

# Retirement News for Employers

Helping Business Owners with Retirement Plans

Internal Revenue Service

Tax Exempt and Government Entities

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## Announcing the New Interactive Navigator

Our popular printed guide to retirement plan-related resources has just been launched as a web-based tool, expanding your capability to review helpful publications about choosing, establishing and maintaining the right plan for your organization. The [online version of \*The Retirement Plans Products Navigator\*](#) (available via the “Plan Sponsor/Employer” section of the “Retirement Plans Community” web page at [www.irs.gov/ep](http://www.irs.gov/ep)) links you to plain language documents for various types of retirement plans.

The *Navigator*’s suite of publications will help you answer questions such as:

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

By following the “plan paths” on the *Navigator* highway, you will learn the benefits of sponsoring a retirement plan, discover the plan best suited for your business, understand how to roll-out your plan and gain insights into taking the right steps to maintain your plan. You will also find information on IRS programs to fix administrative mistakes in your plan.

The updated (May 2007) print version of *The Retirement Plans Products Navigator* ([Publication 4460](#)) and the products it features – with publications for tax-exempt organizations and government entities newly added – can be ordered by calling toll-free (800) TAX-FORM (829-3676).

Use the *Navigator* to take the right steps for you and your employees; we’ve got it mapped out for you! ■





## Critical FewPoints ... by Monika Templeman (Director, EP Examinations)

Hello. I want to share information with you about the new Employee Plans Compliance Unit (EPCU) web page.

In our continuing effort to promote compliance in the retirement plans community, the EPCU recently established a [web page](#) devoted to assisting the retirement plans community in understanding the EPCU's projects and associated compliance contacts or examination letters sent to taxpayers.

The EPCU web page contains a wealth of information, including:

- Overview of EPCU
- Featured Project
- Current and Upcoming Projects
- Examples of EPCU Letters
- Contact Us
- Frequently Asked Questions

First highlighted in the [February 2006 Special Edition](#) of the *Employee Plans News*, the EPCU reaches thousands of retirement plans via compliance contacts. These contacts inquire about potential noncompliance in plans based on information from Form 5500 and other sources. The EPCU constitutes one of the three [“Critical FewPoints”](#) priorities of IRS Employee Plans Examinations, specifically our dedication to “Expanding Compliance Contacts.”

The EPCU “Featured Project” highlights the project generating the most buzz in the retirement plans community. The current focus is the Section 403(b) Universal Availability Project, with guidance and resources for plans contacted as a result of this undertaking.

I hope you find this web page helpful in supplying valuable information on our EPCU projects. If you have any ideas or comments, please share them with me at

[RetirementPlanComments@irs.gov](mailto:RetirementPlanComments@irs.gov). ■

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

Avaneesh Bhagat, Kathy Davis, Peter McConkey, Mark O'Donnell, Nancy Payne, Keith Ruprecht, John Schmidt, Brenda Smith-Custer, Marjorie Taylor, Monika Templeman, and Kathy Tuite. ■

## The Fix Is In: Common Plan Mistakes

In each issue of the *Retirement News for Employers* we present a common mistake that occurs in retirement plans. We describe the problem, how it happened, how to fix it and how to lessen the probability of the problem happening again. In this edition we focus on **“Using EPCRS to Terminate an Orphan Plan.”**

### The Problem

An “Orphan Plan” is a plan that no longer has a plan sponsor. The sponsor may no longer be in existence or may have abandoned the plan before proper plan termination and disbursement of trust assets have taken place. The most common reasons an Orphan Plan is created are death of the lone sponsor, bankruptcy or corporate mergers. Plan participants and their beneficiaries are often concerned about their benefits and contact the third-party service providers to demand payment. Typically, these service providers do not have the authority to make distributions from the trust or to terminate the plan. Even trustees who are still available to work with the plan may lack such authority.

An Orphan Plan faces potential problems under the Internal Revenue Code (IRC) and ERISA. In general, the IRC includes qualification requirements relating to a retirement plan’s tax-favored status. If a plan is no longer sponsored by an employer, the plan ceases to be a qualified plan. In addition, because the plan is no longer being maintained by the employer, the plan may fall out of compliance with other requirements of the IRC.

(Note: The DOL’s Employee Benefits Security Administration (EBSA) oversees ERISA matters, including the law’s fiduciary requirements that govern the termination of Orphan Plans. The agency provides information about Orphan Plans on the [EBSA web site](#) (see “Abandoned Plan Program”). Questions regarding Title I of ERISA issues should be directed to the DOL.)

### The Fix

For an Orphan Plan, an “Eligible Party” may apply for relief from the adverse consequences of plan disqualification by correcting failures through the [Employee Plans Compliance Resolution System’s \(EPCRS\)](#) Voluntary Correction Program (VCP) or Audit Closing Agreement Program (Audit CAP).

*Revenue Procedure 2006-27*, which retirement plans may use to correct failures under EPCRS, includes two important definitions:

- (1) **Orphan Plan.** The term “Orphan Plan” means any qualified plan with respect to which an “Eligible Party” has determined that the plan sponsor:
  - (a) No longer exists;
  - (b) Cannot be located;
  - (c) Is unable to maintain the plan; or
  - (d) Has abandoned the plan pursuant to regulations issued by the DOL.

However, the term “Orphan Plan” does not include any plan terminated pursuant to DOL regulations governing the termination of abandoned individual account plans.



(2) Eligible Party. The term “Eligible Party” means:

- (a) A court appointed representative with authority to terminate the plan and dispose of the plan’s assets;
- (b) In the case of an Orphan Plan under investigation by the DOL, a person or entity who the DOL determined has accepted responsibility for terminating the plan and distributing the plan’s assets; or
- (c) In the case of a qualified plan to which Title I of ERISA has never applied, a surviving spouse who is the sole beneficiary of a plan that provided benefits to a participant who was (i) the sole owner of the business that sponsored the plan and (ii) the only participant in the plan.

Only Eligible Parties of an Orphan Plan can apply for relief under VCP or Audit CAP. If the VCP is used, a copy of the court order giving authority to terminate the plan and dispose of the plan’s assets should be included. Alternatively, the submission may include other evidence that the applicant is an Eligible Party. In general, the correction procedures and principles used for Orphan Plans are the same as other plans, except that the IRS has discretion to:

- (a) Determine whether full correction will be required in a terminating Orphan Plan; and
- (b) Waive the VCP fee in the case of a terminating Orphan Plan, if the submission includes a request for a waiver of the fee.

### **Making Sure It Doesn’t Happen Again**

#### **How to Subscribe to *Retirement News for Employers***

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

For your convenience, we have included Internet links to referenced materials throughout the *Retirement News for Employers*. These links are identified by the blue underlined text. ■

Employers should take necessary steps to prevent a qualified plan from becoming an Orphan Plan. A sole proprietor could designate a successor to take charge if the principal is no longer able to, even if the sole purpose is to wind up the business and implement the plan termination. In the case of a possible bankruptcy, an employer should consider terminating the plan and distributing its assets before filing for bankruptcy. In a sale of business, merger or spinoff, ensure that the employee’s new employer will assume sponsorship of the plan; otherwise, implement the plan termination before completing the sale, merger or spinoff transaction.

If preventive actions such as those outlined above have not been taken and a third party is willing to take responsibility for the administration and termination of an Orphan Plan, the third party should seek to become a court-appointed representative with the power to terminate the plan and dispose of the plan’s assets.

Keep in mind that the Service is willing to work with Eligible Parties to ensure that participants and beneficiaries of Orphan Plans receive their benefits without jeopardizing the tax-favored status of those benefits (e.g., the ability to rollover monies to IRAs or other qualified plans). ■

## DOL News

The Department of Labor's Employee Benefits Security Administration (DOL/EBSA) announced new guidance and tools to assist plan sponsors and practitioners in complying with ERISA. You can subscribe to DOL/EBSA's web site homepage as well as the Compliance Assistance page for notice of updates posted on the web site.



### Hearing on Computer Model Advice Programs for IRAs and Similar Type Plans

On July 31, 2007, DOL/EBSA held a [public hearing](#) to assess the feasibility of using computer models to provide advice to participants with individual retirement accounts (IRAs) and similar plans. DOL/EBSA heard testimony from a number of witnesses at the hearing.

The Pension Protection Act (PPA) amended ERISA by adding a new prohibited transaction exemption that allows greater flexibility for investment advisers to give advice to participants of 401(k) plans and IRAs. One of the ways in which investment advice may be provided under the exemption is through the use of an unbiased computer model. DOL/EBSA, in consultation with the Department of Treasury, is required to determine the feasibility of such models in providing investment advice to IRA participants and report its findings to Congress by the end of the year. On December 4, 2006, DOL/EBSA published a [request for information](#) (RFI) regarding the use of computer model investment advice programs for IRAs. The [comments](#) received in response to the RFI are posted on DOL/EBSA's PPA dedicated web page. You can [subscribe](#) to DOL/EBSA's PPA web page.

### Guidance on Tax-Sheltered Annuity Programs

On July 24, 2007, DOL/EBSA issued [Field Assistance Bulletin \(FAB\) 2007-02](#) clarifying that tax-sheltered annuity programs, also known as 403(b) plans, that comply with recently released tax regulations under section 403(b) of the Internal Revenue Code can still be structured so that they are excluded from coverage under Title I of ERISA.

DOL/EBSA's regulation on 403(b) plans provides a "safe harbor" so that, under certain circumstances, a tax-sheltered annuity program, funded solely with employee contributions, is not treated as a pension plan "established or maintained" by the employer for purposes of Title I of ERISA. FAB 2007-02 confirms DOL/EBSA's view that tax-exempt employers can engage in a range of activities to facilitate the operation of a tax-sheltered annuity program under the new IRS regulations and still remain within the safe harbor's criteria.

### Fee and Expense Disclosures to Participants in Individual Account Plans

On April 25, 2007, DOL/EBSA published in the *Federal Register* an [RFI](#) to assist the department in improving information provided to an estimated 41 million participants about administrative and investment fees and expenses charged to 401(k)-type plans.



The RFI requested comments on fee and expense disclosure issues affecting participants and beneficiaries of 401(k)-type plans governed by ERISA. Specifically, the RFI requested information concerning what administrative and investment-related fee and expense information participants should consider when investing their retirement savings, the manner in which the information should be furnished to participants and who should provide that information.

The comment period closed on July 24, 2007. The [comments](#) received are posted on DOL/EBSA's web site.

### Upcoming Compliance Assistance Events

- Voluntary Fiduciary Correction Program Workshops: September 6, 2007, in Philadelphia, PA.
- Fiduciary Education Seminars: August 29, 2007, in Juneau, AK; October 16, 2007, in Portland, ME; October 30, 2007, in Nashville, TN; November 7, 2007, in Detroit, MI; and December 13, 2007, in Tucson, AZ.

Visit DOL/EBSA's [web site](#) for the registration brochure for these seminars and for the announcement of additional seminars around the country. ■

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## The Filing Cabinet

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

### Form 5500 Developments – Schedule P Eliminated

In conjunction with the Department of Labor's July 21, 2006, *Federal Register* announcement mandating the electronic filing of the Form 5500, the IRS initiated certain measures intended to reduce burdens and expenses for filing requirements. Among those measures was the elimination of the Schedule P (Form 5500), *Annual Return of Fiduciary of Employee Benefit Trust*.

With the release of [Announcement 2007-63](#) on June 29, 2007, the IRS has announced that it will treat the plan's filing of the appropriate Form 5500-series return as "if the filing constitutes a return of the plan's employee benefit trust for purposes of §6501(g)(2)." Simply put, as of 2006 (or 2005 for Form 5500-EZ), the filing of a Form 5500-series return will replace the Schedule P as the triggering device for purposes of §6501(g)(2).

### Determination Letter Applications under Revision

Although completion of the final versions is still months away, all of the EP determination letter application forms are in the process of being revised. Not only will the entire "series" be updated technically, most of the forms will be reformatted to accommodate EP's new processing and control system. In addition, EP is creating a new form for Group Trust Rulings (Form 5316) that should be available by Spring 2008. Over the next few months, additional information will be available on the "Retirement Plans Community" web page and within future editions of the *Retirement News for Employers*, so stay on the lookout. ■

## Net Gains

Here are the latest updates and additions to the [“Retirement Plans Community” web page](#).

### Customer Accounts Services (CAS)

The [“EP Customer Accounts Services” web page](#) has been updated with new procedures for asking EP questions. Telephone representatives will provide assistance on basic EP questions and will refer questions beyond their scope to an Employee Plans Specialist to be answered within 15 days.

#### CONTACTING EMPLOYEE PLANS

The *Retirement News for Employers* welcomes your comments about this issue and/or your suggestions for future articles.

#### Send comments/suggestions to:

EP Customer Education & Outreach  
SE:T:EP:CEO

1111 Constitution Avenue, N.W., PE-4C3  
Washington, D.C. 20224

FAX (202) 283-9525

E-Mail:

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

#### For EP Taxpayer Assistance:

#### For retirement plans technical and procedural questions:

Please call (877) 829-5500

Or visit the “Contact EP/Services” section at [www.irs.gov/ep](http://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. ■

### The Employee Plans Compliance Unit (EPCU)

The Employee Plans Compliance Unit has established [“EPCU” web pages](#) to assist the retirement plans community in understanding EPCU projects and what to do if contacted. For additional information on the EPCU, see the “Critical FewPoints” article on page 2.

### IRC 403(b) Tax-Sheltered Annuity Plans

The recently published final IRC section 403(b) regulations are available on the [“IRC 403\(b\) Tax-Sheltered Annuity Plans” web page](#). Other new features on the 403(b) page are the [“Ask Bob Architect” page](#) that provides 403(b) FAQs and links to the [presentations](#) Mr. Architect uses during his speeches to the retirement plans community.

### [403\(b\) Plan Checklist \(Publication 4546\)](#)

Expanded explanations attached to the online checklist have been updated. This publication can be located on the [“EP Forms/Publications/Products” web page](#).

### Staggered Remedial Amendment Cycles




The [“Staggered Remedial Amendment Cycles” web page](#) has been updated to include *Revenue Procedure 2007-44*. Rev. Proc. 2007-44 clarifies, modifies and supersedes Rev. Proc. 2005-66, in which the Service established a system of remedial amendment cycles under section 401(b) for individually designed and preapproved plans. ■














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

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

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

-  = contribution
-  = conference
-  = file forms

-  **Aug. 28-30:** IRS Nationwide Tax Forum – New York, NY.
-  **Aug. 29:** Fiduciary Education Seminar – Juneau, AK.
-  **Sept. 6:** Voluntary Fiduciary Correction Program Workshop – Philadelphia, PA.
-  **Sept. 11-13:** IRS Nationwide Tax Forum – Anaheim, CA.
-  **Sept. 15:** Deadline for making final required minimum contributions for 2006 calendar-year money purchase and defined benefit plans.
-  **Sept. 18-20:** IRS Nationwide Tax Forum – Orlando, FL.
-  **Oct. 15:** File 2006 Form 5500, *Annual Return/Report of Employee Benefit Plan*, or Form 5500-EZ with DOL/EFAST if you filed for a 2-1/2 month extension prior to August 1.
-  **Oct. 15:** Deadline for making third quarter contributions to 2007 calendar-year defined benefit plans.
-  **Oct. 16:** Fiduciary Education Seminar – Portland, ME.
-  **Oct. 30:** Fiduciary Education Seminar – Nashville, TN.
- Nov. 1:** Last day for employer with SIMPLE IRA or SIMPLE 401(k) plans to notify eligible employees of their 2008 salary reduction rights and whether its required contributions will be matching or nonelective contributions.
-  **Nov 7:** Fiduciary Education Seminar – Detroit, MI.

**For a comprehensive list of upcoming EP Educational Events, visit the [Retirement Plans Community web page](#), select “Plan Sponsor/Employer,” then “Questions: Where to Get Answers” and click on “Upcoming EP Educational Events.” ■**





# Timing is Everything



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

## Taking Stock of Your Retirement Goals

Every year your employer sends you information about your retirement plan. You may ask yourself, “Why should I read this?” The answer is, “Because the information is important to your financial future.”

One purpose of this information is to update you on how your plan investments are performing. With that knowledge, you can begin to make informed choices about your financial future. It’s never too soon to start thinking about how much you’ll need in retirement savings.

The IRS and the Department of Labor (DOL) have information on their web sites to guide you in planning your retirement finances.

- IRS’s IRA Online Resource Guide ([www.irs.gov/ep](http://www.irs.gov/ep), see “Plan Participant/Employee”) links to a calculator that will estimate how much you’ll need in retirement savings and how you can meet that goal.
- DOL’s, *Taking the Mystery Out of Retirement Planning* ([www.dol.gov/ebsa/publications/main](http://www.dol.gov/ebsa/publications/main), see “Featured Publications”), looks at your financial situation today and estimates your retirement expenses and how they will be affected by inflation.



Reviewing your retirement savings plan each year will help you stay on target with your retirement savings goals.

For additional information to help you with making retirement planning decisions, visit “Tax Information for Plan Participants/Employees” ([www.irs.gov/ep](http://www.irs.gov/ep)).