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WESTERN PENSION AND BENEFITS CONFERENCE WASHINGTON UPDATE – MARCH 9, 2011

IRS:

Guidance on Termination of 403(b) Plans. The IRS issued a revenue ruling discussing the requirements for properly terminating a 403(b) plan. These include various distribution requirements depending on what funding mediums are used in the 403(b) plan, as well as the prohibition on contributions to another 403(b) plan for 12 months following the termination. The ruling gives examples of actions taken on termination by 403(b) plan sponsors and explains why each termination was done properly. (*Rev. Rul. 2011-7*).

Full-Scope Examinations Planned for Employers that Didn't Return the 401(k) Questionnaire. Early in 2010, 1,200 employers who sponsor 401(k) plans were randomly selected to receive a questionnaire that inquired about plan documentation and operations. The IRS recently announced via an article on its website that it would conduct a full-scope examination of those plans whose sponsors failed to respond to the survey. (<http://tinyurl.com/fullscopeaudit>).

Clarification on When Employer Securities are "Readily Tradable." There are various uses of the term "readily tradable on an established [securities] market" in the Code that apply to ESOPs and employer securities held in other types of qualified plans. This Notice specifies that the definition under Treasury Regulation §1.401(a)(35)-1(f)(5) (which discusses diversification requirements for plans that hold publicly-traded employer stock) applies for the purposes of a number of other Code sections that reference the term. (*Notice 2011-19*).