

Retirement News for Employers

Tax Information for Sponsors of Retirement Plans
Internal Revenue Service Tax Exempt and Government Entities

Volume 6, Winter 2010

A Look Inside

Timing of employer contributions to a defined contribution plan...
[more on page 2](#)

Guidance clarifying retirement plan provisions of the HEART Act...[more on page 3](#)

ERPA publication summarizes application, renewal and continuing educ. requirements...
[more on page 5](#)

Taxability of Roth IRA distributions...[more on page 8](#)

EP Exam Director discusses the latest in 403(b) plans in "Desk Side Chat"...[more on page 9](#)

Also in this Issue

| | |
|--------------------------|--------------------|
| Tax Return Prep. Reqmts. | 4 |
| The Filing Cabinet | 5 |
| We're Glad You Asked! | 6 |
| SEP Phone Forum | 10 |
| DOL News | 11 |
| Recent Guidance | 13 |
| New on the Web | 14 |
| Mark Your Calendar | 15 |
| Timing is Everything | 16 |

April 30, 2010, Filing Deadline for Adopting Employers of Pre-Approved Plans – Filing Tips for Submissions

When to Adopt and File

The IRS wants to remind employers entitled to use the pre-approved plan six-year cycle of an upcoming April 30, 2010, deadline to adopt the final approved version of the defined contribution pre-approved plan and submit applications for determination letters, if applicable.

Employers entitled to use the six-year remedial amendment cycle described in [Revenue Procedure 2007-44](#) must generally adopt either a master and prototype (M&P) or volume submitter (VS) defined contribution plan approved by the IRS for EGTRRA and other plan qualification requirements on the [2004 Cumulative List](#) by April 30, 2010, for the plan's restatement to be eligible for retroactive correction and reliance.

April 30, 2010, is also the filing deadline for employers who have adopted an M&P or VS defined contribution plan and need to file a determination letter request for reliance (in other words, where the employer makes certain changes to the document) or otherwise wish to file a request for a determination letter.

Filing Requirements for an M&P Plan or a VS Plan When the Employer has Modified the Pre-Approved Document

An employer who adopts an M&P plan and makes changes to the pre-approved plan document (other than choosing adoption agreement options and amending a plan as described in [Revenue Procedure 2005-16](#), §§5.02 and 19.03) must generally file a Form 5300. The IRS will review an M&P plan that has been modified and submitted for a determination letter based on the Cumulative List in effect for the year the determination letter is filed (current Cumulative List). In this case, the employer must:

- follow the normal filing procedures for Form 5300 as described in [Revenue Procedure 2010-6](#); and
- ensure that any modifications (including interim amendments for changes in qualification requirements on the post 2004 Cumulative Lists) are adopted in the form of separate amendments and are not incorporated into the underlying M&P plan document.

Unlike an employer who adopts an M&P plan, an employer who adopts a VS plan and makes changes to the pre-approved plan document may file an application for a determination letter by using either Form 5307 or Form 5300, depending on the extent of

the changes. If a Form 5307 is filed, it will be reviewed based on the Cumulative List that was used to review the underlying VS plan. The IRS will require a Form 5300 when the VS adopter makes changes to the plan that are too extensive or complex or otherwise incompatible with the purposes of the VS program. A Form 5300 application will be reviewed based on the current Cumulative List.

In addition to the normal filing requirements applicable to either Form 5300 or Form 5307, the employer:

- may submit VS changes as separate amendments or incorporate them into the plan document.
- must include a list describing each VS change if the changes are incorporated.

For a description of individual determination letter filing procedures for pre-approved plans, including what types of amendments to submit, see [Announcement 2008-23](#). Also, see [Revenue Procedure 2010-6](#), and [Revenue Procedure 2007-44, §19](#) for further information.

Here are a few filing tips and reminders:

- IRS will not accept faxed determination letter applications.
- Employers who [timely executed Form 8905](#), *Certification of Intent to Adopt a Pre-approved Plan*, must attach it to the application.
- Send all determination letter applications (including those filed using Forms 5300, 5307, 5309 or 5310) to EP Determinations at:

Internal Revenue Service
P.O. Box 12192
Covington, KY 41012-0192

Express mail or delivery service:

Internal Revenue Service
201 West Rivercenter Blvd.
Attn: Extracting Stop 312
Covington, KY 41011

Deadline for Making Employer Contributions

Employer contributions to a defined contribution (DC) plan can be made until the due date of the employer's tax return, including extensions, regardless of when the tax return is actually filed. For example, a calendar-year corporate income tax return is due on March 15, but, with a valid extension, the corporation has until September 15 to both file its tax return and deposit employer contributions into its DC plan's trust or IRA. If contributions are not deposited timely, the employer must amend its tax return and pay any tax, interest and penalties that may apply.

The employer's DC contributions for a year can be made until the extended due date of the tax return for that year if:

- the plan was established by the end of the calendar year; and
- the plan treats these contributions as though it had received them on the last day of the calendar year.

However, a SEP plan sponsor has until the due date of the year's income tax return, including extensions, to both set up and fund the SEP plan for the year.

Additional Resources:

[SEP FAQs](#)

[SIMPLE IRA Plan FAQs](#)

[Publication 560](#), *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*

Clarification of HEART Act Changes for Retirement Plans

The IRS issued [Notice 2010-15](#) (Notice) on January 20, 2010, that contains guidance, in the form of questions and answers, on many provisions of the [Heroes Earnings Assistance and Relief Tax Act of 2008](#) (HEART Act). The guidance clarifies some of the following Act provisions.

Death Benefits

The Act added Code [§401\(a\)\(37\)](#) that imposes a new requirement on 401(a) plans, 403(b) annuities and 457(b) governmental plans. The Act requires these plans to treat participants who died on or after January 1, 2007, while performing qualified military service (QMS) as being re-employed prior to death and, therefore, entitled to certain additional benefits provided under the plan, such as:



- accelerated vesting;
- ancillary life insurance benefits; and
- other plan survivor benefits that are contingent on a participant's termination of employment due to death.

The Notice provides:

- The plan's additional death benefits are not required to include benefit accruals (if a defined benefit plan) or contributions (if a defined contribution plan) for the QMS period;
- The plan must provide service credit for vesting purposes for the deceased participant's QMS; and
- A participant's survivors are not entitled to Code [§401\(a\)\(37\)](#) death benefits unless the participant was entitled to reemployment with the employer maintaining the plan following his or her QMS.

Contributions or Benefits for Time of Military Service

Other clarifications in the Notice relate to [§104\(b\)](#) of the Act that permits certain plans to treat participants who die or become disabled on or after January 1, 2007, while performing QMS as:

- being rehired the day before his or her death or disability; and
- then terminating employment on the date of death or disability.

If the plan uses this provision, then it may provide benefit accruals or contributions for the period when the participant was absent as would have been required by the Uniformed Services Employment and Reemployment Rights Act ([USERRA](#)) had the participant actually been rehired. However, the plan must provide the same benefits or contributions to all similarly situated participants on a reasonably equivalent basis.

Differential Pay

The Notice also describes how a plan treats differential pay that an employer may provide after December 31, 2008, for retirement plan purposes. Differential pay is the difference between a person's pay from the employer and his or her military pay. For example, a plan does not have to treat differential pay as compensation to determine contributions and benefits but it must consider the differential pay when determining the total amount of employer and employee contributions under Code [§415\(c\)\(3\)](#).

Plan Distributions

The Notice clarifies that if a plan allows distributions upon severance of employment, it may treat an individual's service in the uniformed services while on active duty for more than 30 days as a deemed severance from employment under Code [§§401\(k\)](#), [403\(b\)](#) and [457\(d\)](#) and allow a distribution. If so, the plan can't permit the individual for a 6-month period following the date of the distribution to make:

- an elective deferral to the plan; or
- an employee contribution to the plan.

Required Plan Amendment Date

Some of the Act's provisions were effective retroactively to January 1, 2007, while others were effective for later years. The Notice extends the [remedial amendment period](#) during which a plan can make certain amendments retroactively effective to comply with the Act's provisions. Generally, sponsors must amend their plans for HEART Act provisions by the last day of the first plan year beginning on or after January 1, 2010 (January 1, 2012, for governmental plans).

The IRS is considering additional guidance on various sections of the Act and requests [comments](#) from the public.

Future Requirements for Tax Return Preparers

On January 4, 2010, the IRS proposed new registration, testing and continuing education requirements for tax return preparers that it plans to implement for future filing seasons. These steps will not be in effect for the current 2010 filing season. The steps include:

- Requiring all paid tax return preparers who must sign a federal tax return to register with the IRS and obtain a preparer tax identification number. These preparers will be subject to a limited tax compliance check to ensure they have filed federal personal, employment and business tax returns and that the tax due on those returns has been paid.
- Requiring competency tests for all paid tax return preparers, except attorneys, certified public accountants (CPAs) and enrolled agents (EAs) who are active and in good standing with their respective licensing agencies. There would be two levels of competency examinations for:
 1. Wage and non-business Form 1040 series.
 2. Wage and Small Business Form 1040 series.

The IRS plans to monitor the testing process during the implementation period to study whether additional tests are necessary and feasible and to add a third test on business tax preparation after the initial implementation phase is completed. The IRS does not intend to "grandfather" any tax return preparer from the testing requirement based on return preparation experience.

CPAs, attorneys and EAs already take competency tests. However, in the future, the IRS will study tax return accuracy of attorneys and CPAs to ensure that this exemption to testing requirements is warranted. The IRS recommends that enrolled actuaries and enrolled retirement plan agents (ERPAs) be required to pass one of the IRS competency tests if they intend to prepare Form 1040 series returns.

- Requiring ongoing continuing professional education for all paid tax return preparers except attorneys, CPAs, EAs and others who are already subject to continuing education requirements. While attorneys, CPAs, EAs, enrolled actuaries and ERPAs are not subject to IRS continuing education requirements or self-certification during the registration renewal process, they generally must complete continuing education to retain their professional credentials. If data is collected in the future that identifies a need for educational requirements for these individuals, the IRS will consider expanding the continuing education requirements to them.
- Extending the ethical rules found in [Treasury Department Circular 230](#) - which currently only apply to attorneys, CPAs and EAs who practice before the IRS - to all paid preparers. This expansion would allow the IRS to suspend or otherwise discipline tax return preparers who engage in unethical or disreputable conduct.

Visit the [Tax Return Preparer](#) Web page for additional information about the IRS's [Return Preparer Review Study](#) and the latest updates.

Have You Heard of ERPA's?

Enrolled Retirement Plans Agent ([ERPA](#)) is a new category of practitioner that can represent retirement plans before the IRS. An individual becomes an ERPA by passing a two-part exam, applying to the IRS and passing tax compliance and background checks.

ERPAs can represent taxpayers on most retirement issues including:

- IRS Forms [5300](#) and [5500](#) issues (but not actuarial forms),
- Employee Plans Determination Letter program,
- Employee Plans Compliance Resolution System program, and
- Employee Plans Master and Prototype and Volume Submitter program.

[Publication 4789](#), *Represent Taxpayers Before the IRS on Retirement Plan Matters*, is available for download at www.irs.gov/ep by clicking on “Forms/Pubs/Products” or can be ordered by calling (800) TAX-FORM.

The Filing Cabinet

Updated Publications

Revisions are available for the following IRS publications:

- [Publication 560](#), *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*, discusses retirement plans that small business owners can set up and maintain for themselves and their employees.
- [Publication 571](#), *Tax-Sheltered Annuity Plans (403(b) Plans) For Employees of Public Schools and Certain Tax-Exempt Organizations*, covers maximum contribution amounts, excess contributions and the basic rules for distributions and rollovers.
- [Publication 575](#), *Pension and Annuity Income (Including Simplified General Rule)*, discusses the tax treatment of pension and annuity plan distributions and explains how to report the income on a federal income tax return.
- [Publication 590](#), *Individual Retirement Arrangements (IRAs)*, discusses these personal savings plans and highlights the tax advantages of setting aside money for retirement.

These and other publications are available for download at www.irs.gov/ep by clicking on “Forms/Pubs/Products” or can be ordered by calling (800) TAX-FORM.



We're Glad You Asked!

Each issue of the *RNE* looks at a common question we receive and provides an answer and additional resources in response to the question.

I'm over 50 and my employer's 401(k) plan allows catch-up contributions. Is this a one-time contribution or can I make them every year? Can I make them now for 2009?

An employee who is eligible to make salary deferrals under a [401\(k\)](#), [SIMPLE IRA](#), [403\(b\)](#), [SARSEP](#) or a [governmental 457\(b\)](#) plan may be able to make additional deferrals ("catch-up contributions"), up to the catch-up contribution limit, **every year** provided:

1. the plan allows catch-up contributions;
2. the employee is age 50 or older *at any time* during the calendar year; and
3. the employee makes a valid salary deferral election that includes the amount of the catch-up contributions before the end of the calendar year.

Notwithstanding condition 1 above, if an employee can make salary deferrals under plans of unrelated employers, he or she can contribute up to the annual deferral limit plus the amount of the catch-up contribution limit even if none of the plans allow catch-up contributions. However, the employee can not exceed the annual deferral limit in any one plan. An example of this situation is where an employee, aged 50, participates in both a 401(k) plan and a 403(b) plan of unrelated employers. Both plans allow employees to contribute the annual maximum salary deferral limit (\$16,500 for both 2009 and 2010) but neither plan allows catch-up contributions (\$5,500 for 2009 and 2010). The employee could elect to contribute a combined total of \$22,000 (\$16,500 plus \$5,500 catch-up contributions) via salary deferrals to both plans. However, because neither plan allows catch-up contributions, the employee can not contribute more than \$16,500 to either plan.

You can only make a catch-up contribution for a year from income that, but for the deferral election, you would have received in cash during that year

Catch-up contributions are salary deferrals (also referred to as "elective deferrals"), and employees fill out salary deferral agreements, or election forms, to let the employer know how much to contribute to the plan on the employee's behalf as elective deferrals. Also like regular elective deferrals, catch-up contributions can be pre-tax elective deferrals or [designated Roth contributions](#), as chosen by the employee. They are counted for both the regular annual deferral limit and the catch-up contribution limit on the basis of the calendar year, and a deferral is counted for a calendar year only if the wages subject to the deferral election would otherwise have been received by the employee in cash during the year.

Therefore, you can't make catch-up contributions with 2010 wages for 2009.

Remember that a plan may not treat salary deferrals as catch-up contributions until they exceed the least of the following limits:

- any statutory limit, such as the annual limit on elective deferrals (\$16,500 for non-SIMPLE plans, \$11,500 for SIMPLE plans);
- the plan's actual deferral percentage test limit, if applicable; or
- the plan-imposed limit, if any.

Catch-up Contribution Limits

The maximum amount of additional elective deferrals that you can contribute as catch-up contributions depend on your type of plan. The 2010 limits are:

| | |
|---|---------|
| 401(k) (not SIMPLE), 403(b), governmental 457(b) and SARSEP plans | \$5,500 |
| SIMPLE plans | \$2,500 |

Catch-up IRA Contributions

Regardless of whether you make pre-tax or designated Roth contribution salary deferrals to your employer-sponsored plan (including catch-up contributions, if allowed by the plan), you may be able to make catch-up IRA contributions to your traditional or Roth IRA. You are allowed to make IRA contributions for a year up until the due date of your tax return for that year (not including extensions), which for most people is April 15. The combined IRA contribution limit for 2009 and 2010 is \$5,000. You may also make catch-up IRA contributions for a year if you are age 50 or older before the end of that year. The combined catch-up IRA contribution limit is \$1,000. However, you may not be able to [deduct](#) all or some of your traditional IRA contributions, including any catch-up IRA contributions, depending upon the amount of your income, your filing status and if you or your spouse are covered by an employer-sponsored retirement plan. Also, you must meet [certain eligibility requirements](#) to make contributions (including catch-up IRA contributions) to a Roth IRA.

Additional Resources:

[Life Events That Can Affect Retirement Savings](#) Web page

[Publication 560](#), *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*

[Publication 571](#), *Tax-Sheltered Annuity Plans (403(b) Plans) For Employees of Public Schools and Certain Tax-Exempt Organizations*

[Publication 590](#), *Individual Retirement Arrangements (IRAs)*

We're Glad You Asked! #2

I am retired and I turned 70½ last year. I received a payment from my former employer's defined contribution (DC) plan on January 30, 2010. Can I roll over this payment?

Maybe. You may only roll over a payment from a [DC plan](#) if it is an [eligible rollover distribution](#) (ERD). Certain payments from qualified plans, such as [required minimum distributions](#) (RMDs) and [substantially equal periodic payments](#) (SEPPs), are not ERDs and, therefore, may not be rolled over.

Since you turned 70½ last year and are retired, under normal circumstances you would have had to receive an RMD for 2009 by April 1, 2010. However, the Worker, Retiree, and Employer Recovery Act of 2008 ([WRERA](#)) waived 2009 RMDs from IRAs and most DC plans, such as profit-sharing, 401(k), 403(b) and governmental 457(b) plans. WRERA did not waive 2010 RMDs and, therefore, you must take a 2010 RMD based on your December 31, 2009, account balance by the end of 2010. To determine which payments from a plan during a calendar year are RMDs, [Treas. Reg. §1.402\(c\)-2, Q&A-7](#) provides that the first amounts distributed are RMDs from earlier years not yet distributed, followed by RMDs for the current year, until the amount distributed equals RMDs due through the end of the current calendar year.

Applying this rule to your case, if the January 30 payment was the first payment you received from the plan in 2010, you must first apply the payment to the 2010 RMD (because, due to WRERA, there was no RMD for 2009). If the January 30 payment is more than your 2010 RMD, the excess may be rolled over, assuming it is not a SEPP.

Also note that ERDs are subject to mandatory 20% withholding, under Code [§3405\(c\)](#), on the amount includible in income if not rolled over in a trustee-to-trustee transfer.

Additional Resources:

[Publication 590](#), *Individual Retirement Arrangements (IRAs)*

Is Your Distribution from Your Roth IRA Taxable?

[Roth IRAs](#) are funded with after-tax contributions, so you don't have to pay income taxes on those contributions when they are distributed, and, if the distribution is a "qualified distribution," earnings, too, escape being included in gross income.

A "qualified distribution" from a Roth IRA is one made:

1. after 5 years – (measured from January 1 of the year for which you first made **any** Roth IRA contributions to any Roth IRA, including rollover or conversion contributions, to the last day of the fifth year); and
2. a. on or after you are age 59 ½;
b. because you are disabled;
c. after you die; or
d. to buy, build, or rebuild your first home.

[Qualified distributions](#) are not subject to the [§72\(t\)](#) additional 10% early distribution tax because they already meet an exception to that tax.

If you receive a distribution from your Roth IRA that is **not** a qualified distribution, it can be subject to both income tax and the Code §72(t) additional tax.

To calculate what portion, if any, of your nonqualified distribution is subject to income tax and/or the Code §72(t) additional tax, you must apply the special ordering rules for distributions. These ordering rules determine which contributions (including rollover contributions) and earnings are distributed in a nonqualified distribution and which portion is subject to income tax and/or the Code §72(t) additional tax. The special ordering rules treat distributions as coming:

- First, from regular Roth contributions - *not subject to income tax or the Code §72(t) additional tax.*
- Second, from rollover and conversion contributions (on a first-in-first-out basis) and within each rollover or conversion, in the following order:
 1. the taxable portion (the amount that you previously included in income at the time of the rollover or conversion) – *not subject to income tax but, unless some Code §72(t) exception applies, is subject to the additional 10% early distribution tax if being distributed within 5 years of when these were rolled over or converted. Note: a separate 5-year period applies to each conversion and rollover and is not the same 5-year period used for determining whether a distribution is qualified.*
 2. the nontaxable portion – *not subject to income tax or the Code §72(t) additional tax.*
- Finally, from earnings - *subject to income tax and, unless some Code §72(t) exception applies, to the additional 10% early distribution tax.*

See "Roth IRA Distributions" in [Employee Plans News, Winter 2010](#) for additional information, including examples, on nonqualified distribution ordering rules.

Contributors to this Issue:

Milo Atlas
Anita Bower
Kathy Davis
James Flannery
Ingrid Grinde
Daniel Jones
Joyce Kahn
Roger Kuehnle
Angelo Noe
Nancy Payne
Sharon Perkins
Bonnie Schaumberg
John Schmidt
Brenda Smith-Custer
Monika Templeman
Mikio Thomas
Kathy Tuite
Catherine Waite
Robert Walsh
JoAnna Weber
Carol Zimmerman

Desk Side Chat...With Monika Templeman

The Latest in the World of Code §403(b) Plans

In each issue, Monika Templeman, Director of EP Examinations, responds to questions and offers insights on retirement plan topics uncovered during audits. You may provide feedback or suggest future topics for discussion by e-mailing her at: RetirementPlanComments@irs.gov.

Code §403(b) plans are always a hot topic, but it appears they are even hotter right now. Do you agree?

Yes. We are hearing that there is a great deal of concern and confusion in the 403(b) community with the new Treasury regulations requiring that a 403(b) program must be maintained pursuant to a written plan. These tax-sheltered annuity plans utilized by educators and exempt organizations are a very important segment for Employee Plans. Estimates indicate that there are close to \$600 billion in 403(b) plan assets, representing about 17% of total assets of defined contribution plans. With those numbers and the impact on the retirement of so many Americans, we need to be proactive in assisting these plans to stay compliant.

The determination letter program for these plans is beginning soon. Can you provide any information on how the program will work?

The 403(b) prototype, or pre-approved program, will begin sometime this spring. We will release a revenue procedure to open the program describing it and listing the procedures to submit an application. We will follow up in about one year with a revenue procedure for the individually designed plan determination letter process. I would suggest readers visit our [403\(b\)](#) Web page for updates.

Did the employer have any necessary actions to complete during the 2009 calendar year?

[Notice 2009-3](#) states that the employer, during 2009, must have a written plan adopted on or before December 31, 2009, must ensure the plan was operated in accordance with a reasonable interpretation of Code §403(b) and the regulations, and have made their best efforts to retroactively correct operational failures to conform to the written plan.

That answer provides an easy segue to discuss your expertise, the examinations of 403(b) plans. What error trends are your agents finding?

There are several. The most common error is universal availability. The universal availability rule means that, if an employer permits one employee to defer salary into a 403(b) plan, then that employer must also extend this offer to all its employees that do not meet statutory exclusions. It is easy to incorrectly assume certain employees who have a support role in the organization or who work in what some consider a part-time role are not eligible for the plan merely by their position classification in the organization. Nurses, substitute teachers and bus drivers are examples of employees that fall in this category.

The Employee Plans Compliance Unit (EPCU) has worked a project on the universal availability issue. Can you provide details on this project?

We contacted public schools from kindergarten through high school in every state and asked them to demonstrate their plan's compliance with this rule. Look for the report on the findings on the [EPCU](#) Web page soon. EPCU will be doing the same project for colleges and universities and will perform a follow-up project on the public schools.

What do you hope to find with the follow-up project?

We want to learn if these plans did actually have an error and, if so, the correction method they used to calculate the additional contributions needed. The plans have a choice of [two correction methods](#).

Why are you anxious to start two new 403(b) projects using the EPCU?

The purpose of the EPCU is to contact a large portion of a specific market segment of our customers with minimal burden to them. The two new 2010 403(b) projects are intended to have a positive impact on compliance and clarify the new rules. We understand there will be a learning curve and will address it by attaching an outreach component to the projects. We will help 403(b) plans comply with the new requirements, while still holding them accountable for existing 403(b) rules.

What other error trends are your agents finding in the 403(b) examinations?

Another common error occurs with the 15-year catch-up provisions. Agents find that many 403(b) plans don't have a proper calculation available for them to review. More often than not, when the agent reviews the calculation, most plans fail. Also, agents find employers giving credit for service with another unrelated employer when only years of service with the current employer should be credited.

With the current state of the economy, many participants look for loans and hardship distributions from the 403(b) plan to tide them over the tough times. Are there any issues in this area?

We find numerous errors with loans and hardship distributions. Maintaining a loan program in a 403(b) plan can be difficult. Some vendors may not allow loans and those that do may not be collecting the loan payments. It is important for employers to understand they are ultimately responsible for their plan's loan program. Relying exclusively on the vendors to make certain the plan's loan program is running smoothly is usually a problem.

Also, during examinations it is common to see the record keeping for hardship distributions neglected. My agents validate that the distribution was a proper amount for the hardship and that the hardship request is for an immediate and heavy financial need.

What information is available on the www.irs.gov/ep Web site for 403(b) plans?

We have a page devoted to the [403\(b\) program](#). Included on this page are links to [two mini-courses](#), one for the employer that discusses recent law changes and how to properly operate a 403(b) plan, and one for the employee that provides information on the basics of the 403(b) plan and the advantages of participating in the plan. Finally, employers can perform their own [403\(b\) plan check-up](#) and determine if their plan is free of the top errors found during examinations. There is more outreach coming, so stay tuned!

SEP Plan Pitfalls Phone Forum (Free) - February 26, 2010



Don't wait until the IRS knocks on your door to find mistakes in your SEP plan.

Join Mikio Thomas from Employee Plans Customer Education & Outreach and Avaneesh Bhagat from Employee Plans Voluntary Compliance for this 90-minute presentation beginning at 2:00 p.m. EST. During the forum, you will learn how to use the IRS SEP Plan Fix-It Guide to identify and correct mistakes the IRS frequently sees in SEP plans and get tips on how to avoid errors in the future.

Register at the [IRS Retirement Plans Web site](#). Also, visit our [Phone Forum Web page](#) for information on recently held forums including handouts and transcripts.



UNITED STATES DEPARTMENT OF LABOR

Employee Benefits Security Administration

DOL News

The Department of Labor's Employee Benefits Security Administration (DOL/EBSA) announces new guidance as featured below. You can subscribe to [DOL/EBSA's](#) homepage for updates.

Lifetime Income Options for Retirement Plans

On February 2, DOL/EBSA and the Department of the Treasury published a [request for information \(RFI\)](#) soliciting public comments to assist them in determining what steps, if any, to take to enhance retirement security for workers in employer-sponsored retirement plans through lifetime annuities or other arrangements providing a stream of income after retiring.

The RFI seeks comments on a broad range of topics, including:

- The advantages and disadvantages of distributing benefits as a lifetime stream of income both for workers and employers, and why lump sum distributions are chosen more often than a lifetime income option;
- The type of information participants need to make informed decisions in selecting the form of retirement income;
- Disclosure of participants' retirement income in the form of account balances as well as in the form of lifetime streams of payment; and
- Developments in the marketplace relating to annuities and other lifetime income options.

Written comments may be addressed to the U.S. Department of Labor, Employee Benefits Security Administration, Office of Regulations and Interpretations, N5655, 200 Constitution Ave, NW, Washington, DC, 20210, Attn: Lifetime Income RFI. Comments may also be e-mailed to E-ORI@dol.gov or through the [federal e-rulemaking portal](#).

Employee Contributions to Small Retirement and Welfare Benefit Plans

On January 14, DOL/EBSA published a [final rule](#) to protect employee contributions deposited to small retirement and welfare benefit plans with fewer than 100 participants by providing a safe harbor period of seven business days following receipt or withholding by employers.

Currently, employers of all sizes must transmit employee contributions to retirement plans as soon as they can reasonably be segregated from the general assets of the employer, but no later than the 15th business day of the month following the month in which contributions are received or withheld by the employer. The latest date for forwarding participant contributions to health plans is 90 days from the date such amounts are received or withheld by the employer.

The final rule amends the participant contribution rules creating a safe harbor period under which participant contributions to a small plan will be deemed to comply with the law if those amounts are deposited with the plan within seven business days of receipt or withholding. The final rule is consistent with the proposed rule. DOL/EBSA did not expand the safe harbor to cover plans with 100 or more participants because of a lack of information and data sufficient to evaluate current practices of such employers and assess the costs, benefits and risks to participants associated with extending the safe harbor to large plans.

The final rule was effective upon its publication on January 14, 2010.

Electronic Filing of Form 5500 Annual Return/Reports

On December 31, DOL/EBSA converted to a total electronic system of online filing for the Forms 5500 and the new Form 5500-SF. Now, the all-electronic EFAST2 system allows the public to submit and access filings online at www.efast.dol.gov.

The revised EFAST Web site has been updated to provide a variety of tools and guidance, including the 2009 and 2010 Form 5500 and the new Form 5500-SF schedules and instructions, Frequently Asked Questions, user guides and a tutorial. Filers and preparers can register for an account, complete the required forms and schedules online (in multiple sessions), print a copy for their records and submit it at no cost.

Filers may also use EFAST2-approved software to complete and submit their filings. EFAST2-approved software is expected to be easier to use and provide more value-added features than the Government Web application. A list of EFAST2-approved software is available on the EFAST2 Web site.

Retirement plans required to file an annual return/report regarding their financial conditions, investments and operations each year generally satisfy that requirement by filing the Form 5500 or Form 5500-SF and any required attachments.

Filers must submit the 2009 and 2010 annual return/report forms and schedules electronically through EFAST2. Prior year delinquent or amended Form 5500 filings also now must be filed electronically except that timely 2008 plan year filings may still be filed through the original EFAST on paper until October 15, 2010, or electronically through June 30, 2010.

Important changes for the 2009 and 2010 forms include:

- Mandatory electronic filing;
- Introduction of the new, two-page Form 5500-SF for eligible small plan filers;
- Expanded disclosure on Schedule C of indirect service provider compensation;
- Expanded reporting by Code §403(b) plans; and
- Elimination of IRS Schedules E and SSA. Information on participants with deferred vested benefits who separated from the service covered by the plan must now be filed directly with the IRS.

A helpful [video about electronic filing](#) is available. Assistance with the EFAST2 system and the Form 5500 and 5500-SF is available toll-free at (866) 463-3278.

DOL/EBSA is also helping filers and other plan officials with the changes to the Form 5500 and the filing process through a series of webcasts. Archives of four [webcasts](#) held are also available. The most recent webcast was held on January 21 and included a discussion of the changes to Schedule C, the new EFAST2 system as well as the schedules now filed solely with the IRS. Another webcast will be held this spring. Subscribe to [DOL/EBSA's](#) homepage for notification of the upcoming webcast and other guidance related to the changes to filing the Form 5500 and the new EFAST2 system.

Investment Advice

On November 20, DOL/EBSA published a [notice](#) in the *Federal Register* withdrawing the final rule on the provision of investment advice under ERISA's prohibited transaction provisions.

The notice withdraws the January 21, 2009, final rule that implemented a statutory prohibited transaction exemption under the Pension Protection Act (PPA) and provided an additional administrative class exemption. DOL/EBSA decided to withdraw the rule based on public comments that raised sufficient doubts on whether the conditions of the final rule and the class exemption associated with the rule could adequately protect the interests of plan participants and beneficiaries. DOL/EBSA recently extended the applicability and effective dates of the final rule until May 17, 2010. That extension expires upon the effective date of this withdrawal.

DOL/EBSA will separately publish a proposed rule that conforms to the PPA statutory exemption on investment advice.

Free Compliance Assistance Events

For dates and locations of free compliance assistance events sponsored by EBSA for both retirement and health benefit plans, visit [EBSA's](#) homepage.

Employee Plans Published Guidance

Regulations

[T.D. 9472, 74 Fed. Reg. 61270](#)

Contains new regulations on ERISA §204(h) notice requirements for a pension plan amendment that is permitted to reduce benefits accrued before the applicable amendment date.

Revenue Rulings

[Rev. Rul. 2009-40, 2009-52 I.R.B. 942](#)

Provides covered compensation tables for 2010, that remain the same as 2009, for plans with permitted disparity in employer-provided contributions or benefits.

Revenue Procedures

[Rev. Proc. 2010-4, 2010-1 I.R.B. 122](#)

Annual EP/EO revenue procedure on letter rulings.

[Rev. Proc. 2010-5, 2010-1 I.R.B. 165](#)

Annual EP/EO revenue procedure on technical advice.

[Rev. Proc. 2010-6, 2010-1 I.R.B. 193](#)

Annual EP/EO procedures for employee plans determination letter requests.

[Rev. Proc. 2010-8, 2010-1 I.R.B. 234](#)

Annual EP/EO revenue procedure on user fees.

Notices

[Notice 2009-94, 2009-50 I.R.B. 848](#)

States that qualified retirement plan dollar limitations on benefits and contributions that are adjusted by reference to Code §415(d) and those for deferred compensation plans remain unchanged for 2010.

[Notice 2009-97, 2009-52 I.R.B. 972](#)

Extends deadline for amending qualified retirement plans for certain Code requirements, as added by the Pension Protection Act and subsequently modified, to the last day of the first plan year that begins on or after January 1, 2010.

[Notice 2009-98, 2009-52 I.R.B. 974](#)

Contains the 2009 Cumulative List with statutory, regulatory and guidance changes needed for certain opinion, advisory and determination letter requests for the 12-month period beginning February 1, 2010.

[Notice 2010-6, 2010-3 I.R.B. 275](#)

Provides relief and guidance on correcting certain failures in a nonqualified deferred compensation plan to comply with Code §409A(a).

[Notice 2010-15, 2010-6 I.R.B. 390](#)

Provides question and answer guidance on the Heroes Earnings Assistance and Relief Tax Act of 2008 and requests comments on additional Act issues addressed in the notice.

Announcements

[Announcement 2009-85, 2009-51 I.R.B. 938](#)

States that, beginning on February 22, 2010, the IRS will temporarily stop accepting defined benefit plan determination letter applications filed on Form 5307. This does not affect employers who want to file Form 5307 for pre-approved defined contribution plans.

[Announcement 2009-89, 2009-52 I.R.B. 1009](#)

Provides a remedial amendment period and reliance for employers that, pursuant to upcoming revenue procedures, either adopt a pre-approved 403(b) plan having a favorable opinion letter or apply for an individual determination letter for a 403(b) plan when available. Plan sponsors and employers should wait to request a ruling or determination letter for their 403(b) plans until after the upcoming revenue procedure is published that will outline the application procedures for these letters.

[Announcement 2010-03, 2010-4 I.R.B. 333](#)

Provides, for plan years beginning on or after January 1, 2009, automatic approval for changes in funding method for single-employer defined benefit plans in certain circumstances.

New on the Web

Here are the latest updates to the [Retirement Plans Community](#) Web page:

- Redesigned [Correcting Plan Errors](#) Web page makes it easier to find information on using the Employee Plans Compliance Resolution System (EPCRS).
- [Form 5500 Corner](#) - Notices 1388, 1389 and 1391 describe changes to the 2008 Form 5500 Instructions for Schedule R, Schedule MB and Schedule SB.
- [Phone Forum – Employee Plans](#) - Our new Web page provides information about upcoming and recently held phone forums on various retirement plan topics and includes links to the forum transcripts and handout materials.
- [Top Ten Facts about Taking Early Distributions from Retirement Plans](#) provides information on the tax consequences of tapping into retirement funds.



Retirement News for Employers

Retirement News for Employers is a free, quarterly newsletter aimed at keeping employers informed about retirement plan sponsorship. RNE is prepared by the IRS's Employee Plans (Tax Exempt and Government Entities) office.

For your convenience, RNE includes Internet links – identified by the blue underlined text – to referenced materials.

How to Subscribe

RNE is distributed exclusively through IRS e-mail. Sign up for your free subscription by going to the [Retirement Plans Community](#) Web page and selecting “Newsletters” in the left pane. Prior editions of the RNE are also archived there.

Send Comments/Suggestions to:

EP Customer Education & Outreach
SE:T:EP:CEO
1111 Constitution Ave., N.W., PE-4C3
Washington, DC 20224
FAX: (202) 283-9525
E-Mail: RetirementPlanComments@irs.gov

Have a Question?

For taxpayer assistance with retirement plans technical and procedural questions:

Please call (877) 829-5500 or visit the “Contact EP/Services” section at www.irs.gov/ep.

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

Please call (800) 829-1040.

Mark Your Calendar

Stay on top of your retirement plan's mandatory deadlines! Here are some important dates in the upcoming months. Please note that the filing dates are for calendar-year plans. Non-calendar-year plans must adjust these dates.

March 1: Paper Forms 1099-R and Form 1096 for 2009 distributions due to IRS.

March 15: Application of Waiver for 2009 Minimum Funding Standard for defined benefit plans due.

March 15: ADP/ACP distributions of 2009 excess amounts, with earnings, due to highly compensated participants to avoid 10% excise tax (June 30, in the case of certain eligible automatic contribution arrangements.)

March 15: [Form 1042S](#), *Foreign Person's U.S. Source Income Subject to Withholding*, and [Form 1042](#), *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*, due to IRS to report retirement plan distributions and income tax withheld from distributions made to nonresident aliens.

March 15: 2009 corporate employer contributions due to take tax deduction (with no corporate filing extension).

March 31: Electronic filing of Forms 1099-R for 2009 distributions due to IRS.

March 31: Last day for sponsors of single employer defined benefit plans to obtain AFTAP certification from enrolled actuary to avoid possible 10-percentage-point decrease in presumed AFTAP.

April 1: Sponsors of single employer defined benefit plans that have not received a certified AFTAP from the enrolled actuary should review benefit restrictions under Code §436 to determine whether additional restrictions apply or whether other action is required.

April 15: Deadline for returning 2009 participant deferrals, with earnings, in excess of \$16,500 (\$22,000, if 50 or older).

April 15: Deadline to make 2009 traditional and Roth IRA contributions.

April 15: First quarterly defined benefit contribution installment due for the 2010 plan year.

April 15: 2009 self-employed individual and partnership contributions due to take tax deduction for 2009 (with no filing extension).

April 30: Last day to adopt EGTRRA pre-approved defined contribution plans, and submit them for a determination letter, if desired, to the IRS.

For a complete list of upcoming EP Educational Events, visit the [Retirement Plans Community](#) Web page.



Timing Is Everything

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

Major Life Events Can Affect Your Retirement

Did you know that major life events like:

- losing a job,
- changing your marital status, or
- starting a family

could affect how you save for retirement? Even though you've been nurturing that nest egg for years, you still need to know a few things before you're ready to sail away into the sunset.



- Our [Life Events](#) Web page will help you manage your retirement savings for every stage of your life. Are you starting out in your career and wondering if you are [eligible to participate](#) in your company's plan? Or did you know that your retirement plan distribution may be subject to [an additional 10% early distribution tax](#)?
- You can also find the answer to your retirement plan questions by clicking the [Alphabetical Index](#) and reading topics ranging from contributions to vesting.
- Our [Definitions](#) section explains common retirement plan terms in plain language.

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