

# employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

Internal Revenue Service  
Tax Exempt and Government  
Entities Division

A Publication of Employee Plans

- page 3**  
ESOPs, S Corps and New 409(p)  
Regulations
- page 3**  
Follow Up on Form 2848
- page 3**  
Cumulative Effect
- page 4**  
Phased Retirement
- page 4**  
Calling All Callers and E-mailers, Too
- page 5**  
Amendments: Caveat Pre-Emptor?
- page 5**  
DOL Corner
- page 6**  
PBGC Insights
- page 8**  
2004: A Year That Was
- page 10**  
The Corner of Forms & Pubs
- page 10**  
Web Spins
- page 11**  
Quick Hits
- page 12**  
Employee Plans Published Guidance
- page 13**  
FY 2005 EP Work Plan
- page 14**  
2005 Los Angeles Benefits Conference
- page 15**  
SWBA/IRS Conference Recap
- page 15**  
Calendar of EP Benefits Conferences

## EP Connections with Steven T. Miller

*Steve Miller took the helm of the Tax Exempt and Government Entities Division (TE/GE) of the IRS on June 1, 2004. Before his selection as TE/GE Commissioner, Steve served as Director of Exempt Organizations, a post he held since 1999, with experience in both pension and exempt organization tax law. Miller served in the IRS Chief Counsel's office for several years. He joined Employee Plans and Exempt Organizations (the precursor to TE/GE) in 1993. Miller also has experience as a congressional staff member for the Joint Committee on Taxation and in private practice.*

### **You have been in your job as TE/GE Commissioner for six months. What can you tell us about your first half-year in this job?**

First, let me say that I am greatly honored by the opportunity to serve as division commissioner. Coming into the job behind Evelyn Petschek, whose knowledge and experience is so vast, was daunting. It's an exciting time for me though as it's allowing me to get back into the world of employee plans while learning more about the government entities side of the house. I'm also still able to remain involved with the exempt organization side.

The first six months were challenging. With four of the five top leadership positions in TE/GE turning over, my first major challenge in the job was filling the vacancies. I believe that we now have a very solid leadership team. We were very fortunate that Sarah Hall Ingram, our former Counsel, agreed to come in as Deputy Commissioner. Her wealth of experience in all matters in TE/GE is quite valuable to the organization. Martha Sullivan, who came to us from Small Business/Self-Employed Division (SB/SE), took the helm of Exempt Organizations. Her knowledge of examination programs has already been a great help to the organization and a great addition to the TE/GE family. To head up Government Entities, Preston Butcher moved over from EP Examinations. Michael Julianelle, also from SB/SE, took over Preston's slot in EP. Janna Skufca is also new to the position of Customer Account Services Director. Needless to say, it was quite a changeover. I'm particularly grateful to Carol Gold for her steadfast support during this time period.

### **What direction do you see TE/GE, and especially EP, going in the short term?**

This is an interesting and exciting time for TE/GE. December 5<sup>th</sup> was TE/GE's fifth anniversary as an operating division and we've accomplished so much in those five years. I'm very proud of our accomplishments and having those successes in place, we can now move into a new phase of our work.

During 2004, IRS Commissioner Mark Everson asked us to begin rebalancing our work. That is, begin moving toward more enforcement while still maintaining our service levels. The IRS's Strategic Plan for 2005-2009 is built on the idea that to achieve the levels of compliance that Congress and the American public expect of us, we must increase our enforcement presence and combine it with high-quality service to our customers.

*continued on page 2*

## EP Connections *continued from page 1*

I truly believe we have made progress in this area, but it's a difficult transition, particularly since our early emphasis was on outreach. In EP, the Customer Education and Outreach (CE&O) group has done some fabulous work and I don't anticipate that trend to stop. Like CE&O, Voluntary Compliance and Determinations also play vital roles in enforcement. In the future, I foresee all these offices working even closer together to support enforcement initiatives.

### **What do you see as EP's critical priorities?**

Clearly, the move toward more enforcement is critical, but I think we've already started to make progress in that area. EP has realigned offices and established dedicated rulings & agreements and examinations functions in order to stabilize the work in those offices. We're also looking at ways to increase compliance contacts. Many problems and questionable items can be resolved through telephone or mail contact rather than a field office exam. So, to accomplish more of these "soft contacts," we expect to begin staffing an Employee Plans Compliance Unit (EPCU) sometime this fiscal year.

Another priority for EP is to identify and counter Abusive Tax Avoidance Transactions (ATAT). This is an issue of concern for all of IRS. In TE/GE we are seeing instances where the tax-exempt status of organizations, or as in the case of EP, retirement plans are taken advantage of. We will continue to develop resolution strategies to address and correct these abuses.

*TE/GE Commissioner Steve Miller gives his first published interview to the Employee Plans News. Read his thoughts on what TE/GE and EP are doing now and what they'll be doing in the near future.*

The stabilization of determination receipts is yet another important initiative. The new staggered approach will make a serious difference and we are well on our way to increasing efficiency in this process. Finally, I would be remiss not to mention pension funding. The underfunding of plans is a problem and scrutiny of these plans will be expanded. Throughout this process, we will work closely with PBGC and DOL to deal with this issue.

### **What do you predict for the future of TE/GE and EP in particular?**

The direction we are going in now is the right way to go. Balancing our priorities and approaches to enforcement and service will go quite far in increasing compliance. What I think will happen in the future is that we will learn from our experiences and work smarter and more efficiently. In all of TE/GE, including EP, we are working to do a better job of analyzing our customer population through risk assessments. This approach will not only help us determine future exam strategies, but also help us utilize our resources better. Also in the works is a redesign of our examination processes. We are still early in the process, but I think we are beginning to come up with ways that will greatly assist in reducing cycle time of examinations.

Another aspect of increasing efficiency is the improvement of customer satisfaction. Although we have always enjoyed high levels of satisfaction in both determinations and examinations areas, we cannot rest on our laurels. We must continue to find ways to make the process better for our customers.

***Employee Plans News has a tradition of asking special guests about their outside interests. We know Evelyn Petschek has an affinity for running and Carol Gold, for bike riding. What about you?***

Unlike Evelyn, I am not a runner. However, like Carol, I am a bike rider. The only difference between my bike and Carol's is that mine is stationary. I exercise on a stationary bike every morning, but that probably doesn't fall in the hobby category. A kindergartener in the house is quite enough to keep my spare time fully engaged. •

## ESOPs, S Corps and New 409(p) Regulations

EP has begun sending letters to approximately 1,700 businesses and retirement plan sponsors alerting them to an impending effective date for new income and excise taxes applicable to S corporation employee stock ownership plans (ESOPs) and warning of the consequences of participating in abusive schemes involving ESOPs and S corporations. The letters are being mailed to S corporation ESOPs reporting 10 or fewer participants.

The IRS letters follow recently issued [temporary regulations](#) on ESOPs and S corporations, which provide guidance concerning the application of Code section 409(p). Congress intended that S corporations, like C corporations, be able to encourage employee ownership through an ESOP. In general, section 409(p) was enacted to address concerns about ownership structures involving S corporations and ESOPs that concentrate the benefits of the ESOP in a small number of persons. For example, 409(p) imposes income and excise taxes in situations involving abusive arrangements in which an S corporation is used to pass corporate income to a tax-exempt ESOP where the only participants in the ESOP are the owner/employees of the business. For S corporation ESOPs in existence on March 14, 2001, section 409(p) is effective for plan years beginning after December 31, 2004. This delayed effective date has allowed existing S corporations that maintain ESOPs the time to restructure the stock ownership in order to avoid the tax effects of section 409(p).

The IRS urges all sponsors of S corporation ESOPs that may be involved in transactions described above to immediately consult a tax advisor. If the tax advisor determines that the arrangement is, in fact, abusive, an amended return should immediately be filed for all open years affected by the arrangement. This issue is not eligible for the Employee Plans Compliance Resolution System (EPCRS).

Additional information on this issue may be found on the [Retirement Plans web page](#) by clicking on "S Corporation ESOP Guidance." •

**EP intends to initiate an examination program to review a large number of S corporation ESOPs with small numbers of participants.**

## Follow Up on Form 2848 and Unenrolled Preparers

In the [Fall 2004 Employee Plans News](#) and the [Fall 2004 Retirement News for Employers](#), we informed everyone of a change in IRS policy regarding Form 2848, *Power of Attorney and Declaration of Representative*, and unenrolled preparers.

Under the new policy, the IRS will no longer accept a Form 2848 listing unenrolled preparers and other ineligible representatives.

These articles have generated a good deal of interest. Most of the comments have addressed whether the IRS should grandfather current representatives or establish a certification program.

As we mentioned in the prior articles, the Advisory Committee on Tax Exempt and Government Entities (ACT) and EP recognize the important role played by benefits professionals who are not currently permitted to represent employers in their dealings with EP, but upon whom many employers depend for their expert advice regarding plan establishment and administration.

ACT is currently considering a recommendation that would permit enrollment for limited purposes to applicants who can demonstrate special competence in EP matters. There's still time to make your thoughts known and heard. Just send your comments by email to [tege.act@irs.gov](mailto:tege.act@irs.gov). •

## Cumulative Effect

The IRS has just released the 2004 Cumulative List of Changes in Plan Qualification Requirements ([2004 Cumulative List](#)), first described in section 10 of the draft revenue procedure attached to [Announcement 2004-71](#). The 2004 Cumulative List is just one of the components of the redesigned Determination Letter Program.

The 2004 Cumulative List specifically identifies statutory, regulatory and guidance changes that have become effective after December 31, 2001 that must be considered in determining whether a defined contribution (DC) pre-approved plan has been properly updated. These are items that would not have been previously considered by the IRS in issuing opinion and advisory letters.

The 2004 Cumulative List is designed primarily for use by plan sponsors and practitioners in drafting DC pre-approved plans (that is, M&P and volume submitter plans) for their first submission under the proposed remedial amendment cycle. The intended submission period for these plans is February 1, 2005 through January 31, 2006.

In addition, as announced in the [October 22nd Extra Special Edition](#), the 2004 Cumulative List designates retroactive annuity starting date plan provisions as disqualifying provisions under section 1.401(b)-1(b)(3) of the regulations (see Part V of the 2004 Cumulative List). Employers may adopt retroactive annuity starting date amendments, effective for the 2005 plan year. •



## Phased Retirement

On November 10, 2004, the IRS issued [proposed regulations](#) on phased retirement programs. These proposed regulations amend existing regulations under section 1.401(a)-1(b) and add a new section 1.401(a)-3. The regulations state that they cannot be relied upon until final regulations are published.

A primary question regarding these rules is: What exactly is phased retirement? There is no single approach to phased retirement but these arrangements generally provide employees who are at or near retirement with the opportunity for a reduced work schedule or workload. The idea is that employees benefit by having a smoother transition from full-time employment to retirement and employers benefit by retaining the services of experienced employees.

There are, of course, pros and cons for employees using phased retirement benefits. For even though the annuity distribution options offered by defined benefit plans preclude outliving benefits, early partial distributions will reduce the benefits available at full retirement. On the other hand, phased retirement also can provide employees additional time to save for retirement because employees continue working and can accrue additional benefits and reduce early spending of their retirement savings.

Prior to these proposed regulations, in [Notice 2002-43](#), the IRS requested comments on phased retirement. The proposed regulations address many, but not all, of the issues that commentators had. The preamble to the proposed regulations discusses the comments and the rationale for certain provisions in detail.

So what do the proposed regulations do? Highlights include:

- Employees can be paid a pro rata share of their accrued benefit where the pro rata share is based on the amount of the employee's reduced hours. Under this pro rata approach, an employee maintains a dual status (i.e., partially retired and partially in service) during the phased retirement period.
- Single-sum distributions (or other eligible rollover distributions) are not allowed.
- The phased retirement benefit is a protected optional form of benefit under section 411(d)(6).
- The election of a phased retirement benefit is subject to the QJSA provisions of section 417.

Also, under a plan that requires 1,000 hours of service to accrue a benefit, an employee participating in a phased retirement program will accrue proportionate additional benefits, even if the employee works fewer than 1,000 hours of service.

The proposed regulations request comments on a wide range of issues – e.g., eligibility, periodic testing of hours, whether there should be an offset of actuarial value, and more. •

## Calling All Callers and E-mailers, Too

Uncle Sam wants you! OK, in this case Employee Plans wants you. Actually, what we want is for you to help us to help you. Specifically, we'd like to know if the *Employee Plans News* is meeting your needs. And if we're not, how can we do a better job?

For example:

- Are there subjects you'd like to see us address?
- Should we solicit articles from other government agencies such as the Small Business Administration or the Social Security Administration?
- How often should we publish?

Also, EP publishes a retirement newsletter primarily aimed at the small-business community, the [Retirement News for Employers](#). Are there ideas you have for this newsletter – anything from ways to spread the news to needed topics to how often should it be published?

Finally, EP is thinking about developing a short newsletter for employees and plan participants. What do you think? Is this doable or even needed?

So c'mon: tell us what you think. Please. Just click on [RetirementPlanComments@irs.gov](mailto:RetirementPlanComments@irs.gov) and have your voice heard (or at least have your words read). •

There are a lot of questions about phased retirement.

Find out some of the answers here.



What do you think about the News?

Let us know.



## Amendments: Caveat Pre-Emptor?

On occasion, plan sponsors include amendments with an application that predate the last favorable determination letter. These amendments were not included on the last favorable letter because they were not included with that application. Some sponsors feel that we should caveat their letters for these amendments on the current application and in some past cases we have done so.

However, the IRS will no longer caveat for amendments that predate a prior favorable determination letter. Those amendments should have been included in the prior application. If amendments are made after submission of a determination letter application, they should be submitted to the IRS for association with that application. Or, if a specialist has contacted the sponsor on the application, the sponsor should inform the specialist of and send those amendments for consideration with the application. The specialist will review the document that is in front of them – which may include amendments that predate a prior favorable determination letter. To the extent that language is still part of the document, their review will cover it with the current letter. But the letter will not be caveated for the date those amendments were adopted.

[Rev. Proc. 2004-6](#) provides that, because a plan amendment, other than a minor plan amendment which could be submitted on [Form 6406](#), may affect other portions of a plan, a determination letter issued on such a plan amendment will express an opinion on the entire plan, as amended. Therefore, that amendment must be reviewed in conjunction with the prior application. If a determination letter could be issued on that amendment and plan, the prior letter would have to be revoked. In most of these cases the 401(b) period is no longer open.

The [Form 5300 instructions](#) state that all applications for plans that have at any time in the past received a favorable determination letter must include a copy of the plan's latest determination letter and **subsequent** amendments and or restatements. Those are the amendments we will rule on.

For these reasons, the IRS will not issue caveats for amendments that predate a plan's prior favorable determination letter. •

---

## DOL Corner

*The Department of Labor's Employee Benefits Security Administration (DOL/EBSA) continues to expand its efforts to assist employers and other plan officials in complying with the law. In this issue, we highlight new guidance and relief to help retirement plan officials and participants.*

### Disaster Relief

To assist Form 5500 filers in a FEMA-declared disaster area, DOL/EBSA began issuing and posting on a dedicated Web site its own press releases announcing relief from the filing deadlines for the disaster areas. To see if you are eligible for the filing relief, go to the [EFAST Web site](#).

### Missing Participant Guidance

On September 30, 2004, DOL/EBSA released Field Assistance Bulletin ([FAB 2004-02](#)) providing guidance on the responsibilities of employee benefit plan fiduciaries in connection with missing participants in terminated defined contribution plans governed by ERISA.

The guidance provides the steps fiduciaries must take to locate missing participants and beneficiaries when defined contribution plans are terminated, including checking related plan records and using the IRS' or Social Security Administration's letter-forwarding service. In cases where participants cannot be located, or fail to elect a method of distribution, the FAB indicates that plan fiduciaries can follow the new safe harbor regulation governing automatic rollovers for guidance on distributing benefits.

## How to Subscribe to Employee Plans News

*Employee Plans News* is issued only through IRS e-mail. For your free subscription, please go to the Retirement Plans web page at [www.irs.gov/ep](http://www.irs.gov/ep) and register on-line by selecting "Newsletters" under the "Related Topics" section and then selecting "Employee Plans News." All editions of the *Employee Plans News* will be archived at [www.irs.gov/ep](http://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](http://www.irs.gov/ep). •

continued on page 6

## 2004 Form 5500

On September 28, 2004, DOL/EBSA, along with the IRS and the Pension Benefit Guaranty Corporation, released the 2004 Form 5500.

The Form 5500 and the Form 5500-EZ for plan year 2004 are essentially unchanged from 2003. Minor modifications have been made and are highlighted in the instructions. Of particular importance, 2004 filings may be rejected if they include social security numbers on the form or any attachment that is open to public inspection.

Information copies of the forms, schedules and instructions are available on [DOL/EBSA's Web site](#). Filers should monitor the EFAST Web site for information on approved software vendors for completing the 2004 forms and on the availability of the official, government printed forms.

Filers may contact the EFAST Help Line for general assistance by calling (866) 463-3278.

## Automatic Rollover Rules

On September 28, 2004, DOL/EBSA released a [final regulation](#) that will provide retirement plan fiduciaries with guidance to help them preserve workers' retirement savings.

Certain distributions of retirement plan benefits must be automatically rolled over into an individual retirement plan when a separated worker fails to elect a distribution method. The final rule protects retirement plan fiduciaries from liability under the Employee Retirement Income Security Act (ERISA) by providing a safe harbor in connection with two aspects of the automatic rollover process – the selection of an institution to provide the individual retirement plan and the selection of investments for such plans.

In order to obtain relief under the safe harbor, a plan fiduciary must satisfy certain conditions. Among other things, the selected plan provider must be qualified to offer individual retirement plans; investment products must be designed to preserve principal; and the fees and expenses for such plans may not exceed those charged by the selected plan provider to its other individual retirement plan customers.

DOL/EBSA also adopted a [class exemption](#) from the prohibited transaction rules of ERISA that permits certain plan sponsors to use their own services and products in connection with rollovers from their own retirement plan. •

---

## PBGC Insights

### PBGC Encourages E-Filing of Premiums

The Pension Benefit Guaranty Corporation (PBGC) would like to encourage premium filers to submit their plan filings and payments electronically via PBGC's e-filing system, called My Plan Administration Account (My PAA). All types of premium filings (Form 1 including Schedule A, Form 1-EZ, and Form 1-ES) may now be filed electronically for plan years beginning in 2004. Beginning in January or February 2005, e-filings can also be submitted for plan years beginning in 2005.

Electronic filing has many advantages over paper submissions, including:

- Improved data accuracy (key aspects of filing preparation and premium calculation are automated and validated);
- Easier filing preparation using online guidance and instructions;
- Online exchange of premium information with service providers;
- Electronic coordination/tracking of filings and their current status for multiple plans;
- Capability for authorized team members to view their plan premium account histories online;
- Easy to use electronic payment process;
- Instantaneous confirmation that PBGC received the premium filing and payment; and
- Electronic storage of premium e-filing receipts.

For detailed information or to set up a My PAA account, please access PBGC's website, [www.pbgc.gov](http://www.pbgc.gov), and click on the "Online Premium Filing (My PAA)" link.

*continued on page 7*

Here is a brief summary of how the premium e-filing process works:

To initiate an e-filing for a plan, you must identify the person who will be responsible for coordinating the overall online filing process, which includes registering the plan within My PAA and ensuring that all the other practitioners who typically contribute to that plan's filings are included on the plan's e-filing team. This person is called the Filing Coordinator.

The Filing Coordinator begins by accessing the My PAA webpage ([www.pbgc.gov/mypaa](http://www.pbgc.gov/mypaa)), registering to use My PAA for one plan, and then setting up/inviting others to form the plan's e-filing team. When inviting others, the Filing Coordinator identifies the specific role for each team member (e.g., preparing a filing, signing it as plan administrator or enrolled actuary, or authorizing any associated premium payment). This way, each person on the e-filing team can make the same contribution to the e-filing that they would have made to a paper filing.

Once the initial account registration process is completed, the Filing Coordinator can add other plans (and those plans' team members) for which he or she is also the Filing Coordinator. Practitioners who are not the Filing Coordinator for any plan will establish their account when they are invited to a plan by a Filing Coordinator (and they accept the invitation). Additional plans are added to these practitioners' accounts when they are included on e-filing teams for other plans. The result of this process is that each person who uses My PAA will have an individual account (which can include all of the plans to which that person contributes filing information) accessible through a unique user ID and password.

Any team member can initiate a draft e-filing for the plan. My PAA will provide step-by-step instructions to assist in this process. Once a draft e-filing is initiated, e-filing team members may electronically "route" it to another team member so that individuals can perform their assigned tasks such as signing as the enrolled actuary. If a payment is due, payments must be submitted electronically, along with the e-filing, by entering payment information on the My PAA payment screens. There are three payment methods available: ACH, Internet Check, and Credit Card. Once the filing includes all the required information and signatures, and any associated premium payment has been authorized, the Filing Coordinator or Plan Administrator electronically submits the filing and payment to PBGC.

When the filing (and any associated e-payment) has been submitted to PBGC, My PAA will display an electronic receipt. This receipt includes the date and time the e-filing was received by PBGC, a confirmation number, and all of the data entered into the e-filing. This online receipt can also be accessed in My PAA by any e-filing team member. The filing then passes into PBGC's premium system for the usual premium-related processes to occur (e.g., generating a premium invoice for late payments). In addition, once the e-filing and e-payment are posted to the plan's account history, they can be viewed in My PAA by authorized team members.

If you have questions about My PAA or would like a copy of PBGC's pamphlet that describes premium e-filing in more detail, please call PBGC's toll-free practitioner number at (800) 736-2444 (and select the "premium" option). Note: TTY/TDD users may call the federal relay service toll-free at (800) 877-8339 and ask to be connected.

### **Working Families Tax Relief Act Permits Use of PFEA Rate for PBGC Reporting and Disclosure**

The Job Creation and Workers Adjustment Act of 2002 temporarily increased the interest rate used to value vested benefits for purposes of PBGC's variable-rate premium — for the 2002 and 2003 plan years — from 85% to 100% of 30-year Treasuries. However, it did not permit use of the 100% rate when determining PBGC reporting or disclosure obligations. In a series of Technical Updates, PBGC used its waiver authority to permit use of the 100% rate for certain PBGC reporting (but not disclosure) purposes. (See Technical Updates 02-1, 04-2, and 04-3.)

The Working Families Tax Relief Act of 2004 contained a provision, Section 403(d), that retroactively allows use of the 100% rate for both PBGC reporting and disclosure purposes. The effect of this provision on PBGC reporting is largely to duplicate the relief PBGC had previously provided through its waiver authority. For PBGC disclosure purposes, the effect of the provision is to retroactively cure any Participant Notice failures for 2002 or 2003 that were based on use of the 100% rather than the 85% rate. •

### **PBGC Announces Disaster Relief**

Periodically, the PBGC issues announcements outlining relief from PBGC filing deadlines and penalties for companies and individuals in states or regions affected by natural or other disasters. Go to [www.pbgc.gov/laws/techupdates/disasterRelief.htm](http://www.pbgc.gov/laws/techupdates/disasterRelief.htm) to see all such announcements issued in 2004, including a number issued in the past two months. •



## 2004: A Year That Was

The world of retirement plans continued to make news in 2004. Ranging from a “perfect storm” hitting underfunded plans to starts and stops with cash balance plans to abusive tax transactions using pension plans, retirement news happened in a broad variety of areas.

So...without further ado...here is our month-by-month look at some of the highlights of 2004, retirement-style:

### January:

EP debuts a new section of the [Retirement Plans web page](#) devoted to abusive tax schemes involving retirement plans. The section includes listed transactions, recent guidance and examples of abusive schemes involving certain ESOPs, Roth IRAs and 412(i) plans.

In other news, the IRS declares that February 2 = January 31. The reason: GUST determination letter applications needed to be postmarked by January 31, which fell on a Saturday. The date switch has nothing to do with “Spring ahead, Fall back.”

### February:

The Administration proposes cash balance plan legislation. The proposal features a five-year “hold harmless” period after plan conversions.

Guidance is issued – proposed regulations and two revenue rulings – to shut down abusive 412(i) plans.

### March:

EP issues [Rev. Rul. 2004-10](#), which describes how a plan can have administrative expenses allocated between current and former employees with the employer paying administrative expenses only for current employee accounts.

In a general information letter, EP describes how automatic enrollment in 401(k) plans can work.

*Employee Plans News* celebrates its 3<sup>rd</sup> anniversary. There is much rejoicing.

### April:

President Bush signs into law the Pension Funding Equity Act of 2004. A key feature of the law replaces the 30-year Treasury bond rate – used for funding purposes – with a rate based on long-term corporate bonds.

A year after it publishes the second Determination Letter “[White Paper](#),” EP announces that it will institute a staggered remedial amendment period for individually-designed plans. EP also invites comments on a proposed six-year amendment cycle for M&P and Volume Submitter plans.

### May:

EP premieres a set of one-page checklists for sponsors of [SIMPLE IRAs](#), [SEP IRAs](#) and [SARSEPs](#).

The [Retirement News for Employers](#) – a newsletter with information on establishing and operating a retirement plan – debuts. Joyous celebrations abound throughout the Web.

### June:

Evelyn Petschek, TE/GE Commissioner, takes over as chief of staff for IRS Commissioner Mark Everson.

Steve Miller, Director of Exempt Organizations, succeeds Evelyn as TE/GE Commissioner. Sarah Hall Ingram, TE/GE Counsel in the Office of Chief Counsel, is named as Deputy TE/GE Commissioner.

Preston Butcher, Director of EP Exam, is named as Director of Government Entities. Michael Julianelle, Area Director (International) in SB/SE, succeeds Preston as Exam Director.

The Treasury and IRS withdraw proposed regulations on cash balance plans. They announce that they will work instead on helping Congress draft legislation on cash balance plans.

2004 -

Storms:  
Tropical  
and  
Funding

Turnover:  
In EP and  
TE/GE.

Acronyms:  
PFEA,  
ATAT and  
ESOP.

Cash  
Balance  
Plans:  
Legislation,  
Rule  
Withdrawals,  
and Budget  
Amendments.

It's been a  
busy year  
in the  
retirement  
world.

*continued on page 9*



## 2004: A Year That Was *continued from page 8*

### July:

The 2004 IRS Nationwide Tax Forums begin in Atlantic City, NJ with stops in five more cities. By the time the forums end in September, thousands of enthralled attendees have seen EP's presentations: "[The ABCs of 401\(k\)](#)" and an update on "[No Fuss' Retirement Plans](#)."

Using the entire spectrum available, regulations in Proposed, Temporary *and* Final form are issued on Deemed IRAs.

IRS issues the [2004-2005 Priority Guidance Plan](#). This year's model features 23 EP-related projects. Just as in 2003, copies of the Federal Register are spotted in the hands of beachgoers.

### August:

The 2004 edition of the Statistics of Income Bulletin includes – for the first time ever! – stats on IRAs. According to the numbers, at the end of 2000, more than 46 million Americans had IRAs and the total assets in these accounts equaled \$2.6 trillion.

### September:

Nothing "perfect" about these storms: A rash of hurricanes and tropical storms hits the southern U.S. with Florida receiving an inordinate amount of damage. EP issues funding and filing relief for impacted folks.

Cash balance plans in the news again: The House passes an amendment barring the Treasury from using appropriations to overturn a cash balance plan court decision; EP issues new instructions for Schedule B, Form 5500, regarding cash balance sponsors and valuing cash balance accounts; and there's an agreement to partially settle some cash balance litigation.

### October:

Regular, Diet or Caffeine-Free: EP announces the COLAs for [2005 retirement plan limits](#). There is, again, much rejoicing.

EP e-publishes [Pub 4405](#) – *Have you had your Check-Up this year? for SIMPLE IRAs, SEPs and Similar Retirement Plans*. Paper copies became available in November.

### November:

EP releases a [directive](#) from EP Director Carol Gold describing how plans that cover low-paid, short-service employees may violate the nondiscrimination requirements of IRC 401(a)(4).

An unfortunate "perfect storm": A combination of interest rates, poor stock market returns and economic downturn lead to a seven-fold increase in the number of requests for minimum funding waivers according to the [2005 EP Workplan](#).

For the first time in 40 years! EP issues [comprehensive rules on 403\(b\) plans](#) for the first time since Christmas Eve 1964.

### December:

EP Examinations begins an exam review program for SIMPLE IRA plans with cases assigned to agents.

The [Retirement Plans web page](#) is enhanced and features information designed for each EP target audience: benefits professionals, plans sponsors/employers, and plan participants/employees. •

### 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  
SE:T:EP:CEO Room 4C3  
1111 Constitution Avenue, N W  
Washington, D.C. 20224

or FAX (202) 283-9525

or E-Mail [RetirementPlanComments@irs.gov](mailto:RetirementPlanComments@irs.gov)

For **EP Taxpayer Assistance**

For retirement plans technical and procedural questions:

Please call (877) 829-5500

Or visit the EP Customer Account Services section of the Retirement Plans web page 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

For further **Employee Plans Information**: Go to the Retirement Plans web page at: [www.irs.gov/ep](http://www.irs.gov/ep).

## 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 and topics needing further details will get their own full-length articles – alas, we have no Corner topic requiring a full-length article in this edition.

### Seasons Greetings: Fun and Festive 2004 Form 5500 Ready!

In what the DOL/EBSA, IRS and PBGC hope will be a welcome departure from past practice, the newest versions of [Form 5500](#) and [Form 5500-EZ](#) (in this case, the 2004 editions) have been made available earlier than ever before. Although the revisions for 2004 were minor in scope, filers are encouraged to review the *Changes To Note for 2004* discussion within the *Instructions for Form 5500*. There were no changes to the Form 5500-EZ for 2004.

Informational copies of the forms, schedules and instructions are available for viewing on the [EFAST web site](#) (along with information about approved software vendors) and the [Retirement Plans web page](#) by clicking on “EP Forms & Publications” under the “Related Topics” section.

Paper copies of all the 2004 material are available from the IRS by calling (800) TAX-FORM.

Filers are also invited to contact the EFAST Help Line for general assistance by calling (866) 463-3278.

### The Starting Five: Four New IRA Pubs and a Bonus Pub on 403(b)/457 Plans

Unceasing in our attempts to supply plain-language information on different types of retirement plans, we're happy to announce the recent release of the following publications:

- **Publication 4334, [SIMPLE IRA Plans for Small Businesses](#)**, was created with our colleagues at DOL/EBSA and is designed for small business owners and tax practitioners with clients that may want to start or already have a SIMPLE IRA Plan. It provides guidance on the establishment and operation of such a plan.
- **Publication 4336, [SARSEPs for Small Businesses](#)**, is an informational tool that provides specific guidance on the operation of a Salary Reduction Simplified Employee Pension (SARSEP).
- **Publication 4405, [Have you had your Check-up this year? for SIMPLE IRAs, SEPs, and Similar Retirement Plans](#)** is an educational pamphlet designed to inform and encourage employers to perform a periodic “check-up” of their IRA-based retirement plan through the use of checklists, and how to initiate corrective actions, if necessary.
- **Publication 4406, [403\(b\) and 457 Retirement Plans \(with plan feature comparison chart\)](#)**, outlines the features of 403(b) and 457 plans while comparing them to 401(k) plans.
- **Publication 4407, [SARSEP - Key Issues and Assistance](#)**, is an educational pamphlet that highlights various key issues regarding the operation of a SARSEP, while listing different resources for assistance.

All five of these new publications are available on the [Retirement Plans web page](#) by clicking on “EP Forms & Publications” under the “Related Topics” section and can be ordered by calling (800) TAX-FORM. •

## Web Spins – The Retirement Plans Site

We're back: Web Spins - the column that takes you for a quick spin around the [Retirement Plans web page](#). This edition's column takes a sampling from the profusion of retirement plan topics.

- **Notice Anything Different?** – The [Retirement Plans web page](#) has a new look; it even has a new name on the main [www.irs.gov](#) landing page: it's now available under “Retirement Plans Community.” As stated in the 2005 EP Workplan, EP is taking material written for practitioners and re-drafting it for plan sponsors and participants. One of the things you'll notice on the new landing page is on the left sidebar where you can now find “Information For” categories of Benefits Practitioner, Plan Participant/Employee and Plan Sponsor/Employer.



Form  
5500

### Reminder:

Form 5500 and Form 5500-EZ packages will not be printed or mailed. Instead, filers of record will receive a postcard reminding them of their filing requirements and how to request paper copies of the forms, schedules and related instructions, if needed. •



## The Retirement Plans web page:



A new look, new sections, and more help.

## Web Spins *continued from page 10*

The Benefits Practitioner page has a comprehensive list of all the retirement plan information you've come to expect from EP. The Plan Sponsor/Employer page is essentially the "Retirement Source for Plan Sponsors/Employers" section that we debuted earlier this year. The big change is in the Plan Participant/Employee page: we've taken participant material – distribution FAQs, information on different plan types and how to get retirement plan help – and tried to make it accessible for this underserved customer group.

We will continue adding, redrafting and editing retirement information for each of these customer groups. If you have any suggestions about what content we should provide, please email us at [RetirementPlanComments@irs.gov](mailto:RetirementPlanComments@irs.gov).

- **Determined to Help** - The EP Determination Letter Resource Guide is now on the [Retirement Plans web page](#). This one-stop Resource Guide walks you through the EP Determination Letter process and helps answer questions about the process. While it doesn't cover everything, it will help you in your search for information.

Highlights of the Resource Guide include:

- Guidance on the need for a determination letter,
- Steps and instructions for the determination letter application process, and
- Forms and publications, along with links to additional useful information.

Its permanent home on the web can be accessed by clicking on "More Topics" and then "Determinations." There you'll find the "EP Determination Letter Resource Guide."

- **S Corporation ESOP Guidance** – EP has opened a new page about its enforcement of retirement plan rules on S Corporation ESOPs. Just click on "S Corporation ESOP Guidance" and you'll go to a page with links to new temporary regulations relating to section 409(p), a letter that EP is sending to 1,700 sponsors of S Corporation ESOPs with 10 or fewer participants and other related information.

## Quick Hits

Welcome back to Quick Hits. In this edition we'll follow up on the Special (and Extra Special) Editions that we've issued in the last couple of months. Below are highlights of some of the Special topics:

- **While Visions of Tax-Deferred Annuities Contracts...** For the first time since Christmas Eve 1964, regulations on 403(b) plans were issued. Although issued in proposed form, the regulations generated a buzz with the news that a 403(b) program must be maintained pursuant to a written defined contribution plan document. Other items covered in the proposed regulations include elective deferral limits, what organizations may cover their employees and amounts distributed after severance of employment. For details on the proposed 403(b) regulations, see the [November 17th Extra Special Edition](#).
- **Short Changed:** As we reported in the [November 3rd Special Edition](#), in a directive dated October 22, Carol Gold, Director of EP, alerted field staff to schemes using employees with short periods of service. These schemes may circumvent the nondiscrimination requirements of IRC 401(a)(4). EP agents were alerted that these schemes – although they ostensibly seem to satisfy the rules – are not a reasonable interpretation of the regulations.
- **Prospective Retroactive Rules:** In our [October 22nd Extra Special Edition](#), we described how the IRS intends to extend the deadline for plan amendments that effect retroactive annuity starting date rules. EP has since issued a Cumulative List of Changes for Plan Qualification that will address these rules and other items as well. •

A flurry of Special Editions and Extra Special Editions - Get caught up.



## Employee Plans Published Guidance

(October 2004 – December 2004)

### Announcements

<a href="#"><u>Announcement 2004-72, 2004-41 I.R.B. 650</u></a>	A list of approved non-bank trustees as of December 31, 2003.
<a href="#"><u>Announcement 2004-80, 2004-41 I.R.B. 663</u></a>	Clarifies the 2003 instructions for line 8c of Schedule B of Form 5500.

### Regulations

<a href="#"><u>REG-114726-04, 69 Fed. Reg. 65108</u></a> (November 10, 2004)	These proposed Income Tax Regulations would amend section 1.401(a)-1(b) and add a new section 1.401(a)-3 pertaining to phased retirement.
<a href="#"><u>REG-155608-02, 69 Fed. Reg. 67075</u></a> (November 16, 2004)	These proposed Income Tax Regulations are a comprehensive revision to previous guidance issued under Code section 403(b).
<a href="#"><u>T. D. 9159, 69 Fed. Reg. 67054</u></a> (November 16, 2004)	These temporary Employment Tax Regulations pertain to withholding under section 3121(a)(5)(D).

### Revenue Rulings

<a href="#"><u>Rev. Rul. 2004-104, 2004-46 I.R.B. 836</u></a>	The covered compensation tables for permitted disparity, etc., for 2005.
---	--

### Notices

<a href="#"><u>Notice 2004-62, 2004-40, I.R.B. 565</u></a>	Describes additional disaster relief under Code section 412 and ERISA section 302 for certain Florida storm areas.
<a href="#"><u>Notice 2004-72, 2004-46 I.R.B. 840</u></a>	Cost-of-living adjustments for pension plans, etc., for 2005.
<a href="#"><u>Notice 2004-84, 2004-52 I.R.B.</u></a>	The 2004 Cumulative List of Changes in Plan Qualification Requirements described in section 10 of the draft revenue procedure that is contained in <a href="#"><u>Announcement 2004-71, 2004-40 I.R.B. 569</u></a> .

## FY 2005 EP Work Plan

The FY **2005 EP Work Plan** was issued on October 4, 2004. Each annual work plan gives EP employees guidance on the major initiatives, operating priorities, goals and objectives for the coming year.

Carol Gold, Director of EP, said, "There are a number of challenges that EP faces over the next 12 months, including reducing the inventory of determination letter applications and voluntary compliance submissions; combating the growing use of abusive tax avoidance transactions involving retirement plans; and expansion of our scrutiny of plans that fail to comply with the minimum funding standards."

The work plan is designed as a map of all EP activities planned for the year. Benefits practitioners can also use the work plan to see where EP priorities and initiatives are.

EP shares the IRS's three strategic goals of: improving taxpayer service; enhancing enforcement of the law; and modernizing the IRS through its people, processes and technology. EP efforts to achieve these goals will focus on the following six Operating Priorities:

- Develop Education and Examination Strategies to Identify and Counter Abusive Tax Avoidance Transactions (ATAT)

Examples of ATAT in the retirement plan arena include certain 412(i) plans, S Corp ESOPs and Roth IRAs. Combating the growing use of ATAT involving retirement plans is a shared interest within all functions of EP. EP will continue addressing compliance issues through the use of Issue Management Teams and by training specialists in ATAT matters.

- Stabilize Determination Receipts Flow

"During FY 2005, we will begin using a six-year cycle for adopters of pre-approved plans," said Ms. Gold. "The redesign of our determination letter program should greatly assist our efforts to minimize the peaks and valleys of determination receipts and improve our resource planning." A staggered remedial amendment period for individually-designed plans should start in FY 2006.

- Monitor Pension Funding

The stock market drop and economic downturn led to a seven-fold increase in funding waiver requests from 2000. Scrutiny of underfunded plans will be expanded and EP will consult with the Pension Benefit Guaranty Corporation and the Department of Labor to deal with this issue.

- Refine Compliance Risk Assessment with Data from Examinations

The EP customer population has been broken into business segments and plan type. EP will continue examining business segments, analyzing the results and sharing the information with area office employees. Using this approach will let EP determine future exam strategies and ways of leveraging existing resources.

- Create an Employee Plans Compliance Unit (EPCU)

"We're establishing the EPCU to address problems or questionable items," said Ms. Gold, "that can be resolved without the necessity of an audit." She added, "This "soft contact" approach will be less burdensome to our customers than an audit."

- Increase Retirement Plan Information on the IRS Web Site and Restructure by Customer Segment

Historically, EP web content has focused on practitioners. With four primary customer types within the retirement plan community – practitioners, sponsors, participants and vendors – EP will identify web content written for the practitioner and redraft it for the needs of the plan sponsor and participant. Vendor-aimed material will follow in later years.

The 2005  
Work Plan -

3 Strategic  
Goals...

6 Operating  
Priorities...

Endless  
possibilities.

See what EP  
has in store  
for 2005.

## EP Work Plan *continued from page 13*

Finally, Ms. Gold thanked EP employees for their contributions to EP's progress in FY 2004, "You've increased the number of examined returns; reduced exam cycle time; increased the number of voluntary compliance closings despite a staff reduction; dealt with a significantly higher number of determination applications than expected; and substantially increased the number of customers reached through education and outreach.

"You've done all this and kept customer satisfaction scores high. None of these successes could have been achieved without an engaged workforce."

The entire text of the work plan can be found at the Retirement Plans web page at [www.irs.gov/ep](http://www.irs.gov/ep) by selecting "More Topics" and then clicking on "EP Work Plan."•

## 2005 Los Angeles Benefits Conference

The 2005 Los Angeles Benefits Conference is co-sponsored by the IRS, the American Society of Pension Professionals & Actuaries (ASPPA), the National Institute of Pension Administrators (NIPA), and the Western Pension and Benefits Conference (WP&BC). The conference will be held at the Hilton Los Angeles/Universal City on January 27–28, 2005, with a Pre-Conference Workshop (Conversation with the IRS) on January 26.

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

**Bob Architect,  
Carol Gold,  
Sylvia Griffin,  
Teresita Laureano,  
Peter McConkey,  
Steve Miller,  
Todd Newman,  
Greg Nix,  
Mark O'Donnell,  
Nancy Payne,  
Sharon Polo,  
Mike Rubin,  
Gary Runge,  
John Schmidt,  
Brenda Smith-Custer,  
Rick Trevino,  
Rob Walsh and  
Rick Westley**

There will be "Interactive Tables" with IRS experts throughout the conference to answer questions. To schedule an appointment to speak with any of the IRS presenters listed below, contact [Teresita Laureano](mailto:Teresita.Laureano@irs.gov).

- Michael Julianelle, Director, EP Examinations
- Paul Shultz, Director, EP Determinations Redesign
- Martin L. Pippins, Manager, EP Technical Guidance and Quality Assurance
- Newell Kimlin, ASA, Senior Actuary
- Craig Moore, EP Exam Group Manager
- Avaneesh Bhagat, EP Voluntary Compliance Coordinator

Featured Sessions include:

- Washington Update
- Defined Benefit Plan Design
- 403(b) Plans
- How Do You Handle an IRS Audit?
- Health and Welfare Plan Update
- Case Studies in Correction Under EPCRS
- 401(k) Plan Investments
- 401(k) Plan Design
- DOL Investigations

Alicia H. Munnell, PhD, Professor of Management Sciences, Carroll School of Management and Steven T. Miller, Esq., Commissioner, TE/GE, IRS, will be the luncheon speakers at the conference.

For more information regarding the conference, such as special hotel rates and airfares, and to register for the conference, please visit [www.asppa.org](http://www.asppa.org), [www.nipa.org](http://www.nipa.org) or [www.westernpension.org](http://www.westernpension.org).•



## SWBA/IRS Conference Recap

This year's SWBA/IRS 15<sup>th</sup> Annual Employee Benefits Conference, held on November 15 and 16, was the most recent product of a fifteen-year partnership between the SouthWest Benefits Association (SWBA) and the IRS. Each year, the conference provides timely updates on the important issues affecting employee benefit plans.

Highlights of this year's conference in Dallas included the following presentations:

- 401(k) Plan Update
- 403(b) - Update on the New Regulations
- HSA, FSA, HRA, & Cafeteria Plans
- Executive Compensation Update
- Defined Benefit Plans in 2005
- IRS Hot Topics & National Office Update
- Future Direction of Employee Benefits

A special thanks to our friends at the Dept. of Treasury for their participation – William Sweetnam, Lisa Mojiri-Azad and Harry Beker made significant contributions to the success of the conference. From EP, Michael Julianelle, Tom Petit and Paul Shultz were also major contributors. Among the many practitioner presenters, Dallas Salisbury, Howard Shapiro and David Cowart also made their mark on the conference.

In February 2005, SWBA and the IRS will present a series of Administrative Skills Workshops, along with a 403(b)/457 Conference scheduled for April 2005. If you would like more information regarding the conferences and workshops, visit the SWBA website at [www.swba.org](http://www.swba.org).

## Calendar of EP Benefits Conferences

### UPCOMING EVENTS...

Name	Date(s)	Location	Co-Sponsor(s)	For Further Information, Please Contact
<b>Los Angeles Benefits Conference</b>	01/27/05-01/28/05	Los Angeles, CA	ASPPA, NIPA, WPBC and other cooperating sponsors	ASPPA <a href="http://www.asppa.org">www.asppa.org</a> or, ASPPA Meeting : Department (703) 516-9300

### RECENT EVENTS...

Name	Date(s)	Location	Co-Sponsor(s)	For Information, See
<b>SWBA/IRS 15<sup>th</sup> Annual Employee Benefits Conference</b>	11/15/04-11/16/04	Dallas, TX	Southwest Benefits Association (SWBA)	<i>EP Benefits Conferences Calendar at</i> <a href="http://www.irs.gov/ep">www.irs.gov/ep</a>
<b>Central &amp; Mountain Sts. Benefits Conference</b>	09/13/04-09/14/04	Denver, CO	ASPPA and WPBC	
<b>17<sup>th</sup> Annual Cincinnati Employee Benefits Conference</b>	06/17/04-06/18/04	Cincinnati, OH	Cincinnati Bar Association	
<b>Northeast Benefits Conference</b> (2 Locations)	06/10/04-06/11/04	Framingham, MA & White Plains, NY	ASPPA & NE Area Pension Liaison Group	
<b>Mid-Atlantic Benefits Conference</b>	05/24/04-05/25/04	Philadelphia, PA	ASPPA	
<b>Great Lakes Benefits Conference</b>	04/29/04-04/30/04	Chicago, IL	ASPPA & other cooperating sponsors	

