

# Employee Benefits Action Alert

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## ► Important Compliance Deadlines for Section 403(b), Defined Benefit and Defined Contribution Plan Sponsors.

The deadlines for employers sponsoring Section 403(b) plans and qualified defined benefit and defined contribution plans to amend their plans to comply with recent legislative and regulatory changes are fast approaching. This Action Alert highlights some important deadlines for plan sponsors.

### Executive Summary:

This Alert will highlight the following:

- **Important Compliance Deadlines for Section 403(b), Defined Benefit and Defined Contribution Plan Sponsors.**

- **Section 403(b) Plan Document Requirements.** The final regulations issued by the Internal Revenue Service in 2007 require sponsors of Section 403(b) plans to adopt a formal written plan document effective January 1, 2009. The plan document must contain all material terms and conditions for eligibility, benefits, distributions, and the annuity contracts available under the Section 403(b) program. Section 403(b) plan sponsors should be compiling and reviewing their annuity contracts and custodial agreements, reviewing their plan's operations and procedures and beginning the process of drafting formal, written plan documents for their Section 403(b) programs.
- **Pension Funding Equity act of 2004 ("PFEA").** All individually designed defined benefit plans must be amended by the end of the 2008 limitation year (December 31, 2008 for calendar year plans) to comply with changes made by PFEA to the actuarial assumptions used in determining distributions made in plan years beginning in 2004, 2005 and any subsequent plan year provided by law.
- **Final Regulations under IRS Regulations Section 415.** Section 415 of the Internal Revenue Code limits the amount of benefits that may be paid to a participant in a defined benefit plan and the amount of contributions that may be made on behalf of a participant in a defined contribution plan. On April 5, 2007, the IRS published final regulations under Internal Revenue Code Section 415. The final regulations are effective for limitation years beginning on or after July 1, 2008. This means that for calendar year plans, amendments to comply with the final regulations must be made by December 31, 2008.
- **Cycle C Remedial Amendment Period.** Employers who sponsor individually designed qualified plans and who have an employer identification number ending in 3 or 8 have until January 31, 2009 to apply to the IRS for a determination letter on the qualified status of their plans. If a plan has had a number of stand alone amendments since it received its last determination letter, the plan must be restated prior to being submitted for a determination letter. Since the restatement of a plan can be time consuming, plan sponsors falling in Cycle C should begin the process as soon as possible.

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**Damon & Morey**  
ATTORNEYS AT LAW LLP

298 Main Street, 1000 Cathedral Place, Buffalo, New York 14202  
On the web: [www.damonmorey.com](http://www.damonmorey.com) (716) 856-5500

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- **Cycle D Remedial Amendment Period.** Employers who sponsor individually designed qualified plans and who have an employer identification number ending in 4 or 9 may begin submitting their plans for a determination letter on the qualified status of their plans beginning February 1, 2009. The deadline for plan sponsors who fall within Cycle D to submit their plans for a determination letter is January 31, 2010.
- **Prototype Plan Restatements.** Employers who sponsor pre-approved or "prototype" plans are subject to a six year restatement cycle while adopters of individually designed plans are subject to a five year restatement cycle. This means that prototype plans must generally be restated every six years.

An employer that restates its plan and files for a determination letter in accordance with this procedure will not be required to restate its plan (other than for discretionary amendments) for six years.

Under the 6 year cycle, the underlying master plan language is submitted to the IRS in year 1. The IRS then has two years to review and pre-approve all master plans that were submitted. Once the plan language has been approved, the IRS will then provide a period for employers to restate their plans using the latest version of the pre-approved plan.

On March 31, 2008, the IRS issued opinion letter on the plans submitted by sponsors of prototype defined contribution plans. Damon & Morey LLP has received opinion letters from the IRS on its prototype defined contribution plans. The IRS has established deadlines for when employers adopting a prototype plan must restate their plans and submit them to the IRS for a determination letter.

The IRS will begin accepting applications for determination letters submitted by adopters of pre-approved plans starting on **May 1, 2008**. Employers adopting pre-approved documents to restate their plans must adopt the plan document and, if necessary, submit the plan for a determination letter by **April 30, 2010**.

## The Author



**Pamela J. Fielding** is Special Counsel and Chair of the firm's Employee Benefits Practice Group. She has nineteen years of experience advising clients in all aspects of employee benefits law, including the design, drafting, compliance, and administration of defined benefit, 401 (k), ESOPs, health and welfare, and executive compensation plans. She has advised clients on employee benefits in mergers and acquisitions; COBRA and HIPAA compliance; fiduciary duties; and multi-employer withdrawal liability. She has also represented employers in connection with ERISA litigation matters, IRS and DOL audits, and PBGC proceedings.

Email: [pfielding@damonmorey.com](mailto:pfielding@damonmorey.com)  
Phone: (716) 858-3830

Should you have any questions on this or other topics, do not hesitate to contact Pam and her team.

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**Damon & Morey**  
ATTORNEYS AT LAW LLP

Publications Department  
298 Main Street, 1000 Cathedral Place  
Buffalo, New York 14202