

employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

Internal Revenue Service
Tax Exempt and Government
Entities Division

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IRS Employee Plans Leadership Changes

- Carol Gold announced her retirement, effective September 30, 2006, as Director, Employee Plans. (See the below message Carol provided to all Employee Plans Employees.)
- Joseph Grant, Director, EP Rulings & Agreements, has been selected as the new Director, Employee Plans. An EP Connections interview with the new Director will be in the Winter 2007 edition of the *Employee Plans News*.
- Michael Julianelle, Director, EP Examinations, has been selected as the new Director, Government Entities.

For further information, see [IRS News Release 2006-148](#), Sept. 21, 2006. •

Carol Gold's Retirement Message to All Employee Plans Employees

For the last 30 years I have worked with you on retirement plans for American workers. Some have said that we are in the business of making dreams come true. At the end of this month, September, one of my dreams will come true. I will be leaving the position of Director of Employee Plans for a position in Charlottesville, Virginia, where I will begin teaching executive leaders in the federal government.

Public service has given me an opportunity to work with you, some of the most talented and dedicated people I have ever met. That's why I am confident that as the ERISA generation leaves, many of you are ready to step up to lead this organization with creativity, innovation and fairness.

I want to leave you with three lessons I've learned that help me nearly every day to understand our work and find answers to its challenges.

Lesson 1 - Spend some time identifying what your job really is. Don't look to position descriptions or work plans to provide your answer - because those plans and descriptions follow from your answer to the basic question. Why do the people of the U.S. and Congress appropriate tax dollars to pay you to do what you do? What will happen if you do not do your job well?

Lesson 2 - For almost every issue you encounter, there will be more than one right answer. Your job would be relatively easy if it were just a matter of distinguishing right and wrong. Work hard to identify the right answer, the one that is not only consistent with the law we administer but also furthers the work you were hired to do - refer back to your answer to the first question, "What really is your job?"

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Carol Gold's Retirement Message to All Employee Plans Employees *continued from page 1*

Lesson 3 - Retirement plans were not invented by the government. Over many years - even before there was an Internal Revenue Code - plans were designed as a way to provide compensation, reward, incentive and protection to the workforce. Listen to our customers as they struggle to adapt plan designs from the 19th century to accomplish the same objectives in the global economy of the 21st century.

Thank you for the privilege of working with you. It's been a great ride!*

EP Issues FY 2007 Work Plan

Employee Plans issued its FY 2007 Work Plan on September 19, 2006. The work plan sets forth EP's major strategies, operating priorities, goals and objectives for the new fiscal year, and is designed to be a point of reference for various activities. Listed below are highlights of the operating priorities:

Detect and Deter Abusive Tax Schemes through Accelerated Enforcement Actions and Educational Strategies Focusing On Non-Global Settlement Initiative (GSI) Participants and the Identification of New Abusive Schemes - EP will continue to take an aggressive stance toward all identified abusive tax avoidance transactions (ATAT). FY 2007 efforts to combat ATAT will include:

- Continuance of examinations on S Corporation ESOPs that violate IRC 409(p) and IRC 412(i) plans that take deductions for excessive insurance,
- Examination or other compliance activity on taxpayers that did not elect to participate in the settlement initiative described in Announcement 2005-80, and
- Development of other potentially abusive issues for enforcement action.

Coordinate Information and Processes with Department of Labor (DOL) and Pension Benefit Guaranty Corporation (PBGC) to Monitor Pension Funding - Interagency coordination on pension funding issues has escalated in the wake of several prominent bankruptcies which have resulted in failures to fund pension plans. EP will continue to partner with the PBGC and DOL to discuss information sharing and ideas to improve interagency coordination. Technical guidance will also be developed and issued for recent pension legislation.

Take Timely Action to Implement the Provisions of the Pension Protection Act of 2006, Including the Issuance of Technical Guidance and the Processing of Cash Balance Plans that have been Suspended - The passage of the Pension Protection Act of 2006 on August 17, 2006, provides statutory guidance that will allow for the processing of determination applications that have been held in suspense for cash balance conversions. Timely actions will be taken to expeditiously and consistently process these applications during FY 2007. Rulings & Agreements will work jointly with Chief Counsel and Treasury to issue timely technical guidance on the applicable provisions of the new statute.

Analyze and Improve the Focused Examination Concept for All Examinations, and Reinforce the Focus on Key Examination Activities and Issues - The focused examination concept allows agents to more effectively and efficiently perform examinations by focusing on key issues. Mandatory pre-determined issues are identified for audit by considering plan type and other criteria based upon historical information and local knowledge, while still allowing agents the flexibility to expand the audit scope if necessary. This initiative began in January 2006 and will be analyzed for possible improvement in FY 2007, including full implementation for EP Team Audit (EPTA) cases.

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Embed Research and Analysis into Inventory Selection Utilizing Market Segments while Leveraging Data Analysis Unit (DAU) and EP Compliance Unit (EPCU) Resources to Ensure Expanded and Broader Coverage through Compliance Contacts - Risk Based Targeted (RBT) examinations will be conducted in market segments where baseline data indicated potential non-compliance. The results will be used to guide the future direction of examination resources. Projects will also be developed through analysis performed by DAU and EPCU, which will help identify appropriate examination strategies and maximize existing resources.

Continue Efforts to Further Reduce the Inventory Backlog of Voluntary Compliance (VC) Submissions through Improved Work Processes and the Use of Resources throughout Rulings and Agreements - As a result of case processing efficiencies and the support of Technical and Determinations resources, the inventory of VC submissions trended downward during FY 2006 and is expected to continue during FY 2007. Work processes will be further analyzed to determine additional improvement.

Provide Plain Language Guidance and Communicate Enforcement Trends and Tips to Plan Sponsors and Participants to Enhance Mistake/Abuse Prevention and Promote Retirement Savings via Qualified Plans - Plain language guidance will be developed as a result of:

- New technical guidance;
- Growth in employee-directed accounts; and
- Shift in responsibility from employer to employee for many retirement decisions.

Other needs for soft guidance will be identified and linked to related enforcement trends and tips, as appropriate.

Ensure that the New Staggered Determination Process Stays on Schedule, with Special Emphasis on the Review of Defined Contribution Pre-approved Plans - The consolidation of the Master & Prototype and Volume Submitter programs allows for greater control of the pre-approved process and timely disposition of defined contribution pre-approved plans. Several strategies have also been implemented to ensure program success, and it is expected that 7,200 of the 10,400 pre-approved applications will be closed during FY 2007.

For additional information on these operating priorities, please access the [work plan](#).

News for Retirement Plan Sponsors

Available for your - or your clients' - pleasure: the other member of the *Employee Plans News* family of newsletters, the *Retirement News for Employers*.

The *Retirement News for Employers* is filled with retirement plan news and articles designed primarily for many of your clients: members of the small business community. Subscribership to the *RNE* continues to grow. So act now; don't delay: join the thousands of satisfied subscribers who have signed up for the *Retirement News for Employers*.

The **Summer 2006 Edition** featured stories on such topics as:

- Pension Protection Act of 2006;
- Waiver of the 60-Day Rollover Period;
- The Fix is In: Common Plan Mistakes - "Plan Loan Failures and Deemed Distributions;" and
- The latest "Timing is Everything" flyer.

It's easy to subscribe: Just go to the [Retirement Plans Community web page](#), select "Newsletters," and click on "Retirement News for Employers."

EP Connections: Interview with Karen Justesen

Karen Justesen is the manager of the Employee Plans Field Actuaries Group. She has held this position since November of 2005. Karen began her career in the private sector, where she was part owner of a small consulting firm, and principal in a large international consulting firm working with large retirement plans. In 1989 - 1991, she was the first visiting actuary for the Internal Revenue Service when Marty Slate was Director of Employee Plans. After another stint in the private sector she again joined Marty when he was director of PBGC. In 2000, she moved to Denmark where she was a private consultant working mainly in the area of international mergers and acquisitions. She returned to the U.S. three years ago, working first for PBGC and then returning to the IRS. Karen is both a Fellow of the Society of Actuaries and an Enrolled Actuary.

Your group of field actuaries is part of the Examinations area. What type of activities does your group do as part of the EP Examinations Program?

Although we are in the Examinations area, the Field Actuaries Group provides technical support for both EP Examinations and Rulings & Agreements. For Rulings & Agreements our main effort is to review the most complex of the applications for determination letters. For Examinations we are now mainly focused on assisting in the examination of ATAT cases and other complex issues. Field actuaries identify new issues that they see when doing these reviews and this has often been the source of new examination or policy initiatives. For both Examinations and R&A we provide training for the agents, both as part of CPE and more informally as the need arises.

How many employees do you supervise and where are they located?

There are five field actuaries located throughout the United States, one in each EP Examinations Area. We have authority to hire one more this fiscal year and one next fiscal year and it still will not be enough. All of my employees are Enrolled Actuaries, and they all have substantial private-sector experience. They are an incredibly competent group and I learn from their experience every day.

I am located in Washington DC. In addition to coordinating and managing the field actuaries, my role is also to serve as a liaison between the field actuaries and the National Office. We do not make policy, but we work closely with those who do.

Aside from supporting IRS's Examinations and Rulings and Agreements Programs, what duties do your employees have?

Education and outreach are important areas. In addition to the internal IRS teaching activities mentioned above, the field actuaries are very active in outreach to the public. They participate in meetings of various professional organizations, and also provide one-on-one information. Our goal is to help the public understand the Service's position so they can comply voluntarily.

The Service has really focused on Abusive Tax Avoidance Transactions (ATAT). Are your employees involved in this effort?

There is an increasing Examinations focus on ATAT and it is occupying an increasing portion of the field actuaries' time.

Your group was restructured and created as a "field group" under the Examinations area. How does this new organizational structure help?

The restructuring gives my employees a forum to communicate with each other. This communication makes it easier to give consistent advice across the country. We have weekly telephone meetings to discuss technical issues. I work with National Office to get answers when new issues arise, and those answers are then used consistently throughout the country.

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Consistency is an important topic. Can you explain this more?

Complete consistency is an impossible goal. We are often working with issues where there is no clear guidance. The more unusual, difficult, or complex an issue is, the more the IRS's conclusions will depend on the particular facts and circumstances of the case. Consistency cannot be expected in "gray areas." Practitioners who use unusual, complex and creative plan designs should expect that the advice they receive from the IRS may change from time to time and from person to person as the Service's thinking on these issues develops. Practitioners who want certainty should use simpler designs, safe harbors, or well-established plan provisions.

It will never be the case that practitioners will have guidance for every technical nuance they can think up. To the extent that someone is outside the area where the IRS has given clear guidance, they are in a gray area of uncertainty. Processing those cases will take longer and will depend on the facts and circumstances. Results in those cases will certainly be less reliable as a guide to how the IRS will treat future cases that contain similar issues. That is the nature of gray areas.

If a determination letter has been issued on a plan design, can that design be questioned if the plan is selected for an examination?

Just because you receive a good determination letter on a plan with a particular unusual approach, do not assume that the approach will not be questioned on examination. Prospective correction may be required. Again, this is most likely to happen in the "gray areas."

You worked for the PBGC and the IRS. How do the agencies differ in their role as a protector of retirement plans?

At the PBGC, my title was Chief Negotiating Actuary. Our mandate was straightforward, in that we guaranteed the benefits provided by the private pension system in the most efficient way possible. Most of us worked in one building, and if I needed to discuss an issue I could just walk down the hall and have the conversation. The IRS is a much larger and more complex organization. We have a very complex mandate with regard to our focus. It is very challenging to balance all of these. And it is a real challenge to have my employees spread across the country.

And let's close with what you like to do outside of the office?

Traveling: I am married to a Danish National. We spend time every year in Copenhagen, and we have done a lot of European travel. We also manage to get to other interesting places, such as Russia, New Zealand and Australia. Our plans include more travel inside the U.S., as there is so much here that we have not seen. When we are home in Washington we greatly enjoy all this amazing city has to offer. We particularly enjoy the special exhibits at the galleries, and are regulars at the symphony and opera. My husband has a full-time job in Copenhagen and I have a full-time job in the United States, yet we manage to spend most of our time together. Having an inter-continental marriage has its challenges, more than offset by the joys!

**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:T:EP:CEO
1111 Constitution Avenue, N W, PE-4C3
Washington, D.C. 20224

or FAX (202) 283-9525

or E-Mail
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 Community web page](#).

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 Community web page](#).

Critical FewPoints...by Michael Julianelle (Director, EP Examinations)

Hello again everyone. We made it through the summer and now hopefully we can enjoy the weather the fall season brings. Thanks for taking the time in joining me as I inform you on the latest in the Retirement Plans Community.

Using the focused examinations techniques and the various examination initiatives currently underway, I felt that it was a good time to reiterate our policy regarding the preferred place for performing an EP examination. I asked for comments from you to assist me in preparing this article through RetirementPlanComments@irs.gov. I want to thank those of you who took the time to share your comments with me. It is important to know your thoughts and ideas.

What I am about to write in no way changes our past policy and I want to discuss the reasons why we have this policy in place. I want to ensure that the EP agents' time is efficiently used by having access to source documents where they are stored. To accomplish this goal, I am encouraging EP agents to initially PLAN on performing the audit where the taxpayer's original books, records and source documents pertinent to the examination are located, which is generally at the taxpayer's place of business.

Refer to Regulation Section 301.7605-1(d), which provides, in part:

“A field examination will generally take place at the location where the taxpayer's original books, records, and source documents pertinent to the examination are maintained. In the case of a sole proprietorship or taxpayer entity, this will usually be the taxpayer's principal place of business.”

The regulation very clearly sets out what the policy is, but it's important to understand why the IRS has this policy and what I hope to accomplish by following this policy. I don't want to use our authority to insist on the place of audit simply for the sake of demonstrating that we can, especially as it appears Employee Plans hasn't taken a consistent position in the past. Sometimes there are valid reasons not to perform the audit at the taxpayer's place of business. But, please note that we are not auditing the information entered onto the Form 5500, we are auditing the operation of the plan.

By performing the audit at the taxpayer's place of business, the books, records and source documents are more readily available, and this should lessen both the number of document requests and the added time these requests require. For example, Forms W-2, 940 and 941; payroll records; personnel files and the entity's income tax return are all examples of documents and records that would not normally be stored at a pension professional's place of business. A review of these and other records often lead to questions that require additional records that are at the taxpayer's place of business.

Another goal for conducting the audit at the taxpayer's place of business is to provide an opportunity for agents to familiarize themselves with the business operations by inspecting the premises and interviewing the taxpayer. Experience has shown that pension professionals are extremely knowledgeable regarding the plan's operation, but are not as well versed in how the taxpayer conducts business. Without dealing with someone from the business who knows about its daily operations, our EP agents cannot resolve their questions. In addition, unless an interview with the taxpayer has been pre-arranged, the representative's lack of knowledge significantly diminishes the value of the initial interview.

Additionally, agents need to evaluate the internal controls that are in place for plan and business operations. Without having access to someone who works in the taxpayer's location, it is difficult for the agent to evaluate whether the census information provided to the pension professional is accurate. For example, does the office manager fully understand how the plan should work, including entry dates, includable compensation, related businesses that could have an impact on various operational tests, etc.? If not, the information provided to the pension professional may be flawed.

It is for these reasons that my agents have been instructed to initially plan on performing the audit at the taxpayer's place of business. Both agents and managers will use appropriate business and professional judgment in determining where and when the audit will take place.

However, with respect to certain businesses, especially small businesses, I realize there may be valid reasons for not holding the examination at the taxpayer's principal place of business. I am particularly sensitive to situations where:

- The agent's presence would disrupt the business operations.
- There is a lack of office space to perform the audit.

If it makes better business sense to conduct the examination at a location other than the taxpayer's place of business (for example, if the agent's presence would disrupt the business operations), then the taxpayer or their authorized representative may submit a request outlining the reasons. If this is approved, the agent will request an opportunity to conduct a walk-through of the business premises and an opportunity to direct questions to the taxpayer to resolve questions regarding business operations.

In conclusion, I expect my agents to utilize their professional judgment in determining when it is appropriate to deviate from the normal policy of conducting audits at the taxpayer's place of business. I am confident that my agents and their managers, with your input, will use appropriate business and professional judgment in determining where and when the audit will take place and when it is appropriate to request a walk-through of the business premises.

Please feel free to e-mail any questions or comments on this topic to RetirementPlanComments@irs.gov and type "Place of Audit Comments" in the subject line. I will address any further comments or questions either in a future article or on the Retirement Plans Community web page, www.irs.gov/ep.

Thank you for reading my words. Be well. •

Now Available: Refreshed Retirement Plan Correction Programs CD-ROM

Due to the issuance of Revenue Procedure 2006-27, we have refreshed the Retirement Plans Correction Programs CD-ROM. It is now available for order from the area distribution centers. The refreshed CD provides information on why early identification and correction of plan problems is important and how to use the correction programs offered to plan sponsors by IRS, the U.S. Department of Labor and the Pension Benefit Guaranty Corporation. Some of the topics contained on the CD are:

- Maintaining Your Plan
- 10 Reasons to Find and Fix Retirement Plan Mistakes
- Common Qualified Plan Requirements
- Employee Plans Compliance Resolution System (ECPRS)
- U.S. Department of Labor Correction Programs
- Pension Benefit Guaranty Corporation Correction Programs
- FAQs regarding the Self-Correction Program, the Voluntary Correction Program, the Audit Closing Agreement Program, SEPs, SARSEPs, and SIMPLE IRA plans.

To order your copy, phone toll-free (800) TAX-FORM (829-3676). Or, you can order one from the Retirement Plans Community web page at www.irs.gov/ep by going to "Educational Services" under the "Retirement Plans Community Topics" section and clicking on "Retirement Plan Correction Programs CD-ROM." •

GUST Applications in an EGTRRA World

With the opening of the new five-year staggered remedial amendment period on February 1, 2006, some adopters of pre-approved plans have wondered whether they can still receive favorable determination letters for GUST. The answer ismaybe.

Sponsors of defined contribution pre-approved plans have submitted their specimen documents for approval of EGTRRA and subsequent changes, but employers won't be adopting these plans until the two-year window opens after the specimen documents are approved, probably sometime in 2009. If an employer adopts a GUST pre-approved plan as an amendment or if it is an initial plan and the employer wants a determination letter (they actually have reliance on the opinion or advisory letter already), the employer can still submit a Form 5307 application for GUST and receive a GUST determination letter until the two-year window opens.

However, (and here is where the maybe comes in) if changes have been made to the GUST pre-approved document and the employer is required to submit a Form 5300 application, then the plan must meet the requirements of [Rev. Proc. 2005-66](#). Plans that are submitted prior to the two-year window period for pre-approved plans should be amended for the currently applicable Cumulative List ([Notice 2005-101](#) for plans submitted in Cycle A, the 2006 Cumulative List for plans submitted in Cycle B, etc.) in a restated format; these plans will be treated as individually designed plans subject to the five-year remedial amendment cycles. The determination letter issued for the plan will include an expiration date based on the cycle determined by the last digit of the employer's EIN. Remember, off-cycle submissions will not be worked until all on-cycle submissions have been completed, and plan sponsors are strongly encouraged to submit off-cycle only when necessary.

Sponsors of most of these plans will want to remain on the six-year staggered remedial amendment cycle rather than restating and submitting the plans as individually designed plans. Section 19.03 of Rev. Proc. 2005-66 provides that:

“An employer that adopts an amendment which causes an M&P plan to be treated as an individually designed plan...but for remedial amendment cycle purposes remains eligible for the six-year remedial amendment cycle under section 19.02 of this Revenue Procedure, must file a determination letter application (that is a Form 5300) for reliance. The determination letter application should be filed during the approximate two-year period within the six-year remedial amendment cycle that the Service announces for employers to adopt and submit determination applications (if applicable).”

Therefore, such plans can remain on the six-year cycle by submitting the Form 5300 application within the two-year window for adopters of EGTRRA pre-approved plans.

The Service has received a number of these Form 5300 applications since February 1, 2006 and will be returning these applications with an explanation that they must either restate the plan for the current Cumulative List or submit the Form 5300 in accordance with Rev. Proc. 2005-66 during the two-year window for adopters of pre-approved plans to receive a determination letter. •

How to Subscribe to *Employee Plans News*

The *Employee Plans News* is issued only through IRS e-mail. For your free subscription, please go to the [Retirement Plans Community web page](#) and subscribe on-line by selecting “Newsletters” under “Retirement Plans Community Topics.” All editions of the *Employee Plans News* are archived there.

For your convenience, we have included Internet links to referenced materials throughout the *Employee Plans News*. These links are identified by blue and underlined text. •

PBGC Insights

Pension Protection Act of 2006 (PPA)

On August 17, 2006, the Pension Protection Act of 2006 (Public Law 109-280) was signed into law. This legislation affects many PBGC requirements. The PBGC will provide guidance on how the changes affect practitioners and other persons as this information becomes available. For updates, check "[What's New](#)" on PBGC's web site.



Effect of PPA on Certain PBGC Reporting and Disclosure Requirements

On August 30, 2006, the PBGC issued [Technical Update 06-4](#) ("Use of Corporate Bond Rate for Certain PBGC Purposes"). The update explains how the provisions of PPA relating to the PBGC's required interest rate for determining variable-rate premiums affect certain PBGC requirements, particularly annual reporting under ERISA section 4010, post-event and advance reporting under ERISA section 4043, and Participant Notices under ERISA section 4011.

Participant Notice

On August 30, 2006, the PBGC issued [Technical Update 06-3](#) ("2006 Participant Notice"). The update explains how to determine whether a 2006 Participant Notice is required under ERISA section 4011 (taking into account the provisions of PPA) and the information required to be disclosed in a 2006 Participant Notice. As in prior years, it includes a Model Participant Notice, updated to reflect the latest information on maximum guaranteed benefits, and a worksheet for plan administrators. Although PPA repeals ERISA section 4011 for plan years beginning after December 31, 2006, the participant notice requirement under ERISA section 4011 applies for the 2006 plan year.

Premiums Must Be Electronically Submitted

Effective July 1, 2006, premium filings are required to be electronically submitted to the PBGC as follows:

- Large plans (those with 500 or more participants for the prior year) must e-file for plan years beginning on or after January 1, 2006. For example, a large plan with a calendar plan year that has not yet made its final 2006 filing must make the filing electronically by the October 16, 2006, due date.
- All plans must e-file for plan years beginning on or after January 1, 2007. For example, a large plan whose plan year begins January 1, 2007, must e-file its 2007 estimated filing by the February 28, 2007, due date; while a small plan whose plan year begins January 1, 2007, must e-file its 2007 final filing by the October 15, 2007, due date.

Premium filings may be made via the PBGC's online application, My Plan Administration Account (My PAA). To help familiarize filers with the My PAA process, the PBGC is offering explanatory webcasts. To register for a My PAA webcast, go to the "[What's New](#)" page on the PBGC's web site. Additional online information about e-filing via My PAA (e.g., a self-service demonstration of the sign-up process, e-filing methods, and payment options) may be found on the [My PAA](#) page of the PBGC's web site.

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Miscellaneous Changes to PBGC Premiums

- The flat-rate premiums for single-employer and multiemployer plans are now inflation-based and, therefore, may increase for 2007 and later plan years.
- The variable-rate premium for single-employer plans may be capped for certain plans of small employers with 25 or fewer employees starting with plan year 2007 (See next article for more information).
- The interest rate used for determining the variable-rate premium for plan year 2006 is now 85% of the composite corporate bond rate. The monthly interest rates are reflected on the PBGC's web site and may be accessed via the [Practitioners Page](#).

Small Employer Variable-Rate Premium Cap

The Pension Protection Act of 2006 caps the variable-rate premium for certain plans maintained by small employers, effective for plan years beginning in 2007 and later. The cap applies to a plan if the aggregate number of employees of the contributing sponsors of the plan and all members of their controlled groups is 25 or fewer. For these plans, the variable-rate premium is capped at a per-participant rate of \$5 multiplied by the number of plan participants. Thus, a qualifying small-employer plan would pay, at most, a total variable-rate premium calculated by multiplying the capped per-participant rate (\$5 times the number of plan participants) by the number of plan participants, or \$5 times the square of the participant count. For example, if the participant count is 20, the cap on the variable-rate premium is \$2,000 [$(\$5 \times 20) \times 20 = \$2,000$].

What's New for Practitioners

Don't forget to check out "[What's New](#)" on the PBGC's web site. This section highlights recent developments and information of interest to pension plan administrators and other practitioners. •

Quick Hits

Welcome back to *Quick Hits*. Recently, a major law change and announcement of a delayed effective date have been in the news. EP has also experienced the departure of our esteemed newsletter editor.

The Pension Protection Act of 2006: On August 17, 2006, the Pension Protection Act of 2006 was signed into law. The law includes a number of significant tax incentives to enhance retirement savings for millions of Americans. For additional information on the PPA, check out the [Summer 2006](#) edition of the *Retirement News for Employers*.

Delay in Effective Date for Regulations under 403(b): The IRS announced that the final regulations under section 403(b) would generally not be effective earlier than January 1, 2008. Take a look at the [August 29 News Flash](#) for more info.

Au Revoir: Todd Newman, editor of the *Employee Plans News* and *Retirement News for Employers*, has relocated with his family to France. Todd tells us that he is enjoying the farmers' markets and great variety of cheeses that he has encountered on his adventure. We, here at the EPN, thank him for his wit, humor and service to the newsletters and wish him the best of luck in this next chapter in his life. •

Employee Plans Published Guidance

(July 2006 - September 2006)

Regulations

[T.D. 9275, 71 Fed. Reg. 41357](#)

These final Income Tax Regulations pertain to the interrelationship of the minimum coverage requirements of section 410(b) with certain employers of section 501(c)(3) organizations.

[T.D. 9280, 71 Fed. Reg. 45379](#)

These final Income Tax Regulations pertain to the anti-cutback rules of section 411(d)(6) with respect to certain plan amendments as well as a utilization test.

[T.D. 9282, 71 Fed. Reg. 51471](#)

These final Income Tax Regulations pertain to section 162(k) and section 404(k) and state that the payments in redemption of employer securities held by an ESOP are not deductible as applicable dividends.

Revenue Rulings

[Rev. Rul. 2006-38, 2006-29 I.R.B. 80](#)

This revenue ruling pertains to the calculation of the amount involved when calculating the prohibited transaction excise tax where there are elective deferrals that are not timely paid.

[Rev. Rul. 2006-43, 2006-35 I.R.B. 329](#)

This revenue ruling pertains to whether there is a governmental pick-up plan within the meaning of section 414(h)(2) of the Code, and if certain criteria are met, applies prospectively.

Notices

[Notice 2006-65, 2006-31 I.R.B. 102](#)

This notice contains a general description of section 516 of the Tax Increase Prevention and Reconciliation Act of 2005 which contains new section 4965 of the Code.

[RIN-1210-AB06, 71 Fed. Reg. 41616](#)

This notice pertains to proposed changes in the tri-agency revision of the annual information returns/reports (Form 5500 series).

[Notice 2006-75, 2006-36 I.R.B. 366](#)

This notice is a catch-up of corporate bond interest rates under section 301 of the Pension Protection Act of 2006.

Announcements

[Announcement 2006-45, 2006-31 I.R.B. 121](#)

This announcement contains a list of approved non-bank trustees and non-back custodians as of 12/31/2005.

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.

Form 5550 for 2006...

With its [Media Release](#) of July 13, 2006, DOL/EBSA, along with the IRS and Pension Benefit Guaranty Corporation (PBGC) announced the release of the 2006 Form 5500, *Annual Return/Report of Employee Benefit Plan*, along with its accompanying schedules and instructions.

Modifications to the new Form 5500 are described under *Changes To Note for 2006* within the instructions, and are as follows:

- The instructions to lines 6 and 7 on Form 5500, on the counting of participants and beneficiaries in welfare benefit plans, have been expanded to include the definition of when an individual is no longer a participant or beneficiary.
- The TIPS in the instructions for lines 4a and 4d of Schedules H and I have been updated to refer to EBSA's revised Voluntary Fiduciary Correction Program and companion exemption.
- The *General Instructions* have been revised to add the new mail and private delivery service addresses for submitting late filing penalties under the Delinquent Filer Voluntary Compliance Program, and
- The IRS no longer requires the filing of Schedule P, *Annual Return of Fiduciary of Employee Benefit Trust* (beginning with 2006 plan years).

...and beyond

On July 21, 2006, DOL/EBSA, together with the IRS and PBGC released final regulations requiring the electronic filing of the Form 5500 and proposed revisions to the form, schedules and instructions for plan years beginning on or after January 1, 2008. If interested, check out all the proposed [revisions](#) as published in the *Federal Register*.

Schedule SSA Instructions to Be Revised

Filers of the Schedule SSA, *Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits* who use multiple pages, should be aware that the use of multiple pages applies only to page two of the Schedule SSA. Filers should not send more than a single page one, regardless of how many page twos are required. The Schedule SSA instructions will be corrected accordingly.

Pension Legislation Impacts Schedule B Instructions

As the *2006 Instructions for Schedule B* had cautioned, pending legislation (in the form of the Pension Protection Act of 2006) has impacted the interest rate used to calculate current liability. Revised instructions are being prepared and should be publicized shortly. Look for information concerning this in future editions of the *Employee Plans News* and on the Retirement Plans Community web page at www.irs.gov/ep.

Informational copies of the entire Form 5500-series are available for viewing on the [Retirement Plans Community web page](#) by clicking on "EP Forms & Publications" under the "Retirement Plans Community Topics" section. Paper copies will not be available until December 1, 2006.

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New Publications Released

We're happy to announce the release of the following two new publications:

- **Publication 4530, [Designated Roth Accounts Under a 401\(k\) or 403 \(b\) Plan - Frequently Asked Questions](#)** is an introductory brochure that contains a sampling of the more comprehensive list of FAQs found on the EP web page, along with a chart that compares some of the features in Roth 401(k), Roth IRA, and traditional 401(k) retirement accounts.
- **Publication 4531, [401\(k\) Plan Checklist](#)** is directed at small business owners or plan sponsors and designed to help them identify possible operational problems within their specific 401(k) plan.

All of these forms and publications are available on the [Retirement Plans Community web page](#) by clicking on "EP Forms & Publications" under the "Retirement Plans Community Topics" section. Paper copies can be requested by calling 800-TAX-FORM (829-3676). As mentioned above, paper copies of the Form 5550 material for 2006 will not be available until later this year. •

EP Examinations and Practitioners Develop New Examinations Communication Tool

In Employee Plans Examinations, we understand the uncertainty and nervousness that occurs when an audit notice is received from us. We are constantly looking for ways to improve the audit process and the communications between the agents and yourselves. For example, we have provided you with the [EP Examination Process Guide](#), which clarifies the various steps in the examination process and introduces available resources, and the [Compliance Trends and Tips](#), which provides you with results and findings from past and current EP examinations that identify compliance risks and recurring plan issues.

Our newest items, developed by a team of practitioners and Employee Plans managers located throughout the country, are meant to ease the communication between yourself and the agent as well as better prepare you for the examination of a Form 5500 return.

The first item is the [Employee Plan Audit Efficiency Guide](#). The guide will be completed jointly by the agent assigned to audit the return and yourself. The completion of this guide will assist in having the audit completed as efficiently as possible in order to reduce your time and effort during the examination. This guide will include items such as:

- Contact information for both parties;
- Date, time, and location of audit;
- How plan data will be shared; and
- Response timing.

The guide will also provide you with helpful links to various items on our web page.

The next item is [Top Ten Tips to Prepare for an Efficient Audit](#). This listing will provide you with ways to prepare for the examination of the plan and trust. Each tip comes with detailed explanations to assist you in getting the necessary items ready for the examination. For example, what people and plan-related items should be readily available during the audit? These tips will assist you in getting the correct personnel and proper information readily available for the examination.

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EP Examinations and Practitioners Develop New Examinations Communication Tool

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“This team of practitioners and Employee Plans managers have devoted a lot of time and energy to develop these tools in order to reduce the time and stress associated with an Employee Plans examination. These items, along with the other resources on our web page, should improve upon the efficiency and effectiveness of the examination process,” noted Monika Templeman, Great Lakes Area Manager, and chair of the team.

Customer satisfaction is what drives us to create the items you read about here and see on our web page. If you have any ideas for our web page or written materials you wish to share with us that would benefit the Retirement Plans Community, please send your ideas and thoughts to RetirementPlanComments@irs.gov.

Web Spins - The Retirement Plans Site

We're back: **Web Spins** - the column that takes you for a quick spin around the **Retirement Plans Community web page**.

Refreshed Benefits Practitioner Web Page - As we have done in the past with the Plan Sponsor/ Employer and Plan Participant/Employee sections of the **Retirement Plans Community web page**, the **Benefits Practitioner** section has been refreshed and regrouped to provide easier navigation of our web page. In addition, an enhancement to the “More Topics” section of the web page is a **Retirement Plans Community site map**. From this page, the user can see a one-page listing of the main retirement plan topics and link directly to the topic of their choice.

IRS employees contributing to this edition of the *Employee Plans News* are:

Barbara Bagay,
Hillary Egeth,
Carol Gold,
Sylvia Griffin,
Michael Julianelle,
Ann Junkins,
Karen Justesen,
Teresita Laureano,
Peter McConkey,
Greg Nix,
Mark O'Donnell,
Nancy Payne,
Mike Rubin,
Gary Runge,
John Schmidt,
Brenda Smith-Custer,
and
Mikio Thomas

Correcting Plan Errors - As we mentioned in the summer edition of the *Employee Plans News*, we recently redesigned our page on **Correcting Plan Errors**. Since then, we have added a new link called “**Q&A's - Recent Outreach Events**.” The featured questions and answers are based on oral presentations made by IRS officials at the ASPPA web cast on June 6, 2006, entitled, “It's Finally Here. EPCRS Updated” and the June 13, 2006 Tax Talk Today Program - “Why Fix Mistakes in Retirement Plans Now Rather than Later?” The questions were submitted by the attendees and the responses were given at the meetings. Check it out. There's sure to be something there for you.

Two New Additions - We have recently posted two new Quality Assurance Bulletins to the Retirement Plans Community web page. **Caveats under the Staggered Remedial Amendment Period for Individually Designed Plans** offers guidance for issuing determination letters for Form 5300 applications received on or after February 1, 2006. **EGTRRA Staggered Remedial Amendment Period and Remedial Amendment Cycle for Individually Designed Plans** revises the QAB issued on January 23, 2006 to clarify that a parent subsidiary organization may make a controlled group election to use either Cycle A or the parent's EIN to determine the cycle.

Waiver of the 60-Day Rollover Period - We have added a new resource for rollovers from qualified retirement plans. The information includes a **rollover chart** summarizing the rollover rules and **FAQs relating to Waivers of the 60-day Rollover Requirement**.

While We are on the Topic of FAQs - New additions to our Frequently Asked Questions About Retirement Plans Page are **FAQs regarding Loans** and **FAQs regarding Hardship Withdrawals**. As always, give it a spin and let us know what you think.

2006 IRS Nationwide Tax Forums

For the fifth year, Employee Plans and Exempt Organizations participated in the IRS Nationwide Tax Forums. This year the forums were held in Anaheim, Chicago, Orlando, Atlanta, Las Vegas, and New York. Each of the six forums ran for three days, during which time employees of the various IRS functions including TE/GE presented seminars and exhibited at booths in the exhibition hall. The forums reached nearly 15,000 tax professionals, who could earn Continuing Professional Education (CPE) credits for attending the sessions.

EP presented two 50-minute seminars at each location called *Roth 401(k) and Tips* and *Accessing Money from a Retirement Plan*. The *Roth 401(k) and Tips* seminar provided the latest information on the new Roth 401(k) accounts. The session also provided tips on avoiding common pit-falls discovered in examination projects conducted by EP on SIMPLE IRA, SEP, and traditional 401(k) plans, and what error trends were discovered with these plans. The *Accessing Money from a Retirement Plan* seminar provided the who, what, when and why of taking distributions from retirement plans. The session also featured highlights of: minimum required, early, and hardship distributions; loans and prohibited transactions; and the distinction between withdrawals from traditional accounts and Roth accounts. You can view the presentations and notes from these seminars at the Retirement Plans Community web page. Select "Plan Sponsor/ Employer" and "[Retirement Plan FAQs, FYIs, Tips and Tools](#)."

EO specialists presented two 50-minute seminars at each location called *Election Involvement by Section 501(c)(3) Organizations, Including Churches* and *Deterring Abuses Within and Misuses of Exempt Organizations*. The *Election Involvement by Section 501(c)(3) Organizations, Including Churches* seminar focused on an area that receives considerable public attention during election years and emphasized the recently released report on the Political Activities Compliance Initiative (PACI). The *Deterring Abuses Within and Misuses of Exempt Organizations* seminar provided a summary of the current compliance initiatives involving exempt organizations, including executive compensation, credit counseling, conservation easements, terrorism and political intervention.



Back by popular demand for the second year, EO specialists presented a two-hour workshop called *Form 990 Information Return Workshop* twice at each forum location. As in the past, demand for this popular workshop required attendees to pre-register in order to get a seat. During this workshop, EO specialists discussed the major sections of the Form 990 (the unique information return used by the IRS and most state agencies to regulate tax-exempt organizations) emphasizing those areas where exempt organizations make the most errors.

In the booths at each of the forum exhibit halls, practitioners had the opportunity to interact with TE/GE and other IRS employees, and tax professionals, and review the tax products and services offered by the IRS. There, both EP and EO employees responded to practitioners' questions and promoted EP and EO products and services. •

SWBA/IRS 17th Annual Employee Benefits Conference

Internal Revenue Service and the SouthWest Benefits Association (SWBA) bring you the SWBA/IRS 17th Annual Employee Benefits Conference. This year's conference is being held November 15-16, 2006, at the Adam's Mark Hotel in Dallas, Texas.

Featured sessions for the upcoming conference include:

- Pension Protection Act (PPA)
- Washington Guidance Update
- Defined Benefit & Cash Balance after the PPA
- Determinations & the New Remedial Amendment Period
- EP & EBSA Enforcement Activities
- Litigation Update
- 409A
- EP & EBSA Voluntary Correction Programs

Speakers at this year's conference include:

- Joseph Grant, Director, Employee Plans (EP)
- Martin Pippins, Manager, EP Technical Guidance & Quality Assurance
- Craig Bellanger, EP Area Manager, Gulf Coast
- William Bond, Manager, EP Voluntary Compliance, Gulf Coast
- Dan Hogans, Attorney Advisor, Office of Benefits Tax Counsel
- Susan Hensley, EBSA Deputy Regional Director, Dallas
- Tina Godfrey, EBSA VFCP Coordinator, Dallas
- Mark Alder, EBSA Associate Regional Director, Dallas

In addition to the speakers, IRS employees with expertise in determinations, EPCRS, multi-employer plans, 403(b)/457 plans, EPTA large case examinations, and 401(k) will be available to discuss troubling issues and answer your questions. For more information on the conference and to register, please visit www.swba.org, or call the SWBA at (214) 382-3035. This is your opportunity to learn from and interact with your peers at the premier employee benefits conference in the southwest. •

Los Angeles Benefits Conference

The IRS, ASPPA, National Institute of Pension Administrators and the Western Pension & Benefits Conference will host the 2007 Los Angeles Benefits Conference (LABC) at the Hilton Los Angeles/Universal City on January 25 - 26, 2007 with a pre-conference workshop (Conversation with the IRS and DOL) on January 24, 2007. The conference will focus on current regulatory, legislative, administrative and actuarial hot topics.

Featured sessions include:

- Washington Update and Overview of the Pension Protection Act
- Hot Topics for 401(k) Plans, Including Roth 401(k) Developments
- DB Funding Issues after the New Legislation
- Living with the (relatively) New 403(b) Regulations
- Document Updates, FDL Issues, Related Employee Communications Issues
- DOL Investigation Including Criminal
- VFCP - Case Studies
- EPCRS
- Health & Welfare - Covering Tax and Title I Issues Including HIPAA
- EP Examinations and Enforcement Activities

For more information regarding the conference, such as hotel rates and airfares, and to register for the conference, please visit www.asppa.org. •

Calendar of EP Benefits Conferences

UPCOMING EVENTS...

Name	Date(s)	Location	Co-Sponsor(s)	For Further Information, Please Contact
SWBA/IRS 17th Annual Employee Benefits Conference	11/15/06-11/16/06	Dallas, TX	SouthWest Benefits Association (SWBA)	www.swba.org
Los Angeles Benefits Conference	01/25/07-01/26/07	Los Angeles, CA	ASPPA, NIPA, WPBC & cooperating sponsors	www.asppa.org

RECENT EVENTS...

Name	Date(s)	Location	Co-Sponsor(s)	For Information, See
19th Annual Cincinnati Employee Benefits Conference	06/15/06-06/16/06	Cincinnati, OH	Cincinnati Bar Association	<i>EP Benefits Conferences Calendar at www.irs.gov/ep</i>
Northeast Benefits Conference (2 Locations)	06/07/06-06/08/06	Tarrytown, NY & Boston, MA	ASPPA & NE Area Pension Liaison Group	
Great Lakes Benefits Conference	05/15/06-05/16/06	Chicago, IL	ASPPA & cooperating sponsors	
Mid-Atlantic Benefits Conference	05/08/06-05/09/06	Philadelphia, PA	ASPPA	



Department of the Treasury
Internal Revenue Service
www.irs.gov
Publication 3749 (9-2006)

Internal Revenue Service
Tax Exempt and Government
Entities Division

Employee Plans News
SE:T:EP:CEO
1111 Constitution Avenue, NW PE-4C3,
Washington, DC 20224