

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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[Filing tips](#) for plans with an October 15 due date.

5. **401(k) Phone Forum (October 21, 2010 at 2:00 EST)**

[401\(k\) Compliance Check Questionnaire Phone Forum:](#) EP Exam Director, Monika Templeman and EP Exam Area Manager, Janice Gore discuss the Questionnaire and its uses.

6. **Free Material on New Outreach Corner on IRS.gov**

[The Outreach Corner](#) - Click, Copy, Paste: Find ready-to-use drop-in articles, IRS audios and videos, brochures and other resources on a variety of topics, ready to be used in newsletters, e-mail and other communications.

7. **National Save for Retirement Week Resources**

National Save for Retirement Week is October 17-23. Companies can use our resources to promote retirement savings:

- [Plan Participant Resources](#)
- [Forms and Publications for Retirement Plans](#)
- [Retirement Plan Frequently Asked Questions](#)
- [Saver's Credit](#)

8. **Recurring Columns:**

- [Critical Priorities... with Monika Templeman](#)
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- [Calendar of EP Benefits Conferences](#)

2010 Rollovers and Conversions to a Roth IRA: Frequently Asked Questions

1. When is the latest I can make a 2010 rollover or conversion to a Roth IRA?

To qualify as a 2010 rollover or conversion to a Roth IRA, a traditional IRA or an employer-sponsored retirement plan must make a distribution in 2010 (or your taxable year beginning in 2010 if you are not a calendar-year taxpayer). The traditional IRA or plan can make the distribution:

- directly to your new or existing Roth IRA (a [trustee-to-trustee transfer](#)), or
- indirectly - a distribution to you that you deposit into a Roth IRA within 60 days.

For example, if you are a calendar-year taxpayer and receive the distribution on December 31, 2010, and then deposit that distribution into a Roth IRA by March 1, 2011, you will have made the rollover or conversion in 2010.

2. When must I elect to include the taxable portion of my 2010 rollover or conversion to a Roth IRA in 2010, instead of half in 2011 and half in 2012?

The default method for reporting rollovers or conversions to a Roth IRA in 2010 is reporting half of the [taxable amount](#) in your gross income in 2011 and half in 2012. However, you can elect to include the entire amount in your 2010 gross income on your 2010 tax return. You cannot change your election after the due date for your 2010 tax return.

3. If I choose to report my 2010 rollover or conversion to a Roth IRA half in 2011 and half in 2012, do I have to report any amounts rolled over or converted in 2010?

No. However, if you had tax withheld from amounts rolled over or converted to a Roth IRA in 2010 and did not make up this amount in your deposit to the Roth IRA, the withheld amounts are considered a distribution to you in 2010. You must include any previously untaxed amounts "distributed" to you in your 2010 gross income. You may also be liable for the 10% early distribution tax unless some exception applies (note: exceptions to the 10% early distribution tax are different depending on whether the distribution is from a [retirement plan](#) or an [IRA](#)).

4. What is a recharacterization of a rollover or a conversion to a Roth IRA?

This is when you do a trustee-to-trustee transfer of amounts you previously rolled over or converted to the Roth IRA into a traditional IRA.

5. How long do I have to recharacterize a 2010 rollover or conversion to a Roth IRA?

You have until October 17, 2011 (because October 15, 2011, is a Saturday), to recharacterize your 2010 rollover or conversion to a Roth IRA if you file your 2010 tax return on time, including any extensions, and regardless of whether you requested an extension to file your 2010 tax return. For example, even if you did not request an extension to file your 2010 tax return and actually filed your return on or before April 15, 2011, you have until October 17, 2011, to recharacterize your 2010 Roth IRA rollover or conversion.

6. How can I recharacterize an amount rolled over to a Roth IRA from an employer-sponsored retirement plan?

You can only recharacterize amounts rolled into a Roth IRA from an employer-sponsored retirement plan by transferring them to a new or existing traditional IRA, and not back into the plan from which they were distributed.

7. If I included the taxable amount of my 2010 rollover or conversion on my 2010 tax return, but later recharacterized that rollover or conversion, what should I do?

For a recharacterized rollover or conversion, you should amend your 2010 tax return to subtract the amount recharacterized from the taxable amount of the rollover or conversion you previously included in your 2010 gross income.

8. Is there a minimum waiting period to reconvert the money to a Roth IRA following a recharacterization?

Yes, if you elect to recharacterize all or part of a rollover or conversion to a Roth IRA, you cannot reconvert the amount recharacterized to the same or another Roth IRA until the later of:

- 30 days after the recharacterization, or
- the year following the year of the rollover or conversion.

However, this waiting period does not apply to amounts other than the ones you recharacterized. For example, you can convert amounts from a different traditional IRA to a Roth IRA immediately.

9. How are 2010 rollovers or conversions to a Roth IRA reported on a Form 1099-R?

Qualified plans and IRAs report a 2010 rollover, other than from a designated Roth account in a §401(k) or a §403(b) plan, to a Roth IRA on a [2010 Form 1099-R](#) regardless of whether the recipient elects to include the taxable portion of the rollover in 2010, or half in 2011 and half in 2012. No Form 1099-R is required for 2011 or 2012 for rollovers or conversions to a Roth IRA in 2010.

Plans report a direct rollover from a non-designated Roth account to a Roth IRA by stating:

- a. the gross amount of the distribution in box 1;
- b. the taxable amount of the rollover in box 2a;
- c. any [basis recovery amount](#) in box 5; and
- d. Code G in box 7.

IRAs report:

- a. the amount of the conversion in boxes 1 and 2a;
- b. check “taxable amount not determined” in box 2b; and
- c. use code “2” or “7” in box 7, depending on the recipient’s age.

We’re Glad You Asked!

I am self-employed and have a profit-sharing plan for my employees and myself. For 2009, I decided to make a plan contribution equal to 10% of each participant’s compensation. To determine the amount allocated to my own account, I multiplied my net profit on my Schedule C by 10%. Was this correct?

No. You made two errors: (1) you used the net profit from your business to base your percentage on; and (2) you did not reduce the plan’s contribution rate that you used for yourself.

For a self-employed individual, “compensation” means “earned income.” You must use your earned income to calculate plan contributions for yourself. Your earned income is not the same as net profit from your business. You calculate your earned income by taking your net profit from [Schedule C](#) and subtracting:

1. ½ of your self-employment (SE) tax; and
2. plan contributions for yourself.

Your earned income and the amount of your plan contributions for yourself depend on each other. You must [reduce the plan contribution rate](#) to calculate the correct amount of plan contributions for yourself. See Publication 560, *Retirement Plans for Small Business*, to find the correct rate and the worksheet to calculate your deduction.

Example:

Joe’s 2009 Schedule C net profit is \$200,000 and he paid \$18,600 in SE taxes. The plan contribution rate is 10% of each participant’s compensation. Joe would compute the amount of the 2009 plan contribution for himself as follows:

1. Net profit from Schedule C:	\$200,000	
2. Less ½ of SE tax:	(9,300)	
3. Joe’s net profit less ½ SE tax is:	\$190,700	
4. Joe’s reduced plan contribution rate (based on plan contribution rate of 10% of compensation):	x 0.090909	(from rate table in Pub. 560)
5. Joe’s plan contribution for himself:	\$17,336.35	

The limit on annual compensation ([adjusted annually](#)) for determining retirement plan contributions was \$245,000 in 2009. Joe's 2009 earned income (compensation) was less than the 2009 annual limit and, therefore, he does not have to restrict contributions for himself.

Plan contributions for a self-employed individual are deducted on Form 1040 (on the line for self-employed SEP, SIMPLE, and qualified plans) and not on the Schedule C. If you made the deduction on Schedule C, or made and deducted more than your allowed plan contribution for yourself, you must amend your Form 1040 tax return and Schedule C.

If your plan contribution for yourself was higher than allowed by the terms of your plan, you may have a plan qualification issue. However, you may fix this plan error by using the [Employee Plans Compliance Resolution System](#).

Form 5500/Form 5500-SF Filing Tips

October 15 is the extended due date for Forms 5500 and 5500-SF for calendar-year plans.

Before submitting your Form 5500 to EFAST2, review the Department of Labor, EBSA's [Frequently Asked Questions](#) to avoid problems with the filing and processing of your return. Some highlights:

- Remember to sign the return. (FAQs 30-34)
- Once you submit the return, check the filing status to ensure that EFAST2 received it. (FAQs 36 & 37)
- If you receive an error message, you must submit an amended return. Check the box in Part I for "amended return/report" and resubmit the entire Form 5500 or 5500-SF including all appropriate schedules and attachments. (FAQs 38-41)
 - Even though you amended the return, you may receive an IRS notice. If so, respond to the notice by stating that you corrected the error. However, to avoid receiving such notice(s), validate the filing before you submit it and sign it using the correct credentials.

Call the EFAST2 Help Line toll-free at 866-GO-EFAST (463-3278), Monday through Friday, 8:00 a.m. to 8:00 p.m. EST, if you need help completing your Form 5500 or 5500-SF.

Critical Priorities...With Monika Templeman - Accomplishments...and What's Next in Our Examinations Efforts

In each issue, 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 for discussion by e-mailing her at: RetirementPlanComments@irs.gov.

Monika, in an earlier issue of this newsletter, you discussed what you hoped to achieve in this fiscal year. Please update us on what you and your employees have accomplished. Let's start with EP's international efforts.

We're successfully focusing on international issues that impact retirement plans. We made major strides this year and we're on track and ready to proceed in the years ahead. We've collaborated with Large Business and International (formerly Large and Mid-Size Business) and other functions in the IRS. We used our resources, such as our Employee Plans Team Audit (EPTA) and Employee Plans Compliance Unit (EPCU), to strengthen international tax compliance for pension plans. EPCU launched two compliance check projects involving international entities. EPTA currently has more than 20 large case examinations that have international issues. We want to discover where the plans' trust records go and whether the exclusive use of these plans is to provide retirement benefits for plan participants.

As I mentioned in a prior article, we're actively involved in the Hacienda Project with Puerto Rico. This project focuses on information reporting, referrals, joint pension plan audits and voluntary compliance. We coordinated a Memorandum of Understanding with the Virgin Islands to audit plans. We'll help them with training and voluntary compliance efforts.

You mentioned the Hacienda Project, in which EP is working to enhance compliance in Puerto Rican retirement plans. How's that progressing?

The Hacienda Project with Puerto Rico has been a big success. In March, EP began joint audits with 12 new Hacienda agents and we've reviewed approximately 50 Puerto Rican plans. We're also working with the Hacienda, at their request, to establish a voluntary compliance program for retirement plans and other Puerto Rican tax issues.

What do you hope to accomplish in the international area in the next year or so?

EP will continue to develop capabilities to address key international issues impacting the Employee Plans sector. Collaborating with LB&I and other IRS divisions, our goal is to identify complex international transactions and recognize target areas of significant risk and potential abuse affecting retirement plans. We'll complete ongoing EPCU International projects and post project updates at www.irs.gov.

Let's move on to the 401(k) Questionnaire. What's the latest on that project?

We'll be analyzing data from the [401\(k\) Compliance Check Questionnaire Project](#). In May 2010, EPCU sent letters to a statistically valid sample of 1,200 401(k) plan sponsors and instructed them to complete the Questionnaire online by visiting a secure website using a PIN provided in the cover letter. We received most of the responses and are following up with non-responders. EPCU will work with our TE/GE Research team to analyze the data to gain a better understanding of 401(k) plans' compliance behaviors.

Will you share the results of the project with the retirement plans community?

We plan to post our findings on EPCU's Web page by June 30, 2011. The Questionnaire results will help us identify areas needing additional education, outreach, guidance and compliance activities.

Any tips for plan sponsors who did not receive the Questionnaire?

I highly recommend that all plan sponsors visit the [EPCU](#) page and print the [Questionnaire](#) and [glossary of terms](#). I'd also suggest reading the [FAQs](#). Plans sponsors should use the Questionnaire as a self-audit tool. It's important to find plan mistakes early because the impact of non-compliance left unchecked can be very costly.

Large employers have internal resources to perform self-audits. Do you have any suggestions for small business owners who may not have these resources?

I appreciate the struggles that many small business owners face and applaud the ones who chose to establish retirement benefits for their employees. It's important to maintain these plans so the benefits will be there at retirement. Small business owners should invest the time and money to ensure their plans are running properly. An employer who is not comfortable relying on the tools I mentioned earlier has the option of hiring a benefits professional.

Many small business owners assume that the financial institution that sold them their plan will also maintain the plan. Is this true?

Generally, that's an incorrect assumption. It's best for the employer to perform a self-audit, or hire a benefits professional to perform it.

Another priority was sharing information with the governmental plans community. How did you do this?

As with all of our specialized efforts, two-way communications with the governmental plans community will continue to be a priority. State and local governmental plans invest about \$3 trillion in their retirement plans. We conducted speeches and other outreach to communicate the tax qualification requirements and IRS programs for the governmental plans community.

You also focused on abusive transactions. Any progress in this area?

Absolutely! Stopping abusive transactions continues to be an IRS-wide priority as we have teams working on several projects to identify and address emerging issues and abuses that jeopardize the private retirement system in America. We use promoter investigations to deter abusive schemes marketed to the retirement plans community. Learn about our progress in stopping these transactions on our [EP Abusive Tax Transactions](#) Web page.

If our readers have questions after reading your article, where can they go to get these questions answered?

Readers can e-mail their questions to [RetirementPlanQuestions](#). We'll call you with an answer so please include your name and phone number in the e-mail.

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's website](#) for updates.

Hearing on Specific Issues Related to Lifetime Income Options for Retirement Plans

On September 14 and 15, DOL/EBSA and the Department of the Treasury held a joint public hearing to hear testimony on several specific issues relating to lifetime income and other arrangements that provide a stream of income after retirement for workers in employer-sponsored retirement plans.

Witnesses addressed issues relating to:

- Certain specific participant concerns affecting the choice of lifetime income relative to other options;
- Information to help participants make choices on the management and spend down of retirement benefits;
- Disclosure of account balances as monthly income streams;
- The fiduciary safe harbor for selection of lifetime income issuers or products; and
- Alternative designs of in-plan and distribution lifetime income options.

[Written requests to testify](#) at the hearing and testimony are available on EBSA's website. The archive of the webcast of the hearing will be available on this Web page shortly.

The Departments received approximately 780 public comments in response to the request for information (RFI) published in the Feb. 2, 2010 Federal Register. The purpose of the hearing is to gather additional information on discrete technical issues and proposals raised in the RFI submissions.

Disclosure of Fees and Conflicts of Interest Affecting 401(k) and Other Retirement Plans

On July 16, DOL/EBSA published an [interim final rule](#) that will enhance disclosure to fiduciaries of 401(k) and other retirement plans. The rule will assist fiduciaries in determining both the reasonableness of compensation paid to plan service providers and any conflicts of interest that may impact a service provider's performance under a service contract or arrangement.

The interim final rule comes on the heels of considerable work by the Congress to improve the current disclosure system.

The interim final rule will enhance disclosure to pension plan fiduciaries by requiring the disclosure of the direct and indirect compensation certain service providers receive in connection with the services they provide. The rule applies to plan service providers that expect to receive \$1,000 or more in compensation and that provide certain fiduciary or registered investment advisory services; make available plan investment options in connection with brokerage or recordkeeping services; or otherwise receive indirect compensation for providing certain services to the plan.

[Written comments](#) on the interim final regulation are available on EBSA's website.

Proposed Procedure for Exemptions from the Prohibited Transaction Provisions

On August 30, DOL/EBSA published in the Federal Register a [proposed regulation](#) to update the procedure for filing and processing applications for exemptions from the prohibited transaction provisions of ERISA.

The proposal, if adopted, would consolidate the existing policies and guidance on the exemption process. The amended procedures would also clarify the types of information and documentation required to submit a complete filing, expand the methods for transmitting filings to include electronic submissions, and make the exemptions more understandable for participants, beneficiaries and other interested parties.

The proposed exemption procedure retains the section-by-section topical structure of the existing regulation. Among the proposed changes are:

- A requirement that applicants provide interested persons with a brief objective summary of complex transactions;
- The consolidation of exemption policies and guidance within a single document;
- An updated description of the DOL's authority to propose and issue administrative exemptions on its own motion;
- A description of the current standards for obtaining retroactive exemption relief; and
- Clarification of the content of specialized statements, as needed, from qualified independent appraisers and other relevant experts.

Written comments should be received by DOL/EBSA on or before October 14, 2010, and should be addressed to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N-5700, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 202010, Attention: Prohibited Transaction Exemption Procedures Proposed Regulation.

Online Index for Individual Prohibited Transaction Exemptions

On August 2, DOL/EBSA launched a new [online index](#) for locating individual exemptions granted under ERISA. The new online index lets people search by subject matter for individual exemptions granted from 1996 through 2010.

Affordable Care Act

DOL/EBSA has a [dedicated Web page](#) for guidance and educational information as well as outreach events on the Affordable Care Act. You can subscribe to the Web page for notice of updates.

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](#) Web page.

PBGC Insights

4062(e) Proposed Rule

On August 10, 2010, PBGC published a [proposed rule](#) on ERISA §4062(e), which provides for reporting of, and liability for, certain substantial cessations of operations by employers maintaining single-employer plans. The proposed rule would provide guidance on whether and when a "section 4062(e) event" occurs, describe the liability that arises, and explain how that liability is satisfied. The proposed rule would also prescribe recordkeeping requirements and provide for waivers in appropriate circumstances. Comments on the proposed rule are due October 12, 2010.

PBGC also submitted [draft information requirements](#) under the proposed rule to the Office of Management and Budget. Information on how to comment on the proposed rule or information requirements can be found in the proposed rule.

Variable-Rate Premiums - Alternative Premium Funding Target Elections

- If a valid election to use the alternative premium funding target (APFT) was made for the 2008 or 2009 plan year (or, under PBGC [Technical Update 10-2](#), was deemed valid for one of those years), that election remains in effect for the 2010 plan year, and the APFT must be used for 2010.
- An election for the 2010 plan year made in a late filing or otherwise not in accordance with PBGC's rules is not valid.

Notice About Premium Filings

As a service to plan administrators who prepare and submit premium filings, PBGC recently mailed a [notice](#) about the upcoming 2011 premium instructions that included helpful premium filing reminders.