TABLE OF CONTENTS

Volume 1

Introduct	ion		lv
		CHAPTER 1	
		What Is a Pension Plan?	
§ 1.01	Pension Pla	n Defined	1-3
§ 1.02	The Basic 1	ingredients of a Pension Plan	1-4
	[1] Plan	Established by Employer	1-4
	[2] Defi	nitely Determinable Benefits	1-5
	[3] Incid	dental Benefits	1-5
	[4] Syst	ematic Payment of Benefits	1-6
		at Is a "Qualified Joint and Survivor	
	A	nnuity"?	1-7
	[a]	Election to Waive	1-9
		[i] Waiver of Thirty-Day Period	
		for QJSA Explanation	1-10
		[ii] Provision of QJSA Explanation	
		After Annuity Starting	
		Date	1-11
	[b]	Spousal Consent	1-11
	[c]	Spousal Consent for Plan Loans	1-12
	[d]	Restrictions on Cash-Outs	1-12
		[i] Immediate Distribution of	
		the Present Value of a QJSA	
		or QPSA	1-13
		[ii] Proposed Regulations	1-13
	[e]	IRS Issues Final Regulations on	
		Notice/Consent Rules	1-14

		[f]	Spec	ial Rules Under Code	
			S	ection 417(a)(7) for Written	
			E	xplanations Provided by Qualified	
			R	etirement Plans After Annuity	
			St	tarting Dates	1-14
	[6]	Wha		'Qualified Preretirement Survivor	
				"?`	1-14
		[a]	-	tion to Waive	1-16
		[b]		ısal Consent	1-16
		[c]		rictions on Cash-Outs	1-16
		[d]		eased Costs	1-16
	[7]			t Payment Begin?	1-16
	[8]			Benefits on Termination of	1 10
	[~]	-		ment	1-18
	[9]			ls During Employment	1-18
	[10]			e Plan Provisions	1-18.1
§ 1.03				Plans	1-18.2
3 1.00	[1]			fit Plans	1-18.2
	[2]			it Plans	1-18.3
	[3]			Equity Annuities	1-18.5
	[4]			ice Plans	1-18.5
	Γ.1	[a]		le Sum Distributions	1-18.6
		[b]		Do Cash Balance Plans Differ	1 10.0
		[0]		om 401(k) Plans?	1-18.7
		[c]		version of a Defined Benefit Plan	1 10.7
		[c]		a Cash Balance Plan	1-18.8
		[d]		ion Protection Act Changes to	1 10.0
		լայ		Inimum Vesting and	
				ccrual Rules	1-18.9
			[i]	New Definitions Under	1 10.7
			[1]	Proposed Regulations	1-18.9
			[ii]	PPA Changes Addressed by	1-10.7
			[11]	the Regulations	1-18.10
			[iii]	Market Rate of Return	1-10.10
			[IIII]	Limitation	1-18.10
			[iv]	Safe Harbor from Age	1-10.10
			[11]	Discrimination	1-18.12
			[v]	Plan Conversions	1-18.15
		[e]		Regulations for Computing	1-10.13
		[c]		ccrued Benefits and Age	
				iscrimination Testing in Cash	
				alance Plans	1-18.17
			[i]	Statutory Hybrid Plans	1-18.17
			[1]	Statutory Tryonia Flans	1-10.10

		TABLE OF CONTENTS	vii
		[ii] Safe Harbor from Age	
		Discrimination	1-18.19
		[iii] Conversion Amendment	1-18.21
		[iv] Interest Credits	1-18.22
		[v] Preservation of Capital Rule	1-18.23
		[vi] Anti-Cutback Rules	1-18.23
	[5]	Eligible Combined Defined Benefit Plans and Qualified Cash or Deferred	
		Arrangements	1-18.24
		[a] Generally	1-18.24
		[b] Requirements That Apply to the	1-10.24
		Defined Benefit Plan	1-18.25
			1-10.23
		[c] Requirements That Apply to	
		the Applicable Defined	1 10 26
		Contribution Plan	1-18.26
		[d] Annual Reporting Requirements	
		That Apply to Eligible	1 10 27
		Combined Plans	1-18.27
		[e] Reasons Why Eligible Combined	
0 1 0 1		Plans Were Established	1-18.27
§ 1.04		onal Benefits Prior to Normal Retirement	1 10 20
		ge	1-18.29
	[1]	Early Retirement	1-18.29
	[2]	Disability Retirement	1-18.29
	[3]	Death Benefits	1-18.30
	[4]	Health and Accident Benefits	1-18.30
	[5]	Incidental-Payment Test for Beneficiaries	1-18.31
§ 1.05		ng on Benefits	1-18.32
	[1]	Limitation for Defined-Benefit Plans	1-18.32
		[a] Qualified Plan Benefit Limits	
		Increased by EGTRRA	1-18.32
		[b] Qualified Plan Benefit Limits	
		Prior to EGTRRA	1-18.34
	[2]	Excise Tax on Excess Distributions	1-25
	[3]	Application of Limitations to Combination	
		of Plans	1-26
	[4]	Special Rule for Combinations of Plans in	
		Effect on September 2, 1974	1-28
	[5]	Aggregation of Plans for Purposes of	
		Limitations	1-28
	[6]	Employer 50% Common Control Test	1-29

CHAPTER 2

What Is a Profit-Sharing Plan?

§ 2.01	Profit	t-Sharing Plan Defined	2-4.4			
§ 2.02	Qualified Profit-Sharing Plans					
	[1] Plan Established by Employer					
	[2]	Availability of Profits	2-5			
	[3]	Employer Contribution Formula	2-6			
	[4]	Allocation of Funds	2-6			
		[a] Definite Predetermined Formula	2-7			
		[b] Earmarked Investments	2-7			
	[5]	Distribution of Funds	2-7			
	[6]	Hardship Distributions	2-9			
	[7]	Distribution at the Option of the Trustee or				
		Pension Committee	2-14.1			
	[8]	Loans	2-15			
		[a] In General	2-15			
		[b] Department of Labor Regulations	2-23			
		[i] Availability	2-23			
		[ii] Adequate Security	2-24			
		[iii] Additional Measures	2-24			
		[iv] Reasonable Rate of Interest	2-24.1			
		[v] Specific Plan Provisions	2-24.1			
		[vi] Timeliness of Loan				
		Repayments	2-24.2			
		[c] Repaying Exempt Loan with				
		Salary Reduction Contributions	2-24.2			
		[d] Expansion of Loans to				
		Business Owners	2-24.2			
	[9]	Methods of Distribution	2-24.3			
	[10]	Contributions to the Plan	2-24.11			
		[a] Contribution Limits Increased				
		by EGTRRA	2-24.13			
		[i] Defined Contribution Plans	2-24.13			
		[ii] Elective Deferral Limitations	2-24.13			
		[iii] Tax-Exempt Organization and				
		State or Local Governmental				
		Plans	2-24.14			
		[iv] Compensation Limit	2-24.15			
		[v] State "Non-Conformity" with				
		EGTRRA	2-24.15			
		[b] Catch-up Contributions Enacted by				
		EGTRRA	2-24.15			
	[11]	Allocation Formulas	2-24.18			
		[a] Salary Plus Years of Service	2-24.19			

(Rel. 74)

		[b]	Salary Weighted for Years of	
			Service	2-24.19
		[c]	Formula With a Years-of-Service	
			Factor	2-24.20
		[d]	Disabled Employees	2-24.23
	[12]	Inves	stment Diversification	2-24.23
	[13]		Sample Plan Provisions	2-24.23
§ 2.03			vings and Investment Plans	2-25
§ 2.04			s Plans	2-27
	[1]	Emp	loyee Stock Ownership Plans	2-27
		[a]	Generally	2-28
		[b]	Allocation of Employer Securities	2-28
		[c]	Loans to a LESOP	2-28
		[d]	Participant Right	2-29
		[e]	Right of First Refusal	2-29
		[f]	Valuation of Employer Securities	2-29
		[g]	Uses for LESOPs	2-29
		[h]	Diversification of Investments	2-31
			[i] Nature of Diversification	2-31
			[ii] Alternative Method	2-31
		[i]	Independent Appraiser	2-32
		[j]	Timing of Distributions	2-32
			[i] Commencement of	
			Distribution	2-32
			[ii] Limited Distribution Period	2-32.1
		[k]	Put Option Requirements	2-33
		[1]	Pass-Through Voting Rights	2-33
		[m]	Prohibited Allocations	2-33
		[n]	S Corporations	2-34
		[o]	Gratuitous Transfers	2-34
			[i] Qualified Gratuitous Transfer	2-34.1
			[ii] Plan Requirement	2-34.1
			[iii] Treatment of Transferred Stock	
			and Allocation Rules	2-34.2
	[2]	The	Tax Credit ESOP	2-34.2
		[a]	Basis for Employer Contributions	2-35
		[b]	Voluntary Employee Contributions	2-36
		[c]	Allocation of Employer Securities	2-36
		[d]	Plan Expenses	2-37
		[e]	Participant Rights	2-37
		[f]	Adoption Date	2-37
		[g]	Distributions	2-37
		[h]	Fiduciary Rules	2-38
		[i]	Tax Credit Repeal	2-38
	[3]		KSOP	2-38
	[4]		loyee Stock Purchase Plans	2-39
		[a] r	Introduction	2-39

	[b]	Statutory Requirements for	
		Section 423 Plans	2-41
		[i] Eligible Employees	2-41
		[ii] Shareholder Approval	2-41
		[iii] Limitations on Options	
		Granted to 5% Owners	2-42
		[iv] Nondiscrimination Rules	2-43
		[v] Rights and Privileges	2-44
		[vi] Option Exercise Price	2-44
		[vii] Term of Options	2-44.2
		[viii] Purchase Limitations	2-44.3
		[ix] Nontransferability	2-44.5
	[c]	Tax Consequences	2-44.5
		[i] Employee	2-44.5
		[ii] Employer	2-44.9
	[d]	Accounting Treatment	2-44.9
	£J	[i] APB Opinion No. 25	2-44.9
		[ii] FAS 123	2-44.10
	[e]	Application of Federal	
	[-1	Securities Laws	2-44.11
		[i] Introduction	2-44.11
		[ii] Registration Requirements	2-44.12
		[iii] Section 16 Requirements	2-44.13
§ 2.05	Money Puro	chase Pension Plans	2-44.15
3	-	ciples of Money Purchase Plans	2-44.15
		sfers and Rollovers from Money	
		urchase Plans to Profit Sharing Plans	2-44.16
§ 2.06		efit Plans	2-44.18
§ 2.07		ferred Plans	2-45
ŭ.		on Elective Deferrals	2-48
		rent Nondiscrimination Tests	2-48
	[3] Mee	ting the ADP/ACP Tests	2-50
	[a]	Treatment of Excess Contributions	2-50
	[b]	Treatment of Excess Aggregate	
		Contributions	2-51
	[c]	Testing Techniques to Avoid Excess	
		Contributions and Excess	
		Aggregate Contributions	2-52
		[i] Restructuring	2-52
		[ii] Recharacterization	2-53
		[iii] Reclassification	2-53
		[iv] QMACS and QNECS	2-53
	[d]	Risk-Reducing Design Features	2-54
	[e]	Contribution Rate Adjustments	2-54
	[f]	Fail-Safe Mechanisms	2-55
		[i] Limitations on Elective	
		Contributions	2-55

		TABL	E OF CONTENTS	xi
	[g]	[ii] Safe-l	Irrevocable Elections	2-56
	103	Ru	les	2-56
		[i]	ADP Safe-Harbor Test	2-56
		[ii]	ACP Safe-Harbor Test	2-58
		[iii]	Other Matters	2-58
	[h]	Curre	nt or Prior Year Testing	
		Me	ethod	2-59
		[i]	Generally	2-59
		[ii]	Determination of ADP and	
			ACP for NHCEs Using	
			Prior Year Data	2-60
		[iii]	Use of Current Year	
			Testing Method	2-60.2
		[iv]	Use of QNCs and QMACs	
			under Prior Year Testing	
			Method	2-60.2
		[v]	First Plan Year Rule under	
			Prior Year Testing Method	2-60.3
		[vi]	Changes in the Group of Eligible NHCEs Where Plan Uses Prior Year	
			Testing Method	2-60.4
		[vii]	Change from Current Year to Prior Year Testing	
			Method	2-60.9
		[viii] [ix]	Plan Provisions Regarding	2-60.12
		[x]	Testing Method Distribution of Excess	2-60.12
			Contributions and Excess	
			Aggregate Contributions	2-60.13
		[xi]	Repeal of Multiple Use	
			Test for 401(k) Plans	2-60.16
	[i]		ges to Rules for 401(k) Testing	2-60.17
		[i]	Taxation of Corrective	
			Distributions	2-60.17
		[ii]	EACA Distributions	2-60.18
		[iii]	Gap-Period Income	2-60.18
		[iv]	Annual Addition Violations	2-60.19
[4]		-	es Relevant to Cash or Deferred	
			nents	2-60.19
[5]			finition of Highly Compensated	
			e	2-60.20
	[a]		Notice 97-45	2-60.21
		[i]	Introduction and Summary	2-60.21
		[ii]	Required Amendments	2-60.22
				(Rel. 74)

	[iii]	Definitions of Determination	
		Year and Look-Back Year	2-60.22
	[iv]	Elections: Top-Paid Group or	
		Calendar-Year Data	
		Election	2-60.23
	[v]	Consistency Requirement for	
	F.1	Elections	2-60.23
	[vi]	HCE Status Determination:	_ 00
	[,,]	Miscellaneous Issues	2-60.24
	[vii]	Family Aggregation	2-60.25
[b]		ods for Determining HCE	2-00.23
[Մ]		atus	2-60.26
		Determination Years and	2-00.20
	[i]		2 60 26
	F337	Look-Back Years	2-60.26
F.1	[ii]	Applicable Year	2-60.27
[c]		ementation of Elections	2-60.27
	[i]	Top-Paid Group Election	2-60.27
	[ii]	Calendar-Year Data Election	2-60.27
	[iii]	1	
		Requirement	2-60.28
[d]		sistency Requirement for	
		lections	2-60.28
	[i]	Generally	2-60.28
	[ii]	Interaction of Top-Paid Group	
		Election and Calendar-Year	
		Data Election	2-60.28
	[iii]	Multiemployer Plans	2-60.28
	[iv]	Transition Relief for	
		Years Prior to 2000	2-60.28
[e]	Qual	ified Retirement Plan	
		mendments for HCE	
		efinition	2-60.29
	[i]	Qualified Plans That Must	
	L-J	Be Amended	2-60.29
	[ii]	Amendment Date	2-60.29
[f]		r Issues Relating to	2 00.2)
[1]		etermination of HCE Status	2-60.29
		Determining HCE Status	2-00.27
	[i]	for 1997	2-60.29
	F337		2-00.29
	[ii]	Highly Compensated	2 (0.20
	F2223	Former Employees	2-60.30
	[iii]	Family Attribution and	
		Determining 5% Ownership	2 (0 20
	_	Interest	2-60.30
[9]	Exan	nnles	2-60.30

	[i] Code Section 457 Plans	2-70
	[ii] Tax-Sheltered Annuities	2-71
	[3] Deduction Limits Increased by EGTRRA	2-71
	[a] Money Purchase Plans	2-72
	[b] Definition of Compensation	2-72
	[c] Tax on Nondeductible Contributions	2-73
	[d] Elective Deferrals Not Taken Into	
	Account for Purpose of	
	Deduction Limits	2-73
§ 2.13	2004 Final Section 401(k)/401(m) Regulations and	
	Proposed 2009 Amendments	2-76
	[1] Generally	2-76
	[2] Effective Date	2-76
	[3] Summary of Changes	2-76
	[a] Prefunding of Contributions	2-76
	[b] "Targeted Contributions"	2.55
	("Bottom-Up Contributions")	2-77
	[c] Gap Period Income	2-77
	[d] General Anti-Abuse Rule	2-78
	[e] 401(k) Safe Harbor Provisions	2-79
	[4] Suspension or Reduction of Safe Harbor	2.02
	Nonelective Contributions	2-83
	[a] Elective and Nonelective	2 02
	Contributions	2-83 2-84
	[b] Matching Contributions	
	[c] Tax Exempt Plans	
§ 2.14	[d] Proposed Regulations	2-86 2-89
§ 2.14 § 2.15	Roth 401(k) Contribution Program	2-89
8 2.13	[1] Written Plan Document Requirement	2-92
	[2] Audits	2-93
	[3] Field Assistance Bulletin 2009-02—	2-73
	Transitional Relief Regarding Reporting	
	Requirements	2-94
	requiements	27.
	CHAPTER 3	
	CHAFTER 3	
	Pension or Profit-Sharing—What to Consider	r
§ 3.01	In General	3-4.3
§ 3.02	Common Considerations.	3-5
o .	[1] What Eligibility Requirements Will Be	
	Set Up?	3-5
	[a] Methods of Limiting Eligibility	3-5
	[i] Age	3-5
	[ii] Service	3-6
	[iii] Other Classifications	3-6

	XV		
	[b]	Participation Tests	3-6.1
		[i] Plan Years Beginning	
		Prior to 1989	3-6.1
		[ii] Plan Years Beginning	
		After 1988	3-8
[2]	Wha	t Vesting Will Be Provided?	3-10
	[a]	Plan Years Beginning	
		Prior to 1989	3-10
		[i] 5-to-15-Year Vesting	3-10
		[ii] 10-Year Vesting	3-10
		[iii] Rule of 45 Vesting	3-11
	[b]	Plan Years Beginning After 1988	3-11
	[c]	Plan Years Beginning After 2006	3-11
	[d]	Deferral of Distribution	3-12
	[e]	Noncompetition and Dishonesty	
		Provisions	3-12.1
	[f]	Spendthrift Clause	3-12.1
	[g]	Death or Disability	3-12.1
	[h]	Faster Vesting of Employer	
		Matching Contributions	3-13
[3]	Emp	loyee Contributions	3-14
	[a]	Amount of Employee Contributions	3-15
	[b]	Allocation of Accrued Benefits	3-16
	[c]	Interest Rate on Employee	
		Contributions	3-16.1
	[d]	Employee Voluntary Contributions to	
		Deemed IRAs	3-16.1
[4]		ribution Rules for Qualified Plans	3-16.4
	[a]	Distributions Prior to Age 59½	3-16.4
	[b]	Before Death Distribution Rules	3-17
	[c]	After Death Distribution Rules	3-18
	[d]	Minimum Distribution Rules	3-19
		[i] Small Business Job Protection	
		Act of 1996	3-19
		[ii] IRS Guidance on Employees	
		Who Attained Age 70½	
		Before January 1, 1997, and	
		Who Have Not Retired	3-20
		[iii] Additional IRS Guidance	3-21
		[iv] Life Expectancy	2 22 2
		Tables Modified	3-22.3
		[v] IRS Regulation	3-22.4
		[vi] Final Regulations	3-22.11
	[e]	Elimination of "Same Desk" Rule	3-22.15
	[f]	Rollovers Disregarded as Cash-Out	2 22 16
	[~]	Amounts	3-22.16
	[g]	Optional Forms of Benefits	3-22.17

		[1]	Conditions Under which	
			Distribution Options May	
			Be Eliminated	3-22.17
		[ii]	Elimination of Optional	
			Forms of Benefits where a	
			Defined Contribution Plan	
			Offers a Single-Sum	
			Distribution	3-22.18
		[iii]	Regulations Required on	
			Plan Amendments Reducing	
			Benefits	3-22.18
		[iv]	Final Regulations on	
			Elimination of Forms of	
			Distribution in Defined	
			Contribution Plans	3-22.19
		[v]	Factors Considered in Judging	
			Whether Amendment Has a	
			More than De Minimis	
			Effect	3-22.20
	[h]	Distr	ibutions During Working	
		Re	etirement	3-22.21
		[i]	Retirement Age	3-22.22
		[ii]	Anti-Cutback Relief	3-22.22
	[i]	Retir	ee Cash-Out Windows	3-22.23
		[i]	IRS Guidance	3-22.23
		[ii]	Implications	3-22.25
[5]	Limi		Benefits and Contributions	3-22.25
	[a]	Defin	ned Benefit Plan Limits	3-22.25
		[i]	Normal Retirement Age	3-22.25
		[ii]	Early Retirement Reductions	3-22.26
		[iii]	Increases for Later Retirement	3-22.26
		[iv]	Ten-Year Phase-In	3-22.26
		[v]	Governments and Tax-Exempt	
			Organizations	3-22.27
	[b]	Defin	ned Contribution Plan Limits	3-22.27
		[i]	Dollar Limit	3-22.27
		[ii]	Employee Contributions	3-22.27
		[iii]	Post-Retirement Medical	
			Benefits	3-22.27
	[c]		A Arrangements	3-22.28
	[d]		poration by Reference	3-22.28
	[e]		ervation of Accrued Benefit	3-22.28
	[f]	Com	bined Limit	3-22.29
	[g]		Changes to Defined Benefit	
			d Defined Contribution Plan	
		Li	mits and Highly Compensated	
		Eı	mployee Thresholds	3-22.29

		TABLE OF CONTENTS	xvii
		[h] 1994 Interest Rate and Mortality Table Changes and post-RPA	
		Guidance on RPA's Changes	3-23
		[i] Restoration Payments	3-25
	F 67	Compensation Limits	3-25
	[6]	Selection of the Funding Medium	3-26
	[7]	Uses of Life and Medical Insurance	3-26.1
		[a] Incidental Benefit Rule [b] Nondiscrimination Rules for Group	3-26.1
		Term Life Insurance	3-27
		[i] Eligibility Requirements	3-28
		[ii] Benefit Requirements [iii] Consequences of	3-28
		Discriminatory	
		Classification	3-28
		[iv] Revised Imputed	
		Income Table	3-28
	[8] [9]	Plan Investments	3-28.1
		Administrative Committee?	3-28.2
	[10]	Selection of Insurance Carriers for Annuity	
		Purchases	3-28.3
§ 3.03		on Plan Considerations	3-29
	[1]	What Retirement Benefits Should the Plan Provide?	3-29
	[2]	Integration with Social Security	3-29
		[a] Defined Contribution Plans	3-30
		[b] Defined Benefit Plans—Excess Plans	3-30
		[c] Defined Benefit Plans—Offset	3 30
		Plans	3-30
	[3]	Definition of Compensation	3-31
	[4]	Past-Service Credit	3-32
	[5]	Benefit Formulas	3-32
	[6]	Death Benefits and Their Estate Tax	
	r.1	Consequences	3-33
	[7]	Disability Retirement	3-33
	[8]	Other Plan Benefits	3-34
	[9]	Methods of Paying Retirement Benefits	3-34
		[a] Qualified Joint and Survivor Option	3-34
		[b] Straight Life Annuity	3-35
		[c] Period-Certain Option	3-35
		[d] Fixed-Amount or Fixed-Period	
		Installments	3-35
		[e] Level-Income Benefit	3-35
	[10]	When Should a Participant Retire?	3-35

		[a] Early Retirement	3-36
		[b] Deferred Retirement	3-36
	[11]	ERISA's Minimum Funding Standards	3-37
	[12]	Methods of Accruing Benefits	3-37
	[13]	Plan Termination Insurance	3-38
		[a] Covered Benefits	3-39
		[b] Employer Liability to the PBGC	3-39
§ 3.04	Profit	t-Sharing Plan Considerations	3-40
·	[1]	What Profits Will Be Contributed?	3-40
	[2]	Treatment of Forfeitures	3-41
	[3]	How Will the Contributions Be	
		Allocated?	3-42
	[4]	What Valuation and Accounting Procedures	
		Can Be Used?	3-42
	[5]	Should the Plan Permit Loans or	
		Withdrawals?	3-43
	[6]	How and When Should Benefits Be Paid?	3-44
	[7]	Should the Trust Invest in	
		Employer Stock?	3-46
§ 3.05	SECU	URE Act Makes Significant Pension	
	La	w Changes	3-47
	[1]	Changes to the Required Minimum	
		Distribution (RMD) Rules	3-48
		[a] Lifetime RMDs	3-48
		[b] Distributions After Death but	
		Before Participant's Required	
		Beginning Date	3-49
		[i] Prior Rules	3-49
		[ii] New Rules	3-50
		[c] Distributions When Death Occurs	
		After Participant's Required	
		Beginning Date	3-53
		[d] Effect of New Rules on Planning	3-53
		[e] Planning Considerations to Address	
		New Rules	3-54
	[2]	New Type of Multiple Employer Plan	3-56
	[3]	New Mandate to Cover Long-Term	
	F 43	Part-Time Employees	3-57
	[4]	Tax Credit for Small Employers	2.55
	5.53	Who Establish New Plans	3-57
	[5]	Changes to 401(k) Plan Rules	3-57
		[a] Changes to Qualified Automatic	
		Contribution Arrangement	2.55
		("QACA")	3-57
		[i] Current Rule	3-57
		[ii] New Rule	3-58 3-58
		THE ELICCIVE DATE	1-18

		TABLE OF CONTENTS	xix
	[b]	Nonelective Safe Harbor Change	3-58
		[i] Current Rule	3-58
		[ii] New Rule	3-58
		[iii] Effective Date	3-58
	[c]	Portability of Lifetime Options	3-58
		[i] Current Rule	3-58
		[ii] New Rule	3-59
		[iii] Effective Date	3-59
	[6] Mod	lification of Non-Discrimination	
		esting Rules for "Soft" Frozen	
	D	efined Benefit Plans	3-59
	[7] Prov	risions Relating to Lifetime	
		ncome Options	3-59
		Fold Increase in Form 5500	
		ncreased Penalties	3-60
		s Can be Adopted When	
		ax Return Due	3-61
		edial Amendment Period	3-61
§ 3.06		ct Impacts Employer-Provided	
		nt Plans	3-62
	[1] Cove	erage and Contributions	3-62
	[a]	Required Automatic Enrollment	
		and Escalation Provisions for	
		New Plans	3-62
		[i] Mandatory Provisions	3-62
		[ii] New Plan Defined	3-63
		[iii] Exceptions	3-63
		[iv] Mergers, Spinoffs and MEPs	3-63
		[v] Excluded Classes and	
		Universal Availability	3-63
	[b]	Saver's Matching Contribution	3-64
	[c]	Increase in Catch-Up	
		Contributions	3-64
	[d]	Optional "Rothification" Employer	
		Matching and Nonelective	
		Contributions	3-65
	[e]	Matching Contributions for Student	
	. ,	Loan Payments	3-65
	[f]	De Minimis Incentives to Improve	
		Retirement Plan Participation	3-65
	[g]	Improving Coverage for Long-Service	
	[8]	Part-Time Employees	3-65
	[h]	Emergency Savings Accounts Linked	3 00
	[]	to Retirement Plans	3-66
		[i] IRS Notice 2024-22	3-66
		[ii] DOL Q&A Guidance	3-67
	[i]	Tax Credits for Small Employers	3-68
	[*]	in croates for citain Employers	2 00

[2]	Reti	rement Plan Distributions	3-69
	[a]	Increase in Required Beginning	2.60
	LP J	Date	3-69
	[b]	Elimination of Pre-Death Required	
		Minimum Distributions for Roth Amounts	2 60
	[6]		3-69
	[c]	Withdrawals for Certain Emergency	3-69
	[d]	Expenses	3-09
	լայ	Limit and Offer of Automatic	
		Portability Provision	3-69
	[e]	Remove Required Minimum	3 0)
	[0]	Distribution Rule Barriers to	
		Lifetime Income.	3-69
	[f]	Expand Availability of Qualified	
		Longevity Annuity Contracts	3-70
	[g]	Reliance on Employee Certification	
	103	of Hardship	3-70
	[h]	Penalty-Free Withdrawals from	
		Retirement Plans for Cases of	
		Domestic Abuse	3-70
	[i]	Penalty-Free Withdrawals for	
		Individuals with Terminal	
		Illnesses	3-70
	[j]	Permanent Rules for Relief in	
		Connection with Qualified	
		Federal Disasters	3-71
	[k]	Participant Disclosure Requirements	
		for Lump Sum Distribution	
	F13	Windows	3-71
	[1]	Requirement to Periodically Provide	2.51
.	3.6.1	Paper Benefit Statements	3-71
[3]		tiple Employer Plans, Pooled Employer	2.71
		lans, and Groups of Plans	3-71
	[a]	403(b) Plan Multiple Employer Plans	3-71
	[h]	and Pooled Employer Plans Contribution Collection Procedures	3-/1
	[b]	for PEPs	3-72
	[c]	Retirement Plan Startup Costs	3-12
	[c]	Tax Credit	3-72
	[d]	Group of Plans Audit	3 12
	ردا	Requirement	3-72
	[e]	Participation in MEPs and PEPs	- , -
	L-3	Becomes an Option	3-72
	[f]	Auto-Enrollment for 403(b) Plans	3-73
	[g]	Special MEP and PEP	
		Requirements	3-73

			TABLE OF CONTENTS	XX1
	[4]		rement Plan Rules and	
		A	dministration	3-73
		[a]	Recovery of Overpayments	3-73
		[b]	Reduction in Excise Taxes for Required	2.74
		[6]	Minimum Distribution Failure	3-74
		[c]	Expansion of Employee Plans Compliance Resolution System	3-74
		[d]	Amendments to Increase Benefit	3-14
		[w]	Accruals for Previous Plan Year	
			Allowed Until Employer	
			Tax Return Due Date	3-74
		[e]	Establishment of Retirement Savings	
			Lost and Found	3-75
		[f]	Streamline Notice Requirements to	2.75
		[~]	Unenrolled Employees	3-75
		[g]	Elimination of Barriers for 403(b) Plans to Utilize Certain Investment	
			Vehicles	3-75
		[h]	Safe Harbor for Corrections of	5 75
			Employee Elective Deferral	
			Failures	3-75
		[i]	Provisions Relating to Plan	
			Amendments	3-76
			CHAPTER 3A	
			Tax Consequences	
§ 3A.01	Tax '	Treatm	ent of Employer Contributions	3A-8.2
3	[1]		qualified Plans	3A-8.3
		[a]	General Rule	3A-8.3
		[b]	FICA and FUTA Withholding from	
			Nonqualified Deferred	
			Compensation Plans	3A-8.3
		[c]	Post-2004 Changes for Amounts	
			Deferred Under Nonqualified Deferred Compensation Plan	3A-10
			[i] Notice 2007-78	3A-10
			[ii] Notice 2007-86	3A-10.5
			[iii] Notice 2007-89	3A-10.7
			[iv] Notice 2007-100	3A-10.10
		[d]	IRS Deferred Compensation	
			Regulations	3A-10.14
			[i] Code Section 409a - General	2 4 10 14
			Overview	3A-10.14
			[ii] Options and Other Stock Rights	3A-10.15
			1	511 10.15

		[iii]	Severance	3A-10.17
		[iv]	Code Section 457	3A-10.19
		[v]	Reimbursement and Tax	
			Gross-Up	3A-10.22
		[vi]	Legal Settlement	3A-10.23
		[vii]	Indemnification Arrangements	3A-10.23
		[viii]		
			Aggregation Rules	3A-10.23
		[ix]	Corporate Transactions	3A-10.24
		[x]	Plan Termination And	
			Liquidation	3A-10.24
		[xi]	Coverage of Deferred	
			Compensation Rules	3A-10.25
		[xii]	Calculation of Income	
			Inclusion for Failure to	
			Satisfy 409A	3A-10.25
		[xiii]	Voluntary Correction Program	
			for 409A Operational	
			Failures—IRS	
			Notice 2008-113	3A-10.27
		[xiv]		
			Program for 409A Document	
			Failures—IRS Notice 2010-6	3A-10.28
	[e]	Treas	ury Executive Compensation	
			strictions Under TARP	3A-10.35
		[i]	Compliance and Certification	
		[ii]		
			Executive Compensation	
			Going Forward	3A-10.36
		[iii]	Long-Term Regulatory	
			Reform: Compensation	
			Strategies Aligned With	
			Proper Risk Management	
			and Long-Term Value and	
			Growth	3A-10.38
		[iv]	TARP and Section 409A	3A-10.39
[2]	Ouali		ans	3A-10.40
	[a]		for Payment	3A-10.40
	[b]		Constitutes Payment?	3A-10.41
	[c]		ctible Limits	3A-11
	r.,1	[i]	Pension or Defined-	
			Benefit Plans	3A-11
		[ii]	Profit-Sharing and Stock	
			Bonus Plan or Defined-	
			Contribution Plans	3A-12.2
		[iii]	Deduction Limits Increased by	- · ·
		[*]	EGTRRA	3A-12.3
			=011441	2.1.12.2

	TABLE OF CO	NTENTS	xxiii
		Limitation	3A-12.7
	Contri	butions	3A-12.9
	L 3	ties	3A-12.10
[d]		Ownership Plans	3A-12.11
		Rollover on Sale	
	to ESC	OP	3A-14.1
		ility of Dividend	
		outions	3A-15
	LJ	Exclusion on	
		Loans	3A-17
		x Treatment of	
		ers of Employer	2 4 22
Fa1		ties to an ESOP	3A-23
[e]	1 , 1	oyee Deduction for s to Individual	
		Accounts	3A-26
		se-out Limits	3A-28
		y Withdrawal Tax	3A-28.1
		Couples	3A-28.2
		r or Union	371 20.2
		ored IRA	3A-28.2
		n and Distribution	
		tions	3A-28.3
	[vi] Roth IRA	١	3A-28.4
		se Beneficiaries	3A-28.5
[f]	Employee Dedu	ection for	
	Contributions	s to Qualified Plans	3A-28.8
[g]		oyee Deduction for	
		s to Simplified	
		ensions	3A-28.9
[h]		ve Match Plan for	
		SIMPLE Plans)	3A-28.12
		SIMPLE IRA	3A-28.12
E23		Plan as 401(k) Plan	3A-28.16
[i]		Plans	3A-28.22
[j]		Start-Up Costs of oyers	3A-28.22
		Plan	3A-28.22
		Employer	3A-28.22
		Start-Up Costs	3A-28.23
		the Credit	3A-28.24
[k]		ive Deferrals and IRA	J11 20.2T
[-+]		8	3A-28.24
		le Percentage	3A-28.25

		[ii] Qualified Retirement Savings	
		Contributions	3A-28.25
		[iii] Eligible Individuals	3A-28.26
	[3]	Welfare Benefit Plan	3A-28.27
		[a] Deductions for Contributions to	
		Funded Benefit Plan	3A-28.27
		[b] Excise Taxes on Funded	
		Benefit Plans	3A-29
		[c] Tax Treatment of Exempt Benefit	
		Organizations	3A-30
		[d] Treatment of Gain on Employer's	
		Sale of Property to Welfare	
		Benefit Fund	3A-31
		[e] Collectively-Bargained Welfare	
		Benefit Funds	3A-31
	[4]	Golden Parachute Contracts	3A-32
		[a] Penalty on change of Ownership	
		or Control	3A-32
		[b] Definition of "Highly Compensated	
		Individuals"	3A-32
		[c] Exemption for Payments from	
		Qualified Plans	3A-33
		[d] Reasonable Compensation for	
		Services to Be Rendered at or	
		After the Change in Control	3A-33
		[e] Exemptions for Small and/or Closely	
		Held Businesses	3A-33
	[5]	Contribution Limits Increased by EGTRRA	3A-33
		[a] Defined Contribution Plans	3A-34
		[b] Elective Deferral Limitations	3A-34
		[c] Tax-Exempt Organization and State	
		or Local Governmental Plans	3A-34.1
		[i] Code Section 457 Plans	3A-34.1
		[ii] Tax-Sheltered Code 403(b)	
		Annuities	3A-34.1
		[d] Compensation Limit	3A-34.3
	[6]	Qualified Plan Benefit Limits Increased by	
		EGTRRA	3A-34.4
	[7]	Catch-up Contributions Enacted by	
		EGTRRA	3A-34.6
	[8]	Faster Vesting of Employer Matching	
		Contributions	3A-34.8
	[9]	Repeal of Multiple Use Test for 401(k)	
		Plans	3A-34.9
§ 3A.02	Impac	et of Taxation on Employees	3A-34.11
	[1]	Qualified Plans	3A-34.11

	111	Procedures for Providing a	
		Section 402(f) Notice	3A-61
	[iv]	Procedures for Accomplishing	
		a Direct Rollover	3A-61
	[v]	Effective Dates	3A-61
	[vi]	Safe Harbor Explanation	3A-62
[h]		RRA Revisions to	
	Ro	ollover Rules	3A-62
	[i]	Rollovers Between 403(b)	
		Plans and Other Qualified	
		Plans Allowed	3A-62
	[ii]	After-Tax Contributions to	
		Qualified Plans Eligible	
		for Rollover	3A-64
	[iii]	Rollovers of Nondeductible	
		IRA Contributions	3A-64.1
	[iv]	Notice Requirements Expanded	
		for Eligible Rollover	
		Distributions	3A-64.1
	[v]	Automatic Rollover of Certain	
		Mandatory Distributions	3A-64.2
	[vi]	Hardship Exception to	
		Sixty-Day Rule	3A-64.9
	[vii]	Hardship Distributions	
		Ineligible for Rollover	3A-64.9
[i]	Addi	tional Tax on Early	
	Di	istributions	3A-64.10
	[i]	Periodic Payment Exception	3A-64.11
	[ii]	Early Retirement Exception	3A-64.11
	[iii]	ESOP Exceptions	3A-64.12
	[iv]	Cash-Outs	3A-64.12
	[v]	Other Exceptions	3A-64.12
[j]	Tax o	on Excess Distributions	3A-64.12
	[i]	"Excess Distributions"	
		Defined	3A-64.13
	[ii]	Grandfather Provision	3A-64.14
	[iii]	Excise Tax Upon Death	3A-64.16
	[iv]	Interrelationship with Early	
		Distribution Tax	3A-64.18
[k]	Tax	on Asset Reversions	3A-64.18
	[i]	In General	3A-64.18
	[ii]	Exception for Transfers to	
		ESOPs	3A-64.19
[1]	Plan	Loans to Participants	3A-64.20
	[i]	Loan Amount	3A-64.20
	[ii]	Loan Amortization	3A-64.20

		IABL	E OF CONTENTS	XXV11
		[iii]	Principal Residence	
			Plan Loan	3A-64.20
		[iv]	Deductibility of Interest	3A-64.21
		[v]	Loan Agreement	3A-64.21
		[vi]	Deemed Distribution	3A-64.21
		[vii]	Installment Payments	3A-64.23
	[m]	Minin	num Distribution Rules	3A-64.24
		[i]	Required Beginning Date	3A-64.25
		[ii]	Designated Beneficiary	3A-64.27
		[iii]	Life Expectancy	3A-64.29
		[iv]	Life Expectancy	
			Tables Modified	3A-64.30
		[v]	Minimum Required	
			Distribution	3A-64.31
		[vi]	Treatment of Rollovers	
			and Transfers	3A-64.32
		[vii]	TEFRA Section 242(b)(2)	
			Elections	3A-64.33
		[viii]	Excise Tax on Distribution	
			Shortfall	3A-64.34
	[n]	Death	Benefits	3A-64.35
		[i]	Incidental Death Benefit	
			Requirement	3A-64.35
		[ii]	Exclusion for Employer	
			Provided Death Benefit	3A-64.39
[2]	Qual	ified Do	omestic Relations Order	3A-64.39
[3]			Life Insurance	3A-64.39
[4]	Cafe		ans	3A-64.40
	[a]			
			ection	3A-64.44
		[i]	HIPAA Enrollment	3A-64.44
		[ii]	Status Changes	3A-64.44
		[iii]	Court Ordered Changes	3A-64.45
		[iv]	Scope of Regulations	3A-64.45
	[b]		lination with FMLA	
			quirements	3A-64.45
		[i]	Revoking Elections	3A-64.46
		[ii]	Premium Payments	3A-64.46
		[iii]	Health Flexible Spending	
			Arrangements	3A-64.48
		[iv]	Uniform Coverage Rule	3A-64.48
	[c]		te-Proposed Regulations	3A-64.49
		[i]	Written Plan Requirement	3A-64.50
		[ii]	Nondiscrimination in	
			Operation	3A-64.51
		[iii]	Deferral of Compensation	3A-64.51
		[iv]	Nondiscrimination Rules	3A-64.52

			[v]	Paid Time Off	3A-64.54
			[vi]	Eligible Participants	3A-64.54
			[vii]	Cafeteria Plan Elections	3A-64.55
			[viii]	Plan Year	3A-64.55
			[ix]	"Use-or-Lose" Rule	3A-64.56
			[x]	Run-Out Period Requirements	3A-64.56
			[xi]	Flexible Spending Account	
				Rules	3A-64.56
			[xii]	Dependent Care Assistance	
				Plans ("DCAPS")	3A-64.57
	[5]	Exclu	isions	for Certain Employer Provided	
				enefits	3A-64.57
	[6]			on Fringe-Benefit Law Changes	3A-64.59
		[a]	-	ground	3A-64.59
		[b]		sportation Fringes in Lieu of	
				ompensation	3A-64.60
		[c]		portation Fringe-Benefit	
				ogram Requirements	3A-64.60
		[d]		portation Fringes Offered	
				rough Cafeteria Plans and	
				EBAs	3A-64.61
		[e]		Income Inclusion of Amounts	
				cluded Under Section 132(f)	
				Section 415 Compensation	3A-64.62
		[f]		active Application of the	
				ection of Transportation Fringes	3A-64.63
		[g]		ical Application of TEA 21	3A-64.63
		[h]		stments for Inflation	3A-64.64
		[i]	_	lusion	3A-64.64
	[7]			achute Contracts	3A-64.65
		[a]		otion for Small Business	
				orporations	3A-64.65
		[b]		otion for Corporations with	
				Readily Tradable Securities	3A-64.65
		[c]		otion for Payments Under	
			_	ialified Plans	3A-64.66
	[8]	Sever	-	Pay	3A-64.66
§ 3A.03				Consequences	3A-64.70
o	[1]			onsequences	3A-64.70
	[2]	Estate	e Taxa	tion of Distributions from	
				Plans	3A-64.70
		[a]		Law	3A-64.70
		[b]		Estate Tax Changes	
				fecting Qualified Plans	3A-64.70
		[c]		Estate Tax Changes	
				fecting IRAs	3A-64.71

		TABLE OF CONTENTS	xxix
	[3]	ERTA Changes in the Estate and Gift Tax	
		Rules	3A-66
		[a] Increase in Unified Credit [b] Reduction of Maximum	3A-66
		Tax Rate to 50%	3A-67
		[c] Unlimited Marital Deduction [d] Qualified Terminable Interest	3A-67
		Property	3A-68
		[e] Charitable Remainder Trusts[f] Increase in Annual Gift Tax	3A-69
		Exclusion	3A-69
		[g] Gifts Within Three Years of Death	3A-69
		[h] Jointly Held Property	3A-69
§ 3A.04		ernmental Plans	3A-71
	[1]	Background	3A-71
	[2]	Statutory Definition of "Governmental	
		Plan"	3A-72
		[a] "Agency or Instrumentality of	
		the United States"	3A-73
		[b] Definitions of "State" and	
		"Political Subdivision of	
		a State"	3A-74
		[c] Definition of "Agency or	
		Instrumentality of a State or a	
		Political Subdivision of a State"	3A-75
	[3]	Judicial Determinations of Governmental	
		Entity Status	3A-77
	[4]	Agency Guidance Regarding Governmental	
		Entity Status	3A-79
	[5]	Exclusion of Governmental Plans from	
		ERISA	3A-80
	[6]	Exemption of Governmental Plans from	
		Certain Qualified Plan Rules	3A-81
	[7]	Governmental Plan Qualification	
		Requirements	3A-82
	[8]	Exemption of Governmental Plans from	
		Other Employee Benefit Rules Relating	
		to Retirement Plans	3A-83
	[9]	Requirements for Establishing and	
		Maintaining a Section 414(d)	
		Governmental Plan	3A-84
		[a] Rules for Changes in Status	3A-84
		[b] Limitations to Specific Types of	
		Employers	3A-87
	[10]	ERISA Fiduciary Standard of Care	
	F - J	Applicable to Government Plans	3A-88
		- *	

	[11]	NYC Pension Funds Sued for	
		ESG-Related Divestment	3A-89
		[a] Complaint Allegations	3A-89
		[b] Relief Requested	3A-91
		[c] Argument	3A-91
		[d] Impact of the Divestment Actions	
		on Plan Participants and	
		Beneficiaries	3A-93
		[e] Lack of Standing	3A-93
		[f] No Context-Specific Pleading	3A-94
		[g] Closing Observation	3A-94
	[12]	U.S. Supreme Court Lack of Standing	511) !
	[12]	Analysis Adopted by Kentucky	
		Supreme Court	3A-95
		[a] Background	3A-95
		[b] Analysis.	3A-97
		[i] Direct Injury to Plaintiffs	3A-98
		[ii] Representative Standing	3A-102
		[iii] Standing as Trust	JA-102
		Beneficiaries	3A-107
		[c] Conclusion	3A-107
		CHAPTER 4	
		Participation	
§ 4.01	The T	Tests for Participation	4-3
§ 4.02		num Participation Standards	4-4
	[1]	Maximum Age	4-4
	[2]	Year of Service	4-4
	[3]	Counting Hours	4-5
	[4]	Equivalency Method	4-5
		[a] Working Time Equivalencies	4-5
		[b] Periods of Employment	
		Equivalencies	4-6
		[c] Earnings Equivalencies	4-6
	[5]	Elapsed-Time Method	4-7
	[6]	Decoupling	4-8
	[7]	Time of Participation	4-8
	[8]	Breaks in Service	4-9
	[9]	Service with Other Employers	4-10
	[10]	Leased Employees	4-10
§ 4.03		num Coverage Requirements	4-12
-	[1]	Prior Law, TRA '86 and SBJBA	
		'96 Changes	4-13
		<u>-</u>	

		TABLE OF CONTENTS	xxxi
		[a] Prior Law	4-13
		[b] TRA '86 and SBJBA '96 Changes	
	[2]	Ratio Percentage Test	
	[3]	Average Benefits Test	
		[a] Nondiscriminatory	
		Classification Test	4-17
		[i] Safe Harbor Test	4-18
		[ii] Facts and Circumstances Test	4-19
		[iii] Examples	4-20
		[b] Average Benefit Percentage Test	4-21
	[4]	Components of the Coverage Tests	4-22
		[a] Plan	4-22
		[i] Mandatory Disaggregation	4-22
		[ii] Permissive Aggregation	4-23
		[iii] Plans Automatically Meeting	
		the Minimum Coverage	
		Requirement	
		[b] Employer	
		[c] Employee	4-24
		[i] Employees Who Benefit	
		Under a Plan	
		[ii] Excludable Employees	
	[5]	Former Employees	4-26.4
	[6]	Plans Maintained by More than One	
		Employer	
	[7]	Testing Methods	
	[8]	Family Member Aggregation Rule	
	[9]	Acquisitions and Divestitures	
	[10]	Eligibility to Contribute	
	[11]	Sanctions	
e 4 02 A	[12]	Effective Dates	
§ 4.03A		num Participation Requirements	
	[1]	Applicable to Plans Separately	
	[2]	Plans Excepted from Section 401(a)(26) [a] Plans Benefiting No Highly	4-26.9
		Compensated Employees	4-26.9
		[b] Multiemployer Plans	
		[c] Underfunded Defined Benefit Plans	
		[d] Acquisitions and Deposits	
	[3]	Minimum Participation Requirements	
	[4]	Testing Former Employees	
	[5]	Testing Methods	
	[6]	Retroactive Correction	
	[7]	Plans Maintained by More Than One	7.20.11
	Γ,]	Employer	4-26.11
§ 4.03B	Senar	rate Line of Business Rules	
§ 4.04		ributory Plans.	
· · · ·		y	0.1 .

xxxii	EMPLOYEE BENEFITS LAW	
	[1] Mandatory Contributions	4-26.14
	[2] Voluntary Contributions	4-26.15
§ 4.05	Other Coverage Requirements	4-26.17
	[1] Employees Working Beyond Retirement	
	Age	4-26.17
	[2] Plan Must Have Covered Employees	4-26.17
	[3] Right to Deny Future Participation	4-26.18
	[4] Continuation of Participation During Leave of Absence	4-26.18
	[5] Period During Which the Plan Must Meet	4-20.10
	the Coverage Requirements	4-26.20
§ 4.06	Comparability	4-27
0	[1] Traditional Comparability Plans	4-27
	[2] New Comparability Plans	4-29
§ 4.07	Applicability and Effective Dates	4-30
	CHAPTER 5	
	Vesting	
§ 5.01	In General	5-3
§ 5.02	Statutory Full Vesting	5-4
	[1] Termination and Partial Termination of the	
	Plan and Complete Discontinuance of	
	Contributions.	5-4
	[2] Attainment of Normal Retirement Age	5-5
0. 5.03	[3] Employee Contributions	5-6
§ 5.03	Minimum Vesting Standards	5-8
	[1] Minimum Vesting Standards Prior to 1988	5-8 5-8
	[a] 10-Year Vesting	5-8 5-8
	[b] 5-to-15-Year Vesting	5-8
	[d] Four-Forty Vesting	5-9
	[e] Class Year Plan: Five-Year Vesting	5-10
	[f] Three-Year Eligibility Plan: 100%	0 10
	Vesting	5-10
	[2] Minimum Vesting Standards After 1988	5-11
	[a] The 5-Year Rule	5-11
	[b] 3-to-7-Year Graduated Vesting	5-11
	[c] Immediate Vesting	5-11
	[d] Top Heavy Plans	5-11
	[e] Multiemployer Plans	5-12
	[f] Class-Year Plans	5-12
	[g] Changes in Vesting Schedule	5-12
	[h] Discriminatory Vesting	5-13
	[i] PBGC Insurance	5-13

		TAB	LE OF CONTENTS	xxxiii
[3]	Тор	Heavy	Plans	5-13
[4]	Payr	oll-Bas	sed Employee Stock Ownership	
				5-14
[5]			to Vesting Requirements: Early	
	T	ermina	tion of Plan	5-14
[6]	Serv	ice for	Vesting Purposes	5-15
	[a]	Cou	nting Hours of Service	5-16
		[i]	Proper Computation Period	5-17
		[ii]		5-17
		[iii]	Elapsed Time Method	5-17
	[b]	Cont	rolled Group Rule	5-20
	[c]		udable Service	5-21
[7]	Brea	ks in S	Service	5-23
	[a]	Elap	sed Time	5-25
	[b]	Sign	ificance of Incurring a	
		O	ne-Year Break in Service	5-25
		[i]	One-Year Holdout Rule	5-25
		[ii]	Freezing Pre-Break Service	5-25
		[iii]	Rule of Parity	5-26
[8]	Char	nges in	Vesting Schedule	5-26
[9]			of Vested Rights	5-27
	[a]	Perm	nissible Conditions	5-27
		[i]	Cash-Out Rule Restrictions	
			on Mandatory Distributions	5-30
		[ii]	Look-Back Rule	5-30.1
		[iii]	Cash-Out Rule and Service	
			Crediting for Accruals	5-30.1
		[iv]	Plan Amendments	5-30.2
		[v]	Benefits Protected from	
			Reduction of Elimination	5-30.2
	[b]	Brea	k in Service Rules	5-30.2
		[i]	Five Consecutive One-Year	
			Breaks in Service	5-31
		[ii]	Cash-outs	5-31
		[iii]	Separate Account Rule	5-33
	[c]		loyee Consent	5-35
	[d]		ditional Vesting	5-35
	[e]		Beneficiary	5-35
	[f]		l Boy" Clauses	5-35
	[g]		ension of Benefits	5-36
	[h]		-Cutback Rule	5-36
	[]	[i]	Generally	5-36
		[ii]	Retirement-Type Subsidy	5-36
		[iii]	Optional Forms of Benefit	5-37
		[iv]	Age 70 1/2 In-Service	2 2 7
		[,,]	Distributions	5-37
				,

		[v] IRS Issues Final Regulations	
		for Benefit Plan	
		Amendments	5-38
		[vi] Special Rules for ESOPs	5-40
	[10]	Allocation of Forfeitures	5-41
	[11]	When a Vested Benefit is Payable	5-41
	[12]	Faster Vesting of Employer Matching	
		Contributions.	5-42
		CHAPTER 6	
		Qualifying the Plan	
§ 6.01	Purno	ose of Qualifications	6-10.2
6.02		Determination Letter Process	6-11
3 0.02	[1]	Requesting a Determination Letter	6-13
	[1]	[a] IRS Guidance on Plan Amendments	0 13
		for EGTRRA	6-13
		[i] The GUST Remedial	0 13
		Amendment Period	6-13
		[ii] Amendments to EGTRRA	6-14
		[iii] EGTRRA Plan Amendments	0 1 1
		May Be Needed Sooner	6-15
		[iv] Simplification of Determination	0 13
		Letter Procedure	6-16
		[b] Revenue Procedure 98-14	6-18
		[c] Revenue Procedure 93-39	6-19
		[d] Form 5300	6-21
	[2]	Notice to Interested Parties	6-21
	[3]	Remedial Amendment Period	6-22
	[4]	Appeals Procedure.	6-23
	[5]	Timing Amendments Pursuant to the Tax	0 23
	[2]	Reform Act of 1986 and Subsequent	
		Legislation.	6-24
		[a] Conditions	6-24.1
		[b] Collectively Bargained Plans	6-24.1
		[c] Model Amendments	6-24.2
	[6]	IRS User Fee Program	6-24.2
	[7]	Voluntary Compliance Resolution	· - · · -
	r. 1	Programs	6-24.4
		[a] Background	6-24.5
		[b] CAP Monetary Sanction	6-24.6
		[c] IRS Administrative Policy Regarding	. •
		Self-Correction (APRSC)	6-24.6
		[i] Administrative Policy	
		Regarding Sanctions	6-24.6

	TABLE OF CONTENTS			
	[ii] Administrative Policy Regarding Self-Correction	6-24.7		
[d				
	(VCR) Program	6-24.10		
[e		6-25		
[f		6-26		
[g				
	Requirements	6-26		
	[i] Information to be Provided to			
	the IRS	6-26		
	[ii] Description of Proposed			
	Corrections Method	6-27		
	[iii] Standardized VCR Procedure			
	(SVP)	6-28		
	[iv] Compliance Fee	6-30		
[h				
	Statement	6-30		
[i]				
	CAP	6-31		
	[i] Scope of the Voluntary			
	Consideration Under			
	CAP (Walk-In CAP)	6-31		
	[ii] Procedures for a Walk-In			
	CAP	6-31		
	[iii] Scope of Correctional			
	Procedure and Amount			
	of Monetary Sanctions	6-32		
[j]	CAP—Use of Trust Assets to Pay			
	Sanctions	6-33		
[k] What to Do	6-33		
[1]	Further Developments in IRS Plan			
	Auditing/Compliance			
	Examinations	6-34		
	[i] Voluntary Compliance Program			
	for Section 403(b)	6-34		
	[ii] IRS Guidelines to Examine			
	Employee Plans	6-36		
	[iii] Delinquent Filers Voluntary			
	Compliance Program			
	(DFVC)	6-36		
	[iv] CAP Procedures for Restorative			
	Payments to Plan	6-36.1		
	[v] IRS Procedures for Failure to			
	Amend	6-36.1		
[8] E	mployee Plans Compliance Resolution			
	System	6-36.2		
Га		6-36.2		
Γ				
		(D. 1. 02)		

	[i] Qualification Failure	6-36.2
	[ii] Plan Document Failure	6-36.2
	[iii] Operational Failure	6-36.2
	[iv] Demographic Failure	6-36.3
[b]	Principles for Correcting Retirement	
	Plan Failures	6-36.3
	[i] Restoration of Benefits	6-36.3
	[ii] Reasonable and Appropriate	
	Correction	6-36.3
	[iii] Principles Regarding Corrective	
	Allocations and Corrective	
	Distributions	6-36.4
	[iv] Special Exceptions to Full	
	Correction	6-36.4
	[v] Reporting	6-36.5
[c]	Matter Subject to Excise Taxes	6-36.5
[d]	Effect of IRS Examination	6-36.6
	[i] Under Examination	6-36.6
	[ii] Aggregation With a Plan	
	Under Examination	6-36.6
	[iii] Termination of a Plan—	
	Form 5310 Filed	6-36.6
	[iv] Examination by the Exempt	
	Organization Division of	
	the IRS	6-36.7
[e]	Voluntary Self-Correction (APRSC)	6-36.7
	[i] Insignificant Operational	
	Failure	6-36.7
	[ii] Significant Operational	
F.071	Failures	6-36.8
[f]	Voluntary Correction With IRS	
	Approval	6-36.8
	[i] VCR Program	6-36.8
	[ii] Operational Failures and	
	Corrections Under SVP	6-36.9
	[iii] Walk-In CAP Requirements	6-36.11
	[iv] Application Procedures for	(2 (12
	VCR and Walk-In CAP	6-36.12
F - 1	[v] Egregious Failures	6-36.16
[g]	Correction on Audit (Audit CAP)	6-36.16
	[i] Audit CAP Requirements	6-36.16
	[ii] Maximum Payment Amount	6-36.16
гьл	[iii] Determination of Sanction	6-36.16
[h]	VCR/SVP/Walk-In CAP Checklist	6-36.17
[i]	IRS Policies for Walk-in CAP Cases	6-36.19
	[i] No IRS Examination under Walk-in CAP	6-36 20
	waik-in CAP	n-30 20

	TABLE OF CONTENTS			
		[ii] The IRS Will Not Request		
		Copies of the Plan		
		Sponsor's Self-Audit		
		Compliance Report	6-36.20	
		[iii] Plan Sponsors Must Verify		
		Correction of Failures Before		
		the Closing Agreement Is		
		Signed	6-36.20	
		[iv] The Closing Agreement Will		
		Specifically Describe All		
		Issues Addressed in the		
		Case and How Each Issue		
		Was Resolved	6-36.20	
	[j]	Involving a Plan Document Failure		
		under Walk-in CAP	6-36.20	
	[k]	Cases Involving a Qualification		
		Failure Discovered During the		
		Determination Letter Process	6-36.20	
		[i] The IRS Discovers the		
		Qualification Failure	6-36.20	
		[ii] The Plan Sponsor Informs the		
		IRS of the Qualification	(2 (21	
	F13	Failure	6-36.21	
	[1]	Cases Involving Excise Taxes under	(2(21	
		Walk-in CAP and Audit CAP	6-36.21	
		[i] Excise Tax: Minimum Required	6 26 21	
		Distribution	6-36.21	
FO1	IDC	[ii] Other Excise Taxes	6-36.21	
[9]		Extends Employee Plans Correction	6-36.21	
		rogram to 403(b) Plans	6-36.22	
	[a]	Types of 403(b) Plan Failures [i] Demographic Failure	6-36.22	
			6-36.22	
		[ii] Eligibility Failure	6-36.22	
		[iv] Other Definitions	6-36.23	
	[h]	IRS 403(b) Fix-It Guide	6-36.23	
	[b] [c]	Correction Methods	6-36.25	
	[c]	[i] Applicability of EPCRS	6-36.25	
		[ii] Correction of Excess	0 30.23	
		Amounts	6-36.26	
		[iii] Correction of a Plan of an		
		Ineligible Employer	6-36.27	
	[d]	Self-Correction (APRSC)	6-36.27	
		[i] In General	6-36.27	
		[ii] Special Rules for APRSC	6-36.27	
	[e]	TVC Program	6-36.28	
		[i] In General	6-36.28	

xxxviii EMPLOYEE BENEFITS LAW

		[ii] TVC Requirements	6-36.28
		[iii] Eligibility for TVC	6-36.28
		[iv] Failures Covered by TVC	6-36.28
		[v] Correction of Excess	
		Amounts	6-36.29
	[f]	Application Procedures for TVC	6-36.29
		[i] In General	6-36.29
		[ii] Submission Requirements	6-36.29
		[iii] Required Documents	6-36.29
		[iv] Checklist	6-36.29
	[g]	Fees for TVC	6-36.30
	103	[i] Compliance Correction Fee	6-36.30
		[ii] Fee for Operational Failures	6-36.30
		[iii] Fee for Certain Excess	0-30.30
		Amounts	6-36.30
		[iv] Fee for Demographic and	0-30.30
		Eligibility Failures	6-36.30
		[v] Fee for Multiple Failures	6-36.31
		[vi] Fee for Egregious Failures	6-36.31
	[h]	Audit CAP for 403(b) Plans	6-36.32
	[**]	[i] Audit CAP Requirements	6-36.32
		[ii] Payment of Sanction	6-36.32
	[i]	What This Correction Program	
	r-1	Means to Employers	6-36.32
	[j]	Effective Date	6-36.33
[10]		nges to the Employee Plans Compliance	
. ,		esolution Program	6-36.33
	[a]	Basic Elements of EPCRS	6-36.33
	[b]	IRS Improvements to EPCRS	6-38
		[i] Refinement of Factors	
		Considered for Determining	
		Audit CAP Sanction	
		Amount	6-38
		[ii] Exceptions to Full Correction	6-39
		[iii] Terminated Plans	6-39
		[iv] Changes to Anonymous	
		Submission Procedures	6-40
		[v] VCGroup Procedures	6-40
		[vi] Transferred Assets in Merger	
		or Other Corporate	
		Transactions	6-41
		[vii] Favorable Letter	6-42
	[c]	IRS Updates and Expands EPCRS	
		Qualified Plan Correction	
		Program—Revenue	
		Procedure 2008-50	6-42

	TABL	xxxix	
	[i]	Expanded Definition of "Reasonable and	6-42
	[ii]	Appropriate" Correction Excess Amount and Excess Allocation	6-42.1
	[iii]	Exceptions to Full Correction	6-42.1
	[iv]	Broader Definition of	
	[v]	"Overpayment"	6-42.2
		Contributions or Accruals	6-42.2
	[vi]	Guidance on Loan Failures	6-42.3
	[vii]	New Streamlined Voluntary Correction Program	
	[viii]		6-42.4
		Procedures	6-42.4
	[ix]	VCP Procedural Changes	6-42.6
[d]	Reve	nue Procedure 2013-12	6-42.7
	[i] [ii]	IRS Self-Correction Program IRS Audit CAP Monetary	6-42.7
	[iii]	Sanctions	6-42.7
	[iv]	Statement IRS Updates Employee Plans Compliance Resolution	6-42.8
		System	6-42.9
[e]	Reve	nue Procedure 2015-27	6-42.13
	[i] [ii]	Summary IRS Description of	6-42.13
	[iii]	Modifications to EPCRS Modifications to Rev.	6-42.13
		Proc. 2013-12	6-42.16
	[iv]	Effective Date	6-42.29
[f]	Rev.	Proc. 2015-28	6-42.29
	[i]	Summary	6-42.29
	[ii]	Description of Modifications to EPCRS	6-42.31
	[iii]	Modifications to Rev.	
		Proc. 2013-12	6-42.34
	[iv]	Effective Date	6-42.39
[g]		nue Procedure 2015-32	6-42.39
-	[i] [ii]	Background	6-42.39
		Proc. 2014-32	6-42.41

[iii]	Permanent Penalty Relief	
		6-42.41
[iv]	Program Eligibility	6-42.43
[v]	Procedural Requirements	6-42.44
		6-42.47
		6-42.47
		6-42.47
		6-42.48
		6-42.52
		6-42.62
		6-42.74
		6-42.74
ГііТ		6-42.75
		6-42.76
		6-42.76
[]		6-42.77
Reve		6-42.78
		6-42.79
		6-42.79
		6-42.79
		6-42.80
		6-42.80
		0 12.00
[11]		
		6-42.81
[iiii]		0 12.01
[111]		
		6-42.81
ſivl		0 12.01
[14]		
		6-42.81
[v]		0 12.01
[,]		
		6-42.82
[wi]		0 42.02
[1 1]		6-42.82
[vii]		0 42.02
[111]		6-42.82
[viii]		0 42.02
[1111]		6-42.83
[iv]		0-42.03
[بد]	•	
		6-42.83
	[iv] [vi] Rever [i] [iii] [iv] Rever [i] [iii] Rever [i] [iii] Riii]	Program Eligibility [v] Procedural Requirements. [vi] Effective Date Revenue Procedure 2016-37 [i] Summary [ii] Background [iii] Individually Designed Plans [iv] Pre-Approved Plans. Revenue Procedure 2016-51 [i] Determination Letter

	[11]	Requ	irements for Amending Defined	
		Bene	efit Plans to Comply with GATT	
		aı	nd SBJPA under Revenue	
		R	uling 98-1	6-42.84
		[a]	Background	6-42.84
		[b]	Effective Date for Plan Amendments	
		F - 3	(Q&A-1)	6-43
		[c]	Employer Options for Plan	
		[-]	Amendments	6-44
			[i] Option 1: Retroactive	0 11
			Application to All Plan	
			Benefits (Q&A-10)	6-44
			[ii] Option 2: Protection of	0 11
			Accrued Benefits	
				6-44
	[12]	LICE	(Q&A-12)	6-48
	[12]		RRA Qualification Requirements	
		[a]	Elective Deferrals	6-49
		[b]	Compensation During a Period of	6.40
			Qualified Military Service	6-49
		[c]	What Is Not Required by	
			USERRA	6-50
		[d]	USERRA Procedural Matters	6-50
			[i] Effective Date	6-50
			[ii] The Remedial Amendment	
			Period	6-50
			[iii] Model Amendments	6-50
		[e]	Operational Compliance with	
			USERRA	6-51
		[f]	Required USERRA Notice	6-51
	[13]	EGT	RRA Amendments	6-52
	[14]	IRS	90-Day Pre-Examination Compliance	
			ilot Program	6-52.1
		[a]	Under EPCRS (SCP, VCP and	
			Audit CAP)	6-52.1
		[b]	Under 90-Day Pre-Examination	
			Compliance Pilot Program	6-52.2
		[c]	How to Take Advantage of the	
		[-]	Pilot Program	6-52.2
§ 6.03	Regu	iremen	ts for Qualification.	6-52.3
3	[1]		Instruments Must Be Written	6-52.3
	[-]	[a]	Requirements for Valid Trusts	6-52.3
		[b]	Plans and Trusts	6-53
		[c]	Requirements for a Valid Plan	6-53
	[2]		Must Be Permanent and	0-33
	[4]		ontinuing	6-54
	[3]		Must Be Communicated	6-55
	[3]	1 Iall	must be communicated	0-33

[4]	Plan Must Prohibit Diversion or Reversion	
	to Employer	6-55
	[a] Restrictions on Group Annuity	
	Contracts	6-56
	[b] Initial Qualification of a Plan	6-57
	[c] Contributions Made by	
	Mistake of Fact	6-57
[5]	Plan Must Be for the Exclusive Benefit of	
	Employees or Their Beneficiaries	6-58
	[a] Definition of "Employee"	6-58
	[b] Parity Between Corporate and	
	Self-Employed Plans	6-59
	[c] Shareholders and Officers	6-62
	[d] Professional Corporations	6-63
	[e] Insurance Agents	6-64
	[f] Attorneys, Accountants, etc	6-64
	[g] Plan for Former Employees	6-64
	[h] Definition of "Beneficiaries"	6-65
	[i] Meaning of "Exclusive Benefit"	6-66
	[j] Employer Control of, or Benefit	
	from, a Qualified Plan	6-66
	[k] Leased Employees	6-67
	[i] Determination of Leased	
	Employee Status	6-67
	[ii] "Safe Harbor Plan"	
	Exception	6-69
	[iii] Effect of Leased Employee	
	Status	6-70
	[iv] Recordkeeping Requirements	6-70
	[1] Affiliated Service Groups	6-71
[6]	Prohibition Against Assignment and	
	Alienation	6-72
	[a] QDRO's	6-72
	[b] Offset of a Participant's Benefit	6-74.1
[7]	Definitely Determinable Benefits	6-74.2
[8]	Feeder Plans	6-74.3
[9]	Employers Covered Under a Single Plan	6-74.3
[10]	Compensation	6-76
	[a] Tax Reform Act of 1986	6-76
	[i] Uniform Definition	6-76
	[ii] \$200,000 Limit	6-77
	[b] Compensation Limits Increased by	
	EGTRRA	6-77
	[i] General Rule	6-77
	[ii] Definition of Compensation	6-79
[11]	Highly Compensated Employees	6-80
	[a] Special Rule for the Current Vear	6-80

		TABLE OF CONTENTS	xliii
		[b] Special Rule for Officers	6-80
		[c] Special Rule for Family Members	6-81
		[d] Top-Paid Group	6-81
	[12]	Repeal of Special Definition of Highly	
		Compensated Employee	6-82
	[13]	IRS Sample Plan Provisions	6-82
§ 6.04		ERVED]	6-83
§ 6.05		liscrimination Requirements After 1988	6-105
	[1]	Nondiscrimination in Amount of	
		Contributions or Benefits	6-106
		[a] Overview	6-106
		[b] General Safe Harbor Requirements	6-107
		[i] Defined Contribution Safe	
		Harbors	6-108
		[ii] Defined Benefit Safe Harbors	6-111
		[c] Other Safe Harbor Testing Methods	6-113
		[i] Target Benefit Plans	6-113
		[ii] Cash Balance Plans	6-113
		[iii] Plans Offsetting Benefits with	
		Benefits Provided Under	6 114
		Other Plans	6-114
		L 3	6-114
		Design-Based Alternatives [d] General Test and Restructuring	0-114
		Rules	6-128
		[i] General Test	6-128
		[ii] Determination of Accrual	0-120
		Rates	6-128
		[iii] Restructuring	6-129
		[iv] Accrual Rates	6-129
	[2]	Nondiscriminatory Availability of Benefits,	0 12)
	[2]	Rights and Features	6-130
		[a] "Features" to Be Tested	6-132
		[b] Current Availability	6-133
		[c] Effective Availability	6-134
	[3]	Nondiscriminatory Effect of Plan	0 10 .
	[-]	Amendments and Terminations	6-134
		[a] Amendments	6-135
		[b] Past Service Credits	6-136
	[4]	Employee Contributions	6-136
	[5]	Permitted Disparity	6-136
		[a] Adjusting Allocations to Impute	
		Disparity	6-137
		[b] Grouping	6-138
	[6]	Cross-Testing Defined Benefit and Defined	
		Contribution Plans	6-139
	[7]	Definition of a Plan and Plan Aggregation	6-139

	[8]	Plan	Restructuring	6-140
	[9]	Test	ing of Plans with Respect to	
		F	ormer Employees	6-141
	[10]		itional Rules	6-141
	[11]		sition and Fresh-Start Rules	6-143
	[12]		ctive Dates	6-144
	[]	[a]	Nondiscrimination in Benefits	6-144
		[b]	Nondiscrimination in Benefits, Rights	0 111
		[o]	and Features	6-145
		[c]	Past Service Credits	6-146
		[d]	Contributory Plans	6-146
			Restricted Benefits	6-147
		[e]		
		[f]	Section 401(a)(4) Safe Harbor	6-147
		[g]	Related Code Provisions	6-147
			[i] Section 410(b) Minimum	C 147
			Coverage Requirements	6-147
			[ii] Separate Line of Business	6-148
			[iii] Section 401(a)(17)	
			Compensation	
			Requirements	6-148
			[iv] Section 401(a)(26) Minimum	
			Participation Requirement	6-149
		[h]	Restrictions on Early Termination	6-149
		[i]	PIA Offset Plans and Section 401(I)	6-150
		[j]	Section 414(q)	6-150
		[k]	Section 414(s)	6-150
	[13]	EGT	RRA Modification of Top-Heavy	
			ules	6-150
		[a]	Definition of Top-Heavy Plan	6-151
		[b]	Definition of "Key Employee"	6-151
		[c]	Minimum Benefits for Non-Key	
			Employees	6-152
	[14]	None	discrimination Relief For Closed	0 102
	[1,1]		refined Benefit Plans	6-153
		[a]	General	6-153
		[b]	Requested Relief	6-154
			=	6-154
\$ 6.06	Come	[c]	Comments Requested	
§ 6.06			on Requirements	6-154.2
	[1]		nition of Compensation	6-154.2
		[a]	Compensation Safe Harbors Under	(1540
			Section 415(c)(3)	6-154.2
		[b]	Compensation Under Section 414(s)	6-155
			[i] Definitions of Compensation	 -
			that Satisfy Section 414(s)	6-155
			[ii] Reasonable Definition of	
			Compensation	6-156

	T.	ABLE OF CONTENTS	xlv
	[:	Use of Rate-of-Pay Definition for Purposes of Section 414(s)	6-156
	[:	iv] Pre- and Post-Participation and	6-157
	[-	v] Nondiscrimination	
	[:	vi] Employees Taken into Account for	6-157
	[:	Purposes	6-158
[2]	T ''44'	Contributions	6-158
[2]			(150
	-		6-159
			6-159
	[:		6-159
	[:	ii] After 1993	6-160
		=	6-160
		Employer Plans	6-161
	_	ii] Correction of Plans Maintained	6-161
	[:	Employer	6-161
	_	Individuals	6-161
[3] [4]			6-162
	EGT	RRA	6-162
	[a] (General Rule	6-162
	[b] I	Definition of Compensation	6-164
			6-166
			6-167
[1]			6-167
			6-167
			6-168
			6-169
		Sanctions	6-169
	[e] \	Voluntary Compliance Program	6-170
[2]	Prevent	ing Sanctions and Disqualification	6-170
	[a] C		6-170
	[b] E		6-171
	[RES Multi [1]	[2] Limitati Qual [a] A [i] [b] P [c] M [i] [i] [i] [i] [i] [i] [i] [i] [i] [i	for Purposes of Section 414(s) [iv] Pre- and Post-Participation and Leave of Absence [v] Nondiscrimination Requirement Requirement Requirement [vi] Employees Taken into Account for Nondiscrimination Purposes Remployee and Matching Contributions [2] Limitation on Annual Compensation for Qualified Plans [a] Annual Adjustment of Compensation Limit [i] 1989 to 1994 [ii] After 1993 [b] Proportional Reduction in Limit [c] Multiemployer and Multiple Employer Plans [i] Compensation Limit [iii] Correction of Plans Maintained by More than One Employer [iiii] Compensation of Self-Employed Individuals [3] Effective Dates [4] Compensation Limits Increased by EGTRRA [a] General Rule [b] Definition of Compensation. [RESERVED] Multiemployer Plan Qualification Requirements [1] IRS Multiemployer Examination Program [a] Imposition of Monetary Sanctions [b] IRS Field Directive [c] Fiduciary Insurance Coverage [d] Administrative Policy Regarding Sanctions [e] Voluntary Compliance Program [2] Preventing Sanctions and Disqualification. [a] Compliance Audit/Operational Review

CHAPTER 7

[RESERVED]

CHAPTER 8

Funding

§ 8.01	Employe	e Trusts		8-2.5
§ 8.02				8-3
	[1] T	rustee		8-3
	[2] T	rustor		8-3
	[3] F	duciary		8-3
		-	est	8-4
	[5] A	gent-Trustee R	Relationship	8-4
§ 8.03				8-6
	[1] T	rusts		8-6
	[2] I ₁	dividual-Conti	ract Plans	8-6
	[3]	roup Annuity	Contracts	8-8
	[8] Group Ar	nnuity Plan	8-8
	[1] Deposit-A	Administration Group	
		Annuit	y Plan	8-8
	[0] Group Pe	rmanent Pension Plan	8-8
	[4] S	olit Funding C	ontract	8-9
	[5] E	mployers Parti	cipating in a Single Plan	8-9
	[5A] P	EPs and MEPs	: Employers Participating	
		in a Single P	lan Under	
		the SECURE	Act	8-12.5
	[8] What Are	PEPs?	8-12.5
		[i] Be	nefits	8-12.5
		[ii] Fid	luciary Responsibilities	8-12.6
	[١] What Are	MEPs?	8-12.6
		[i] Be	nefits	8-12.6
		[ii] Re	strictions	8-12.7
	[0] Governan	ce Requirements	8-12.7
	[0] Fiduciary	Responsibilities	8-12.8
	[6] Litigation	and Regulatory Activity	8-12.9
	[f	Key Take	eaways	8-12.9
	[8] Statutory	Basis for SECURE Act	
		Change	es	8-12.10
		[i] ER	ISA § 3(43) Pooled	
			Employer Plan	8-12.10
		[ii] ER	ISA § 3 (44) Pooled	
			Plan Provider	8-12.11

			TAB	LE OF CONTENTS	xlvii
			[iii]	IRC § 413(e) Application of Qualification Requirements for Certain Multiemployer Plans with Pooled Plan	
				Providers	8-12.13
	[6]			rusts Under One Plan	8-12.16
	[7] [8]	Fund	ling Th	d Arrangementsnrough Custodial Accounts and	8-12.16
				Contracts	8-12.17
	[9]			nnuities	8-12.17
§ 8.04 § 8.05	Fundi	ng Ru	les for	Single-Employer Defined Plans Under the Pension	8-13
				of 2006	8-14
					8-14
	[1]				8-14
		[a] [b]		ling Under PPAerfunded, At-Risk Plans and Not	0-14
		[Մ]		Vell Funded Plans	8-45
		[c]		arial Valuation Under PPA	8-45
	[2]	Fund	ling Ru	ıles for Plan Years Beginning	0-43
		A		07	8-47
		[a]		mum Required Contribution	8-47
		[b]	Shor	tfall Amortization Charge	8-49
			[i]	Shortfall Amortization	
				Installments	8-49
			[ii]	Shortfall Amortization Base	8-49
			[iii]	Shortfall Amortization Charge May Not Be Less Than	
				Zero	8-50
			[iv]	Exception to Shortfall	
				Amortization Base for	
				Well-Funded plan	8-50
			[v]	Early Deemed Amortization	
				of Funding Shortfalls for	
				Preceding Years	8-51
			[vi]	Shortfall Amortization Charge	
				Included in Termination	
				Liability to PBGC Trustee	8-52
		[c]		ver Amortization Charges	8-52
		[d]		it Balances	8-53
			[i]	Funding Standard Carryover	^ - -
			F***3	Balance	8-53
			[ii]	Prefunding Balance	8-54
			[iii]	Determining Increase in	^ - :
			F: 3	Prefunding Balance	8-54
			[iv]	Credit Balance Adjusted for	^ - :
				Investment Experience	8-54

		[v] Election to Apply Credit	
		Balance Against Minimum	
		Required Contribution	8-55
		[vi] Agreement with PBGC May	
		Prevent Use of Credit Balance	
		to Reduce Plan Assets	8-55
		[vii] Election to Waive	
		Credit Balance	8-55
	[e]	Interest Rate Assumptions:	
		Segmented Yield Curve	8-56
	[f]	Mortality Table	8-58
	[g]	Accounting for Probability of	
	[6]	Lump-Sum Benefit Payments	8-59
	[h]	Changes in Actuarial Assumptions	
		Require IRS Approval	8-59
	[i]	Special Assumptions for	
	r-1	At-Risk Plans	8-60
		[i] Funding Target for	
		At-Risk Plans	8-61
		[ii] Phase-in Rules for	
		At-Risk Liability	8-62
	[j]	Valuation Date	8-62
	[k]	Value of Plan Assets	8-62
	[1]	Timing Rules for Contributions	8-63
	[m]	Excise Tax on Failure to Make	
	[]	Minimum Required Contributions	8-63
[3]	Bene	efit Limitations Under Single-Employer	0 03
[2]		Defined Benefit Pension Plans	8-64
	[a]	Plant Shutdown and Other	0 0 .
	[4]	Unpredictable Contingent Event	
		Benefits	8-64
	[b]	Plan Amendments Increasing	0 0 .
	[o]	Benefit Liabilities	8-65
	[c]	Prohibited Payments	8-65
	[d]	Cessation of Benefit Accruals	8-66
	[e]	Adjusted Funding Target Attainment	
	[-]	Percentage	8-67
		[i] In General	
		[ii] Special Rule for Fully	0 0,
		Funded Plans	8-67
		[iii] Presumptions as to	0 0,
		Funded Status	8-68
	[f]	Reduction of Funding Standard	
	r-1	Carryover and Prefunding	
		Balances	8-69
		[i] Election to Reduce Balances	8-69
		L.J. —	0 0)

			TABLE OF CONTENTS	xlix
			[ii] Deemed Reduction of Balances in the Case of Collectively	
			Bargained Plans [iii] Deemed Reduction of Balances	8-69
		[g]	in the Case of Other Plans Contributions Made to Avoid a	8-69
			Benefit Limitation	8-69
			[i] In General[ii] Security as Alternative to	8-69
		[h]	Additional Contributions Treatment of Plan as of Close of	8-70
			Prohibited or Cessation Period	8-70
		[i]	Notice to Participants	8-70
	[4]	Rest	trictions on Funding of Nonqualified	
		Γ	Deferred Compensation Plans by	
		E	Employers Maintaining Underfunded	
			r Terminated Single-Employer Plans	8-71
	[5]	MA	P-21 Funding Stabilization Provisions	8-73
8.06			iles for Multiemployer Defined Benefit	
			nder the Pension Protection Act	
				8-74.2
	[1]		ding Rules for Multiemployer Defined	
			Benefit Plans	8-74.2
		[a]	In General	8-74.2
		[b]	Amortization Periods	8-74.2
		[c]	Actuarial Assumptions	8-74.2
		[d]	Extension of Amortization Periods	8-74.2
		[e]	Interest Rate Applicable to Funding	
			Waivers and Extension of	
			Amortization Periods	8-75
		[f]	Controlled Group Liability for	
			Required Contributions	8-75
		[g]	Shortfall Funding Method	8-75
		[h]	Effective Date	8-76
	[2]		itional Funding Rules for Multiemployer	
			lans in Endangered or Critical Status	8-76
		[a]	In General	8-76
		[b]	Reorganization Status	8-76
		[c]	Insolvency	8-77
		[d]	Additional Funding Rules for	
			Significantly Underfunded	
			Multiemployer Plans	8-77
		[e]	Annual Certification of Status;	
			Notice; Annual Reports	8-78
		[f]	Endangered Status	8-79
			[i] Definition of Endangered	
			Status	8-79

		[ii]	Information to Be Provided to	0.70
		[iii]	Bargaining Parties Funding Improvement Plan	8-79
			and Funding Improvement	
		F. 3	Period	8-80
		[iv]	Requirements Pending	
			Approval of Plan and	
			During Funding	0.01
		[]	Improvement Period	8-81
		[v]	Effect of and Penalty for	
			Failure to Adopt a Funding	8-82
		[vi]	Improvement Plan Excise Tax on Employers	0-02
		[VI]	Failing to Make Required	
			Contributions	8-82
		[vii]	Application of Excise Tax to	0-02
		[vii]	Plans in Endangered	
			Status/Penalty for Failure to	
			Achieve Benchmarks	8-83
		[viii]	Waiver of Excise Tax	8-83
	[g]		al Status	8-83
	[8]	[i]	Definition of Critical Status	8-83
		[ii]	Additional Contributions	0 02
		[]	During Critical Status	8-84
		[iii]	Reductions to Previously	
			Earned Benefits	8-85
		[iv]	Information to Be Provided to	
			Bargaining Parties	8-86
		[v]	Rehabilitation Plan	8-86
		[vi]	Rehabilitation Period	8-87
		[vii]	Rules for Reductions in Future	
			Benefit Accrual Rates	8-87
		[viii]	Requirements Pending	
			Approval and During	
			Rehabilitation Period	8-88
[3]	Meas	sures to	Forestall Insolvency of	
	M	lultiemp	oloyer Plans	8-90
[4]	With	drawal	Liability Reforms	8-91
	[a]	Repea	al of Limitation on Withdrawal	
		Lia	ability in Certain Cases	8-91
	[b]		drawal Liability Continues If	
		W	ork Contracted Out	8-92
	[c]		cation of Forgiveness Rule to	
			ans Primarily Covering	
			nployees in Building and	
		Co	onstruction	8-92

		TABLE OF CONTENTS	li
		[d] Procedures Applicable to Disputes Involving Withdrawal Liability	8-93
		[e] Prohibition on Retaliation Against Employers Exercising Their Rights to Petition the Federal	0.05
	[5]	Government	8-95
	[6]	the PBGC Exception from Excise Tax for Certain	8-96
		Multiemployer Pension Plans	8-96
§ 8.07	Inter	est Rate Assumptions	
	[1]	Interest Rate Assumption for Determinatio of Lump-Sum Distributions	
	[2]	Interest Rate Assumption for Applying Benefit Limitations to Lump-Sum	
§ 8.08	Pens	Distributions	8-98
3 0.00		uarantee and Related Provisions	8-100
	[1]	PBGC Premiums	
		[a] Flat-Rate Premium	
		(single-employer plans only)	8-100
	[2]	In General	
		[a] Flat-Rate Premium	
		[b] Variable-Rate Premium	
		[c] Termination Premium	8-101
		(PPA) Changes	8-101
		[i] Variable Rate Premium	
		[ii] Termination Premium	
		[e] MAP-21 Premium Increases	
	[3]	Limitations on PBGC Guarantee of	
		Shutdown and Other Benefits	8-102
	[4]	Rules Relating to Bankruptcy of	
		the Employer	
		[a] Guaranteed Benefits	
		[b] Asset Allocation	8-104
		[c] Pension Protection Act of 2006	
		(PPA) Changes	
	[5]	PBGC Premiums for Small Plans	8-105
	[6]	Rules for Substantial Owner Benefits in Terminated Plans	8-105
	[7]	Acceleration of PBGC Computation of Benefits Attributable to Recoveries	
		from Employers	8-106
		[a] In General	

		[b] Plan Underfunding Recoveries	8-106
		[c] Recoveries for Due and Unpaid	
		Employer Contributions	8-107
		[d] PPA Changes	8-107
	[8]	Treatment of Certain Plans When There	
		Is a Cessation or Change in Membership	
		of a Controlled Group	8-107
	[9]	Missing Participants	8-108
§ 8.09		ned Benefit Plan Funding Notice	8-109
	[1]	In General	8-109
	[2]	Access to Multiemployer Pension Plan	
		Information	8-111
	[3]	Additional Annual Reporting Requirements	
		and Electronic Display of Annual	
		Report Information	8-113
		[a] Annual Report	8-113
		[b] Electronic Display of	
		Annual Report	8-114
		[c] Summary Annual Report	8-114
		[d] Multiemployer Plan	
		Summary Report	8-114
	[4]	Section 4010 Filings with the PBGC	8-115
	[5]	Disclosure of Plan Termination to Plan	
		Participants	8-116
	[6]	Notice of Freedom to Divest Employer	
		Securities	8-118
	[7]	Periodic Pension Benefit Statements	8-119
		[a] In General	8-119
		[b] Requirements for Defined	
		Contribution Plans	8-120
		[c] Requirements for Defined	
		Benefit Plans	8-120
		[d] Form of Benefit Statement	8-121
	[8]	Notice to Participants or Beneficiaries of	
		Blackout Periods	8-121
		[a] In General	8-121
		[b] Definition of Blackout Period	8-122
		[c] Timing of Notice	8-123
		[d] Form and Content of Notice	8-123
		[e] Penalty for Failure to	
		Provide Notice	8-124

TABLE OF CONTENTS

Volume 2

CHAPTER 9

Plan Termination

§ 9.01	Impa	ct on (Oualifica	ation	9-6.3
	[1]			cessity	9-6.3
	[2]			tion	9-7
	[3]			Termination	9-7
	[4]			inations	9-8
	[5]			iscontinuance	9-10
	[6]			rmination	9-10
	[7]			ior Status if Terminated with	
		V	alid Rea	son	9-10
	[8]			ior Status if Terminated	
				alid Reason	9-12
	[9]	Tern	nination	Limitations	9-13
		[a]	Pre-Te	ermination Limitations	9-13
			[i]	Dollar Limitations	9-13
			[ii]	Restricted Employee	9-13
			[iii]	Benefit	9-14
			[iv]	Nonapplicability in Certain	
				Cases	9-14
		[b]	Early	Termination Limitations	9-14
			[i]	When Does the Limitation	
				Apply?	9-14
			[ii]	Affected Employees	9-15
			[iii]	Dollar Limitations	9-15
			[iv]	Definitions	9-16
			[v]	Required Plan Provision	9-16.1
			[vi]	Conditional Nature of	
				Limitations	9-16.1
			[vii]	Amendments	9-16.2
			[viii]	Reallocation of Excess Funds	
				on Termination	9-16.2
			[ix]	Insured or Noninsured	
				Benefits	9-16.3

			[x]	Substitution of One Type of	
				Plan for Another	9-16.3
			[xi]	Effect of ERISA	9-16.3
	[10]	Discri	imina	tion in Operation	9-16.4
		[a]		ailment—Partial Terminations	9-16.5
		[b]		owing Eligibility	9-17
		[c]		icing Employer Contributions	
				th or without Reducing Benefits	9-17
		[d]		icing Vesting	9-18
		[e]		s of Employees Eliminated	
				om Participation	9-19
		[f]		sion Closed or Sold	9-19
		[g]	Busi	ness Moved to New Location	9-19
		[h]	Othe	er Changes in Plans	9-19
		[i]		sional Authority on Partial	
				rminations	9-20
			[i]	Tipton and Kalambach, Inc. v.	
				Commissioner	9-20
			[ii]	Weil v. Terson Co. Retirement	
				Plan Committee	9-21
		[j]	IRS	Ruling on Plan Terminations	9-23
	[11]			S	9-24
	. ,	[a]		ion and Annuity Plans	9-24.1
		[b]		t-Sharing and Stock	
				onus Plans	9-25
	[12]	Frozei		ns	9-25
	[13]			rticipants	9-26
		[a]		erally	9-26.1
		[b]		ired Search Methods	9-26.1
		[c]		er Search Options	9-26.2
		[d]		ribution Options	9-26.3
		[e]		6 Income Tax Withholding—	
				nacceptable Method	9-26.4
		[f]		Guidance on Missing	
				rticipants	9-26.4
			[i]	Compliance Assistance Release	
				Describing DOL Missing	
				Participant Investigations	9-26.5
			[ii]	DOL Temporary Enforcement	
				Policy on Fiduciaries of	
				Abandoned Insolvent	
				Plans	9-26.10
			[iii]	DOL Best Practices for	
				Locating and Tracking	
				Missing Participants and	
				Retirees	9-26.13
§ 9.02	Single	e-Emplo	yer P	Plan Termination Insurance	
~					9-26.17
	[1]	Insuri	ng A	gent	9-26.17
			- '		

	TABLE OF CONTENTS	vii
	[a] PBGC Objective	9-27
[2]	Benefits Guaranteed	9-27
[3]	Premiums	9-28
	[a] Premium Rates	9-28
	[b] Premium Filing Deadline	9-30
	[c] PBGC Flat-Rate Premium	
	Due Date	9-30
[4]	Plans Insured by the PBGC	9-30.1
[5]	Reportable Events	9-31
	[a] Post-Event Notice of Reportable	
	Events	9-31
	[b] Advance Notice of Reportable	
	Events	9-34
	[c] Contents of Notice	9-34
	[d] Reduction in Benefit Accruals	9-35
[6]	Plan Termination	9-35
	[a] In General	9-35
	[b] Enrolled Actuary Certification	
	Program	9-36
[7]	Standard Termination	9-38
	[a] In General	9-38
	[b] Required Notices	9-38
	[i] Notice of Intent to Terminate	
	to Affected Parties	9-39
	[ii] Notice to PBGC	9-40
	[iii] Notice to Participants and	
	Beneficiaries of Benefit	
	Liabilities	9-40
	[iv] PBGC Notice of	
	Noncompliance	9-41
	[v] Timing Requirements Under	
	PBGC Regulations	9-42
	[vi] Final PBGC Regulations	9-42
	[vii] Final PBGC Regulations on	
	Standard Terminations	9-42
	[c] Benefit Liabilities	9-43
	[d] Final Distribution of Assets	9-44
	[e] Facilitating Plan Sufficiency	9-45
	[f] Lost Participants	9-45
	[g] Special Temporary Rule Regarding	
	Reversions	9-47
	[h] PBGC Audits	9-48
[8]	Distress Termination	9-48
	[a] In General	9-48
	[b] Distress Termination Criteria	9-48.1
	[c] Limitations on Bankruptcy	
	Reorganizations in Qualifying for	
	Distress Termination	9-49

		[d]	Employer Liability Under Distress	
			Termination	9-50
		[e]	Implementation of Distress	
			Termination	9-50
		[f]	Administration During Interim	
			Period	9-51
		[g]	Prohibition on Benefit Increases	
			Where Plan Sponsor is in	
			Bankruptcy	9-52
		[h]	Bankruptcy Laws	9-53
	[9]	Plan	Termination by the PBGC	
			voluntary Termination)	9-53
	[10]	Term	ination Date	9-54
	[11]	Annu	al Report	9-55
	[12]		eation of Assets on Plan Termination	9-56
	[13]	Plan	Termination Liability	9-56
		[a]	In General	9-56
		[b]	Liability to PGBC	9-57
			[i] "Collective Net Worth"	9-57
			[ii] "Pre-Tax Profits"	9-58
		[c]	Liability to Participants and	
			Beneficiaries	9-58
		[d]	Liability to Section 4042 Trustees	9-59
		[e]	Tax Deductibility of Payments	9-59
		[f]	Transactions to Evade Liability	9-60
		[g]	Effect of Corporate Reorganizations	9-60
		[h]	Enforcement Authority	9-60
		[i]	Actions Against the PBGC	9-61
		[j]	Funding Waivers and Amortization	
			Period Extensions	9-61
			[i] Exception	9-61
			[ii] Interest Rate	9-62
		[k]	Lien for Liability	9-62
		[1]	Shifting of Liability to PBGC	9-62
		[m]	Spinoff Terminations	9-63
		[n]	Implementation Guidelines	9-63
		[o]	Substantial Cessation of Operations	9-65
	[14]	Plan	Mergers and Splits	9-66
§ 9.03	Multie	employ	rer Plan Termination Program	9-68
	[1]		eneral	9-68
	[2]		employer Plan Defined	9-68
	[3]	Empl	oyer Withdrawal Liability	9-69
		[a]	Complete Withdrawal Defined	9-70
			[i] Limited Exemption for	
			Certain Industries	9-70
			[ii] Special Sale of Assets Rule	9-72
			[iii] Reduction or Waiver	9-75
			[iv] Events That Are Not	
			Withdrawals	9-75
		[b]	Partial Withdrawal Defined	9-78

	TABLE OF CONTENTS	ix
	[i] 70% Contribution Decline	9-78
	[ii] Cessation of Obligation to	
	Contribute	9-78
	[iii] Cessation of Obligation to	
	Contribute at a Facility	9-79
	[iv] Special Rules	9-79
[c]	Determination of Complete	
	Withdrawal Liability	9-79
	[i] Basic or Presumptive	
	Method	9-80
	[ii] First Alternative (Modified	
	Presumptive) Method	9-82
	[iii] Second Alternative (Rolling	
	Five-Year) Method	9-83
	[iv] Third Alternative (Direct	0.04
	Attribution) Method	9-84
	[v] Other Computation Methods	0.04
	Actuarial Assumptions [vi] Abatement of Withdrawal	9-84
	L 3	9-85
[d]	Liability Determination of Partial	9-83
լսյ	Withdrawal Liability	9-85
	[i] Reduction of Abatement	9-03
	of Partial Withdrawal	
	Liability	9-86
	[ii] Credit Against Future	, 00
	Withdrawal Liability	9-88
[e]	Six-Year "Free Look" Rule	9-88
[f]	De Minimis Rules	9-89
	[i] Mandatory De Minimis	
	Rule	9-89
	[ii] Discretionary De Minimis	
	Rule	9-89
[g]	Dollar Limitations on Withdrawal	
	Liability	9-90
	[i] Asset Sales to Unrelated	
	Parties	9-90
	[ii] Insolvency Rule	9-90
F1 7	[iii] Individual Employers	9-91
[h]	Sale of Corporate Assets	9-91
	[i] Liability of Seller	9-92
	[ii] Liability of Purchaser	9-92 9-93
F67	[iii] Exemption Process Payment of Withdrawal Liability	9-93
[i]	[i] Notice and Collection by	7-73
	Plan Sponsor	9-93
	[ii] Payment Schedule Formula	9-93
	[iii] When Payment is Due	9-94
	[iv] Deductibility of Payments	9-95
	y,	

	[j]	Arbitration of Disputes	9-95				
	[k]	Approval of Amendments	9-97				
	[1]	Special Payment Funds Authorized	9-98				
	[-J	[i] Private Withdrawal Liability	, , ,				
		Payment Fund	9-98				
		[ii] Other Insurance Not					
		Prohibited	9-98				
	[m]	Limitations on Controlled Group					
		Withdrawal Liability	9-98				
		[i] The Multiemployer Pension					
		Plan Amendments Act	9-99				
		[ii] Facts of Sun Capital Case	9-100				
		[iii] Analysis By The Courts	9-100				
		[iv] Conclusions	9-104				
[4]	Reor	ganization of Multiemployer Plans	9-104				
	[a]	Reorganization Status	9-104				
		[i] Vested Benefits Charge	9-105				
		[ii] Net Charge to the Funding					
		Standard Account	9-106				
	[b]	Notice of Reorganization	9-106				
	[c]	Minimum Contribution					
		Requirements	9-106				
		[i] Cash Flow Rule	9-107				
		[ii] Ceiling on Required					
		Increases	9-107				
		[iii] Overburden Credit	9-108				
	[d]	Adjustments in Accrued Benefits	9-109				
	[e]	Insolvent Plans	9-110				
	[f]	Mass Withdrawal Terminations	9-111				
[5]		efits Guaranteed	9-112				
	[a]	Requirements for Guarantee	9-112				
	[b]	Level of Guarantee	9-113				
	[c]	Supplement Guaranteed Benefits	9-114				
[6]		niums	9-114				
	[a]	Acceleration of Phase In 9-114					
	[b]	Insufficient Premiums	9-115				
	[c]	Premium Filing Deadline	9-115				
[7]		nination of Multiemployer Plans	9-116				
	[a]	Benefits Under Terminated Plans	9-117				
	[b]	Continued Maintenance of					
F07	- 0	Terminated Plan	9-118				
[8]		rcement	9-118				
	[a]	Civil Actions.	9-118				
	[b]	Liquidated Damages	9-119				
	[c]	Penalty for Failure to Provide Notice.	9-119				
F07	[d]	Expanded Annual Reports	9-119				
[9]	Mult	eiemployer Pension Reform Act of 2014.	9-120				

		TABLE OF CONTENTS	xi
	[a]	Background	9-120
	F3	[i] Amendments to the PPA	
		Critical and Endangered	
		Status Funding Rules	9-121
		[ii] Benefit Suspensions for	, 121
		Plans in Critical and	
		Declining Status	9-123
		[iii] Plan Partitions	9-125
		[iv] Plan Mergers	9-126
[10]	Chal	llenges to Multiemployer Plan	, 120
		ithdrawal Liability Assumptions	9-126
	[a]	Fifth Circuit Upholds Challenge to	
	F3	DOL Fiduciary Rule SEC Issues	
		Fiduciary Regulations Similar to	
		DOL Rule	9-126
	[b]	D.C. District Court Upholds	
	[0]	Different Assumptions for Funding	
		and Withdrawal Liability	9-127
	[c]	Ohio District Court Orders Plan to	, 1 - ,
	[~]	Recalculate Based on Funding	
		Assumptions	9-130
	[d]	Second Circuit Prohibits Retroactive	, 150
	լայ	Changes to Withdrawal Liability	
		Assumptions	9-131
	[e]	D.C. Circuit Invalidates UMWA	7 131
	[C]	Fund's Method of Calculating	
		Withdrawal Lia-bility	9-133
		[i] Summary	9-133
		[ii] Background	9-134
		[iii] Decision	9-134.2
[11]	PRG	C Issues Final Regulations on	7 154.2
[11]		mplified Withdrawal Liability	
		alculation Methods	9-134.9
	[a]	Background	9-134.10
	[b]	Overview of Final Regulation	9-134.10
	[c]	Regulatory Changes to Reflect	9-130
	[C]	Benefit Decreases	9-137
		[i] Requirement to Disregard	9-137
		Adjustable Benefit	
		Reductions and Benefit	
		Suspensions	9-137
		1	9-13/
		[ii] Simplified Methods for	
		Disregarding Adjustable Benefit Reductions and	
			0 120
	[4]	Benefit Suspensions	9-138
	[d]	Regulatory Changes to Reflect	
		Surcharges and Contribution	0.142
		Increases	9-143

		[1]	Surcharges and Certain Contribution Increases and the Annual Withdrawal Liability Payment Amount	9-143
		[ii]	Simplified Methods for Disregarding Certain Contribution Increases in	
		[iii]	the Allocation Fraction Simplified Methods After Plan Is No Longer in Endangered or Critical	9-144
	[12]		Status	9-148
			Plans	9-150
			ground	9-151
			rview of the Final Rule	9-151
			act of the Final Rule	9-153
			CHAPTER 10	
		Repor	ting and Disclosure	
§ 10.01				10-4.2
§ 10.02		-	the Reporting and Disclosure	10.5
				10-5
	[1]		Exemptions	10-6
	[2]		nd Arrangements	10-6
	[3] [4]		Payments to Patirage	10-7 10-9
	[5]		Payments to Retirees	10-9
	[5]	[a] Sma	ll Unfunded Welfare-Benefit	
			ans	10-10.1
			up Insurance Arrangements	10 11
			volving Small Welfare Plans renticeship Training Plans	10-11 10-12
		[d] Unfi	unded Plans for Select Groups	10-12
			Management or Highly	10-12
		[i]	ompensated Employees Percentage of Work Force	10-12
		[i] [ii]	Ability to Influence	10-14
		[iii]	Dollar Level of	
		EL.J	Compensation	10-14
		[iv]	"Plan" v. Employment Contract	10-14.1
			s Providing Day Care Centers	10-14.1
		[f] Sim	olified Employee Pensions	10-14.1

		TABLE OF CONTENTS					
	[6]	Cour [a]	rts Rule on ERISA Coverage	10-14.2			
		[b]	Subject to ERISA	10-14.2			
		٢٠٦	ERISA	10-14.3			
§ 10.03	Repo	orting to	o Governmental Agencies	10-14.7			
	[1] Initial Filings with the Internal Revenue						
		Se	ervice	10-14.7			
		[a]	Forms 5300, 5303 and 8717	10-14.7			
	507	[b]	Notice to Interested Parties	10-14.7			
	[2]		al Filings with the Department	10.15			
			Labor	10-15			
		[a]	Summary Plan Descriptions	10-15			
			[i] Contents of the Summary Plan Description	10-16			
			[ii] Final Regulations on	10-10			
			Summary Plan Description				
			Content	10-21			
			[iii] General Format	10-25			
			[iv] Multiple Classes of				
			Participants	10-26			
			[v] Merged Former Plans	10-27			
			[vi] Health Maintenance				
			Organizations	10-28			
	[3]		al Filings with the Pension Benefit	40.00			
			uaranty Corporation	10-28			
	F43	[a]	Form PBGC-1	10-28			
	[4]		oing Filings with the Internal evenue Service	10-28			
		[a]	Form 5500, the Annual Report	10-28			
		[b]	Contents of the Annual Report	10-29			
		٢٥٦	[i] Generally	10-29			
			[ii] Schedules for Small Pension	10 2)			
			Plans	10-33			
			[iii] Schedules for Large Pension				
			Plans	10-34			
			[iv] DOL Q&A's on Small				
			Pension Plan Audit Waiver				
			Regulation	10-34			
			[v] Limited Pension Plan	10.25			
			Reporting	10-35			
			[vi] Chart for Form 5500	10.26			
		[6]	Schedules and Attachments Statements of Distribution	10-36 10-39			
		[c] [d]	Withholding Requirements	10-39			
		լսյ	[i] Obligations to Withhold	10-39			
			[ii] Amount of Withholding	10-40			
			[iii] Election and Notification	10 11			
			Requirements	10-42			
			1				

		[iv	Periodic Distributions	10-42
		[v]	Nonperiodic Distributions	10-42.3
		[v	I	10-42.4
		[v]	.T	10-42.5
		[v	iii] Reporting and Recordkeeping	
		-	Requirements	10-42.5
		[e] Ro	ollover Rules	10-42.6
	[5]		Filings with the Department of	
				10-42.6
			orm 5500	10-42.6
		[i]		10-43
		įίi		10-43
		_	pdated Plan Description	10-46
	[6]		GGC-1	10-47
	[7]		Section 4010 Filings	10-48.1
	Г. Л		ersons Required to Provide	
			Information to PBGC	10-48.1
			dditional Information Required in	
			Section 4010 Report	10-48.1
			ffective Date	10-48.2
			isclosure of Information and	
			Notice To Congress	10-48.2
§ 10.04	Spec	10-49		
3 10.0.	[1]		eporting	10-49
	[-]		pproval of Amendments	10-49
			nnual Registration Statement	10 .,
			(Schedule SSA)	10-49
			ermination or Curtailment of Plan	
			(Forms 5500 and 5310)	10-49
			otice of Change in Plan Status	
			(Form 5500)	10-51
			otice of Merger, Consolidation,	
			or Transfer of Plan Assets or	
			Liabilities	10-51
			enalties for Failure to File	10-53
		[i]		
			(Schedule SSA)	10-53
		ſii		
			Status (Form 5500)	10-53
		ſii		
		-	of Mergers (Form 5310)	10-54
		[iv	<u> </u>	
		L	Trusts and Annuity Purchase	
			Plans (Form 5500)	10-54
		[g] Pe	enalties for Missing Information	10-54
	[2]		ent of Labor	10-54
			aterial Modifications	10-54

	[3]	Pens		nefit Guaranty Corporation	10-54.2
		[a]		rtable Event Notice—Pre-1994	10.54.2
		ГЫ		es	10-54.2
		[b]		ective On or After February 6,	
				5	10-54.5
		[c]		Termination	10-54.5
		[d]		e to Interested Parties	10 5 1.5
		رما		Trustee	10-54.6
		[e]	-	rts to Trustee	10-54.6
		[f]		e of Inability to Pay Basic	10 2 1.0
		[-]		nefits	10-54.7
		[g]	PBGO	C Reporting Requirements for	
		[6]		ntrolled Groups Maintaining	
		U	Uno	derfunded Plans	10-54.7
			[i]	Conditions That Trigger the	
				Filing Requirement	10-54.7
			[ii]	Required Information	10-54.7
			[iii]	Filing Deadlines	10-54.8
			[iv]	Members of the Controlled	
			Group That Must File	10-54.9	
			[v]	Exemptions from Filing	10-54.9
			[vi]	Waivers or Extensions	10-54.10
			[vii]	Confidentiality of Filed	
			Information	10-54.10	
			[viii]	Penalties for Noncompliance	10-54.10
§ 10.05	Disc	10-54.12			
	[1]	In G	General .		10-54.12
	[2]	Part		Covered Under the Plan	10-54.14
		[a]		are Plans	10-54.14
		[b]	Pensi	on Plans	10-54.15
		[c]		ees and Terminated Vested	
				ployees	10-54.16
		[d]		Vested Employee	10-54.17
	[3]			Disclosure	10-54.18
		[a]		nary Plan Description	10-54.18
		[b]		nary of Material Modifications	10-54.19
		[c]		nary Annual Report	10-54.19
			[i]	Contents, Style and Format	10-54.19
			[ii]	Foreign Languages	10-54.19
			[iii]	Furnishing of Additional	
				Documents to Participants	
			F: 3	and Beneficiaries	10-54.20
			[iv]	Defined Benefit Plans	10-54.20
			[v]	Annual Funding Notice for	10.54.50
			F 13	Defined Benefit Plans	10-54.20
			[vi]	DOL Guidance for Pension	10.55
			E. **3	Funding Disclosures	10-55
			[vii]	ERISA Section 4011 Repeal	10-56.2

	[d]	Benefits Statements for Terminating	
		Vested Employees	10-56.2
	[e]	Written Explanation of Claims	
		Denial	10-56.3
	[f]	Notice to Interested Parties	10-57
	[g]	Joint and Survivor Explanation	10-59
		[i] Notice and Election	
		Requirements	10-59
		[ii] Spousal Consent	10-60.3
		[iii] Content	10-60.3
		[iv] Elections for Transitional	
		Coverage	10-60.4
		[v] Distribution to Participants	10-60.5
	[h]	Notice of Eligibility for Rollover	
	[**]	Treatment Prior to 1993	10-60.5
	[i]	Notice of Eligibility for Rollover	10 00.0
	F+1	Treatment After 1/1/93	10-60.5
	[j]	Notice of Eligibility for Rollover	10 00.5
	LJJ	Treatment After EGTRRA	10-60.6
	[k]	Underfunded Defined Benefit Plans—	10 00.0
	[K]	Notification of Funding Status	10-60.7
	[1]	Significant Reduction in the Benefit	10-00.7
	[1]	Accrual Rate	10-60.8
	[m]	Claims Procedure Final	10-00.8
	[m]		10-60.9
		Regulations	10-00.9
		[i] Who May Represent a Claimant	10-60.10
			10-00.10
		[ii] Structure and Scope of the	10 (0.11
		Final Regulation	10-60.11
		[iii] Limitations on Arbitration	10 (0.14
		and Multiple Appeals	10-60.14
		[iv] Claim Determinations and	10 (0.16
		Appeals	10-60.16
		[v] Content of Notices	
		of Adverse Benefit	10 (0.01
		Determinations	10-60.21
		[vi] Preemption of State Law	10-60.22
		[vii] PWBA Issues Guidance on	
		Claims Processing	
		Regulations	10-60.23
	[n]	Blackout Notice	10-60.24
[4]		losure Upon Request	10-60.25
	[a]	Plan Description Form EBS-1	10-60.25
	[b]	Plan Documents	10-60.25
	[c]	Plan Amendments	10-60.25
	[d]	Personal Pension Benefits Statement	10-60.25
	[e]	Plan Termination Report	10-60.26
[5]	Discl	losure Upon Examination	10-60.26
	[a]	In General	10-60.26

		[b]	Who Can Examine Plan	
		[Ս]	Documents?	10-60.27
		[6]	Where Documents Must Be Made	10-00.27
		[c]		10 60 20
	[6]	Elas	Available	10-60.28
	[6]	[a]	tronic Disclosure	10-60.29
			and Pension Plans	10-60.29
			[i] Disclosure Through	
			Electronic Media	10-60.30
			[ii] Electronic Recordkeeping	10-60.30
			[iii] Final Regulations Regarding	
			Electronic Notices and	
			Recordkeeping	10-60.31
		[b]	IRS Rules for Pension and Profit	
			Sharing Plans	10-60.33
			[i] Use of Electronic Media for	
			Delivery of Notices	10-60.33
			[ii] Paper Notices	10-60.34
			[iii] Flexibility for Timing	
			Requirements in Providing	
			Notices	10-60.34
			[iv] Participant's Consent Under	
			Section 411(a)(11)	10-60.35
			[v] Additional Guidance	10-60.35
			[vi] Common Law "Mailbox"	10 00.55
			Rule to Determine if Plan	
			Received Participant's	
			Benefit Form	10-60.38
		[6]		10-00.50
		[c]	Electronic Display of Annual Report Form 5500 Information	10-60.38
		[4]		10-00.36
		[d]	DOL Final Regulations on	
			E-Disclosure of Retirement Plan	10 60 20
			Documents	10-60.39
			[i] New Voluntary Safe Harbor	10-60.39
			[ii] Two Options for Electronic	10 (0.20
			Delivery	10-60.39
	F 773	D	[iii] Participant Protections	10-60.40
	[7]		ion Benefit Statements—Reporting of	10 60 41
	F07	Pe	ermitted Disparity	10-60.41
	[8]		losure of Termination Information to	
			an Participants	10-60.41
§ 10.06			Inaccurate Disclosure	10-60.43
	[1]		eneral	10-60.43
	[2]		ntial Liability	10-60.43
	[3]		nissory Estoppel	10-62
	[4]		laimer as Protection	10-63
	[5]		eading Communications	10-64
	[6]	Duty	to Inform of Plan Termination	10-67

TABLE OF CONTENTS

xvii

XV111	EMPLOYEE BENEFITS LAW				
	[a]	Fiduciary Duty to Inform			
	ГЫ	Employees	10-67		
	[b]	Procedural Requirements	10-69		
	[7] Rul	es to Follow	10-09		
		netary Damages Available for	10 70		
		nadequate Disclosure	10-71		
§ 10.07		ED]	10-72		
§ 10.08		ED]	10-73		
§ 10.09		ED]	10-74		
		CHAPTER 11			
		[RESERVED]			
		CHAPTER 12			
		Fiduciary Responsibility			
§ 12.01	In General		12-8.27		
§ 12.02			12-9		
§ 12.03		the ERISA Fiduciary	12-12		
		ectors as Fiduciaries	12-13		
		estment Advice and Fiduciary Status	12-14 12-14		
	[a]	Regulatory Guidance	12-14		
	[b]	[i] Individualized Investment			
		Advice	12-16.1		
		[ii] Mutual Agreement	12-16.2		
		Requirements	12-16.3		
		Securities	12-16.3		
		[v] Receipt of Compensation	12-16.4		
	[c]	Changes Mandated by the Pension Protection Act of 2006 with			
		Respect to Investment Advice	12-16.4		
	[d]	Changes Mandated by the Pension			
		Protection Act of 2006 with			
		Respect to "Blackout" Period			
		Investments and Mapping	12-16.8		
	[e]	DOL Proposal for New Definition			
		of Fiduciary with Respect to			
		Providers of Investment Advice	12-16.8		
	[f]	PBGC Investment Policy	12-16.10		
		[i] Overview of Investment			
		Objectives and	10 16 10		
		Governance	12-16.10		

		[ii] Rules Governing Asset	
		Allocations and	
		Investments	12-16.11
		[iii] Lessons for Fiduciaries	12-16.12
	[3]	Parties-in-Interest	12-16.12
	[4]	IRS Disqualified Persons Definition	12-16.13
	[5]	Claims Administrator with Discretionary	
		Control Is Functional Fiduciary	12-17
		[a] Discretionary Authority	12-20
		[b] Control Over Assets	12-20.1
		[c] Impact of Decision	12-20.1
§ 12.04	Parti	12-20.3	
ŭ.	[1]	12-20.3	
	[2]	In General	12-20.3
		[a] Named Fiduciaries	12-20.3
		[b] Funding Procedure	12-20.3
		[c] Plan Operation	12-20.4
		[d] Plan Amendment Procedure	12-20.4
		[e] Payments Basis	12-20.4
		[f] Voluntary Requirements	12-20.4
	[3]	Plan Amendment Litigation	12-20.4
		[a] Plan Amendment Procedure	
		Requirement	12-20.4
		[b] Plan Amendment Does Not Create	
		Separate Plan	12-20.9
		[c] Plan Reformation Is Available	
		Remedy Under ERISA to	
		Recalculate Participant Benefits	12-20.13
	[4]	Mandatory Trust Requirements	12-20.18
		[a] Exemption of Certain Plans or Plan	
		Assets	12-20.18
		[b] Authority and Discretion of	
		Trustee	12-20.19
		[c] Delegation of Authority to	
		Investment Manager	12-20.20
	[5]	Requirement That Plan Assets Be Held for	
		Exclusive Benefit of Plan Participants	12-20.20
		[a] In General	12-20.20
		[b] Allocation, Upon Termination, of	
		Assets of Uninsured Plan	12-20.20
		[c] Allocation, Upon Termination, of	40.00.04
		Assets of Welfare Plan	12-20.21
		[d] Instances Where Contribution Can	10.00.00
	563	Be Returned to Employer	12-20.21
	[6]	Standard of Fiduciary Review	12-20.22
		[a] The Aetna Decision	12-20.22
		[b] The MetLife Decision	12-21

		[c]	Plan I	nposed Limitations on	
				gation of Benefit Claims	12-22.1
				The Heimeshoff Decision	12-22.2
				The Moyer Decision	12-22.5
		[d]		Application of Limitations	
		[]		ision Creates Impossible	
				rual Date	12-22.8
				Background	12-22.9
				Decision	12-22.9
		[م]			12-22.9
		[e]		l of District Court Remand	12 22 12
				er to Plan Administrator	12-22.13
				Background	12-22.13
		F.071		Decision	12-22.13
		[f]		ne Court Affirms Ninth	
				uit Decision on Fiduciary	
				ch Statute of Limitations	
				ual Knowledge"	
				airement	12-22.16
			[i]	Background	12-22.17
			[ii]	Ninth Circuit Decision	12-22.18
			[iii]	Supreme Court Decision	12-22.22
		[g]		tance of Prudent	
		203	-	ninistrative Procedures	
				Substantive Decisions in	
				oonding to ERISA Benefit	
				ms	12-22.25
				Rizzo v. First Reliance	12 22.20
			[+]	Standard Life Insurance Co	12-22.25
			[ii]	Mathews v. The Northwestern	12 22.23
			[11]	Mutual Life Insurance Co	12-22.27
	[7]	[DE	CEDVED		12-22.27
	[7]			olan Dantisin anta Mass Dungsa	12-22.29
	[8]			Plan Participants May Pursue	
			-	and Prohibited Transaction	12 22 20
	507			ising from Hostile Takeover	12-22.29
	[9]			L Procedures for Finding	
				articipants	12-22.31
	[10]			ider "Guide" to Assist	
				iaries in Reviewing Initial	
			isclosure		12-22.31
		[a]	Backg	round	12-22.32
		[b]	The Fi	nal Regulations	12-22.32
		[c]	The P	roposed Amendment	12-22.33
§ 12.05	Fiduc	iary S	tandards		12-22.41
	[1]	Gen	eral Stan	dards	12-22.41
	[2]	Pruc	lent Man	Rule	12-22.41
		[a]	Specia	l Rules Where	
				icipant or Beneficiary	
				cts Investment	12-22.43
				Participant Control Over	
			r-1	Investments	12-22.44
					12 22, FT

			TABL	E OF CONTENTS	XXI
			[ii]	Broad Range of Investment	
			[iii]	Alternatives	12-22.45
			[iv]	Information	12-22.47
			[v]	Directed Individual Account Plans	12-22.51
				Reviewing Initial Disclosure	12-22.60
		[b]		ibition Against Transferring	
	[2]	D:		an Assets Outside United States	12-22.63
	[3]			tion of Plan Investments	12-22.63
		[a]		eneral	12-22.63
		[b]		nissible Degree of	12-22.64
		[6]		re There Is More Than One	12-22.04
		[c]		vestment Manager	12-22.65
	[4]	Δdh		to Plan Documents	12-22.65
	[5]			ovide Accurate Benefit	12-22.03
				ion	12-22.65
	[6]	Labo	or Depa	artment Guidance on Fiduciary Connection with Mutual Fund	12-22.03
					12-22.67
	[7]			A Lawsuits for Failure to	
		Re	emit Pa	articipant Salary Deferrals	12-22.69
		[a]	DOL	Lawsuit Against MEP	
			Sp	onsor and Plan Administrator	
			for	Failure to Remit Deferrals	12-22.69
		[b]	DOL	Judgment Against Plan	
				duciaries for Missed	
				ontributions	12-22.70
		[c]		Suit Against NYC Courier	
				r Failure to Remit	
			Co	ontribution	12-22.70
§ 12.05A				dden Section 401(k) Fees	12-22.71
	[1]			e with ERISA Reporting and	10 00 71
	F07			re Requirements	12-22.71
	[2]			of Reporting and Disclosure	12 22 72
	[2]			bor	12-22.73
	[3]			Cannot Hide Behind Investment	12 22 72
				nt's Advice	12-22.73 12-22.74
		[a] [b]		h Circuit Decision	12-22.74
				eitor General Brief Endorsing	12-22./0
		[c]		opeal	12-22.78
		[d]	Sunr	eme Court Decision	12-22.78
		լսյ	Supi	one court booksion	12 22.1)

	[i] Background	12-22.80
	[ii] Decision	12-22.81
	[iii] Implications	12-22.83
	[e] \$13.16 in Total Damages	12-22.84
[4]	\$35 Million Verdict in 401(k) Fee Case	12-22.85
	[a] Failure to Monitor Recordkeeping	
	Expenses	12-22.86
	[b] Failure to Negotiate Rebates	12-22.87
	[c] Generating More Revenue Sharing	
	by Replacing Funds	12-22.88
	[d] Monetary Relief	12-22.88
	[e] Lost Float Income	12-22.88
	[f] U.S. Supreme Court Denial of	
	Fiduciary Liability Review	12-22.89
	[g] ABB Inc. Still Fighting Over	
	Money Owed for 401(k) Fund	
	Swap	12-22.89
[5]	Bundled Vendor May Be ERISA Fiduciary	
	with Responsibility to Monitor Own	
	Compensation	12-22.90
	[a] TLIC Is a Fiduciary Accountable	
	for Reasonableness of Its Fees	12-22.91
	[b] Ability to Change Fee Schedule Is	
	"Discretionary" Activity	12-22.91
	[c] Ability to Add or Delete	
	Investment Options Is Fiduciary	
	"Discretionary" Activity	12-22.91
	[d] Having or Exercising Discretion	
	Are Both Fiduciary Functions	12-22.92
[6]	Service Provider Not a Fiduciary in	
[-1	Negotiating Its Contract	12-22.92
[7]	Fiduciary Breach Claims Barred by	1
L' J	ERISA's Six-Year Statute of	
	Limitations	12-22.92
[8]	Lockheed Agrees to Pay \$62 Million to	12 22.92
[o]	Settle for \$1.3 Billion ERISA Class	
	Action	12-22.93
[9]	Boeing Settles Excessive-Fee Suit for	12 22.93
[~]	Near-Record \$57 Million	12-22.95
	[a] Background	12-22.96
	[b] Settlement Terms	12-22.96
[10]	Novant Reaches \$32 Million Settlement in	12-22.70
[IU]	Plan Fees Case	12-22.97
		12-22.97
		12-22.98
F1 13		12-22.90
[11]	Anthem Agrees to \$23.65 Million	
	Settlement Over 401(k) Fees Paid to	12 22 00
	Vanguard	12-22.99
	[a] Background	12-22.100
	[b] Plan Investments	12-22.101

[iv] Failure to Monitor

			Fiduciaries	12-22.118
		[v]	Prohibited Transactions	12-22.110
		[,]	between the Plan and	
			Parties In Interest	12 22 110
		[svi]	Prohibited Transactions	12-22.119
		[vi]		
			between the Plan and	12 22 120
	F-3	T	Fiduciaries	12-22.120
	[c]		rity Motion to Dismiss	10 00 100
			nied	12-22.122
		[i]	Count I: Breach of Duties of	
			Loyalty and Prudence—	
			Selection and Retention of	
			Untested, Excessive-Cost,	
			and Poorly Performing	
			Proprietary Target Date	
			Funds	12-22.123
		[ii]	Count II: Breach of	
			Duties of Loyalty and	
			Prudence—Unreasonable	
			Administrative and Record	
			Keeping Fees	12-22.127
		[iii]	Count III: Breach of Duties	
			of Loyalty and Prudence—	
			Unreasonable Investment	
			Management Fees	12-22 129
		[iv]	Count IV: Breach of Duties	12 22.12)
		[11]	of Loyalty and Prudence—	
			Use of a Microscopically	
			Low-Yielding Money	
			Market Fund Without	
			Consideration or Use of a	
			Stable Value Fund Until	
			Adding a Stable Value	
			Fund and Then Adding an	10 00 101
			Imprudent One	12-22.131
		[v]	Count V: Holdings' Failure to	10 00 100
		F :3	Monitor Fiduciaries	12-22.132
		[vi]	Counts VI: ERISA	
			§ 406(a)-Prohibited	
			Transactions Between	
			the Plan and Parties in	
			Interest, and VII: ERISA	
			§ 406(b)-Prohibited	
			Transactions Between the	
			Plan and Fiduciaries	12-22.133
	[d]		Certification	12-22.133
[13]	Princ	ipal Li	fe Not Liable for 401(k) Fees	12-22.134
-	[a]		ground	12-22.134
		`		

	[b]	First	Circuit Decision	12-22.172
		[i]	Background	12-22.172
		[ii]	Decision	12-22.173
[5]	Prude	ential S	Sued Over Alleged Undisclosed	
				12-22.185
[6]			Defeats 401(k) Fee Lawsuit	
[,]			enue Sharing	12-22.187
[7]			ed Over 401(k) Fees,	12 22.107
Г,]			nt Strategy	12-22.188
[8]	Dents	sche Ba	ank Agrees to \$21.9 Million	12 22.100
[o]			at In 401(k) Fee Class	
				12-22.189
	[a]		ch of Fiduciary Duty Claims	12-22.10)
	[a]			12-22.191
		-	ounts I and IV)	12-22.191
		[i]		
	F1. 1	[ii]	2	12-22.193
	[b]		bited Transaction Claims	12 22 102
			ounts II and III)	12-22.193
F03	[c]		ement Terms	12-22.193
[9]			Sued for Alleged ERISA	10 00 101
F4.03			S	12-22.194
[10]			es to \$12 Million Settlement	
			Fees Litigation	12-22.195
	[a]		al of Motion to Dismiss and	
			ss Status Granted	12-22.195
	[b]		g on Testimony of Expert	
			tness	12-22.196
	[c]		ment	12-22.197
[11]			Agrees to \$9.5 Million in	
			iduciary Breach in Determining	
			Compensation	12-22.197
[12]			Agrees to \$20.85 Million	
	Set		t in 401(k) Fee Class Action	12-22.203
	[a]		plaint Allegations	12-22.203
	[b]		ndants' Violations of ERISA in	
		Ma	naging the Plan	12-22.205
		[i]	Defendants Added Seven	
			Proprietary M&T Affiliated	
			Investments to the Plan in	
			2011 in Violation of Their	
			Fiduciary Duties	12-22.205
		[ii]	Defendants Retained High	
			Cost and Poorly Performing	
			Proprietary Mutual Funds	
			in the Plan in Their Own	
			Self-Interest and at the	
			Expense of Plan	
			Participants	12-22.206

xxviii **EMPLOYEE BENEFITS LAW**

[20]		th Circuit Rules that Principal is	
	Fic	duciary of its Stable Value Product	12-22.233
[21]	Char	les Schwab Cannot Send 401(k) Fund	1
		wsuit to Arbitration	
	[a]	Background.	
		Decision	
	[b]		12-22.23
	[c]	Appeal to Ninth Circuit Court of	
		Appeals	12-22.241
	[d]	Ninth Circuit Decision	
		[i] Background	12-22.242
		[ii] Ninth Circuit Changes	
		its Position on the	
		Enforceability of Arbitration	1
		Breach of Fiduciary Duty	1
			12 22 246
FO1 4 7		Claims Under ERISA	12-22.245
[21A]		t Rules Arbitration Provision Too	
		ne-Sided to be Enforced	
	[a]	Background	12-22.248
	[b]	Decision	12-22.249
		[i] Arbitrability of Statutory	
		ERISA Claims	12-22.250
		[ii] The Amendment and	
		Whether it Constitutes a	
			12-22.251
[21D]	E1	Valid Agreement	12-22.23
[21B]		loyer Status For Purposes of	
		ithdrawal Liability Not Subject to	
	Ar	bitration	
	[a]	Background	
	[b]	Decision	12-22.258
[21C]	ERIS	SA Fiduciary Claims Not Subject to	
	Ar	bitration	12-22.261
	[a]	Background	
		[i] Factual Background	
		[ii] The Arbitration Agreement.	
		[iii] Procedural History	
	гыт		
	[b]	Second Circuit Opinion	
		[i] Meaning of the Agreement's	
		phrase "Relating to	
		Employment"	12-22.264
		[ii] Additional language in the	
		Agreement	12-22.264
		[iii] Limits of the phrase "relating	g
		to employment" in the	=
		context of an arbitration	
		agreement	12-22.265
[21D]	Sunr	eme Court Limits Federal Courts	12 22.200
		risdiction Over Arbitration Awards	12-22.266
	[a]	Background	
	[b]	Decision	12-22.267

[21E]	Eight	th Circ	uit Vacates Arbitration Awards	
	Af	ter Suj	preme Court Decision	12-22.268
	[a]	Back	ground	12-22.269
	[b]	Decis	sion	12-22.270
[21F]	Third	d Circu	it Arbitration Decisions	12-22.271
	[a]	Henr	y v. Wilmington Trust NA	12-22.272
		[i]	Summary	12-22.272
		[ii]	Background	12-22.272
		[iii]	Appellate Jurisdiction	12-22.273
		[iv]	Decision	12-22.275
		[v]	Analysis	12-22.275
	[b]	Berk	elhammer v. ADP TotalSource	
		Gr	oup, Inc	12-22.277
		[i]	Background	12-22.277
		[ii]	Decision	12-22.278
[21G]			d Circuit Supports	
	Ar		on Denial	12-22.280
	[a]	Majo	ority Opinion	12-22.281
	[b]	Back	ground	12-22.282
		[i]	Defendants' Alleged	
			Breaches	12-22.282
		[ii]	The Plan	12-22.283
		[iii]	District Court Proceedings	12-22.284
	[c]	Anal	ysis	12-22.285
		[i]	The Federal Arbitration Act	12-22.286
		[ii]	ERISA Section 502(a)(2)	
			Claims	12-22.288
		[iii]	Application of	
			Sections 17.10(f) and (g)	12-22.292
		[iv]	Conclusion	12-22.300
	[d]		enting Opinion	12-22.301
[21H]			it Questions if Kellogg	
	Ar	bitratio	on Pact is Invalid	12-22.303
	[a]		mary	12-22.304
	[b]		ment of the Case	12-22.304
		[i]	Factual Background	12-22.304
		[ii]	Procedural History	12-22.306
		[iii]	Legal Background	12-22.307
	[c]		mary of the Argument	12-22.309
	[d]	_	ment	12-22.310
		[i]	District Court Erred in	
			Compelling Arbitration	12-22.310
		[ii]	District Court Erred By	
		_	Forcing Arbitration	12-22.317
[22]			plaints Filed Against Financial	
F0.07	Ins	stitutio	ns	12-22.320
[23]			ms and Investment Advisor	10.00.000
			9 Million Investment Suit	12-22.320
	[a]	Back	ground	12-22.320

		[b]	Settlement	12-22.322
	[24]	Gene	ntech Wins 401(k) Fee Suit	12-22.323
		[a]	Background	12-22.324
		[b]	Decision	12-22.325
			[i] Duty of Prudence	12-22.325
			[ii] Duty of Loyalty	12-22.330
			[iii] Failure to Adequately	
			Monitor Other Fiduciaries	12-22.330
			[iv] Liability As Non-Fiduciaries	12-22.331
	[25]	Land	O'Lakes Loses Dismissal of	12-22.331
	[25]		cessive Fee Case	12 22 221
				12-22.331
		[a]	Background	12-22.332
			[i] Breach of Fiduciary Duties	12-22.332
		F1 7	[ii] Plaintiff Allegations	12-22.334
		[b]	Decision	12-22.334
			[i] Standing	12-22.334
			[ii] Failure to Investigate and	
			Select Lower Cost	
			Alternative Funds	12-22.335
			[iii] Recordkeeping	
			Compensation	12-22.337
			[iv] Duty of Loyalty	12-22.338
			[v] Failure to Monitor	12-22.338
	[26]	Ninth	Circuit Decision Requiring	
	[=0]		nsideration of Indirect Compensation	12-22.339
		[a]	Connection between the Ninth	12 22.55)
		լայ	Circuit Decision and PTE 2020-02	12-22.340
		[b]	Bugielski v. AT&T	12-22.340
				12-22.340
		[c]	Commentary and Analysis	12-22.341
		[d]	PTE 2020-02	
			[i] New Disclosure Requirements	12-22.342
			[ii] Acknowledgment of	10 00 040
			Fiduciary Status	12-22.342
			[iii] Statement of Best Interest	
			Standard of Care	12-22.343
			[iv] Description of Services to	
			Be Provided and Material	
			Conflicts of Interests	12-22.343
			[v] What to Do	12-22.343
§ 12.05C	Unive	rsities a	and Healthcare Systems Facing	
	Re	tiremen	t Plan Class Actions	12-22.345
	[1]	NYU	Decision	12-22.345
	[2]	Colu	mbia Lawsuit Advances After NYU	
	. ,		cision	12-22.347
	[2A]		ersity of Chicago Agrees to	
			.5 Million Settlement	12-22.348
	[3]		erbilt Agrees to \$14.5 Million	- 10
	[~]		ttlement in Retirement Plan Fees	
			igation	12-22.349
		பி	15ut1011	12 22.549

	TABLE OF CONTENTS	xxxi
F43	[a] Background	12-22.350 12-22.350
[4]	MIT Agrees to \$18.1 Million Settlement in Fees Litigation	12-22.351
[5]	Brown University Agrees to \$3.5 Million	10 00 250
	Settlement	12-22.352 12-22.352
	[a] Background	12-22.352
[6]	Northwestern Beats Workers' Bid to	12-22.332
	Revive Excessive-Fee Suit	12-22.353
[7]	Penn Retirement Plan Fee Lawsuit	12-22.353
[8]	Lockton and Norton Healthcare Agree to	12 22 256
	Pay \$5.75 ERISA Settlement	12-22.356
	[a] Background	12-22.356
[0]	[b] Settlement	12-22.357
[9]	Mercy Health Agrees to \$3.9 Million Settlement on Behalf of Three	
	Retirement Plans	12-22.357
	[a] Background	12-22.358
	[b] Settlement	12-22.360
[10]	Southcoast Hospitals Group Settles	12 22.300
[10]	Excessive Fee Lawsuit for \$2 Million	12-22.360
	[a] Background	12-22.360
	[b] Settlement Terms	12-22.361
[11]	CHS/Community Health System	
	Reaches Settlement in 401(k)	
	Excessive Fee Suit	12-22.363
	[a] Background	12-22.363
	[b] Settlement Terms	12-22.364
[12]	Bronson Healthcare Group Agrees to	
	\$3 Million Settlement	12-22.365
	[a] Background	12-22.365
F127	[b] Settlement Terms	12-22.365
[13]	Barnabas Health Settles Excessive Fee	10 00 266
	Lawsuit	12-22.366 12-22.366
	[a] Settlement	12-22.367
	[i] Standing	12-22.367
	[ii] Duty of Prudence	12-22.369
	[iii] Duty of Loyalty	12-22.372
	[iv] Failure to Monitor	12-22.372
[14]	Universal Health Services Loses Motion	12 22.572
	to Dismiss Excessive Fee Litigation	12-22.373
	[a] Background	12-22.373
	[b] Decision	12-22.374
[15]	Washington University Agrees to	
	7.5 Million Settlement in Excessive	
	Fee/Underperforming Investment	10.00.00:
	Litigation	12-22.381

		[a] Settlement	12-22.381
		[b] Eighth Circuit Decision	12-22.381
		[i] Background	12-22.381
		[ii] Decision	12-22.382
	[16]	Yale Workers Ask Second Circuit to	
		Order New Trial in ERISA Suit	12-22.386
		[a] Background	12-22.386
		[b] Plaintiffs Brief on Appeal to the	
		Second Circuit	12-22.387
		[i] Statement of the Case	12-22.387
		[ii] Summary of the Argument	12-22.392
		[c] DOL Amicus Brief	12-22.403
§ 12.05D	Emplo	oyer Stock Litigation	12-22.405
,	[1]	Generally	12-22.405
	[2]	ERISA Requirements	12-22.407
		[a] ERISA Fiduciaries	12-22.407
		[i] Statutory Definition	12-22.407
		[ii] Named Fiduciary and	
		Functional Fiduciaries	12-22.408
		[iii] Fiduciary Status Can Be	
		Limited in Scope	12-22.409
		[iv] D&Os as Fiduciaries	12-22.410
		[b] ERISA Fiduciary Duties	12-22.410
		[i] Exclusive Purpose	12-22.410
		[ii] Prudence	12-22.411
		[iii] Diversification	12-22.411
		[iv] Terms of the Plan	12-22.412
		[v] ERISA Breach of Fiduciary	
		Duty	12-22.412
	[3]	Disclosure Obligations	12-22.413
		[a] Securities Law—Disclosure	
		Requirements	12-22.414
		[b] ERISA—Disclosure Requirements	12-22.415
	[4]	Compliance with ERISA Plan	
		Document Rule	12-22.417
	[5]	The <i>Moench</i> Presumption	12-22.418
	[6]	Potentially Workable <i>Moench</i> Standard	12-22.418
	[7]	Pro-Fiduciary Presumption of Prudence	12-22.419
		[a] Appeal to Supreme Court	12-22.420
		[b] District Court Decision	12-22.421
		[c] Sixth Circuit Decision	12-22.422
	[8]	Presumption Gradually Narrowed	12-22.423
		[a] Second Circuit Decision	12-22.424
		[b] Ninth Circuit Decision	12-22.425
		[c] Solicitor General Brief	12-22.427
	[9]	Supreme Court Rejects Special	
		"Presumption of Prudence" for	
		Employer Stock	12-22.427
		[a] Background	12-22.428

			TABLE OF CONTENTS	XXXIII
		[b]	Supreme Court Decision	12-22.429
		[c]	Impact of Fifth Third Bancorp v.	
			Dudenhoeffer Decision	12-22.439
		[d]	Halliburton v. Erica P. John Fund	12-22.439
			[i] In General	12-22.439
			[ii] Supreme Court Decision	12-22.441
		[e]	What Can You Do?	12-22.448
		[f]	Stock Drop Litigation Following	
			Supreme Court Rejection of	
			Prudence Presumption	12-22.456
			[i] Supreme Court Orders	
			Ninth Circuit to Reconsider	10 00 456
			Amgen	12-22.456
			[ii] Supreme Court Orders	
			Second Circuit to	
			Reconsider Lehman	12 22 450
			Brothers	12-22.459
			[iii] Fifth Circuit Vacates BP	12 22 467
			Stock Drop Case	12-22.467
			[iv] No Fiduciary Breach for Sell-Off of Company	
			1 2	12 22 469
			Stock in 401(k) Plan	12-22.468
			[v] Fiduciary Breach for Sell-Off of Company Stock in 401(k)	
			Plan	12-22.469
				12-22.409
			[vi] J.C. Penney ESOP Participants Claim Stock	
			Price Artificially Inflated	12-22.475
§ 12.05E	Litiga	tion O	ver Actuarial Assumptions	12-22.473
§ 12.03L	[1]		rally	12-22.483
	[2]		onableness of Actuarial Factors for	12 22.403
	[2]		lculating Joint and Survivor	
			inuities	12-22.484
		[a]	Overview	12-22.484
		[b]	Allegations in the Complaint	
		رما	[i] Background	
			[ii] Arguments	
			[iii] Retirees' Claims Under	12 22.100
			ERISA	12-22.488
			[iv] Must Use Reasonable	,
			Actuarial Factors	12-22.490
			[v] The IRS Regulations Do	
			Not Govern Calculation of	
			Actuarial Equivalence	12-22.493
		[c]	District Court Decision	12-22.497
	[3]		Retirement Pensions Not	
			ctuarially Equivalent"	12-22.498
		[a]	Summary	12-22.498
		[b]	Background	12-22.498
			-	

		[c] Decision	12-22.499
		[i] "Actuarial Equivalence"	12-22.499
		[ii] "Forfeitability"	12-22.501
		[iii] "Failure to Monitor" Claim	12-22.501
	[4]	Another Motion to Dismiss Denied	12-22.501
		[a] Summary	12-22.501
		[b] Background	12-22.502
		[c] Actuarial Assumptions	12-22.503
		[d] ERISA & Treasury Regulations	12-22.504
		[e] Anti-Forfeiture	12-22.505
		[f] Breach of Fiduciary Duty	12-22.506
		[g] "Narrow Issues" Preventing Class	12 22.500
		Certification	12-22.506
	[5]	Mixed Order on Motion to Dismiss	12-22.507
	[2]	[a] Summary	12-22.507
		[b] Meaning of "Actuarial	12-22.307
		Equivalent"	12-22.508
	[6]	Raytheon Agrees to \$59M Settlement in	12-22.300
	լսյ		12-22.509
		Outdated Mortality Rate Suit	12-22.509
			12-22.509
	[7]	[c] Litigation Trend	12-22.313
	[7]	DuPont Used Outdated Actuarial	12 22 512
		Formulas to Calculate Benefits	12-22.513
		[a] Magistrate Judge Report and	10 00 514
		Recommendation	12-22.514
		[i] Background	12-22.515
		[ii] Discussion	12-22.516
	FO7	[b] District Court Memorandum Order	12-22.525
	[8]	Duke Denied Mortality Data Lawsuit	
		Motion to Dismiss	12-22.526
		[a] Background and Summary	12-22.526
		[b] Decision	12-22.527
		[i] Plaintiff's Claims	12-22.527
		[ii] Motion to Dismiss for Lack	
		of Standing	12-22.528
		[iii] Motion to Compel	
		Arbitration	12-22.531
§ 12.05F		ss Prevails in Supreme Court Decision and	
	ER	RISA Excessive Fee Victories	12-22.537
	[1]	Generally	12-22.537
	[2]	Hughes v. Northwestern University	12-22.537
		[a] Background	12-22.539
		[b] The Supreme Court Decision	12-22.540
		[c] Conclusion	12-22.541
	[3]	Alas v AT&T Services, Inc	12-22.542
	_	[a] Background	12-22.543
		[b] Decision	12-22.543
		[i] Duty of Prudence	12-22.543
		[ii] Prohibited Transactions	12-22.544

	TABLE OF CONTENTS	XXX
[4]	Reetz v. Lowe's Companies Inc	12-22.547
	[a] Background	
	[b] Decision	
[5]	Smith v. CommonSpiritHealth	
r- 1	[a] Background	
	[b] District Court Decision	
	[i] Factual and Procedural	12 22.55
	Background	12-22.550
	[ii] Decision	
	[aa] Fidelity Active Suite	
	[bb] American Beacon Small Cap	12 22.33
	Value Fund	12-22.559
	[cc] AllianzGI NFJ Small Cap Fund	12-22.559
	[i] Overly Expensive Investment	
	Menu	12-22.560
	[ii] Excessive Recordkeeping	12 22 56
	Costs	
567	[c] Sixth Circuit Decision	
[6]	Albert v. Oshkosh Corp	
	[a] Background	
	[i] Statutory Context	
	[ii] Facts	
	[iii] Procedural History	
	[b] Decision	
	[i] Duty of Prudence Claims	
	[ii] Duty of Loyalty Claims	12-22.580
	[iii] Duty to Monitor Claims	12-22.582
	[iv] Prohibited Transaction	
	Claims	12-22.582
	[v] Duty to Disclose Claim	
[7]	Matousek v. MidAmerican Energy Co	
	[a] Background	
	[b] Decision	
[8]	Process Prevails In ERISA Excessive Fee	
	Bench Trial	12-22.591
	[a] Specific Findings	12-22.591
	[b] Background	
	[i] Summary	
	[ii] Procedural History	
	[iii] Findings of Fact	
[9]	The Plan's Investment Options	
[7]	[a] Overview of the Plan's	12 22.57
	Investment Options	12-22.595
		12-22.39.
		12-22.596
	Investment Options	
F107	[c] Share Classes and Revenue Sharing.	
[10]	The Plan's Recordkeeping Fees	12-22.597

		[a]	The Plan's Recordkeepers and	
			Recordkeeping Compensation	
			Arrangements	12-22.597
		[b]	The Committee's Review of	
			Recordkeeping Fees	12-22.599
		[c]	Prudence of Investment Options	12-22.601
		[d]	Prudence of Recordkeeping Fees	12-22.603
		[e]	Decision	12-22.605
		[f]	Conclusions of Law	12-22.607
		[g]	Importance of Decision	12-22.607
§ 12.06	Alloc		Fiduciary Responsibility	12-22.608
0	[1]		duciary Responsibility	12-22.608
	[2]		gorizing Fiduciary Responsibility	12-23
	[-1	[a]	Fiduciaries Not Named	12-23
		[b]	Trustees.	12-23
		[c]	Named Fiduciaries	12-24
	[3]		iting Responsibility	12-24
	[4]		ited Responsibility	12-25
	[5]		-Fiduciary Liability	12-26.1
§ 12.07			tion and Fiduciary Liability Insurance	12-27
y 12.07	[1]		ountability	12-27
	[2]		eased Risk of Liability	12-27
	[2]		Broader Court Remedies and	12 27
		լայ	Participant Relief	12-27
		[b]	Measures of Loss for Breach of	12 27
		[Մ]	Fiduciary Duty	12-28
		[c]	Statute of Limitations	12-28
		[d]	Contractual Periods in ERISA	12-31
		լսյ	Plans	12-31
				12-31
				12-31
		[م]	[ii] Supreme Court Decision Reliance on IRS Determination	12-32
		[e]		12-32.1
		[£]	Letter	12-32.1
		[f]	ERISA's Equitable Remedies	12 22 1
			Provision	12-32.1
			[i] CIGNA Corp. v. Amara	
			(2011 U.S. Supreme Court	12 22 1
			Decision)	12-32.1
			[ii] District Court Decision	12-32.2
			[iii] Second Circuit Decision	12-32.2
			[iv] U.S. Supreme Court	12 22 2
		F - 1	Decision	12-32.2
		[g]	U.S. Airways, Inc. v. McCutchen	
			(2013 U.S. Supreme Court	10.00.0
			Decision)	12-32.3
			[i] District Court Decision	12-32.4
			[ii] Third Court Decision	12-32.4
			[iii] Supreme Court Decision	12-32.4

		TABLI	E OF CONTENTS	xxxvii
	[h]	Sixth	Circuit Affirms \$3.8M	
		Dis	gorgement Under ERISA'S	
			uitable Remedies Provision	12-32.5
		[i]	District Court Decision	12-32.5
		[ii]	Sixth Circuit Decision	12-32.5
		[iii]	Dissenting Opinion	12-32.6
[3]	Insu	rance P	ermitted	12-32.6
	[a]		sor Indemnification	12-32.7
	[b]		sor Insurance	12-32.7
	. ,	[i]	General	12-32.7
		[ii]	What Types of Liability	
			Insurance Should Plans	
			Have?	12-32.8
		[iii]	Who Is Insured by a	
			Fiduciary Liability Policy?	12-32.10
		[iv]	Who Purchases Fiduciary	
			Liability Insurance?	12-32.11
		[v]	What Does Fiduciary	
		F.1	Liability Insurance Cover?	12-32.12
		[vi]	What Other Provisions Are	
		[]	Frequently Included in a	
			Fiduciary Liability Policy?	12-32.13
		[vii]	What Else Might Not Be	12 02.10
		[,11]	Covered by Fiduciary	
			Liability Insurance?	12-32.15
		[viii]	How Much Is the Policy	12 32.10
		[4111]	Deductible and How Should	
			It Be Applied?	12-32.20
		[ix]	What Factors Should Be	12 32.20
			Considered When Selecting	
			a Liability Limit?	12-32.21
		[x]	What Liability Limits Are	12-32.21
			Available?	12-32.21
		[xi]	How Is the Premium	12-32.21
		[AI]	Determined?	12-32.22
		[xii]	What Is a Reasonable	12-32.22
		[XII]	Premium?	12-32.22
		[wiii]	What if a Policy Is	12-32.22
		[XIII]	Canceled?	12 22 22
		[:-]		12-32.23
	[a]	[xiv]	Extended Coverage	12-32.23
	[c]		ing Requirements	12-32.24
	[d]		iary Liability and Employee	12 22 24
			nefits Liability	12-32.24
		[i]	Bonding Requirements Under	10.22
		F227	ERISA	12-33
		[ii]	Fiduciary Liability Versus	10.00
		F2222	Employee Benefits Liability	12-33
		[iii]	IRS Liability Insurance	12-34

			[iv] Compliance Audit Insurance				
			Can Be Paid with Plan				
			Assets	12-35			
§ 12.08	Rules	Prohi	biting Transactions Between Plan and				
3	Party-in-Interest						
	[1]	-	ieneral	12-36 12-36			
	[2]		hibited Transactions	12-37			
	[2]	[a]	Sale, Exchange or Lease	12-38.1			
		[a] [b]	_	12-36.1			
			Loans	12-40			
		[c]	Furnishing of Goods, Services or	12 41			
		F 13	Facilities	12-41			
		[d]	Transfers of Plan Assets	12-43			
			[i] In General	12-43			
			[ii] Plan Assets Defined	12-43			
			[iii] Release of Future Claims				
			Against Employer	12-44			
		[e]	Certain Acquisitions of Employer				
			Securities or Realty	12-44.1			
		[f]	Block Trading	12-46			
		[g]	Electronic Communication Network	12-46			
		[h]	Service Providers	12-46.1			
		[i]	Foreign Exchange Transactions	12-46.1			
		[j]	Cross-Trading	12-46.2			
	[3]		ciary Self-Dealing Transactions	12-46.3			
	[4]		cial Rules Covering Financial	12 10.5			
	ניין	_	estitutions	12-47			
	F51		rance/Annuities.	12-47			
	[5]			12-48			
		[a]	In General	12-48			
		[b]	Plan Assets and Insurance	10 40			
	563		Company General Accounts	12-48			
	[6]		tribution of Property Constitutes	40			
			ohibited Transaction	12-50			
	[7]		ninistrative Exemptions	12-54			
		[a]	In General	12-54			
		[b]	Joint Procedure	12-55			
		[c]	Retroactivity	12-55			
		[d]	Exemption Procedure	12-56			
			[i] Who May Apply for				
			Exemptions	12-56.1			
			[ii] Exemption Application				
			Contents—General				
			Information	12-56.2			
			[iii] Proposed Regulations for	12 00.2			
			Exemption Procedure	12-56.5			
		[e]	Processing of Exemption Request	12-56.10			
				12-30.10			
			[i] Examples of Individual				
			Exemptions Created by the	10 57 11			
			Department of Labor	12-56.11			

		TABLE OF CONTENTS	XXXIX
	[8]	[ii] Examples of Exemption Requests Not Approved by the Department of Labor	12-56.18 12-56.19 12-56.21 12-56.35 12-56.35 12-56.37 12-56.38 12-56.38
e 12.00	Code	[iii] Summary of Revisions	
§ 12.09	-	ersecurity Risks for Employee Benefit Plans	12-57
	[1]	Overview	12-57
		[a] Scope of Liability	12-58
	F27	[b] Analysis and Observations	12-58
	[2]	The Duty of Prudence Analysis	10.50
		Under ERISA	12-59
		[a] Duty to Monitor Analysis Under	10 60
		ERISA	12-60
		[b] Analysis of the Fiduciary Duties of	40.00
		Corporate Directors and Officers	12-63
	[3]	Analysis of Litigation Challenges	12-64.1
		[a] Venue Analysis	12-64.1
		[i] The Target Litigation	12-64.1
		[ii] The Home Depot Litigation	12-64.2
		[b] Jurisdictional Analysis	12-64.3
		[i] Overview of ERISA	
		Preemption Analysis	12-64.3
		[ii] Complete Preemption Under	
		ERISA § 502(a)(2)	12-64.4
		[iii] Conflict Preemption Under	
		ERISA § 514(a)	12-64.5
		[c] Conclusion	12-64.6
	[4]	Fraudulent Plan Distributions	12-64.7
		[a] Summary	12-64.7
		[b] Fraudulent Distribution to	
		Ex-Spouse Not a Forfeiture	12-64.7
		[i] Background	12-64.7
		[ii] Tenth Circuit Decision	12-64.8
		[c] Lawsuit Against Estee Lauder for	
		401(k) Distribution Fraud	12-64.11
		[i] Background	12-64.11
		[ii] Claims for Relief	12-64.11
	[5]	DOL Authority to Investigate ERISA	
		Cybersecurity Breaches	12-64.12

		[a]	Background	12-64.13
		[b]	Decision	12-64.15
			[i] Subpoena Authority	12-64.15
			[ii] Indefinite and Burdensome	12-64.16
		[c]	Abbott Labs Wins ERISA Suit	
			Over Fraudulent 401(k) Plan	
			Distribution	12-64.22
			[i] Background Based on	
			Complaint Allegations	12-64.23
			[ii] Analysis	12-64.24
§ 12.10	Plan E	xpens	es	12-65
0	[1]		ciary Duty to Identify and Monitor	
			n Expenses	12-65
		[a]	Annual Reporting and Disclosure—	
		F7	Schedule C	12-65
		[b]	ERISA Section 408(b)(2)—Fee	
		F - J	Disclosure	12-66
			[i] Final Regulations	12-66
			[ii] Judicial View of Fiduciary	
			Duties	12-88
		[c]	Disclosure in Participant-Directed	
			Individual Account Plans	12-94
		[d]	DOL Field Assistance Bulletins 2012-2	
		[]	and 2012-02R on Fee Disclosure	12-98.4
		[e]	Revenue Sharing Payments as Plan	
		[-]	Assets.	12-98.20
			[i] Background	12-98.21
			[ii] Plan Asset Question	12-98.21
			[iii] Settlor Accounts	12-98.22
		[f]	Plan Fiduciary Best Practices to	
			Monitor Plan Fees and Expenses	12-98.23
	[2]	Alloc	cation of Plan Expenses Among Plan	
	. ,		rticipants and Beneficiaries	12-98.24
		[a]	ERISA and the DOL Regulations	12-98.24
		[b]	Pro Rata versus Per Capita	12-98.25
		[c]	Allocation of Expenses Among All	
			Participants versus Solely to an	
			Individual Plan Participant	12-98.26
	[3]	Repo	rting and Disclosure Implications	12-98.26
	[4]		2003-3 and Its Relationship to the	
			ernal Revenue Code	12-98.27
	[5]		Guidance on Plan Expenses in	
	. ,		sponse to DOL FAB 2003-3	12-98.28
§ 12.10A	Litigat		Plan Forfeitures	12-98.29
o .	[1]		ox Motion to Dismiss 401(k)	
			rfeiture Suit	12-98.29
		[a]	Summary	12-98.30
		[b]	Background	12-98.31
			[i] The Plan	12-98.31

[5]	Bank	k of America Sued Over Misuse of	
		orfeited 401(k) Funds	12-98.75
	[a]	Nature of Action	
	[b]	Factual Allegations	
	[c]	First Claim for Relief—Breach of	
		Fiduciary Duty	12-98.76
	[d]	Second Claim for Relief-Breach of	
		ERISA's Anti-Inurement Provision	12-98.77
	[e]	Third Claim For Relief-Breach of	
		ERISA's Prohibited Transactions	12-98.78
	[f]	Fourth Claim for Relief-Failure to	
		Monitor Fiduciaries	12-98.78
	[g]	Request for Relief	
[6]		it Loses Motion to Dismiss 401(k)	
[-1		orfeiture Suit	12-98.79
	[a]	Summary	
	[b]	Background	
	[c]	Analysis	
	[~]	[i] Plaintiff Has Stated Claims	12 > 0.02
		for Breach of Fiduciary	
		Duties Under ERISA	12-98.83
		[ii] Plaintiff Has Adequately	/
		Pleaded a Claim for Breach	
		of ERISA's Anti-Inurement	
		Provision	12-98.88
		[iii] Plaintiff Has Adequately	/ 0.00
		Pleaded a Claim for	
		Prohibited	
		Transactions under ERISA	12-98.89
[7]	BAF	E Wins Motion to Dismiss 401(k) Plan	12 > 0.0>
r. 1		orfeiture Suit	12-98.92
	[a]	Allegations	
	[b]	Decision	
	[c]	Background	
	[d]	Defendant's Motion to Dismiss	
	[4]	[i] Breach of Fiduciary Duties	12 70.78
		Relating to Forfeitures	12-98.96
		[ii] Breach of Fiduciary Duties	12 70.70
		Relating to Excessive Fees	12-98.100
	[e]	Plaintiff's Motion to Disqualify	12 >0.100
	[~]	Defendant's Counsel	12-98.102
[8]	ERIS	SA Forfeitures Lawsuit against	12 70.102
[o]		oneywell Dismissed	12-98.102
	[a]	Background	
	[b]	Procedural History	
	[c]	Legal Standard	
	[d]	The Complaint Alleges Honeywell	12 70.107
	լայ	Acted as a Fiduciary	12-98.105
	[e]	Plaintiff Fails to Allege Breaches of	12 70.100
	احا	Fiduciary Duties	12-98 106

Platform Providers.....

[iii]

12-121

		[1V]	Transactions with	
			Independent Plan	
			Fiduciaries with Financial	
			Expertise	12-121
		[v]	Swap and Security-Based	
		Γ.]	Swap Transactions	12-122
		[vi]	Employees of Plan Sponsors,	12 122
		[VI]	Affiliates, Employee	
			Benefit Plans, Employee	
			Organizations, or Plan	
			Fiduciaries	12-122
	[c]		Best Interest Contract	
		Ex	emption (BICE)	12-122
	[d]	Addi	tional Exemptive Relief	12-123
	[e]	Appl	icability Date	12-124
[2]			Challenging DOL Fiduciary	
			ent Advisor Definition	12-124
	[a]		onal Association for Fixed	
	[۵]		nuities v. Perez	12-124
		[i]		12-125
			NAFA Complaint	12-123
		[ii]	DOL Response to NAFA	10 140
	F1.7	E: 0.1	Complaint	12-143
	[b]		Circuit Upholds Challenge to	
			DL Fiduciary Rule SEC Issues	
			luciary Regulations Similar to	
		DC	OL Rule	12-165
		[i]	Background of the DOL's	
			New Fiduciary Rule	12-165
		[ii]	The Decision Vacating the	
			New Fiduciary Rule	12-165
		[iii]	The Impact of SEC Proposed	
		[]	Fiduciary Regulation	12-166
		[iv]	SEC Proposed Protections	12-167
Г21	2022			12-107
[3]			osed Rule to Redefine DOL	12 160
			nt Advice Fiduciary Definition	12-168
	[a]		ground	12-168
	[b]	_	ications of Proposed New Test	12-168.1
		[i]	Elimination of "Regular	
			Basis" Requirement	12-168.1
		[ii]	Elimination of "Mutual	
			Agreement, Arrangement	
			or Understanding" and	
			"Primary Basis"	
			Requirement	12-168.1
		[iii]	Informal Advice Outside the	
		rJ	Scope of a Manager's	
			Engagement	12-168.2
		[iv]	Acknowledgement of	12 100.2
		[14]	Fiduciary Status	12-168.2
			i iduciai y Status	14-100.4

		TABL	E OF CONTENTS	xlv
		[v]	No Disclaimers	12-168.2
		[vi]	Fee or Other Compensation,	
			Direct or Indirect	12-168.2
	[c]	Impa	act On Fiduciary Status	12-168.3
	[d]		pliance Overkill	12-168.3
§ 12.15			Cyber Attacks and Fraudulent	
· ·			ons	12-169
				12-169
			or Liability	12-169
			Litigation	12-170
		ı Admi	nistrator and Custodian	, -
			for Cybersecurity Theft of	
			ant Accounts	12-171
			ance	12-172
				12-172
§ 12.16			Environmental, Social and	12 1/2
y 12.10			ctors	12-173
			Rule on Prudence and Loyalty	12-1/3
			ing Plan Investments and	
			ng Shareholder Rights	12-173
			ground	12-173
	[a]		The 2020 Rules	12-173
		[i]		12-1/3
		[ii]	President Biden's Executive	12 174
		F:::1	Orders	12-174
		[iii]	Department of Labor	
			Review of 2020 Rules	10 175
		F13	and Enforcement Policy	12-175
		[iv]	The 2021 Notice of Proposed	10 175
	F1.3	0	Rulemaking	12-175
	[b]		rview of the Final Rule	12-176
		[i]	Changes to Clarify	
			Permissibility of	
			Consideration of ESG	4. 4.
			Factors	12-176
		[ii]	Removal of Pecuni-ary/Non-	
			Pecuniary and Related	
			Terminology	12-177
		[iii]	Changing the Standard for	
			When to Apply	
			"Tiebreaker" Test	12-177
		[iv]	Removal of Tiebreaker	
			Documentation	
			Requirement	12-177
		[v]	Changes to Qualified Default	
			In-vestment Alternative	
			Provisions	12-178
		[vi]	Changes to Clarify the	
			Applica-tion of the Duty	
			of Loyalty	12-178

		[vii]	Provisions on Shareholder				
			Rights Including				
			Proxy Voting	12-179			
[2]	Ame	rican A	Airlines Pilot Files Class Action				
	O.	ver 401	(k) Plan ESG Investing	12-180			
	[a]		mary	12-181			
		[i]	Allegations	12-181			
		[ii]	Parties	12-183			
	[b]		al Background	12-185			
	F-3	[i]	The Plan	12-185			
		[ii]	ESG Funds	12-188			
		[iii]	ESG Proxy Voting and	12 100			
		[]	Share-holder Activism	12-189			
		[iv]	ERISA Fiduciary Duties	12-189			
	[c]		es of Action	12-193			
	[d]		ers for Relief	12-196			
[3]			aintiffs Challenge DOL	12 170			
			e	12-196			
	[a]		v. Walsh	12-197			
	լայ	[i]	Factual Background	12-197			
		[ii]	The Biden Administration's	12-170			
		[11]	2021 Executive Orders and				
				12-202			
		F3337	Proposed Rule The 2022 Investment Duties	12-202			
		[iii]		12-204			
		F27	Rule				
		[iv]	Claims for Relief	12-215			
	F1 3	[v]	Request for Relief	12-217			
	[b]		n v. Walsh	12-218			
		[i]	Statement of Claim	12-219			
		[11]	Causes of Action	12-229			
		[iii]	Relief Requested	12-232			
[4]	"Disloyal, Not Imprudent" American						
			ESG Investment Decision	12-232			
	[a]		ground	12-233			
	[b]		mary of Decision	12-233			
		[i]	Prudence Claim	12-234			
		[ii]	Loyalty	12-234			
	[c]		clusions of Law	12-235			
		[i]	Applicable Law	12-235			
		[ii]	Fiduciaries of the Plan	12-236			
		[iii]	Duty of Prudence	12-238			
		[iv]	Duty of Loyalty	12-243			
		ΓvΊ	Conclusion	12-248			

CHAPTER 13

Plan Mergers

§ 13.01	In G	General	13-4		
§ 13.02		ns of Corporate Reorganizations	13-4.1		
Ü	[1]	Buyer Acquires Subdivision of Seller	13-4.1		
		[a] Impact on Seller's Plan	13-5		
		[i] Full Impact	13-5		
		[ii] Partial Impact	13-5		
		[b] Impact on Buyer's Plan	13-6		
	[2]	Buyer Acquires All of the Assets of Seller	13-6		
		[a] Impact on Seller's Plan	13-6		
		[i] Termination	13-6		
		[ii] Assumption	13-7		
		[b] Impact on Buyer's Plan	13-7		
	[3]	Buyer Acquires Stock of Seller or			
		Merges Seller in to Buyer or a			
		Subdivision of Buyer	13-7		
		[a] Impact on Seller's Plan	13-7		
		[i] Termination	13-7		
		[ii] Freeze	13-7		
		[iii] Continuation	13-7		
		[b] Impact on Buyer's Plan	13-7		
	[4]	Reorganization Impact Chart	13-8		
§ 13.03		siderations to Be Applied in Reviewing			
0	Alternative Courses of Action				
	[1]	The Impact of the Course of Action Upon	13-9		
		Purchase or Sale Price	13-9		
	[2]	Future Risk	13-9		
	[3]	Tax Deductions	13-9		
	[4]	Administrative Burdens	13-9		
	[5]	Employee Communication	13-10		
§ 13.04		Requirements and Qualifications for			
0		Deductibility	13-11		
	[1]	Fundamental Principle	13-11		
	[2]	Mergers	13-12		
	[3]	Transfer of Assets or Liabilities	13-12		
	[4]	Separate Accounting Assets	13-13		
	[5]	Merger of Defined Benefit Plans	13-13		
	[6]	De Minimus Rule for Merger of Defined			
	F-3	Benefit Plans	13-19		
	[7]	Defined Contribution Plans	13-19		
	[8]	Spinoffs	13-20		
	[9]	Merger and Spinoff Rules Apply to	-2 -0		
	r. 1	Transfer of Assets and Liabilities	13-21		
§ 13.05	Cont	tingent Liabilities in the Merger of Employee			
0	_	enefit Plans	13-22		

xlviii	EMPLOYEE BENEFITS LAW	
	[1] Section 4062 Liability	13-22
	[2] The Controlled Group Concept	13-23
§ 13.06	Acquisition Patterns; the Seller's Point of View	13-24
	[1] Plan Termination	13-24
	[a] Full Termination	13-24
	[b] Partial Termination	13-26
	[c] "Comparable Plan" if Buyer	
	Precludes Termination	13-26
	[2] Freezing Plans	13-27
	[a] Full Freeze	13-27
	[b] Partial Freeze	13-28
	[3] Assumption	13-28
	[a] Full Assumption	13-28
	[b] Partial Assumption	13-29
	[4] Continuation	13-29
§ 13.07	Acquisition Patterns; the Buyer's Point of View	13-30
	[1] Plan Termination	13-30
	[a] Full Termination	13-30
	[b] Partial Termination	13-32
	[2] Freezing Plans	13-32
	[a] Full Freeze	13-32
	[b] Partial Freeze	13-33
	[3] Assumption	13-33
	[a] Full Assumption	13-33
	[b] Partial Assumption	13-34
	[4] Continuation	13-34
0.12.00	[5] Potential Liabilities	13-34
§ 13.08	Reporting and Disclosure Requirements for	
	Employee Benefit Plans in Mergers and	12.26
	Acquisitions	13-36
	[1] Plan Termination	13-36
	[a] Full Termination	13-36
	[b] Partial Termination	13-37
	[2] Freezing Plans	13-38
	[a] Full Freeze	13-38
	[b] Partial Freeze	13-39
	[3] Assumption	13-39
	[4] Merger, Consolidation or Transfer of Plan	12.20
0 12 00	Assets	13-39
§ 13.09	Requirements for Multiemployer Plans	13-41
	[1] Mergers with and Transfers Between	12 41
	Multiemployer Plans	13-41

PBGC Final Rule Amends

Regulation on Multiemployer Plan

Transfers

[a]

[b]

[c]

13-41

13-41

13-42

13-42

		,	TABLE OF CONTENTS	xlix
	[2]		gers with and Transfers to Single	
			nployer Plans	13-42
		[a]	Liability of Multiemployer Plan	13-42
		[b]	Exception to Liability	13-43
		[c]	Transferee Consent	13-43
		[d]	Limitations on Transfers	13-43
	[3]	Parti	tion of Multiemployer Plan	13-44
	[4]	Asse	t Transfer Rules	13-44
	[5]	Trans	sfers Relating to Change in	
		Ba	rgaining Representative	13-45
		[a]	Prohibited Transfers	13-46
		[b]	Election to Apply Regular Merger	
			Rules	13-46
§ 13.10	Mergers and Acquisitions (Cash Balance and			
	Other Hybrid Plans)			13-47
	[1]	Cash	Balance and Other Hybrid Plans	13-47
	[2]	Merg	gers and Acquisitions	13-47
KEY TO) ABBR	EVIA	TIONS	KA-1
INDEV				Т 1