

# employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

Internal Revenue Service  
Tax Exempt and Government  
Entities Division

A Publication of Employee Plans

***Weathering the Storm: Advising Clients about Loans and Hardship Withdrawals from Retirement Plans*** - Your clients may ask about plan loans and hardship withdrawals to meet emergency expenses...[more on page 2](#)

***Update on Pre-Approved Plan Program for 403(b) Plans*** - Employee Plans is developing programs for 403(b) plans similar to the current programs offered for 401(a) tax-qualified plans...[more on page 4](#)

***Take Our Survey: Help Us Expand and Improve Our Self-Correction Program!*** - by providing feedback in our survey...[more on page 4](#)

***Relief for Hurricane Victims*** - in Louisiana and Texas, affected by Hurricanes Ike and Gustav, by extending certain filing deadlines until January 5, 2009...[more on page 4](#)

***Critical Priorities...With Monika Templeman*** - discusses the new Enrolled Retirement Plan Agent (ERPA) designation...[more on page 5](#)

***Remind Your Clients to Do the Right Thing Even When Times are Tough!*** - Reminds employers that payroll taxes and retirement plan contributions must be timely deposited...[more on page 6](#)

***Employee Plans Completes Another Successful IRS Nationwide Tax Forum Season*** - EP presented two 50-minute seminars and a two-hour workshop at the 2008 IRS Nationwide Tax Forums...[more on page 8](#)

***Ordering the Form 5500, Schedules, and Instructions*** - With the upcoming annual rush to file Forms 5500 and 5500-EZ for 2007, you may need additional copies of the forms, schedules, and instructions...[more on page 10](#)

***VCP Applications - Appendix F*** - discusses using Appendix F when the only plan failure is not timely adopting interim or discretionary amendments...[more on page 11](#)

***Hurricane Ike Relief for Affected Defined Benefit Pension Plans*** - Some key deadlines for affected defined benefit plans have been extended in Notice 2008-87...[more on page 12](#)

## And Our Regular Columns

Web Spins	<a href="#">Page 3</a>
We're Glad You Asked!	<a href="#">Page 7</a>
Highlights of the <i>Retirement News for Employers</i>	<a href="#">Page 7</a>
Employee Plans Published Guidance	<a href="#">Page 9</a>
DOL Corner	<a href="#">Page 13</a>
PBGC Insights	<a href="#">Page 14</a>
Calendar of EP Benefits Conferences	<a href="#">Page 15</a>

## Weathering the Storm: Advising Clients about Loans and Hardship Withdrawals from Retirement Plans

We all know that saving for retirement is a priority, but there are times when your clients may have no other source of money to meet emergency expenses. Under certain circumstances, your clients, as plan participants, might be able to turn to their retirement plan for a loan or a hardship withdrawal. Below are typical questions your clients might be asking about retirement plan loans and hardship withdrawals and what they need to consider when deciding their best course of action.

### How do I know if I can get a loan or withdraw money from my retirement plan?

Although not required to do so, many retirement plans offer loans and hardship withdrawals. Check the plan documents you received when you first enrolled in the plan, such as a copy of the plan or the summary plan description. If you still have questions, check with your plan administrator. Your employer will be able to provide you with the name and contact information of your plan administrator. Loans from IRA-based plans such as SEPs and SIMPLE IRA plans are not permitted.

### What is the difference between a loan and a hardship withdrawal?

A loan is an amount you borrow from your retirement plan account and then pay back with interest. As long as the borrowed amount is repaid, it is not taxed. Also, if you repay the loan, your retirement plan account balance will be restored by the amount borrowed. You are not required to prove financial hardship to get a loan.

A hardship withdrawal is an amount that you can receive from your retirement plan account and **do not** have to pay back. The amount withdrawn permanently reduces your retirement plan account balance. You may be required to prove the amount you want to withdraw is to pay for an unforeseeable financial emergency and you do not have any other available resources to pay for it.

### How do I get a loan from my retirement plan?

To get a loan from your retirement plan, you will be required to fill out loan forms and sign a repayment agreement outlining the number, the amount, and the due dates of repayment. You will also be required to pay interest on the amount borrowed. You may also have to agree to repay the loan using automatic deductions from your future wages. Your plan may limit the amount of money you can borrow, but the maximum amount that you can be loaned is: (1) the greater of \$10,000 or 50% of the balance of your retirement plan account; or (2) \$50,000, whichever is less. All your outstanding loans are taken into account when determining the maximum amount you can borrow.

### How do I make a hardship withdrawal from my retirement plan?

Typically, hardship withdrawals are only for unforeseeable emergency expenses you, your spouse, your dependent, or your beneficiary are facing and are unable to pay using any other available resources, including loans from the retirement plan, if available. Depending upon the type of plan you have, emergency expenses may include having to pay for: (1) medical bills; (2) funeral expenses; (3) repairs to your primary home after a fire or other damage; (4) prevention of eviction or mortgage foreclosure; (5) tuition expenses; or (6) the purchase of your primary home. Plans may limit the circumstances under which you can get a hardship withdrawal. For example, some plans may only allow them to pay funeral or medical expenses, but not to purchase your first home or to pay tuition expenses. You will likely be required to provide proof of your hardship and in some plans, you will not be allowed to contribute to the plan from your wages for the next six months. Some plans may restrict the amount you can withdraw to just the amount you have contributed to the plan from your wages, not contributions that the employer has made. In IRA-based plans, however, there are no restrictions on withdrawing amounts, but there are tax consequences as described below.

Plans usually have specific procedures to obtain a hardship withdrawal. Once again, your plan administrator should be able to provide you with all the necessary forms. Generally, the forms require you to describe the hardship you are undergoing and verify you have no other resources to meet your current financial crisis.

## What are the tax consequences of failing to repay the loan or a hardship withdrawal?

A loan is not considered taxable income as long as you repay the loan. If you fail to repay the loan, the unpaid amount is considered taxable income in the year you failed to repay it and is also subject to an additional 10% early withdrawal tax, unless some **exception** to this early withdrawal tax applies.

The amount of hardship withdrawal is considered taxable income in the year you receive that withdrawal. Also, you will usually have to pay an additional **10% early withdrawal tax** on the amount of the withdrawal, unless, again, some **exception** to this early withdrawal tax applies. To ensure you don't end up owing a large amount of taxes when you file your tax return, you should have taxes withheld from the amount of the withdrawal. You should consider the taxes you will owe on the withdrawal when determining the amount to withdraw.

Please refer to **Publication 575, Pension and Annuity Income**, for additional details on loans and the 10% early withdrawal penalty, and our **Frequently Asked Questions on loans and hardship withdrawals**.

### Employee Plans' FY 2009 Work Plan

EP is finalizing its FY 2009 Work Plan that will set forth the background and strategies for EP's operating priorities for the new fiscal year. The work plan will be featured in an upcoming Special Edition.

## 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.

### [Fix-It Guides Web Page](#)

The **SEP Fix-It Guide** is here! It provides tips on how to find, fix, and avoid common mistakes in SEP plans. Check out our consolidated **Fix-It Guides** web page. Currently, the 401(k) and SEP Fix-It Guides are available. Fix-It Guides on SIMPLE IRA and SARSEP plans are coming soon.

### [ERPA Web Page](#)

See our "ERPA" web page for information on the ERPA program (see related article on page 5). If you have a question on the ERPA program, we have established an e-mail box just for **ERPA questions**. See [www.erpaxam.org](http://www.erpaxam.org) for further information on the testing process.

### [IRS Nationwide Tax Forums – EP Presentations](#)

Did you miss the 2008 IRS Nationwide Tax Forums? It is not too late to view EP's presentations, **Retirement Plan Choices for Self-Employed Individuals** and **401(k) Plans for Self-Employed Individuals**. We have posted the presentations, along with the speaker's notes, to our "Retirement Plans Community" web page.

### [Correcting Plan Errors Web Page](#)

Updates detailing the changes to the EPCRS Program in Revenue Procedure 2008-50 have been made to our "Correcting Plan Errors" web page. On it you will find a Summary of Changes, a Topical Index, and other EPCRS resources.

### [2008-2009 Priority Guidance Plan](#)

The Office of Tax Policy and the IRS have issued their 2008-2009 Priority Guidance Plan with a list of issues to be addressed by formal legal guidance in FY 2009.



## Update on Pre-Approved Plan Program for 403(b) Plans

As we previously discussed in the [Spring Edition](#) of EPN, [final regulations](#) require that a 403(b) sponsor will need to have a written plan by January 1, 2009. Employee Plans is developing programs for 403(b) plans similar to the current programs offered for 401(a) tax-qualified plans. These include a pre-approved plan program and a determination letter program. We expect the pre-approved 403(b) plan program to open in spring 2009, and the individually designed plan program to open in early 2011.

We anticipate posting a draft 403(b) Listing of Required Modifications (LRM) on our web site in early fall, and will request public comment. Additionally, we expect to issue a revenue procedure by the end of the calendar year that will open the pre-approved 403(b) plan program for submissions from prototype sponsors. As the pre-approved plan program opens, we will continue to develop the individually designed 403(b) plan program.

We will keep you posted on the progress of these programs. •

---

## Take Our Survey: Help Us Expand and Improve Our Self-Correction Program!

On August 16, 2008, we released a Special Edition of the *Employee Plans News*, seeking your feedback on our Self-Correction Program (SCP). You still have until October 31, 2008 to take the [survey](#) and provide us your valuable input. This **anonymous** questionnaire takes less than five minutes to complete. Your participation will greatly assist us in improving the SCP program and tailoring it to better meet the needs of plan sponsors, employees, and beneficiaries in the retirement plans community. We thank you in advance for your participation and look forward to future improvements that work for you! •

---

## Relief for Hurricane Victims

IRS has announced disaster relief for taxpayers in Louisiana and Texas, affected by Hurricanes Ike and Gustav, by extending until January 5, 2009, the deadline for filing:

- Extended Forms 5500/5500EZ due between September 7, 2008 and January 5, 2009,
- Corporate 1120 tax returns due September 15, 2008,
- Individual estimated tax payments due September 15, 2008, and
- Individual extended 1040 tax returns due October 15, 2008.

Additionally, IRS will waive failure to deposit penalties for excise and employment tax deposits, due from Louisiana taxpayers between September 1 and September 16, 2008, if they were made by September 16, 2008, and due between September 7 and September 22, 2008, from Texas taxpayers, if they were made by September 22. If an affected taxpayer receives a penalty notice from the IRS, they should call the telephone number listed on the notice to request the IRS reverse the late filing or late payment penalties and the corresponding interest that would otherwise apply. For complete details on eligibility and the type of relief available, please visit the [Disaster Relief Section](#) of the IRS web site or call (800) 829-1040. Also see [DOL's related extension](#) for Form 5500 series. •

## Critical Priorities...With Monika Templeman

### Today's Discussion: Enrolled Retirement Plan Agent (ERPA) Program

**Monika, I understand the implementation of this program is near and dear to your pension heart.**

Yes, it is. It is important to set up a program that allows benefits consultants and third party administrators to represent taxpayers before the IRS in connection with Employee Plans programs.

**Please explain what an ERPA is, and why this is so important.**

An ERPA is a new classification of an individual recognized to practice before the IRS under Circular 230. The Advisory Committee on Tax Exempt and Government Entities, or ACT, recognized the disenfranchisement of many benefits consultants and third party administrators due to the restrictions imposed by the Restructuring and Reform Act of 1998. As a result, the ACT made a recommendation for the new ERPA classification. The recommendation was accepted, and on September 26, 2007, Circular 230 was revised to include ERPAs.

This is important because ERPA status removes barriers for many retirement plan professionals. They will be authorized to interact directly with EP employees in the determination letter process, resolving issues under the Employee Plans Compliance Resolution System, as well as during EP examinations, but not with actuarial matters.

The ability to practice before the IRS is governed by Circular 230, which requires professional and ethical standards. ERPAs will be held accountable for their actions, and as such, will provide added assurances to employers when hiring third party administrators or benefits consultants.

The program also levels the playing field for the entire retirement plans community. The program requires ERPAs to demonstrate competency in retirement plan matters, remain in active ERPA status by completing CPE credits, and follow the same standards as all retirement plan professionals. The program will also benefit the IRS by ensuring that ERPAs are competent, up-to-date on retirement plan matters, professional, ethical, and held accountable. Equally important, the ability to deal directly with an ERPA will assist EP specialists to accurately resolve issues and process cases timely.

**How will the program work?**

The ERPA program is very similar to the Enrolled Agent Program. To become an ERPA, an applicant must demonstrate competency in retirement plan matters either by passing a special enrollment examination or possessing past service and technical experience with the IRS. A former IRS employee will not be required to take the enrollment exam if he or she has at least five years of service with the IRS. The five years must include the former employee having regularly engaged in applying and interpreting the provisions of the Code and regulations relating to qualified retirement plan matters.

The enrollment exam will consist of two parts with approximately 75 questions per part. Both parts of the examination must be passed before applying for enrollment. The first enrollment exam is planned for January 2009. ERPA candidates apply for enrollment through the **Office of Professional Responsibility** and undergo background and tax compliance investigations. Renewal is required and is contingent upon completing CPE credits.

#### Spotlight on ERPA

Potential ERPAs can sign-up to receive the latest information at [erpaexam.org](http://erpaexam.org). In the near future, this site will have licensure information, a study guide, and reference materials. Beginning October 23, 2008, registration for the ERPA Special Enrollment Examination will begin. The first ERPA Examinations will be held January 6 through February 17, 2009 and again on July 7 through August 31, 2009.

**Note:** You are not eligible to sign **Form 2848, Power of Attorney and Declaration of Representative**, as an ERPA until you have been certified as such. •

## What is being done internally to assist in the success of ERPA?

Four phases of the program are being addressed: technology to maintain the ERPA data, the ERPA enrollment exam, customer education and outreach, and forms. Each phase is dependent on the other.

I am the executive champion of the ERPA enrollment exam task force, which will develop the syllabus, exam content, and questions. As always, we will provide information on the program through news articles...watch this space!...and through our [web site](#). Our [ERPA](#) web page has links to information about the enrollment exam, study guides, test taking tips, and reference material. The [IRS.gov](#) site will have a listing, updated weekly, where both internal and external customers can check to see if an individual has been granted ERPA status, or is in good standing with the IRS. We have already introduced the ERPA program at many benefit conferences throughout the country. [Form 2848](#), *Power of Attorney and Declaration of Representative*, was revised and released on July 10, 2008, with the new ERPA designation. Application and renewal forms (Forms 23-EP and 8554-EP) will be available once ERPA is fully functional, around January 2009.

Thanks for some of your time today, Monika. Readers can go to this [e-mail address](#) and provide Monika comments on this article or provide ideas for future articles. •

---

## Remind Your Clients to Do the Right Thing Even When Times are Tough!

Like many businesses, your clients may be feeling the financial crunch these days and be tempted to use money they deduct for taxes and retirement plan contributions from their employees' wages. However, failing to remit [payroll taxes](#) and [retirement plan contributions](#) in a timely manner is not only a violation of an employer's legal obligation, it can also subject them to heavy penalties.

Remember that when employers deduct income and Social Security taxes from their employees' wages, the money is not theirs to use, even for a short period of time. They must remit the deducted amounts, along with their portion of payroll taxes, by their next scheduled [Federal Tax Deposit deadline](#). There are [deposit penalties](#) for making late deposits and for not depositing the proper amount. Additionally, there are penalties for failing to file returns and pay taxes when due, for filing false returns, and for submitting bad checks. The rate of these penalties increases with every passing day until deposits are made. [Interest](#) is also charged on the total unpaid tax and the penalty. These penalties and interest can add up quickly and lead to even bigger financial troubles for your clients.

If your clients maintain a retirement plan and allow their employees to make elective deferrals, they cannot use any money they deduct for contributions to pay other business expenses. Instead, these employers have [fiduciary obligations](#) under the Employee Retirement Income Security Act of 1974 ([ERISA](#)) to deposit the deducted amounts as soon as those amounts can be segregated from their own general assets, but no later than the 15th business day of the month immediately after the month in which they withheld the contributions. Under a [proposed rule](#) from the Department of Labor, plans with fewer than 100 participants are treated as meeting this deposit rule if such contributions are transferred to the plan within seven business days from the date those amounts would otherwise have been payable to the employee in cash.

Instead of using money that is not theirs, explore other options with your clients. For example, suggest they reduce their overhead or borrow money to meet their business expenses. In the long run, these other options will be less costly for them! •

## 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.

**One of our still-employed 401(k) plan participants, age 71, requested a distribution of his entire account balance and asked us to send it to his traditional IRA by direct rollover. Our plan permits participants to take “in-service” distributions after reaching age 59½. As plan administrator, can we send his entire account balance to the IRA?**

Yes. Assuming the still-employed plan participant is not a “5% owner,” you may roll over his entire account balance into an IRA. If the participant was a 5% owner (meaning he owned more than 5% of the employer), the required minimum distribution (RMD) rules would apply because he has reached age 70½. A RMD cannot be rolled over. A person who is not a 5% owner does not have to take a RMD until the later of retirement or reaching age 70½. However, once the money is transferred to the traditional IRA, it is subject to the traditional IRA RMD rules, which require payments to begin for the year the IRA owner turns 70½.

For additional information, see:

[Pub 590](#), *Individual Retirement Arrangements (IRAs)*

[Pub 575](#), *Pension and Annuity Income*

---

## 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 newsletter.

The [Spring 2008 Edition](#) featured:

- “Interview with Joyce Kahn: New Law and Help for the Small Employer” discusses the impact of the Pension Protection Act on IRS Correction Programs in Employee Plans.
- “What Do I Do if My Plan is Selected for an Examination?” an interview with the EP Exam Director, assures readers that they do not have to panic during an EP audit.
- Required minimum distribution and SIMPLE IRA plan questions are answered in “We’re Glad You Asked!”
- “401(k) Fix-It Guide” is an online resource for retirement plan sponsors and their tax advisors to help find, fix, and avoid common plan mistakes in 401(k) plans.
- Hardship distributions from a 401(k) plan must be made in accordance with the plan document in “Fixing Common Plan Mistakes.”

It’s easy to subscribe: Just go to the [Retirement Plans Community](#) web page, select “Newsletters,” and click on “Retirement News for Employers.”

## Employee Plans News

*Employee Plans News (EPN)* is a free, quarterly newsletter providing retirement plan information for retirement plan practitioners. *EPN* is prepared by the IRS' 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-4C4  
Washington, DC 20224

FAX: (202) 283-9525

E-Mail:  
[RetirementPlanComments@irs.gov](mailto: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](http://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.

## Employee Plans Completes Another Successful IRS Nationwide Tax Forum Season

The 2008 IRS Nationwide Tax Forums were held in six locations across the country this summer. Each Forum offered a variety of seminars, workshops, and an exhibit hall. Each Forum, designed for tax professionals who earned Continuing Professional Education credits for their attendance, lasted three days.

This year, EP presented two 50-minute seminars and a two-hour workshop. The first seminar, [401\(k\) Plans for Self-Employed Individuals: Fact? Or Fiction?](#), helped the audience evaluate the accuracy of information being marketed to plan sponsors regarding one-participant 401(k) plans. The second seminar, [Retirement Plan Choices for Self-Employed Individuals](#), discussed factors self-employed individuals need to review to decide which retirement plan option to choose for themselves and for their businesses.

For the first time, EP offered a two-hour workshop, “Retirement Plan Pitfalls Workshop (Use IRS Fix-It Guides to Keep Your Clients Out of Trouble),” during which attendees learned how to use IRS “Fix-It Guides” to find and fix common retirement plan mistakes found by IRS during plan audits. The workshop provided tips on how to avoid making errors in the future. Piloted in May at the American Institute of Certified Public Accountants National Conference on Employee Benefit Plans, the workshop received rave reviews.

If you were not able to attend one of the Tax Forum locations, you can access the EP presentations, along with speaker’s notes, posted on the [Retirement Plans Community](#) web page. To view the presentations, select “Contact EP/Services,” “Educational Services & Products,” and “IRS Nationwide Tax Forum Presentations” from the web page.

Start planning now for next year’s Forums. To get additional information go to “Tax Professionals,” and select “Nationwide Tax Forum Information.”

Dates and locations for the 2009 Tax Forums are:

Dates	Locations
July 7 - 9	Las Vegas
July 14 - 16	San Diego
August 4 - 6	Orlando
August 25 - 27	New York
September 8 - 10	Dallas
September 22 - 24	Atlanta



## Employee Plans Published Guidance

(July 2008 – September 2008)

### Regulations

#### [REG-142040-07 73 Fed. Reg. 39630](#)

Proposed regulations permit a governmental plan to comply with the required minimum distribution rules of §401(a)(9) by using a reasonable and good faith interpretation of the statute (rather than having to comply with the regulations under §401(a)(9)). This interpretation applies to all governmental plans, under §414(d), including §403(b) contracts, and §457(b) plans.

#### [T.D. 9418 73 Fed. Reg. 43860](#)

Final regulations under Code §408A provide guidance on the tax consequences of converting a non-Roth IRA annuity to a Roth IRA. They are effective July 29, 2008, and are applicable to any Roth IRA conversion where an annuity contract is distributed or treated as distributed from a traditional IRA on or after August 19, 2005.

#### [T.D. 9419 73 Fed. Reg. 44632](#)

Final regulations provide guidance on mortality tables to be used in determining present value or making computations to apply certain pension funding requirements. They are effective July 31, 2008.

### Revenue Procedures

#### [Rev. Proc. 2008-50, 2008-35 I.R.B. 464](#)

This revenue procedure updates and expands the scope of Rev. Proc. 2006-27, 2006-1 C.B. 945, which sets forth the Employee Plans Compliance Resolution System, EPCRS. (See article on page 11.)

#### [Rev. Proc. 2008-56, 2008-40 I.R.B. 826](#)

This revenue procedure relaxes certain restrictions that now apply to the issuance of opinion and advisory letters for new pre-approved plans under Rev. Proc. 2007-44. Those restrictions limit the ability of sponsors of pre-approved plans (such as banks, insurance companies, and law firms) to apply for opinion and advisory letters for new plans after March 31, 2008, and also limit the ability of adopting employers to rely on the letters issued for new plans.

## Revenue Rulings

### [Rev. Rul. 2008-40, 2008-30 I.R.B. 166](#)

Revenue ruling provides that transfer of amounts from a trust under a plan qualified under Code §401(a) to a nonqualified foreign trust is treated as a distribution from the transferor plan and that transfer of assets and liabilities from a plan qualified under Code §401(a) to a plan that satisfies §1165 of the Puerto Rico Code is also treated as a distribution from the transferor plan even if the plan is described in §1022(i)(1) of ERISA.

### [Rev. Rul. 2008-45, 2008-34 I.R.B. 403](#)

Revenue ruling provides that the exclusive benefit rule of Code §401(a) is violated if the sponsorship of a qualified retirement plan is transferred from an employer to an unrelated taxpayer and the transfer is not in connection with a transfer of business assets or operations from the employer to the unrelated taxpayer.

## Notices

### [Notice 2008-62, 2008-29 I.R.B. 130](#)

Notice provides that the Treasury Department and the IRS anticipate proposing regulations that will address, among other things, when an arrangement in which an employee or independent contractor receives recurring part-year compensation over an extended period, such as a 12-month payment schedule, does not constitute deferred compensation for purposes of Code §457(f). Until further guidance is issued, taxpayers may rely on the rule described in section II of this notice beginning with the first taxable year that includes July 1, 2008.

### [Notice 2008-73, 2008-38 I.R.B. 717](#)

Notice expands the availability of the transition relief for certain small pension plans, originally provided in Notice 2008-21, 2008-7 I.R.B. 431.

---

## Ordering the Form 5500, Schedules, and Instructions

With the upcoming annual rush to file Forms 5500 and 5500-EZ for 2007 (calendar-year filers on extension until October 15, 2008), you may need additional copies of the forms, schedules, and instructions. For those of you filing government-printed forms, you can order them:

- at [Forms and Publications by U.S. Mail](#), where you may order up to 10 different products for delivery by U.S. Mail (applicable instructions are automatically added to all form orders, but are typically not available to order separately); or
- by calling (800) TAX-FORM (829-3676).

Place your order today since either method can take up to 10 business days for delivery. Don't delay!•

## VCP Applications - Appendix F

Revenue Procedure 2007-44 established a system of **cyclical remedial amendment periods** under Code §401(b) for individually designed and pre-approved plans. This extended remedial amendment period, however, is conditioned on timely adoption of interim amendments and discretionary amendments.

An *interim amendment* is required for a plan to stay qualified on account of a law change. For example, EGTRRA changed the requirements for determining a plan's top-heavy status and the group of non-key employees who may be entitled to top-heavy benefits. A plan's failure to adopt an amendment to comply with the new top-heavy rules would cause it to violate provisions of Code §§401(a)(10)(B) and 416. The deadline for a plan sponsor to adopt a required interim amendment is generally the later of (1) the due date (including extensions) for filing the income tax return for the employer's taxable year that includes the date in which the law change first became effective or (2) the last day of the plan year that includes the date in which the law change first became effective.

A *discretionary amendment* is not required in order for the plan document to comply with qualification rules. An amendment would be required, however, if the plan sponsor, at its discretion, changed the manner in which it operated the plan. For example, the plan sponsor may take advantage of a law change allowing plans to offer eligible participants with the opportunity to make catch-up contributions pursuant to Code §414(v). The deadline for a plan sponsor to adopt a discretionary amendment is the last day of the plan year in which the amendment became effective.

If a plan's only failure is not timely adopting either interim or discretionary amendments, then the plan sponsor can correct either failure by submitting an application under the Voluntary Correction Program, VCP, using Appendix F, Schedule 1 under **Rev. Proc. 2008-50**.\* The fee for such a submission is \$375, regardless of the size of the plan.

A compliance statement issued under these procedures treats the corrective amendments as being adopted timely and the plan retains its extended remedial amendment period described in Rev. Proc. 2007-44. The issuance of such a compliance statement, however, does not constitute a determination that the plan amendment complies with applicable qualification requirements. However, these procedures do not provide plan sponsors with any relief if the amendments are adopted after the expiration of the plan's extended remedial amendment period.

If the extended remedial amendment period of the plan has already passed, then the plan sponsor should make a VCP submission using Schedule 2 of Appendix F under Rev. Proc. 2008-50.\*\* Schedule 2 addresses failures to adopt amendments to comply with law changes by the end of the applicable remedial amendment period. These amendments are reviewed for determining whether they comply with applicable qualification requirements. The fee for this submission is determined pursuant to the provisions of section 12.02 of Rev. Proc. 2008-50.\*\*

\*Until December 31, 2008, the plan sponsor can make a VCP application using Appendix F under Rev. Proc. 2006-27.

\*\*Until December 31, 2008, the plan sponsor can make a VCP submission for nonamenders under the procedures outlined in Rev. Proc. 2006-27. The fee is determined pursuant to the provisions of section 12.02 of Rev. Proc. 2006-27. •

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

**Avaneesh Bhagat**  
**Anita Bower**  
**Roger Kuehnle**  
**Louis Leslie**  
**Deborah Lohning**  
**Rhonda Migdail**  
**Mark O'Donnell**  
**Nancy Payne**  
**John Schmidt**  
**Brenda Smith-Custer**  
**Monika Templeman**  
**Mikio Thomas**  
**Kathy Tuite** •

## Hurricane Ike Relief for Affected Defined Benefit Pension Plans

In recognition of the disruption caused by Hurricane Ike, [Notice 2008-87](#) extends some key deadlines for certain **affected** defined benefit plans located in the counties of Brazoria, Chambers, Galveston, Harris, Jefferson, Liberty, Montgomery, or Orange in the State of Texas as of September 7, 2008.

Due dates falling between September 7, 2008, and December 15, 2008, are postponed until December 15, 2008, for the following items:

- Contributions with due dates under Code §§412(c)(10), 412(m), 430(j)(1), and 430(j)(3), and ERISA §§302(c)(10), 302(e), 303(j)(1), and 303(j)(3);
- Applying for Waivers with deadlines under Code §§412(c)(5) and 412(d)(4), and ERISA §§302(c)(5) and 303(d)(1);
- Certification of the Adjusted Funded Target Attainment Percentage due per dates in Code §§436(h)(2) and 436(h)(3) and ERISA §§206(g)(7)(B) and 206(g)(7)(C);
- Providing Notice of a Benefit Restriction required under ERISA §101(j)(1) or (2);
- Actuarial Certification of a Plan's Status with due dates described in Code §432(b)(3)(A) and ERISA §305(b)(3)(A); and
- Adoption of a Funding Improvement Plan or a Rehabilitation Plan – deadlines described in Code §432(c)(1) or 432(e)(1) and ERISA §305(c)(1) or 305(e)(1). However, the date by which an Affected Plan in critical or endangered status must adopt a funding improvement or a rehabilitation plan will still be determined based on the original certification deadline and not the extended deadline.

The extended deadline of December 15, 2008, shall also be used under ERISA Title IV to determine a plan's unfunded vested benefits for a premium payment year or entitlement to the full funding limit exemption from the variable rate premium for a premium payment year. A contribution for any plan year before the premium payment year may be taken into account if it is made on or before the earlier of (1) December 15, 2008, or (2) the date of the plan's variable-rate premium filing or, if applicable, the amended variable-rate premium filing for the premium payment year. •

## 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.

### Proposed Rules on Investment Advice Exemption for 401(k) Plans and IRAs



The PPA amended ERISA to add a new prohibited transaction exemption that allows greater flexibility for participants in 401(k) plans and IRAs to obtain investment advice.

On August 22, DOL/EBSA published a [proposed regulation](#) providing general guidance on the statutory exemption's requirements, including computer model certification, and a non-mandatory model form that advisers may use to satisfy the exemption's fee disclosure requirement.

DOL/EBSA also published a [proposed class exemption](#) that permits advisers to provide individualized advice to a worker after giving advice generated by use of a computer model.

Comments can be submitted on or before October 6, 2008, electronically to [e-ORI@dol.gov](mailto:e-ORI@dol.gov) or mailed to the U.S. Department of Labor, Employee Benefits Security Administration, Room N-5655, 200 Constitution Avenue, NW, Washington, DC 20210, Attn: Investment Advice Regulations.

### Proposed Regulation to Improve Disclosure of Fees and Expenses to Participants

On July 23, DOL/EBSA published a [proposed rule](#) that would provide workers in 401(k)-type plans with useful summary information, including fee and expense information, for investment options available under their plans.

The proposed regulation requires the provision of investment-related information in a comparative chart or similar format. DOL/EBSA has developed a [model chart](#) for complying with this requirement, or fiduciaries can design their own charts or comparative formats. Fiduciaries are also required to disclose basic information about the plan and its investment options, such as what options are available, how to give investment instructions, investment returns and fees and expenses, and how to obtain more detailed information. This information would be given to participants on a regular and periodic basis.

When finalized, the regulation would be effective for plan years beginning on or after January 1, 2009.

[Comments](#) are posted on DOL/EBSA's web site.

### Guidance on 2009 Form 5500 Schedule C

On July 14, DOL/EBSA issued [guidance](#) to help in complying with the new requirements for reporting service provider fee and compensation information applicable to Form 5500 Annual Returns/Reports filed for plan years beginning on or after January 1, 2009.

DOL/EBSA released 40 frequently asked questions (FAQs) on the new Schedule C requirements. The FAQs cover such issues as the alternative reporting option for eligible indirect compensation, electronic disclosure of fee information by service providers, fee reporting for brokerage window options in participant directed plans, and reporting on gifts, entertainment, and other non-monetary compensation.

In response to concerns expressed by service providers trying to make changes to their recordkeeping and information management systems in order to provide their clients with fee and compensation information required for 2009 reports, DOL/EBSA announced that plan administrators will not be required to report service providers on the Schedule C as failing to provide fee and compensation information if the service provider provides the plan administrator with a written statement that (i) the service provider made a good faith effort to make any necessary recordkeeping and information system changes in a timely fashion, and (ii) despite such efforts, was unable to complete the changes for the 2009 plan year.

**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. •

Form  
5500



## PBGC Insights

### 2008 Premium Filings

For plan years beginning in 2008, both Estimated Flat-rate Filings and Comprehensive Filings must be electronically submitted to PBGC via the agency's premium e-filing application called My Plan Administration Account (My PAA). For details about the 2008 Comprehensive Filing, refer to the [Comprehensive Filing Instructions](#). For details about how to e-file, review the online premium filing, [My PAA](#), which includes e-filing tips and user demos. Note that the earliest Comprehensive Filing due date is October 15, 2008, for calendar year plans.

To e-file most efficiently and effectively, PBGC suggests: Start the e-filing process early!; Verify that you have the correct User ID and Password by logging into My PAA; Update your filing team to add or remove practitioners; Gather your premium filing data before starting; Be sure to pay timely if you pay outside of My PAA; Make sure you receive confirmation of the date/time that PBGC received your filing to verify that it has been submitted; and Review the plan's Account History to confirm that the plan year is paid in full.

### Premium Compliance

PBGC's variable-rate premium [final rule](#), published March 21, 2008, made changes that strengthen its premium recordkeeping and audit rules (29 CFR 4007.10). As revised, these rules more broadly describe the categories of records and record preparers covered, and they include records supporting not just payments and information actually filed but also what should have been filed. PBGC may now also require the demonstration of systems used to determine premiums and filing data to enable PBGC to assess their effectiveness and the reliability of data produced. The revised rules will be used in PBGC's ongoing Premium Compliance Evaluation Program.

### Treating Bankruptcy Filing Date as Plan Termination Date

On July 1, 2008, PBGC published a [proposed rule](#) that would implement a Pension Protection Act of 2006 change to the benefits that PBGC pays. Under the statute, when an underfunded pension plan terminates during the plan sponsor's bankruptcy, the date that the sponsor's bankruptcy petition was filed is treated as the plan's termination date for purposes of determining (1) the amount of benefits PBGC guarantees, and (2) the amount of benefits in priority category 3 in the asset allocation. The statutory change applies if the bankruptcy petition was filed on or after September 16, 2006. The public comment period ended September 2, 2008. PBGC expects to publish a final rule in FY 2009.

### Disaster Relief

When the IRS extends deadlines for filing Form 5500-series returns in response to a Presidentially-declared major disaster (such as a hurricane), PBGC issues a Disaster Relief Announcement providing relief relating to PBGC deadlines. [PBGC Disaster Relief Announcements](#) waive premium penalties, but not applicable interest charges, and extend certain deadlines for reporting or disclosing information. The relief is provided to any person responsible for meeting a PBGC deadline, such as a plan administrator or contributing sponsor that is located in a disaster area for which the IRS extended 5500 deadlines. The relief is also provided to any person that cannot reasonably obtain information or other assistance needed to meet the deadline from a service provider, bank, or other person whose operations are directly affected by the disaster. If you believe disaster relief may be warranted for a situation that is not covered by a Disaster Relief Announcement, contact PBGC as soon as reasonably possible, by:

- 1) calling Diane Morstein at (800) 736-2444, extension 4136 or (202) 326-4136 (for TTY and TDD, call (800) 877-8339 and request connection to (202) 326-4136);
- 2) sending an e-mail to [practitioner.pro@pbgc.gov](mailto:practitioner.pro@pbgc.gov); or
- 3) writing to Diane Morstein, Pension Benefit Guaranty Corporation, Suite 610, 1200 K Street, NW, Washington, DC 20005-4026 (specify the Disaster Relief Announcement in question).

## Calendar of EP Benefits Conferences

### UPCOMING EVENTS...

Name	Date(s)	Location	Co-Sponsor(s)	For Further Information, Please Contact
<b>19th Annual SWBA/IRS Employee Benefits Conference</b>	11/20/08-11/21/08	Dallas, TX	SouthWest Benefits Association (SWBA)	<a href="http://www.swba.org">www.swba.org</a>
<b>Benefits Conference of the South</b>	01/15/09-01/16/09	Atlanta, GA	ASPPA	<a href="http://www.asppa.org">www.asppa.org</a>
<b>Los Angeles Benefits Conference</b>	01/28/09-01/30/09	Los Angeles, CA	ASPPA & NIPA	<a href="http://www.asppa.org">www.asppa.org</a>

### RECENT EVENTS...

Name	Date(s)	Location	Co-Sponsor(s)	For Information, See
<b>Northeast Area Benefits Conference</b> (2 Locations)	06/12/08 & 06/13/08	New York & Boston, MA	ASPPA & NE Area Pension Liaison	<a href="http://www.irs.gov/ep">www.irs.gov/ep</a>
<b>21st Annual Cincinnati Employee Benefits Conference</b>	06/12/08-06/13/08	Cincinnati, OH	Cincinnati Bar Association	
<b>Mid-Atlantic Benefits Conference</b>	05/22/08-05/23/08	Washington, DC	ASPPA	
<b>Great Lakes Benefits Conference</b>	04/03/08-04/04/08	Chicago, IL	ASPPA & cooperating sponsors	



Department of the Treasury  
Internal Revenue Service  
[www.irs.gov](http://www.irs.gov)  
Publication 3749 (10-2008)

**Internal Revenue Service**  
**Tax Exempt and Government**  
**Entities Division**

**Employee Plans News**  
SE:T:EP:CEO  
1111 Constitution Avenue, NW PE-4C4,  
Washington, DC 20224