


**2009 Interim & Termination Amendments For  
Defined Contribution & Defined Benefit Plans**

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**Background**

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- IRS Notice 2004-84**
- IRS Notice 2005-101**
- IRS Notice 2007-3**
- IRS Notice 2007-94**
- IRS Notice 2008-108**



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## Highlights of the 2009 DC Interim Amendment

- **Section 2.** The Plan provides applicable individuals with the right to divest publicly-traded employer securities held in their accounts and reinvest those amounts in certain diversified investments. PPA '06 added Code §401(a)(35).
- **Section 3.2** The Plan provides for Plan Years beginning after December 31, 2007, GAP period income on corrective distributions of excess contributions, excess aggregate contributions, and excess deferrals for Plan Years may be disregarded. See PPA '06, Code §401(k)(8)(A)(i), Code § 401(m)(6)(A) and the final 402A regulations.
- **Section 4.1** The Plan provides that the application of certain participation and non-discrimination requirements shall not apply to governmental plans. PPA '06 amended Code § 401(a)(5)(G), Code §401(a)(26)(G), and Code §401(k)(3)(G), added language to Code §414(d) and modified Code §415(b)(2)(H) and Code §415(b)(10).



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## Highlights of the 2009 DC Interim Amendment (Continued)

- **Section 4.1** provides that a plan established and maintained by Indian Tribal governments, a subdivision of an Indian tribal government, or an agency or instrumentality of either, is treated as a Governmental Plan.
- **Section 5.1** provides if the Annuity and consent requirements of §401(a)(17) and §417 apply, the plan must offer a Qualified Optional Survivor Annuity. PPA '06 added the Qualified Optional Survivor Annuity to Code §417.
- **Section 5.2** provides if the plan's Survivor Annuity Percentage is less than 75%, the plan must include a 75% survivor annuity option. If the plan's survivor annuity percentage is greater than or equal to 75 percent, the plan must include a 50% survivor annuity option.



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## Highlights of the 2009 DC Interim Amendment (Continued)

- **Section 6** provides that the notice and consent period for distributions may be as early as 180 days prior to the distribution date or the annuity starting date. In addition, the notice must also include a description of how much larger the benefit will be if the distribution is deferred. See PPA '06, Code §402(f), Code §411(a)(11) and Code §417.
- **Section 7.1** provides that a participant turnover rate of at least 20 percent creates a presumption of a partial plan termination, although the ultimate determination still rests with the specific facts and circumstances. See IRS Revenue Ruling 2007-43.
- **Section 8.1** The plan may treat a Participant's designated beneficiary in the same manner as the Participant's spouse or dependent for safe harbor hardship distribution purposes. See PPA '06 and Code §401(k).



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## Highlights of the 2009 DC Interim Amendment (Continued)

- **Section 8.2** A Plan covered under Code §401(k) will permit an individual called to active duty for at least 179 days after September 11, 2001 to treat his distribution as a Qualified Reservist Distribution. See PPA '06 and Code §401(k)(2)(B)(i)(V).
- **Section 8.3** permits certain defined contribution plans to allow in-service distributions to a Participant who has attained age 62, even if the Participant has not terminated his employment prior to requesting a distribution. PPA '06 added Code §401(a)(36).
- **Section 9.1** provides the Employer may elect to permit a direct trustee-to-trustee transfer, or within 60 days, a Participant, a Participant's spouse or Distributee to rollover an Eligible Rollover Distribution as Qualified Rollover Contribution to a Roth IRA described in Code §408A. PPA '06 added Code §408A(e). See Adoption Section option 1.



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## Highlights of the 2009 DC Interim Amendment (Continued)

- **Section 9.2** provides the Employer may elect to permit a direct trustee-to-trustee transfer, or a Participant rollover of after-tax amounts if the amount is an Eligible Rollover Distribution. Where after-tax amounts are accepted into the plan, separate accounting requirements must be met. PPA '06 amended Code §402(c)(2)(A). See Adoption Section option 2.
- **Section 9.3** provides the Employer may elect to permit a non-spouse beneficiary to request a direct trustee-to-trustee transfer to an individual retirement account or an annuity described in Code § 402(c)(11). PPA '06 added Code §402(c)(11). See Adoption Section option 3.



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## Highlights of the 2009 DC Interim Amendment (Continued)

- **Section 10** provides that the transfer of amounts from a trust under a plan qualified under Code §401(a) to a Nonqualified Foreign Trust is treated as a distribution from the transferor plan and that the transfer of assets and liabilities from a qualified plan to a plan that satisfies §1165 of the Puerto Rico Code is also treated as a distribution from the transferor plan. See Rev. Rul. 2008-40.
- **Section 11** provides the Employer will be permitted to satisfy the minimum vesting requirements of Code §411(a) for employer or non-elective contributions. PPA '06 amended Code §411(a). See Adoption Section option 4.
- **Section 12** provides the Employer may elect to allow Qualified Disaster Recovery Assistance Distributions. See the Emergency Economic Stabilization Act. See Adoption Section option 5.



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## Highlights of the 2009 DC Interim Amendment (Continued)

- **Section 13.1** The Plan provides that the survivors of a Participant who dies while performing Qualified Military Service (as defined in Code §414(u)) are entitled to any additional benefits provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. The HEART Act added Code §401(a)(37).
- **Section 13.2** provides the Employer may elect for benefit accrual purposes to treat an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing Qualified Military Service as if the individual resumed employment in accordance with the individual's reemployment rights under Code §414(u), on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability. The HEART Act amended Code §414(u). See Adoption Section option 6a.



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## Highlights of the 2009 DC Interim Amendment (Continued)

- **Section 13.3** The Plan provides that the Employer who elects to make Differential Wage Payments to active duty members in Qualified Military Service shall treat the Differential Wage Payments as a payment of wages by the Employer to an Employee. These payments are now considered wages for withholding and plan purposes. The HEART Act added Code §414(u)(12).
- **Section 14** provides the Employer may elect an Eligible Automatic Contribution Arrangement (EACA). Plans that meet the EACA requirements in Code §414(w) may allow employees to elect to withdraw automatic contributions no later than 90 days from the date these contributions first start, without incurring the 10% early withdrawal tax. PPA '06 added Code §414(w). See Adoption Section option 7.



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## Highlights of the 2009 DC Interim Amendment (Continued)

- **Section 15** provides the Employer may elect a Qualified Automatic Contribution Arrangement (QACA). Plans that meet QACA requirements in § 401(k)(13) will be deemed to satisfy the actual deferral percentage (ADP) and the actual contribution percentage (ACP) nondiscrimination tests that would otherwise apply to salary deferrals and employer matching contributions, as well as the top-heavy rules. PPA '06 added Code § 401(k)(13) and Code § 401(m)(12). PPA '06 amended Code §416(g)(4)(H)(i) and Code §416(g)(4)(H)(ii). See Adoption Section option 8.



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## Highlights of the 2009 DB Interim Amendment

- **Section 2** provides the applicable interest rate and applicable mortality table requirements for plan distributions to which section 417(e)(3) of the Internal Revenue Code (the "Code") applies as well as those distributions to which section 417(e)(3) does not apply. See PPA '06 and Code §417(e)(3). Also see Notice 2008-30.
- **Section 3** contains the Church Plan Annual Benefit Limitation. See PPA '06 and Code §415(b)(11).
- **Section 4** contains provisions for government plans that permit the purchase of service credits. See PPA '06 and Code §415(b).
- **Section 5** includes the PPA '06 funding limitations including notice requirements, limitation on distributions and required cessation of accrual provisions. See PPA '06 and Code §436. See Adoption Section option 4. Also see notices 2008-21 and 2008-73.



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## Highlights of the 2009 DB Interim Amendment (Continued)

- **Section 6** provides for direct rollover of after tax contributions to a Roth IRA. See PPA '06 and Code §408A. See Adoption Section options 1 and 2.
- **Section 7** provides for Phased Retirement. The Plan may now permit in-service distributions to a Participant who has attained age 62, even if the Participant has not terminated his employment prior to requesting a distribution. PPA '06 added Code §401(a)(36).
- **Sections 7, 8 and 9** contain the final Required Minimum Distribution requirements of Reg 1.401(a)(9)-6. See Adoption Section option 5.
- **Section 10** contains the government plan exemption to certain qualified plan rules such as 401(a)(5), 401(a)(26) and 401(k)(3) as well as limitations from Indian Tribal Governments. See PPA '06.



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## Highlights of the 2009 DB Interim Amendment (Continued)

- **Section 11** contains the new Qualified Optional Survivor Annuity. If the plan offers a QJSA of less than 75% it must offer an optional annuity of 75%. If the plan offers a QJSA of 75% or more it must offer an optional annuity of 50%. See PPA '06 and Code § 417.
- **Section 12** extends the 90-day notice period to 180 days for QJSA and QPRSA. See PPA '06 and Code §417.
- **Section 13** defines the presumption of a partial plan termination is the plan has a turnover rate of at least 20%. See IRS Revenue Ruling 2007-43.
- **Section 14** addresses Rollovers used to fund a business start-up. Transferring plan sponsorship to an unrelated taxpayer when the transfer is not in connection with a transfer of business, operations or employees. See Revenue Ruling 2008-45 and Code §401(a).



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## Highlights of the 2009 DB Interim Amendment (Continued)

- **Section 15** permits a direct rollover of an eligible rollover distribution to a Roth IRA as well as a participant rollover. See Adoption Section option 3.
- **Section 16** contains provisions on the restriction of transfers to a nonqualified foreign trust with an exception for certain Puerto Rican trusts. See Revenue Ruling 2008-40 and Code §401(a).



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## Highlights of the 2009 DB Termination Amendment

### In addition, the DB termination amendment contains:

- **Section 17** provides the Employer may elect to allow a Qualified Disaster Recovery Assistance Distribution when taken as a loan from the plan. See the Emergency Economic Stabilization Act. See Adoption Section option 4.
- **Section 18.1** provides that the survivors of a Participant who dies while performing Qualified Military Service (as defined in Code § 414(u)) are entitled to any additional benefits provided under the Plan as if the Participant had resumed employment and then terminated employment on account of death. The additional benefits shall not include benefit accruals relating to the period of Qualified Military Service. The HEART Act added Code §401(a)(37).
- **Section 18.2** provides the Employer may elect for benefit accrual purposes to treat an individual who dies or becomes disabled (as defined under the terms of the Plan) while performing Qualified Military Service as if the individual resumed employment in accordance with the individual's reemployment rights under Code §414(u), on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability. The HEART Act amended Code §414(u). See Adoption Section option 7.



**Questions**

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**For more information contact**

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