

**Towers Watson
Monthly Regulatory Round-Up**

December 2009

- - Retirement - -

The Monthly Regulatory Round-Up is a high-level summary of legal and regulatory developments that occurred during December 2009 that may be relevant to large employers. Developments are sorted according to

- federal legislative developments,
- federal regulatory guidance
- other developments (e.g., significant litigation, studies, select state law developments).

The Monthly Regulatory Round-Up is prepared by Towers Watson's Technical Services staff, located in Valhalla, NY. This material is not a substitute for legal, accounting, actuarial or other professional advice.

LEGISLATIVE

1. ***Encouragement of annuitization.*** Senator Bingaman (D-MN) introduced the Lifetime Income Disclosure Act (S. 2832). The bill would require sponsors of participant-directed individual account plans (such as 401(k) plans) to provide participants and beneficiaries with an annual statement projecting the monthly benefit payment they would receive if their present account balance were used to purchase a guaranteed annuity commencing at normal retirement age. The legislation also directs the DOL to issue factors that employers may use in calculating an annuity equivalent, as well as a model disclosure. Employers and service providers using the model disclosure and following the prescribed assumptions and DOL rules would be insulated from liability.

REGULATORY

1. ***IRS extension of certain PPA amendment deadlines.*** The IRS published Notice 2009-97 in which they announced a one year extension of the deadline to make certain Pension Protection Act (PPA) amendments (and related relief from the anti-cutback rule). Specifically, Notice 2009-97 extended the deadline to the last day of the 2010 plan year for amendments to incorporate the following requirements:
 - The funding-based limits on benefits and benefit accruals under IRC § 436;
 - The special vesting rules applicable to hybrid plans pursuant to IRC § 411(a)(13) and the other PPA-related hybrid plan requirements in IRC § 411(b)(5) such as the rules regarding interest rates (but not the deadline to eliminate any whipsaw calculations for a lump sum paid under a hybrid plan); and
 - The diversification requirements applicable to certain defined contribution plans that hold publicly traded employer stock under IRC § 401(a)(35).
2. ***403(b) plan determination letter program.*** The IRS issued Announcement 2009-89 regarding their intention to publish revenue procedures opening up programs under which 403(b) plans (both prototypes and individually designed plans) can obtain a review by the IRS of the form of the document. According to the Announcement, employers will be given a remedial amendment period to retroactively make any changes requested by the IRS. The announcement did not extend the December 31, 2009 deadline by which sponsors of 403(b) plans must adopt a written plan intended to meet the requirements of 403(b).
3. ***Guidance on FICA tax corrections.*** The IRS published Rev. Rul. 2009-39 which provides guidance on correcting underpayments and overpayments of employment taxes and notes that new regulations and new "X" forms have been adopted in this regard.
4. ***2009 Cumulative List.*** The IRS published Notice 2009-98 which contains the 2009 Cumulative List of Changes in Plan Qualification Requirements (the 2009 Cumulative List). These annual cumulative lists identify statutory, regulatory and guidance changes that must be taken into account by plan sponsors when submitting their plans for determination letters. The 2009 Cumulative List must be taken into account primarily by sponsors of individually designed plans with Cycle E as their determination letter cycle. Requests for determination letters for Cycle E plans must be submitted between February 1, 2010 and January 31, 2011.
5. ***Assets of target-date funds not plan assets.*** The DOL issued Advisory Opinion 2009-04, in which the DOL opined that that assets held in a fund of funds (i.e., a mutual fund registered

under the Investment Company Act of 1940 that invests in the shares of affiliated mutual funds) are not “plan assets” under ERISA. Specifically, the DOL indicated that “the fact that a target-date or lifecycle mutual fund’s assets consist of shares of affiliated mutual funds does not, on that basis alone, make the assets of the target-date or lifecycle mutual fund “plan assets” of investing employee benefit plans or the investment advisers to such mutual funds fiduciaries to the investing plans under ERISA.”

6. **PBGC proposed changes to reportable event rules.** The PBGC released draft disclosure forms and instructions associated with the recently proposed changes to the reportable event regulations. The proposed regulations would eliminate most automatic waivers and filing extensions provided under the current reportable event regulations. The draft disclosure forms are applicable to Form 10, Form 10-Advance and Form 200.
7. **2010 covered compensation tables.** The IRS issued Rev. Rul. 2009-40, which provides tables on covered compensation for use in calculating employer contributions to qualified retirement plans for the 2010 plan year.
8. **Automatic approval for certain funding method changes.** The IRS issued Announcement 2010-3, which establishes requirements for automatic IRS approval of changes in funding method due to:
 - changes in both the individual enrolled actuary and in the business organization providing actuarial services (“takeover” situations); and
 - changes in an actuarial organization's valuation software.

Provided that the requirements in the Announcement are met, automatic approvals are available for plan years beginning on or after January 1, 2009. The automatic approvals in the Announcement supplement the approvals already available under the final regulations issued October 15, 2009, under IRC § 430.