Summer 2009/Volume 9

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 Sarah Hall Ingram

Employee Plans News is proud to welcome back Sarah Hall Ingram, the new Commissioner of the Tax Exempt and Government Entities Division (TE/GE). For the past three years, she served as Chief of Appeals; was the TE/GE Deputy Commissioner from 2004-2006; and, prior to that, was the Division Counsel/Associate Chief Counsel for TE/GE, providing legal services to TE/GE and other parts of the IRS. She began her career with the IRS in the former Tax Litigation Division in 1982.

So are you glad to be back at TE/GE? I have spent 24 years of my career working with TE/GE and EP in one way or another and so it feels good to be back, especially in time to celebrate TE/GE's upcoming 10th Anniversary.

You spent the last 3 years as Chief of Appeals. How was that different from EP? At Appeals, the focus is on a particular issue at a particular point in time. In EP, we take a more holistic approach and work with the plan throughout its life cycle. The various EP programs make this easy. For example, we start with the determination/opinion/advisory letter program to ensure a plan's document is in compliance. Rulings and Agreements generates guidance to keep the plan on track; Customer Education & Outreach (CE&O) ensures the plan's administrator knows about and understands the rules; the plan can use the Employee Plans Compliance Resolution Program (EPCRS) to correct most mistakes; and Examinations may audit the plan to ensure compliance and protect the participants.

Did you gain any particular insight at Appeals? In Appeals, I got to work with all types of taxpayers, from multi-national corporations to the struggling recent immigrant. Working with such a diverse group, I gained a better understanding of the challenges taxpayers face when it comes to compliance with tax laws.

Do you foresee any change in EP's priorities? I do not foresee any fundamental shift for EP but rather continuing to support the core programs we have. I especially want to continue to support and grow the EPCRS and the CE&O programs since these provide great tools and resources for the community. I would also like to expand our outreach efforts to reach not just benefits practitioners and plan administrators but also those people who may not work exclusively in the EP arena and the participants. Of course, there is always new legislation that we will need to deal with in a timely fashion rather than simply adding it to the end of the list.

How will the current economic crisis affect EP's programs? We cannot lose our focus of servicing the community. During this crisis, we understand the practical difficulty of staying in compliance for many employers who sponsor plans. Our goal has been and will continue to be to help them do the right thing even in difficult times.

Participants also need our help during this crisis when they might be tempted to tap into their retirement savings before they actually retire. We need to make sure they understand this pot of gold is for retirement and to educate them about all the consequences of dipping into it earlier so they can make informed decisions.

How can people get more information about upcoming EP programs and priorities? The best place is to visit the "Retirement Plans Community" web page at www.irs.gov/ep and view the FY2009 EP Work Plan. The work plan sets forth EP's strategies, operating priorities, goals and objectives for this year. We are currently formulating the Fiscal Year 2010 EP Work Plan and will post that to our web site once it is completed.

On a personal note, what do you enjoy doing outside of work? I like spending time with my family. I also enjoy reading, preferably under a nice shady tree on a perfect summer day, gardening and sailing.

ACT Issues Eighth Annual Report and Welcomes Ten New Members

On June 10, the Advisory Committee on Tax Exempt and Government Entities (ACT) submitted its latest round of recommendations to senior IRS executives. ACT's eighth report issued four recommendations, including one on "International Pension Issues in a Global Economy: A Survey and Assessment of the IRS's Role in Breaking Down Barriers."

IRS named 10 new members to ACT who will join 11 returning members. ACT members, appointed by the Secretary of the Treasury, serve two-year terms and advise the IRS on policies and procedures.

Two-Year Adoption/Submission Period for Defined Contribution Pre-Approved Plans Expires on April 30, 2010

The IRS wants to remind employers entitled to use the pre-approved six-year cycle of an upcoming April 30, 2010, deadline to:

1. adopt the final approved version of the defined contribution pre-approved plan; and
2. submit applications for determination letters.

Employers entitled to use the six-year remedial amendment cycle in Revenue Procedure 2007-44 must adopt the IRS master and prototype (M&P) or volume submitter (VS) defined contribution plan approved for EGTRRA and other plan qualification requirements on the 2004 Cumulative List. The adoption must be completed by April 30, 2010, in order to allow the plan's restatement to be eligible for retroactive correction and reliance. For additional information, see "Determination Letters Coming Your Way - Announcement 2008-23" in the Spring 2008 Edition of the *EPN*.

Employers who have adopted an M&P or VS defined contribution plan and are required to file a determination letter request for reliance, or otherwise wish to file for one, should do so by April 30, 2010. Please note that this filing deadline is only 10 months away, and the IRS does not anticipate extending it. For details on determination letter submission procedures, see Revenue Procedure 2009-6, section 9.

The EPCU Insider

Monitoring IRAs for Required Minimum Distributions

Welcome back to "The EPCU Insider!" In this column, we provide 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 in a whole new way. We use compliance checks and questionnaire studies to pinpoint troublesome areas with minimal burden to taxpayers.

Beginning October 2007, the Employee Plans Compliance Unit (EPCU) began mailing contact letters to individual IRA owners. The purpose was to educate owners about taking the required minimum distributions (RMD) from their IRAs as well as identify those who were failing to do so.

Since the RMD requirement was waived for 2009 under the Worker, Retiree and Employer Recovery Act of 2008 for IRAs and certain other defined contribution plans, the EPCU's focus is on tax years 2006, 2007 and 2008.

As of December 31, 2007, 45 million people owned 108 million IRAs, with assets totaling $4.8 trillion and representing 27% of all U.S. retirement plan savings. To ensure IRA compliance, we will continue to mail contact letters to IRA owners regarding IRA required minimum distributions.

The EPCU web page contains more information about this and other EPCU projects and its procedures should you or your client receive a letter.

New Federal Income Tax Withholding for Pensions

On May 14, 2009, the IRS announced new withholding adjustment procedures that could help some recipients of pension plan income avoid a smaller refund or even a balance due next April. These optional adjustment procedures, are available in Notice 1036-P, *Additional Withholding for Pensions for 2009*, and may be used by pension income payors to adjust withholdings from pension payments. Payors who elect to use the optional adjustment procedures are encouraged to contact retirees who previously adjusted their withholdings based on the tables released in February. Various factors, such as other earned income, can affect how much withholding, if any, is needed by people receiving pension income to satisfy their annual tax liability.

IRS EP Summer Phone Forums

The IRS will host two phone forums this summer – EPCRS and 401(k).

EPCRS – July 27, 2009

Joyce Kahn, Manager, Employee Plans Voluntary Compliance, and Avaneesh Bhagat, Employee Plans Voluntary Compliance Program Coordinator, will conduct a one-hour presentation on the Employee Plans Compliance Resolution System (EPCRS). The discussion will provide a brief overview of EPCRS and Revenue Procedure 2008-50.

401(k) – August 6, 2009

A discussion of recent 401(k) guidance by Roger Kuehnle, Tax Law Specialist, and Lisa Mojiri-Azad, Senior Technical Reviewer, Office of Division Counsel/Associate Chief Counsel, TE/GE, Employee Benefits. This hour-long presentation will focus on the final regulations on automatic contribution arrangements and the recently proposed regulations on the suspension or reduction of nonelective contributions under a safe harbor plan.

Phone Forum	Date	Register By	Time	Access Code
EPCRS	07-27-09	07-17-09	2:00EST	196805
401(k)	08-06-09	07-31-09	2:00EST	717816

Register for:

- the EPCRS phone forum by 07-17-09 at EP Phone Forum; and
- the 401(k) phone forum by 07-31-09 at EP Phone Forum.
  - You will be assigned a Personal Identification Number (PIN) that must be used to join the conference.
  - If you have never registered with AT&T phone forum, you will need to click on “create a profile” first.

Dial in:

- on 07-27-09 for the EPCRS phone forum, toll free 1-(866) 216-6835; and
- on 08-06-09 for the 401(k) phone forum, toll free 1-(800) 683-4564.
  - 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 Credits:

- An enrolled agent may earn one CPE credit if he or she listens to the presentation for 50 minutes. Other professional groups should consult with their respective licensing agencies regarding acceptability of credit.
- To receive credit, each participant must register individually and use his or her own PIN on an individual phone line.
- Certificate of Completion will be e-mailed to participants who meet the above requirements about a week after the forum.

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

Critical Priorities…With Monika Templeman

Today's Discussion: A New Look for EP Large Case Program Web Page

Monika, let's discuss the "new and improved" large case web page. Why was a makeover done on this page?

Modernizing our web pages and ensuring that we offer the most current and relevant information is a critical priority. I particularly wanted to update the EP large case program web page because of the significant growth of our EP large case program, better known as Employee Plans Team Audit (EPTA). Since large plans (over 2,500 participants) cover approximately 60% of plan participants and hold approximately 70% of plan assets, it is essential to provide web-based tools and resources to help keep these plans in compliance. We also want to reduce the burden to plan sponsors and large case practitioners by posting helpful information and tips about the EPTA process.

We completed the web page makeover with significant input from large case employee benefits practitioners. The page now features new and updated tools that give information to help administer large plans and keep them out of trouble.

So, practitioners played a part in getting this done?

Yes, I am very grateful for the knowledge and experience of the large case practitioners and their valuable suggestions on how to improve this web page. Their ideas helped us to rebuild the web page into a more useful, web-based tool that will enhance the users' understanding of the EPTA program and the issues impacting large plans found during EPTA examinations.

Let's take the readers on a quick tour of the improved page. It begins with EPTA Trends and Tips. What does this contain?

EPTA Trends and Tips provides a comprehensive list of plan errors found by EP examiners during audit as well as those submitted through our voluntary compliance program. The errors are listed by plan type and there is a section on common errors across all plan types. The list also provides tips on how to avoid these errors before they occur. There are also page and video links relating to fixing plan mistakes and procedures on self-correcting operational mistakes.

Are the correction programs generally the same with large cases as they are with smaller plans?

Yes. We encourage all plan sponsors and administrators, regardless of plan size, to try to find and fix plan mistakes quickly. The sooner a mistake is found, the cheaper it is to fix.

Next on the page is a questionnaire. What is this?

The Internal Controls Questionnaire is a list of questions that EP examiners ask during an audit to gain an understanding of a plan sponsor's internal controls and administrative procedures. The questions are categorized by payroll, HR personnel, plan administration and internal control impact on plan failures.

How would questions asked by examiners assist practitioners and plan sponsors?

We want to stress the fact that good internal controls are essential to staying compliant with the tax laws. By informing plan sponsors and administrators of the questions we ask during an examination, we enable them to answer these questions when a plan is not under audit so they can verify, or self-audit, whether they have proper internal controls in place.

Next is the Taxpayer Documentation Guide. How does this tool help?

The Taxpayer Documentation Guide is a comprehensive list of documents the EP examiner will need when reviewing issues identified for audit. This guide lets plan sponsors know which documents/information should be readily available when requested prior to an audit. There is a defined benefit plan guide and defined contribution plan guide.

This Taxpayer Documentation Guide was previously on the web page. Were there changes made to the guides?

Yes. Practitioners provided invaluable suggestions that helped us update the information to make it more pragmatic and useful.

I see that a presentation and a video were also added to the web page. What do these tell the plan sponsor or practitioner?

The EPTA Presentation is a PowerPoint shared with large case practitioners at regional and national conferences. We decided to add it to the site for those who cannot attend these conferences as it is important that they see our message. In the EPTA Video, Michael Julianelle, Director, Employee Plans, and I share the latest information on the EPTA program. The message in the video does not mirror the message in the presentation. I would recommend taking a few minutes to visit both links.

Do you have any other final tips for large case plan sponsors and practitioners?

I encourage all large plan sponsors and practitioners to take a few minutes to visit the web page and save the links in this article as favorites so they can easily visit these pages again.

Thanks for your time today, Monika. Readers can go to this e-mail address and send their comments to Monika on this article or provide ideas for future articles.

Web Spins - The Retirement Plans Site

We're back: Web Spins - the column that takes you for a quick spin around the "Retirement Plans Community" web page.

WRERA Election Form

Multiemployer plan sponsors can find the WRERA election form on the **"**Employee Plans Compliance Unit" web page. Sponsors can use the form to satisfy the election and notice procedures under WRERA §§204 and 205, as described in Notice 2009-31.

Nonamenders and Voluntary Correction Program (VCP)

Voluntary Correction has written an explanation of how plan nonamender failures can be corrected through VCP. This explanation will tell you all you need to know about filing for relief, including when you can file (with examples of when Appendix D or F should be used) and when a determination letter application should be filed as part of the VCP submission.

EP Team Audit (EPTA) Program

The EPTA (Large Case Program) web pages have been updated to include:

- EPTA Trends and Tips (now organized according to plan type) - Includes links to videos on the EPTA program and on finding, fixing and avoiding plan errors.
- Common Trends Across All Plan Types
- Multiemployer Plan Trends
- 401(k) Plan Trends
- Defined Benefit Plan Trends
- 403(b) Tax-Sheltered Annuity Plan, 457 Plan and Governmental Plan Trends
- Internal Controls Questionnaire - Examples of questions asked by EP examiners to understand system procedures and internal controls.
- Taxpayer Documentation Guide - This guide, developed by EPTA agents and outside practitioners, provides a comprehensive list of documents that need to be made available for examination.

Fix-It Guides Web Page

The SARSEP Fix-It Guide is here! It provides tips on how to find, fix and avoid common mistakes in SARSEP plans. Check it out on our Fix-It Guides web page where you will also find the 401(k), SEP and SIMPLE IRA Plan Fix-It Guides.

Enrolled Retirement Plan Agent Program (ERPA)

The ERPA questions and answers have been updated to include a list of approved ERPAs, approved ERPA CPE sponsors and Form 8554-EP, *Application for Renewal of Enrollment to Practice Before the Internal Revenue Service as an Enrolled Retirement Plan Agent (ERPA).*

We're Glad You Asked!

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

I own a small business and have a SIMPLE IRA plan for my employees. Before the beginning of this year, I notified eligible employees that they would each receive a 2% nonelective contribution. Can I change my mind and not make this 2% nonelective contribution or terminate the SIMPLE IRA plan before the end of the year?

No. You may not decide during the plan year to stop making nonelective or matching contributions for employees eligible to participate in your SIMPLE IRA plan. This means you must make the 2% nonelective contribution. However, you have until the filing deadline of your business's tax return, including extensions, to deposit the nonelective contributions to your employees' SIMPLE IRAs.

SIMPLE IRA plans are maintained on a whole-calendar-year basis. A SIMPLE IRA plan must continue for the entire calendar year, funding all contributions promised in the employee notice. An employer can terminate its SIMPLE IRA plan prospectively, beginning with the next calendar year, after it has informed its employees that there will be no SIMPLE IRA plan for the upcoming year.

If you choose to terminate your SIMPLE IRA plan, notify the financial institution that you chose to handle the SIMPLE IRA plan that you will not be making contributions for the next calendar year and that you want to terminate the contract or agreement with it. You must also notify your employees within a reasonable time before their 60-day election period that you are discontinuing the SIMPLE IRA plan. You do not need to give any notice to the IRS that the SIMPLE IRA plan has been terminated.

Remember that a SIMPLE IRA plan gives an employer the flexibility of making either a 3% matching contribution or a 2% nonelective contribution. An employer may reduce the amount of the matching contribution to no lower than 1% and for no more than 2 calendar years in the 5-year period ending with the calendar year the reduction is effective. However, to elect this option, the employer must notify the employees of the reduced contribution within a reasonable period of time before the applicable 60-day election period prior to the beginning of the year.

For additional information:

- Form 5305 – SIMPLE/ Form 5304 – SIMPLE
- Publication 560, *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*
- SIMPLE IRA plan web page

We're Glad You Asked! #2

I am confused by the 2009 income limits for making regular contributions to a Roth IRA and for rolling over amounts (making a rollover contribution) to a Roth IRA. Are they different?

Yes, the 2009 income limits are different for making a *regular contribution* to a Roth IRA versus making a *rollover contribution* to a Roth IRA.

Making a regular contribution to a Roth IRA

For 2009, you are eligible to make a regular contribution to a Roth IRA if you have taxable compensation and your modified adjusted gross income (modified AGI) for Roth IRA purposes is less than:

- $176,000 and your filing status is married filing jointly or qualifying widow(er);
- $120,000 and your filing status is single, head of household or married filing separately and you did not live with your spouse at any time during the year; or
- $10,000 and your filing status is married filing separately and you lived with your spouse at any time during the year.

Taxable compensation is wages, salaries, tips, professional fees, bonuses, commissions, other amounts received for providing personal services, self-employment income, taxable alimony and separate maintenance. It also includes non-taxable combat pay received for being a member of the U.S. Armed Forces, even though these amounts are not taxable.

Your modified AGI for Roth IRA purposes is generally your adjusted gross income, as shown on your return, modified by subtracting certain items and then adding certain deductions and exclusions. You can determine the amount of your modified AGI for Roth IRA purposes by completing Publication 590's worksheet 2-1, *Modified Adjusted Gross Income for Roth IRA Purposes*.

For 2009, the maximum amount of a regular contribution to all of your IRAs is the lesser of $5,000 ($6,000 if you are age 50 or older) or your taxable compensation. However, If your modified AGI is above a certain amount for your filing status, your Roth IRA regular contribution limit is gradually reduced (phased out). Use Publication 590's worksheet 2-2, *Determining Your Reduced Roth IRA Contribution Limit*, to compute the amount of your regular contribution to a Roth IRA.

If your filing status is married filing jointly, your taxable compensation includes your spouse's taxable compensation. For example, both you and your spouse can each make a regular contribution to a Roth IRA of $5,000 even if you individually did not have any taxable compensation, provided that:

- your spouse had taxable compensation of $10,000; and
- your regular contribution limit is not reduced because of your modified AGI for Roth IRA purposes.

Rollover contributions (rollovers) into a Roth IRA

For 2009, you can convert amounts from your traditional IRA (and SIMPLE IRA after 2 years) to your Roth IRA, or roll over into a Roth IRA all or part of an eligible rollover distribution (ERD) that you receive from your tax qualified plan (for example, a 401(k) plan), a 403(b) plan or a governmental 457 plan if:

1. your modified AGI for Roth IRA purposes is $100,000 or less, and
2. you are not a married individual filing a separate return.

Rollovers from one Roth IRA to another Roth IRA are not subject to the above conditions.

Note: if you received a required minimum distribution (RMD) for 2009 from a defined contribution plan, that distribution may qualify as an ERD, since 2009 RMDs are waived.

You must include in your gross income any previously untaxed amounts that are converted or part of a rollover contribution to a Roth IRA.

For additional information:

Publication 590, *Individual Retirement Arrangements (IRAs)*

Notice 2008-30

Employee Plans News

Employee Plans News is a free, quarterly newsletter providing retirement plan information for retirement plan practitioners. *EPN* is prepared by the IRS's Employee Plans (Tax Exempt and Government Entities) office.

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

How to Subscribe

EPN is distributed exclusively through IRS e-mail. Sign up for your free subscription by going to the **Retirement Plans Community** web page and selecting "Newsletters" in the left pane. Prior editions of the *EPN* are also archived there.

Send Comments/Suggestions to:

EP Customer Education & Outreach
SE:T:EP:CEO
1111 Constitution Ave., N.W., PE-4C3
Washington, DC 20224

FAX: (202) 283-9525

E-Mail: **RetirementPlanComments@irs.gov**

Have a Question?

For taxpayer assistance with retirement plans technical and procedural questions:

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

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

Please call (800) 829-1040.

PBGC Insights

Small Plan Reporting Relief for Missed 2009 Quarterlies

On April 30, 2009, PBGC issued Technical Update 09-3, which provides relief from part 4043 reporting requirements. The relief applies to plan sponsors who fail to make the required quarterly contributions for the 2009 plan year in a timely manner; as long as the failure is not motivated by financial inability. The Technical Update waives reporting for plans with fewer than 25 participants and simplifies reporting for plans with 25-99 participants.

Single-Employer Plan Annual Funding Notices

Under ERISA §101(f) and guidance issued by the Department of Labor, starting with plan years beginning on or after January 1, 2008, single-employer plans with liabilities that exceed plan assets by $50 million or more must provide PBGC a copy of the Annual Funding Notice by the Notice due date. Single-employer plans with liabilities that exceed plan assets by less than $50 million must provide PBGC a copy of the Notice within 30 days of receiving a written request from PBGC. See Department of Labor Field Assistance Bulletin No. 2009-01 (Feb. 10, 2009).

Single-employer plans required to provide PBGC a copy of the Annual Funding Notice should e-mail it to single-employerAFN@pbgc.gov, or send it to:

PBGC
ATTN: Single-Employer AFN Coordinator
1200 K Street, NW, Suite 270
Washington, DC 20005-4026

PBGC Premium E-Filing Tips

- **Start early** – Allow sufficient time to resolve any unexpected questions and issues before your filing due date.
- **Verify your e-filing team:**
  - Verify multiple filing coordinators and back-ups for each e-filing role;
  - add/remove filing team members as needed;
  - ensure that each person knows his/her account information (user ID, password, and secret question/answer); and
  - confirm that the filing and payment methods are agreed upon.
- **Review how to e-file** – Information on e-filing is located on the Online Premium Filing My PAA page of PBGC's web site.
- **Review premium filing requirements** – Detailed premium filing requirements (including filing due dates) are located on the Premium Instructions page.
- **Contact PBGC if you have questions** – If you cannot find an answer on PBGC's web site, please send an e-mail to premiums@pbgc.gov or call (800) 736-2444 and select "2" for premiums during PBGC's weekday business hours (8:00 a.m. to 5:00 p.m. ET) (For TTY/TDD users, phone (800) 877-8339 and ask to be connected to (800) 736-2444.)

What's New

Practitioner Updates and Filing Reminders Available: In response to customer requests, PBGC now sends automatic e-mails to keep practitioners current on interest rate updates and new premium filing or other regulatory developments. Visit the What's New for Practitioners web page and/or the Monthly Interest Update web page, and enter your e-mail address to sign up. You can also sign up for monthly e-mail filing reminders on the Practitioner Filing Reminders page (simply click on the Enroll link(s) by the month(s) that you would like to receive a reminder and then enter your e-mail address). PBGC will send a filing reminder to your e-mail address by the third workday of each month you select.

What's New in My PAA

Information about "What's New in My PAA" is on the Online Premium Filing My PAA page of our web site.

The Corner of Forms & Pubs

Changes to Form 5500 for 2008

The July 31 filing date for calendar-year plans is almost here. Significant changes to the 2008 return include:

- Two new actuarial schedules replaced the Schedule B, *Actuarial Information*:
    - Schedule SB, *Single-Employer Defined Benefit Actuarial Information*, mandatory for single-employer and multiple-employer plans.
    - Schedule MB, *Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information,* mandatory for multiemployer and certain money purchase plans.

  Defined benefit plan filers **cannot** use the 2007 Schedule B for their 2008 annual return/report filing requirements but may use it as an attachment to Schedule SB.
- Beginning with the 2008 plan year, certain defined benefit plans will be required to provide additional information as attachments to the Schedule R, *Retirement Plan Information*.
    - Defined benefit plans with 1,000 or more participants must attach financial asset breakout information to the Schedule R.
    - All multiemployer defined benefit plans are required to provide information in attachments as specified in the Schedule R Instructions.
- Certain plans with fewer than 25 participants at the beginning of the plan year can continue to use the voluntary simplified reporting option in 2008.
- Sponsors with a short plan year for 2009 and a 5500 filing due date prior to January 1, 2010, have an automatic extension to file Form 5500 electronically until 90 days after DOL's EFAST web site becomes operational.

See the Form 5500 Instructions for details about these changes and our web site for other filing tips and for ordering the Form 5500, Schedules and Instructions.

Form 8717 To Be Revised

The Form 8717, *User Fee for Employee Plan Determination, Opinion, and Advisory Letter Request,* will be revised to reflect the change in mailing address for determination filings and to remove the obsolete Form 6406.

IRS Requires Use of the Current Form 5307

Form 5307 determination letter applications for adopting employers of pre-approved plans, postmarked on or after August 1, 2009, must be submitted using the most recent version of Form 5307, *Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans (Rev. March 2008)*. The IRS will return applications that are filed using an earlier version of Form 5307 to the applicant.

Announcement 2008-23 noted that Form 5307 was being revised to allow the form to be optically scanned to improve processing of applications and that applications filed with the previous version of Form 5307 (Rev. September 2001) would be accepted through September 30, 2008. However, the IRS has continued to receive numerous applications using the September 2001 version of Form 5307. In order to expedite the processing of applications using optical scanning, the IRS will stop accepting applications postmarked on or after August 1, 2009, that are not filed on Form 5307 (Rev. March 2008).

IRS employees contributing to this edition of the *Employee Plans News* are:

Milo Atlas
Anita Bower
Craig Chomyok
Kathy Davis
Ingrid Grinde
Sarah Hall Ingram
Roger Kuehnle
Teresita Laureano
Angelo Noe
Mark O'Donnell
Nancy Payne
Steve Pyrek
Sharon Polo
John Schmidt
Brenda Smith-Custer
Monika Templeman
Mikio Thomas
Kathy Tuite

Employee Plans Published Guidance

(April 2009 – June 2009)

Regulations

REG-115699-09, 74 Fed. Reg. 23134	These proposed regulations contain guidance for employers with 401(k) or 403(b) safe harbor plans that incur a substantial business hardship on how to reduce or suspend safe harbor nonelective contributions during a plan year.
T.D. 9451, 74 Fed. Reg. 25147	These final regulations provide guidance for determining which corporations are included in a controlled group of corporations.

Announcements

Announcement 2009-34, 2009-18 I.R.B. 916	The IRS intends to establish a program to issue opinion letters for §403(b) prototype plans. This announcement includes a draft revenue procedure for issuing these opinion letters. The IRS posted draft sample plan language for use in drafting §403(b) prototype plans. The IRS seeks public input before finalizing the draft revenue procedure and sample plan language, and invites interested persons to submit comments.

Notices

Notice 2009-31, 2009-16 I.R.B. 856	This notice provides guidance for sponsors of underfunded multiemployer defined benefit plans in making elections under §§204 and 205 of the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA).
Notice 2009-42, 2009-20 I.R.B. 1011	This notice modifies Notice 2009-31 by extending the time period, from April 30, 2009, to June 30, 2009, to make WRERA §§204 and 205 elections.

Highlights of the *Retirement News for Employers*

The *Retirement News for Employers* is filled with information of interest to retirement plan sponsors in the small employer community. Ask your clients to join the thousands of existing subscribers to this free newsletter.

The Spring 2009 Edition featured:

- "We're Glad You Asked!"

  Q&A answers yes to an employer being permitted to eliminate the matching contribution to a safe harbor 401(k) plan (provided certain requirements are met).

  Q&A answers a question regarding rolling over your 401(k) account to a Roth IRA when you originally intended to roll it over to a traditional IRA.

- The IRS offers a time-saver: *e-News for Small Businesses* – a free, bi-weekly newsletter that alerts you to what's new and important for small business owners.
- Automatic enrollment plans are becoming more popular and their benefits are many as discussed in "Desk Side Chat with Monika Templeman," Director of EP Examinations.
- The CP216F Notice, *Application For Extension of Time to File an Employee Plan Return - Approved*, has been corrected to remove the instruction to attach the notice to your 5500 filing.

Subscribe to the *Retirement News for Employers* newsletter.

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 web site homepage or PPA page for updates.

Target Date Funds and Similar Investment Options

On June 18, DOL/EBSA and the Securities and Exchange Commission held a joint public hearing on the investment of 401(k) and other retirement plans in target date type plans. The purpose of the hearing was to examine the need for additional guidance given the importance of these investments to the retirement savings of investors.

Witnesses addressed topics relating to:

- How target date funds (TDF) managers determine asset allocations and changes to asset allocation;
- How they select and monitor underlying investments;
- The extent to which the foregoing, and related risks, are disclosed to investors and the adequacy of that disclosure; and
- The approaches or factors to compare and evaluate TDFs.

The hearing was open to the general public. An archive of the live webcast of the hearing will be available on DOL/EBSA's homepage. The hearing agenda, requests to testify and additional materials are available on DOL/EBSA's web site.

Getting Ready for the 2009 Form 5500 and Electronic Filing

DOL/EBSA held its second webcast on June 11 to address frequently asked questions about preparing the Form 5500 and preparing for electronic filing and the new EFAST2 system. The webcast also highlighted new features of the Delinquent Filer Voluntary Compliance Program that make it easier to use. This webcast and the first webcast on electronic filing are available on EBSA's homepage which you can also subscribe to for notice of future events.

As part of the changes to the 2009 Form 5500, a new Form 5500-SF was created for certain small plan filers and a number of the schedules to the Form 5500 were changed. The webcast featured the layout of the new Form 5500-SF and the key changes to the Form 5500 schedules and their instructions.

Along with the form changes, the ERISA Filing Acceptance System (EFAST) is being modernized. The new filing system, EFAST2, will only receive electronic filing submissions. The webcast discussed the key dates surrounding the EFAST decommissioning and transition to EFAST2.

Investment Advice

On May 22, DOL/EBSA published a *Federal Register* notice extending the effective and applicability dates of the final rule until November 18, 2009.

The American Recovery and Reinvestment Act of 2009 (ARRA) - Update

As we noted in the last column, if you have a group health plan subject to COBRA, the ARRA includes provisions that may apply to your plan. The ARRA expands eligibility for COBRA continuation coverage and provides a premium reduction to certain qualified individuals. Eligible individuals pay only 35% of their COBRA premiums and the remaining 65% is reimbursed to the employer, insurer or health plan through a tax credit. The premium reduction applies to periods of health coverage beginning on or after February 17, 2009, and lasts for up to nine months. Individuals who are eligible for COBRA coverage because of an employee's involuntarily termination of employment that occurred from September 1, 2008 through December 31, 2009, and who elect COBRA may be eligible to pay the reduced premium amount.

Individuals who are denied the premium reduction by their plan, employer or insurer may request an expedited review of the denial by the U.S. Department of Labor. The Department must make a determination within 15 business days of receipt of a completed request for review. DOL's process, in many situations, involves sharing the applicant's information with the employer or plan administrator and requesting information from them regarding the applicant's coverage under the health plan and the reason for the employee's job loss. The official application for individuals to request the DOL's review is available and DOL is receiving and reviewing applications.

DOL/EBSA has a dedicated COBRA web page. The archives of two compliance assistance webcasts held by the Agency, joined by the Department of the Treasury and the IRS, are posted on this web page. Additional seminars and workshops around the country also are listed. Subscribe to DOL/EBSA's COBRA page for notification of updates.

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.

Calendar of EP Benefits Conferences

UPCOMING EVENTS...

Name	Date(s)	Location	Co-Sponsor(s)	For Further Information, Please Contact
Northeast Area Benefits Conference (2 Locations)	07/16/09-07/17/09	Boston, MA & New York, NY	ASPPA & NE Area Pension Liaison Group	www.asppa.org
20th Annual SWBA/IRS Employee Benefits Conference	11/19/09-11/20/09	Dallas, TX	Southwest Benefits Association (SWBA)	www.swba.org
Los Angeles Benefits Conference	01/27/10-01/29/10	Los Angeles, CA	ASPPA & National Inst. of Pension Administrators (NIPA)	www.asppa.org

RECENT EVENTS...

Name	Date(s)	Location	Co-Sponsor(s)	For Information, See
22nd Annual Cincinnati Employee Benefits Conference	06/11/09-06/12/09	Cincinnati, OH	Cincinnati Bar Association	www.irs.gov/ep
Great Lakes Benefits Conference	04/20/09-04/21/09	Chicago, IL	ASPPA & cooperating sponsors	
Benefits Conference of the South	01/15/09-01/16/09	Atlanta, GA	ASPPA	
Mid-Atlantic Benefits Conference	05/22/08-05/23/08	Washington, DC	ASPPA	