

# Qualified Plan News

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## Helpful Web Links

Department of Labor  
[www.dol.gov/](http://www.dol.gov/)

Taking the Mystery Out of Retirement Planning  
[www.dol.gov/ebsa/publications/nearretirement.html](http://www.dol.gov/ebsa/publications/nearretirement.html)

Internal Revenue Service  
[www.irs.gov/](http://www.irs.gov/)



## Annual Plan Deadlines

### OPN Highlights

*No action is required at this time.*

- The attached chart provides an explanation of key plan events for defined contribution plans and the deadline for each.
- Significant events for 2009 include waiver of RMDs for 2009, PPA plan amendment and EGTRRA plan restatement.
- The chart is intended as a tool to assist employers with monitoring the key annual plan requirements.

There are many important *required* events for defined contribution plans (i.e., 401(a) and 401(k) plans) that occur either during the calendar year or during the plan year. These events include such things as participant statements, compliance testing and remittance of plan contributions.

**2009 Events** – In addition to the ongoing plan requirements the important events listed below occur in 2009. Related editions of Qualified Plan News (QPN) describing some of these events are noted below and are available on the ING Sponsor Website.

- Waiver of Required Minimum Distributions for the 2009 calendar year (see QPN 2008-19).

- Amendment of plan documents for the Pension Protection Act of 2006 (PPA, see QPN 2006-1).
- Ongoing restatement of plan documents for the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA, see QPN 2008-9).
- Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) requires that differential wage payments made to employees on military leave must be treated as compensation for plan and tax withholding purposes. This change supersedes any previous plan amendment that excluded differential wage payments from plan compensation (see QPN 2008-8).

The attached chart (although not intended to be exhaustive) includes the key annual events which must occur within a specific deadline for a defined contribution plan. The chart is intended to serve as a tool that can be used by employers to monitor compliance over the plan and calendar year.

## ANNUAL PLAN DEADLINES

<b>Required Event</b>	<b>Deadline</b>
<b>Contribution Remittance</b>	
Remit Employee Contributions in accordance with the ERISA <sup>1</sup> timing requirements	As soon as administratively possible for the employer to segregate from corporate assets but in no event later than 15 business days following the month in which the contribution was deducted. The DOL's proposed rules for plans with less than 100 participants provide a safe harbor standard of 7 business days. (See QPN 2008-4)
Employer Match	<p><u>Annual</u> - By the tax filing date (plus extensions) for plan year it applies to. <i>Note: ADP/ACP testing cannot be completed until the match is remitted.</i></p> <p><u>Payroll Periods</u> - For ADP/ACP safe harbor plans by the last day of the quarter, following the quarter to which the match applies. For all other plans as directed by the plan document, but not later than the tax filing date (plus extensions) for the plan year it applies to. <i>Note: ADP/ACP testing cannot be completed until the match is remitted.</i></p>
Employer Annual Profit Sharing	By the tax filing date (plus extensions) for plan year it applies to.
True-Up of Employer Contribution based on annual compensation (if made periodically during the Plan Year)	By the tax filing date (plus extensions) for plan year it applies to. <i>Note: ADP/ACP testing cannot be completed until the match is remitted.</i>
<b>Annual Compensation Limit</b>	
Limit on compensation used to calculate contributions for the plan year is \$245,000 for 2009 (\$360,000 for certain government plans)	Employee contributions based on amounts in excess of the limit must be returned and any employer contributions must be forfeited before testing for the plan year is done. <i>Note: Effective 1-1-09 differential pay made to employees on military leave is compensation for contribution purposes.</i>
<b>Forfeiture Account Use</b>	
Forfeitures for each plan year should be used and not held indefinitely	By the end of the year in which they were forfeited or by the end of the following plan year, as directed in the plan document.

<sup>1</sup> Employee Retirement Income Security Act

Required Event	Deadline
<b>Participant Notices</b>	
Safe Harbor ADP/ACP Annual Notice	30 days before start of each plan year to which the safe harbor rules will apply.
Eligible Automatic Contribution Arrangement (EACA, See QPNs 2007-19 and 2007-20)	<p><u>Initial Notice</u> - For newly eligible employees, no earlier than 90 days before the employee's eligibility date, and no later than the employee's eligibility date.</p> <p><u>Annual Notice</u> - No earlier than 90 days, or later than 30 days before the start of the plan year.</p>
Qualified Automatic Contribution Arrangement (QACA, See QPNs 2007-19 and 2007-20)	<p><u>Initial Notice</u> – For newly eligible employees no earlier than 90 days before the employee's eligibility date, and no later than the employee's eligibility date.</p> <p><u>Annual Notice</u> – No earlier than 90 days or later than 30 days before the start of the plan year.</p>
Automatic Contribution Arrangement	<p><u>Initial Notice</u> – Must be provided on the date of hire.</p> <p><u>Annual Notice</u> – A reasonable time period of at least 30 days before the start of the plan year.</p>
Qualified Default Investment Alternative (QDIA, See QPN 2007-16)	<p><u>Initial Notice</u> - A reasonable period of at least 30 days before plan eligibility or at least 30 days before the first default investment.<sup>2</sup></p> <p><u>Annual Notice</u> – A reasonable period of time at least 30 days before the start of the plan year.</p>
Stock Diversification (See QPNs 2007-3 and 2007-12)	30 days before participant is eligible to diversify. No ongoing annual notice required.

<sup>2</sup> Alternatively, on or before eligibility date if participant may make a permissible withdrawal under an EACA.

Required Event	Deadline
<b>Compliance Testing</b>	
ADP/ACP Annual Nondiscrimination Testing	Test must be completed and corrected (if failed) within 12 months after the end of the plan year. If failed, excess amounts must be distributed within 2 ½ months after plan year end to avoid the 10% excise tax
ADP/ACP under an EACA	Test must be completed and corrected (if failed) within 12 months after the end of the plan year. If failed, excess amount must be distributed within 6 months after plan year end to avoid the 10% excise tax
415 Annual Additions Testing (Lesser of 100% of compensation or \$49,000 for the 2009 limitation year)	Must be monitored ongoing. If the test fails, excess deferrals or after tax contributions are returned and excess employer contributions are forfeited or held in a suspense account, as directed by the plan document
Top Heavy Testing (Key employees' assets must not exceed 60% of total plan assets)	Test is performed at the start of the plan year, using account balances on the last day of the prior plan year. If failed the plan is Top Heavy for the current plan year and an additional employer contribution may be required. Generally, the additional contributions should be made no later than the tax filing date (plus extensions) for the Top Heavy plan year.
Elective Deferral Limit (\$16,500 for the 2009 calendar year)	Return excess amounts by April 15 <sup>th</sup> of the following calendar year.
Coverage Testing (Requires that the classification of employees covered by a plan does not discriminate in favor of highly compensated employees.)	Coverage requirements must be satisfied at least annually as of the last day of the plan year. A failed test must be corrected within 9 ½ months after the end of the plan year.

Required Event	Deadline
<b>Required Minimum Distributions (RMDs) at Age 70 1/2</b>	
Initial Payment	April 1 <sup>st</sup> of the calendar year following the later of: (a) the calendar year in which the employee attains age 70 ½, or (b) the calendar year in which the employee retires from the employer. <sup>3</sup>
Ongoing Payments	By December 31st of each subsequent calendar year.
<b>All RMDs for the 2009 calendar year are waived</b>	Participants turning 70 ½ in 2009 or participants already receiving ongoing RMD payments are not required to take an RMD for the 2009 calendar year. <b>Note that RMDs for the 2008 calendar year are NOT waived including any initial RMD payment that must be taken no later than April 1, 2009.</b>
<b>Form 5500 &amp; Schedules</b>	
Form 5500 Annual Information Return	Due 7 months after plan year end. Employer may file for a 2 ½ month extension. (e.g., due 7-31-09 for a plan year ending 12-31-08, but may file for an extension to 10-15-09)
Summary Annual Report (SAR) for 2008 Form 5500	Distribute to participants within 9 months after the end of the plan year. Plans that file for an extension to the Form 5500 deadline must distribute the SAR within 2 months after the extended deadline.

<sup>3</sup> 5% owners initial payment is due by April 1<sup>st</sup> of the calendar year following the calendar year in which the employee attains age 70 ½ (even if still employed).

Required Event	Deadline
<b>Plan Amendments</b>	
<p>Legislatively required amendments</p> <p>Restatement for the Economic Growth and Tax Relief Reconciliation Act of 2001(EGTRRA)</p> <p>Pension Protection Act of 2006 (PPA) Amendment</p>	<p>Adopt by the tax filing date (plus extensions) unless otherwise directed.</p> <p>All pre-approved plans (e.g., prototype plans) must be restated no later than April 30, 2010 (2012 for government plans). Different restatement deadlines apply to individually designed plans based on the plan’s EIN. Special rules apply to off-cycle filings, plan terminations, mergers and acquisitions, change in plan sponsorship, plan spin offs, multiemployer and multiple employer plans. Employers should work with their plan document provider to ensure the plan is timely restated.</p> <p>Must be adopted by the last day of the 2009 plan year (2011 for government plans). Employers should work with their plan document provider to ensure the plan is timely restated.</p>
Employer discretionary amendments	Adopt by the end of the plan year in which the amendment is effective.
Summary of Material Modifications (SMM)	Distribute to participants within 210 days after the end of the plan year in which the change is effective.
Summary Plan Description (SPD)	Distribute 90 days after participant becomes eligible; every 5 years if plan is amended; every 10 years if plan is not amended (unless otherwise directed).

**IRS Circular 230 Disclosure**

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