

employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

Internal Revenue Service
Tax Exempt and Government
Entities Division

A Publication of Employee Plans

1. **Form 5558 Requests for Extension That May Have Been Inadvertently Denied**

[Procedures](#) for plan sponsors who received extension denial letters in error

2. **Form 5500-EZ Mailing Address**

[Mail](#) Form 5500-EZ to:

Department of the Treasury
Internal Revenue Service
Ogden, UT 84201-0020

3. **Fiscal Year 2011 Work Plan**

[Seven operating priorities](#) for Employee Plans.

4. **Hybrid Defined Benefit Plans - Final and Proposed Regulations**

[Highlights](#) of recent guidance on hybrid DB plans

5. **Hybrid Plans Phone Forum (November 23, 2010 at 2:00 p.m. EST)**

[Phone Forum](#) - Mike Spaid, IRS Actuary, will discuss the new hybrid plan regulations. Linda Marshall, Senior Counsel, has been invited to participate as well

6. **PTIN - Additional Information**

- [PTIN Renewals](#) – Paid tax return preparers who received their Preparer Tax Identification Numbers (PTIN) before Sept. 28, 2010, must register/renew using the new online sign-up system
- [Revenue Procedure 2010-41](#) – Individuals without a Social Security number may obtain a PTIN and there is temporary relief during the 2011 filing season for those who experience delays in obtaining a PTIN
- [PTIN Demo](#) (11 minutes)
- [YouTube Video](#) (1 ½ minutes)
- [“What’s New For Return Preparers” Seminar](#) at 2010 IRS Nationwide Tax Forums

7. **IRS Seeks Members for ACT**

[Announcement](#) seeking applications for the Advisory Committee on Tax Exempt and Government Entities (ACT) vacancies

8. **Information Reporting Program Advisory Committee Report**

IRPAC [proposed changes](#) in reporting basis allocation for rollovers, payments made under EPCRS and more

Form 5558 Requests for Extension That May Have Been Inadvertently Denied

As everyone is well aware, plan year 2009 is the first filing season using ERISA Filing Acceptance System ([EFAST2](#)) for the filing of [Form 5500](#), *Annual Return/Report of Employee Benefit Plan*. A number of plan administrators are still in the process of updating their systems for EFAST2 and have had some issues and concerns about filing timely without an extension. Because of these issues and concerns, a number of plan administrators have filed the [Form 5558](#), *Application for Extension of Time to File Certain Employee Plan Returns*. The IRS Ogden Campus received numerous Forms 5558 from the practitioner community.

Some Forms 5558 were inadvertently denied and plan sponsors received extension denial letters ([CP 216H](#), *Application for Extension of Time to File an Employee Plan Return Denied - Not Timely*). We recognized this error and have taken the necessary steps to correct this issue.

If you believe you received a CP 216H Notice in error, please respond by enclosing the denial letter and proof that the original Form 5558 was postmarked timely (*for example*, express mail or certified mail receipt). Please send your responses to:

Ogden Accounts Management Center
EP Accounts Unit, Mail Stop 6270
Ogden, UT 84201

If you received a [CP 213N](#), *Form 5500 Late Return*, proposed penalty notice indicating Form 5500 was not timely filed, in error, please respond by following the instructions in the notice. For additional information, see our [FAQs on Notices from IRS \(CP 213 Notices\)](#).

We apologize for any inconvenience this may have caused. We appreciate the feedback.

Form 5500-EZ Filing Address

Beginning with the 2009 plan year, Forms 5500-EZ must be mailed to the IRS Offices in Ogden, UT to be processed.

Many filers have contacted the IRS that they incorrectly mailed their Form 5500-EZ to Lawrence, Kansas instead of to the Ogden address.

The Lawrence, Kansas address is not an IRS office; it is the offices of the independent contractor hired by the Department of Labor (DOL) to process Form 5500 returns. Up until October 31, 2010, all Forms 5500-EZ mailed to Lawrence, Kansas were forwarded to the DOL and the DOL forwarded these returns to the IRS Offices in Ogden. However, after October 31, 2010, the mail forward expired and the incorrectly filed returns will be returned to the filer.

In order to ensure the Form 5500-EZ is received by the IRS, filers should send another copy of the Form 5500-EZ with an original signature to Ogden at the following address:

Department of the Treasury
Internal Revenue Service
Ogden UT 84201-0020

Hybrid Defined Benefit Plans - Final and Proposed Regulations

The IRS recently issued [final](#) and [2010 proposed](#) regulations for hybrid defined benefit (DB) plans – DB plans that express participants' accumulated benefits as a lump sum.

In general, the final regulations:

- incorporate the transitional guidance in [Notice 2007-6](#) and the [2007 proposed regulations](#), and
- provide guidance on Code §§411(a)(13) and (b)(5).

The 2010 proposed regulations provide additional guidance for hybrid DB plans that compute accrued benefits by reference to a hypothetical account balance or equivalent amounts (under Code §411(a)(13)) and discuss a hybrid DB plan's accrued benefit requirements (under Code §§411(b)(1) and (b)(5)).

The **Final Regulations** address issues including:

1. *Definitions* - that apply to regulations under Code §§411(a)(13) and (b)(5).
2. *Accumulated benefit* - a participant's benefit accrued to date under a plan.
3. *Lump sum-based benefit formula* - a benefit formula under which all or some of the accumulated benefit is expressed as the current balance of a hypothetical account or as the current value of the accumulated percentage of the participant's final average compensation.
4. *Statutory hybrid benefit formula* - a benefit formula that is either a lump sum-based benefit formula or a formula that has an effect similar to a lump sum-based benefit formula.
5. *Effect similar to* - a benefit formula has an effect similar to a lump sum-based benefit formula if:
 - the formula providing a participant's accumulated benefit at normal retirement age includes adjustments for a future period; and
 - the total dollar amount of the adjustments is reasonably expected to be smaller for the participant, when compared to a similarly situated, younger individual who is or could be a participant in the plan.
6. *Hypothetical account* - a benefit is expressed as a hypothetical account if it is expressed as a current single sum dollar amount whether or not the participant has the right to future interest credits.
7. *Statutory hybrid plan* - a plan that contains a statutory hybrid benefit formula.
8. *Pension equity plans (PEPs)* - a PEP formula that provides for interest credits after PEP accruals cease must follow the market rate of return rules to calculate interest credits because a lump sum-based benefit formula that credits interest is subject to the market rate of return rules.
9. *After-tax and rollover contributions* - the benefit properly attributable to after-tax employee contributions, rollover contributions and other similar employee contributions is disregarded in determining if a benefit formula is a lump sum-based benefit formula.
10. *Indexing of benefits* - when determining whether a benefit formula has an effect similar to a lump sum-based benefit formula, certain indexing to adjust benefits after the annuity starting date (for example, cost-of-living increases) is disregarded.
11. *Adjustments under a variable annuity* - do not have an effect similar to a lump sum-based benefit formula if the assumed interest rate used to determine the adjustments is 5% or higher.
12. *Special Rules under Code §411(a)(13)(A)* - a plan will not be treated as failing the requirements of Code §411(a)(2) or the accrued benefit derived from employer contributions requirements of:
 - Code §411(a)(11),

- Code §411(c), or
- Code §417(e)

merely because a statutory hybrid plan provides that the present value of benefits determined under a lump sum-based benefit formula is equal to the then-current balance of the hypothetical account maintained for the participant or the then-current value of the accumulated percentage of the participant's final average compensation under that formula.

However, it is important to note that Code §411(a)(13) does not alter the definition of the accrued benefit under Code §411(a)(7)(A) or the definition of the normal retirement benefit under Code §411(a)(9).

13. *Present value rules of Code §417(e)* - a statutory hybrid plan that provides benefits under a benefit formula that is a statutory hybrid benefit formula other than a lump sum-based benefit formula must comply with the present value rules of Code §417(e) with respect to an optional form of benefit that is subject to the requirements of Code §417(e).
14. *Vesting* - a plan fails to satisfy the requirements of Code §411(a)(2) if any part of a participant's DB accrued benefit is determined under a statutory hybrid benefit formula unless the plan provides that:
 - a participant with 3 or more years of service has a non-forfeitable right to 100% of the participant's accrued benefit derived from employer contributions. This requirement applies to the participant's entire benefit derived from employer contributions under a statutory hybrid plan (not just the portion of the participant's benefit that is determined under a statutory hybrid benefit formula); and
 - the 3-year vesting requirement applies to the participant's entire accrued benefit under the plan if a participant is entitled to the greater of two (or more) benefit amounts, where each amount is determined under a different benefit formula, and at least one of which is a benefit calculated under a statutory hybrid benefit formula (even if that participant's benefit under the statutory hybrid benefit formula is ultimately smaller than under the other formula.)
15. *Safe-harbor for age discrimination* - a plan may satisfy the requirements of Code §411(b)(1)(H)(i) with respect to certain benefit formulas if, as determined as of any date, a participant's accumulated benefit expressed under one of those formulas would not be less than any similarly situated, younger participant's accumulated benefit expressed under the same formula.
16. *Conversion protection* - a participant whose benefits are affected by a conversion amendment that was both adopted and effective on or after June 29, 2005, must generally be given a benefit after the conversion that is at least equal to the sum of the benefits:
 - accrued through the date of the conversion, and
 - earned after the conversion, with no permitted interaction between these two portions.
17. *Conversion amendment* - an amendment, determined on a participant-by-participant basis (including multiple amendments) is a conversion amendment if:
 - it reduces or eliminates the benefits that, except for the amendment, the participant would have accrued after the effective date of the amendment under a benefit formula that is not a statutory hybrid benefit formula and under which the participant was accruing benefits prior to the amendment; and
 - after the effective date of the amendment, all or a portion of the participant's benefit accruals under the plan are determined under a statutory hybrid benefit formula.
18. *Interest credit* - generally means any increase or decrease for a period to a participant's accumulated benefit, including under a statutory hybrid benefit formula, which under the terms of the plan at the beginning of the period is calculated by applying a rate of interest or rate of return (including a rate of increase or decrease under an index) to any portion of the participant's accumulated benefit as of the beginning of the period that:
 - is not conditioned on current service; and
 - is not made because of imputed service.

19. *Market rate of return* - an interest crediting rate is not in excess of a market rate of return if:
 - it is always less than a particular interest crediting rate that meets the market rate of return limitation; or
 - it always equals the lesser of two or more rates when at least one of the rates meets the market rate of return limitation.
20. *Safe-harbor interest crediting rate* - the list of safe-harbor rates has been expanded to include the first and second segment rates.
21. *Indexed benefits* - for Code §411(b)(5)(E) indexed benefits, an interest crediting rate equal to the actual rate of return on the plan's aggregate assets, both positive and negative, is not in excess of a market rate of return if the plan's assets are diversified to minimize the volatility of returns.
22. *Protected Benefit* - the right to future interest credits not conditioned on future service is a protected benefit under Code §411(d)(6).

The **2010 Proposed Regulations** address issues, including:

1. *Code §411(a)(13)(A) relief* - does not apply to benefits determined under a lump sum-based benefit formula unless certain requirements are satisfied. However, the relief:
 - extends to an optional form of benefit currently payable under a lump sum-based benefit formula under certain circumstances; and
 - applies on a proportionate basis to a payment of a portion of the benefit under a lump sum-based benefit formula not paid in the form of an annuity.
2. *133⅓% Rule* - a plan that determines any portion of the participant's accrued benefit based on a statutory hybrid benefit formula using a variable interest crediting rate that was less than zero for the prior plan year would not fail the requirements of the 133⅓% rule for the current plan year merely because it is assumed that the variable rate is zero for the current plan year and all future plan years.
3. *Alternative method of satisfying conversion protection requirements* - certain plans may satisfy the conversion protection requirements of Code §§411(b)(5)(B)(ii) through (iv) by establishing an opening hypothetical account balance without a subsequent comparison of benefits at the annuity starting date.
4. *Preservation of capital requirement* - applied only at an annuity starting date on which a distribution of the participant's entire benefit as of that date under the plan's statutory hybrid benefit formula commences.
5. *Rate of return on plan assets as a market rate of return* - generally allowed if the plan assets are diversified in order minimize the volatility of returns.
6. *Market rate of return* - the proposed regulations broaden the list of safe-harbor interest crediting rates. They also provide the following guidance:
 - an interest crediting rate is not in excess of a market rate of return if it is equal to the rate of return for certain registered investment companies;
 - a 3% floor that applies cumulatively may be combined with any permissible rate;
 - a plan may use an annual floor of 4% with a permissible bond rate;
 - a fixed annual interest crediting rate of 5% is a safe harbor rate and is deemed not to be in excess of the rate of interest on long-term investment grade corporate bonds;
 - terminating plans must use interest crediting rates and annuity conversion factors (the interest rate and mortality table used) as specified in the regulations; and
 - interest crediting rate changes and Code §411(d)(6) protected benefits rules.

Hybrid Plans Phone Forum (November 23, 2010 at 2:00 p.m. EST)

Michael Spaid, IRS Actuary with Employee Plans Rulings and Agreements will discuss the new hybrid plan regulations that were released on October 18, 2010. Linda Marshall, Senior Counsel with the Office of Chief Counsel has been invited to participate as well. If you have a specific matter that you would like the speakers to address, please let us know via e-mail at ep.phoneforum@irs.gov on or before November 19, 2010.

Handouts:

[T.D. 9505, 75 Fed. Reg. 64123 \(October 19, 2010\)](#)

Final regulations provide guidance for hybrid defined benefit plans on changes made by the Pension Protection Act of 2006, as amended by the Worker, Retiree, and Employer Recovery Act of 2008. These final regulations incorporate most provisions of Notice 2007-6 and the 2007 proposed regulations.

[REG-132554-08, 75 Fed. Reg. 64197 \(October 19, 2010\)](#)

Proposed regulations to provide additional guidance: 1) for plans that compute accrued benefits by reference to a hypothetical account balance or equivalent amounts (under Code §411(a)(13)); and 2) regarding accrued benefit requirements for hybrid retirement plans (under Code §§411(b)(1) and (b)(5)).

Conference Access Code	Eastern	Central	Mountain	Pacific
747794	2:00 p.m.	1:00 p.m.	12:00 p.m.	11:00 a.m.

- Register at <https://www.attevent.com/rsvpreg.asp?PPass=747794>
- You will be assigned a Personal Identification Number (PIN) that **must be used** to join the conference.
- If you have never registered with AT&T phone forum, you will need to click on “create a profile” first.

Dial In On: November 23, 2010

Toll Free: (800) 683-4564