passage of coverage under IRC §410(b)(6)(C) also applies to component plans for IRC §401(a)(4) testing purposes; if a significant change occurs during the transition period, the plan must resume coverage testing as of the date of such change [Citation: *Rev. Rul. 2004-11*, 2004-7 I.R.B. (February 17, 2004) (advance copy released on January 29, 2004)]. . . . . 282

¶6.116(1) - Disaggregation of Otherwise Excludable Employees. . . . . 1176



**Cumulative Table of Contents for eRISA Update**

Field memorandum addresses document language needed in 401(k) plans that elect to disaggregate otherwise excludable employees for ADP or ACP testing [Citation: IRS Memorandum from National Office to Mid-Atlantic EP Area Manager, February 1, 2006]..... 1176

¶6.120 - Nondiscrimination Testing Under IRC §401(a)(4)  
 IRS concerns about plan designs involving short service employees resurfaces; regulations must be “reasonably interpreted” to prevent discrimination in favor of HCEs [Citation: *Discriminatory Plan Designs Using Short Service*, IRS Employee Plan News, Issue No. 2016-5 (April 4, 2016)]. . 3859

¶6.120(1) - Nondiscrimination Testing Under IRC §401(a)(4): Cross-Testing  
 Revised sample language for prototype plans provides more flexibility than the original proposal [Listing of Required Modifications (LRM) for Defined Contribution Plans, LRM #94 on cross-tested profit sharing plans, available at the IRS website ([www.irs.gov/ep](http://www.irs.gov/ep))]. . . . . 1231

¶6.120(3) - Nondiscrimination Testing Under IRC §401(a)(4): Availability of Benefits, Rights and Features  
 Rights provided to HCEs to purchase life insurance contracts held for their benefit under plan are discriminatory where similar rights accorded to NHCs are of lesser value [Citation: *Rev. Rul. 2004-21*, 2004-10 I.R.B. (February 13, 2004)]. . . . . 366  
 IRS provides special BRF testing exception so that target date funds offered to participants may have deferred annuity options that might be available only to older participants [Citation: *Notice 2014-66*, 2014-46 I.R.B. (November 6, 2014); DOL Information Letter from Phyllis Borzi to Mark Iwry (October 23, 2014)]. . . . . 3499

¶6.120(4) - Nondiscrimination Testing under IRC §401(a)(4): Abusive Arrangements  
 IRS internal directive alerts agents to abusive use of “short-term” employees to satisfy coverage and nondiscrimination testing requirements, but also goes beyond statutory mandate [Citation: *Short Service Employees and Other Meaningful Benefit Schemes and Abuses*, Memorandum for Director, EP Examinations and Director, EP Determinations Redesign from Carol Gold, Director, Employee Plans (October 22, 2004)]. . . . . 586

¶6.120(5) - Nondiscrimination Testing Under IRC §401(a)(4): DB/DC Combo Plans  
 Temporary relief for certain DB/DC combo plans involving a “closed” DB plan [Citation: *Notice 2014-5*, 2014-2 I.R.B. (January 9, 2014)]. . . . . 3281  
 Extension of temporary relief for certain DB/DC combo plans involving a “closed” DB plan [Citation: *Notice 2015-28*, 2015-14 I.R.B. (April 2, 2015)]. . . . . 3564

¶6.121 - Permitted Disparity (IRC §§401(a)(5) and 401(l))  
 IRS issues 2011 covered compensation table [Citation: *Rev. Rul. 2011-3*, 2011-4 I.R.B. (January 24, 2011)] . . . . . 2618  
 IRS issues 2015 covered compensation table [Citation: *Rev. Rul. 2014-34*, 2014-52 I.R.B. (December 19, 2014)]. . . . . 3503

¶6.126 - Compensation Dollar Limit (IRC §401(a)(17))  
 Application of \$200,000 limit to retirees will not result in prohibited discrimination under IRC §401(a)(4) [Citation: *Rev. Rul. 2003-11*, 2003-3 I.R.B.]. . . . . 44

¶6.130(3) - Vesting: General Requirements: Vesting Schedules  
 IRS provides guidance on accelerated vesting schedules required for nonelective contributions under defined contribution plans, as enacted by the PPA 2006 [Citation: *Notice 2007-7*, Section VII (Q&A-28 through Q&A-30), 2007-7 I.R.B. (January 29, 2007) (advance release on January 10, 2007)] . . . . . 1178

**Cumulative Table of Contents for eRISA Update**

¶6.131 - Minimum Vesting Standards: Years of Service and Breaks in Service  
Years of service earned while plan was frozen count toward vesting in benefits accrued after the "unfreezing" of the plan [Citation: *Rev. Rul. 2003-65*, 2003-25 I.R.B. (June 23, 2003)]. . . . . 185

¶6.132 - Vesting: Forfeitures  
Restricting distributions from a medical reimbursement account under a profit sharing plan to the reimbursement of medical expenses is an impermissible forfeiture under the vesting rules [Citation: *Rev. Rul. 2005-55*, 2005-33 I.R.B. (August 15, 2005)]. . . . . 832

¶6.133(1) - Accrual of Benefits: Defined Benefit Plans  
IRS explains the application of the minimum accrual rules to a conversion from a traditional benefit formula to a lump-sum based benefit formula [Citation: *Rev. Rul. 2008-7*, 2008-7 I.R.B. (February 19, 2008)]. . . . . 1782

¶6.134(1) - Partial Termination  
IRS sets rebuttable presumption of partial termination when employer-initiated terminations are at least 20% of participants during applicable period [Citation: *Rev. Rul. 2007-43*, 2007-28 I.R.B. (July 9, 2007; advance release on June 26, 2007)]. . . . . 1485

¶6.136 - Cash Balance Plans and Other Hybrid Plans  
Transitional guidance on IRC §401(a)(13) and IRC §411(b)(5), as added by the PPA 2006 [Citation: Notice 2007-6, I.R.B. 2007-3 (January 15, 2007) (advance release on December 21, 2006)]. . . . . 1179

¶6.141(1) - General Consent Requirements under IRC §411(a)(11)  
Charging the accounts of former employees for their share of reasonable administrative expenses is not a significant detriment even though employer pays for the share of expenses incurred by the accounts of active employees [Citation: *Rev. Rul. 2004-10*, 2004-7 I.R.B. (February 17, 2003) (advance copy released on January 29, 2004)]. . . . . 285  
IRS provides guidance on the 180-day notice period and the requirement to explain the effect of failing to defer payment, as enacted by the PPA 2006 [Citation: Notice 2007-7, Section VIII (Q&A-31 through Q&A-33), 2007-7 I.R.B. (January 29, 2007) (advance release on January 10, 2007)]. . . . . 1183

¶6.141(2) - Joint and Survivor Annuities/Spousal Consent  
"Relative value" regulations postponed for plans that do not offer a "subsidized" QJSA relative to any lump sum option (or other payment method that is subject to IRC §417(e)(3)) [Citation: *Announcement 2004-58*, 2004-29 I.R.B. (June 30, 2004)]. . . . . 405  
Guidance on qualified optional survivor annuity (QOSA) requirements [Citation: *Notice 2008-30, Q&A-8 through Q&A-15*, 2008-12 I.R.B. (March 24, 2008)]. . . . . 1791  
IRS makes it easier for a defined contribution plan to offer deferred annuity options without immediately triggering the QJSA spousal consent rules [Citation: *Rev. Rul. 2012-3*, 2012-8 I.R.B. (February 21, 2012)]. . . . . 2935

¶6.143(1) - Minimum Distribution Requirements: General Requirements  
Postponement of 2002 temporary and proposed regulations for defined benefit plans and annuity contracts; special rules for governmental plans [Citation: *Notice 2003-2*, 2003-2 I.R.B.]. . . . . 45  
IRA reporting requirements with respect to waiver of 2009 minimum distribution requirement [Citation: *Notice 2009-9*, 2009-5 I.R.B. (February 2, 2009)]. . . . . 2018  
IRS provides guidance on waiver of 2009 RMDs for defined contribution plans and IRAs [Citation: *Notice 2009-82*, 2009-41 I.R.B. (October 9, 2009)]. . . . . 2220

¶6.143(2) - Minimum Distribution Requirements: Plan Documentation

**Cumulative Table of Contents for eRISA Update**

Postponement of defined benefit plan amendments for 2002 minimum distribution regulations [Citation: *Rev. Proc. 2003-10*, 2003-2 I.R.B.] . . . . . 46

¶6.143(4) - Minimum Distribution Requirements: Annuity Distributions  
 “De-risking” programs that allow retirees in pay status to convert annuity stream to lump sum payment will no longer be permitted under many circumstances [Citation: *Notice 2015-49*, I.R.B. 2015-30 (July 23, 2015)] . . . . . 3730

¶6.144 - Minimum Distributions: Special Rules for IRAs  
 Clarification of Notice 2002-27 reporting requirements: consistency of reporting method not required for all IRA owners; electronic delivery of statements [Citation: *Notice 2003-3*, 2003-2 I.R.B.] . . . 47

¶6.145(3) - Distribution Restrictions: Permissible Distribution Events for Pension Plans  
 IRS provides transition relief with respect to certain amendments to the normal retirement age; offers private letter ruling option for plans with normal retirement age less than 55 [Citation: *Notice 2007-69*, 2007-35 I.R.B. (August 10, 2007)] . . . . . 1592  
 Normal retirement age regulations postponed to 2013 for governmental plans [Citation: *Notice 2009-86*, I.R.B. 2009-46 (November 16, 2009)] . . . . . 2311  
 IRS will delay normal retirement age regulations for governmental pension plans; considering special normal retirement age rules for governmental plans [Citation: *Notice 2012-29*, 2012-18 I.R.B. (April 30, 2012)] . . . . . 2959

¶6.145(4) - Distribution Restrictions: Hardship Withdrawals  
 IRS provides guidance on expansion of hardship rules to encompass expenses incurred by a participant’s beneficiary, as required by the PPA 2006 [Citation: *Notice 2007-7*, Section III (Q&A-5), 2007-7 I.R.B. (January 29, 2007) (advance release on January 10, 2007)] . . . . . 1184  
 IRS posts reminder on plan sponsor’s obligations regarding hardship withdrawals [Citation: *It’s Up To Plan Sponsors To Track Loans, Hardship Distributions*, Retirement News for Employers (April 2, 2015, Edition)] . . . . . [3607](#)

¶6.146 - Distributions: Actuarial Assumptions/Present Value Determinations  
 IRS publishes methodology for determining the applicable interest rate under IRC §417(e) for making minimum present value determinations in post-2007 plan years [Citation: *Notice 2007-81*, 2007-44 I.R.B. (October 29, 2007)] . . . . . 1689  
 IRS provides guidance under IRC §417(e), as amended by PPA 2006, including the applicable mortality table for 2008 plan year, timing rules for establishing the applicable interest rate, and anti-cutback relief under IRC §411(d)(6) [Citation: *Rev. Rul. 2007-67*, 2007-48 I.R.B.(November 26, 2007)] . . . . . 1690  
 Interaction between new PPA assumptions under IRC §417(e) and the QJSA rules [Citation: *Notice 2008-30*, *Q&A-16 through Q&A-18*, 2008-12 I.R.B. (March 24, 2008)] . . . . . 1793  
 IRS clarifies how the vesting rules and IRC §415 limits apply to the annuitization of a direct rollover from a defined contribution plan to a defined benefit plan maintained by the same employer [Citation: *Rev. Rul. 2012-4*, 2012-8 I.R.B. (February 21, 2012)] . . . . . 2939

¶6.150(1) - Limitations On Contributions And Benefits (IRC §415): General Rules  
 Effective date of proposed 415 regulations clarified with respect to plan amendments or new plans adopted before the publication of final regulations; May 31, 2005, date no longer relevant [Citation: *Notice 2005-87*, I.R.B. 2005-50 (December 12, 2005) (advanced released on November 21, 2005)] . . . . . 941

**Cumulative Table of Contents for eRISA Update**

¶6.150(3) - Limitations On Contributions And Benefits: Defined Benefit Plans  
 Guidance on IRC §415(b) changes under the Pension Funding Equity Act of 2004 [Citation: *Notice 2004-78*, 2004-48 I.R.B. (November 12, 2004)]. . . . . 589  
 IRS provides guidance on new interest rate assumptions under IRC §415(b)(2)(E), as enacted by the PPA 2006, and options for correcting excess distributions paid as a result of the retroactive effective date [Citation: *Notice 2007-7*, Section II (Q&A-1 through Q&A-4), 2007-7 I.R.B. (January 29, 2007) (advance release on January 10, 2007)]. . . . . 1185

¶6.151 - Top Heavy Rules: Exemption for Certain Safe Harbor 401(k) Plans  
 Exemption from top heavy rules for safe harbor 401(k) plans is determined on a year by year basis, looking at the contributions made for that plan year [Citation: *Rev. Rul. 2004-13*, 2004-7 I.R.B. (February 17, 2003) (advance copy released on January 29, 2004)]. . . . . 286

¶6.153 - Applicable Dollar Limits  
 Adjusted dollar limits for 2012 [Citation: *IR-2011-103* (October, 20, 2011), available at <http://www.irs.gov/newsroom/article/0,,id=248482,00.html>; *IRS-published table of dollar limits for 2010-2012*, available at <http://www.irs.gov/retirement/article/0,,id=96461,00.html>]. . . . . 2821  
 Adjusted dollar limits for 2013 [Citation: *IR-2012-77* (October 18, 2012)]. . . . . 3064  
 Adjusted dollar limits for 2014 [Citation: *IR-2013-86* (October 31, 2013)]. . . . . 3283  
 Adjusted dollar limits for 2015 [Citation: *IR-2014-99* (October 23, 2014)]. . . . . 3505  
 Adjusted dollar limits for 2016 [Citation: *IR-2015-118* (October 21, 2015)]. . . . . 3780

¶6.161(2) - Definition of Cash or Deferred Arrangement: Automatic Enrollment  
 Plan may set automatic enrollment percentage at any level [Citation: *IRS General Information Letter to Mark Iwry* (March 17, 2004)]. . . . . 408  
 IRS’ sample automatic enrollment notice [Citation: [http://www.irs.gov/pub/irs-tege/sample\\_notice.pdf](http://www.irs.gov/pub/irs-tege/sample_notice.pdf)]  
 . . . . . 1693  
 Guidance on automatic contribution increases under an automatic contribution arrangement; sample plan language provided [Citation: *Rev. Rul. 2009-30* and *Notice 2009-65*, 2009-39 I.R.B. (September 25, 2009)]. . . . . 2226

¶6.164 - Roth 401(k) Contributions  
 IRS releases sample amendment for plans that accept Roth 401(k) contributions [Citation: *Notice 2006-44*, 2006-20 I.R.B. (May 15, 2006; advance release on April 20, 2006)]. . . . . 1016

¶6.165 - Safe Harbor 401(k) Plans. . . . . 1487  
 Mid-year changes to safe harbor 401(k) plan to add Roth 401(k) feature or hardship withdrawals [Citation: *Announcement 2007-59*, 2007-25 I.R.B. (June 18, 2007; advance release on May 31, 2007)]  
 . . . . . 1487  
 IRS provides guidance on mid-year changes to safe harbor plans and safe harbor notices [Citation: *Notice 2016-16*, I.R.B. 2016-7 (February 16, 2016)]. . . . . 3862

¶6.166 - Eligible Combined Plans (“DB-K” Plans) Under IRC §414(x)  
 IRS solicits comments from public on issues that should be addressed in IRC §414(x) guidance [Citation: *Notice 2009-71*, 2009-35 I.R.B. (August 31, 2009)]. . . . . 2236

¶6.170 - Minimum Funding Requirements  
 Statute of limitations for collecting the IRC §4971 excise tax starts with the filing of Form 5330 [Citation: *Rev. Rul. 2003-88*, 2003-32 I.R.B. (August 11, 2003)]. . . . . 186

**Cumulative Table of Contents for eRISA Update**

Procedures for requesting an extension of an amortization period [Citation: *Rev. Proc. 2004-44*, 2004-31 I.R.B. (July 7, 2004)]. . . . . 409

Restrictions placed on plan amendments following election of alternative deficit reduction contribution under IRC §412(l)(12) [Citation: *Notice 2004-59*, I.R.B. 2004-36 (September 7, 2004)]. . . . . 484

¶6.170(1) - Minimum Funding Requirements: Funding Waivers

Revised procedures for requesting minimum funding waivers under IRC §412(d) [Citation: *Rev. Proc. 2004-15*, 2004-7 I.R.B. (February 17, 2004) (advance copy released on January 29, 2004)]. . . . . 288

¶6.170(2) - Minimum Funding Requirements: Interest Rate Assumptions

IRS modifies weighted average interest rate permissible ranges to reflect Pension Protection Act of 2006 [Citation: *Notice 2006-75*, 2006-36 I.R.B. (September 5, 2006; advance release on August 21, 2006)] . . . . . 1234

IRS publishes methodology for determining corporate bond yield curve under PPA 2006 minimum funding rules, and the 24-month average yield curve segment rates [Citation: *Notice 2007-81*, 2007-44 I.R.B. (October 29, 2007)]. . . . . 1699

IRS publishes 25-year averages for segment rates to implement segment rate stabilization rule under MAP-21 [Citation: *Notice 2012-55*, 2012-36 I.R.B. (August 31, 2012)]. . . . . 3004

Formal guidance from IRS on the MAP-21 interest rate stabilization rule, including application of stabilized rates to various calculations, election requirements, and reporting rules [Citation: *Notice 2012-61*, 2012-42 I.R.B. (October 15, 2012)]. . . . . 3005

Formal guidance from IRS on the HATFA amendments to the MAP-21 interest rate stabilization rule, including elections to delay HATFA rates to the 2014 plan year, Schedule SB reporting issues, and the impact of the HATFA rates on IRC §436 determinations for the 2013 and 2014 plan years [Citation: *Notice 2014-53*, 2014-40 I.R.B. (September 25, 2014)]. . . . . 3449

¶6.170(3) - Minimum Funding Requirements: Mortality Assumptions

Procedures for requesting approval of plan-specific substitute mortality tables [Citation: *Rev. Proc. 2007-37*, 2007-25 I.R.B. (June 18, 2007; advance release on May 31, 2007)]. . . . . 1487

Mortality table for disabled participants: continued reliance on Rev. Rul. 96-7 [Citation: *Notice 2008-29*, 2008-12 I.R.B. (March 24, 2008)]. . . . . 1794

Static mortality tables released for valuation dates occurring in 2009 through 2013; revision of procedures for requesting approval of substitute mortality tables [Citation: *Notice 2008-85 and Rev. Proc. 2008-62* (advance release on September 30, 2008)]. . . . . 1930

Static mortality tables released for valuation dates occurring in 2014 and 2015; applicable to IRC §417(e) determinations for annuity starting dates that occur in stability periods beginning in 2014 and 2015; comments requested [Citation: *Notice 2013-49*, 2013-32 I.R.B. (August 5, 2013)]. . . . . 3253

Static mortality tables released for valuation dates occurring in 2016; applicable to IRC §417(e) determinations for annuity starting dates that occur in stability periods beginning in 2016 [Citation: *Notice 2015-53*, 2015-33 I.R.B. (August 17, 2015)]. . . . . 3732

Static mortality tables released for valuation dates occurring in 2017; applicable to IRC §417(e) determinations for annuity starting dates that occur in stability periods beginning in 2017 [Citation: *Notice 2016-50*, 2016-38 I.R.B. (September 19, 2016)]. . . . . 4073

¶6.170(4) - Minimum Funding Requirements: General Requirements

Uniform delay of IRC §430 regulatory effective dates to 2009 [Citation: *Notice 2008-21*, 2008-7 I.R.B. (February 19, 2008)]. . . . . 1795

**Cumulative Table of Contents for eRISA Update**

IRS guidance on expected earnings assumption for determining the actuarial value of plan assets under IRC §430(g)(3), as amended by the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) [Citation: *Notice 2009-22*, 2009-14 I.R.B. (April 3, 2009)]. . . . . 2146

Changes to funding method relating to change in valuation software or change in the plan’s enrolled actuary [Citation: *Announcement 2010-3*, 2010-4 I.R.B. (January 25, 2010)]. . . . . 2312

IRS announces that plans may take advantage of the funding elections allowed by the Pension Relief Act of 2010 even if the Form 5500 (with Schedule SB or MB) has been filed before IRS guidance is issued [Citation: *Notice 2010-55*, *Notice 2010-56*, 2010-33 I.R.B. (August 13, 2010)]. . . . . 2516

IRS guidance on special amortization elections allowed under the Pension Relief Act of 2010 for 2008-2011 plan years [Citation: *Notice 2011-3*, 2011-2 I.R.B. (January 10, 2011)]. . . . . 2620

Changes to funding method for post-2012 plan years relating to change in the plan’s enrolled actuary [Citation: *Announcement 2015-3*, 2015-3 I.R.B. (January 16, 2015)]. . . . . 3507

¶6.170(5) - Minimum Funding Standards: Special Elections

Election of alternative funding schedule under PPA 2006 for certain airline businesses [Citation: *Announcement 2006-70*, 2006-40 I.R.B. (October 2, 2006; advance release on September 15, 2006)] . . . . . 1235

¶6.170(7) - Minimum Funding Requirements: Multiemployer Plans

Guidance relating to elections described in section 204 and 205 of WRERA and notice required if plan sponsor makes an election under section 204 [Citation: *Notice 2009-31*, 2009-16 I.R.B. (April 17, 2009), *Notice 2009-42*, 2009-20 I.R.B. (May 15, 2009)]. . . . . 2189

Guidance relating to revocation of election described in section 204 of WRERA [Citation: *Rev. Proc. 2009-43*, 2009-40 I.R.B. (October 2, 2009)]. . . . . 2240

Procedures for requesting approval of a proposed benefit suspension under a multiemployer defined benefit plan in critical and declining status, as permitted under IRC §432(e)(9); model notice to participants provided [Citation: *Rev. Proc. 2015-34*, 2015-26 I.R.B. (June 25, 2015)]. . . . . 3608

Procedures for requesting approval of a proposed benefit suspension under a multiemployer defined benefit plan in critical and declining status, as permitted under IRC §432(e)(9); model notice to participants provided [Citation: *Rev. Proc. 2016-27*, I.R.B. 2016-19 (May 9, 2016)]. . . . . 3988

¶6.170(8) - Minimum Funding Requirements: CSEC Act Plans

Guidance on certain issues relating to the Cooperative and Small Employer Charity Pension Flexibility Act (CSEC Act) [Citation: *Notice 2015-58*, I.R.B. 2015-37 (September 10, 2015)]. . . . . 3733

¶6.172 - Benefit Restrictions For Underfunded Pension Plans (IRC §436)

Uniform delay of IRC §§430 and 436 regulatory effective dates to 2009; guidance for plans with a valuation date on the last day of the plan year [Citation: *Notice 2008-21*, 2008-7 I.R.B. (February 19, 2008)]. . . . . 1796

Modification of transitional rule for plans with a valuation date on the last day of the plan year; reasonable interpretation guidance in performing 2008 AFTAP determinations [Citation: *Notice 2008-73*, 2008-38 I.R.B. (September 22, 2008), *IRS Employee Plans News (Special Edition: September 18, 2008)*, available at <http://www.irs.gov/retirement/article/0,,id=96731,00.html>]. . . . . 1931

IRS provides guidance on the ERISA §101(j) notice requirement when a certain benefit restrictions under IRC §436 go into effect [Citation: *Notice 2012-46*, I.R.B. 2012-30 (July 20, 2012)]. . . . 3018

¶6.180 - Definition of Employer Securities

**Cumulative Table of Contents for eRISA Update**

Definition of “readily tradable” employer securities prescribed by IRC §401(a)(35) regulations applicable to other specified tax code sections [Citation: *Notice 2011-19*, I.R.B. 2011-11 (March 14, 2011) (<http://www.irs.gov/pub/irs-irbs/irb11-11.pdf>)]. . . . . 2717

¶6.184 - S Corporation ESOPs

S corporation election not terminated if stock is directly rolled to IRA and immediately repurchased by corporation [Citation: *Rev. Proc. 2003-23* (February 21, 2003)]. . . . . 128

S corporation election not terminated if stock is directly rolled to IRA and immediately repurchased by corporation or by ESOP [Citation: *Rev. Proc. 2004-14*, 2004-7 I.R.B. (February 17, 2004)]. . . . . 367

¶6.184(1) - S Corporation ESOPs: Prohibited Allocations Under IRC §409(p)

Abusive S corporation ESOPs identified by IRS [Citation: *Rev. Rul. 2003-6*, 2003-3 I.R.B.]. . . . . 48

¶6.184(2) - S Corporation ESOPs: Synthetic Equity

Ownership structure designed to siphon off business profits of S Corp to an individual in the form of deferred compensation creates synthetic equity that triggers nonallocation year under IRC §409(p) and applicable excise taxes under IRC §4979A [Citation: *Rev. Rul. 2004-4*, 2004-6 I.R.B. (February 9, 2004; advance release on January 23, 2004)]. . . . . 368

¶6.185 - Diversification Rights (IRC §401(a)(35)/ERISA §204(j))

Transitional guidance on IRC §401(a)(35) diversification rights provided by IRS [Citation: *Notice 2006-107*, 2006-51 I.R.B. (December 18, 2006) (advance release on November 30, 2006)]. . . . . 1187

¶6.190 - Exclusive Benefit Rule

Supplemental guidance for PEOs that satisfy conditions for relief under *Rev. Proc. 2002-21* regarding exclusive benefit violations for plans covering worksite employees of client organizations [Citation: *Rev. Proc. 2003-86*, 2003-50 I.R.B. (November 25, 2003)]. . . . . 294

Transfer of sponsorship of plan to unrelated taxpayer with no connection to non-plan business transaction violates exclusive benefit rule [Citation: *Rev. Rul. 2008-45*, 2008-34 I.R.B. (August 25, 2008)]. . . . . 1933

¶6.194 - Mergers and Transfers (IRC §§401(a)(12) and 414(l)/ERISA §208)

Transfers from qualified plans to nonqualified foreign trust or to Puerto Rico trust [Citation: *Rev. Rul. 2008-40*, 2008-30 I.R.B. (July 28, 2008; advance release on July 1, 2008)]. . . . . 1860

Transition relief for certain transfers from qualified plans to nonqualified foreign trust or to Puerto Rico trust extended for one year [Citation: *Rev. Rul. 2011-1*, 2011-2 I.R.B. (January 10, 2011)]. . . . . 2638

Extension of transition relief under *Rev. Rul. 2008-40* for transfers from qualified plans to Puerto Rico plans described in ERISA §1022(i)(1) [Citation: *Notice 2012-6*, 2012-3 I.R.B. (January 16, 2012)]. . . . . 2823

¶6.195 - Anti-Cutback Rules

IRS grants IRC §7805(b) relief for plans that received favorable determinations on amendments found by the Supreme Court to be in violation of ERISA’s anti-cutback rule in *Central Laborers’ Pension Fund v. Heinz* [Citation: *Rev. Proc. 2005-23*, I.R.B. 2005-18 (April 18, 2005)]. . . . . 651

IRS extends to January 1, 2007, the deadline for operational compliance with the conditions under *Rev. Proc. 2005-23* for IRC §7805(b) relief on amendments which violated the Central Laborers’ holding [Citation: *Rev. Proc. 2005-76*, I.R.B. 2005-50 (December 12, 2005) (advance release on November 25, 2005)]. . . . . 942

¶6.195(1) - Anti-Cutback Rules: Reduction of Accrued Benefit

**Cumulative Table of Contents for eRISA Update**

Extended anti-cutback relief will be provided to statutory hybrid plans that need to be amended to comply with future guidance on market rate of interest [Citation: *Announcement 2009-82*, 2009-48 I.R.B. (November 30, 2009)] . . . . . 2314

¶6.195(2) - Anti-Cutback Rules: Early Retirement Benefits and Retirement-Type Subsidies  
Proposed regulations will be released to address the protection of early retirement benefits and retirement-type subsidies, and to resolve conflicting court opinions [Citation: *Notice 2003-10* (advance release) . . . . . 46

¶6.195(3) - Anti-cutback Rules: Protecting Optional Forms of Benefit/Early Retirement/Retirement-Type Subsidies  
ESOPs that become subject to IRC §401(a)(35) may eliminate option provided under IRC §401(a)(28) to receive distribution in lieu of diversifying employer stock investments [Citation: *Notice 2013-17*, 2013-20 I.R.B. (May 13, 2013)] . . . . . 3216

¶6.200 - Taxation of Distributions: General Rules  
Taxation on qualified plan distributions cannot be avoided by using funds to pay health insurance premiums or to cover medical reimbursement [Citation: *Rev. Rul. 2003-62*, 2003-25 I.R.B. (June 25, 2003)] . . . . . 188

¶6.200(1) - Taxation of Distributions: General Rules (IRC §§72 and 402)  
IRS addresses the IRC §72 recovery of basis rules in the context of a “phased retirement” payment under a defined benefit plan [Citation: *Notice 2016-39*, 2016-26 I.R.B. (June 27, 2016)] . . . . . 3990

¶6.200(2) - Taxation of Distributions: Nonresident Aliens  
Special method prescribed for calculating portion of defined benefit plan payments treated as income from sources outside of the United States [Citation: *Rev. Proc. 2004-37*, 2004-26 I.R.B. (June 9, 2004)] . . . . . 410  
U.S. source annuity income taxed under IRC §871 for nonresident aliens and under IRC §1 for bona fide residents of Puerto Rico [Citation: *Rev. Rul. 2004-75*, I.R.B. 2004-31 (August 2, 2004)] . . . . . 485

¶6.200(3) - Taxation of Distributions: Exclusion From Gross Income Under IRC §402(i)  
IRS provides guidance on income exclusion under IRC §402(i), as enacted by the PPA 2006, for distributions used to pay qualified health insurance premiums of an eligible retired public safety officer [Citation: *Notice 2007-7*, Section VI (Q&A-20 through Q&A-27), 2007-7 I.R.B. (January 29, 2007) (advance release on January 10, 2007)] . . . . . 1192

¶6.201(1) - Taxation of Distributions: Employer Securities: Net Unrealized Appreciation  
Basis in employer securities issued by S corporation includes adjustments under IRC §1367 with respect to distributive share of S corporation income/loss items [Citation: *Rev. Rul. 2003-27*, February 21, 2003]. . . . . 129

¶6.202 - Taxation Issues: Benefits Under Foreign Plans  
IRS simplifies election procedures for deferring taxation on accrued income in Canadian retirement plans [Citation: *Rev. Proc. 2014-55*, I.R.B. 2014-44 (October 23, 2014)] . . . . . 3457

¶6.208 - FICA and FUTA: Nonqualified Deferred Compensation  
FICA and FUTA treatment of transfers incident to divorce of nonstatutory stock options or nonqualified deferred compensation [Citation: *Rev. Rul. 2004-60*, 2004-24 I.R.B. (June 7, 2004)] . . . . . 414



**Cumulative Table of Contents for eRISA Update**

¶6.210(2) - Premature Distribution Penalty: Age 55 Exception  
 IRS provides guidance on reduction of age requirement to 50 for certain public safety workers, as enacted by the PPA 2006 [Citation: Notice 2007-7, Section IV (Q&A-6 through Q&A-10), 2007-7 I.R.B. (January 29, 2007) (advance release on January 10, 2007)]. . . . . 1193

¶6.220(1) - Rollovers: 60-Day Rollover Period  
 Procedures for applying to IRS for waiver of 60-day rollover requirement; automatic approval granted for certain errors committed by financial institutions receiving rollover funds [Citation: *Rev. Proc. 2003-16* (advance release)]. . . . . 51  
 IRS allows taxpayers to “self-certify” their entitlement to extension of 60-day rollover period under certain circumstances [Citation: *Rev. Proc. 2016-47, 2016-37* I.R.B. (September 12, 2016)].. 4074

¶6.220(3) - Automatic Rollovers Under IRC §401(a)(31)(B)  
 IRS provides guidance on the automatic rollover provisions [Citation: *Notice 2005-5, 2005-3* I.R.B. (January 17, 2005) (advance released on December 28, 2004)]. . . . . 592

¶6.220(4) - Rollovers to Roth IRAs  
 Guidance on PPA amendment to allow non-Roth funds in eligible retirement plans to be rolled over to Roth IRAs [Citation: *Notice 2008-30, Q&A-1 through Q&A-7, 2008-12* I.R.B. (March 24, 2008)]  
 . . . . . 1798  
 Additional guidance on PPA amendment to allow non-Roth funds in eligible retirement plans to be rolled over to Roth IRAs [Citation: *Notice 2009-75, 2009-39* I.R.B. (September 25, 2009)]. . . . . 2242

¶6.220(5) - Rollover Notice under IRC §402(f) (“402(f) Notice”)  
 IRS updates the model 402(f) notice to reflect law changes enacted since 2001 [Citation: *Notice 2009-68, 2009-39* I.R.B. (September 25, 2009)]. . . . . 2244  
 IRS updates the model 402(f) notice to reflect guidance on the allocation of pre-tax and after-tax amounts, in-plan Roth conversions, and other clarifications [Citation: *Notice 2014-74, 2014-50* I.R.B. (December 4, 2014)]. . . . . 3509

¶6.220(7) - Rollovers Involving After-Tax Amounts  
 IRS clarifies how the character of direct rollovers is determined when a disbursement of benefits includes both after-tax and pre-tax amounts and part of the distribution is disbursed to the recipient; addresses multiple direct rollover recipients; reverses position in Roth regulations; will modify safe harbor rollover notice accordingly [Citation: *Notice 2014-54, 2014-41* I.R.B. (October 2, 2014); Prop. Treas. Reg. §1.402A-1, Q&A-5(a), 79 F.R. 56310-56312 (September 19, 2014)]. . . . . 3460

**Cumulative Table of Contents for eRISA Update**

¶6.222 - Special Rollover Rules for IRAs (IRC §408(d))  
 IRS will adopt Tax Court’s interpretation of the once-per-year limitation on IRA rollovers, but will not enforce it until 2015 [Citation: Announcement 2014-15, . . . . . 3341  
 IRS will apply once-per-year limitation on IRA rollovers by disregarding 2014 rollovers for 2015 rollovers made with a different IRA [Citation: *Announcement 2014-32*, I.R.B. 2014-48 (November 20, 2014)]. . . . . 3525

¶6.223 - Miscellaneous Rollover Issues  
 IRS simplifies due diligence standards that may be used by a plan administrator to reasonably conclude that a rollover being accepted by the plan is valid [Citation: *Rev. Rul. 2014-9*, 2014-17 I.R.B. (April 21, 2014)]. . . . . 3342

¶6.225 - Rollovers: Treatment under the Recipient Plan  
 Rollovers may be distributable under the recipient plan at any time; rollovers take on character of recipient plan for QJSA, minimum distribution, and IRC §72(t) penalty tax purposes [Citation: *Rev. Rul. 2004-12*, 2004-7 I.R.B. (February 17, 2004) (advance copy released on January 29, 2004)] . . . . . 297

¶6.226 - Rollovers: Rollovers By Nonspouse Beneficiaries  
 IRS provides guidance on nonspouse beneficiary rollovers pursuant to IRC §402(c)(11), as enacted by the PPA 2006 [Citation: Notice 2007-7, Section V (Q&A-11 through Q&A-19), 2007-7 I.R.B. (January 29, 2007) (advance release on January 10, 2007)]. . . . . 1194

¶6.231(1) - Deduction Limits: Defined Benefit Plans: General Rules  
 IRS clarifies the application of certain changes made by the PPA 2006 to the deduction limits for defined benefit plan contributions [Citation: Notice 2007-28, Q&A-1 through Q&A-5, 2007-14 I.R.B. (April 2, 2007; advance release on March 13, 2007)]. . . . . 1321  
 IRS clarifies the application of certain changes made by the PPA 2006 to the deduction limit under IRC §404(a)(7) [Citation: Notice 2007-28, Q&A-6 through Q&A-9, 2007-14 I.R.B. (April 2, 2007; advance release on March 13, 2007)]. . . . . 1323

¶6.231(2) - Deduction Limits: Defined Benefit Plans - Contributions Applied Toward Life Insurance Premiums  
 Contributions made to pay premiums on excess death benefits are not deductible until used to pay future premiums [Citation: *Rev. Rul. 2004-20*, 2004-10 I.R.B. (February 13, 2004)]. . . . . 372

¶6.233 - Deduction Rules: Dividend Deduction under IRC §404(k)  
 Reporting IRC §404(k) dividends in 2009 and later [Citation: *Announcement 2008-56*, 2008-26 I.R.B. (June 30, 2008)]. . . . . 1863

¶6.236 - Employer Deductions: Welfare Benefit Plans (IRC §§419 and 419A)  
 IRS warns of arrangements that are purported to satisfy the collective bargaining exception from the account limits under IRC §§419 and 419A [Citation: *Notice 2003-24*, 2003-18 I.R.B. (May 5, 2003)] . . . . . 189  
 IRS discusses the proper treatment of premiums paid on cash value life insurance policies acquired by fund [Citation: *Rev. Rul. 2007-65*, 2007-45 I.R.B. (November 5, 2007)]. . . . . 1701  
 Listed transaction treatment for certain welfare trust arrangements/guidance on proper tax treatment of certain welfare benefit funds [Citation: *Notice 2007-83*, 2007-45 I.R.B., and *Notice 2007-84*, 2007-45 I.R.B. (November 5, 2007)]. . . . . 1703

**Cumulative Table of Contents for eRISA Update**

¶6.240(1) - Limits on Elective Deferrals  
 Timing of amendments to reflect the requirement to distribute gap period earnings [Citation: *Notice 2008-30, Q&A-19 through Q&A-21*, 2008-12 I.R.B. (March 24, 2008)]. . . . . 1801

¶6.240(3) - Elective Deferrals: Designated Roth Contributions  
 IRS provides guidance on Internal Roth Conversions of distributable non-Roth funds held inside a 401(k), 403(b) plan or governmental 457(b) plan [Citation: *Notice 2010-84*, 2010-51 I.R.B. (December 20, 2010), *Retirement News for Employers (Fall 2010 Edition)*]. . . . . 2639  
 IRS provides guidance on Internal Roth Conversions of nondistributable non-Roth funds held inside a 401(k), 403(b) plan or governmental 457(b) plan; supplements guidance under Notice 2010-84 regarding Internal Roth Conversions [Citation: *Notice 2013-74*, 2013-52 I.R.B. (December 19, 2013)] . . . . . 3285

¶6.242 - Participant Loans  
 IRS posts reminder on plan sponsor’s obligations regarding participant loans [Citation: *It’s Up To Plan Sponsors To Track Loans, Hardship Distributions*, *Retirement News for Employers* (April 2, 2015, Edition)]. . . . . 3610

¶6.247(1) - Distributions Involving Insurance Contracts  
 Interim method prescribed for determining fair market value of insurance contracts, pending issuance of final regulations [Citation: *Rev. Proc. 2004-16*, 2004-10 I.R.B. (February 13, 2004)]. . . . . 374  
 New safe harbor method for determining fair market value of insurance contracts replace interim method under Rev. Proc. 2004-16 [Citation: *Rev. Proc. 2005-25*, 2005-17 I.R.B. (April 8, 2005)]. . . . . 655

¶6.247(2) - Fully-insured plans (IRC §412(i))  
 Plan is not a fully-insured plan under IRC §412(i) if benefits payable at normal retirement age under the contract exceed the benefits payable under the terms of the plan [Citation: *Rev. Rul. 2004-20*, 2004-10 I.R.B. (February 13, 2004)]. . . . . 375

¶6.253 - Loss Deductions By Individuals  
 Overpayment of benefits that are repaid to plan are deductible by participant under IRC §165; no deduction for reduction of future benefit payments [Citation: *Rev. Rul. 2002-84*, 2002-50 I.R.B.].53

¶6.256 - Group Trusts  
 Group trust ruling (Rev. Rul. 81-100) expanded to cover governmental section 457(b) plans [Citation: *Rev. Rul. 2004-67*, 2004-28 I.R.B. (June 22, 2004)]. . . . . 416  
 Group trust ruling (Rev. Rul. 81-100) expanded; exclusive benefit rule and recordkeeping standards added; clarification of application to 403(b) plans [Citation: *Rev. Rul. 2011-1*, 2011-2 I.R.B. (January 10, 2011)]. . . . . 2651  
 Form 5316 released [Citation: *Form 5316, Application for Group or Pooled Trust Ruling*, available at <http://www.irs.gov/pub/irs-pdf/f5316.pdf>]. . . . . 2770  
 Expansion of relief under Rev. Rul. 2011-1 for certain trusts containing ERISA §1022(i)(1) plan investments and extended amendment deadline for governmental retiree benefit plans [Citation: *Notice 2012-6*, 2012-3 I.R.B. (January 16, 2012)]. . . . . 2823  
 Group trust ruling (Rev. Rul. 81-100) expanded; transition relief for Puerto Plans held in group trusts as of January 10, 2011 and for insurance company separate accounts [Citation: *Rev. Rul. 2014-24*, 2014-37 I.R.B. (September 4, 2014)]. . . . . 3468

¶6.257 - Paid Time off (PTO) Plans

**Cumulative Table of Contents for eRISA Update**

Ruling discusses tax treatment and qualification issues surrounding the deferral (either on an elective or nonelective basis) of the dollar equivalent of paid unused leave [Citation: *Rev. Rul. 2009-31, Rev. Rul. 2009-32, 2009-39 I.R.B. (September 25, 2009)*]. . . . . 2261

¶6.258 - Special Tax Rules for Expatriates  
Deemed distributions (or alternative special tax treatment) for certain individuals who relinquish U.S. citizenship or permanent U.S. residence for tax purposes [Citation: *Notice 2009-85, 2009-45 I.R.B. (October 15, 2009)*]. . . . . 2315

¶6.260(1) - Estate Tax Issues Relating To Retirement Plans: QTIP Elections  
Update of ruling regarding QTIP elections with respect to IRAs or defined contribution plan interests [Citation: *Rev. Rul. 2006-26, 2006-22 (May 30, 2006)*]. . . . . 1094

¶6.271 - Plan Termination: Surplus Assets and Reversions  
Surplus assets in excess of 25% of total surplus that are transferred to qualified replacement plan under IRC §4980(d) are not subject to reversion excise tax under IRC §4980; IRS private letter ruling position reversed [Citation: *Rev. Rul. 2003-85, 2003-32 I.R.B. (August 11, 2003)*]. . . . . 191

¶6.272 - Plan Termination: Missing Participants  
IRS will no longer forward letters aimed at finding participants or beneficiaries owed money under a plan [Citation: *Rev. Proc. 2012-35, 2012-37 I.R.B. (September 10, 2012)*]. . . . . 3027

¶6.300 - Form 5500 Reporting Requirements  
With elimination of Schedule P, filing of Form 5500 series starts statute of limitations on taxable year of trust [Citation: *Announcement 2007-63, 2007-30 I.R.B. (July 23, 2007; advance release on June 29, 2007)*]. . . . . 1488  
Procedures for requesting waiver of electronic filing requirement for Forms 5500-EZ and 8955-SSA [Citation: *Rev. Proc. 2015-47, 2015-39 I.R.B. (September 24, 2015)*]. . . . . 3734  
2015 Form 5500 series includes new IRS compliance questions [Citation: *Frequently Asked Questions Regarding the IRS Compliance Questions on the Form 5500- Series Returns, [www.irs.gov](http://www.irs.gov); 2015 Instructions for Form 5500*]. . . . . 3782  
**Note: After publication of these FAQs, the IRS instructed filers NOT to complete the additional questions for 2015 returns.**

¶6.300(1) - Form 5500 Reporting Requirements: Schedule B  
Clarification on reporting contribution information for cash balance plans on Form 5500 [Citation: *Announcement 2004-80, 2004-41 I.R.B. (October 12, 2004)*]. . . . . 485

¶6.300(5) - Penalties for Late 5500 Filing/Relief Programs  
Pilot program will allow for voluntary correction of late filings for non-Title I plans with no penalty until June 2, 2015; penalties likely if program made permanent [Citation: *Rev. Proc. 2014-32, I.R.B. 2014-23 (June 2, 2014)*]. . . . . 3388  
Participation in DOL's Delinquent Filer Voluntary Compliance (DFVC) Program will automatically waive IRS penalties if Forms 8955-SSA required for plan year(s) corrected are filed with IRS [Citation: *Notice 2014-35, 2014-23 I.R.B. (June 2, 2014)*]. . . . . 3392  
Program for voluntary correction of late filings for non-Title I plans made permanent; penalty fee will be charged for submissions made after June 2, 2015 [Citation: *Rev. Proc. 2015-32, 2015-24 I.R.B. (June 11, 2015)*]. . . . . 3611

¶6.301 - IRS Reporting Rules and Forms (Other Than Form 5500)

**Cumulative Table of Contents for eRISA Update**

Extension for certain persons to file foreign bank account reports (FBARs) [Citation: *Notice 2009-62*, 2009-35 I.R.B. (August 31, 2009)]. . . . . 2267

Additional reporting extension for certain persons to file foreign bank account reports (FBARs); further clarification of “commingled funds” definition; reporting relief for nondomestic persons [Citation: *Notice 2010-23*, 2010-11 I.R.B. (March 12, 2010), *Announcement 2010-16*, 2010-11 I.R.B. (March 12, 2010)]. . . . . 2390

Delays for FBAR filings for certain persons [Citation: *FinCEN Notice 2011-1* (May 25, 2011), available at [http://www.fincen.gov/statutes\\_regs/guidance/pdf/FBAR-Extension-Notice-5-25-11-Clean.pdf](http://www.fincen.gov/statutes_regs/guidance/pdf/FBAR-Extension-Notice-5-25-11-Clean.pdf) *FinCEN Notice 2011-2* (June 17, 2011), available at [http://www.fincen.gov/statutes\\_regs/guidance/pdf/FBARFinCENNotice.pdf](http://www.fincen.gov/statutes_regs/guidance/pdf/FBARFinCENNotice.pdf), *IRS Notice 2011-54*, I.R.B. 2011-29 (July 15, 2011) (advance release on June 16, 2011)]. . . . . 2756

Additional extension for certain FBAR filings [Citation: *FinCEN Notice 2013-1* (December 17, 2013)] . . . . . 3290

¶6.301(1) - IRS Reporting Rules and Forms (Other than Form 5500): Form 8955-SSA

IRS issuing Form 8955-SSA; due date delayed for 2009 and 2010 plan years [Citation: *Announcement 2011-21*, I.R.B. 2011-12 (March 21, 2011) (<http://www.irs.gov/pub/irs-irbs/irb11-12.pdf>)]. . . 2719

2009 Form 8955-SSA now available; additional extension for 2009 & 2010 forms; instructions for electronic filing released [Citation: *IRS Employee Plans News 2011-5*, [http://www.irs.gov/pub/irs-tege/eptn\\_2011\\_5.pdf](http://www.irs.gov/pub/irs-tege/eptn_2011_5.pdf) (June 22, 2011), *Rev. Proc. 2011-31*, I.R.B. 2011-22 (May 27, 2011)]. . . 2755

Revised Form 5558 includes extension request for Form 8955-SSA [Citation: *Form 5558 (Rev. June 2011)*, available at IRS website (<http://www.irs.gov/pub/irs-pdf/f5558.pdf>)]. . . . . 2770

IRS provides FAQ guidance on SSA reporting requirements for 403(b) plans [Citation: <http://www.irs.gov/retirement/article/0,,id=238940,00.html>]. . . . . 2824

IRS provides FAQ guidance on the SSA statement required to be furnished to affected participants [Citation: *FAQs Regarding Form 8955-SSA*, <http://www.irs.gov/retirement/article/0,,id=252298,00.html>]. . . . . 2942

¶6.361 - Prohibited Transaction Exemptions: Exemptions Relating to Loans

Suspension of enforcement of IRC §4975 with respect to IRAs engaged in transactions described in DOL Advisory Opinions 2009-03A and 2011-09A [Citation: *Announcement 2011-81*, 2011-52 I.R.B. (December 26, 2011)]. . . . . 2825

¶6.402 - IRAs: Approval Procedures

IRS reviews law changes since 2002 that affect IRAs and waives requirement to amend documents; model IRAs will be issued to reflect new rules [Citation: *Rev. Proc. 2010-48*, 2010-50 I.R.B. (December 13, 2010)]. . . . . 2656

¶6.404(1) - IRAs: Taxation Issues: Qualified Charitable Distributions (IRC §408(d)(8))

IRS provides guidance on qualified charitable distributions made from IRAs for individuals who have attained age 70½, as enacted by the PPA 2006 [Citation: *Notice 2007-7*, Section IX (Q&A-34 through Q&A-44), 2007-7 I.R.B. (January 29, 2007) (advance release on January 10, 2007)]. . . . . 1197

¶6.404(2) - IRAs: Miscellaneous Tax Issues

Withdrawal of Economic Stimulus Act deposits [Citation: *Announcement 2008-44*, 2008-20 I.R.B. (May 19, 2008)]. . . . . 1864

¶6.405 - Roth IRAs

**Cumulative Table of Contents for eRISA Update**

Abusive Roth IRA transactions added as listed transactions under tax shelter rules [Citation: *Notice 2004-8* (advance copy released on January 5, 2004)]. . . . . 299

Safe harbor method for determining value of annuity in Roth IRA conversion [Citation: *Rev. Proc. 2006-13*, 2006-3 I.R.B. (January 17, 2006) (advance release on December 27, 2005)]. . . . . 943

Prototype Roth IRAs must be amended by December 31, 2007, to accept rollovers from designated Roth accounts under 401(k) or 403(b) plans [Citation: *Announcement 2007-55*, 2007-23 (June 4, 2007)] . . . . . 1488

¶6.409 - Deemed IRAs

Plan document requirements for accepting deemed IRA contributions under IRC §408(q) [Citation: *Rev. Proc. 2003-13* (advance release)]. . . . . 56

¶6.413 - SIMPLE-IRA Plans

IRS grants EGTRRA amendment relief for SIMPLE-IRA plans [Citation: *Special Edition of Employee Plans News* (March 10, 2006), available at [www.irs.gov](http://www.irs.gov)]. . . . . 1020

IRS provides guidance to facilitate automatic enrollment in SIMPLE-IRA plans; publishes sample plan language [Citation: *Notice 2009-66*, *Notice 2009-67*, 2009-39 I.R.B. (September 25, 2009)]. . . . . 2269

¶6.420 - Definition of Governmental Entity or Governmental Plan

Advance notice that proposed regulations will include special rule for public charter schools [Citation: *Notice 2015-7*, 2015-6 I.R.B. (February 6, 2015)]. . . . . 3564

¶6.422 Governmental Plans and Church Plans: Special Qualification Requirements or Exceptions

All governmental plans deemed to satisfy all nondiscrimination requirements until final regulations are issued; certain governmental plans subject to such rules thereafter [Citation: *Notice 2003-6*, 2003-3 I.R.B.]. . . . . 55

¶6.423 - Government “Pick Up” Plans (IRC §414(h))

IRS clarifies formal action that must be taken by governmental entity in order for employee contributions to be “picked up” under IRC §414(h)(2) [Citation: *Rev. Rul. 2006-43*, 2006-35 I.R.B. (August 28, 2006)]. . . . . 1236

¶6.424 - Indian Tribal Governments

Interim guidance establishes good faith compliance for treatment of certain tribal government plans as governmental plans; provides transition period for separating out employees engaged in commercial activities [Citation: *Notice 2006-89*, I.R.B. 2006-43 (October 23, 2006)]. . . . . 1237

Transition relief for separating governmental employees from commercial activity employees extended [Citation: *Notice 2007-67*, 2007-35 I.R.B. (August 9, 2007)]. . . . . 1594

¶6.500 - Section 403(b) Plans: General Requirements

Model language for public schools; timing of plan amendments to conform to regulations; additional guidance on certain contracts issued before 2009 [Citation: *Rev. Proc. 2007-71*, 2007-51 I.R.B. (December 17, 2007)]. . . . . 1705

Plan document required postponed for a year [Citation: *Notice 2009-3*, 2009-2 I.R.B. (January 12, 2009)] . . . . . 2018

IRS proposed procedure to establish a prototype program for section 403(b) plans [Citation: *Announcement 2009-34*, 2009-18 I.R.B. (May 1, 2009)]. . . . . 2190

Retroactive remedial amendment period for section 403(b) plans [Citation: *Announcement 2009-98*] . . . . . 2317

¶6.501 - Section 403(b) Plans: Distributions Restrictions

**Cumulative Table of Contents for eRISA Update**

IRS provides guidance on how a 403(b) plan successfully terminates [Citation: *Rev. Rul. 2011-7*, 2011-10 I.R.B. (March 7, 2011) (<http://www.irs.gov/pub/irs-irbs/irb11-10.pdf>)]. . . . . 2720

¶6.510 - Taxation Issues For Nonqualified Plans

Initial guidance on IRC §409A requirements for nonqualified plans, as enacted by the American Jobs Creation Act of 2004 [Citation: *Notice 2005-1*, 2005-2 I.R.B. (January 10, 2005) (advance released on December 20, 2004)]. . . . . 598

No assertion of penalties for failure to withhold for 2005 calendar year deferred compensation [Citation: *Notice 2005-94*, 2005-52 I.R.B. (December 27, 2004) (advance release on December 8, 2005)]. 943

Special valuation rule for stock rights issued before 2005 [Citation: *Notice 2006-4*, 2006-3 I.R.B. (January 17, 2006) (advance release on December 23, 2005)]. . . . . 944

Transition relief to comply with IRC §409A(b) with respect to certain assets set aside, transferred or restricted by March 21, 2006 [Citation: *Notice 2006-33*, 2006-15 I.R.B. (April 10, 2006) (advance release on March 21, 2006)]. . . . . 1021

Clarification of certificate of divestiture exception to anti-acceleration rule under IRC §409A(a)(3) [Citation: *Notice 2006-64*, 2006-29 I.R.B. (July 17, 2006; advance release on June 30, 2006)] . . . . . 1102

Extension of transition periods under IRC §409A and delay of final regulations to 2008 [Citation: *Notice 2006-79*, 2006-43 I.R.B. (October 23, 2006; advance release on October 4, 2006)]. . . . . 1240

Reporting and wage withholding requirements for calendar years 2005 and 2006 with respect to deferrals of compensation and amounts includible in gross income under IRC §409A [Citation: *Notice 2006-100*, 2006-51 I.R.B. (advance release on November 30, 2006)]. . . . . 1199

IRS explains the application of IRC §409A to split-dollar life insurance arrangements, and provides transitional guidance with respect to modifications to such arrangements to comply with, or avoid the application of, IRC §409A [Citation: *Notice 2007-34*, 2007-17 I.R.B. (April 23, 2007)]. . . . 1489

Limited extended transition relief granted by IRS through 2008 for certain IRC §409A requirements [Citation: *Notice 2007-78*, 2007-41 I.R.B. (September 10, 2007)]. . . . . 1595

IRS extends transition relief under IRC §409A to the end of 2008; supersedes limited document extension under Notice 2007-78 [Citation: *Notice 2007-86*, 2007-46 I.R.B. (November 13, 2007)] . . . . . 1708

Reporting and wage withholding requirements for calendar year 2007 with respect to deferrals of compensation and amounts includible in gross income under IRC §409A [Citation: *Notice 2007-89*, 2007-46 I.R.B. (November 13, 2007)]. . . . . 1713

Interim rules provide relief for certain operational failures under IRC §409A, solicit comments for voluntary compliance program [Citation: *Notice 2007-100*, 2007-52 I.R.B. (December 26, 2007)] . . . . . 1719

Relaxation of no-ruling proscription regarding nonqualified plans [Citation: *Rev. Proc. 2008-61*, 2008-42 I.R.B (October 20, 2008; advance release on September 26, 2008)]. . . . . 1935

Reporting and wage withholding requirements for calendar year 2008 and subsequent years before effective date of final regulations with respect to deferrals of compensation and amounts includible in gross income under IRC §409A [Citation: *Notice 2008-115*, 2008-52 I.R.B. (December 29, 2008)] . . . . . 2019

Procedures for obtaining relief for certain operational failures under IRC §409A [Citation: *Notice 2008-113*, 2008-51 I.R.B. (December 22, 2008)]. . . . . 2026

**Cumulative Table of Contents for eRISA Update**

**Note: Notice 2008-113 replaces the interim rules in Notice 2007-100, which are summarized at p. 1719.**

Interim guidance under new IRC §457A pertaining to special income tax inclusion rule for nonqualified deferred compensation from certain “tax indifferent” parties [Citation: *Notice 2009-8*, 2009-5 I.R.B. (February 2, 2009); *Emergency Economic Stabilization Act of 2008 (P.L.110-343)*, §801 (enacted on October 3, 2008)]..... 2048

Acquisition of equity by Treasury Department pursuant to Emergency Economic Stabilization Act is not a permissible IRC §409A payment event [Citation: *Notice 2009-49*, 2009-25 (June 19, 2009)]. 2195

Procedures for curing certain document failures in a nonqualified deferred compensation plan that is subject to IRC §409A [Citation: *Notice 2010-6*, 2010-3 I.R.B. (January 15, 2010)]. . . . . 2391

Nonstatutory stock options and stock appreciation rights paid solely in employer stock do not constitute deferred compensation for IRC §457A purposes [Citation: *Rev. Rul. 2014-18*, 2014-26 I.R.B. (June 23, 2014)]..... 3394

¶6.514(1) - Section 457(b) Plans

Governmental section 457(b) plan must be sponsored by an eligible governmental employer, and may not be sponsored solely by a labor union representing employees covered by the plan; transition relief provided to existing union-sponsored programs [Citation: *Rev. Rul. 2004-57*, 2004-24 I.R.B. (May 24, 2004), and *Announcement 2004-52*, 2004-24 I.R.B. (May 24, 2004)]. . . . . 418

Model amendments issued for governmental 457(b) plans [Citation: *Rev. Proc. 2004-56*, 2004-35 I.R.B. (August 31, 2004)]..... 487

Federal credit unions are not eligible to maintain governmental section 457(b) plans, but transition relief provided for certain 457(b) plans currently maintained by credit unions [Citation: *Notice 2005-58*, 2005-33 I.R.B. (August 15, 2005)]. . . . . 833

IRS provides examples of what are and are not “unforeseeable emergencies” under IRC §457(b) [Citation: *Rev. Rul. 2010-27*, 2010-45 I.R.B. (November 8, 2010)]. . . . . 2658

¶6.514(2) - Section 457(f) Plans

Guidance with respect to certain recurring part-year compensation [Citation: *Notice 2008-62*, 2008-29 I.R.B. (Jul 21, 2008; advance release on July 1, 2008)]. . . . . 1865

¶6.514(3) - Section 457 Plans: Plans Not Subject to IRC §457

Example of length of service award program for volunteers outlined in ruling [Citation: *Rev. Rul. 2003-47*, 2003-19 I.R.B. (May 12, 2003)]..... 193

¶6.514(4) - Section 457 Plans: Tax Withholding and Reporting

Tax withholding and reporting rules explained for “eligible deferred compensation plans” under IRC §457(b) [Citation: *Notice 2003-20*, 2003-19 I.R.B. (May 12, 2003)]. . . . . 194

¶6.520 - Health Savings Accounts (HSAs)..... 1327

Guidance on rollovers from health FSAs and HRAs to HSAs, as permitted under the HOPE Act [Citation: *Notice 2007-22*, 2007-10 I.R.B. (March 5, 2007; advance release on February 10, 2007)] . . . . . 1327

Guidance on contribution limits to HSAs, reflecting amendments made by the HOPE Act [Citation: *Notice 2008-52*, 2008-25 I.R.B. (June 23, 2008)]. . . . . 1867

Guidance on qualified HSA funding distributions [Citation: *Notice 2008-51*, 2008-25 I.R.B. (June 23, 2008)]..... 1873



**Cumulative Table of Contents for eRISA Update**

Additional guidance on eligible individuals, HDHPs, HSA contributions, HSA distributions, prohibited transactions, and establishing an HSA [Citation: *Notice 2008-59*, 2008-30 I.R.B. (July 28, 2008; advance release on June 25, 2008)]. . . . . 1878

¶6.531 - Nonqualified/Secular Trusts (IRC §402(b))  
 IRS outlines tax consequences with respect to contributions, distributions, and trust income for nonqualified trust that is subject to IRC §402(b)(4) [Citation: *Rev. Rul. 2007-48*, 2007-30 I.R.B. (July 23, 2007; advance release on July 2, 2007)]. . . . . 1491

¶6.603 - Tax Procedures: Private Letter Rulings and Technical Advice Memoranda  
 Annual update of general procedures for obtaining private letter rulings and technical advice memoranda on employee plans issues [Citation: *Rev. Proc. 2004-4*, *Rev. Proc. 2004-5*, 2004-1 I.R.B. (January 5, 2004)]. . . . . 300  
 Annual update of general procedures for obtaining private letter rulings and technical advice memoranda on employee plans issues [Citation: *Rev. Proc. 2005-4*, *Rev. Proc. 2005-5*, 2005-1 I.R.B. (January 3, 2005)]. . . . . 607  
 IRS requires interested party notice as a condition for obtaining a ruling that a plan is a church plan under IRC §414(e) if the plan will be a nonelecting church plan [Citation: *Rev. Proc. 2011-44*, I.R.B. 2011-39 (September 23, 2011), available at <http://www.irs.gov/pub/irs-drop/rp-11-44.pdf>]. . . . . 2772  
 Reorganization of responsibility within the IRS for certain guidance affecting retirement plans [Citation: *Announcement 2014-34*, 2014-51 I.R.B. (December 12, 2014)]. . . . . [3527](#)  
 Annual update of general procedures for obtaining private letter rulings and technical advice memoranda on employee plans issues [Citation: *Rev. Proc. 2015-1*, *Rev. Proc. 2015-2*, *Rev. Proc. 2015-4*, 2015-1 I.R.B. (January 2, 2015)]. . . . . 3528

¶6.605(1) - Practice Before The IRS. . . . . 1495  
 Guidance on monetary penalties under 31 U.S.C. section 330 [Citation: *Notice 2007-39*, 2007-20 I.R.B. (May 14, 2007)]. . . . . 1495  
 Expanded tax return preparer penalty can be triggered with respect to preparers of certain employee benefits related forms [Citation: *Notice 2008-13*, 2008-3 I.R.B. (January 22, 2008)]. . . . . 1802  
 Guidance under the preparer penalty modification in the Tax Extenders and Alternative Minimum Tax Relief Act of 2008; tax returns subject to IRC §6694 penalty [Citation: *Notice 2009-5*, 2009-3 I.R.B. (January 19, 2009); *Rev. Proc. 2009-11*, 2009-3 I.R.B. (January 19, 2009)]. . . . . 2051  
 IRS provides interim guidance on PTIN requirements; exempts Form 5500 preparers from PTIN requirement [Citation: *Notice 2011-6*, 2011-3 I.R.B. (January 18, 2011)]. . . . . 2659  
 FAQs add Forms 5558 and 8955-SSA as exempt from PTIN requirements, provide a refund procedure for PTINs obtained by individuals who do not require them by reason of IRS guidance [Citation: *New Requirements for Tax Return Preparers* (FAQ-9 under “Scenarios”), <http://www.irs.gov/taxpros/article/0,,id=218611,00.html#Requirements>, *Additional Frequently Asked Questions About New Requirements for Tax Return Preparers* (FAQ-4 under “Fees”), <http://www.irs.gov/taxpros/article/0,,id=230145,00.html>]. . . . . 2723  
 Follow-up guidance on PTINs and the RTRP practice classification [Citation: *Notice 2011-80*, I.R.B. 2011-43 (October 21, 2011), available at <http://www.irs.gov/pub/irs-utl/n-11-80.pdf>, *IR-2011-96* (September 21, 2011), available at <http://www.irs.gov/newsroom/article/0,,id=246227,00.html>)] . . . . . 2771

**Cumulative Table of Contents for eRISA Update**

Individuals do not need PTINs to become ERPA or renew ERPA status, but PTIN required for form preparation that necessitates a PTIN [Citation: *Notice 2011-91*, 2011-47 I.R.B. (November 21, 2011), advance release copy at <http://www.irs.gov/pub/irs-utl/n-11-91.pdf>]. . . . . 2825

IRS discontinuing ERPA exam [Citation: *ERPA Program Changes*, IRS Website Announcement (November 9, 2015)]. . . . . 3785

¶6.606 - Employee Plans Compliance Resolution System (EPCRS)

Update to EPCRS procedures expands relief provisions for participant loan violations, modifies correction method for excluding eligible employees from 401(k) arrangement, addresses failures to adopt required interim amendments on timely basis [Citation: *Rev. Proc. 2006-27*, 2006-22 I.R.B. (May 30, 2006; advance release on May 5, 2006)]. . . . . 1103

Latest revision of the EPCRS procedure adds new prescribed correction methods, expands the use of the streamlined application procedure and provides other important clarifications [Citation: *Rev. Proc. 2008-50*, 2008-35 I.R.B. (September 2, 2008)]. . . . . 1936

Latest revision of the EPCRS procedure adds correction options for 403(b) plans, modifies the VCP submission procedure, clarifies when a determination letter is required with a VCP submission, addresses when QNECs are required to satisfy corrective contributions, provides additional guidance on overpayments, and incorporates IRC §436 into certain corrections made under defined benefit plans methods [Citation: *Rev. Proc. 2013-12*, 2013-4 I.R.B. (January 21, 2013) (advance release on December 31, 2012)]. . . . . 3066

IRS modified Rev. Proc. 2013-12 to clarify corrective actions for overpayments, eliminate Appendixes C and D in favor of IRS forms, reduce fees for certain minimum distribution and participant loan corrections, extend the time to self-correct IRC §415(c) failures under the practices and procedures requirement, and made other clarifications [Citation: *Rev. Proc. 2015-27*, 2015-16 I.R.B. (April 16, 2015)]. . . . . 3567

IRS modifies Rev. Proc. 2013-12 to add corrective actions for automatic contribution arrangement failures and reduce the employer’s make-up contribution liability for elective deferral failures that are corrected no later than 9½ months after close of plan year [Citation: *Rev. Proc. 2015-28*, 2015-16 I.R.B. (April 16, 2015)]. . . . . 3615

Latest update of the EPCRS Procedure incorporates the changes made by Rev. Procs. 2015-27 and 2015-28, revises the procedure to incorporate the contraction of the determination letter program, modifies the sanction process under Audit CAP [Citation: *Rev. Proc. 2016-51*, 2016-42 I.R.B. (October 17, 2016), advance release by IRS on September 29, 2016)]. . . . . 4078

¶6.610 - Determination Letters: Application Forms

Form 5310 revised November 2002; Schedule Q no longer needed in most cases [Citation: *Announcement 2003-13*, 2003-11 I.R.B., March 17, 2003]. . . . . 131

Revised Form 5300 issues [Citation: *Form 5300 (Rev. April 2011)*, <http://www.irs.gov/pub/irs-pdf/f5300.pdf>]. . . . . 2826

Use of Form 5307 significantly restricted after May 1, 2012; determination letters on coverage and nondiscrimination testing no longer available starting in 2012 [Citation: *Announcement 2011-82*, 2011-52 I.R.B. (December 26, 2011)]. . . . . 2827

¶6.611 - Determination Letters: User Fees

**Cumulative Table of Contents for eRISA Update**

Annual update of user fee procedure provides for reduced fee to request ruling on waiver of 60-day rollover period, but otherwise leaves user fees mostly unchanged [Citation: *Rev. Proc. 2003-8*, 2003-1 I.R.B. (January 6, 2003)]. . . . . 62

Supplemental IRS guidance on user fee waiver for certain small employers clarifies when EGTRRA remedial amendment period starts [Citation: *Notice 2003-49*, 2003-32 I.R.B. (August 11, 2003)] . . . . . 199

Annual update of user fee procedure slightly increases fees for private letter rulings and opinion letter applications [Citation: *Rev. Proc. 2004-8*, 2004-1 I.R.B. (January 5, 2004)]. . . . . 301

Annual update of user fee procedure makes no changes to fee structure [Citation: *Rev. Proc. 2005-8*, 2005-1 I.R.B. (January 3, 2005)]. . . . . 607

Annual update of user fee procedure makes significant increases to fee structure [Citation: *Rev. Proc. 2006-8*, 2006-1 I.R.B. (January 3, 2006)]. . . . . 945

Annual update of user fee procedure for 2010 [Citation: *Rev. Proc. 2010-8*, 2010-1 I.R.B. (January 4, 2010)]. . . . . 2318

Annual update of user fee procedure for 2011 [Citation: *Rev. Proc. 2011-8*, 2011-1 I.R.B. (January 3, 2011)]. . . . . 2663

IRS guidance on user fee waiver for certain small employers [Citation: *Notice 2011-86*, 2011-45 I.R.B. (November 7, 2011)]. . . . . 2830

Annual update of user fee procedure for 2012 [Citation: *Rev. Proc. 2012-8*, 2012-1 I.R.B. (January 2, 2012)]. . . . . 2831

Annual update of user fee procedure for 2013 [Citation: *Rev. Proc. 2013-8*, 2013-1 I.R.B. (January 2, 2013)]. . . . . 3091

Annual update of user fee procedure for 2014 [Citation: *Rev. Proc. 2014-8*, 2014-1 I.R.B. (January 2, 2014)]. . . . . 3290

Annual update of user fee procedure for 2015 [Citation: *Rev. Proc. 2015-8*, 2015-1 I.R.B. (January 2, 2015)]. . . . . 3529

Annual update of user fee procedure for 2016 [Citation: *Rev. Proc. 2016-8*, 2016-1 I.R.B. (January 4, 2016)]. . . . . 3786

¶6.612 - Determination Letter Procedures

Annual update of general determination letter procedures requests documentation of GUST amendment extension, updates interested party notice requirements, and clarifies approval procedures for volume submitter plans [Citation: *Rev. Proc. 2003-6*, 2003-1 I.R.B. (January 6, 2003)]. . . . . 63

Second IRS “white paper” on determination letters narrows choices down to two; adds concept for annual amendment requirement [Citation: *Announcement 2003-32*, 2003-20 I.R.B. (May 19, 2003)] . . . . . 200

Annual update of general determination letter procedures makes only minor changes [Citation: *Rev. Proc. 2004-6*, 2004-1 I.R.B. (January 5, 2004)]. . . . . 301

Annual update of general determination letter procedures makes only minor changes [Citation: *Rev. Proc. 2005-6*, 2004-1 I.R.B. (January 3, 2005)]. . . . . 608

Annual update of determination letter procedure for 2006 [Citation: *Rev. Proc. 2006-6*, 2006-1 I.R.B. (January 3, 2006)]. . . . . 953

Annual update of determination letter procedure for 2009 [Citation: *Rev. Proc. 2009-6*, 2009-1 I.R.B. (January 5, 2009)]. . . . . 2057

**Cumulative Table of Contents for eRISA Update**

Annual update of determination letter procedure for 2010 [Citation: <i>Rev. Proc. 2010-6</i> , 2010-1 I.R.B. (January 4, 2010)]. . . . .	2319
Annual update of determination letter procedure for 2011 [Citation: <i>Rev. Proc. 2011-6</i> , 2011-1 I.R.B. (January 3, 2011)]. . . . .	2664
Annual update of determination letter procedure for 2012 [Citation: <i>Rev. Proc. 2012-6</i> , 2012-1 I.R.B. (January 2, 2012)]. . . . .	2832
Annual update of determination letter procedure for 2013 [Citation: <i>Rev. Proc. 2013-6</i> , 2013-1 I.R.B. (January 2, 2013)]. . . . .	3091
Annual update of determination letter procedure for 2014 [Citation: <i>Rev. Proc. 2014-6</i> , 2014-1 I.R.B. (January 2, 2014)]. . . . .	3291
Annual update of determination letter procedure for 2015 [Citation: <i>Rev. Proc. 2015-6</i> , 2015-1 I.R.B. (January 2, 2015), <i>Announcement 2015-1</i> , 2015-2 I.R.B. (January 9, 2015)]. . . . .	3530
Determination letter applications for reasons other than initial qualification and plan termination being eliminated for individually-designed plans effective January 1, 2017; 5-year remedial amendment cycles will be eliminated [Citation: <i>Announcement 2015-19</i> , 2015-32 I.R.B. (August 6, 2015)] . . . . .	3736
Annual update of determination letter procedure for 2016 [Citation: <i>Rev. Proc. 2016-6</i> , 2016-1 I.R.B. (January 4, 2016)]. . . . .	3787
¶6.621 - Volume Submitter Plans	
Procedure for implementing VS practitioner’s authority to amend specimen plan on behalf of adopting employers [Citation: <i>Announcement 2005-37</i> , 2005-21 I.R.B. (May 9, 2005)]. . . . .	765
¶6.622 - Approval Procedures For Pre-Approved Plans	
New procedure creates more uniformity in approval procedures for master/prototype plans and volume submitter plans, but does not merge programs; EGTRRA submission process officially launched for pre-approved defined contribution plans [Citation: <i>Rev. Proc. 2005-16</i> , I.R.B. 2005-10 (advance release on February 17, 2005)]. . . . .	659
GUST program for defined contribution pre-approved plans closed as of June 15, 2005 [Citation: <i>Announcement 2005-36</i> , 2005-21 I.R.B. (May 9, 2005)]. . . . .	767
2-year restatement and determination letter application window opens for EGTRRA remedial amendment cycle for pre-approved defined contribution plans [Citation: <i>Announcement 2008-23</i> , 2008-14 I.R.B. (April 7, 2008) (advance release on March 14, 2008)]. . . . .	1808
IRS modifies certain submission procedures for Pre-Approved Plans [Citation: <i>Rev. Proc. 2008-56</i> , 2008-40 (October 6, 2008; advance release on September 17, 2008)]. . . . .	1951
2-year restatement and determination letter application window opens for EGTRRA remedial amendment cycle for pre-approved defined benefit plans [Citation: <i>Announcement 2010-20</i> , 2010-15 I.R.B. (April 12, 2010)]. . . . .	2394
Two-year window for defined contribution pre-approved plans extended to July 31, 2010, for certain disaster areas [Citation: Notice 2010-48, 2010-27 I.R.B. (July 2, 2010)]. . . . .	2435
Procedures for employers who failed to restate within the 2-year window ending April 30, 2010, or who restated but failed to submit for a determination letter [Citation: Retirement News for Employers - Summer 2010, available at the IRS website (www.irs.gov)]. . . . .	2518

## Cumulative Table of Contents for eRISA Update

Updated procedure addresses applications for opinion and advisory letters; launches second RAP cycle for Pre-Approved Plans [Citation: <i>Rev. Proc. 2011-49</i> , I.R.B. 2011-44 (October 31, 2011), as modified by <i>Announcement 2012-3</i> , 2012-4 I.R.B. (January 23, 2012)]. . . . .	2836
IRS launches prototype and volume submitter programs for 403(b) plans; supplements remedial amendment guidance [Citation: <i>Rev. Proc. 2013-22</i> ]. . . . .	3128
Pre-approved plan program expanded to include cash balance formulas [Citation: <i>Announcement 2014-4</i> , 2014-7 I.R.B. (February 10, 2014)]. . . . .	3292
Two-year window to restate defined contribution pre-approved plans for second remedial amendment cycle ends April 30, 2016; determination letter program opens May 1, 2014 [Citation: <i>Announcement 2014-16</i> , 2014-17 I.R.B. (April 21, 2014)]. . . . .	3344
IRS modifies pre-approved plan program for 403(b) plans and extends initial application deadlines to April 30, 2015 [Citation: <i>Rev. Proc. 2014-28</i> , 2014-16 I.R.B. (April 14, 2014)]. . . . .	3345
IRS further modifies pre-approved plan program for 403(b) plans by changing submission addresses and clarifying user fee for minor modified volume submitter plans [Citation: <i>Rev. Proc. 2015-22</i> , 2015-11 I.R.B. (March 12, 2015)]. . . . .	3573
Updated procedure for Pre-Approved Plans reflects inclusion of cash balance plans in DB program and ESOPs in DC program; extends deadline for submission of Pre-Approved DB Plans; incorporates changes to determination letter program made by <i>Announcement 2011-82</i> [Citation: <i>Rev. Proc. 2015-36</i> , 2015-25 I.R.B. (June 18, 2015)]. . . . .	3619
¶6.631 - Resolution Programs For Qualification Failures	
2003 update of EPCRS consolidates all IRS-submitted voluntary correction under VCP program, adopts uniform fee schedule, adds SIMPLE-IRA plans [Citation: <i>Rev. Proc. 2003-44</i> , 2003-25 I.R.B. (June 23, 2003)]. . . . .	202
<b>Note: This procedure has been replaced by Rev. Proc. 2006-27, which is reported at ¶6.606, page 1103.</b>	
IRS modifies the EPCRS procedure to clarify the use of the streamlined VCP filing for certain remedial amendment failures [Citation: <i>Rev. Proc. 2007-49</i> , 2007-30 I.R.B. (July 23, 2007; advance release on July 3, 2007)]. . . . .	1497
¶6.632 - GUST Remedial Amendment Period	
GUST amendment period for pre-approved plans extended to September 30, 2003; other amendment deadlines also affected [Citation: <i>Rev. Proc. 2002-73</i> , 2002-49 I.R.B.]. . . . .	65
Deadline relief for plans with GUST remedial amendment periods ending between September 30, 2003, and January 31, 2004; extension of deadline for DC plans to adopt amendments for final IRC §401(a)(9) regulations [Citation: <i>Rev. Proc. 2003-72</i> , 2003-38 I.R.B. (September 22, 2003)]. . . . .	251
¶6.633 - EGTRRA Remedial Amendment Period	
Previously adopted EGTRRA good faith amendments are deemed by IRS to be part of GUST restatement even if not readopted with the restated document [Citation: <i>Technical Assistance on Timing of EGTRRA Amendments</i> , Memorandum from Director, EP Rulings and Agreements (Paul Shultz) to Manager, EP Determinations (December 19, 2003)]. . . . .	377
Remedial amendment period for new plans and amendments adopted after 2001 are covered by the EGTRRA remedial amendment period [Citation: <i>Rev. Proc. 2004-25</i> , 2004-16 I.R.B. (March 31, 2004)]. . . . .	378

**Cumulative Table of Contents for eRISA Update**

IRS response to public comment on IRS’ determination letter “white papers” is to roll out staggered remedial amendment period for individually-designed plans, but reserves its decision regarding pre-approved plans [Citation: *Announcement 2004-32*, 2004-18 I.R.B. (April 16, 2004)]. . . . . 379

Interim amendment rules under Rev. Proc. 2005-66 are clarified by IRS [Citation: *Notice 2005-95*, 2005-51 I.R.B. (December 19, 2005) (advance release on December 2, 2005)]. . . . . 955

IRS posts FAQs at website addressing certain issues relating to Rev. Proc. 2005-66 and the use of Form 8905 to secure the 6-year cycle for pre-approved plans [Citation: *FAQs on Pre-Approved and Individually Designed Plan Programs*, <http://www.irs.gov/retirement/article/0,,id=158688,00.html>; posted on June 14, 2006]. . . . . 1106

Revisions made to staggered remedial amendment period rules, including “on-cycle” review status for certain “off-cycle” determination letter filings, clarifications on 6-year cycle for pre-approved plans, and coordination between remedial amendment periods and filing cycles [Citation: *Rev. Proc. 2007-44*, 2007-28 I.R.B. (July 9, 2007; advance release on June 13, 2007)]. . . . . 1497

**Note: The supersedes Rev. Proc. 2005-66, summarized at p. 834, which in turn had superseded Announcement 2004-71, summarized at page 489.**

Clarification of review status of pre-approved plans that file late [Citation: *Rev. Proc. 2007-49*, 2007-30 I.R.B. (July 23, 2007; advance release on July 3, 2007)]. . . . . 1510

Modifications to remedial amendment cycle applicable to governmental plans [Citation: *Rev. Proc. 2009-36*, 2009-35 I.R.B. (August 31, 2009)]. . . . . 2271

¶6.634 - Cumulative List of Changes in Plan Qualification Requirements

2004 list contains document requirements for defined contribution pre-approved plans being submitted in 2005 [Citation: *Notice 2004-84*, 2004-52 I.R.B. (December 27, 2004) (advance release on December 14, 2004)]. . . . . 609

2005 list contains document requirements for plans under Cycle A submission period [Citation: *Notice 2005-101*, 2005-52 I.R.B. (December 27, 2005) (advance release on December 13, 2005)]. . . . . 959

2006 list contains document requirements for plans under Cycle B submission period; submission of Defined Benefit Pre-Approved Plans [Citation: *Notice 2007-3*, 2007-2 I.R.B. (January 8, 2007) (advance release on December 14, 2006)]. . . . . 1205

2007 list released for use primarily by Cycle C individually-designed plans [Citation: *Notice 2007-94*, 2007-51 (December 17, 2007)]. . . . . 1728

2008 list issued for Cycle D plans [Citation: *Notice 2008-108*, 2008-50 I.R.B. (December 15, 2008)] . . . . . 2058

2009 list issued for Cycle E plans [Citation: *Notice 2009-98*, 2009-52 I.R.B. (December 28, 2009)] . . . . . 2321

2010 list issued for Cycle A plans and Defined Contribution Pre-Approved Plans - first list for the second set of RAP cycles [Citation: *Notice 2010-90*, 2011-52 I.R.B. (December 27, 2010)]. . . . . 2666

2011 list issued for Cycle B plans [Citation: *Notice 2011-97*, 2011-52 I.R.B. (December 26, 2011), <http://www.irs.gov/pub/irs-drop/n-11-97.pdf>]. . . . . 2848

2012 list issued for review of Cycle C plans and pre-approved defined benefit plans in the 2<sup>nd</sup> cycle under Rev. Proc. 2007-44 [Citation: *Notice 2012-76*, 2012-52 I.R.B. (December 27, 2012)]. . . . . 3093

2013 list issued for review of Cycle D plans in the 2<sup>nd</sup> cycle under Rev. Proc. 2007-44 [Citation: *Notice 2013-84*, 2013-52 I.R.B. (December 19, 2013)]. . . . . 3292

**Cumulative Table of Contents for eRISA Update**

2014 list issued for review of Cycle E plans in the 2<sup>nd</sup> cycle under Rev. Proc. 2007-44 [Citation: *Notice 2014-77*, 2014-52 I.R.B. (December 19, 2014)]. . . . . 3533

2015 list issued for review of Cycle A plans in the 3<sup>rd</sup> cycle under Rev. Proc. 2007-44 [Citation: *Notice 2015-84*, I.R.B. 2015-52 (December 28, 2015)]. . . . . 3788

¶6.635 - Amendments to Comply with the PPA 2006

Limited amendment extension to 2010 plan year for specific provisions of the PPA 2006; extension of anti-cutback relief for certain provisions [Citation: *Notice 2009-97*, 2009-52 I.R.B. (December 28, 2009)]. . . . . 2344

Limited amendment extension to 2011 plan year for specific provisions of the PPA 2006; extension of anti-cutback relief for certain provisions [Citation: *Notice 2010-77*, 2010-51 I.R.B. (December 20, 2010)]. . . . . 2686

Limited amendment extension to 2011 plan year for specific PPA 2006 provisions relating to statutory hybrid plans; extension of anti-cutback relief [Citation: *Notice 2011-85*, 2011-44 I.R.B. (October 31, 2011)]. . . . . 2866

Delayed amendment deadline for IRC §436 amendments; sample amendment provided [Citation: *Notice 2011-96*, 2011-52 I.R.B. (December 30, 2011)]. . . . . 2867

Delayed amendment deadline for IRC §436 amendments [Citation: *Notice 2012-70*, 2012-51 (December 17, 2012)]. . . . . 3112

¶6.636 - Remedial Amendment Cycles After EGTRRA

Governmental plans may elect Cycle E instead of Cycle C for post-EGTRRA remedial amendment cycle [Citation: *Rev. Proc. 2012-50*, 2012-50 I.R.B. (December 10, 2012)]. . . . . 3113

Deadline for Cycle C sponsors to execute Form 8905 extended to March 31, 2014 [Citation: *Announcement 2014-4*, 2014-7 I.R.B. (February 10, 2014)]. . . . . 3307

Extension of submission deadline for Pre-Approved Defined Benefit Plans and Cycle D submissions [Citation: *Announcement 2014-41*, 2014-52 I.R.B. (December 19, 2014)]. . . . . 3545

Expiration dates on determination letters no longer apply, April 30, 2017, deadline for individually-designed defined contribution plans to elect pre-approved plan cycle, Cycle A clarification for related employers [*Notice 2016-3*, 2016-3 (January 19, 2016)]. . . . . 3798

Voluntary closing agreement option available to Pre-Approved Plan sponsors who have missed April 30, 2016, restatement deadline for 20 or more clients [Citation: *Umbrella Closing Agreement Program*, IRS Employee Plan News, Issue No. 2016-5 (April 4, 2016)]. . . . . 3995

**Note: This information was originally summarized at p. 3867, but the above summary replaces that original summary due to modifications made by the IRS.**

IRS revamps remedial amendment period rules and amendment cycles to reflect constriction of determination letter program; 5-year cycles eliminated for individually-designed plans [Citation: *Rev. Proc. 2016-37*, 2016-29 I.R.B. (July 14, 2016)]. . . . . 3997

¶6.700(1) - Age Discrimination Issues: Cash Balance Plans

2002 proposed regulations completely withdrawn to make way for Congressional solution [Citation: *Announcement 2004-57*, 2004-27 I.R.B. (June 15, 2004)]. . . . . 420

¶6.713 - Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act)

IRS provides guidance on HEART Act issues affecting retirement plans, including differential wage payments, survivor rights with respect to deceased military servicemembers, deemed severance from

**Cumulative Table of Contents for eRISA Update**

employment, qualified reservist distributions, and optional crediting of make-up benefits [Citation: *Notice 2010-15*, I.R.B. 2010-6 (February 4, 2010)].. . . . . 2395

¶6.715 - Defense of Marriage Act (DOMA)  
IRS will apply a “place of ceremony” test to determine if same-sex couple is married for federal tax purposes [Citation: *Rev. Rul. 2013-17*, 2013-38 I.R.B. (September 16, 2013)]. . . . . 3254



**Cumulative Table of Contents for eRISA Update**

**DOL OR PBGC FORMAL GUIDANCE (OTHER THAN REGULATIONS)**

¶7.101 - Definition of Employee  
 IRS and DOL coordinate efforts to stop misclassification of employees as independent contractors [*Wage and Hour Division News Release*, September 19, 2011]..... 2774  
 DOL’s Wage and Hour Division issues interpretation of the “suffer or permit” standard in the identification of employees who are misclassified as independent contractors [Citation: *Administrator’s Interpretation No. 2015-1* (July 15, 2015)]..... 3738  
 DOL’s Wage and Hour Division issues interpretation of joint employment relationships [Citation: *Administrator’s Interpretation No. 2016-1* (January 20, 2016)]..... 3868

¶7.108(1) - Miscellaneous Definitions And Procedures: Disaster Relief  
 DOL announces extensions for persons affected by Hurricane Katrina with respect to COBRA and HIPAA deadlines, and ERISA claims procedures [Citation: *Extension of Certain Time Frames for Employee Benefit Plans Affected*, 70 F.R. 55500 (September 21, 2005)]..... 836  
 PBGC announces extensions with respect to plans affected by Hurricane Katrina or Hurricane Rita [Citation: *PBGC Technical Releases 05-10 and 05-11*]. .... 838  
 PBGC announces extensions with respect to plans affected by Hurricane Wilma [Citation: *www.pbgc.gov*]..... 967  
 PBGC waives reporting under ERISA §4010 if filing wouldn’t have been required under the PFEA rate for years ending on or before June 30, 2006 [Citation: *PBGC Technical Update 06-1* (January 12, 2006)]..... 967  
 Form 5500 deadline extended to August 28, 2006, for certain plan administrators, employers, and other entities affected by Hurricane Katrina [Citation: *DOL News Release Number 06-351-NAT* (February 27, 2006)]..... 1023  
 Form 5500 deadline extended to October 16, 2006, for certain plan administrators, employers, and other entities affected by Hurricane Katrina; Form 5558 filed by such date will provide additional 2½ months [Citation: *DOL News Release Number 06-1536-ATL* (August 30, 2006); *DOL News Release Number 06-1796-ATL* (October 12, 2006)]..... 1244  
 DOL provides ERISA compliance guidance relating to Hurricane Sandy [Citation: *EBSA News Release* (November 20, 2012)]. .... 3114

¶7.146 - Distributions: Actuarial Assumptions/Present Value Determinations  
 PPA 2006 changes not applicable to plans terminating before the first day of the 2008 plan year [Citation: *PBGC Technical Update 07-3* (December 3, 2007)]..... 1744  
 Applicable interest/mortality rates where plan terminates in post-2007 plan year but make distributions in a later plan year [Citation: *PBGC Technical Update 08-4* (December 31, 2008)]. .... 2076

¶7.172 - Benefit Restrictions For Underfunded Plans (IRC §436)  
 PBGC releases present values of the Title IV maximum guaranteed benefit for purposes of determining the partial restrictions on distributions for plans below 80% but not below 60% funding [Citation: *PBGC Technical Update 07-4* (December 17, 2007)]..... 1745  
 PBGC releases 2009 present values of the Title IV maximum guaranteed benefit for purposes of determining the partial restrictions on distributions for plans below 80% but not below 60% funding [Citation: *Notice of Present Value of PBGC Maximum Benefit Guarantee* (December 22, 2008)]  
 ..... 2077

**Cumulative Table of Contents for eRISA Update**

¶7.272 - Plan Termination: Missing Participants  
 PBGC issues request for information regarding implementation of missing participant program for DC plans [Citation: *Missing Participants in Individual Account Plans - Request for Information*, 78 F.R. 37598-37599 (June 21, 2013)]. . . . . 3220

¶7.300 - Form 5500 Reporting Requirements  
 2006 Forms eliminate Schedule P, incorporates clarifications regarding the Schedule R [Citation: *Release of Advance Copies of 2006 Forms*, available at [www.dol.gov/ebsa](http://www.dol.gov/ebsa)]. . . . . 1245  
 DOL issues FAQs on Schedule C revisions being made to the 2009 Form 5500 series [Citation: *FAQs About The 2009 Form 5500 Schedule C*, available at the DOL website ([www.dol.gov/ebsa](http://www.dol.gov/ebsa))]. . . . . 1953  
 DOL’s Delinquent Filer Voluntary Compliance Program (DFVC) updated to reflect EFAST2 filing instructions [Citation: *Delinquent Filer Voluntary Compliance Program*, 78 F.R. 6135 (January 29, 2013)]. . . . . 3143

¶7.303 - PBGC: Reporting Rules and Forms  
 PBGC issues 2003 model notice under ERISA §4011; notice may be required even though plan doesn’t actually have a variable premium [Citation: *PBGC Technical Update 03-17* (September 5, 2003)]. . . . . 255

¶7.303(1) - PBGC Reporting Rules and Forms: Interest Rate Assumptions  
 PBGC extends JCWAA reporting relief into 2004; explains effect of PFEA interest rates and coordination of overlapping interest rate requirements [Citation: *PBGC Technical Update 04-2* (March 19, 2004), *PBGC Technical Update 04-3* (June 4, 2004)]. . . . . 421  
 Summary of effect of variable rate premium interest rate, as amended by the Pension Protection Act of 2006, on various Title IV reporting requirements [Citation: *PBGC Technical Update 06-4* (August 30, 2006), available at [www.pbgc.com](http://www.pbgc.com)]. . . . . 1246  
 PBGC explains the effect on Title IV premium calculations and other reporting issues of the new mortality tables for determining current liability in 2007 plan years [Citation: *PBGC Technical Update 07-1* (February 15, 2007) (available at the PBGC’s website: [www.pbgc.gov](http://www.pbgc.gov))]. . . . . 1335

¶7.303(2) - PBGC Reporting Rules: Annual Financial And Actuarial Information (ERISA §4010)  
 Technical Update provides guidance for 2008 on the effect of the PPA 2006 changes in the calculation of the \$50 million gateway test under ERISA §4010 [Citation: *PBGC Technical Update 07-2* (November 28, 2007)]. . . . . 1747  
 Waiver of reporting requirement if aggregate underfunding does not exceed \$15 million [Citation: *PBGC Technical Update 08-3* (December 19, 2008)]. . . . . 2078  
 PBGC releases guidance on how MAP-21 interest rate stabilization provisions affect ERISA §4010 reporting [Citation: *PBGC Technical Update 12-2* (September 11, 2012)]. . . . . 3028  
 PBGC provides HATFA guidance regarding ERISA §4010 reporting obligations [Citation: *PBGC Technical Update 14-2* (October 17, 2014)]. . . . . 3546

¶7.303(3) - PBGC Reporting Rules: Reportable Events (ERISA §4043)  
 Technical Update provides transitional guidance for the 2008 plan year with respect to certain determinations under ERISA §4043, to reflect the changes made by the PPA 2006 [Citation: *PBGC Technical Update 07-2* (November 28, 2007)]. . . . . 1748  
 Waiver of reporting of missed quarterly contributions for 2008 plan year for certain small plans [Citation: *PBGC Technical Update 08-2* (March 24, 2008)]. . . . . 1884

**Cumulative Table of Contents for eRISA Update**

Reporting obligations for plans with Madoff-related losses [Citation: *PBGC News Release No. 09-14, “Notice to DB Plans Concerning Funds Invested With Bernard L. Madoff Investment Securities LLC”* (February 6, 2009), available at [www.pbgc.gov](http://www.pbgc.gov)]. . . . . 2154

Guidance for valuation unfunded vested benefits and assets for purposes of reportable event requirements in 2009 plan years [Citation: *PBGC Technical Update 09-1* (January 9, 2009), available at [www.pbgc.gov](http://www.pbgc.gov)]. . . . . 2155

Reporting waived or subject to a simplified reporting option for certain small plans that have missed quarterly contribution not motivated by financial inability [Citation: *PBGC Technical Update 09-3* (April 30, 2009), available at [www.pbgc.gov](http://www.pbgc.gov)]. . . . . 2196

Extension of guidance in Technical Updates 09-1 and 09-3 to reportable events for the 2010 plan year [Citation: *PBGC Technical Update 09-4* (November 23, 2009), available at [www.pbgc.gov](http://www.pbgc.gov)]. . . . . 2346

Extension of guidance in Technical Updates 09-1, 09-3, and 09-4 to reportable events for the 2011 plan year [Citation: *PBGC Technical Update 10-4* (December 3, 2010), available at [www.pbgc.gov](http://www.pbgc.gov)]. . . . . 2688

Extension of guidance in Technical Update 09-4 to reportable events for the 2012 plan year [Citation: *PBGC Technical Update 11-1* (December 7, 2011), available <http://www.pbgc.gov/res/other-guidance/tu/tu11-1.html>]. . . . . 2878

Extension of interim guidance on reportable events for the 2013 plan year and subsequent years [Citation: *PBGC Technical Update 13-1* (January 30, 2013), available]. . . . . 3148

¶7.317(1) - Title IV Disclosure Requirements: ERISA §4011 Participant Notice

    Voluntary correction program provides penalty relief for corrections made before due date of 2004 notice [Citation: *Participant Notice Voluntary Correction Program*, 69 F.R. 25792 (May 7, 2004)]. . . . . 427

    New penalty structure proposed for ERISA §4011 Participant Notice failures [Citation: *Assessment of and Relief From Penalties - Participant Notices*, 69 F.R. 25792 (May 7, 2004)]. . . . . 429

    2004 Participant Notice under ERISA §4011 issued with explanation of when notice is required [Citation: *PBGC Technical Update 04-4* (available at [www.pbgc.gov](http://www.pbgc.gov))]. . . . . 496

    2005 Participant Notice under ERISA §4011 issued with explanation of when notice is required [Citation: *PBGC Technical Update 05-1* (available at [www.pbgc.gov](http://www.pbgc.gov))]. . . . . 968

    2006 Participant Notice under ERISA §4011 issued with explanation of when notice is required and reflecting amendments made by the Pension Protection Act of 2006 [Citation: *PBGC Technical Update 06-3* (available at [www.pbgc.gov](http://www.pbgc.gov))]. . . . . 1248

¶7.321(1) - Fiduciary Duties and Liability: Prudence and Diversification

    Fiduciary duties with respect to losses on assets invested with Madoff [Citation: *Statement of EBSA on the Duties of Fiduciaries In Light of Recent Events Regarding Bernard L. Madoff Investment Securities LLC*” (February 5, 2009), posted at [www.dol.gov/ebsa](http://www.dol.gov/ebsa)]. . . . . 2156

    Economically targeted investments - DOL updates position by withdrawing Interpretive Bulletin 08-01 and reinstating language in Interpretive Bulletin 94-1 [Citation: *Interpretive Bulletin 2015-01*, 29 C.F.R. §2509.2015-01, 80 F.R. 65135-65137 (October 26, 2015)]. . . . . 3801

¶7.322(1) - Participant-Directed Plans: Disclosures

    Interim guidance on using electronic media to furnish participant fee disclosures [Citation: *DOL Technical Release 2011-03R* (December 8, 2011), available at the DOL website (<http://www.dol.gov/ebsa/newsroom/tr11-03R.html>)]. . . . . 2880

**Note: This revised released replaces the one summarized at p. 2774.**

**Cumulative Table of Contents for eRISA Update**

¶7.337 - ERISA Preemption  
 DOL issues Interpretive Bulletin regarding State programs that sponsor or facilitate ERISA-covered plans [Citation: *Interpretive Bulletin 2015-02 (DOL Reg. §2509.2015-02)*, 80 F.R. 71936-71940 (November 18, 2015)]. . . . . 3803

¶7.344 - ERISA Enforcement: Voluntary Compliance Programs  
 Revisions to VFC Program simplify Lost Earnings calculation, add correction options with respect to violations of the plan's participant loan limits, the disposition of illiquid assets held by the plan, and the impermissible payment by the plan of certain expenses [Citation: *Updated Voluntary Fiduciary Correction Program*, 71 F.R. 20262 (April 19, 2006)]. . . . . 1024  
**Note: This finalizes the interim amendments published on April 6, 2005, which were summarized at page 672.**

¶7.353 - Prohibited Transactions: Participant Loan Exemption  
 Loan program will not be treated as failing to be available on reasonably equivalent basis if loan denied to officers, directors, pursuant to Sarbanes-Oxley Act [Citation: *EBSA Field Assistance Bulletin 2003-1* (April 15, 2003)]. . . . . 132

¶7.371 - Title IV of ERISA: Coverage/Premiums  
 PBGC announces revised variable premiums rates reflecting the Pension Protection Act of 2006 [*PBGC Notice of Interest Rate Assumptions*, 71 F.R. 50477 (August 25, 2006)]. . . . . 1250  
 “Box 5” relief provided to certain plans that elected to use alternative premium funding target election [Citation: *Technical Update 10-2* (June 16, 2010)]. . . . . 2436  
 Changes to 2011 premium instructions [Citation: *Premium Mailing Notice*, <http://www.pbgc.gov/docs/Premium-Mailing-Notice-Sept-2010.pdf> (September 2010)]. . . . . 2520  
 PBGC announces premium penalty relief for short-term late periods; expands “Box 5” relief with respect to plans that made errors regarding the alternative premium funding target election [Citation: *Notice on Premium Penalty Relief; Alternative Premium Funding Target Election Relief*, 76 F.R. 57082 (September 15, 2011), available at <http://www.gpo.gov/fdsys/pkg/FR-2011-09-15/pdf/2011-23692.pdf>]. . . . . 2778  
 2012 maximum guaranteed benefits and 2012 premium rates [Citation: <http://www.pbgc.gov/prac/prem/premium-rates.html> and <http://www.pbgc.gov/news/press/releases/pr11-04.html>]. . . . . 2884  
 PBGC issues policy statement on premium refund requests due to contribution recharacterizations on amended Schedule SB [Citation: *Premium Changes Based on Recharacterization of Contributions*, 76 F.R. 79714 (December 22, 2011), <http://www.gpo.gov/fdsys/pkg/FR-2011-12-22/pdf/2011-32804.pdf>]. . . . . 2884  
 PBGC announces short-term amnesty period for paying late premiums [Citation: *Premium Penalty Relief for Certain Delinquent Plans*, 77 F.R. 6675 (February 9, 2012), <http://www.gpo.gov/fdsys/pkg/FR-2012-02-09/pdf/2012-3054.pdf>]. . . . . 2943  
 PBGC releases initial guidance on how the MAP-21 interest rate stabilization provisions affecting PBGC premiums [Citation: *PBGC Technical Update 12-1* (August 28, 2012)]. . . . . 3029  
 PBGC provides guidance on certain premium issues affected by HATFA amendments to the MAP-21 segment interest rate corridors [Citation: *PBGC Technical Update 14-1* (September 24, 2014)] . . . . . 3470

**Cumulative Table of Contents for eRISA Update**

¶7.372 - Title IV: Plan Termination Procedures  
PBGC requests comments on purchases of irrevocable commitments *prior* to standard termination  
[Citation: *Request for Public Comment on the Purchase of Irrevocable Commitments Prior to  
Standard Termination*, 74 F.R. 61074 (November 23, 2009)]..... 2348

¶7.715 - Defense of Marriage Act (DOMA)  
DOL will apply a “place of ceremony” test to determine if same-sex couple is married for ERISA  
purposes [Citation: *EBSA Technical Release 2013-04*]..... 3256

**Cumulative Table of Contents for eRISA Update**

**PROHIBITED TRANSACTION EXEMPTIONS**

¶8.183(2) - Employer Securities Under Title I of ERISA: Prohibited Transactions  
 Class exemption permits the acquisition and holding of shares in a Trust REIT by an individual account plan sponsored by the REIT or its affiliates [Citation: *PTE 2004-07*, 69 F.R. 23221 (April 28, 2004)] ..... 432

¶8.220(3) - Automatic Rollovers  
 Class exemption for IRA providers of automatic rollovers under IRC §401(a)(31)(B) from plans maintained by the IRA provider or its affiliate [Citation: *PTE 2004-16*, 69 F.R. 57964 (August 24, 2004)]..... 501

¶8.273 - Plan Termination: Orphan Plans  
 Exemption provides relief for services provided to the termination of abandoned defined contribution plans [Citation: *PTE 2006-06*, 71 F.R. 20856 (April 21, 2006)]..... 1036  
**Note: This finalizes the proposed exemption published on March 10, 2005, which was summarized at page 681.**  
 Amendments to PTE 2006-06 clarify that exemptive relief is available with respect to direct rollover of a missing nonspouse beneficiary’s benefit to an inherited IRA under IRC §402(c)(11) [Citation: *Amendment to PTE 2006-06*, 73 F.R. 58629 (October 7, 2008)]. ..... 2079  
**Note: This is a finalization of the proposed amendment summarized at p. 1340.**  
 Proposed amendments to PTE 2006-06 would modify the conditions of the exemption to recognize bankruptcy trustees that might serve in a QTA capacity [Citation: *Proposed amendments to PTE 2006-06*, 77 F.R. 74056 (December 12, 2012)]. ..... 3115

¶8.325(2) In-house Asset Managers  
 Amendments to PTE 96-23 modify the definition of an in-house asset manager (INHAM) and clarify certain aspects of PTE 96-23 [Citation: *Amendments to PTE 96-23*, 76 F.R. 18255 (April 1, 2011) (<http://www.gpo.gov/fdsys/pkg/FR-2011-04-01/pdf/2011-7655.pdf>)]. ..... 2724  
**Note: These amendment finalize the proposed amendments summarized on page 2438.**

¶8.350(4) - Lending Transactions/Extensions of Credit (Other than Participant Loans).. ..... 1220  
 Revision and consolidation of class exemptions dealing with securities lending transactions [Citation: *PTE 2006-16, Class Exemption to Permit Certain Loans of Securities by Employee Benefit Plans*, 71 F.R. 63786 (October 31, 2006)]..... 1220  
 DOL proposes to grant temporary exemption for certain indemnification/cross-collateralization agreements involving certain investment arrangements [Citation: *Notice of Proposed Amendments to PTE 80-26*, 78 F.R. 31584 (May 24, 2013)]. ..... 3222

¶8.352 - Prohibited transactions: excise taxes and penalties  
 Class exemption provides excise tax relief for correction of certain prohibited transactions through the VFC Program [Citation: *PTE 2002-51*, 67 F.R. 70623 (November 25, 2002)]..... 68  
 Amendments to PTE 2002-51 provide excise tax relief for sale of illiquid assets to a disqualified person and for the impermissible payments of certain expenses with plan assets, pursuant to the revised VFC Program [Citation: *Amendment to PTE 2002-51 to Permit Certain Transactions Identified in the VFC Program*, 71 F.R. 20135 (April 19, 2006)]..... 1039  
**Note: This finalizes proposed amendments that were published on April 6, 2005, and which were summarized on page 684.**

**Cumulative Table of Contents for eRISA Update**

¶8.360 Class Exemptions: General

Class exemption for release of claims and extensions of credit in connection with litigation [Citation: *PTE 2003-39*, 68 F.R. 75632 (December 31, 2003)]. . . . . 302

Proposed amendments to class exemption for release of claims and extensions of credit in connection with litigation to expand the transactions covered by the exemption [Citation: *Proposed Amendments to PTE 2003-39*, 72 F.R. 65597 (November 21, 2007)]. . . . . 1749

Amendments to class exemption for release of claims and extensions of credit in connection with litigation to expand the transactions covered by the exemption [Citation: *Amendments to PTE 2003-39*, 75 F.R. 33830 (June 15, 2010)]. . . . . 2441

¶8.361 - Prohibited Transaction Exemptions: Exemptions Relating to Loans

Proposed exemption would combine PTE 81-6 and PTE 82-63, relating to securities lending transactions, and expand exemptions to permit certain foreign borrowers and foreign collateral [Citation: *Proposed Class Exemption to Permit Certain Loans of Securities by Employee Benefit Plans*, 68 F.R. 60715 (October 23, 2003)]. . . . . 307

3-day limit on interest-free loans for incidental purposes is eliminated by amendments to PTE 80-26; interest-free loans of 60 days or more must be in writing [Citation: *Amendment to PTE 80-26 For Certain Interest Free Loans to Employee Benefit Plans*, 71 F.R. 17917 (April 7, 2006)]. . . . . 1040

**Note: This finalizes amendments that were proposed on December 15, 2004, which were summarized at page 613.**

¶8.362 - Prohibited Transaction Exemptions Relating to Investment Transactions

Amendments to PTE 86-128 allow certain trustees to avail themselves of the exemption [Citation: *Amendments to PTE 86-128*, published in the October 17, 2002, Federal Register (67 F.R. 64137)] . . . . . 72

Amendments expand application of PTE 84-14 to recognize difficulties in complying with certain conditions of the exemption due to consolidation in the financial services industry; proposed regulation would allow financial services employer to act as QPAM for its own plan [Citation: *Amendment to PTE 84-14*, 70 F.R. 49305 (August 23, 2005), *Proposed Amendment to PTE 84-14*, 70 F.R. 49312 (August 23, 2005)]. . . . . 839

Amendments to PTE 75-1 recognize difficulties in complying with certain conditions of the exemption due to consolidation in the financial services industry; narrows scope of fiduciary relationship necessary to preclude reliance on the exemption [Citation: *Amendments to PTE 75-1, Exemptions From Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefits Plans and Certain Broker-Dealers, Reporting Dealers and Banks*, 71 F.R. 5883 (February 3, 2006)]. . . . . 1041

**Note: This finalizes amendments that were proposed on April 28, 2004, which were summarized on page 434.**

Amendments to PTE 84-24 narrow definition of prohibited fiduciary role with respect to certain covered transactions [Citation: *Amendments to PTE 84-24, Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, Investment Companies and Investment Company Principal Underwriters*, 71 F.R. 5887 (February 3, 2006)]. . . . . 1043

Proposed class exemption would expand the types of investment advice arrangements that would have exemptive relief [Citation: *Proposed Exemption for the Provision of Investment Advice to Participants and Beneficiaries of Individual Account Plans*, 73 F.R. 49924 (August 22, 2008)]. . . . . 1961

Amendments to PTE 84-14 allow financial services employer to act as QPAM for its own plan [Citation: *Amendment to PTE 84-14*, 75 F.R. 38837 (July 28, 2010)]. . . . . 2521

**Cumulative Table of Contents for eRISA Update**

**Note: This regulation finalizes proposed amendments to PTE 84-14 that were published on August 23, 2005, and were summarized at page 839.**

New class exemptions and modifications to existing exemptions coordinate with final investment advice fiduciary regulations [Citation: *Best Interest Contract Exemption*, 81 F.R. 21002-21089 (April 8, 2016), *Class Exemption for Principal Transactions in Certain Assets between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs*, 81 F.R. 21089-21139 (April 8, 2016), *Amendments to Class Exemptions 75-1, 77-4, 80-83 and 83-1*, 81 F.R. 21208-21221 (April 8, 2016), *Amendment to and Partial Revocation of PTE 86-128 and Amendment to and Proposed Partial Revocation of PTE 75-1*, 81 F.R. 21181-21208 (April 8, 2016), *Amendment to PTE 75-1, Part V*, 81 F.R. 21139-21147 (April 8, 2016), and *Amendment to and Partial Revocation of PTE 84-24*, 81 F.R. 21147-21181 (April 8, 2016)]. . . . . 3873

**Note: The proposed versions of these exemptions were summarized at page 3627.**

Clarifications adopted to the Best Interest Contract Exemption and the Principal Transactions Exemption [Citation: *Technical corrections to the Best Interest Contract Exemption*, 81 F.R. 44773-44784 (July 11, 2016); *Technical corrections to the Principal Transactions Exemption*, 81 F.R. 44784-44792 (July 11, 2016)]. . . . . 4016

¶8.364 - Prohibited Transaction Exemptions: Exemptions Relating To Services

Proposed class exemption would provide relief to fiduciaries who are unaware of a service providers fails to satisfy new disclosure requirements promulgated under ERISA §408(b)(2) [Citation: *Proposed Class Exemption For Plan Fiduciaries When Plan Service Arrangements Fail To Comply With ERISA §408(b)(2)*, 72 F.R. 70893 (December 13, 2007)]. . . . . 1750

¶8.714 - Financial Reform Legislation

DOL proposes amendments to six class exemptions to eliminate reference to credit ratings, as required by the Dodd-Frank financial reform legislation [Citation: *Proposed Amendments to Class Prohibited Transaction Exemptions to Remove Credit Ratings Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act*, 78 F.R. 37572-37583 (June 21, 2013)]. . . . . 3226



Cumulative Table of Contents for eRISA Update

IRS INTERNAL COMMUNICATIONS: GENERAL COUNSEL MEMORANDA, FIELD SERVICE ADVICE, CHIEF COUNSEL ADVICE, SERVICE CENTER ADVICE

¶9.110 - Minimum Age And Service Requirements - General  
IRS reverses 2002 directive and now requires agents, as part of reviewing a determination letter application, to request clarification on eligibility exclusions (e.g., part-time, seasonal, temporary) that may result in the imposition of indirect age and service requirements [ Citation: *EP Quality Assurance Bulletin FY-2006-3*, February 14, 2006 (available at [www.irs.gov](http://www.irs.gov))]. . . . . 1044

¶9.116(1) - Disaggregation of Otherwise Excludable Employees  
Chief Counsel of IRS confirms use of statutory entry dates for determining otherwise excludable employees; recognizes acceptability of other identification methods [Citation: *CCA 201615013* (April 8, 2016)]. . . . . 4018

¶9.150(3) - Limitations on Contributions and Benefits (IRC §415): Defined Benefit Plans  
Internal memorandum to EP employees discusses application of IRC §415 limits to DROP features in a governmental defined benefit plan [Citation: *Memorandum from Director, Employee Plans, to EP Employees* (December 8, 2014) (made public January 29, 2015)]. . . . . 3574

¶9.193 - Bankruptcy  
IRS Chief Counsel believes IRC §4971 excise taxes on post-petition pension obligations are entitled to administrative expense priority [Citation: *Chief Counsel Notice CC-2006-007* (December 29, 2005)] . . . . . 970

¶9.223 - Rollovers: Miscellaneous Rollover Issues  
U.K.-U.S. tax treaty does not authorize the rollover of distributions from U.K. plans to U.S. plans [Citation: *Chief Counsel Advice Memorandum AM2008-009* (August 29, 2008)]. . . . . 1965  
IRS position on using rollovers to start up a business [Citation: *Guidelines Regarding Rollovers as Business Start-ups*, Memorandum from Michael Julianelle, Director, Employee Plans, SE:T:EP, IRS Employee Plans Bulletin (Special Edition: November 5, 2008)]. . . . . 2080

¶9.500 - Section 403(b) Plans: General Requirements  
Employees of LLC that is a disregard entity and owned solely by a tax-exempt organization are eligible to participate in a 403(b) plan; must be taken into account under universal availability rule [Citation: *CCA 201634021* (July 11, 2016)]. . . . . 4089

¶9.607 - Tax Shelters: Listed Transactions Involving Retirement  
Spouses not joint and severally liable for penalty with respect to transaction described in Notice 2004-8 (abusive Roth IRAs) [Citation: *CCA 200938022*]. . . . . 2349

¶9.612 - Determination Letter Procedures  
Withdrawal of determination letter application where there is a potential qualification issue generates caveat on IRS withdrawal letter [Citation: *Memorandum from Andy Zuckerman, Director, Rulings and Agreements, to Managers and Employees EP Determinations* (June 9, 2009), available at the IRS website at <http://www.irs.gov/pub/foia/ig/tege/tege-07-0609-01.pdf>]. . . . . 2757  
IRS updates procedures for verifying prior documentation during a determination letter review [Citation: *Quality Assurance Bulletin (QAB) 2012-1* (released on October 24, 2011), available at [http://www.irs.gov/pub/irs-tege/qab\\_102411.pdf](http://www.irs.gov/pub/irs-tege/qab_102411.pdf)]. . . . . 2885

**Cumulative Table of Contents for eRISA Update**

¶9.622 - Approval Procedures For Pre-Approved Plans

Internal memorandum sets forth procedures for obtaining corrective amendments to certain Pre-Approved Plans under VCP or Audit CAP and status of plan’s treatment as a Pre-Approved Plan [Citation: *Memorandum for Director, EP Examinations, and Director, EP Rulings & Agreements, from Michael D. Julianelle, Director, Employee Plans, “Corrective Amendments to Pre-Approved Plans”* (March 11, 2009)]. . . . . 2273

IRS INFORMAL RULINGS, LETTERS OR OTHER COMMUNICATIONS: PRIVATE LETTER RULINGS, TECHNICAL ADVICE MEMORANDA, GENERAL INFORMATION LETTERS, OTHER INFORMAL GUIDANCE

¶10.105 - Amendment of Plan

Increase in normal retirement age due to law change is not an amendment for purposes of statutory vesting and accrual standards [Citation: *PLR 200936045*]. . . . . 2277

¶10.131 Minimum Vesting Standards: Years of Service and Breaks in Service

Merged plan does not have to credit service prior to effective date of plan in which employees were eligible before the merger [Citation: *PLR 200315039*]. . . . . 136

Where two plans maintained by the same employer are merged, the exception under IRC §411(a)(4)(C) is applied with reference to earliest effective date of the plans involved in the merger [Citation: *PLR 200337015* (June 17, 2003), revoking *PLR 200315039* (January 15, 2003)]. . . . . 262

¶10.143(1) - Minimum Distribution Requirements (IRC §401(a)(9)): General Requirements

Rollover to another plan after reaching the required beginning date under the distributing plan [Citation: *PLR200453015* (October 4, 2004)]. . . . . 614

Secondary beneficiary must be designated at time of death to be treated as designated beneficiary for life expectancy purposes on post-death distributions [Citation: *PLR 200742026*]. . . . . 1752

Failure to make first two years’ distributions under life expectancy method for post-death distributions does not preclude use of such method for remainder of beneficiary’s life expectancy [Citation: *PLR 200811028*]. . . . . 1810

Modified benefit options do not cause governmental plan to lose grandfather status under IRC §401(a)(9) for existing options [Citation: *PLR 200807023*]. . . . . 1810

The phrase “as stated in wills” in IRA beneficiary designation results in decedent being treated as having no designated beneficiary for minimum distribution purposes [Citation: *PLR 200846028*]. . . . . 2085

Lump sum payment of remaining benefit owed to participant in pay status, pursuant to window period adopted by plan amendment, does not violate the minimum distribution requirements under IRC §401(a)(9) [Citation: *PLR 201228045* (July 18, 2012)]. . . . . 3031

Time for starting post-death RMDs cannot be extended under Treas. Reg. §301.9100-1 [Citation: *PLR 201417027*]. . . . . 3395

¶10.143(3) - Minimum Distribution Requirements (IRC §401(a)(9)): TEFRA §242)(b)(2) Elections

Entire lump sum distribution made pursuant to TEFRA election, but after five-percent owner’s attainment of age 70½, was eligible for rollover [Citation: *PLR 200510035* (December 14, 2004)] . . . . . 685

¶10.143(5) - Minimum Distribution Requirements: Designated Beneficiary

**Cumulative Table of Contents for eRISA Update**

Court order that IRA benefits should be paid to trust did not make trust beneficiaries designated beneficiaries under IRC §401(a)(9) because order was entered after participant’s death [Citation: *PLR 201628006*]. . . . . 4090

¶10.145(1) - Distribution Restrictions: Termination of a 401(k) Plan  
Leasing organization’s 401(k) plan is not a successor plan with respect to recipient employer’s terminated 401(k) plan [Citation: *PLR 200241054*]. . . . . 73

¶10.145(2) - Distribution Restrictions: Restricted Payments Under Defined Benefit Plans  
High-25 group under §1.401(a)(4)-5 may be determined without regard to QSLOB election [Citation: *PLR 200248029*]. . . . . 74  
High-25 determination applied *separately* to each employer participating in a multiple employer plan [Citation: *PLR 200449043* (September 8, 2004)]. . . . . 614

¶10.145(3) - Distribution Restrictions: Permissible Distribution Events for Pension Plans  
Understanding between employer and employee that an early retirement would be followed by immediate “rehire” was not a bona fide retirement for purposes of allowing pre-age 62 retirement distributions from pension plan [Citation: *PLR 201221033*]. . . . . 2961

¶10.150(3) - Limitations on Contributions and Benefits (IRC §415): Defined Benefit Plans  
Value of COLA had to be taken into account to determine if benefit payable from plan exceeded the annual benefit limit under IRC §415(b) [Citation: *PLR 200452039* (September 30, 2004)]. . . . . 615

¶10.160 - Section 401(k) Plans: Self-Employed Individuals  
Partners may have elective deferrals withheld from advances on current year’s partnership earnings [Citation: *PLR 200247052*]. . . . . 75

¶10.161(1) - Definition of Cash or Deferred Arrangement: Irrevocable Election Not to Participate  
Prior participation in a section 403(b) plan did not preclude reliance on irrevocable election exception to cash or deferred arrangement under qualified plan [Citation: *PLR 200236047*]. . . . . 76

¶10.178 - Retiree Medical Benefits  
IRS addresses proper calculation of past service credits in determining whether subordination test under IRC §401(h)(1) is satisfied [Citation: *PLR 200550043* (September 22, 2005)]. . . . . 971

¶10.179 - ERISA §204(h) and IRC §4980F Notice Requirements  
Corporate committee’s resolution to amend plan treated by IRS as amendment for purposes of applying ERISA §204(h) notice deadlines, since resolution bound corporation to adopt amendment to money purchase plan’s formula [Citation: *PLR 200407021* (November 19, 2003)]. . . . . 384  
Failure to provide 204(h) notices to alternate payees and unions representing covered employees corrected within 30 days; reasonable diligence exception to IRC §4980F penalty under IRC §4980F(c)(2) applicable [Citation: *PLR 201243021*]. . . . . 3117

¶10.182 - ESOPs: Exempt Loans  
Suspense account release requirements are both documental and operational requirements; failure to comply renders ESOP loan a prohibited transaction [Citation: *TAM 201425019*]. . . . . 3396

¶10.190(1) - Exclusive Benefit Rule: Return of Employer Contributions  
Overcontribution to terminated defined benefit plan to make the plan sufficient for standard termination procedures under Title IV of ERISA [Citation: *PLR 200637036* (September 20, 2006)]. . . . . 1228  
Excess profit sharing contribution allocated to equity partners due to incorrect earned income information could be returned to employer [Citation: *PLR 200639003* (October 4, 2005)]. . . . . 1251

**Cumulative Table of Contents for eRISA Update**

¶10.191 - Assignment of Benefits/Creditor Protection  
 Garnishment against 401(k) interest not subject to IRC §401(a)(13) assignment prohibition because fine imposed as part of U.S. criminal statutes is treated as a federal tax assessment [Citation *PLR 200342007*, October 22, 2003]. . . . . 308  
 Criminal fines and restitution obligations treated by federal law in the same manner as delinquent taxes, so levy against plan interest is permitted under antiassignment rule exception [Citation: *PLR 200426027* (March 30, 2004)]. . . . . 436

¶10.200(1) - Taxation of Distributions: General Rules (IRC §§72 and 402)  
 Tax consequences under IRC §§72 and 402(c) and IRC §415 treatment discussed with respect to payment in lump sum of hypothetical account in conjunction with retirement annuity election under defined benefit plan [Citation: *PLR 200511028* (December 22, 2004)]. . . . . 686

¶10.200(2) - Taxation of Distributions: Nonresident Aliens  
 Minimum distributions from IRA to Canadian resident qualify as pension payments subject to 15% tax rate under U.S.-Canada tax treaty [Citation: *PLR 201009012* (March 10, 2010)]. . . . . 2403

¶10.201(1) - Taxation of Distributions: Employer Securities - Net Unrealized Appreciation  
 Failure to complete paperwork properly resulted in direct rollover of portion of participant’s account being made in different calendar year from year in which employer securities distributed, resulting in loss of NUA exclusion [Citation: *PLR 200434022* (August 25, 2004)]. . . . . 504  
 Ruling addresses 3 circumstances under which “balance to the credit” in a single taxable year is analyzed for purposes of qualifying NUA for income exclusion under IRC §402(e)(4) [Citation: *PLR 200634059* (September 6, 2006)]. . . . . 1252  
 Participants who elect put option simultaneously with distribution of employer securities are not treated as having received a cash distribution, so NUA exclusion rules apply [Citation: *PLR 200841042*] . . . . . 2198

¶10.202 - Benefits Provided in Foreign Plans  
 Pursuant to treaty, contributions and benefits accruals under foreign plan are excludable from income to extent parallel limitations in U.S. tax code are not exceeded [Citation: *PLR 200602045* (published January 18, 2006; issued to taxpayer on October 18, 2005)]. . . . . 1047

¶10.203 - Payments by Plan for Medical or Accident Insurance  
 Use of 401(k) plan assets to pay for long-term care insurance results in distribution, not only for tax purposes but also for qualification purposes [Citation: *PLR 200806013*]. . . . . 1812

¶10.210(1) - Premature Distribution Penalty (IRC §72(t): Substantially Equal Payments Exception  
 Failure to make annual payment under annuitization method due to financial institution’s error was not treated as modification under IRC §72(t)(4) [Citation: *PLR 200503036* (October 25, 2004)] . . . 687  
 Transfer of portion of IRA to another IRA during “substantially equal payment” period results in prohibited modification under IRC §72(t)(4) [Citation: *PLR 200925044*]. . . . . 2278  
 Extra payment made in error by financial institution did not result in a prohibited modification under IRC §72(t)(4) [Citation: *PLR 201235029*]. . . . . 3031  
 Extra payment made in error by financial institution did not result in a prohibited modification under IRC §72(t)(4) [Citation: *PLR 201510060*]. . . . . 3576

¶10.220(2) - 60-day Rollover Period  
 Executor may not complete rollover on behalf of deceased IRA participant [Citation: *PLR 200415011* (January 26, 2004)]. . . . . 438

**Cumulative Table of Contents for eRISA Update**

IRS grants waiver of 60-day deadline for participant who received distribution from qualified plan but did not receive tax explanation required by IRC §402(f); waiver for participant who withdrew IRA funds to cover living expenses while unemployed [Citation: *PLR 200427027* (April 6, 2004) and *PLR 200428034* (April 13, 2004)]. . . . . 436

IRS declines to waive 60-day period with respect to withdrawal taken by now-deceased section 403(b) participant so that surviving spouse could complete a rollover to his own IRA [Citation: *PLR 200540020*]. . . . . 844

¶10.220(6) - Rollovers: Definition of an Eligible Rollover Distribution

Final payment to participant after restrictions under Treas. Reg. §1.401(a)(4)-5(b)(3) no longer apply was eligible rollover distribution [Citation: *PLR 201031042* (August 11, 2010)]. . . . . 2524

¶10.221 - Rollovers by Surviving Spouses

Amount that was repaid to plan by estate that improperly received the distribution is eligible for rollover to an IRA when it is paid to the surviving spouse as the proper beneficiary [Citation: *PLR 200722031*]. . . . . 1511

¶10.224 - Rollovers with Respect to Special Allocations/Distributions

Settlement proceeds received with respect to a lawsuit brought against an IRA annuity provider treated as IRA distributions eligible for rollover [Citation: *PLR 200452043* (September 28, 2004)]. . . 615

Litigation proceeds received subsequent to distribution of terminated plan’s assets may be treated as payable with respect to such plan and eligible for rollover [Citation: *PLR 200446026* (August 19, 2004)]. . . . . 616

Additional amounts required by PBGC to be paid to participants in terminated defined benefit plan are treated as benefits payable from plan and are eligible for rollover [Citation: *PLR 200444045* (August 3, 2004)]. . . . . 617

Settlement and litigation proceeds with respect to terminated ESOP eligible for rollover; consent requirements waived [Citation: *PLR 200604039* (published February 1, 2006; issued to taxpayer on October 31, 2005)]. . . . . 1048

Challenge of interest rate assumptions used to pay out benefits from a terminated plan resulted in settlement agreement, the proceeds of which are eligible for rollover [Citation: *PLR 200745022*]. . . . . 1752

¶10.226 - Rollovers by Nonspouse Beneficiaries

Terminated plan could be amended to reflect option to allow nonspouse beneficiaries to rollover inherited benefits pursuant to IRC §402(c)(11) [Citation: *PLR 200717023*]. . . . . 1511

Minor child was given more time to complete rollover and avoid income inclusion due to improper distribution of funds requested by her mother as guardian [Citation: *PLR 201139011* (July 7, 2011), posted at <http://www.irs.gov/pub/irs-wd/1139011.pdf>]. . . . . 2891

¶10.230 - Deduction Limits: Defined Contribution Plans

Deduction limit under IRC §404(a)(9) is separate from and in addition to IRC §404(a)(3) limit [Citation: *PLR 200436015* (September 8, 2004)]. . . . . 505

Employees who are eligible to make 401(k) deferrals but are not eligible for an allocation of other employer contributions are not taken into account to compute IRC §404(a)(3) deduction limit [Citation: *PLR 201229012*]. . . . . 3118

¶10.231(1) - Deduction Limits: Defined Benefit Plans: General Rules

**Cumulative Table of Contents for eRISA Update**

30-year Treasury rates may be used to calculate unfunded current liability for purposes of the combined deduction limit under IRC §404(a)(7) [Citation: *PLR 200510042* (December 14, 2004)]. . . . . 688

¶10.231(3) - Combined Deduction Limit Under IRC §404(a)(7)  
 Spinoff plan created for DB plan participants who were never eligible for DC plan is disregarded from overall deduction limit under IRC §404(a)(7) [Citation: *PLR 200612018*]. . . . . 1049

¶10.232 - Employer Deductions: Timing of Employer Contributions/IRC §404(a)(6) Period  
 Defined benefit contribution was properly deductible for prior taxable year because contributed within IRC §404(a)(6) period and credited for funding purposes for prior year [Citation: *PLR 200311036*, December 18, 2002]. . . . . 137

¶10.243 - Collectibles (IRC §408(m))  
 Interests in trust holding gold bullion not treated as collectibles under IRC §408(m) [Citation: *PLR 200446032* (August 19, 2004)]. . . . . 618

¶10.255(1) - FICA and FUTA: Section 403(b) Plans  
 Contributions to 403(b) plan resulting from irrevocable election to reduce salary were subject to FICA because they were made pursuant to salary reduction agreements [Citation: *CCA 200333003* (March 12, 2003)]. . . . . 264

¶10.261 - Gift Tax Issues Relating to Retirement Plans  
 Transfer of assets from one IRA to another does not result in gift because IRA owner retains right to revoke and to control distribution of IRA assets; appointment of designated representative to perform certain functions in the event of the IRA owner’s incapacity does not create a general power of appointment for estate or gift tax purposes [Citation: *PLR 200324018* (February 24, 2003)]. . . 209

¶10.271 - Plan Termination: Surplus Assets and Reversions (IRC §4980)  
 Qualified replacement plan under IRC §4980 may not use transferred surplus assets to fund matching contributions [Citation: *PLR 20083604* (June 11, 2008)]. . . . . 1966  
 Sale of subsidiaries will not affect status of plan as a qualified replacement plan retained by seller as long as 95% test is satisfied after the sale [Citation: *PLR 201143034* (August 2, 2011)]. . . . . 2892  
 Safe harbor 401(k) plan serving as qualified replacement plan may not use suspense account to pay for safe harbor matching contributions; consequences of not fully allocating suspense account within statutory 7-year period discussed [Citation: *PLR 201147032* (August 10, 2010)]. . . . . 2892  
 Premium refunds from insurer with respect to group annuity purchased to satisfy all liabilities under terminated defined benefit plan are permitted to be reverted to the employer and are not subject to IRC §4980 excise tax [Citation: *PLR 201228055* (July 18, 2012)]. . . . . 3032  
 Calculation to make plan sufficient for standard termination under Title IV was based on factual error; excess contribution could be returned as a “mistake of fact” without reversion excise taxes [Citation: *PLR 201424032*]. . . . . 3397  
 Transfers to qualified replacement plan under IRC §4980(d) could be made in two steps due to contingent litigation liability involving the terminated defined benefit plan; termination date not affected [Citation: *PLR 201626003*]. . . . . 4091

¶10.334(4) - ERISA Enforcement: Damages/Relief: Offset of Breaching Fiduciary’s Benefit  
 Use of funds to satisfy liability under another plan resulted in taxation to fiduciary-participant, but offsetting business deduction available [Citation: *PLR 200640003* (October 11, 2006)]. . . . . 1228

¶10.350(4) - Prohibited Transactions: Lending Transactions/Extensions of Credit (Other than Participant Loans)

**Cumulative Table of Contents for eRISA Update**

Loan from IRA to church not a prohibited transaction [Citation: *PLR 200741016*]. . . . . 1753

¶10.401 - IRAs: Contribution Limits

Separate payment of fees based on a percentage of assets under wrap fee structure do not count against individual’s IRA contribution limits [Citation: *PLR 200507021* (November 23, 2004)]. . . . . 689

Restorative payments to make up for misappropriation of IRA assets are not subject to contribution limits or rollover timing rules [Citation: *PLR 200714030*]. . . . . 1512

Wrap fees may be paid by IRA owner without regard to contribution limits under IRC §219 [Citation: *PLR 201104061* (<http://www.irs.gov/pub/irs-wd/1104061.pdf>)]. . . . . 2727

¶10.404(2) - Miscellaneous Tax Issues for IRAs

Incentives paid by bank to new IRAs established with bank are not subject to IRC §6041 reporting, and exempt from reporting as interest or dividends under IRC §§6042 and 6049 [Citation: *PLR 201310043*]. . . . . 3150

¶10.441 - Puerto Rican Plans: Rollovers, Transfers, Mergers

Merger of domestic qualified plan with Puerto Rican plan does not result in taxation to participants with respect to transferred benefits [Citation: *PLR 200317042* (December 19, 2002)]. . . . . 209

¶10.500 - Section 403(b) Plans: General Requirements

Entity classification regulations applied to LLC owned by tax-exempt organization, resulting in employees of LLC treated as eligible for 403(b) plan [Citation: *PLR 200851044*]. . . . . 2157

¶10.501 - Section 403(b) Arrangements: Distribution Restrictions

Direct transfer of 403(b) assets to qualified plan not permitted unless transfer satisfies requirements for a rollover [Citation: *PLR 200317022* (September 24, 2002)]. . . . . 210

¶10.514(1) - Section 457(b) Plans

Transfers under IRC §457(e)(17) to purchase permissive service credits under a defined benefit plan must pertain to benefits calculated with respect to years of service not already credited under the plan [Citation: *PLR 200617038*, February 3, 2006, LTR Report Number 1522 (May 3, 2006)]. . . . . 1108

¶10.605(1) - Practice Before The IRS

Treasury officials clarify scope of Circular 230 regulations in teleconference sponsored by ABA [Source: Pension & Benefit News, August 17, 2005, edition]. . . . . 845

¶10.606 - Employee Plans Compliance Resolution System (EPCRS)

IRS posts links for resolving document failures for adopters of pre-approved plans that missed the April 30, 2010, or April 30, 2012, EGTRRA deadline [Citation: *Correcting Plan Errors - VCP Submission Kits for Pre-Approved Plans*, <http://www.irs.gov/retirement/article/0,,id=257274,00.html>]. . . . . 2962

¶10.642 - Plan Administration: Restorative Payments

Payments to plan to cover surrender charges incurred upon surrender of annuity contracts are treated as employer contribution under IRC §§404, 415, and 4972 [Citation: *PLR 200317048* (January 27, 2003)]. . . . . 211

Employer contributions to restore losses incurred in Madoff-like scam were treated as restorative payments under Rev. Rul. 2002-45 [Citation: *PLR 201007077* (February 24, 2010)]. . . . . 2403

¶10.643 - Defined Contribution Plan Allocations

Market Value Equalizer provided by new annuity vendor to cover old vendor’s surrender charges is not a contribution for qualification purposes [Citation: *PLR 200404050*, October 20, 2003]. . . . . 309

**Cumulative Table of Contents for eRISA Update**

**DOL OR PBGC PRIVATE RULINGS AND OPINION LETTERS, FIELD ASSISTANCE BULLETINS**

¶11.104 - Establishment of Plan/Coverage Under Title I of ERISA  
 Health Savings Accounts established in connection with employment-based group health plans are not employee welfare benefit plans for purposes of Title I of ERISA [Citation: *Field Assistance Bulletin 2004-1* (April 7, 2004)]. . . . . 439  
 VEBA used in conjunction with vacation pay plan does not necessarily cause plan to be an employee welfare benefit plan under Title I of ERISA [Citation: *DOL Advisory Opinion 2004-08A* (dated July 2, 2004)]. . . . . 691  
 Supplemental guidance on Title I issues affecting Health Savings Accounts [Citation: *Field Assistance Bulletin 2006-02* (October 27, 2006)]. . . . . 1230

¶11.157 - Multiple Employer Plans  
 DOL concludes that “open” multiple employer plans (MEPs) fail to constitute a single plan because the participating employers do not satisfy the definition of a group or association of employers; rejects use of open MEP even for abandoned plans [Citation: *Advisory Opinion 2012-03A* (May 25, 2012) (abandoned plans), *Advisory Opinion 2012-04A* (May 25, 2012) (active plans)]. . . . . 2963

¶11.182 - ESOPs: Exempt Loans  
 Refinancing of exempt loan: fiduciary considerations [Citation: *Field Assistance Bulletin 2002-1* (September 26, 2002)]. . . . . 77

¶11.183(2) - Employer Securities Under Title I of ERISA: Prohibited Transactions  
 Reallocation of employer securities held in master trust to four of five investing plans resulted in acquisition in violation of the 10% limit under ERISA §407(a) [Citation: *Advisory Opinion 2003-10A* (August 12, 2003)]. . . . . 266

¶11.192 - QDROs  
 Second order modifying original order may qualify as a QDRO; payments made under prior order discharge liability to participant and alternate payee for period it was in effect [Citation: *DOL Advisory Opinion 2004-02A* (February 17, 2004)]. . . . . 385  
 Unclear whether tribal court is recognized under New Mexico law with authority to issue QDROs [Citation: *Advisory Opinion 2011-03A* (February 2, 2011), text available at <http://www.dol.gov/ebsa/regs/aos/ao2011-03a.html>]. . . . . 2728

¶11.271 - Plan Termination: Surplus Assets and Reversions  
 Demutualization proceeds under certain circumstances may be retained by the employer without violating Title I of ERISA [Citation: *Opinion Letter 2003-05A* (April 10, 2003)]. . . . . 212  
 ERISA does not prohibit transfer of surplus assets to unrelated charitable foundation [Citation: *Opinion Letter 2003-08A* (June 26, 2003)]. . . . . 213

¶11.272 - Plan Termination: Missing Participants  
 DOL issues informal guidance on fiduciary obligations to conduct reasonable search for missing participants and how terminated defined contribution plan can complete distributions with respect to missing participants [Citation: *Field Assistance Bulletin 2004-2* (September 30, 2004) (posted at [www.dol.gov/ebsa](http://www.dol.gov/ebsa))]. . . . . 506  
 DOL updates guidance on fiduciary obligations to conduct reasonable search for missing participants and how terminated defined contribution plan can complete distributions with respect to missing participants [Citation: *Field Assistance Bulletin 2014-01* (August 14, 2014) ]. . . . . 3472



**Cumulative Table of Contents for eRISA Update**

¶11.300 - Form 5500 Reporting Requirements

DOL posts FAQs on small pension plan audit waiver regulations [Citation: *Frequently Asked Questions on The Small Pension Plan Audit Waiver Regulation*, [www.dol.gov/ebsa/faqs/faq\\_auditwaiver.html](http://www.dol.gov/ebsa/faqs/faq_auditwaiver.html)] ..... 310

FAQs about reporting delinquent participant contributions on Form 5500 - reporting should be in line 4a of Schedule H or I [Citation: *Frequently Asked Questions About Reporting Delinquent Participant Contributions on Form 5500*]. ..... 440

Top hat registration statement for single plan maintained by a controlled group [Citation: *Advisory Opinion 2008-08A* (December 19, 2008)]. ..... 2086

DOL posts FAQs at website regarding EFAST2 (mandatory electronic filing system) [Citation: <http://www.dol.gov/ebsa/faqs/faq-EFAST2.html>]. ..... 2350

DOL issues additional FAQs on revised Schedule C to Form 5500 [Citation: *FAQs About The 2009 Form 5500 Schedule C*, available at the DOL website ([www.dol.gov/ebsa/faqs/main.html](http://www.dol.gov/ebsa/faqs/main.html))]. ..... 2359

DOL posts additional FAQs at website regarding EFAST2 (mandatory electronic filing system) [Citation: <http://www.dol.gov/ebsa/faqs/faq-EFAST2.html>]. ..... 2404

DOL provides alternative signing procedure that will permit third party service providers to sign Form 5500 on behalf of client if certain conditions are met [Citation: FAQ-33a, available at <http://www.dol.gov/ebsa/faqs/faq-EFAST2.html>]. ..... 2444

DOL posts additional FAQs at website regarding EFAST2 (mandatory electronic filing system) [Citation: <http://www.dol.gov/ebsa/pdf/faq-efast2.pdf>]. ..... 2525

DOL posts additional FAQs at website regarding EFAST2 (mandatory electronic filing system) [Citation: <http://www.dol.gov/ebsa/pdf/faq-efast2.pdf>]. ..... 2758

¶11.300(2) - Form 5500 Reporting Requirements: Schedule A

DOL outlines requirement for reporting commissions and fees paid to brokers, agents, and others by insurance companies who provide insurance coverage to ERISA plans [Citation: *DOL Advisory Opinion 2005-02A* (February 24, 2005)]. ..... 693

¶11.300(4) - Form 5500 Reporting Requirements: Section 403(b) Plans

DOL provides reporting relief with respect to certain individually-owned contracts or custodial accounts [Citation: *Field Assistance Bulletin (FAB) 2009-02*, available at [www.dol.gov/ebsa](http://www.dol.gov/ebsa)]. ..... 2281

DOL clarifies reporting relief with respect to certain individually-owned contracts or custodial accounts held by section 403(b) plans; provides additional guidance on “safe harbor” exemption under DOL Reg. §2510.3-2(f) [Citation: *Field Assistance Bulletin (FAB) 2010-01*, available at [www.dol.gov/ebsa](http://www.dol.gov/ebsa)] ..... 2405

¶11.311 - Employee Benefit Statements

Good faith compliance standards with periodic benefit statement requirements enacted by the PPA 2006 [Citation: *Field Assistance Bulletin 2006-03*, available at the DOL website <http://www.dol.gov/ebsa/Regs/fabmain.html>]. ..... 1232

Deadline for furnishing employee benefit statements for non-directed defined contribution plans linked to Form 5500 filing [Citation: *Field Assistance Bulletin 2007-03*, available at the DOL website <http://www.dol.gov/ebsa/Regs/fabmain.html>]. ..... 1754

¶11.318 - Miscellaneous Disclosure Requirements under Title I of ERISA

Interim guidance on annual funding notices under ERISA §101(f) [Citation: *Field Assistance Bulletin 2009-01* (February 10, 2009), available at [www.dol.gov/ebsa](http://www.dol.gov/ebsa)]. ..... 2158

**Cumulative Table of Contents for eRISA Update**

Interim guidance on annual funding notice requirement updated to reflect MAP-21 [Citation: *Field Assistance Bulletin 2013-01*]. . . . . 3151

Supplemental guidance on annual funding notice requirement to reflect HATFA [Citation: *Field Assistance Bulletin 2015-01* (January 14, 2015)]. . . . . 3547

¶11.320(1) - Definition of a Fiduciary  
 Person who provides investment advice or manages the investment of a participant’s account in a participant-directed plan is a fiduciary [Citation: *Advisory Opinion 2005-23A* (December 7, 2005)] . . . . . 1050

¶11.320(2) - Fiduciary Requirements: Definitions: Fiduciary Actions  
 Replacement of retiree life insurance benefit under welfare benefit plan with similar benefit under overfunded defined benefit plan not fiduciary action under ERISA; no exclusive purpose violation merely because amendment reduced employer costs and resulted in accounting adjustments favorable to the employer [Citation: *Opinion Letter 2003-04A* (March 26, 2003)]. . . . . 214

¶11.321(1) - Fiduciary Duties And Liability: Prudence And Diversification  
 DOL clarifies aspects of Interpretive Bulletin 95-1 relating to fiduciary’s obligations surrounding the purchase of an annuity contract to satisfy benefit distributions [Citation: *PWBA Opinion Letter 2002-14A* (December 18, 2002)]. . . . . 79  
 Defined benefit plan fiduciary may take into consideration the liability obligations of the plan and the risks associated with such liability in determining a prudent investment strategy [Citation: *Advisory Opinion 2006-08A* (October 3, 2006)]. . . . . 1254

¶11.321(2) - Fiduciary Duties And Liability: Exclusive Purpose Rule/Payment of Fees  
 DOL outlines principles for method of allocating fees paid by defined contribution plan; clarifies types of expenses that may be charged to individual participants, reversing earlier guidance regarding the payment of QDRO-related expenses [Citation: *EBSA Field Assistance Bulletin 2003-3* (May 19, 2003)] . . . . . 215  
 ERISA’s fiduciary rules prohibit the use of plan assets to promote union organizing campaigns and union goals in collective bargaining negotiations [Citation: *DOL Advisory Opinion 2008-05A*]. . . . . 1968

¶11.321(4) - Fiduciary Duties and Liability: Trustee Duties  
 DOL outlines how to determine which fiduciary is responsible for the collection of delinquent employer and employee contributions [Citation: *Field Assistance Bulletin (FAB) 2008-01* (February 1, 2008)] . . . . . 1813

¶11.321(5) - Fiduciary Duties and Liability: Directed Trustees  
 DOL publishes its position on directed trustee responsibilities [Citation: *Field Assistance Bulletin 2004-03* (December 17, 2004) (available at the dol website (www.dol.gov/ebsa)]. . . . . 619

¶11.321(6) - Fiduciary Duties and Liability: Selection of Annuity Providers  
 DOL supplements safe harbor for selecting annuity providers under a defined contribution plan by addressing the duty to monitor and review the annuity provider and the interaction with the statute of limitations [Citation: *Field Assistance Bulletin 2015-02* (July 13, 2015)]. . . . . 3745

¶11.322(1) - Participant-Directed Investments: Disclosures  
 ERISA §404(c) disclosure requirements are satisfied if participants receive a mutual fund’s summary prospectus (Profile), in lieu of a full prospectus, if the Profile is the most recent prospectus in the plan’s possession [Citation: *Advisory Opinion 2003-11A* (September 8, 2003)]. . . . . 267

**Cumulative Table of Contents for eRISA Update**

Prospectus delivery obligation under ERISA §404(c) regulations may be satisfied with a mutual fund’s Summary Prospectus [Citation: *Field Assistance Bulletin 2009-03*, available at [www.dol.gov/ebsa](http://www.dol.gov/ebsa)] ..... 2279

DOL provides supplemental guidance on fee disclosures [Citation: *Field Assistance Bulletin (FAB) 2012-02*, <http://www.dol.gov/ebsa/pdf/fab2012-2.pdf> (May 7, 2012)]. ..... 2971

DOL’s supplemental guidance on fee disclosures modified to withdraw Q&A-30 and replace it with more general statements regarding fiduciary duties [Citation: *Field Assistance Bulletin (FAB) 2012-02R* (July 30, 2012)]. ..... 3033

DOL issues nonenforcement policy that will permit plans to “reset” the annual fee disclosure deadline in 2013 or 2014 [Citation: *Field Assistance Bulletin 2013-02* (July 22, 2013)]. ..... 3261

¶11.322(4) - Participant-Directed Investments: Default Investments  
DOL provides Q&As that clarify certain aspects of the QDIA regulations [Citation: *Field Assistance Bulletin 2008-03* (April 29, 2008)]. ..... 1885

¶11.324 - Fiduciary Requirements: Exculpatory Provisions  
Contractual agreement to limit liability of service provider must be reviewed by fiduciary to determine whether such agreement is prudent; not a *per se* violation of ERISA [Citation: *PWBA Opinion Letter 2002-08A*]. ..... 81

¶11.326 - Definition of Plan Assets  
Underlying assets of target date or lifecycle mutual fund *not* plan assets of plans that invested in the mutual fund [Citation: *DOL Advisory Opinion 2009-04A* (December 4, 2009)]. ..... 2367  
Revenue sharing payments not plan assets until used to pay expenses or credited to the plan [Citation: *DOL Advisory Opinion 2013-03A* (July 3, 2013)]. ..... 3263

¶11.326(1) - Definition of Plan Assets: Participant Contributions  
Time frames established in collective bargaining, employer participation, and similar agreements may be taken into account in determining the “earliest reasonable date” for depositing participant contributions [Citation: *EBSA Field Assistance Bulletin 2003-2* (May 7, 2003)]. ..... 220

¶11.326(3) - Definition of Plan Assets: Settlement Proceeds  
DOL provides guidance on allocation of mutual fund settlement proceeds paid through independent distribution consultant appointed by SEC [Citation: *Field Assistance Bulletin 2006-01* (April 19, 2006), available at DOL website: [www.dol.gov/ebsa](http://www.dol.gov/ebsa)]. ..... 1052

¶11.326(4) - Definition of Plan Assets: Indicia of Ownership  
Investment vehicles involving foreign jurisdictions satisfy ERISA requirement to maintain indicia ownership within jurisdiction of US courts [Citation: *Advisory Opinion 2008-04A*]. ..... 1889

¶11.337 - ERISA Preemption  
ERISA preempts state law that would interfere with operation of a default election feature in a group health plan that triggers payroll deductions [Citation: *Advisory Opinion 2008-02A* (February 8, 2008)] ..... 1816

¶11.338 - ERISA Bonding Requirements  
Subsidiary of bank holding company is eligible for fidelity bonding exemption because it is subject to examination and supervision by the FDIC pursuant to the Bank Holding Company Act [Citation: *Advisory Opinion 2004-07A* (July 1, 2004)]. ..... 510  
DOL provides field guidance on the bonding requirements [Citation: *Field Assistance Bulletin 2008-04 (FAB 2008-04)* (November 25, 2008)]. ..... 2087

**Cumulative Table of Contents for eRISA Update**

¶11.350(1) - Prohibited Transactions: Self-Dealing By A Fiduciary  
 “Float” earned by financial services provider with respect to the plan’s disbursement or investment transactions [Citation: *Field Assistance Bulletin 2002-3* (November 5, 2002)]. . . . . 82  
 DOL discusses the implications of a fiduciary recusing himself from trustees' decision regarding selection of service providers where recusing fiduciary was beneficiary of political campaign donations from such service providers [Citation: *DOL Information Letter*, Division of Fiduciary Interpretations, Office of Regulations and Interpretation (February 23, 2005)]. . . . . 695  
 Trustee who is president of advisor to mutual fund in which plan assets are held would be self-dealing if he uses his fiduciary authority to cause the plan to invest in the mutual fund [Citation: *DOL Advisory Opinion 2005-04A* (March 23, 2005)]. . . . . 768  
 Investment strategy program made available by a bank to its IRA clients would not result in self-dealing violations, so long as advisory and non-advisory fees attributable to participating IRA assets are applied to reduce the management fees charged the IRAs [Citation: *Advisory Opinion 2005-10A* (May 11, 2005)]. . . . . 846

¶11.350(2) - Prohibited Transactions: Definitions - Disqualified Person/Party-In-Interest  
 Administrative corporation wholly owned by related plans is not party-in-interest; services provided by corporation for a fee would not result in prohibited transactions [Citation: *DOL Advisory Opinion 2005-03A* (March 23, 2005)]. . . . . 769  
 DOL looks only to vertical chain of interest to determine “indirect” ownership under party-in-interest definition [Citation: *Advisory Opinion 2011-06A* (February 4, 2011), text available at <http://www.dol.gov/ebsa/regs/aos/ao2011-06a.html>]. . . . . 2729

¶11.350(3) - Prohibited Transactions: Use of Plan Assets by a Disqualified Person/Party-In-Interest  
 Formation of LLC to lease property to company partially-owned by IRA owner, where IRA is an owner of the LLC, would result in a prohibited transaction [Citation: *Advisory Opinion 2006-01A* (January 6, 2006)]. . . . . 1056  
 Actions as trustee of trust beneficiary of IRA, pursuant to estate planning arrangement, that result in payment of statutory commissions from the IRA do not give rise to prohibited transaction [Citation: *Advisory Opinion 2009-02A* (September 28, 2009)]. . . . . 2368

¶11.350(4) - Prohibited Transactions: Definitions: Lending Transactions (Other Than Participant Loans)  
 Purchase of corporate notes by IRA results in prohibited transaction where corporation is a disqualified person due to degree of ownership by IRA owner’s family members [Citation: *DOL Advisory Opinion 2006-09A* (December 19, 2006)]. . . . . 1344  
 Grant to brokerage firm of security interest in account to cover IRA indebtedness to broker is prohibited extension of credit [Citation: *Advisory Opinion 2009-03A* (October 27, 2009)]. . . . . 2370  
 Purchase by IRA of note and deed of trust from bank constitutes extension of credit between IRA and IRA owner [Citation: *Advisory Opinion 2011-04A* (February 3, 2011), text available at <http://www.dol.gov/ebsa/regs/aos/ao2011-04a.html>]. . . . . 2730

¶11.356 - Prohibited Transactions: Qualifying Employer Real Property Exception  
 Satisfaction with ERISA §407 requirements, including the “geographically dispersed” rule, determined after contribution of one or more parcels of real property to plan or sale of one or more parcels by plan [Citation: *Advisory Opinion 2012-05A* (July 20, 2012)]. . . . . 3046

**Cumulative Table of Contents for eRISA Update**

¶11.361 - Prohibited Transaction Exemptions: Exemptions Relating to Loans  
 Requirement that IRA owner provide indemnification agreement to broker setting up futures trading account for IRA is a prohibited extension of credit that is not eligible for relief under PTE 80-26 [Citation: *Advisory Opinion 2011-09A* (October 20, 2011), <http://www.dol.gov/ebsa/regs/aos/ao2011-09a.html>]. . . . . 2894

¶11.362 - Prohibited Transaction Exemptions: Exemptions Relating to Investment Transactions  
 Determination of ownership interests under PTE 84-14 is clarified [Citation: *Opinion Letter 2003-07A* (June 19, 2003)]. . . . . 223  
 Receipt of 12b-1 and subtransfer agency fees from propriety mutual funds will not cause service provider to engage in prohibited transactions when the decision to invest in such funds is made by an independent fiduciary or by participants [Citation: *Opinion Letter 2003-09A* (June 25, 2003)]. 223  
 PTE 77-3 does not preclude the receipt of 12b-1 fees by broker who is unrelated to the mutual funds, the principal underwrite/distributor, any investment advisers, or any affiliates thereof [Citation: *DOL Advisory Opinion 2006-06A* (July 26, 2006)]. . . . . 1255  
 DOL explains interaction between PPA investment advice exemption and prior DOL guidance involving investment advice services, clarifies fee leveling rule [Citation: Field Assistance Bulletin 2007-01 (February 2, 2007), available at the DOL website: [www.dol.gov/ebsa](http://www.dol.gov/ebsa)]. . . . . 1345  
 A broker-dealer firm may engage in transactions with a qualified professional asset manager (QPAM) of a plan, pursuant to PTE 84-14, even though broker-dealer’s subsidiary provides investment advice services to plan participants [Citation: *DOL Advisory Opinion 2007-01A* (January 22, 2007)] . . . . . 1348  
 Use of banking affiliate for deposit account eligible for exemption under ERISA §408(b)(4) even though bank received benefit of decreased borrowing needs from a Federal Reserve Bank [Citation: *DOL Advisory Opinion 2009-01A* (January 13, 2009)]. . . . . 2169  
 Investment advice fiduciaries are eligible for PTE 86-128 relief [Citation: *Advisory Opinion 2011-08A*, text available at <http://www.dol.gov/ebsa/regs/aos/ao2011-08a.html>]. . . . . 2780

¶11.363 - Prohibited Transaction Exemptions Relating to Sales and Exchanges  
 No consideration to be paid by plan where insurance contract transferred to plan has zero cash surrender value [Citation: *PWBA Opinion Letter 2002-12A*]. . . . . 83  
 Sale of second-to-die policy jointly to husband and wife, both of whom are plan participants, is eligible for exemptive relief under PTE 92-6 [Citation: *Advisory Opinion 2006-03A* (February 28, 2006)] . . . . . 1057

¶11.364 - Prohibited Transaction Exemptions Relating to Services  
 Overdraft protection services provided to a plan are covered by reasonable service exemption or ancillary services exemption, if certain conditions are satisfied [Citation: *Opinion Letter 2003-02A* (February 10, 2003)]. . . . . 138

¶11.420 - Definition of Governmental Entity or Governmental Plan  
 Addition of deemed IRAs in a governmental plan will not adversely affect status of plan as a governmental plan [Citation: *DOL Opinion Letter 2003-01A* (January 24, 2003)]. . . . . 140  
 Inclusion of private sector employers in State government’s group health plan would result in loss of status as a governmental plan [Citation: *Advisory Opinion 2012-01A* (April 27, 2012), <http://www.dol.gov/ebsa/regs/aos/ao2012-01a.html>]. . . . . 2984

**Cumulative Table of Contents for eRISA Update**

¶11.506 - Section 403(b) Plans: Title I Issues. . . . . 1600  
ERISA exemption for certain 403(b) plans; safe harbor clarified in light of final regulations [Citation: *Field Assistance Bulletin (FAB) 2007-02* (July 24, 2007) (available at [www.dol.gov/ebsa](http://www.dol.gov/ebsa)). . . 1600  
If an employer maintains a separate qualified plan to which it makes matching contributions based on elective deferrals made to a 403(b) plan, the employer fails to satisfy the DOL Reg. §2510.3-2(f) safe harbor with respect to the 403(b) plan [Citation: *Advisory Opinion 2012-02A* (May 25, 2012)]  
. . . . . 2985

¶11.714 - Financial Reform Legislation  
DOL clarifies application of ERISA fiduciary and prohibited transaction rules to “cleared swap” transactions conducted pursuant to the Dodd-Frank Act [Citation: *Advisory Opinion 2013-01A*]  
. . . . . 3159

Cumulative Table of Contents for eRISA Update

MISCELLANEOUS GUIDANCE

¶12.142 - Death Benefits  
NTIS issues interim regulations to certify organizations to access Death Master File [Citation: *NTIS Reg. §§1110.1-1110.300*, 15 C.F.R. Part 1110 (National Technical Information Service, Department of Commerce) (March 26, 2014)]. . . . . 3346

¶12.242 - Participant Loan Limits (IRC §72(p)): Miscellaneous Loan Issues  
Regulation Z (Truth In Lending) does not apply to participant loans effective July 1, 2010 [Citation: *Regulation Z, 12 C.F.R. Part 226, §226.3(g)*, 74 F.R. 5244 (January 29, 2009)]. . . . . 2170

¶12.272 - Plan Termination: Missing Participants  
Social Security Administration has discontinued its letter forwarding service [Citation: *Elimination of the Social Security Administration’s Letter Forwarding Service*, 79 F.R. 21831 (April 17, 2014)] . . . . . 3398

¶12.440 - Puerto Rico Plans: General Rules  
Puerto Rico Treasury Department issues guidance on new rules relating to determination letters, retroactive qualification procedures [Citation: *Circular Letter No. 11-10*, Puerto Rico Treasury Dept] . . . . . 2944

¶12.701 - Securities Laws  
SEC proposes to repeal Rule 12b-1 in favor of separate rules for asset-based sales charges and servicing fees [Citation: Prop. SEC Reg. §§270.6c-10 (Rule 6c-10) and 270.12b-2 (Rule 12b-2), 17 U.S.C. Part 270, 75 F.R. 47064 (August 4, 2010)]. . . . . 2527  
SEC issues “no action” letter to DOL regarding the applicability of Rule 482 to the participant fee disclosure rules under DOL Reg. §2550.404a-5 [Citation: *Response of the SEC Office or Chief Counsel Division of Investment Management to Department of Labor*, Ref. No. 20081112953 (October 26, 2011), posted at <http://www.dol.gov/ebsa/pdf/SECnoactionletter.pdf>]. . . . . 2895  
Application of NASD Rules 2210 and 2211 to participant-level fee disclosure information provided pursuant to DOL Reg. §2550.404a-5 [Citation: *FINRA Regulatory Notice 12-02*, <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p125393.pdf>] . . . . . 2945  
FINRA provides guidance on disclosure of fees in communications concerning IRAs [Citation: *FINRA Regulatory Notice 13-23* (July 2013)]. . . . . 3267  
FINRA reminds broker-dealers of responsibilities concerning IRA rollovers [Citation: *FINRA Regulatory Notice 13-45* (December 2013)]. . . . . 3308

¶12.711 - FDIC Regulations  
Final regulations raise deposit insurance for participant-directed defined contribution plans, section 457(b) plans, and IRAs, incorporate indexation of deposit insurance limit [Citation: *12 C.F.R. Part 330, FDIC Reg. §§330.1-330.16*, 71 F.R. 53547 (September 12, 2006) (see 71 F.R. 14629 (March 23, 2006) for text of interim rule, which is adopted by the September 12, 2006, final rule except with the amendments shown at 71 F.R. 53547)]. . . . . 1257  
**Note: These regulations replace the interim regulations summarized at page 1058.**