October 27, 2005

Hon. Mark W. Everson
Commissioner
Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: Suggested IRS and Treasury Guidance Relating to the Impact of Hurricanes Katrina and Rita

Dear Commissioner Everson:

We have identified a number of technical issues, principally involving employee benefit plans, programs and practices, where we believe the IRS should provide guidance relating to the impact of Hurricanes Katrina and Rita. These suggestions follow on our previous letter of September 15, 2005, suggesting potential guidance related to exempt organizations. These comments represent the views of the American Bar Association Section of Taxation. They have not been approved by the Board of Governors or the House of Delegates of the American Bar Association and should not be construed as representing the policy of the American Bar Association.

Sincerely,

Dennis B. Drapkin
Chair
Enclosure

cc: Eric Solomon, Acting Deputy Assistant Secretary (Tax Policy), Department of Treasury
    Donald L. Korb, Chief Counsel, Internal Revenue Service
    Nancy J. Marks, Division Counsel/Associate Chief Counsel, TE/GE, Internal Revenue Service
    Michael J. Desmond, Tax Legislative Counsel, Department of Treasury
    Catherine Livingston, Assistant Chief Counsel, TE/GE, Internal Revenue Service
    Angela Kraus, Director, Stakeholder Liaison for SB/SE, Internal Revenue Service
    Ann L. Combs, Assistant Secretary of the Employee Benefits Security Administration, Department of Labor
SUGGESTED IRS AND TREASURY GUIDANCE RELATING TO THE IMPACT OF HURRICANES KATRINA AND RITA

These comments are submitted on behalf of the American Bar Association Section of Taxation and have not been approved by the House of Delegates or Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

Principal responsibility for preparing these comments was exercised by James R. Raborn, Chair of the Employee Benefits Committee of the Section of Taxation. Substantive contributions were made by Rob Fowler and Danny Martin of the Employee Benefits Committee. The comments were further reviewed by Thomas A. Jorgensen, Council Director of the Employee Benefits Committee.

Although members of the Section of Taxation who participated in preparing these comments may have clients who would be affected by the federal income tax rules applicable to the subject matter addressed by these comments, or may have advised clients on the application of such rules, no such member (or the firm or organization to which such member belongs) has been engaged by a client to make a government submission with respect to, or otherwise to influence the development or outcome of, the specific subject matter of these comments.

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This paper is a compilation of comments and suggestions from ABA Tax Section members primarily focusing on the impact of Hurricanes Katrina and Rita (“the hurricanes”) on compensation and benefit tax compliance matters, and alternatives for use of compensation and benefits matters to support and assist those impacted by the hurricanes. Where possible, attempts have been made to reference applicable guidance issued and legislative action taken since this project was initiated in early September 2005.

Compliance Matters

At the time that the hurricanes impacted the Gulf Coast, many benefit plans, plan sponsors, vendors supporting plans, and employers were actively engaged in the operation and compliance of numerous compensation benefits arrangements. The destruction and disruption of the business and support infrastructure of the region has made it impossible for many compliance functions to be satisfied on a timely basis. The implications of the integrated nature of these compliance functions cannot be overstated. For example, not only were the compliance efforts of compensation and benefits arrangements disrupted for employers and employees located in the region devastated by the hurricanes, but compliance efforts for employers and employees outside that area were disrupted where the vendors, financial institutions, and other support functions for the respective compensation and benefits arrangements were located within the geographic area impacted by the hurricanes. Any relief regarding compliance matters for compensation and benefits arrangements and processes needs to consider this broader impact and not just be limited to those employers or employees that reside in the impacted area.

The quick response by Treasury in the wake of the hurricanes is appreciated. (In this regard, see our letter dated September 21, 2005, to Commissioner Everson and Acting Deputy Assistant Secretary (Tax Policy) Solomon.) Through a series of notices and information releases, Treasury was quick to announce relief for various compliance matters. Pursuant to the authority granted under Internal Revenue Code (“Code”) section 7508A, News Releases IR-2005-84, IR-2005-91, and IR-2005-96 were issued, identifying certain compliance related filings and actions were extended to January 3, 2006. The opening paragraph of Announcement 2005-70 clarified that the announcement provided by News Release IR-2005-96 effectively postponed until January 3, 2006, the listing of employee benefit-related acts identified in Rev. Proc. 2005-27, 2005-20 I.R.B. 1050, for taxpayers adversely affected by the hurricanes. (See attached list of benefit related acts.) (The Katrina Emergency Tax Relief Act of 2005 (“KETRA”) has implemented some of the recommendations as well as extended several deadlines described below to February 28, 2006.)

There will be many taxpayers that do not live in the disaster area, but are handicapped in their ability to comply with various tax provisions due to their dependence on persons or operations within the disaster area. In the development of relief provisions under the various sections of the Code, including Code section 139, Treasury should favor a broad geographic

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application of the relief and not restrict the relief to just taxpayers that “reside” in the identified disaster area.

The compliance relief provided by Code section 7508A, News Release IR-2005-96, and Rev. Proc. 2005-27 only postpones the various compliance deadlines to January 3, 2006. Due to the extent of damage and disruption caused by the hurricanes, as well as the broad scope of parties impacted (both within and outside the disaster area), it now appears that the impact of the hurricanes may continue to be a handicap to taxpayers beyond January 3, 2006. Treasury should continue to monitor this and seriously consider extending this relief beyond the current deadline.

In the wake of a disaster, there will always be a large number of records that are destroyed or are otherwise unrecoverable. In addition, operations during the recovery period after a disaster will often require processes and procedures that focus on results at the expense of detail documentation procedures that would otherwise be in effect.

Recommendation: Substantiation and documentation requirements should be relaxed where there are lost records that impede operations during disaster recovery.

Payroll and Compensation Compliance

Payroll records may be lost for some employers located in the path of the hurricanes. This will make it difficult to comply with the timely reporting of taxable compensation on Form W-2.

Recommendation: A method for estimating payroll and withholdings for the employers to use to prepare Forms W-2 for the 2005 year if employment and/or compensation records are lost due to the hurricanes should be established (assuming that their payroll records were in the path of the hurricanes). As lost payroll records will also impact the calculation of contributions to retirement plans on behalf of the employees whose records are lost and must be estimated, as well as the performance of discrimination testing for the affected plan year, comparable relief should be considered for these items as well.

While many of the requirements under Code section 409A have been extended until the end of 2006, there still remain certain transition rules for nonqualified deferred compensation arrangements that require action by the end of 2005. Some taxpayers will not be able to satisfy this requirement because of damage and limited access to records, operations, and communication systems due to disruptions caused by the hurricanes. In addition, for these same reasons, nonqualified deferred compensation arrangements that have been modified to comply with Code section 409A may not be able to fulfill the election timing and other procedures, consistent with the respective plan modifications.
Recommendation: Provide additional time for impacted taxpayers to comply with Code section 409A provisions which otherwise require action in 2005.

Benefit Arrangements

Disruption of operations, records, and communications of plan sponsors, financial institutions, and plan administration vendors may prevent compliance with Code section 412 funding requirements. Notice 2005-60, 2005-38 I.R.B. ____, delays the due date for contributions and funding waiver requests for affected plans to October 31, 2005. However, it is likely that many sponsors, financial institutions, or administrators may not be adequately operational to satisfy this later date.

Recommendation: Treasury should continue to monitor this and provide additional relief through further delays of the due date where the recovery progress makes it impossible to satisfy the October 31, 2005, deadline.

For salary deferral contributions to 401(k) plans, the hurricanes may have made it impossible for employers to timely deposit amounts withheld on dates preceding the hurricanes. In addition, the hurricanes have certainly prevented many employers and plan sponsors from continuing to administer their plans consistent with employee deferral elections relative to compensation earned or paid after the hurricanes. The disruption in this process can result from not only the employer no longer being able to process payroll systems, accounting systems, or other business operations, but also from the disruption of the trustee, the financial institution or the plan administrator’s operations. The Employee Benefits Security Administration (“EBSA”), by announcement dated September 15, 2005, recognized that payroll processing, including forwarding participant payments and withholdings to employee pension benefit plans could be affected by Hurricane Katrina, and announced enforcement would not be sought with respect to failures attributable to Hurricane Katrina.

Recommendation: Employers and plan sponsor should be relieved of the excise tax for delinquent deposits and the filing of Form 5330 where the impact of the hurricanes has prevented them from accomplishing a timely deposit.

Similarly, employer contribution deposits that are otherwise due by the employer’s extended tax return due date may not be deposited timely due to the hurricanes. Relief for filing the tax returns has been provided through various notices, but the possibility exists that some impacted employers may not be able to accomplish these deposits for several months. For example, if the employer contribution for the 2004 calendar year was going to be deposited by the extended due date of the employer’s 2004 tax return, the hurricanes may prevent that deposit from occurring for several months with a resulting deposit in 2006.
Recommendation: Provide guidance that will permit the employer to treat the delayed contribution as being made timely, allowing the deduction for the contribution to be taken on the employer tax return for the year in which the contribution was accrued, and including that contribution in the annual additions for the year of accrual rather than the year of actual contribution.

Employers and plan sponsors may not be able to perform annual discrimination testing of their retirement and welfare plans on a timely basis. This would include ADP/ACP testing, testing under Code section 401(a)(4), and dependent care flexible spending account testing. In some cases, the employer and plan records may have been destroyed preventing any testing at all.

Recommendation: Consider waiving the performance of the test for 2005 if the necessary records are not available. Where the testing is delayed, Treasury should provide relief by allowing additional time to accomplish the corrections that would have otherwise been permitted.

While Code section 7508A, News Release IR-2005-96, and Rev. Proc. 2005-27 extended the due date to January 3, 2006, for Form 5500 filings impacted by the hurricanes, this may still not allow enough time for some employers due to the loss of records and possible loss of resources to support the performance of such compliance within the extended period. After determining the safety of their employees, many employers’ initial efforts will be focused on restoring their business operations, not filing Form 5500.

Recommendation: Treasury should consider providing additional extensions of time to file Form 5500 based on the timing of the business’s restoration of operations. Similarly, the deadline for distributing the Summary Annual Reports for the subject plans should be extended consistent with the Form 5500 filing extensions.

Due to the disruption in the ability to communicate information to employees and the ability to receive communications from employees, it may not be possible for plans to satisfy certain notice requirements on a timely basis and receive elections from employees on a timely basis. This can impact a wide range of plan operations and rights. In addition, the disruption can take many forms with no obvious simple or common solution. The breakdown in the communication infrastructure in the impacted area is an obvious problem. However, plans may not be able to locate participants and beneficiaries due to the extended evacuation period and lack of information regarding where the individuals are located. Employees may not be able to contact the employer or the plans if the respective business location is not yet operational or possibly no longer exists. This can make it impossible for participants to make plan loan payments on time.
communicate investment directions, make a timely election or consent, advise the plan of a claim under the plans claims procedures, and notify the plan of enrollments or elections for retirement and welfare benefit plans. Each situation has the potential of violating the terms of the plan, violating the technical requirements for qualification under the Code, or compromising the rights of the plan sponsor, participant or beneficiary.

Recommendation:

(1) Treasury should continue to update extensions of technical deadlines for notices and other compliance matters, consistent with plan sponsor ability to meet the deadlines; and

(2) Relief should be provided to plans relative to potential violation of plan terms, permitting the plan to extend deadlines for employee enrollment, elections, and exercise of participant rights without causing a plan violation or risk of plan qualification.

Timely plan loan repayments by the plan participant may not be possible where the employee, the employer, the plan administrator, or the plan’s operational systems were impacted by the hurricanes. Code section 7508A, News Release IR-2005-96, and Rev. Proc. 2005-27 offer relief from the requirements of Code section 72(p) until January 3, 2006. However, this relief may not be sufficient to prevent a loan default due to the impact of the hurricanes.

Recommendation: Provide a longer deferral for loan payments for plans impacted by the hurricanes. NOTE: This recommendation appears to be partially addressed by recent legislation that would permit up to a one-year deferral of victim loan payments that are due after August 25, 2005 and before January 1, 2007. The legislation does not appear to address loan payments that were due before August 25, 2005, but were not satisfied due to employers, administrators, or systems ceasing to operate after that date due to the hurricanes.

The hurricanes may prevent plans from adopting amendments on a timely basis. Plans may need to be amended to comply with EGTRRA and other technical requirements. Plans may also need to be amended to provide for design changes intended to address related issues. Prior to the hurricanes, plan sponsors may have scheduled the adoption of amendments within the remedial amendment period for provisions that were properly put into effect earlier in the year.

Recommendation: Provide an extension to the remedial amendment period for plans impacted by the hurricanes to permit impacted employers sufficient time to adopt the amendments after their operations have recovered.
The EBSA’s recent notices, which were issued in cooperation with Treasury, confirmed that various time frames for HIPAA and COBRA were extended for plans and individuals affected by the hurricanes. An HHS notice has confirmed that HIPAA privacy permits disclosure for disaster relief and treatment in emergency situations. However, additional clarification is needed from EBSA to assist plan sponsors in determining when the qualifying event has occurred under COBRA when disasters such as the hurricanes occur, including how to determine the qualifying event where salary and benefits are continued after the disaster to assist the affected participant or beneficiary.

Recommendation: That the EBSA, in conjunction with Treasury, where appropriate, provide guidance for determining the date of a qualified event when arising out of or in connection with disasters.

Support and Assistance

For many individuals impacted by the hurricanes, the most significant source of personal resources available to assist in supporting daily subsistence and recovery are the dollars that have accumulated in the individual’s retirement funds. Facilitating efficient access to these assets may be the only means for many to effect a speedy recovery from the impact of the hurricanes. However, this poses a dilemma for the individual with respect to future retirement security. Therefore, to the extent restrictions on access to plan assets are eased to facilitate the recovery effort, it would appropriate to provide complementary relaxation of rules to provide affected individuals the opportunity to restore the distributed amounts to the plans.

There will be many taxpayers that do not live in the disaster area, but are materially affected by the hurricanes due to their dependence on persons or operations within the disaster area. In the development of support and assistance provisions under the various sections of the Code, including Code section 139, Treasury should favor a broad geographic application of the relief and not restrict the relief to just taxpayers that “reside” in the identified disaster area.

Payroll and Compensation

Code section 119 provides an exclusion for employer provided meals and lodging to the employee when the meals and lodging are provided on the employer’s premises are for the convenience of the employer. Code section 139 provides that gross income shall not include any amount received by an individual as a qualified disaster relief payment. A number of employers have provided meals, lodging and transportation to employees that were living in areas impacted by the hurricanes. It may be impossible to identify the amounts of such in-kind relief provided to each employee and/or the employee’s dependents. If these amounts must be treated as compensation, then they may impact the
calculation of contributions to the qualified retirement plans and the funding requirements for defined benefit plans.

**Recommendation:** To the extent possible, these amounts should be treated as qualified disaster relief payments and be excluded from the employee’s taxable income under Code section 139. Alternatively, IRS could issue a notice defining the meals, lodging and transportation provided by employers to employees and their families as either excludable because it was done for the convenience of the employer in this situation to preserve their trained workforce under section 119, or as a de minimis fringe benefit that cannot reasonably be accounted for under section 132. The notice could limit the exclusion to those living in those areas declared federal disaster areas due to damage from the hurricanes.

As noted, books and records will be difficult to establish and maintain. Recognizing this fact, the Department of Homeland Security issued a notice on September 6, 2005, relaxing the I-9 requirements for employers hiring persons displaced by the hurricanes for the next 45 days. This period will no doubt need to be extended into 2006 and perhaps beyond for affected employers and employees.

Many employers are providing credit assistance to employees and it is anticipated that loan terms and rates may be established that would not avoid imputed income. **Recommendation:** Employer loans to victims of the hurricanes should be exempt from the requirements of Code section 7872 and no income should be imputed by reason of these extensions of credit.

Record Retention and Plan Compliance -- Relaxation of Substantiation requirements

A potential source of financial support for those affected by the hurricanes is any unpaid deferred compensation. Under section 409A, however, payment of these amounts might trigger tax penalties. **Recommendation:** Provide that amounts made available from deferred compensation subject to section 409A (or grandfathered as pre-2005 deferrals) will not be subject to section 409A tax penalties if made available for disaster relief and that the availability of access to such amounts will not result in constructive receipt or loss of “grandfathering.” Arguably some aspects of this relief can be accomplished listed during 2005 under existing “partial termination” guidance under IRS Notice 2005-1. This ability under existing guidance should be extended through the end of 2006.

The credit support that will be provided by many employers might be in the form of a loan. It is anticipated that many of these loans will not be repaid, although an
extended time might pass before either the employer forgives the loan or determines it is uncollectible.

**Recommendation:** Permit forgiveness of such loans without imputed income if for purposes of disaster relief based on minimal representations by the employee or the employer.

One form of support being provided by employers to employees is in-kind services and goods.

**Recommendation:** Provide that the furnishing of any in-kind service or goods by an employer will not be considered compensation if the employer represents that the purpose is disaster relief for its employees. Examples include transportation, clothing, food, etc., and should include housing for an extended period of time.

**Benefit Arrangements**

Access to 401(k) amounts is restricted by statute and current regulations. The IRS has acted quickly to relax the hardship withdrawal rules in current 401(k) regulations by issuing guidance that hardship withdrawals for persons whose principal residence was damaged by the hurricanes are permitted without regard to proof of damage or loss and the plan can rely on representations of the participant. IRS Announcement 2005-105. This relief also permits the hardship withdrawals to assist the victims without requiring the plan sponsor to amend its plans until the end of 2006 and certain administrative and documentation requirements are relaxed. Moreover, the normal “six-month suspension” for future contributions can be disregarded. This relief applies to hardship distributions made before April 1, 2006.

**Recommendation:** That this relief be extended at least through the end of 2006.

Loans from 401(k) plans are also the subject of statutory and regulatory requirements. Some of the regulatory requirements have been relaxed by Announcement 2005-105.

**Recommendation:** That this relief be extended at least through the end of 2006. Clarify that a plan loan made to restore, reconstruct or rebuild a principal residence is within the meaning of “acquire” under the loan provisions of Section 72(p). If salary continuation payments are being made by an employer, consider waiving requirement that loan payments continue out of this source. NOTE: Recent legislation would increase amounts available for loans (presently there are $10,000 or not more than one-half account balance thresholds and a $50,000 cap).
Paperwork, records and documentation will be a serious problem for many plans for an extended period of time. Announcement 2005-105 relaxes some of these requirements for distributions made before April 1, 2006 to affected participants.

**Recommendation:** That this relief be extended at least through the end of 2006 and be applicable to any plan requirement that the plan sponsor or plan administrator represents cannot be met by reason of the hurricanes.

Access to tax qualified plan benefits is often keyed to termination of employment. For many participants there is substantial uncertainty as to whether they are currently employed and/or will be reemployed by plan sponsors. These participants may have lost current wages or are receiving only partial wage payments for rendering no or reduced services.

**Recommendation:** Deem any person whose principal residence was located in disaster areas to be terminated and permit the plan record keeper to process a distribution without notice from the employer if the employer’s office responsible for processing termination paperwork was located in the same path or if the employee represents that his employment status is uncertain.

Distributions from certain plans or IRAs may normally be transferred to other arrangements and thereby would not be currently taxable to the recipient. Timely action may not be possible by reason of lost records, access to funds, etc.

**Recommendation:** Provide an extension of time within which to accomplish such transfers. Also, provide an exception to the automatic rollover rules for distributions to participants who lived in the path of the hurricanes so they do not have any distribution automatically rolled over while they cannot access the paperwork to request a direct payment.

Many individuals participate in cafeteria plans that limit access to benefits based on employment status and certain prerequisites to eligibility for benefits.

**Recommendation:** Employees affected by the hurricanes who participated in a Code section 125 plan or a section 129 plan should still be treated as eligible employees even if not working and should be able to be reimbursed for dependent care expense reimbursement dollars to cover any expenses related to care of their dependents even if it is not childcare services or if payments are for services provided by family members. The requirements for justifying payments of medical benefits should be relaxed for medical expenses for FSA and cafeteria plans.
Employers may not be and may not have been able to make contributions to plans in respect of 2004 by reason of the hurricanes.

**Recommendation:** Provide an extended contribution deduction date for contributions that otherwise would have been made in respect of 2004 and for which the time to make the contributions deducted under the 2004 return have not yet expired as of August 29, 2004.

Cafeteria plan elections may be changed only in limited, enumerated circumstances keyed to change in status of family or employment.

**Recommendation:** Allow changes to cafeteria plan elections for hurricane victims as if impact of the hurricanes were a change in family status.

Plan contributions by employees can be made only out of defined compensation. Many employers are providing some sorts of payments to those who will ultimately be determined to be former employees.

**Recommendation:** Permit plan sponsors to elect to accept 401(k) contributions and make related employer matching contributions with respect to such “salary continuation payments.”

Payment of death benefits under benefit plans often requires extensive documentation which might not be practicable for the near term.

**Recommendation:** Provide that plans may take a reasonable good faith approach and provide such benefits even where there is an absence of thorough documentation.

The scope of application of Section 139 to payments by benefit plans is not clear.

**Recommendation:** Provide that any plan distributions can qualify as Section 139 nontaxable disaster relief payments, at least to the extent they cover costs incurred due to a qualified disaster.

Loans by employers to employees can result in imputed income if there is no interest or inadequate interest, subject in some cases to a $10,000 principal cap. As noted above, a form of disaster assistance that employers may wish to provide is credit support or loans.

**Recommendation:** Provide that interest that would otherwise result in imputed income on loans to employees of over $10,000 would be considered disaster relief
and not taxable as imputed income if used to finance repair or rehabilitation of residence or its contents.

The opportunity and/or ability for employees to contribute to benefit plans has in many cases disappeared or been severely limited.

Recommendation: To the extent that 401(k) contributions are not withheld or deducted in respect of periods beginning August 1, 2005 through the end of 2006 in what would have been the normal course, allow a retroactive fix by permitting employees to contribute at a later date. Permit employers to electively match such amounts. In each case for various plan purposes, including Section 415, permit “assignment” of such amounts in a manner that is reasonable under the circumstances.
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<thead>
<tr>
<th>Statute or Regulation</th>
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<tr>
<td>1. Sec. 72(p)(2)(B) and (C), and Treas. Reg. §1.72(p)-1, Q&amp;A-10</td>
<td>A loan from a qualified employer plan to a participant in, or a beneficiary of, such plan must be repaid according to certain time schedules specified in section 72(p)(2)(B) and (C) (including, if applicable, any grace period granted pursuant to section 1.72(p)-1, Q&amp;A-10).</td>
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<td>2. Sec. 72(t)(2)(A)(iv)</td>
<td>Under section 72(t)(2)(A)(iv), to avoid the imposition of a 10-percent additional tax on a distribution from a qualified retirement plan, the distribution must be part of a series of substantially equal periodic payments, made at least annually.</td>
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<td>3. Sec. 72(t)(2)(F)</td>
<td>To avoid the imposition of a 10-percent additional tax on a distribution from an individual retirement arrangement (IRA) for a first-time home purchase, such distribution must be used within 120 days of the distribution to pay qualified acquisition costs or rolled into an IRA.</td>
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<td>4. Sec. 83(b) and Treas. Reg. §1.83-2(b)</td>
<td>If substantially nonvested property to which section 83 applies is transferred to any person, the service provider may elect to include the excess of the fair market value of the property over the amount paid (if any) for the property in gross income for the taxable year in which such property is transferred. This election must occur not later than 30 days after the date the property was transferred.</td>
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<td>5. Proposed Treas. Reg. §1.125-1, Q&amp;A-15</td>
<td>Cafeteria plan participants will avoid constructive receipt of the taxable amounts if they elect the benefits they will receive before the beginning of the period during which the benefits will be provided.</td>
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<td>6. Proposed Treas. Reg. §1.125-1, Q&amp;A-14 Proposed Treas. Reg. §1.125-2, Q&amp;A-7</td>
<td>Cafeteria plan participants will not be in and constructive receipt if, at the end of the plan year, they forfeit amounts elected but not used during the plan year.</td>
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<td>Proposed Treas. Reg. §1.125-2, Q&amp;A-5</td>
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<td>Treas. Reg. §1.162-27(e)(2)</td>
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<td>Sec. 220(f)(5)</td>
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<td>10.</td>
<td>Sec. 220(h)</td>
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<td>11.</td>
<td>Secs. 401(a)(9), 403(a)(1), 403(b)(10), 408(a)(6), 408(b)(3) and 457(d)(2)</td>
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<td>Sec. 401(a)(28)(B)(i)</td>
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<td>Section and Regulation</td>
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<td>Sec. 401(a)(28)(B)(ii)</td>
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<td>Sec. 401(a)(30) and Treas. Reg. §1.401(a)-30 and §1.402(g)-1</td>
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<td>18.</td>
<td>Sec. 402(g)(2)(A) and Treas. Reg. §1.402(g)-1</td>
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<td>Sec. 404(k)(2)(A)(ii)</td>
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<td>Secs. 408(i) and 6047(c)</td>
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<td>Sec. 409(h)(4)</td>
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<td>Sec. 409(h)(5)</td>
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23. Sec. 409(h)(6) An employer required to repurchase employer securities distributed as part of an installment distribution must pay for the securities not later than 30 days after the exercise of the put option under section 409(h)(4).

24. Sec. 409(o) An ESOP must commence the distribution of a participant’s account balance, if the participant elects, not later than 1 year after the close of the plan year --i) in which the participant separates from service by reason of attaining normal retirement age under the plan, death or disability; or ii) which is the 5th plan year following the plan year in which the participant otherwise separates from service (except if the participant is reemployed before distribution is required to begin).

25. Sec. 457(e)(16)(B) An eligible rollover distribution from a section 457 eligible governmental plan may be rolled over to an eligible retirement plan no later than the 60th day following the day the distributee received the distributed property.

26. Sec. 1042(a)(2) A taxpayer must purchase qualified replacement property (defined in section 1042(c)(4)) within the replacement period, defined in section 1042(c)(3) as the period which begins 3 months before the date of the sale of qualified securities to an ESOP and ends 12 months after the date of such sale.

27. Sec. 4972(c)(3) Nondeductible plan contributions must be distributed prior to a certain date to avoid a 10 percent tax.

28. Sec. 4979 and Treas. Reg. §54.4979-1 A 10 percent tax on the amount of excess contributions and excess aggregate contributions under a plan for a plan year will be imposed unless the excess, plus income attributable to the excess is distributed (or, if forfeitable, forfeited) no later than 2 1/2-months after the close of the plan year. In the case of an employer maintaining a SARSEP, employees must be notified of the excess by the employer within the 2 1/2-month period to avoid the tax.
Secs. 6033, 6039D, 6047, 6057, 6058, and 6059

Form 5500, Annual Return/Report of Employee Benefit Plan, and Form 5500-EZ, Annual Return of One-Participant ( Owners and Their Spouses) Retirement Plan, which are used to report annual information concerning employee benefit plans and fringe benefit plans, must be filed by a specified time.

General Advice
Affected filers are advised to follow the instructions accompanying the Form 5500 series (or other guidance published on the postponement) regarding how to file the forms when postponements are granted pursuant to section 7508 or section 7508A.

Combat Zone Postponements under Section 7508
Individual taxpayers who meet the requirements of section 7508 are entitled to a postponement of time to file the Form 5500 or Form 5500-EZ under section 7508. The postponement of the Form 5500 series filing due date under section 7508 will also be permitted by the Department of Labor and the Pension Benefit Guaranty Corporation (PBGC) for similarly situated individuals who are plan administrators.

Postponements for Presidentially Declared Disasters and Terroristic or Military Actions under Section 7508A
In the case of “affected taxpayers,” as defined in section 301.7508A-1(d), the IRS may permit a postponement of the filing of the Form 5500 or Form 5500-EZ. Taxpayers who are unable to obtain on a timely basis information necessary for completing the forms from a bank, insurance company, or any other service provider because such service providers’ operations are located in a covered disaster area will be treated as “affected taxpayers.” Whatever postponement of the Form 5500 series filing due date is permitted by the IRS under section 7508A will also be permitted by the Department of Labor and PBGC for similarly situated plan administrators and direct filing entities.
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<td>30.</td>
<td>Rev. Proc. 2003-44, Sections 9.02(1) and (2)</td>
<td>The correction period for self-correction of operational failures is the last day of the second plan year following the plan year for which the failure occurred. The correction period for self-correction of operational failures for transferred assets does not end until the last day of the first plan year that begins after the corporate merger, acquisition, or other similar employer transaction.</td>
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<td>31.</td>
<td>Rev. Proc. 2003-44, Section 12.07</td>
<td>If the submission involves a plan with transferred assets and no new incidents of the failures in the submission occurred after the end of the second plan year that begins after the corporate merger, acquisition, or other similar employer transaction, the plan sponsor may calculate the amount of plan assets and number of plan participants based on the Form 5500 information that would have been filed by the plan sponsor for the plan year that includes the employer transaction if the transferred assets were maintained as a separate plan.</td>
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<td>32.</td>
<td>Rev. Proc. 2003-44, Section 14.03</td>
<td>If an examination involves a plan with transferred assets and the IRS determines that no new incidents of the failures that relate to the transferred assets occurred after the end of the second plan year that begins after the corporate merger, acquisition, or other similar employer transaction, the sanction under Audit CAP will not exceed the sanction that would apply if the transferred assets were maintained as a separate plan.</td>
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