



Tax Exempt & Government Entities | **Employee Plans**

Defined Benefit Plan Update

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Retirement Plans

[Benefit Practitioner](#)[Plan Participant, Employee](#)[Plan Sponsor](#)[Topics for Retirement Plans](#)

- IRAs
- Types of Retirement Plans
- Required Minimum Distributions
- Retirement Plan FAQs
- Published Guidance
- Forms & Publications
- Correcting Plan Errors
- Newsletters
- More Topics

Tax Information for Retirement Plans Community



[Help with Choosing a Retirement Plan](#)

Web guide to help you compare plans

[File a Retirement Plan Return](#)

Forms 5500, 5500-SF, 5330, 5558 and 8955-SSA

[Form 2848 - More Changes](#)

Use the March 2012 version to designate a representative for retirement plan issues.

[Retirement Plans Phone Forums](#)

Check out upcoming phone forums

[Fix-It Guides](#)

Find, Fix and avoid common mistakes in plans

[Cost-of-Living Adjustments \(COLAs\)](#)

Limits on contributions and benefits

[Examinations and Enforcement](#)

Audit guide, compliance check letters and other programs

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Topics for Retirement Plans

- IRAs
- Types of Retirement Plans
- Required Minimum Distributions
- Retirement Plan FAQs
- Published Guidance
- Forms & Publications
- Correcting Plan Errors
- Newsletters
- More Topics

- Guidance on recent legislation
 - HATFA – Notice 2014-53
 - CSEC Act
- Other recent and pending guidance
- Common issues arising in examinations



Highway and Transportation Funding Act of 2014 (HATFA)

- HATFA enacted 8/8/2014
- Similar to MAP-21 except for timing
 - Retroactively effective for plan years beginning in 2013
 - Can elect to defer to 2014
 - For all applicable purposes, or
 - Only for applying benefit restrictions under § 436



Highway and Transportation Funding Act of 2014 (HATFA)

- Key provision -- extends the MAP-21 interest rate corridors

| Plan Year Beginning in | MAP-21 corridor | HATFA corridor |
|------------------------|-----------------|----------------|
| 2012 | 90%-110% | 90%-110% |
| 2013 | 85%-115% | 90%-110% |
| 2014 | 80%-120% | 90%-110% |
| 2015 | 75%-125% | 90%-110% |
| 2016 | 70%-130% | 90%-110% |
| 2017 | 70%-130% | 90%-110% |
| 2018 | 70%-130% | 85%-115% |
| 2019 | 70%-130% | 80%-120% |
| 2020 | 70%-130% | 75%-125% |
| 2021 and later | 70%-130% | 70%-130% |



Highway and Transportation Funding Act of 2014 (HATFA)

- Other HATFA provisions:
 - MAP-21/HATFA rates cannot be used to apply § 436 restrictions on accelerated distributions in bankruptcy (plan years beginning after 12/31/2014)
 - Extended reporting requirements, annual report to participants
 - Technical correction, alignment of segment interest rates for year-end valuations



Notice 2014-53 (HATFA)

- Notice 2014-53 issued 9/11/2014
 - Elections to defer HATFA to 2014
 - Opportunity to revise decisions made under MAP-21
 - Guidance on change in application of § 436 restrictions
 - Provisions of Notice 2012-61 remain in effect except where changed by HATFA



Notice 2014-53 (HATFA)

- Election to defer HATFA to 2014
 - Written election (by later of due date for filing Form 5500 or 12/31/2014)
 - Deemed election to defer if 2013 Schedule SB filed on or before 12/31/2014 using MAP-21 rates
 - Deemed election defers HATFA for all purposes



Notice 2014-53 (HATFA)

- Deemed election can be revoked by:
 - Filing amended 2013 Schedule SB with HATFA rates by 12/31/2014, OR
 - Providing written election by 12/31/2014
 - Requires filing amended 2013 Schedule SB by date 2014 Form 5500 is timely filed
 - Copy of election must be provided to PBGG by 12/31/2014
 - This option is not available if plan sponsor in bankruptcy
 - May elect to defer for § 436 purposes only



Notice 2014-53 (HATFA)

- Schedule SB must reflect HATFA rates if used for the plan year
 - 2013 Schedule SB, unless election to defer
 - 2014 Schedule SB, for all plans



Notice 2014-53 (HATFA)

- Notice 2014-53 permits
 - Reversal of elections to reduce funding balances
 - Late election to add excess contributions for 2013
 - Recharacterization of § 436 contributions made in connection with certified AFTAP
 - Redesignation of contributions originally designated for 2013 on Schedule SB filed by 12/31/2014



Notice 2014-53 (HATFA)

- These changes are generally
 - Available for elections or contributions made on or before 9/30/2014
 - Required to be made by 12/31/2014
 - Not permitted based on presumed AFTAP (exception for 2014 if HATFA used for 2013)
 - Not permitted if the change would cause
 - An unpaid MRC for plan years prior to 2014 or
 - § 436 restriction that did not apply previously
 - Refer to Notice 2014-53 for additional details



Notice 2014-53 (HATFA)

- Effect of HATFA rates on application of § 436 benefit restrictions
 - Rules similar to Notice 2012-61
 - Can generally apply prospectively or retroactively for 2014
 - Prospective approach
 - Not available if used HATFA for § 436 purposes for 2013
 - Requires recertification of AFTAP by 12/31/2014
 - Simplified correction methods available



Notice 2014-53 (HATFA) -- FAQ

- No specific provision for reversing an election to use funding balance to offset 2013 MRC
- However, current regulations provide relief:
 - Maybe too late to revoke excess “use” election for 2013
 - But excess “use” election becomes an election to reduce funding balances, which can be reversed under Notice 2014-53
 - Excess contributions can be used to “replenish” funding balances that were used to offset MRC
 - Standing elections automatically adjust elections



Notice 2014-53 (HATFA) -- FAQ

- Technical correction – segment rates
 - HATFA corrected alignment of segment rates with valuation date instead of first day of plan year
 - Some practitioners concerned that deferring use of HATFA rates to 2014 could mean deferring correction of segment rates as well
 - However, deferring HATFA to 2014 means 2013 is under pre-HATFA rules (including reasonable interpretation of segment rates – final regulations reserved the paragraph on application of these rates)



Cooperative and Small Employer Charity Pension Flexibility Act

- Provides alternative funding rules for certain plans
 - Generally, plans with delayed effective dates under section 104 of PPA'06 – some exceptions
- Creates new Code section 433
 - Similar to pre-PPA funding rules
 - No DRC
- Several elections available regarding effective dates and applicability – due by 12/31/2014
- Optional election for extended amortization, similar to retroactive PRA 2010 relief
- Guidance pending



Notice 2014-19 – Windsor decision

- Guidance under Notice 2014-19
 - Qualified plans must reflect Windsor decision effective 6/26/2013
 - Requirement to recognize same-sex marriages based on place of celebration effective 9/16/2013
 - Earlier application permitted, not required
 - Can choose to apply for some purposes and not others
 - But retroactive application cannot result in qualification failure
 - If amendments needed, generally required by 12/31/2014



QLAC Regulations

- QLAC = Qualified Longevity Annuity Contracts
- Regulations:
 - Allow deeply deferred annuity contracts in retirement accounts, with annuities starting as late as age 85
 - Provides “safety net” to help retirees avoid outliving retirement assets
 - Excludes value of contract from account balance used to determine RMD
 - Increased maximum premium, made other changes so QLACs more marketable



Qualified Plan Rollover Guidance

- Revenue Ruling 2014-9
 - Provides safe harbor method for checking validity of rollovers to a qualified plan
 - Generally, check online Form 5500 filings to make sure the payor plan filed as a qualified plan
 - If rollover amount is later deemed ineligible, the invalid amount plus earnings must be distributed to the employee within a reasonable time after discovery
 - Easier for plan sponsors to accept rollovers without fear of disqualifying recipient plan

- Current tables issued in 2007 & 2008 regulations
- Code includes a mandate to update tables at least every 10 years – 2017 or 2018?
- Static mortality tables published for use through 2015
- SOA mortality study expected 10/31/2014
- Far too early to predict what tables will be issued by IRS



Nondiscrimination testing for closed DB plans

- Closed DB plans = DB plans closed to some participants, with ongoing accruals for others
 - Over time, participants of closed plan tend to become more concentrated in HCEs
 - Concerns these plans are failing “gateway” test
 - Requested permanent relief from gateway test if met conditions when plan closed
- Notice 2014-5 offers limited relief through 2015
- IRS/Treasury working on regulations



Pre-Approved Cash Balance Docs

- Announcement 2014-4 extended deadlines to allow development of pre-approved CB plans:
 - Until 2/2/2015 to submit DB plans for opinion / advisory letters
 - Until 3/31/2014, for sponsors of Cycle C plans to sign Form 8905 indicating intent to adopt pre-approved plan
- IRS also announced ability to withdraw filing and request return of user fee for Cycle C cases



Pre-Approved Cash Balance Docs

- Developing sample language, updated Rev. Proc.
 - Want program to be as broad as possible
 - Evaluating difficult areas relative to how many plans are expected to use given features



Pending Guidance

- Finalizing proposed regulations
 - Minimum funding rules - § 430
 - Mechanics of constructing MRC
 - Quarterly contributions
 - Excise taxes
 - Minimum present value rules - § 417(e)(3)
 - Finalize bifurcation rules
 - Propose rules, miscellaneous § 417(e)(3) issues
 - Hybrid plan regulations
 - Separate PEP guidance



Pending Guidance

- Other projects
 - Guidance on funding method changes
 - Automatic approvals - successor to RP 2000-40
 - Procedures for requesting approval - successor to RP 2000-41
 - Phased retirement rules



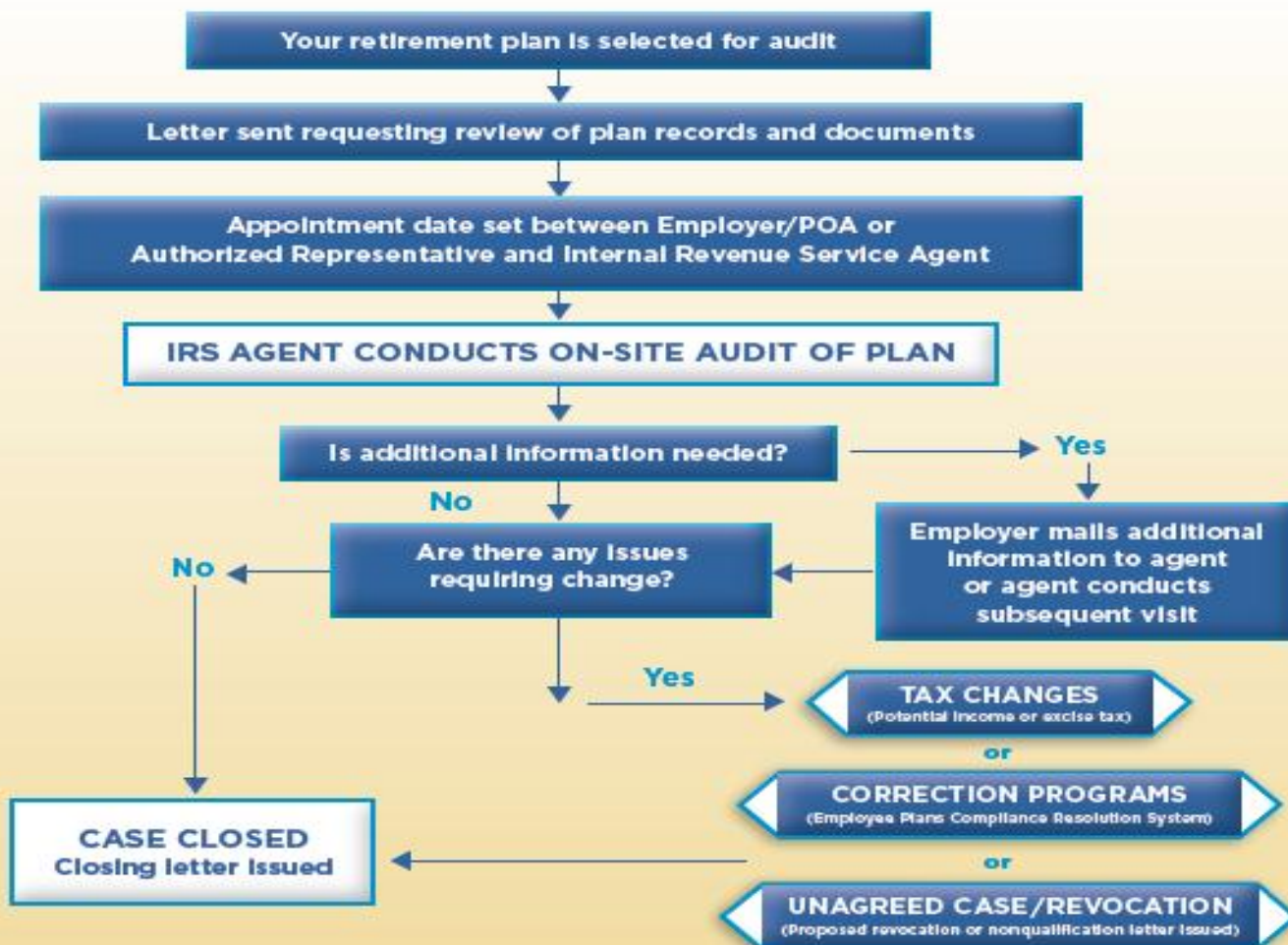
Pending Guidance

- Other projects
 - Proposed regulations, § 404
 - Additional proposed regulations, §§ 430 and 436
 - WRERA rules
 - Mergers / spinoffs
 - Year-end valuations
 - Miscellaneous updates
 - Ongoing – Schedule SB updates



Common issues arising in Examinations

Employee Plan Examination Process



- TEGE Actuary
- TEGE Field Counsel
- Computer Audit Specialists (CAS)
- Engineers
- Financial Product Specialists

- Employee Plans programs:
 - Examinations – 5 geographic areas
 - Rulings and Agreements
- Each examination area has an assigned actuary
- Actuaries:
 - Assist with case work, training, guidance and special projects
 - Work closely with guidance, determination, and voluntary compliance

- Provide assistance to Revenue Agents in:
 - Conducting examination
 - Developing IDRs and opening conferences
 - Reviewing materials provided by plan sponsor
 - Attending conferences with representatives
 - Discussing common errors and work with the areas to provide as consistent a resolution as possible



Examination Errors

- Common Examination Errors
- DB non-PPA issues
- DB PPA issues
- Cash Balance plan issues
- EPTA issues
- Multi-employer issues



Read the Plan!





Common Examination Errors

- Minimum Funding
 - Internal Revenue Code Section 412/430 violation - funding deficiency
 - Delinquent/late contributions



Common Examination Errors

- Inadequate or No Fidelity Bond
 - Fidelity bond equal to at least 10% of the most current handled assets
 - Effective for plan years beginning after December 31, 2007, the fidelity bond maximum is increased from \$500,000 to \$1 million for plans holding employer securities.



Common Examination Errors

- Vesting or Benefit Accruals
 - Erroneous cash-outs and forfeitures,
 - Wrong vesting schedules being used
 - Errors when calculating a participant's vesting percentage



Common Examination Errors

- Prohibited Transactions - Loans
 - Made out of plans that don't provide for them
 - To disqualified people under IRC 4975
 - To HCEs that violate exemptions listed under 4975(d)
 - Hardship distribution
 - IRC 72(p) violations
 - due to the original excessive length
 - Amounts exceeding either 72(p) or plan requirements
 - failure to meet amortization requirements requiring payments be made at least quarterly



Common Examination Errors

- Participation/Coverage
 - Plans failing testing requirements of section 410(b) by not following the participation entry requirements of the plan



Common Examination Errors

- Discrimination of Contributions/Benefits
 - Benefit provisions in the plan are misapplied,
 - Definition of “Compensation”
 - Plan vs. operational definition not consistent
 - Excluding eligible / Including ineligible employees
 - Combinations of above



Common Examination Errors

- Non/Late Amender
 - Examinations reveal late amenders



Common Examination Errors

- Required Distributions
 - IRC Section 401(a)(9) violation (required minimum distributions)



Common Examination Errors

- Joint and Survivor Annuity
 - Spousal consent,
 - QJ&S application,
 - Joint and survivor annuity adjustment when the Non-spouse beneficiary is more than 10 years younger than the employee, and
 - QDRO



Common DB Issues – Non PPA

- Actuarial increase for late retirement benefits not made
- Late contribution payments resulting in liquidity shortfalls
- Late quarterly contributions - IRC section 430(j)(3)
- Inappropriate inclusion of premiums for life insurance policies in target normal cost as plan expenses



Common DB Issues – Non PPA

- Compensation for determining accrued benefit in the valuation doesn't match the plan definition
- Compensation for benefit purposes not defined in the plan
- Service incorrectly calculated for benefit purposes
- Relative value disclosure notices



Common DB Issues –PPA

- Elections to use or reduce prefunding and/or carryover balances made late/not dated
- Elections to use prefunding and carryover balance to meet quarterly contributions made late or elections not specifying the dollar amount(s)
- Late or lack of Adjusted Funding Target Attainment Percentage (AFTAP) certification



Common DB Issues –PPA

- Assets valued differently for IRC section 430 versus IRC section 436
- Failure to give ERISA 101(j) and/or 204(h) Notice
- Annual funding notices made late or not dated



Common DB Issues –Cash Balance

- Late or lack of Adjusted Funding Target Attainment Percentage (AFTAP) certification
- Invalid offset for CB/DC combo
- Fail IRC 401(a)(26)
- Definition of cash balance interest credit
- Fail IRC 401(a)(4) – nondiscrimination



Criteria for an EPTA Case

- Maintained by large entities with 2,500 or more participants in the aggregate
- Various criteria used to select
 - EPTA case selection
 - Referrals



EPTA / Large Case Considerations

- While the issues are the same (i.e., Eligibility, Coverage, etc...) the manner in which they are addressed is different



Common Issues on EPTA Exams

- Defined Benefit Plans
 - Required Minimum Distribution (RMD) Issues
 - Lost Participant Issues
 - Compensation Issues
 - Cash Balance Plan Issues (Whipsaw)
 - Late Amenders / Interim Amendments



Common Multi-Employer Issues

- Failure to follow plan provision and CBA
- Deficient plan language
- Non-collectively bargained employees participating in plan
- Error in contribution or earning allocations
- Funding deficiencies
- Required Minimum Distributions
- Not properly calculating retirement benefits