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LEGISLATION

¶1.102 - Self-Employed Individuals

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

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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

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

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

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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Congress provides liberalized distribution, rollover and loan rules, and premature distribution penalty relief for certain taxpayers affected by California Wildfires [Citation: *Section 20101 and 20102 of the Bipartisan Budget Act of 2018 (“BBA2018”)*, P.L. 115-123 (February 9, 2018)] . . . . . 4349

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to significant fires [Citation: *Infrastructure Investment and Jobs Act*, P.L. 117-58 (November 15, 2021)] . . . . . 5251

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 Congress eliminates 6-month suspension rule and requirement to access available plan loans, and permits all contributions sources and earnings on elective deferrals to be available for hardship withdrawal in post-2018 plan years [Citation: *Sections 41113 and 41114 of the Bipartisan Budget Act of 2018 (“BBA2018”)*, P.L. 115-123 (February 9, 2018)] . . . . . 4353

¶1.150(1) - Limitations On Contributions And Benefits (IRC §415): Definition of Section 415 Compensation  
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¶1.150(3) - Limitations On Contributions And Benefits: Defined Benefit Plans  
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¶1.170(2) - Minimum Funding Requirements: Interest Rate Assumptions  
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¶1.170(3) - Minimum Funding Requirements: Mortality Assumptions  
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¶1.170(4) - Minimum Funding Standards: General Requirements  
 Congress enacts funding relief for defined benefit plans for 2008-2011 plan years [Citation: P.L. 111-192, Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (H.R. 3962) (enacted on June 25, 2010)] . . . . . 2409

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

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

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

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

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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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¶1.240(3) - Elective Deferrals: Designated Roth Contributions  
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¶1.246 - Unrelated Business Taxable Income (IRC §§511-514)  
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¶1.301(2) - IRS Reporting Rules and Forms (Other Than Form 5500): Form 1099-R  
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¶1.300(3) - Deadline for Filing Form 5500  
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**Note: The original statutory language that was repealed was summarized on p. 3665.**

¶1.317(1) - Title IV Disclosure Requirements: ERISA §4011 Participant Notice  
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¶1.371 - Title IV of ERISA: Coverage/Premiums  
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¶1.405 - Roth IRAs  
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¶1.407 - Roth Conversions and Recharacterization of IRA Contributions  
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¶1.422(2) - Special Qualification Requirements or Exceptions: Church Plans  
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¶1.710 - Servicemembers Civil Relief Act (SCRA)  
Servicemembers Civil Relief Act amends and restates the Soldiers’ and Sailors’ Civil Relief Act of 1940, providing clearer guidance on interest rate relief affecting participant loans [Citation: *Servicemembers Civil Relief Act* (H.R. 100, 108<sup>th</sup> Congress)]. . . . . 268



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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)]

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¶1.714 - Financial Reform Legislation

Financial reform legislation includes provisions regulating swaps, and establishing Bureau of Consumer Financial Protection, which may affect employee benefit plans [Citation: Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203 (July 21, 2010)] 2451

¶1.716 - SECURE Act

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-

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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: *Further Consolidation Appropriations Act: Division O (SECURE Act), §104 of Division M, and Division Q*, P.L. 116-94 (December 20, 2019)] . . . . . 4589

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¶1.718 - Consolidated Appropriations Act, 2021	
Massive stimulus and tax bill includes several retirement-related provisions [Citation: <i>Consolidated Appropriations Act, 2021</i> , P.L. 116-260 (December 27, 2020)] . . . . .	4947
¶1.719 - American Rescue Plan Act of 2021	
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¶1.720 - SECURE 2.0 Act	
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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

Final regulations clarify how extensions under IRC §7508A are applied, implement IRC §7508A(d), and eliminate ambiguity in legislative language referring to disaster declarations [Citation: *Treas. Reg. §§1.165-11(b)(1) and (h) and 301.7508A-1(g) and (h)*, 86 F.R. 2607 (June 11, 2021)] ..... 5113

**Note: These regulations finalize the proposed regulations summarized on p. 4955.**

¶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

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¶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**

¶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

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2006 [Citation: *Prop. Treas. Reg. §§1.411(a)-11(c)(2)(i), (iii)(B)(3) and (vi), and 1.411(a)-11(h)*, 73 F.R. 59575 (October 9, 2008)] . . . . . 1980

¶2.141(2) - Joint and Survivor Annuities/Spousal Consent

Final regulations provide guidance for retroactive annuity starting dates, pursuant to IRC §417(a)(7) [*Treas. Reg. §1.417(e)-1(b)(3)*, 68 F.R. 41906 (July 16, 2003)] . . . . . 141

Final regulations modify notice requirements governing the explanation of QJSA and QPSA so participants receive better financial information, particularly about the relative value of subsidized benefit options [Citation: *Treas. Reg. §1.417(a)(3)-1*, 68 F.R. 70141 (December 17, 2003)]. . . . . 271

“Relative value” regulations amended to incorporate modifications described in Announcement 2004-58 [Citation: *Treas. Reg. §§1.401(a)-20, Q&A-16 and Q&A-36, and 1.417(a)(3)-1(c), (d) and (f)*, 71 F.R. 14798 (March 24, 2006)] . . . . . 974

**Note: Announcement 2004-58 was summarized at page 512.**

Proposed regulations would make permanent a waiver of the physical presence requirement for spousal consent if certain conditions are met [Citation: *Prop. Treas. Reg. §1.401(a)-21*, 87 F.R. 80501 (December 30, 2022)]. . . . . 5461

¶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

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.**

Regulations update life expectancy tables for required minimum distributions calculated for 2022 and later distribution calendar years [Citation: *Treas. Reg. §1.401(a)(9)-9*, 85 F.R. 72472 (November 12, 2020)] . . . . . 4961

¶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

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**Note: These regulations replace proposed regulations that were summarized at page 1891.**

Proposed regulations would incorporate SECURE Act changes into RMD regulations, including post-death distribution rules under IRC §401(a)(9)(H), the new eligible designated beneficiary definition, and the transition to age 72 mandatory commencement age; update of rules relating to rollovers, 403(b) plans and governmental 457(b) plans and other clarifications [Citation: *Prop. Treas. Reg. §§1.401(a)(9)-1 through 1.401(a)(9)-8, 1.402(c)-2, 1.403(b)-6(e), 1.408-8, and 54.4974-1* . . . . . 5279

¶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

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treatment of post-severance compensation; conforming amendments made to regulations under IRC §§401(a)(9), 401(k), 403(b) and 457 [Citation: *Treas. Reg. §§1.415(a)-1, 1.415(b)-1, 1.415(b)-2, 1.415(c)-1, 1.415(c)-2, 1.415(d)-1, 1.415(f)-1, 1.415(g)-1, 1.415(j)-1, §1.401(a)-2, §1.401(a)(9)-5, Q&A-9(b)(1), §1.401(k)-1(e)(8), §1.402(c)-2, Q&A-4(a), §1.416-1, Q&A-21, 1.457-4(d), 1.457-5(d) (Example 2), 1.457-6(a) and (c), 1.457-10, 72 F.R. 16878 (April 5, 2007)] . . . . . 1236*

**Note: These replace the proposed regulations that were summarized at page 703.**

Indian tribal fishing rights income under IRC §7873 included in section 415 compensation definition [Citation: *Prop. Treas. Reg. §1.415(c)-2, 78 F.R. 68780-68782 (November 15, 2013)] . . . . . 3268*

¶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: *Prop. Treas. Reg. §1.413-2(a)(2), (a)(3)(iv), (a)(4), and (c), and 1.413-3, 87 F.R. 17225 (March 28, 2022)] . . . . . 5308*

**Note: The proposed regulations replace the regulations proposed on July 3, 2019, and reported at p. 4496, which have been withdrawn.**

¶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.**



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

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

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

¶2.167: 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.**

Update to regulatory mortality assumptions under IRC §430(h)(3) proposed for post-2022 plan years [Citation: *Prop. Treas. Reg. §§1.430(h)(3)-1, 1.431(c)(6)-1, 1.433(h)(3)-1*, 87 F.R. 25161 (April 28, 2022)] . . . . . 5349

¶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.**

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Final regulations on calculation of the minimum required contribution, contribution deadlines, quarterly contribution requirements, and excise taxes on late contributions for post-2007 plan years (reflecting PPA 2006 requirements) [Citation: *Treas. Reg. §§1.430(a)-1, 1.430(f)-1(iii), 1.430(h)(2)-1(b)(2), 1.430(j)-1 and 54.4971(c)-1*, 80 F.R. 54374-54402 (September 9, 2015)] ..... 3666

**Note: These regulations finalized proposed regulations that were summarized at p. 1823**

¶2.170(6) - Minimum Funding Requirements: Funding Balances

Final regulations explain effect of prefunding balance and funding standard carryover balance [Citation: *Treas. Reg. §1.430(f)-1*, 74 F.R. 53004 (October 15, 2009)] ..... 2286

**Note: These regulations finalize proposed regulations that were summarized at page 1513.**

¶2.170(7) - Minimum Funding Requirements: Multiemployer Plans

Proposed regulations to implement requirements under IRC §432 for multiemployer plans that are in critical or endangered status [Citation: *Prop. Treas. Reg. §§1.432(a)-1 and 1.432(b)-1*, 73 F.R. 14417 (March 18, 2008)] ..... 1755

Final regulations regarding the approval of a proposed benefit suspension under a multiemployer defined benefit plan in critical and declining status, as permitted under IRC §432(e)(9) [Citation: *Treas. Reg. §1.432(e)(9)-1*, 81 F.R. 25540-25573 (April 28, 2016), and *Treas. Reg. §1.432(e)(9)-1(d)(8)*, 81 F.R. 27011-27015 (May 5, 2016)] ..... 3933

**Note: The temporary and proposed versions of these regulations were summarized at p. 3579.**

¶2.172 - Benefit Restrictions For Underfunded Pension Plans

Final regulations provide guidance on restrictions under IRC §436 [Citation: *Treas. Reg. §1.436-1*, 74 F.R. 53004 (October 15, 2009)] ..... 2288

**Note: These regulations finalize proposed regulations that were summarized at page 1520.**

¶2.179 ERISA §204(h) and IRC §4980F Notice Requirements

Final regulations explain notice requirements under ERISA §204(h) and IRC §4980F for amendments that significantly reduce the rate of future benefit accrual and/or early retirement benefits or retirement-type subsidies [Citation: *Treas. Reg. §54.4980F-1*, 68 F.R. 17277 (April 9, 2003)] ..... 85

Regulations clarify notice requirements for retroactive amendments, treat certain notice requirements in other tax code and ERISA sections as satisfying 204(h) notice [Citation: *Treas. Reg. §§1.411(d)-3 and 54.4980F-1, Q&As-1, -7 -8, -9, -10, -11 and -18*, 74 F.R. 61270 (November 24, 2009)] ..... 2292

**Note: These regulations finalize proposed regulations that were summarized at page 1757.**

¶2.184(1) - S Corporation ESOPs: Prohibited Allocations Under IRC §409(p)

Temporary and proposed regulations define synthetic equity under IRC §409(p)(5) to include nonqualified deferred compensation and certain rights to acquire interests in related entities [Citation: *Treas. Reg. §1.409(p)-1T*, (July 21, 2003)] ..... 147

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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.**

¶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

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**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  
 Regulations amends rules for determining the default withholding rate when distributee of periodic payments fails to make a withholding election [Citation: *Treas. Reg. §31.3405(a)-1*, 85 F.R. 61813 (October 1, 2020)] ..... 4849

¶2.220 - General Rollover Rules  
 Proposed regulations incorporate statutory changes to rollover regulations [Citation: *Prop. Treas. Reg. §1.402(c)-2*, 87 F.R. 10504 (February 24, 2022)] ..... 5318

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

¶2.220(8) - Rollovers: Plan Loan Offsets  
 Regulations define qualified plan loan offsets eligible for extended rollover period [Citation: *Treas. Reg. §1.402(c)-3*, 86 F.R. 464 (January 6, 2021)] ..... 4964  
**Note: These regulations finalized the proposed regulations that were summarized at p. 4850.**

¶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

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Regulations disallow deduction for redemption of employer securities held by an ESOP  
 [Citation: *Treas. Reg. §§1.162(k)-1 and 1.404(k)-3*, 71 F.R. 51471 (August 30, 2006)] . 1211  
**Note: The regulations replace the corresponding portion of the proposed regulations issued on August 25, 2005. See summary on page 808.**

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

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

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

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

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

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

¶2.246 - 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

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

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

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

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

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

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¶2.301(3) - IRS Reporting Rules and Forms: Mandatory Electronic Filing  
 IRS proposes to reduce the minimum return requirement from 250 to 10 for mandatory electronic filing on many plan-related reporting forms, effective in 2023 [Citation: *Prop. Treas. Reg. §§54.6011-3, 301.6011-2, 301.6011-10, 301.6033-4, 301.6057-3, 301.6058-2, 301.6059-2, 301.6721-1*, 86 F.R. 39910 (July 23, 2021)] ..... 5173

¶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

¶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

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¶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.

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¶2.520 - Health Savings Accounts (HSAs)

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

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

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

¶2.605(1) - Practice Before the IRS

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

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

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

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

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

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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

IRS increases renewal user fee for ERPAs from \$67 to \$140 [Citation: *Treas. Reg. §300.6*, 87 F.R. 58968 (September 29, 2022)]. . . . . 5369

**This regulation finalizes the proposal published on March 1, 2022, and summarized at p. 5319.**

IRS proposes to increase enrollment and renewal user fee for Enrolled Actuaries from \$250 to \$680 [Citation: *Prop. Treas. Reg. §300.6*, 87 F.R. 60357 (October 5, 2022)] . . . . . 5370

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

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

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

¶2.607 - Tax Shelters: Listed Transactions Involving Retirement Vehicles

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

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

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

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¶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

¶3.101 - Definition of Employee

DOL revises its interpretation of independent contractor status under the FLSA to promote certainty for stakeholders, reduce litigation, and encourage innovation in the economy [Citation: *DOL Reg. §§795.100-795.115*, 29 C.F.R. Part 795, 86 F.R. 1168 (January 7, 2021)] Text available at <https://www.govinfo.gov/content/pkg/FR-2021-01-07/pdf/2020-29274.pdf>

..... 4972  
**Note: These regulations finalize the proposed regulations that were summarized at p.4858, but the DOL has withdrawn them (see p.5119 (entry below)).**

DOL withdraws regulations that would change standards for determining whether a worker is an employee or an independent contractor under the FLSA [Citation: *Independent Contractor Status Under the Fair Labor Standards Act; Withdrawal*, 86 F.R. 24303 (May 6, 2021)]

..... 5119  
 DOL proposes regulations regarding independent contractor status to be more consistent with judicial precedent and the FLSA’s text and purpose [Citation: *Prop. DOL Reg. §§795.100-795.115 (Wage and Hour Division)*, 29 C.F.R. Part 795, 87 F.R. 62218 (October 13, 2022)]  
 ..... 5371

¶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)].

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¶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.*

¶3.157(1) - Multiple Employer Plans: Pooled Employer Plans  
 Final regulations implement the registration program for Pooled Plan Providers [Citation: *DOL Reg. §2510.3-44*, 85 F.R. 72934 (November 16, 2020)] . . . . . 4979  
*Note: These regulations finalize the proposed regulations that were summarized at p.4862.*

¶3.192 - QDROs  
 Final regulations implement PPA 2006 directive to clarify status of QDROs without regard to timing or that a prior QDRO already exists [Citation: *DOL Reg. §2530.206*, 75 F.R. 32846 (June 12, 2010)] . . . . . 2424  
*Note: These regulations replace the interim regulations that were issued on March 7, 2007, and were summarized on p. 1302.*

¶3.220(3) - Automatic Rollovers  
 Final regulations provide fiduciary relief for automatic rollovers and implement a March 28, 2005, effective date for IRC §401(a)(31)(B) [Citation: *DOL Reg. §2550.404a-2*, 69 F.R. 58018 (September 29, 2004)] (*replaces proposed regulations summarized on page 349*) . . . . . 456  
 Fiduciary safe harbor provided for automatic rollovers made with respect to terminated defined contribution plans (including abandoned plans) [Citation: *DOL Reg. §2550.404a-3*, 71 F.R. 20820, 20828-20830, 20850-20853 (April 21, 2006)] . . . . . 981  
*Note: These regulations replace the regulations that were proposed on March 10, 2005, which were summarized at page 628.*

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

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

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**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

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

DOL/IRS/PBGC propose modifications to the Form 5500 series to incorporate SECURE Act; conforming proposed modifications to DOL’s reporting regulations [Citation: *Proposed Revision of Annual Information Return/Reports*, 26 C.F.R. Part 301 and 29 C.F.R. Parts 2520 and 4065, 86 F.R. 51488 (September 15, 2021); *Prop. DOL Reg. §§2520.103-1, 2520.103-10, 2520.103-14, 2520.104-51*] ..... 5178

DOL publishes modifications to 2021 Form 5500 instructions to incorporate reporting changes for MEPs and pooled employer plans [*Revision of Annual Information Return/Reports*, 86 F.R.73976 (December 29, 2021)] ..... 5254

DOL/IRS/PBGC finalize modifications to the Form 5500 series to incorporate SECURE Act [Citation: *Revision of Annual Information Return/Reports*, 26 C.F.R. Part 301 and 29 C.F.R. Parts 2520 and 4065, 87 F.R. 31133 (May 23, 2022) ..... 5352

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¶3.300(6) - Form 5500 Reporting: Audit Requirements  
 DOL updates Interpretive Bulletin on independence of accountant [Citation: *DOL Reg. §2509.2022-01* (replacing §2509.75-1), 87 F.R. 54368 (September 6, 2022)] . . . . . 5374

¶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 interim final rule to implement the SECURE Act requirement that defined contribution plans provide lifetime income disclosures on at least an annual basis [Citation: *DOL Reg. §2520.105-3*, 85 F.R. 59132 (September 18, 2020) (advance publication on August 18, 2020)]. . . . . 4868  
*Note. An advance notice of proposed rulemaking on lifetime income disclosures was summarized in p. 3163. This interim final rule incorporate comments received under that ANPRM as well as the SECURE Act statutory changes.*

¶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)] . . . . . 997  
 Final regulations on annual funding notices under ERISA §101(f) [Citation: *DOL Reg. §2520.101-5, Appendixes A and B to §2520.101-5, §2520.104-46(b)(1)(i)(B), §2520.104b-10(g)(9)*, 80 F.R. 5626-5663 (February 2, 2015)] . . . . . 3551  
**Finalized proposed regulations summarized at p. 2578**

¶3.320(1) - Fiduciary Requirements: Definition of a Fiduciary  
 DOL will re-propose in early 2012 its regulations that would expand the definition of a fiduciary with respect to persons who provide investment advice for a fee [Citation: *Prop. DOL Reg. §2510.3-21(c)*, 75 F.R. 65263 (October 22, 2010), announcement of re-proposal in News



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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)]  
 ..... 4292

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 regulations provide more clarity regarding how non-pecuniary factors should be evaluated in a fiduciary’s selection of plan investment or designated investment alternatives; anti-ESG

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bias softened a bit from the proposed version [Citation: *DOL Reg. §2550.404a-1*, 85 F.R. 72846 (November 13, 2020)] . . . . . 4985  
**Note: These regulations finalize proposed regulations that were summarized at p.4762 p.4877, but will not be enforced by the DOL. See entry below at p.5082.**

DOL finalizes regulations intended to provide clarity regarding fiduciary responsibilities over the exercise of proxy voting and other shareholder rights [Citation: *DOL Reg. §2550.404a-1(e), (g) and (h)*, 85 F.R. 81658 (December 16, 2020)] . . . . . 4992  
**Note: These regulations finalize proposed regulations that were summarized at p.4877, but will not be enforced by the DOL. See entry below at p.5082.**

DOL will not enforce 2020 regulations regulation the use non-pecuniary factors in a fiduciary’s selection of plan investment or designated investment alternatives, and in exercising proxy voting and other shareholder rights [Citation: *Statement Regarding Enforcement of DOL Reg. §2550.404a-1* (March 10, 2021)]  
 Text available at:  
<https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/erisa/statement-on-enforcement-of-final-rules-on-esg-investments-and-proxy-voting.pdf> . . . . . 5082

DOL adopts new rules to allow for climate change and other ESG factors to be considered in a fiduciary’s selection of plan investment or designated investment alternatives, and in exercising proxy voting and other shareholder rights [Citation: *DOL Reg. §2550.404a-1* (Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights), 87 F.R. 73822 (December 1, 2022)] . . . . . 5464

¶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

¶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

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**Note: These regulations finalize the proposed regulations summarized at p. 1759.**

¶3.321(1) - Fiduciary Duties and Liability: Prudence and Diversification  
 DOL proposes new rules to allow for climate change and other ESG factors to be considered in a fiduciary’s selection of plan investment or designated investment alternatives, and in exercising proxy voting and other shareholder rights [Citation: *Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights*, Prop. DOL Reg. §2550.404a-1, 86 F.R. 57272 (October 14, 2021)] . . . . . 5186

¶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  
 Civil penalty adjustments for 2021 [Citation: *DOL Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2021*, DOL Reg. §2575.3, 86 F.R. 2964 (January 14, 2021)] . . . . . 5083  
 Civil penalty adjustments for 2022 [Citation: *DOL Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2022*, DOL Reg. §2575.3, 87 F.R. 2328 (January 14, 2022)] . . . . . 5320  
 Civil penalty adjustments for 2023 [Citation: *DOL Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2022*, DOL Reg. §2575.3, 88 F.R. 2210 (January 13, 2023)] . . . . . 5471

¶3.346 - DOL Administrative Procedures  
 DOL updates its procedures for non-regulatory Guidance Documents [Citation: *DOL Reg. §§89.1 - 89.8*, 29 C.F.R. Part 89, 85 F.R. 53163 (August 28, 2020)] . . . . . 4884  
**Note: These regulations were withdrawn by the Treasury. See p.5085 (entry below).**  
 DOL rescinds 2020 update of its procedures for non-regulatory Guidance Documents [Citation: *29 C.F.R. Part 89 [removed]*, 86 F.R. 7237 (January 27, 2021)] . . . . . 5085

¶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.**

¶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

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Civil penalty adjustments for 2021 [Citation: *PBGC Adjustment of Civil Penalties for Inflation, PBGC Reg. §§4071.3 and 4302.3*, 86 F.R. 2541 (January 13, 2021)]. . . . . 5000

Civil penalty adjustments for 2022 [Citation: *PBGC Adjustment of Civil Penalties for Inflation, PBGC Reg. §§4071.3 and 4302.3*, 87 F.R. 2340 (January 14, 2022),] . . . . . 5255

Civil penalty adjustments for 2023 [Citation: *PBGC Adjustment of Civil Penalties for Inflation, PBGC Reg. §§4071.3 and 4302.3*, 88 F.R. 1991 (January 12, 2023),] . . . . . 5473

¶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.**



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Regulations finalized that implement section 404 of the PPA 2006 regarding substitution of an employer’s bankruptcy filing date for the plan’s termination date to make certain determinations [Citation: *PBGC Reg. §§4001.2, 4022.2, 4022.3, 4022.4, 4022.6, 4022.21, 4022.22, 4022.23, 4022.24, 4022.25, 4022.51, 4022.61, 4022.62, 4022.63, 4022.81, 4022.82, 4044.1, 4044.2, 4044.3, 4044.10, 4044.13*, 76 F.R. 34590 (June 14, 2011), available at <http://www.gpo.gov/fdsys/pkg/FR-2011-06-14/pdf/2011-14241.pdf>] . . . . . 2739  
**Note: These regulations finalize the proposed regulations summarized at p. 1848.**

Benefit determinations and plan valuations for statutory hybrid plans, allocation of assets under terminated statutory hybrid plan that is trustee by the PBGC [Citation: *Prop. PBGC Reg. §§4022.120-4022.123, 4041.28(c)(3), 4044.52(e), 4044.76*, 76 F.R. 67105 (October 31, 2011)] . . . . . 2810

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.**

PBGC updates its procedures for PBGC Guidance Documents [Citation: *PBGC Reg. §§4908.1-4908.6*, 29 C.F.R. Part 4908, 85 F.R. 52481 (August 26, 2020)] . . . . . 4888  
**Note: These regulations were withdrawn by the PBGC. See entry below for p. 5086.**

PBGC rescinds 2020 update of its procedures for non-regulatory Guidance Documents [Citation: *29 C.F.R. Part 4908 [removed]*, 86 F.R. 17066 (April 1, 2021)] . . . . . 5086

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PBGC adopts changes to its procedures for examining PBGC records to reflect FOIA changes [Citation: *PBGC Reg. §§4901.1-4901.34*, 87 F.R. 43991 (July 25, 2022)]. . . . . 5376  
**This regulation finalizes the proposed regulations that were summarized at p. 4891.**

¶4.375 - Title IV: Payments of Benefits from PBGC-Trusteed Plans  
 Regulations implement PPA 2006 amendments requiring 5-year phase-in for guaranteed benefits to be applied to unpredictable contingent event benefits as if amendment is adopted on the date the event occurs [Citation: *PBGC Reg. §§4022.27* (with conforming amendments to §§4022.2, 4022.24 and 4022.62 and redesignation of former §4022.27 as §4022.28, 79 F.R. 25669 (May 18, 2014)] . . . . . 3369  
**Note: The regulations replace proposed regulations that were summarized at p. 2701.**  
 Regulations clarify the treatment of benefits attributable to rollover amounts under an underfunded terminated plan covered by the PBGC [Citation: *PBGC Reg. §§4001.2, 4022.2, 4022.7(b)(2) and (c)(2), 4022.8(f), 4022.22(d), 4022.24(g) and 4044.12(b)(4) and (c)(4)*, 79 F.R. 70090-70095 (November 25, 2014)] . . . . . 3489  
**Note: The regulations replace proposed regulations that were summarized at p. 3321.**  
 PBGC proposes clarifications and codification of existing practices in the payment of benefits under PBGC-trusteed 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  
 PBGC adopts IRC §417(e)(3) interest and mortality assumptions for PBGC-trusteed plans; publishes new table for private-sector plans that continue to use PBGC legacy rates [Citation: *PBGC Reg. §4022.7, Appendixes A, B and C of Part 4022*, 85 F.R. 55587 (September 9, 2020)]. . . . . 4893  
**Note. The proposed regulations were issued on September 30, 2019, and summarized on p. 4569. The regulations adopt the proposal with modifications.**

¶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  
 Proposed regulations would provide interest rate assumptions that may be used by a plan actuary in determining a withdrawing employer’s liability under a multiemployer plan. . . . . 5378

¶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

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¶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)]  
. . . . . 4299  
**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.**

¶4.719 - American Rescue Plan Act of 2021  
PBGC finalizes rule for plans to apply for financial assistance under the American Rescue Plan  
Act [Citation: *PBGC Reg. §§4262.1-4262.17*, 87 F.R. 40968 (July 8, 2022)] . . . . . 5355

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¶5.101 - Definition of Employee

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¶5.107 - Definitions: Plan Administrator

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¶5.110 - Minimum Age and Service Requirements: General Rules

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¶5.113(3) - Minimum Coverage Requirements: Union Exclusion . . . . . 998

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¶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

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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. NYS-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

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¶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:

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¶5.140 - Distributions: Procedures

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

    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)] . . . . . 178

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

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¶5.142 - Death Benefits

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

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

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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

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¶5.147 - Life Insurance

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¶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

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¶5.170(7) - Minimum Funding Requirements: Multiemployer Plans  
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¶5.173 - Benefit Restrictions to HCEs for Underfunded Pension Plans (Treas. Reg. §1.401(a)(4)-5)  
 Plan properly refused lump sum distribution to HCE due to regulatory restrictions triggered by plan’s underfunded status; not required to offer security option for receiving distribution [Citation: *Wetzler 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  
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¶5.183(1) - Employer Securities: Fiduciary Issues Under Title I of ERISA  
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*Moench* presumption applied during pleading stage; fiduciaries under no obligation to provide plan participants non-public information that could pertain to the employer securities investment option in the plan; false or misleading statements in SEC filings do not constitute ERISA breaches [Citation: *Fisher v. JP Morgan Chase & Co.*, 2012 WestLaw 1592208 (2<sup>nd</sup> Cir. May 8, 2012) (not selected for publication in the Federal Reporter)] . . . . . 2949

Eleventh Circuit adopts *Moench* presumption with respect to fiduciary’s decision to invest in Home Depot stock; fiduciaries not required to disclose non-public information to plan participants [Citation: *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

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*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

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

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

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. MEMCLLC*, 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); the Supreme Court denied certiorari on November 9, 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

Pinning down the “right” pleading approach under *Dudenhoeffer* for fiduciary breaches surrounding the investment in publicly-traded securities - Eighth Circuit rejects using generic economic theory to bolster a prudence claim [Citations: *Dormani v. Target Corporation*, No. 18-2543, \_\_\_ F.3d \_\_\_ (8<sup>th</sup> Cir. July 28, 2020)] ..... 4897

*Dudenhoeffer* pleading standard remains elusive as Ninth Circuit rejects claim for failure to disclose nonpublic information about publicly-traded stock based on general economic principles regarding delayed disclosure [Citation: *Wilson v. Craver*, No. 18-56139, \_\_\_ F.3d \_\_\_ (9<sup>th</sup> Cir. April 19, 2021)]. ..... 5121

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Corporate insiders serving as fiduciaries can transfer risk regarding stock drop decisions by delegating exclusive investment authority to independent fiduciary [Citation: *Burke v. The Boeing Co.*, No. 20-3389, \_\_\_ F.3d \_\_\_ (7<sup>th</sup> Cir. August 1, 2022)]. . . . . 5380

“More harm than good” *Dudenhoeffer* pleading test trips up plaintiffs again in stock drop case involving insider information that could affect the value of the employer securities [Citation: *Perrone v. Johnson&Johnson*, No. 21-1885, \_\_\_ F.3d \_\_\_ (3<sup>rd</sup> Cir. September 7, 2022)] . . . . . 5383

¶5.183(2) - Employer Securities: Prohibited Transactions

Award against employer for overvalued ER stock sold to ESOP should have been offset by the ESOP debt cancelled by the employer [Citation: *Walsh v. Vinoskey*, No. 20-1252, \_\_\_ F.3d \_\_\_ (4<sup>th</sup> Cir. December 6, 2021)] . . . . . 5256

¶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

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

Ninth Circuit recognizes anti-assignment exception for garnishment under federal Mandatory Victims Restitution Act of 1996 [Citation: *U.S. v. Novak*, 476 F.3d 1041 (9<sup>th</sup> Cir. February 22, 2007)]. . . . . 1310

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

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

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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

Fourth Circuit joins Second and Ninth Circuits in recognizing anti-assignment exception for garnishment under federal Mandatory Victims Restitution Act of 1996 [Citation: *U.S. v. Frank*, No. 20-6706, \_\_\_ F.3d \_\_\_ (4<sup>th</sup> Cir. August 10, 2021)]. . . . . 5193

Second Circuit reaffirms that the Mandatory Victims Restitution Act authorizes garnishment of 401(k) funds, but lower court needs to determine whether 10% premature distribution penalty should apply [Citation: *United States v. Greebel*, No. 21-993, \_\_\_ F.3d \_\_\_ (2<sup>nd</sup> Cir. August 24, 2022)]. . . . . 5385

¶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

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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

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

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**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

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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

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

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

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

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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

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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*, 960 F.3d 346 (6<sup>th</sup> Cir. June 1, 2020)] . . . . . 4770

Chapter 13 debtor may not start 401(k) contributions that will be exempt from disposable income under their creditor repayment plan where no 401(k) contributions were made for more than six months before the bankruptcy petition was filed [Citation: *Penfound v. Ruskin*, No. 19-2200, \_\_\_ F.3d \_\_\_ (6<sup>th</sup> Cir. August 10, 2021)]. . . . . 5194

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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

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Change in trust’s investment allocation under a cash balance plan does not result in violation of anti-cutback rule even though trust’s investment experience is one factor in determine annual interest crediting rate [Citation: *Thompson V. Retirement Plan for Employees of S.C. Johnson & Sons, Inc.*, 47 EBC 2518 (E.D.Wisc. October 2, 2009)] . . . . . 2304

Amendment to modify social security offset calculation was not a reduction of accrued benefits in violation of ERISA §204(g) [Citation: *Cinotto v. Delta Airlines, Inc.*, 674 F.3d 1285 (11<sup>th</sup> Cir. March 23, 2012)] . . . . . 2928

Enhanced accruals for “banked hours” were protected under IRC §411(d)(6) [Citation: *Bonneau v. Plumbers and Pipefitters Local Union 51 Pension Trust Fund*, 736 F.3d 33 (1<sup>st</sup> Cir. (R.I.) November 15, 2013)] . . . . . 3278

**¶5.195(2) - Anti-Cutback Rules: Early Retirement Benefits and Retirement-Type Subsidies**

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**¶5.195(3) - Anti-cutback Rules: Protecting Optional Forms of Benefit/Early Retirement/Retirement-Type Subsidies**

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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



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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

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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

    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

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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: *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

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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. Coldesina, D.D.S., P.C., Employee Profit Sharing Plan and Trust v. Estate of Greg P. Simper*, 34 EBC 2633 (10<sup>th</sup> Cir. May 19, 2005)]. . . . . 759

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

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

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

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

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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

Fees charged by Fidelity to mutual funds in order to be included on Fidelity’s platform of investment options do not make Fidelity a fiduciary with respect to plans that contract with Fidelity [Citation: *Wong v. FMR, LLC*, No. 20-1286, \_\_\_ F.3d \_\_\_ (1<sup>st</sup> Cir. March 5, 2021)] . . . . . 5088

Allegations if proven true could establish Aetna as a fiduciary because its unauthorized inclusion of administrative fees in plan would establish discretionary control over plan administration; summary judgment avoided and case will proceed to trial [Citation: *Peters v. Aetna, Inc.*, No. 19-2085, \_\_\_ F.3d \_\_\_ (4<sup>th</sup> Cir. June 22, 2021)] . . . . . 5125

¶5.320(2) - Fiduciary Requirements: Fiduciary Actions

Named fiduciary cannot be liable for fiduciary breach due to non-fiduciary actions performed by fiduciary’s delegate; electronic requests recognized as a *writing*; professional negligence and negligent misrepresentation claims against non-fiduciary service provider are not preempted by ERISA [Citation: *Bafford v. Northrop Grumman Corp.*, No. 20-55222, \_\_\_ F.3d \_\_\_ (9<sup>th</sup> Cir. April 15, 2021)] . . . . . 5127

¶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)]  
 ..... 3200

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

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

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

Fourth Circuit green-lights fiduciary breach claims surrounding fiduciary’s failure to liquidate single-stock fund available to participants [Citation: *Stegemann v. Gannett Company, Inc.*, No. 19-1212, \_\_\_ F.3d \_\_\_ (4<sup>th</sup> Cir. August 11, 2020)] ..... 4899

Insurer acting in fiduciary capacity did not breach duties of prudence and loyalty in the manner in which it set guaranteed interest rates for stable value contracts [Citation: *Rozo v. Principal Life Insurance Co.*, No. 21-2026, \_\_\_ F.3d \_\_\_ (8<sup>th</sup> Cir. September 2, 2022)] ..... 5386

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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*, 953 F.3d 980 (7<sup>th</sup> Cir. March 25, 2020)] ..... 4707

Tenth Circuit agrees that fiduciaries breach duty to plan by failing to monitor recordkeeping fees that were a percentage of plan assets *without a cap*; lower court’s use of recordkeeper’s credit calculations to plan to compute damages was reasonable [Citation: *Ramos v. Banner Health*, No. 20-1231, \_\_\_ F.3d \_\_\_ (10<sup>th</sup> Cir. June 11, 2021)]. ..... 5130

Allegations regarding imprudent use by a 403(b) plan trustee of retail mutual fund shares over institutional shares were sufficient to avoid dismissal and proceed to trial [Citation: *Sacerdote v. New York University*, No. 18-2707-cv, \_\_\_ F.3d \_\_\_ (2<sup>nd</sup> Cir. August 16, 2021)] . . . 5195

Supreme Court vacates Seventh Circuit rejection of plaintiffs’ claims in excessive fee case because it did not consider the *Tibble* holding that failure to prudently monitor investment options and plan expenses is not excused by offering a sufficient number of prudent investment options [Citation: *Hughes v. Northwestern University*, No. 19-1401, 595 U.S. \_\_\_ (Sup.Ct. January 24, 2022)] ..... 5322

Merely offering actively-managed funds as an option, which bear higher expense ratios, is not itself a violation of fiduciary prudence [Citation: *Smith v. CommonSpirit Health*, No. 21-5964, \_\_\_ F.3d \_\_\_ (6<sup>th</sup> Cir. June 21, 2022)]. ..... 5357

Imprudence claim challenging fiduciary’s failure to offer institutional funds that are substantially identical to the retail funds available under the plan [Citation: *Forman v. TriHealth, Inc.*, No. 21-3977, \_\_\_ F.3d \_\_\_ (6<sup>th</sup> Cir. July 13, 2022)] ..... 5387

Allegations based on per-participant recordkeeping fees without analysis relating to the services rendered with respect to such fees are insufficient to avoid dismissal for failure to state claim [Citation: *Albert v. Oshkosh Corporation*, No. 21-2789, \_\_\_ F.3d \_\_\_ (7<sup>th</sup> Cir. August 29, 2022)]. ..... 5388

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

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

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

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

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

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

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

¶5.321(4) - Fiduciary Duties and Liability: Trustee Duties

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

¶5.321(5) - Fiduciary Duties and Liability: Directed Trustees

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

¶5.322(2) - Participant-Directed Investments: Restrictions on Investment Options/Rights

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

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¶5.322(3) - Participant-Directed Investments: Fiduciary Liability/Scope of Relief under ERISA §404(c)  
 Summary judgment granted to employer with respect to claims for fiduciary breach regarding participant-directed investments where plan did not satisfy ERISA §404(c) requirements [Citation: *Jenkins v. Yager*, 37 EBC 1609 (7th Cir. April 14, 2006)] ..... 1007  
 6-year statute of limitations on fiduciary breach claims involving investment menu selection generally runs from time menu option is added; 404(c) relief doesn't apply to fiduciary decisions regarding selection of investment menu options [Citation: *Tibble v. Edison International*, 711 F.3d 1061 (9th Cir. March 21, 2013); amended 729 F.3d 1110 (9th Cir. August 1, 2013)] ..... 3246  
 6-year statute of limitations on fiduciary breach claims involving investment menu selection generally runs from time menu option is added unless changed circumstances are alleged [Citation: *Fuller v. SunTrust Banks, Inc.*, 744 F.3d 685 (2014 WL 718309) (11th Cir. (GA) February 26, 2014))] ..... 3332

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

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

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

¶5.324(2) - Exculpatory Provisions (ERISA §410): Indemnification Agreements  
 District court did not abuse discretion in enjoining advancement of litigation expenses to defendants under indemnification agreement when assets of corporation expended under agreement directly affected value of ESOP assets; impact of agreement on company assets is germane consideration because of direct effect on ESOP participants [Citation: *Johnson v. Couturier*, No. 08-17369 (9th Cir. July 27, 2009)] ..... 2213  
 Union's agreement to indemnify employer for Title IV withdrawal liability is enforceable [Citation: *Shelter Distribution, Inc. v. General Drivers, Warehousemen & Helpers Local Union No. 89*, 2012 WL 880601, 674 F.3d 608 (6th Cir. March 16, 2012)] ..... 2931

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

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

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

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

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

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

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

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

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

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

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

Plan language was *not* sufficiently specific to confer discretion on the plan administrator to interpret the plan document, so *de novo* review of administrator’s decision was warranted

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[Citation: *Stephanie v. Blue Cross Blue Shield of Massachusetts HMO Blue, Inc.*, 813 F.3d 420 (1<sup>st</sup> Cir. February 17, 2016)] ..... 3850

Administrator acted arbitrarily in interpreting plan language that clearly applied under the claimants’ situation regarding involuntarily termination from the controlled group [Citation: *Knowlton v. Anheuser-Busch Companies Pension Plan*, 849 F.3d 422 (8<sup>th</sup> Cir. February 22, 2017)]. ..... 4163

Interpretation of document to assume continued base salary during the participant’s disability period was reasonable even though it resulted in a lower average compensation calculation for the participant [Citation: *Dowling v. Pension Plan For Salaried Employees*, 817 F.3d 239 (3<sup>rd</sup> Cir. September 15, 2017)] ..... 4240

Tenth Circuit rules that *deferential review standard* does not apply unless administrator has notified plan participants and beneficiaries of its discretion over benefit claims [Citation: *Lyn M. v. Premera Blue Cross*, No. 18-4098, \_\_\_ F.3d \_\_\_ (10<sup>th</sup> Cir. July 24, 2020)] ..... 4903

Plan administrator reasonably interpreted that plaintiffs had not experienced a layoff or termination by plant shutdown where business continued operations (without modification) after sale [Citation: *Hill v. Employee Benefits Admin. Comm. of Mueller Grp. LLC*, No. 18-14026, \_\_\_ F.3d \_\_\_ (11<sup>th</sup> Cir. August 24, 2020)]. ..... 4904

¶5.325(3) - Plan Administration: Claims Procedures

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

Equitable reformation resolved ambiguous plan provision regarding calculation of benefits for rehired employees [*Frommert v. Conkwright*, Nos. 17 114 cv(L), 17 738 cv(CON), \_\_\_ F.3d \_\_\_ (2<sup>nd</sup> Cir. January 14, 2019)]. ..... 4470

“Substantial compliance doctrine” does not apply to administrator’s failure to meet deadlines, resulting *de novo* review of administrator’s decision to deny disability benefits [*Fessenden v. Reliance Standard Life Ins. Co. and Oracle USA, Inc., Group Long Term Disability Plan*, No. 18-1346, \_\_\_ F.3d \_\_\_ (7<sup>th</sup> Cir. June 25, 2019)] ..... 4518

¶5.326(1) - Definition of Plan Assets: Participant Contributions

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

¶5.330 - ERISA Enforcement: Claim For Benefits

Participant who intentionally evades receipt of pension benefits not entitled to interest on late payments made by plan [Citation: *Twomey v. Delta Airlines Pilots Pension Plan*, 30 EBC 1513 (1<sup>st</sup> Cir. May 7, 2003)] ..... 184

Plan may seek recoupment of overpayment of benefits pursuant to contractual provisions of the plan; equitable relief limitation under ERISA §502(a)(3) not applicable [Citation: *Northcutt*

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*v. General Motors Hourly-Rate Employee Pension Plan*, 467 F.3d 1031 (7th Cir. 2006), rehearing denied, 2007 U.S. App. LEXIS 468 (7th Cir. January 5, 2007)] . . . . . 1317

Employer’s statements regarding its intentions to restart funding of frozen defined contribution plans when the company became financially stable did not create enforceable rights to future funding [Citation: *Kalda v. Sioux Valley Physician Partners, Inc.*, 481 F.3d 639 (8<sup>th</sup> Cir. March 29, 2007)] . . . . . 1478

Employee claiming status as participant cannot be held to have waived administrative rights if relevant documents to establish eligibility are not furnished; failure of administrator to interpret language in plan in rendering decision on claim results in *de novo* review of decision [Citation *Strom v. Siegel Fenchel & Peddy P.C. Profit Sharing Plan*, 497 F.3d 234 (41 EBC 1484) (2<sup>nd</sup> Cir. 2007)] . . . . . 1589

Supreme Court reaffirms *Firestone* holding; provides analysis regarding impact of conflicts of interest [Citation: *Metropolitan Life Ins. Co. v. Glenn*, 554 U.S. \_\_\_\_ (June 19, 2008)] . 1856

Third Circuit revokes its “sliding scale” analysis for standard of review in light of *Glenn* case [Citation: *Schwing v. Lilly Health Plan*, 562 F.3d 522, (46 EBC 2370) (3<sup>rd</sup> Cir. 2009)] 2182

Anti-alienation provisions are not violated when judgment is enforced against the plan for improper payment of participant’s benefits to ex-spouse, even though account balances will be affected as a result of the loss [Citation: *Milgram v. Orthopedic Associates Defined Contribution Pension Plan*, 662 F.3d 187 (2<sup>nd</sup> Cir. November 29, 2011)] . . . . . 2819

Administrator abused its discretion in denying participant’s claim for retroactive benefits resulting from a failure of the plan to timely inform her of her right to elect full benefits under an early retirement provision [Citation: *Helton v. AT&T, Inc.*, \_\_\_\_ F.3d \_\_\_\_ (2013 WL 812118) (4<sup>th</sup> Cir. March 6, 2013)] . . . . . 3125

ERISA §4044 does not create ERISA cause of action for alleged violation of IRC §401(a)(4); fiduciaries entitled to rely on advice of counsel in making benefits determination [Citation: *Clark v. Feder Semo and Bard, P.C.*, 739 F.3d 28 (D.C. Cir. January 7, 2014)] . . . . . 3333

Exhaustion of administrative remedies not required to bring claim based on statutory violations rather than violations of the terms of the plan [Citation: *Stephens v. PBGC*, 755 F.3d 959 (D.C. Cir. June 24, 2014)] . . . . . 3382

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

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

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Provisions in health plans that prohibit assignment of the beneficiary’s claim are *not* prohibited by ERISA [Citation: *American Orthopedic & Sports Medicine v. Independence Blue Cross Blue Shield*, 890 F.3d 445 (3<sup>rd</sup> Cir. May 16, 2018)]. . . . . 4415

Claimant deemed to have exhausted administrative remedies because of plan’s deficient claims procedure [Citation: *Theriot v. Building Trades United Pension Trust Fund*, No. 20-30126, \_\_\_ F.3d \_\_\_ (5<sup>th</sup> Cir. March 12, 2021)]. . . . . 5089

¶5.331 - Statute of limitations for ERISA actions

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

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

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

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

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

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

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

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The 6-year statute of limitations under ERISA §413 regarding fiduciary breach actions may be waived by the defendant [Citation: *Secretary of Labor v. Preston*, No. 873 F.3d 877 (11<sup>th</sup> Cir. October 12, 2017)]. . . . . 4327

Application of state law limitations period depended on the basis of the claim [Citation: *Clemons v. Norton Healthcare Inc. Retirement Plan*, 890 F.3d 254 (6<sup>th</sup> Cir. 2018)]. . . . . 4413

Unanimous Supreme Court applies literal interpretation of “actual knowledge” to determine the appropriate limitations period under ERISA §413 [Citation: *Intel Corporation Investment Policy Committee v. Sulyma*, No. 18-1116, \_\_\_ U.S. \_\_\_ (Sup.Ct. February 26, 2020)] 4709

Actual knowledge of breach by some participants is not imputed to participants without knowledge to determine whether latter is barred under 3-year statute of limitations to bring action for fiduciary breach [Citation: *Browe v. CTC Corporation*, No. 19-677-cv, \_\_\_ F.3d \_\_\_ (2<sup>nd</sup> Cir. September 29, 2021)]. . . . . 5196

Statute of limitations to bring claim of underpayment of benefits begins when the first alleged underpayment is made, not the earlier date when the plan explained the benefit [*Gragg v. UPS Pension Plan*, No. 22-3379, \_\_\_ F.3d \_\_\_ (6<sup>th</sup> Cir. December 16, 2022)] . . . . . 5475

¶5.332 - ERISA Enforcement: Civil and Criminal Penalties

Criminal penalties upheld with respect to conversion of 401(k) deferrals and false statements on valuation report [Citation: *U.S. v. Eriksen*, 639 F.3d 1138 (50 EBC 2193) (9<sup>th</sup> Cir. 2011)] 708

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

¶5.333 - ERISA Enforcement: Standing

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

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

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

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

Claims against fiduciaries of distress-terminated defined benefit plan under ERISA §502(a)(2) lacked constitutional standing because recovery would go to PBGC rather than plan, and ERISA §502(a)(3) lacked ERISA standing because spin-off decision was not fiduciary action



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and monetary recovery sought was not equitable relief [Citation: *Paulsen v. CNF, Inc.*, 559 F.3d 1061 (46 EBC 1481) (9<sup>th</sup> Cir. March 20, 2009)] . . . . . 2184

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

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

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

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

Supreme Court holds DB participants lack standing where alleged fiduciary conduct did not adversely affect their promised benefits under the plan [Citation: *Thole v. U.S. Bank, N.A.*, No. 17-1712, 590 U.S. \_\_\_ (June 1, 2020)] . . . . . 4771

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

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

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

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

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

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

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Entire course of litigation needs to be considered to determine whether a party’s request for appellate attorney’s fees should be granted [Citation: *Micha v. Sun Life Assurance of Canada*, 874 F.3d 1052 (9<sup>th</sup> Cir. October 31, 2017)] . . . . . 4328

Plaintiff not entitled to attorney's fees associated with appeal of summary judgment for defendant, even though court reversed the summary judgment [Citation: *Katherine P. v. Humana Health Plan, Incorporated*, No. 19-50276, \_\_\_ F.3d \_\_\_ (5<sup>th</sup> Cir. June 29, 2020)] . . . . . 4773

An attorney’s fees award incurred during the administrative proceedings relating to a claim for benefits is not appropriate under ERISA §502(g) [Citation: *Castillo v. Metropolitan Life Ins. Co.*, No. 19-56093, \_\_\_ F.3d \_\_\_ (9<sup>th</sup> Cir. August 17, 2020)]. . . . . 4905

Eleventh Circuit rules that ERISA attorney’s fees cannot be assessed against legal counsel [Citation: *Peer v. Liberty Life Assurance Company of Boston*, No. 19-13974, \_\_\_ F3d \_\_\_ (11<sup>th</sup> Cir. April 6, 2021)]  
 Text available at: <https://media.ca11.uscourts.gov/opinions/pub/files/201913974.pdf>. . 5091

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

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

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

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

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

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

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

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

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

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

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

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

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

Reformation of defined benefit plan ordered by court because of fraudulent concealment of the wear-away effect of replacing the plan’s traditional benefit formula with a cash balance formula [Citation: *Osberg v. Foot Locker, Inc.*, No. 15-3602-cv, \_\_\_ F.3d \_\_\_ (2<sup>nd</sup> Cir. July 6, 2017)]. ..... 4177

Participant who declined generous job transfer offer to take lump sum option that had been incorrectly calculated may move forward with his surcharge claim against plan fiduciaries [Citation: *Retirement Committee of DAK Americas LLC v. Brewer*, 867 F.3d 471 (4<sup>th</sup> Cir. August 14, 2017)] ..... 4241

Ninth Circuit rejects claims for restitution and disgorgement because they were not equitable in nature; service provider not acting as fiduciary when selling its product even if fees excessive; ERISA doesn’t preempt state law regarding fraudulent sales practices [Citation: *The Depot, Inc. v. Caring For Montanans, Inc.*, No. 17-35597, \_\_\_ F.3d \_\_\_ (9<sup>th</sup> Cir. February 6, 2019)] ..... 4471

Equitable reformation of a plan document is appropriate to correct a plan provision that violates ERISA, even if there is no fraud involved; once reformed, a claim for benefits may be made against the reformed document [Citation: *Laurent v. PricewaterhouseCoopers LLP*, No. 18-487-cv, \_\_\_ F.3d \_\_\_ (2<sup>nd</sup> Cir. December 23, 2019)] ..... 4655

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Repeated overstatement of life insurance benefit by agent of plan administrator may be litigated for equitable relief under ERISA §502(a)(3) [Citation: *Sullivan-Mestecky v. Verizon Communications*, No. 18-1591-cv, \_\_\_ F.3d \_\_\_ (2<sup>nd</sup> Cir. June 1, 2020)] . . . . . 4774

Plan has equitable lien against accounts of beneficiary who commingled overpayment with other invested assets [Citation: *Zirbel v. Ford Motor Company*, No. 20-1149, \_\_\_ F.3d \_\_\_ (6<sup>th</sup> Cir. November 16, 2020)]. . . . . 5001

Pleading sufficient to try ERISA §502(a)(3) claim seeking recovery from employer-fiduciary for alleged misleading statements regarding life insurance benefit elections made by a now-deceased participant [Citation: *Delker v. MasterCard International, Inc.*, No. 20-3600, \_\_\_ F.3d \_\_\_ (8<sup>th</sup> Cir. January 5, 2022)]. . . . . 5257

Deficiencies in insurer’s benefit election procedures supported lower court’s grant of summary judgment in ERISA §502(a)(3) claim for additional insurance coverage [Citation: *Skelton v. Radisson Hotel Bloomington*, No. 21-2641, \_\_\_ F.3d \_\_\_ (8<sup>th</sup> Cir. May 6, 2022)]. . . . . 5358

Eleventh Circuit also recognizes equitable surcharge as an appropriate remedy under ERISA §502(a)(3) even though it provides for monetary relief [Citation: *Gimeno v. NCHMD, Inc.*, No. 21-11833, \_\_\_ F.3d \_\_\_ (11<sup>th</sup> Cir. June 28, 2022)] . . . . . 5359

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

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

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

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

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

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

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

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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 (N.D.Ill. November 2, 2009)]  
 ..... 2307

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

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

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¶6.271 - Plan Termination: Surplus Assets and Reversions  
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¶6.272 - Plan Termination: Missing Participants  
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 2015 Form 5500 series includes new IRS compliance questions [Citation: *Frequently Asked Questions Regarding the IRS Compliance Questions on the Form 5500- Series Returns*, [www.irs.gov](http://www.irs.gov); *2015 Instructions for Form 5500*]. . . . . 3782  
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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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 Revised Form 5558 includes extension request for Form 8955-SSA [Citation: *Form 5558 (Rev. June 2011)*, available at IRS website (<http://www.irs.gov/pub/irs-pdf/f5558.pdf>)] . . . . 2770  
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¶6.402 - IRAs: Approval Procedures  
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- Initial guidance on IRC §409A requirements for nonqualified plans, as enacted by the American Jobs Creation Act of 2004 [Citation: *Notice 2005-1, 2005-2 I.R.B. (January 10, 2005) (advance released on December 20, 2004)*] . . . . . 598



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

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

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Latest update of the EPCRS Procedure revises the VCP submission procedures to require electronic submissions starting no later than April 1, 2019 [Citation: *Rev. Proc. 2018-52*, 2018-42 I.R.B. (October 15, 2018; advance release on September 28, 2018)] . . . . . 4423

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    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

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¶6.633 - EGTRRA Remedial Amendment Period  
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2022 remedial amendment list contains no required amendments [Citation: *Notice 2022-62*, 2022-49 (December 5, 2022) (advance release on November 21, 2022)]. . . . . 5488

IRS modifies remedial amendment periods for new plans, establishes determination letter program for individually-designed 403(b) plans, and clarifies the scope of IRS’ review of individually-designed plans [Citation: *Rev. Proc. 2022-40*, 2022-47 I.R.B. (November 21, 2022)]. . . . . 5490

¶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

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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

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

IRS updates Operational Compliance List to reflect changes effective through 2020 [Citation:  
*Operational Compliance List* (last updated April 27, 2021), [www.irs.gov](http://www.irs.gov)] . . . . . 5138

¶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

¶6.716 - SECURE Act

Initial guidance on several SECURE Act and other 2019 legislative changes: small plan  
automatic enrollment tax credit, lifting of age cap on IRA contributions, long-term part-time  
employees, qualified birth or adoption distributions, difficulty of care payments, and age 59½  
in-service distributions from pension plans and governmental 457(b) plans [Citation: *Notice  
2020-68*, 2020-38 I.R.B. (September 14, 2020)] . . . . . 4918

IRS guidance on SECURE Act changes made to safe harbor 401(k) rules; clarifies when safe  
harbor notice is needed to qualify for ACP test waiver and other regulatory requirements under  
safe harbor plans that provide for the safe harbor nonelective contribution [Citation: *Notice  
2020-86*, 2020-53 I.R.B. (December 28, 2020; advance release on December 9, 2020)].5040

¶6.717 - CARES Act

Formal IRS guidance on CARES Act provisions relating to coronavirus-related distributions, and  
loan suspensions [Citation: *Notice 2020-50*, 2020-28 I.R.B. (July 6, 2020) (advance release on  
June 19, 2020)] . . . . . 4803

IRS provides formal guidance on the 2020 waiver of required minimum distributions enacted  
by the CARES Act and provides transitional guidance for SECURE Act change to required  
beginning date [Citation: *Notice 2020-51*, 2020-29 I.R.B. (July 13, 2020; advance release on  
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IRS provides guidance on special rules relating to funding of single-employer DB plans and  
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(August 24, 2020) (advance release on August 6, 2020)] . . . . . 4932

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IRS extends deadline for paying IRC §4971 excise tax on late minimum funding payments relating to the extended CARES Act deadline [Citation: *Announcement 2020-17*, 2020-40 I.R.B. (September 28, 2020)] . . . . . 4941

IRS provides guidance on special rules relating to funding of single-employer DB plans and related benefit limitations under the CARES Act [Citation: *Notice 2020-61*, 2020-35 I.R.B. (August 24, 2020) (advance release on August 6, 2020); as modified by *Notice 2020-82*, 2020-50 I.R.B. (December 7, 2020) (advance release on November 20, 2020)] . . . . . 5041

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    IRS guidance on legislative changes applicable to cafeteria plans [Citation: *Notice 2021-15*, 2021-10 I.R.B. (March 8, 2021); advance publication on February 18, 2021)] . . . . . 5095

¶6.719 - American Rescue Plan Act of 2021 . . . . . 5233

    IRS guidance on the pension provisions in the American Rescue Plan Act provide funding relief for single-employer pension plans [Citation: *Notice 2021-48*, 2021-33 I.R.B. (August 16, 2021; advance release on July 30, 2021)] . . . . . 5233



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¶7.101 - Definition of Employee

IRS and DOL coordinate efforts to stop misclassification of employees as independent contractors [*Wage and Hour Division News Release*, September 19, 2011]. . . . . 2774

DOL’s Wage and Hour Division issues interpretation of the “suffer or permit” standard in the identification of employees who are misclassified as independent contractors [Citation: *Administrator’s Interpretation No. 2015-1* (July 15, 2015)]. . . . . 3738

DOL’s Wage and Hour Division issues interpretation of joint employment relationships [Citation: *Administrator’s Interpretation No. 2016-1* (January 20, 2016)]. . . . . 3868

¶7.108(1) - Miscellaneous Definitions And Procedures: Disaster Relief

DOL announces extensions for persons affected by Hurricane Katrina with respect to COBRA and HIPAA deadlines, and ERISA claims procedures [Citation: *Extension of Certain Time Frames for Employee Benefit Plans Affected*, 70 F.R. 55500 (September 21, 2005)] . . . 836

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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

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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

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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

PBGC announces extended due date for including prior year contributions for calculating VRP liability; COVID FAQs released by PBGC [Citation: *PBGC Technical Update 20-2* (September 23, 2020; revised on November 16, 2020) *COVID-19-Related Single-Employer Plan Sponsors and Administrations Questions and Answers*, [www.pbgc.gov](http://www.pbgc.gov)] . . . . . 5050

DOL explains how the continuation of the COVID-19 period for more than one year affects the deadlines extended under DOL/IRS Joint Notice and EBSA Disaster Relief Notice 2020-1 [Citation: *EBSA Disaster Relief Notice 2021-1* (posted March 29, 2020)] . . . . . 5102

¶7.146 - Distributions: Actuarial Assumptions/Present Value Determinations

PPA 2006 changes not applicable to plans terminating before the first day of the 2008 plan year [Citation: *PBGC Technical Update 07-3* (December 3, 2007)] . . . . . 1744

Applicable interest/mortality rates where plan terminates in post-2007 plan year but make distributions in a later plan year [Citation: *PBGC Technical Update 08-4* (December 31, 2008)] . . . . . 2076

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

PBGC releases present values of the Title IV maximum guaranteed benefit for purposes of determining the partial restrictions on distributions for plans below 80% but not below 60% funding [Citation: *PBGC Technical Update 07-4* (December 17, 2007)] . . . . . 1745

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¶7.272 - Plan Termination: Missing Participants

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¶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

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DOL issues FAQs on Schedule C revisions being made to the 2009 Form 5500 series [Citation: *FAQs About The 2009 Form 5500 Schedule C*, available at the DOL website ([www.dol.gov/ebsa](http://www.dol.gov/ebsa))] ..... 1953

DOL’s Delinquent Filer Voluntary Compliance Program (DFVC) updated to reflect EFAST2 filing instructions [Citation: *Delinquent Filer Voluntary Compliance Program*, 78 F.R. 6135 (January 29, 2013)] ..... 3143

¶7.303 - PBGC: Reporting Rules and Forms

PBGC issues 2003 model notice under ERISA §4011; notice may be required even though plan doesn’t actually have a variable premium [Citation: *PBGC Technical Update 03-17* (September 5, 2003)] ..... 255

¶7.303(1) - PBGC Reporting Rules and Forms: Interest Rate Assumptions

PBGC extends JCWAA reporting relief into 2004; explains effect of PFEA interest rates and coordination of overlapping interest rate requirements [Citation: *PBGC Technical Update 04-2* (March 19, 2004), *PBGC Technical Update 04-3* (June 4, 2004)] ..... 421

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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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Waiver of reporting requirement if aggregate underfunding does not exceed \$15 million [Citation: *PBGC Technical Update 08-3* (December 19, 2008)] ..... 2078

PBGC releases guidance on how MAP-21 interest rate stabilization provisions affect ERISA §4010 reporting [Citation: *PBGC Technical Update 12-2* (September 11, 2012)]. . . . . 3028

PBGC provides HATFA guidance regarding ERISA §4010 reporting obligations [Citation: *PBGC Technical Update 14-2* (October 17, 2014)] ..... 3546

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

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Reporting obligations for plans with Madoff-related losses [Citation: *PBGC News Release No. 09-14*, “Notice to DB Plans Concerning Funds Invested With Bernard L. Madoff Investment Securities LLC” (February 6, 2009), available at [www.pbgc.gov](http://www.pbgc.gov)] . . . . . 2154

Guidance for valuation unfunded vested benefits and assets for purposes of reportable event requirements in 2009 plan years [Citation: *PBGC Technical Update 09-1* (January 9, 2009), available at [www.pbgc.gov](http://www.pbgc.gov)]. . . . . 2155

Reporting waived or subject to a simplified reporting option for certain small plans that have missed quarterly contribution not motivated by financial inability [Citation: *PBGC Technical Update 09-3* (April 30, 2009), available at [www.pbgc.gov](http://www.pbgc.gov)] . . . . . 2196

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Extension of interim guidance on reportable events for the 2013 plan year and subsequent years [Citation: *PBGC Technical Update 13-1* (January 30, 2013), available] . . . . . 3148

PBGC prescribes an alternative method for determining whether reporting an attrition event to the PBGC is required under PBGC Reg. §4043.23(a)(2) [Citation: *PBGC Technical Update 17-1* (September 15, 2017)]. . . . . 4267

Technical Update 21-1 provides guidance on how certain ARP elections can affect ERISA §4010 reporting [Citation: *PBGC Technical Update 21-1* (October 15, 2021)] . . . . . 5246

¶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

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2006 Participant Notice under ERISA §4011 issued with explanation of when notice is required and reflecting amendments made by the Pension Protection Act of 2006 [Citation: *PBGC Technical Update 06-3* (available at [www.pbgc.gov](http://www.pbgc.gov))] . . . . . 1248

¶7.321(1) - Fiduciary Duties and Liability: Prudence and Diversification  
 Fiduciary duties with respect to losses on assets invested with Madoff [Citation: *Statement of EBSA on the Duties of Fiduciaries In Light of Recent Events Regarding Bernard L. Madoff Investment Securities LLC*” (February 5, 2009), posted at [www.dol.gov/ebsa](http://www.dol.gov/ebsa)] . . . . . 2156

Economically targeted investments - DOL updates position by withdrawing Interpretive Bulletin 08-01 and reinstating language in Interpretive Bulletin 94-1 [Citation: *Interpretive Bulletin 2015-01*, 29 C.F.R. §2509.2015-01, 80 F.R. 65135-65137 (October 26, 2015)] . . . . . 3801

¶7.322(1) - Participant-Directed Plans: Disclosures  
 Interim guidance on using electronic media to furnish participant fee disclosures [Citation: *DOL Technical Release 2011-03R* (December 8, 2011), available at the DOL website (<http://www.dol.gov/ebsa/newsroom/tr11-03R.html>)] . . . . . 2880

**Note: This revised released replaces the one summarized at p. 2774.**

¶7.337 - ERISA Preemption  
 DOL issues Interpretive Bulletin regarding State programs that sponsor or facilitate ERISA-covered plans [Citation: *Interpretive Bulletin 2015-02 (DOL Reg. §2509.2015-02)*, 80 F.R. 71936-71940 (November 18, 2015)] . . . . . 3803

¶7.344 - ERISA Enforcement: Voluntary Compliance Programs  
 Revisions to VFC Program simplify Lost Earnings calculation, add correction options with respect to violations of the plan's participant loan limits, the disposition of illiquid assets held by the plan, and the impermissible payment by the plan of certain expenses [Citation: *Updated Voluntary Fiduciary Correction Program*, 71 F.R. 20262 (April 19, 2006)] . . . . . 1024

**Note: This finalizes the interim amendments published on April 6, 2005, which were summarized at page 672.**

DOL proposes restating the VFC Program to add a limited self-correction option for delinquent participant contributions, and to expand and clarify the correction rules for certain other covered transactions [Citation: *Proposed Amendments to Voluntary Fiduciary Correction Program*, 87 F.R. 71164 (November 21, 2022)] . . . . . 5491

¶7.353 - Prohibited Transactions: Participant Loan Exemption  
 Loan program will not be treated as failing to be available on reasonably equivalent basis if loan denied to officers, directors, pursuant to Sarbanes-Oxley Act [Citation: *EBSA Field Assistance Bulletin 2003-1* (April 15, 2003)] . . . . . 132

¶7.371 - Title IV of ERISA: Coverage/Premiums  
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Changes to 2011 premium instructions [Citation: Premium Mailing Notice (September 2010)]  
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PBGC announces premium penalty relief for short-term late periods; expands “Box 5” relief with respect to plans that made errors regarding the alternative premium funding target election [Citation: *Notice on Premium Penalty Relief; Alternative Premium Funding Target Election Relief*, 76 F.R. 57082 (September 15, 2011), available at <http://www.gpo.gov/fdsys/pkg/FR-2011-09-15/pdf/2011-23692.pdf>] ..... 2778

2012 maximum guaranteed benefits and 2012 premium rates [Citation: <http://www.pbgc.gov/prac/prem/premium-rates.html> and <http://www.pbgc.gov/news/press/releases/pr11-04.html>] ..... 2884

PBGC issues policy statement on premium refund requests due to contribution recharacterizations on amended Schedule SB [Citation: *Premium Changes Based on Recharacterization of Contributions*, 76 F.R. 79714 (December 22, 2011), <http://www.gpo.gov/fdsys/pkg/FR-2011-12-22/pdf/2011-32804.pdf>] ..... 2884

PBGC announces short-term amnesty period for paying late premiums [Citation: *Premium Penalty Relief for Certain Delinquent Plans*, 77 F.R. 6675 (February 9, 2012), <http://www.gpo.gov/fdsys/pkg/FR-2012-02-09/pdf/2012-3054.pdf>] ..... 2943

PBGC releases initial guidance on how the MAP-21 interest rate stabilization provisions affecting PBGC premiums [Citation: *PBGC Technical Update 12-1* (August 28, 2012)] 3029

PBGC provides guidance on certain premium issues affected by HATFA amendments to the MAP-21 segment interest rate corridors [Citation: *PBGC Technical Update 14-1* (September 24, 2014)]  
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PBGC guidance on premium filings and payments for CSEC plans to address SECURE Act change in premium rates [Citation: *PBGC Technical Update 20-1* (January 23, 2020)] 4670

¶7.372 - Title IV: Plan Termination Procedures

PBGC requests comments on purchases of irrevocable commitments prior to standard termination [Citation: *Request for Public Comment on the Purchase of Irrevocable Commitments Prior to Standard Termination*, 74 F.R. 61074 (November 23, 2009)] . . 2348

¶7.715 - Defense of Marriage Act (DOMA)

DOL will apply a “place of ceremony” test to determine if same-sex couple is married for ERISA purposes [Citation: *EBSA Technical Release 2013-04*]. . . . . 3256

¶7.719 - American Rescue Plan Act of 2021

Technical Update 21-1 provides guidance on how certain ARP elections can affect ERISA §4010 reporting [Citation: *PBGC Technical Update 21-1* (October 15, 2021)]  
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¶8.183(2) - Employer Securities Under Title I of ERISA: Prohibited Transactions  
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¶8.220(3) - Automatic Rollovers  
 Class exemption for IRA providers of automatic rollovers under IRC §401(a)(31)(B) from plans maintained by the IRA provider or its affiliate [Citation: *PTE 2004-16*, 69 F.R. 57964 (August 24, 2004)]. ..... 501

¶8.273 - Plan Termination: Orphan Plans  
 Exemption provides relief for services provided to the termination of abandoned defined contribution plans [Citation: *PTE 2006-06*, 71 F.R. 20856 (April 21, 2006)] ..... 1036  
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 Amendments to PTE 2006-06 clarify that exemptive relief is available with respect to direct rollover of a missing nonspouse beneficiary’s benefit to an inherited IRA under IRC §402(c)(11) [Citation: *Amendment to PTE 2006-06*, 73 F.R. 58629 (October 7, 2008)] 2079  
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 Proposed amendments to PTE 2006-06 would modify the conditions of the exemption to recognize bankruptcy trustees that might serve in a QTA capacity [Citation: *Proposed amendments to PTE 2006-06*, 77 F.R. 74056 (December 12, 2012)] ..... 3115

¶8.325(2) In-house Asset Managers  
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**Note: These amendment finalize the proposed amendments summarized on page 2438.**

¶8.350(4) - Lending Transactions/Extensions of Credit (Other than Participant Loans). . . . 1220  
 Revision and consolidation of class exemptions dealing with securities lending transactions [Citation: *PTE 2006-16, Class Exemption to Permit Certain Loans of Securities by Employee Benefit Plans*, 71 F.R. 63786 (October 31, 2006)] ..... 1220  
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¶8.352 - Prohibited transactions: excise taxes and penalties  
 Class exemption provides excise tax relief for correction of certain prohibited transactions through the VFC Program [Citation: *PTE 2002-51*, 67 F.R. 70623) (November 25, 2002)]  
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 Amendments to PTE 2002-51 provide excise tax relief for sale of illiquid assets to a disqualified person and for the impermissible payments of certain expenses with plan assets, pursuant to

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the revised VFC Program [Citation: *Amendment to PTE 2002-51 to Permit Certain Transactions Identified in the VFC Program*, 71 F.R. 20135) (April 19, 2006)] . . . . . 1039  
**Note: This finalizes proposed amendments that were published on April 6, 2005, and which were summarized on page 684.**

Proposed amendments to class exemption would recognize proposed self-correction procedure under VFC Program, eliminate 3-year limitation and make several other clarifications [Citation: *Proposed amendments to PTE 2002-51*, 87 F.R. 70753) (November 21, 2022)] . . . . . 5498

¶8.355 - Prohibited Transactions: Exemption Procedures  
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¶8.360 Class Exemptions: General  
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Proposed amendments to class exemption for release of claims and extensions of credit in connection with litigation to expand the transactions covered by the exemption [Citation: *Proposed Amendments to PTE 2003-39*, 72 F.R. 65597 (November 21, 2007)]. . . . . 1749  
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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  
3-day limit on interest-free loans for incidental purposes is eliminated by amendments to PTE 80-26; interest-free loans of 60 days or more must be in writing [Citation: *Amendment to PTE 80-26 For Certain Interest Free Loans to Employee Benefit Plans*, 71 F.R. 17917 (April 7, 2006)]. . . . . 1040  
**Note: This finalizes amendments that were proposed on December 15, 2004, which were summarized at page 613.**

¶8.362 - Prohibited Transaction Exemptions Relating to Investment Transactions  
Amendments to PTE 86-128 allow certain trustees to avail themselves of the exemption [Citation: *Amendments to PTE 86-128*, published in the October 17, 2002, Federal Register (67 F.R. 64137)] . . . . . 72  
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[Citation: *Amendment to PTE 84-14*, 70 F.R. 49305 (August 23, 2005), *Proposed Amendment to PTE 84-14*, 70 F.R. 49312 (August 23, 2005)] ..... 839

Amendments to PTE 75-1 recognize difficulties in complying with certain conditions of the exemption due to consolidation in the financial services industry; narrows scope of fiduciary relationship necessary to preclude reliance on the exemption [Citation: *Amendments to PTE 75-1, Exemptions From Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefits Plans and Certain Broker-Dealers, Reporting Dealers and Banks*, 71 F.R. 5883 (February 3, 2006)] ..... 1041

**Note: This finalizes amendments that were proposed on April 28, 2004, which were summarized on page 434.**

Amendments to PTE 84-24 narrow definition of prohibited fiduciary role with respect to certain covered transactions [Citation: *Amendments to PTE 84-24, Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, Investment Companies and Investment Company Principal Underwriters*, 71 F.R. 5887 (February 3, 2006)] ..... 1043

Proposed class exemption would expand the types of investment advice arrangements that would have exemptive relief [Citation: *Proposed Exemption for the Provision of Investment Advice to Participants and Beneficiaries of Individual Account Plans*, 73 F.R. 49924 (August 22, 2008)] ..... 1961

Amendments to PTE 84-14 allow financial services employer to act as QPAM for its own plan [Citation: *Amendment to PTE 84-14*, 75 F.R. 38837 (July 28, 2010)] ..... 2521

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New class exemptions and modifications to existing exemptions coordinate with final investment advice fiduciary regulations [Citation: *Best Interest Contract Exemption*, 81 F.R. 21002-21089 (April 8, 2016), *Class Exemption for Principal Transactions in Certain Assets between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs*, 81 F.R. 21089-21139 (April 8, 2016), *Amendments to Class Exemptions 75-1, 77-4, 80-83 and 83-1*, 81 F.R. 21208-21221 (April 8, 2016), *Amendment to and Partial Revocation of PTE 86-128 and Amendment to and Proposed Partial Revocation of PTE 75-1*, 81 F.R. 21181-21208 (April 8, 2016), *Amendment to PTE 75-1, Part V*, 81 F.R. 21139-21147 (April 8, 2016), and *Amendment to and Partial Revocation of PTE 84-24*, 81 F.R. 21147-21181 (April 8, 2016)] ..... 3873

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¶8.364 - Prohibited Transaction Exemptions: Exemptions Relating To Services  
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¶11.326(3) - Definition of Plan Assets: Settlement Proceeds  
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DOL explains interaction between PPA investment advice exemption and prior DOL guidance involving investment advice services, clarifies fee leveling rule [Citation: Field Assistance Bulletin 2007-01 (February 2, 2007), available at the DOL website: [www.dol.gov/ebsa](http://www.dol.gov/ebsa)] . . . . . 1345

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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 FAQs - Part I* (October 2016); *Conflict of Interest Exemptions FAQs - Part II* (January 2017); *Consumer Protections for Retirement Investors - FAQs on Your Rights and Financial Advisers* (January 2017)] . . . . . 4144

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Prohibition on QPAM criminal convictions under PTE 84-14 does *not* apply to convictions under foreign laws [Citation: *Letter from Kat O’Scannlain, Solicitor, DOL, to Lisa Bleier, Managing Director & Associate Legal Counsel of the Securities Industry and Financial Markets Association (SIFMA)*, November 3, 2020]. . . . . 5076  
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Follow-up DOL letter withdraws earlier letter that said criminal convictions under foreign law did not violate prohibition on QPAM criminal convictions under PTE 84-14 [Citation: *Letter from Kate O’Scannlain, Solicitor, DOL, to Lisa Bleier, Managing Director & Associate Legal Counsel of the Securities Industry and Financial Markets Association (SIFMA)*, issued November 3, 2020 (withdrawn March 23, 2021)]. . . . . 5108

¶11.363 - Prohibited Transaction Exemptions Relating to Sales and Exchanges  
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¶11.506 - Section 403(b) Plans: Title I Issues . . . . . 1600  
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¶12.142 - Death Benefits  
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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.**

¶12.800 - Executive Orders: Biden Administration

Executive order places temporary freeze on new regulatory action, requires review of regulations that have not gone into effect as of January 20, 2021 [Citation: *Regulatory Freeze Pending Review*, Memorandum For The Heads of Executive Departments and Agencies from Ronald A. Klain, Assistant to the President and Chief of Staff (January 20, 2021)] . . 5109 and 5169