

ASPPA Comments Relating to Notice 2009-43 and the Guidance Priority List

June 15, 2009

Submitted to the Internal Revenue Service

The American Society of Pension Professionals & Actuaries (ASPPA) appreciates this opportunity to comment on the Guidance Priority List, as requested in Notice 2009-43.

ASPPA is a national organization of more than 6,500 members who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines, including consultants, investment professionals, administrators, actuaries, accountants and attorneys. Our large and broad-based membership gives ASPPA a unique insight into current practical applications of ERISA and qualified retirement plans, with a particular focus on the issues faced by small- to medium-sized employers. ASPPA's membership is diverse but united by a common dedication to the employer-sponsored retirement plan system.

ASPPA's comments focus on guidance pertaining to retirement plans.

Recommendations

ASPPA recommends that the following guidance be given priority for the fiscal year beginning July 1, 2009, for the reasons stated below:

1. Further guidance under Code §§430 and 436, including guidance on AFTAP timing. ASPPA/COPA submitted a request to the Service on April 8, 2009, requesting additional guidance on matters related to end of year valuations and the application of benefit restrictions under Code §436.
2. Guidance on DB(k) plans under Code §414(x). These plans become available January 1, 2010. Consistent with the stated policy goals of the Obama Administration, ASPPA expects that making DB(k) plans available to employers will help to improve retirement savings and benefits for many Americans. Many ASPPA members have expressed interest in offering these types of plans for employers, but are discouraged by the lack of guidance. Guidance is urgently needed to permit implementation of DB(k) plans by the effective date.
3. Deduction issues for defined benefit plans under Code §404. In addition to guidance on specific PPA issues such as determining the cushion amount, clarification is needed as to whether or not prior guidance such as determination of the deductible amount when the plan year and the tax year are not the same has been affected by PPA.
4. Updated sample notice for QACA/EACA. We understand from informal comments made by IRS personnel that the sample notice previously issued by the Service was not intended to be

used for years after 2008. Many plan sponsors continue to rely on and use the sample language as the basis for their notices. If the sample is no longer appropriate in the opinion of the Service, this should be communicated and an updated sample notice should be released.

5. Further guidance for cash balance plans under Code §411, including guidance on accrual rules, market rates of return, the definition of “Normal Retirement Benefit” under Code §411(a)(9), and retroactive amendments under §1107 of the Pension Protection Act.
6. Further guidance on determining the present value of accrued benefits under Code §417(e), including the calculation of bifurcated benefits required by §436 restrictions.
7. Updated model notice under Code §402(f). Due to changes in the law, the model notice has become out of date. ASPPA, by letter dated April 12, 2007, previously submitted proposed language for an updated notice and stands ready to assist further upon request by the Service.
8. Further guidance under Code §411(a)(11) regarding the requirement to provide a description of the consequences of failure to defer a distribution. ASPPA submitted comments to the Service on January 7, 2009, including a request to integrate this notice requirement with existing notices.
9. Further guidance to clarify several of the pension provisions of the Heroes Earnings Assistance and Relief Tax Act of 2008 (the “HEART Act”). ASPPA submitted detailed comments to the Service on these issues by letter dated November 24, 2008.
10. Further guidance to clarify and conform permitted definitions of “compensation” under Code §414(s) with final regulations under Code §415 pertaining to the exclusion of post-severance compensation. ASPPA submitted a comment letter to the IRS and Treasury on August 26, 2008, recommending that the IRS add a Code §414(s) safe harbor to exclude certain post-severance payments without requiring discrimination testing.
11. Guidance on the termination of 403(b) plans,
12. Guidance on which retirement plan deadlines are extended when the deadline falls on a weekend or holiday.
13. Update to Revenue Procedure 2007-44. ASPPA has previously pointed out several deficiencies in the Revenue Procedure. In addition, further guidance is needed for sponsors of pre-approved plans regarding the document sponsors’ responsibilities with respect to employers that do not timely update their plans (e.g., for GUST or EGTRRA).
14. Further guidance on participation in group trusts under Revenue Rulings 81-100 and 2004-67. This would include the expansion of 81-100 to include insurance company separate accounts, non-qualified Puerto Rican plan trusts, all governmental plan trusts (including health trusts) and 403(b) arrangements.

These comments have been Hand-Delivered at a meeting on June 15, 2009, and a copy has been mailed to:

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2009-43)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

The comments were prepared by the IRS and Defined Benefit Plan Subcommittees of the ASPPA Government Affairs Committee, and were primarily authored by Elizabeth Dold, Judy Miller, Craig Hoffman and Jim Paul. Please contact us if you have any comments or questions regarding the matters discussed above. Thank you for your consideration of these comments.

Very Truly Yours,

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