

Employee Plans News

Issue No. 2015-1, February 2, 2015

[Reference lists of changes in plan qualification requirements](#) - tools to help you keep your plan document up-to-date

[Send your applications](#) for 403(b) pre-approved plans to Cincinnati

[Penalties may be waived](#) for delinquent Forms 5500EZ and some Form 5500-series

EPCU projects

- [Fraud and internal controls](#) - fraud linked to weak internal controls and risky investments
- [Reporting taxable distributions](#) - include early distributions as income and on Form 5329
- [Form 5500](#) and other forms' line item errors

Forms and Pubs

[Form 8606](#) - use to report: nondeductible contributions you made to traditional IRAs; nondeductible contributions to traditional IRAs; IRA distributions; and IRA conversions

New:

- [Form 1098-Q](#), *Qualifying Longevity Annuity Contract Information*
- [Publication 590-A \(2014\)](#), *Contributions to Individual Retirement Arrangements (IRAs)*
- [Publication 590-B \(2014\)](#), *Distributions from Individual Retirement Arrangements (IRAs)*

Updated:

- [Form 1099-R](#), *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.* ([Instructions](#))

Recent internal directives

- [Pension Equity Plan \(PEP\) Accrued Benefits](#) (Oct. 9, 2014)
- [Applying Section 415 Limits to Governmental Defined Benefit Plans with Deferred Retirement Option Plan Features](#) (Dec. 8, 2014)
- [Realignment of Technical Work between the Tax Exempt and Government Entities Division \(TE/GE\) and Office of Associate Chief Counsel \(Tax Exempt and Government Entities\)](#) (Jan. 7, 2015)

[Limit your search results on IRS.gov](#) to the Retirement Plans Web pages: click on Advanced, enter your search terms in the "Find results" fields, and type "http://www.irs.gov/Retirement-Plans" in the "Domain" field

Reference Lists of Changes in Qualification Requirements for Retirement Plans

Reference lists are tools to help you ensure that your plan document incorporates all relevant mandatory and optional changes in plan qualification requirements.

Fillable reference lists

You may use these fill-in lists.

- [2014](#)
- [2013](#)
- [2012](#)
- [2011](#)
- [2010](#)

Which lists do I use?

Each reference list contains items that are new to the [cumulative list](#) for that year. For example, the 2014 Reference List includes those items that first appeared on the 2014 Cumulative List of Changes in Plan Qualification Requirements.

- **Determination letter applications** – For an individually designed plan submitted on Form 5300, complete the five reference lists for the five years of your remedial amendment cycle (RAC). These are the years covered by the cumulative list applicable to your submission. For an employer adopting a volume submitter plan and submitting on Form 5307, complete the six reference lists for the six years in your RAC.

Example: Your plan is an individually designed Cycle E filer and your Form 5300 determination letter application is due January 31, 2016. Your plan will be reviewed based on the 2014 Cumulative List and the relevant reference lists are 2014, 2013, 2012, 2011, and 2010.

- **Interim amendments** - Complete each year's reference list to check whether your plan document is up-to-date. If you missed any relevant amendments, your plan may have a qualification failure and you must [correct this error](#).

How to complete

(1) If your plan document reflects a listed provision:

- Enter a checkmark in the “√” column.
- In the “Plan Section Reference” column, enter the specific numbered section(s) of your plan document that reflect the provision.
- In the “Date Amendment Signed” column, enter the date that the amendment implementing the plan change was signed. Include the adoption dates for all relevant amendments.

(2) If the provision doesn't require a plan amendment or isn't relevant to your plan type:

- Enter a checkmark in the "N/A" column.
- **Example:** an item relating to plan administration doesn't have to be reflected in the plan document.
- **Example:** an item pertaining solely to defined benefit plans will not be applicable to a profit-sharing plan.

Are reference lists required with a determination letter application?

Although not mandatory, we encourage you to include completed reference lists with your determination letter application. This will facilitate IRS review of your plan document.

Additional resources

- [Apply for a Determination Letter - Individually Designed Plans](#)
 - [Determination, Opinion and Advisory Letter for Retirement Plans - Update a Plan](#)
 - [Cumulative List of Changes in Retirement Plan Qualification Requirements](#)
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Address to File Applications for 403(b) Pre-approved Plans

Please send your applications for 403(b) pre-approved plans to:

Internal Revenue Service
Attn: Pre-Approved Plans Coordinator
Room 5106, Group 7521
P.O. Box 2508
Cincinnati, OH 45201-2508

Express Mail or a delivery service:

Internal Revenue Service
Attn: Pre-approved Plans Coordinator
550 Main Street
Room 5106, Group 7521
Cincinnati, OH 45202

Please note that the addresses in both Revenue Procedures 2013-22 and 2015-8 aren't correct.

Application reminders

- 403(b) pre-approved plan applications are due by April 30, 2015.
- Review the instructions in Revenue Procedures [2014-28](#), [2013-22](#) and the 403(b) List of Required Modifications. A modified 403(b) LRM is currently in clearance, but if you file prior to when we issue it, you'll still have an opportunity to adjust your plan language once it is available.

- Use separate checks for each type of filing. For example, send one check for volume submitter lead plans, another check for volume submitter word-for-word adopters and another check for non-mass volume submitter, etc.
 - Review Revenue Procedure 2015-8 for the appropriate [user fees](#).
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Delinquent Retirement Plan Returns

Your clients may qualify to file their business's past due retirement plan returns without paying late filing penalties. The IRS has two separate programs that waive certain late penalties.

Form 5500-EZ Late Filers Pilot Program

This program is for non-ERISA plans:

- covering only a 100% business owner or one or more partners, and their spouses (with no common law employee participants), or
- being maintained outside the U.S. primarily for non-resident aliens (foreign plans) that must annually file a report with the IRS.

The IRS will waive late filing penalties for:

- Form 5500-EZ, *Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan*, or
- Form 5500, *Annual Return/Report of Employee Benefit Plan*, if you were required to file this return because your non-ERISA plan didn't meet the Form 5500-EZ filing requirements for plan years before 2009.

Your client must file the past due returns by June 2, 2015, and comply with other [requirements](#) ([Revenue Procedure 2014-32](#)). No fees or other payments are required under the pilot program.

Form 5500 series returns and Form 8955-SSA

This relief is for all other plans (those covered by Title I of ERISA). The IRS has made a change in this program and will now only waive late filing penalties for filers who:

1. satisfy the Department of Labor's [Delinquent Filer Voluntary Compliance Program](#) requirements for:
 - Form 5500, *Annual Return/Report of Employee Benefit Plan*, or
 - Form 5500-SF, *Short Form Annual Return/Report of Small Employee Benefit Plan*;
2. file a paper Form 8955-SSA, *Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits*, (if applicable) with the IRS for the same delinquent tax year filings; and
3. meet certain other [requirements](#).

Additional resources

- [Form 5500 Corner](#)
 - [Form 8955-SSA Resources](#)
 - [Notice 2014-35](#)
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Preventing Fraud in Your Retirement Plan

When the Employee Plans Compliance Unit ([EPCU](#)) completed the [Fraud project](#), we found some surprising results.

Project goals

We reviewed Form 5500 series returns that reported fraud loss. We looked at:

- the circumstances surrounding the fraud loss,
- how the plan accounted for the loss,
- what actions were taken to recover the loss, and
- what actions were taken to prevent future losses from occurring.

Project results

We found a significant percent of plans experienced fraud losses for two main reasons:

- weak internal controls
- risky investments

Prevention

[Internal controls](#) are business processes designed to detect and prevent mistakes and fraud in the operation of your retirement plan. It's important that you establish administrative procedures to segregate plan duties and safeguard assets, especially in a small business environment when there are fewer employees to perform these tasks.

Strong internal controls are important for any size business or retirement plan. Good internal controls will help you:

- protect assets from accidental loss or loss from fraud,
- ensure the reliability and integrity of financial information,
- ensure compliance with various laws and regulations,
- promote efficient and effective operations, and
- accomplish the plan's goals and objectives.

Some helpful internal control steps you can take are:

- Ensure the plan's books and records are checked regularly by an outside third party
- Trace deposits and payments to original documents

- Have someone else review work when only one employee is in charge of plan operations
- Ensure your [fidelity bond](#) is current and in a sufficient amount
- Keep blank checks locked up
- Have outside professionals verify transactions
- Ensure any loans to third parties are in writing with all forms properly completed, adequately secured, and all interest payments made on time
- Reconcile bank, investment and account statements regularly
- Require two original signatures on checks or forms that involve plan assets
- Keep copies of plan documents including Form 5500 series returns and determination letters
- Ensure that payments are sent to correct vendors
- Request product and service providers promptly remove employees or trustees with signature authority after they retire or leave employment
- Verify participants who are supposed to receive loans or other distributions actually received them in the correct amounts

Regarding risky investments, the old maxim still applies. If it sounds too good to be true, it probably is. One of the purposes of a retirement plan is to accumulate money for when you retire. Investment returns of 35 – 40% are unlikely and may be indications of a Ponzi type pyramid scheme or other type of questionable scheme.

Risky investments may also expose you and your plan to additional taxes on [prohibited transactions](#) or [unrelated business income](#).

Some steps you can take to avoid getting involved in a risky investment are:

- Be prudent in your investments
- Question investments in hard-to-value assets including hedge funds and foreign assets
- Ensure that your investment advisors act according to your instructions and monitor their work regularly
- Consult with your benefits professional to ensure that you have administrative procedures in place to prevent fraud or dishonesty in your retirement plan.

What we've done

In some cases, we found there was no actual fraud. Instead, we learned:

- sponsors incorrectly entered fidelity bond information on the fraud line –
 - we're looking at ways to educate filers on how to complete their return, specifically the fidelity bond and fraud questions because they're listed consecutively on the return:
 - Was this plan covered by a fidelity bond?
 - Did the plan have a loss, whether or not reimbursed by the plan's fidelity bond that was caused by fraud or dishonesty?
- IRS or sponsor systemic errors incorrectly reported a fraud loss -
 - we corrected the software conversion error occurring in [EFAST2](#).

Planning tips

If you prepare the Form 5500 series return yourself, review it carefully to ensure that you didn't confuse the fidelity bond amount with a fraud or dishonesty loss. You must report the loss whether the plan recovered the loss through the fidelity bond or otherwise.

When a third party prepares your return, take time to review it and match your answers to the form's questions. The EPCU uses information on your Form 5500 series return to select project cases. Putting incorrect information on your return, or leaving something blank when there should be an entry, increases the likelihood that we may select you for an EPCU compliance check that you might've avoided.

Correction

If you find errors on the information reported on your return, fix these errors promptly by [amending the return](#). If you find errors in your plan's form or operation, fix them using our Employee Plans Compliance Resolution System ([EPCRS](#)).

Contact us

If you have questions about the Fraud project, [email](#) us and include "Fraud" in the subject line. Make sure to include your phone number and the best time to reach you, and we'll contact you with answers.

If you have general questions about retirement plans not related to EPCU projects, contact [EP Customer Account Services](#).

Additional resources

We have many resources to help you keep your retirement plan in compliance. Our resources can help you find and fix errors and avoid making them in the future.

- [Check-Ups](#)
- [Fixing Common Plan Mistakes](#)
- [Fix-It Guides](#)
- [A Guide to Common Qualified Plan Requirements](#)
- ["Maintaining Your Plan" Video](#)
- [What You Should Know About Your Retirement Plan](#) (Department of Labor)

Reporting Taxable Distributions

During the [Form 1099-R, Code Section 72\(t\) Project](#), the Employee Plans Compliance Unit ([EPCU](#)) found errors in reporting taxable distributions. In general, if you receive a distribution from a qualified retirement plan (including an involuntary cash-out), the part of the distribution you must include in income may also be an early distribution that's subject to a 10% additional tax unless you qualify for an [exception](#).

Project goals

The EPCU reviewed Forms 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*, marked as 'Early distribution, no known exception' (box 7, code 1). In most cases, these are distributions from a qualified retirement plan made to an individual under age 59½.

The EPCU then determined if the individuals reported on their Form 1040 tax returns the:

- taxable distributions, and
- additional 10% early distribution tax (IRC Section 72(t)).

Project results

We found almost 40% of the individuals made errors on their Form 1040 returns. Most individuals didn't qualify for an exception to the 10% additional tax on early distributions. The EPCU requested these individuals to properly report the distributions by amending their returns.

Preparation tips

If you receive a Form 1099-R with an amount in box 2a, "Taxable amount", you must include this amount as income on your individual tax return. You must also report:

- the additional tax on early distributions on [Form 5329](#), *Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts*, or
- an exception to the additional tax on Form 5329, line 2. Only use code 12 for "Other" if you meet one of the exceptions for "Other" shown in the [Form 5329 instructions](#).

If you take a hardship distribution from your retirement plan, you must pay the 10% additional tax on early distributions from qualified retirement plans unless you qualify for an exception.

Additional resources

- [Publication 575](#), *Pension and Annuity Income*
- [Publication 590-B](#), *Distributions from Individual Retirement Arrangements (IRAs)*

Avoid IRS Scrutiny – Review Your Form 5500 for Errors

In many Employee Plans Compliance Unit ([EPCU](#)) projects, we find mistakes when plan sponsors enter incorrect information on their Form 5500 series returns or information reports. We use information on these returns and reports to select cases for compliance checks.

Entering incorrect information on the return or report, or leaving a field blank when there should be an entry increases the likelihood that you'll be selected for an EPCU compliance check.

Examples of these types of errors on recent projects include:

1. [Plan Participants project](#) - we found sponsors incorrectly entered 0 participants or left that line item blank.
2. [Excess Deferral project](#) - we found filers incorrectly coded 403(b), 457 or non-qualified plan elective deferrals as 401(k) elective deferrals (box 12, code D) on their W-2, Wage and Tax Statement.
3. [Termination project](#) - we found sponsors incorrectly marked their 5500 return to show they:
 - Adopted a resolution to terminate the plan when they hadn't
 - Distributed all plan assets but didn't mark the return as the final return
 - Terminated the plan when it wasn't terminated
 - Distributed all plan assets but didn't mark zero assets at the end of the plan year
4. [Fraud project](#) - we found sponsors incorrectly entered the fidelity bond amount on the next line, which asks if the plan had a loss caused by fraud or dishonesty.
5. [Simplified Employee Pension \(SEP\) Plans project](#) - we found filers incorrectly reported rollover contributions as SEP contributions on their Form 5498, *IRA Contribution Information*, in box 8 instead of box 2.
6. [Hacienda project](#) - we found sponsors incorrectly entered the Puerto Rico related pension feature code 3J on their 5500 return when they should have entered 3C.
7. [Frozen Plans project](#) - we found sponsors entered pension feature code 1I, frozen defined benefit plan, on their 5500 return when their plan wasn't a defined benefit plan or frozen.

Planning Tips

If you prepare the 5500 return or information report yourself, look at each line item and related instructions with fresh eyes. Don't copy line item entries from year to year without reviewing them carefully to ensure that you didn't:

- Make an entry on the wrong line item
- Put an entry in a wrong box
- Leave a line blank that needs an entry
- Use an incorrect code.

When a third party prepares your return, take time to review it and match your answers to the form's questions. Consult your benefits professional to ensure that you have administrative procedures in place to prevent mistakes on your 5500 return and information reports.

Correction

If you find errors on a return or information report, fix these errors promptly by [amending the return](#) or filing a corrected information report. If you find errors in your plan's form or operation, fix them using our Employee Plans Compliance Resolution System ([EPCRS](#)).

Contact us

If you have questions about an EPCU project, [email](#) us and include the name of that project in the subject line. Make sure to include your phone number and the best time to reach you, and we'll contact you with answers.

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