



Pension Analyst

Important information

Plan administration and operation

2008

2008 Year-End compliance reminders

For defined contribution plans not subject to ERISA

This information applies to defined contribution plans, such as qualified governmental plans (including “grandfathered” 401(k) plans), qualified church plans that do not elect to be covered by ERISA (“non-electing church plans”), 403(b) programs, and section 457 plans that are not subject to Title I of ERISA.

Every year, defined contribution plan sponsors should make sure their plans meet certain compliance requirements, including those listed below. This publication identifies the materials you need to review and will help you prepare for year-end.

- **2008 Compensation limit is \$230,000.** In general, when determining 2008 contributions, plan sponsors may only take into account each participant’s compensation up to \$230,000. However, a special limit of \$345,000 applies to eligible participants in certain governmental plans that were in effect on July 1, 1993.
- **Annual deferral limit and correction deadline.** For the 2008 calendar year, a participant’s deferral contributions to a 401(k) plan, 403(b) program or section 457 plan could generally not exceed \$15,500. A single \$15,500 limit applies to deferral contributions made to any combination of 401(k) plans and/or 403(b) programs. However, deferrals made to 401(k) plans and/or 403(b) programs do not reduce the limit on deferrals that may be made to a section 457 plan. As a result, an individual could contribute \$15,500 to a combination of 401(k) plans and/or 403(b) programs and contribute an additional \$15,500 to a section 457 plan.

Some 401(k), 403(b), and governmental section 457 plans also may have allowed participants age 50 or older in 2008, to contribute an additional \$5,000 of “catch-up” deferrals during the 2008 calendar year. Additional catch-ups (i.e., 15 year catch-up, last three year catch-up) are available under some 403(b) programs and section 457 plans.

Excess deferrals made in 2008 to a single plan, or to multiple plans sponsored by the same employer (determined on a controlled-group basis), must be distributed to the participant, with related earnings, by April 15, 2009. Failure to make these corrective distributions by April 15, 2009, may result in plan disqualification or loss of the tax deferred status of plan assets. In addition, the amount of excess elective deferral contributions must be included in the participant’s income in both the year contributed and in the year eventually distributed.

As mentioned in our May 2008 Pension Analyst titled [“IRS Provides Guidance on 2008 Distribution Rules.”](#) the IRS has confirmed that plans must pay gap period income on excess deferrals attributable to tax years beginning on or after January 1, 2007, despite the fact that pending PPA technical corrections bills would repeal this requirement. Prudential has been automatically calculating and paying gap period income on excess deferrals distributed after December 31, 2007.

If your plan needs to distribute 2008 excess deferrals to any participants, complete and return to your Client Consultant a [Request for Distribution of Excess Elective Deferrals](#) form for each affected participant.

- **Annual additions limit.** In general, employer contributions, employee post-tax and pre-tax contributions, and forfeitures reallocated (if any) to a participant during the 2008 limitation year (collectively referred to as “annual additions”) are limited to the lesser of \$46,000 or 100% of the participant’s compensation. However, church employees may receive annual additions under a 403(b) program of up to \$10,000 per year, even if this amount exceeds the standard 100% of compensation limit on annual additions. This special limit is limited to a \$40,000 lifetime maximum.

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We have included an [Annual Additions Limit Worksheet](#) that you may photocopy and use to calculate each participant's limit, under the standard rules, and actual annual additions. For each participant who has excess annual additions, complete and return to your Client Consultant a [Request for Distribution of Excess Annual Additions](#) form. The sample form provides additional information about acceptable correction methods.

- **2008 Forfeitures.** In general, qualified defined contribution plans may not carry unallocated suspense accounts from one plan year to the next. The IRS makes specific exceptions to this rule for suspense accounts arising from the correction of excess annual additions and assets transferred from a terminated defined benefit plan to be allocated over a seven-year period. Otherwise, the IRS expects all plan assets to be allocated among participant accounts at year-end. Generally, whether your plan reallocates forfeitures, applies them as a credit toward employer contributions, or applies them as a credit toward plan expenses, there should be no unallocated forfeitures remaining at year-end. Plan documents may contain language specifically addressing the timeframe by which forfeitures must be applied.
- **2009 Top-Heavy determination.** To determine if your plan is top-heavy for the 2009 plan year, you must first identify your "Key Employees." An employee is a Key Employee only if he is:
 - An officer of the organization who received more than \$150,000 compensation in 2008.

Employees who performed no services for your company during the one-year period ending on the last day of the 2008 plan year are disregarded in determining top-heavy status.

Also, the lookback period for adding back distributions to account balances depends on the type of distribution made. A five-year lookback applies to in-service withdrawals, including hardship withdrawals. However, other distributions (e.g., due to retirement, disability, death or termination of employment) are added back only if they were made during the one-year period ending on the last day of the 2008 plan year.

If Prudential Retirement does not provide top-heavy testing services for your plan, you may use the [Top-Heavy Test Worksheet](#) we have provided to perform this test or make other arrangements to do this testing.

- **2008 Top-Heavy contributions.** If your plan was Top-Heavy for 2008, based on 2007 plan year-end data, you must make a minimum contribution to satisfy the Top-Heavy requirements. This contribution is subject to the same timing requirements as any other 2008 employer contribution.
- **Plan amendments.** Plan sponsors that maintain plan documents may need to adopt certain plan amendments by the last day of the 2008 plan year. For example, plan sponsors that have decided to implement optional provisions in 2008, such as catch-up contributions or designated Roth contributions may need to adopt the appropriate plan amendments by the last day of the 2008 plan year.

In addition, the final 403(b) regulations contain a number of provisions that significantly affect the administration and operation of both ERISA 403(b) plans and non-ERISA 403(b) programs, beginning in 2009. Effective January 1, 2009, all 403(b) plans, including non-ERISA 403(b) programs, must have a written defined contribution plan that contains certain provisions. In addition, the final regulations require that 403(b) contracts must be amended by December 31, 2008, to incorporate certain provisions. The final 403(b) regulations, including the written plan requirement, are described in detail in our June 2008 publication titled "[A New World for 403\(b\) Arrangements.](#)"

To ensure that Prudential's recordkeeping system accurately reflects the provisions of your plan, it is important that you send Prudential copies of all plan amendments that you've adopted, or those that you plan to adopt, during the 2008 plan year.

If you have questions about these requirements, please contact your Prudential Retirement representative.

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Pension Analyst by Prudential Retirement

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Editor: Mitzi Romano (860) 534-2768