chapter 1

Overview of Tax Qualified Retirement Plans

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I. TAX QUALIFIED RETIREMENT PLANS.

A. Introduction.

1. For professionals and other small business owners, qualified retirement plans have been vastly improved by EGTRRA and the Pension Protection Act of 2006 (PPA). Qualified plans can be structured to provide large benefits for professionals and other key employees at a minimal cost for benefits for rank and file employees.

2. Whether the key employee is motivated by a desire to provide for his retirement or solely to shelter income from taxes, the same result is attained — he retains more of what he earns by diverting a substantial portion of his earnings into a tax-sheltered retirement plan.

3. Qualified retirement plans serve two major functions — they provide employee benefits and they act as tax shelters. As a general rule, the tax shelter aspect is emphasized in smaller plans and employee benefits are emphasized in larger plans. Both features are present in all plans, however, and should be recognized when designing a plan and when reviewing a plan with a client. Even in a plan designed primarily as a tax shelter for a key employee, the funding of benefits for rank and file employees should not be viewed in an entirely negative light. Participation in a pension plan should always be presented to employees in a positive manner and can be used to encourage employee loyalty and longevity and to thereby reduce employee dissatisfaction and turnover. Thus, participation by non-key employees engenders a more cohesive staff and can reduce employee training and turnover costs. Remember: proper and positive communication to employees is the key to employee appreciation of pension and other fringe benefits.

4. Retirement Plan Assets at 12/31/2012.

a.	IRAs:	$ 6.5 Trillion
b.	Defined Contribution Plans:	$ 5.9 Trillion
c.	Defined Benefit Plans:	$ 3.0 Trillion

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d. Government Employee Plans: $ 5.5 Trillion

e. 403(b): $ 2.0 Trillion

Total: $ 23.0 Trillion

Retirement plan assets account for 36% of all U.S. household assets. In 1974, retirement plan assets accounted for 12% of U.S. household assets (Investment Company Institute, March, 2013).

5. Importance of Employer Sponsored Plans.

a. 10% of individuals eligible to contribute to an IRA do contribute to an IRA.

b. 75% of individuals eligible to contribute to a 401(k) plan do contribute to a 401(k) plan.

B. Tax advantages of qualified plans:

1. Employer contributions are deductible in the year made. Contributions are deductible if made prior to the due date for the corporate tax return, including extensions. IRC §404(a).

2. Participants are taxed only when they receive payments from the trust (i.e., non-recognition of income until amounts are distributed from the trust). IRC §402(a).

3. The retirement trust is tax-exempt and the trust funds accumulate income tax free. IRC §501(a).

4. Income tax brackets are generally lower at the time benefits are received following the participant's retirement or death. Additionally, Social Security taxes are paid neither on employer contributions to tax-qualified retirement plans nor on distributions to participants from such plans.

5. Qualified plans provide a means of forced savings and protection of assets from creditors' claims.

a. Example:

For example, compare the tax effects of a $10,000.00 contribution to a tax-qualified plan and a $10,000.00 compensation bonus. The $10,000.00 contribution to the plan is deductible to the employer pursuant to IRC §404(a). The employee is not taxed until the funds are distributed from the plan. The $10,000.00 contribution is held in a tax-exempt trust (assume a 10% annual return) and at the end of the year, $11,000.00 would be saved. If a $10,000.00 bonus was paid, the bonus would be deductible to the employer pursuant to IRC §§162, 212. The employee would be taxed on the bonus and assuming a 40% tax rate (federal, state and local taxes and Social Security/ Medicare), the employee would net $6,000.00. Of the $6,000.00, assume the employee saves half ($3,000.00) and invests it in a funding vehicle with a 10% annual return. Since the 10% return is not in a tax exempt trust, it is subject to tax (assuming 20% tax rate). Therefore, of the $300.00 investment gain, the employee would net $240.00 ($300.00 less 20%), and at the end of the year, of the $10,000.00, the employee would have savings of only $3,240.00.

Compensation		**Retirement Plan Contribution**
$ 10,000		$ 10,000
– 4,000	Taxes	– 0
$ 6,000		$ 10,000
– 3,000	Spend	– 0
$ 3,000	Save	$ 10,000
x .1	Invest	x .1
$ 300		$ 1,000
– 60	Taxes	– 0
$ 240		$ 1,000
+ 3,000		+ 10,000
$ 3,240		$ 11,000

C. Comparison of Tax-Qualified Retirement Plan and Non-Qualified Deferred Compensation Plan (NQDC).

1. Qualified Plan – 401(k) Plan

a. Assets contributed to a separate trust.

i. Not an asset of the Employer.

ii. Not attachable by creditors of Employer.

iii. Not attachable by creditors of Participant.

iv. Exceptions to protection from creditors of Participant.

a) QDRO: retirement benefits are a marital asset subject to division in divorce or attachment for child support.

b) Retirement plan assets may be subject to federal tax liens.

c) Certain federal criminal fines and penalties.

v. Tax-Exempt Trust.

b. Benefits may be rolled over to an IRA upon distribution from the qualified plan.

i. This provides further protection from creditors and further tax-deferred growth.

c. Employer receives current deduction for year of contributions.

d. Employee receives income only upon distribution of benefits from Plan but can roll over to IRA to further defer receipt of income.

e. Employer contributions are not subject to Social Security or Medicare at time of contribution or at time of distribution.

i. Employee elective deferrals are subject to Social Security (6.2%) up to the taxable wage base ($117,000 for 2014) ($118,500 for 2015) and Medicare (1.45%) with no compensation limit.

f. Qualified Plans must comply with strict coverage and nondiscrimination requirements.

2. Non-Qualified Deferred Compensation Plan (NQDC).

a. Employer receives deduction in same year that amounts are included in income of Employee.

b. There is no tax-exempt trust for retirement plan assets. If funded, plan assets are a general asset of the Employer and investment income is taxable to Employer.

i. If Employer is a tax-exempt entity, the lack of a deduction for plan contributions and the lack of a separate tax-exempt trust are not as big of an issue from a tax standpoint.

c. Plan Assets (if informally funded) are assets of Employer and subject to attachment by creditors of Employer.

d. Rabbi Trust

i. Assets for NQDC are irrevocably segregated by the Employer into a separate trust. The trust assets are not available to the Employer for its general use. The Rabbi Trust protects the Employee from non-payment due to a change in control in the Employer or a "change of heart" on the Employer's part with respect to the payment of benefits.

ii. Employee is an unsecured general creditor with respect to NQDC benefits even if such benefits are in a Rabbi Trust.

e. Vested benefits are included in income for Social Security and Medicare purposes when earned.

f. Very loose coverage rules. However, IRC § 409A applies.

g. NQDC is an unfunded, unsecured promise to pay benefits at a future date.

D. Definition of "Spouse" and "Marriage": *U.S. v. Windsor* / IRS Rev. Rule. 2013-17 / DOL Technical Release 2013-04.

1. *U.S. v. Windsor*.

In *United States v. Windsor*, 133 S.Ct 2675 (2013), the U.S. Supreme Court struck down as unconstitutional Section 3 of the Defense of Marriage Act ("DOMA") which provided that only opposite-sex marriages would be recognized as valid for federal law purposes.

a. As a result of *Windsor*, individuals who are spouses in a same-sex marriage that is recognized under applicable state law are considered to be married when applying federal laws and regulations that refer to marital status.

2. Revenue Ruling 2013-17.

a. The IRS addressed the impact of the Supreme Court ruling in *Windsor* in Revenue Ruling 2013-17 and Frequently Asked Questions (FAQs). Rev. Rul. 2013-17 has three primary holdings:

i. "Marriage" and "Spouse" Include Same Sex Marriages. For federal tax purposes, the term "spouse" (and husband/wife) includes an individual married to a person of the same sex if the individuals are lawfully married under state law. The term "marriage" includes a same sex marriage.

ii. "Place of Celebration" Controls. The IRS adopts a general rule recognizing a marriage of same-sex individuals that was validly entered into in a state (or country) whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same sex marriages.

iii. Domestic Partnerships **Not** Recognized. The terms "spouse", "husband", "wife", or "marriage" do not include individuals (whether of the opposite sex or the same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the laws of that state.

b. The rulings in Rev. Rul. 2013-17 were based on a long-standing IRS position (first stated in Rev. Rul. 58-66) which recognizes a valid common law marriage even if the taxpayer relocates to a state that does not recognize common law marriages.

c. Rev. Rul. 2013-17 is effective prospectively as of September 16, 2013. However, affected taxpayers may rely on the ruling for the purpose of filing original returns, amended returns, adjusted returns, or claims for credit or refund of any overpayment of tax.

3. DOL Technical Release 2013-14.

The DOL guidance very closely tracks the position of the IRS in Rev. Rul. 2013-17.

a. The term "spouse" will be read to refer to any individuals who are lawfully married under any state law, including individuals married to a person of the same sex who were legally married in a state (or country) that recognizes such marriage, but who are domiciled in a state that does not recognize such marriages.

b. The term "marriage" will be read to include a same sex marriage that is legally recognized as a marriage under any state law.

c. The terms "spouse" and "marriage" do not include individuals in a formal relationship recognized by a state that is not denominated a marriage under state law, such as a domestic partnership or civil unions. This applies to both opposite sex and same sex relationships.

4. Impact of Rev. Rul. 2013-17 and DOL Tech. Release 2013-04 on tax-qualified retirement plans.

Spouses of marriages between individuals of the same sex will be treated the same as spouses in opposite sex marriages for purposes of:

a. Providing a qualified joint and survivor annuity (QJSA) and a qualified pre-retirement survivor annuity (QPSA) in plans subject to the QJSA rules.

b. Requiring the consent of a participant's spouse to the participant's election of an optional form of benefit in plans subject to the spousal consent requirements.

c. Requiring the consent of a participant's spouse to a participant's designation of a non-spouse beneficiary.

d. Requiring the consent of a participant's spouse to a plan loan if the plan requires spousal consent.

e. Safe harbor hardship distribution rules.

f. Qualified Domestic Relations Orders (QDROs).

g. Required Minimum Distribution Rules.

h. Permitting the spouse to elect a direct rollover to a retirement plan or IRA (not just an "inherited IRA").

II. TYPES OF RETIREMENT PLAN DOCUMENTS.

A. Prototype Plan Documents

1. Prototype documents are pre-approved by the IRS and consist of two separate documents: the prototype document and the adoption agreement.

a. The prototype document is a document that cannot be changed or modified by the adopting employer. It contains the required "boilerplate" provisions for the plan.

b. The adoption agreement contains various options that can be selected to adapt the documents to the preferences of the individual adopting employer.

2. There are two types of adoption agreements: Standardized and Non-Standardized.

3. *A Standardized Adoption Agreement* contains strict limitations on the election options for the adopting employer. In most circumstances, however, the IRS Approval Letter issued for the Prototype Plan can be considered to apply to the employer adopting the plan without the need for the employer to request an individual IRS determination letter for the employer's adoption of the plan.

Standardized Adoption Agreements <u>cannot</u>:

a. Require employment on the last day of a plan year to receive a contribution (last day requirement);

b. Require 1,000 Hours of Service in a plan year to receive a contribution (1,000 hour requirement);

c. Exclude categories of employees from plan participation other than statutory exclusions permitted by the IRC.

4. A *Non-Standardized Adoption Agreement* can contain many more optional provisions for the adopting employer. An employer may choose to exclude certain specified categories of employees (e.g., custodian employees) from coverage under the plan. The plan can also contain last day and 1,000 hour requirements for participants to receive contributions to the plan for a given plan year.

   a. The prototype approval letter generally applies to the adoption of the plan by the individual employer.

   b. The employer may file an IRS Form 5307 to request an individual determination letter for the employer's adoption of the Non-Standardized Adoption Agreement.

5. Any additions to or deletions from the prototype plan or the adoption agreement can cause the plan to lose its prototype status and cause the IRS approval letter for the prototype to be not applicable to the plan. If changes are made to the plan it is treated as an individually designed plan without a determination letter (unless one is applied for on a Form 5300 by the adopting employer).

6. In what situations can an employer adopting a pre-approved plan with a valid opinion or advisory letter rely on that letter without requesting its own determination letter?

   a. In general an employer that makes no changes or only specified minor changes to the plan document can rely on the opinion or advisory letter for the pre-approved plan. Minor changes allowed include: changing the effective date of a provision, correcting typographical errors, adopting model, sample or other required good faith amendments that specifically provide that their adoption won't cause the plan to be individually designed. See Rev. Proc. 2005-16 for details.

B. *Volume Submitter* Plan Documents.

1. Along with the prototype plans, volume submitter plans are referred to as "pre-approved plans".

2. A volume submitter plan may look like an individually designed plan. The provisions of the plan have, however, been pre-approved by the IRS.

3. The adopting employer can make modifications to the language of the volume submitter plan. Such modifications are pointed out to the IRS as variances when the employer files for an individual determination letter on IRS Form 5307.

4. If an employer is a "word-for-word" adopter of the plan (i.e., no changes have been made to the approved plan document), the IRS volume submitter determination letter may be relied upon by the adopting employer.

C. *Individually Designed Plan Documents.*

1. Many complicated documents are individually designed plans. Large defined benefit plans, cash balance plans, collectively bargained plans and ESOPs are often individually designed plans.

2. Individually designed plans are not pre-approved by the IRS. Such plans should always be filed with the IRS with a Form 5300 determination letter request.

D. Types of Plan Amendments.

A plan amendment can either be an interim amendment or a discretionary amendment.

1. Interim Amendment.

An interim amendment is a required amendment of a disqualifying provision or an amendment that is integrally related to a disqualifying provision. A disqualifying provision may arise, for example, when there is a change in the plan qualification requirements and the plan provisions do not reflect the change. Amendments required to keep a written plan document up to date between a plan's submission periods during the applicable remedial amendment cycles are interim amendments.

2. Discretionary Amendment.

Discretionary amendments are all other types of amendments. An amendment that allows participants to receive plan loans is an example of a discretionary amendment.

E. Adoption Dates for Interim and Discretionary Amendments.

1. Interim Amendments.

An interim amendment for a disqualifying provision (or a provision that is integral to a disqualifying provision) must be adopted by the later of:

a. the due date, including extensions, for filing the employer's tax return for the taxable year that includes the date on which the remedial amendment period begins; or

b. the last day of the plan year that includes the date on which the remedial amendment period begins.

2. Discretionary Amendments.

A discretionary amendment must be adopted by the end of the plan year in which the amendment is effective.

F. Benefits of a Favorable Determination Letter.

1. IRS Publication 794 addresses the significance of a favorable determination letter.

a. The publication also points out some features that may affect the qualified status of a plan and nullify your determination letter.

2. What is an EP Determination Letter?

a. A ruling by the Service that the terms of an employer's retirement plan satisfy the applicable requirements of the Internal Revenue Code.

b. If the Service approves the terms of the retirement plan document, the employer and employees who participate in the plan receive the favorable tax treatment accorded a tax-qualified retirement plan.

3. Why Employers Want Letter.

a. Although not required, employers generally may want a favorable determination letter because the letter:

i. Provides a relatively inexpensive form of insurance for the employer that the Service has ruled that the plan is qualified.

ii. Provides added protection under bankruptcy law.

G Important Changes to the Employee Plans Determination Letter Program Effective May 1, 2012. Rev. Proc. 2012-6 and IRS Announcement 2011-82.

1. Determination letter applications filed on Form 5307 will be accepted only from adopters of Volume Submitter (VS) plans that modify the terms of the pre-approved VS specimen plan (and only if the modifications are not so extensive as to cause the plan to be treated as an individually designed plan).

2. The IRS will not accept determination letter applications filed on Form 5307 by adopters of VS plans that have not made any changes to the terms of the pre-approved VS specimen plan (except to select among options under the plan) or by adopters of Master or Prototype (M&P)

plans. These VS and M&P adopters may rely on the advisory or opinion letter issued with respect to the VS or M&P plan.

3. Schedule Q (Elective Determination Requests) has been eliminated. Schedule Q and accompanying demonstrations regarding the coverage or nondiscrimination requirements should not be submitted with any determination letter application (Forms 5300, 5307 and 5310).

4. Determination letter applicants should no longer complete line 13 of Form 5300, line 11 of Form 5307, or lines 13 or 14 of Form 5310, regarding coverage data and nondiscrimination.

III. QUALIFIED PLAN DOCUMENT UPDATES/REMEDIAL AMENDMENT PERIOD. REV. PROC. 2007-44; ANNOUNCEMENT 2008-23.

Part I: Six-Year Cycle for Pre-Approved Plans.

A. Six-Year Cycle for Pre-Approved Plans.

The IRS has established a six-year cycle for the updating of the pre-approved plans (i.e., prototype and volume submitter plans). The six-year cycle begins in 2005 for Defined Contribution (DC) Plans and in 2007 for Defined Benefit (DB) Plans. Rev. Proc. 2007-44 (superseding Rev. Proc. 2005-66).

1. Six-Year Cycle for Pre-Approved Defined Contribution (DC) Plans.

Year	Step
5/1/2008-4/30/2010	Employers restate DC plans by adopting pre-approved plans.
5/1/2014-4/30/2016	Employees restate DC plans by adopting pre-approved plan (PPA).

2. The last day of the EGTRRA Remedial Amendment Period (RAP) for employers to adopt pre-approved defined contribution plans was April 30, 2010.

3. The Pension Protection Act (PPA) RAP begins 5/1/2014 and ends 4/30/2016.

B. Six-year cycle for Pre-Approved Defined Benefit (DB) Plans.

1. The IRS issued Opinion letters for Pre-Approved Defined Benefit Plan on March 31, 2010. IRS Announcement 2010-20.

2. The two year remedial amendment period for employers to restate DB Plans by adopting pre-approved DB Plans commenced May 1, 2010 and ended on April 30, 2012.

3. The next two year RAP for employers to adopt pre-approved defined benefit plans will begin in 2016 and end in 2018.

C. Interim Amendments.

Good faith interim amendments (e.g., the amendments for compliance with the IRC Section 401(a)(9) final regulations on minimum required distributions) may be required based on new laws or updated IRS guidance.

1. Summary of Interim Amendments and due dates.

Amendment	Due Date
a. EGTRRA Good Faith	End of 1st plan year beginning on or after January 1, 2003.
b. Required Minimum Distributions. IRC §401(a)(9)	End of 1st plan year beginning on or after January 1, 2003.
c. Mandatory Rollover/ Involuntary Cash-Out	End of the Plan year that contains March 28, 2005.
d. IRC §401(k) final regulations	Last day of the 1st plan year beginning on or after January 1, 2006.
e. IRC §415 final regulations	Last day of the limitation year beginning on or after July 1, 2007.
f. Pension Protection Act (PPA) of 2006	Last day of the plan year beginning on or after January 1, 2009.
g. HEART Act IRC §§401(a)(37); 414(u)(9)	Last day of the first plan year beginning on or after January 1, 2010.
h. WRERA Waiver of 2009 RMDs	Last day of the first plan beginning on or after January 1, 2011.
i. IRC §436 (Defined Benefit Plans)	Last day of plan year beginning on or after January 1, 2013.

2. IRS Form 6406 (Short Form Application for Minor Amendment of Employee Benefit Plan) has been eliminated. Form 5307 or 5300 must now be filed for determination letter requests for ongoing plans and Form 5310 for terminating plans.

D. The Plan Sponsor/Employer should have copies of the executed Adoption Agreement on all Interim Amendments.

E. Non-Timely Amenders.

Tax-qualified retirement plans that missed the deadline to be amended and restated will need to be updated and filed with the IRS under the Voluntary Correction Program (VCP). VCP is part of the IRS Employee Plans Compliance Resolution System (EPCRS). The EPCRS is currently found in Rev. Proc. 2013-12.

IV. QUALIFIED PLAN DOCUMENT UPDATES / REMEDIAL AMENDMENT PERIOD.

Part II. Five-Year Cycle for Individually Designed Plans.

A. Five-Year Cycle for Individually Designed Plans.

The IRS established a five-year cycle for updating individually designed plans. The cycle provides that plans sponsored by employers with employer identification numbers (EINs) ending in 1 or 6 must be restated in the first year (2006) of the program and restated again in 2011. Employers with EINs ending in 2 or 7 will be restated in 2007 and again in 2012, and so on for the other EINs. Rev. Proc. 2007-44.

1. Each year's deadline is actually January 31 of the following year. Therefore, plans that must be submitted in 2013 will actually have a remedial amendment period beginning on February 1, 2013 and ending on January 31, 2014.

2. As with the pre-approved plans, individually designed plans may need to adopt needed amendments in interim years for compliance with changes in laws or IRS guidance.

3. Five-Year Cycle for Individually Designed Plans.

Last Digit of EIN of Sponsoring Employer	Cycle	Year to be Restated	Next Restatement
1 or 6	A	2/1/11 – 1/31/12	2/1/16 – 1/31/17
2 or 7	B	2/1/12 – 1/31/13	2/1/17 – 1/31/18
3 or 8	C	2/1/13 – 1/31/14	2/1/18 – 1/31/19
4 or 9	D	2/1/14 – 1/31/15	2/1/19 – 1/31/20
5 or 0	E	2/1/15 – 1/31/16	2/1/20 – 1/31/21

B. Special Rules for Five Year Cycle/Individually Designed Plans.

1. Multiemployer (Collectively Bargained) Plans are updated under Cycle D.

2. Multiple Employer Plans are updated under Cycle B.

3. Governmental Plans (including governmental multiple employer plans and governmental multiemployer plans) are updated under Cycle C (or Cycle E for the first cycle: 2/1/10 – 1/31/11).

4. Controlled Group maintaining more than one plan:

   a. Can make election to file all plans under parent's EIN; or

   b. All members of controlled group can elect to file under Cycle A.

C. Cycle-Changing Events.

1. The definition of cycle-changing events, such as merger or acquisition, change in plan sponsorship and plan spin-off have been expanded by Rev. Proc. 2007-44 to include a plan changing its status by either becoming or ceasing to be a multi-employer plan or a multiple employer plan. If a plan's cycle changes, the change must be pointed out in the determination letter application, including a detailed explanation of why the change occurred. Proof of such change, for example, the corporate resolution in the case of a merger or spin-off, should be attached to the explanation.

2. The general rule under Section 11.01 of Rev. Proc. 2007-44 is that a plan's five-year remedial amendment cycle is determined on the basis of the EIN or status of the employer that is maintaining the plan after a cycle-changing event such as a merger, acquisition or a spin-off. However, special rules under Section 11.03 may apply for determining a plan's applicable cycle immediately after the event.

D. Off-Cycle Filings.

In general, if an application for a determination letter is submitted prior to or after the last 12-month period of a plan's remedial amendment cycle, the application is filed off-cycle. However, Rev. Proc. 2007-44 provides that an off-cycle application generally will not be reviewed until all on-cycle plans have been reviewed and processed. Exceptions to this rule include: (1) applications for terminating plans, (2) new individually designed plans whose next regular on-cycle submission period ends at least two years after the end of the off-cycle submission period during which the sponsor submits its application and (3) plans which are determined by the IRS to be subject to an urgent business need (as determined on a facts and circumstances basis). A plan falling within one of the above exceptions will be given the same processing priority as if it were an on-cycle application. Rev. Proc. 2007-44, §14.

E. Cumulative List

1. The Cumulative List of Changes in Plan Qualification is a list of changes required to be included in a plan for qualification purposes based upon the

plan's particular submission cycle. It is anticipated that the Cumulative List will be issued each year in approximately mid-November.

2. Revenue Procedure 2007-44 clarifies that, except as specifically provided in the applicable Cumulative List and except in the case of terminating plans, the Service will not consider in its review of any opinion, advisory or determination letter application any:

   a. guidance issued after the October 1 preceding the date the applicable Cumulative List is issued; (that this October 1 date may be extended in the applicable Cumulative List with respect to opinion or advisory letter applications);

   b. statutes enacted after the October 1 preceding the date the applicable Cumulative List is issued;

   c. qualification requirements that become effective in a calendar year following the calendar year in which the submission period begins with respect to the applicable Cumulative List, (e.g., qualifications requirements first effective in 2010, for applications submitted during the period beginning February 1, 2010 based on the 2010 Cumulative List), or

   d. statutes that are first effective in the year in which the submission period begins with respect to the applicable Cumulative List, for which there is no guidance specified on the applicable Cumulative List.

3. Applications submitted which contain qualification requirements described above (i.e., not contained in the Cumulative List) are required to identify those requirements that are in the plan, in a cover letter or in an attachment to the application. The determination letter cannot be relied upon with respect to such provisions. (Rev. Proc. 2007-44, §4.03)

4. The Service will, however, consider in its review of any opinion, advisory, or determination letter application, all qualification requirements not described above. This means, for example, that a determination letter may be relied on with respect to guidance issued on or before the October 1st preceding the issuance of the applicable Cumulative List and which is effective during the calendar year in which the submission period begins, whether or not identified on the applicable Cumulative List. (Rev. Proc. 2007-44, §4.04)

F. Switch From Individually Designed Plan to Pre-Approved Plan. Form 8905.

The IRS issued FAQs relating to the use of Form 8905, *Certification of Intent to Adopt a Pre-Approved Plan*. Sections 17.01 and 17.04 of Rev. Proc. 2007-44 provide that an employer's plan is treated as a pre-approved plan and is eligible for the six-year remedial amendment cycle if an employer and a Master and

Prototype (M&P) sponsor or a Volume Submitter (VS) practitioner who maintains the pre-approved plan execute Form 8905 before the end of the employer's five-year remedial amendment cycle. Thus, this Form is used to shift from the five-year remedial amendment cycle used for individually designed plans to the six-year remedial amendment cycle applicable to pre-approved plans.

G. Switch From Master and Prototype Plan to Individually Designed Plan.

1. What are the procedural submission requirements for an M&P plan where an adopting employer has made changes to the pre-approved basic plan document or adoption agreement?

An employer that makes changes to the underlying plan document may be considered to have adopted an individually designed plan depending on the changes made, as described in Section 5.02 of Rev. Proc. 2005-16. In such a case, Form 5300 must be filed if a determination letter application is submitted to the Service. Since the plan is treated as an individually designed plan, it must be updated for the applicable Cumulative List based on the date of submission for a determination letter during the announced period (approximately a two-year window) for adopting employers to adopt the updated plans within the 6-year cycle. This would require submission of the approved EGTRRA adoption agreement along with the interim amendments made for the later applicable Cumulative List. The interim amendments must be in the form of tack-on amendments and cannot be integrated into the EGTRRA approved adoption agreement or basic plan document.

V. FEE DISCLOSURE AND PARTICIPANT REPORTING REQUIREMENTS.

A. Service Provider Fee Disclosure. ERISA §408(b)(2). 29 CFR §2550.408b-2; DOL FAB 2012-02 (effective **July 1, 2012**).

1. Overview.

a. Persons providing services to an ERISA-covered plan are "parties in interest" of the plan, and ERISA section 406(a) prohibits parties in interest from providing services to a plan. ERISA section 408(b)(2) provides an exemption for "reasonable arrangements" under which parties in interest may provide services to a plan. The prior regulations under section 408(b)(2) required: (i) the services must be appropriate and helpful to the plan, (ii) the arrangement must be terminable by the plan without penalty on reasonably short notice, and (iii) the compensation received by the service providers must be reasonable.

b. The interim final regulations under section 408(b)(2) provide that, in order to rely on the section 408(b)(2) exemption, service providers will need to assemble and report information relating to their direct or indirect compensation.

c. Covered Plans. The final regulations define a covered plan as an employee pension plan. Excluded from the definitions are:

i. Welfare plans;

ii. IRAs;

iii. SEP-IRAs; and

iv. SIMPLE-IRAs.

2. The Regulations Apply to "Covered Service Providers" (CSP).

These new regulations only apply to covered service providers. Covered service providers are service providers (a) that enter into a contract or arrangement with a plan and reasonably expect to receive $1,000 or more in compensation, direct or indirect, in connection with their services and (b) that provide the following services:

i. Fiduciary services or services provided to the plan as a registered investment advisor;

ii. Recordkeeping or brokerage services to a participant-directed individual account plan where the investments options are made available under the arrangement furnished by the recordkeeper or broker; or

iii. Accounting, appraisal, banking, consulting, custodial, insurance, investment advisory (for participants), legal, recordkeeping, securities or other investment brokerage, third party administration, or valuation services for which indirect compensation is received.

Note: Not CSP if:

i. Paid by Employer (not by Plan); or

ii. Paid directly (not indirectly) by Plan and have no connection with Plan Investments.

3. Disclosure Requirements.

Covered service providers must disclose the following information in writing:

a. <u>Services</u>: Information that must be disclosed includes a description of the services to be provided to the plan.

b. Status: Covered service providers must disclose whether they are providing any services as a fiduciary to the plan or as a registered investment advisor.

c. Compensation: Covered service providers must disclose all direct and indirect compensation to be received by the covered service provider, its affiliates or subcontractors. Direct compensation is compensation received directly from the plan. Indirect compensation generally is compensation received from a source other than the plan sponsor, the covered service provider, an affiliate, or subcontractor.

d. Recordkeeping Services: Because recordkeeping services are so significant to a plan, information concerning those services and costs must be disclosed without regard to whether the services are furnished as part of a bundle or package. For example, covered service providers must disclose whether they are providing recordkeeping services and the compensation attributable to such services, even when no explicit charge for recordkeeping is identified as part of the service contract.

e. Manner of Receipt: The regulations require the written disclosure to describe the manner in which compensation (including compensation for recordkeeping services) will be received, such as whether the plan will be billed or the compensation will be deducted directly from the plan's investments.

f. Investment Disclosure — Recordkeeping and Brokerage Services: Information also must be disclosed about plan investments and investment options. These disclosure obligations apply to fiduciaries to investment vehicles that hold plan assets. They also apply to recordkeepers and brokers who, through a platform or other mechanism, facilitate the investment in various options by participants in individual account plans, such as 401(k) plans.

If the disclosed information changes, then the covered service provider generally must disclose the change as soon as practicable, but no later than 60 days from the date on which the covered service provider is informed of such change. Covered service providers also must, upon request, disclose compensation or other information related to their service arrangements that is requested by the responsible plan fiduciary or plan administrator in order to comply with ERISA's reporting and disclosure requirements, including the Form 5500 requirements.

4. Compensation or Fees.

The Regulations define "compensation or fees" very broadly to include, in addition to money, any other thing of monetary value received by the service provider or its affiliates "in connection with" the services provided to the plan. Examples of covered compensation include, among other things, gifts, awards, trips, research, float, 12b-1 fees, commissions and various other fees.

DOL indicates in explaining the regulations that, if a service provider does not know the exact amount of compensation when it signs a contract with a plan, compensation may be disclosed and expressed in terms of a formula, a percentage of the plan's assets, or a per capita charge for each participant or beneficiary.

5. Regulation Requires Limited "Unbundling".

Compliance with the regulation will require certain "unbundling" of fees; specifically, recordkeeping fees, even when no explicit charge for recordkeeping services is identified in the arrangement. When recordkeepers are paid from compensation received by an affiliate (e.g., recordkeeping fees are a component of an affiliated investment's expense ratio), the recordkeeper must provide a reasonable good-faith estimate of the cost to the plan of the recordkeeping services, including an explanation of the methodology and assumptions used to prepare the estimate.

6. Exemption Relief for Fiduciaries.

The regulations include relief for plan fiduciaries who enter into a contract without knowing that the service provider has failed to comply with its disclosure obligations. To qualify for this relief, the responsible plan fiduciary must not have known that the covered service provider failed or would fail to make required disclosures and reasonably believed that the covered service provider disclosed the required information. Upon discovering that the covered service provider failed to disclose the required information, the plan fiduciary must request in writing that the covered service provider furnish such information. If the covered service provider fails to comply with such written request within 90 days of the request, then the responsible plan fiduciary must notify the Department of Labor of the covered service provider's failure not later than 30 days following the earlier of (1) the covered service provider's refusal to furnish the information requested by the written request or (2) 90 days after the written request is made. Finally, the responsible plan fiduciary, following discovery of a failure to disclose required information, must determine whether to terminate or continue the contract or arrangement. In making such a determination, the plan fiduciary must evaluate the nature of the failure, the availability, qualifications, and cost of replacement service providers, and the covered service provider's response to notification of the failure.

B. Participant Disclosure Requirements for Participant-Directed Individual Account Plans. 29 CFR §2550.404a-5; DOL FAB 2012-02 (effective **August 30, 2012**).

1. Plans <u>not</u> subject to the participant disclosure requirements.

   a. IRAs;

   b. SEP-IRAs;

   c. SIMPLE-IRAs;

   d. Plans not subject to ERISA:

      i. Owner-only plans;

      ii. Governmental plans;

      iii. Church plans.

2. <u>Compliance Dates</u>.

   a. Plan years commencing on or after November 1, 2011.

   b. Initial Annual Statement for fee disclosure due: August 30, 2012 (later of 60 days after plan year commencing after November 1, 2011 or August 30, 2012).

   c. Annual "Reset" is permitted for 2013 or 2014.

      i. Calendar year (12/31) Plan can elect to defer August 2014 disclosure until January or February 2015.

      ii. Disclosure would be on reset date for future years.

   d. Initial Quarterly Statement for fee disclosure due: for third quarter 2012; November 14, 2012 (45 days following the close of the first quarter with the initial annual statement for participant fee disclosures).

3. <u>Plan Related Information — Annual Statement</u>.

   a. <u>General Plan Information</u>.

      i. An explanation of structure and mechanics of the plan including an explanation of how to give investment instructions under the plan.

      ii. An explanation of any specified limitations on such investment instructions including any restrictions on transfer to or from a designated investment alternative.

iii. A current list of the designated investment options under the plan.

iv. The identity of any designated investment managers.

v. A description of any brokerage window.

b. Administrative Expense Information.

i. An explanation of any fees that may be charged to the plan for general administrative services such as:

a) Recordkeeping;

b) Accounting;

c) Asset Management Charges.

ii. A description of how the fees are allocated.

a) Pro rata.

b) Per Capita.

c. Individual Expense Information.

i. An explanation of any fees and expenses that may be charged to or deducted from the individual account of a specific participant or beneficiary based on the actions taken by that person. Examples include fees for:

a) Plan loans;

b) Distributions;

c) Qualified Domestic Relations Order (QDRO) processing.

d. Frequency of Disclosure of Information.

i. On or before the date on which a participant or beneficiary can first direct his investments and at least annually thereafter.

ii. Change in information: must notify participant or beneficiary 30 to 90 days in advance of such change.

4. Plan Related Information: Quarterly Statements.

   a. In addition to the plan-related information that must be furnished up front and annually, participants and beneficiaries must receive statements, at least quarterly, showing the dollar amount of the plan-related fees and expenses (whether "administrative" or "individual") actually charged or deducted from their individual accounts during the preceding quarter along with a description of the services for which the charge or deduction was made.

   b. If applicable, an explanation should be provided that some administrative expenses were paid from operating expenses such as revenue sharing, 12b-1 or sub-TA fees.

   c. The quarterly statement should also include specific investment related expense charges against the specific account of the participant and not on a plan wide basis such as front or back-end loads or redemption fees.

   d. The quarterly disclosures may be included in the quarterly benefit statements required under ERISA §105.

5. Investment Related Information (Annual Statement).

   a. Must be provided before the date on which the participant can make the investment and at least annually thereafter with respect to each designated investment alternative offered under the plan.

   b. Identifying Information.

      i. Name of each designated investment alternative.

      ii. The type or category of the investment (e.g., money market fund, balanced fund, large cap fund).

   c. Performance Data.

      i. Non-fixed return investment: average return for 1, 5 and 10 year period.

      ii. Fixed return investment: fixed or stated rate of return and term of investment.

      iii. Benchmarks: 1, 5 and 10 year periods.

   d. Fee and expense information (non-fixed return investment).

      i. Amount and description of each fee including shareholder type fees.

ii. Annual operating expenses expressed as a percentage (expense ratio).

iii. Annual operating expenses for a one year period expressed as a dollar amount for a $1,000 investment.

iv. Statement that fees and expenses are only one factor to be considered.

v. Statement that cumulative fees and expenses can reduce the growth of a participant's account and that participants can visit the EBSA website.

e. Fee and expense information (fixed income investments).

i. Description of any shareholder type fees.

ii. Any limitations on purchase or transfer.

f. Internet Web Site address containing significant information with respect to each designated investment alternative.

g. Tables and charts similar to those included in appendix to the regulations.

h. A "designated investment alternative" means any investment alternative designated by the plan into which participants and beneficiaries may direct the investment assets held in, or contributed to, their individual accounts.

i. This term, does not include a brokerage window or self directed brokerage account.

ii. The plan administrator is not required to provide the investment-related information for trustee-directed investments.

C. Benefit Statement Requirements for Non-Participant-Directed Plans.

PPA establishes new requirements for plan sponsors to provide benefit statements for plan participants. There are separate benefit statement requirements for defined contribution plans (DC) that permit participants to direct investments, DC plans that do not permit participants to direct investments, and defined benefit plans (DB). The benefit statement requirements are effective in 2007. The Department of Labor has been instructed to prepare model benefit statements.

1. DC Plans without participant direction of investments.

a. Statements must be provided to any participant or beneficiary with an account under the plan.

b. Statements must be provided at least once each calendar year and to any participant or beneficiary upon request.

c. The benefit statement must contain the following information:

i. The participant's total accrued benefit and vested percentage.

ii. A description (where applicable) of any Social Security integration or floor-offset provision.

iii. The value of each investment.

2. Defined Benefit Plans.

a. Statements must be provided to each participant with a nonforfeitable accrued benefit who is employed at the time the statement is furnished and any participant or beneficiary upon request.

b. Statement must be provided at least once each three years and to any participant or beneficiary upon request. A DB plan may not have to provide statements to every participant if it provides an annual notice of the availability of a benefit statement and how to obtain the benefit statement.

c. The DB benefit statement must contain the following information:

i. The participant's total accrued benefit and vested percentage.

ii. A description (where applicable) of any Social Security integration or floor-offset provision.

D. Defined Benefit Plan Funding Notice and Annual Reporting Requirements.

1. Effective in 2008, a DB plan insured by the PBGC must provide a DB funding notice to each plan participant and beneficiary, each labor organization representing participants and beneficiaries, and to the PBGC. The notice must be provided within 120 days after the close of each plan year.

2. The DB funding notice must contain the following information:

a. Identifying information.

b. A statement as to whether the plan's adjusted funding target attainment percentage ("AFTAP") for the current and two preceding years is at least 100 percent.

c. A statement of total assets (and credit balances) and liabilities for the current and two preceding years (and for the current year using PBGC asset valuation and interest rate assumptions).

d. A statement of the number of participants who are (1) retired or separated from service and receiving benefits, (2) retired or separated participants and entitled to future benefits, and (3) active participants under the plan.

e. A statement of the funding policy of the plan and the asset allocation of plan investments as of the end of the year.

f. In the case of any material plan amendment, scheduled benefit increases or reduction, or other known event ("material event") taking effect in the current plan year, an explanation of the material plan amendment and event and a projection to the end of the plan year of the effect of the material event on plan liabilities.

g. A summary of ERISA's plan termination rules.

h. A general description of plan benefits eligible for PBGC insurance, along with an explanation of the limitations.

i. A statement that a person may obtain a copy of the Annual Report of the plan upon request, through the Internet website of the DOL, or through an intranet website maintained by or for the sponsor.

j. A statement of any applicable 4010 filing requirement. A 4010 filing is made with the PBGC if the FTAP of a plan of the plan sponsor or any member of a controlled group is less than 80% at the end of the preceding plan year.

3. Revised Annual Report Requirements and Summary Annual Report Requirements for DB Plans.

a. Effective in 2008, PPA amends the Annual Report (Form 5500) rules to require that where liabilities to a participant consist of liabilities under 2 or more plans, the Annual Report include the FTAP of each plan. In addition, Schedule B to the Annual Report must include a statement explaining the actuarial assumptions and methods used in projecting future retirements and forms of benefit distributions under the plan.

b. Identification, basic plan information and actuarial information included in the annual report must be filed in an electronic format accommodating display on the internet. The Secretary of Labor is directed to post this information on the Internet within 90 days of filing. This information must also be displayed on any Intranet maintained by the sponsor.

c. The PPA generally repeals the Summary Annual Report requirement for DB plans subject to these rules.

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RETIREMENT PLAN DOLLAR AND PERCENTAGE LIMITS

		2014	2015	2016
Annual compensation for plan purposes (for plan years beginning in calendar year) 401(a)(17)	Indexed in $5,000 increments	$260,000	$265,000	$265,000
Defined benefit plan, basic limit (for limitation years ending in calendar year) 415(b)	Indexed in $5,000 increments	$210,000	$210,000	$210,000
Defined contribution plan, basic limit (for limitation years ending in calendar year) 415(c)	Indexed in $1,000 increments	$52,000	$53,000	$53,000
401(k) / 403(b) plan, elective deferrals (for taxable years beginning in calendar year) 402(g)	Indexed in $500 increments	$17,500	$18,000	$18,000
457 plan, elective deferrals (for taxable years beginning in calendar year)	Indexed in $500 increments	$17,500	$18,000	$18,000
401(k) / 403(b) / 457, catch-up deferrals (for taxable years beginning in calendar year) (Age 50+) 414(v)	Indexed in $500 increments	$5,500	$6,000	$6,000
SIMPLE plan, elective deferrals (for calendar years) 408(p)	Indexed in $500 increments	$12,000	$12,500	$12,500
SIMPLE plan, catch-up deferrals (for taxable years beginning in calendar year) (Age 50+) 408(p)	Indexed in $500 increments	$2,500	$3,000	$3,000
Defined contribution plan §415 percentage of compensation contribution limit 415(c)	100% of compensation			
Profit sharing plan §404 percentage of compensation deduction limit	25% of compensation			
Elective deferrals	Do not count against §404 deduction limits			
SEP contribution / deduction limit 408(k)	25% of compensation			
IRA contribution limit 408(a)		$5,500	$5,500	$5,500
IRA catch-up contribution (Age 50+)		$1,000	$1,000	$1,000
Highly Compensated Employee 414(q)		$115,000	$120,000	$120,000
SEP Coverage 408(p)		$550	$600	$600
FICA Covered Compensation		$117,000	$118,500	$118,500
PBGC Maximum Monthly Insured Benefit (Age 65)		$4,943	$5,011	$5,011

KEY AGES FOR RETIREMENT PLANS AND SOCIAL SECURITY

Age 49 and Under .... Individuals covered under 401(k) plans can contribute up to $17,500 ($18,000 in 2015).

Age 50 .... Employees age 50 and older may make catch-up contributions. These employees can contribute an additional $5,500 into a 401(k) plan ($6,000 in 2015) for a total of $23,000 ($24,000 for 2015).

Age 55 .... If you terminate employment from your employer after attaining your 55th birthday, you can begin to take penalty-free distributions from your employer's 401(k) plan or other tax-qualified retirement plan at this age. Distributions from tax-qualified retirement plans are still taxed as ordinary income but the additional 10% tax on distributions prior to age 59½ will not apply.

Age 59½ .... IRA withdrawals are permitted without penalty and are taxed as ordinary income. 401(k) plans may also permit in-service withdrawals (by current employees) at age 59½.

Age 62 .... Social Security begins, but your benefits will be reduced by 25% to 35% if you begin to receive benefits at age 62. If you also continue to work while receiving Social Security benefits prior to your full retirement age, your Social Security benefits will be reduced by 50¢ for each dollar that you earn above $15,480 in 2014.

Age 65 .... Medicare eligibility begins. Beneficiaries may sign up for Medicare Part B during a 7 month window around their 65th birthday that begins 3 months before the month of your 65th birthday and ends 3 months after such month. It is important to sign up for Medicare Part B promptly because the monthly premium increases 10% for each 12 month period that you were eligible for Medicare Part B but did not enroll. If you or a spouse are still employed and covered by a group health plan after age 65, you have 6 months to enroll in Medicare Part B after you or your spouse leave the job before the penalty kicks in.

Age 66 .... This is the year that individuals born between 1943 and 1954 are eligible to receive full Social Security retirement benefits. For those born between 1955 and 1959, the full retirement age gradually increases from age 66 and 2 months to 66 and 10 months. The month that you reach your full retirement age, your Social Security benefits are no longer reduced if you continue to earn income from working. The maximum benefit at Age 66 is $2,642 per month for 2014.

Age 67 .... For those born in 1960 and later, the age at which you can receive full Social Security retirement benefits is age 67.

Age 70 .... Your Social Security benefits will increase by 8% for each year that you delay receiving your benefits up until age 70. After age 70 there is no additional incentive to delay collecting your Social Security benefits.

Example:	Age	Benefit %	Benefit
	62	75%	$1,500
	66	100%	$2,000
	70	132%	$2,640

Age 70½ .... At age 70½, individuals must begin to receive required minimum distributions from Individual Retirement Accounts and, in most cases, employer retirement plans. Non-5% owners in employer-sponsored retirement plans may delay distributions until the later of age 70½ or the date of their actual retirement. The amount of the required minimum distribution is calculated by dividing the balance of your IRA and employer-sponsored retirement plan accounts by your life expectancy as determined by Treasury Regulations under the Uniform Distribution Table. Individuals who fail to receive the required minimum distributions are assessed a 50% penalty on the amount that should have been distributed.