

Employee Plans News

Issue 2014-3, March 4, 2014

Sign Form 8905, *Certificate of Intent to Adopt a Pre-approved Plan*, by March 31, 2014, if you're a Cycle C individually designed defined benefit plan and want to adopt and [extend your pre-approved](#) plan's six-year cycle

Correction options for 457(b) plans – EP Voluntary Compliance is not available for [form errors](#)

Employee Plans Compliance Unit

- You can now [e-fax or email](#) your defined benefit plan Annual Actuarial Certifications
- Don't make your [401\(k\) plan look nonqualified](#) by using the wrong pension feature code
- Make sure you complete [all steps when terminating](#) your plan

2013 Cumulative List of Changes in Plan Qualification [phone forum](#) (March 13, 2014, at 2 p.m. EDT) will discuss the changes sponsors and practitioners must make to their plans

SIMPLE IRA plan tips for [sole proprietors](#) – where to deduct, when to contribute and how to calculate the owner's contributions

MyRA program [information](#) Fact Sheet, FAQs and video in English and Spanish

[New Publication 5136](#), *IRS Services Guide* – where individual taxpayers and professionals can get help

Updated

- [PBGC Insights](#)
- [SEP Fix-It Guide](#)
- [SIMPLE IRA Plan Fix-It Guide](#)
- [Alert Guidelines, Explanations & Plan Deficiency Paragraphs](#) for Cycle C Submission Period (02/01/2013 – 01/31/2014)
- [2013 Form 8955-SSA](#), *Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits* ([instructions](#))
- [Publication 560](#) (2013), *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*
- [Publication 571](#) (01/2014), *Tax-Sheltered Annuity Plans (403(b) Plans) For Employees of Public Schools and Certain Tax-Exempt Organizations*
- [Publication 575](#) (2013), *Pension and Annuity Income*
- [Publication 590](#) (2013), *Individual Retirement Arrangements (IRAs)*

Deadline Extended For Pre-Approved Defined Benefit Plans

The Internal Revenue Service has extended the deadline until February 2, 2015, to submit on-cycle opinion and advisory letter applications for pre-approved defined benefit plans for the second six-year remedial amendment cycle ([Announcement 2014-4](#)). Without this extension, the applications for these plans would have been due by January 31, 2014.

In response to recent requests from the employee benefits community, the IRS intends to expand the defined benefit pre-approved plan program to include pre-approved plans with certain cash balance features. This extended deadline will give the IRS time to develop the necessary language and tools to process pre-approved cash balance plans and for practitioners to prepare their plans for submission.

The extended deadline of February 2, 2015, applies to all pre-approved defined benefit plans, even if they won't be modified to include cash balance features. These plans include:

- mass submitter lead and specimen plans;
- word-for-word identical plans;
- master and prototype minor modifier placeholder applications; and
- non-mass submitter plans.

The IRS will continue to review the opinion and advisory letter applications for these plans based on qualification items in the [2012 Cumulative List](#).

Guidance will be issued in the future to announce:

- cash balance features that will be permitted under the pre-approved program, and
- when applications for opinion and advisory letters may be submitted for plans with cash balance features.

Until the future guidance is issued, plans with cash balance features should not be submitted under the pre-approved program.

Practitioners submitting applications for opinion and advisory letters for a pre-approved defined benefit plan must pay the user fees listed in:

- [Rev. Proc. 2013-8](#) if they do not intend to include cash balance features in the plan and choose to submit the application by January 31, 2014; or
- [Rev. Proc. 2014-8](#) if they submit the application after January 31, 2014.

Form 8905 deadline extended for individually designed Cycle C plans

Sponsors of individually designed defined benefit plans that intend to adopt a pre-approved plan document in the future may establish eligibility for the six-year remedial amendment period for pre-approved plans by completing [Form 8905](#), *Certification of Intent to Adopt a Pre-approved Plan*. Cycle C individually designed plan sponsors would generally have until January 31, 2014 (the on-cycle submission deadline for Cycle C individually designed plans) to either file a request for a determination letter as an individually designed plan or complete Form 8905. However, [Announcement 2014-4](#) extends the deadline for completing Form 8905 for Cycle C plans to March 31, 2014.

Comments

Please [email](#) us any comments you may have on the expansion of the pre-approved defined benefit program to include plans with cash balance features, for example:

- comments on program parameters, and
- proposals for sample plan language.

Please direct your email to the attention of Don Kieffer.

Additional resources

- [Apply for an Opinion or Advisory Letter - Pre-Approved Retirement Plans](#)
 - [Tips for Expediting the Determination, Opinion and Advisory Letter Process](#)
 - [FAQs](#) on determination, opinion or advisory letter issues
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457(b) Plan Submissions to Voluntary Compliance

Some plan sponsors, under limited circumstances, may submit requests for voluntary correction to the IRS for their Code Section 457(b) retirement plans ([Revenue Procedure 2013-12, Section 4.09](#)). The IRS's Employee Plans Voluntary Compliance (VC) team will consider these requests on a provisional basis outside of the Employee Plans Compliance Resolution System ([EPCRS](#)). VC retains complete discretion to accept or reject these requests. If accepted, VC will issue a special closing agreement. VC will not consider any issue relating to the form of a written 457(b) plan document. Also, governmental plan sponsors do not have to make a submission to VC to voluntarily fix problems with their 457(b) plans.

VC will not process submissions that involve the form of the written 457(b) plan

In the past year, we received several submissions alleging that a written 457(b) plan was not timely adopted, or amended for some tax law or income tax regulation. VC will not issue closing agreements for these matters and will decline to process these requests and refund any payments. Plan sponsors are reminded that the remedial amendment concepts and definitions in [Rev. Proc. 2007-44](#) do not apply to 457(b) retirement plans.

Plan sponsors who want the IRS to review their 457(b) plan document or consider any other document form issue may request a private letter ruling. See [Rev. Proc. 2014-4](#) (or annual successor revenue procedure) for details.

Governmental plan sponsors can self-correct

Governmental plan sponsors may self-correct and fix their 457(b) plans if they did not comply with the Code or regulations. Governmental entities have until the first day of the plan year that begins more than 180 days after the IRS notifies them of the failure to correct their plan

failures (IRC Section [457\(b\)\(6\)](#) and Treas. Regs. Section [1.457-9\(a\)](#)). Considering the time governmental entities have to self-correct plan errors, they may not need to make voluntary submissions to the IRS in most cases.

If a governmental plan sponsor needs to request additional relief or simply wants IRS approval for a correction method for a non-plan document failure, they may make a submission to VC as permitted by Rev. Proc. 2013-12, Section 4.09. The plan sponsor must indicate that they are aware of the self-correction rule in IRC Section 457(b)(6) and Treas. Reg. Section 1.457-9, but still wants to proceed with a written VC application. Plan sponsors should include this statement and [Form 8950](#), *Application for Voluntary Correction Program (VCP)* ([instructions](#)) in their submission.

Annual Multiemployer Actuarial Certification – Can Now be Emailed or E-Faxed

Actuaries may now submit the Annual Actuarial Certification by email or e-fax to the Employee Plans Compliance Unit. The certification must be:

- completed no later than 90 days after the beginning of the plan year.
- submitted annually using only one of these methods:
 - **Email:** EPCU@irs.gov
 - **E-Fax:** 855-215-7122
 - **Mail:**
Internal Revenue Service
Employee Plans Compliance Unit
Group 7602 (TEGE:EP:EPCU)
230 S. Dearborn Street
Room 1700 - 17th Floor
Chicago, IL 60604

The IRS can't guarantee security for email submissions.

The EPCU lists more information about the [Annual Actuarial Certification](#) and actions they take when [certifications aren't received](#).

Wrong Pension Feature Codes on 401(k) Plans

During the 401(k) Nonqualified Plans Project, the Employee Plans Compliance Unit ([EPCU](#)) looked at whether 401(k) plan sponsors selected the wrong pension feature on their Form 5500-series return that described their plans as nonqualified.

Project goals

We designed the 401(k) Nonqualified Plans Project to learn:

1. If plan sponsors incorrectly selected pension feature codes 2J and 3C on their Form 5500-series return, which indicate they didn't intend their 401(k) plans to be qualified plans.
2. If plan sponsors selected the wrong codes, why they made this mistake.

Background

During the 401(k) Compliance Check Questionnaire Project, the EPCU discovered that some sponsors filed their 5500 return showing their plan was both a nonqualified plan and a 401(k) plan. The Internal Revenue Code requires a 401(k) plan to be a qualified plan.

Project Results

Overall, the project showed that sponsors of the sampled 401(k) plans made mistakes when describing their plan characteristics and listed 3C, showing their plan was a 401(k) plan not intended to be qualified under the Internal Revenue Code.

- Pension feature code 2J means the plan has a Code section 401(k) feature – A cash or deferred arrangement described in IRC Section 401(k) is part of a qualified defined contribution plan that allows employees to elect to defer part of their compensation to the plan or to receive these amounts in cash.
- Pension feature code 3C means the plan not intended to be qualified – A plan not intended to be qualified under IRC Sections 401, 403 or 408.

Some sponsors incorrectly selected pension feature code 2J when their plan was a profit-sharing plan, but not a 401(k) plan. A 401(k) plan is a type of profit-sharing plan, but a profit-sharing plan isn't necessarily a 401(k) plan.

The few plans that correctly indicated they were nonqualified 401(k) plans were those plans only intended to be qualified by the Hacienda, Puerto Rico's tax authority, and not under the Internal Revenue Code.

Make sure you understand the different pension feature codes that describe a plan's characteristics. Selecting an incorrect code on your 5500 return could result in an EPCU compliance check or an examination of your plan.

Planning tips

Review your 401(k) plan to see if you used the correct pension feature codes on your Form 5500. If you've made a mistake, file an amended return electronically with the Department of Labor using the EFAST2 system. If you filed Form 5500-EZ, paper file your amended return with IRS.

Make sure you correct your plan administrative procedures to avoid making the same mistake again. It may be helpful to have at least two people review your 5500 return before you file it.

Contact us

If you have questions about this project, [email](#) us and include "Nonqualified 401(k) Plans" in the subject line.

Additional resources

- [Form 5500 instructions](#)
- [Form 5500-EZ instructions](#)

EPCU Project Finds Plan Sponsors Don't Complete All Steps in Termination Process

During its Termination Project, the Employee Plans Compliance Unit ([EPCU](#)) looked at whether plan sponsors completed all the necessary steps after filing a [Form 5500-series](#) return showing they had adopted a resolution to terminate the plan.

Project goals

We designed the Termination Project to learn if sponsors who indicated they adopted a resolution to terminate their plan:

1. Completed the termination process,
2. Complied with Revenue Ruling 89-87 for their wasting trusts,
3. Filed a final Form 5500-series return, and
4. Distributed all trust assets as soon as administratively feasible.

Background

The EPCU discovered that some plan sponsors who indicated they had adopted a resolution to terminate their plan didn't file a final Form 5500-series return. In general, plan sponsors must continue to file a Form 5500-series return for their terminated plan until the last return filed is marked "final return/report" and shows zero assets at the end of that plan year. This is

required even if the sponsor was exempt from filing a Form 5500-EZ (the annual return of a one-participant retirement plan) in previous years.

Project results

Over 75% of the sampled sponsors showed that, although they took additional steps to terminate their plan beyond adopting a resolution to terminate, they didn't complete the termination process.

- Didn't file a Form 5500-series return marked as the 'final return/report' showing zero assets at the end of the plan year

Being in the process of terminating doesn't eliminate the Form 5500-series filing requirement. Sponsors must continue filing their annual return until all plan assets are distributed.

- Distributed all plan assets but didn't mark the Form 5500-series return as final

Sponsors can correct this by filing an amended return. Review your Form 5500 return carefully before filing to prevent errors.

- Terminated the plan but weren't aware there were still assets in the trust

All plan assets need to be distributed for the plan termination to be complete.

- Took a long time to distribute plan assets because of difficulty locating participants and beneficiaries

Many plan sponsors weren't aware of the requirements and procedures for locating [missing participants](#) and beneficiaries. Plan sponsors may use the Department of Labor's [Field Assistance Bulletin 2004-2](#) for guidance in locating missing individuals for benefit distributions. The IRS no longer provides letter-forwarding services ([Revenue Procedure 2012-35](#)).

- Distributed all plan assets but didn't indicate zero assets at the end of the plan year on their final Form 5500 series return

Sponsors can correct this by filing an amended return.

- Didn't distribute all plan assets as soon as administratively feasible after the plan termination date

Some plan sponsors had difficulty distributing certain types of plan assets, such as real estate or partnership investments. Generally, a distribution which isn't completed within one year following the date of plan termination will be presumed not to have been made as soon as administratively feasible unless facts and circumstances show otherwise

(Revenue Ruling 89-87, 1989-2, C.B. 81). If sponsors don't distribute all plan assets as soon as administratively feasible, the IRS considers the plan to be ongoing.

If sponsors don't complete all termination actions, there is potential for [plan disqualification](#), discrimination in favor of highly compensated employees, abusive tax avoidance, and administrative penalties.

Other filing errors

- Didn't actually terminate their plan

Some plan sponsors incorrectly marked line 5a on the Schedule H (Financial Information) or Schedule I (Financial Information – Small Plan) of their Form 5500-series return to indicate they had adopted a resolution to terminate the plan.

- Mistakenly indicated the plan terminated when it was frozen

These sponsors weren't aware of the differences between a frozen plan and a terminated plan. In a frozen plan, participants don't accrue any additional benefits (whether because of service or compensation) except under special circumstances. A frozen plan must continue to meet annual information reporting and plan qualification requirements including having the plan sponsor amend the plan for current law by the required deadlines; otherwise, the plan may lose its qualified status for tax benefits.

- Mistakenly used the same plan number from a previous or different plan

Once plan sponsors use a plan number, they should continue to use it for that plan on all future filings with IRS, DOL and PBGC. Even if the plan sponsor terminated their plan, they can't use the same plan number for any other plan.

- Processing errors that occurred before the implementation of the DOL electronic filing system

Plan sponsors now must file Forms 5500 and 5500-SF electronically using DOL's EFAST2 web-based filing system or through an EFAST2 approved vendor. Plan sponsors paper file the Form 5500-EZ with the IRS. Plan sponsors can't paper file Forms 5500 or 5500-SF. For more information, see DOL's [EFAST2](#) website or the IRS Form [5500 corner](#).

Planning tips

Review your terminated plan to see if you've finished all the steps in the termination process including:

- Filing all current and prior Form 5500-series filings
- Filing a final Form 5500-series return showing zero assets

- Distributing all assets
- Finding all missing participants and beneficiaries

You should also recognize the differences between active, frozen, and terminated plans.

You should correct any errors you discover and amend your return, if needed. Correct your plan administrative procedures so the mistakes don't happen again. It may be helpful to ask at least two people to review your 5500 return before you file it.

Contact us

If you have questions about this project, [email](#) us and include "Termination project" in the subject line.

Additional resources

- [Form 5500 series and instructions](#)
- [Form 5500-EZ](#) and [instructions](#)

SIMPLE IRA Tips for the Sole Proprietor

If you are a Schedule C filer (a sole proprietor) and have a SIMPLE IRA plan, you are treated as both an employer and an employee when calculating and reporting your own plan contributions and limits. Here are some tips.

Where do I report the contributions I make for myself to my SIMPLE IRA?

Report both your salary reduction contributions and employer contributions (non-elective or matching) for yourself on line 28 of Form 1040.

This is different from reporting employer contributions (non-elective or matching) for your common-law employees, which you would do as a business expense on your Schedule C.

When must I deposit the contributions I make for myself to my SIMPLE IRA?

You must deposit your salary reduction contributions within 30 days after the end of the tax year. For most people, this means salary reduction contributions for a year must be made by January 30 of the following year.

You must deposit your employer contributions by the due date (including extensions) of your federal income tax return for the tax year that includes the last day of the calendar year for which you made the contributions. For most people, this means employer contributions for a year must be made by April 15 of the following year, or by October 15 if on extension.

What is the maximum contribution I may make for myself to my SIMPLE IRA?

Salary reduction contributions

You may defer up to \$12,000 in 2014 (adjusted for [cost-of-living](#) in later years). However, you may not exceed your net earnings from self-employment from the business sponsoring the SIMPLE IRA plan. If you are age 50 or over, you can make a catch-up contribution of up to \$2,500 in 2014 (adjusted for cost-of-living in later years).

Employer contributions

Employer contributions for yourself must be the same type and rate as the contributions you make for your common-law employees. You must either:

- match your salary reduction contributions dollar-for-dollar up to 3% of your net earnings from self-employment; or
- make a non-elective contribution of 2% of your net earnings from self-employment that do not exceed \$260,000 for 2014. This amount was \$255,000 for 2013, and it is adjusted for cost-of-living in later years.

Your net earnings from self-employment are the amount you report on line 4 of Short Schedule SE or line 6 of Long Schedule SE (Form 1040) before you subtract any SIMPLE IRA plan contributions you make for yourself.

Example

Your business sponsors a SIMPLE IRA plan. In 2013, your employee, John, earned \$25,000 and chose to defer 5% of his salary. Your **net earnings from self-employment** were \$40,000 (as reported on your Form 1040, Schedule SE), and you chose to defer 10% of your earnings to your SIMPLE IRA. You elected to make 3% matching contributions for 2013 for all your employees.

The total SIMPLE IRA plan contribution for John is \$2,000.

John's salary reduction contributions ($\$25,000 \times 5\%$)	\$1,250
Employer matching contribution ($\$25,000 \times 3\%$)	\$ 750
Total contributions	\$2,000

You deduct John's contribution on your Form 1040, Schedule C. You must deposit John's \$1,250 salary reduction contributions to his SIMPLE IRA:

- - at the earliest date on which you can reasonably segregate them from your business' general assets, but no later than 30 days following the month in which John would have otherwise received the money; or
 - within 7 business days after John would have otherwise received the money, to meet the Department of Labor's 7-day safe harbor for SIMPLE IRA plans with fewer than 100 participants.

You must deposit the \$750 employer matching contribution no later than the due date of your federal income tax return, including extensions.

Your total plan contribution is \$5,200.

Salary reduction contributions (\$40,000 × 10%)	\$4,000
Employer matching contribution (\$40,000 × 3%)	\$1,200
Total contributions	\$5,200

You deduct the plan contributions for yourself on line 28 of your Form 1040. You must deposit your \$4,000 salary reduction contribution to your SIMPLE IRA no later than January 30, 2014. You must deposit the \$1,200 employer matching contribution no later than the due date of your federal income tax return, including extensions.

Additional resources

- [Self-Employed Individuals – Calculating Your Own Retirement-Plan Contribution and Deduction](#)
 - [Publication 560](#), *Retirement Plans for Small Business*
 - [Publication 590](#), *Individual Retirement Arrangements (IRAs)*
 - [FAQs](#) – SIMPLE IRA Plans
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PBGC Insights

Multiemployer Plans - notice and valuation requirements proposed rule - On Jan. 29, 2014, we published a [proposed rule](#) that would implement changes to PBGC's multiemployer regulations. The changes were developed as a result of our regulatory review. The proposal would:

- reduce the number of actuarial valuations required for certain small terminated but not insolvent plans,
- shorten the advance notice filing requirements for mergers in situations that do not involve a compliance determination, and
- remove certain insolvency notice and update requirements.

Comments on the proposed rule are due by March 31, 2014.

Premium final rule - On Jan. 3, 2014, we published a [final rule](#) moving the flat-rate premium due date for large single-employer and multiemployer plans (500 or more participants) to the variable-rate premium due date for single-employer plans, starting with the 2014 plan year. Large calendar-year plans' 2014 flat-rate premiums will be due Oct. 15, 2014, instead of Feb. 28, 2014. This rule finalizes part of a [proposed rule](#) to:

- simplify premium due dates,
- coordinate the premium due date for terminating plans with the termination process,
- make conforming and clarifying changes to the variable-rate premium rules,
- give small plans more time to value benefits,
- grant relief from penalties, and
- make other changes.

We expect to publish a final rule addressing the rest of the proposed rule, post the 2014 premium payment instructions (including illustrative forms) and make MyPAA available for 2014 filings before the first filing deadline of Oct. 15, 2014. Until then, we are not accepting 2014 filings.