

## Employee Plans News - Summer 2010 Edition

The *Employee Plans News* is a periodic IRS newsletter with retirement plan information for retirement plan practitioners.

### **Form 5500 Schedules**

The final 2010 [Schedule SB](#) (PDF) and [Schedule MB](#) (PDF) with [Instructions](#) (PDF) are now available and can be used for filing.

**Advisory Committee on TE/GE** proudly welcomes [four new members](#) for the 2010-2012 term and issues six recommendations in its [June 9, 2010 Report](#) (PDF), including an analysis of EP's Determination Letter Program.

### **ESOP Phone Forum**

Due to an overwhelming demand, the ESOP Update Phone Forum will be held on June 24th at 11:00 EST and then repeated at 2:00.

### **EPCU Insider**

The Foreign Distributions Project focuses on individuals living outside the U.S. or its territories who received an early distribution from their retirement plan or IRA.

### **401(k) Questionnaire Follow-Up**

Answers to common questions and status on EP's 401(k) Questionnaire.

### **Who Can Represent a Plan Sponsor During an Employee Plans Examination?**

EP Exam Director discusses the proper use of Form 2848 and Form 8821.

### **New Favorable Determination Letter 4577** Will Accelerate Processing Form 5307 Applications

Is Your Plan Eligible for the [User Fee Exemption](#)?

### **Final Regulations on Investment Diversification Requirements**

Final Code §401(a)(35) regulations for certain defined contribution plans with publicly traded employer securities.

### **August 2, 2010, is the Form 5500 Deadline for 2009 Calendar-Year Plans** Remember to file electronically ...

**We're Glad You Asked!** - Where can employees set up their SEP-IRAs? and Can you make traditional IRA contributions to a SEP-IRA?

**IRS is Sponsoring Six Nationwide Tax Forums this Summer-** Employee Plans will present two seminars at each Forum.

**EP's Fiscal Year 2010 Work Plan** (PDF) sets forth seven operating priorities.

Check out our latest postings to the Retirement Plans Community Web page - Redesigned [403\(b\)](#) pages and [401\(k\) Compliance Questionnaire](#) page.

### **Employee Plans Published Guidance**

**PBGC Insights**

**DOL Corner**

**Forms and Pubs Update**

**Calendar of EP Benefits Conferences**

If you have any comments or suggestions on our newsletter or Web pages, please send them to [RetirementPlanComments@irs.gov](mailto:RetirementPlanComments@irs.gov).

# IRS Names New Members to the Advisory Committee on Tax Exempt and Government Entities

IR-2010-61, May 13, 2010

WASHINGTON – The Internal Revenue Service today announced the selection of four new members to the Advisory Committee on Tax Exempt and Government Entities (ACT) for the term starting in 2010 and ending in 2012.

The ACT is a formal body consisting of external stakeholders who represent employee retirement plans, tax-exempt organizations, tax-exempt bonds and federal, state, local and Indian tribal governments.

“ACT members provide valuable feedback and insight on a wide variety of issues related to tax-exempt organizations and governmental entities,” said IRS Commissioner Doug Shulman.

ACT members generally serve a two-year term with a possible one-year extension. The four new participants will join 17 returning members in 2010.

The new members are:

## **Employee Plans**

**David N. Levine**, Washington, D.C. Levine is a principal at Groom Law Group, Chartered, where he provides advice about employee benefit plans to tax-exempt, for-profit and governmental entities. Levine also advises plan sponsors and service providers on technical plan design and other issues. He has served as the Vice Chair of the Legislative Subcommittee of the American Bar Association Tax Section’s Employee Benefits Committee. Levine received a J.D. from the University of Pennsylvania Law School.

**Adam C. Pozek**, Reading, Mass. Pozek is Vice President, Consulting Services, for Sentinel Benefits & Financial Group. He gives technical advice on defined contribution and defined benefits plans, including providing assistance with plan design, due diligence in merger and acquisition transactions and corrections under several voluntary correction programs operated by the IRS. Pozek is active in the American Society of Pension Professionals and Actuaries, where he serves on the board of directors. Pozek studied accounting and finance at Georgia State University and holds professional credentials from the American Society of Pension Professionals and Actuaries, including Qualified Pension Administrator and Qualified Plan Financial Consultant.

## **Exempt Organizations**

**Karen A. Gries**, Minneapolis, Minn. Gries is a principal with LarsonAllen LLP. She serves a wide variety of tax-exempt organizations, including charities, social welfare organizations, business leagues and associations, credit unions, health care providers and religious organizations. Gries provides a broad range of services, including planning and reporting of unrelated business income, intermediate-sanction analysis and application and corporate compliance review. Gries is a graduate of Nettleton College in South Dakota.

**Celia Roady, Washington D.C.** Roady is a partner in Morgan Lewis & Bockius, LLP, where she works on a wide range of issues affecting public charities, private foundations and other categories of tax-exempt organizations. Among other entities, she represents colleges and universities, museums, private and operating foundations, scholarship organizations and disaster relief organizations. Roady received her J.D. from the Duke University School of Law and her LL.M. from the Georgetown University Law Center.

## ESOP Phone Forum

Free phone forums featuring IRS employees discussing retirement plan topics.

### Upcoming Phone Forums

#### ESOP Update Phone Forum - June 24, 2010:

#### Two Sessions - 11:00 a.m. - 12:30 p.m. Eastern Time and 2:00 p.m. - 3:30 p.m. Eastern Time

"Qualified participant" and "Qualified election period" as described in section 401(a)(28)(B) of the Internal Revenue Code, the repurchase of employer security under Section 409(h)(2)(B)(i) and issues related to the transfer of employer security and cash between plan accounts.

Join Robert Gertner (Tax Law Specialist in EP Technical Guidance and Quality Assurance, Group 1) and Clare Diefenbach (Tax Law Specialist in EP Technical Branch, Group 2), for this 90-minute presentation.

Handout: [ESOP Update Phone Forum Presentation](#)

Advance questions can be emailed to [ep.phoneforum@irs.gov](mailto:ep.phoneforum@irs.gov).

#### Session 1 - 11:00 a.m. - 12:30 p.m. Eastern Time

Conference Access Code	Register	Eastern	Central	Mountain	Pacific
333614	<a href="#">Register</a>	11:00 a.m.	10:00 a.m.	9:00 a.m.	8:00 a.m.

#### Session 2 - 2:00 p.m. - 3:30 p.m. Eastern Time

Conference Access Code	Register	Eastern	Central	Mountain	Pacific
369691	Full	2:00 p.m.	1:00 p.m.	12:00 p.m.	11:00 a.m.

**Registering for a session will not guarantee you will be able to participate in that time slot. Only the first 850 people who dial in will be able to participate in 11 a.m. session and the first 999 people for the 2 p.m. session. Pre-registration for the 2:00 p.m session is closed; you may now only register for the 11:00 a.m session.**

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**Toll Free:** (866) 216-6835

- Dial in 15 to 20 minutes before the scheduled time.
- Enter your access code, then the pound (#) sign.
- Enter your PIN, then the pound (#) sign.
- Your line will be placed on hold until the conference begins.

#### Continuing Professional Education (CPE) Credits

- [Enrolled Agents](#) and [Enrolled Retirement Plan Agents](#) may earn CPE credit for attending. Other professional groups should consult with their licensing agencies regarding acceptability of credit.
- Participants must register individually and use their own assigned PIN to receive CPE credit.
- Each participant must use an individual phone line to determine attendance and the length of time attending the forum.
- A Certificate of Completion will be e-mailed to the participants who meet the attendance requirement in about a week after the forum.

If you have question(s), please contact us at [ep.phoneforum@irs.gov](mailto:ep.phoneforum@irs.gov).

## EPCU Insider

### Foreign Distributions – International Project

*This column provides the latest news from our shop so you can be informed if you happen to receive a letter from us. The EPCU addresses pension compliance by using compliance check and questionnaire studies designed to pinpoint troublesome areas while creating minimal burden to taxpayers.*

Our latest compliance issue is the Foreign Distributions Project, which focuses on individuals living outside the U.S. or its territories who have received an early distribution from their retirement plan or IRA. Generally, if an individual receives an early distribution (prior to age 59 ½) from an IRA or other qualified retirement plan, there is a 10% additional tax imposed on the early distribution amount that is included in gross income, unless a [special exception](#) applies. This rule applies to all U.S. citizens or resident aliens (Green Card holders), even if they live abroad.

We are sending compliance contact letters to individuals who received an early distribution from a retirement plan or IRA as reported on [Form 1099-R](#), *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*, and have an address outside the U.S. or in a U.S. territory. We'll ask for information to determine if the individual reported the distribution and paid the tax correctly. We may also ask about that individual's compliance with annual filings, such as [Form 1040](#) or [1040-NR](#).

If you receive a compliance contact letter, please feel free to furnish any additional documents or materials you believe will explain your situation.

This compliance contact letter is not a formal audit or investigation, however, if the information you provided indicates that you did not comply with the reporting or payment requirements for early distributions, we may pursue an examination or other corrective action unless you correct the issue.

[EPCU's](#) Web page has additional information and FAQs about this project. See the following for additional information on international issues:

- [International Taxpayer Information](#)
- [Form 1040](#), *U.S. Individual Income Tax Return*, and [Instructions](#)
- [Form 1040-NR](#), *U.S. Nonresident Alien Income Tax Return*, and [Instructions](#)
- [Treaties](#) – U.S. Tax Treaties

We appreciate your input! Please e-mail your comments to [EPCU@irs.gov](mailto:EPCU@irs.gov) on this or any other project.

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## 401(k) Questionnaire Follow-Up

IRS Employee Plans Compliance Unit (EPCU) sent the [401\(k\) Compliance Check Questionnaire](#) to 1,200 plan sponsors in May. As of June 18, 2010, 177 sponsors had completed the Questionnaire and 183 partially completed it.

IRS estimates that there are over 500,000 Form 5500s filed for 401(k) plans, covering over 40 million individuals. The information gathered from the Questionnaire will provide a comprehensive view of 401(k) plans - their trends, compliance issues and whether the size of the plan is a factor in overall plan compliance. EP will use this information to make future audits more productive and focus on necessary education, outreach, guidance and enforcement efforts.

If you have any questions you should contact the person listed on the letter you received or e-mail [EPCU@irs.gov](mailto:EPCU@irs.gov). Some of the most frequently asked questions about the compliance check are:

### Can someone complete the Questionnaire for me?

Yes, someone else can complete the Questionnaire for you if you provide them with the information to access it. However, if you would like someone else to communicate with the IRS about the Questionnaire, you must submit [Form 2848](#), *Power of Attorney and Declaration of Representative*.

**What should I do if I get an error message when I try to access the Questionnaire?**

Please verify the accuracy of the PIN, Password and Source ID you entered. For example, it is possible the letter "l" was mistaken for the number "1." If this does not resolve the problem, contact the person listed on the letter you received.

**The letter references the 2007 plan year, but the instructions request 2008 plan year information.**

Please use data as of the end of the 2008 plan year unless the question specifically lists the 2006, 2007 and 2008 years. In this instance, you must answer the question by providing data for all years listed.

**I discovered a qualification failure when completing the Questionnaire. What should I do?**

Plan sponsors may either self-correct or submit an application under the Voluntary Correction Program. Please refer to [Revenue Procedure 2008-50](#) on our [Correcting Plan Errors](#) page.

[EPCU](#) Web page has more information on the Questionnaire. Even if you haven't received the Questionnaire, use our [401\(k\) Fix-It Guide](#) to find, fix or avoid plan errors!

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## Critical Priorities With...Monika Templeman – Who Can Represent a Plan Sponsor During an Employee Plans Examination?

*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](mailto:RetirementPlanComments@irs.gov).*

**Monika, there seems to be a lot of confusion about which forms to use and how to complete them to represent a plan sponsor.**

This issue continues to confuse taxpayers and unenrolled pension professionals. With the successful implementation of the [Enrolled Retirement Plan Agent \(ERPA\) Program](#), third party administrators and benefits consultants are no longer disenfranchised because of RRA'98 (when the Power of Attorney Form 2848 was revised to exclude unenrolled preparers). The ERPA Program allows third party administrators and benefit consultants who maintain and administer plans to have limited practice before the IRS under Circular 230 on retirement plan matters, while increasing accountability through examination, enrollment, renewal procedures and continuing education requirements. These pension professionals are now able to become ERPAs and represent clients on issues involving IRS Employee Plans programs (excluding actuarial forms or schedules). The IRS has revised Form 2848 to include the ERPA designation and is strictly enforcing the procedures and rules that distinguish Form 2848 from Form 8821. I hope this article will reduce confusion for plan sponsors.

**Why is it important to clarify these procedures?**

It's important because, for IRS to request retirement plan records or discuss issues with any of the three distinct taxpayers in an EP examination, we must obtain separate powers of attorney for each. The three separate taxpayers in an EP examination are: the plan sponsor, the trust (defined as an accumulation of assets held in the name of the plan participants) and the participant/beneficiary. The concern is that improper completion of these forms increases the risk of violating third party contact requirements and disclosure rules. We must not violate a taxpayer's confidentiality during our examinations.

**Can you please explain the forms used for providing representation?**

There are three forms. The first is [Form 2848, Power of Attorney and Declaration of Representative \(instructions\)](#), which authorizes an individual to represent the plan sponsor before the IRS. The individual authorized must be a person eligible to practice before the IRS. Remember, individuals who represent the taxpayer as unenrolled return preparers must have prepared the Form 5500 for the year being examined and their representation is limited. The next is [Form 8821, Tax Information Authorization](#) (instructions are below the form), which authorizes any individual, corporation, firm, organization or partnership the plan sponsor designates to inspect and/or receive confidential information in any office of the IRS for the type of tax and the years or periods listed on the form. The final one is [Form 56, Notice Concerning Fiduciary Relationship](#) (instructions are below the form), which the fiduciary uses to notify the IRS of the creation or termination of a fiduciary relationship. For retirement plans, the form lists the trustee(s) of the plan.

**It appears Forms 2848 and 8821 are similar. True?**

The forms are similar in their preparation, but not in their use. Allow me to quote from the Form 8821 instructions:

Form 8821 does not authorize your appointee to advocate your position with respect to the federal tax laws; to execute waivers, consents, or closing agreements; or to otherwise represent you before the IRS. If you want to authorize an individual to represent you, use Form 2848, *Power of Attorney and Declaration of Representative*.

If someone other than the plan sponsor is going to participate in the examination, that individual must be qualified to complete the Form 2848 and do so properly. Only individuals listed on that form can represent the taxpayer. Also note, one name on the form does not automatically include all other members of that firm. This is a frequent situation encountered by my examination agents.

#### **Who is a taxpayer for purposes of Form 2848 and Form 8821?**

For purposes of conducting a 5500 examination, Item 1 (Taxpayer Information) is the plan name and number (if applicable) and the plan sponsor's name, address and EIN. The plan and trust are two separate legal entities. Therefore, unless the employer is also the trustee, it is possible that a second Power of Attorney for the trust will be necessary if the examination includes trust assets.

#### **Line 3 on Forms 2848 and 8821 requests "Tax Matters" information. What is contained here?**

This area has shown the most errors during our reviews. The type of tax shown on Form 2848 or Form 8821 depends on the examined entity. The plan couldn't, under any circumstances, produce a tax liability so the only valid entry under "Type of Tax" would be "N/A." The "Tax Form Number" would be "5500" and the "Year(s) or Period(s)" would be the plan years under examination. For the trust, however, the "Type of Tax" would be "income" and the "Tax Form Number" would be "Form 1041." The Internal Revenue Code states the calendar year is always the tax year of the 1041 when properly completing the "Year(s) or Period(s)" area of either form. It might be necessary to list multiple tax years to cover the period under examination.

#### **What if a bank or other entity is the trustee?**

In this situation, the appropriate signatory is an officer having authority to bind the bank or other entity and that individual must certify that he/she has such authority. Since this is a representation of the trust, this would include completion of both Forms 2848 and Form 56.

#### **How do examination agents handle "pen and ink" changes to these forms?**

I instruct my examination agents to take the conservative approach and secure a new form. It is IRS Counsel's position that initialed "pen and ink" changes are not an adequate remedy for an incorrect form. The same situation applies where a member of the law firm other than the person listed on the form arrives for the examination. The requirement for my agents is to secure a new valid form.

#### **Plan sponsors may have questions after reading your article. Where can they go to get these questions answered?**

We have made this process easy. They can e-mail their questions to [RetirementPlanQuestions@irs.gov](mailto:RetirementPlanQuestions@irs.gov). When you send us your question, it is important to include your name and phone number in the e-mail because we respond to questions by phone.

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## **New Favorable Determination Letter 4577 Will Accelerate Processing Form 5307 Applications**

The IRS has a new Favorable Determination Letter 4577 – for adopters of pre-approved defined contribution plan documents. Unlike other final determination letters, such as Letter 2002, Letter 4577 will **not** include the dates of adoption of plan documents and amendments. Otherwise, Letter 4577 is identical to the currently issued Letter 2002. This change will accelerate the processing of certain Form 5307 applications. There are two versions of Letter 4577, depending on which system generates the letter: [Letter 4577 \(DO/CG\)](#) and [Letter 4577C](#).

Plan sponsors may rely on Letter 4577 for all plan amendments listed on line 3 of [Form 5307](#) that conform the plan to the applicable [Cumulative List](#). As with all favorable determination letters, an applicant must retain Form 5307 and all documents submitted with the application to maintain reliance. Visit our [Determination Letter](#) Web pages for additional information on the scope of reliance and benefits of a favorable letter.

Letter 4577 is part of our effort to streamline the Form 5307 application process for adopters of pre-approved DC plans. Please share your questions and concerns with us at [RetirementPlanQuestions@irs.gov](mailto:RetirementPlanQuestions@irs.gov).

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## User Fee Exemption - Is Your Plan Eligible?

[EGTRRA §620](#), eliminated user fees for certain determination letter applications filed after December 31, 2001. [Notice 2002-1](#) helps a plan sponsor determine if they are eligible for the user fee exemption.

We've noticed an increase in applications with user fees that qualified for an exemption and some filed without user fees that were not exempt. To help determine whether your determination letter application is eligible for a user fee exemption, answer the following questions.

### When was the plan first in existence?

You must file your determination letter application before the later of the:

- fifth plan year the plan is in existence; or
- end of any remedial amendment period for the plan that begins in its first five plan years.

For the EGTRRA remedial amendment period, this means:

- a defined contribution plan had to first be effective on or after January 2, 1997; and
- a defined benefit plan had to first be effective on or after January 3, 1996.

**Note:** If the plan was established because of a plan spin-off or merger, then the plan will be treated as in existence on the first day the plan from which it was spun-off was in effect, or the earliest date any of the merged plans was in effect.

### Is the employer an “eligible employer?”

To qualify for the exemption, an employer must:

- Have 100 or fewer employees receiving at least \$5,000 in compensation for the calendar year immediately preceding the one in which the determination letter request is filed.
- Treat all members of a controlled group, partnership or affiliated service group as a single employer and considers leased employees as employees when figuring total employees.

**Note:** If the plan is maintained by more than one employer, then each of those employers must be an “eligible employer.”

### In the plan year preceding the one in which the determination letter request is filed, did you have at least one non-highly compensated plan participant?

To qualify for the exemption you must have had at least one non-highly compensated employee participating in the plan in the year prior to the year you file your application. A non-highly compensated employee is an employee who isn't a highly compensated employee. See Code §414(q) for the definition of highly compensated employee.

If you meet the user fee exemption, remember to sign and date the certification on the [Form 8717](#), *User Fee for Employee Plan Determination, Opinion and Advisory Letter Request*. If your plan is not eligible for the user fee exemption, you must submit the correct fee or your package will be returned.

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## Final Regulations on Investment Diversification Requirements

On May 18, 2010, the IRS and the Treasury Department released [final regulations](#) on Code §401(a)(35) investment diversification requirements for certain defined contribution plans with publicly traded employer securities.

DC plans holding publicly traded employer securities are considered "applicable defined contribution plans" and subject to the diversification requirements of Code §401(a)(35). These plans must contain at least three investment options other than employer securities. The diversification requirement applies to:

- employee contributions; and
- employer contributions allocated to participants (or their beneficiaries) with at least three [years of service](#).



A plan can't restrict a participant's right to invest in or to divest employer securities any more than it restricts any other plan investment options. However, the final regulations modify some of the permitted restrictions:

- A plan may have more frequent transfers to and from stable value funds and qualified default investment alternatives than a fund invested in employer securities.
- A plan may not allow reinvestment of divested amounts in the same employer securities account, but may allow investment of those amounts in another employer securities account if the only difference between the two accounts is the Code §402(e)(4) cost or other basis.
- Under a transitional rule, certain leveraged ESOPs may allocate matching contributions to an otherwise frozen employer stock fund.

Exceptions to the diversification requirements include a:

- stand-alone ESOP that does not hold amounts attributable to §§401(k) or (m);
- one-participant retirement plan; or
- plan with an investment fund holding employer securities as part of a broader fund is not treated as holding employer securities if the:
  - investment was independent of the employer;
  - employer's securities did not exceed 10% of the fund; and
  - employer securities were held indirectly through:
    - an investment company registered under the Investment Company Act of 1940;
    - a common or collective trust fund or pooled investment fund maintained by a bank or trust company supervised by a state or federal agency;
    - a qualified insurance company's pooled investment fund; or
    - any other IRS-designated investment fund.

The final regulations:

- do not treat a multiemployer plan as holding employer securities if they are held indirectly through an investment fund managed by an independent investment manager and do not exceed 10% of the fund;
- extend the types of allowed investment companies to include certain exchange traded funds;
- state that in determining whether the value of employer securities exceeds 10% of the fund's investment's total value for a plan year, use the value at the end of the preceding plan year; and
- provide that if a fund that indirectly holds employer securities doesn't meet the "independent of the employer" requirement, it meets the diversification requirements even if the plan doesn't offer diversification rights to the participants for up to 90 days after it is found to hold employer securities.

The final regulations are effective May 19, 2010, and apply for plan years beginning on or after January 1, 2011. Until then, plans may satisfy Code §401(a)(35) by relying on [Notice 2006-107](#), the [proposed regulations](#) or the final regulations.

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## Electronic Filing is Mandatory for Form 5500

Plan sponsors must file Form 5500-series returns on the last day of the seventh month after their plan year ends. If the deadline falls on Saturday or Sunday, the deadline becomes the following Monday. For example, calendar-year plans typically must file by July 31. In 2010, July 31 falls on a Saturday so the deadline moves to Monday, August 2, 2010. Plans can request an extension to file by submitting [Form 5558](#), *Application for Extension of Time to File Certain Employee Plan Returns*, by that plan's original due date.

Consider these important changes for [2009 Form 5500 filings](#):

- Paper copies of Form 5500 are no longer accepted. Plans must file the electronic version of [Form 5500](#) using the computerized ERISA Filing Acceptance System (EFAST2). Plans with fewer than 100 participants may be eligible to use the new [Form 5500-SF](#), *Short Form Annual Return/Report of Small Employee Benefit Plan*, which must also be filed using EFAST2. Read the [Instructions for Form 5500-SF](#) to see if you are eligible to file this form.
- Filers need certain credentials to sign and submit a Form 5500 or Form 5500-SF. Obtain these at [www.efast.dol.gov](http://www.efast.dol.gov).



- Complete Form 5500 and Form 5500-SF by using the EFAST2 web-based filing system (IFILE) or software provided by [approved vendors](#).
- Form 5500 and many of its schedules have been modified, so review your submission carefully.
- Schedule E (Form 5500) has been eliminated.
- Do not file Schedule SSA information with the Form 5500, even if the submission pertains to a filing year before 2009. More information will be available about filing the SSA data in the near future.

### **2009 Form 5500-EZ**

Every "one-participant plan" required to file a 2009 annual return must file the [2009 Form 5500-EZ](#) (paper format) unless the plan is eligible and chooses to file its return electronically on 2009 Form 5500-SF. File 2009 Form 5500-EZ for 2009 with the IRS:

Department of the Treasury  
Internal Revenue Service  
Ogden, UT 84201-0020

A "one-participant plan," for purposes of the 2009 Form 5500-EZ, means a retirement plan not subject to the annual ERISA Title I reporting requirements that only covers the owner, or the owner of a wholly-owned trade or business (whether or not incorporated) and his or her spouse, or partners, or partners and their spouses, of a business partnership.

A plan is not a one-participant plan if the plan benefits anyone besides the owner (or owner and spouse) or partners (or partners and their spouses).

Read the [instructions for the 2009 Form 5500-EZ](#) to determine if you must file an annual return for a one-participant plan.

Certain retirement plans maintained outside the U.S. primarily for the benefit of nonresident aliens must also file Form 5500-EZ, rather than Form 5500 or Form 5500-SF, for the 2009 plan year. See the instructions for the 2009 Form 5500-EZ for more information.

For additional information contact toll-free:

- DOL EFAST Help Line at 866-GO EFAST (866-463-3278)
- IRS Customer Account Services at 877-829-5500

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## **We're Glad You Asked!**

### **If an employer sets up a SEP plan for its employees, can each employee choose a different financial institution for his or her SEP-IRA?**

That depends on the SEP plan the employer chooses. Each employee (including the business owner) eligible to participate in the SEP generally must establish his or her own SEP-IRA to receive employer contributions. Although the law does not require each participant's SEP-IRA to be at the same financial institution, the institution that offers or administers the SEP may require the employer to deposit SEP contributions initially into SEP-IRAs maintained at that institution. Employers should read the SEP plan document carefully and make sure they understand the plan's terms before signing.

### **Can SEP plan participants make tax-deductible IRA contributions to their SEP-IRAs?**

Employers contribute under a SEP plan to each participant's SEP-IRA, and a SEP-IRA is generally no different from any traditional IRA. Employer SEP contributions do not affect the amount a participant can contribute to an IRA. So, assuming the SEP-IRA permits non-SEP contributions, regular IRA contributions can be made by the participant to his or her SEP-IRA, up to the maximum annual limit (for 2010, \$5,000 if under age 50 and \$6,000 if 50 or over). However, the amount of the regular IRA contribution that can be deducted on the employee's income tax return may be reduced or eliminated due to the employee's participation in the SEP plan. See [Publication 590, Individual Retirement Arrangements \(IRAs\)](#), for more information on contribution and deduction limits.

## Additional Resources

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

[FAQs for SEP Plans](#)

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## Nationwide Tax Forums - Save the Date!

IRS is sponsoring six Nationwide Tax Forums this summer for tax practitioners. These educational events:

- feature a variety of basic and advanced seminars,
- provide updates from IRS executives, and
- allow practitioners to meet and exchange ideas.

Employee Plans will hold two seminars at each Forum:

- **Roth Conversions/Retirement Planning for Life Events**  
Information about the new 2010 Roth conversion rules and how "Life Events" such as job termination, hardships and retirement can impact retirement savings.
- **A SIMPLE Solution for Finding and Fixing SIMPLE IRA Mistakes**  
A case-study presentation on how to find, fix and avoid common mistakes in SIMPLE IRA plans.

The locations and dates for the 2010 Tax Forums are:

<b>Atlanta, GA</b>	June 22-24
<b>Chicago, IL</b>	July 13-15
<b>Orlando, FL</b>	July 27-29
<b>New York, NY</b>	August 10-12
<b>Las Vegas, NV</b>	August 24-26
<b>San Diego, CA</b>	August 31- September 2

To register, visit [Nationwide Tax Forum Information](#).

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## PBGC Insights

### Form 5500, Schedule R Instructions

On June 8, 2010, PBGC issued [Technical Update 10-1](#) that provides guidance on 2009 instructions to Form 5500, Annual Return/Report of Employee Benefit Plan, specifically the instructions for Line 14 of Schedule R (Retirement Plan Information). Line 14 requires multiemployer plans to report the number of inactive participants whose employers have withdrawn from the plan, as defined by the amendments made by PPA 2006 to ERISA §103(f)(2)(C) concerning multiemployer plan annual reports. Technical Update 10-1 clarifies the "last employer rule" and provides reporting relief for the 2009 plan year for "a reasonable approximation" of the number of participants required to be reported (for example, based on sampling) and an alternative method of compliance based on the number of withdrawn employers.

### Technical Update on Alternative Premium Funding Target Elections

On June 16, 2010, PBGC issued [Technical Update 10-2](#) providing relief under certain conditions to plans that intended to use the alternative premium funding target to calculate the variable rate premium but did not check the appropriate box on the comprehensive premium filing. This update also sets forth the scope of the relief and the process to obtain that relief.

## Minimum Funding Waivers

Plan sponsors subject to the minimum funding standard may request a waiver if meeting the standard causes the employer to suffer temporary substantial business hardship and would be adverse to the interest of plan participants. Sponsors can submit a minimum funding waiver application under ERISA §303 or Code §412(d). Since filing a minimum funding waiver application is a PBGC reportable event (see ERISA §4043), copies of all applications must be sent to PBGC. Waiver applications are due 2 ½ months after the end of the plan year.

Contact William Hulteng at the IRS ([william.hulteng@irs.gov](mailto:william.hulteng@irs.gov) or 202-283-9508) or Phyllis Dawson at PBGC ([post-event.report@pbgc.gov](mailto:post-event.report@pbgc.gov) or 202-326-4070) for more information.

## Premium Filings

Prior to submitting filings, check them for accuracy and completeness, especially uploaded filings that typically have fewer validations prior to submission. After submission, the returned e-filing confirmation/receipt will verify the date and time PBGC received it. If the filing is incomplete, inaccurate or late, PBGC may request a corrected (amended) filing and, in some cases, additional premium and late payment charges.

For filings created using My PAA's data entry and editing screens or imported into the My PAA screens, the three primary My PAA screens used are:

- Home Page: An in-process filing will be reflected in your Inbox and only allows you to work on that filing. For someone else to work on the filing, it must be routed to that person.
- Plan Page: If another person is holding an in-process filing, other e-filing team members can view it via the Filings in Process section.
- Filing Manager Page: When you click on an in-process filing via your Home Page or Plan Page, the Filing Manager Page used to route, finish, sign and submit the filing appears. This page shows whether the filing is complete and who is holding it. If the filing is incomplete, click the View/Edit button for update information (you do not need to be holding the filing to do this). To make required updates you must be holding the filing. Only the Plan Administrator or Filing Coordinator can submit a filing that is complete and fully signed (and only if that person is holding the filing).

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## DOL Corner

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

### Electronic Filing Update - New E-signature Option

On May 13, DOL/EBSA announced a new e-signature option for the EFAST2 electronic filing system for Forms 5500 and 5500-SF annual reports. The option is designed to simplify the electronic filing process, especially for small businesses that use service providers to complete and file their annual reports.

Effective January 1, 2010, retirement and welfare plans required to file an annual Form 5500 or 5500-SF must file electronically using DOL/EBSA's new EFAST2 electronic filing system.

Under the new e-signature option, service providers that manage the filing process for plans can get their own signing credentials and submit the electronic Form 5500 or 5500-SF for the plan. The service provider must confirm that it has specific written authorization from the plan administrator to submit the plan's electronic filing. In addition, the administrator must manually sign a paper copy of the completed filing, and the service provider must attach a PDF copy of the manually signed Form 5500 or 5500-SF as an attachment to the electronic filing submitted to EFAST2.

The service provider must communicate to the plan administrator any inquiries received from EFAST2, DOL/EBSA, the IRS or the PBGC regarding the filing, and inform the plan administrator that, by electing this option, the image of the plan administrator's manual signature will be included with the rest of the annual return/report posted by DOL/EBSA on the Internet for public disclosure.

The additional e-signature option is available in the government-sponsored IFILE application. Filers using EFAST2 approved software to complete and file the Form 5500 or 5500-SF should contact their software vendors for information about the availability of this new e-signature option as part of their software.

The current [EFAST2 frequently asked questions](#) have been updated (see Q&A 33a), and a new [fact sheet](#) and set of frequently [asked questions](#) were developed to help small businesses understand this new option. Assistance with the EFAST2 system and Forms 5500 and 5500-SF is also available toll-free at 866-463-3278.

In addition, the archive of DOL/EBSA's June 3 webcast on "[Getting Started with EFAST2 and Preparing Your 2009 Form 5500](#)" is available.

## Target Date Funds

On May 6, DOL/EBSA and the U.S. Securities and Exchange Commission issued [guidance](#) to assist investors and plan participants to better understand the operations and risks of target date fund investments. Target date funds, also known as life cycle funds, are designed to provide a convenient way to invest for retirement by automatically reallocating funds from higher to lower risk investments as the fund's target date approaches. There can be significant differences in how target date funds invest and how they reallocate assets between equity and fixed income investments up to and through the target date of the fund. This guidance helps in assessing the benefits and risks associated with target date funds and the appropriateness of including such an investment as part of a retirement portfolio.

## Affordable Care Act

DOL/EBSA has a dedicated Web page for guidance and educational information as well as outreach events on the [Affordable Care Act](#). You can subscribe to the Web page for notice of updates. It currently includes the regulations published on May 13 extending coverage for adult children as well as information about the early retiree reinsurance program, the small business tax credits and upcoming DOL/EBSA seminars with presentations on the new rules.

## 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.

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## Forms & Pubs Update

### Changes to Form 5500 for 2009

The Form 5500 filing date for calendar-year plans is almost here. Significant changes to the 2009 return include:

- Effective January 1, 2010, all Form 5500, *Annual Return/Report of Employee Benefit Plan*, and all Form 5500-SF, *Short Form Annual Return/Report of Small Employee Benefit Plan*, for 2009 and 2010 plan years, and any required schedules and attachments, must be completed and filed electronically using [EFAST2-approved third-party software](#) or using IFILE. For more information on completing and filing forms electronically through EFAST2, see the [EFAST2 FAQ](#).
- You cannot submit a Schedule SSA, *Annual Registration Statement for Deferred Vested Participants*, to EFAST2, even for delinquent or amended filings for plan years prior to 2009. Stay tuned for information on the to-be-released Form 8955-SSA (that replaces Schedule SSA).
- A one-participant plan may not file an annual return on Form 5500 for 2009 regardless of whether the plan was previously required to file an annual return on Form 5500. Every one-participant plan that is required to file an annual return for 2009 must instead file paper [Form 5500-EZ](#), *Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan*, or, if eligible, electronically file [Form 5500-SF](#).

See our [Form 5500 Corner](#) for additional information on these changes.

## Updated Publications

- [Publication 3066](#), *Have You Had Your Check-Up This Year? for Retirement Plans*
- [Publication 3125](#), *The IRS Does Not Approve IRA Investments*
- [Publication 4284](#), *SIMPLE IRA Plan Checklist*
- [Publication 4286](#), *SARSEP Checklist*
- [Publication 4482](#), *403(b) Tax-Sheltered Annuity for Participant*
- [Publication 4483](#), *403(b) Tax-Sheltered Annuity for Sponsors*
- [Publication 4484](#), *Choose a Retirement Plan for Employees of Tax-Exempt and Government Entities*

## New Publications

- [Publication 4721](#), *Adding Automatic Enrollment to Your 401(k) Plans*, presents a basic look at why small business owners may want to add the automatic enrollment feature to their 401(k) plans.
- [Publication 4806](#), *Profit Sharing Plans for Small Businesses*, contains basic information for establishing and operating a profit sharing plan.

Both new publications were created in cooperation with the U.S. Department of Labor's Employee Benefits Security Administration (EBSA).

Find these products at [Forms/Pubs/Products](#), or order them by calling (800) TAXFORM.