

employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

Internal Revenue Service
Tax Exempt and Government
Entities Division

A Publication of Employee Plans

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EP Connections: Interview with Joyce Kahn

Earlier this month, the IRS issued Rev. Proc. 2003-44, the latest EPCRS (Employee Plans Compliance Resolution System) revenue procedure. *Employee Plans News* last interviewed Joyce two years ago and with the release of this latest EPCRS revenue procedure, we wanted to get her perspective on the changes that have occurred in the Voluntary Compliance arena.

Joyce joined the IRS in 1987 as a tax law specialist in an EP group in the Qualifications Branch and later transferred to the Projects Branch. Joyce became the Manager of the Voluntary Compliance Resolution Program in 1995 and the Manager of EP Voluntary Compliance in 1999. Joyce is a graduate of the University of Florida and received her Juris Doctor from the University of South Carolina (her home state). She then attended the Georgetown University Law Center and earned a Masters in Taxation in 1987.

You just released [Rev. Proc. 2003-44](#), which is the newest update to the EPCRS program. Compare this procedure with its predecessor, [Rev. Proc. 2002-47](#).

Rev. Proc. 2003-44 makes programmatic and other types of changes to the EPCRS. Many of the modifications relate to simplifying the Voluntary Correction Program (VCP) – merging its separate procedures into a single program and streamlining the process for determining the fees imposed. These changes provide administrative time-savers and cost-savers for both the IRS and applicants under VCP. However, Rev. Proc. 2003-44 accomplishes much more than that...for example, it provides several enhancements that we're hoping will prove valuable to small businesses - it expands the scope of EPCRS to cover SIMPLE IRA Plans, provides tax-reporting guidance for these plans and for SEPs, and provides sample formats for VCP submissions.

How were these revisions to the program developed?

The changes made to EPCRS reflect a natural progression of EP's correction programs. Each revision is like a link in a chain, as it is both separate from and dependent upon what came before.

This is evident in the development of the VCP: the original voluntary correction program, the Voluntary Compliance Resolution (VCR) program was established in 1992 and administered out of what was then EP's National Office. It was an experimental program, providing for a fixed fee structure, based, generally, on the number of participants in the plan. VCR was limited in scope: it granted relief to plans with a favorable letter and that had operational failures that were not egregious. All other plans – plans without a favorable letter or plans with plan document or demographic failures, for example - were precluded from using VCR.

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Interview with Joyce Kahn *continued from page 1*

In 1994, to fill this gap, we established in the field offices the Walk-in Closing Agreement Program (“Walk-in CAP), which covered everything else. Under Walk-in CAP, the plan sponsor paid a negotiated sanction based on the Maximum Payment Amount (MPA) - an amount approximately equal to the amount of tax that would be owed upon plan disqualification. The sanction was capped at 40% of the MPA. In practice the negotiated sanctions were rarely near the 40% of MPA ceiling; however, we were told by outside stakeholders that the very existence of the ceiling – notwithstanding actual practice – had a chilling effect on the program.

In 1998, to address that concern as well as to increase consistency in the imposition of fees paid under Walk-in CAP, we modified the sanction structure under Walk-in CAP to provide for a series of tiered fee ranges, based on the size of the plan. Fees could be negotiated within the applicable tier. The floor of the tier was the VCR fee; the middle of the tier was the “presumptive amount.” As provided in Rev. Proc. 98-22, it was assumed that in most instances, the presumptive amount would be the fee; however, in appropriate cases, a fee higher or lower than the presumptive amount could be imposed.

In the past couple of years, EP created a Voluntary Compliance organization with a staff dedicated to working all voluntary correction program submissions, no matter what the program. Given that fact, along with the fact that, in practice, most fees imposed under the Walk-in CAP were equal to the presumptive amount, it became clear that the next logical step in the evolution of our voluntary correction programs was to create a single program with a single, fixed fee structure.

“The next logical step in the evolution of our voluntary correction programs was to create a single program with a single, fixed fee structure.”

How do you think the public will respond to these changes?

So far, the reception by the public to Rev. Proc. 2003-44 has been extremely favorable. People are especially pleased with some of the tools we created:

- A [red-lined version](#) of Rev. Proc. 2003-44 comparing it to Rev. Proc. 2002-47,
- A [topical index](#) directing you to the appropriate section numbers,
- A [table of changes](#) made by Rev. Proc. 2003-44, and
- A [slide presentation](#) setting forth the changes made by Rev. Proc. 2003-44.

Are these tools available on the web?

Yes, they can be accessed at www.irs.gov/ep. Right now they are available through the [Rev. Proc. 2003-44](#) link on the landing page. Later on, you can access them by clicking “More Topics” under the “Topics” section and then go to “Corrections”.

What outreach efforts is the VC group making?

EP has always had a strong outreach presence with respect to its correction programs and continues to improve its outreach efforts. We continue to provide numerous opportunities to interface with the public. We are also working on a Retirement Plan Correction Programs CD-ROM, which is due out this summer. (*Editors Note: To pre-order the CD-ROM, go to www.irs.gov/ep, click on “More Topics” in the “Topics” section and click on “Correction”.*) The CD-ROM will focus on the importance of establishing ongoing programs of retirement plan review and will provide several tools for navigating the EPCRS. It will also contain frequently asked questions and links to useful IRS forms and publications. DOL and PBGC will also provide information relating to their voluntary correction programs on this CD.

Another joint venture we are engaged in with DOL and PBGC is the development of a voluntary correction pamphlet, containing short descriptions of our programs and applicable links to more information.

Second White Paper Published

A second white paper on the future of the EP determination letter program has been posted to the Retirement Plan website at www.irs.gov/ep. To view the new white paper, click on "More Topics" and then go to "Determinations".

The second white paper continues the IRS's exploration of ways to improve the EP determination letter program. The new white paper evaluates public comments on the options for change that were outlined in the first White Paper. It also explains in greater detail the system of staggered remedial amendment periods that was outlined in the first white paper. Finally, it discusses the possibility of requiring plans to be updated annually, either without further changes to the current process or in combination with a staggered remedial amendment period system.

The IRS asks that comments on the new White Paper be submitted in writing by September 2, 2003. The IRS expects to announce a decision before the end of the year on whether to implement the options in the new white paper. •

Since our last interview, what changes have occurred in VC?

Many changes have occurred since then. The VC groups are up and running and had many training opportunities.

One of the most popular VC training classes is the working of case studies. The classes are divided into groups of five-seven people that "work" the cases separately. Meeting together to discuss our conclusions can be illuminating in many ways. The Area Coordinators, the coordinators who work in EP Examinations and who are responsible for the consistent application of the Audit CAP and SCP programs, also attend the training classes, so we all get the opportunity to "fertilize" cross-functionally.

The Area Coordinators, the VC Group Coordinators and the Program Coordinators (who are responsible for the consistent application of EPCRS) comprise a Central Coordination Committee, the purpose of which is to enhance consistency among the coordinators of each program and across programs as well. The Committee meets frequently to discuss items of current interest ranging from narrowly defined case correction issues to broader issues covering the development of fee and sanction structures under EPCRS. I think the Committee has proved quite effective in enhancing communication among the coordinators and improving equitable treatment for taxpayers nationwide.

In addition, the VC Council, which consists of the EP directors – with additional representatives from VC and Examinations – has met several times. The Council meets to discuss broad topics that have cross-functional effect.

Are you satisfied with the program or will there continue to be enhancements?

I am very proud of our accomplishments to date. Nevertheless, you should expect future enhancements to EPCRS. The input of our own people as well as the feedback we receive from our customers is a formula that has helped fashion our programs into the success they are today. We will continue using this formula to ensure that EPCRS continues to meet the needs of our customers. •

New Catch-Up Regs Issued

On July 8, 2003, the IRS published [final regulations](#) providing guidance on what are commonly referred to as "catch-up contributions". Such contributions are permitted under Code section 414(v) – added by section 631 of EGTRRA – and pertain to individuals age 50 or older. Catch-up contributions increase the amount of elective deferrals that a catch-up eligible participant may exclude from income and can be made to:

- 401(k) plans,
- SIMPLE IRA plans,
- SEPs and SARSEPs,
- Section 403(b) tax-sheltered annuity contracts, and
- Section 457 eligible governmental plans.

These regulations are applicable to contributions in taxable years beginning on or after January 1, 2004. The final regulations state that taxpayers can rely on the final regulations and on the proposed regulations (published in 2001) for taxable years beginning prior to 2004. In general, the final regulations follow the proposed regulations and address:

- (1) Catch-up eligibility,
- (2) Calculating catch-up contribution amounts,
- (3) Treatment of elective deferrals as catch-up contributions, and
- (4) Universal availability.

"Catch-up contributions offer a chance for employees to increase their savings as they get closer to retirement. By making the rules as simple as possible, we hope to encourage plan sponsors to offer catch-up contributions to their employees," said Pam Olson, Treasury Assistant Secretary for Tax Policy. •

September 30th: It's Getting Closer and Closer!

Some background on the extended deadline – September 30 – and filing a determination letter request: As a condition for having the extended deadline, employers must file for a determination letter if their plan is not “identical” to the pre-approved M&P or Volume Submitter plan. If they don't file, the September 30 extension is voided and the plan will be a late amender (unless the employer adopted the GUST-approved M&P or Volume Submitter plan by February 28, 2002).

Tick tock, tick tock. With every passing moment, there is less time left for some adopting employers of Master & Prototype (M&P) and volume submitter plans to submit a determination letter request for their plans.



As discussed in the [June 2003 Special Edition](#), some adopting employers of M&P and volume submitter plans are required to get a determination letter to have any reliance. For example, *an adopting employer of an M&P plan or a volume submitter plan who modifies the pre-approved document, other than changes allowed by the adoption agreement or choosing options permitted under the document, must file an application for a determination letter to have reliance.*

Such an employer has until September 30th to file an application for a determination letter – otherwise the plan will be considered a late-amender.

On the other hand, [Announcement 2001-77](#) describes how many adopting employers of M&P and volumes submitter plans no longer have to get a determination letter to have at least limited reliance. *These employers are not required to file determination letters by September 30.*

Employers who maintain an M&P or volume submitter plan need to amend the plan by September 30, 2003 and if they have modified the plan, they must also file a determination letter request by September 30, 2003.

Act Now: Don't lose valuable tax benefits. •

EPCRS Recap

On June 5, 2003 - as reported in the [June 2003 Special Edition](#) - the IRS issued [Revenue Procedure 2003-44](#), updating EPCRS. The new procedure significantly streamlines and simplifies the EPCRS program.

Coinciding with the issuance of the new procedure, the IRS also made available some online tools to help practitioners and plan sponsors. Go to the Retirement Plans web site at www.irs.gov/ep by clicking on “More Topics” in the “Topics” section and going to “Correction”. This page includes:

- [Red-Lined Version of Rev. Proc. 2003-44](#) delineating the changes made by the new procedure.
- [EPCRS Comparison Chart](#) describing the differences between the new procedure and its predecessor.
- [Topical Index](#) to Rev. Proc. 2003-44: A detailed index with entries keyed to rev. proc. section numbers.
- [EPCRS After Rev. Proc. 2003-44](#) - A presentation on the changes made to EPCRS by Rev. Proc. 2003-44.

Joyce Kahn, Manager of Employee Plans Voluntary Compliance, said, “We’re working on more tools to help our stakeholders. You can look for a new Corrections Programs CD-ROM later this summer. We also plan on participating with ASPA on an EPCRS webcast.” Check with ASPA at www.aspa.org for more details on the EPCRS webcast. •

DOL Corner

The Department of Labor's Employee Benefits Security Administration (EBSA) (formerly the Pension and Welfare Benefits Administration) continues to actively expand its compliance assistance program to help employers, plan officials, service providers and others, by issuing guidance on a number of key issues in recent months.

Field Assistance Bulletin 2003-03

On May 20, DOL/EBSA issued Field Assistance Bulletin (FAB) 2003-03 providing enforcement guidance to the agency's investigators on the allocation of expenses among participants in a defined contribution plan covered by ERISA.

The guidance indicates that plan sponsors and fiduciaries have considerable discretion under ERISA to determine as a matter of plan design or administration how expenses will be allocated among participants and beneficiaries. The FAB concludes that a method of allocating expenses set forth in a plan document, in effect, becomes part of the benefit entitlements of the plan and fiduciaries generally will be required to follow that determination.

When plan documents are silent or ambiguous, plan fiduciaries must act prudently and solely in the interests of participants in determining how to allocate expenses. These general principles apply to methods of allocating expenses among participants in the plan as a whole and allocating specific expenses to individual participants, rather than to the plan as a whole. The conclusions in the FAB supersede views taken in Advisory Opinion 94-32A.

(Editor's Note: The IRS hopes to clarify soon the tax plan qualification issues raised in the FAB related to Code sections 401(a)(4) and 411.)

Advisory Opinion 2003-05

On April 10, 2003, DOL/EBSA issued Advisory Opinion 2003-05 regarding the proper disposition of a stock award received by an employer in connection with the conversion of an insurance company from a mutual to a stock company, a process known as a demutualization. Specifically, the Advisory Opinion considered whether under Title I of ERISA, the employer is entitled to retain the entire demutualization award paid to it by the insurance company for a group annuity contract that was purchased in connection with the termination of a retirement plan that had been established and maintained by the employer.

The Advisory Opinion concluded that if the plan was properly terminated and all obligations and claims under the plan were satisfied prior to the annuity contract provider's demutualization, there is no obligation under Title I of ERISA to treat demutualization proceeds as plan assets. Therefore, no violation of Title I of ERISA would occur if the employer takes possession of the proceeds. The Advisory Opinion states that the question of whether the employer or the beneficiaries of the termination annuity contract are the actual owners of the demutualization proceeds received by the employer as the named policyholder of the annuity is not within the jurisdiction of the Department of Labor under Title I of ERISA. Rather, this issue is governed by the terms of the contract and applicable state law.

Field Assistance Bulletin 2003-01

On April 15, DOL/EBSA issued Field Assistance Bulletin (FAB) 2003-01 providing enforcement guidance to the agency's investigators on the participant loan rules under section 408(b)(1) of ERISA with respect to the Sarbanes-Oxley Act amendments to the federal securities laws. The FAB concludes that restrictions on pension plan loans to officers and directors of plan sponsors do not violate the participant loan rules under ERISA.



With the publication of more Field Assistance Bulletins and Advisory Opinions, EBSA continues to grow its compliance programs. For all the latest information on EBSA programs, check out their web site www.dol.gov/ebsa.

Under ERISA, participant loans offered by pension plans must be available to all participants and beneficiaries on a reasonably equivalent basis. Given the uncertainty as to whether loans to officers and directors of a plan sponsor are permissible under the Securities Exchange Act of 1934 as amended by the Sarbanes-Oxley Act of 2002, the Department concluded that restricting loans to such individuals would not violate the requirement that loans be made available to all participants and beneficiaries on a reasonably equivalent basis.

Field Assistance Bulletin 2003-02

On May 8, DOL/EBSA issued Field Assistance Bulletin (FAB) 2003-02 providing enforcement guidance to the agency's investigators considering whether participating employers in multiemployer 401(k) plans have timely forwarded employee contributions to the plan. The FAB states that EBSA investigators may consider the time frames established in collective bargaining and similar agreements for the forwarding of employee contributions in determining when those contributions become plan assets under the Department's participant contribution regulation at 29 CFR section 2510.3-102. The time frames, however, may not extend beyond the maximum period described in the Department's participant contribution regulation.

Under that regulation, amounts that a participant has paid to or has withheld by an employer for contribution to a plan become plan assets as of the earliest date on which such contributions reasonably can be segregated from the employer's general assets but in no event later than the 15th business day of the month following the withholding.

Under the FAB, in order for the time frames in the collective bargaining agreements to be considered, plan trustees must determine that they reflect the appropriate balance of the costs to the plan of collecting the contributions and the protections to plan participants.

Advisory Opinion 2003-04A

On March 26, DOL/EBSA issued Advisory Opinion 2003-04A regarding the application of the fiduciary responsibility provisions of ERISA to:

1. A sponsor's amendment of its employee welfare benefit plan to eliminate life insurance benefits for certain retirees, and
2. The amendment of its defined benefit pension plan to add similar benefits for those retirees, and
3. The implementation of those amendments.

The employer represented that it retained authority to amend or terminate the welfare plan and had not communicated any limitations, and that retirees had no vested right to life insurance benefits. The employer would no longer pay for the retiree life insurance benefits from its general assets and account for such benefit liabilities on its financial statements under Financial Accounting Standards Board's (FASB) Statement of Financial Accounting Standards No. 106, Employer's Accounting for Post-Retirement Benefits Other Than Pensions.

The Advisory Opinion stated that a settlor's decision to eliminate life insurance benefits for certain retirees under a welfare plan and to provide similar benefits to the same retirees under a pension plan would not be subject to ERISA's fiduciary standards. The Advisory Opinion further stated that implementation of such decisions by plan fiduciaries would not, in itself, violate the anti-inurement provision of ERISA section 403(c)(1), the general fiduciary standards of section 404, or the prohibited transaction standards of section 406 merely because doing so would confer a benefit on the Employer. Whether the steps taken by any given fiduciary in implementing a settlor's decision satisfy ERISA's fiduciary standards are inherently factual questions on which the Department generally will not rule.

Finally, the Advisory Opinion noted, as indicated in various pronouncements by the Department, the expenses incurred by an employer in the performance of settlor functions are not reasonable plan expenses.

Advisory Opinions and FABs can be found on the DOL/EBSA Web site under "Compliance Assistance" at www.dol.gov/ebsa/regs. For questions about Advisory Opinions or FABs, contact EBSA's Office of Regulations and Interpretations at 202-693-8500.

How to Subscribe to Employee Plans News

Future editions of *Employee Plans News* will be issued only through IRS e-mail. For your free subscription, please go to the Retirement Plans web page at www.irs.gov/ep and register on-line by selecting "Employee Plans News" under the "Topics" section. All editions of the *Employee Plans News* will be archived at www.irs.gov/ep.

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

The 401(k) Compliance Planning Group – Help is on the Way

In March 2001, EP established the 401(k) Compliance Planning Group. The primary purpose of the Group is to offer a continuous avenue for addressing 401(k)-related issues. To that end, the Group was charged with a variety of tasks, including the development of specialized examination projects and audit tools that address the unique features of 401(k) plans. The Group is also responsible for providing technical support for internal education and external Customer Education & Outreach (CE&O) efforts.

Current group members include revenue agents, managers and representatives from the offices of Examinations Special Review, EP Planning and Programs (EPP), Rulings and Agreements, Chief Counsel, Voluntary Compliance and more.

Specialized examination projects have helped identify areas of noncompliance. EPP uses these project results to continually refine and add focus to EP's examination efforts. Other offices – such as CE&O and Rulings and Agreements – use project results to identify areas where additional education and outreach efforts and written guidance are needed.

The Group is constantly striving to improve the quality and consistency of EP's 401(k) examinations. Since its inception, the Group has helped update the Examination Guidelines and has developed a variety of audit tools, including a set of automated workpapers for use in the examination of 401(k) and 401(m) issues. A 401(k) audit techniques guide is currently in the works.

The Group has been active in CE&O efforts, working to help the pension community comply with 401(k) rules. Members of the Group have delivered speeches, participated in panel discussions and staffed exhibit booths during benefits conferences.

The Group is also developing a 401(k) section on the Retirement Plans web site: www.irs.gov/ep. It has gathered a wealth of useful material devoted to 401(k) issues and it will tailor the site to meet the needs of the user: plan participant, plan sponsor and plan practitioner. The site will also provide information organized according to the Life Cycle of a plan – from plan selection to termination. Among the compliance tools that users will find on the site are:

- EP's automated workpapers,
- Examination guidelines, and
- Links to forms and filing requirements.

Look for the 401(k) website later this summer.

Finally, the Group requests comments from the public. As Carol Schille, Group Leader, said recently, "We want to hear from you. Is your input valued? Absolutely. I like to think of our role as that of a partner with the private pension community, working hand-in-hand to achieve compliance with the myriad of 401(k) rules."

Comments or suggestions related to the 401(k) compliance programs can be sent directly to Ms. Schille by e-mail at Carol.A.Schille@irs.gov. Requests for Group members to speak at an event or conference should be sent to Mikio Thomas, CE&O Area Analyst, by e-mail at Mikio.S.Thomas@irs.gov.

ASBO International and the IRS – Partners for Compliance

In the 1990s, the IRS formed the 403(b) Tax Sheltered Annuities (TSA) and 457 Governmental Plan Compliance Group. The Group's purpose is to continually measure and develop strategies to improve 403(b) and 457 plan compliance through a proactive customer education program called Partnership for Compliance.

Through the Partnership program the IRS recognized a need in the public and private school community to enhance understanding of and compliance with 403(b) and 457 plan tax law. An active partner in this process has been the over 6,000 member Association of School Business Officials (ASBO) International.

Two EP Planning Groups are working to promote compliance within the 401(k) plan and 403(b)/457 plan arenas.



And each group is asking for suggestions and comments from the public.

ASBO International and its state and local chapters have provided forums for the exchange of information and ideas among education professionals and the IRS. Since 2001, the IRS has partnered with ASBO in speeches, interactive workshops, panel discussions, “gold mine” sessions and Exhibition booths. Members use these opportunities to discuss issues found by IRS auditors, correction methods, and practices and procedures designed to avoid compliance problems. Through this partnership, thousands of ASBO members from across the country are better able to understand and comply with 403(b) TSA and 457 plan tax laws.

Feedback from the ASBO partnership has led to the development of a number of products and services designed to enhance understanding and compliance. One such product, the “Resource Guide for Tax-Sheltered Annuities and 457 Plans” available online at the Retirement Plans web page www.irs.gov/ep by clicking “More Topics” under the “Topics” section and going to “Examinations”, provides information vital to 403(b) and 457 participants and administrators alike. The web site also has contact information for educational services in your area, FAQs and guidance on the most recent 403(b) and 457 tax law changes.

The IRS values the growing relationship with ASBO International, as it enhances the respective missions to protect retirement benefits and to promote the highest standards of school business management. Any suggestions on how to improve this relationship and the IRS’s 403(b) and 457 Compliance Group’s education efforts should be sent to the Group’s chair Robert Cremeens at Robert.J.Cremeens@irs.gov.

The Past Plan Document is Prologue to Today’s Application

When a Form 5300 application is processed, the favorable determination letter will express an opinion on the entire plan, as amended. Therefore, the submission package must include a copy of the plan and trust instrument plus all plan amendments, if any, made since the last determination letter. The application must also include a statement explaining how the amendments made since the last determination letter, or restatement, affect the plan (or any other plan maintained by the employer).

If there is a request for a determination on amendments made to a prior plan, the appropriate plan document (or, at a minimum, the applicable sections) should be submitted to determine the affect of the amendment and to verify that no protected benefits have been eliminated. So, when submitting a Form 5300 application, be sure to include the section(s) from the prior plan document that were affected by the changes made by the amendment(s) or restatement.

A restated plan may be required if four or more amendments have been made since the last restated plan. Submission of a working copy of the plan in a restatement format *may* also be required in some cases. Note, when submitting a working copy, be sure to include the signed and dated amendments that relate to the working copy changes.

Any questions regarding what should be submitted should be directed to EP Customer Account Services at 1-877-829-5500.

Mountain States Benefits Conference

The IRS, in association with the American Society of Pension Actuaries (ASPA) and the Western Pension and Benefits Conference, announces the Mountain States Benefits Conference. The conference will be held on Thursday and Friday, September 11 and 12, at the Hyatt Regency Denver. The conference will feature speakers from the IRS, Department of Labor and EBSA, Department of Health and Human Services and ASPA.

For more information regarding the conference such as continuing education credits, and special airfares and rental car rates, please visit the ASPA website www.aspa.org, or call them at (703) 516-9300. Hotel reservations should be made through the Hyatt Regency Denver:

Hyatt Regency Denver
1750 Welton St.
Denver, CO 80202
Phone: (303) 295-1234

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Determination Letter Errors Aren't Always What They Appear to Be (or, To Err is Human but to Correct Requires Guidance)

Recently, some practitioners have received determination letters containing dates for plan amendments that neither they nor the plan sponsor recalls adopting. Some have asked the IRS to review these recently issued determination letters for possible mistakes. After reviewing several of these requests, a trend was spotted where the seemingly erroneous dates were really just the dates pertaining to the adoption of - or amendment to - the trust document.

Recently, the IRS issued guidance in the form of Quality Assurance Bulletin 2003-1, *Proper Use of Caveats and Closing Transmittal Form*. The Bulletin states that, "All amendments to the plan and trust that have not been addressed on a previous ruling should be included on the determination letter. This includes amendments to the trust document."

The Bulletin represents a change in practice for EP. The rationale behind the change is as follows: Suppose a practitioner or plan sponsor submitted a determination letter request (Forms 5300, 5307, 5310, etc.) and the submitted plan document was an integrated document – i.e., both the plan and the trust were contained in the same document. The resulting determination letter would cover both the plan and the trust.

On the other hand, suppose a plan sponsor had submitted the plan document and the trust document as two separate documents. Under the old guidelines, only the dates pertaining to the plan document or amendments to the plan document would have been contained in the determination letter. Also, the determination letter would not have covered the separate trust document, whereas integrated plans were receiving a determination letter for their trust language.

By including the date of the adoption or amendment to the separate trust document, EP hopes to remedy an oversight. Of note here is that although prior determination letters did not expressly cover the separate trust documents, these documents have always been reviewed as part of the determination letter application. Under the new practice, EP is trying to make it clear to all interested parties that those separate trust documents have indeed been looked at by EP.

However, there is an exception. In a situation where the separate trust document and the plan document were adopted on the same date, there will not be a separate caveat for that trust document. Instead, it will be considered as one of the amendments executed on that date.

So, if there appears to be an error with a recently issued determination letter, before requesting re-examination by the IRS, check to make sure that that date doesn't relate to the trust document. The determination letter might provide more comfort than originally appeared. •

The Cash Balance Plan Hearings: A Recap

When was the last time three Congressmen along with television cameras appeared at an IRS regulation hearing on a pension policy issue? And when was the last time such a public hearing lasted two full days and included over 40 speakers?

Well, that was the scene at the beautifully refurbished Mellon Auditorium in Washington, DC as the IRS conducted a public hearing on a proposed regulation that deals in part with cash balance plans. The hearing was held on April 9th and 10th, and was kicked off by Representatives George Miller, Bernie Sanders, and Rahm Emmanuel. Other speakers included a wide cross-section of the pension community, including representatives of private law firms, actuarial and consulting companies, organizations aimed at protecting the rights of participants, and over a dozen plan participants. Each speaker had 10 minutes allocated to make a presentation and the panel conducting the hearing – itself a cross-section of the pension leadership of the Treasury Department and IRS – asked a variety of follow-up questions to many of the speakers.

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With the issuance of the new Quality Assurance Bulletin, the IRS is trying to remedy an oversight.

Congressmen and TV cameras at an IRS regulation hearing ...

Cash Balance Plans Hearings Recap *continued from page 9*

The subject of this hearing was a proposed regulation – issued in December 2002 - on the application of age-discrimination rules to defined benefit and defined contribution plans. The proposed regulation deals with section 411(b)(1)(H) of the Internal Revenue Code and provides guidance, for the first time, on how the age discrimination requirements of that section apply to cash balance plans.

Section 411(b)(1)(H) was enacted in 1986 and requires that the rate of benefit accrual in defined benefit plans cannot be reduced “because of the attainment of any age”. ERISA and the Age Discrimination Employment Act (ADEA) have parallel requirements. Prior proposed regulations under this Code section were issued in 1988 but were never finalized. The prior regulations did not address cash balance plans and did not define the rate of benefit accrual. The newly released regulations provide a number of rules and detailed examples that were the subject of numerous comments.

The next step is for Treasury and IRS to consider all comments submitted – including those at the public hearing – and to move forward. It is premature at this point to say what “moving forward” will consist of, but finalization of this regulation remains one of the highest priority items for Treasury and IRS. Meanwhile, the so-called “moratorium” on the issuance of determination letters and the completion of examination cases involving cash balance conversions will continue for now. Under the moratorium, such cases are suspended and submitted for mandatory technical advice to Washington, DC, pending the issuance of final regulations. •

Want an Employer Identification Number Fast?

The IRS has rolled out yet another way to apply for an employer identification number (EIN). It is the new Online EIN Application and features:

- 24x7 availability
- NO registration required
- NO paper sent to the IRS

Once the online form is completed, a preliminary validation is performed that lets the user know if any information the IRS needs wasn't included. An EIN will be issued after the successful online submission of the completed Form SS-4.

Users are urged to print their SS-4 application after the EIN is assigned and keep a paper copy for their records. To do this, just click the “Print Form” button after receiving the EIN. *This provisional EIN may be used immediately* to file tax returns. The IRS will review the application for completeness and verify that a new EIN is needed. Users will receive a confirmation notice, CP 575, within two weeks.

Attention Third Parties: You may request EINs via the Internet on behalf of your clients. However, you **must** keep a copy of the Form SS-4, signed by the client, in your business files.

Please note that there are a few limitations. The following request types cannot use the Internet application:

- Requests from addresses outside the continental USA, Alaska and Hawaii
- Limited Liability Company without type of entity
- Real Estate Mortgage Investment Conduits (REMIC)
- State and Local Governments
- Federal Government/Military Entities
- Indian Tribal Governments or Enterprises

To apply online go to www.irs.gov/businesses/small and click on “Online Application - Form SS-4. *Note:* There is no limit to the number of EIN requests that can be requested at one time. •

**More online
help from the
IRS:**



Instant EINs!

And the #1 Helpful Filing Tip for Form 5500 is ...

The Schedule F (Form 5500) Fringe Benefit Plan Annual Information Return is obsolete! Employers who in the past had filed the Form 5500 and attached the schedule, solely to meet the reporting requirements of section 6039D, don't need to file **either** Form 5500 or Schedule F.

Through the untiring efforts of our friends at the Employee Benefit Security Administration (EBSA) and the telephone assistance folks at the EFAST Help Line and IRS Call Site, an additional Baker's Dozen of Filing Tips (no mere Top 10) for Form 5500 filings have been developed. Although some of the tips may seem to be common sense, they include extra insight and advice that some filers may not have realized.

For example, do you know about the "80-120" participant rule? Or, that electronic filers **must** keep a signed copy of the form and **all** schedules and attachments on file? Maybe you continue to use an old business code or never understood how to properly assign a plan number. Do you know that to be considered a final return, a filer must check Form 5500, Part I, Line B(3) *and* have no assets or participants remaining at the end of the plan year?

A list of filing tips and detailed descriptions can be found at www.irs.gov/ep by selecting "EP Forms and Publications" under the "Topics" section. A quick review of this list just might be all that's required to assure that you have error-free filings for 2002. •

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 although topics needing further details will get their own full-length articles (such as the article on Helpful Filing Tips for Form 5500). Our lead story at The Corner concerns the revision of Form 5310-A:

- **Coming soon:** The IRS will release a revised version of the **Form 5310-A, Notice of Merger, Consolidation or Transfer of Plan Assets or Liabilities**. Although the form is not an application and does not generate a response from the IRS, it is a *required* notice. The updated version does away with the duplicate first page (the pink scannable page) and conforms to changes made to the rest of Form 5300-series over the past two years.
- **Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.** For distributions in 2003, [Form 1099-R](#) has been revised to reflect the re-titling, deletion and addition of some distribution codes, add a reference to "deemed IRAs", and note changes in the valuation of current life insurance protection. Distributions from a Coverdell Education Savings Account, which were reported on Form 1099-R in 2002, are now reported on the [Form 1099-Q, Payments From Qualified Education Programs \(Under Section 529 and 530\)](#).
- **Form 5498, Individual Retirement Arrangement Contribution Information.** Beginning for distributions in for 2003, Box 11 has been made into a checkbox to indicate if the participant must take a Required Minimum Distribution in 2004. In addition, contributions in 2003 to a Coverdell Education Savings Account can no longer be reported on a [Form 5498](#). They should be reported on the [new Form 5498-ESA, Coverdell ESA Contribution Information](#).
- **Form 2848, Power of Attorney** - Some determination letter applicants are inadvertently filing a Form 2848 that expires before the determination letter is issued. Many practitioners are preparing Form 2848 by inserting a Year or Period on *Line 3, Tax Matters*, which corresponds to the year of application or the year of plan termination. For example, if a determination letter request is made in 2002, the year 2002 is entered on *Line 3*. But in doing so, the practitioner limits the validity of the Form 2848 to the 2002-year only. To avoid this situation, the Year(s) or Period(s) block of *Line 3*, should be left blank or contain an "N/A" or "Not applicable".

For further details about topics at the Corner, please visit the Retirement Plans web page at www.irs.gov/ep and select "EP Forms and Publications" under the "Topics" section. We hope that you find this information useful. If you have suggestions or comments about forms or pubs, please contact us at RetirementPlanComments@irs.gov. •

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
T:EP:CEO
Room 4C3
1111 Constitution Ave.
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 web
page 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

Please go to the
Retirement Plans Web
Page at:
www.irs.gov/ep

A New National Savings Campaign

Concerned that Americans are not saving enough, the Social Security Administration (SSA) and the American Savings Education Council (ASEC) launched the new national Save For Your Future™ campaign on May 1, 2003 in Washington, DC. The Save For Your Future™ campaign is committed to informing Americans about the need to plan and to save for retirement and other life stages.

James B. Lockhart, Deputy Commissioner of the SSA, said, “Unfortunately, many Americans mistakenly believe that Social Security alone will guarantee their financial future. The reality is Social Security was never intended to be the sole source of income in our retirement years. Social Security was and is meant to be part of a three-legged stool, along with pensions and personal savings. Only half of today’s retirees have a private pension. And too few Americans save as much as they should. The Save For Your Future™ campaign emphasizes the importance of saving. It also guides people to easy-to-use tools that can help them craft and implement a financial plan.”

Don Blandin, president of ASEC, said, “The personalized Social Security Statement that is mailed to workers age 25 and older each year provides an estimate of what they could receive from Social Security when they retire. With that information in hand, people can begin to create their financial plans. The Social Security Statement generally arrives about 3 months before a worker’s birthday. The Save For Your Future™ campaign suggests that people use the 3-month period between the time they receive their statement and their birthday as an annual financial review and planning period. The unfortunate reality is that if people don’t plan and don’t save, they may find that they cannot retire comfortably — or perhaps that they cannot retire at all.”

For example, the 2003 Retirement Confidence Survey found that 29 percent of American workers say they or their spouse have not saved for retirement. According to the same survey, 61 percent of workers and more than half (53 percent) of all worker households have not calculated how much money they will need to save by the time they retire. However, further research reveals that 40 percent of workers who calculate what they need to save for retirement realize that their current savings plan would not allow them to reach their goal and so they adjusted their plan accordingly.

The Save For Your Future™ campaign recommends that every American take four simple steps when they receive their Social Security Statement each year:

- 1) *Calculate how much money you need for retirement and other personal and family needs.*
- 2) *Plan how to accumulate money and other assets to help you meet your needs.*
- 3) *Act to implement your plan and save the money you (and your family) need.*
- 4) *Reassess your financial needs and the progress of your plan every year during the three-month period between the time you receive your Social Security Statement and your birthday. If your needs have changed or your plan is not working, readjust one or both of them.*

Developed in partnership by ASEC and its many coalition members— including SSA, Departments of Labor, Treasury, Health and Human Services and Defense, and State Farm (the 2003 national campaign sponsor) — the annual Save For Your Future™ campaign will include events and activities throughout the country devoted to educating and motivating Americans to take charge of their financial future.

At events throughout the country, an informative new booklet, “How To Save For Your Future — a guide for financial security” will be distributed. The booklet is available in several different languages and can be downloaded from www.saveforyourfuture.org. The Web site also provides links to the SSA and ASEC Web sites, which include valuable on-line benefit calculators and the *Ballpark Estimate* pre-retirement planning worksheet. The *Ballpark Estimate* worksheet enables individuals to combine the estimate of their future Social Security benefits with estimates of income from pensions and savings to determine if they are saving enough for retirement.

A recent survey found that 29% of American workers haven't saved for retirement and that more than half of all households don't know how much money they'll need to save for retirement.

Web Spins – The Retirement Plans Site

We'd like you to say "Hello" to a new feature of *Employee Plans News*: Web Spins. This column will take you for a quick spin around the Retirement Plans web page at www.irs.gov/ep to see what recent additions we've spun together. Our inaugural column focuses mainly on information geared toward small business owners and their retirement plan practitioners.

In this issue, we introduce another new feature: **Web Spins**. This column will keep you posted on the newest postings to the Retirement Plans web page www.irs.gov/ep.

- *Life Cycle Information* – EP has been promoting the concept of the "Retirement Plan Life Cycle" in its outreach efforts. To further broadcast that message, EP will soon be posting content about the Life Cycle at www.irs.gov/ep. Once you're there, select "More Topics" and then click on "Retirement Plan Life Cycle". Once posted, you'll find resource guides on plans available to small businesses – indeed, available to most businesses.
- *No Fuss Plans* – "No Fuss Plans" are IRA-based plans, including Payroll Deduction IRAs, SEPs and SIMPLE IRAs. EP has gathered plenty of web-based materials on No Fuss Plans to help augment EP's 2003 IRS Nationwide Tax Forums presentation on No Fuss Plans. EP put all this No Fuss Plans info on one new site, where you'll find Life Cycle info for each IRA-based plan, compliance checklists, FAQs and many more useful tools. For further details go to www.irs.gov/ep, click on "More Topics" and then go to "Types of Retirement Plans".
- *USERRA Qs&As* – In our [Spring 2003 Edition](#) we had a story on USERRA and its impact on both employers and employees. Due to the interest generated by that story, EP is gathering those Qs&As along with additional Qs&As and will soon place them on www.irs.gov/ep. More Qs&As will be posted as they develop. Just select "More Topics" and go to "EP FAQs".
- *Missing Participants* – EP is continuing its efforts to help plan sponsors and administrators find missing participants. (See the story in our [Spring/Summer 2002 Edition](#).) EP has collected some helpful tools for finding lost participants and placed them on www.irs.gov/ep. Just click on "More Topics" and go to "Contacting Missing Participants or Beneficiaries".

Quick Hits

Welcome back to Quick Hits. Below are headlines of recent and expected developments.

- *POA Numbers Update* – In the [Spring/Summer 2002 edition](#) of the *Employee Plans News*, we told you about a program for any POA who submits 30 or more applications at one time and who would like to have their submissions (Forms 5307 &/or 5300 only) kept together to be worked in the same area of the country. To date, a number of firms have taken advantage of this program. And despite some glitches early on (for example, some plans went to the wrong areas), most feedback has been positive.

With the September 30, 2003 deadline for amending many M&P and volume submitter plans fast approaching (See the related article in this issue), if you're a POA who would like to take advantage of the convenience offered by this program, go to the [Spring/Summer 2002 edition](#) for further details.
- *The Tax Forums Are Coming! The Tax Forums Are Coming!* – The first of the 2003 IRS Nationwide Tax Forums starts on July 8th in Atlantic City, NJ. Five other forums will be held with the final one being in Las Vegas on September 16th-18th. The EP seminar topic this year is "No Fuss Plans" and EP will have an exhibition booth at each forum (except in St. Louis, where EP will be sharing a booth with SB/SE). Just go to www.irs.gov and click on "2003 IRS Nationwide Tax Forums" under the "Tax Professionals Corner" for registration, travel and hotel information.
- *More Help for Small Businesses* – The Small Business/Self-Employed Operating Division of the IRS recently issued the 2003 Small Business Resource Guide CD-ROM. This year's edition of the popular CD includes many helpful tools for current and prospective small business owners including information on choosing a retirement plan. To order or view this invaluable CD, go to the [SB/SE web page](#) and click on "Small Business Products Online Ordering".

Quick Hits



Are Back!

Employee Plans Published Guidance

(April 2003 – June 2003)

Revenue Rulings

[Rev. Rul. 2003-27, 2003-11 I.R.B. 597](#)

This revenue ruling pertains to the adjustment of basis in S corporation stock.

Notices

[Notice 2003-24, 2003-18 I.R.B. 853](#)

This notice alerts taxpayers and their representatives that the tax benefits purportedly generated by certain arrangements purporting to qualify as collectively-bargained welfare benefit funds excepted from the account limits of IRC sections 419 and 419A are not allowable for federal income tax purposes.

Regulations

[T.D. 9052, 68 Fed. Reg. 17277](#)
(Apr. 9, 2003)

These final regulations under §4980F of the Code implement section 659 of EGTRRA.

[T.D. 9056, 68 Fed. Reg. 23586](#)
(May 5, 2003)

These final regulations under §§ 408 and 408A of the Code pertain to calculations of earnings for certain IRA contributions.

[REG-157302-02, 68 Fed. Reg. 27493](#)
(May 20, 2003)

These proposed regulations under §§ 408(q) of the Code pertain to ‘deemed’ IRAs as added by EGTRRA.

Revenue Procedures

[Rev. Proc. 2003-23, 2003-11 I.R.B. 599](#)

This revenue procedure pertains to the direct rollover from an ESOP of Subchapter S corporation stock to a participant’s IRA.

[Rev. Proc. 2003-44, 2003-25 I.R.B.](#)
(June 5, 2003)

This revenue procedure updates [Rev. Proc. 2002-47](#), which set forth the EPCRS and described the correction programs for retirement plans established by the Service.

Announcements

[Announcement 2003-13, 2003-11 I.R.B. 846](#)

This announcement describes the revised Form 5310 for requesting determination letters for terminating plans.

[Announcement 2003-22, 2003-17 I.R.B. 846](#)

This announcement states that the Service will withdraw certain “new comparability” proposed regulations.

[Announcement 2003-32, 2003-20 I.R.B. 933](#)

This announcement refers readers to a WEB site that contains a revised paper on the EP determination letter program.

ACT II: New Members and New Reports

The IRS's special Advisory Committee on Tax Exempt and Government Entities – known as ACT – presented four recommendations to TE/GE officials at a public meeting May 21, 2003, in Washington, DC. Two of the recommendations deal with employee retirement plan issues – an interim report on the TE/GE audit processes and a final report on abusive tax shelters involving tax-exempt and government entities.

These recommendations – as well as those presented at first public ACT meeting in June 2002 – are on the Retirement Plans web page at www.irs.gov/ep. The IRS invites comment on them from the public. (The site features a handy e-mail address for submitting comments.)

ACT is chartered under the Federal Advisory Committee Act and its 18 members are appointed by the Secretary of the Treasury. ACT holds one public meeting a year in which it formally presents its recommendations to TE/GE officials.

Of the 18 ACT members, six represent a broad spectrum of retirement plan viewpoints:

- Brian L. Anderson, of Madison, WI
- Mary Beth Braitman, of Indianapolis, IN
- Jonathan Barry Forman, of Norman, OK
- Craig Hoffman, of Jacksonville, FL
- John W. Schroeder, of Santa Clara, CA, and
- Donald J. Segal, of New York, NY

(The other 12 members of ACT are experts in tax-exempt organizations, tax-exempt bonds, and federal, state, local and Indian tribal governments.)

This was the final meeting for Mr. Forman and Mr. Hoffman, whose terms expired in May. The two new retirement plan experts joining the committee are:

- Michael P. Coyne, of Westlake, OH, and
- Douglas Kant, of Boston, MA

TE/GE officials pledged to carefully consider all of ACT's recommendations and pointed out that the recommendations on combating abusive shelters in the TE/GE arena would be a valuable part of the overall IRS initiative to combat abusive shelters. •

An Early Reminder: Mark Your Calendars for the USC Benefits Seminar

The University of South Carolina, the IRS and the Department of Labor will host a benefits seminar at the Moore School of Business on the University of South Carolina campus in Columbia, South Carolina on Friday, November 7, 2003. This will be the 33rd annual benefits seminar, which is designed for professionals who specialize in the employee benefits area. In addition to providing a full day of technical discussions and updates, the seminar will also offer a chance for attendees to network with other benefits professionals.

IRS speakers this year will feature Carol Gold, Director, Employee Plans; Cathy L. Jones, EP Area Manager, Mid-Atlantic & Commissioner's Representative; George Brim, Area Coordinator, Mid-Atlantic Area; and Stacy Smith, EP Specialist. There will also be speakers from EBSA, as well as speakers from the private sector.

The seminar is accredited for attendees to earn CPE credits for accountants, CLE credits for attorneys, and CPE credits for South Carolina life insurance agents.

For those who are interested in attending, please feel free to contact Helen Doerpinghaus, at the University of South Carolina at doerp@moore.sc.edu for further information. You may also contact Stacy Smith at stacy.smith@irs.gov. •

ACT and Benefits Conferences:



Two more ways EP is partnering to improve compliance and understanding

Non-Filer Update

The IRS and DOL's Employee Benefits Security Administration (EBSA) are once again preparing to mail out letters this summer to a group of potential non-filers under their joint non-filer compliance effort. In this third phase of their program, the IRS and EBSA are targeting "stop filers", those plan sponsors who had previously filed a Form 5500-series return but stopped filing without a valid explanation (final return, merged plan, etc.).

As a part of this mail out, the IRS plans to contact approximately 300 plan sponsors. EBSA will be mailing similar letters to a sample of plan sponsors who filed a Form 5500 for the 1999 plan year but have no 2000 year return on record. As with prior notices, recipients will have the opportunity to respond before the IRS or EBSA follow up with additional notices (including proposed penalties).

Delinquent filers are again reminded of EBSA's Delinquent Filer Voluntary Compliance (DFVC) Program. This program allows for substantially reduced penalties for the late filing of Form 5500 returns/reports. More information about the DFVC Program is available on the EBSA website at www.dol.gov/ebsa.

Results from the two prior mail outs still indicate a problem with incorrect EINs. *The EIN listed on the Form 5500 should be the plan sponsor's/employer's EIN.* Generally, trust EINs are not required on the Form 5500. Also, large numbers of SEP plans were identified in the second mail out – SEPs do not need to file Form 5500.

Additional information about the non-filer project is available from EBSA at (202) 693-8360 or the IRS at 1-877-829-5500. You can also find information about this project on the Retirement Plans website at www.irs.gov/ep by going to "EP Forms and Publications" under the "Topics" section and then clicking on "Joint Project".

Calendar of EP Benefits Conferences

UPCOMING EVENTS...

Name	Date(s)	Location	Non-IRS Co-Sponsor(s)	For Further Information, Please Contact
Mountain States Benefits Conference	09/11/03-09/12/03	Denver, CO	ASPA and WP&BC	www.aspa.org or ASPA Meeting Department (703) 516-9300
SWBA/IRS 13th Annual Employee Benefits Conference	10/15/03-10/16/03	Dallas, TX	Southwest Benefits Association (SWBA)	www.swba.org

RECENT EVENTS...

Name	Date(s)	Location	Non-IRS Co-Sponsor(s)	For Information, See
16th Annual Cincinnati Employee Benefits Conference	06/19/03-06/20/03	Cincinnati, OH	Cincinnati Bar Association	EP Benefits Conferences Calendar at www.irs.gov/ep
Northeast Benefits Conference (2 Locations)	06/12/03-06/13/03	Boston, MA & White Plains, NY	ASPA & NE Area Pension Liaison Group	
Mid-Atlantic Benefits Conference	05/13/03-05/14/03	Philadelphia, PA	ASPA	
Great Lakes Benefits Conference	05/01/03-05/02/03	Chicago, IL	ASPA & other cooperating sponsors	
Los Angeles Benefits Conference	01/30/03-01/31/03	Los Angeles, CA	ASPA & other cooperating sponsors	



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