



TE/GE

Tax Exempt and
Government Entities

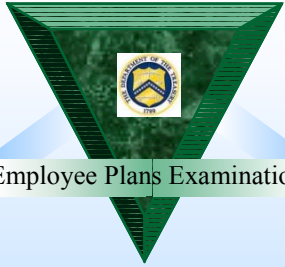
Employee Plans Examinations

Preston R. Butcher

Director

410-962-3290

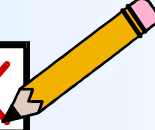
Preston.R.Butcher@irs.gov



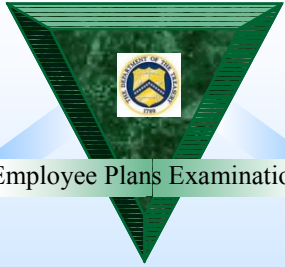
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Customer Service

General Chief Complaint

Bad 

Customer Service



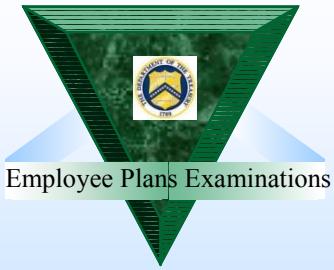
Employee Plans Examinations

Customer Service

In EP Examinations:

*Service
is an*

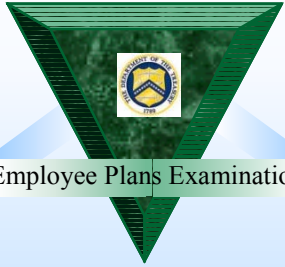
EXPECTATION!



Customer Service

EP Examinations Approach:

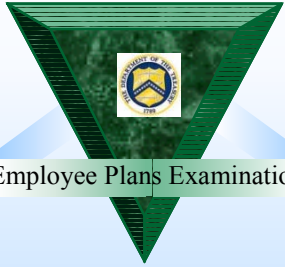
- ★ Identify customers
- ★ Talk to customers
- ★ Promote customer service
- ★ Encourage feedback



Customer Service

EP's Up-Front Approach:

- ★ Education and Communication
- ★ Alternative treatments
- ★ Correction and sanction programs
- ★ Information reporting
- ★ Enforcement

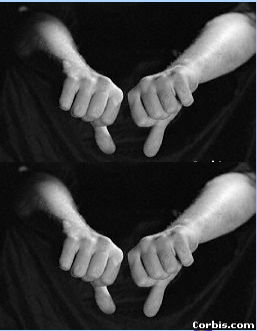


Employee Plans Examinations

Customer Service

CRITERIA

Customer Satisfaction Data



Explanation of Taxpayer's Rights



Explanation of EP Exam Process



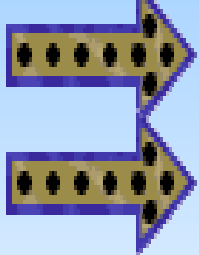
Courtesy of IRS Revenue Agent

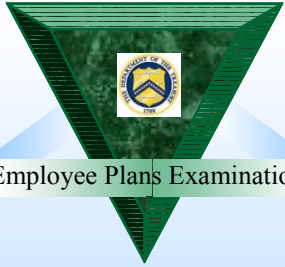


Professionalism of IRS Revenue Agent



Knowledge of IRS Revenue Agent





Employee Plans Examinations

Customer Service

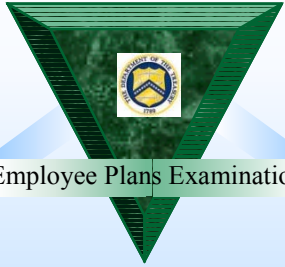
CRITERIA

Customer Satisfaction Data

- ★ Showing the Right Attitude
- ★ Explanation of Records Required
- ★ Time Given You to Respond to IRS
- ★ Consideration Given to Material
- ★ Listening to Your Concerns



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Customer Service

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Customer Satisfaction Data



Length of the Process



Amount of Time Spent on This Issue



Ease of Understanding Letter/Report



Explanation of Adjustments Made



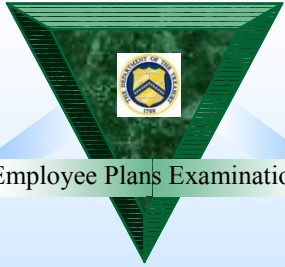
Fairness of Treatment by the IRS



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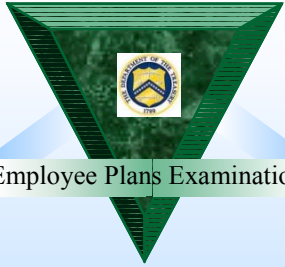


Employee Plans Examinations

Customer Service

EP Exams Customer Process Enhancements:

- ★ EP Specific Pub. 1
- ★ Friendlier Initial Contact Letter
- ★ Issue/Plan Specific IDRS
- ★ Limit Scope of Audit
- ★ Audit Guides



Employee Plans Examinations

Customer Service

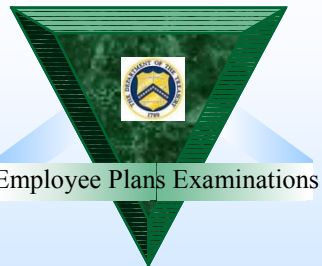
EP Exams Customer Process Enhancements:

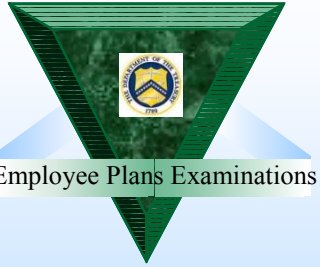
- ★ Alternative Compliance Treatments
- ★ Clearly Defined Customer Segments
- ★ Audit Schedule Agreement
- ★ Training of EP Agents
- ★ Communicate During Audit Delays

Examination Program Scope

Over the last 3 years:

- ★ Closed over **20,000** Examinations
- ★ Another 8,000 in Process
 - Large Case Support (IRC 404)
 - Referrals
 - Reported Funding Deficiencies
 - Project and Risk Assessment Cases





Examination Program Scope

Eight Criteria for a Quality EP Examination

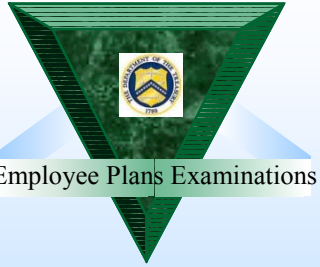
- ★ Examination Planning
- ★ Examination Scope
- ★ Documents/Operational Compliance
- ★ Examination Techniques



Examination Program Scope

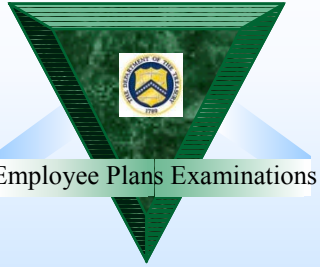
Eight Criteria for a Quality EP Examination

- ★ Workpapers/Reports
- ★ Application of Law/Tax Determination
- ★ Timeliness
- ★ Customer Relations/Professionalism



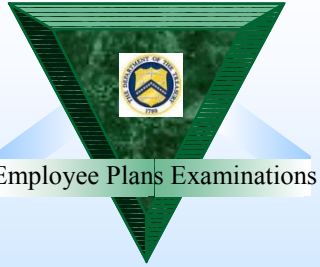
Past General Program Trends and Issues

- ★ ADP/ACP Failures
- ★ Non-Amenders
- ★ Not Following Plan Terms
- ★ Incorrect Allocations
- ★ Top Heavy Violations
- ★ Early Admission of Ineligible Employee(s)



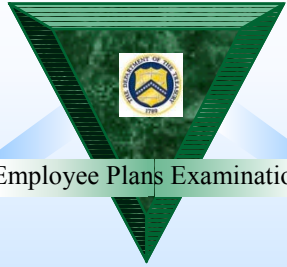
Past General Program Trends and Issues

- ★ Failure to Timely Admit Eligible Employees
- ★ IRC 72(t) Issues
- ★ Prohibited Transactions
- ★ Minimum Funding Violations



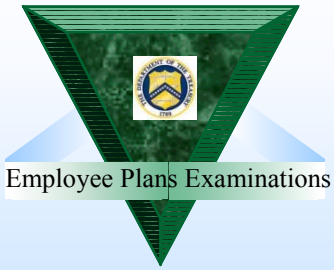
In Past, Top 5 Items That Triggered an Audit

- ★ Large Number of Separated Participants with Less Than 100% Vesting
- ★ Large Percentage of Assets Classified as “Other Assets”
- ★ Large Distributions on Income Statement



In Past, Top 5 Items That Triggered an Audit

- ★ Top-Heavy 401(k) Plans
- ★ Top-Heavy Plans Covering Self-Employed Individuals

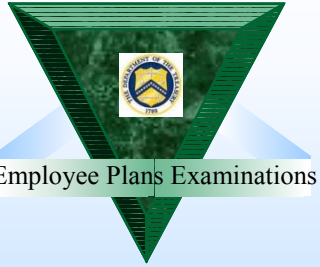


The Future – Examination Process Efficiency



Essential Steps

- Specialty Groups w/ Enhanced Training
- Limiting Scope of Examinations
- Reduce Cycle Time
- Starting Exam w/o Return
- EPCU

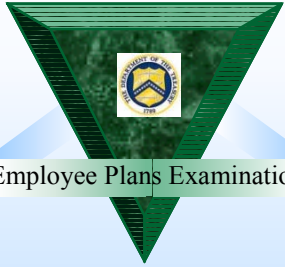


The Future – Customer/ Market Segmentation



Essential Steps

- Develop Sanction/Correction Programs
- Develop Audit Guidelines
- Risk Assessment Methodology



Employee Plans Examinations

Risk Assessment Methodology



Data Driven

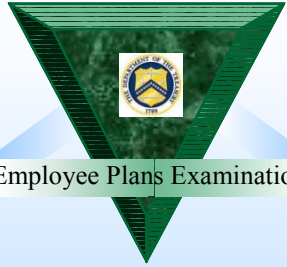
- Eight years of closing data and audit reports

- 10 plan types

- 19 industry/business codes



A total of 190 potential market segments



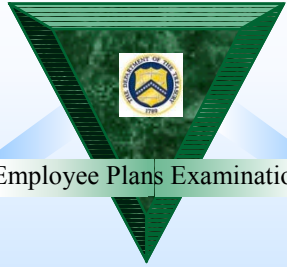
Employee Plans Examinations

Risk Assessment Methodology



Emphasis on Plan Type

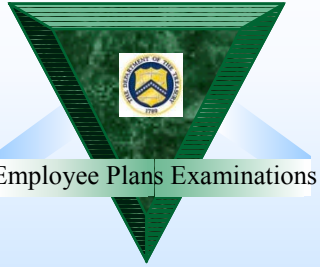
- 401(k)
- ESOP
- Defined Benefit
- Emerging Market Segments



Risk Assessment Methodology



- Data assessed as to
- Risk (history and past findings)
 - Reliability (sufficient number of audits)

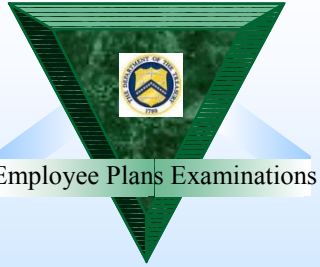


The Future – Customer/ Market Segmentation



Current Initiatives – Multi-Employer

- Minimum Distribution Requirements
- Crediting of Participant Accruals and Service
- Required Actuarial Adjustments for Payments Post-Normal Retirement Date
- Who Pays Sanction?

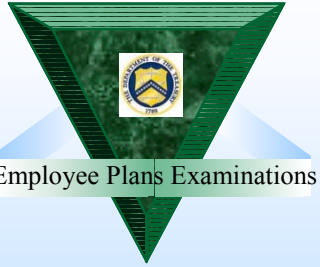


The Future – Customer/ Market Segmentation



Current Initiatives – Multi-Employer

- Adequacy of Books and Records
- Spousal Rights
- Vesting Provisions
- Participation Agreements
- Funding
- IRC 415 Limits

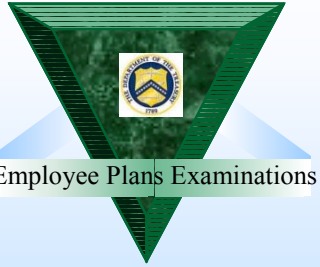


The Future – Customer/ Market Segmentation



Current Initiatives – IRC 403(b)/457

- Universal Availability
- Limitation Problems
- Examinations of 457 Features
(Substantial risk of Forfeiture)

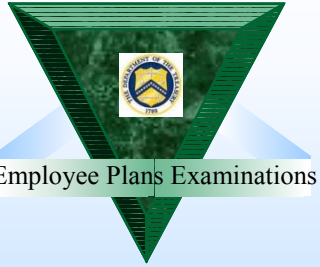


The Future – Customer/ Market Segmentation



Current Initiatives – IRC 403(b)/457

- Excess Contributions Under IRC 402(g)
- Excess Catch-Up Contributions
- Defaulted Loans

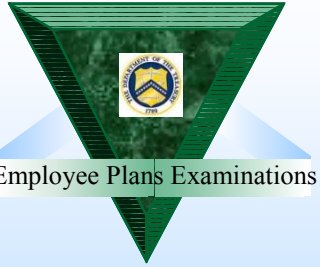


The Future – Customer/ Market Segmentation



Current Initiatives – 401(k) Plans

- Controlled Group
- Potential for Industry Analysis
- Improperly Excluded/Included Employees
- Correctness of Contributions and Allocations

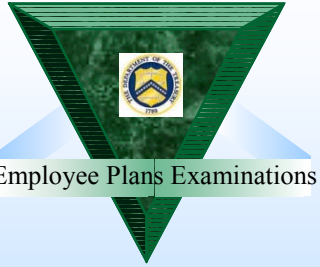


The Future – Customer/ Market Segmentation



Current Initiatives – 401(k) Plans

- Testing Errors
- Vesting Errors
- Failure to Follow Plan Terms
- Crediting Hours of Service

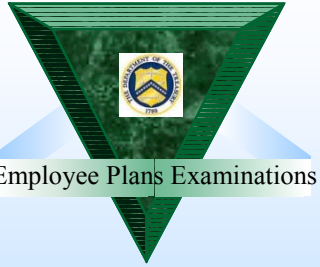


The Future – Customer/ Market Segmentation



Current Initiatives – 401(k) Plans

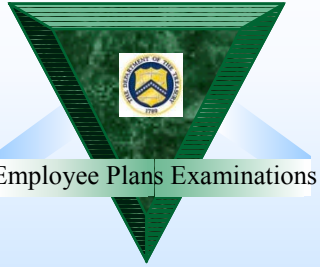
- DOL – Late Deposit of Deferrals
- Failure to Follow Safe Harbor Language
- IRC 401(k) Accelerated Deductions



The Future – Customer/ Market Segmentation

★ Employee Plans Team Audit (EPTA)

- Five Groups
- Team Audit Approach
- Identification and Selection Criteria

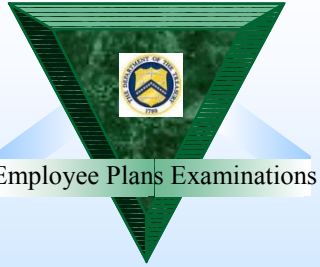


The Future – Customer/ Market Segmentation



Current Initiatives – EPTA

- Improper IRC 420 Transfer
- Improper IRC 401(h) Account Language
- Minimum Funding
- Minimum Distributions

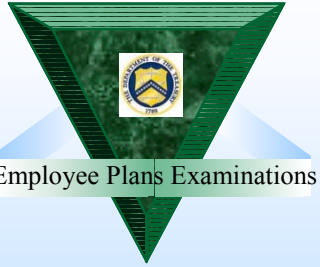


The Future – Customer/ Market Segmentation



Current Initiatives – EPTA

- Incorrect Vesting
- Fair Market Value of Securities
- Loans
- Excess Non-Deductible Contributions

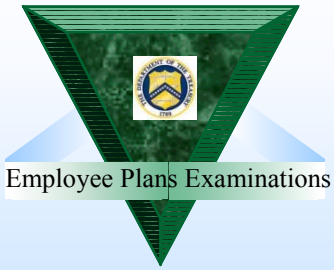


The Future – Customer/ Market Segmentation



Potential Customer/Market Segments

- SEP/SARSEP Adopters
- Third Party Administrators
- Mergers and Acquisitions
- Non-Filers (Joint IRS-DOL Program)

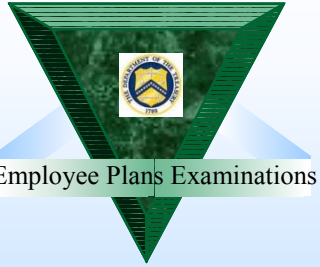


Non-Filers (Joint IRS-DOL Program)



Background

- 10-7-02 Joint DOL-IRS Notice
- Impact on DOL DFVCP Program
- 3 Compliance Check Samples

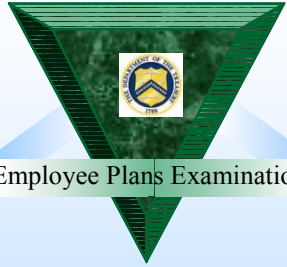


The Future – Customer/ Market Segmentation



Potential Customer/Market Segments

- Globalization
- Standardized Plan Adopters
- Terminations
- Mergers/Consolidations
- Abusive Tax Promotions Involving Pension Plans



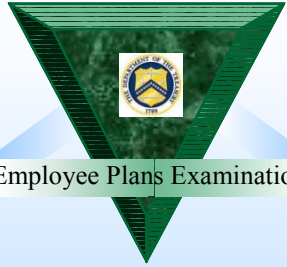
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Abusive Tax Avoidance Transactions (ATATs)

★ Definition

- A plan created to obtain tax benefits not allowable by law.





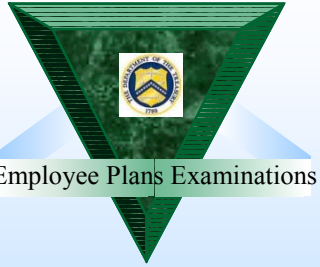
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Abusive Tax Avoidance Transactions (ATATs)



Three common characteristics of Abusive Tax Promotions

- promote large deductions
- diversion of income through pass-thru entity to qualified plan that benefits few employees
- promise tax-free distributions

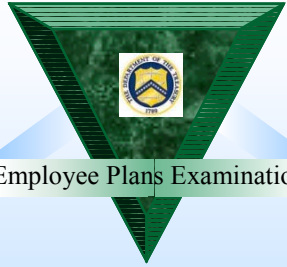


Abusive Tax Avoidance Transactions (ATATs)

★ Potential Benefit Abusive Schemes

(NOTE: Abusive promotions may exist within the following structures):

- **IRC 412(i) – Springing Cash Value Life Insurance Arrangements**
- **ESOP S-Corps & Management Corps**
- **IRC 419(A)(f) – Funded Welfare Plans**



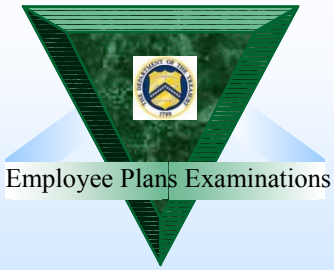
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Abusive Tax Avoidance Transactions (ATATs)

★ Potential Benefit Abusive Schemes

(NOTE: Abusive promotions may exist within the following structures):

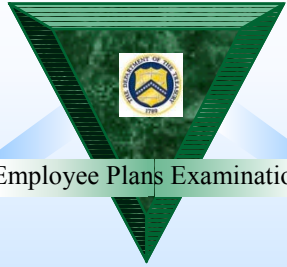
- **Roth IRA's – Shell Corporations**
- **IRC 401(k) – Accelerated Deduction Issues**



Abusive Tax Avoidance Transactions (ATATs)

★ Initial Strategy

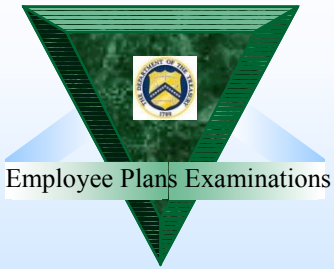
- **Sample Audits on ESOPs and IRC 412(i)**
- **Issue Identification**



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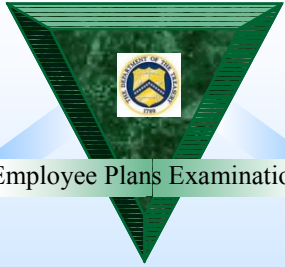
Abusive Tax Avoidance Transactions (ATATs)

- ★ Resolution Strategy Considerations
 - **Service Wide Considerations**
 - **Promoter and Investor Aspects**
 - **Reporters vs. Concealment**



Abusive Tax Avoidance Transactions (ATATs)

- ★ Resolution Strategy Considerations
 - **Sophistication of Investor**
 - **Attempts to Verify Promoter Claims**
 - **Involvement in Multiple Schemes**



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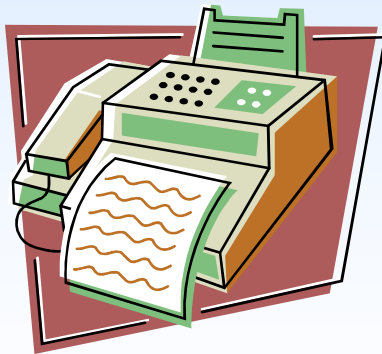
Contact Information

(Can be anonymous)

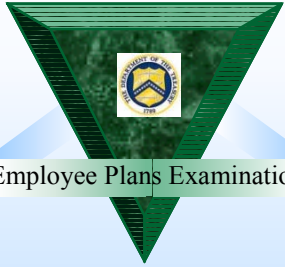


Phone: 410-962-9547

(Not toll free)



Fax: 410-962-0132

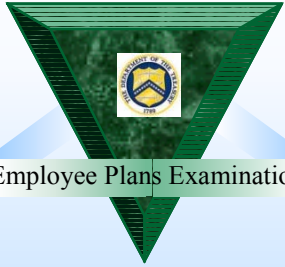


Contact Information

(Can be anonymous)



[tegeepsheltercoord@](mailto:tegeepsheltercoord@irs.gov)
[irs.gov](mailto:tegeepsheltercoord@irs.gov)

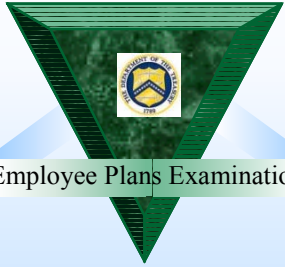


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Contact Information

(Can be anonymous)

**Internal Revenue Service
EP Tax Shelter Coordinator
31 Hopkins Plaza, Room 1542
Baltimore, MD 21201**



Employee Plans Examinations

Website Information





Employee Plans Examinations

://www.irs.gov/retirement/index.html

Website Information

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Retirement Plans

Tax Information for Retirement Plans

[401\(k\) Plans for Small Businesses](#)
Information is now available to help small business owners (who sponsor a 401(k) plan) better understand their responsibilities in establishing and operating their plans.

[EP Abusive Tax Transactions](#)
The IRS is engaged in extensive efforts to curb abusive tax shelter schemes and transactions. A listing of these transactions which require disclosure and other resources have been provided.

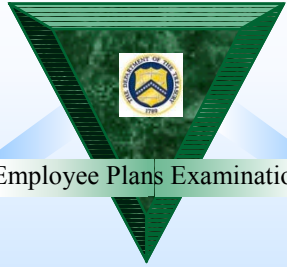
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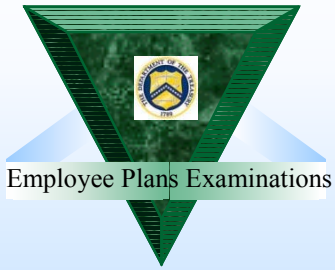
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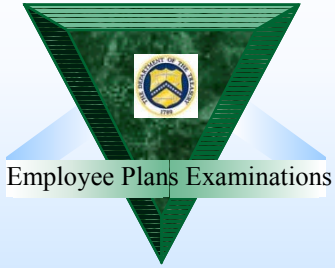
How Can You Help?





How Can You Help?

- ★ Share Your Newsletters, Websites, etc. with Us
- ★ Assist Us in Enhancing our Training
- ★ Feedback Through TE/GE Channels
- ★ Partner with Us in Outreach Initiatives



Feedback Method

★ E-mail

RetirementPlanComments@irs.gov

(Include your phone number in your e-mail message)