

employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

Internal Revenue Service
Tax Exempt and Government
Entities Division

A Publication of Employee Plans

Proposed Extension of Qualified Charitable Distributions

Congress has passed [H.R. 4853](#) and sent it to the President for signature. It includes an extension of qualified charitable distributions (QCDs) for 2010 and 2011. QCDs are nontaxable distributions from an age 70 ½ or older individual's IRAs (other than SEP or SIMPLE IRAs) of up to \$100,000 made directly by the IRA trustee(s) to organizations eligible to receive tax-deductible contributions. H.R. 4853 would permit 2010 QCDs until January 31, 2011. Stay tuned to our newsletters for additional information!

Extended Deadline to Adopt Certain Amendments for Defined Benefit Plans

DB plans now have until the last day of the first plan year beginning on or after January 1, 2011, to [adopt certain plan amendments](#) under Notice 2010-77

Unforeseeable Emergency Distributions from 457(b) Plans

Types of expenses eligible for an [unforeseeable emergency distribution](#) under Revenue Ruling 2010-27

Amortization Period Extensions for Multiemployer Plans

How multiemployer plan sponsors may [request an extension of their plan's amortization period](#) under Revenue Procedure 2010-52

Modification of Group Trust Rules

Changes to the general rules for group trusts including model language in [Revenue Ruling 2011-1](#)

Phone Forum - December 20, 2010, at 3:00 EST

[In-Plan Roth Rollovers](#) for 401(k) and 403(b) plans

We're Glad You Asked!

[Limits on multiple loans](#) to a participant

Employee Plans Compliance Unit Projects:

- **Confirm the Status of IRS Approved Nonbank Trustees (NBT) and Custodians**
If you receive a letter from EPCU on the [NBT Project](#), please respond by providing all requested information
- **Rollovers as Business Start-Ups**
Common [ROBS](#) operational mistakes made by new business owners using their retirement funds to pay business start-up costs

Exam Priorities...with Monika Templeman

Spanning the Globe with [International Efforts](#)

IRS Proposes Fee Reduction for Enrolled Agents and Enrolled Retirement Plan Agents

Proposal to [reduce PTIN fees](#) from \$125 to \$30

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Recurring Columns: [DOL Corner](#); [PBGC Insights](#); [Employee Plans Published Guidance](#); [Calendar of EP Benefits Conferences](#)

Extended Deadline to Adopt Certain Amendments for Defined Benefit Plans

[Notice 2010-77](#) extends some deadlines for defined benefit (DB) plan amendments to the last day of the first plan year beginning on or after January 1, 2011. The extended deadlines give single-employer DB plans and hybrid DB plans (such as cash balance and pension equity plans) additional time to adopt certain amendments. However, the amendments must be complied with operationally as of their effective dates.

The extension gives single-employer DB plans additional time to adopt amendments to comply with funding-based limits on benefits and benefit accruals. This includes restrictions on the amount and form of benefit payments from plans falling below various funding levels. The extension also applies for purposes of an amendment's eligibility for relief from the anti-cutback requirements of the Internal Revenue Code.

Hybrid DB plans have until the extended deadline to adopt amendments to reflect:

- full vesting after three years of service;
- special rules on the interest crediting rate the plan can use; and
- special rules on other plan provisions to determine benefits that do not violate the prohibition on cessation or reduction of benefit accruals on account of attainment of any age.

Notice 2010-77 also:

- provides that relief from the anti-cutback requirements is expected to apply to certain amendments that are adopted by the extended deadline in order to comply with the special rules for hybrid DB plans;
- states that determination letter applications submitted before February 1, 2012, won't be reviewed for the funding-based limits and determination letters issued for these applications may not be relied on for these limits; and
- notes that a determination letter application submitted after January 31, 2011:
 - will be reviewed for compliance with the hybrid DB plan [final regulations](#);
 - will be reviewed by applying a standard of reasonable interpretation of the statute with respect to matters addressed in the hybrid DB [proposed regulations](#);
 - may accelerate a plan sponsor's time to adopt an interim plan amendment of a hybrid DB plan.

Unforeseeable Emergency Distributions from 457(b) Plans

[Revenue Ruling 2010-27](#) contains examples of certain expenses that may be eligible for an unforeseeable emergency distribution from a [457\(b\) deferred compensation plan](#). In general, a 457(b) plan may permit hardship distributions for unforeseeable emergencies if specific requirements are met. This new ruling determines that residential flood damage and funeral expenses of a non-dependent child may be unforeseeable emergencies arising from events beyond the control of the participant. However, accumulated credit card debt would not be eligible for an unforeseeable emergency distribution.

Plan provisions governing unforeseeable emergency distributions

457(b) plans may offer distributions to a participant based on an unforeseeable emergency for:

- an illness or accident of the participant, the participant's beneficiary, or the participant's or beneficiary's spouse or dependents;
- property loss caused by casualty (for example, damage from a natural disaster not covered by homeowner's insurance) of the participant or beneficiary;

- funeral expenses of the participant's spouse or dependent; and
- other similar extraordinary and unforeseeable circumstances resulting from events beyond the control of the participant or his or her beneficiary (for example, imminent foreclosure or eviction from a primary residence, or to pay for medical expenses or prescription drug medication).

The participant seeking the distribution must show that the emergency expenses could not otherwise be covered by insurance, liquidation of the participant's assets or cessation of deferrals under the plan.

Examples of requests for emergency distributions

The ruling lists three examples of participant requests for emergency distributions:

1. **repair significant water damage to the participant's principal residence not covered by insurance** - the distribution is allowable because the damage to the participant's primary residence is an extraordinary and unforeseeable circumstance and is substantially similar to the need to pay for damage to a home from a natural disaster.
2. **pay funeral expenses of the participant's non-dependent adult son** - the distribution is allowable because it is for an extraordinary and unforeseeable circumstance and is substantially similar to the need to pay for funeral expenses of a dependent.
3. **pay credit card debt** - the distribution is **not allowable** because it is not due to an extraordinary and unforeseeable circumstance or the result of events beyond the participant's control.

In addition to 457(b) plans, the examples and related rules cited in the ruling also apply to emergency distributions from a nonqualified deferred compensation plan subject to Code §409A.

Extension of Amortization Periods for Multiemployer Plans

[Revenue Procedure 2010-52](#) describes how a multiemployer plan sponsor may request an extension under Code [§431\(d\)](#) of its plan's unfunded liability amortization period. Plan sponsors may request an extension under Code §§431(b)(2)(B) or (b)(4) either as an:

- automatic extension – by including an actuarial certification and requesting an extension of no more than 5 years; or
- alternate extension – requesting an extension of no more than 10 years minus the amount of any automatic extension.

Revenue Procedure 2010-52:

- updates [Revenue Procedure 2008-67](#) by describing the special amortization rule under Code §431(b)(8)(A);
- details the information a plan sponsor must include in an automatic and alternate extension application;
- adds the [Pension Benefit Guaranty Corporation](#) to the list of affected parties who must receive notice of the application;
- includes a Model Notice of Application for Amortization Extension, with a "Plain Language" section;
- extends the time that plan sponsors have to submit an application until the 15th day of the third calendar month following the last day of the first plan year for which the extension is intended to take effect; and
- changes the interim effect of the amortization extension application.

Revenue Procedure 2010-52 is generally effective for extension applications submitted on or after January 1, 2011. However, if the IRS has not yet ruled on a plan's application for an automatic 5-year extension and the actuary certifies prior to January 1, 2011, the actuary may under certain conditions treat the application as approved and use the extended amortization period.

Modification of Group Trust Rules

[Revenue Ruling 2011-1](#) revises the general rules for group trusts and provides model language for the changes. It also extends transition relief under [Revenue Ruling 2008-40](#) for Puerto Rico Internal Revenue Code §1165 qualified plans to January 1, 2012.

This revenue ruling allows assets of:

- Code [§403\(b\)\(7\)](#) custodial accounts,
- Code §403(b)(9) retirement income accounts, and
- Code §401(a)(24) governmental plans

to be pooled together after January 10, 2011, in a group trust with the assets of Code [§401\(a\)](#) and [§457\(b\) governmental plans](#), and [IRAs](#) without affecting the group trust's or participating separate group trust retiree benefit plan's tax status, as long as the group trust meets certain requirements.

We're Glad You Asked!

Jim, a participant in our retirement plan, has requested a second plan loan. Jim's vested account balance is \$80,000. He borrowed \$27,000 eight months ago and still owes \$18,000 on that loan. How much can he borrow as a second loan? Would it benefit him to repay the first loan before requesting a second loan?

Jim will only be able to take a second loan if your plan's terms allow it. You'll find how to determine the maximum amount Jim may borrow in Code [§72\(p\)\(2\)\(A\)](#). The law treats the portion of the loan that exceeds the maximum amount as a distribution. Generally, any previously untaxed amount of the distribution is taxable. We'll use the facts in your question to calculate Jim's maximum allowable loan balance.

The new loan *plus the outstanding balance of all other loans* cannot exceed the lesser of:

1. \$50,000, reduced by the excess of the highest outstanding balance of all Jim's loans during the 12-month period ending on the day before the new loan (in this example, \$27,000) over the outstanding balance of Jim's loans from the plan on the date of the new loan (in this example, \$18,000), or
2. The greater of \$10,000 or 1/2 of Jim's vested account balance.

Maximum second loan if amount still owed on first loan

Jim's current loan balance is \$18,000. This amount *plus the new loan* cannot exceed the *lesser* of:

1. $\$50,000 - (\$27,000 - \$18,000) = \$41,000$, or
2. $\$80,000 \times 1/2 = \$40,000$

Jim's total permissible balance is \$40,000, of which \$18,000 is an existing loan balance. This leaves a new maximum permissible loan amount of \$22,000 ($\$40,000 - \$18,000$).

Maximum second loan if first loan repaid

Because the law bases Jim's maximum loan on all of his loans during the 12 months prior to the new loan, there isn't a significant advantage for Jim to pay off his first loan before requesting a second. If Jim repaid the \$18,000 before applying for the second loan, he would be limited to the lesser of:

1. $\$50,000 - (\$27,000 - 0) = \$23,000$, or
2. $\$80,000 \times 1/2 = \$40,000$

In this case, the maximum permissible loan amount would be \$23,000.

Additional Resources

[Treasury Regulations §1.72\(p\)-1](#)
[Retirement Plans FAQs regarding Loans](#)

Exam Priorities...With Monika Templeman -Today's Discussion: EP is Spanning the Globe with International Efforts

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, as you promised, international efforts in Employee Plans are moving forward.

Yes, I am very pleased that EP has expanded our international presence. International issues are an IRS-wide priority as is improving large corporations' and high-wealth individuals' compliance with tax law. We continue to work closely with the IRS's Large Business and International Division (LB&I) to address international issues involving retirement plans, to improve examination coverage and to develop voluntary compliance programs in the U.S. territories. Retirement plans range from those of multi-national corporations to IRAs maintained by retirees overseas, and everything in-between. The impact of non-compliance left unchecked can be costly to plan sponsors and individuals, whether in the U.S. or overseas.

Let's begin talking specifics. What's the status of your Puerto Rico efforts?

Our Hacienda Project with Puerto Rico continues to be a success. We provided an extensive training program for the Hacienda Project and audited about 50 dual jurisdiction plans with Puerto Rico. We are working with the Hacienda to establish a voluntary compliance program for retirement plans. We're also establishing an information reporting system and referral process for them to use. In the near future, we'll have Hacienda-related information on www.irs.gov/retirement.

Are you expanding your international efforts to other locations?

We completed a Memorandum of Understanding to conduct audits with Virgin Islands, started these audits, and will continue to help them with training and voluntary compliance efforts. I foresee memorandums for other locations as well.

The Employee Plans Compliance Unit (EPCU) has launched two international project compliance checks. Can you describe these projects?

The first project involves [domestic trusts](#). It's our goal to determine the total number of existing domestic trusts maintained by foreign entities, verify compliance and check whether they can be identified by their EIN (usually beginning with the number 98).

The second project involves [foreign distributions](#) from retirement plans. EPCU is contacting a random sample of individuals with an address outside the U.S. or in a U.S. territory, who received a distribution from a retirement plan or IRA and who may not have reported the distribution or paid the 10% early distribution tax under Code §72(t). We asked these individuals to provide information so we could determine whether they properly included the distribution, as reported on the Form 1099-R issued to them, on their tax return and paid the correct tax due, if any.

We'll post summary reports on both projects on the EPCU Web page when they're completed.

Are international plan issues prevalent in large case audits?

We're finding many global issues in our large cases. Employee Plans Team Audit (EPTA) currently has more than 20 large case examinations in process with international issues, including referrals from LB&I. We continue to collaborate with LB&I to identify complex international transactions and target areas of significant risk and potential abuse impacting retirement plans.

Do agents receive special training before working these examinations or compliance checks?

We developed a two-year international training plan and are focusing on new training needs so agents can identify complex international transactions, and recognize significant risk target areas impacting potential abuse in retirement plans.

Does the corporate approach for training and examinations work best?

Absolutely. Together, we're working to ensure appropriate use of IRS-wide customer-tailored strategies to provide targeted guidance and outreach. We aim to strengthen our partnership with tax professionals and third parties to ensure effective international tax administration.

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 homepage for updates.

Target Date Retirement Fund Disclosures

On November 30, DOL/EBSA published a [proposed rule](#) to enhance target date retirement fund disclosures. The proposed rule would amend the "qualified default investment alternative regulation" and the "participant-level disclosure regulation" to provide more specificity regarding the information that must be disclosed to participants and beneficiaries concerning investments in target date funds.

The proposed amendments require new disclosures about the design and operation of target date or similar investments, including an explanation of:

- The investment's asset allocation
- How that allocation will change over time, with a graphic illustration
- The significance of the investment's "target" date

The proposed amendments also require a statement concerning the risk that a participant investing in a TDF may lose money in that investment, even close to retirement.

Comments on the proposed regulation should be directed to the U.S. Department of Labor, Employee Benefits Security Administration, Room, N5655, 200 Constitution Ave., NW, Washington, DC 20210, Attention: TDF Amendments; or electronically to e-ORI@dol.gov or at <http://www.regulations.gov>. Comments must be received by January 14, 2011.

Annual Funding Notice Requirement

On November 18, DOL/EBSA published a [proposed rule](#) pursuant to the Pension Protection Act to implement the annual funding notice requirement under ERISA §101(f).

The proposed regulation requires administrators of all defined benefit plans that are subject to Title IV of ERISA to provide an annual funding notice to the Pension Benefit Guaranty Corporation, each plan participant and beneficiary, each labor organization representing such participants or beneficiaries and, in the case of a multiemployer plan, to each employer that has an obligation to contribute to the plan. Prior to implementation of the PPA, only multiemployer plans were required to disclose any funding information.

An estimated 29,500 plans covering approximately 44 million participants and beneficiaries are subject to these disclosure requirements. Among other information, a funding notice must include the plan's funding target attainment percentage or funded percentage, as applicable, over a period of time.

The proposed regulation contains [model notices for single employer plans](#) and for [multiemployer plans](#).

Definition of "Fiduciary" of Employee Benefit Plans

On October 22, DOL/EBSA published a [proposed rule](#) to update the definition of "fiduciary" to more broadly define the term as a person who provides investment advice to plans for a fee or other compensation.

The proposed rule would amend a 1975 regulation that defines when a person providing investment advice becomes a fiduciary under ERISA. The proposed amendment would update that definition to take into account changes in the expectations of plan officials and participants who receive advice, as well as the practices of investment advice providers.

The proposal notes that the 1975 rule's approach to fiduciary status may inappropriately limit DOL/EBSA's ability to protect plans, participants and beneficiaries from conflicts of interest that may arise from today's diverse and complex fee practices in the retirement plan services market. The proposed rule is designed to remedy this limitation, and protect plan officials and participants who expect unbiased advice, by giving a broader and clearer understanding of when individuals providing such advice are subject to ERISA's fiduciary standards.

Improving Transparency of Fees and Expenses to Workers with 401(k)-type Retirement Plans

On October 20, DOL/EBSA published a [final rule](#) to give the estimated 72 million participants covered by 401(k)-type retirement plans greater information regarding the fees and expenses associated with their plans in order to better manage their retirement savings.

Many 401(k)-type plans allow workers to make their own investment decisions. Current law does not require that all workers be given the information they need to make informed investment decisions or, when information is given, that it is furnished in a user-friendly format. This rule will ensure that all workers who direct their plan investments have access to the information they need to make informed decisions regarding the investment of their retirement savings, including fee and expense information. Under the rule, workers will receive this information in a format that enables them to meaningfully compare the investment options under their plans.

The final regulation requires plan fiduciaries to:

- Give workers quarterly statements of plan fees and expenses deducted from their accounts.
- Give workers core information about investments available under their plan including the cost of these investments.
- Use standard methodologies when calculating and disclosing expense and return information to achieve uniformity across the spectrum of investments that exist in plans.
- Present the information in a format that makes it easier for workers to comparison shop among the plan's investment options.
- Give workers access to supplemental investment information in addition to the basic information required under the final rule.

The proposed rule includes a [model comparative chart](#).

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](#) homepage.

PBGC Insights

Reportable Events Guidance for 2011 Plan Years: On December 3, 2010, PBGC issued [Technical Update 10-4](#), extending the reportable events guidance provided in [Technical Update 09-4](#) for 2011 plan years. PBGC expects to issue a final rule amending its reportable events regulation in 2011.

Multiemployer Plans – Funding Relief Notice to PBGC: IRS [Notice 2010-83](#) (Q&As N-5 and N-6) tells multiemployer plans how to inform PBGC when applying for funding relief under the Pension Relief Act of 2010. Plans must inform PBGC within 30 days after the date the plan sponsor formally decides to apply, or by January 18, 2011, whichever is later.

Benefit Restrictions – Updated Present Value of PBGC Maximum Guarantee: The present value of the maximum guarantee for purposes of Code §436(d)(3)(A)(ii) and ERISA §206(g)(3)(C)(i)(II) is changing for 2011 (even though PBGC's maximum guarantee is not increasing). [Technical Update 07-04](#) describes how to determine the present value and explains that a table will be posted for each calendar year. On October 26, 2010, PBGC posted the [2011 table](#).

2011 Premium Filings:

- The 2011 premium payment instructions are almost identical to the filing requirements for 2010. Key items to note:
 - No flat-rate premium change. The flat-rate premium for 2011 remains \$35 per participant for single-employer plans and \$9 per participant for multiemployer plans.
 - The credit card option has been eliminated. You may still make premium payments online through My Plan Administration Account (My PAA), using e-payment options of Automated Clearing House (ACH) or Internet Check.
- The 2011 premium payment instructions, with illustrative forms for Estimated Flat-rate filing and Comprehensive filing, will be posted on PBGC's [Premium Payment Instructions and Addresses](#) Web page in December 2010.
- Both Estimated Flat-rate filings and Comprehensive filings for plan years beginning in 2011 may be electronically submitted via My PAA starting early January 2011. E-filing information via My PAA (e.g., FAQs and Demos) is on the [Online premium filing \(My PAA\)](#) page of PBGC's website.

4010 Filings: The first ERISA 4010 filings for the 2010 information year are due April 15, 2011. Filings are prepared on a controlled group basis. The plan's contributing sponsor and each member of the sponsor's controlled group must make a 4010 filing if (assuming no waivers or exemptions):

1. Any plan maintained by a member of the controlled group has attained 80% or less of its funding target, **or**
2. Any member of the controlled group fails to make a required payment to a plan within 10 days of its due date and, as a result, the conditions for a Code §430(k) lien have been met, **or**
3. Any plan maintained by a member of the controlled group has been granted one or more minimum funding waivers under Code §412(c) totaling more than \$1 million, any portion of which is still outstanding.