

# 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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## Recent Guidance that May Require Interim or Discretionary Amendments

The list of [Recent Guidance that May Require Interim or Discretionary Amendments](#) has been posted to our web page. This list contains guidance identified on the [2007 Cumulative List](#) that was not on earlier cumulative lists, as well as guidance issued between October 1, 2007, and February 15, 2008. This list will be updated periodically.

### Types of Plan Amendments

A plan amendment can be either an interim amendment or a discretionary amendment. An interim amendment is a required amendment of a disqualifying provision or an amendment that is integrally related to a disqualifying provision. A disqualifying provision may arise in a plan, for example, when there is a change in the plan qualification requirements and the plan's terms do not reflect the change. A discretionary amendment is all other types of amendments. Interim amendments are required to keep a written plan document up to date between a plan's submission periods during the applicable remedial amendment cycles.

### Adoption Dates for Interim and Discretionary Plan Amendments

An interim amendment for a disqualifying provision (or a provision that is integral to a disqualifying provision) must be adopted by the later of (1) the due date, including extensions, for filing the employer's income tax return for its taxable year that includes the date on which the remedial amendment period begins or (2) the last day of the plan year that includes the date on which the remedial amendment period begins. See [Rev. Proc. 2007-44](#), section 5.05. Generally, the due date described by (1) above, being at a later date, will be applicable. Note that, pursuant to section 12.03 of Rev. Proc. 2007-44, the filing of a determination letter may accelerate the deadline for the incorporation of interim amendments into a restated plan document to an earlier date. Plans that apply for a determination letter must adopt and incorporate interim amendments into their EGTRRA restated plan document. The determination letter application must also include a copy of the signed and dated required interim plan amendments, except in the case of certain pre-approved plans.

A discretionary amendment, on the other hand, must be adopted by the end of the plan year in which the amendment is effective. An amendment which allows plan participants to receive a loan from a qualified plan is an example of a discretionary amendment. The adoption of such an amendment is not required for the plan to maintain its qualified status. Keep in mind though, that a plan's qualified status would be jeopardized if its operations were not in accordance with such an amendment.

### The Cumulative List

The Service publishes an annual Cumulative List of Changes in Plan Qualification Requirements, which identifies changes in the qualification requirements of the Code, as well as published guidance items relating to plan qualification requirements. The Service uses this list in its review of plans submitted for opinion, advisory, or determination letters.

### 2007 Interim and Discretionary Amendments

An employer may be required to adopt certain interim amendments relative to the 2007 plan year ([2007 Interim and Discretionary Amendments](#)) by the due date of its 2007 income tax return. Interim amendments may have to be adopted for a plan to be in compliance with the provisions under Treas. Reg. §1.411(d)-3(a)(3) which reconciles the anti-cutback rules of §411(d)(6) with the nonforfeiture requirements of IRC §411(a).

## Gap-Period Earnings

An interim amendment to provide for the inclusion of gap-period earnings in the distribution of excess deferrals will not be required to be adopted until the last day of the first plan year beginning on or after January 1, 2009, per [Notice 2008-30](#), Q&A-20. •

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## Determination Letters Coming Your Way - Announcement 2008-23

The Service expects to issue opinion and advisory letters for pre-approved master and prototype (M&P) and volume submitter (VS) defined contribution plans on March 31, 2008, or in some cases, as soon as possible thereafter. Adopting employers must adopt these plans using Form 5307 by April 30, 2010, and can submit applications for determination starting May 1, 2008. Plans filed on Form 5307 will be reviewed using the 2004 Cumulative List. However, for Form 5300 filers, the Cumulative List in effect on the date an application is filed will be used (except for #3 below, where it is treated as though it was a Form 5307 filer and the 2004 Cumulative List will be used).

### Form 5307 or 5300?

Certain circumstances require a plan sponsor to file an application for determination on Form 5300 instead of Form 5307:

1. M&P adopters who:
  - amend the basic plan document or Adoption Agreement other than to change their choice of option, or
  - do not meet the Other Limitations and Conditions on Reliance described in [Revenue Procedure 2005-16](#), section 19.03.
2. VS adopters who make extensive or complex amendments to the pre-approved plan.
3. Either an M&P or VS adopter who requests a determination regarding partial termination, affiliated service group status, or leased employees, or when the pre-approved plan is a multiple employer VS plan.

### Amendments to be Included with the Application

Form 5307 filers do not need to include EGTRRA good-faith or interim amendments unless it is an adopter of a VS plan that does not authorize the practitioner to amend on behalf of the adopting employer.

Form 5300 filers in the above situations (1) and (2) must include EGTRRA good-faith amendments and interim amendments for all changes in qualification requirements on the Cumulative List in effect when their application is filed. •

### ERPA is Moving Forward

On March 17, 2008, the IRS released a [solicitation](#) for vendors who will help develop and administer a program for a new category of limited scope practitioner: the “Enrolled Retirement Plan Agent,” or “ERPA.” Vendors will have until April 21, 2008, to submit bids. The contract should be awarded by August 2008. For more details on ERPA, see the [October 2007 Special Edition](#) of the *Employee Plans News*. •

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### Steve Miller Discusses Governmental Plans Roundtable

On March 11, 2008, we sent out a [Special Edition](#) of the *Employee Plans News* announcing the first Governmental Plans Roundtable to be held on April 22, 2008, in Washington, DC. To date, the response to our invitations has been very strong. As TE/GE Commissioner, I am extremely pleased at this response for our first roundtable. I want to make you aware that all the materials available at the roundtable will be posted on our [Retirement Plans Community](#) web page ([www.irs.gov/ep](http://www.irs.gov/ep)). After the roundtable, we will continue to update and revise the materials to help and assist the governmental plan community in the proper administration of its plans. •

## We're Glad You Asked!

Welcome to our recurring column, "We're Glad You Asked!" This column will look at a common question we receive and provide an answer to the question, along with additional resources.

### **I have clients who have excess contributions in their SEP and SIMPLE IRAs and we aren't sure what to do with the excess contributions.**

Excess amounts to SEP and SIMPLE IRAs are contributions made to an employee's IRA in excess of certain limits. These excess amounts should be distributed from the SIMPLE IRA as soon as possible. An employer who sponsors a SIMPLE IRA may use the IRS' Voluntary Correction Program (VCP) to correct this error. Under the VCP, if an excess amount is attributable to elective deferrals, the plan sponsor may effect distribution of the excess amount, adjusted for earnings through the date of correction, to the affected participant. The amount distributed to the affected participant is includible in gross income in the year of distribution. The distribution is reported on Form 1099-R for the year of distribution with respect to each participant receiving the distribution. In addition, the plan sponsor must inform affected participants that the distribution of an excess amount is not eligible for favorable tax treatment accorded to distributions from a SIMPLE IRA plan (and, specifically, is not eligible for tax-free rollover). If the excess amount is attributable to employer contributions, the plan sponsor may effect distribution of the employer excess amount, adjusted for earnings through the date of correction, to the plan sponsor. The amount distributed to the plan sponsor is not includible in the gross income of the affected participant. The plan sponsor is not entitled to a deduction for such employer excess amount. The distribution is reported on Form 1099-R issued to the participant indicating the taxable amount as zero.

Under the VCP, if an excess amount is not distributed from the SIMPLE IRA plan, a special fee, in addition to the VCP submission fee, will apply. The plan sponsor is not entitled to a deduction for an excess amount retained in the SIMPLE IRA plan.

Notwithstanding the above, if the total excess amount in a SIMPLE IRA plan, whether attributable to elective deferrals or employer contributions, is \$100 or less, the plan sponsor is not required to distribute the excess amount and the additional fee described in the preceding paragraph does not apply.

For additional information, see:

[Pub 4284 SIMPLE IRA Plan Checklist](#)

[Pub 4285 SEP Checklist](#)

[Retirement Plans FAQs Regarding SEPs](#)

[Retirement Plans FAQs Regarding SIMPLE IRA Plans](#)•

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## New PPA Guidance on Distributions

**Notice 2008-30** provides guidance on distribution-related provisions of the Pension Protection Act of 2006 (PPA) that are effective in 2008, including rollovers from eligible retirement plans to Roth IRAs, additional survivor annuity options, and interest rate assumptions for lump sum distributions. The notice also provides guidance regarding plan amendments for certain gap-period earnings. Check out our "PPA" web page for [Plain Language Guidance](#) on Notice 2008-30. •

## Critical Priorities...With Monika Templeman

### Today's Discussion: Large Case Examinations

**Monika, your recent presentations included discussions on large case examinations. I assume you are focusing more on this program this year.**

The large case program, also known as the Employee Plans Team Audit, or EPTA, is a key market segment because it has a huge impact on the private retirement system in America. Since large plans cover the majority of plan participants, I think that it is important to bring the EPTA Program to the attention of the Retirement Plans Community in my presentations to remind them that it is one of our focus areas.

#### **What can you tell us about the large case program?**

First, I would like to share some information about the Employee Plans large case universe. Currently, there are approximately one million qualified pension plans. Of those plans, 4,500 of them are considered to be large cases – those with more than 2,500 plan participants. That means that less than 1% of all qualified plans are considered large case. However, these 4,500 plans cover about 60% of the plan participant universe and 70% of total plan assets. Therefore, this program is an important one to us.

#### **What are your goals for the large case audit program?**

We plan to increase the examinations of these large cases by about 30% in 2008. That means we expect to open around 180 new audits this year.

#### **That is quite a boost. Because of the increased goal, does that mean that agents will be taken from other audits to examine these plans?**

Let's not get the smaller case community too excited by implying that we won't be examining their plans. There will be no effect on other programs by shifting agents from one program to another. The examination agents I have on staff are knowledgeable and experienced. The agents who audit large plans receive extra training to help them develop and hone their expertise to conduct these very complex examinations. We are also working to optimize the EPTA program by using a more focused approach to increase coverage and efficiencies.

#### **Can you please elaborate on the focused approach for large plans?**

Yes. If we can focus on the issues that we see as trends in large case examinations, we can minimize our time on the audit, giving us opportunities to perform more audits. Likewise, we minimize practitioner time and cost while reducing taxpayer burden.

#### **Does the EP web page have tools for the employers who fall under the large case community?**

We do and we will. First of all, I am glad to say we listened to the Retirement Plans Community about the difficulty in finding the large case materials on our web page and acted on their feedback. Now, when you visit the [EP home page](#), the lower portion of the page has a new feature. Visit [Plans and Programs](#), which contains a link: "Large Case – Employee Plans Team Audit." This improvement lets you get to the material on only two clicks from the home page.

Once there, you will find we have the top ten issues we are finding in large case examinations, FAQs on the EPTA Program, contact information of the key players in the program, and a Taxpayer Documentation Guide.

#### **What is the Taxpayer Documentation Guide?**

The guide provides a comprehensive listing of documents needed for an efficient review of issues identified for examination. This guide assists plan sponsors in determining the documents/information needed to be kept current and readily available, if requested, during an audit.

## Employee Plans News

*Employee Plans News (EPN)* is a free, quarterly newsletter providing retirement plan information for retirement plan practitioners. *EPN* is prepared by the IRS' Employee Plans (Tax Exempt and Government Entities) office.

For your convenience, *EPN* includes Internet links – identified by the blue underlined text – to referenced materials.

### How to Subscribe

*EPN* is distributed exclusively through IRS e-mail. Sign up for your free subscription by going to the [Retirement Plans Community](#) web page and selecting "Newsletters" in the left pane. Prior editions of the *EPN* are also archived there.

### Send Comments/Suggestions to:

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1111 Constitution Ave., N.W., PE-4C3  
Washington, DC 20224

FAX: (202) 283-9525

E-Mail:  
[RetirementPlanComments@irs.gov](mailto:RetirementPlanComments@irs.gov)

### Have a Question?

#### For taxpayer assistance with retirement plans technical and procedural questions:

Please call (877) 829-5500 or visit the "Contact EP/Services" section at [www.irs.gov/ep](http://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. •

## You mentioned "we will" earlier in the discussion about the web page. What does that mean?

I am very pleased that large case practitioners have partnered with the Service to help make the EPTA web page a more useful tool for large case stakeholders and taxpayers. We are working with stakeholders who formed an EPTA Liaison Group to provide valuable feedback to help us enhance our large case program. They also provide our Customer Education and Outreach function with ideas on how best to answer questions and promote EPTA issues on the web and in newsletters such as this one.

**Thanks, Monika.**

Readers can go to this [e-mail address](#) and provide Ms. Templeman comments on this article or provide ideas for future articles. •

## EP Exam's Risk Modeling Project

Employee Plans is rolling out a new examination initiative, "EP Risk Modeling Project." With over one million pension plan filers, EP's goal is to focus efforts on those returns with the greatest audit potential and then spend more time only on those returns that show areas of noncompliance. The prime objective of the EP Exam program is to maintain compliance and enforcement programs that have a positive impact on the retirement plans system. One way to do this is by refining how we select returns for audit.

With the assistance of EP Examinations, the Tax Exempt and Government Entities' Data Analysis Unit (DAU) designed the EP Risk Model using data mining software, with three central purposes in mind:

1. Enhance our ability to identify noncompliant plans electronically.
2. Develop EP noncompliance risk assessment strategies.
3. Reduce taxpayer burden by not auditing compliant plans.

The initial test study will involve the examination of 200 Form 5500 returns with §401(k) CODA features. These examinations will be worked as "full-scope" priority field examinations in order to give us a complete picture of the EP Risk Model performance. By analyzing audit results, we can determine if our goal of selecting noncompliant plans has been met.

It is our expectation that this EP Risk Modeling process will enable us to do a better job of return selection. As the model is tested and revised, we look forward to being able to better select noncompliant plans and identify key issues for future examinations. •

## Economic Stimulus Payments: How You Can Help

The IRS is encouraging various partners and stakeholders, such as pension plan practitioners, to assist in efforts to reach out to those Americans who may be eligible for the 2008 economic stimulus payment but who normally have no requirement to file a tax return. People who receive certain Social Security, Veterans Affairs, Railroad Retirement, or wages from earned income or combat pay may be eligible and not know it.

The IRS has created a special web page for interested organizations: [Economic Stimulus Payments: Marketing Products for Partners](#). This page contains one-page flyers that you can copy, the Package 1040A-3 (a 10-page booklet that contains everything certain people need to file a return today), Radio PSAs, Logos, etc. This page is part of the [Economic Stimulus Payments Information Center](#) on IRS.gov, which provides information on eligibility and other requirements. The IRS appreciates any assistance you can provide. •

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## Highlights of the *Retirement News for Employers*

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 [Winter 2008 Edition](#) featured:

- How Much Can You Deduct in Your Retirement Plan?;
- “Keeping Your Plan Compliant” interview with EP Exam Director refers readers to helpful information at [www.irs.gov/ep](http://www.irs.gov/ep);
- Fixing Common Plan Mistakes: Correcting a Failure to Follow Plan Terms with a Retroactive Amendment using IRS’ Self-Correction Program; and
- SIMPLE IRA Q&As.

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

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## 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.**

### Changes to the “Retirement Plans Community” Web Page

We’ve added a couple of new items in the third tier on the “Retirement Plans Community” web page – Plans and Programs and Retirement Plans Community Site Map. Also, we have streamlined our EP FAQs web page.

#### [Plans and Programs Web Page](#)

Wish to go directly to a plan type or IRS Employee Plans program? Find it here. This web page provides users with a more direct route to plan and program web pages.

#### [Retirement Plans Community Site Map Web Page](#)

Need help finding a topic? Visit the site map for a listing of information by topic. It’s a one-stop location for all the Retirement Plans Community content.

#### [EP FAQs Web Page](#)

The Frequently Asked Questions (FAQ) 5.5 - Plan Design section of our web page has been updated to include seven Q&As on the EGTRRA Determination Letter Program for Pre-Approved Defined Contribution Plans. •



## Employee Plans Published Guidance

(December 2007 – March 2008)

### Regulations

#### [REG-104946-07 – 72 Fed. Reg. 73680](#)

Proposed regulations relating to §§411(a)(13) and 411(b)(5) of the Code concerning certain hybrid defined benefit plans.

#### [REG-139236-07 – 72 Fed. Reg. 74215](#)

Proposed regulations pertaining to Code §§430(d), 430(g), 430(h)(2), and 430(i) and discusses the measurement of assets and liabilities for the funding requirements of single-employer defined benefit plans.

#### [REG-136701-07 – 72 Fed. Reg. 421](#)

Proposed regulations relating to Code §401(a)(35) pertaining to certain defined contribution plans that hold publicly-traded stock of their employers.

#### [REG-151135-07 – 73 Fed. Reg. 14417](#)

Proposed regulations interpreting Code §432 and providing guidance regarding multiemployer defined benefit pension plans' determination of when their plan is either endangered or in critical status.

### Revenue Procedures

#### [Rev. Proc. 2007-71, 2007-51 I.R.B. 1154](#)

Provides model plan language that may be made to §403(b) plans by public schools so that a public school can adopt a written plan, or amend an existing plan, to comply with the requirements of the 2007 §403(b) final regulations.

#### [Rev. Proc. 2008-4, 2008-1 I.R.B. 121](#)

Basic procedures for EP/EO private letter rulings.

#### [Rev. Proc. 2008-5, 2008-1 I.R.B. 164](#)

Basic procedures for applying for technical advice.

#### [Rev. Proc. 2008-6, 2008-1 I.R.B. 192](#)

Basic procedures for applying for EP determination letters.

#### [Rev. Proc. 2008-8, 2008-1 I.R.B. 233](#)

Basic procedure describing EP/EO user fees.

### Revenue Rulings

#### [Rev. Rul. 2007-71, 2007-50 I.R.B. 1155](#)

2008 annual revenue ruling pertaining to covered compensation.

#### [Rev. Rul. 2008-7, 2008-7 I.R.B. 419](#)

Accrual rules and the "greater of" issue when a traditional defined benefit formula was amended in 2001 to a lump sum-based benefit formula for plan years beginning on or after January 1, 2002.

## Notices

### [Notice 2007-99, 2007-52 I.R.B. 1143](#)

Alters Q&A23 of Notice 2007-7 by deleting the word “insurance” from the term “accident or health insurance plan” relating to §402(l)(4)(D) and 402(l)(5)(A) and PPA §845(a).

### [Notice 2008-7, 2008-3 I.R.B. 276](#)

Extends certain transitional relief described in Notice 2006-107 for §401(a)(35) of the Code for certain defined contribution plans that hold publicly-traded stock of their employers.

### [Notice 2008-21, 2008-7 I.R.B. 431](#)

Extends the effective date of certain proposed funding regulations to 2009 and establishes a 2008 transitional rule for small defined benefit plans with end-of-the-year valuations.

### [Notice 2008-29, 2008-12 I.R.B. 637](#)

States that taxpayers may continue to use the mortality tables in Rev. Rul. 96-7 for the alternative mortality tables for disabled participants in qualified defined benefit pension plans relative to §§430(h)(3)(D) and 431(c)(6)(D)(v), pending public comments and further guidance.

### [Notice 2008-30, 2008-12 I.R.B.638](#)

Provides guidance in the form of Qs&As for certain distribution-related provisions of PPA that are effective in 2008.

## Announcements

### [Announcement 2008-2, 2008-3 I.R.B. 307](#)

Provides a procedure and form that certain commercial passenger airlines may use to make an alternative funding schedule election under §402(a)(2) of PPA as amended by §6615 of SWOTA'07.

### [Announcement 2008-23, 2008-14 I.R.B.](#)

Discusses the issuance of opinion and advisory letters and the opening of the EGTRRA determination program for pre-approved defined contribution plans. •

## IRS Employee Plans Videos - Now Available Online

Nine EP video clips on a range of retirement plan topics are now available online via links on the [Retirement Plans Community](#) web page ([www.irs.gov/ep](http://www.irs.gov/ep)). These videos can be used in combination with the related web page content to provide both employers and participants useful information for meeting their retirement plan needs.

The following is a guide to these videos and how to find them:

Video Title	Description	Video Link on <a href="http://www.irs.gov/ep">www.irs.gov/ep</a> available at:
"The Navigator" - Navigating Employer Information on Retirement Plans	Small business owner uses "The Navigator" to help choose and operate a retirement plan. (2:52 min.)	<a href="#">Plan Sponsor/Employer</a> web page, select <a href="#">The Navigator</a>
Maintaining Your Plan	Tips on what employers/sponsors need to do to keep their retirement plan healthy. (6:45 min.)	<a href="#">Correcting Plan Errors</a> web page
Self-Correcting Plan Mistakes	A discussion on using the Self-Correction Program for a common plan mistake. (1:59 min.)	<a href="#">Correcting Plan Errors</a> web page
Fixing Plan Mistakes Found During an IRS Audit	IRS EP Examinations Director discusses what happens when EP agents find mistakes while examining retirement plans. (4:45 min.)	<a href="#">Correcting Plan Errors</a> web page
Increasing Your Retirement Savings	A short discussion on Individual Retirement Arrangements (IRAs) as a tool to use in planning for retirement years. (1:17 min.)	<a href="#">Plan Participant/Employee</a> web page, select "Resources for Retirement Plan Participant/Employee," then <a href="#">IRA Online Resource Guide</a>
Managing Your IRA	A discussion on basic principals of investing. (3:00 min.)	<a href="#">Plan Participant/Employee</a> web page, select "Resources for Retirement Plan Participant/Employee," then "IRA Online Resource Guide," then <a href="#">Information about Traditional IRAs</a> or <a href="#">Information about Roth IRAs</a>
Starting a SEP or SIMPLE IRA Plan	A discussion on two types of retirement plans (SEP and SIMPLE IRA) that are tailored for many small businesses. (2:00 min.)	<a href="#">Plan Sponsor/Employer</a> web page, then select "Types of Retirement Plans," then <a href="#">SEPs</a> or <a href="#">SIMPLE IRAs</a>
Stopping Abuses in Retirement Plans	IRS EP Examinations Director discusses stopping abuses in retirement plans. (2:33 min.)	<a href="#">Examinations/Enforcement</a> web page, then select <a href="#">EP Abusive Tax Transactions</a>
IRS Enforcement Priorities	IRS EP Examinations Director discusses 2008 Employee Plans Examination priorities. (3:24 min.)	<a href="#">Examinations/Enforcement</a> web page, then select <a href="#">"Critical Priorities" - EP Examinations Priorities/Goals</a>

The IRS Employee Plans videos are hosted on [stayexempt.org](http://stayexempt.org), the same web site that hosts IRS Exempt Organizations' online workshop – **Stay Exempt – Tax Basics for 501(c)(3)s.**

## The Corner of Forms & Pubs

Welcome back to *The Corner of Forms & Pubs*.

### Forms Update – Determination Letter Applications

**Form 5307**, *Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans* (revised March 2008), will soon be available. The form is being updated to allow for optical scanning, while its companion, stand-alone **instructions** will also be refreshed to reflect updated changes in guidance and the law. The release of Form 5307 has been coordinated with the recent issuance of **Announcement 2008-23** which will appear in issue 2008-14 of the IRB on April 7, 2008. See article on page 3.

Over the course of the next few weeks and months, other determination letter applications will be similarly revised. They include:

- **Form 5300**, *Application for Determination for Employee Benefit Plan*
- **Schedule Q (Form 5300)**, *Elective Determination Requests*
- **Form 5309**, *Application for Determination of Employee Stock Ownership Plan*
- **Form 5310**, *Application for Determination for Terminating Plan*
- **Form 5310-A**, *Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business.*

Information concerning the release and availability of these forms will be found on the “Retirement Plans Community” web page and within future editions of the *Employee Plans News*, so stay on the lookout.

### Publication 560 Revised

*Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)* (**Publication 560**) has been updated for use in the preparation of 2007 individual tax returns.

All of these forms, instructions, and publications are available on the **Retirement Plans Community** web page by clicking on “EP Forms/Pubs/Products” in the left pane. Paper copies can be ordered by calling (800) TAX-FORM (829-3676).•

### Written Plan Requirement for 403(b) Plans

Contributions to a 403(b) plan are excluded from the participants’ income if the plan meets certain requirements contained in the Internal Revenue Code. On July 26, 2007, **final regulations** were published that describe these requirements. One of the provisions requires that the 403(b) plan be in writing. The new 403(b) regulations are generally effective for taxable year beginning after December 31, 2008.

Andrew E. Zuckerman, Director, Employee Plans Ruling and Agreements, has indicated that Employee Plans is developing programs for 403(b) plans that are similar to the current programs offered for 401(a) tax-qualified plans (i.e., a determination letter program and a pre-approved plan program). While it is unlikely that the new 403(b) programs will be in place by December 31, 2008, the effective date of the 403(b) final regulations, the plan sponsor must have a written plan by January 1, 2009. Thus, employers maintaining 403(b) plans should take appropriate steps to ensure their programs are in writing by December 31, 2008. •

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**Mikio Thomas,**  
**Kathy Tuite,**  
**David Ziegler, and**  
**Carol Zimmerman.**•

## DOL Corner

The Department of Labor's Employee Benefits Security Administration (DOL/EBSA) announced new guidance and tools to assist plan sponsors in complying with ERISA, including those featured below. You can subscribe to [DOL/EBSA's web site homepage](#) or [PPA page](#) for updates.

### Proposed Regulation to Increase Disclosure of Fees and Conflicts of Interest

A [proposed rule](#) was published that will enhance disclosure to fiduciaries by requiring that contracts between certain service providers and plans provide for specific and detailed information. The proposal requires that all compensation, direct and indirect, to be received by the service provider in connection with services furnished to the plan be disclosed in writing. The proposal also requires the disclosure of possible conflicts of interest of the service provider that may affect the performance of plan services.

A [proposed class exemption](#) was published related to the above described proposed regulation that would provide relief to fiduciaries who enter into contracts with service providers that, unbeknownst to the fiduciary, failed to comply with their disclosure obligations.

A public hearing on these proposals will be held on March 31-April 1 at DOL in Room S-4215 A-C, 200 Constitution Avenue, NW, in Washington, DC. Persons wishing to testify should submit an outline of topics to be discussed by March 20 at [e-ORI@dol.gov](mailto:e-ORI@dol.gov).

### Proposed Safe Harbor Rule for Employee Contributions to Small Pension and Welfare Plans

A [proposed rule](#) was published creating a safe harbor period under which participant contributions to a small plan will be deemed to be made in compliance with the law if those amounts are deposited with the plan within seven business days of receipt or withholding.

Under current rules, employers of all sizes must transmit employee contributions to pension plans as soon as they can reasonably be segregated from the general assets of the employer, but no later than the 15<sup>th</sup> business day of the month following the month in which contributions are received or withheld by the employer.

Before the effective date of the final regulation, DOL/EBSA will not assert a violation of ERISA regarding participant contributions where such contributions are deposited with small plans within the seven business day safe harbor.

In addition, DOL/EBSA is requesting information and data regarding a possible safe harbor for plans with 100 or more participants to enable it to evaluate the current contribution practices of large employers.

Comments may be submitted on the proposed rule through April 29, 2008.

### Guidance on Collection of Delinquent Contributions

[Field Assistance Bulletin \(FAB\) 2008-01](#) provides guidance on the responsibilities of fiduciaries and trustees with respect to monitoring and collecting delinquent employer and employee contributions owed to plans governed by ERISA.

### Electronic Filing of Form 5500 Moving Forward

EBSA is moving to the development phase of the EFAST2 system to make possible electronic filing of the Form 5500 annual reports. The EFAST2 system will receive, process, store, publicly disclose, distribute, and archive approximately one million Form 5500 reports filed annually via the Internet. Electronic filing is required for plan year 2009 filings, due in 2010.

**Free Compliance Assistance Events:** For dates and locations of free compliance assistance events sponsored by EBSA for both retirement and health benefit plans, visit EBSA's [homepage](#).



## PBGC Insights

Free Subscription Service for “[What’s New](#):” Practitioners can now sign up to receive e-mail alerts whenever PBGC adds items to its “What’s New” page. This is an easy way to keep up to date with PBGC’s changes and items of interest that impact practitioners who deal with PBGC (e.g., consultants, actuaries, and third-party administrators). Sign up on the “[What’s New](#)” page.

### Premium E-Filings for Plan Year 2008

The per-participant flat-rate premiums for plan years beginning in 2008 have been adjusted for inflation. The updated rates, \$33 for single-employer plans and \$9 for multiemployer plans, are now incorporated in My PAA ([PBGC’s premium e-filing application](#)), which means that filers can now prepare and submit Estimated Filings electronically for plan year 2008 in accordance with PBGC’s mandatory e-filing regulation. Note that only 2008 Estimated Filings can be submitted via My PAA at this time. The updates for the 2008 final filing (now called the Comprehensive Filing) will take longer to incorporate into My PAA because of the substantial changes that are required as a result of the Pension Protection Act of 2006 (PPA), particularly with respect to the variable-rate premium. My PAA will be updated with these changes to allow sufficient time for filers to prepare and submit filings due October 15, 2008, the earliest Comprehensive Filing due date for calendar-year plans.

### Diligent Search Required for Missing Participants

PBGC’s Missing Participants Program provides a way to distribute plan benefits to participants and beneficiaries who cannot be located in defined benefit plans terminating in a standard termination. If you cannot find a participant or beneficiary after making a diligent search, you must either purchase an annuity from a private insurer in that person’s name and provide information on the missing person and insurer to PBGC or transfer the value of the person’s benefit to PBGC’s Missing Participants Program. A diligent search includes inquiry of any beneficiaries of the missing participant whose names and addresses are known and the use of a commercial locator service. A diligent search must begin not more than 6 months before notices of intent to terminate are issued. It must be carried on in such a manner that if the individual is found, distribution to the individual can reasonably be expected to be made by the “deemed distribution date” as described in 29 CFR 4050. The plan administrator must certify that a diligent search has been made before transferring money to PBGC for a person’s benefit. See additional information on [PBGC’s web site](#).

### Proposed Rule on Annual Financial and Actuarial Information Reporting

On Feb. 20, 2008, PBGC published a [proposed rule](#) in the *Federal Register* that would implement changes to PBGC’s regulation on annual financial and actuarial information reporting (part 4010) as required under the PPA. The proposed rule, which would provide guidance on how to determine whether a 4010 filing is required under the PPA changes, would waive reporting in certain cases for controlled groups with aggregate underfunding of \$15 million or less. Public comments on the proposed rule are due by April 21, 2008. •



## “Interesting” Pension Guidance Issued

### Defined Benefit Plans

Several pieces of guidance have been issued recently answering a number of questions on how to measure the value of single-employer pensions under the Pension Protection Act of 2006 (PPA). This guidance will help enrolled actuaries calculate the funding target and target normal cost needed to determine the minimum required contribution for a single-employer pension plan and plan administrators calculate lump sum benefits payable to participants.

### Interest and Mortality Rates for Calculating the Minimum Required Contribution

Employer contributions are calculated as the amounts needed to fund benefits payable in the future. The funding target and target normal cost reflect the present value of these future benefits. Calculation of the present value of future benefits involves interest rates to compare the cost of future benefits to today's assets already held by the plan. PPA allows a number of variations in the interest rates to be used to calculate the minimum required contributions for a pension plan:

- Interest rates can be based on a [full yield curve](#), which shows interest rates used for discounting payments every 6 months up to 100 years after the valuation date.
- A [simplified yield curve](#) can be used instead, with only 3 segment rates – one used to discount any payments made during the first five years, another for payments made after the 5<sup>th</sup> year through the 20<sup>th</sup> year (including any payment expected to be made on the first day of the 6<sup>th</sup> year), and the third rate used to discount payments made more than 20 years after the valuation date (including any payment expected to be made on the first day of the 21<sup>st</sup> year).
- [Other variations](#) are also available (*see second table*), including a 3-year phase-in and lookback periods that allow a plan sponsor to use an interest rate up to 4 months before the valuation date. If a plan sponsor does not elect another option, the rates reflecting the 3-year phase-in (the “transitional segment rates”) are the default interest rates.

To calculate the funding target and target normal cost, mortality rates are also considered. Proposed regulations §1.430(h)(3) includes mortality tables. These mortality rates must be adjusted for projected improvements in mortality – either by using updated tables to be issued each year by the IRS and Treasury, or the actuary can project future improvements for all years using what is known as a “full generational” approach. Large plan sponsors may use their own substitute mortality tables under §1.430(h)(3)-2 of the regulations as long as they are large enough to have credible experience – but only if they obtain IRS approval for the substitute tables.

**Additional Resources:** [Notice 2007-81](#), [Notice 2008-29](#), [proposed regulations 1.430\(d\), 1.430\(g\), 1.430\(h\)\(2\)](#) and [1.430\(i\)](#), and [proposed regulation 1.430\(h\)\(3\)-1](#).

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### Interest and Mortality Rates for Calculating Minimum Distributions under §417(e)(3)

Interest and mortality rates for converting an annuity to a lump sum distribution are applied using much the same principles as described above. However, for distributions subject to §417(e), the interest rate must be based on the [3 segment rates](#), with a 5-year phase-in. The full yield curve and segment rates without a phase-in are not permitted for §417(e)(3) distributions, even if the plan is using one of these options to calculate the minimum required contribution.

Before PPA, interest rates used for these distributions were based on a stability period (how long the rates are used before they are updated, up to one year) and a lookback period (how far back to look when pulling the published rates used during the stability period, up to five months). [Revenue Ruling 2007-67](#) says that the stability and lookback periods stay the same for §417(e)(3) distributions after PPA. Using these rules, a plan that has a calendar-year stability period and a 5-month lookback period can use the interest rates published for August 2007 for any distribution made during 2008.

A key difference is that under PPA it's not just the interest rates that change – mortality rates are updated each year as well, to reflect improvements in mortality. Revenue Ruling 2007-67 sets the 2008 mortality rates for lump sums and other distributions subject to Code §417(e)(3). The mortality rates for 2008 will apply for any stability period that begins in 2008 – but will not apply before PPA becomes effective for the plan year (that is, before the first day of the plan year that begins in 2008), even if the stability period begins before then.

It is important to note that the plan language should incorporate the mortality tables by referencing Code §417(e)(3) so that the tables are automatically updated without having to amend the plan. If a particular mortality table (such as the 2008 mortality table) is specified in the plan, then the plan would have to be amended each year when the mortality tables are updated – and then any benefits based on the prior table would have to be protected in accordance with Code §411(d)(6).

**Additional Resources:** [Code §417\(e\)\(3\)](#), [Notice 2007-81](#), and [proposed regulations 1.430\(h\)\(2\)-1](#) and [1.430\(h\)\(3\)-1](#).

## Defined Benefit Plans – AFTAP Certifications Needed as Early as April 1, 2008

Code §436 requires benefit limitations for underfunded single-employer defined benefit plans. Whether benefit limitations apply, and if so, which ones, is based on the plan's adjusted funding target attainment percentage, or AFTAP. Simplistically, the AFTAP is a ratio of the plan's adjusted assets to its adjusted funding target. If a plan's AFTAP is less than a certain percentage (depending on the type of limitation), then a plan must limit the affected benefits. In general, the limitations are applied using the AFTAP for the prior plan year without adjustment until the first day of the 4<sup>th</sup> month of the plan year (April 1, for calendar-year plans) or until the AFTAP for the current year is certified. Beginning with the first day of the 4<sup>th</sup> month (April 1, for calendar-year plans), the prior year AFTAP is reduced by 10 percentage points if it is within 10 percentage points of one of the thresholds in the table below. Beginning with the first day of the 10<sup>th</sup> month (October 1, for calendar-year plans), the AFTAP is presumed to be less than 60% — triggering all the limitations below for the rest of the plan year if the current-year AFTAP has not been certified by that date, even if the actual AFTAP for the current year is certified later.

Limitation on Benefits	...if AFTAP is less than
Plan amendment increasing benefits cannot take effect*	80%, counting the cost of the amendment
Shutdown benefits cannot be paid	60%, counting the cost of the additional benefits
Only part of a participant's benefit can be paid as a lump sum or other accelerated form of payment**	80%, but more than 60%
None of the participant's benefit can be paid as a lump sum or other accelerated form of payment	60%
Participant benefits are frozen -- they cannot increase even if the participant continues working	60%

\*Limited exception for benefits not based on compensation

\*\*Accelerated benefits are limited to one-half of the participant's benefit or one-half of the PBGC minimum guaranteed benefit, if greater.

## Temporary Rules Apply for the First Plan Year Beginning on or After January 1, 2008

The above limitations are applied based on the AFTAP for the current year, as certified by the plan's enrolled actuary. However, for the period before the current-year AFTAP is certified, the limitations can be based on the AFTAP certified for the prior year, using "presumption" rules outlined in Code §436(h) and §1.436-1(h) of the proposed regulations. If the enrolled actuary has not certified the AFTAP for the current year by the first day of the 10<sup>th</sup> month (October 1, for calendar-year plans), the presumed AFTAP is less than 60% – triggering all the limitations above – beginning on that date. In this case, all the limitations continue to apply through the end of the plan year, even if the actuary certifies the AFTAP before the end of the year. For additional guidance, please see [Adjusted Funding Target Attainment Percentage \(AFTAP\)](#). •

## Calendar of EP Benefits Conferences

### UPCOMING EVENTS...

Name	Date(s)	Location	Co-Sponsor(s)	For Further Information, Please Contact
Great Lakes Benefits Conference	04/03/08-04/04/08	Chicago, IL	ASPPA & cooperating sponsors	<a href="http://www.asppa.org">www.asppa.org</a>
Mid-Atlantic Benefits Conference	05/22/08-05/23/08	Washington, DC	ASPPA	<a href="http://www.asppa.org">www.asppa.org</a>
Northeast Area Benefits Conference (2 Locations)	06/12/08-06/13/08	Boston, MA & New York, NY	ASPPA & NE Area Pension Liaison Group	<a href="http://www.asppa.org">www.asppa.org</a>
21st Annual Cincinnati Employee Benefits Conference	06/12/08-06/13/08	Cincinnati, OH	Cincinnati Bar Association	<a href="http://www.cincybar.org">www.cincybar.org</a>
Benefits Conference of the South	TBD	Atlanta, GA	ASPPA	<a href="http://www.asppa.org">www.asppa.org</a>

### RECENT EVENTS...

Name	Date(s)	Location	Co-Sponsor(s)	For Information, See
<a href="#">Los Angeles Benefits Conference</a>	01/24/08-01/25/08	Los Angeles, CA	ASPPA & National Inst. of Pension Administrators (NIPA)	<a href="http://www.irs.gov/ep">www.irs.gov/ep</a>
<a href="#">18th Annual SWBA/IRS Employee Benefits Conference</a>	11/15/07-11/16/07	Dallas, TX	Southwest Benefits Association (SWBA)	

