



Vol. XIV, No. 4 – April 7, 2009

Internal Revenue Service

Spring Edition of Employee Plan News Published by IRS

The following articles appear in the spring edition of *Employee Plan News* <http://www.irs.gov/pub/irs-tege/spr09.pdf>, along with summaries of recent developments from the Department of Labor and the Pension Benefit Guaranty Corporation:

Automatic Contribution Final Regulations – summary of the final regulations published in February, 2009. Explains the distinctions between an eligible automatic contribution arrangement (EACA) and a qualified automatic contribution arrangement (QACA).

2009 IRS Form 1099-R – explanation of reporting of distributions of excess contributions or excess aggregate contributions.

Answer to a Topical Question – We just laid off 10 employees and don't plan to rehire them. What should we do with their 401(k) account balances?

IRS Publishes Article on Nonamenders and the Voluntary Correction Program (VCP)

According to an article recently published on the IRS website, one of the most common qualification failures currently resolved under the Voluntary Correction Program (VCP) is the “nonamender failure” occurring in individually designed plans.

<http://www.irs.gov/retirement/article/0,,id=205524,00.html> A nonamender failure occurs when good faith plan amendments are not timely adopted under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) as well as interim, and discretionary amendments that are related to changes in the qualification requirements.

The IRS article explains that applying for relief under VCP for nonamender failures is simple. Submissions limited to EGTRRA good faith, interim and/or optional amendment failures are provided a streamlined VCP application procedure under Rev. Proc. 2008-50.

<http://www.irs.gov/pub/irs-irbs/irb08-35.pdf#page=15> Helpful examples and other useful guidance are included.

Department of Labor

Department of Labor Extends Effective Date of Investment Advice Rules

The Department of Labor's Employee Benefits Security Administration (EBSA) published a notice in the March 20, 2009 edition of the Federal Register extending to May 22, 2009, the applicability and effective dates of the final rule on investment advice under the Pension Protection Act (PPA). <http://edocket.access.gpo.gov/2009/pdf/E9-6210.pdf>

No part of this document is intended to provide tax or legal advice. Any questions involving tax or legal matters should be referred to your plan's legal counsel or tax advisor.

The PPA amended the ERISA by adding a new prohibited transaction exemption that allows greater flexibility for participants of 401(k) plans and individual retirement accounts to obtain investment advice. The DOL published the final rule on January 21, 2009. The DOL decided to postpone for 60 days until May 22, 2009 the effective and applicability dates of the final rule to give it time to review legal and policy issues raised by many of the 26 public comment letters received.

<http://www.dol.gov/ebsa/newsroom/2009/09-307-NAT.html>

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