

Session #12

Late Breaking Developments

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**2009 CCA Annual Meeting
Monday, November 2, 2009**

Retirement Plan Developments from October 2008 through September 2009

IRS RELEASES		
Item	Issue date	Summary
Employee Plans News	9/09	IRS provides information with respect to final regulations on selection of interest rates. The final regulations will provide automatic approval for a new choice of interest rates for the 2010 plan year regardless of what choices were made for earlier plan years. For plan years beginning after 2009, the final regulations will not allow the use of the full yield curve with a lookback month.
Employee Plans News	9/09	IRS provides information to sponsors and participants on what to do when “limits collide” and on partial terminations. The information defines who an “affected participant” is and reminds sponsors that if more than 20% of total plan participants left in one year because of a lay-off, a partial termination may have occurred.
Notice 2009-82	9/09	IRS addresses waiver of 2009 minimum distributions from 401(k)-type plans. New IRS guidance addresses the waiver of 2009 required minimum distributions (RMDs) from IRAs and defined contribution plans, including 401(k), 403(b) and 457(b) plans. Congress passed the waiver late last year when many retirement accounts lost value. Notice 2009-82 includes sample plan amendments letting individuals choose whether to receive or forgo distributions of 2009 RMDs. The notice offers employers and participants transition relief through Nov. 30; lays out rollover options for 2009 RMDs; and covers related issues, such as tax withholding and spousal consent.
Prop. Regs. §§901.0, 901.2, 901.11, 901.12, 901.31, 901.32, 901.47, 901.72	9/09	Proposed updates to standards for enrolled actuaries. Proposed updates to the Joint Board for the Enrollment of Actuaries’ standards would tweak rules on initial enrollment, clarify the distinction between core and noncore continuing professional education (CPE), reduce required core CPE from 18 to 12 hours after an actuary’s initial renewal cycle (36 total CPE hours would still be required), require at least two core CPE hours on ethics, and simplify rules on active/inactive status. The changes also would align performance standards with professional standards and Circular 230. The comment deadline is Nov. 20.
Rev. Proc. 2009-43; Rev. Proc. 2009-4	9/09	Some multiemployer plans can revoke funding relief elections. Multiemployer pension plans may qualify for automatic IRS approval to revoke a “zone freeze election” made under the Worker, Retiree and Employer Recovery Act of 2008, if conditions in new IRS guidance are met. Automatic approval under Rev. Proc. 2009-43 is contingent on timely submitting a revocation request (generally within the first 330 days of the plan year for which the election was made), notifying participants of the plan’s certified zone status and satisfying additional operational requirements. Other revocation requests may be submitted under Rev. Proc. 2009-4.
Notice 2009-77; Notice 2009-68	9/09	August 30-year Treasury, corporate bond and PPA yield curve rates. The IRS has announced the August 30-year Treasury securities rate (4.37 percent), composite corporate bond rate (6.03 percent), corporate bond yield curve, and PPA funding and lump sum segmented yield-curve rates.

IRS RELEASES

Item	Issue date	Summary
Notice 2009-75	9/09	IRS clarifies tax treatment of rollovers to Roth IRAs. New IRS guidance clarifies tax rules for Roth IRA rollovers. Retirement plans -- including pension, 401(k), 403(b) and governmental 457(b) plans -- must offer Roth IRA rollovers when paying lump sums or other eligible rollover distributions. Though Roth IRA rollovers are taxable unless distributed from a Roth 401(k) or 403(b) account, Notice 2009-75 clarifies that certain tax rules (relating to company stock appreciation, for example) do not apply. The notice also explains how eligibility conditions for Roth IRA rollovers will change in 2010.
Notice 2009-68; Notice 2009-67; Notice 2009-66; Notice 2009-65; Rev. Rul. 2009-32; Rev. Rul. 2009-31; Rev. Rul. 2009-30	9/09	Obama administration marks Labor Day with surge of retirement-focused guidance. A Labor Day bonanza of guidance from the Obama administration could affect many retirement plans. Effective immediately, plans may use updated IRS model notices when making eligible rollover distributions. New IRS rulings offer a roadmap for converting unused paid time off to retirement savings. Other new releases focus on automatically enrolling workers in 401(k)-type plans, automatically increasing their contribution rates and providing an avenue for using tax refunds to buy US savings bonds. The president also used his Sept. 5 speech to push retirement initiatives in his legislative agenda.
Final Regs. §§1.901(a)(9)-1; 1.401(a)(9)-6; 1.401(b)-6	9/09	Governmental plans can use a good-faith standard for required distributions. IRS final rules permit governmental retirement plans to rely on a reasonable, good-faith interpretation of the minimum distribution requirements of Section 401(a)(9). As a result, governmental plans will have more flexibility in making distributions -- especially annuity payments -- that don't necessarily meet prior IRS rules on minimum required distributions. The final rules, which are identical to rules proposed in 2008, implement a Pension Protection Act change affecting qualified defined benefit and defined contribution plans, as well as 403(b) and 457(b) plans.
http://www.stayexempt.org/ep/403b_employee_s/player.html and http://www.stayexempt.org/ep/403b_employer_s/player.html	9/09	IRS audio presentations describe 403(b) plans. Two new audio presentations posted on the IRS website explain common features and compliance requirements for 403(b) plans. One recording, intended for employees, consists of sample questions and answers between a new employee and her employer's HR representative. The second, intended for employers, focuses on final 403(b) regulations that took effect Jan. 1, 2009, and other compliance issues.
IRS Retirement Plan News for Employers (Summer 2009)	8/09	Fixing mistakes in 401(k) plan auto-enrollment. As auto-enrollment becomes more prevalent in 401(k) plans, IRS is seeing two common operational errors. The first involves an employer's failure to recognize an employee's eligibility, so the individual is never sent enrollment materials and is not auto-enrolled. The other involves an employer's failure to deduct automatic contributions from the pay of an employee who received the enrollment package but never opted out. A recent IRS newsletter explains how to fix these problems.

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Rev. Proc. 2009-36	8/09	IRS extends remedial amendment period for governmental plans. New IRS guidance gives governmental employers extra time to adopt remedial amendments to secure a favorable determination letter for their retirement plans. Rev. Proc. 2009-36 extends the remedial amendment period to a date after the first regular meeting of the government entity with authority to amend the plan. The guidance also formalizes a one-time opportunity -- first announced last November -- for governmental plans to file for determination letters during Cycle E (ending Jan. 31, 2011) rather than Cycle C (which expired Jan. 31, 2009).
Schedule R instructions for 2008 Form 5500	8/09	Pension asset disclosures required on 2008 Form 5500 may surprise filers. Pension plan sponsors facing upcoming filing deadlines for the 2008 Form 5500 should take heed of new plan asset disclosures required for Schedule R. For the 2008 plan year, all single-employer and multiemployer defined benefit (DB) plans with 1,000 or more participants must file an attachment providing financial asset breakdowns as of the first day of the plan year (Jan. 1, 2008, for calendar-year plans), including bond duration information. To avoid last-minute filing snags, sponsors of large DB plans should be working with trustees to obtain the required information.
Notice 2009-71	8/09	IRS seeks comments on combined DB/DC plan for small employers. IRS has requested comments by Oct. 15 on issues raised by an "eligible combined plan." This new design, available in 2010, will enable small employers to combine a traditional or cash balance pension plan with an auto-enrollment 401(k) plan and treat the whole arrangement as a single plan for Form 5500 filings. Though intended to reduce administrative costs and testing burdens for firms with two to 500 employees, the design requires minimum DB accruals and DC matching contributions, plus other conditions outlined in Notice 2009-71. IRS guidance will apply prospectively once issued.
Notice 2009-62	8/09	IRS extends reporting deadline for plans with foreign investments. Administrators of -- and individuals with signatory authority over -- pension and other employee benefit trusts invested in foreign hedge funds, mutual funds or similar commingled accounts during 2008 or earlier calendar years can breathe a sigh of relief: IRS has extended their filing deadline for the Report of Foreign Bank and Financial Accounts (FBAR) to June 30, 2010. Individuals should contact counsel to determine how the postponement affects their own FBAR filing obligation or that of a plan they administer.
Advisory Committee on Tax Exempt and Government Entities (ACT) Report of Recommendations	8/09	IRS reviews US tax issues for employers in cross-border transactions. The IRS should work to break down barriers for US employers that want to provide pensions to nonresident aliens working in the US and employees transferred outside the US, according to an IRS advisory group. The IRS has posted the eighth annual report from the Advisory Committee on Tax Exempt and Government Entities, which presented its recommendations this summer. The report suggests that the IRS address such international pension issues as allocation of deductions, taxation of US citizens on accruals in other countries and treatment of pension distributions.
Notice 2009-63	8/09	July 30-year Treasury, corporate bond and PPA yield curve rates. The IRS has announced the July 30-year Treasury securities rate (4.41 percent), composite corporate bond rate (6.39 percent), corporate bond yield curve, and PPA funding and lump sum segmented yield-curve rates.

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Prop. Regs. §§1.430(f)-1; 1.436-1;	7/09	Reviewing pension plans for potentially restricted payments. For defined benefit plans less than 80 percent funded or with bankrupt sponsors, PPA's accelerated distribution restrictions apply to lump sums and many other payment options, such as Social Security level-income options, retroactive annuity starting dates and employee contribution refunds. How the rules affect death and disability benefits or payments under domestic relations orders is unclear. Sponsors should review plan documents and administrative policies for benefits that could be "prohibited payments" and consider eliminating some payment options to ease compliance.
http://www.irs.gov/retirement/article/0,,id=135263,00.html	7/09	Top 10 compliance issues for multiemployer retirement plans. The IRS has highlighted the top 10 compliance issues identified during its audits of multiemployer retirement plans. Common compliance problems include failure to follow required minimum distribution rules, violation of "definitely determinable benefit" requirements when benefit service depends on actual receipt of employer contributions, failure to make actuarial adjustments for benefit payments commencing after normal retirement age, and benefit calculation errors.
FBAR Filing Obligation	7/09	Pension and benefit trusts with foreign investments face Sept. 23 deadline. Administrators and fiduciaries of pension and benefit plans that invested in foreign hedge funds before 2009 should confer with legal counsel to determine whether to file a Report of Foreign Bank and Financial Accounts (FBAR) with IRS. The filing obligation generally applies to US persons -- including trusts -- owning such interests, as well as fiduciaries and others with "signature or other authority" over accounts. Until Sept. 23, IRS will accept FBAR filings (without penalty) for 2008 and earlier years, if filers satisfy certain conditions. [See deadline extension issued 8/09.]
Notice 2009-57	7/09	June 30-year Treasury, corporate bond and PPA yield curve rates. The IRS has announced the June 30-year Treasury securities rate (4.52 percent), composite corporate bond rate (6.6 percent), corporate bond yield curve, and PPA funding and lump sum segmented yield-curve rates.
Interim Final Regs. §§30.0 through 30.17	6/09	Treasury issues TARP pay guidance. The interim final rule on TARP pay and governance standards details how to apply restrictions on executive incentives to take excessive risks; golden parachutes; and bonus, retention and incentive awards. The rule also explains TARP requirements for clawbacks, policies on excessive or luxury expenses, say on pay, independent compensation committees, and compliance certifications. New provisions require disclosures about perquisites and compensation consultants, ban tax gross-ups, and create a special pay master. The rule took effect June 15, but Treasury will accept comments until Aug. 14.
Rev. Proc. 2009-50	6/09	Procedures for correcting late amendments to qualified retirement plans. As the timeliness of qualified retirement plan amendments comes under increased IRS scrutiny, a recent IRS newsletter highlights streamlined procedures for correcting late or missed amendments to individually designed plans. In general, the extent of IRS relief available will depend on the type of amendment involved and the employer's determination letter filing cycle. The guidance focuses exclusively on the timing of plan amendments – it offers no relief to employers that adopted timely amendments but missed their determination letter filing deadline.

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Rev. Ruling 2009-18	6/09	IRS identifies 403(b) guidance that is now obsolete. Now that the final 403(b) regulations are in effect, taxpayers cannot rely on the prior 403(b) rulings and other IRS guidance listed in Rev. Rul. 2009-18. Among the obsolete items is Notice 89-23 (nondiscrimination safe harbor rules for 403(b) plans); however, state and local public schools, as well as certain narrowly defined church entities, may continue to apply that notice's reasonable good-faith standards to determine their controlled group.
Notice 2009-56	6/09	May 30-year Treasury, corporate bond and PPA yield curve rates. The IRS has announced the May 30-year Treasury securities rate (4.23 percent), composite corporate bond rate (6.95 percent), corporate bond yield curve, and PPA funding and lump sum segmented yield-curve rates.
IRS Notice 1036-P	5/09	New income tax rule for pensions addresses underwithholding issue. New IRS income tax withholding procedures for pension payers respond to concerns that revised withholding tables issued in February may result in underwithholding on pension payments. The revised tables, effective April 1, reflect the "Making Work Pay" tax credit and apply to pensions – even though they are ineligible for the credit. The optional procedures explain how to calculate additional withholding for pension payments and encourage payers to contact retirees who updated their Forms W-4P. Payers may choose to continue using only the February withholding tables.
Prop. Regs. §§1.401(k)-3; 1.401(m)-3	5/09	IRS permits midyear suspension of 401(k) safe-harbor contributions. Employers with a "substantial business hardship" may reduce or suspend 401(k) safe-harbor nonelective contributions during the plan year, under IRS proposed rules effective May 18. The relief gives distressed employers using a nonelective safe-harbor formula (typically 3 percent of pay) the same flexibility as those making a safe-harbor match. To qualify, employers must notify employees, pass ADP/ACP testing and meet other conditions. Employers suspending safe-harbor nonelective or matching contributions midyear must prorate the Code's compensation limit.
Notice 2009-45	5/09	April 30-year Treasury, corporate bond and PPA yield curve rates. The IRS has announced the April 30-year Treasury securities rate (3.76 percent), composite corporate bond rate (7.05 percent), corporate bond yield curve, and PPA funding and lump sum segmented yield-curve rates.
Notice 2009-42	4/09	Funding relief election deadline for multiemployer pension plans postponed. Multiemployer plan sponsors have more time to elect funding relief under the Worker, Retiree and Employer Recovery Act for plan years starting Oct. 1, 2008 - March 1, 2009. The IRS has postponed the deadline for elections to freeze plans' funded status until the later of June 30 (previously April 30), or 120 days after the start of the first plan year beginning on or after Oct. 1, 2008. Sponsors also have at least until June 30 to elect to extend funding rehabilitation or improvement periods for critical or endangered plans. Special rules apply when elections must undergo arbitration.

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Item	Issue date	Summary
Form 5500 instructions	4/09	<u>Intranet posting of Form 5500 pension information required for 2008 plan year.</u> Defined benefit plan sponsors will have to post Form 5500 actuarial information (Schedule SB or MB) on their intranets for employees starting later this year. The Pension Protection Act requirement is effective for the 2008 plan year, even though Form 5500 e-filings are not required until the 2009 plan year. Pending further guidance, calendar-year plans filing the 2008 Form 5500 in July 2009 would be well-advised to post the required information on their intranets by October. Posting is not required if a plan sponsor doesn't maintain an intranet site for employee communications.
Notice 2009-39	4/09	<u>March 30-year Treasury, corporate bond and PPA yield curve rates.</u> The IRS has announced the March 30-year Treasury securities rate (3.64 percent), composite corporate bond rate (7.22 percent), corporate bond yield curve, and PPA funding and lump sum segmented yield-curve rates.
IRS Publication 15-T	3/09	<u>New withholding table may cause underwithholding on pensions.</u> New reduced IRS income tax withholding tables implementing the stimulus law's tax credit must be used for pension payments beginning April 1, 2009, even though pensions are not eligible for the credit. This may lead to a retiree or beneficiary owing additional taxes at year-end. Administrators are not required to advise payees of the automatic reduction in withholding taxes, but an employee notice included in IRS Publication 15-T could be adapted to inform recipients of the automatic reduction and option to adjust withholding.
IRS Employee Plans News – Special Edition March 2009	3/09	<u>IRS issues pension yield-curve guidance.</u> Calendar-year pension plan sponsors may reasonably determine 2009 funding targets using the full yield curve for October 2008 (when corporate bond rates peaked), regardless of the yield-curve option used in 2008, according to IRS.
Notice 2009-31	3/09	<u>IRS tightens deadline for multiemployer pension plans electing relief.</u> Multiemployer pension plans must elect funding relief under the Worker, Retiree and Employer Recovery Act by the later of April 30 or 120 days after the start of the first plan year beginning on or after Oct. 1, 2008. Notice 2009-31 details what sponsors must submit to IRS when extending a plan's funding improvement or rehabilitation period or "freezing" a plan's funded status using its prior-year funded status. The notice also lists information that sponsors must provide to participants and others when freezing a plan's funded status as neither endangered nor critical. [See deadline extension issued 4/09.]
Notice 2009-22	3/09	<u>IRS allows new 2009 pension asset averaging method election.</u> Pension plan sponsors may finalize 2008 asset method decisions and evaluate 2009 options now that IRS has issued interim guidance on asset averaging for minimum funding purposes. Notice 2009-22 explains the average value calculation as corrected by the Worker, Retiree and Employer Recovery Act and gives automatic approval for 2009 asset method changes. For the 2008 plan year only, average asset values may be determined under either the new averaging method or the method originally proposed by IRS, so 2008 valuations done using the IRS method won't have to be revised.

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Final Regs. §§226.3; 226.4	3/09	Retirement plan loans exempt from truth-in-lending disclosures. Loans from employer-sponsored retirement plans will be exempt from truth-in-lending disclosures under final regulations effective July 1, 2010. The Regulation Z exemption covers any loan from 401(k) and other qualified plans, 403(b) tax-sheltered annuities, and 457(b) governmental plans that is composed of fully vested funds and complies with the tax code. In crafting the retirement plan exception, the Federal Reserve Board considered that interest on plan loans is reinvested in the participant's own account, with no third-party creditor imposing finance charges.
Notice 2009-31	3/09	February 30-year Treasury, corporate bond and PPA yield curve rates. IRS has announced the February 30-year Treasury securities rate (3.59 percent), composite corporate bond rate (6.83 percent), corporate bond yield curve, and PPA funding and lump sum segmented yield-curve rates.
	2/09	IRS seeks comments on governmental retirement plan survey. As part of a governmental retirement plan initiative, IRS is mailing a pilot questionnaire to 25 randomly selected public-sector plans and soliciting comments on the 24-page survey before sending a final version to a larger group later in 2009. The survey focuses on demographics, plan documents, common provisions, operational compliance, communications, administration and retirement systems. IRS will not use pilot data to select anyone for examination, but final survey responses will be summarized in a public report and used to develop more guidance. Comments were due May 19.
Notice 2008-115; Prop. Regs. §1.409A-4	2/09	NQDC plans can rely on proposed rules to quantify 409A penalties. Proposed IRS rules describe how to calculate employees' tax penalties when a nonqualified deferred compensation plan violates 409A's restrictions on deferral elections and payments. Some parts of the proposal may be helpful to taxpayers – for example, a violation in one year would not necessarily taint later deferrals, and a violation involving nonvested amounts may escape penalties if it doesn't continue into the year the participant vests. Taxpayers may rely on the proposed regulations or instead follow the interim guidance in Notice 2008-115.
Final Regs. §§1.401(k), 1.411(a)-4, 1.414(w)-1, 54.4979-1	2/09	IRS finalizes 401(k) auto-enrollment regulations. Sponsors of 401(k), 403(b) and 457 plans relying on the Pension Protection Act's auto-enrollment provisions should act quickly to review just-released IRS final regulations. New rules on the nondiscrimination safe harbor for "qualified automatic contribution arrangements" (QACAs) generally apply retroactively to Jan. 1, 2008. For "eligible automatic contribution arrangements" (EACAs), good-faith compliance is required now. The final regulations cover many more technical issues than the proposed rules but do not affect auto-enrollment designs other than QACAs or EACAs.
Notice 2009-16	2/09	January 30-year Treasury, corporate bond and PPA yield curve rates. The IRS has announced the January 30-year Treasury securities rate (3.13 percent), composite corporate bond rate (6.47 percent), corporate bond yield curve, and PPA funding and lump sum segmented yield-curve rates.

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Item	Issue date	Summary
WRERA	1/09	Multiemployer plan sponsors must consider funding relief options. Multiemployer pension plan sponsors weighing the new funding relief options enacted late last year need to act quickly. Under the Worker, Retiree and Employer Recovery Act of 2008, multiemployer plan sponsors can elect to freeze the plan's funded status for the first plan year starting on or after Oct. 1, 2008. Notice rules may force an election decision in the first 120 days of the plan year. A three-year extension of funding improvement or rehabilitation periods is available for plans in critical or endangered status during the 2008 or 2009 plan year (after applying any freeze election).
Interim Final Regs. §30.5; 30.6; 30.7; 30.12; Notice 2008-PSSFI	1/09	Treasury releases additional guidance on EESA pay limits for financial institutions. New Treasury guidance clarifies and makes technical changes to the executive pay and governance restrictions for financial institutions participating in federal bailout programs. Clarifications address provisions on identification of senior executive officers, risk analysis certification, clawbacks and golden parachutes. To bolster enforcement, the guidance adds CEO certification and recordkeeping requirements. Of the three new pieces of guidance issued Jan. 16, the Treasury's revised regulations are on hold pending review by the Obama administration before publication.
Final Regs. §301.7508A-1	1/09	IRS updates disaster relief regulations. The IRS has updated its disaster relief regulations, effective Jan. 15, 2009, to reflect changes in law and IRS practice. Under the final rules, certain tax-related deadlines may be postponed for taxpayers affected by a federally declared disaster or a terrorist or military action. The term "affected taxpayer" now includes an individual or firm located outside a disaster area whose necessary records were in the disaster area, as well as a visitor killed or injured by the disaster. Other changes include a new example addressing taxpayers making installment payments to satisfy tax liabilities.
Notice 2009-9	1/09	IRS modifies reporting of IRA required minimum distributions. IRS Notice 2009-9 modifies the reporting requirements for financial institutions issuing 2008 Form 5498, IRA Contribution Information, to reflect the waiver of required minimum distributions (RMDs) for 2009. Congress recently waived RMDs for 2009 for all IRAs and DC plans. Under the notice, a 2008 Form 5498 won't be considered incorrect if indicates that a 2009 RMD is required as long as the financial institution notifies the IRA owner by March 31, 2009 that the 2009 RMD is waived. Also, RMD information required under Notice 2002-27 does not need to be sent to IRA owners for 2009.
Rev. Procs. 2009-8, 2009-6, 2009-5, 2009-4	1/09	IRS releases 2009 revenue procedures for employee plans. The IRS has updated its annual revenue procedures for employee plans: Rev. Proc. 2009-4 addresses procedures for furnishing rulings and information letters; Rev. Proc. 2009-5 discusses the process of providing technical advice on employee plan issues to IRS area managers and appeals offices; Rev. Proc. 2009-6 updates procedures for issuing determination letters on a retirement plan's qualified status; and Rev. Proc. 2009-8 lists related user fees for employee plans and exempt organizations. The revenue procedures appear in Internal Revenue Bulletin 2009-1.
Notice 2009-2	1/09	December 30-year Treasury, corporate bond and PPA yield curve rates. The IRS has announced the December 30-year Treasury securities rate (2.87 percent), composite corporate bond rate (6.64 percent), corporate bond yield curve, and PPA funding and lump sum segmented yield-curve rates.

IRS RELEASES

Item	Issue date	Summary
Employee Benefit News Special Edition	1/09	Waiver of required minimum distributions. IRS discusses the waiver of required minimum distributions for 2009 granted by WRERA. The newsletter notes that the waiver does not apply to required minimum distributions for 2009 that were due by April 1, 2009, and that other distributions in 2009 will be treated as eligible rollover distributions.
IRS Form 990	12/08	IRS issues Form 990 in final format. The IRS has finalized Form 990, the tax return for exempt organizations, and its related instructions. The final package, which reflects the IRS printing format, is applicable for the 2008 tax year. Release of the official 990 form and instructions completes a detailed revision process that began in 2007.
Rev. Rul. 2009-2	12/08	IRS publishes covered compensation tables for 2009 plan years. For purposes of determining covered compensation for the 2009 year, the taxable wage base is \$106,800.
Final Regs. §825; The Family Medical Leave Act of 1993	12/08	Determining employer coverage and employee eligibility under final FMLA rules. Final regulations provide important clarifications of rules under the Family and Medical Leave Act (FMLA), including new leave rights for families of military service members and the law's coverage of employment agencies and professional employer organizations. This article – the first in a series on what employers must do by the final FMLA rule's Jan. 16, 2009 effective date – focuses on which employers must comply with the law and which employees are entitled to its protections.
	12/08	Treasury will not provide relief for 2008 minimum required distributions. The Treasury Department has announced that it will not provide relief for 2008 minimum required distributions from IRAs, 401(k) plans or similar plans. Because of recent steep declines in stock market values, Congress has passed legislation waiving the distribution requirement for 2009, and some individuals were hoping that the Treasury would waive some or all of the 2008 requirement. The Treasury announced its decision in a Dec. 17 letter to Rep. George Miller, D-CA, chairman of the House Education and Labor Committee.
Employee Benefit News Volume 8/ Winter 2009	12/08	Cycle C retirement plan determination letter applications due by Feb. 2, 2009. The IRS will accept Cycle C determination letter applications for individually designed plans submitted by Feb. 2, 2009 – granting a brief extension because the Jan. 31 deadline under Rev. Proc. 2007-44 falls on a Saturday in 2009. In general, the Cycle C deadline applies to sponsors with EINs ending in 3 or 8 and to governmental plan sponsors that opt to file under Cycle C.
Notice 2009-3	12/08	IRS extends 403(b) written plan deadline. The IRS has postponed the Jan. 1, 2009 deadline for tax-exempts, schools and other 403(b) sponsors to adopt a written plan. Under Notice 2009-3, sponsors will satisfy 403(b) during calendar-year 2009 if they (i) adopt a written plan by year-end that is retroactively effective to Jan. 1, 2009; (ii) administer the plan using a “reasonable interpretation” of 403(b) and the final rules; and (iii) make best efforts to retroactively correct operational failures by year-end. The IRS plans to create an approval program for prototype and individually designed 403(b) plans and expand correction programs to cover more 403(b) issues.

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Item	Issue date	Summary
Notice 2008-115	12/08	IRS waives 409A deferral reporting for 2008. The IRS has waived the requirement to report deferrals under nonqualified deferred compensation (NQDC) plans on Form W-2 or 1099 for 2008. The waiver applies for later years until the IRS issues further guidance. However, if a 409A violation occurs, taxable amounts must be reported and treated as supplemental wages for withholding (no additional withholding is required for 409A penalty taxes). Notice 2008-115 offers other guidance on 409A violations, including income tax reporting, calculation of taxable amounts and 409A penalties, and reliance on recently proposed penalty regulations.
Notice 2008-113 and Prop. Regs. §§1.409A-0; 1.409A-4	12/08	IRS addresses 409A penalties for NQDC plans, expands correction program. The IRS has released two pieces of guidance on failures by NQDC plans to comply with Code Section 409A's stringent rules on deferral elections and payments. Proposed regulations describe how to calculate participants' harsh tax penalties – immediate income inclusion of the deferred amounts, plus interest and penalties. Notice 2008-113 provides correction steps to avoid or limit those harsh tax consequences for certain operational failures. The correction procedures take effect Jan. 1, 2009, but can be used earlier.
Notice 2008-112	12/08	November 30-year Treasury, corporate bond and PPA yield curve rates. The IRS has announced the November 30-year Treasury securities rate (4.0 percent), composite corporate bond rate (7.72 percent), corporate bond yield curve, and PPA funding and lump sum segmented yield-curve rates.
Final Regs. §1.6039l-1	11/08	IRS issues rules on employer-owned life insurance reporting. IRS has issued final guidance on required information reporting for employer-owned life insurance. Employers must file Form 8925 with their income tax returns, reporting how many employees are covered under such policies, total insurance in force and other information. Employers also must verify that they have valid consents from employees allowing income exclusion of death benefit proceeds in excess of the premiums paid. The rules, effective Nov. 6, 2008, generally apply to contracts issued after Aug. 17, 2006, and to tax years ending after the effective date.
2008 Form 5500	11/08	Advance copies of 2008 Form 5500 released with new Schedules MB and SB. IRS, DOL and PBGC have released advance copies of 2008 Form 5500. New Schedules MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information) and SB (Single-Employer Defined Benefit Plan Actuarial Information) replace Schedule B. New Schedule R filing requirements apply to multiemployer and larger (1,000 or more participants) single-employer DB plans. If a plan faces a filing deadline for Schedule MB, SB or R before final forms are available, the due date is automatically extended until 90 days after 2008 forms are issued.
Notice 2008-108	11/08	Cumulative list for Cycle D retirement plans covers PPA amendments. PPA amendments are on the list of changes that the IRS will review when retirement plans file for determination letters during Cycle D, opening Feb. 1, 2009. The 2008 cumulative list gives Cycle D filers with noncalendar-year plans a one-time option to defer filings to Cycle E. Though Cycle D letters will not cover the HEART Act, 401(k) plan sponsors allowing in-service distributions to military reservists in 2008 must adopt an amendment by 2009 plan year-end. Eligible Cycle D filers include multiemployer plans, plus single-employer plans if the employer's EIN ends in 4 or 9.

IRS RELEASES

Item	Issue date	Summary
Rev. Proc. 2008-67	11/08	IRS guidance for multiemployer pension plans seeking amortization extensions. Starting with the 2008 plan year, multiemployer pension plan sponsors seeking automatic five-year extensions of amortization periods for unfunded liabilities must file far less information under new IRS procedures implementing PPA changes. Multiemployer plan sponsors seeking longer alternative extensions (up to 10 years) must file more comprehensive applications similar to those required under prior law. Sponsors that have not yet applied for an extension must rely on speedy IRS action if they want to apply an extension to a 2009 calendar-year zone certification.
Notice 2008-105	11/08	October 30-year Treasury, corporate bond and PPA yield curve rates. The IRS has announced the October 30-year Treasury securities rate (4.17 percent), composite corporate bond rate (7.90 percent), corporate bond yield curve, and PPA funding and lump sum segmented yield-curve rates.
Employee Benefit News Special Edition: November 5, 2008	11/08	IRS warns about using retirement plan rollovers to fund startup businesses. The IRS has fired a warning shot across the bow of so-called “rollovers as business startups” (ROBS), alerting taxpayers that it will scrutinize these transactions. A ROBS transaction occurs when a new business owner sets up a profit-sharing plan, rolls over accounts from a former employer’s plan and uses rolled-over assets to purchase stock of the startup business. The IRS and DOL are coordinating review for possible violations of prohibited transaction rules. New IRS guidelines also identify issues under nondiscrimination, permanency, exclusive benefit and 401(k) rules.
Employee Benefit News Special Edition: November 5, 2008	11/08	Governmental pension plans can delay determination letter filings. The IRS has announced a one-time modification to the staggered cycle of determination letter filings for governmental retirement plans, allowing sponsors to forgo Cycle C, which ends Jan. 31, 2009, and instead file during Cycle E. Filings already made under Cycle C may even be withdrawn. Governmental plans choosing to remain in Cycle C will be eligible for expedited processing of their determination letter requests, as well as reduced penalties and fees under IRS correction programs. Cycle E filings are due in the 12-month period ending Jan. 31, 2011.
Notice 2008-102, Rev. Proc. 2008-66	10/08	2009 Social Security, Medicare, PBGC and Internal Revenue Code amounts. The IRS has released 2009 cost-of-living adjustments for retirement plans, the saver’s credit, Archer medical savings accounts, long-term care programs and other qualified fringe benefits. In addition, the Social Security Administration has issued 2009 adjustments to the taxable wage base as well as disability and retirement benefits. The 2009 Medicare, health savings account and high-deductible health plan amounts came out earlier in 2008.
Notice 2008-98	10/08	IRS delays ‘normal retirement age’ rules for governmental pensions. IRS guidance gives governmental pension plans two more years to comply with final regulations defining “normal retirement age” (NRA). For governmental plans, the rules were to take effect as soon as Jan. 1, 2009, but Notice 2008-98 extends that deadline to plan years starting on or after Jan. 1, 2011. Governmental employers have raised concerns about implications for plans with service-based NRAs, and IRS has requested comments on that issue. Plans generally may offer early retirement benefits on completion of a stated number of years of service, but not in-service distributions.

IRS RELEASES

Item	Issue date	Summary
Notice 2008-93	10/08	September 30-year Treasury, corporate bond and PPA yield curve rates. The IRS has announced the September 30-year Treasury securities rate (4.27 percent), composite corporate bond rate (6.98 percent), corporate bond yield curve, and PPA funding and lump sum segmented yield-curve rates.
Prop. Regs. §§1.401(a)-13(g)(4)(ii); 1.401(a)-20, A-4; 1.401(a)-20, A-16; 1.401(a)-20, A-24(a)(1); 1.402(f)-1, A-2(a); 1.411(a)-11(c)(c)(ii); 1.411(a)-11(c)(2)(iii)(A); 1.417(e)-1(b)(3)(i); 1.417(e)-1(b)(3)(ii); 1.417(e)-1(b)(3)(iii); 1.417(e)-1(b)(3)(vi); 1.417(e)-1(b)(3)(vii); 1.417(e)-1(b)(3)(viii)	10/08	IRS proposes new retirement plan distribution notices. Retirement plan participants seeking early distributions must get an explanation of the consequences of failing to defer receipt of benefits. Since 2007, most employers have made a reasonable attempt to comply, often following IRS safe harbors. IRS has now proposed regulations that would govern these disclosures starting in 2010. Depending on plan type, required disclosures would describe federal tax rules, the availability of 401(k) funds outside the plan, the higher amount of a deferred pension benefit and other relevant factors (such as eligibility for retiree health benefits).
IRS Fact Sheet	10/08	Taxation of international pension benefits. The IRS released a fact sheet concerning the taxation of international pension benefits and other issues that may affect taxation of benefits by employees transferring between the U.S. and other countries. The fact sheet also briefly discusses determining the country of residence for tax purposes and the treatment of foreign social security pensions, which are often governed by special rules in tax treaties.
Notice 2008-85; Rev. Proc. 2008-62	10/08	Updated pension mortality assumptions, process for using plan-specific tables. The IRS has updated the mortality assumptions to use in determining pension funding targets and minimum lump sum distributions for calendar years 2009 through 2013. The mortality tables in Notice 2008-85 also apply in determining current liability for plans with delayed PPA effective dates and multiemployer plans. The updated tables match earlier projections based on the methodology outlined in recent IRS regulations. In related guidance (Rev. Proc. 2008-62), the IRS has modified the procedures for large plans seeking approval of plan-specific mortality tables.

DOL RELEASES

Item	Issue Date	Summary
Field Assistance Bulletin No. 2009-03	9/09	<u>DOL lets retirement plan fiduciaries use summary prospectus for 404(c) protection.</u> Fiduciaries of ERISA-covered 401(k) and 403(b) plans may use a summary prospectus to meet disclosure obligations to participants investing in mutual funds, the Department of Labor says. The fiduciary protections of ERISA Section 404(c) apply only if participants are automatically sent a prospectus at the time of their initial investment. A summary prospectus will suffice if it is the most recent prospectus provided to the plan, according to FAB 2009-03. Mutual funds may give investors a plain-English summary prospectus instead of a full prospectus, under a final SEC rule effective March 31.
Prop. Regs. §2560.502c-8	9/09	<u>Sponsors of multiemployer plans could face funding penalties.</u> Sponsors of pension plans in endangered or critical status may owe daily penalties of up to \$1,100 for each failure to timely adopt a funding improvement or rehabilitation plan, under proposed Department of Labor (DOL) rules. Similar penalties would apply if endangered plans don't meet funding benchmarks. DOL's proposal outlines procedures for assessing, contesting and waiving penalties. Each trustee on a plan's board would be personally liable for amounts due, without reimbursement from plan assets. Comments are due Nov. 3; final rules will take effect 60 days after publication.
DOL FAQs	9/09	<u>General DOL guidelines for employers selecting benefit plan auditors.</u> General guidelines for employers selecting employee benefit plan auditors – such as auditor licensure requirements, information employers should know about an audit and considerations when reviewing audit reports – are available on a DOL webpage. These guidelines may be useful to employers sponsoring ERISA-covered 403(b) plans that are subject to expanded reporting requirements effective for the 2009 plan year.
Field Assistance Bulletin No. 2009-02	7/09	<u>DOL eases Form 5500 burdens for 403(b) plans.</u> Tax-exempt employers making good-faith efforts to comply with new reporting rules for ERISA-covered 403(b) plans do not have to compile financial information for certain pre-2009 annuity contracts or custodial accounts under transition relief (FAB 2009-02) from the Department of Labor (DOL). Individuals need not be counted as participants on the 2009 Form 5500 if all of their investments are covered by the relief, and DOL will accept 5500s even if the accountant's opinion is qualified, adverse or disclaimed as a result of the pre-2009 contracts.
ERISA Filing Acceptance System (EFAST2)	6/09	<u>DOL set to begin transition to Form 5500 e-filing on July 1.</u> As the transition to EFAST2 – the second-generation e-filing system for Form 5500 – gets underway, benefit plan sponsors and other filers could see an immediate impact: As of July 1, DOL will eliminate an informal correction process that has allowed filers 30 to 60 days to correct deficiencies in their reports before substantive review begins. Starting with reporting for the 2009 plan year, DOL generally will accept only electronically filed Form 5500 annual reports for retirement, health and welfare plans.

DOL RELEASES

Item	Issue Date	Summary
Final Regs. §2550.408g-1	5/09	<u>DOL again delays 401(k) investment advice rule.</u> The Labor Department has postponed to Nov. 18, 2009, the effective date of controversial investment advice rules for 401(k)-type plans. The delay gives DOL time to address concerns that the Bush administration rules go further than the Pension Protection Act allows and fall short in preventing conflicts of interest. Reflecting those concerns, a bill (HR 1988) from Rep. Rob Andrews, D-NJ, would let fiduciaries hire only “independent” investment advisers. The Andrews bill could prove controversial though, as it may invalidate arrangements acceptable under long-standing DOL guidance.
Statement of Employee Benefits Security Administration	2/09	<u>Madoff investments.</u> Statement of guidance on fiduciary duties in response to recent events regarding Bernard L. Madoff Investment Securities. The DOL has provided guidance concerning steps fiduciaries can take to protect the interests of the plan, participants and beneficiaries if the plan invested in assets connected to the Madoff scandal.
Field Assistance Bulletin No. 2009-01	2/09	<u>Model pension funding notices may help plans meet April deadline.</u> New Labor Department guidance on the annual funding notice required by the Pension Protection Act should help the many calendar-year pension plans facing an April 30 deadline for 2008 plan-year notices. Field Assistance Bulletin 2009-01 answers questions about notice content and delivery, announces a “good faith” compliance standard for issues not addressed, and includes model notices for single-employer and multiemployer plans. Use of a model, while not mandatory, is deemed to meet PPA’s content requirements, and plan administrators may add explanatory information if desired.
Field Assistance Bulletin No. 2008-04	2/09	<u>DOL guidance offers ERISA bonding roadmap.</u> A comprehensive DOL guide on ERISA bonding requirements may help fiduciaries meet their duty to protect pension or welfare plans with fidelity bonds. Anyone who handles funds or property of an ERISA plan – from fiduciaries and claims administrators to trustees – must be bonded. DOL’s guidance details the bonding requirements, including new developments for plans holding employer securities, and clears up some long-standing confusion about how the bonding rules apply to cafeteria plans.
Prop. Regs. §2550.408g-1	2/09	<u>DOL to reconsider 401(k) investment advice rules.</u> The Obama administration will reconsider investment advice rules for 401(k)-type plans, according to a Department of Labor (DOL) notice. The final rules, issued by the Bush administration and set to take effect March 23, now have a proposed effective date of May 22. DOL will accept new comments on legal or policy issues until March 6 and then decide whether to let the rules take effect as is, amend them or withdraw them altogether. Critics have faulted the rules for leaving too much room for conflicts of interest, and a legislative response may soon be underway. [See effective date delay issued 5/09.]

DOL RELEASES

Item	Issue Date	Summary
Final Regs. §§2550.408g-1; 2550.408g-2	1/09	Status of 401(k) investment advice, fee disclosure rules unclear. Final Department of Labor (DOL) rules describe how to provide professional investment advice to participants in 401(k)-type plans without running afoul of ERISA's prohibited transaction rules. Set to take effect March 23, the rules retain the same general framework as the proposals issued last year. This probably won't please critics in Congress and elsewhere who were concerned that DOL left too much room for conflicts of interest. How the Obama administration or new Congress will handle the final rules is unclear. DOL's pending fee disclosure rules also face an uncertain future.
Final Regs. §2560.502c-4	1/09	DOL confirms penalty procedures for PPA retirement plan notices. A DOL final rule maps out how penalties are assessed if a plan administrator fails to provide the PPA-required notice of defined benefit plan funding-based benefit limits or defined contribution plan automatic contribution arrangements. For multiemployer plans, the rule addresses failure to provide – upon request – notice of potential withdrawal liability or copies of specified financial records. The rule explains when penalties may be assessed, what the maximum penalties are and how to contest a penalty. The rule is consistent with civil penalty procedures for other ERISA notices.
2008 Form M-1	12/08	DOL releases 2008 Form M-1 for MEWAs. The 2008 Form M-1 annual report for multiple employer welfare arrangements (MEWAs) is now available on the Department of Labor (DOL)'s website. MEWAs, which offer medical benefits to employees of two or more unrelated employers, must annually file Form M-1. The filing deadline for the 2008 Form M-1 is March 2, 2009, but administrators can request an automatic 60-day extension to May 1, 2009. The 2008 form is substantively identical to last year's form, DOL says.
Interpretive Bulletin 08-2; Prop. Regs. §2509.08-2	10/08	DOL guides ERISA fiduciaries on exercise of shareholder rights. An updated DOL bulletin reiterates that ERISA plan fiduciaries exercising proxy voting or other shareholder rights must be guided solely by the plan's economic interests. In Interpretive Bulletin 08-2, DOL cautions that attempts to further policy or political issues through proxy resolutions without any economic benefit to the plan's investment violate the fiduciary obligations of prudence and loyalty to participants. The guidance also outlines who's responsible for proxy voting and fiduciary issues regarding investment policy statements.
Interpretive Bulletin 08-1; Prop. Regs. §2509.08-1	10/08	DOL updates ERISA plan guidelines on economically targeted investments. ERISA plan fiduciaries should exercise caution when considering economically targeted investments, according to updated DOL guidelines. DOL warns fiduciaries not to subordinate the plan's economic interest to unrelated objectives when choosing plan investments. The new guidelines provide examples to clarify that fiduciaries may consider noneconomic factors – such as job creation or “green” standards – only when choosing among “economically indistinguishable” investment alternatives. The new guidelines supersede prior guidance, effective immediately.
29 CFR Parts 2550 and 2578	10/08	Safe harbor for distributions to missing participants in a plan termination. DOL final regulations establishing a fiduciary safe harbor for distributions on behalf of participants and beneficiaries in defined contribution plans who do not make timely benefit elections in connection with a plan termination (“missing participants”).

DOL RELEASES

Item	Issue Date	Summary
Final Regs. §§2550.404a-4; 2509.95-1	10/08	<u>DOL finalizes fiduciary standard for selecting DC plan annuity providers.</u> DOL has finalized safe-harbor relief for DC plan fiduciaries selecting annuity providers for distributions. The agency has confirmed that DC plan fiduciaries do not have to select the “safest available annuity” but still must meet ERISA’s prudence standard. The safe harbor offers a roadmap for demonstrating prudence but is not the exclusive means for satisfying this fiduciary responsibility. The final rules take effect Dec. 8, 2008.
Final Regs. §2550.408b-19	10/08	<u>DOL outlines investment policies for cross-trades involving ERISA plans.</u> Final DOL rules focus on the written policies that investment managers must adopt to execute cross-trades involving large ERISA plans. A PPA exemption allows the purchase and sale of securities between plans with at least \$100 million in assets and any other account managed by the same investment manager. DOL is requiring investment managers to disclose written pricing, allocation and conflict-of-interest policies to plan fiduciaries, who must approve cross-trading in advance. The rules take effect Feb. 4, 2009, replacing a 2007 interim rule.

PBGC RELEASES

Item	Issue date	Summary
Prop. Regs. §§4001.2, 4002.11	8/09	PBGC expands pension guarantee for returning veterans. Proposed changes to PBGC's pension benefit guarantee would better protect veterans' ERISA rights. If a distress or involuntary plan termination occurs while a participant is on military leave and the participant is later rehired, the proposal would allow the participant's guaranteed benefit to take into account vesting and accrual service credited from the start of the military leave through the plan termination date. The proposed change would apply to veterans re-employed on or after Dec. 12, 1994.
Final Regs. §§4062.1, 4062.3, 4062.7, 4062.8-4062.10, 4063.1	6/09	Plant shutdown may trigger PBGC liability for plan sponsors. Pension plan sponsors considering a plant shutdown may face added costs associated with ERISA Section 4062(e), an obscure provision that requires notifying PBGC when a shutdown results in termination of more than 20 percent of current employee-participants. Once aware of the shutdown, PBGC may require the sponsor to set aside funds in escrow to cover a portion of unfunded liabilities. PBGC is pursuing 4062(e) liability more aggressively than ever. New regulations may be issued later this year, but until then, employers may have room to negotiate a host of open issues.
	5/09	Annual pension funding notice causes widespread confusion. A recent PBGC website posting reassures pension plan participants that receiving an annual funding notice (AFN) "does not mean that your plan is terminating or that it has been trustee'd by the PBGC." The PBGC has been flooded with calls from participants misinterpreting their first AFNs – distributed by April 30 for calendar-year plans – as a sign their plans were terminating. The confusion may have resulted from sponsors' use of a DOL model notice stating that the AFN summarizes federal plan termination rules but never mentioning that the plan is not actually terminating.
Technical Update 09-3	5/09	Small pension plans get simplified PBGC reporting of missed contributions. Responding to practitioners' concerns, PBGC has simplified reporting of missed quarterly contributions for small plans for the 2009 plan year. As long as the employer was financially able to make the missed contribution, Technical Update 09-3 waives reporting for plans with fewer than 25 participants and eases reporting for plans with 25-99 participants by requiring one simple notice for the plan year (instead of separate reports each quarter) within 30 days after the first quarterly contribution is missed. The guidance includes a sample notice, which may be sent via e-mail.
Final Regs. §4001.2, 4010.1—4010.5; 4010.7—4010.14; 4044.2	3/09	PBGC accepting 2008 4010 e-filings for underfunded pension plans. PBGC's e-4010 site now accepts post-Pension Protection Act (PPA) financial and actuarial filings reflecting the final rule issued March 16. A 4010 filing is required within 105 days after an information year (as soon as April 15 for 2008) if any controlled-group defined benefit plan has a funding target attainment percentage below 80 percent (unless the aggregate 4010 funding shortfall of all plans is less than \$15 million), has missed contributions or has funding waivers exceeding \$1 million. The PBGC website has instructions and screen shots explaining e-filing and data requirements.

PBGC RELEASES

Item	Issue date	Summary
What's new for practitioner's website	3/09	<u>PBGC updates mailing addresses for annual pension funding notices.</u> Single-employer pension plans should send annual funding notices via e-mail or postal mail to new addresses provided by PBGC. Single-employer pension plans with at least \$50 million of unfunded liabilities must automatically send the notice to PBGC within 120 days after plan year-end (April 30 for calendar-year plans). Plans with smaller unfunded liabilities must provide the notice within 30 days after receiving a written request from PBGC. Multiemployer plans should continue to send their annual funding notices to the PBGC address used since 2005.
	3/09	<u>PBGC finalizes rule for underfunded pension plans.</u> With filings due as soon as April 15 for certain underfunded pension plans, affected employers will want to make a quick study of the just-issued final PBGC rule under ERISA Section 4010. The regulations implement PPA changes for "4010 filings" of controlled-group financial and plan actuarial information, effective for information years (generally company fiscal years) after 2007. If required under the new rule, 4010 filings are due 105 days after the 2008 information year (April 15 for calendar-year employers). PBGC has not delayed the filing deadline.
	3/09	<u>PBGC offers to e-mail monthly reminders of filing deadlines.</u> Pension plan sponsors and practitioners can now sign up on the PBGC website to receive e-mail reminders of monthly filing deadlines, as well as other agency publications already available by e-mail (monthly interest updates and PBGC's What's New newsletter). Filing deadline e-mails are sent on the third workday of each month for which the user subscribes.
What's new for practitioner's website	2/09	<u>No PBGC reporting waiver for 2009 missed quarterly pension contributions.</u> All pension plan sponsors will have to notify PBGC within 30 days after they know or have reason to know they missed a required pension contribution (unless the contribution is made within 30 days after due). Before 2009, PBGC automatically waived reporting of missed quarterly contributions for employers with 100 or fewer participants in all controlled-group pension plans, or with 100 to 500 participants if the missed quarterly was to a well-funded plan. On Feb. 20, PBGC said it will not grant such waivers for 2009 but may still grant case-by-case waivers.
	2/09	<u>PBGC now accepting 2009 premium filings.</u> Pension plan sponsors may now file their 2009 estimated flat-rate and comprehensive (variable- and final flat-rate) PBGC premiums using the agency's My Plan Administration Account (My PAA) e-filing application. Calendar plans generally must make estimated flat-rate premium filings by March 2 (if 500 or more participants in 2008) and comprehensive filings by Oct. 15. But plans reporting fewer than 100 participants in 2008 have until April 30, 2010 to make 2009 premium filings. The PBGC website includes FAQs, e-filing tips, My PAA demos, payment instructions and illustrative forms.

PBGC RELEASES

Item	Issue date	Summary
Public Affairs Notice 202-326-4343	2/09	PBGC issues notice for DB plans invested with Madoff. Defined benefit plan sponsors or trustees may need to take action if their plans have experienced significant investment losses due to the Bernard L. Madoff Investment Securities scandal, the PBGC advises. If a single-employer plan is unable to pay benefits when due, the plan administrator or sponsor must notify the PBGC of this reportable event within 30 days. If multiemployer plan trustees believe benefits cannot be paid when due or if all or substantially all employers cease contributions, trustee duties may include reducing benefits, assessing withdrawal liability and notifying the PBGC.
Technical Update 09-1	2/09	PBGC clarifies reporting extensions and waivers for 2009 events. PBGC Technical Update 09-1 clarifies employers' reporting obligations that depend on their pension plans' unfunded vested benefits (UVBs) or ratio of assets to vested benefits. For events occurring in the 2009 plan year, reporting waivers are applied using UVBs and vested benefits determined for 2008 variable-rate premiums. For reporting extensions that apply to plans meeting the waiver criteria in the 2008 plan year, 2008 UVBs and vested benefits may be determined under either the 2008 variable-rate premium rules or pre-PPA rules.
Technical Update 08-4	12/08	PBGC issues lump sum guidance for plans terminating in 2008-2011. Employers terminating pension plans in 2008-2011 plan years will calculate minimum lump sums by continuing to phase in Pension Protection Act (PPA) lump sum interest rates after the termination date, according to new PBGC guidance. Technical Update 08-4, issued Dec. 31, 2008, applies to standard terminations of single-employer plans (and certain distress terminations) with a termination date on or after the start of the 2008 plan year. The continued phase-in of the PPA interest rates also applies to future lump sums provided through annuity contracts.
	12/08	PBGC updates table for DB plans facing partial lump sum restrictions. The PBGC has issued a table that pension plans need to administer partial restrictions on 2009 lump sums and other accelerated distributions. For plans at least 60 percent but less than 80 percent funded, PPA limits lump sums (or accelerated distributions) to the lesser of (i) 50 percent of the present value of the benefit otherwise payable or (ii) the present value of a participant's PBGC maximum guarantee. Plans subject to the restrictions must use the 2009 Present Value of PBGC Maximum Guarantee table for participants with annuity starting dates in 2009, regardless of the plan year.
	12/08	PBGC finalizes PPA multiemployer pension plan withdrawal liability rules. Final PBGC rules implement PPA changes to multiemployer pension plan withdrawal liability calculations, including reallocation liability in mass withdrawal, adjustments for plans in critical status and presumptive method "fresh start" options that may simplify administration. The rules generally apply to withdrawals on or after Jan. 29, 2009. However, one of the fresh-start options may be used for withdrawals after 2006, and withdrawal liability adjustments for critical-status benefit reductions and employer surcharges apply to withdrawals in plan years beginning after 2007.

PBGC RELEASES

Item	Issue date	Summary
Technical Update 08-3	12/08	<u>PBGC waives 4010 filing if aggregate pension underfunding \$15m or less.</u> The PBGC has waived 4010 filings triggered solely by the 80-percent-funded gateway test if the aggregate underfunding of all controlled-group DB pension plans does not exceed \$15 million (ignoring plans with no underfunding). Proposed rules issued Feb. 20, 2008, contain this exception but won't be finalized before year-end. Technical Update 08-3 enables sponsors of calendar-year plans to finalize credit balance waiver elections required by Dec. 31, 2008. The exception does not apply to filings triggered by missed contributions or funding waivers exceeding \$1 million.
Appendix D to Part 4044	12/08	<u>Valuing early retirement benefits in 2009 distress and involuntary terminations.</u> PBGC has published a 2009 table for use in valuing early retirement benefits in distress or involuntary single-employer plan terminations and, optionally, in plan spinoffs. Plan sponsors use the Selection of Retirement Rate Category table, which is updated annually for cost-of-living increases, to determine whether a participant has a low, medium or high probability of retiring early. The retirement rate category is then used with the plan's early and normal retirement provisions to determine the participant's expected retirement age.
Final Regs. §§4041.51, 4042.1, 4042.2, 4042.3, 4042.4, 4042.5	11/08	<u>New disclosures for pension plans undergoing distress or involuntary termination.</u> Pension plans undergoing distress or involuntary termination face new disclosure obligations under a PBGC final rule. The rule applies to information requests on or after Dec. 18, 2008, regarding plan terminations initiated after Aug. 16, 2006. Within 15 business days of a request by an "affected party" – a participant, beneficiary or union – plan administrators or sponsors must disclose termination information submitted to the PBGC (with participant privacy protections). PBGC's administrative record in an involuntary termination also must be provided on request.

MISCELLANEOUS

Item	Issue date	Summary
IASB Exposure Draft ED/2009/10	8/09	IASB seeks comments on retirement benefit discount rate proposal. Employers have until Sept. 30 to comment on IASB's proposal to change the discount rate used to value pension, retiree health and other post-employment benefits in countries without deep corporate bond markets. The proposed amendment to IAS 19, Employee Benefits, would require employers in such countries to base discount rates on estimated high-quality corporate bond yields rather than government bond yields. The new rule would apply prospectively with a one-time adjustment to retained earnings. Early adoption would be allowed for December 2009 financial statements.
	7/09	EEOC addresses ADEA waivers. New EEOC guidance in Q&A format helps employees and employers understand waivers under the Age Discrimination in Employment Act (ADEA) and other employment laws. The guidance sets out requirements for valid ADEA waivers, including the specific notice and content (for example, age-related data) required for waivers used in conjunction with early retirement windows. Along with a checklist to aid employees deciding whether to sign waivers, the EEOC provides sample language that may be a useful starting point for employers drafting waivers for exit incentives or other termination programs.
IASB Press Release	7/09	Simplified international accounting rules for small and medium-sized entities. IASB has issued streamlined optional financial reporting standards for use by small and medium-sized entities (SMEs), including simplified accounting and disclosures for pension and other post-retirement plans and share-based payments. SMEs do not have, and are not issuing, any publicly traded debt or equity; do not hold assets for outsiders (such as banks or insurers); and issue general-purpose financial statements for external users, including creditors. SMEs' next annual statements may use the new standards, with restatement of prior comparative periods.

MISCELLANEOUS

Item	Issue date	Summary
Prop. Regs. §§200.82a; 232.13; 240.13a-11; 240.13d-1; 240.14a-2; 240.14a-3 to 240.14a-15; 240.14a-4; 240.14a-6; 240.14a-8; 240.14a-9; 240.14a-11; 240.14a-12; 240.14a-19; 240.14a-101— Schedule 14A; 240.14n-1; 240.14n-2; 240.14n-3; 240.14n-101; 240.14a-11; 240.15d-11	6/09	<p>SEC details new proxy access proposal, seeks comments. The SEC's latest proposal to give shareholders access to company proxies to nominate board candidates refines past initiatives that failed to win consensus. To gain proxy access under the current proposal, a shareholder or group would have to own for a year or longer a minimum percentage of the company's securities. With shifts in support and the potential for Congress to act if the SEC does not, some type of proxy access mandate seems likely to pass this year. This GRIST reviews the SEC's latest and past proposals, business groups' concerns and the potential impact of a proxy access mandate.</p>
FASB News Release	6/09	<p>FASB launches codification of US GAAP guidance. The new FASB Accounting Standards Codification (ASC) must be used for annual and interim periods ending on or after Sept. 15, 2009. When officially launched July 1, the ASC will be the single authoritative source for most guidance on accounting and reporting, supplemented by certain SEC guidance. In addition to consolidating guidance, the ASC eliminates hierarchies such as those between FASB standards and implementation guides. While the ASC is not intended to change substance, time will tell if some of the new language makes a difference.</p>
IASB Exposure Draft ED/2009/4	6/09	<p>IASB proposes revised accounting for prepaid pension contributions. The IASB has proposed changes to IFRIC 14, IAS 19 - The Limit on a Defined Benefit Asset, Minimum Funding Requirements and their Interaction, to clarify how much of an asset may be recognized for prepaid minimum required contributions to pension plans. As proposed, an employer reporting under IAS that sponsors a US qualified pension plan with ongoing accruals could apparently recognize an asset equal to the greater of the plan's surplus or its credit balance. Whether this result was intended is unclear, so further revisions are possible. Comments were due by July 27.</p>

MISCELLANEOUS

Item	Issue date	Summary
	5/09	FTC delays identity theft rule; application to 401(k) plan loans still uncertain. The Federal Trade Commission (FTC) has delayed enforcement of a new “red flags” rule until Aug. 1 to give businesses time to develop written identity theft prevention programs. 401(k) plans offering participant loans may be subject to the red flags rule if the sponsoring employer is a “financial institution” or “creditor,” according to informal comments from FTC staff. The FTC has not offered official guidance on whether the rule will apply to 401(k) loans, but one reason for the delay is an ongoing debate about whether Congress wrote the underlying law too broadly.
Final Regs. §§230.482, 230.497, 230.498, 232.304, 232.401, 239.23, 239.15A, 274.11A, 239.17b, 274.11c	2/09	Mutual funds may give 401(k) participants plain-English summary prospectus. Mutual funds may give investors a plain-English summary prospectus, rather than a full prospectus, under a final SEC rule effective March 31, 2009. The rule ultimately may change the form and content of fund information passed through to participants in many 401(k), 403(b) and 457 plans. Once summary prospectuses become available, plan sponsors will need to re-evaluate “pass through” disclosure obligations under ERISA. Those rules currently are in flux while the Obama administration reviews fee disclosure rules proposed by DOL last year.
IASB Update – January 2009	2/09	Immediate recognition of retirement plan funded status changes. The IASB has tentatively decided to separate key proposals in its March 2008 discussion paper, Preliminary Views on Amendments to IAS 19 Employee Benefits, into two categories: (i) recognition and presentation and (ii) contribution-based promises. An exposure draft on the first category, expected by year-end, will require immediate recognition of changes in defined benefit (including retiree medical) plan funded status. Accounting for contribution-based promises will be on a slower track and may ultimately become part of a comprehensive review of pension accounting issues.
FAS 132(R)-1	1/09	New pension, retiree medical disclosures for years ending after Dec. 15, 2009. New FASB guidance greatly expands required disclosures about assets held by pension, retiree medical and other post-retirement benefit plans for fiscal years ending after Dec. 15, 2009. Under FASB Staff Position (FSP) FAS 132(R)-1, employers must show more asset categories, explain how the fair value of assets is measured and reconcile nontraded (Level 3) assets from beginning to end of year. The FSP does not require specific disclosures about significant risk concentrations but includes the broad objective that financial statements should give users an understanding of such concentrations.
SEC Release 2008- 275	12/08	SEC approves ‘summary prospectus’ for mutual fund, 401(k) investors. Mutual fund investors, including participants in 401(k)-type plans, may soon be receiving a plain-English summary prospectus instead of a full-blown prospectus, thanks to a new final SEC rule. A summary prospectus must highlight, in a standardized format, certain key information about the fund’s investment objectives and strategies, fees, risks and performance. A full prospectus still must be posted on the mutual fund’s website and be provided in hard copy on request. Mutual funds may opt to use this method of disclosure starting Feb. 28, 2009.

MISCELLANEOUS

Item	Issue date	Summary
Prop. Regs. §§210.1-01; 210.1-02; 210.4-01; 210.13-01-210.13-03; 229.10; 229.101; 229.301; 230.45; 240.12b-2; 240.13e-100; 240.14d-100; 244.101; Form 8-K, items 2.04, 2.05, 4.02	12/08	SEC issues proposed roadmap for mandatory international accounting rules. The SEC has issued a proposed roadmap that would require the largest US public companies to use international financial reporting standards instead of US accounting rules starting in 2014. Effective dates for smaller public companies would phase in over later years. Certain companies would be eligible for voluntary adoption starting in 2010. Comments on the proposal were due Feb. 19, 2009.
	12/08	Determining employer coverage and employee eligibility under final FMLA rules. Final regulations provide important clarifications of rules under the Family and Medical Leave Act (FMLA), including new leave rights for families of military servicemembers and the law's coverage of employment agencies and professional employer organizations. This article – the first in a series on what employers must do by the final FMLA rule's Jan. 16, 2009, effective date – focuses on which employers must comply with the law and which employees are entitled to its protections.
Public Law 110-458		Single-employer temporary pension funding relief becomes law. Signed into law Dec. 23, the Worker, Retiree and Employer Recovery Act of 2008 provides temporary pension funding relief, waives 2009 minimum required distributions from 401(k) and similar plans, and makes a broad range of PPA corrections.
	10/08	FASB finalizes new disclosures about pension and retiree health plan assets. Sponsors of pension, retiree health and other post-retirement benefits plans will have to make expanded disclosures about their plans' assets for fiscal years ending after Dec. 15, 2009, FASB decided Oct. 29. Sponsors of plans investing in hard-to-value (Level 3) assets should determine whether system updates are needed before current fiscal year-end to track information for the new Level 3 asset reconciliation. Publication of the amended standard is expected by 2008 year-end
FSP FAS 157-3	10/08	FASB clarifies 'fair value' in inactive markets. Responding to the financial crisis, FASB has clarified how to determine "fair value" in an inactive market. Effective immediately, the new FASB staff position affects fair value reporting of financial assets – including pension assets – and expands on an earlier SEC-FASB joint statement. The guidance illustrates how a financial statement preparer might conclude that the market for a particular financial asset is not active and instead calculate the asset's fair value using a valuation model that relies on significant unobservable (nonmarket) inputs.