

# employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

Internal Revenue Service  
Tax Exempt and Government  
Entities Division

A Publication of Employee Plans

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## Information for Filing a Better Determination Letter Application

We give tips on how, what, and whether you have to file for a Determination Letter.

### Adopting a Pre-Approved Plan? No Need for a Determination Letter Application

Thinking of filing a determination letter application for your client's plan? You may not have to if your client has adopted an IRS approved Master or Prototype (M&P) plan or a volume submitter plan (See [IRS list of EGTRRA approved defined contribution pre-approved plans](#)). Subject to certain restrictions and requirements, an opinion letter issued to an M&P plan and an advisory letter issued to a volume submitter plan are equivalent to a favorable determination letter IRS would issue to a plan sponsor. See section 19 of [Revenue Procedure 2005-16](#) for further detail.

One fundamental purpose of the IRS's pre-approved plans program is to ease an employer's ability to establish and maintain a retirement plan. Another purpose of the program is to eliminate the need to file for a determination letter, or if one needs to be requested, simplify the process. So, if your client has adopted an M&P or volume submitter plan, please be sure and read section 19 of Revenue Procedure 2005-16 before you reach for a Form 5307 application; the opinion or advisory letter issued to the pre-approved plan may be enough. •

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### Under Consideration: Determination Letters without Amendment Dates

Currently, all favorable determination letters issued to plan sponsors contain caveats identifying the dates of amendments submitted and reviewed with the application. The IRS is contemplating eliminating specific amendment dates from the final determination letters. Instead, a list of the amendment dates would be submitted by the applicant as part of the determination application package, which would be attached to the final determination letter.

A current determination letter would not extend reliance to amendments which pre-date a plan's previous determination letter.

This enhanced process would eliminate determination letter amendment date errors and reduce the need for applicants to secure corrections because of keystroke or transposition errors. •

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### Form 8905 - Certification of Intent to Adopt a Pre-Approved Plan

**Form 8905**, *Certification of Intent to Adopt a Pre-Approved Plan*, should only be submitted to the IRS as part of a determination letter application. The form, introduced under the staggered remedial amendment period for EGTRRA, is used by an individually designed plan sponsor to switch from a five-year remedial amendment cycle to the six-year cycle for pre-approved plans. [Revenue Procedure 2007-44, Section 17](#) defines these employers as "intended adopters." An individually designed plan's remedial amendment cycle is based on the last digit of the employer's EIN.

Adopters of pre-approved defined contribution plans have until April 30, 2010, to adopt pre-approved defined contribution plans for EGTRRA and other qualification requirements on the 2004 Cumulative List. See [Announcement 2008-23](#).

*Example:* Employer M maintained an individually designed profit-sharing 401(k) plan. Employer M, having an EIN ending with a "6," was considered a Cycle A filer. Thus, Employer M's remedial amendment period ended on January 31, 2007. However, on January 14, 2007, Employer M and a pre-approved plan sponsor executed Form 8905 stating Employer M's intention to adopt a pre-approved profit-sharing 401(k) plan. By executing Form 8905, Employer M's remedial amendment

period is extended to April 30, 2010. If Employer M desired an individual determination letter, then it would be appropriate to attach the Form 8905 to its Form 5307 or 5300 application to show the remedial amendment period was properly and timely extended. The application would have to be submitted no later than April 30, 2010. If Employer M adopted the pre-approved plan by April 30, 2010, and wanted to rely on the opinion or advisory letter instead of requesting its own individual determination letter, then Employer M should keep the executed copy of the Form 8905 on file with the plan document.

See our web site for:

- [Form 8905 and Determination Application FAQs](#)
- [List of pre-approved defined contribution plans approved for EGTRRA](#)
- [List of pre-approved defined benefit plans submitted for new approval letters considering EGTRRA](#)
- [2004 Cumulative List](#)
- [2006 Cumulative List](#)

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## Has Your Client's Plan Merged with Another Plan? Keep All Plan Documents!

EP Determinations has been receiving numerous determination letter applications for plans that hold assets transferred from other plans, many of which do not contain the pre-merger plan documents. Assets transferred into a plan could be the result of a merger, acquisition, or consolidation involving one or more corporation or other business entities. Since EP Determination specialists routinely verify a plan's compliance with prior legislation such as GUST, the scope of verification may extend to the plans that were merged into the plan applying for a determination letter, the "pre-merged plans."

### New Address for EP Determination Applications

Forms 5307, 5300, 5310, 5310-A, and 8717 should be mailed to:

Internal Revenue Service  
P.O. Box 12192  
Covington, KY, 41012-0192.

The P.O. Box has changed. Applications mailed prior to the change will be redirected to the correct address. •

**Quality Assurance Bulletin 2006-5**, "Verification of Prior Plan Documents in the Absence of a Determination Letter," discusses IRS's policy on substantiation of compliance with prior law. If the plan sponsor of the plan that is merged into a plan submitted for a determination letter did not timely amend it to comply with all statutory and regulatory requirements subject to a remedial amendment period, the IRS will treat both that plan and the post-merger plan as nonqualified. Since the post-merger plan holds assets transferred from a nonqualified plan, both plans will remain nonqualified unless, and until, each plan's tax-qualified status is restored through a closing agreement between the IRS and the post-merger plan sponsor. Alternatively, if the business entity that sponsored the pre-merged plan remains in existence, it may enter into a closing agreement to remedy plan document failures. **Revenue Procedure 2008-50** sets forth the closing agreement program.

Securing pre-merger plan documents while a determination letter application is pending with the IRS is frequently time-consuming since many documents are difficult to locate from the pre-merger business' files. Contacting many practitioners and obtaining pre-merger documents causes case processing delays. In order to increase the efficiency of the determination process, pursuant to **Revenue Procedure 2008-6**, section 6, a determination letter application filed for a post-merger plan must include a copy of the pre-merged plan's determination letter and/or plan amendments which confirm that the pre-merged plan was qualified when it was merged into the surviving plan. Otherwise, the IRS will return the application to the sponsor as incomplete. This change in policy is effective immediately. •

## Common Plan Language Errors

Employee Plans Determination specialists often see the same mistakes as they review plans. We have listed some common plan language errors below. Take a look and make sure that your plans have the correct language so that we can expedite their review and issuance of their favorable determination letters.

1. Defined benefit plans not updated for the final 415 regulations as required by the **2006 Cumulative List**:
  - Plans submitted for Cycle B and later don't have the language effective for limitation years beginning on or after July 1, 2007.
  - Plans must contain language for the adjustments to the dollar limitations under Code §415(b)(1)(A) if they provide a retirement benefit that begins before age 62. Dollar limit adjustments must be made in accordance with Code §§415(b)(2)(C), 415(b)(2)(E)(i) and (v), and I.T. Regulations §1.415(b)-1(d).
  - Plans must contain language for adjustments to the dollar limitation if the plan provides for benefits that commence after age 65. Dollar limit adjustments must be made in accordance with Code §§415(b)(2)(D), 415(b)(2)(E)(iii), and I.T. Regulations §1.415(b)-1(e).
  - Plans must contain language for when benefits are payable in a form other than a straight life annuity and the form of benefit is not subject to Code §417(e)(3). These benefit adjustments must be made in accordance with Code §§415(b)(2)(B), 415(b)(2)(E)(i), and I.T. Regulations §1.415(b)-1(c).
2. Defined contribution plans still include correction methods for excess annual additions in §1.415-6(b)(6) of the 1981 regulations. However, the final regulations issued in 2007 deleted the permitted correction methods in the 1981 regulations. Plans that include a correction method in the event a participant would exceed the annual additions should be amended to delete the language effective for limitation years beginning on or after July 1, 2007.
3. All plan types often fail to update for final regulations §1.415(c)-2(e)(3)(i) and (ii). These regulations require certain post severance compensation to be included as 415 compensation, while other post severance compensation may optionally be included.
4. All plan types frequently contain an incorrect definition of Top-Heavy Ratio. Distributions made to a participant during the *one-year period* ending on the determination date must be added to the present value of the cumulative accrued benefit. However, if a distribution is made for a reason other than severance from employment, death, or disability, the *five-year look back period* is used. Often, plans incorrectly refer to "separation from service" but should instead refer to "severance from employment."
5. 401(k) plans:
  - Code §414(v)(5)(A) provides that an "eligible participant" for purposes of making catch-up contributions means a participant in a plan who would attain age 50 by the end of the taxable year. Some plan documents erroneously refer to the "plan year" rather than the "taxable year."
  - Some plans are still providing for the use of "targeted QNECs" and "targeted QMACs" to correct ADP test failures. If a plan permits using QNECs and QMACs to correct ADP test failures, it must provide that disproportionate contributions will not be taken into account. See I.T. Regulations §§1.401(k)-2(a)(6)(iv) and 1.401(m)-2(a)(5)(ii), respectively.

These errors are just a sampling of the recurring items that specialists find in reviewing plans. A careful review for these particular items may help expedite the determination letter application process. •



## Tips for Quick Processing of Employee Plans Determination Letter Applications

Employee Plans Determinations has updated our computer system to process determination letter applications by scanning them into the Tax Exempt Determinations System (TEDS). We can increase the efficiency of this system if you submit your applications without using staples, rubber bands, or bound documents.

Please organize your Form 5300 application in the following order:

1. Cover letter identifying the below listed items and any information relevant to the plan being submitted (i.e., the application is being filed on- or off-cycle; the plan was involved in a merger; it was submitted to the IRS Voluntary Compliance function; the plan is currently under audit; or that it is being submitted with a related plan, etc.);
2. Form 8717 (with user fee check, if applicable);
3. Authorization to represent the employer (Form 2848 and/or Form 8821);
4. Form 8905, if applicable;
5. Application Form;
6. Attachments relating to application questions (i.e., controlled group statement);
7. Schedule Q;
8. Demonstrations;
9. Notice to Interested Parties;
10. Meeting minutes, resolutions or other formal actions approving amendments, restatements, or actions involving the plan such as merger or termination;
11. Restated plan;
12. EGTRRA good faith amendments;
13. All executed interim and discretionary amendments in chronological order with the latest on top;
14. Current trust agreement;
15. Verification of prior law, such as a prior determination letter or adoption agreement/plan document and all amendments not covered by a prior letter; and
16. All other pertinent documents, such as merger agreements or compliance statements.

Please organize your Form 5307 application as indicated above with the following exceptions:

- Provide a list of volume submitter modifications after meeting minutes.
- EGTRAA good faith and interim amendments need only be submitted for volume submitter plans that do not authorize the practitioner to amend on behalf of the adopting employer.

Please organize your Form 5310 application as indicated above with the following exceptions:

- Provide Form 6088 after Form 2848.

By submitting documents in the order stated above, we can quickly scan your submission and assign it to a determination specialist. For additional information regarding the submission process see Revenue Procedure 2008-6 (updated annually) and Announcement 2008-23.

*Other Items:* Please use the most current [Form 5307](#), revised in March 2008, to allow for optical scanning. Per Announcement 2008-23, the IRS will no longer accept an older version of the form as of October 1, 2008.

If submitting a plan that has been involved in a merger, the application must demonstrate that all merged plans are qualified as of the date of merger in order for the surviving plan to receive a letter. We will return applications that do not provide this information. •

## Sound Off about the Self-Correction Program

### A Message from Joyce Kahn

We asked Joyce Kahn, Manager of our Voluntary Compliance programs, about what is at stake for our Self-Correction Program and how you can help us improve it.

#### Joyce, what is the purpose of the Self-Correction Program survey?

We have heard anecdotally that the Self-Correction Program is very successful and widely used, and we are very pleased to hear that. I know that one of the most appealing aspects of the Self-Correction Program is that correction of plan failures can be accomplished without notifying the IRS. But as a result, we have little information from the retirement plans community to measure the use of the Self-Correction Program and assure its continued vitality. We constructed the Self-Correction Survey in order to get a look at the use of the program.

#### How has the response to the Self-Correction Survey gone so far?

First, I want to thank all of you who have already taken the survey. Your responses are very valuable to us. However, we have not received enough responses to get a picture of how the Self-Correction Program is used and how to improve it. Some have suggested that the IRS require users of the Self-Correction Program to provide the IRS notice regarding self-corrected failures; however, I really have no intention of implementing such a requirement and have no intention of cutting back on the program. I am asking practitioners and plan sponsors to respond to the survey and give us their frank feedback. The survey is totally anonymous and we will use the feedback to improve and expand the program.

#### What thoughts would you like to leave the retirement plans community with?

Our correction programs have steadily grown over the years. I am very proud of this and intend to continue this tradition. My goal is to provide you with programs that will best facilitate appropriate plan correction. I believe that by partnering with you, we improve compliance in retirement plans across the country. I think that, in general, retirement plans are in a better state of compliance than they were 10 years ago. Take credit for that, blow your horn, and take our [survey](#) so that we can expand and improve our Self-Correction Program! •

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## Extension of Year-End Deadline for 403(b) Plan Sponsors

On December 11, 2008, the IRS released [Notice 2009-3](#) extending the deadline for 403(b) plan sponsors to adopt new written plans or amend their existing written plans from January 1, 2009, to December 31, 2009. The IRS will consider 403(b) plans as meeting the requirements of §403(b) and the final regulations for 2009 if the plan sponsor:

1. adopts or amends a written plan by December 31, 2009 that is intended to satisfy §403(b) (and the final regulations) effective January 1, 2009;
2. operates the plan during 2009 with a reasonable interpretation of §403(b), taking into account the final regulations; and
3. makes its best effort to retroactively correct by the end of 2009, any operational failure occurring in 2009 to conform to the written plan, based on the general principles of correction in section 6 of [Rev. Proc. 2008-50](#), the revenue procedure for the IRS's Employee Plans Compliance Resolution System.

The IRS plans to issue further guidance on 403(b) plans, including a revenue procedure establishing programs for 403(b) plans to obtain IRS approval of their plan document and allowing them to correct plan provisions for years after 2009 by making remedial amendments. Stay tuned! •

## 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's Employee Plans (Tax Exempt and Government Entities) office.

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

### How to Subscribe

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

### Send Comments/Suggestions to:

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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 section 125 cafeteria plans:

Please call (800) 829-1040. •

## Cycle C Deadline

The Cycle C deadline for submitting determination letter applications for individually designed plans under Revenue Procedure 2007-44 ends January 31, 2009. A question has been raised as to whether the deadline is extended to Monday, February 2, 2009, since January 31, 2009 is a Saturday. Although this does not generally fall within the rules of Code §7503, the IRS will accept an application for a Cycle C determination letter if it is submitted no later than February 2, 2009. Please note that although February 2 is Groundhog Day, this does not give applicants unlimited do-overs as in the movie by the same name. •

## SIMPLE IRA Plan Fix-It Guide Helps Keep Your Plan on Track

Following the lead of our popular "401(k) Fix-It Guide" and "SEP Plan Fix-It Guide," EP has created a guide for SIMPLE IRA plans. The [SIMPLE IRA Plan Fix-It Guide](#) is an online resource for SIMPLE IRA plan sponsors and their tax advisors to help them find, fix, and avoid common plan mistakes in their SIMPLE IRA plans. The guide gives trends and tips for ten frequent issues that the IRS sees in the operation of SIMPLE IRA plans, including:

- plan document updates,
- employee eligibility,
- timeliness of contributions,
- definition of compensation for determining SIMPLE IRA contributions, and
- coverage requirements.

By selecting "More," the guide directs the user to additional information describing the law, guidance, and correction methods for each plan mistake. It also directs plan sponsors and practitioners to IRS correction programs to correct the mistake, if needed. Employers should consider this list of potential mistakes as they review their SIMPLE IRA plans' operation.

In response to customer feedback, we have also posted a [printer-friendly](#) Fix-It Guide. This enables plan sponsors to select and print only the mistakes that are of interest to them.

We will continue to update the "Fix-It Guide" with the latest SIMPLE IRA error trends – so, check back periodically for new information.

You can find the [SIMPLE IRA Plan Fix-It Guide](#), along with the [SEP](#) and [401\(k\) Fix-It Guides](#) by selecting the "Plan Sponsor/Employer" tab at the top of the [Retirement Plans Community](#) web page. •

## Saver's Credit - Another Good Reason to Start Saving for Retirement

In addition to potentially qualifying for a tax deduction for contributing to their Individual Retirement Account (IRA) or their employer's retirement plan, some taxpayers may be eligible for a **Saver's Credit**, also known as the Retirement Savings Contributions Credit, of up to \$1,000 (\$2,000 for taxpayers married filing jointly). The Saver's Credit can be claimed by:

- Married couples filing jointly with incomes up to \$53,000 in 2008 (\$55,500 in 2009);
- Heads of Household with incomes up to \$39,750 in 2008 (\$41,625 in 2009); and
- Married individuals filing separately and singles with incomes up to \$26,500 in 2008 (\$27,750 in 2009).

An individual can claim the 2008 Saver's Credit by contributing to a new or an existing IRA by April 15, 2009. However, to claim it for salary deferrals to a 401(k), 403(b), SARSEP, SIMPLE IRA, or 457 plan, the deferrals must be made before January 1, 2009.

To claim the Saver's Credit, a taxpayer must complete and attach *Credit for Qualified Retirement Savings Contributions*, **Form 8880**, to their tax return, and must be at least 18 years of age. The taxpayer must not be claimed as a dependent on someone else's tax return and must not have been a full-time student during any part of 5 calendar months during 2008. See **Publication 4703** for more information. •

**Actuarial Corner: User Fee Q&As on Extending an Amortization Period, Change in Funding Method Requests, and New Schedules SB & MB**

## Revenue Procedure 2008-8 - User Fee Frequently Asked Questions

Recently the IRS has received a number of questions about **Revenue Procedure 2008-8**. We have listed some of the most frequently asked questions with the answers below.

Q. What is the user fee for submitting an application for extending the amortization period?

A. The user fee is specified in section 6.01(12) of Revenue Procedure 2008-8. The category is "all other," and the fee is \$9,000. This amount is the fee whether you are submitting for only an automatic extension, or a combined application for an alternate extension as well as an automatic extension.

Q. Does the notice mentioned in section 3.04 of Revenue Procedure 2008-8 get sent to the PBGC?

A. Yes, the notice must also be sent to the PBGC. The Revenue Procedure failed to include the PBGC as a recipient in listing the affected parties to whom notification must be made. We expect to issue guidance to reflect the correct list of recipients.

Q. Section 3.04 of Revenue Procedure 2008-8 says the notice must be sent out within 14 days *before* the application is submitted. However, the first sentence of the Model Notice says "This notice is to inform you that an application...*has been submitted*..." How can both provisions be followed?

A. We expect to issue guidance to correct this discrepancy. The Model Notice should say that an application "will be submitted within 14 days..." •



## 2008 Form 5500 – Schedules SB & MB

On December 10, 2008, the Department of Labor, Internal Revenue Service, and Pension Benefit Guaranty Corporation released the **2008 Form 5500**, schedules, and instructions for filing (see “DOL Corner” for 2008 changes). You can order the forms, schedules, and instructions by calling IRS at (800) TAX-FORM (829-3676).

Under the Pension Protection Act, separate actuarial information schedules were developed for 2008 plan year filings. Single-employer and multiple-employer plans now will use the Schedule SB (*Single-Employer Defined Benefit Actuarial Information*) and multiemployer and certain money purchase plans will now use Schedule MB (*Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information*).

The 2007 Schedule B **cannot** be used to satisfy the 2008 filing requirements for the annual return/report. However, plan sponsors may use it as an attachment to Schedule SB. The **Form 5500 instructions** contain details about these changes.

You can access the EFAST web site, [www.efast.dol.gov](http://www.efast.dol.gov), to:

- View forms and related instructions.
- Get information regarding EFAST, including approved software vendors.
- See answers to frequently asked questions about the Form 5500 and EFAST.
- Access the main EBSA and DOL web sites for news, regulations, and publications.

You can access the IRS web site, [www.irs.gov](http://www.irs.gov), to:

- View forms, instructions, and publications.
- View filing tips & updates, notices, and other helpful materials to assist you in preparing your Form 5500 (5500-EZ) return.

For general Form 5500 assistance, contact the EFAST Helpline at (866) 463-3278.

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## Changes in Funding Methods in 2009

We have received some questions about the appropriate timing for submission of applications for changes in funding method for a plan year. We would like to respond with two observations about the timing of these applications.

First, there is no need to rush to apply before the end of 2008. Under section 4.02 of **Revenue Procedure 2000-41** (the existing revenue procedure for requesting approval for a change in funding method), the application for a change in funding method is to be made by the close of the plan year for which the funding method is applicable. Thus, for a plan with a calendar plan year, a request for approval of a method change for 2009 does not need to be made until the end of next year.

Second, the Service is aware that some plans desire to change their funding method (in particular, the method of determining the value of plan assets) so that the full impact of the market downturn will not have to be reflected in the asset value as of the valuation date. For plan years beginning in 2008, the proposed regulations under §430 would provide automatic approval for any change in funding method that is in accordance with §430. Thus, a large plan with a plan year beginning December 1, 2008 could switch asset valuation methods for the December 1, 2008 valuation.

The automatic approval for changes in the proposed regulations does not apply for plan years beginning in 2009. However, as was indicated in **Notice 2008-73**, the IRS is considering possible automatic approval of certain changes in funding methods for the 2009 plan year, pending the issuance of final regulations under Code §§430 and 436. While we understand that some plan sponsors would like to apply for a change in funding method for the plan year beginning January 1, 2009 with the goal of avoiding the imposition of benefit restrictions under Code §436, we do not anticipate acting upon requests for changes in funding method for 2009 until the regulations are final. Accordingly, plan sponsors should defer any requests for changes until after they see the extent of automatic approval in the final regulations.

Form  
5500

## Critical Priorities...With Monika Templeman

### Today's Discussion: Employee Plans Compliance Unit (EPCU)

#### Monika, I would like to take some time today to discuss the Employee Plans Compliance Unit, or EPCU as it is widely known. What is the EPCU?

The Employee Plans Compliance Unit addresses pension compliance in a whole new way by using compliance checks and questionnaire studies to pinpoint areas of non-compliance with minimal burden to compliant taxpayers. The Unit has proven to be an extremely successful innovation that allows us to reach out to a larger portion of the EP universe, positively impact compliance, and increase our enforcement presence.

#### What were the IRS's reasons in establishing the EPCU?

The IRS established EPCU to focus on specific areas of potential non-compliance. We conduct compliance checks using data analysis and identified problem trends. Compliance checks are not audits and are limited to a single issue. Since many questions/problems can be resolved without an audit, we can use the EPCU to conduct compliance checks while leveraging our resources and significantly increasing our compliance coverage. A compliance check is usually handled through correspondence and can involve projects such as determining whether a reporting requirement is being met. It can also be used to match information from a return to a plan sponsor's records to resolve discrepancies while, at the same time, educating taxpayers. Incidentally, a compliance check contact does not preclude a plan from using our voluntary compliance programs under EP Compliance Resolution System (EPCRS), an inexpensive and non-draconian way to correct plan errors, unless the issue cannot be resolved and is referred for audit. We also use the EPCU to conduct questionnaire studies and assist in identifying abusive emerging issues. So, you can see how the EPCU is an excellent way for us to reach a lot more folks and address compliance issues on more plans with less staffing than by performing traditional field examinations. This approach results in reducing taxpayer burden, while saving time and money for both the taxpayer and the IRS.

#### Have these contacts eliminated field examinations?

No. Compliance checks will not replace field audits. EP maintains a very active nationwide examination program.

#### Does the EPCU consist solely of revenue agents?

No. Along with senior employee plans revenue agents, the EPCU is also staffed with a computer research analyst, a tax analyst, and several tax compliance officers and tax examiners. The Unit has staff members throughout the country. This allows the EPCU to address compliance issues consistently and efficiently in the employee plans community nationwide.

#### How many compliance checks have been performed?

EPCU has made approximately 8,000 compliance contacts and completed several important compliance projects since its inception in 2004.

#### How many projects are currently in process?

The EPCU has nine projects in process. "In process" means that taxpayers have been contacted about an apparent problem with their plan. Some of these projects include: 1) a *Master & Prototype (M&P) Project* to determine if M&P sponsors are fulfilling their responsibilities to adopting employers under Revenue Procedure 2000-20. These include record keeping and ensuring that adopting

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

Milo Atlas  
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Kathy Tuite  
Cathy Waite  
JoAnna Weber  
Melissa Whelan

employers executed required documents related to the provisions of GUST; 2) a *Funding Deficiency Project*, focusing on plans that may or may not have met minimum funding requirements. It entails funding deficiency correction and securing delinquent Forms 5330; 3) a *Prohibited Transaction Project* focusing on 401(k) plans that indicate prohibited transactions as a result of late elective deferral payments; and 4) a *Code §403(b) Universal Availability Project*, the highest volume and most visible EPCU Project to date. In this project, the EPCU contacted over 3,000 school districts in over 40 states and found that more than 20% had universal availability problems. §403(b) plan sponsors' voluntary corrections resulted in not only teachers, but also school bus drivers, cafeteria workers, janitors, and substitute teachers being included in these plans.

Fiscal Year 2009 projects include a *Multiemployer Certification Project*, verifying their compliance with the new annual certification requirements under PPA 2006 and a *401(k) Questionnaire Project*. Detailed information about the EPCU and current projects are available at our [EPCU](#) web page.

### **What are some of EPCU's completed projects?**

The EPCU has completed three projects - a fraud project, a funding waiver project, and a project that followed up on plan sponsor corrections listed in their voluntary compliance statements.

### **Please elaborate on the voluntary compliance project. What did the EPCU find?**

In cases where the Unit made contact with a plan sponsor, we found that 29% had violated the terms of their Voluntary Compliance Statement. Mainly, plan sponsors were not making the proposed correction within the 150-day time period required by the statement.

### **What affect do the EPCU findings have on your examination program?**

It depends on the project study and the results. Actions beyond the scope of the EPCU might include conducting more examinations based on the non-compliant issue, using our Customer Education and Outreach department to create written or web material, or communicating in my speeches across the country.

### **So, I am a taxpayer who receives a letter from the EPCU. Where can I go to get assistance?**

When the program first started, we had many plan sponsors asking for help; so we created our user-friendly EPCU web site. If you look under current projects, you will find a wealth of information, including what to do if you receive a letter and who to contact if you have any questions. The site also shares the closed project findings and lists the approved projects waiting in queue for the EPCU to start.

In response to the growing interest in our EPCU Projects, this newsletter will have a recurring article on the latest developments in the EPCU. So stay tuned.

Thanks Monika. Readers can go to this [e-mail address](#) and provide Monika comments on this article or provide ideas for future articles.

## Highlights of the *Retirement News for Employers*

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

The Fall **2008 Edition** featured:

- “Required Minimum Distribution Reminder”- Use the worksheets posted on our web site to calculate the amount of RMDs from IRA accounts and also see our FAQs regarding Required Minimum Distributions.
- “Is My Plan the Right Plan?” - An interview with the EP Exam Director reminds businesses to re-evaluate their retirement plans based on their workforce to ensure they are the right fit.
- “We’re Glad You Asked!” discusses how to treat a plan distribution that is made up of both employer and employee contributions.
- “2009 Retirement Plan Limits” lists 2009 Cost-of-Living Adjustments.
- “Fixing Common Plan Mistakes” describes how to correct a plan administrator’s failure to give a Safe Harbor 401(k) Notice.

It’s easy to subscribe: Just go to the **Retirement Plans Community** web page, select “Newsletters,” and click on “Retirement News for Employers.” •

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

### IRS Nationwide Tax Forums – EP Presentations

You can now view EP’s presentations given at the 2008 IRS Nationwide Tax Forums:

- **[Retirement Plan Choices for Self-Employed Individuals](#)**
- **[401\(k\) Plans for Self-Employed Individuals](#)**
- **[Retirement Plan Pitfalls Workshop \(Use IRS Fix-It Guides to Keep Your Clients Out of Trouble\)](#)**

### Frequently Asked Questions on Required Minimum Distributions

We have updated our **FAQs on Required Minimum Distributions**. See our two **worksheets** on how to calculate your Required Minimum Distribution from your IRA.

### COLA Increases

The IRS recently announced the 2009 Cost-of-Living Adjustments for pension plans. We have updated our **COLA Increases for Dollar Limitations on Benefits and Contributions** web page. •





## PBGC Insights

### Final Rules

In late 2008, PBGC published three final rules. The first is a Pension Protection Act implementation rule and the other two are routine annual updates:

**Disclosure of Termination Information** implements Pension Protection Act §506 which amends ERISA §§4041 and 4042 to require that plan administrators, plan sponsors, and PBGC disclose certain information in connection with distress terminations or PBGC-initiated terminations to affected parties upon request.

**Expected Retirement Age Update** amends PBGC's valuation regulation by substituting a new table for selecting a retirement rate category. The new table applies to any plan being terminated in either a distress termination or involuntarily by PBGC with a valuation date falling in 2009.

**2009 Maximum Guarantee** amends PBGC's benefits payment regulation by updating the maximum guaranteeable monthly benefit table for 2009. The maximum guaranteeable monthly benefit for 2009 is \$4,500.

### Premiums for 2009

The inflation-adjusted annual flat-rate premium for plan years beginning in 2009 is \$34 per participant for single-employer plans (up from \$33 for 2008) and \$9 per participant for multiemployer plans (unchanged).

The **2009 premium instructions** (for both estimated flat-rate filings for large plans and comprehensive filings for all plans) are on PBGC's web site. By law, the premium rates are adjusted for inflation each year based on changes in the national average wage index.

PBGC's premium e-filing application, My Plan Administration Account (My PAA), is expected to be ready to accept 2009 premium filings (both estimated flat-rate filings and comprehensive filings) by the end of January 2009. While the full range of due dates is in our 2009 premium instructions, the earliest 2009 filing due dates for calendar year plan years are:

March 2, 2009 (Monday) for flat-rate premiums for large plans - those with 500 or more participants in the prior plan year (note that the actual due date of February 28, 2009, is a Saturday).

October 15, 2009 (Thursday) for comprehensive filings for mid-size and large plans - those with 100 or more participants in the prior plan year.

April 30, 2010 (Friday) for small plans - those with fewer than 100 participants in the prior plan year.

### My PAA and [www.pbgc.gov](http://www.pbgc.gov)-Getting Better All the Time:

Users of PBGC's premium e-filing system, **My PAA**, reported greater satisfaction with the system in 2008, with a score of 80, up from 76 in 2007. Over the past year, PBGC used customer feedback to improve the **My PAA** filing experience by providing additional **online resources**, such as **webcasts and demos**, **FAQs**, and a **What's New subscription service**. PBGC also expanded hours of phone and e-mail support during peak filing times. Customers can expect more intuitive navigation, as well as convenient links to online instructions and demos, with a new release planned for early 2009. Satisfaction with PBGC's web site, [www.pbgc.gov](http://www.pbgc.gov), has also been rapidly improving, as customer satisfaction in 2008 rose to 70 from 62 in 2007. Search and navigation have been targeted, with numerous improvements in these areas to help site visitors more easily locate material of interest. Also, PBGC recently added a **Forms for Practitioners** page to PBGC.gov. The new page displays forms and other reporting tools grouped by topic areas such as financial reporting, reportable events, and terminations. See Publication 4703 for more information. •

### What's New for Practitioners

Signing up for our "What's New" alerts will keep you up to date with PBGC's changes and items of interest. In addition, you will automatically receive an e-mail alert from us whenever PBGC adds an item to the "What's New" page. To sign up, go to the **Practitioners** page at [www.pbgc.gov](http://www.pbgc.gov), click on **What's New** (in upper right corner), and follow the instructions. •

## 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.

### 2008 Form 5500 Annual Report

On December 10, DOL/EBSA, the IRS, and the PBGC released the 2008 Form 5500 annual return/report, schedules, and related instructions. Informational copies can be obtained at our [web site](#).

Modifications to the Form 5500 for plan year 2008 are described under "Changes to Note" in the 2008 instructions. Significant changes include:

- New actuarial schedules replace the Schedule B (*Actuarial Information*) and must be used for plan year 2008 filing – Schedule MB, *Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information*, and Schedule SB, *Single-Employer Defined Benefit Plan Actuarial Information*. If the due date of the plan's 5500 occurred before the 2008 forms were available for filing, the plan has an automatic extension until 90 days from December 10, 2008, to file a complete Form 5500.
- Multiemployer defined benefit pension plans generally must file additional information as attachments to the Schedule R, *Retirement Plan Information*. Defined benefit plans of 1,000 or more participants must also include financial assets breakout information as an attachment to the Schedule R.
- The voluntary simplified reporting option for certain plans with fewer than 25 participants at the beginning of the plan year will continue for the 2008 filings.

Filers should monitor the [EFAST](#) web site for approved software vendors to complete the 2008 forms.

### Guidance on Exercising Shareholder Rights and Investing in Economically Targeted Investments

On October 17, DOL/EBSA published two interpretive bulletins in the *Federal Register* clarifying the obligations of plan fiduciaries when considering shareholder rights and investments in economically targeted investments.

The [bulletin](#) on economically targeted investments supplements earlier guidance issued by DOL/EBSA addressing the limited circumstances under which ERISA fiduciaries may, in connection with investment decisions, take into account factors other than the economic interests of the plan. The supplement further clarifies, through explanation and examples, that fiduciary consideration of non-economic factors should be rare and, when considered, must comply with ERISA's rigorous fiduciary standards.

The [bulletin](#) on shareholder rights updates prior guidance issued by DOL/EBSA on the application of ERISA's fiduciary standards to proxy voting. The new bulletin includes clarifications of the earlier guidance, as well as interpretive positions issued by DOL/EBSA since 1994 on shareholder activism and socially-directed proxy voting initiatives.

The guidance reiterates that plan fiduciaries, who are charged by law with the responsibility for operating employee benefit plans on behalf of plan participants, may never increase expenses, sacrifice investment returns, or reduce the security of plan benefits in order to promote legislative, regulatory, or public policy goals that have no connection to the payment of benefits or plan administrative expenses.

**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. •

### Guidance on Fidelity Bonding

On November 25, DOL/EBSA issued [Field Assistance Bulletin 2008-04](#) which provides guidance on the fidelity bonding requirements under ERISA §412. FAB 2008-04 was developed to address issues that EBSA investigators frequently confront in their investigations. The 42 FAQs address a variety of issues including: whether a bond may use an omnibus clause to name insured plans; how to calculate the bond amount when multiple plans are covered under a single bond; whether the \$1 million bond maximum applies in the case of plans that hold employer securities solely as a result of investments in pooled investment funds; and whether third party service providers are subject to the bonding requirements if they handle plan funds. •

## Employee Plans Published Guidance

(October 2008 – December 2008)

### Regulations

#### [REG 107318-08 73 Fed. Reg. 59575](#)

These proposed regulations provide that the notice required under §411(a)(11) to inform a participant of his or her right, if any, to defer receipt of an immediately distributable benefit, must also describe the consequences of failing to defer receipt of the distribution. They also provide that the applicable election period for waiving the qualified joint and survivor annuity form of benefit under §417 is the 180-day period ending on the annuity starting date, and that a notice required to be provided under §§402(f), 411(a)(11), or 417 may be provided to a participant as much as 180 days before the annuity starting date (or, for a notice under §402(f), the distribution date).

### Revenue Procedures

#### [Rev. Proc. 2008-62, 2008-42 I.R.B. 935](#)

This revenue procedure states the method for defined benefit plan sponsors, other than those sponsoring a multiemployer plan, to request and obtain approval to use plan-specific substitute mortality tables under Code §430(h)(3)(C) and ERISA §303(h)(3)(C). It updates Rev. Proc. 2007-37, 2007-25 I.R.B. 1433.

#### [Rev. Proc. 2008-67, 2008-48 I.R.B. 1211](#)

This revenue procedure explains how a multiemployer pension plan sponsor can request and obtain approval of an extension of an amortization period in accordance with Code §431(d) and ERISA §304(d). It supersedes Rev. Proc. 2004-44, 2004-31 I.R.B.134.

### Notices

#### [Notice 2008-85, 2008-42 I.R.B. 905](#)

The notice provides updated static mortality tables for use in applying the minimum funding requirements to single employer defined benefit pension plans that do not choose to use generational mortality tables and are not approved to use employer-specific substitute mortality tables. These mortality tables are also used for multiemployer plans for certain funding requirements. The tables apply for calculating the funding target and other items for valuation dates occurring during the calendar years 2009 through 2013.

#### [Notice 2008-98, 2008-44 I.R.B. 1080](#)

This notice provides that the IRS and Treasury intend to amend the effective date for the normal retirement age regulations for governmental plans to plan years beginning on or after January 1, 2011. This will give governmental plans two additional years to comply with the requirements in the normal retirement age regulations.

**Notice 2008-102, 2008-45 I.R.B. 1106**

This notice lists certain cost-of-living adjustments effective January 1, 2009, for the dollar limitations on benefits and contributions under qualified retirement plans. Other limitations applicable to deferred compensation plans are also affected by these adjustments. See IR-2008-118 issued October 16, 2008.

**Notice 2008-108, 2008-50 I.R.B. 1275**

This notice lists changes referred to in Rev. Proc. 2007-44, 2007-2 C.B. 54, for the statutory, regulatory, and guidance changes that requests to the IRS for opinion, advisory, and determination letters need for the 12-month period beginning February 1, 2009.

**Notice 2009-3, 2009-2 I.R.B.**

This notice provides relief in 2009 for §403(b) plan sponsors regarding the requirement to have a written §403(b) plan in place by January 1, 2009. It also briefly describes other programs the IRS intends to establish for §403(b) plans. IRS News Release 2008-140 was also issued on December 11, 2008.

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## Calendar of EP Benefits Conferences

### UPCOMING EVENTS...

<b>Name</b>	<b>Date(s)</b>	<b>Location</b>	<b>Co-Sponsor(s)</b>	<b>For Further Information, Please Contact</b>
<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, & cooperating sponsors	<a href="http://www.asppa.org">www.asppa.org</a>
<b>Great Lakes Benefits Conference</b>	04/20/09-04/21/09	Chicago, IL	ASPPA	<a href="http://www.asppa.org">www.asppa.org</a>
<b>Mid-Atlantic Benefits Conference</b>	04/29/09-04/30/09	Washington, DC	ASPPA	<a href="http://www.asppa.org">www.asppa.org</a>
<b>Northeast Area Benefits Conference (2 Locations)</b>	07/16/09 or 07/17/09	Boston, MA or New York, NY	ASPPA & NE Area Pension Liaison Group	<a href="http://www.asppa.org">www.asppa.org</a>

### RECENT EVENTS...

<b>Name</b>	<b>Date(s)</b>	<b>Location</b>	<b>Co-Sponsor(s)</b>	<b>For Information, See</b>
<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.irs.gov/ep">www.irs.gov/ep</a>
<b>21st Annual Cincinnati Employee Benefits</b>	06/12/08-06/13/08	Cincinnati, OH	Cincinnati Bar Association	