

Special Edition  
November 5, 2008

# employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

Internal Revenue Service  
Tax Exempt and Government  
Entities Division

A Publication of Employee Plans

## IRS Will Modify Filing Cycle for Governmental Plans Under the Staggered Remedial Amendment Program

### Overview

Employee Plans is implementing a one-time modification of the staggered remedial amendment program to permit sponsors of governmental plans to submit for determination letters during either Cycle C or Cycle E.

[Revenue Procedure 2007-44](#) provides that a governmental plan's five-year remedial amendment cycle is Cycle C. The first deadline for filing a determination letter for a Cycle C plan is January 31, 2009. As a result of the Employee Plans' Governmental Plans Initiative and continuing discussions with the governmental plans community, Employee Plans has modified a number of the rules and procedures applicable to its determination letter program for governmental plans. These modifications were published as [FAQs](#) in July 2008 on the "Retirement Plans Community" web page. Some of the changes include:

- Not requiring a single restated plan document under certain circumstances.
- Allowing the governmental plan sponsor to submit a summary of all amendments made prior to those reflected in the current version of the plan.
- Requiring a governmental plan sponsor to verify timely adoption of plan amendments only required by GUST and later law changes.
- Eliminating the requirement to provide a redlined version of the plan document comparing the old document to the current document.

These changes have made it easier for sponsors of governmental plans to file for a determination letter. However, based on feedback from the governmental plans community, we have learned of a number of obstacles beyond the direct control of the party responsible for filing the determination letter application, including the process of getting funds appropriated for the filing of a determination letter request. Accordingly, Employee Plans is implementing a one-time modification of the staggered remedial amendment program for these filers.

### Governmental Plans electing to file in Cycle E

If a sponsor of a governmental plan does not file a determination letter application during Cycle C, it need do no more than file an application during Cycle E. No election form or notice to the IRS is required. A sponsor of a governmental plan that has already submitted under Cycle C may withdraw its application. To withdraw, a governmental plan must have filed a determination letter application by November 7, 2008, and must provide a written request to withdraw to the IRS postmarked by January 31, 2009. The applicable determination letter user fee will be refunded to the applicant. Our general procedures for withdrawals set forth in section 7.07 of [Revenue Procedure 2008-6](#) will apply to withdrawals after January 31, 2009.

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If a sponsor of a governmental plan elects to file during Cycle E, all requirements for a plan normally filing during Cycle E are applicable to the governmental plan, including the requirement to amend the plan for all applicable items on the Cycle E Cumulative List and the requirement to adopt any interim amendments that are required for a governmental plan during Cycle C and Cycle D. Additionally, since the option is only a one-time modification, the filing cycle for the governmental plan will continue to be Cycle C. This means that the determination letter for a governmental plan filed during Cycle E will expire at the end of the next Cycle C (January 31, 2014).

### **Governmental Plans filing in Cycle C**

We have modified our determination letter and voluntary compliance programs to provide incentives for governmental plans to file during Cycle C.

### **Determinations**

As part of the determination letter process, sponsors of governmental plans filing a determination letter application during Cycle C will go to the top of the determination letter queue for Cycle C work priority.

### **EPCRS**

Any sponsor of a governmental plan that files during Cycle C will be eligible for reduced fees or sanctions under certain parts of the Employee Plans Compliance Resolution System (EPCRS). In order to receive a reduced fee or sanction, the sponsor of a governmental plan must file its determination letter and voluntary compliance application by January 31, 2009.

Voluntary Correction Program - Any sponsor of a governmental plan filing during Cycle C and which uses the Voluntary Correction Program (VCP) will be eligible for a reduced VCP fee equal to one-half of the current fee under section 12.02 of [Rev. Proc. 2008-50](#). The reduced fee applies regardless of the number or type of qualification failures included in the submission. If the VCP submission includes a plan document failure, the determination letter application must be submitted along with the VCP application under Rev. Proc. 2008-50 to the following address:

Internal Revenue Service  
Attention: SE:T:EP:RA:VC  
P.O. Box 27063  
Washington DC 20038-7063

These cases will be moved to the top of the VCP queue. Any sponsor of a governmental plan that has filed during Cycle C and has a VCP application pending or has received a compliance statement for a VCP application submitted during Cycle C will receive a refund of one-half of the applicable compliance fee. A sponsor of a governmental plan that has received a compliance statement on a VCP application submitted during Cycle C should notify the IRS at the above address of its eligibility to receive a refund.

To receive the reduced VCP fee, a sponsor of a governmental plan that filed during Cycle C must provide proof by submitting a copy of the "Acknowledgement Letter" issued by Employee Plans Determinations when a determination letter application is received by the IRS. If the VCP application is submitted prior to the determination letter application in Cycle C, the plan sponsor will need to provide a certification that it intends to file a determination letter application prior to the end of Cycle C (January 31, 2009). The submission should indicate in the upper left hand corner that it is a "Governmental Plan Cycle C Filer."

Determination Letter Program - For a sponsor of a governmental plan that files a determination letter request during Cycle C under the procedures of [Rev. Proc. 2007-44](#), and that has a plan document failure discovered by the IRS during the review of its application, the applicable sanction set forth in section 14.04 of [Rev. Proc 2008-50](#) will also be reduced by one-half.

These modifications will be reflected in published guidance to be issued in the near future.

## When 'Too Good to Be True' Very Well May Be: Funding Business Startups with Plan Assets

With recent events in the financial markets putting a squeeze on business credit, many aspiring entrepreneurs may search for novel ways to acquire business capital. One that has gained IRS's attention, and coverage in the press, is to withdraw money from existing retirement accounts and then channel it into a new retirement plan. On October 1, 2008, the IRS released initial [guidelines](#) on the acceptability of these arrangements. Though not stating that these arrangements are noncompliant *per se*, the guidelines sound a warning call that the IRS will scrutinize these transactions very carefully.

Referred to in the guidelines as Rollovers as Business Startups, or ROBS, these arrangements provide a business owner with the apparent ability to convert retirement accounts into business capital by using the rollover process. By creating a new corporation that sponsors a new retirement plan, the individual can rollover proceeds from a prior employer's retirement account into the new plan. Then, through an exchange of corporate stock for the rollover money, the owner receives instant business capital. The plan owns all the stock, for the benefit of the individual, and the business receives needed cash. The distribution restrictions normally associated with taking money out of a retirement plan are circumvented, and the capital (which includes previously untaxed income) is not taxed at this time. Other than the risk of gambling one's retirement savings on business success, this transaction appears to be too good to be true.

Like many other recently marketed tax savings strategies that appear to have been designed to take advantage of the law, ROBS arrangements, designed to fit within the existing law and guidance, do not present a 'home-free' result. In fact, they may violate the law. That is what the IRS has been finding and what many practitioners have been telling their clients. In formulating an appropriate response to these arrangements, IRS evaluated not only the law, but balanced this with policy objectives.

As a tax regulatory agency, our focus is on the conformity of policy consideration with established law. This is especially the case with any transaction, such as this one, that promises a transfer of value without payment of any accompanying tax. From our experience, many ROBS arrangements quite simply do not comply with the law.

ROBS plans are questionable in that they may solely benefit one individual's exchange of tax-deferred assets for currently available funds. This stock exchange occurs inside what should otherwise be a retirement plan for the benefit of employees. Yet, from our review, few, if any, employees other than the individual who initiates the transaction will actually benefit from the exchange. Furthermore, these arrangements are predicated on stock valuations that are frequently superficial and are administered more as a corporate funding vehicle than a bona fide employee benefit program.

For these reasons, we intend to scrutinize ROBS arrangements. Our guidelines will serve as instructions to our technical specialists to resolve issues they encounter when evaluating these plans. We believe that ROBS arrangements may endanger the qualified status of otherwise tax-qualified employee plans and may be prohibited transactions, requiring complete undoing of the transaction, and imposition of excise taxes.

In recent years, the IRS has taken steps to combat transactions that we believe are abusively tax avoidant. At the same time, we have noted an upswing in the number of these transactions that seek to exploit the generous tax benefits enjoyed by qualified retirement plans. While we are not ready to throw ROBS into this category, we are certainly mindful of the old adage that things that appear to be too good to be true usually are.

## 2009 Retirement Plan Limits Announced

The IRS announced the [cost-of-living adjustments \(COLAs\)](#) to retirement plan limits for 2009. For a complete listing of the 2009 limits, refer to our web page under [Published Guidance](#).

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## List of Recent Guidance that May Require Interim or Discretionary Amendments

We have updated the [list](#) of **Recent Guidance that May Require Interim or Discretionary Amendments** to retirement plans. The updated list, available on our web site, contains certain new guidance identified on the [2007 Cumulative List](#) and guidance issued between October 1, 2007, and September 30, 2008.

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## 403(b) Phone Forum - December 4, 2008 (2:00 p.m. - 3:00 p.m. Eastern)

January 1, 2009 is coming up! Are you ready for the Final 403(b) Regulations? Please join Bob Architect, from the IRS, as he discusses these regulations. Bob will answer questions following his presentation.

Limited registration is now open until November 21, 2008. Go to our [web page](#) for registration information.