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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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DOs and DON'Ts for Form 5307 Applications

April 30 is the deadline to submit determination letter applications for employers who adopted an EGTRRA-approved defined contribution Master or Prototype (M&P) or Volume Submitter (VS) plan. See *EPN, Special Edition January 2010*, for additional details.

Here are some tips to help speed processing.

DOs

- Enclose the correct user fee. Please submit **one check per application** and staple it to the front of Form 8717, *User Fee for Employee Plan Determination, Opinion, and Advisory Letter Request*. See Notice 2002-1 for user fee exemption criteria. If the application meets the exemption, sign the certification on Form 8717. We will return applications not exempt from the user fee if it is missing.
- Use the current version of all forms. For example, March 2008 is the most current revision of Form 5307, *Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans*.
- Submit original forms and documents whenever possible, because copies can be illegible when scanned.
- Check that all plan documents and/or amendments are signed and dated, if applicable. If needed for proof of timely adoption, submit additional documentation such as a board resolution.
- Ensure the application is complete. Submit all required forms and documents. Review Revenue Procedure 2010-6, Revenue Procedure 2007-44 and Announcement 2008-23.
- Follow the form instructions and submit all required attachments. See *Instructions for Form 5307* for questions needing explanations/attachments.
- Clearly identify each document by using titles and page numbers, or identifying separator sheets.
- Include a copy of the prior determination letter, if applicable.
- Enclose the current EGTRRA opinion or advisory letter. If an existing plan has not received a GUST determination letter, submit a copy of the prior GUST opinion or advisory letter, if applicable.
- Include Form 8905, *Certification of Intent to Adopt*, if applicable.
- Enclose a cover letter detailing why you are applying, what you are submitting and any additional relevant information.
- State if the Volume Submitter is a word-for-word adopter. If there are any modifications, list and explain each modification. See Revenue Procedure 2010-6, §9.02. This may be included in the cover letter.
- Separate multiple applications with brightly colored paper instead of clips or binders.
- Use 8 ½ by 11 paper. Odd size or colored documents should be copied onto 8 ½ by 11 paper for better scanning.
- Ensure the Form 2848, *Power of Attorney and Declaration of Representative*, is correctly completed and timely signed. Review the form's instructions for signature requirements and timeliness. See limited authority granted to Unenrolled Return Preparers.
- File the application on time. If possible, file early to allow for more efficient and accurate processing.

DON'Ts

- Don't use staples (except to attach a check to the front of Form 8717), paper clips or binder clips.
- Don't attach sticky notes to the application.
- Don't punch holes in the application.
- Don't use odd size or colored paper within the application.
- Don't include unnecessary documents, such as instructions or summary plan descriptions. If submitting an M&P with an adoption agreement, do not send the base plan document. See Revenue Procedure 2010-6, §9.04. Also, the Notice to Interested Parties does not need to be included if the Form 5307 box 3i is checked yes.

For additional filing reminders, see Tips for Expediting the Determination, Opinion and Advisory Letter Process.

What Can and Can't Be Rolled Over to a Roth IRA

Besides rolling over from one Roth IRA to another, you can roll over (convert) the following to a Roth IRA:

- your traditional, SEP or SIMPLE IRAs (during the first two years, a SIMPLE IRA can only be rolled over to another SIMPLE IRA);
- an eligible rollover distribution (ERD) from your retirement plan;
- an ERD from a retirement plan for which you are a beneficiary (in the case of a designated nonspouse beneficiary, the rollover must be via a direct (trustee-to-trustee) rollover into an inherited Roth IRA.)

Any previously untaxed amounts must be included in your gross income in the year of the rollover. However, for rollovers and conversions to a Roth IRA in 2010 only, you will have the option to report the taxable portion of your rollover in your gross income for 2010, or half in 2011 and half in 2012.

Below are a few reminders about rollovers to a Roth IRA.

Ineligible Rollover Distributions

Remember, you can only roll over ERDs from a retirement plan to a Roth IRA. Below are some types of plan distributions that are **not** ERDs:

- required minimum distributions (RMDs);
- hardship distributions;
- substantially equal periodic payments paid at least once a year over your lifetime or life expectancy, the lifetimes or life expectancies of you and your beneficiary, or a period of 10 years or more;
- corrective distributions of excess contributions or excess deferrals, and earnings on these amounts;
- deemed distributions because of a defaulted plan loan (but not plan loan offsets);
- dividends on employer securities; and
- the cost of life insurance coverage.

You can't roll over RMDs from an IRA or any distributions from an inherited IRA.

RMDs Can't Be Rolled Over

Even though 2010 RMDs can be delayed until December 31, 2010 (or April 1, 2011, if you turn 70 ½ in 2010), Code §§402(c)(4) and 408(d)(3)(E) state that RMDs can't be rolled over.

Rolling RMDs to a Roth IRA is considered an excess IRA contribution. You can withdraw an excess IRA contribution, and earnings, by the due date of your tax return for the year the excess contribution was made. Otherwise, it is subject to a 6% tax under Code §4973 for each year it remains in the Roth IRA.

Inherited Traditional IRAs

If you inherit an IRA from your spouse, you can elect to treat it as your own and roll it over to a Roth IRA. However, if you inherit an IRA from someone other than your spouse, you may not roll it into an inherited Roth IRA.

For additional information on inherited IRAs, see Publication 590, *Individual Retirement Arrangements (IRAs)*.

The Taxable Portion of Your Rollover to a Roth IRA

After-tax money that you roll over (convert) from an IRA (other than a Roth IRA) or a qualified plan to a Roth IRA is not included in your gross income. However, when you roll over a distribution from a non-Roth IRA or a plan that contains after-tax and pre-tax amounts to a Roth IRA, you must determine the after-tax and pre-tax amounts in the distribution. You must generally report the pre-tax amount as gross income for the year in which it is distributed from the IRA or plan, even if you roll it over to a Roth IRA. The 10% early distribution tax under Code §72(t) does not apply to any amount rolled over to a Roth IRA, although it may apply if amounts rolled into the Roth IRA are distributed within 5 years.

Rollovers from IRAs

You must calculate the after-tax and pre-tax amounts of any IRA distribution that you roll over to a Roth IRA, even if the roll over is a direct (trustee-to-trustee) rollover. If any of your IRAs (not including Roth IRAs) contain non-deductible (after-tax) contributions, you have to combine all your non-Roth IRAs to pro-rate a distribution between pre-tax amounts (deductible contributions and earnings) and after-tax amounts.

The formulas to determine these amounts are:

$$\text{After-tax amount} = \frac{\text{after-tax amounts in all IRAs}}{\text{value of all IRAs}} \times \text{amount distributed}$$

Pre-tax amount = amount distributed – after-tax amount

In applying these formulas, remember that:

1. this calculation is done at year-end (on December 31 of the year of the distribution) and not on the distribution date;
2. “IRAs” include any traditional, SEP and SIMPLE IRAs, but not Roth IRAs; and
3. you do not include any IRAs that your spouse may have.

Rollovers from Qualified Retirement Plans

Rollovers from a Designated Roth Account

If you roll over a distribution from a designated Roth account to a Roth IRA, you do not include any amount rolled over in your gross income. The law treats the rollover as from one Roth IRA to another, except the 5-year period for determining qualified distributions from a designated Roth account does not carry over to the Roth IRA. For information on Qualified Distributions, see *EPN, Winter 2010*. For information on the taxability of a subsequent distribution from a Roth IRA, see “Is Your Distribution from Your Roth IRA Taxable?” in *RNE, Winter 2010*.

Rollovers of Pre-1987 After-Tax Contributions

A special rule applies if you made after-tax contributions to a plan before 1987, the plan separately accounted for them and the plan permitted withdrawals from this account. You can request that your plan roll over these pre-1987 after-tax contributions, without earnings, to a Roth IRA. If the amount rolled over consists of after-tax contributions only, then you do not have to include any portion of the rollover in your gross income.

Rolling Over Pre-Tax and After-Tax Contributions

If you roll over a plan distribution that consists of both after-tax and pre-tax amounts, then use the following formulas to determine the after-tax and pre-tax amounts.

$$\text{After-tax amount} = \frac{\text{after-tax contributions in your plan account(s)}}{\text{value of your plan account(s)}} \times \text{amount distributed}$$

Pre-tax amount = amount distributed – after-tax amount

In applying these formulas, remember:

1. do not include any designated Roth contributions;

2. "value" is the total of your plan account(s) at the time of the distribution but does not include the value of any of the plan's designated Roth account(s); and

3. "amount distributed" is the amount distributed to you and rolled over to a Roth IRA or directly rolled over from the plan to a Roth IRA.

Ordering Rule for Partial Rollovers

If you receive a plan distribution that consists of after-tax and pre-tax amounts, you would first use the formulas above to determine the pre-tax amount of the distribution. If you roll over only part of that distribution to a Roth IRA, the first dollars rolled over come from the pre-tax amount of the distribution. After all the pre-tax portion of the distribution has been rolled over, any remaining amount is after-tax, which may also be rolled over to a Roth IRA.

Distribute Excess Deferrals

Failing to distribute a participant's excess deferrals from a plan may lead to plan disqualification or to the participant being taxed twice.

An excess deferral is a plan participant's elective deferral that exceeds the annual elective deferral limit. For 2009 and 2010, the annual elective deferral limits are:

- $16,500 ($22,000 if a participant is age 50 or older) for 401(k) (non-SIMPLE) plans and 403(b) plans; and
- $11,500 ($14,000 if a participant is age 50 or older) for SIMPLE plans.

When an employee's elective deferrals made to one employer's plan exceed the annual limit, the plan must distribute the excess plus earnings by April 15 following the year of excess to meet plan qualification requirements.

If an employee participates in two plans of unrelated employers and has excess deferrals, but does not exceed the limit in either plan, the employee can notify one of the plans of the excess deferrals and ask to have them distributed along with earnings by April 15. Although most plans accommodate such participant requests, they are not legally required to do so when there are no excess deferrals considering just that plan.

Excess deferrals are includible in the employee's gross income in the year deferred, while any gains or losses on the excess deferrals are reported in the year distributed. However, if the plan does not distribute the excess deferrals and earnings to the employee by April 15, the excess deferrals must be included in gross income both in the year of deferral **and** in the year they are actually distributed. In other words, the excess deferrals are taxed twice!

If a plan fails to distribute excess deferrals when required, it can use the correction programs under the IRS's Employee Plans Compliance Resolution System to avoid plan disqualification. Also, see The Fix Is In: Common Plan Mistakes - Excess Deferrals.

A plan may also be required to distribute excess contributions and excess aggregate contributions. These corrective distributions may be used to remedy failed actual deferral percentage or actual contribution percentage tests. See "Attention All 2009 Form 1099-R Issuers" in *EPN, Spring 2009*, for additional information on returning and reporting these corrective distributions.

We're Glad You Asked!

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

I am over the age of 70 ½ and own two traditional IRAs. I usually take required minimum distributions from IRA #1 in monthly installments. Before realizing that RMDs were not required for 2009, I received two installments from IRA #1, both of which I rolled over into IRA #2. Can I withdraw one of these rollover contributions from IRA #2?

Yes. Under the one-rollover-per-year rule in Code §408(d)(3)(B), if you roll over any part of a distribution from an IRA, you cannot roll over any later distribution from the same IRA for a 1-year period, measured from the date you received the distribution that was rolled over.

Normally you can't roll over RMDs. However, the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) waived RMDs for 2009 from IRAs and certain defined contribution plans. However, WRERA did not waive the one-rollover-per-year rule for IRAs.

This means that WRERA allowed you to roll over the first distribution from IRA #1 in 2009, but rolling over the second distribution (installment) violated the one-rollover-per-year rule. By contributing the second installment to IRA #2, you made an excess IRA contribution. You may withdraw an excess IRA contribution, along with earnings, by the due date of your tax return (including extensions) for the year that you made the excess IRA contribution.

You could not have excluded the amount of the second installment from gross income by rolling it over; it must be included in your gross income for 2009. If you timely withdraw the excess IRA contribution and earnings, you would report the earnings as income for the year that you made the excess IRA contribution and not the year in which they are withdrawn. The amount of the withdrawn earnings would not be subject to the additional 10% early distribution tax under Code §72(t), that would otherwise apply, because you are over age 70 ½ and, therefore, meet the "age 59 ½" exception to this tax.

If you do not withdraw the excess IRA contribution plus earnings, you will have to pay a 6% tax on the excess amount remaining in IRA #2 at the end of each tax year. Calculate and report the 6% tax on Form 5329, *Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts,* filed with your annual tax return.

Additional Resources

Treasury Regulations §1.408-11, *Net income calculation for returned or recharacterized IRA contributions*

Instructions for Form 5329 (2009), *Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts*

Fix-It Guides - Common Problems, Real Solutions!

You already know that our Fix-It Guides help you fix common plan mistakes but did you know that they also contain practical tips to avoid common plan errors?

The Guides are only available on our Web site. They include links to resources to help you meet your responsibilities and avoid costly errors.

If you do find a mistake in your plan, the Guides list the specific IRS correction programs you may use to fix the error and examples of actions you may take to correct the problem. Each Guide's format allows you to navigate, select and print only the mistakes that apply to you.

Fix-It Guides are available for:

- 401(k) plans,
- SARSEP plans,
- SIMPLE IRA plans; and
- SEP plans.

The Fix-It Guides help plan sponsors solve common problems with real solutions.

Future Requirements for Tax Return Preparers

The IRS proposed new registration, testing, continuing education and ethics requirements for tax return preparers that it plans to implement for future filing seasons, but not for the 2010 filing season. For details, see the *RNE, Winter 2010*.

Web Spins

Check out our latest postings to the Retirement Plans Community Web page:

Redesigned Determination and Plan Participant/Employee pages.

If you have any suggestions on how to improve our Web pages, please send them to RetirementPlanComments@irs.gov.

Free Phone Forum - Retirement Plans Determination Letter Program, March 31, 2010

Learn the progress of the determination letter program, the types of “reliance” available to pre-approved plans (with or without a determination letter), tips on completing the new Form 5307 and ways to make the determination application process smoother.

Andrew Zuckerman, Director of Employee Plans Rulings and Agreements, will be joined by Vickie Surguy, Manager, EP Determinations, to discuss the Retirement Plans Determination Program.

Register at the IRS Retirement Plans Community Web site. Also, visit our Phone Forum Web page for information on recently held forums including handouts, recordings and transcripts.

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

Anita Bower
Christine Chaille
Kathy Davis
Doug Jordan
Roger Kuehnle
Teresita Laureano
Nancy Payne
Sharon Perkins
Bonnie Schaumberg
John Schmidt
Brenda Smith-Custer
Monika Templeman
Mikio Thomas
Kathy Tuite
Sherry Whitaker
Joleah White

Critical Priorities…With Monika Templeman
Today's Discussion: Multiemployer Funding Issues

In each issue, Monika Templeman, Director of EP Examinations, responds to questions and offers insights on retirement plan topics uncovered during audits. You may provide feedback or suggest future topics for discussion by e-mailing her at: RetirementPlanComments@irs.gov.

Monika, the recent economy has hit multiemployer plans hard, since they must comply with the Pension Protection Act of 2006 that imposed additional funding rules for multiemployer plans.

The expression "timing is everything" really applies to the problems impacting multiemployer plans. The proverbial perfect storm occurred with the timing of these requirements and the financial collapse in the past 18 months. This unfortunate timing makes the new funding rules appear draconian. Of course, that was never the purpose. The objectives of the new funding rules were to improve the funded status of these plans to protect the plans, the participants and the employers from the consequences associated with funding deficiencies. The new funding rules require trustees, unions and employers to assess their pension plans' financial status according to certain criteria and to proactively take steps to improve the funded status of plans that are not well-funded.

What does the Act and Internal Revenue Code require?

The plan actuary must complete an annual actuarial certification, which is a determination of the plan's current and projected financial status. This certification is due no later than the 90th day of the plan year. The penalty for not having this certification completed equates to a reporting violation and a fine of up to $1,100/day. Once the status of the plan is certified, plans that are not well-funded have to meet other requirements, such as sending notices regarding status and adopting a funding improvement or rehabilitation plan.

Your Employee Plans Compliance Unit (EPCU) is handling these certifications, right?

Correct. EPCU is processing and reviewing the annual certifications. The initial concern is to verify that all multiemployer plans have filed a certification, and confirm that these are complete and timely. Specialists will also follow-up, as necessary, on plans that fall into the status of endangered, seriously endangered or critical.

Since you brought up the different statuses, let's start with where most of these plans would like to be – the green zone.

The green zone means that the plan is not in an endangered or critical status.

Therefore, everything is OK?

I would suggest employers or unions not necessarily jump to that conclusion. The Act does not require any action if a plan is in the green zone, but plan administrators should always concentrate on all funding indicators and constantly monitor the plan's financial condition.

Next is the yellow zone. What does that signify?

The plan is in endangered status. The plan does not meet the criteria to be in critical status but is either: less that 80% funded, or has an accumulated funding deficiency in the current plan year or is projected to have an accumulated funding deficiency in any of the next six plan years. If the actuary determines both criteria apply, the plan is still in the yellow zone, but the plan is now considered to be in *seriously* endangered status.

What steps must plans in the yellow zone perform to improve funding?

Within 240 days of the actuarial certification of status required date (the 90^{th} day of the plan year), an endangered multiemployer plan must adopt a funding improvement plan. This plan must include actions, options or a range of options designed to reach funding benchmarks to avoid a funding deficiency. The funding benchmark for an endangered plan is a one-third improvement in funded status over 10 years. Plans in seriously endangered status have a funding benchmark of a one-fifth improvement over 15 years. Sponsors of plans in seriously endangered status must take all reasonable steps to improve the plan's funded percentage and postpone an accumulated funding deficiency.

Lastly, we have the red zone. What are the indicators that make a plan fall into this zone?

Red zone is critical status. The Act provides a multi-criteria definition, but generally, the plan is in critical status if the plan is facing a funding deficiency or insolvency within the next five to seven years.

What steps must plans in the red zone take in order to improve funding?

Critical status plans must adopt a rehabilitation plan designed to improve the plan's funding over a 10-year period. This rehabilitation plan must be in place no later than 240 days after the required date of the actuarial certification of status. The rehabilitation plan could include actions such as increasing employer contributions, decreasing benefits accruals or reducing costly adjustable benefits.

Would reducing adjustable benefits be considered a benefit cut for participants?

Most benefits payable at normal retirement age will not be reduced, but some costly benefits, such as unreduced early retirement benefits, may be reduced to help the plan survive troubled times. The alternative is the PBGC taking over the plan. If this happens, a significant reduction in benefits occurs because the PBGC benefit provided is minimal. Most employees would trade reducing their adjustable benefits to get their full normal retirement benefit.

Do you have any statistics about the number of plans in each zone?

The Segal Group, Inc. conducted a winter 2010 survey showing that generally, each of the three zones has the same percentage of plans. The green zone percentage went from 80% in 2008 to 38% in 2009.

How did the Worker, Retiree, and Employer Recovery Act (WRERA) help multiemployer plans with their funding concerns and meeting PPA requirements?

Generally, for the period from October 1, 2008, through September 30, 2009, it permitted plan sponsors of multiemployer plans to elect to remain ("freeze") in the status determined for the prior plan year. For plans in the yellow or red zone that elected to freeze their status, the trustees were not required to update any funding improvement or rehabilitation plans for this period. Additionally, the provisions of WRERA allow a plan sponsor of a multiemployer plan in endangered or critical status to elect to extend the funding improvement or rehabilitation period by three years. The Segal survey indicated 74% of the plans that were permitted to freeze did so. What is nice to see from this survey is that 26% of the plans that could freeze opted to continue to work on their funding improvement or rehabilitation plans. That means a great deal to the participants of these plans.

Let's conclude this conversation with the funding issues your agents are finding on examination.

The issues occurring most often include trustees not pursuing receipt of delinquent contributions from employers, diversion of trust assets, and trustees not assessing withdrawal liability to withdrawing employers or not assessing it in a timely manner.

Employee Plans Published Guidance

(January - March)

Announcements

Announcement 2010-3, 2010-4 I.R.B. 333	Provides, for plan years beginning on or after January 1, 2009, automatic approval for certain changes in funding method with respect to single-employer defined benefit plans that result either from a change in the valuation software used to determine the liabilities for such plans or from a change in the enrolled actuary and the business organization providing actuarial services to the plan.

Revenue Procedures

Rev. Proc. 2010-4, 2010-1 I.R.B. 122	Annual EP/EO revenue procedure on letter rulings.

Rev. Proc. 2010-5, 2010-1 I.R.B. 165	Annual EP/EO revenue procedure on technical advice.
Rev. Proc. 2010-6, 2010-1 I.R.B. 193	Annual EP/EO procedures for employee plans determination letter requests.
Rev. Proc. 2010-8, 2010-1 I.R.B. 234	Annual EP/EO revenue procedure on user fees.
Notices	
Notice 2010-6, 2010-3 I.R.B. 275	Provides relief and guidance on correcting certain failures in a nonqualified deferred compensation plan to comply with Code §409A(a).
Notice 2010-15, 2010-6 I.R.B. 390	Contains Q&As on the Heroes Earnings Assistance and Relief Tax Act of 2008 and requests comments on additional Act issues addressed in the notice.

PBGC Insights

Here are a few reminders about a plan administrator's Comprehensive Premium and 4010 Filing requirements and information on PBGC's Risk Mitigation Program.

Comprehensive Premium Filing - Variable-Rate Premium

The liability measure underlying the variable-rate premium calculation is the "premium funding target." The "standard premium funding target" is determined using specified premium-specific discount rates. The plan administrator may instead elect to use the "alternative premium funding target." The alternative is the same as the standard except that it is determined using the same discount rates used to determine the minimum required contribution for the plan year. The **only** way for a plan administrator to make the election is to check the box in the "Alternative Premium Funding Target Election" section of the Comprehensive Premium Filing. For this election to be valid, however, the filing must be timely. Once elected, the alternative remains in effect for all future years, unless and until it is revoked, but it must remain in effect for five years at a minimum.

In completing the filing, be aware of these common errors:

1. The plan administrator elects to use the alternative premium funding target but:
   - the enrolled actuary reports that the standard premium funding target was used,
   - the reported discount rates are not permissible rates for the alternative premium funding target, or
   - the election was made after the variable-rate premium due date.
2. The plan administrator does not elect to use the alternative premium funding target but:
   - the enrolled actuary reports that the alternative premium funding target was used, or
   - the reported discount rates are not the correct rates for the standard premium funding target.

In these situations, the plan administrator must amend the filing and, if necessary, recalculate the variable-rate premium. For more information on the variable-rate premium, see Comprehensive Premium Payment Instructions.

4010 Filings

The first ERISA §4010 filing due date for the 2009 information year is April 15, 2010. The plan's contributing sponsor and each member of the sponsor's controlled group must make a 4010 filing if **any** of the following conditions are met (assuming no waivers or exemptions apply):

1. any plan maintained by a member of the controlled group has a funding target attainment percentage of less than 80%;
2. any member of the controlled group fails to make a required payment to a plan and, as a result, the conditions for a Code §430(k) lien have been met and the required payment is not made within 10 days after its due date; or
3. any plan maintained by a member of the controlled group has been granted one or more minimum funding waivers under Code §412(c) totaling in excess of $1 million and any portion of those waivers is still outstanding.

In past years, PBGC experienced significant underreporting where the 4010 filing requirement was triggered solely by conditions 2 or 3. See 4010 Reporting Page for more information.

Risk Mitigation

One of PBGC's programs to reduce risk to plan participants and the pension insurance system is the ERISA §4062(e) enforcement effort. Under ERISA §4062(e), a liability arises when there has been a separation from employment of more than 20% of participants due to a facility's cessation of operations. Sponsors are required to notify PBGC of these events within 60 days after the cessation. For more information about this program, or to discuss a particular company's situation, contact Roger Reiersen, Esq. or Ajit Gadre, both at (202) 326-4070 or by e-mail (Reiersen.Roger@pbgc.gov or Gadre.Ajit@pbgc.gov).

UNITED STATES DEPARTMENT OF LABOR
Employee Benefits Security Administration

DOL Corner

The Department of Labor's Employee Benefits Security Administration (DOL/EBSA) announced new guidance as featured below. You can subscribe at DOL/EBSA's Web site for updates.

Investment Advice

After review, DOL/EBSA decided to propose a revised rule limited to the implementation of the PPA statutory exemption on investment advice. The proposed rule, published on March 2, 2010, allows investment advice to be given under the statutory exemption in two ways. One is through the use of a computer model certified as unbiased. The other way is through an adviser, compensated on a "level-fee" basis. (For example, fees do not vary based on investments selected by the participant).

Several other requirements also must be satisfied, including disclosure of fees the adviser will receive. The regulation contains some key safeguards and conditions, including:

- requiring that a plan fiduciary (independent of the investment adviser or its affiliates) select the computer model or fee leveling investment advice arrangement;
- imposing recordkeeping requirements for investment advisers relying on the exemption for computer model or fee leveling advice arrangements;
- requiring that computer models must be certified in advance as unbiased and meeting the exemption's requirements by an independent expert;
- establishing qualifications and a selection process for the investment expert who must perform the above certification;
- clarifying that the fee-leveling requirements do not permit investment advisers (including its employees) to receive compensation from affiliates on the basis of their recommendations;
- establishing an annual audit of investment advice arrangements, including the requirement that the auditor be independent from the investment advice provider; and
- requiring disclosures by advisers to plan participants.

Public comments can be submitted by e-mail to E-ORI@dol.gov or by using the Federal e-rulemaking portal at www.regulations.gov by May 5.

Lifetime Income Options for Retirement Plans

On February 2, DOL/EBSA and the Department of the Treasury published in the *Federal Register* a request for information (RFI) soliciting public comments to assist the agencies in determining what steps, if any, to take to enhance retirement security for workers in employer-sponsored retirement plans through lifetime annuities or other arrangements that provide a stream of income after retiring.

The RFI seeks comments on a broad range of topics, including:

- The advantages and disadvantages of distributing benefits as a lifetime stream of income both for workers and employers, and why lump sum distributions are chosen more often than a lifetime income option;
- The type of information participants need to make informed decisions in selecting the form of retirement income;
- Disclosure of participants' retirement income in the form of account balances as well as in the form of lifetime streams of payment; and
- Developments in the marketplace that relate to annuities and other lifetime income options.

Written comments may be addressed to the U.S. Department of Labor, Employee Benefits Security Administration, Office of Regulations and Interpretations, N5655, 200 Constitution Ave, NW, Washington, DC, 20210, Attn: Lifetime Income RFI. The public may also submit comments by e-mail to E-ORI@dol.gov or through the Federal e-rulemaking portal at www.regulations.gov.

Employee Contributions to Small Retirement and Welfare Benefit Plans

On January 14, DOL/EBSA published a final rule in the *Federal Register* to protect employee contributions deposited to small retirement and welfare benefit plans with fewer than 100 participants by providing a safe harbor period of seven business days following receipt or withholding by employers.

Currently, employers of all sizes must transmit employee contributions to retirement plans as soon as they can reasonably be segregated from the general assets of the employer, but no later than the 15th business day of the month following the month in which contributions are received or withheld by the employer. The latest date for forwarding participant contributions to health plans is 90 days from the date on which such amounts are received or withheld by the employer.

The final rule amends the participant contribution rules to create a safe harbor period under which participant contributions to a small plan will be deemed to comply with the law if those amounts are deposited with the plan within seven business days of receipt or withholding. The final rule is consistent with the proposed rule. DOL/EBSA did not expand the safe harbor to cover plans with 100 or more participants because of a lack of information and sufficient data to evaluate current practices of such employers and assess the costs, benefits and risks to participants associated with extending the safe harbor to large plans.

The final rule was effective upon publication.

Electronic Filing of Form 5500 Annual Return/Reports

On December 31, DOL/EBSA converted to a total electronic system of online filing for the Form 5500 and the new Form 5500-SF. Now, the all-electronic EFAST2 system allows the public to submit and access filings online at www.efast.dol.gov.

The revised EFAST Web site has been updated to provide filers with a variety of tools and guidance, including the 2009 and 2010 Form 5500 and the new Form 5500-SF schedules and instructions, Frequently Asked Questions, user guides and a tutorial. Filers and preparers can register for an account, complete the required forms and schedules online in multiple sessions, print a copy for their records and submit it at no cost.

Filers may also use EFAST2-approved software to complete and submit their filings. EFAST2-approved software is expected to be easier to use and provide more value-added features than the Government Web application. A list of EFAST2-approved software is available on the EFAST2 Web site.

Retirement plans required to file an annual return/report regarding their financial conditions, investments and operations each year generally satisfy that requirement by filing the Form 5500 or Form 5500-SF and any required attachments.

Filers must submit the 2009 and 2010 annual return/report forms and schedules electronically through EFAST2. Prior year delinquent or amended Form 5500 filings also now must be filed electronically except that timely 2008 plan year filings may still be filed through the original EFAST on paper until October 15, 2010, or electronically through June 30, 2010.

Important changes for the 2009 and 2010 forms include:

- mandatory electronic filing,
- introduction of the new, two-page Form 5500-SF for eligible small plan filers,
- expanded disclosure on Schedule C of indirect service provider compensation,
- expanded reporting by Code §403(b) plans, and
- removal of IRS Schedules E and SSA. Information on participants with deferred vested benefits who separated from the service covered by the plan now must be filed directly with the IRS.

A helpful video on electronic filing is available. Assistance with the EFAST2 system and the Form 5500 and 5500-SF is available toll-free at (866) 463-3278.

DOL/EBSA is also helping filers and other plan officials with the changes to Form 5500 and the filing process through a series of webcasts. Archives of prior webcasts are available. Another webcast will be held this spring.

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.

Employee Plans News

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

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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1111 Constitution Ave., N.W., PE-4C3
Washington, DC 20224

FAX: (202) 283-9525

E-Mail: RetirementPlanComments@irs.gov

Have a Question?

For taxpayer assistance with retirement plans technical and procedural questions:

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

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

Please call (800) 829-1040.

Calendar of EP Benefits Conferences

UPCOMING EVENTS... Name	Date(s)	Location	Co-Sponsor(s) Please Contact	For Further Information,
Benefits Conference of the South	**05/13/10 - 05/14/10**	**Atlanta, GA**	**ASPPA**	www.asppa.org
Mid-Atlantic Benefits Conference	**05/24/10 - 05/25/10**	**Philadelphia, PA**	**ASPPA**	www.asppa.org
23rd Annual Cincinnati Employee Benefits Conference	**06/10/10 - 06/11/10**	**Cincinnati, OH**	**Cincinnati Bar Association**	www.cincybar.org
Great Lakes Benefits Conference	**06/16/10 - 06/17/10**	**Chicago, IL**	**ASPPA & cooperating sponsors**	www.asppa.org
1st Annual ERPA Conference	**06/17/10 - 06/18/10**	**Chicago, IL**	**American Institute of Retirement Education, L.L.C.**	http://www.erpaconference.org
Northeast Area Benefits Conference (2 Locations)	**07/12/10 & 07/13/10**	**Boston, MA & New York, NY**	**ASPPA & NE Area Pension Liaison Group**	www.asppa.org
RECENT EVENTS... Name	Date(s)	Location	Co-Sponsor(s)	For Information, See
Los Angeles Benefits Conference	**01/20/10 - 01/21/10**	**Los Angeles, CA**	**ASPPA & National Inst. of Pension Administrators (NIPA)**	www.irs.gov/ep
20th Annual SWBA/ IRS Employee Benefits Conference	**11/19/09 - 11/20/09**	**Dallas, TX**	**SouthWest Benefits Association (SWBA)**	

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