

# 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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Calendar of EP Benefits Conferences

## EP Connections – Interview with Marty Pippins

*Martin L. Pippins is Manager, EP Technical Guidance and Quality Assurance. He received a Bachelor of Science degree in Mathematics from the University of Notre Dame in 1982, attending college on a Naval ROTC scholarship, and serving as a Surface Warfare Officer in the U.S. Navy until 1986 before joining the IRS in 1987. Marty worked as an actuary at the IRS and received his certification as an Enrolled Actuary in 1996. From 1999 through 2003, Marty was the Manager of Actuarial Group 2. He's currently a member of the Joint Board for the Enrollment of Actuaries, serving one previous term as Chairman. Marty is also a member of the American Academy of Actuaries.*

### **For those of our readers who aren't familiar with you, what can you tell them about your background?**

Almost my entire career with the IRS has been with the actuarial branches of the IRS. Of course, at the IRS, actuarial work involves written guidance and rulings just as much as number crunching.

### **What do you see as the role for Technical Guidance?**

The Technical Guidance workgroup is the EP component of three key offices working on publishing guidance – the others are the Office of Chief Counsel and the Benefits Tax Counsel at Treasury. Although published guidance is the core function, there are many other aspects of the “Quality Assurance” function, including training, support for the Determination Letter program, and outreach.

### **What is your part in that role?**

Well, I've done a lot of public speaking in the last year, mainly discussing with various groups guidance that has been published and guidance projects that we're working on. I kind of view my role as keeping the EP portion of the guidance production “machine” oiled and ready to go.

### **How many folks work in Technical Guidance?**

After a key retirement, we currently have nine people in EP Technical Guidance, which is three more than when I took over. So we have expanded a bit – but we still have plenty of work.

### **What are the “hot button” topics these days?**

We have various guidance that must get issued soon in order to open up the Determination Letter program in 2005 for certain plans. For example, we just released [\*\*Announcement 2004-71\*\*](#), which requests comments on a proposal that details a major revamping of the Determination Letter program. Other hot items include final regulations for 401(k) plans, guidance on Roth 401(k) plans, and of course some revenue procedures of how the program will work. There are various projects dealing with abusive tax schemes that have a high priority. We are also working on guidance dealing with the 7805(b) aspects of the recent Supreme Court *Heinz* decision.

*continued on page 2*

## EP Connections *continued from page 1*

**"We absolutely welcome public comments... They are closely read, reviewed and debated."**

### **Breaking News:**

In [Ann. 2004-71](#), EP asks for public comment on the Determination Letter program revision. Have your voice heard on making the rollout work better.

**Form 2848 and Unenrolled Preparers: The issues, the background and the IRS's new policy.**

**Read about them here.**

### **What is the relationship like between Technical Guidance and other parts of EP?**

Right now, Technical Guidance is working extremely closely with EP Determinations and EP Determinations Quality Assurance on establishing a new Determination Letter program that we anticipate getting off the ground in early 2005. Technical Guidance works with CE&O to provide outreach on published guidance and other projects through newsletter articles, web content and more. And we work closely with Examination, in particular on abusive tax scheme issues.

### **How do you take into account public comments?**

We absolutely welcome public comments on proposed guidance we have issued, as well as emerging issues and problems. It is hard to underestimate the importance of public comments and input to the guidance process. They are closely read, reviewed and debated.

### **You've been the head of Technical Guidance for about a year now, what's been the biggest challenge?**

Isn't keeping up on e-mail everyone's biggest challenge?

### **Rumor has it that you're a juggler: fact or fiction?**

I can juggle five balls in the air – yes, literally. And sometimes that's easier than juggling all the projects we have going on in Guidance.♦

## **Unenrolled Preparers, Form 2848 and the IRS**

Taxpayers may use **Form 2848, Power of Attorney and Declaration of Representative**, to authorize another person to represent the taxpayer before the IRS. This person must be eligible to practice before the IRS but taxpayers have occasionally submitted the forms listing ineligible representatives. IRS practice has been to treat these invalid powers of attorney as tax information authorizations, which permit third parties to receive information about the taxpayer's account, but not to represent the taxpayer before the IRS. Beginning April 1, 2004, the IRS discontinued this practice and began rejecting Forms 2848 listing an ineligible representative. As a result of this change in practice, questions have been raised regarding the role an unenrolled preparer may now play in submissions to EP.

### **Preparation of Tax Returns and EP Examinations**

The general rules regarding the practice of unenrolled preparers before the IRS are set forth in [Circular 230](#) and Rev. Proc. 81-38. Circular 230 provides that individuals who are not CPAs, attorneys, enrolled actuaries, or enrolled agents, may practice as unenrolled preparers before the IRS to the extent they prepared the tax returns at issue. Rev. Proc. 81-38 (issued as [Publication 470, Limited Practice Without Enrollment](#)) addresses the role of an unenrolled preparer with respect to tax returns. Rev. Proc. 81-38 states that an unenrolled individual who signs a return may act as the taxpayer's representative but this representation may only encompass matters concerning the tax liability for the taxable year covered by the return.

### **EPCRS and the Determination Letter Program**

[Rev. Proc. 2004-6](#) is the current guidance for submitting matters under the Determination Letter program. Section 6.06 of Rev. Proc. 2004-6 expressly states that Section 9 of [Rev. Proc. 2004-4](#) (regarding requests for letter rulings) is applicable to requests for determination letters. Section 9.02(10) of Rev. Proc. 2004-4 states that "(t)he request for a letter ruling or determination letter must be signed and dated by the taxpayer or the taxpayer's authorized representative."

## Unenrolled Preparers *continued from page 2*

Under [Revenue Procedure 2003-44](#), the same rules apply to EPCRS. Section 10.12 of Rev. Proc. 2003-44 provides that the rules regarding the authority to sign an EPCRS submission and to appear before the IRS in connection with a submission are the same as for requests for letter rulings.

### Limited Role for Unenrolled Preparers

So where does this leave unenrolled preparers with respect to the EP Determination Letter program and EPCRS?

Although an unenrolled preparer does not have the authority to sign documents or submissions on behalf of the plan sponsor, an unenrolled return preparer can still submit items to the IRS or take a role in the Determination Letter or EPCRS processes. An unenrolled preparer may use a [Form 8821, Tax Information Authorization](#), which when properly executed allows an unenrolled preparer to:

1. Provide information regarding a plan to the IRS and receive tax information from the IRS regarding a plan;
2. Receive copies of correspondence from the IRS and submit information requested by the IRS (such as participant data, asset information, etc.) as part of the review of an EPCRS submission or a Determination Letter application;
3. Discuss matters raised relative to a Determination Letter application or an EPCRS submission with EP personnel as long as any decisions regarding the application or the submission are made by the taxpayer, either in person or in writing;
4. Submit an application for an extension of time on [Form 5558, Application for Extension of Time to File Certain Employee Plan Returns](#) (*Editors Note: See the Typo Notice sidebar item to the left of this article.*).

### Current Use of Form 2848

As of April 1, 2004, Forms 2848 are no longer accepted where the representative is an unenrolled return preparer. Determination Letter applications or EPCRS submissions submitted by an unenrolled preparer prior to that time will be treated according to prior practice. For all applications submitted after March 31, 2004, the rules as outlined in the revenue procedures will apply.

As a result, unenrolled return preparers may not use Form 2848 to receive confidential information about their clients. Unenrolled preparers should instead use Form 8821.

### Future Solution?

The Advisory Committee on Tax Exempt and Government Entities (ACT) and EP recognize the important role played by benefits professionals who are not currently permitted to represent taxpayers in their dealings with EP, but upon whom many taxpayers depend for their expert advice regarding plan establishment and administration. Accordingly, the ACT is currently considering a recommendation that would permit enrollment for limited purposes to applicants who can demonstrate special competence in EP matters. Comments may be emailed to [tege.act@irs.gov](mailto:tege.act@irs.gov).

Additional information regarding this program will be provided in future newsletters.

(*Editor's note: To see the full-length version of this article featuring additional background material, go to the [Retirement Plans web page](#), click on More Topics and select either Determinations or Examinations.*)

## Continuing Priorities: Making Guidance

Recently, the Treasury's Office of Tax Policy and the IRS posted the [\*\*2004-2005 Priority Guidance Plan\*\*](#). The Plan includes 23 EP-related items. The Plan also features an appendix with routine guidance – such as interest rate updates, cost-of-living adjustments and user fee information – that is published each year.

Paul Shultz, Director, EP Determinations Redesign (and former Director, EP Rulings & Agreements) said, "As always, many of these items were originally suggestions from our customers and we thank all of them for their active, interested contributions."

*In the 2004-2005 Priority Guidance Plan, the IRS has an ambitious schedule of revenue procedures and rulings, final regulations and more.*

*What topics are on the list this year? Read Continuing Priorities and you'll get Paul Shultz's perspective as well.*

### Disaster Relief

**Due to the string of hurricanes causing immense havoc and destruction, the IRS has issued Disaster Relief guidance.**

**In IR-2004-115 and Notice 2004-62, the IRS provided filing relief and funding contribution relief, respectively, for Federal Disaster Areas caused by the hurricanes.**

**For more information, go to the Retirement Plans web page.**

Among this year's items that Mr. Shultz said practitioners can look forward to and his comments on each are:

- A draft revenue procedure describing the details of **the new Determination Letter program** using the five-year staggered remedial amendment period for individually-designed plans and the loose six-year program for pre-approved plans.

"We will follow up the draft rev. proc. with a final rev. proc. by early 2005 doing the actual implementation and providing for opening the program for pre-approved defined contribution plan specimen documents on February 1, 2005."

- Final regulations on **401(k) and (m)** following up on the proposed regulations issued last year.

"These regulations need to be in place before we open up the new Determination Letter program for EGTRRA and other changes."

- Guidance on providing for **Roth 401(k) elective contributions** in profit-sharing plans.

"We'll integrate this into the new Determination Letter program as well."

Mr. Shultz said that providing guidance on **abusive tax transactions** will continue, especially in the area of S Corporation ESOPs, following up on several earlier items in this area. He also said, "We need to issue guidance on the application of 411(d)(6) to plans, mostly multiemployer plans, that added tougher suspension of benefits provisions applicable to existing accrued benefits in light of the Supreme Court's decision in *Heinz*."

As with prior guidance plans, the IRS will update this Guidance Plan quarterly for new projects based on changing circumstances and developments.

Finally, Mr. Shultz said, "To our customers: we want your help. Please keep the ideas flowing to us so we can have the benefit of your experience."♦

## This Year's Model (Amendments for 457 Government Plans)

Recently issued [Revenue Procedure 2004-56](#), provides model amendments that may be used by a state or local government employer to amend or draft an eligible section 457(b) plan. In addition, the revenue procedure provides reliance that if an eligible employer adopts one or more of the model amendments and operates the plan in accordance with these plan provisions, the plan will be treated as meeting the requirements of section 457(b) eligibility with respect to those provisions. Section 457 applies to nonqualified deferred compensation plans established by state and local government and tax-exempt employers. The revenue procedure does not apply to eligible section 457(b) plans of tax-exempt entities or ineligible plans under section 457(f).

The model amendments contain both mandatory and optional provisions, and incorporate recent statutory changes to 457, as well as changes made by the newly published section 457 final regulations. Some of the optional model amendments include distributions for unforeseeable emergencies, loans, plan-to-plan transfers, and distributions of smaller accounts to eligible participants. An eligible employer may adopt the applicable model amendment on a word-for-word basis or adopt an amendment that is substantially similar in all material respects.

The revenue procedure further points out that if an eligible employer's plan does not include the model amendments or amendments that are substantially similar in all respects, an eligible governmental employer who requests a private letter ruling from the IRS on plan eligibility under section 457 must clearly highlight and describe in the written request how its plan provisions differ from the model amendments.

Pursuant to the revenue procedure, an eligible section 457(b) governmental plan will be treated as having adopted timely amendments to reflect the requirements of EGTRRA if the related model amendment, or any other amendment that satisfies that requirement, is adopted no later than December 31, 2005, the amendment is effective as of a date not later than the latest date permitted under section 457(b), and the operations of the plan since that date are not inconsistent with the amendment.

The IRS requests comments on the model amendments contained in the revenue procedure and any other model amendments that interested parties believe should be added to the revenue procedure. Comments should be received by November 30, 2004. See the procedure for information on where comments should be sent. •

## We Cordially Invite You to...

Later in this edition, in the *Corner of Forms & Pubs*, you'll see an article on common mistakes in preparing [Form 5330](#). We know that this form can be intimidating and confusing. After all, this one form is used to report some 13 different excise taxes related to employee benefit plans and there are six different due dates for filing this return depending on the applicable tax.

We have assembled a team to review the Form 5330 to determine what design improvements can be made so that filing errors are minimized.

Since many of you have first-hand knowledge of the problems faced in completing and filing this form, we invite you to share your comments with us. We welcome any of your comments or suggestions for improvement.

Please email your suggestions to Tom Petit ([t.j.petit@irs.gov](mailto:t.j.petit@irs.gov)) or Colleen Hesse ([colleen.j.hesse@irs.gov](mailto:colleen.j.hesse@irs.gov)).

We may not be able to eliminate the need to file this form but we can certainly make the task less burdensome. •

## PBGC Insights

(Editor's Note: Our colleagues over at the Pension Benefit Guaranty Corporation, who along with the IRS and the Department of Labor, provide oversight of the private-sector retirement system, are back for a 2<sup>nd</sup> installment of PBGC Insights.)

### Paying PBGC Premiums Is Now Easier with New Online Filing System

With final premium filings for 2004 calendar year plans (Form 1-EZ, Form 1, or Form 1 with Schedule A) due to the Pension Benefit Guaranty Corporation (PBGC) by October 15, 2004, this is a good time to consider e-filing your premium forms and payments. For plan years beginning in 2004, PBGC's e-filing system, called My Plan Administration Account (My PAA), enables practitioners to electronically create, route, sign and submit premium filings to PBGC. If you are using My PAA to submit a premium filing that includes a premium amount due, you must use one of three options under My PAA to make this payment electronically: Automated Clearing House (ACH), electronic check or credit card. You cannot send paper checks or Fedwires to pay for e-filings.

To get started with an e-filing, you must identify the person who will be responsible for coordinating the overall online filing process, which includes registering the plan within My PAA and inviting others to join the plan's e-filing team. This person is called the Filing Coordinator. The Filing Coordinator starts by registering to use My PAA for one plan and then inviting others who are involved with the plan's premium filing (for example, preparing it, signing as plan administrator or enrolled actuary or authorizing payment) to use My PAA. Once the Filing Coordinator registers to use My PAA and has established an account with a permanent ID and Password, the Filing Coordinator can add other plans for which he or she is also the Filing Coordinator to the account.

## PBGC Insights...

### The latest news from America's private pension system insurer

Once the plan's filing team is set-up, any team member can initiate a draft e-filing for the plan. My PAA will walk you through a step-by-step process to help you (or others) create this draft. Once a draft e-filing is started, e-filing team members can electronically "route" it to each other so that individual contributions can be made to it. Each person on the e-filing team can make the same contribution to the e-filing that they would have made to a paper filing, i.e., edit the filing, sign it as the plan administrator or enrolled actuary, authorize the payment for it and finally submit the filing/payment to PBGC. Note that the actions a person can take on a filing are limited by the permissions granted to that person by the plan's Filing Coordinator.

Once the filing (and any associated e-payment) has been submitted to PBGC, My PAA will display an electronic receipt. This receipt includes the date and time the e-filing was received by PBGC, a confirmation number and all of the data entered into the e-filing. This online receipt can also be accessed in My PAA by any e-filing team member.

Electronic filing has many advantages over paper submissions including improved data accuracy, easier filing preparation and easier coordination/tracking of filings for multiple plans. For more detailed information or to set up an account within My PAA, please access the [PBGC Web site](#) and click on the "Online Premium Filing (My PAA)" link. If you have questions about My PAA or would like a copy of PBGC's new pamphlet that describes premium e-filing in more detail, please call PBGC's toll-free practitioner number at 1-800-736-2444 (and select the "premium" option). Note: TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected.

## The Big 3-Oh

### Happy Birthday ERISA!

**It's true - back on Labor Day 1974, President Ford signed into law the Employee Retirement Income Security Act. Among other things, ERISA created the PBGC and provided the establishment of an Employee Plans unit within the IRS.**

**To read President Ford's statement on ERISA - as well as see some wonderful mid-70's fashions - just click on [www.pbgc.gov/about/signing.htm](http://www.pbgc.gov/about/signing.htm).**

### CONTACTING EMPLOYEE PLANS

The *Employee Plans News* welcomes your comments about this issue and/or your suggestions for future articles. Send comments/suggestions to:

EP Customer Education & Outreach  
SE:TEP:CEO Room 4C3  
1111 Constitution Avenue, N W  
Washington, D.C. 20224

or FAX (202) 283-9525

or E-Mail [RetirementPlanComments@irs.gov](mailto:RetirementPlanComments@irs.gov)

For EP Taxpayer Assistance

For retirement plans technical and procedural questions:

Please call (877) 829-5500

Or visit the EP Customer Account Services section of the Retirement Plans web page at [www.irs.gov/ep](http://www.irs.gov/ep).

For questions relating to retirement income, IRAs, ROTH IRAs, educational IRAs, medical savings accounts and section 125 cafeteria plans:

Please call (800) 829-1040

For further Employee Plans Information: Go to the Retirement Plans web page at: [www.irs.gov/ep](http://www.irs.gov/ep).

## Act Fast to Take Advantage of PBGC's One-Time Participant Notice Voluntary Correction Program!

PBGC is increasing its efforts to enforce the Participant Notice requirements established under Title IV of ERISA. Under section 4011 of ERISA, plan administrators of certain underfunded plans must notify participants of the plan's funding status and the limits on PBGC's guarantee. A plan administrator that fails to provide a Participant Notice as required is subject to penalties under section 4071 of ERISA. As a transition to expanded enforcement, earlier this year PBGC announced a Participant Notice Voluntary Correction Program (VCP) — a one-time opportunity to "wipe the slate clean" — under which plan administrators can correct most 2002 and 2003 failures without penalty. The deadline for participating in the VCP depends on the plan's Form 5500 deadline for the 2003 plan year, and may be as early as October 4, 2004. PBGC provided information on this program in the **Summer 2004 edition** of *Employee Plans News*. For additional details, including a model VCP Corrective Notice and other guidance on the VCP and on Participant Notice requirements generally, visit the PBGC's Web site at [www.pbgc.gov/participantnotice](http://www.pbgc.gov/participantnotice).

## In-Sourcing a Resource Guide

In the quest to answer the questions "What is a Determination Letter?" and "Do I need one?" the IRS has posted the EP Determination Letter Resource Guide to the [Retirement Plans web page](#). The Resource Guide walks customers through the EP Determination Letter process.

This Resource Guide originated from customer satisfaction surveys and was designed by a group of EP managers, revenue agents and tax law specialists. This exciting idea has resulted in a one-stop resource that assists our customers with their determination letter requests and helps answer questions about the DL process.

Highlights of the Resource Guide include:

- What is a Favorable Determination Letter?
- Do I need to file for a determination letter for my retirement plan?
- The Application Process: A review of the application process from receipt of the determination letter request to the issuance of a determination letter.
- Additional Resources: Forms, publications and links to information useful during the determination letter application process.

The EP Determination Letter Resource Guide will be updated when there are changes to the Determination Letter program. The Resource Guide is currently on the [Retirement Plans web page](#). Its permanent home on the web can be accessed by clicking on "More Topics" and then "Determinations". There you'll find the "EP Determination Letter Resource Guide".

If you have any suggestions or comments regarding the EP Determination Letter Resource Guide, please email us at [RetirementPlanComments@irs.gov](mailto:RetirementPlanComments@irs.gov).

## **Merger Ahead – Use Caution**

Since EGTRRA increased the deduction limits for profit-sharing plans, many employers have decided to merge their money purchase plans into their profit-sharing plans. Because of the large number of these mergers, the IRS has made an exception to the normal policy for determination letter requests for merging plans. The exception is:

When the surviving profit-sharing plan is submitted for a determination letter, the determination specialist will review the money purchase pension plan to ensure that the surviving profit-sharing plan contains qualified assets. So if there is a prior determination letter issued to the money purchase pension plan, that letter must be submitted with the application request along with any subsequent amendments made to the money purchase pension plan. See [Quality Assurance Bulletin 2003-2](#).

After reviewing any amendments made to the money purchase pension plan, a special caveat including the dates of the amendments to the money purchase pension plan will be included in the determination letter issued to the surviving profit-sharing plan. The determination letter does not consider the special requirements relating to plan assets or liabilities involved in a merger. (See our “Merger FAQs”, by going to the [Retirement Plans web page](#), selecting “More Topics” and then “Determinations” for details concerning application requirements for plans merged during the GUST remedial amendment period. Also, see [Pub 794](#) for the limitations and scope of a determination letter.)

The caveat for the money purchase pension plan amendments will appear on page 3 of the profit-sharing plan’s determination letter. The caveat will read, “This determination letter is also applicable for the amendment(s) made to the money purchase pension plan executed on [insert date(s)].” Note that the ruling only covers the amendments to the money purchase pension plan, not the actual merger itself. Only amendments made to a money purchase pension plan merging into a profit-sharing plan will be covered in this determination letter. No other situations involving mergers will receive caveats unless otherwise permitted under [Rev. Proc. 2004-6](#).•

## **DOL Corner**

A brief reminder – the Department of Labor/Employee Benefits Security Administration’s (DOL/EBSA) Fiduciary Education Campaign seminars, “Getting it Right – Know Your Fiduciary Responsibilities,” are continuing with the announcement of two new locations – Kansas City, Missouri on October 5 and Philadelphia, Pennsylvania on October 15. More seminars will be announced shortly. For more information and to register, please click on [Fiduciary Education](#).

### **Voluntary Fiduciary Correction Program Seminars**

DOL/EBSA also continues to sponsor seminars focusing on its Voluntary Fiduciary Correction Program (VFCP). The most recent one-day seminar was sponsored by DOL/EBSA’s Philadelphia Regional Office on September 20 at The Curtis Center in Philadelphia. The seminar, intended to assist employers, plan administrators and other benefit professionals, offers comprehensive information and one-on-one help on how to utilize the VFCP to self-correct potential violations of ERISA.

The VFC Program provides plan fiduciaries with an opportunity to identify and correct plan activities that might otherwise make them the subject of investigative or enforcement action. Applicants under the program must fully correct any prohibited transactions, calculate any losses and restore those losses with interest or profits, and distribute any supplemental benefits owed to eligible participants and beneficiaries. The program offers relief from DOL penalties and IRS excise taxes that may otherwise be imposed. Information about the VFC Program is available on DOL/EBSA’s Web site at [Compliance Assistance](#).

Each seminar is from 9:00 a.m. to 11:30 a.m. and also will be offered that afternoon from 1:00 p.m. to 3:30 p.m. Each session offers a brief overview of the program. DOL/EBSA staff also will provide one-on-one assistance and guidance on the application process. The seminar is open to employers, accountants, plan fiduciaries, third-party administrators, attorneys, and other benefit plan officials on a first come, first serve basis.

**Interested in knowing more about what the Pension Funding Equity Act of 2004 provides?**

**Go to the Retirement Plans web page and click on Published Guidance. There you’ll find a highly informative article written by Jim Holland, EP’s Manager of Rulings & Agreements.**

**DOL and EBSA are back with more new locations for their Fiduciary and VFCP seminars.**

**Go to the DOL Corner and learn more about them.**

## DOL Corner *continued from page 8*

For more information on future seminars, please contact Gerald Weslosky by phone at (215) 861-5318, fax at (215) 861-5347 or email at [vfcp-phiro@dol.gov](mailto:vfcp-phiro@dol.gov).

### Streamlined Registration for Investment Managers

On August 24, 2004, DOL/EBSA published in the Federal Register a **final rule** requiring state-registered investment advisers who are seeking investment manager status under ERISA to register electronically through the Investment Adviser Registration Depository (IARD).

Under ERISA, plan trustees are relieved of certain liabilities relating to the management of plan assets by a registered investment adviser, bank or insurance company that meets certain requirements to be appointed an investment manager for an ERISA-covered plan.

The IARD is a centralized electronic filing system for investment advisers created by the Securities and Exchange Commission and state securities regulators. A majority of state-registered investment advisers who are investment managers of ERISA-covered plans already file registration forms electronically through the IARD.

The final rule will apply to investment adviser registration filings due on or after October 25, 2004. The final rule also contains a conforming amendment to an EBSA Interpretive Bulletin on fiduciary responsibility, which deals with when registered investment advisers are eligible to be ERISA investment managers.♦

### EFAST – Effective, Efficient and Evolving

The multi-agency **EFAST** (ERISA Filing Acceptance System) program, now in its fifth year of production, provides returns processing, agency master file data, customer contact center operations, and disclosable digital image files for the annual **Form 5500** series returns. EFAST began processing returns in July 2000, for plan year 1999 filings. The IRS receives weekly EFAST electronic data transmissions which are then posted to the EP Master File and made available to EP agents. Electronic images of publicly disclosable information for Form 5500 series returns are posted on the [www.FreeErisa.com](http://www.FreeErisa.com) website.

Four agencies – the IRS, DOL, PBGC and the Social Security Administration – use the Form 5500 series which allows employers and plan administrators to satisfy their statutory annual reporting obligations (under ERISA and the Internal Revenue Code) by filing a single form. Form 5500 is the primary source of information concerning the operation, funding, and investments of pension and other employee benefit plans. Each year, over 1.2 million pension and welfare benefit plans file this annual return/report.

### EFAST Next Generation

IRS is working with DOL's Employee Benefits Security Administration (EBSA) to refine concepts and plans for **EFAST Next Generation**. This upcoming version will be Internet-based and will provide additional filing benefits such as:

- Improved transaction accuracy,
- Reduced cycle times, and
- Enhanced information transparency.

Look for EFAST Next Generation updates in future editions of the *Employee Plans News*.♦



**Curious about  
what's new in the  
world of EFAST?**

**Get the scoop on  
what's current and  
what's planned in  
EFAST – Effective,  
Efficient and  
Evolving.**

## Tips for Filing a Voluntary Correction Program Request

What's the most common mistake with VCP submissions?

Would you believe "insufficient postage"?

Neither would we.

Read our VCP Filings Tips and learn how to avoid common problems and help your submission move faster.

Plan sponsors may correct qualification failures, such as problems with plan form and failures to operate the plan properly, by filing under the Voluntary Correction Program (VCP). The VCP is one component of the Employee Plans Compliance Resolution System (EPCRS), currently set forth in [Rev. Proc. 2003-44](#). Under the VCP, plan sponsors may get assurance that a proposed correction method for a qualification failure is acceptable to the IRS and that the plan will not be disqualified on account of the failure identified. During the past year, receipts under the VCP have increased significantly. To help us improve the efficiency of processing your submission, we are providing some tips for you to use when preparing a VCP request. Proper completion of the application package will ensure prompt and accurate processing of your request. Application procedures for VCP can be found in [Section 11](#) of Rev. Proc. 2003-44. [Appendix D](#) to the Rev. Proc. presents sample formats for VCP submissions.

### VCP Compliance Fees

The most common problems with VCP submissions pertain to compliance fees.

[Section 12](#) of Revenue Procedure 2003-44 lists the various fees for all possible types of submissions. Every VCP submission should include a VCP fee. In some cases, as where the method proposed to correct a qualification failure requires a plan amendment, the VCP submission will contain a request for a determination letter, in addition to a request for a compliance statement. In such cases, the VCP compliance fee and any Determination Letter user fee must be submitted on separate checks. Soliciting additional fees or preparing refunds can cause significant delays in processing your VCP request.

Applicants are reminded that the fee for a submission under VCP for Qualified Plans is based on the number of participants in the plan, and this number is determined from the line on the most recently filed [Form 5500](#) series return that contains the total number of participants as of the end of the plan year. Thus, with respect to the 2003 Form 5500, the Plan Sponsor would use the number shown in item 7(f) to establish the number of plan participants. Remember that if the only failure included in a VCP submission is a failure to amend the plan timely for recent legislation, such as GUST, and the submission is filed within one year of the expiration of the applicable remedial amendment period, the fee will be reduced by 50%. For example, the fee for a plan with 88 total participants that is submitted under VCP because of a failure to amend the plan timely for GUST, which is submitted within one year of the expiration of the GUST remedial amendment period would be \$1,250, which is equal to 50% of the \$2,500 VCP fee that would normally apply to a plan with 88 participants.

### Order of Submission:

The sample formats for VCP submissions in Appendix D to the Rev. Proc. suggests the order in which to assemble the submission package. The IRS's experience with processing applications has uncovered a need to change the order of submission materials to streamline processing. These new requirements will be included in the next revenue procedure updating the EPCRS. However, it is recommended that in order to streamline the processing of a VCP submission, an applicant should use the following procedures. Please assemble your submission package in the following order:

1. Submission signed by the Plan Sponsor or Plan Sponsor's authorized representative. The VCP fee should be attached to the front of the incoming letter;
2. Penalty of perjury statement;
3. [Form 8717](#) (if applicable) with separate determination letter fee attached
4. Form 5500 (first three pages);
5. Power of attorney;
6. Checklist – [Appendix C](#) of Rev. Proc. 2003-44;
7. Determination letter application (if applicable) with attachments; and
8. Plan document.

## Tips for Filing a VCP Request *continued from page 10*

### Group Submissions

If a Master and Prototype (M&P) sponsor submits more than one prototype, a separate fee must be submitted for each prototype. Any group submission must include a separate page for each affected employer that provides the employer's name, EIN, and failure.

### Anonymous Submissions

Practitioners who submit multiple anonymous submissions must number or label each for purposes of identification and tracking. If a determination letter request will be part of the submission, the determination letter application should not be submitted until after the plan sponsor has been identified.

### IRS's Processing of Deficient Requests

It is important to note that until the IRS receives a complete and correct application, the submission will not be considered "properly submitted" under Section 10.05 of the Rev. Proc. As a result, the plan will remain subject to examination until a properly submitted application is received. In cases where a VCP submission is seriously deficient, pursuant to section 10.08 of Rev. Proc. 2003-44, the IRS may return the submission, including any compliance fee, without contacting the plan sponsor. Most submissions, however, are not seriously deficient. In those cases, the IRS will attempt to contact the applicant and its representative to correct any deficiencies in the application.

We hope that these suggestions clarify some questions relating to VCP submissions, reduce the incidence of submission error and improve the processing of VCP submissions. As always, thank you for your interest in the VCP! •

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## Are You EPTA Date, Part 2 - The New Website



Exciting news! EP Team Audit (EPTA), in conjunction with the EPTA National Liaison Group (a group of pension practitioners and IRS EPTA personnel), has developed the "EPTA Web page" on the [Retirement Plans web page](#). EPTA is the EP program of broad-scope examinations of large employer plans.

This new section of the Retirement Plans web page features information on:

- History of Employee Plans Team Audit – A history of EPTA from its initial design to the present.
- Frequently Asked Questions (FAQs) – A listing of frequently asked questions about EPTA and its exam procedures.
- Listing of Top 10 EPTA issues – Issues that can be identified during the planning and initial stages of the examination.
- EPTA audit process – A flowchart of the audit process that is used during an EPTA examination.
- EPTA area contacts – A listing of the states within each area with contact names, phone numbers and addresses.
- Glossary of Terms – Have you wondered what EPCRS, ATAT and SCP mean? Now you can find out by going to the EPTA Glossary for common EPTA terms.

Look for the new EPTA information online in October. •



## How to Subscribe to Employee Plans News

*Employee Plans News* is issued only through IRS e-mail. For your free subscription, please go to the Retirement Plans web page at [www.irs.gov/ep](http://www.irs.gov/ep) and register on-line by selecting "Newsletters" under the "Related Topics" section and then selecting "Employee Plans News". All editions of the *Employee Plans News* are archived at [www.irs.gov/ep](http://www.irs.gov/ep).

For your convenience, we have included Internet links to referenced materials throughout the electronic version of *Employee Plans News*. These links are identified on the paper version by the underlined text. The electronic version may be found at [www.irs.gov/ep](http://www.irs.gov/ep).

## The Corner of Forms & Pubs

Welcome back to the Corner of Forms & Pubs – the EP version of Hollywood & Vine. The information here at the Corner is brief and topics needing further details will get their own full-length articles (such as the articles on Form 5330 and EFAST).

**Constant Changes** – With two separate cost cutting initiatives, business as we've come to know it at the IRS Area Distribution Centers (the warehouses where IRS forms and pubs are stored) is changing.

- The IRS will be closing two of its three Area Distribution Centers sometime in early FY 2005. The centers in Richmond, VA and Rancho Cordova, CA will cease activities, while the center in Bloomington, IL will remain open. These closings are partially attributed to fewer taxpayers and businesses ordering IRS forms and pubs due to their increased availability on the Internet and from tax preparation software vendors.
- Effective this past July 1<sup>st</sup>, the responsibility for taking forms and pubs orders (by calling 1-800-TAX-FORM) was transferred from the distribution centers to the dozens of call sites across the country. To request forms and pubs, call the 800 number Monday through Friday, 7:00 a.m. to 10:00 p.m. (locally across the country). IRS Forms and Publications are also available at [www.irs.gov](http://www.irs.gov).

**Deciphering the Distribution Code Enigma** – A change has been made to the instructions for the 2004 [Form 1099-R](#) regarding the reporting of certain types of distributions from retirement plans. The distribution code used to report substantially equal periodic payments (SEPPs) has been changed from Code 1 to Code 2, the way SEPPs had previously been reported. In other reporting news, distributions made for medical expenses, health insurance premiums, qualified higher education expenses or, for a first-time home purchase, under section 72(t)(2)(B), (D), (E), or (F) will still be reported using Code 1. Code 3 is used for distributions on account of disability and Code 4 is used for distributions on account of death. In the "What's Hot" section of [www.irs.gov](http://www.irs.gov), the IRS notified issuers of Form 1099-R that a change has been made to the use of Code 1 and Code 2 for certain distributions for 2004.

**Dreams Do Come True: Here's More Form 5330 News** – As reported in the [Summer 2004 edition](#) of the *Retirement News for Employers*, the IRS has identified the most common mistakes in preparing the [Form 5330](#), *Return of Excise Taxes Related to Employee Benefit Plans*. These common mistakes include:

- Failure to sign the return.
- Leaving the plan number blank or using an invalid plan number.
- Using a single Form 5330 to report two or more excise taxes that do not have the same filing due date and therefore may not be filed together.
- Failure to complete Lines 12a-12c in Part 1 when there is tax reflected on Line(s) 1-11.
- If Part VII is applicable, failure to check appropriate box on Line 26a (discrete or not discrete prohibited transaction) and Line 27 (corrected all prohibited transactions).
- Confusion in the relationship between Parts VII and IX of the Form 5330.

See the *Retirement News* for other common mistakes and more information on this form and see the article in this edition of the *Employee Plans News* for news on redesigning Form 5330.

**Coming Attractions** – If things go as planned – and don't they always? – EP is scheduled to release a new tri-panel product entitled **Publication 4407, SARSEP – Key Issues and Assistance**, in November. It's an educational pamphlet that addresses key issues, solutions and resources for assistance with SARSEPs (Salary Reduction Simplified Employee Pensions).

For further details about topics at the Corner, please visit the [Retirement Plans web page](#) and select "EP Forms and Publications". Paper copies of forms and publications can also be requested by calling 1-800-TAX-FORM. If you have comments about forms or publications, contact us at [RetirementPlanComments@irs.gov](mailto:RetirementPlanComments@irs.gov).

## Employee Plans Published Guidance

(June 2004 – September 2004)

### Announcements

<a href="#"><b>Announcement 2004-57, 2004-27 I.R.B. 15</b></a>	The IRS will withdraw proposed regulations under Code sections 411(b)(1)(H) and 411(b)(2).
<a href="#"><b>Announcement 2004-58, 2004-29 I.R.B. 66</b></a>	In certain instances, the IRS is delaying the effective date of the relative value regulations.
<a href="#"><b>Announcement 2004-71, 2004-40 I.R.B.</b></a> (September 13, 2004)	The IRS seeks public input before finalizing procedures for issuing determination letters under a staggered remedial amendment period system and invites public comments.

### Regulations

<a href="#"><b>T.D. 9130, 69 Fed Reg. 33288, 2004-26 I.R.B. 1082</b></a> (June 15, 2004)	Minimum distribution rules at section 1.401(a)(9)-6 of the Income Tax Regulations.
<a href="#"><b>REG-159704-03, 69 Fed. Reg. 39376</b></a> (June 30, 2004)	This is a request for comments for proposed regulations by the Joint Board for the Enrollment of Actuaries.
<a href="#"><b>T. D. 9142, 69 Fed. Reg. 43735, 2004-34 I.R.B. 302</b></a> (July 22, 2004)	Regulations under section 1.408(q)-1 pertaining to deemed IRAs and under section 1.408-2T pertaining to nonbank trustees. The temporary regulations pertaining to nonbank trustees were also published as proposed regulations at <a href="#"><b>REG-101447-04, 69 Fed. Reg. 43786, 2004-34 I.R.B. 344.</b></a>

### Revenue Procedures

<a href="#"><b>Rev. Proc. 2004-37, 2004-26 I.R.B. 1099</b></a>	The taxation of benefits from a defined benefit plan to a non-resident alien.
<a href="#"><b>Rev. Proc. 2004-44, 2004-31 I.R.B. 134</b></a>	Pertains to extensions of the amortization period under section 412(e) (Supersedes Rev. Proc. 79-61).
<a href="#"><b>Rev. Proc. 2004-56, 2004-35 I.R.B. 376</b></a>	Provides model amendments for certain section 457(b) plans and requests comments by November 30, 2004 (Supersedes Rev. Proc. 98-41).

### Revenue Rulings

<a href="#"><b>Rev. Rul. 2004-65, 2004-27 I.R.B. 1</b></a>	Describes when there is employer action under section 420(c)(3)(E) and an employer offers enhanced pension benefits in exchange for a retiree electing out of health insurance coverage.
<a href="#"><b>Rev. Rul. 2004-67, 2004-28 I.R.B. 28</b></a>	Clarifies and modifies Rev. Rul. 81-100 pertaining to group trusts.

### Notices

<a href="#"><b>Notice 2004-34, 2004-18, I.R.B. 848</b></a>	Describes the permissible range of interest rates as a result of section 101 of the PFEA of 2004.
<a href="#"><b>Notice 2004-59, 2004-36 I.R.B. 447</b></a>	Provides guidance in Q&A format on plan amendments following an alternative deficit reduction contribution election under section 102 of PFEA.

## The SWBA/IRS 15<sup>th</sup> Annual Conference

The SouthWest Benefits Association/IRS 15<sup>th</sup> Annual Employee Benefits Conference features top government officials and leading private industry experts in the world of employee benefits. This year's conference is on November 15-16, 2004 in Dallas, TX. The curriculum provides insight into the hottest topics of employee plans and direct answers to troubling plan questions.

Featured speakers for this year's event include:

- Michael Julianelle, Director, EP Examinations, IRS
- Paul Shultz, Director, EP Determinations Redesign, IRS
- William Sweetnam, Benefits Tax Counsel, U.S. Dept. of Treasury
- Harry Beker, Counsel Branch Chief, Health & Welfare Branch, IRS
- Dallas Salisbury, Executive Director, EBRI
- Tim Hauser, Solicitor's Office, U.S. Department of Labor (DOL)
- Roger Hilburn, Acting Regional Director of EBSA, DOL

This is your opportunity to hear from the experts on topics ranging from Health Savings Accounts & Health Reimbursement Accounts to 401(k), 403(b), and defined benefit plans. The conference will also feature updates on recent guidance and litigation. Luncheon speakers feature Michael Julianelle, the new Director of EP Examinations, and Dallas Salisbury, the Executive Director of EBRI. For more information regarding the conference or to register, please contact the SouthWest Benefits Association at (214) 382-3035, or visit their website at [www.swba.org](http://www.swba.org).

## Central and Mountain States Benefits Conference Recap

The 2<sup>nd</sup> annual Central and Mountain States Benefits Conference, celebrating ERISA's 30<sup>th</sup> birthday, was recently held at the Hyatt Regency Denver in Denver, Colorado. The two-day event was co-sponsored by the IRS, ASPA and the Western Pension and Benefits Conference. The program focused on current regulatory, legislative, administrative and actuarial topics.

Panelists from the IRS, Department of Labor, Department of Treasury, Health and Human Services, ASPA and benefits experts from private industry discussed topics including:

- Washington Update
- Aggressive Tax Practices
- Preparing for an IRS or EBSA audit
- IRS and DOL Compliance Programs
- Treasury, IRS and 401(k) plan updates
- 2-part sessions in the areas of Mergers and Acquisitions, Service Crediting Rules and EPCRS including case studies

Luncheon speakers were Alan D. Lebowitz, Deputy Assistant Secretary for Program Operations, U.S. Department of Labor, EBSA and Dr. Richard Wobbekind, Director of the Business Research Division and Associate Dean for External Relations, Leeds School of Business, University of Colorado.

The IRS offered "interactive booths" where conference attendees were given the opportunity to have one-on-one discussions with EP specialists in the areas of Compliance Programs, 401(k) plans, 403(b) and 457 plans and Customer Education and Outreach. In addition, they had an opportunity to pick up IRS publications, forms and promotional items in these specialty areas.

For further information on the Central and Mountain States Benefits Conference as well as other IRS co-sponsored Benefits Conferences, go to the [Retirement Plans web page](#), click on "Educational Services" under the "Related Topics" section and then select "Benefits Conferences Calendar".

## Cincinnati Employee Benefits Conference Recap

The Cincinnati Employee Benefits Conference was held on June 17-18, 2004. Over 200 participants attended the conference, jointly sponsored by the IRS, the Department of Labor and the Cincinnati Bar Association.

The first day of the conference featured IRS speakers Paul Shultz and Marty Pippins providing an overview of current events affecting EP. Bob Bell, Dennis Miceli and Robert Contreras reviewed local office issues including an overview of the most common technical issues encountered by EP specialists. Monika Templeman covered updates regarding the National IRS examination program.

On the second day, Sal Tripodi discussed many relevant legislative, regulatory, ERISA litigation, and agency guidance updates. He also provided several comedic interludes poking fun at his having just turned 50 years old.

Each day featured breakout sessions covering 403(b) and 457 plan exam issues, 401(k) plan issues, current fiduciary investment concerns and design concepts for small-employer defined benefit plans. Other breakout sessions covered catch-up contributions, IRS examination strategies, surviving a DOL audit and EPCRS.

Next year's conference will be held on June 9<sup>th</sup> and 10<sup>th</sup>.

### Calendar of EP Benefits Conferences

#### UPCOMING EVENTS...

Name	Date(s)	Location	Co-Sponsor(s)	For Further Information, Please Contact
<b>SWBA/IRS 15<sup>th</sup> Annual Employee Benefits Conference</b>	11/15/04-11/16/04	Dallas, TX	Southwest Benefits Association (SWBA)	SWBA: <a href="http://www.swba.org">www.swba.org</a> or, (214) 382-3035
<b>Los Angeles Benefits Conference</b>	01/27/05-01/28/05	Los Angeles, CA	ASPA, NIPA, WPBC and other cooperating sponsors	ASPA <a href="http://www.aspa.org">www.aspa.org</a> or, ASPA Meeting : Department (703) 516-9300

#### RECENT EVENTS...

Name	Date(s)	Location	Co-Sponsor(s)	For Information, See
<b>Central &amp; Mountain Sts. Benefits Conference</b>	09/13/04-09/14/04	Denver, CO	ASPA and WPBC	
<b>17<sup>th</sup> Annual Cincinnati Employee Benefits Conference</b>	06/17/04-06/18/04	Cincinnati, OH	Cincinnati Bar Association	
<b>Northeast Benefits Conference</b> (2 Locations)	06/10/04-06/11/04	Framingham, MA & White Plains, NY	ASPA & NE Area Pension Liaison Group	<i>EP Benefits Conferences Calendar at</i> <a href="http://www.irs.gov/ep">www.irs.gov/ep</a>
<b>Mid-Atlantic Benefits Conference</b>	05/24/04-05/25/04	Philadelphia, PA	ASPA	
<b>Great Lakes Benefits Conference</b>	04/29/04-04/30/04	Chicago, IL	ASPA & other cooperating sponsors	



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