

Retirement News for Employers

Helping Business Owners with Retirement Plans

Internal Revenue Service

Tax Exempt and Government Entities

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Timing is Everything

In this edition of the *Retirement News for Employers* we bring you a new feature: “Timing is Everything.” The inaugural flyer provides info on 401(k) plan and 403(b) plan contributions and on tax credits for retirement saving in 2006. Just go the last page of this and each future edition for the handy one-page flyer.

“Timing is Everything” is a flyer designed for employers to share with their employees and provides bullet-point information about retirement. Each “Timing” flyer features:

- Printer-friendly graphics – We won’t drain your ink supply when you print them out;
- Plain-language tips – No translation needed; and
- The Retirement Plans Community web address – Your employees can just point and click for even more retirement tips from the IRS.

Print the “Timing is Everything” flyer and include it in your employees’ pay envelopes or post it on a bulletin board – we’ve made the flyer look good whether you print in color or in black & white.

If you prefer, you can use the flyer in company e-mails or newsletters. Just like the rest of the *Retirement News for Employers* the “Timing” flyer is in easy-to-use PDF format.

Each “Timing” flyer will have important tips for employees on retirement issues. Future flyers will have info on receiving retirement plan distributions, IRA contributions and more. We welcome your suggestions on “Timing is Everything” topics – just send them to RetirementPlanComments@irs.gov.

FYI: We’ll build an online archive of linkable “Timing is Everything” flyers where viewers can click on linked items in each flyer and find additional info. You’ll find them in both the Plan Sponsor/Employer and Plan Participant/Employee sections of the [Retirement Plans Community web page](#). ■



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

Hello again everyone. Thanks for returning to what I hope is a valuable tool for you and your employees as I inform you about recent developments in the retirement plans community. Please note that I am always willing to hear your feedback and/or questions about this article or suggestions for future articles. You can do so by e-mailing me at RetirementPlanComments@irs.gov.

Critical Few – Update

In the last issue, I shared with you some of my current “Critical Few,” or most important items. In this issue, I’ll share with you my updated “Critical Few.” This and future issues will expand on these areas of focus to give you my in-depth views and ideas. The highlighted items are discussed below.

- Expand Compliance Contacts
- Improve Examination Timeliness
- **ATAT**
- Monitor Pension Funding
- **Expand Focused Examination Concept**

ATAT – Abusive Tax Avoidance Transactions

One area we are currently examining is transactions the IRS considers abusive. Because of our examination experience with these arrangements, the IRS issued [Announcement 2005-80](#). This Announcement gives taxpayers a limited-time opportunity to come forward and settle any of 21 different transactions the IRS considers abusive. For the retirement plans community, the transactions eligible for this settlement initiative involve (generally):

- Abusive Roth IRA transactions;
- Abusive situations in life insurance contracts;
- Abusive trust arrangements involving welfare benefit trusts; and
- Abusive transactions in management S Corporation Employee Stock Ownership Plans, or ESOPs.

I strongly advise anyone currently in one of these arrangements to read the Announcement, consult your pension representative if you believe your plan is affected by one or more of these transactions, and consider applying for a settlement initiative via this Announcement. Go to www.irs.gov for more information on the abusive transactions and the settlement initiative.



We Have a New Look

Thanks to public feedback, changes have been made to navigating the IRS.gov web site (and to the Retirement Plans Community web page, too):

- “Information for” links on the main IRS.gov web site are now located under the IRS banner. Note “Retirement Plans Community.”
- Once at the Retirement Plans Community web page (www.irs.gov/ep), the second level navigation of the web page to “Information for” links for specific content for Benefits Practitioner; Plan Participant/Employee; and Plan Sponsor/Employer are now located directly under the IRS banner.
- Search functionality has been upgraded to increase search result accuracy and usability.

So give us a visit and take a look at the improvements. [News Release IR-2005-134](#) provides more information about the improvements to the IRS.gov site. ■

Expand Focused Examination Concept

I'm working to change the methodology and audit philosophy within Employee Plans Examinations from one that stresses a comprehensive approach, to a more limited process that concentrates on a framework of activities that are used to evaluate overall plan compliance. This philosophy will help me increase examination coverage and have my agents work more productively. What's in it for you? You will only have to gather records for the issues initially identified by the agent. Depending on the compliance level of your plan after conducting an opening interview, reviewing internal controls and examining these few key issues; the examination will be expanded or closed at that time. For the compliant taxpayers this approach will save them time and money. Also, my agents will be spending less time on the examination, which provides you a quicker closing letter.

My plan is to begin using this focused examination concept in January 2006. I intend to provide agents with training toward the end of this year and to share my philosophy and goals for this concept as I have done with you here.

If you are one of the "lucky" (I guess you might prefer the term "unlucky") ones who gets selected for a focused examination and you would like to share your experiences with me, I would welcome your comments as well as ideas for improving the process. E-mail me at RetirementPlanComments@irs.gov. ■

More Relief for Hurricane Victims

The IRS, DOL and PBGC have issued joint guidance on relief – including filing and funding relief; loan and hardship distribution provisions; and re-contribution rules – provided in the Katrina Emergency Tax Relief Act (KETRA). See this and all the recent information on disaster relief due to the spate of deadly hurricanes in the Gulf Coast at the [Retirement Plans Community web page](#).

There's information on provisions related to Hurricanes Katrina, Rita and Wilma. You'll also find links to relevant newsletter articles, official IRS guidance and other government agencies.

Go to www.irs.gov for all the latest news. ■

Product Profile – *The Retirement Plan Products Navigator*

The Retirement Plan Products Navigator (**Publication 4460**) is a new publication issued by the Employee Plans office. This useful tool will help you find the retirement plan assistance materials and lend you a hand in answering these questions:

- Which plan is best for my business?
- What are the basic plan requirements?
- How can I keep my plan compliant with the tax law?
- What if I make mistakes?

The *Navigator* provides you a highway of retirement plan assistance materials and lists the publication title, content and product description for resources to:

- Determine Your Direction
- Choose a Route
- Stay on Course
- Perform Regular Maintenance
- Make a Course Correction

From this collection of retirement plan products, learn the benefits of having a retirement plan for your business, compare and discover which plan is best suited for your business, roll-out your plan, and take the right steps to keep up your plan. Follow the highway and you will also see that the IRS has helpful programs to catch and fix mistakes in your plan.

The publication, as well as the resources listed in the *Navigator*, can be found on the [Retirement Plans Community web page](#). The publication can also be ordered by calling toll-free (800) TAX-FORM (829-3676). ■

The Filing Cabinet

Forms – you can't live with them, you can't live without them. Just like you use forms when running your business – everything from spreadsheets to receipts to invoices – you also use forms when dealing with a retirement plan.

New Form

The IRS is drafting **Form 8915**, *Qualified Hurricane Katrina Retirement Plan Distributions and Repayments*, which will be used by taxpayers to report distributions and determine the amount included in income. The new form should be available sometime after January 1, 2006 by calling (800) TAX-FORM (829-3676).

Pub Update

In keeping with our promise to supply basic information on different types of retirement plans, we're happy to announce the release of a cornucopia of new publications:

- **Publication 4333**, *SEP Retirement Plans for Small Businesses*, is a customer education and outreach tool designed for small business owners and tax practitioners with clients that may be able to start or already have a Simplified Employee Pension (SEP) plan. It provides guidance on the establishment and operation of such plans and was produced in conjunction with the U.S. Department of Labor.

CONTACTING EMPLOYEE PLANS

The *Retirement News for Employers* 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 at 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 www.irs.gov/ep.

- **Publication 4460**, *The Retirement Plan Products Navigator*, highlights publications and brochures targeted to small business owners. (See the article on Pub 4460 on page 3.)
- **Publication 4482**, *403(b) Tax-Sheltered Annuity for Participant*, is directed at participants in a 403(b) annuity who are interested in learning more about the basic provisions and requirements in the operation of their plan along with pitfalls common with many 403(b) annuities.
- **Publication 4483**, *403(b) Tax-Sheltered Annuity Plan for Sponsor*, is directed at plan sponsors/employers who are interested in learning more about a 403(b) annuity plan, the operational mistakes common to many of these plans, and how to avoid and correct them.
- **Publication 4484**, *Choose a Retirement Plan for Employees of Tax-Exempt and Government Entities*, is designed for plan sponsors/employers of tax-exempt organizations and government entities who are interested in establishing a retirement plan for their employees. It contains a chart that highlights the different types of plans available and key features specific to each plan.

In addition, we've updated the two following publications:

- **Publication 3998**, *Choosing a Retirement Solution for Your Small Business*, is designed for tax practitioners with clients that may

be able to sponsor a retirement plan. It contains a chart that highlights the primary types of retirement plans and key features specific to each type of program. It was produced in conjunction with the U.S. Department of Labor.

- **Publication 4222**, *401(k) Plans for Small Businesses*, is designed for small business owners and tax practitioners with clients that may be able to start or already have a 401(k) plan. It contains basic information dealing with the establishment and operation of 401(k) plans, including highlights of the basic types of 401(k) plans. It was produced in conjunction with the U.S. Department of Labor.

All of these new publications are available on the [Retirement Plans Community web page](#) by clicking on “EP Forms & Publications” under the “Retirement Plans Community Topics” section. ■

They’re Here: The 2006 Dollar Limitations!

To quote the Scarecrow: “Oh joy! Rapture!” They’re here: the 2006 retirement plan dollar limits are now available. Once again, we’ve gathered all the dollar limit numbers you know and love – along with perhaps some strangers – and put them on the [Retirement Plans Community web page](#).

We’ve got dollar limits starting in 1989 and continuing all the way through 2006. Or, if you just want to see the 2006 numbers, click on [2006 COLA News Release](#).

We’ve got all your favorite limits. You’ll discover such goodies as the deferral limit for 401(k) plans (\$15,000) and the section 401(a)(17) compensation limit (\$220,000). We also include – as part of this special offer – some lesser known figures. For example, the chart has the compensation amount under section 408(k)(2)(C) for SEPs (\$450 in 2006 and unchanged from 2005) and the amount for determining who is a “Key Employee” – as defined in Internal Revenue Code section 416 – increased in 2006 from \$135,000 to \$140,000.

So, if you want to see if your 2006 COLA is flat or bubbly, click on [COLA Table](#) or go to the [Retirement Plans Community web page](#), click on “Published Guidance” and go to “Cost-of-Living-Increases.”

Finally, if you act now, we’ll include a bonus link to the Social Security Administration. Just click on [2006 SSA Limits](#) and you’ll get extras like the 2006 taxable wage base (\$94,200, up from \$90,000 in 2005) and much, much more! ■

DOL News

The Department of Labor’s Employee Benefits Security Administration (DOL/EBSA) announced new guidance and education to assist plan sponsors and practitioners in complying with ERISA. In addition, DOL/EBSA worked with the IRS and PBGC to provide relief to plan officials and participants impacted by Hurricanes Katrina, Rita and Wilma.

Relief for Those Impacted by Hurricanes Katrina, Rita and Wilma

- DOL/EBSA launched a [web site](#) providing contact information on employee benefit plan sponsors whose operations have been disrupted by Hurricanes Katrina and Rita. Employers who sponsor benefit plans are being encouraged to update their contact information with DOL/EBSA if it has changed. This information will allow employees, plan participants and their families, as well as the many other support organizations assisting victims of the hurricanes, to reach plan administrators with questions and information related to their retirement and health benefits. The web site contains a searchable database with pre-

hurricane contact information from Form 5500 Annual Reports previously filed. Employers/plan sponsors who wish to update or correct their contact information on this site may do so by calling toll-free (866) 444-EBSA (3272) or by submitting a Verification of Contact Information Form found on the web site.

- DOL/EBSA and the IRS announced guidance for employers and plan officials to help victims of Hurricane Katrina obtain hardship distributions and loans through 401(k) and similar employer-sponsored plans. The guidance extends the circumstances under which workers are able to gain access to their retirement funds and eliminates the need for certain documentation.

- DOL/EBSA announced that the agency will not seek enforcement action against plan fiduciaries in the Hurricane Katrina-affected regions unable to comply with certain DOL regulations, while urging the fiduciaries to use their best efforts to comply with the law.

- Along with the IRS, DOL/EBSA used the Secretary's existing authority to extend a number of deadlines related to health plan coverage, enabling affected workers more time to make critical decisions regarding health coverage and giving affected employers more time to comply with certain notice requirements in the areas affected by Hurricane Katrina.

- DOL/EBSA announced an extension of the deadline for filing the Form 5500 and Form 5500-EZ annual report/returns for the affected counties in Louisiana, Mississippi, Alabama and Florida due to property damage and destruction from Hurricanes Katrina, Rita and Wilma.

The extension applies to plan administrators, employers and other entities located in the areas directly affected, as identified by the Federal Emergency Management Agency. The extension also applies to firms located outside the affected areas who are unable to obtain the necessary information from service providers, banks or insurance companies whose operations were directly affected by the hurricane.

Additional information on this [guidance and relief](#) is available on [DOL/EBSA's web site](#).

Electronic Filing of Form 5500 Annual Reports

As part of its continuing effort to update and streamline the annual reporting process, DOL/EBSA published in the Federal Register on August 30, 2005, a proposed regulation that would require plans to file the Form 5500 Series report electronically beginning with plan filings due in 2008.

Adopting an electronic filing system is consistent with recommendations made by the Government Accountability Office and the ERISA Advisory Council. The proposed regulation would apply to all employee benefit plans required to file Form 5500 reports with DOL. In conjunction with this regulatory initiative, DOL/EBSA will also update its current forms processing system – known as EFAST – to ensure that plans and service providers have secure internet-based methods for transmitting filings.

The comment period closed on October 31, 2005.

The [proposed regulation](#) is available on DOL/EBSA's web site. The [comments](#) are also available online.

In addition, DOL/EBSA, along with the IRS and PBGC, will propose revisions to the 2007 plan year forms to streamline and improve the information filed by plans. The revised forms, to be filed in 2008, are expected to be published for public comment this year.

Fiduciary Education Seminar Series

DOL/EBSA has announced another seminar scheduled for this fall:

Norfolk, Virginia – December 8, 2005

More [information](#) on the seminar and registration is available on DOL/EBSA's web site. ■

IRS employees contributing to this edition of the *Retirement News for Employers* are:

**Evelyn DeWald,
Larry Isaacs,
Michael Julianelle,
Joyce Kahn,
Peter McConkey,
Todd Newman,
Mark O'Donnell,
Nancy Payne,
Keith Ruprecht,
John Schmidt,
Brenda Smith-Custer
Susan Taylor, and
Mikio Thomas**

How to Subscribe to Retirement News for Employers

The *Retirement News for Employers* will be issued only through IRS e-mail. For your free subscription, please go to the [Retirement Plans Community web page](#) and subscribe online by selecting "Newsletters" under "Retirement Plans Community Topics." All editions of the *Retirement News for Employers* will be archived at the [Retirement Plans Community web page](#).

For your convenience, we have included Internet links to referenced materials throughout the electronic version of *Retirement News for Employers*. These links are identified on the printed version by the underlined text. The electronic version may be found at the [Retirement Plans Community web page](#).

The Fix Is In: Common Plan Mistakes

In each issue of the *Retirement News for Employers* we'll present a common mistake that occurs in retirement plans. We'll describe the problem, how it happened, how to fix it and how to lessen the probability of the problem happening again. This edition of the column focuses on **“Top-Heavy Errors in Defined Contribution Plans.”**

The Issue

Many of you have a 401(k) plan or some other form of defined contribution plan that needs to meet what are called “top-heavy plan rules.” These rules are found in section 416 of the Internal Revenue Code. The top-heavy rules are designed to ensure that lower paid employees receive at least a minimum benefit in plans where most of the assets are owned by higher paid employees (referred to as “key employees”). When a plan is top-heavy, certain minimum vesting and allocation requirements must be satisfied. Plans with fewer than 100 participants are the most likely to become top-heavy and thus affected by the top-heavy rules. *See our full “The Fix is In” article under the “Plan Sponsor/Employer” section of www.irs.gov/ep for more details on The Issue.*

The Problem

To properly comply with the top-heavy rules, unless the plan has been designed to satisfy the top-heavy rules in all years, employers must test their plans every year to determine their status. If the plan is top-heavy for a given year, the minimum benefits and vesting must be given for that year. The failure to properly follow the top-heavy rules can cause the plan to lose its qualified status.

Some commonly overlooked top-heavy rules that lead to problems include:

- If the participant is a key employee at any time during the previous plan year, the person is considered a key employee for the entire year.
- If the key employee account balances exceed 60%, the plan is top-heavy. There is no leeway.
- The plan may provide that only employees employed on the last day of the plan year are entitled to the top-heavy contribution.
- There is no 1,000 hour requirement in a defined contribution plan for a top-heavy allocation.
- The top-heavy minimum contribution is based on a total compensation definition (not just compensation while a participant).
- Elective deferrals made by a non-key employee to a 401(k) plan cannot be considered for the top-heavy minimum contribution.

The Fix

A top-heavy violation will cause a plan to become disqualified, resulting in adverse tax consequences to the employer and employees under the plan; however, employers may get relief from these adverse consequences through the **Employee Plans Compliance Resolution System (EPCRS)** by correcting the top-heavy failures. The Self-Correction Program (SCP) or Voluntary Correction Program (VCP) can be used to correct these mistakes. In order to fix the mistake under SCP, generally the mistake must be fixed within two years after the end of the plan year in which the failure occurred. Unless the failure can be classified as insignificant, VCP must be used after this time.

To correct a top-heavy allocation failure, the employer must make a corrective contribution on behalf of the employee who received an insufficient allocation in an amount equal to the insufficiency, adjusted for earnings. There is more than one way to correct a vesting failure under EPCRS.

Under the *Contribution Correction Method*, the employer makes a corrective contribution on behalf of the employee whose account balance was improperly forfeited by the amount of the improper forfeiture. The corrective contribution is adjusted for earnings. If, as a result of the improper forfeiture, an amount was improperly allocated to the account balance of another employee, no reduction need be made to the account balance of that employee.

Another way to correct these errors is the *Reallocation Correction Method*. Generally, the account balance of the employee who incurred the improper forfeiture is increased by the amount of the improper forfeiture and the amount is adjusted for earnings. The account balance of each employee who shared in the allocation of the improper forfeiture is reduced by the amount of the improper forfeiture that was allocated to that employee's account.

Making Sure It Doesn't Happen Again

Calculating the top-heavy status of a plan accurately and timely is vital for plan sponsors. The plan document, employee data, etc., should be carefully reviewed to ensure that the test is done correctly.

Important Tip: A plan can be structured so that the top-heavy minimum allocation requirement and vesting schedule is automatically satisfied every year. This eliminates the need to test for top-heavy status.

However, despite all of your good efforts, mistakes can happen. In that case, the IRS can help you correct the problem and retain the benefits of your qualified retirement plan. ■

Let's Just Take It One Three-Month Period at a Time

 = contribution

 = conference

 = file forms

Operating a retirement plan can be a time-consuming job. There are deadlines, not just for reports and forms but also for making contributions. There are conferences and seminars. And then there is information you need to give to participants.

So to help you navigate the retirement plan timeline, here is our month-by-month look at some of the important moments in the months to come. Please note that all of the filing dates below are for calendar-year plans - adjust the dates for non-calendar year plans:

 **December 8:** DOL Seminar: [Getting It Right – Know Your Fiduciary Responsibilities](#) - Norfolk, VA

December 31: Deadline for -

- Making required minimum distributions for 2005.
- Distributing prior year's excess 401(k) plan contributions - including income or losses - without losing plan's tax-qualified status.

 **January 15, 2006:** Fourth quarterly contribution due date for 2005 calendar-year defined benefit plans.

January 31: Deadline for -

- Filing [Form 945](#), *Annual Return of Withheld Federal Tax*.
- Giving payees [Form 1099-R](#), *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans...*

For a comprehensive list of upcoming EP Educational Events, visit the [Retirement Plans Community web page](#), select "Plan Sponsor/ Employer" and then "Upcoming EP Educational Events." ■

Timing is Everything

Some helpful retirement tips for employees from the IRS...

How much can I save for retirement in 2006?



- **If you participate in a 401(k) or a 403(b) plan:**
 - You can make up to \$15,000 in pre-tax contributions.
 - Over age 50? You may be eligible to make “Catch-Up Contributions” up to an additional \$5,000.

- **If you participate in a SIMPLE IRA plan:**
 - You can make up to \$10,000 in pre-tax contributions.
 - Over age 50? You may be eligible to make “Catch-Up Contributions” up to an additional \$2,500.

Are there any tax credits for making retirement plan contributions?

- **Some workers qualify for the “Retirement Saver’s Credit”:**
 - This is a tax credit of up to \$1,000 or up to \$2,000 if filing jointly.
 - To qualify for the credit, there are limits on your adjusted gross income:
 - \$50,000 if married filing jointly,
 - \$37,500 if head of household, or
 - \$25,000 if single, married filing separately or qualifying widow(er).
 - Use Form 8880, *Credit for Qualified Retirement Savings Contributions*, to calculate the credit.



For more retirement tips, talk to your employer or visit www.irs.gov/ep, select “Plan Participant/Employee” and click on “Timing is Everything.”