

employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

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Tax Exempt and Government
Entities Division

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New Regulations Address Cash Balance Plans

[Proposed regulations](#) on the application of age-discrimination rules to defined benefit and defined contribution plans were released on December 10, 2002. These proposed regulations address sections 411(b)(1)(H) and 411(b)(2)(A) of the Internal Revenue Code and provide guidance, for the first time, on how the age discrimination requirements of section 411(b)(1)(H) apply to cash balance plans.

Sections 411(b)(1)(H) and 411(b)(2)(A) were enacted in 1986. Section 411(b)(1)(H) provides that the rate of benefit accrual in defined benefit plans cannot be reduced "because of the attainment of any age". Section 411(b)(2)(A) provides that the rate of allocations in a defined contribution plan cannot be reduced because of the attainment of any age. ERISA and the Age Discrimination Employment Act (ADEA) have parallel requirements. The new proposed regulations are meant to be consistent with the requirements of ERISA and ADEA.

Prior proposed regulations under section 411(b)(1)(H) were issued in 1988 but were never finalized. The prior regulations did not address cash balance plans and did not define the rate of benefit accrual.

A highlight of the newly released regulations is a set of detailed examples on applying the new rules.

Some of the major rules in the regulations applicable to defined benefit plans include:

- Reductions - both direct and indirect - in accruals or allocations because of age are prohibited.
- To test for age discrimination, look at what the accrual or allocation would be if the participant were younger. The plan is age discriminatory if the accrual would be higher if the participant were younger (holding all other factors the same).
- For a "traditional" defined benefit plan, the rate of accrual is defined as the increase in the accrued benefit in the form of a single life annuity at normal retirement age. For an "eligible" cash balance plan, the rate of accrual is the hypothetical pay credit and any interest credit not already accrued.
- For cash balance plan conversions where the traditional defined benefit plan is frozen, and all new accruals are under a cash balance formula, the plan will satisfy the age discrimination test unless pay credits for older participants are lower than they would be if the participant were younger.

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- Where the traditional formula is converted to a cash balance formula using an opening account balance, the plan will generally satisfy the age discrimination test if the opening account balance is computed using reasonable actuarial assumptions and pay credits otherwise satisfy the basic requirements.
- If a defined benefit plan has both traditional and cash balance formulas, each formula can be tested for age discrimination separately.
- There are new rules for how the requirements for "traditional" defined benefit plans are satisfied for post-normal retirement age accruals, including the effect of any post-normal retirement distributions.

The new regulations are proposed to be effective for plan years beginning after the date of publication of final regulations. Finalizing the regulations is a high priority for the IRS and Treasury. No reliance is provided on the proposed regulations until they are finalized. The proposed 1988 regulations can still be relied on until these proposed regulations are final.

Along with the issuance of the proposed age discrimination regulations, the IRS announced that determination letter applications and examination cases involving cash balance conversions will continue to be suspended and submitted for mandatory technical advice to Washington, D.C. *See the following story for details.* •

Cash Balance Conversion Plans - What Now?

On December 10, 2002, the IRS issued proposed regulations ([REG-209500-86](#)) relating to age discrimination requirements applicable to certain retirement plans under sections 411(b)(1)(H) and 411(b)(2)(A) of the Internal Revenue Code (*see the cover story earlier in this edition*). The proposed regulations provide rules regarding the age discrimination requirements applicable to certain retirement plans. When finalized, these proposed regulations would affect retirement plan sponsors and administrators, and participants in and beneficiaries of retirement plans.

Beginning September 15, 1999, the IRS required that cases involving an amendment to change a traditional defined benefit plan into a cash balance plan – whether in a determination letter application or in a plan under examination - be submitted to IRS Washington, D.C. office for technical advice. These technical advice cases will determine the conversion's effect on the plan's qualified status. Many such cases were submitted and are still pending.

These cases have not been processed because certain age discrimination issues under section 411(b)(1)(H) have continued to be the subject of discussions between Treasury and other agencies. While the proposed regulations address the age discrimination issues of section 411(b)(1)(H), they are subject to public comments and possible revision before being finalized. Pending further guidance, the technical advice cases on cash balance conversions will continue to be suspended. *See [Announcement 2003-1](#)* •

How to Subscribe to Employee Plans News



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

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

DOL Corner

(Editor's Note: Beginning with this issue, the Employee Plans News is providing our sister agencies the opportunity to tell our audience about some of their programs, priorities and initiatives. Our initial contribution is from the Department of Labor's Pension and Welfare Benefits Administration.)

Our first "guest article" comes courtesy of the Department of Labor's Pension and Welfare Benefits Administration.

Look for more guest articles in future edition of the *Employee Plans News*.

We encourage your suggestions and comments about the articles in the News.

Contact us at:

RetirementPlanComments@irs.gov

Secretary of Labor Elaine L. Chao has made compliance assistance a top DOL priority. The actions described below are the next steps in DOL's Pension and Welfare Benefits Administration's (PWBA) continuing compliance assistance program to educate and assist employers, plan officials, service providers and others in achieving and maintaining compliance with ERISA. These efforts include working to foster self-regulation and oversight by offering programs that encourage voluntary compliance, such as the Voluntary Fiduciary Correction (VFC) Program and the Delinquent Filer Voluntary Compliance Program, as well as outreach, new educational materials and a dedicated Web page.

Final Class Exemption under the VFC Program

On November 25, 2002, DOL/PWBA published the final exemption providing relief from the excise taxes imposed under the Internal Revenue Code for four transactions covered by DOL's VFC Program. Relief is available provided plan officials satisfy the conditions of the exemption. The transactions include:

- Late transmittal of employee contributions and participant loan repayments to plans.
- Loans by plans to parties in interest.
- Purchases or sales of assets between plans and related parties at fair market value.
- Sale and leaseback of property between plans and employers for fair market value and fair market rental value.

On March 28, 2002, DOL/PWBA included the proposed class exemption in its expanded VFC Program to allow applicants to avoid imposition of excise taxes that otherwise discourage voluntary compliance. Based on public comments, DOL made several changes to the proposal. One change expands the transactions relating to employee contributions to cover delinquent transmittal of participant loan repayments to plans. The other changes allow service providers to use the exemption more frequently than once every three years and let certain VFC applicants give the required notice to an unrelated plan fiduciary as a representative of plan participants and beneficiaries.

The VFC Program allows plan officials, sponsoring employers or parties to affected transactions to voluntarily correct specific violations of ERISA. Applicants must fully correct any prohibited transactions, calculate any losses and restore those losses with interest or profits, and distribute any supplemental benefits owed to eligible participants and beneficiaries. If properly corrected, plan officials will receive a "no action" letter indicating there will be no further enforcement action by DOL on the corrected transaction.

For questions on the exemption, contact DOL/PWBA's Office of Exemption Determinations at (202) 693-8540. For more information about the VFC Program and other compliance assistance activities, contact a PWBA regional office toll free at 1-866-275-7922 or go to the PWBA Web site at www.dol.gov/pwba.

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Field Assistance Bulletins

DOL/PWBA has a new compliance assistance tool: the Field Assistance Bulletin (FAB). Each FAB gives the regulated community the technical guidance that PWBA provides to its field enforcement staff on specific issues.

In the course of audits and investigations by PWBA field enforcement staff, difficult legal issues often arise. In an effort to provide the regional office staff with prompt guidance, PWBA developed this new vehicle for communicating technical guidance from the national office. FABs will ensure that the law is applied consistently across the various regions. They also will provide the regulated community with an important source of information about the Agency's views on technical applications of ERISA.

The first FAB, FAB 2002-1, issued October 16, 2002, addresses the fiduciary issues involved with the refinancing of an ESOP loan under section 408(b)(3) of ERISA.

FAB 2002-2, issued November 12, 2002, describes the circumstances under which multiemployer plan trustees may be acting in a settlor, rather than a fiduciary, capacity. In addition, the FAB makes clear that, consistent with earlier plan expense guidance, expenses incurred by multiemployer plan trustees in connection with settlor activities cannot be paid by the plan.

FAB 2002-3, issued November 14, 2002, provides guidance on the compensation earned by service providers from short-term investments of plan assets, commonly called "float." The FAB describes the duties of a fiduciary to prudently select and monitor service providers regarding these earnings, as well as describing the obligations of service providers to disclose sufficient information to their employee benefit plan customers to enable plan fiduciaries to make an informed decision about compensation agreements.

All FABs are posted on the PWBA Web site at www.dol.gov/pwba under Compliance Assistance and Laws and Regulations. For questions on the FABs, contact DOL/PWBA's Office of Regulations and Interpretations at 202-693-8500. Watch for additional FABs!

Rules on Disclosure of Pension Plan Blackout Periods

On July 30, 2002, President Bush signed the Sarbanes-Oxley Act of 2002 giving DOL authority to issue interim final rules and a model notice implementing the blackout provisions. The Act requires that participants and beneficiaries be given a 30-day advance notice of a blackout period. When a blackout period affects a plan that includes employer stock as an investment option, the plan must also notify the corporate issuer of the employer stock so that corporate insiders are aware that they may not trade employer securities or exercise options during the blackout period.

On October 21, 2002, DOL/PWBA published interim final rules implementing a new federal law requiring 401(k)-type plans to give participants 30-day advance notice of blackout periods affecting their rights to direct investments, take loans or obtain distributions. The interim final rules contain model notice language to assist plan sponsors in carrying out this new obligation. Blackout periods typically occur when plans change record keepers or investment options, or add participants due to a corporate merger or acquisition.

The following IRS employees are contributors to this edition of the *Employee Plans News*



Bob Architect, Peter Breslin, Richard Ervi, James Flannery, Sharon Inge, Peter McConkey, Todd Newman, Mark O'Donnell, Nancy Payne, Marty Pippins, Sharon Polo, Cheryl Press, Wiley Ransom, Mike Rubin, Mike Ruzycki, Bonnie Schaumberg, John Schmidt, Bruce Settell and Vickie Surguy

In addition, PWBA staff contributed the DOL Corner article.

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Under the interim final rules, administrators of plans with individual accounts must provide blackout period notices that contain, among other things:

- The reasons for the blackout period
- A description of the rights that will be suspended during the blackout period
- The start and end dates of the blackout period, and
- A statement advising participants to evaluate their current investments based on their inability to direct or diversify assets during the blackout period.

A second set of rules issued by DOL provides for civil penalties of up to \$100 per day per participant for plan administrators who fail or refuse to comply with the notice requirement.

The interim final rules are effective January 26, 2003. DOL expects to publish final rules by the effective date of the new provisions after considering the comments on the interim final rules. The comment period closed November 20, 2002 and was limited to 30 days to enable DOL to adopt changes to the interim final rule prior to the effective date. The interim final rules and the comments are available on the PWBA Web site at www.dol.gov/pwba. For questions on the rules, contact DOL/PWBA's Office of Regulations and Interpretations at 202-693-8510. •

**CONTACTING
EMPLOYEE PLANS**



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

Send comments/
suggestions to:

• EP Customer Education & Outreach T:EP:CEO
Room 4C3
1111 Constitution Avenue, N. W.
Washington, D.C. 20224

• FAX (202) 283-9525

• E-Mail:
RetirementPlanComments@irs.gov
(Note the change in address)

For EP Taxpayer Assistance
(for retirement plans technical
and procedural questions):

• Please call (877) 829-5500

Or visit the EP Customer Account
Services section of the Retirement
Plans web page at
www.irs.gov/ep.

**For questions relating to
retirement income, IRAs,
ROTH IRAs, educational IRAs,
medical savings accounts
and section 125 cafeteria
plans:**

Please go to the IRS Help Page
at:
www.irs.gov/help

**EP Connections:
Interview with Peter Breslin and Mike Ruzycski**

Recently, *Employee Plans News* had the opportunity to sit down and talk with Peter Breslin and Mike Ruzycski.

Peter is the manager of EP Examination, Programs & Review (EP&R) and Senior Program Manager of EP Team Audit (EPTA). As Manager of EP&R, he is responsible for all EP field examination support. This assignment involves such areas as the Strategic Business Plan, Annual Work Plan, all National Compliance Projects, coordination with the Department of Labor and classification and assignment of returns for examination. As the Senior Manager of EPTA, he oversees the national large case program for EP. In his dual role, Peter leads a staff of 12 managers and some 100 employees located all over the country. He began his career as an EO Tax Law Specialist in the old national Office in 1971. He received his BS degree in Economics at Mount St. Mary's College in 1967.

Mike is the manager of EP Examinations, Planning & Programs (EPP). Mike's career with EP began in 1976 as a Tax Law Specialist in the old National Office and since 2000 he has served in several managerial positions in the Baltimore headquarters of EP Examinations. In 2002, Mike became the Manager, EPP. Mike received his BS degree from Indiana University.

The conversation hit on a number of Examination topics including upcoming Examination priorities, the Non-Filer initiative and EPTA. Below are highlights of our conversation – for a transcript of the complete interview go the Retirement Plans web page at www.irs.gov/ep. Unless otherwise noted, both Peter and Mike contributed responses to each question.

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What is the role and responsibility of EP&R?

Peter: After the reorganization, regional EP offices were eliminated and TE/GE established Area Offices. The EP Area Offices were organized under the leadership of Preston Butcher, Director, EP Examinations. I report directly to Preston, here in Baltimore - the headquarters for EP examinations. Examinations Programs and Review was established to ensure program development and oversight over all EP Examination field programs on a national level. EP&R consists of five units: Planning and Programs, Classification, Special Review, Mandatory Review and Support and Processing.

Basically, Examination tasks have been centralized in the Baltimore headquarters of EP Examinations. These tasks include case identification and selection of cases for examination; quality review and technical guidance; and case processing and closing to the Service Centers. While clerical workers in Brooklyn and in the Pacific Coast area are still closing some cases, the ultimate plan is to centralize the entire operation in Baltimore.

The Special Review unit and the Mandatory Review unit conduct quality review of cases. Although both units are headquartered in Baltimore, the reviewers are spread out in all Area Offices, as well as in Baltimore.

The Classification Unit selects returns for examination, performs numerous compliance research activities and coordinates with the Department of Labor (DOL). Classification is also headquartered in Baltimore, with some key personnel in California and New York.

Mike: EP Program and Planning is the biggest unit in EP&R. This unit, in essence, replaced the Regional Office activities in developing area work plans and conducting operational review visits on each Area Office. It has absorbed many National or HQ activities in developing and monitoring Examination Compliance Programs. EP&P plays a critical role in developing, monitoring and assessing all examination activities in support of the TE/GE Strategic Business Plan. This unit is also headquartered in Baltimore, with analysts all over the country.

What are FY 2003 priorities for EP Examinations?

We have several, including:

- Support Rulings & Agreements in processing the remaining inventory of determination letter requests.
- Continue work on potentially non-compliant returns – as identified by our Risk Assessment study.
- Support Customer Education & Outreach in their public outreach efforts.
- Meet our oversight responsibilities to our largest sponsors by maintaining a presence in EP Team Audit (EPTA), supporting Large and Mid-Size Business (LMSB) and supporting Exempt Organizations (EO).
- Continue implementing the non-filer initiative in order to determine if a problem exists with plan sponsors failing to file the appropriate information returns.
- Maintain examination presence in areas such as section 403(b) and 457 plans and in SEP/SARSEP to determine the compliance rate for sponsors that do not have a filing requirement.
- Continue examination activities in our identified areas of emphasis such as the MAP and 401(k) programs.

You mentioned the Risk Assessment study. How will refining EP's Compliance Risk Assessment with data from Examinations be used in selecting plans for examination?

The Examinations data will allow us to identify market segments that are compliant and those that are not. Then we can concentrate our efforts (enforcement, education, etc.) on those non-compliant segments of our EP population.

What is EPTA – EP Team Audit?

During the design of the new TE/GE Operating Division, concerns arose on how we should best address our customers from both an outreach/educational approach and from an enforcement perspective. Data revealed that only 1% of companies (these were very large companies) had 60% of all plan participants and 70% of all pension plan assets. The data also revealed that we had very little examination coverage on this market segment.

It was decided that we should design a special program to address this small market segment (in terms of numbers – 1%) that has such a large impact in terms of plan participants and plan assets (60% and 70%, respectively). A design team was assigned to develop the best approach to address this market segment. However, because the remedial amendment period for GUST amendments would result in limited enforcement resources, it was decided to do a pilot program with a limited number of agents.

A number of senior agents (24) volunteered to participate in this new program and three EPTA Examination groups were established under Preston Butcher. During the pilot period, these groups reported to Peter as the Manager of EP&R. Mark Hoffman, a group manager in St. Paul, was selected as National Program Manager – a position established to ensure smooth coordination with other functions such as LMSB and EO.

The types of cases under examination in this program are the major corporations and industries with plan assets over 50 million dollars. The cases are worked in a team structure with much more pre-planning by the agents and their managers than our more routine work. Because of their complexity, EPTA cases are usually assigned a Computer Audit Specialist, a member of TE/GE Counsel and sometimes a technical person from Rulings and Agreement. Economists and excise, employment or other specialists are also available.

It is expected that the taxpayer and representatives will work with the team leader or group manager in developing the audit plan and ensuring that all issues are timely discussed and resolved. Close coordination with EO and LMSB are a necessary component of this program to ensure effective overall tax administration.

We currently have 36 EPTA examinations in process.

Another breaking news topic is the Non-Filer Program – How has the IRS collaborated with the Department of Labor to identify Form 5500 Non-Filers?

The IRS has collaborated with the Department of Labor's Pension and Welfare Benefits Administration (PWBA) by agreeing to identify potential non-filers by researching federal tax information compiled and maintained by the IRS and referring certain potential non-filers to the PWBA for formal enforcement action.

What is a non-filer?

A pension plan subject to ERISA is required to file an annual return with very few, specific exceptions. (Please see [Form 5500 instructions](#) under Section 1: Who Must File, for additional information.) All plans that have this filing requirement and that have not filed are considered "non-filers".

What means are being used to identify and contact pension plan sponsors who have been identified as a potential non-filer of a Form 5500/5500EZ return?

Research of various databases has revealed potential non-filers. Potential non-filers will be sent a letter by the IRS inquiring as to the status of their Form 5500 filings.

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Data showed that just 1% of all plans - plans of very large companies - held more than 70% of all pension plan assets and had more than 60% of all participants.

What voluntary programs are available from the DOL or IRS that can be used by a non-filer?

The Delinquent Filer Voluntary Compliance (DFVC) Program was established by DOL in 1995 to encourage plan administrators to file overdue annual reports by paying reduced penalties. The program has been recently updated to substantially reduce the penalty amounts for delinquent Form 5500 reports in order to make it easier to participate in the program. The IRS has agreed to not assess penalties on delinquent filers who satisfy the requirements of the DFVC Program.

Who will receive contact letters? If a letter is received, what options are available to address a non-filer situation?

Plan administrators identified as potential non-filers (as described above) will receive contact letters from the IRS. The letters will list several possible responses including:

- A Form 5500 has been filed for this particular plan;
- A Form 5500 has been filed under a different EIN or plan number;
- A return is not required to be filed; or
- A return has not been filed and the administrator wishes to participate in the DFVC Program.

If the IRS receives an inadequate response (or no response at all) to these contact letters, we will refer the case to DOL. Once plan administrators have been notified by PWBA about a delinquent filing, they are no longer eligible to participate in the DFVC Program.

How does someone find out more about this collaboration and the options available to a non-filer?

For more information on this project, contact PWBA at (202) 693-8360 (not a toll-free number) or IRS customer service at 1-877-829-5500. More information on the DFVC Program is available on the PWBA website at www.dol.gov/pwba. See the following two stories for further information on the non-filer program that the IRS has gathered and posted to the Retirement Plans web page at: www.irs.gov/ep.

For a transcript of the entire interview with Peter Breslin and Mike Ruzycki, see www.irs.gov/ep.

Form 5500 Non-Filers: PWBA and IRS Begin New Enforcement Effort

In an effort to further increase compliance with the Form 5500-series filing requirements for retirement plans, the Pension and Welfare Benefits Administration (PWBA) and IRS recently announced a [joint project](#) to identify and contact potential non-filers.

The agencies will take advantage of various databases at their disposal to determine if plan administrators are fulfilling their filing requirements. In early December 2002, the IRS mailed letters of inquiry to those identified as potential non-filers. These letters of inquiry will give recipients the opportunity to respond before one or both of the agencies follow up with additional notices (including proposed penalties).

The main goals of this effort are having all filers understand their filing responsibilities and taking the necessary action to meet those obligations. Requirements for filing Form 5500-series material are explained within the *Instructions for Form 5500*. Visit the Internet at www.dol.gov/pwba or www.irs.gov/ep for a copy of the instructions.

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The IRS has agreed to not assess penalties on delinquent filers who satisfy the requirements of the DFVC Program.

Form 5500 Non-Filers *continued from page 8*

In addition, delinquent filers are reminded of the availability of a program to assist plan administrators in filing delinquent reports. The PWBA has updated its Delinquent Filer Voluntary Compliance (DFVC) Program to substantially reduce the penalties associated with the late filing of Form 5500 reports and to further encourage delinquent filers to participate in the program. As an added incentive, the IRS stated in [Notice 2002-23](#) that it would not assess penalties on delinquent filers who satisfy the requirements of the DFVC Program. However, plan administrators who are notified by the PWBA concerning a delinquent filing (beyond the IRS letter of inquiry) cannot participate in the DFVC Program.

Additional information about this project is available from the PWBA at (202) 693-8360 or the IRS at 1-877-829-5500. Information about the DFVC Program is available from the PWBA website at www.dol.gov/pwba or by calling the PWBA number given above. •

New Non-Filers Information on the Retirement Plans Website

In response to a recent Pension and Welfare Benefits Administration (PWBA) [press release](#) announcing the joint effort by the PWBA and IRS (“the agencies”) to identify and contact non-filers of Form 5500-series returns, EP has assembled information on the subject and added it to our website.

The site includes information on filing obligations, an educational/outreach flyer, FAQs and more. We hope that making this information available on our website and publicizing it here in the Employee Plans News, will get the attention of as many affected persons (i.e., non-filers) as possible. This list of information can be found by selecting “Forms and Publications” under the “Topics” section of the Retirement Plans web page at www.irs.gov/ep.

In other news on this subject, in early December, the IRS mailed out approximately 300 contact letters to potential non-filers. These initial contact letters inform the recipient that a search of the IRS determination letter database indicates that although an employee benefit plan was submitted for approval, no corresponding Form 5500 was shown filed. The contact letter requests the recipient to review their records and respond by:

- Indicating whether a filing has in fact taken place (and attaching a copy of that filing),
- Providing a statement and reason why a filing may not have been required, or
- Stating that a required filing did not take place and that they want to participate in the PWBA’s Delinquent Filer Voluntary Compliance (DFVC) Program, which provides for substantially reduced non-filer penalties.

The PWBA and IRS encourage non-filers to participate in the DFVC Program if a filing was required.

Recipients of the initial contact letter who do not respond will receive a follow-up letter from the IRS asking for information about their filing status. Those filers who continue to be non-responsive will be referred to the PWBA for further contact. Communication from the PWBA, at this point, could preclude the non-filer from participating in the DFVC program.

If you are a non-filer, it’s time to contact the PWBA about taking advantage of this opportunity to participate in the DFVC Program. •

EP has assembled information on filing obligations, an educational/outreach flyer, FAQs and more on the non-filer program and added it to our website.

Update: Section 457 Plans Guidance

Section 457 of the Internal Revenue Code applies to deferred compensation plans of state and local government and tax-exempt employers. These types of employers may maintain eligible plans – plans that satisfy the requirements of section 457(b) in both form and operation - or they may maintain ineligible plans.

In the case of an eligible governmental plan, benefits are excludable from income of plan participants until paid. In the case of an eligible plan of a tax-exempt employer, benefits are excludable from income of plan participants until paid or made available. Benefits under ineligible plans are taxable when rights to the benefits are not subject to a substantial risk of forfeiture (see section 457(f)).

In May 2002, the IRS issued proposed regulations, [REG-105885-99](#), that provide broad guidance regarding the rules applicable to eligible deferred compensation plans described in section 457(b) (eligible plans). In particular, the proposed regulations provide clear standards for the administration and operation of eligible plans. They also amend the existing final regulations to update them for changes in the law, and respond to the comments and inquiries received from state and local governments and tax-exempt employers that sponsor eligible plans, from participants and beneficiaries, and from service providers and other advisors.

The proposed regulations include a general overview of section 457, for both eligible plans under section 457(b) and ineligible plans that are subject to section 457(f). Specific rules applicable to eligible plans are contained in proposed sections 1.457-4 through 1.457-10. Meanwhile, rules applicable to those ineligible deferred compensation plans are contained in proposed section 1.457-11.

The IRS is currently reviewing the comments received on the proposed regulations and is in the process of revising the proposed regulations. Final regulations under section 457 are anticipated in mid-2003, if not earlier. Until finalized, *taxpayers may rely on the proposed regulations*, despite the fact that they are not final.

Examination guidelines for section 457 plans *are also anticipated late in 2003* but not before the release of the section 457 final regulations. Exam guidelines, while not providing guidance in and of themselves, are a helpful tool to IRS examination agents. While the guidelines are aimed primarily at IRS employees, they are also available for public use. To see available exam guidelines, go the Retirement Plans web page at [www.irs.gov/ep](#) and select “More Topics” and then select “EP Tool Kit”.

Finally, comprehensive *regulatory guidance under section 403(b)* relating to tax-sheltered annuities for nonprofit organizations and public schools *is also being prepared*. Please note that the IRS has an educational CD-ROM on section 403(b) and section 457 plans that may be ordered by going to the Retirement Plans web page at [www.irs.gov/ep](#) and selecting “Educational Services & Products” under the More Topics section. •

New Qs&As on EGTRRA Amendment Deadline on the Web

After the recent release of [Rev. Proc. 2002-73](#) (see the story in the [Employee Plans News Special Edition, November 2002](#)), the Service has received some recurring questions on the procedure. In response, the IRS has posted Qs&As to the Retirement Plans web page at [www.irs.gov/ep](#) concerning the extended remedial amendment period deadline.

Among the topics discussed in the Qs&As are:

- EGTRRA good faith plan amendments
- The anti-cutback prohibition of section 411(d)(6)
- Extending the deadline for adopting EGTRRA good faith plan amendments

Additional Qs&As will be posted to the Retirement Plans web page as necessary. Keep checking the site for further updates.

Employee Plans Published Guidance

(September 2002 - December 2002)

Revenue Rulings

[Rev. Rul. 2002-62, 2002-42 I.R.B. 710](#)

This revenue ruling provides guidance on what constitutes a series of substantially equal periodic payments from an individual account within the meaning of IRC section 72(t)(2)(A)(iv).

[Rev. Rul. 2002-63, 2002-45 I.R.B. 803](#)

This revenue ruling contains the annual covered compensation tables for purposes of IRC section 401.

[Rev. Rul. 2002-73, 2002-45 I.R.B. 805](#)

This revenue ruling modifies [Rev. Rul. 2002-46](#) and modifies and amplifies [Rev. Proc. 2002-9](#) as they relate to the timing of the deduction of certain contributions.

[Rev. Rul. 2002-84, 2002-50 I.R.B.](#)
(December 16, 2002)

This revenue ruling describes the income tax consequences in certain specific instances of overpayments of plan benefits.

Notices

[Notice 2002-71, 2002-45 I.R.B. 830](#)

This notice contains the annual cost-of-living adjustments for pension plans, etc..

Regulations

[REG-124667-02, 67 Fed. Reg. 62417](#)
(October 7, 2002)

These regulations under IRC section 417 pertain to relative value explanations of QJSAs and QPSAs.

[T.D. 9021, 67 Fed. Reg. 71821](#)
(December 3, 2002)

Finalized form of the Income Tax regulations (proposed on July 31, 2002) pertaining to certain aspects of plan loans.

[REG-209500-86, 67 Fed. Reg. 76123](#)
(December 11, 2002)

These proposed regulations address the application of the pension plan age discrimination rules to cash balance plans.

Revenue Procedures

[Rev. Proc. 2002-73, 2002-49 I.R.B.](#)
(December 9, 2002)

This revenue procedure extends the time for making certain amendments to certain qualified plans.

Announcements

[Announcement 2003-1](#)
(December 11, 2002)

This announcement notifies plan sponsors that technical advice cases on cash balance plans will remain suspended.

Final Regulations Issued on Plan Loans

On December 3, 2002, the IRS issued [final regulations](#) on certain aspects of plan loans. Proposed regulations on this topic were issued on July 31, 2000.

The final regulations are effective Dec. 3, 2002, and apply to assignments, pledges and loans made on or after Jan. 1, 2004.

The main changes from the proposed Income Tax Regulations are explained in the preamble to the final regulations and include:

1. An example in the Q&A on a loan repayment has been adjusted to reflect the 6% maximum interest rate ceiling that can be charged during uniformed (military) service as defined in title 38 of the U.S. Code.
2. In order to satisfy the limitations of section 72(p)(2)(A) of the Code, an issuer of a new loan can rely on an employee's certification concerning the status of prior loans if there is no reason to doubt that employee's certification.
3. The rules on the refinancing of existing loans were modified to the extent that if there is an original loan of less than five years, an extension of the term of the original loan to a length of 5 years (which would have been allowed at the time of the original loan) will not be deemed to be a refinancing. See the examples at section 1.72(p)-1, A-20(b).
4. The proposed, 2-loan per year limit is not contained in the final regulations.

The proposed regulations had provided that a deemed distribution would occur if a participant received more than two loans a year, even though section 72(p)(2) has no specific prohibition on borrowing from a plan more than once a year. Under the final regulations, there are no limits on the number of loans that may be taken. Also, because there is not any limit on the number of loans that can be made, credit card loans that otherwise meet the requirements of section 72(p) are allowed.

The final regulations retain much of the substance of the proposed rules. But there were some clarifications and modifications based on public comments. For example, on the issue of extending repayment periods to accommodate military service, the final rules clarify that loan repayments can be revised at the end of a military leave to extend the repayment schedule in the event the loan originally had a term of fewer than five years.

The regulations note that the IRS and the Treasury Department are considering whether notices under the various requirements relating to plans can be provided electronically. Proposed regulations regarding this issue - and an invitation for public comment - are anticipated. •

The Corner of Forms & Pubs

Welcome back to The Corner of Forms & Pubs – the EP version of Hollywood & Vine. The information here at The Corner is brief although topics needing further details will get their own full-length articles (such as the article on the non-filer package contained earlier in this newsletter). Our lead story at The Corner concerns the non-filer package:

- *Non-Filer Package* - EP has gathered information on the joint effort by the Pension and Welfare Benefits Administration and the IRS to identify and contact non-filers of the [Form 5500](#)-series returns and added it to our website. The site includes information on filing obligations, an educational/outreach flyer, FAQs and more. This list of information can be found by selecting "Forms and Publications" under the "Topics" section of the Retirement Plans web page at www.irs.gov/ep.

Under the prior rules, a deemed distribution would occur if a participant received more than two loans a year.

Under the final rules, there are no limits on the number of loans per year.

Credit card loans are also allowed.

- *New Forms 8880 and 8881 – Form 8880 (Credit for Qualified Retirement Savings Contributions)*, was developed to help individuals compute the amount of their retirement savings contributions credit. This credit, if any, may be claimed in addition to any IRA deduction already claimed on their Form 1040 or 1040A. **Form 8881 (Credit for Small Employer Pension Plan Startup Costs)** was developed to help employers compute the credit for on costs incurred in establishing or administering an eligible employer plan. The credit is 50% of the qualified costs for the tax year up to a maximum credit of \$500 for each of the first three tax years. Both forms will be available on the IRS Website in January 2003 for use with various 2002 income tax returns. Paper copies should be available by mid-January and can be requested by calling 1-800-TAX-FORM.
- *Revised Form 5310 (Application for Determination Upon Termination)* – Eureka! The **Form 5310** has been revised. Currently the form is available only through the IRS Website. Paper copies should be available from the IRS Distribution Centers by late-January 2003 (by calling 1-800-TAX-FORM).
- *Revised Form 4972 (Tax on Lump-Sum Distributions from Qualified Plans)* - This form applies to plan participants born before Jan. 2, 1936 and is used to figure the tax on a qualified lump-sum distribution received in 2002, using the 20 percent capital gain election, the 10-year tax option, or both. A change to note in [the 2002 form](#) is that it may not be used for distributions from a qualified plan that received a rollover after 2001 from an IRA (other than a conduit IRA), a section 457 plan or another qualified plan on behalf of the plan participant's surviving spouse.

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

Quick Hits – Sound Bites in Print

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

- *Retirement Plan Life Cycle Info* - Coming Soon on the Web! Every retirement plan has a life cycle with four distinct stages: Choosing, Establishing, Operating and Terminating. Soon you'll be able to go to the Retirement Plans web page at www.irs.gov/ep and learn about the Retirement Plan Life Cycle and find the resources that will be useful during the life cycle of *your* retirement plan.
- *Form 5307* - In a story in the [Employee Plans News Special Edition, November 2002](#), we reported that a review of recent determination letter (DL) requests found that more than half (60%) of all [Form 5307](#) submissions needed follow-up from a DL specialist because of missing or insufficient data. In response, EP has begun mailing notices to Volume Submitter and M&P plan sponsors alerting the sponsors to common errors found in the submission process. Looking at these tips could save you valuable time the next time you use the Form 5307.

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Quick Hits *continued from page 13*

- *EP Continuing Review of White Paper Comments* – As we reported in our last edition, EP is reviewing the comments received on the Determination Letter Program [White Paper](#). EP has pared down the options and is fleshing out the remaining ones. But the review of all comments is not yet complete. EP expects to issue a follow-up to the White Paper after the review is completed. For more information on the White Paper and the Determination Letter program, go to the Retirement Plans web page at www.irs.gov/ep and select “More Topics” under the “Topics” section and then select “Determinations”.
- *New Newsletter for Government Entities* – Our TE/GE colleagues over in Government Entities recently debuted their own newsletter: *Federal, State and Local Governments Newsletter*. You can find this new product by going to their homepage at www.irs.gov/govt and then selecting “Federal, State and Local Gov’ts” under the Contents section and then selecting “FSLG Newsletter” under the Topics section. So, if you have questions or concerns about Government Entities, be sure to check out their web page and their new newsletter. •

Los Angeles Benefits Conference

The IRS, in association with the American Society of Pension Actuaries (ASPA), announces the Los Angeles Benefits Conference. This year’s conference will be held on Thursday and Friday, January 30 and 31, at the Hilton Universal City & Towers. The conference will feature speakers from the IRS (both local and Washington offices), Department of Treasury, Department of Labor and the Pension and Welfare Benefits Administration, Congressional staff and ASPA.

Topics at this year’s conference include:

- EPCRS.
- IRS Guidance.
- Enforcement Initiatives and Issues
- Aggressive Tax Practices.
- Mergers & Acquisitions.
- 401(k), 403(b) and 457 Plans.

During the afternoon of January 29th, in pre-conference sessions, IRS officials and specialists will engage in free-flowing dialogues with practitioners on current issues. Bring your clients’ real-life concerns and receive some informal guidance on an anonymous basis. You need to be registered for the conference in order to attend these pre-conference sessions and an additional fee is required. Last year’s pre-conference sessions filled up fast – so register soon!

For more information regarding the conference such as CPE credits, and special airfares and rental car rates, see the ASPA website at www.aspa.org, or you call them at (703) 516-9300.

Hotel reservations should be made through the Hilton Universal City & Towers.

555 Universal Terrace Parkway
Universal City, CA 91608
Phone: (818) 506-2500

Time is winding
down. Make your
reservations soon
to attend an IRS co-
sponsored benefits
conference near
you.

Great Lakes Benefits Conference

Mark your calendars for May 1-2, 2003: These are the dates for the 2003 EP Great Lakes Benefits Conference in Chicago. EP is once again partnering with the American Society of Pension Actuaries (ASPA) and over twenty other co-sponsors to present the 2003 Conference.

This conference provides pension professionals with an excellent opportunity to meet and discuss employee benefit issues with private practitioners and key government agency representatives. Attendees participate in excellent technical sessions and can earn continuing professional education (CPE) credit. The conference agenda includes general sessions of broad interest (featuring prominent governmental and private sector speakers), a variety of relevant breakout sessions, and two keynote luncheon speakers.

During the Conference, EP Employees will staff a booth with exhibits covering areas such as:

- Volume Submitter Program,
- Employee Plans Compliance Resolution System,
- Section 403(b) Tax Sheltered Annuities and
- 401(k) plans.

You will also find Customer Education and Outreach (CE&O) enhancements including:

- Tabletop exhibits staffed by CE&O and EP Program Coordinators.
- Access to the newest information on benefits regulations, litigation, enforcement, and compliance.
- Networking opportunities with private-sector and government agency representatives.

Hotel reservations should be made through the Hyatt McCormick Place - Chicago.

2233 South Martin Luther King Drive
Chicago, IL 60616
Phone: (312) 567-1234

For more information, visit the ASPA website at www.aspa.org, or you may call them at (703) 516-9300. •

Mid-Atlantic Benefits Conference

The 2003 Mid-Atlantic Benefits Conference will be held on May 13-14, at the Loews Philadelphia Hotel. This Conference is jointly sponsored by EP and by ASPA.

The Conference features panel discussions with both public and private sector participants on each panel. It also provides a unique opportunity for attendees to meet and discuss common areas of interest with government representatives. By utilizing an interactive panel format, discussions focus on the issues that are important to attendees.

The 2003 Conference will feature discussions on plan design, 403(b) and 457, cash balance plans, fiduciary issues in the bear market and 412(i) plans. Other topics will include how to handle “lost” plan participants, section 401(a)(9) issues, spousal consents, reporting and disclosure, bankruptcy, church plans, abusive practices, and voluntary compliance. The Conference is also bringing back the very successful “Forget-Me-Nots” session on both days.

The conference is an essential learning and interactive experience for serious pension practitioners. Please join us. Visit ASPA’s website at www.aspa.org for more information. •

Calendar of EP Benefits Conferences

Upcoming Events...

Name	Date(s)	Location	Non-IRS Co-Sponsor(s)	For Further Information, Please Contact
Northeast Benefits Conference	06/12/03-06/13/03	Natick (Boston), MA White Plains, NY	American Society of Pension Actuaries (ASPA)	www.aspa.org or ASPA Meeting Department (703) 516-9300
Mid-Atlantic Benefits Conference	05/13/03-05/14/03	Philadelphia, PA	ASPA	
Great Lakes Benefits Conference	05/01/03-05/02/03	Chicago, IL	ASPA & more than 20 cooperating sponsors	
Los Angeles Benefits Conference	01/30/03-01/31/03	Los Angeles, CA	ASPA	

Recent Events...

Name	Date(s)	Location	Non-IRS Co-Sponsor(s)	For Further Information, Please Contact
SWBA/IRS 13th Benefits Annual Employee Benefits Conference	10/21/02-10/22/02	Dallas, TX	ASPA	EP Benefits Conferences Calendar at www.irs.gov/ep



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

Department of the Treasury
Internal Revenue Service

Employee Plans News
1111 Constitution Avenue, NW
Room 4C3, T:EP:CEO
Washington, DC 20224

www.irs.gov

Publication 3749 (12-2002)
Catalog Number 31746D

Official Business
Penalty for Private Use, \$300