



# Compliance Checklist 2010

**For Qualified Governmental and Nonelecting Church Plans, Non-ERISA 403(b) Plans, 457 Plans, and Nonqualified Executive Benefit Plans that are not subject to ERISA.**



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**Prudential**

## Compliance Checklist for 2010



Dear Client,

As a retirement plan sponsor, you know how important it is to comply with the ever-changing reporting and disclosure requirements mandated by the federal government. You also know how confusing it can be.

As your provider of retirement services, we are always looking for ways we can make your job easier. That is why we are pleased to provide you with our Compliance Checklist for 2010, offered to Prudential Retirement® clients by our Regulatory & Consulting Services department.

The Checklist incorporates requirements for Governmental and Nonelecting Church Plans, Non-ERISA 403(b) Plans, 457 Plans, and Nonqualified Executive Benefit Plans, and provides information on the materials that you will need to file, filing due dates, and agencies to which the filings should be made. In addition, we've identified how Prudential Retirement can help you complete each task, so you can rest assured you have what you need to meet the latest government filing and disclosure requirements.

We are confident that you will find this Checklist to be a valuable reference tool. If you have any questions on any of the items covered in the Checklist, or if you would like additional information on how Prudential Retirement can help you meet these requirements, please contact your Prudential Retirement representative.

Sincerely,

Michael L. Taricani  
Vice President, Regulatory & Consulting Services  
Prudential Retirement



## How to use this Checklist

We've designed this Checklist as a "quick glance" resource to help you meet plan reporting and disclosure requirements for plans that are not subject to the reporting and disclosure requirements of ERISA. This easy-to-follow Checklist should help you provide timely and complete information to individuals and appropriate government agencies. We suggest you keep your Checklist in a convenient place so you can refer to it whenever you may need to take specific action.

For your convenience, we've divided it into the following reporting categories:

- Participants & Beneficiaries—Pages 3 through 7; and
- Internal Revenue Service (IRS)—Pages 8 through 10.

Each of the categories contains five sections:

- Status;
- Plan;
- Item;
- Action/Support; and
- When Due.

The "**Status**" column is a convenient way to monitor the activity for each item that applies to your plan or program.

The "**Plan**" column indicates whether the item applies to qualified governmental or nonelecting church defined benefit ("**DB**") plans, qualified governmental or nonelecting church defined contribution ("**DC**") plans, non-ERISA 403(b) plans ("**403(b)**"), Section 457(b) plans ("**457**"), or unfunded nonqualified plans ("**NO**"). Throughout this document, we will collectively refer to these as "plans." Remember, if you sponsor multiple plans, these requirements apply separately to each plan.

The "**Action/Support**" column lists what must be completed for each item and describes Prudential Retirement's role in supporting the tasks. In addition, this column indicates how these actions must be performed.

The "**When Due**" column specifies the deadline or completion time frame for each item.

We suggest you start by reviewing in each section the items that apply to your type of plan(s). The mandatory annual (or more frequent) recurring items appear in **bold** within each section. You are required by law to act on these items if they apply to your plan. Next to the applicable items, place a checkmark in the box provided in the "Status" column. Then look in the "When Due" column to determine your deadline and pencil it in next to "Action Date."

There are two categories of event-driven items, which require action only under certain circumstances. The first category includes items that may apply to your plan, such as a change in your plan's vesting schedule. For these you can fill in the "Action Date."

The second category of event-driven items covers those that apply to individuals in your plan. Because these can occur frequently each year, an "Action Date" is not included, but you may find it useful to jot down notes in the "Status" column.

This edition of *Prudential's Compliance Checklist* addresses those reporting and disclosure requirements for plans not subject to ERISA. In addition, it indicates what you need to provide or file and when. Finally, the "Action/Support" column indicates how Prudential works with you to complete each reporting and disclosure task.

A separate edition of *Prudential's Compliance Checklist* addresses reporting and disclosure requirements for plans that are subject to ERISA Title I.

The information presented here reflects reporting and disclosure requirements in effect as of January 1, 2010. Since regulations are always subject to change, you should consult your tax advisor for updates.

This Compliance Checklist and other important compliance publications, such as *Prudential's Pension Analyst*® may be found on Prudential's website at <http://www.prudential.com/pensionanalyst>.



## Special note about nonqualified plan reporting requirements

In general, a nonqualified “top-hat” plan is subject to ERISA reporting requirements, including the requirement to file Form 5500 annually. However, when a top-hat plan is unfunded (i.e., the general assets of the employer are used as the sole source to provide benefits), the plan sponsor may report the following information directly to the DOL, instead of filing Form 5500:

1. The sponsoring employer’s name, address, and employer identification number (EIN);
2. A declaration that the employer maintains the plan primarily to provide nonqualified deferred compensation to a select group of management or highly compensated employees; and
3. A statement of the number of top-hat plans and the number of employees participating in each such plan.

This statement must be filed within 120 days of the plan inception date. It should be sent to:

Top-Hat Plan Exemption  
Employee Benefits Security Administration  
Room N-1513  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

If the information is not provided within this time frame, the plan sponsor will be required to distribute Summary Plan Descriptions and to comply with all ERISA Title I reporting and disclosure requirements, including the annual filing of Form 5500.

## Participants & beneficiaries



Status	Plan	Item	Action/Support	When Due
<input type="checkbox"/> Action Date: ___ / ___ / ___	DB DC 403(b) 457	<b>Form 1099-R</b> to report distributions, including direct rollovers from qualified plans, 403(b) plans, and 457 plans.	Prudential issues Forms 1099-R to participants and beneficiaries in plans whose Plan Sponsors have elected to use our Benefit Payment Services.	January 31 of the year following the calendar year in which the distribution was made.
<input type="checkbox"/> Action Date: ___ / ___ / ___		NQ <b>Form 1099-MISC</b> to report distributions from a nonqualified plan to a participant's beneficiary.	Prudential issues Forms 1099-MISC to beneficiaries in nonqualified plans whose Plan Sponsors have elected to use our Benefit Payment Services.	January 31 of the year following the calendar year in which the distribution was made.
<input type="checkbox"/> Action Date: ___ / ___ / ___	DB DC 403(b) 457	NQ <b>Form 1042-S</b> to report distributions made to certain nonresident aliens.	Prudential issues Forms 1042-S to participants and beneficiaries in plans whose Plan Sponsors have elected to use our Benefit Payment Services.	March 15 of the year following the calendar year in which the distribution was made.
<input type="checkbox"/> Action Date: ___ / ___ / ___		NQ <b>Form W-2</b> to report distributions made to participants from nonqualified plans.	Prudential issues Forms W-2 to participants in plans whose Plan Sponsors have elected to use our Benefit Payment Services.	January 31 of the year following the calendar year in which the distribution was made.
<input type="checkbox"/> Action Date: ___ / ___ / ___	DC 403(b) 457*	<b>Eligible Automatic Contribution Arrangement Notice (EACA).</b>	<p>Plan Sponsors of automatic enrollment plans that meet the eligible automatic contribution arrangement requirements (to permit penalty-free distribution of "accidental" automatic deferrals) must provide employees with a notice that describes the level of contribution which will be made if the employee does not make an affirmative election, the employee's right to elect a different percentage, and how contributions will be invested in the absence of an investment election. If applicable, the notice must also describe the ability for the employee to receive a withdrawal of accidental deferrals and the procedures to elect such a withdrawal. For more information regarding additional items that must be included in the EACA Notice, please see the May 2009 <i>Prudential's Pension Analyst</i> titled, <a href="#">IRS provides final guidance on automatic enrollment plan designs</a>.</p> <p>Prudential Retirement offers varying levels of notice support to Plan Sponsors. For more information regarding the support Prudential provides on annual notices, see <i>Prudential's Compliance Bulletin</i> titled, <a href="#">Participants must be "noticed."</a></p>	Within a reasonable period of time before the employee becomes eligible and within a reasonable time before the beginning of each plan year. At least 30 days and no more than 90 days before the beginning of the plan year is deemed reasonable.

\* Applies to governmental 457(b) plans only.

## Participants & beneficiaries (continued)



Status	Plan	Item	Action/Support	When Due
<input type="checkbox"/> Action Date: ___ / ___ / ___	DB DC	<p>Summary Plan Description (SPD) or booklet (contains descriptive information concerning plan provisions and administration).</p> <p>Governmental and nonelecting church plans are not subject to ERISA's participant disclosure requirements. However, Plan Sponsors must tell employees about the plan and any changes made to the plan for the plan to be qualified. Instead of providing an official SPD, Plan Sponsors may:</p> <ul style="list-style-type: none"> <li>• give each employee a copy of the plan document;</li> <li>• give each employee a booklet summarizing the plan; or</li> <li>• post a notice about the plan on a bulletin board.</li> </ul> <p>Retirement systems of states that have adopted the Uniform Management of Public Employee Retirement Systems Act of 1997 (UMPERSA) must include certain specific information in an SPD.</p>	Prudential drafts an employee booklet for clients who have elected to use our Plan Document Services.	No specific due date.
<input type="checkbox"/> Action Date: ___ / ___ / ___	DB DC	<p>Notice to interested parties of application for initial qualification or for amendment of plan under Internal Revenue Code.</p>	Plan Sponsors generally must provide this notice to eligible employees and other employees working at the same principal place of employment. Prudential prepares a sample of this notice for clients who have elected our Plan Document Services, if applicable.	If seeking a determination letter, the plan must provide notice to interested parties. The notice must be provided no less than 10 and no more than 24 days before the application for the determination letter is mailed.

## Participants & beneficiaries (continued)



Status	Plan	Item	Action/Support	When Due
<input type="checkbox"/>	DB DC 403(b)* 457	Required Minimum Distributions (RMD).	<p>Plan Sponsors are responsible for determining which participants must receive RMDs.</p> <p>For defined benefit clients, Prudential publishes a special annual issue of <i>Prudential's Pension Analyst</i>, which contains updated information on the rules. Plan Sponsors must submit the appropriate forms to initiate distributions.</p> <p>Prudential sends a listing of participants who are/will be age 70½ or older during the upcoming calendar year to defined contribution, defined benefit, 403(b), and 457 clients who use our Recordkeeping Service. After Plan Sponsors review the list and submit changes or revisions, Prudential sends information directly to affected participants to initiate the required distributions.</p>	<p>The first distribution must be made by April 1 following the calendar year in which the participant retires or turns 70½, whichever comes later.</p> <p>Special Note: A participant who signed an election before January 1, 1984 to remain under pre-TEFRA rules can delay payments according to that election.</p>
<input type="checkbox"/>	DB DC	Written explanation of preretirement survivor annuity and joint and survivor annuity.	<p>As required by the plan document, Plan Sponsors must provide these notices to participants and their spouses.</p> <p>Prudential has published a <i>Pension Analyst</i> on Survivor Benefit Rules for Defined Benefit Plans (June 1994) and for <u>Defined Contribution Plans (August 1999)</u>.</p>	<p>Even though qualified governmental and nonelecting church plans are not subject to ERISA's survivor benefit requirement, some Plan Sponsors choose to provide preretirement survivor or joint and survivor benefits. If your plan document contains participant notification requirements, you must administer it according to those requirements for the plan to remain qualified. However, you may remove those provisions from the plan at any time by adopting an appropriate plan amendment.</p>

\* For 403(b) plans, RMD requirements apply only to the portion of the account balance accrued after December 31, 1986. For the portion of the account balance that accrued before January 1, 1987, RMD requirements apply beginning in the year in which the employee turns age 75, regardless of employment status.

## Participants & beneficiaries (continued)



Status	Plan	Item	Action/Support	When Due
☐	DB DC 403(b) 457*	Special Tax Notice Regarding Plan Payments (Section 402(f) Notice).	<p>Plan Sponsors must provide this notice to participants and beneficiaries. Prudential provides this notice to participants in defined contribution plans who request distributions through Prudential's toll-free telephone number service, Participant Website, Personal Retirement Services, or the Direct Service Option.</p> <p>For defined benefit plans that use Prudential Retirement's Outsourcing Services, Prudential provides this notice to participants.</p> <p>For more information regarding the IRS safe harbor notice, see <i>Prudential's Compliance Bulletin</i> from December 2009 titled, <a href="#">IRS updates safe harbor rollover distribution notice</a>.</p>	<p>No less than 30 days and no more than 180 days before the distribution date. Participants can waive the 30-day waiting period if:</p> <ul style="list-style-type: none"> <li>(a) the participant is given at least 30 days after receiving the notice to make a decision to directly roll over the payment; and</li> <li>(b) the plan administrator clearly lets the participant know that he/she has at least 30 days in which to make a decision; and</li> <li>(c) the participant's spouse does not have to consent to the distribution.</li> </ul>
☐	DB DC 403(b) 457*	Automatic Rollover Notice—for plans with mandatory distributions exceeding \$1,000.	<p>For defined contribution plans that use Prudential Retirement's Distribution Options Letter, Prudential will provide this notice to participants. Also, for defined benefit plans that use Prudential Retirement's Outsourcing Services, Prudential will provide this notice to participants.</p>	<p>Prior to the date the mandatory distribution is made.</p>

\* Item applies to governmental 457(b) plans. Distributions from non-governmental 457(b) plans are not eligible for rollover.

## Participants & beneficiaries (continued)



Status	Plan	Item	Action/Support	When Due
<input type="checkbox"/>	DB DC 403(b) 457*	Notice of right to elect not to have federal income tax withheld from distributions other than "eligible rollover distributions."	Plan Sponsors must provide this notice to participants and beneficiaries taking distributions.	<p>Periodic payment: no earlier than six months before and no later than with the first payment. Notice of the right, must thereafter be given, to make or revoke an existing election once each calendar year at approximately the same time.</p> <p>Nonperiodic payment: no earlier than six months before the distribution but within reasonable time for payee to make a decision and notify payer of election choice before distribution is made.</p> <p>Note: U.S. citizens living abroad with no permanent resident address in the U.S. cannot elect out of federal tax withholding. Special rules may apply to nonresident aliens.</p>
<input type="checkbox"/>	DB DC 403(b) 457	Statements to new employees not covered by Social Security.	<p>State and local governmental employers are required to provide a statement to employees hired on or after January 1, 2005, whose jobs are not covered by Social Security.</p> <p>A copy of the statement with the employee's signature must be sent to the "pension-paying agency."</p> <p><u><i>Prudential's Compliance Bulletin from March 2005</i></u> discusses this requirement.</p>	Employers must give the statement to an employee before he or she is hired.
<input type="checkbox"/>		403(b)	Effective opportunity to make or change elective deferrals.	<p>Plan Sponsors must provide employees with an effective opportunity to make or change a cash or deferred election. Prudential can provide a sample template that can be used for this purpose.</p> <p>At least once during each plan year.</p>
<input type="checkbox"/>	DB		Notice of right to supply actual earnings history under plans using estimated wages to determine Social Security offset in benefit formula.	<p>This is due:</p> <p>(a) with SPD, if distributed; and (b) upon separation from service.</p>

\* Item applies to governmental 457(b) plans. Distributions from non-governmental 457(b) plans are not eligible for rollover.

# Internal Revenue Service



Status	Plan	Item	Action/Support	When Due
<input type="checkbox"/> Action Date: ___ / ___ / ___	DB DC 403(b) 457	<b>Form 1099-R</b> to report distributions including direct rollovers from qualified plans, 403(b) plans, and 457 plans.	Prudential files Form 1099-R with the IRS for plans whose Plan Sponsors have elected to use our Benefit Payment Services.	February 28 of the year following the calendar year in which the distribution was made. If filing electronically, the due date is March 31 of the year following the year in which the distribution was made. A 30-day extension to either filing deadline may be requested by filing Form 8809 by the applicable filing due date.
<input type="checkbox"/> Action Date: ___ / ___ / ___		NQ <b>Form 1099-MISC</b> to report distributions from a nonqualified plan to a participant's beneficiary.	Prudential files Forms 1099-MISC with the IRS for plans whose Plan Sponsors have elected to use our Benefit Payment Services.	February 28 of the year following the calendar year in which the distribution was made. If filing electronically, the due date is March 31 of the year following the year in which the distribution was made. A 30-day extension to either filing deadline may be requested by filing Form 8809 by the applicable filing due date.
<input type="checkbox"/> Action Date: ___ / ___ / ___	DB DC 403(b) 457	NQ <b>Form 945</b> to report income tax withheld from distributions made from qualified plans, 403(b) plans, 457 plans, and from nonqualified plans to participants' beneficiaries.	Prudential files Form 945 with the IRS for plans whose Plan Sponsors have elected to use our Benefit Payment Services.	January 31 of the year following the calendar year in which the distributions were made. This filing deadline can be extended by 10 days if tax payments were made on time and in full.
<input type="checkbox"/> Action Date: ___ / ___ / ___	DB DC 403(b) 457	NQ <b>Form 1042-S</b> to report distributions made to certain nonresident aliens.	Prudential files Form 1042-S with the IRS for plans whose Plan Sponsors have elected to use our Benefit Payment Services.	March 15 of the year following the calendar year in which the distribution was made. A 30-day extension may be requested by filing Form 8809 by this due date.
<input type="checkbox"/> Action Date: ___ / ___ / ___	DB DC 403(b) 457	NQ <b>Form 1042</b> to report income tax withheld from distributions made to certain nonresident aliens.	Prudential files Form 1042 with the IRS for plans whose Plan Sponsors have elected to use our Benefit Payment Services.	March 15 of the year following the calendar year in which the distribution was made. The filing deadline can be extended up to 90 days by filing Form 2758. However, the filing of Form 2758 does not extend the time for the payment of income tax.
<input type="checkbox"/> Action Date: ___ / ___ / ___		NQ <b>Form W-2</b> to report distributions made to participants from nonqualified plans.	Prudential files Form W-2 with the IRS for plans whose Plan Sponsors have elected to use our Benefit Payment Services.	February 28 of the year following the calendar year in which the distribution was made. If filing electronically, the due date is March 31 of the year following the year in which the distribution was made. A 30-day extension to either filing deadline may be requested by filing Form 8809 by the applicable filing due date.

# Internal Revenue Service (continued)



Status	Plan	Item	Action/Support	When Due
<input type="checkbox"/> Action Date: ___ / ___ / ___ ___ / ___ / ___ ___ / ___ / ___ ___ / ___ / ___		NQ <b>Form 941</b> to report income tax withheld from distributions made to participants from nonqualified plans.	Prudential files Form 941 with the IRS for plans whose Plan Sponsors have elected to use Benefit Payment Services.	Last day of the month following the end of each calendar quarter in which distributions were made. This filing deadline can be extended by 10 days if tax payments were made on time and in full.
<input type="checkbox"/> Action Date: ___ / ___ / ___	DC 403(b) 457	Correction of Excesses: (1) Elective Deferral Limit For 2009 and 2010: \$16,500	<p>Plan Sponsors are responsible for monitoring the deferral limit. Generally, Plan Sponsors provide Prudential with direction to distribute excess deferrals.</p> <p>If permitted by the plan, catch-up eligible participants may have excess deferrals reclassified as catch-up contributions up to the limit for the specified year (the age 50 catch-up limit is \$5,500 for 2009 and 2010).</p> <p>Under a 403(b) program, certain employees of an eligible organization may make additional deferrals under a 15-year catch-up option.</p> <p>For a 457(b) plan, the basic annual limit for 2009 and 2010 is the lesser of \$16,500, or 100% of the participant's includible compensation. Under a 457(b) plan, certain employees may also be eligible for a special Section 457 catch-up limit.</p>	Calendar-year test period – must distribute no later than April 15 of calendar year following the year in which excess deferrals occurred. Governmental 457(b) plans must distribute the excess deferrals as soon as administratively practicable.
<input type="checkbox"/> Action Date: ___ / ___ / ___	DC 403(b)	(2) Excess Annual Additions - (For 2010: the lesser of: 100% of compensation or \$49,000.)	Plan Sponsors are responsible for monitoring Code Section 415 Limits. Plan Sponsors must provide Prudential with direction to distribute excess annual additions.	Limitation-year test period. Correction methods may include refunding to participants, or removing from participants' accounts and using as contribution credit. Corrections should be completed as soon as possible.

## Internal Revenue Service (continued)



Status	Plan	Item	Action/Support	When Due
<input type="checkbox"/> Action Date: ___ / ___ / ___	DB DC	<b>Advance Determination</b> (1) Form 5300 to request a determination letter for qualification of a plan and the exempt status of any related trust, and Schedule Q (nonelecting church plans only) to relate the manner in which the plan satisfies certain nondiscrimination requirements. The filing of Schedule Q is optional.	Plan Sponsors must file the form with the IRS. Prudential prepares a completed form for defined benefit Plan Sponsors who elect our Plan Document Services. Prudential provides either a completed form or an instructional package for defined contribution clients who elect our Plan Document Services. Even though the filing of Schedule Q is not required, Plan Sponsors of nonelecting church plans may choose to submit it with the Form 5300 series to broaden the scope of a determination letter.	Before the end of the plan's regular, five-year remedial amendment cycle, generally determined by the last digit of the employer's EIN. The first EGTRRA remedial amendment cycle ended on January 31, 2007. For plans where the last digit of the employer's EIN ends in a 5 or 0, the EGTRRA remedial amendment cycle ends on January 31, 2011. The deadline for <u>governmental plans</u> was January 31, 2009, unless the Plan Sponsor chose to file instead between February 1, 2010 and January 31, 2011. For more information on remedial amendment cycles, see the IRS's Determinations web page at: <a href="http://www.irs.gov/retirement/content/0,,id=97226,00.html">http://www.irs.gov/retirement/content/0,,id=97226,00.html</a> . Receipt of an advance determination letter allows an employer to make contributions to the retirement plan with the knowledge that investment earnings on plan assets are not taxable until distributed and participants will not be taxed on their benefits until distributed.
<input type="checkbox"/> Action Date: ___ / ___ / ___	DB DC	(2) Form 5310 to apply for a determination upon plan termination under Code Section 401(a). Nonelecting church plans have the option to file Schedule Q with Form 5310 to relate the manner in which the plan satisfies certain nondiscrimination requirements. Governmental plans do not file Schedule Q.	Plan Sponsors should file these forms with the IRS.	The later of: (i) one year from the effective date of the termination; or (ii) one year from the date on which the action terminating the plan is adopted. However, in no event can the application be filed later than 12 months from the date of distribution of substantially all plan assets in connection with the termination of the plan.
<input type="checkbox"/> Action Date: ___ / ___ / ___	DB DC	(3) Form 8717 (User Fee) to be attached to determination letter filing.	Plan Sponsors must file this form along with Form 5300 or Form 5310 with the IRS.	See information under Advance Determination.

# Notes



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Pension Analyst by Prudential Retirement

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