The Q&A committee solicits, screens and submits questions from ASPPA members to various government agency panelists as part of the ASPPA Annual Conference and other ASPPA conferences. Members of the Q&A subcommittee generally meet with the government agency panelists to screen and preview the submitted questions. The answers reflect the ASPPA representatives’ interpretation of the IRS officials’ responses, and are not direct quotes. They are intended to reflect as accurately as possible the statements made by the government representatives. This material does not represent the official position of the Internal Revenue Service, the Treasury Department, or any other government agency.
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**Footnotes:**
- Yes, it does violate the pre funding rule.
- We will discuss this from the podium.
- Yes, it does violate the pre funding rule.
- No further comments.
- Yes, it does violate the pre funding rule.
A participant makes plan eligibility requirements for a 401(k) plan, and is eligible to enter the plan on the entry date of July 1, 2008. He has a payroll period that runs from June 22, 2008 – July 1st, 2008, but the actual pay date of this payroll period is not until July 3, 2008. Can he defer from this payroll period since the funds would not have been available to him until after his entry date of July 1st, 2008, even though most of the actual funds were earned before his entry date? I have always thought it went by when the actual pay date was, because the funds would not have been available to him in cash until that time. So can he defer on a pre-tax basis from a payroll pay date of 7/3/2008, since his official entry date into the plan was 7/1/2008? This is, of course, assuming he has elected to defer prior to the actual payroll date.

The plan must have sufficient information to adjudicate a claim. Reasonable evidence is needed. See, e.g., regulations relating to Katrina hardships for what you need to show.

Katrina hardships rules found under KETRA (Katrina Emergency Tax Relief Act) This is more of a participant / employer relationship, and administrator can generally rely on what the employer provides.

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Annual 2008 IRS 10 Defined Contribution

Deduction

Limit. A non-vesting participant in a 401(k) plan terminates during the year. The plan has a 30 day notice provision, so the participant is not eligible for a pro-rata sharing contribution. For determining the plan’s maximum deductible contribution, is this participant’s contribution included or excluded? (Includable because he is still treated as benefiting under the 401(k) or excludable because deferments no longer are included in the deduction limit.)

The table has not changed. You should indicate the 401(k) participant’s compensation in the 25% limitation.

no further comments.

Annual 2008 IRS 10 Defined Contribution

Limitation

Targeted benefit. Code §404(a)(4)(A) states, in general, that the deduction for a “stock bonus or profit-sharing trust” is limited to 25% at year-end.

The 25% deduction rate applies. Code §404(a)(4)(A) says that OC plan subject to §412 is subject to the same limitation as a profit sharing or stock bonus plan.

no further comments.

Annual 2008 IRS 10 Defined Contribution

EPCRS

Informed distribution of excess contributions. In 2007 due to a failed 2006 ADP test, the amount distributed was several thousand dollars too much. How is this properly corrected? The plan sponsor indicated that the employee does not have the funds to return the money to the plan. The employee is 34 years old. If the employee had the funds, what is the correct method to return the money to the plan?

Is it permissible to use forfeitures to reduce 401(k) safe harbor contributions?

Yes. If concerned is with pre-lumping, check out the exception in Treas. Reg §1.401(m)-1(a)(2)(iii).

no further comments.

Annual 2008 IRS 10 Defined Contribution

ANDS

Transitional Rule and ADP/ACP testing. Are Revenue Ruling 2004-17 allow employees of an acquired entity (who are allowed to participate under the Acquirer’s plan) to be tested separately during the IRC Section 410(b)(3)(C) transition period for ADP/ACP testing so long as the requirements of Section 410(b)(3)(C) are otherwise satisfied? This would in effect be akin to “restructuring” the plan component into separate plans for ADP/ACP testing during the transitional period.

Is it allow the plan to be tested separately for nondiscrimination?

No. Section 410(b)(3)(C) says that, under the Acquirer’s plan) to be tested separately during the IRC Section 410(b)(3)(C) transition period for ADP/ACP testing so long as the requirements of Section 410(b)(3)(C) are otherwise satisfied.

no further comments.

Annual 2008 IRS 20 Defined Contribution

Pre-approved documents

Does there exist an intention to repackage the program for word of word adapter of volume submitter and prototype? If so, when?

Yes, Rev. Proc. 2008-56 allows new prototype word-for-word adopters to get approval, but the 2-year window still applies and is not extended, which expires 4/30/10. Volume submitter plans cannot be approved under this Rev. Proc.

The answer is for mass submitters only.

no further comments.

Annual 2008 IRS 20 Defined Contribution

Pre-approved documents

Determination Letter.

1. Yes, unless interim amendments are completely done and cover all interim laws (e.g., EGTIRA, PPA, and HEART).

2. It does fail to meet qualification rule, unless interim amendments are sufficient.

3. Yes, but they will require that the plan be updated to conform to all laws in the interim, so your good faith interim amendments must be done. See IRS FAQs on the EGTIRA Determination Letter Program for M&P plans, Q&A 5, http://www.irs.gov/retirement/article/0,,id=173690,00.html.

no further comments.

Annual 2008 IRS 20 Defined Contribution

Safe harbor

Safe harbor discretionary matching contribution. The sponsor of a safe harbor plan has a provision in the plan document that allows for a discretionary matching contribution. All contributions to the plan (deferred, safe harbor, and discretionary match) are made following each payroll date. The sponsor provided the safe harbor notice explaining that, in addition to the safe harbor contribution, the plan may make a discretionary matching contribution during the plan year, but did not stipulate the formula for the discretionary match. The sponsor distributed enforcement materials throughout the year with a summary sheet that defines the current discretionary match formula. This current discretionary match formula is also listed on the company’s intranet for all employees to reference.

In the middle of the plan year, the sponsor changes the formula on the discretionary match they provide. Will the plan still be covered under the ACP safe harbor?

No, because this can result in a wave of match for HCEs that is greater than the match for NHCEs that have the same rate of deferral. To discuss further from the podium.

can offer changes be made? Generally the IRS won’t address this. This is not a high priority issue.
Annual 2008 IRS 23 Defined contribution $401(k)

Defined contributions and profit-sharing contributions with allocation conditions. If the plan has the following eligibility requirements:

$401(k) & SHNEC = 1 YOS/Age 21

SHNEC = 2 YOS

Since the SHNEC and profit-sharing contributions are both $401(a) contributions, must the plan perform the general nondiscrimination test if some participants receive only the SHNEC and do not receive the PS? If so, we would seem the plan does not have a uniform allocation. OR is there a basis for treating the SHNEC and PS as separate plans due to the different eligibility requirements? Assume the $401(k) plan has the same eligibility requirements for all contributions ($1 YOS/Age 21), but certain participants do not receive any of the PS contribution due to allocation conditions of 1,000 hours/YOS. Is the plan required to perform the general test for PS/ShNEC contributions or are they viewed as separate plans? Assuming the general test is required in both situations, does the following meet the nondiscrimination requirements?

Annual 2008 IRS 31 General

Normal retirement age:

TRUE OR FALSE - A participant born on July 1, 1941, who entered a pension plan on October 1, 2001, would reach retirement age on July 1, 2006. A calendar year plan that uses the maximum retirement age allowed under the Code and ERISA, True. October 1, 2006, is not the normal retirement age in the section.  

Annual 2008 IRS 26 General

Controlled group Foreign parent. If a foreign parent owns nothing new common stock, compensation employees in one company but why should they apply in this situation where two or more companies have nothing in common accept a foreign parent? Do you anticipate any changes?

Annual 2008 IRS 24 Defined contribution SIMPLE IRA

SIMPLE IRA: Does the following meet the requirements for a transition period?

SIMPLE IRA: Does the following meet the requirements for a transition period?

Annual 2008 IRS 27 General

Determination letter

Plan has been using Form 530-C to obtain an Authorization, as the power of attorney when filing for determination letter to the IRS. How long can I continue with that process in light of the new rules and nondiscrimination tests?

Annual 2008 IRS 30 General

HCE status on entry:

Assume that a qualified plan document provision grants prior service credits for eligibility and vesting from an entity that is unrelated to the plan sponsor. Both HCEs and NCHEs of the unrelated entity are equally granted entry to the plan under this provision. Assume that none of the individuals being granted entry under this provision owns more than 5% of the plan sponsor. May an additional provision be added to the plan that grants the prior year's compensation earned by any such individual from the unrelated entity as defined in the plan document? You can definitely test via component plans, but the plan that covers the nonvested contributions must cover all nonvested contributions, so the people getting only the SH contribution are tested with the regular nonvested contribution and you need to test §401(a)(9) this way.

Annual 2008 IRS 25 General

M&A: If one company buys another, we have the following situations:

• SIMPLE IRA exceeded 100 participants and two-year grace period has expired. Will file w/IRS for 2008?

Annual 2008 IRS 21 General

Determinant letter filing

Plans have been using Form 530-C to obtain an Authorization, as the power of attorney when filing for determination letter to the IRS. How long can I continue with that process in light of the new rules and nondiscrimination tests?

Annual 2008 IRS 20 General

Affirmative defense.

You may roll over to IRA (but may not get 404(c)-1 according to the participant). If you know where someone is, and they do not complete the form, you can still cash them out. You may roll over to IRA (but may not get 404(c)-1 according to the participant). If you know where someone is, and they do not complete the form, you can still cash them out. You may roll over to IRA (but may not get 404(c)-1 according to the participant). If you know where someone is, and they do not complete the form, you can still cash them out.

Annual 2008 IRS 410(b)

If one company buys another, we have the following situations:

Annual 2008 IRS 29 General

ERISA Continuation education:

Why were not any ASPPA designations (or anyone else's for that matter) not deemed good enough to be grandfathered?

No, the compensation was with an unrelated entity however, the answer may be different if the unrelated prior employer was a predecessor employer as defined in §401(a)(9).
Annual 2008 IRS 32 General Puerto Rican plans Local qualified US and Puerto Rican plans

1. AFP - test Puerto Rican employees who are required to take a refund because of a failed ADP test on the US side - can those dollars be refunded and are they reported on a 1099 or a Puerto Rican reporting form?
2. Two plans - one US, one Puerto Rican, US fails coverage because Puerto Rican employees are in Puerto Rican plan. Can you aggregate the plans or will the Puerto Rican NHCEs now be in two plans?
3. Lastly, how much coordination does the IRS have with Hacienda and will there be any guidance on the US side with respect to dual qualified plans in the near future?

We will discuss from the podium.


A fair amount; see Rev. Rul. 2008-43.

1. Maybe. This is a required aggregation group, so you need to determine the top heavy status on a combined basis. However, even if the top-heavy group is top-heavy, the safe harbor plan is not.

A separate term for HACIENDA plan for the US. Possibly some plans treated as US, some treated as Puerto Rican.

Annual 2008 IRS 33 General R&D Notices

There are a number of different required participant notices. In many cases only general content guidelines have been provided. How is the administrator to know if the notice provided is sufficient? For example, safe harbor notices require the listing of distribution options available. One firm's safe harbor notice lists 'hardships' as an available distribution option; a notice from a different source describes the hardship distribution in full detail. Would the former notice be considered insufficient in content?

In a certain extent, the IRS has provided sample notices, as has DOL. Check these model/examples. But, generally, you need to be reasonable in your interpretation of the guidance.

No further comments

Annual 2008 IRS 34 IRA Inherited IRAs

Can the owner of an inherited Traditional IRA convert it to an Inherited Roth IRA? Does it matter whether the owner is (was) a spouse or non-spouse beneficiary?

If the owner of the inherited traditional IRA is the former spouse, the owner can convert it to an inherited Roth IRA. If the owner is a non-spousal beneficiary, the owner cannot convert to a Roth IRA. See Publication 590. Notice that Notice 2008-30, QT-7, explains that non-spousal beneficiaries are allowed to make direct trustee-to-trustee rollins from eligible retirement plans to Roth IRAs.

No further comments

Annual 2008 IRS 1 DB - DC combo

Offset plans and 401(a)(26) 401(k)(26)

A company sponsors a profit sharing plan and a defined benefit plan using a tax-offset arrangement. All 20 non-cancelable employees are eligible to participate in both plans. An employer contribution of a certain percentage of compensation to all participants in the profit sharing plan has the effect of reducing the net benefit in the defined benefit plan, after the offset, to zero for all of the NHCEs.

If the conditions under Reg. 1.401(a)(26)-5 are met, the gross benefit (before the offset) in the defined benefit plan can be used to determine whether the plan satisfies the minimum participation requirements of IRC 401(a)(26). One of those conditions is that the contribution in the defined contribution plan must be allocated "uniformly." A contribution allocated to all participants as a uniform percent of compensation, or as a uniform dollar amount, appears to meet the uniformity requirement.

If the HCEs fail to receive any allocation of the contribution in the DC plan, but the NHCEs receive a uniform allocation, does this violate the uniformity requirement?

If the DC plan has a fixed allocation formula (such as uniform dollar amount or uniform percent), then the DC plan's allocation will not meet the uniformity requirement.

Yes.

2. Yes, but you must use the benefit accrued by the level percentage allocation. In other words, you need to account for that portion of the DC account separately.

Annual 2008 IRS 3 DB - DC combo

EPROSS plan and multiple plans

Two plans have inconsistent definitions of "highly compensated employees" -- one uses the top-paid group, the other does not.

1. Do the plans need to be amended during the first year in which they were both in existence to fix the inconsistency, or can it be done retroactively in the following year?

If the plans are able to pass testing regardless of whether they use the top-paid group or not for one plan uses the top-paid group and the other does not, is there still a problem because of the inconsistent documentation?

3. Is this correctable under SOP?

Yes, you need to amend the plans so that they are consistent. You may have to do it before participants accrue benefits or contributions to avoid a 4110(k)(6) cutback caused by your amendment. For example, if your amendment made someone an HCE who was not previously, and that person will get a smaller contribution allocation as a result, that would be a cutback.

If parallel plans are just cross-tested, you will need to meet the incidental rules separately in the each of the two plans. If, on the other hand you are offsetting one plan against another, you need to show that the two plans meet the incidental rules on a combined basis.

No.

Annual 2008 IRS 4 DB - DC combo

Life insurance

How do you apply the incidental benefits rules when there exists a cash balance plan that is tested together with a cross-tested 401(k) profit-sharing plan? What if certain employees are not covered in both plans, yet the plan(s) otherwise pass all non-discrimination testing?

If the two plans are just cross-tested, you will need to meet the incidental rules separately in the each of the two plans. If, on the other hand you are offsetting one plan against another, you need to show that the two plans meet the incidental rules on a combined basis.

Annual 2008 IRS 4 DB - DC combo

Top heavy Safe harbor 401(a)(26) combo with DB

DB and DC plans are top heavy and a key employee participates in both. Therefore, they must be aggregated for top heavy purposes.

1. Is the safe harbor 401(a)(26) still considered 'not top-heavy'? The Code implies yes, at least if the other plan is a DC, then the safe harbor can be used to satisfy the top heavy in the other plan. However, since the top-heavy minimum is bumped up to 5% in the DC plan when combined with a DB plan, does that mean that the top heavy exemption does not apply?

2. Two participants are excluded by class from the DB. One defers and receives the safe harbor match. The other does not defer, so receives no safe harbor. Is a top heavy contribution required for this participant?

May be. This is a required aggregation group, so you need to determine the top heavy status on a combined basis. However, even if the top-heavy group is top-heavy, the safe harbor plan is not.

However, since people in the top-heavy group get the 5% DC contribution or all below the top heavy exemption amount, you have the choice of providing the 5% DC contribution to everyone (even those not in the DB plan) or you lose the top heavy exemption in the safe harbor plan.

2. Here, you have a safe harbor match plan. Therefore, there are people who are in DC only get nothing (they don't defer), and then there are people in the DB and DC who need to get either the 2% top heavy minimum in the DB plan or the 5% DC contribution in the DC plan. Again, if you have different levels of contribution in your DC plan, you lose your top heavy exemption.
**Annual 2008 IRS 5 Defined Benefit**

1. **Is it acceptable to use compensation as of the end of the year in a beginning of year valuation?**
   - No.

2. **Are the answers different for 2008/2009?**
   - No.

3. **Can a plan with an AFTAP of less than 80% be terminated and distribute the assets?**
   - No.

4. **No (final regs will address further). You can request a determination letter and see if it is received. Remember, you must meet all laws regarding AFTAP.**

**Annual 2008 IRS 5 Defined Benefit**

5. **Is it necessary to certify 2007?**
   - The proposed regulations indicate a potentially unreasonable deadline for electing a reduction ("burn in" or "waive") in COB/PFB - end of plan year to which reduction would apply.

6. **In the normal case, that would give a sponsor until 12/31/08 to make an election for the 1/1/08 COB. Presumably a valuation will be available no later than 11/10/08 (AFTAP deadline), so the end of plan year deadlines is flexible.**

7. **But what if there is a short plan year 1/1/08-12/31/08?**
   - Note that the plan year change might not even be particularly "voluntary," for example due to a business transaction (merger, etc.). It is not possible to have a 11/10/08 valuation done by 12/31/08 even a reliable trust statement might not be available. The sponsor can't reasonably select an accurate reduction in COB (say to achieve 80%) by plan year end.

8. **Why cannot an election to reduce COB/PFB be made by the 5500 due date, like an election to use "carryover"?**
   - The proposed regulations do not permit you to handle a suspension of benefits; it's a benefit alienation that is prohibited.

**Annual 2008 IRS 12 Defined Benefit**

1. **What is the maximum COB/PFB that can be used in a traditional DB plan, and in a cash balance plan?**
   - Under PPA, you don't fund for the insurance; you fund for a death benefit. Will discuss further from podium.

2. **If you have a cash balance plan, you use those rules, right?**
   - Under PPA, you don't fund for the insurance; you fund for a death benefit. Will discuss further from podium.

3. **If you have a DB plan, you use the rules from IRS 12, correct?**
   - Yes, we will discuss further from podium.

4. **If you have a defined contribution plan, do you use the rules from IRS 12?**
   - Yes, we will discuss further from podium.

5. **No, this does not work.**

**Annual 2008 IRS 13 Defined Benefit**

1. **Is it necessary to certify the 2007 AFTAP, or is it the first one required?**
   - Yes, it is necessary to certify 2007.
Treas. Reg. §1.430(d)-1(b)(1)(i) states that for a plan not at risk the Target Normal Cost is the present value of all benefits that have accrued or have been earned or that are expected to accrue or to be earned under the plan during the plan year.

Treas. Reg. §1.430(d)-1(b)(1)(ii) states that "benefits accruing during the year" include any increase in benefits during the plan year that is a result of any actual or projected increase in compensation during the current plan year, even if that increase in benefit is with respect to benefits attributable to service performed in a preceding plan year.

Treas. Reg. §1.430(d)-1(b)(2) states that the Funding Target is the present value of all benefits that have been accrued or earned under the plan as of the first day of the plan year.

The preamble to the proposed regulations states that for an amendment adopted during the plan year (or within 2½ months after the end of the plan year) but effective as of the first day of the plan year and that is recognized under a 412(d)(2) election to include the amendment, the full increase in liabilities as a result of the amendment should be included in the valuation as of the first day of the plan year.
Annual 2008 IRS 26 General ERPA

- **Deferral method**: Why such a strict CE requirement for an ERPA designation? Why are not any ASPPA designations (or anyone else's for that matter) not deemed good enough to be grandfathered?
- **Continuing education**: The CE requirement for ERPAs are the same as those for Enrolled Agents.
- **HCE status on entry**: It's important that people who represent taxpayers stay current with the law. ASPPA is not the only organization that provides designations to professionals and the Office of Professional Responsibility declined to determine which of such designations were comparable.

Annual 2008 IRS 21 General 410(b) M&A

- **If one company buys another, we have the 410(k) transition period during which the plans of the acquirer and the acquired company can continue to operate without considering the impact of the new populations on §410(b). However, this transition period terminates if the plan is amended “significantly,” which was interpreted by the IRS in Rev. Rul. 2004-11 to be almost any amendment. If the plans need to be reset during the period because they are in the current cycle (for individually designed plans) or if April 30, 2010 occurs during the transition period (for preapproved documents), does the restatement automatically terminate the transition period? What if the only changes being made to the document are those required by the Cumulative List of Changes for the period or because the preapproved document does not contain the prior provision?**

Annual 2008 IRS 23 General Controlled group Foreign parent

- **Foreign parent**: Do you anticipate any changes?

Annual 2008 IRS 24 General Determination letter Determination letter filing

- **Determination letter filing**: From 8821, Tax Information Authorization, as the power of attorney when filing for determination letters to the IRS. How long can I be assured that the preapproval document does not contain the prior provision?

Annual 2008 IRS 20 Defined Benefit Annuitized Benefit

- **Annuity calculation**: If I use the additional year of service in my testing for deferred retirees seems to force me to recognize an actuarial increase on their pre-freeze accrued benefit. It benefits were frozen at 12/31/07, so service do I use to calculate BARS at 12/31/07? If I use the additional year of service in my testing or separating a participant's account balances greater than the cash-out threshold (either $1000 or $5000), what can be done to distribute assets for participants who are not lost, but will not complete a distribution form? Can deadlines to complete forms be put in place and actually enforced?

Annual 2008 IRS 21 Defined Benefit Annuitized Benefit

- **Required minimum distribution**: For a Participant who turns age 70½ in Dec. 2007 terminates employment and elects a lump sum payout from a defined benefit plan in Oct. 2007, is the 2007 minimum distribution which cannot be rolled into an IRA calculated as the lump sum at termination divided by the Uniform Life Table divisor (1.401(a)(9)-4. A-1 (d)(1)(i)) (i.e., 1.401(a)(9)-4. A-1 (d)(1)(i) to get $577)

2. Suppose the participant turns 70½ in 2007, elected to defer payment until 4/08 and then terminated employment in 3/08. He must receive both the 2007 and 2008 minimum distributions. Why may they both be calculated as the lump sum amount at termination divided by the appropriate factor (27.4 for 2007 and 26.5 for 2008) or must he receive 12 times the monthly benefit for 2007 and 2008 in the year of distribution?

Annual 2008 IRS 22 General 410(b) M&A If one company buys another, we have the 410(k) transition period during which the plans of the acquirer and the acquired company can continue to operate without considering the impact of the new populations on §410(b). However, this transition period terminates if the plan is amended “significantly,” which was interpreted by the IRS in Rev. Rul. 2004-11 to be almost any amendment. If the plans need to be reset during the period because they are in the current cycle (for individually designed plans) or if April 30, 2010 occurs during the transition period (for preapproved documents), does the restatement automatically terminate the transition period? What if the only changes being made to the document are those required by the Cumulative List of Changes for the period or because the preapproved document does not contain the prior provision?

Annual 2008 IRS 21 Defined Benefit Testing Accrued-to-termination Distribution

- **Testing Accrued-to-termination Distribution**: How do you calculate benefit Accrued to termination? Accrued for frozen or terminated employment in 3/08. He must receive 12 times the monthly benefit for 2007 and must receive 12 times the monthly benefit for 2007 and we can use the account balance approach for 2008 only?

Annual 2008 IRS 20 Defined Benefit Annuitized Benefit

- **How do you calculate benefit accrual for a plan in which the accruals have been frozen for all participants? Deferred retirees will only get an actuarial increase on their pre-freeze accrued benefit. If benefits were frozen at 12/31/07, what service do I use to calculate BARS at 12/31/08? If I use the additional year of service in my testing for deferred retirees seems to force me to recognize an actuarial increase on their pre-freeze accrued benefit. It benefits were frozen at 12/31/07, so service do I use to calculate BARS at 12/31/07? If I use the additional year of service in my testing or separating a participant's account balances greater than the cash-out threshold (either $1000 or $5000), what can be done to distribute assets for participants who are not lost, but will not complete a distribution form? Can deadlines to complete forms be put in place and actually enforced?

Annual 2008 IRS 20 Defined Benefit Annuitized Benefit

- **Required minimum distribution**: How is the Required Minimum Distribution calculated under the following two scenarios?

1. A Participant who turns age 70½ in Dec. 2007 terminates employment and elects a lump sum payout from a defined benefit plan in Oct. 2007, is the 2007 minimum distribution which cannot be rolled into an IRA calculated as the lump sum at termination divided by the Uniform Life Table divisor (1.401(a)(9)-4. A-1 (d)(1)(i)) (i.e., 1.401(a)(9)-4. A-1 (d)(1)(i) to get $577)

2. Suppose the participant turns 70½ in 2007, elected to defer payment until 4/08 and then terminated employment in 3/08. He must receive both the 2007 and 2008 minimum distributions. Why may they both be calculated as the lump sum amount at termination divided by the appropriate factor (27.4 for 2007 and 26.5 for 2008) or must he receive 12 times the monthly benefit for 2007 and 2008 in the year of distribution?
| Annual | 2008 IRS 28 General NRA | Normal retirement age | TRUE OR FALSE - A participant born on July 1, 1941, who entered a pension plan on October 1, 2001, would reach retirement age on July 1, 2006, in a calendar year plan that uses the maximum retirement age allowed under the Code and ERISA. | False — October 1, 2006 |
| Annual | 2008 IRS 29 General Puerto Rican plans Dual qualified — US and Puerto Rico | 1) ADP Test: Puerto Rican employees who are required to take a refund because of a failed ADP test on the US side - can those dollars be refunded and are they reported on a 1099 or a Puerto Rican reporting form? 2) Two plans - one US, one Puerto Rican. US fails coverage because Puerto Rican employees are in Puerto Rican plan. Can you aggregate the plans or will the Puerto Rican NHCEs now be in two plans? 3) Lastly, how much coordination does the IRS have with Hacienda and will there be any guidance on the US side with respect to dual qualified plans in the near future? | 1) We will discuss from the podium. 2) See Rev. Rul. 2008-43. 3) A fair amount; see Rev. Rul. 2008-43. There are no plans for further guidance. |
| Annual | 2008 IRS 30 General R&D Notices | There are a number of different required participant notices. In many cases only general content guidelines have been provided. How is the administrator to know if the notice provided is sufficient? For example, safe harbor notices require the listing of distribution options available. One firm’s safe harbor notice lists “hardships” as an available distribution option; a notice from a different source describes the hardship distribution in full detail. Would the former notice be considered insufficient in content? | To a certain extent, the IRS has provided sample notices, as has DOL. Check these models/examples. But, generally, you need to be reasonable in your interpretation of the guidance. |
| Annual | 2008 IRS 31 IRA Inherited IRAs | Can the owner of an Inherited Traditional IRA convert it to an Inherited Roth IRA? Does it matter whether the owner is (was) a spouse or non-spouse beneficiary? | If the owner of the inherited traditional IRA is the former spouse, the owner can convert it to a Roth IRA. If the owner is a non-spousal beneficiary, the owner cannot convert to a Roth IRA. See Publication 590. Note that Notice 2008-35, Q&A-7, explains that nonspousal beneficiaries are allowed to make direct trustee-to-trustee rollovers from eligible retirement plans to Roth IRAs. |