Issue 2012-3
November 14, 2012

employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

Internal Revenue Service
Tax Exempt and Government
Entities Division

A Publication of Employee Plans

Determinations

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New on the web

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- **Help for victims of Hurricane Sandy** – YouTube videos, podcasts, news releases and guidance to help disaster victims.
- **2013 COLA limits** – dollar limits for retirement plans and IRAs

- **Lifetime annuity guidance** – highlights of recent phone forum on how plans can offer annuity options for retirees
- **Missing participants or beneficiaries** – recent changes to the letter forwarding program
- **Due date chart** – lists due dates for Forms 5500, 945, 5329, 1099-R and others
- ***Lots of Benefits*** when you set up or participate in an employee retirement plan, Publication 4118 (Rev. 7-2012)
- **Watch Nationwide Tax Forum presentation**, "A Taxing Matter - Retirement" – select presentation on left pane, scroll to the bottom of the page and select "Audit"

Recurring columns

- EP published guidance
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- PBGC Insights

Application Identification Sheet for Determination Letter Case Files

What is it?

The Application Identification Sheet is a one-page, bar-coded document created for each determination letter application the Employee Plans Determinations Unit receives. Each unique AIS contains the:

- IRS number for your determination letter application case file
- plan sponsor's EIN
- document locator number (DLN)
- application form number
- plan name
- plan number

Why is the AIS important?

The AIS ensures that determination letter application case files are accurately associated with incoming information, such as user fee payments, plan documents, plan amendments, forms, and correspondence.

How do I get an AIS?

During the review of your determination letter application, an Employee Plans specialist may send you a letter requesting additional information. The specialist will send you an AIS with the request letter. If you don't receive the AIS with the request, contact the specialist assigned to your application to request a copy of this document. When responding to an specialist's request, please fax or mail your response, **but do not do both**.

If you haven't been contacted by a specialist and you would like the AIS for your application, send a request to:

Mail	For express and overnight delivery
Internal Revenue Service EP Determinations Customer Service, Group 7535 P.O. Box 2508, Rm 5-120 Cincinnati, OH 45201	Internal Revenue Service 201 West Rivercenter Blvd. Attn: TEGE Team 31406 Stop 31 Covington, KY 41011

Please include the plan sponsor's name, EIN and the DLN (listed on the Acknowledgement Letter).

Completing the AIS box for mailed in user fees

When you submit a user fee payment for your determination letter application case file, please enter the amount of your payment on the check in the AIS box in the top right corner. Send your payment and the completed AIS to:

Internal Revenue Service
P.O. Box 12192
Covington, KY 41012-0192

When not to use the AIS

Do not send the AIS when you:

- request a copy or corrected EP determination letter. Once we issue a determination letter, we close the related application case file. Therefore, if you attach the AIS to your request, our system won't take action because the AIS is for a closed case file.
- resubmit your previously filed determination letter application. For example, if we sent your determination letter application back to you as an incomplete application and you resubmit the same application with the requested information, don't include the AIS with your resubmitted application.
- submit a new determination letter application. Your new determination letter application will receive its own AIS when we establish a case file for the application.

If you are unsure whether to include your AIS with your submission, call us at 877-829-5500.

Volunteers needed to test Pay.gov

Employee Plan's Determination Letter Program will be testing Pay.gov for paying determination letter application user fees. If you would like to volunteer to pay your user fee using pay.gov, please email, Joanna.h.weber@irs.gov. Pay.gov is a secure government-wide portal for payments to federal government agencies.

Thanks to those who have already volunteered; we should be contacting you soon.

After the annual user fees are announced in Revenue Procedure 2013-8, practitioners filing a Form 5300 series determination letter application can use Pay.gov to:

- complete an online equivalent of Form 8717, *User Fee for Employee Plan Determination, Opinion, and Advisory Letter Request*, and
- pay the user fee via a bank account, credit, or debit card.

Pay.gov users can print and attach the payment confirmation page, instead of a Form 8717, to their Form 5300 application to show they paid the user fee.

Determination Letter Applications – Provide Your Correct Address

The Employee Plans determination letter function mails thousands of notices and letters every year but receives hundreds of them back as “undeliverable” because of incorrect or missing address information on the application or power of attorney forms.

What can you do to ensure that you receive your acknowledgement notice or determination letter?

Before submitting your application, make sure your address is complete and correct on both the determination letter application and power of attorney (if applicable) forms:

- Include the suite, room, floor, or other unit number after the street address. (This is the most common error we see.)
- If the Post Office does not deliver mail to the street address and the plan sponsor has a P.O. Box, you should use the P.O. Box number in the address instead of the street address.

If you realize after filing your application that the mailing information is incorrect, incomplete or an old address, you should notify us at the address below so that we can change your address. Please include:

- your correct mailing address
- plan sponsor’s name
- plan sponsor’s EIN
- plan name
- plan number
- date the application was filed

Do not send a copy of your application.

If your representative’s address has changed, you aren’t required to complete a new power of attorney form. Your representative can send a signed statement identifying the correct information.

Mail address corrections to:

Mail:	**For express and overnight delivery:**
Internal Revenue Service PO Box 2508, Room 5-120 Cincinnati, OH 45201 Attn: Manager, EP Correspondence	Internal Revenue Service Room 4-024 550 Main Street Cincinnati, OH 45202 Attn: Manager, EP Correspondence

Or, you can fax written requests to 513-263-4663.

Related resource:

- Determination Letters - Need a Copy or a Correction?

Internal Controls are Essential in Retirement Plans

Monika Templeman, Director of EP Examinations, responds to questions and offers insights on retirement plan topics uncovered during audits. You may provide feedback or suggest future topics by emailing her at: RetirementPlanComments@irs.gov.

"An ounce of prevention is worth a pound of cure" definitely applies to keeping retirement plans tax-qualified. Practitioners tell me that it's often difficult to convince their clients that effective internal controls are essential to prevent costly mistakes that can jeopardize the plan's tax-favored status. Hopefully, the "preventive care" I give below will help convince plan sponsors that their plan needs to be reviewed annually to ensure that it's operating according to its terms and current law.

Benefits to having strong internal controls

Having effective practices and procedures to prevent compliance problems is a basic requirement to be eligible to use the Self-Correction Program. Retirement plan sponsors can self-correct insignificant operational errors at any time and preserve the tax-favored status of the plan without having to pay any fees.

When auditing a retirement plan, the agent begins by evaluating the plan's internal controls to determine whether to perform a focused or expanded audit. In addition, if the agent finds plan errors, the strength of internal controls is a factor in the negotiation of the sanction amount under Audit CAP. The agent will make every effort to ensure that the plan has internal controls in place when the audit concludes.

Plan sponsors should keep in mind that hiring a service provider doesn't relieve them of the responsibility of keeping their plan in compliance. Problems typically occur when there's a communication gap between the employer and plan administrator about what the plan document provides and what documentation is needed to ensure compliance.

Common mistakes that we see during plan audits resulting from communication problems between the plan sponsor and administrator

Failure to timely amend the plan or to follow the terms of the plan

It's common during examinations that an employer can't locate documentation to prove the plan was timely amended for current law. This results in an Audit Closing Agreement. If the error had been discovered through an annual review of the plan document before the plan was audited, the plan sponsor could have filed a much less expensive Voluntary Correction submission to bring the plan current with all law changes (self-correction isn't available for document failures).

When plan sponsors change their plan document, they should also make corresponding changes to their summary plan description and communicate the changes to plan participants. It's also important to share changes made to the plan with all persons who provide service to the plan. For example, if the plan's definition of compensation is changed, this change needs to be communicated to anyone involved in determining deferral amounts, performing nondiscrimination tests or allocating contributions.

Failure to review in-service, termination, and loan distribution forms to make sure they follow the plan terms

Many plan vendors use the same distribution forms for all of the plans they administer despite the fact that individual plans may have different distribution options and requirements. Using a generic form can lead to incorrect distributions and incorrect tax reporting.

Failure to count all eligible employees in testing

Plan sponsors often fail to share information with the plan administrator on all employees:

- eligible to make an elective deferral, including those terminated during the year, or
- of a related company with common ownership interests.

These employees may be eligible to participate in the plan and, therefore, may need to be included in the various tests.

Free tools

The tools on our website can help plan sponsors strengthen their internal controls. We have checklists that list common errors found in certain types of plans. If you answer "no" to any of the questions, you should investigate further to see if you have an error in your plan. 401(k) plan sponsors can use our 401(k) questionnaire, which contains more questions to help determine if there are errors in the plan. We also have Fix-It Guides for a number of plan types with tips on how to find, fix and avoid common plan errors. The Trends and Tips pages list recurring errors by plan type and issue, and include errors we found in large case (EPTA) exams.

So, if you haven't done so already, please ask your clients to check out our user-friendly tools on the Information for Retirement Plans Web pages.

Plan's Matching Formula May Require Additional Employer Contributions

Our 401(k) plan's match formula is 100% of a participant's salary deferrals up to 3% of the participant's entire-year compensation with the matching contributions being made at the end of each payroll period. If a participant stops making salary deferrals mid-year, would we have to make additional matching contributions for that participant?

Yes, if you haven't made the amount of matching contributions required by the plan's match formula when the participant stops making salary deferrals, you'll have to "true-up" the matching contributions for the participant.

Many plans require the employer to match salary deferrals up to a percentage of a participant's total compensation for the plan year (up to $250,000 for 2012). So, if a participant stops or decreases their salary deferrals during the year, you may owe the participant an additional match.

Example:
Steve elects to contribute 5% of his $48,000 annual compensation to his 401(k) plan. Steve's employer pays him $2,000 twice a month, deducts $100 (5% x $2,000) from his salary and contributes it to his 401(k) account. Steve's employer contributes a matching contribution of 100% of his salary deferral up to 3% of his wages every pay period, or $60 (3% x $2,000). The 401(k) plan document requires Steve's employer to use his entire plan-year compensation to determine the amount of the matching contribution. Steve stops making salary deferrals in May.

Pay period ending	Steve's pay	Steve's salary deferral	Steve's matching contribution
January 15	$2,000	$100	$ 60
January 31	2,000	100	60
February 15	2,000	100	60
February 28	2,000	100	60
March 15	2,000	100	60
March 31	2,000	100	60
April 15	2,000	100	60
April 30	2,000	100	60
May – December compensation	$32,000	0	0
Totals for the year	**$48,000**	**$800**	**$480**
Amount employer must contribute to Steve's account to comply with the plan's match formula.			**$320**

The plan requires Steve's employer to make matching contributions of 100% of Steve's salary deferrals up to 3% of his annual compensation (3% x $48,000). Even though Steve's actual salary deferrals ($800) equaled only 1.6% of his annual compensation, his employer stopped matching when Steve stopped contributing in May. Steve's employer must make an additional $320 ($800 - $480) in matching contributions equal 100% of Steve's salary deferrals up to 3% of his annual compensation required by the plan document.

The plan must comply with its match formula even if a participant stops making or decreases their salary deferrals during the year.

Additional resources:

- 401(k) Plan Fix-It Guide – Employer didn't make the correct amount of matching contributions
- Publication 560, *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*
- Retirement Topics: Contributions
- Matching Contributions Help You Save More for Retirement

SEP Plan for Businesses Under Common Control

I own a sole proprietorship with several common-law employees. Recently I started a separate business as a C corporation. I own 100% of the corporation's stock and am currently the C corp's only employee. The C corp plans to adopt a Simplified Employee Pension (SEP) plan. Do I have to include the sole proprietorship employees in the SEP plan?

Yes. Because the sole proprietorship and the C corp are under common control, any of the sole proprietorship's employees who meet the SEP plan's eligibility requirements must be included in the plan.

Common control

For SEP plan purposes, you must treat employees of commonly controlled trades or businesses (whether or not incorporated) as employed by a single employer (Internal Revenue Code Section 414(c)).

Common control – The sole proprietorship and the C corp are under common control as a brother-sister group of trades or businesses because you:

- own a controlling interest in both businesses, and
- are in effective control of each business (Treas. Reg. Section 1.414(c)-2(c)(1)).

Controlling interest – you have a controlling interest in both businesses because you own the sole proprietorship and at least 80% of the C corp's total combined voting power of all classes of stock entitled to vote or at least 80% of the total value of shares of all of the C corp's classes of stock (Treas. Reg. Section 1.414(c)-2(b)(2)).

Effective control – you are in effective control of both businesses because you own the sole proprietorship and more than 50% of the C corp's total combined voting power of all classes of stock entitled to vote or more than 50% of the total value of shares of all of the C corp's classes of stock (Treas. Reg. Section 1.414(c)-2(c)(2)).

SEP eligibility requirements

An employer must allow all employees who meet these requirements to participate in its SEP plan:

- are age 21 or older;
- worked for the employer in at least 3 of the last 5 years; and
- received at least $550 in compensation in 2012.

An employer can choose to use less restrictive eligibility requirements. For example, the plan may cover employees:

- who are age 18 or older instead of 21 or older, or
- immediately when hired instead of waiting until after they worked for the employer in at least 3 of the last 5 years.

Example: Your C corp's SEP plan's only requirement for participation is an employee must work 2 out of the last 5 years. One of the sole proprietorship's common-law employees has worked there since you started the business 3 years ago. Both you and this employee immediately meet the SEP's participation requirement. The other employees of your sole proprietorship and future employees of both the sole proprietorship and the C corp will be able to participate in the SEP plan once they meet the plan's eligibility requirements.

Additional Resources:

- SEP plans
- FAQs: SEP plans
- Publication 560, *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*

Notice Requirements for Benefit Restrictions in Single-Employer Defined Benefit Plans

Notice 2012-46 (July 23, 2012):

- Explains when and how single-employer defined benefit plans must notify participants and beneficiaries of benefit restrictions (Internal Revenue Code Section 436 and ERISA Section 206(g))
- Contains a sample notice for plans to comply with ERISA Section 101(j)

Benefit restrictions

- Single-employer DB plans less than 60% funded must:
    - restrict benefits, if any, for unpredictable contingent events (for example, a plant shutdown or similar event that isn't based on age, performance of services, receipt of compensation, death or disability), and
    - suspend benefit accruals.
- Plans less than 80% funded must restrict lump-sum distributions.
- Plans less than 80% funded or where the sponsor is in bankruptcy can't make prohibited payments. For example, payments:
    - that exceed the monthly single-life annuity payment, and
    - to insurers for irrevocable commitments to pay benefits.

Timing

The plan must restrict benefits on the first date that the plan's adjusted funding target attainment percentage (AFTAP) is actually or presumed to be less than the applicable 60% or 80%. A plan's AFTAP is its funded target attainment percentage plus any employee annuities for the previous two plan years.

Plan administrators must notify participants and beneficiaries who are, or are likely to be, affected by the restrictions, in writing within 30 days after the date the restrictions take effect. Otherwise, the plan may be penalized up to $1,000 each day it fails to provide the notice.

Effective date

Although the notice took effect on October 22, 2012, plan administrators could have relied on the notice or any reasonable interpretation of ERISA Section 101(j) before then.

MAP-21: New Funding Rules for Single-Employer Defined Benefit Plans

Recent legislation and guidance provides funding relief for single-employer defined benefit plans.

- The Moving Ahead for Progress in the 21st Century Act (MAP-21) changes the segment rates used for certain calculations to reflect average segment rates for the 25-year period ending on September 30 of the prior plan year.
- Notice 2012-55 contains the 25-year average segment rates for the period ending September 30, 2011.
- Notice 2012-61 clarifies how the 25-year average segment rates affect certain plan calculations.

How does MAP-21 provide funding relief for DB plans?
MAP-21 changes the segment interest rates used to determine the minimum funding requirements for single employer plans to take into account a 25-year average of the segment interest rates. Because interest rates are currently at historical lows, limiting the rates based on the 25-year average tends to increase the interest rates, and therefore lower the minimum funding requirements.

Under MAP-21, the segment rates for a plan year are adjusted so that they are no less than a minimum percentage (floor) and no more than a maximum percentage (cap) of the average segment rates for the 25-year period ending on September 30 of the prior plan year. The range of allowable rates expands over the next few years as shown in the table below, phasing out the impact of the 25-year average.

	Range of Allowable Segment Rates as a Percentage of the 25-year Average	
For plan years beginning in	**Minimum percentage**	**Maximum percentage**
2012	90%	110%
2013	85%	115%
2014	80%	120%
2015	75%	125%
2016 or later	70%	130%

Adjusted segment rates for plan years beginning in 2012 (MAP-21 rates) were published in Notice 2012-55. As shown in the table below, all three segment rates for January 2012 are higher than the rates that would have otherwise been required prior to MAP-21:

Segment rate	January 2012 Unadjusted segment rates	MAP-21 rates for plan year beginning in 2012
First	1.98%	5.54%
Second	5.07%	6.85%
Third	6.19%	7.52%

Do the MAP-21 rates affect benefit restrictions under Internal Revenue Code Section 436?
Yes, using the MAP-21 rates may increase the plan's adjusted funding target percentage (AFTAP) and potentially remove funding-based benefit restrictions on the plan (for example, the restriction on paying lump sum benefits).

Are the MAP-21 rates used for all plan calculations?
No, MAP-21 specifies that the unadjusted segment rates must still be used for certain purposes. These include determining:

- lump sum payments to participants,
- PBGC premiums,
- deductible limits on pension contributions,
- the amount available for qualified transfers to retiree medical accounts, and
- whether a plan must report to the PBGC under ERISA Section 4010.

See PBGC Technical Updates 12-1 and 12-2 for additional information.

When are the MAP-21 segment rates effective?
The MAP-21 segment rates are generally used for plan years beginning in 2012 and later. However, plans may elect to delay applying MAP-21 until the 2013 plan year. In addition, Congress recognized that some plan sponsors may wish to take advantage of funding relief for 2012, but do not want to disrupt 2012 plan operations under IRC Section 436. Therefore, a plan sponsor may elect to defer applying MAP-21 rates until 2013 for IRC Section 436 benefit restrictions while using the MAP-21 rates for 2012 for other purposes.

If a plan's AFTAP for the 2012 plan year was already certified by September 30, 2012, using the unadjusted segment rates, and the sponsor wishes to reflect the MAP-21 rates for the 2012 plan year for IRC Section 436 purposes, a sponsor may either apply any change in benefit restrictions using the MAP-21 rates prospectively (effective no later than October 1, 2012), or retroactively, as if the AFTAP was originally certified using the MAP-21 rates. If the sponsor applies this change prospectively, the AFTAP must be recertified to reflect the MAP-21 rates by December 31, 2012. Please see Notice 2012-61 for additional details.

Does MAP-21 give any relief to plans that are valued using the full yield curve?
No, MAP-21 does not give any direct relief to plans that are funded using the full yield curve instead of the segment interest rates, but it does give plan sponsors a one-time opportunity to opt out of the yield curve without IRS approval, and begin using the segment interest rates instead. This opportunity is only available for the first plan year that MAP-21 applies to a plan (2012 or 2013, depending on the plan sponsor's elections).

If a plan sponsor opts out of using the full yield curve for funding purposes, it must use the segment interest rates for all purposes, even for calculations that can't reflect MAP-21.

How does MAP-21 affect interest credited under cash balance plans?
The Pension Protection Act of 2006 limits the interest rate credited to a cash balance account to a rate no higher than a market rate of return. Final regulations issued in October 2010 (T.D. 9505) provide that any of the three segment interest rates would be considered acceptable under these rules.

However, these regulations were issued before MAP-21 was enacted, and the IRS has not yet determined whether the MAP-21 segment rates would be acceptable as an interest crediting rate. Until final hybrid plan regulations regarding allowable interest crediting rates are issued, if a cash balance plan credits interest using a segment rate, the plan sponsor may use a reasonable interpretation as to whether the plan's terms mean the segment rate should be the unadjusted segment rate or the MAP-21 segment rate.

Notice 2012-61 also provides that final hybrid plan regulations regarding allowable interest crediting rates will not be effective before January 1, 2014.

What elections must be made by the plan sponsor?
MAP-21 and Notice 2012-61 provide a number of choices for the plan sponsor. A plan sponsor must make an election by the earlier of the actual filing date or filing deadline (including extensions) for the 2012 Form 5500 if the sponsor wishes to:

- defer the application of MAP-21 until the plan year beginning in 2013,
- retroactively apply a 2012 AFTAP certification based on MAP-21 when applying IRC Section 436 benefit restrictions, or
- change certain contribution elections.

In addition, a plan sponsor must make an election by the last day of the 2012 plan year in order to change certain funding balance elections. Elections to opt out of using the full yield curve without requiring IRS approval are due by July 5, 2013.

Please see Notice 2012-61 for additional information.

Additional resources:

- MAP-21: Changes to Segment Rates Phone Forum (Sept. 27,2012) handout
- PBGC Technical Update 12-1: Effect of MAP-21 on PBGC Premiums
- PBGC Technical Update 12-2: Effect of MAP-21 on 4010 Reporting
- T.D. 9505 – final hybrid plan regulations (October 2010)
- REG-132554-08 – proposed regulations for hybrid plans (October 2010)

Multiemployer Actuarial Certifications – Project Summary

The Employee Plans Compliance Unit summarized information from the multiemployer plans actuarial certifications we received in the last five years. Based on this information, we're considering future multiemployer plans compliance projects.

Actuarial certification requirement

Multiemployer defined benefit plans must certify their actuarial status annually. This annual actuarial certification is due by:

- March 31 for a calendar year plan, or
- 90 days after the beginning of the plan year for a fiscal year plan.

Plan sponsors who fail to provide the certification on time may be subject to a penalty of up to $1,100 per day.

Project process

The certifications will come directly to the EPCU and we will enter key information from each one into a database that will give us an "at a glance" review of the certification's completeness for future tracking and research.

EPCU's other multiemployer plan projects

Multiemployer certifications

We focused on sponsors who filed a Form 5500-series return indicating they were a multiemployer DB plan but didn't provide an actuarial certification. Most cases were resolved because:

- the plan wasn't required to submit a certification because it terminated or PBGC took it over
- the plan used an incorrect EIN or there was a mismatched EIN
- the plan incorrectly indicated on Form 5500 that it was a multiemployer DB plan
- the certification listed incorrect or incomplete information
- the plan sponsor didn't send a certification to the IRS

Multiemployer validation project

We focused on Form 5500 returns for plans we believed had incorrectly indicated they were multiemployer DB plans. The majority of the cases were resolved because the plan:

- was a defined contribution plan
- was a defined benefit plan but not a multiemployer plan
- was a DB multiemployer but didn't file the required certification
- submitted a certification with discrepancies that prevented us from associating it with the correct files

Future EPCU project for multiemployer DB Plans

EPCU is considering a follow up project to determine why multiemployer DB plans with scheduled rehabilitation or funding improvement plans either:

- didn't report their scheduled progress on the certifications, or
- aren't making progress (for plans that reported "not making progress").

IRS continues to receive and share data on multiemployer DB actuarial certifications with both the DOL and PBGC.

Final Regulations for Single-Employer Defined Benefit Plans in Bankruptcy

Final regulations (T.D. 9601) offer a limited exception to single-employer defined benefit plans covered under ERISA Section 4021 from the anti-cut back rules under Internal Revenue Code Section 411(d)(6)(B). The regulations allow a plan sponsor who is a debtor in bankruptcy and who meets certain conditions to amend its plan to eliminate:

- a lump-sum distribution option, or
- another optional form of benefit providing for accelerated payments.

Conditions
A plan sponsor must satisfy these four conditions by the applicable amendment date (the later of the amendment's adoption or effective date):

1. The plan's enrolled actuary has certified that the plan's adjusted funding target attainment percentage is less than 100% for the plan year that contains the applicable amendment date.
2. The plan can't make any prohibited payments (generally, one that is in excess of the monthly amounts payable under a single life annuity) because its sponsor is a debtor in a bankruptcy.
3. The sponsor's bankruptcy court has issued an order, after notice and a hearing, finding that the adoption of the amendment eliminating that optional form of benefit is necessary for the plan to avoid a distress or involuntary termination.
4. The PBGC has determined the:
    - plan amendment to eliminate that optional form of benefit is necessary for the plan to avoid a distress or involuntary termination before the sponsor emerges from bankruptcy (or before the bankruptcy case is otherwise completed), and
    - plan is not sufficient for guaranteed benefits (ERISA Section 4041(d)(2)).

Effective/Applicability Dates
The final regulations adopt most of the rules in the June 21, 2012, proposed regulations (REG 113738-12) and apply to plan amendments that are adopted and effective after November 8, 2012.

Lifetime Annuity Guidance Highlights

The Lifetime Annuity Guidance phone forum on August 28 featured two Employee Plans actuaries, Carol Zimmerman and Larry Isaacs, who discussed guidance designed to encourage lifetime annuity options for retirees. We spoke with Carol about the phone forum and the guidance.

What guidance items did you discuss during the forum?

Carol: We discussed the four pieces of lifetime annuity guidance that were issued in February of this year:

- Revenue Ruling 2012-3 about how the survivor annuity requirements apply to a deferred annuity contract in a defined contribution plan;
- Revenue Ruling 2012-4 on the rules for rollovers from defined contribution plans into defined benefit plans, to purchase additional annuity benefits;
- Proposed regulations (REG-115809-11) to make it easier for participants to purchase annuities that begin at an advanced age by providing for qualified longevity annuity contracts, or QLACs; and

- Proposed regulations (REG-110980-10) on partial annuities to make it easier for plan sponsors to allow participants to split a benefit between a lifetime annuity and a lump sum or other form of benefit that is subject to the minimum present value requirements of Internal Revenue Code Section 417(e).

What is the purpose of these four guidance items?

Carol: The overall purpose is to make it easier for plans to offer participants a lifetime annuity option to receive their retirement benefits. A lot of retirement plan participants have difficulty managing their retirement savings so that they have enough income throughout their lifetime. It is a challenge to know how much they can withdraw from their retirement savings each year. Too many people focus only on life expectancy without realizing that this is just an average number of retirement years, and that they have a 50-50 chance of living longer than their life expectancy. Furthermore, in the current economic environment, investments have not been earning as much as retirees may have counted on when they retired. Having the ability to receive retirement benefits as an annuity with a lifetime guarantee provides retirees with additional security and the peace of mind that comes with it.

Are there certain issues plan sponsors should be aware of about the revenue rulings?

Carol: Yes. As I discussed during the forum, the fact pattern in Revenue Ruling 2012-4 was not meant to restrict rollovers between qualified plans otherwise allowed by IRC Sections 402 and 408. The fact pattern was limited only to allow us to focus on the key holding of the revenue ruling and not dilute the message by dealing with side issues that could arise in other scenarios.

Since the forum, we have received a number of questions asking whether Revenue Ruling 2012-4 applies to floor-offset plans that allow participants to roll defined contribution accounts into the plan to eliminate the offset. The revenue ruling does indeed apply in this situation, and so the amount added by the rollover may not exactly match the amount of the offset, unless the offset is calculated using assumptions that are consistent with Revenue Ruling 2012-4.

Revenue Ruling 2012-3 clarifies the rules concerning annuities offered in a defined contribution plan, with the hope that more plan sponsors would offer an annuity option if it were easier to administer. We also pointed out that Revenue Ruling 2012-3 doesn't address situations in which annuity payments may be modified after they have begun.

Have you received many comments on the proposed regulations?

Carol: Yes, we did receive many comments on the proposed regulations and discussed a few of them during the forum. For example, some people felt that the proposed $100,000 limit on a QLAC was too low, requested that variable contracts (annuities that pay dividends) should also qualify as QLACs, and suggested a program for plans to correct QLAC mistakes.

Again, we will review every comment before finalizing the proposed regulations.

Transcript & handout

The forum transcript and handout are available on our phone forum Web page.

Related resources

- Treasury Fact Sheet - Helping American Families Achieve Retirement Security by Expanding Lifetime Income Choices

- Treasury Press Release (February 2, 2012) - U.S. Treasury, Labor Departments Act to Enhance Retirement Security for an America Built to Last

DOL Corner

The Department of Labor's Employee Benefits Security Administration (DOL/EBSA) announced new guidance as featured below. You can subscribe to DOL/EBSA'a homepage for updates.

Guidance on fee disclosure rules

On July 30, DOL/EBSA issued a set of frequently asked questions and answers in Field Assistance Bulletin 2012-02R to help plan administrators and service providers comply with the requirements of new rules improving the transparency of fees and investment expenses in retirement plans.

On July 18, DOL/EBSA published improved procedures for plan sponsors who want to obtain fiduciary relief for a service provider's failure to comply with the plan-level fee disclosure rule.

The final 408(b)(2) regulation, effective on July 1, 2012, includes a provision to protect plan sponsors or other responsible plan fiduciaries from liability for a breach of their fiduciary duties under ERISA when, unknown to the plan sponsor, a service provider failed to comply with the regulation's comprehensive disclosure requirements. If a plan sponsor discovers that required information has not been furnished, the sponsor must notify DOL/EBSA, electronically or by regular mail, when efforts to obtain the undisclosed information from a service provider are not successful. The new procedures allow a plan sponsor to notify DOL/EBSA online or by mail. The web-based tool will assist plan sponsors in ensuring that all required information is submitted with immediate confirmation of receipt by DOL/EBSA.

On February 3, DOL/EBSA published a final rule under section 408(b)(2) of ERISA that requires disclosures to employers sponsoring pension and 401(k) plans about the administrative and investment costs associated with providing such plans to their workers.

On October 20, 2010, DOL/EBSA published a final rule to help America's workers manage the money they have contributed to their 401(k) accounts, or similar retirement plan accounts, by requiring the disclosure of information regarding the fees and expenses associated with their plans. This participant-level disclosure rule, under section 404(a) of ERISA, also ensures that workers receive core investment information in a format that enables them to meaningfully compare their plan's investment options.

Guidance for apprenticeship and training plans

On July 26, DOL/EBSA held a webcast for apprenticeship and training plans on fiduciary responsibilities. The webcast covered basic fiduciary responsibilities, including guidance on graduation ceremonies and program marketing Field Assistance Bulletin 2012-01. The archived webcast is available on DOL/EBSA's website.

Outreach and education

For notice of upcoming events as they are scheduled, subscribe on DOL/EBSA's website homepage. DOL/EBSA also conducts seminars for small businesses sponsoring health benefits plans. Information on these events is also available on DOL/EBSA's homepage.

PBGC Insights

On August 28, PBGC issued Technical Update 12-1 to provide guidance on how the determination of premiums is affected by the amendments to ERISA Section 4006, made by the Moving Ahead for Progress in the 21st Century Act (MAP-21).

On September 11, PBGC issued Technical Update 12-2, which provides guidance on the effect of MAP-21 on annual financial and actuarial information reporting under ERISA section 4010.

Our premium e-filing application, My Plan Administration Account (My PAA), has recently been enhanced to improve the usability and security of the system:

- You and all filing team members have new features when you create draft filings using the My PAA screens or import them into the My PAA screens. Click "View" on the Filing Manager Page to:

- See any warnings about possible data discrepancies on the top of the Data Summary Page, or
- Print the data entered in a draft filing in a format similar to the “illustrative form” by clicking “View Printable Form” on the top of the Data Summary Page.

- Whoever uploads the filing data can now view the submitted data on most uploaded filings by clicking the “Conf. ID/Receipt” link in the upload section of your Home Page.
- We have improved the text on some screens to help clarify the instructions (for example, to better describe the payment choices).
- You can now view a short summary of “how to use My PAA” by clicking this new link at the top of your My PAA Home Page.
- We have strengthened our password requirements for better data security. When you log in, you will be prompted to change your password (if you have not recently done so) to meet the new requirements. Your password must be between 10 and 24 characters, not include any spaces and must contain at least one:
  - uppercase character,
  - lowercase character,
  - number, and
  - special character that is NOT a single quote (‘), double quote (“), equal to (=), percent (%), asterisk (*), backslash (\), plus (+), ampersand (&), greater than (>), less than (<), semicolon (;) or question mark (?).