

employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

Internal Revenue Service
Tax Exempt and Government
Entities Division

A Publication of Employee Plans

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to a Site Near You

Lessons Learned from Processing Determination Applications Under Cycle A

[Revenue Procedure 2007-44](#) superseded Revenue Procedure 2005-66, which established a system of five-year remedial amendment cycles for individually designed plans and six-year remedial amendment cycles for master and prototype (M&P) and volume submitter plans. Under this system, plan sponsors seeking a favorable determination letter generally apply only once every five or six years.

Cycle A, the first five-year remedial amendment cycle, ended on January 31, 2007, and applied to employers with taxpayer identification numbers (TINs) ending with 1 or 6 or that were part of a controlled group making an election to file under Cycle A. [Cycle B](#), the current cycle, opened on February 1, 2007. It applies to employers with TINs ending with 2 or 7, as well as to multiple employer plans.

Common Problems Uncovered

As part of its review of a determination letter application package, the IRS performs an initial prescreening to ascertain whether the plan was properly restated to include the appropriate "Cumulative List of Changes in Plan Qualification Requirements." The prescreening also considers whether an application is submitted during the plan sponsor's appropriate cycle.

The IRS's prescreening process is finding that many problems that plagued plan sponsors in Cycle A are also recurring in Cycle B. These include:

- plan language not reflecting EGTRRA changes, including, for example, the definitions for "[top-heavy](#)," "[key employee](#)," "[look-back period](#)," "[direct rollover](#)," and "[eligible rollover distribution](#)," along with the absence of the [automatic rollover requirement](#) (IRC §401(a)(31)(B));
- submissions with an addendum containing the EGTRRA changes instead of incorporating the changes throughout the plan document, as required;
- controlled groups and/or affiliated service groups electing Cycle A but lacking such required information as the names of all members of the controlled group or affiliated service group, employer identification numbers, or signatures of all members;
- related plans submitting separate application packages; and
- related plans not being restated for the same Cumulative List.

Determination letter applications with the problems noted above are returned to the submitter, creating additional delays in processing. If a returned application is not resubmitted within 30 days of notification by the Service and is then resubmitted during a subsequent cycle, the plan submission will be labeled "off cycle." Thus, plan sponsors are encouraged not to delay filing their determination letter applications until the January 31 deadlines of their respective cycles and to respond within 30 days of a returned application.

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Moreover, applications that are deemed off-cycle filings are placed in suspense and are not processed until all of the reviews of on-cycle applications have been completed. The classification of an application as “on” or “off” cycle will not be changed prior to its processing. Plans will need to be restated for their appropriate Cumulative List and resubmitted as an on-cycle application. For this reason, Cycle B submissions filed as an off-cycle application in Cycle A will be returned for restatement. •

EP Connections: EP Examinations Director’s FY 2008 Critical Priorities

Monika Templeman, IRS Director, Employee Plans Examinations, recently sat down with Employee Plans News to outline her office’s top priorities for the upcoming year. Additional information about the examinations and enforcement efforts are available at www.irs.gov/ep. Ms. Templeman may be contacted by sending an e-mail to her attention at retirementplancomments@irs.gov.

What is the primary responsibility of EP Examinations?

My office is responsible for ensuring that the retirement plans community complies with the various tax laws affecting pension, 401(k), and similar plans. We help to make certain that employers and employees benefiting from having a retirement plan are playing by the rules. Both the IRS and the retirement plans community have a vested interest in the success of the private retirement system in America. It’s important to let the community know what those rules are and where we see mistakes happening.

What are your critical priorities in 2008?

There are three [critical priorities](#):

1. Address Abusive Transactions - During the last year we have had a large impact on curbing [abusive transactions](#), specifically 412(i) plans and Subchapter S-Corp ESOPs. We will continue to address all identified abusive transactions and emerging issues/abuses by taking an aggressive stance against them. We are asking retirement plan practitioners to partner with us to stamp out these kinds of abuses.
2. Expand Enforcement Contacts - We will expand our enforcement contacts by continuing to use the EP Compliance Unit ([EPCU](#)) to leverage our resources. We will start new EPCU projects to pursue and investigate areas of potential noncompliance. By combining our EPCU contacts with our examinations, we will have the broadest impact on compliance in the retirement plans community.
3. Employ Efficiencies - We will also continue to employ efficiencies in how we conduct examinations so that we reduce burden on compliant taxpayers and use enforcement resources to better target noncompliance. This will be done by completing [risk-based targeted examination projects and LESE](#) (Learn, Educate, Self-Correct, Enforce) projects that use “judgment sampling” as selection criteria. We will continue to use the focused examination approach for all types of examinations.

Does your office work with other IRS Employee Plans offices?

My office works closely with EP Rulings & Agreements and EP Customer Education & Outreach so we can maximize our overall compliance efforts. For example, in FY 2008 we will initiate a customer satisfaction project involving all three EP offices plus external stakeholders to optimize the Employee Plans Compliance Resolution System (EPCRS). EPCRS includes the Self-Correction Program (SCP), the Voluntary Correction Program (VCP), and the Audit Closing Agreement Program (Audit CAP). The project will be coordinated with the Advisory Committee for Tax Exempt and Government Entities (ACT) and will complement its project on leveraging EPCRS in accordance with the Pension Protection Act of 2006 (PPA).

What happens when your agents find mistakes while examining plans?

First, let me say that we encourage all plan sponsors to review their plans regularly and to self-correct when they uncover plan mistakes. If my agents find mistakes or defects while examining qualified plans, employers/plan sponsors may be entitled to a closing agreement under Audit CAP to preserve the tax benefits associated with properly maintained retirement plans. Thus, Audit CAP offers a non draconian way to keep legitimate retirement plans qualified. Instead of disqualifying the plan, we allow employers/plan sponsors to:

- correct the defects, ensuring that all participants will receive the benefits due under the plan;
- pay a sanction based on an amount that is directly related to the amount of tax benefits preserved, with the sanction bearing a reasonable relationship to the nature, extent, and severity of the defects, and taking into account the extent to which correction occurred before audit, the plan size, number of participants, and other factors; and
- enter into a closing agreement with the Service.

Of course, Audit CAP costs a lot more than a submission under VCP. Remember that unlike VCP, where the plan sponsor goes to the effort and expense to find the defects, bring them to our attention and fix them, in Audit CAP we expend the time and resources to find the disqualifying defects discovered as the result of an examination. If the IRS and the plan sponsor cannot reach an agreement on correcting the mistake(s) or the amount of the sanction under Audit CAP, we will pursue disqualification of the plan.

Let me also point out that we are increasingly concerned that there are individuals promoting what we call abusive schemes/transactions. My office has devoted significant resources to stop these activities, which undermine public confidence in our voluntary tax system. It is important that everyone plays by the rules. We do not view tax evasion schemes as retirement plans. And as such, they are not eligible for Audit CAP because they are not intended as qualified retirement plans; so there is no qualified status to preserve.

How will you share the progress of your office in achieving your 2008 priorities?

First, I will continue to share my thoughts in "Critical Priorities" in future editions of this newsletter and the *Retirement News for Employers*. I also encourage the subscribers of this newsletter to read the "EPCU Insight" [articles](#) which will periodically feature new or ongoing EPCU projects.

Second, in addition to speaking at all [2008 EP Benefits Conferences](#), I will participate in other events and attend various customer partnership meetings.

I consider an open dialogue with the community essential so that my office can more fully do our enforcement job. Hearing from practitioners enables us to conduct examinations more efficiently with the least burden on taxpayers under audit and respond to potential abuses/emerging issues. It is everyone's responsibility to work together to enhance and to preserve the private retirement system so all Americans can enjoy the fruits of their labor. •

Prior to her official selection in April 2007, Ms. Templeman served as EP Area Manager, Great Lakes, and acted as the Director, EP Rulings and Agreements in FY 2005 after graduating from the Executive Readiness Program. Ms. Templeman serves as the IRS Executive Champion for 412(j) Abusive Tax Avoidance Transaction enforcement efforts and for the implementation of the ACT's proposal to provide limited enrollment opportunities for unenrolled return preparers. Ms. Templeman has been with the Service since 1988 and has over 16 years of experience in IRS management positions. A native of California, she received a BA degree in English and Political Science from California State University, Northridge. In 1980 she earned a JD Degree from California Institute of Law and was admitted to the California Bar.

EP's FY 2008 Work Plan

Employee Plans issued its [FY 2008 Work Plan](#) on September 25, 2007. The work plan sets forth EP's strategies, operating priorities, goals, and objectives for the new fiscal year and is designed to be a point of reference for work initiatives.

EP's FY 2008 priorities include:

- Providing plain language information and communicating enforcement trends and tips to plan sponsors.
- Continuing to address abusive transactions by:
 - completing enforcement action on all in-process abusive 412(i) plans and Subchapter S-Corp ESOP cases by the end of FY 2008;
 - developing strategies for identifying and addressing new abusive schemes; and
 - using EP Compliance Unit (EPCU) resources to leverage coverage and expand compliance contacts in areas where a statistical analysis has indicated potential abuses, data inconsistencies, and/or areas of noncompliance.
- Using results from the Market Segment Examinations to identify areas of noncompliant behavior and developing risk-based targeted examination projects using the Focused Examination approach.
- Ensuring that the staggered determination process stays on schedule by:
 - issuing opinion and advisory letters on all timely filed defined contribution preapproved plans by March 31, 2008;
 - closing 60% of Cycle A submissions by January 31, 2008; and
 - starting the technical review of defined benefit preapproved plans by April 2008.
- Continuing to address the provisions of the Pension Protection Act of 2006 (PPA) by:
 - increasing small employers' awareness and knowledge of IRS correction programs;
 - continuing to work with Treasury and Counsel to issue guidance identified in the [IRS/Treasury Priority Guidance Plan](#); and
 - issuing determination letters by September 30, 2008, on 80% of the 1,250 cash balance plans that were removed from suspense in January 2007.
- Continuing to further reduce the inventory and case processing time frames of voluntary compliance submissions.
- Designing a preapproved and/or determination letter program for IRC §403(b) arrangements by January 2009.
- Supporting information technology projects (e.g., TE/GE Reporting and Electronic Examination System (TREES), TE/GE Determination System (TEDS), and ERISA Filing Acceptance System (EFAST2)) by providing the necessary resources for the development, testing, and training required to implement the systems. Once TREES and TEDS are rolled out and operational, ensure they are effectively utilized by the impacted employees. •

DOL Corner

The Department of Labor's Employee Benefits Security Administration (DOL/EBSA) announced new guidance and tools to assist plan sponsors and practitioners in complying with ERISA. You can subscribe to DOL/EBSA's web site homepage, as well as the "Compliance Assistance" page and "Pension Protection Act" (PPA) page for notice of updates posted on the web site.

Disclosure Rules for Multiemployer Pension Plans



On September 14, 2007, DOL/EBSA published in the *Federal Register* [proposed rules](#) giving participants in multiemployer pension plans, their union representatives, and contributing employers the right to request and receive copies of certain actuarial, financial, and other funding-related documents from their plans. The new disclosure rules implement provisions of the PPA.

Under the PPA, plan administrators of multiemployer plans must furnish these documents upon written request. The plan has 30 days after a request to furnish the documents, which are limited to one copy per report within a 12-month period.

Public comments may be submitted to DOL by October 15, 2007, via e-mail sent to e-ORI@dol.gov or through the federal e-rulemaking portal at www.regulations.gov. Paper-based comments should be sent to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210, Attention: ERISA 101(k) Regulation.

Rules on Selecting Annuity Providers for Benefit Distributions from Pension Plans

On September 12, 2007, DOL/EBSA published in the *Federal Register* an [interim final rule](#) that amends Interpretive Bulletin 95-1 to limit the application of the bulletin to the selection of annuity providers for benefit distributions from defined benefit plans.

DOL/EBSA also published a [proposed rule](#) to provide guidance, in the form of a safe harbor, for the selection of annuity providers by fiduciaries for benefit distributions from individual account plans, such as 401(k) plans.

These rules are being issued pursuant to the PPA, which requires DOL to issue regulations clarifying that the selection of an annuity contract as an optional form of distribution from an individual account plan is not subject to the "safest available" standard under Interpretive Bulletin 95-1, but is subject to all otherwise applicable fiduciary standards.

Under the proposed safe harbor, fiduciaries must: (1) conduct an objective, thorough and analytical search to identify and select providers; (2) consider the need to engage an expert to assist in their evaluation of providers; and (3) appropriately conclude that the annuity provider would be financially able to make all future payments under the contract, and the cost of the contract is reasonable in relation to the benefits and services to be provided under the contract.

While the interim final rule will be effective 30 days after publication in the *Federal Register*, the public is invited to submit written comments on both the interim final and proposed rules by November 13, 2007. Public comments should be submitted electronically to DOL/EBSA at e-ORI@dol.gov or through the federal e-rulemaking portal at www.regulations.gov.

Hearing on Computer Model Advice Programs for IRAs and Similar Type Plans

On July 31, 2007, DOL/EBSA held a public hearing to assess the feasibility of using computer models to provide advice to participants with individual retirement accounts (IRAs) and similar plans. DOL/EBSA heard [testimony](#) from a number of witnesses at the hearing.

The PPA amended ERISA by adding a new prohibited transaction exemption that allows greater flexibility for investment advisers to give advice to participants of 401(k) plans and IRAs. One of the ways in which investment advice may be provided under the exemption is through the use of an

unbiased computer model. DOL/EBSA, in consultation with the Department of Treasury, is required to determine the feasibility of such models in providing investment advice to IRA participants and report its findings to Congress by the end of the year. On December 4, 2006, DOL/EBSA published a [request for information](#) (RFI) regarding the use of computer model investment advice programs for IRAs. The comments received in response to the RFI are posted on [DOL/EBSA's PPA dedicated web page](#).

CONTACTING EMPLOYEE PLANS

The *Employee Plans News* welcomes your comments about this issue and/or your suggestions for future articles.

Send comments/suggestions to:

EP Customer Education & Outreach
SE:T:EP:CEO

1111 Constitution Avenue, N.W., PE-4C3
Washington, D.C. 20224

FAX (202) 283-9525

E-Mail:

RetirementPlanComments@irs.gov.

For EP Taxpayer Assistance:

For retirement plans technical and procedural questions:

Please call (877) 829-5500

Or visit the "Contact EP/Services" section at www.irs.gov/ep.

For questions relating to retirement income, IRAs, Roth IRAs, educational IRAs, medical savings accounts and section 125 cafeteria plans:

Please call (800) 829-1040.

Guidance on Tax-Sheltered Annuity Programs

On July 24, 2007, DOL/EBSA issued [Field Assistance Bulletin \(FAB\) 2007-02](#), clarifying that tax-sheltered annuity programs, also known as 403(b) plans, that comply with recently released tax regulations under §403(b) of the Internal Revenue Code can still be structured so that they are excluded from coverage under Title I of ERISA.

DOL/EBSA's regulation on 403(b) plans provides a "safe harbor" so that under certain circumstances, a tax-sheltered annuity program funded solely with employee contributions is not treated as a pension plan "established or maintained" by the employer for purposes of Title I of ERISA. FAB 2007-02 confirms DOL/EBSA's view that tax-exempt employers can engage in a range of activities to facilitate the operation of a tax-sheltered annuity program under the new IRS regulations and still remain within the safe harbor's criteria.

Fee and Expense Disclosures to Participants in Individual Account Plans

On April 25, 2007, DOL/EBSA published in the *Federal Register* an [RFI](#) to assist the department in improving information provided to an estimated 41 million participants about administrative and investment fees and expenses charged to 401(k)-type plans.

The RFI requested comments on fee and expense disclosure issues affecting participants and beneficiaries of 401(k)-type plans governed by ERISA. Specifically, the RFI requested information concerning what administrative- and investment-related fee and expense information participants should consider when investing their retirement savings, the manner in which the information should be furnished to participants, and who should provide that information.

The comment period closed on July 24, 2007. The comments received are posted on [DOL/EBSA's web site](#).

Upcoming Compliance Assistance Events

- Voluntary Fiduciary Correction Program Workshops: October 23, 2007, in Portland, OR.
- Fiduciary Education Seminars: October 16, 2007, in Portland, ME; October 30, 2007, in Nashville, TN; November 7, 2007, in Detroit, MI; and December 13, 2007, in Tucson, AZ.

Visit DOL/EBSA's web site at www.dol.gov/ebsa for the registration brochure for these seminars and for the announcement of additional seminars around the country.

PBGC Insights

Premium Filings to PBGC

All Plans Must E-File Starting Plan Year 2007



All premium filings (estimated or final, original, or amended) for plan years starting in 2007 must be submitted electronically via PBGC's e-filing application, My Plan Administration Account ([My PAA](#)). This means, for example, that a final filing for a plan year beginning January 1, 2007, must be filed electronically by October 15, 2007. (Note: large plans (those with 500 or more participants for the prior plan year) must now e-file premiums for their 2006 plan years.)

Start the E-Filing Process Early

- Register for a My PAA account (e.g., set your user ID and password) as soon as you know that you will be involved with premium e-filing. You only need one account for all of your plans and e-filing activities for all plan years.
- Decide on the appropriate e-filing option and payment method for each sponsor/plan:
 - Filing Option 1: Use the My PAA data entry and editing screens to create a filing that can be electronically edited, routed, signed, and submitted to PBGC. Note that each My PAA reviewer and signer needs his/her own user ID and password.
 - Filing Option 2: Use My PAA to import one or more premium filings created with compatible private-sector software. The imported filing data is transferred into My PAA's data entry and editing screens for editing, routing, signing, and submission to PBGC. Note that each My PAA reviewer and signer needs his/her own user ID and password.
 - Filing Option 3: Use My PAA to upload one or more premium filings created with compatible private-sector software. The uploaded files are immediately transferred to PBGC's premium system for processing and posting to the appropriate plan accounts. Note that only the person who uploads the filing needs a user ID and password.
- Payment options available for all filing options: E-filings may be paid online using My PAA (ACH, Internet check, credit card) or paid outside of the My PAA application (ACH, Fedwire, paper check). The only exception is that if a batch of filings is uploaded, all payments must be made outside of My PAA.
- Identify each plan's e-filing team, including the filing coordinator who will perform My PAA administrative tasks (e.g., adding the plan to each person's account). The makeup of the e-filing team is largely determined by the filing and payment methods that will be used.

Additional Premium E-Filing Tips

- You can change your password but not your user ID and secret question/answer.
- If you forget your user ID and password, click on the links on the My PAA Login Screen. If you lock your account (after three unsuccessful login attempts), contact a PBGC premium customer service representative at (800) 736-2444.
- If you do not receive an expected My PAA e-mail, check to see if your company's spam filter is preventing the e-mail from reaching you. If that is not the case, contact a PBGC premium customer service representative at (800) 736-2444.
- You can view a plan's account history (showing the results of PBGC's processing of each year's premium filings) online if you have a user ID and password and have been set up in My PAA (by the plan's filing coordinator) to view the plan's account history.

Reminder - Premium Changes for Plan Year 2007

- Flat-Rate Premium - The flat-rate premium for plan year 2007 is \$31.00 per participant for single-employer plans and \$8.00 per participant for multiemployer plans.
- Assumptions/Methodology for Calculating the Variable-Rate Premium (VRP) - As a result of the issuance of a new IRS current liability mortality table, the assumptions and methods underlying the VRP calculation have changed. The Required Interest Rate has increased from 85% to 100% of the corporate bond rate and the market value of assets must be used instead of actuarial value.
- Maximum VRP - Beginning with plan year 2007, the VRP is capped for certain plans maintained by small employers. The cap applies to a plan if the aggregate number of employees of the contributing sponsors of the plan and all members of the sponsors' controlled groups is 25 or fewer. For these plans, the per participant VRP is capped at a rate of \$5 multiplied by the number of plan participants. For example, if the participant count is 20, the cap on the VRP is \$2,000 [(\$5 x 20) x 20].

Premium Changes Coming for Plan Year 2008

- As a result of the adoption of the Pension Protection Act of 2006 (PPA), there will be substantial changes to the premium rules, particularly with respect to the VRP. My PAA will be updated for these changes to allow sufficient time for final filings to be prepared and submitted before the earliest 2008 VRP due date of October 15, 2008 (for calendar year plans).
- Plan year 2008 will be the final year for which PBGC will automatically mail paper premium instruction packages to practitioners on our mailing list. The instructions will continue to be available on our web site and within My PAA, and PBGC will mail them upon request.

Premium Rules

- Flat-rate premium/VRP cap/termination premium: On February 20, 2007, PBGC published in the *Federal Register* (72 Fed. Reg. 7755) a [proposed rule](#) to amend PBGC's premium regulations to implement certain provisions of the Deficit Reduction Act of 2005 and the PPA that are effective beginning in 2006 or 2007. These amendments would implement provisions that change the flat premium rate, cap the VRP for certain plans of small employers, and create a new "termination premium" that is payable in connection with certain distress and involuntary plan terminations. The public comment period on this rule closed April 23rd. The final rule, expected to be published later this year, will be posted on PBGC's web site.
- VRP proposed rule: On May 31, 2007, PBGC published in the *Federal Register* (72 Fed. Reg. 30308) a [proposed rule](#) to amend PBGC's regulations on Premium Rates and Payment of Premiums. The amendments would implement provisions of the PPA that change the VRP for plan years beginning on or after January 1, 2008, and make other changes to the regulations. The public comment period on this rule closed July 30th. The final rule, expected to be published later this year, will be posted on PBGC's web site.

PBGC's Web Site and Contact Information

- To access online information for practitioners, go to PBGC's web site at www.pbgc.gov and select the "Practitioners Page." To review premium e-filing information (including "demos") or to register for a My PAA account, click on "Online Premium Filing (My PAA)." To review items of interest for practitioners or to register for My PAA Webcasts (to be held in September and October 2007), click on "What's New."
- To contact a premium customer service representative, call PBGC's toll-free number (800) 736-2444 (TTY/TDD users should call the Federal Relay Service toll-free at (800) 877-8339 and ask to be connected to (800) 736-2444) and select the "premium" option. You may also e-mail PBGC at premiums@pbgc.gov.

Web Spins - The Retirement Plans Site

We're back: Web Spins - the column that takes you for a quick spin around the "Retirement Plans Community" web page.

IRC §403(b)



In conjunction with the issuance of the final IRC §403(b) regulations, we have updated our "[IRC 403\(b\) Tax-Sheltered Annuity Plans](#)" web pages. The "[Ask Bob Architect](#)" web page is a new feature in which Bob answers some of the most frequently asked 403(b) questions about the final regulations' effective date, written plan requirement, implications for ERISA plans, and plan termination requirements. The [presentations](#) that Bob uses during his speeches are also available.

Online Navigator

An online, interactive version of Publication 4460, *The Retirement Plans Product Navigator*, has been posted on the "[Plan Sponsor/Employer](#)" web page. Following the [Navigator's](#) path will help users find the publications to help them choose, establish, and operate a retirement plan, and even correct plan errors. We've got it mapped out for you!

Staggered Remedial Amendment Cycles

The "[Staggered Remedial Amendment Cycles](#)" web page has been updated to include *Revenue Procedure 2007-44*. Rev. Proc. 2007-44 clarifies, modifies, and supersedes Rev. Proc. 2005-66, in which the Service established a system of remedial amendment cycles under §401(b) for individually designed and preapproved plans.

Pension Protection Act of 2006 Charts

The "[Pension Protection Act of 2006](#)" web page has been updated to include two "Pension Protection Act of 2006 Charts" listing each PPA provision section, description, relevant IRC section and effective date. One chart is sorted by "topic description," the other by "Code/ERISA section." The charts are updated monthly.

EP 2007 Tax Forum Presentations

Unable to attend one of the six 2007 IRS Nationwide Tax Forums? The two Employee Plans presentations, [Automatic Enrollment and Other Need-to-Know Provisions of the Pension Protection Act of 2006](#) and [Tax Issues on Distributions from Retirement Plans](#), along with speaker's notes, are now available for you to view or download. •

IRS employees contributing to this edition of the *Employee Plans News* are:

JaLynne Archibald,
Sylvia Griffin,
Teresita Laureano,
Peter McConkey,
Greg Nix,
Mark O'Donnell,
Nancy Payne,
John Schmidt,
Brenda Smith-Custer,
Marjorie Taylor,
Monika Templeman,
Kathy Tuite, and
Lisa Wilson. •

How to Subscribe to *Employee Plans News*

The *Employee Plans News* is issued only through IRS e-mail. For your free subscription, please go to the "[Retirement Plans Community](#)" web page and subscribe online by selecting "Newsletters" under "Retirement Plan Community Topics." All editions of the *Employee Plans News* are archived there.

For your convenience, we have included Internet links to referenced materials throughout the *Employee Plans News*. These links are identified by the blue underlined text. •

Employee Plans Published Guidance

(July 2007 – September 2007)

Regulations

[REG-142039-06 and REG-139268-06](#)
[72 Fed. Reg. 36927](#)

These proposed regulations provide guidance on the excise taxes an “entity manager” of a retirement plan or other tax-savings entity may be assessed under §4965 for a prohibited tax-shelter transaction (e.g., a listed transaction).

[T.D. 9334 - 72 Fed. Reg. 36871](#)

These temporary and final regulations provide guidance on return filings accompanying the payment of excise taxes under §4965 if an entity manager engages in a prohibited tax-shelter transaction.

[T.D. 9335 - 72 Fed. Reg. 36891](#)

These temporary regulations set forth the requirements for the form, manner, and timing of disclosures by entity managers who are parties to prohibited tax-shelter transactions.

Revenue Procedures

[Rev. Proc. 2007-49, 2007-30 I.R.B. 141](#)

This revenue procedure modifies certain aspects of [Rev. Proc. 2006-27](#) which describes the Employee Plans Compliance Resolution System.

Revenue Rulings

[Rev. Rul. 2007-43, 2007-28 I.R.B. 45](#)

This revenue ruling states that a partial termination of a defined contribution plan occurs where there is significant employee turnover at one of four business locations.

Notices

[Notice 2007-67, 2007-35 I.R.B. 467](#)

This notice modified the transition date in [Notice 2006-89](#) to the date that is six months after the issuance of guidance under §414(d) of the Code as modified by §906 of the Pension Protection Act of 2006.

[Notice 2007-69, 2007-35 I.R.B. 468](#)

This notice provides temporary relief to the first day of the first plan year beginning after June 30, 2008, for certain pension plans whose definition of normal retirement age may have to be changed to comply with the regulations pertaining to normal retirement age that were issued on May 22, 2007.

Announcements

[Announcement 2007-63, 2007-30 I.R.B. 236](#)

This announcement states that as a result of the elimination of the Schedule P, the Service will treat the filing of a complete Form 5500 return as the commencement of the running of the 3-year or 6-year statute of limitations.

[Announcement 2007-90, 2007-42 I.R.B.](#)

This announcement states that the Service will temporarily stop accepting applications for determination letters for defined contribution plans that are filed on Form 5307 beginning December 18, 2007.



Ordering the Form 5500, Schedules, and Instructions

With the upcoming annual rush to file the Form 5500 and 5500-EZ for 2006 (calendar-year filers on extension until October 15, 2007), many of you will need additional copies of the forms, schedules, and instructions. As a reminder, for those of you filing on government-printed forms, there are two ways to order:

- Via the internet: Go to [Forms and Publications by U.S. Mail](#). Here you may order up to 10 different products for delivery by U.S. mail. Applicable instructions are automatically added to all form orders, but are typically not available to order separately.
- Via telephone: Call (800) TAX-FORM (829-3676) and place your order.

Because either method can take up to 10 business days for delivery, you are advised to place your order today. Don't delay!•

News for Retirement Plan Sponsors

The *Retirement News for Employers* is filled with information of interest to retirement plan sponsors in the small employer community. Ask your clients to join the thousands of subscribers who have signed up for the free *Retirement News for Employers*.

The [Summer 2007 Edition](#) featured:

- IRS's new interactive Navigator, a web tool to help employers choose retirement plan publications;
- ways to fix a termination of an "orphan plan" using EPCRS; and
- the new Employee Plans Compliance Unit's web page.

It's easy to subscribe: Just go to the ["Retirement Plans Community" web page](#), select "Newsletters," and click on "Retirement News for Employers."•

Update: Taxpayer Delinquency Investigation Notices for Forms 5500 and 5500-EZ

In February 2007, the IRS began mailing Taxpayer Delinquency Investigation (TDI) Notices to employers that failed to timely file Forms 5500 and 5500-EZ for the plan year ending December 31, 2004. The first delinquency notice, CP 403, is normally sent 15 months after an employee plan return was due. The second delinquency notice, CP 406, is sent 15 weeks after the issuance of the CP 403 if the filer did not respond with a completed return or an acceptable explanation as to why it did not need to file a return.

For several years prior to 2007, the IRS had suspended mailing TDI notices. The reinstatement of these notices is allowing us to obtain missing returns and allowing nonfilers to become compliant. In addition, the responses received to the notices have helped identify and correct EIN, plan number, and return posting discrepancies, and update records.

We recognize that some of these notices will be received by employers that fully complied with their Form 5500 or Form 5500-EZ filing obligations and we ask that these employers allow us to correct our records by responding to the notice as requested.

[Additional information](#) on these notices is posted on the "Retirement Plans Community" web page.

Benefits Conferences Coming to a Site Near You

The **SouthWest Benefits Association (SWBA)/Internal Revenue Service 18th Annual Employee Benefits Conference** will be held November 15-16, 2007, at the Adam's Mark Hotel in Dallas. The conference features IRS and DOL officials and leading private-sector employee benefits experts. Our curriculum will provide answers to those troubling plan questions and offer insights into the latest employee benefit topics.

This year's conference includes a special roundtable session, allowing plan sponsors to share among themselves their plan administration concerns. Other featured topics include:

- IRS National Office Update
- Plan Examinations & Investigations
- 401(k) – The Automatic Retirement Plan
- Litigation Update
- Final 403(b) Rules
- Determination Letter Update
- 409A Before the Bell

For more information on the conference or to register, go to www.swba.org or call the SWBA at (214) 382-3035.

FOR RECENT EVENTS, VISIT OUR [BENEFITS CONFERENCES CALENDAR](#).

The IRS, the American Society of Pension Professionals & Actuaries (ASPPA), and the National Institute of Pension Administrators (NIPA) will host the **2008 Los Angeles Benefits Conference** at the Westin Los Angeles Airport on January 24-25, 2008, with a preconference workshop (a "Conversation with the IRS and DOL") on January 23, 2008.

Featured sessions include:

- Washington Update
- Defined Benefit Funding Changes and New Actuarial Plan Designs
- Comparison of the IRS and DOL Electronic Media Guidelines
- Future of Fiduciary Obligation
- Defined Contribution Class Action Litigation Update
- 403(b) Plans
- Health & Welfare Plan Update
- Mergers and Acquisitions – DOL Regulations/IRS Audits
- EPCRS-Variation/Guidance for Smaller Companies and Other New/Emerging Issues
- Nonqualified Plans under the 409A Regulations
- IRS Employee Plans Examination and Enforcement

For more information about the conference or to register, please visit www.asppa.org or call ASPPA at (703) 516-9300.