

# Employee Benefits Action Alert

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## ▶ **IRS Releases Final 403(b) Regulations**

The IRS has released final regulations governing retirement plans sponsored by nonprofit, governmental and church organizations under Internal Revenue Code Section 403(b).

The final regulations are generally effective beginning January 1, 2009 and include the following major points:

**Written Plan Document.** The final regulations require all 403(b) programs to have a written plan document. Prior to the final regulations, most 403(b) programs were administered through annuity contracts and were not required to have formal written plan documents. Under the final regulations, all 403(b) programs must have a written document providing eligibility rules, benefits, and contracts available under the 403(b) program. The document must coordinate the administration among vendors where the program has multiple contracts with multiple vendors.

**Universal Availability.** Subject to certain exceptions, an employer that offers one employee the opportunity to contribute to a 403(b) arrangement must offer that opportunity to all employees.

**Notice Requirement.** The employer must provide a “meaningful notice” to all eligible employees at least once each year advising them of the availability of the 403(b) arrangement and how they can make salary deferrals.

**Severance from Employment.** Severance from employment is defined under the final rules as the date that the employer ceases to be an employee of the employer. A severance from employment does not occur where the employee transfers from one nonprofit organization to another nonprofit organization within the controlled group, but a severance from employment does occur when the employee transfers from a nonprofit to a for-profit entity in the controlled group.

**Termination of 403(b) Arrangement.** The final regulations provide that a 403(b) sponsor may terminate a 403(b) arrangement and distribute benefits as soon as administratively feasible following termination.

*Sponsors of 403(b) arrangements should consult with legal counsel to coordinate preparation of their written plan documents and insure that the arrangement is in compliance with all of the requirements of the final regulations.*

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this newsletter is attorney advertising.

## ▶ IRS Announces 2008 Health Savings Account/ High Deductible Plan Limits

The IRS has released the 2008 annual contribution limits for health savings accounts (“HSAs”) and the minimum deductible and maximum out-of-pocket limits for high deductible health plans (“HDHPs”).

### Annual HSA Contribution Limit

- Self-only: \$2,900 (increase of \$50 from 2007)
- Family: \$5,800 (increase of \$150 from 2007)

### HDHP Limits

#### Minimum Deductible:

- Self-only - \$1,100 (no change from 2007)
- Family - \$2,200 (no change from 2007)

#### Maximum Deductible:

- Self-only - \$5,600 (\$100 increase from 2007)
- Family - \$11,200 (\$200 increase from 2007)

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## ▶ Defined Benefit Plans Require Operational Compliance with PPA by 2008

The Pension Protection Act of 2006 made significant changes to laws governing defined benefit plans, including a major overhaul of funding requirements for these plans. Some of the major changes include:

- Increasing the funding target for plan assets to 100% of all benefit liabilities accrued to date, subject to a four year phase in;
- Quarterly installment contributions for plans with a “funding shortfall”;
- Larger contributions for plans determined to be “at-risk”;
- Various benefit distribution and accrual restrictions for plans with “adjusted funding target attainment percentages” below 80% and 60% levels;
- Changes in interest rate and mortality assumptions for calculating lump sum distributions; and
- Annual notices to participants with additional disclosure requirements, including the plan’s funding status and the value of plan assets compared to plan liabilities.

Many of these changes are effective beginning January 1, 2008, and plan sponsors of defined benefit plans will need to operationally comply with the revisions in the law by that time.

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## ▶ IRS Eliminates Schedule P (Form 5500)

To reduce the administrative burdens and in anticipation of the transition to a wholly electronic Form 5500 filing system, the IRS has announced the elimination of Schedule P, Annual Return of Fiduciary of Employee Benefit Trust, effective for the 2005 and later plan years for Form 5500-EZ filers. For all other Form 5500 filers, the elimination of Schedule P is effective for the 2006 and later plan years.

## ▶ DOL Announces Delay in Form 5500 Mandatory Electronic Filing

The Department of Labor (“DOL”) has announced that mandatory electronic filing of Form 5500 has been delayed until plan years beginning in 2009. In July 2006, the DOL issued a rule imposing mandatory electronic filing of Form 5500 for plan years beginning in 2008. A high ranking official with the DOL’s Employee Benefits Security Administration has since announced that this 2008 plan year deadline will be stretched out to 2009 plan years.

## ▶ IRS to Issue Guidance on Severance Pay Plans, Substantial Risk of Forfeiture under Code Section 457

The IRS has announced that it intends to issue guidance defining a “bona fide severance pay plan.” Generally, the IRS anticipates defining a “bona fide severance pay plan” as an arrangement in which (1) the benefit is payable only upon involuntary severance from employment, (2) the amount payable does not exceed two times the employee’s annual rate of pay, and (3) the payments must be completed by the end of the employee’s second taxable year following the year in which the employee separates from service.

The IRS has also announced that it intends to issue guidance regarding the definition of “substantial risk of forfeiture” for purposes of Code Section 457(f)(3)(B). The IRS anticipates that this guidance will generally adopt the rules relating to “substantial risk of forfeiture” under the Treasury Regulations relating to Code Section 409A.

*Governmental and tax-exempt organizations who sponsor a severance pay plan or other Section 457(f) arrangement may wish to consult with counsel regarding this anticipated guidance.*

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## ▶ IRS Modifies Procedure for Staggered Remedial Amendment Periods

In Revenue Procedure 2005-66, the IRS established a system of cyclical remedial amendment periods for review of individually designed and pre-approved qualified plans. On June 13, 2007, the IRS issued Revenue Procedure 2007-44 which clarifies, modifies and supersedes Revenue Procedure 2005-66. A highlight of the changes included in Revenue Procedure 2007-44 includes the following:

- The IRS has clarified those plan qualification requirements which will be considered when reviewing opinion, advisory or determination letter applications.
- Plans can now change remedial amendment periods upon becoming or ceasing to be a multiemployer plan or a multiple employer plan;
- Individually designed plans which have not received a determination letter covering amendments due to the Economic Growth and Tax Relief Reconciliation Act of 2001 must be restated when they are submitted for an on-cycle determination letter; and
- Off-cycle reviews of terminating plans, certain new plans and applications due to urgent business need are given equivalent priority to on-cycle reviews.

*Plan Sponsors with Employer Identification Numbers ending in 2 or 7 have until January 31, 2008 to submit their plan for on-cycle review. Plan Sponsors missing this January 31, 2008 deadline must wait until February 1, 2012 to submit their plan for the next on-cycle review.*

### The Authors



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