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¶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

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Joint resolution of Congress nullifies regulation to exempt mandatory IRA programs of States from ERISA [*H.J. Res. 66* (May 17, 2017)] . . . . . 4176

¶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

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Congress provides liberalized distribution, rollover and loan rules, and premature distribution penalty relief for certain taxpayers affected by Hurricanes Harvey, Irma and Maria [Citation: *Disaster Tax Relief and Airport and Airway Extension Act of 2017 (Title V) (“DTRA”)*, P.L. 115-63 (September 29, 2017)]. . . . . 4275

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¶1.145(4) - Distribution Restrictions: Hardship Withdrawals  
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¶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  
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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

¶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  
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¶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)  
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¶1.193 - Bankruptcy  
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¶1.210(4) - Premature Distribution Penalty (IRC §72(t)): Public Safety Workers  
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¶1.220(2) - General Rollover Rules: 60-Day Rollover Period  
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¶1.220(6) - Rollovers: Definition of an Eligible Rollover Distribution  
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¶1.222(1) - Special Rollover Rules for IRAs: SIMPLE-IRAs  
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¶1.232 - Timing of Employer Contributions: IRC §404(a)(6)  
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¶1.240(3) - Elective Deferrals: Designated Roth Contributions  
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¶1.246 - Unrelated Business Taxable Income (IRC §§511-514)  
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¶1.300(3) - Deadline for Filing Form 5500  
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¶1.317(1) - Title IV Disclosure Requirements: ERISA §4011 Participant Notice  
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¶1.377(1) - Title IV of ERISA - Miscellaneous: Cessation of Operations (ERISA §4062(e))  
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¶1.407 - Roth Conversions and Recharacterization of IRA Contributions  
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¶1.440 - Puerto Rico Plans: General Rules  
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¶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

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SECURE Act and other sections of the Further Consolidated Appropriations Act comprise comprehensive legislation affecting retirement plans, including more flexible safe harbor 401(k) rules, increased tax credit for small employers, more time to adopt plans, lower in- service distribution age for pension plans, expanded 401(k) availability to long-term part-time employees, deferral of required minimum distributions and restrictions on post-death distributions from defined contribution plans, facilitation of lifetime income options, expanded multiple employer plan options, increased penalties for certain reporting failures, rules for terminated 403(b) custodial account plans, expanded IRA availability, permanent relief for closed defined benefit plans, and additional disaster relief [Citation: <i>Further Consolidation     Appropriations Act: Division O (SECURE Act), §104 of Division M, and Division Q</i> , P.L. 116- 94 (December 20, 2019)] .....	4589
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<p>CARES Act provides tax relief for coronavirus-related distributions from DC plans and IRAs, loan limit increases and loan repayment relief for certain individuals, funding relief for DB plan sponsors, and required minimum distribution relief for DC plans and IRAs, expands DOL authority to extend ERISA deadlines, and extends small business relief to certain ESOPs [Citation: Coronavirus Aid, Relief, and Economic Security (CARES) Act, §§1110, 2202-2203, 3607-3609, P.L. ____ (H.R. 748 (March 27, 2020))] . . . . .</p>	
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TREASURY REGULATIONS

¶2.102 - Self-Employed Individuals

Treatment of disregarded entity as corporation for employment tax purposes does not change character of compensation for owner(s) of disregarded entity [Citation: *Treas. Reg. §301.7701-2(c)(2)(iv)(C)(2)*, 84 F.R. 31478 (July 3, 2019)] ..... 4493

¶2.108(1) - Disaster Relief

IRS extends relief in Announcement 2017-15 to employees affected by Hurricanes Florence and Michael [*Preamble to Proposed Regulations on Hardship Distributions*, 83 F.R. at 56766 (November 14, 2018)] ..... 4431

Joint relief issued by the Treasury and the DOL health coverage, COBRA continuation, and benefits claims [Citation: *Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak*, 85 F.R. 26351 (May 4, 2020)] ..... 4729

¶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.**

¶2.120 - 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

¶2.121(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

¶2.132 - Vesting: Forfeitures

Forfeitures may be used to reduced employer’s contribution liability for QNECs, QMACs and 401(k)(12) safe harbor contributions [Citation: *Treas. Reg. §§1.401(k)-1(g)(5), 1.401(k)-6, 1.401(m)-1(d)(4), and 1.401(m)-5*, 83 F.R. 34469 (July 20, 2018)] ..... 4373

**Note: These regulations finalizes proposed regulations that were issued on January 28, 2017 and summarized at page 4093**

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¶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.**

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

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¶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.**

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¶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.**  
 Proposed regulations would update IRC §417(e)(3) regulations to incorporate PPA 2006, clarify application of stability periods to mortality assumptions and the use of mortality discounts, and eliminate outdated rules [Citation: *Prop. Treas. Reg. §1.417(e)-1(d)*, 81 F.R. 85190-85196 (November 25, 2016)] ..... 4095

¶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*,

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§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

¶2.157 - Multiple Employer Plans  
 Proposed regulations would provide qualification protection for MEPs where a participating employer’s actions might otherwise disqualify the entire plan [Citation: *Treas. Reg. §1.413-2(g)*, 84 F.R. 31777 (July 3, 2019)] . . . . . 4496

¶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

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

¶2.167: Section 401(k) Plans: Distribution Restrictions

Regulations addressing new hardship distribution rules enacted by recent legislation, adding a safe harbor hardship event for natural disasters, and prescribing uniform determinations for financial need adopted by the Treasury [Citation: *Treas. Reg. §§1.401(k)-1(d), 1.401(k)-3(c)(6) and (7), 1.401(k)-3(j), 1.401(k)-6 (eligible employee, QMACs, and QNECs definitions), 1.401(m)-3(c)(6)(v)*, 84 F.R. 49651 (September 23, 2019)]. . . . . 4541

**Note: These regulations finalize the proposed regulations published on November 14, 2018, and summarized at page 4432.**

¶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.**

Mortality tables for post-2017 plan years; expanded availability of substitute mortality tables [Citation: *Treas. Reg. §§1.430(h)(3)-1, 1.430(h)(3)-2, and 1.431(c)(6)-1*, 82 F.R. 46388 (October 5, 2017)]

. . . . . 4221

**Note: These regulations replace the proposed regulations issued on December 29, 2016, and summarized at p. 4100.**

¶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.**



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¶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

¶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.**

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¶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)] 546  
 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.**  
 Proposed regulations under IRC §3405(e)(13) regarding withholding on periodic payments and nonperiodic distributions (other than eligible rollover distributions) to payments outside of the U.S. [Citation: *Prop. Treas. Reg. §31.3405(e)-1*, 84 F.R. 25209 (May 31, 2019)]. . . . 4494

¶2.220(7) - Rollovers Involving After-Tax Amounts

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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-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

¶2.230 - Deduction Limits: Defined Contribution Plans  
 Deletion of some old-law regulations regarding employer deduction for qualified plan contributions leaves some guidance gaps [Citation: *Treas. Reg. §§1.404(a)-1, 1.404(a)-2, 1.404(a)-2A, 1.404(a)-3, 1.404(a)-4 through 1.404(a)-7, 1.404(a)-8, 1.404(a)-9, 1.404(a)-10, and 1.416-1*, 84 F.R. 9231 (March 14, 2019)]. . . . . 4462

¶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.**

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¶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

¶2.246 - Unrelated Business Taxable Income (IRC §§511-514)  
 Proposed regulations regarding calculation of UBTI under IRC §512(c)(6) for exempt organizations engaged in more than one unrelated trade or business [Citation: *Treas. Reg. §1.512(a)-6*, 85 F.R. 23172 (April 24, 2020)] ..... 4731

¶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

¶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.*

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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

¶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

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¶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 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.**

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¶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

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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 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

Decrease in application fees for PTINs [Citation: *Treas. Reg. §300.13*, 85 F.R. 43433 (July 17, 2020)]. . . . . 4735

¶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



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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

Regulations under IRC §6707A amend the calculation of the penalty for failure to disclose a reportable transaction to reflect changes made by the Small Business Job Act of 2010 [Citation: *Treas. Reg. §301.6707A-1*, 84 F.R. 11217 (March 26, 2019)] ..... 4463

¶2.608 - Tax Procedures: Regulatory Administration ..... 4465

Treasury obsoletes outdated regulations [Citation: *Treas. Reg. §§1.72-15, 1.72-17A, 1.72-18, 1.401-3, 1.401-4, 1.401-5, 1.401-6, 1.401-8, 1.401-10, 1.401-11 through 1.401-13, 1.401(e)-1 through 1.401(e)-6, 1.401(f)-1, 1.402(a)-1, 1.402(e)-1, 1.403(a)-1, 1.404(a)-1, 1.404(a)-2, 1.404(a)-2A, 1.404(a)-3, 1.404(a)-4 through 1.404(a)-7, 1.404(a)-8, 1.404(a)-9, 1.404(a)-10, 1.404(a)(8)-1T, 1.404(e)-1, 1.404(e)-1, 1.404(e)-1A, 1.405-1 through 1.405-3, 1.410(a)-1, 1.410(b)-0, 1.410(b)-1, 1.411(a)-1, 1.411(a)-5, 1.411(a)-9, 1.411(d)-2, 1.411(d)-5, 1.412(b)-5, 1.412(c)(1)-3T, 1.412(l)(7)-1, 1.414(r)-8, and 1.416-1*, 84 F.R. 9231 (March 14, 2019)]4465

¶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

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.

**Nullified by Congress.** These regulations later were nullified by Congress. See ¶1.104, summarized on p. 4176.

DOL expands exception for State-mandated IRA savings programs for nongovernmental employers to permit establishment of such programs by political subdivisions of a State [Citation: *DOL Reg. §2510.3-2(h)*, 81 F.R. 92639-92654 (December 20, 2016)] . . . . . 4110

**Nullified by Congress.** These regulations later were nullified by Congress. See ¶1.104, summarized on p. 4157.

¶3.108(1) - Miscellaneous Definitions And Procedures: Disaster Relief

Joint relief issued by the Treasury and the DOL health coverage, COBRA continuation, and benefits claims [Citation: *Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak*, 85 F.R. 26351 (May 4, 2020)]. . . . . 4736

¶3.157 - Multiple Employer Plans

DOL relaxes “commonality” standard to determine if certain multiple employer *welfare* plans (Association Health Plans) constitute a single-plan in order to expand the market for group health coverage [Citation: *DOL Reg. §2510.3-5*, 83 F.R. 28912 (June 21, 2018)] . . . . . 4376

**Note:** These regulations finalize proposed regulations issued on January 5, 2018, and summarized on page 4289.

DOL relaxes “commonality” standard to determine if certain multiple employer *defined contribution* plans constitute a single-plan in order to expand coverage of employees in workplace retirement plans [Citation: *DOL Reg. §2510.3-55*, 84 F.R. 37508 (July 31, 2019)] . . . . . 4550

**Note:** These regulations finalize proposed regulations published on October 25, 2018, and reported at p. 4401.

¶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.

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¶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*, 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

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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  
 Regulations 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: *DOL Reg. §§2520.104-22(c) and 2520.104-23(c)*, 84 F.R. 27952 (June 17, 2019)]  
 ..... 4502

¶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

¶3.314 - Electronic Delivery of Disclosure Documents  
 Proposed regulations would allow for automatic disclosure of Title I documents through website availability if notice requirement satisfied and opt-out and paper request are available [Citation: *Prop. DOL Reg. §2520.104b-31*, 84 F.R. 56894 (October 23, 2019)] ..... 4561  
 Final regulations allow for automatic disclosure of Title I documents through website availability if notice requirement satisfied and opt-out and paper request are available [Citation: *DOL Reg. §2520.104b-31*, 85 F.R. 31884 (May 27, 2020)] ..... 4736  
**Finalized proposed regulations summarized at p. 4561**

¶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)] ..... 397  
 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.*

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§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.**

DOL delays the Applicability Date of the fiduciary regulation and associated prohibited transaction exemptions, provides extended delay for requirements other than the Impartial Conduct Standards [Citation: *Extension of Applicability Date of DOL Reg. §2510.3-21, PTEs 2016-01 and 2016-02, and amendments to PTEs 75-1, 77-4, 80-83, 83-1, 84-24 and 86-128*, 82 F.R. 16902-16918 (April 7, 2017)] . . . . . 4158

DOL delays to July 1, 2019, the Applicability Date of the requirements (other than the Impartial Conduct Standards) of the Best Interest Contract Exemption, the Principal Transaction Exemption, and amendments to PTE 84-24 to July 1, 2019 [Citation: *18-month Extension of Transition Period and Delay of Applicability Dates*, 82 F.R. 56545 (November 29, 2017)] . . . . . 4792

DOL implements the vacatur by the Fifth Circuit of the DOL’s 2016 Fiduciary Rule, restoring the 5-part test for defining an investment advice fiduciary and the pre-rule version of existing prohibited transaction class exemptions, removing the new exemptions added by the 2016 rule, and restore pre-rule investment education guidelines [Citation: *DOL Reg. §2510.3-21(c)*, 85 F.R. 40589 (July 7, 2020)]. . . . . 4758

¶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, statements of proxy voting policy, and shareholder activism [Citation: *DOL Reg. §2509.2016-01 (Interpretive Bulletin 2016-1)*, 81 F.R. 95879-95884 (December 29, 2016)]. . . . . 4112

**Note: This Interpretive Bulletin supersedes IB 09-2, which was summarized at p. 2006.**

DOL proposes regulations intended to provide clarity regarding how non-pecuniary factors (e.g., ESG investing) should be evaluated in a fiduciary’s selection of plan investment or designated investment alternatives [Citation: *Prop. DOL Reg. §2550.404a-1*, 85 F.R. 39113 (July 7, 2020)] . . . . . 4762

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¶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, 2570.64, 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

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¶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

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¶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 updates claims procedures for disability benefits to coordinate with ACA procedures [Citation: *DOL Reg. §2560.503-1(b)(7), (g)(1)(v), (g)(1)(vii) and (viii), (h)(4), (i)(3)(i), (j)(4), (j)(5), (j)(6), (j)(7), (l), (m)(4), (o) and (p)*, 81 F.R. 92316-92343 (December 19, 2016)] 4116  
**Note: These regulations supersede the proposed regulations summarized at p. 3769.**  
 DOL delays the Applicability Date of revised disability claims regulation to April 1, 2018 [*DOL Reg. §2560.503-1(p)(3) and (4)*, 82 F.R. 56560 (November 29, 2017)] ..... 4296

¶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.**  
 Civil penalty adjustments for 2017 [Citation: *DOL Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2017*, *DOL Reg. 2575.3*, 82 F.R. 5373-5387 (January 18, 2017)]. . . . 4123  
 Civil penalty adjustments for 2018 [Citation: *DOL Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2018*, *DOL Reg. §2575.3*, 83 F.R. 7 (January 2, 2018)]. . . 4297  
 Civil penalty adjustments for 2019 [Citation: *DOL Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2018*, *DOL Reg. §2575.3*, 84 F.R. 213 (January 23, 2019)] 4438  
 Civil penalty adjustments for 2020 [Citation: *DOL Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2020*, *DOL Reg. §2575.3*, 85 F.R. 2292 (January 15, 2020)] 4651

¶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



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**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

**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

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¶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

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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.**

PBGC amends regulations to provide more flexibility for reporting controlled group information, and to clarify plan actuarial assumptions to be used by cash balance plans, the use of consolidated financial statements, and the application of waiver rules [Citation: *PBGC Reg. §§4010.2, 4010.4(e), 4010.7(a), 4010.8(d)(2) and (3), 4010.9, and 4010.11*, 85 F.R. 6046 (February 4, 2020)] . . . . . 4687

**Note: These regulations replace the proposed regulations summarized at p.4503.**

¶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.**

PBGC amends regulations to eliminate potential duplicative reporting with respect to active participant reductions and liquidation and insolvency reporting, to simplify the active participant reduction determination, and to clarify aspects of the reportable events relating to active participant reductions, inability to pay benefits when due, change in contributing sponsor or controlled group, and liquidation [Citation: *PBGC Reg. §§4043.2, 4043.3, 4043.9, 4043.23, 4043.26(a), 4043.27(d), 4043.29, 4043.30, 4043.31, 4043.32, 4043.35, and 4043.81*, 85 F.R. 6046 (February 4, 2020)] . . . . . 4690

**Note: The regulations finalize proposed regulations that were summarized on p. 4505.**

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¶4.332 - ERISA Enforcement: Civil and Criminal Penalties  
 Civil penalty adjustments for 2020 [Citation: *PBGC Adjustment of Civil Penalties for Inflation, PBGC Reg. §§4071.3 and 4302.3*, 85 F.R. 2305 (January 15, 2020)]. . . . . 4653

¶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.**  
 PBGC adopts regulatory amendments to clarify the exemptions from the VRP for plans completing a standard termination and the participant count rules for certain transfers and mergers [Citation: *PBGC Reg. §§4006.4 and 4006.5*, 85 F.R. 6046 (February 4, 2020)] . . . . . 4698  
**Note: The regulations finalize proposed regulations that were summarized at p.4510.**

¶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*,

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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 trusted 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

Regulations incorporate PPA 2006 changes to the phase-in rules for guaranteed benefits for majority owners [Citation: *PBGC Reg. §§4001.2, 4022.24-4022.26, 4022.62-4022.63, 4043.2, 4044.10, 4044.14*, 83 F.R. 49799 (October 3, 2018)] . . . . . 4408

**Note: These regulations finalized proposed regulations issued on March 7, 2018, and summarized on page 4357.**

PBGC amends regulations to provide more time to complete post-distribution reporting after a standard termination [Citation: *PBGC Reg. §4041.29*, 85 F.R. 6046 (February 4, 2020)] . . . . . 4701

**Note: The regulations finalize proposed regulations that were summarized at p.4512.**

¶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

PBGC reorganizes regulations pertaining to review of agency decisions and clarifies certain procedures [*PBGC Reg. §§4003.1, 4003.3-4003.4, 4003.7, 4003.21-4003.22, 4003.31, 4003.33-4003.35, 4003.55, 4003.57-4003.59*, 85 F.R. 10279 (February 24, 2020)]. . . . 4702

**Note: The regulations finalize proposed regulations that were summarized at p.4566.**

¶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.**

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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.**

PBGC proposes to adopt IRC §417(e)(3) interest and mortality assumptions [Citation: *Prop. PBGC Reg. §4022.7, Appendixes A, B and C of Part 4022*, 84 F.R. 51490 (September 30, 2019)] . . . . . 4569

PBGC proposes clarifications and codification of existing practices in the payment of benefits under PBGC-trusted plans [Citation: *Prop. PBGC Reg. §§4022.7-4022.9, 4022.23, 4022.93, 4044.10, 4044.41, 4062.4*, 84 F.R. 51494 (September 30, 2019)]. . . . . 4570

¶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

¶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 adds 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: *PBGC Reg. §§4050.101-4050.407*, 82 F.R. 60800 (December 22, 2017)] . . . . . 1199  
**Note: This regulation supersedes the proposed regulations issued on September 20, 2016, and summarized at p. 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.**

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**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

Sixth Circuit favors more nuanced standard of review of *Darden* factors used to establish employee or independent contractor status; gives substantial weight to independent contractor agreement entered into by parties [Citation: *Jammal v. American Family Insurance Company*, No. 17-4125, \_\_\_ F.3d \_\_\_ (6<sup>th</sup> Cir. January 29, 2019)] . . . . . 4466

¶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

¶5.107 - Definitions: Plan Administrator

ERISA §502(c)(1) penalty for failure to provide requested information can be imposed only on the plan administrator; court rejects concept of *de facto* administrator for this purpose [Citation: *Bergamatto v. Board of Trustees of the NYSA-ILA Pension Fund*, No. 18-2811, \_\_\_ F.3d \_\_\_ (3<sup>rd</sup> Cir. August 6, 2019)] . . . . . 4573

¶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)]

¶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

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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. 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



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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

Wire transfer of funds out of plan to participant reasonably interpreted by administrator as paid as of such date, even though funds did not hit transferee account until after participant’s death [Citation: *Wengert v. Rajendran*, 866 F.3d 725 (8<sup>th</sup> Cir. April 3, 2018)] . . . . . 4361

¶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)] 8

    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 Plan*, 46 EBC 2702 (10<sup>th</sup> 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

    Prenuptial 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

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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

Arizona’s revocation-on-divorce statute resulted in forfeiture of former spouse’s rights to IRA after IRA owner’s death; contractual choice-of-law provision not followed [Citation: *Lazar v. Kronke*, 862 F.3d 1186 (9<sup>th</sup> Cir. July 14, 2017)] . . . . . 4237

¶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

Participant’s death three days before annuity starting date resulted in no death benefit for nonspouse beneficiary because plan only provide spousal preretirement death benefits [Citation: *Estate of Jones v. Children’s Hospital and Health Systems Incorporated Pension Plan*, 892 F.3d 919 (7<sup>th</sup> Cir. June 13, 2018)] . . . . . 4382

¶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

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[Citation: *Wetzler 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

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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: *Lanfear v. Home Depot, Inc.*, \_\_\_ F.3d \_\_\_ (2012 WL 1580614) (11<sup>th</sup> Cir. May 8, 2012)] . . . . . 2950

*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)] 242

*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

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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

On remand, Fifth Circuit dismisses fiduciary claims regarding retention of publicly-traded stock, illustrating difficulties for plaintiffs in stock drop cases in a post-*Dudenhoeffer* environment [Citation: *Kopp v. Klein*, 894 F.3d 214 (5<sup>th</sup> Cir. June 27, 2018)] . . . . . 4383

Second Circuit breathes some life into pleading standards for stock drop cases based on nonpublic information [Citation: *Jander v. Retirement Plans Committee of IBM*, \_\_\_ F.3d \_\_\_, No. 17-3518 (2<sup>nd</sup> Cir. December 10, 2018)] . . . . . 4440

Plaintiffs continue to struggle with the *Dudenhoeffer* pleading standards regarding allegedly overvalued publicly-traded employer securities [Citation: *Usenko v. MEMC LLC*, No. 18-1626, \_\_\_ F.3d \_\_\_ (8<sup>th</sup> Cir. June 4, 2019)] . . . . . 4513

Supreme Court pauses the “celebration” over the Second Circuit’s recent decision on pleading standards for stock drop cases based on nonpublic information [Citation: *Retirement Plans Committee of IBM v. Jander*, No. 18-1165, 589 U.S. \_\_\_ (2020), (January 14, 2020)] . 4654  
**Note: This case relates to the Second Circuit case reported on page 4440. Upon remand, however, the Second Circuit reinstated its opinion after further analysis. See 962 F.3d 85 (2nd Cir. 2020).**

Securities held by plan in former employer lost status of employer securities after spin-off, so traditional concepts of prudence and diversification apply [Citation: *Schweitzer v. Investment Committee of the Phillips66 Savings Plan*, No. 18-20379, \_\_\_ F.3d \_\_\_ (5<sup>th</sup> Cir. May 22, 2020) . . . . . 4768

¶5.184 - S Corporation ESOPs: Special Tax Issues

S corporation stock held by ESOP attributed to participating employees to determine if they were related persons within the meaning of IRC §267 [Citation: *Peterson v. Commissioner*, No. 17-9003, \_\_\_ F.3d \_\_\_ (10<sup>th</sup> Cir. May 15, 2019)] . . . . . 4514

¶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

¶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

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Federal court recognizes anti-assignment exception for garnishment under federal Mandatory Victims Restitution Act of 1996 [Citation: *U.S. v. Novak*, 37 EBC 1172 (9th Cir. 2006)] 000

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) (9th 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

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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

Sixth Circuit applies “clearly specifies” test to determine that divorce decree met the statutory requirements of a QDRO [Citation: *Sun Life Assurance Company of Canada v. Jackson*, 877 F.3d 698 (6<sup>th</sup> Cir. November 28, 2017)] ..... 4326

Court upholds validity of QDRO issued after participant’s death where final partition entered less than 18 months before compliant QDRO was issued [Citation: *Miletello v. RMR Mechanical, Inc.*, No.18-30942, \_\_\_ F.3d. \_\_\_ (5<sup>th</sup> Cir. April 16, 2019)]. ..... 4514

¶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

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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)] 078

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

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).**



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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

IRA and 401(k) funds obtained in a property settlement were not exempt from bankruptcy estate as retirement funds [Citation: *Lerbakken v. Sieloff and Associates, P.A. (In re Lerbakken)*, \_\_\_ F.3d \_\_\_, No. 18-6018 (8<sup>th</sup> Cir. October 16, 2018)] . . . . . 4441

Chapter 13 debtor’s rate of 401(k) contributions is not part of disposable income and may continue rather than made available to creditors [Citation: *In re Davis*, No. 19-3117, \_\_\_ F.3d \_\_\_ (6<sup>th</sup> Cir. June 1, 2020)] . . . . . 4770

¶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

Amending that assumed future compensation increases with respect to protected traditional-formula benefit did not violate anti-cutback rule [Citation: *Teufel v. Northern Trust Company*, No. 17-1676, \_\_\_ F.3d \_\_\_ (7<sup>th</sup> Cir. April 11, 2018)]. . . . . 4362

¶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

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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

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

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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

¶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

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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)] 9  
 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

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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

Second Circuit finds one-year statute of limitations for civil forfeitures under State law applies to section 502(c)(1) claims [Citation: *Brown v. Rawlings Financial Services, LLC*, 868 F.3d 126 (2<sup>nd</sup> Cir. August 22, 2017)] . . . . . 4239

¶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

    Ministerial employees’ misinformation about distribution options may amount to a fiduciary breach by the fiduciary for whom the employees work as agents, but accurate information in SPD will foreclose recovery [Citation: *DeRogatis v. Board of Trustees of the Central Pension Fund*, \_\_\_ F.3d \_\_\_, No. 16-3549-cv (2<sup>nd</sup> Cir. September 14, 2018)]. . . . . 4412

¶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:

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*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

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

In the absence of a plan document, a summary plan description could constitute a plan to determine health plan’s right to reimbursement for participant’s third party recovery for injuries [*MBI Energy Services v. Hoch*, No. 18-1539, \_\_\_ F.3d \_\_ (8<sup>th</sup> Cir. July 3, 2019)]. . . . . 4515

¶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. Coldsina, 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

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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

Fifth Circuit vacates entire fiduciary regulation and related PT exemptions, while Tenth Circuit rules that limiting PTE 84-24 to fixed rate annuities was not an improper exercise of regulatory action [Citation: *Chamber of Commerce v. DOL*, No. 885 F.3d 360 (5<sup>th</sup> Cir. March 15, 2018); *Market Synergy Group, Inc. v. DOL*, No. 885 F.3d 676 (10<sup>th</sup> Cir. March 13, 2018)] . . . 4363

Financial institution’s engagement in foreign exchange transactions on behalf of client plans did not cause the institution to be an ERISA fiduciary with respect to such plans [Citation: *Allen v. Credit Suisse Securities LLC*, Nos 16-3327-cv (L) and 16-3571-cv (CON), \_\_\_ F.3d \_\_\_ (2<sup>nd</sup> Cir. July 10, 2018)] . . . . . 4385

Financial service provider was not a fiduciary merely because it had the authority to change the credited rate on stable value product since, after any such change, the plan fiduciary could eliminate the investment and participants could direct out of that investment [Citation: *Teets v. Great-West Life & Annuity Insurance Company*, No. 18-1019, \_\_\_ F.3d \_\_\_ (10<sup>th</sup> Cir. March 27, 2019)]. . . . . 4468

Person identified as named fiduciary is an ERISA fiduciary regardless of whether such person would meet the functional fiduciary test [Citation: *Dawson-Murdock v. National Counseling Group, Inc.*, No. 18-1989, \_\_\_ F.3d \_\_\_ (4<sup>th</sup> Cir. July 24, 2019)]. . . . . 4574

Financial service provider was acting as a fiduciary when it set guaranteed rate of return on fixed income option [Citation: *Roxo v. Principal Life Insurance Company*, No. 18-3310 \_\_\_ F.3d \_\_\_ (8<sup>th</sup> Cir. February 3, 2020)] . . . . . 4705

¶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

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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, 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. Coldsina, 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)] ..... 3300

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

Prudence challenge against stable value fund investment option dismissed for failure to state a claim under ERISA [Citation: *Barchock v. CVS Health Corporation*, 886 F.3d 43 (1<sup>st</sup> Cir. March 23, 2018)] ..... 4365



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¶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 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

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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

Damages award on fiduciary breach with respect to substitution of default investment fund vacated because district court failed to consider proper damages calculation other than a suggested alternative mentioned by the appellate court in the earlier opinion [Citation: *Tussey v. ABB, Inc.*, 850 F.3d 951 (8<sup>th</sup> Cir. March 9, 2017)]. ..... 4162

First Circuit addresses burden of proof issues surrounding fiduciary breach allegations regarding use of proprietary funds and unreasonableness of fees, and the application of PTE 77-3 to in-house mutual fund investments [Citation: *Brotherston v. Putnam Investments, LLC*, No. 17-1711, \_\_\_ F.3d \_\_\_ (1<sup>st</sup> Cir. October 15, 2018)] ..... 4442

Fiduciary breach suit against large 403(b) plan for excessive fees relating to investment options allowed to proceed to trial; allegations must focus on deficiencies in fiduciary’s *process* [Citation: *Sweda v. University of Pennsylvania*, No. 17-3244, \_\_\_ F.3d \_\_\_ (3<sup>rd</sup> Cir. May 2, 2019)]. ..... 4516

Seventh Circuit rejects plaintiffs’ claims in excessive fee case; addressing allocation of recordkeeping fees, effect of broad investment options, choice of recordkeepers [Citation: *Divane v. Northwestern University*, No. 18-2569, \_\_\_ F.3d \_\_\_ (7<sup>th</sup> Cir. March 25, 2020)] 07

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

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¶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)] . . . . . 1013

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

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**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.**

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)] 8

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

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(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 (7th 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,

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2012)] ..... 2932

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

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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)] 2

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

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

Promissory estoppel claim against health insurer ruled not preempted by ERISA because medical provider did not receive valid assignment of payment and received an independent promise from insurer [Citation: *McCulloch Orthopaedic Surgical Services, PLLC v. Aetna, Inc.*, 857 F.3d 141 (2<sup>nd</sup> Cir. May 18, 2017)] . . . . . 4179

Killer statute determined not to be preempted by ERISA; applicable to person found not guilty by reason of insanity [Citation: *Laborers’ Pension Fund v. Miscovic*, 880 F.3d 927 (7<sup>th</sup> Cir. January 29, 2018)] . . . . . 4366

Insurance savings clause under ERISA §514 resulted in state law preventing insurer from obtaining reimbursement of health plan participant’s medical payments covered by tort

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settlement [Citation: *Rudel v. Hawai'i Management Alliance Association*, Nos. 17-17395 and 17-17460, \_\_\_ F.3d \_\_\_ (9<sup>th</sup> Cir. September 11, 2019)] ..... 4576

¶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)]

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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

Certification decision may be different for liability and damages stages [Citation: *Clemons v. Norton Healthcare Inc. Retirement Plan*, 890 F.3d 254 (6<sup>th</sup> Cir. 2018)]. ..... 4414

¶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

Choice of law provision in plan should be given effect as matter of federal law; standard of review of administrator’s denial of disability affected by which state law applied [Citation: *Ellis v. Liberty Life Assurance Company of Boston*, No. 19-1074, \_\_\_ F.3d \_\_\_ (10<sup>th</sup> Cir. May 13, 2020)]. ..... 4776

¶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

¶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)]

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Arbitration clause in employment clause did not apply to action under ERISA §502(a)(2) because the suit was brought *on behalf of the plan* [Citation: *Munro v. University of Southern California*, \_\_\_ F.3d \_\_\_ (9<sup>th</sup> Cir. July 24, 2018)] . . . . . 4414

Ninth Circuit reverses its earlier case law that ERISA claims are not arbitrable in light of a more recent Supreme Court case [Citation: *Dorman v. Charles Schwab Corp.*, No. 18-15281, \_\_\_ F.3d \_\_\_ (9<sup>th</sup> Cir. August 20, 2019)] . . . . . 4577

¶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)] 205

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. Auffenberg Ford, Inc.*, 637 F.3d 718 (7<sup>th</sup> Cir. March 11, 2011)] . . . . . 2712

Multiemployer fund could bring ERISA §515 action against employer for exit contribution because trust documents clear provided that such contribution survived the collective-bargaining agreement [Citation: *Board of Trustees, International Training Institute for the Sheet Metal and Air Conditioning Industry v. Four-C-Aire, Inc.*, No. 17-2295, \_\_\_ F.3d \_\_\_ (4<sup>th</sup> Cir. July 3, 2019)] . . . . . 4519

Multiemployer fund trustees had right to audit employer's payroll records, including those of nonunion employees [Citation: *Electrical Construction Industry Prefunding Credit Reimbursement Program v. Veterans Electric, LLC*, No. 19-1051, \_\_\_ F.3d \_\_\_ (7<sup>th</sup> Cir. October 24, 2019)] . . . . . 4656

¶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

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Fiduciary bank failed to meet its burden to prove the amount of recordkeeping fees collected from plan were related to direct expenses; reasonable compensation exemption not applicable to self-dealing [Citation: *Acosta v. City National Corporation*, No. 17-55421, \_\_\_ F.3d \_\_\_ (9<sup>th</sup> Cir. April 23, 2019)] ..... 4520

¶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

¶5.363 - Prohibited Transactions: Exemptions Relating to Sales or Exchanges ..... 4474  
 Sale of company stock to ESOP was a prohibited transaction because ESOP overpaid for stock; ERISA §408(e)(1) exemption not applicable because overpayment by ESOP fails “adequate consideration” requirement [Citation: *Brundle v. Wilmington Trust, N.A.*, No. 17-1873, \_\_\_ F.3d \_\_\_ (4<sup>th</sup> Cir. March 27, 2019)]. ..... 4474

¶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  
 Court held trust that is in a controlled group with employer was liable to PBGC for funding liabilities because its leasing of land to the employer was a trade or business, and federal common law of successor liability also can be applied [Citation: *PBGC v. Findlay Industries, Inc.*, \_\_\_ F.3d \_\_\_, No. 17-3520 (6<sup>th</sup> Cir. September 4, 2018)]. ..... 4416

¶5.376 - Title IV: Multiemployer Plans  
 Two private equity firms that owned a manufacturing company at the time it went bankruptcy were held *not* to be liable for MPPAA withdrawal liability imposed on the manufacturing company [Citation: *Sun Capital Partners III, LP v. New England Teamsters & Trucking Industry Pension Fund*, No. 16-1376, \_\_\_ F.3d \_\_\_ (1<sup>st</sup> Cir. November 22, 2019)]. . . . 4656

¶5.404 - IRAs: Taxation Issues  
 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

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IRAs held by spouse were community property subject to garnishment under the Mandatory Victims Restitution Act [Citation: *U.S. v. Berry*, No. 19-20050, \_\_\_ F.3d \_\_\_ (5<sup>th</sup> Cir. February 28, 2020)] ..... 4711

¶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

IRS could not recharacterize dividends paid to Roth IRAs through a DISC as contributions made by the owners of the Roth IRAs where transactions were structured exactly as the tax code requires [Citation: *Summa Holdings, Inc. v. Commissioner*, 848 F.3d 779 (6<sup>th</sup> Cir. February 16, 2017)]. ..... 4164

¶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

Supreme Court holds “principal purpose organization” of church may *establish* and maintain a church plan that is exempt from ERISA [Citation: *Advocate Health Care Network v. Stapleton*, 137 S.Ct. 1652 (June 5, 2017)] ..... 4180

**Note: This case overrules earlier opinions in the Third and Seventh Circuits, summarized at p. 3776 and p. 3855, respectively.**

Tenth Circuit tackles issue of what is a “principal purpose organization” for purposes of the church plan exemption from ERISA [Citation: *Medina v. Catholic Health Initiatives*, 877 F.3d 1213 (10<sup>th</sup> Cir. December 19, 2017)] ..... 4329

Eighth Circuit joins Tenth Circuit in its interpretation of the term “principal purpose organization” for purposes of the church plan exemption from ERISA [Citation: *Swainsona v. Mercy Health*, No. 18-3574 \_\_\_ F.3d. \_\_\_ (8<sup>th</sup> Cir. March 27, 2020)] ..... 4713

¶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

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¶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)]  
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 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  
 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 (7<sup>th</sup> Cir. August 7, 2006), reversing, 274 F.Supp. (S.D.Ill. 2003)] ..... 1229  
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¶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)]

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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 (7<sup>th</sup> 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 (2<sup>nd</sup> 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 (8<sup>th</sup> Cir. September 7, 2004)] ..... 584

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¶6.258 - Special Tax Rules for Expatriates

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¶6.260(1) - Estate Tax Issues Relating To Retirement Plans: QTIP Elections

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¶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

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¶6.300(1) - Form 5500 Reporting Requirements: Schedule B  
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¶6.300(5) - Penalties for Late 5500 Filing/Relief Programs  
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IRS expands determination letter options for individually-designed plans - one temporary the other open-ended [Citation: *Rev. Proc. 2019-20*, 2019-20 I.R.B. (May 13, 2019); advance release on May 1, 2019] . . . . . 4521

¶6.621 - Volume Submitter Plans  
     Procedure for implementing VS practitioner’s authority to amend specimen plan on behalf of adopting employers [Citation: *Announcement 2005-37*, 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

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launched for pre-approved defined contribution plans [Citation: *Rev. Proc. 2005-16*, 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: *Announcement 2005-36*, 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: *Announcement 2008-23*, 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: *Rev. Proc. 2008-56*, 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: *Announcement 2010-20*, 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](http://www.irs.gov))] . . . . . 2518

Updated procedure addresses applications for opinion and advisory letters; launches second RAP cycle for Pre-Approved Plans [Citation: *Rev. Proc. 2011-49*, I.R.B. 2011-44 (October 31, 2011), as modified by *Announcement 2012-3*, 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: *Rev. Proc. 2013-22*] . . . . . 3128

Pre-approved plan program expanded to include cash balance formulas [Citation: *Announcement 2014-4*, 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: *Announcement 2014-16*, 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: *Rev. Proc. 2014-28*, 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: *Rev. Proc. 2015-22*, 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 *Announcement 2011-82* [Citation: *Rev. Proc. 2015-36*, 2015-25 I.R.B. (June 18, 2015)] . . . . . 3619

Revised procedure for Pre-Approved Plans combines M&P plans and volume submitter plans into a single category of Pre-Approved Plans, expands plan eligible to use Pre-Approved Plan Documents, delays third on-cycle submission period for Defined Contribution Pre-Approved

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Plans [Citation: *Rev. Proc. 2017-41*, 2017-29 I.R.B. (July 17, 2017) (advance release on July 3, 2017)]. . . . . 4190

Procedures for second RAP cycle modified to permit cash balance plans that use actual return on total plan assets as the interest crediting rate; conforming language adopted for second cycle and third cycle procedures [Citation: *Rev. Proc. 2018-21*, 2018-14 I.R.B. (May 21, 2018) (advance release on March 16, 2018)]. . . . . 4367

Two-year window to restate defined benefit M&P plans and volume submitter plans for second remedial amendment cycle ends April 30, 2020; determination letter program opens May 1, 2018 [Citation: *Announcement 2018-5*, 2018-13 I.R.B. (March 26, 2018)] . . . . . 4368

Submission cycle for third cycle extended for DC Pre-Approved Plans [Citation: *Rev. Proc. 2018-42*, 2018-36 (September 4, 2018; advance release on August 15, 2018)]. . . . . 4426

Third cycle submission period opens for Defined Benefit Pre-Approved Plans [Citation: *Rev. Proc. 2020-10*, 2020-10 (March 2, 2010) (advance release on December 19, 2019)]. . . 4666

Two-year restatement window for the second remedial amendment cycle for pre-approved defined benefit plans extended to July 31, 2020 [Citation: *Deadlines Extended for Pre-Approved Defined Benefit Plans*, [www.irs.gov](http://www.irs.gov) (March 30, 2020)]. . . . . 4718

Third cycle submission period opens for Defined Benefit Pre-Approved Plans [Citation: *Rev. Proc. 2020-10*, 2020-10 (March 2, 2010) (advance release on December 19, 2019); as amended by *Deadlines Extended for Pre-Approved Defined Benefit Plans*, [www.irs.gov](http://www.irs.gov) (March 30, 2020)]. . . . . 4719

Two-year restatement window and determination letter submission cycle under third remedial amendment cycle for pre-approved defined contribution plans [Citation: *Announcement 2020-7*, 2020-25 I.R.B. (June 15, 2020)] . . . . . 4787

¶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: *Rev. Proc. 2003-44*, 2003-25 I.R.B. (June 23, 2003)]. . . . . 202

**Note: This procedure has been replaced by Rev. Proc. 2006-27, which is reported at ¶6.606, page 1103.**

IRS modifies the EPCRS procedure to clarify the use of the streamlined VCP filing for certain remedial amendment failures [Citation: *Rev. Proc. 2007-49*, 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: *Rev. Proc. 2002-73*, 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: *Rev. Proc. 2003-72*, 2003-38 I.R.B. (September 22, 2003)]. . . . . 251

¶6.633 - EGTRRA Remedial Amendment Period

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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: *Technical Assistance on Timing of EGTRRA Amendments*, 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: *Rev. Proc. 2004-25*, 2004-16 I.R.B. (March 31, 2004)] . . . . . 378

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

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2008 list issued for Cycle D plans [Citation: *Notice 2008-108*, 2008-50 I.R.B. (December 15, 2008)]  
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2009 list issued for Cycle E plans [Citation: *Notice 2009-98*, 2009-52 I.R.B. (December 28, 2009)]  
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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)]  
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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,  
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2013 list issued for review of Cycle D plans in the 2<sup>nd</sup> cycle under Rev. Proc. 2007-44 [Citation:  
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*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

2017 list issued for review of Pre-Approved DC Plans in the 3<sup>rd</sup> remedial amendment cycle  
 [Citation: *Notice 2017-37*, I.R.B. 2017-29 (July 17, 2017) (advance release on July 3, 2017)]  
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**Note: There was no Cumulative List published in 2016.**

2020 list issued for review of Pre-Approved DB Plans in the 3<sup>rd</sup> remedial amendment cycle  
 [Citation: *Notice 2020-14*, 2020-13 I.R.B. (March 23, 2020)] ..... 4720

**Note: There were no Cumulative Lists published in 2018 and 2019.**

¶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

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¶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

IRS establishes uniform deadline for adopting interim amendments under Pre-Approved Plans to comply with the final 401(k) hardship regulations [Citation: *Rev. Proc. 2020-9*, 2020-2 I.R.B. (January 6, 2020)] . . . . . 4667

SECURE Act amendment deadline applies to interim amendments and discretionary amendments relating to the SECURE Act [Citation: [Citation: *Notice 2020-14*, 2020-13 I.R.B. (March 23, 2020)] . . . . . 4725

¶6.637 - Post-2016 Remedial Amendment Rules for Individually-designed Plans

2016 Required Amendment List issued by the IRS [Citation: *Notice 2016-80*, 2016-52 I.R.B. (December 26, 2016) (advance release on December 14, 2016)] . . . . . 4140

2017 Required Amendment List issued by the IRS [Citation: *Notice 2017-72*, 2017-52 I.R.B. (December 26, 2017) (advance release on December 5, 2017)] . . . . . 4341

2018 Required Amendment List issued by the IRS [Citation: *Notice 2018-91*, I.R.B. (December 26, 2018) (advance release on December 5, 2018)]. . . . . 4458

2019 remedial amendment list includes final 401(k) hardship regulations [Citation: *Notice 2019-64*, 2019-52 (December 23, 2019)] . . . . . 4668

¶6.638 - Maintaining Plan Qualification: Operational Compliance

IRS posts initial Operational Compliance List on its website [Citation: *Operational Compliance List* (February 27, 2017), [www.irs.gov](http://www.irs.gov)]. . . . . 4166

IRS updates Operational Compliance Checklist to include rules taking affect in 2018 and 2019 [Citation: *Operational Compliance Checklist*, as updated on March 26, 2019] . . . . . 4488

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IRS updates Operational Compliance List to reflect changes effective through 2020 [Citation: *Operational Compliance List* (July 8, 2020), [www.irs.gov](http://www.irs.gov)] . . . . . 4788

¶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 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

¶6.717 - CARES Act  
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**DOL OR PBGC FORMAL GUIDANCE (OTHER THAN REGULATIONS)**

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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

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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

PBGC disaster relief provided for victims of Hurricanes Harvey, Irma, and Maria, and the California Wildfires [Citation: *Disaster Relief Announcements 17-09 through 17-19* (August 29 through October 24, 2017)]. . . . . 4344

DOL provides relief for victims of Hurricanes Harvey, Irma and Maria, and California Wildfires [Citation: *DOL News Release 17-1216-NAT* (August 30, 2017) (Harvey), *DOL News Release 17-1297-NAT* (September 15, 2017) (Irma), *EBSA News Release* (November 21, 2017) (Maria and California Wildfires), *Extension of Certain Time Frames for Employee Benefit Plans Affected by Hurricane Maria*, 82 F.R. 55507 (November 22, 2017)]. . . . . 4345

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PBGC simplifies procedures for determining whether PBGC relief applies to a disaster; coordination with IRS announcements [Citation: *Announcement of PBGC Disaster Relief*, 83 F.R. 30991 (July 2, 2018)] . . . . . 4388

PBGC reminders on Title IV disaster relief triggered by IRS Notice 2020-23 [Citation: *PBGC Provides Relief to Mitigate Effects of COVID-19 Pandemic*, Press Release 20-02 (April 10, 2020)] . . . . . 4726

DOL takes relaxed enforcement posture with respect to Title I deadlines during Outbreak Period of COVID-19 that will focus on compliance assistance and reasonable accommodations [Citation: *EBSA Disaster Relief Notice 2020-1* (posted April 29, 2020)] . . . . . 4827

COVID FAQs released by PBGC [Citation: *COVID-19-Related Single-Employer Plan Sponsors and Administrations Questions and Answers*, [www.pbgc.gov](http://www.pbgc.gov) (July 2, 2020)] . . . . . 4830

¶7.146 - Distributions: Actuarial Assumptions/Present Value Determinations

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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

¶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

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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)

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¶7.303(3) - PBGC Reporting Rules: Reportable Events (ERISA §4043)

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¶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

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¶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  
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¶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  
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¶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

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¶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

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**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

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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

**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)]. . . . . 3187

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¶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

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¶10.201(1) - Taxation of Distributions: Employer Securities - Net Unrealized Appreciation

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¶11.350(3) - Prohibited Transactions: Use of Plan Assets by a Disqualified Person/Party-In-Interest  
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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

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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)] 270

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

¶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)] 345

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

DOL issues FAQs on the conflict-of-interest exemptions issued in conjunction with the expanded definition of investment advice fiduciary [Citation: *Conflict of Interest Exemptions*

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DOL adopts temporary nonenforcement policy during Transition Period under conflict of interest exemptions and issues FAQs regarding compliance during such period [Citation: *Field Assistance Bulletin (FAB) 2017-02* (May 22, 2017); *Conflict of Interest FAQs (Transition Period)* (May 2017)] ..... 4216

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**Note: These regulations finalize the proposed regulations published on May 9, 2018, and summarized at p. 4394.**

¶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.**