



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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EP Connections: Interview with Paul Shultz

Recently, *Employee Plans News* had the opportunity to sit down and talk with Paul Shultz, Director, Employee Plans Rulings & Agreements. In this role, Mr. Shultz is responsible for all forms of guidance affecting retirement plans, the determination letter program and the voluntary compliance resolution program; and for personnel administering these programs.

Prior to coming to EP, Mr. Shultz had more than 30 years of experience as an employee benefits lawyer in the private sector. He has served Of Counsel for a well-known law firm, where he focused on sophisticated employee benefit issues encountered by large employers. He has also managed the legal resource group of a prominent consulting firm specializing in employee benefits and human resources services to major businesses, governments and other organizations. Mr. Shultz is a graduate of Princeton University and received his Juris Doctor with Distinction from Cornell Law School, where he was Managing Editor of the *Cornell Law Review*.

1. You're midway through your term as Director of Rulings & Agreements — what are some of the changes that you've seen so far in EP?

The most dramatic event I have witnessed is the change in the culture of the IRS. Before our eyes, we have seen people move progressively toward a customer-focused approach with concern for the stakeholders and an embracement of partnering with our customers. Coupled with this has been a growth in our employees' move to thinking strategically about what our IRS mission is and how to accomplish it. Following these changes, people have become more open to new ideas, and are more willing to state what is on their minds, even if it may be inconsistent with views of their superiors. And finally, IRS employees have begun to realize that we are truly, finally, in the midst of real change in our organization.

2. What accomplishments or improvements in that time have made big impressions upon you?

Major accomplishments and improvements are best seen in different areas. In the guidance area, we have improved our way of working with Treasury and Chief Counsel to develop guidance by focusing efforts through "small groups" before bringing issues before the "large group" that includes persons who need to make the calls on major issues. Some of the major guidance items are:

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

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

Interview with Paul Shultz *continued from page 1*

- The publication of the revenue procedure on Professional Employment Organizations that enables IRS and taxpayers to resolve many cases that have been tied up in the ruling process for many years (*note, see the article on PEOs further on in this edition*),
- The completion of the decision process on cash balance plans, which will enable publication of guidance by the end of September,
- The completion of significantly improved minimum distribution regulations under Code section 401(a)(9),
- Our rapid and effective response to passage of pension reform in EGTRRA in 2001, and
- Our response to our customers' needs in connection with the disasters of the fall of 2001.

In the determination letter (DL) area, we have also done many good things including:

- Marshaling all the resources needed to prepare for the large number of GUST applications,
- Streamlining the process, making some applications unnecessary and making others use less resources of both customers and the Service,
- Early on, focusing needed resources on completion of M&P and VS plans, enabling the adopters to apply as early as possible,
- Applying resources to an extensive screening program at the appropriate time, and
- Devising methods of providing internal guidance for employees working the DL applications.

The Voluntary Compliance organization stood up earlier this year, bringing to fruition a major idea that began in the early stages of modernization. Some of the major accomplishments this year include:

- Completing the staffing of four VC groups,
- Creating national procedures for each EPCRS program and providing on-time training,
- A smooth transition of case inventory from Examination groups to the new VC groups,
- Developing methods for improving case processing consistency,
- Coordinating with Examination and Customer Education & Outreach (CE&O) to address cross-functional concerns, and
- Revising the EPCRS revenue procedure.

The Technical Group processed all of the M&P applications while continuing to move key private letter ruling and technical advice requests. By the way, Technical is now in the midst of rethinking the way it does business, which surely will lead us to find new ways to perform better and faster and cheaper.

3. The DL program for GUST is winding down. What are your thoughts on how the process went this time?

The dragon was nine-times tall and we shrank the dragon to five-times tall. We had anticipated almost 300,000 applications. Our changes in the program reduced the receipts to 150,000 applications. And, on average, we found ways to make those received far less burdensome,

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direction to a super-sized aircraft carrier. We needed to provide a lot of communication to all involved, and we did. This was achieved with good help from the people in our Cincinnati Determinations and Determinations Quality Assurance (DQA) groups, and from the people in our Published Guidance group here in Washington. We are currently working to make the DL process even more efficient by ensuring that when screeners find appropriate cases, they move them on to full review at the earliest opportunity.

4. Let's switch gears: We know that the priority guidance plan for 2002-2003 has been announced. What pieces of guidance can practitioners expect before the end of calendar year 2002?

By the end of this calendar year, we should see two major pieces of guidance: proposed regulations on the application of the age discrimination provisions (section 411(b)(1)(h)) to cash balance plans and proposed regulations combining and updating our various guidance affecting sections 401(k) and (m). Other guidance that may appear before the end of the year include final regulations on:

- Participant loans under section 72(p)
- Required minimum distributions relating primarily to defined benefit plans
- Catch-up contributions
- Retroactive annuity starting date in section 417(a)(7)

Other possible items include proposed regulations on communications to participants concerning the relative value of lump sum distributions and available annuity amounts and perhaps some guidance on section 72(t) as to what are substantially equal periodic payments, on ESOPs and on the aggregate entry age normal funding method under section 412.

5. The EPCRS program is quite a success. What are your thoughts on VC? On it's evolution?

I remember well when the voluntary compliance program first began in the late '80s under Marty Slate with APRS and VCR. To my thinking, this was the first glimmer of EP's true accommodation to customers. The program (or programs) has undergone an evolution throughout the '90s and has now matured into a single program placed in Rulings & Agreements. This maturation can also be considered a unification of three programs, all within the jurisdiction of the Voluntary Compliance organization under the leadership of Joyce Kahn (or perhaps almost all since Audit CAP – and self correction, also – remains under Examination, but closely coordinated with VC). Coordination between VC and Examination is the key to the success of all of these programs. We are finding that the broadening availability of self-correction is leading to fewer cases in VC and Audit CAP. This is one more way to facilitate compliance, which benefits both participants and plan sponsors. We will continue to watch for ways to fine-tune the VC program in the future.

6. Earlier in this interview, you mentioned the role of EP Technical in the DL process and also that EP is rethinking about the way Technical works. What role do you envision for EP Technical?

Inventory of work – Private Letter Rulings (PLRs), Tech Advices, M&Ps, actuarial rulings – has been declining and raises the long term question of how many employees we need to do the work of Technical. We think there are a good number of customer support projects that we

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The most dramatic event I have witnessed is the change in the culture of the IRS. Before our eyes, we have seen people move progressively toward a customer-focused approach with concern for the stakeholders and an embracement of partnering with our customers.

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

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Richard Ervi, James Flannery,
Roger Kuehnle, Peter McConkey,
Denise McMickens,
Todd Newman, Greg Nix,
Mark O'Donnell, Nancy Payne,
Sharon Polo, Donna Prestia,
Mike Rubin, John Schmidt,
Paul Shultz, and
Jeanne Royal Singley

can add to Technical's repertoire and we plan to do so over the coming months, working in conjunction with Customer Education & Outreach (CE&O) and Technical Guidance. We can use our enormous wealth of talent and knowledge in Technical to do soft guidance, checklists, outreach efforts, articles, other customer assistance. We are also "reengineering" Technical so that what they do is done faster, cheaper, better. It is our intention that their customers – both external and internal – will use Technical more in the future. We plan to focus on common issues and common plan types and develop knowledge bases on those issues so that we can address them more efficiently. For example, a large proportion of Technical's cases involve governmental plans and another large proportion involves church plans.

7. You're an avid fisherman. Do you get any ideas for improving EP while you're hip-deep in water?

To tell the truth: No. One of the wonderful things about fly-fishing is the total focus on fishing while you are doing it. Honestly, I have no thoughts of work whatsoever, only how to outwit those beasts in the water with brains the size of a pea. The benefit of fishing is that it totally clears the mind. When I come back from fishing, I am energized and can give work the same kind of total focus, and indeed I personally get the same kind of satisfaction from total focus on various tasks at work.

8. Crystal ball time: How do you envision EP in five years? 10 years?

In five years, I would guess that TEDS, the electronic DL administration program, should be up and running and giving a lot more speed and efficiency. I also see the DL program looking somewhat different then with one of the long-term options having been put in place. In my view, that option will probably be the one that provides for immediate adoption of changes for both law and guidance changes. But this will not be the hassle for employers it might at first seem – it likely will be done semi-automatically for most employers as most will, by then, be covered by a pre-approved plan and pre-approved plan sponsors will be adopting these changes on a continuing basis every year on behalf of all adopters. So, this will mean plan documents at maximum compliance with minimum hassle for employers. Well, maybe that won't be until 10 years from now....

Technical will look much different in five years with fewer employees and a different mix of work – more focus on assistance for employers. Voluntary Compliance will likely be about the same, perhaps smaller, as we see more and more types of self-correction made available. Guidance will likely have grown a little, but not much, as legislation and regulation continue to grow in the retirement plan area. Determinations and DQA will both be national organizations and perhaps need fewer employees because of the advent of the TEDS system.

Where will we be using our EP employees more? Not necessarily in Examinations – more likely in outreach and customer assistance. We will all increasingly be extensions of our CE&O element. And that is where we should be moving - to assist in more up-front compliance.

To see where we will be in 10 years, we need to extrapolate out from the directions postulated for the five-year period.

For a transcript of the entire interview with Paul Shultz, see www.irs.gov/ep. ■



CONTACTING EMPLOYEE PLANS



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

Send comments/ suggestions to:

- EP Customer Education & Outreach T:EP:CEO
Room 4C3
1111 Constitution Ave., NW
Washington, DC 20224
- FAX: (202) 283-9525
- E-mail:
RetirementPlanComments@irs.gov
▶ (Note the change in address)

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

- Please call (877) 829-5500

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

For Questions Relating to Retirement Income, IRAs, ROTH IRAs, Educational IRAs, Medical Savings Accounts, and Section 125 Cafeteria Plans:

- Please go to the Retirement Plans Web page at:
www.irs.gov/ep

EP Reviewing White Paper Comments

On April 1, 2002, the Service issued [Announcement 2002-36, 2002-13 I.R.B. 703](#), announcing that the comment period on our "White Paper" about the long-term future of the EP determination letter program was being extended to July 1, 2002. (For further details on the White Paper, see the [Spring/Summer 2002 Employee Plans News](#).)

The purpose of the White Paper (entitled *The Future of the Employee Plans Determination Letter Program: Some Possible Options*) was to solicit input from the public on the future of the EP determination letter program. The Service also asked for comment on whether it should hold a series of nationwide town meetings to foster increased dialogue on this topic.

As reported in the [Spring/Summer 2002 Employee Plans News](#), Paul Shultz, Director, EP Rulings & Agreements, expressed his pleasure both at the quantity and the quality of the comments to date. He also spoke of his desire to receive additional comments and suggestions regarding this important EP program.

EP is reviewing the comments received thus far and once the review of all comments is completed, EP expects to issue a follow-up to the White Paper. The topic of the future of the determination letter program will also be an article in a future edition of the *Employee Plans News*.

The White Paper is available for download from the Retirement Plans Web page at www.irs.gov/ep by selecting "More Topics" under the "Topics" section and then selecting "Determinations." ■

Legislative Update- 401(k) Blackout Periods

On July 30, 2002, President Bush signed into law the [Sarbanes-Oxley Act of 2002](#). Included in the Act, which relates primarily to accounting reform and investor protection, are some benefits-related provisions. Notably, section 306 of this new law provides some new requirements regarding "blackout periods." Blackout periods are those times when 401(k) plan participants are unable to access or direct their accounts for some length of time. Recent developments have made blackout periods a source of concern to plan participants as well as government officials.

Two provisions of import contained in section 306 of the new law are:

- First, directors or executive officers of registered companies are prohibited from selling their own stock (acquired in connection with their service as a director or executive officer) during blackout periods when workers can't make changes to their 401(k) plans. No longer will these directors or officers be able to exercise company stock options and sell company stock during periods when employees with company stock investments in their 401(k) plan are blocked from doing so.

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401(k) Blackout Periods *continued from page 5*

■ Second, plan administrators are required to notify workers 30 days before the start of any blackout period that will affect them and their pensions. Previously, there was no express statutory requirement to provide participants with such a notice. Now, not only is there a requirement to provide the notice but the law also spells out exactly what information the notice needs to provide. There are penalties for failing to provide the notice and its required information.

The definition of “blackout period” differs for each of the two provisions described above. See section 306 of the Act for clarification. The Securities and Exchange Commission and the Department of Labor have been given the authority to make regulations and other guidance to clarify and implement the requirements of new provisions. ■

Another GUST Reminder

As we explained in an article (“GUST Reminder,” page 6) of the [Spring/Summer 2002 Employee Plans News](#), the remedial amendment period for GUST generally ends on the later of February 28, 2002, or the last day of the first plan year beginning on or after January 1, 2001. However, eligible employers can file for an extension of time (granted by section 19 of [Rev. Proc. 2000-20](#)) to apply for a GUST determination letter after that deadline. The employer has to include evidence of eligibility for the extension with the application. Such evidence includes: a copy of the prior plan or adoption agreement (including opinion, advisory, and/or determination letters) or a copy of a timely completed certification to adopt a GUST-approved M&P or volume submitter plan. See section 6.10 of [Rev. Proc. 2002-6](#) for further details.

The [Spring/Summer 2002 Employee Plans News](#) also announced that there were new streamlined procedures that would allow plans to avoid disqualification and obtain favorable GUST determination letters even though the plans were not amended before the end of the GUST remedial amendment period.

In a separate article (“Streamlined Procedures for GUST Late Amenders,” pages 6 and 7), we reported that plans not timely amended for GUST faced disqualification unless the defects could be resolved under EPCRS. However, [Rev. Proc. 2002-35](#) provides some streamlined and less costly procedures that allow these plans to preserve their qualified status. The article went on to say that the streamlined procedures apply to plans eligible under Rev. Proc. 2002-35 in lieu of the procedures in Rev. Proc. 2001-17 (EPCRS).

After the publication of that article, the Service has since updated EPCRS via [Rev. Proc. 2002-47](#). Still, provided the sponsor has submitted the required fee (of Rev. Proc. 2002-35), the Service will (upon resolution of the determination letter application) treat the plan as having been amended for GUST within the GUST remedial amendment period and issue a favorable determination letter. No closing agreements or compliance statements are involved. ■



***Choosing A Retirement
Solution for Your Small
Business is a new “plain
English” publication
geared to give information
to small business owners
about the advantages
of sponsoring and being
in a retirement plan.***

New *Choosing* Publication

The Service, the Pension Welfare Benefits Administration, the Small Business Administration, and the Chamber of Commerce, along with private-sector partners, have just released Publication 3998, *Choosing A Retirement Solution for Your Small Business*. This brand new publication is geared toward small business owners who might be interested in having a retirement plan.

The Service and its partners are promoting the concept of “The Retirement Plan Life Cycle,” and “Choosing” is the premier issue in a series of publications on the Life Cycle. This new publication contains “plain English” information for small business employers about the advantages of sponsoring and being in a plan.

The four stages of the Life Cycle are:

- Choosing
- Establishing
- Operating
- Terminating

In the first stage – Choosing – business owners think ahead toward retirement and learn the various ways that money can be put aside for their retirement and the retirement of their employees.

With the “Choosing” publication, the Service and its partners introduce the plan types best suited to small business employers, who these plans cover, and how the plans work. This pub also features an easy-to-use chart that highlights important aspects of each featured plan type and issues that business owners should consider when selecting the retirement program best fitted to their needs.

Some of the things that you’ll find in the pub are:

- Reasons for sponsoring a plan, including some of the applicable tax incentives.
- Thumbnail sketches of the many retirement plan designs.
- Other sources and contact points for further retirement plan information.

So, if you or your clients have some questions about the basics of choosing a retirement plan, check out the new *Choosing a Retirement Solution for Your Small Business* publication. You can obtain a copy by going to the Retirement Plans Web page www.irs.gov/ep and selecting “EP Forms and Publications” under the “Topics” section. Other retirement plan information for small business owners can be found on the Retirement Plans Web page by selecting “More Topics” under the “Topics” section and then selecting “Retirement Plans for Small Businesses.”

You can also obtain a copy of this new publication 24 hours a day, seven days a week by calling 1-800-TAX-FORM (1-800-829-3676) and ask for Publication 3998.

This new publication and other upcoming pubs are part of the Service’s desire to encourage small business owners to sponsor retirement plans and to provide them with the information and support that they need. But the Service also realizes that whether or not to adopt a retirement plan is a big decision. If a business owner does decide to have a plan, it is also very important *to get the right plan for their business* because some plans may be better suited for a company’s circumstances than would other plans. Accordingly, we recommend that employers check with their financial advisor *before* deciding which plan, *if any*, to sponsor. ■

Tax Talk Today

On August 13, 2002, Employee Plans participated in a "Tax Talk Today" webcast (www.taxtalktoday.tv) on the topic of "Advising Clients on Retirement Plans." The program began with an interview session to introduce the topic for the month and a panel discussion of the topic followed.

Carol Gold, Director of Employee Plans handled the interview portion of the show in addition to participating in the panel discussion. During the interview, Carol explained that although there are some 40 million people who work in small businesses (those with 100 or fewer employees), only about 8 million (20%) of those individuals are covered by some type of retirement plan other than Social Security. This statistic is troubling because small businesses make up 40% of the nation's workforce. She also brought attention to the fact that if things continue unchanged, the remaining 80% of small business employees (32 million people) will be living in retirement with Social Security as their only source of income. She noted that the average Social Security benefit is only about \$830 a month.



From left to right; Craig Hoffman, Donna Prestia, Brian Anderson, Carol Gold, and Les Witmer participate in a "Tax Talk Today" webcast on the topic of "Advising Clients on Retirement Plans."

The program moderator, Les Witmer, introduced the publication *Choosing a Retirement Solution for your Small Business* (Publication

3998) as a source of information for practitioners to use to help their clients choose the right type of plan for their business. The publication is a joint project of the IRS, Department of Labor, the Small Business Administration and the Chamber of Commerce and can be ordered from the IRS or downloaded by selecting "Forms and Publications" under the "Topics" section of the Retirement Plans Web page www.irs.gov/ep. The *Choosing* publication is being used as the backbone of EP's education effort and what EP has characterized as the "Life Cycle of a Retirement Plan," the first stage of which is the *Choosing* stage.

Other guests on broadcast included Donna Prestia (Senior Analyst, EP Customer Education and Outreach) and two well-known benefits practitioners, Craig Hoffman (current president of ASPA, Vice President and General Counsel at SunGard Corbel) and Brian Anderson (Attorney at DeWitt Ross & Stevens S.C.). Carol and Donna told the audience that EP is reaching out to educate small business tax practitioners on the types of plans available and to reassure them and their clients that these plans do not need to be complex. They further put out the message that EP is here to help employers and, in the event they do have a plan with a problem, that we will assist them in resolving it.

As Mr. Hoffman said at the end of the program, "One closing point, Carol mentioned the Employee Plans Web site. If you have not checked out the Web site, you absolutely should. It is so easy to subscribe to. The e-mail newsletter keeps you absolutely up to date with what the IRS is thinking in the retirement plan area. They have worked very hard at improving the Web site. Frankly I use it myself...." To see the most recent retirement plan news, we also urge you to go to the Retirement Plans Web page at www.irs.gov/ep.

If you missed the August 13th webcast, go to the "Tax Talk Today" Web site. That webcast will be archived for 12 months. ■

► If you missed the webcast, go to the "Tax Talk Today" Web site where it will be archived for 12 months (www.taxtalktoday.tv).

Recap of the 2002 IRS Nationwide Tax Forums

The 2002 IRS Nationwide Tax Forums were recently concluded. Seminars were held in six locations across the country throughout the summer. Each seminar ran for three days and had a variety of sessions and an exhibit hall. These sessions are designed for tax professionals and included:

- How the Service *e-file* can revolutionize your business
- Retirement benefits
- How to apply for tax-exemption

Employee Plans presented a session entitled "[Retire With A Plan](#)." This session was designed to introduce practitioners to the various retirement plans that are available for small businesses. EP, in partnership with the Department of Labor, the Small Business Administration, and the Chamber of Commerce, has issued a new publication, [Choosing a Retirement Solution for Your Small Business](#) (Publication 3998). The Tax Forums proved to be an ideal platform to introduce this new publication designed to help attendees and their clients understand the plans available. The new *Choosing* publication is available by calling 1-800-TAX-FORM (1-800-829-3676) and requesting Publication 3998.

Exempt Organizations (EO) presented a session entitled "Does Non-Profit Really = Tax-Free?" Other operating divisions of the Service also participated, as did other government agencies, among them, the Department of Labor and the Social Security Administration. The EP and EO sessions were well attended and attendees ranged from those with a wealth of retirement plan or non-profit experience to those who were retirement plan novices or had never set up a non-profit or charitable organization.

At the IRS Tax Forum Exhibit Hall, practitioners had the opportunity to interact with TE/GE employees including Carol Gold, Director of Employee Plans and other EP executives. Many of the questions answered at the TE/GE booth concerned 401(k) plans, SEPs, SIMPLEs, disaster relief, charitable and non-profit organizations and federal, state, and local tax issues. Practitioners stopping by the TE/GE booth took advantage of the opportunity not only to ask questions but also to pick up IRS publications, forms, and promotional items. Feedback from the attendees on the presentations, the booth, and the *Choosing* publication was quite favorable.

The Tax Forum audiences are an entirely new group of practitioners for EP to reach out to. Traditionally, EP has worked closely with the practitioners that support larger businesses. In contrast, attendees of the Tax Forums are predominantly small business practitioners (i.e. enrolled agents and small CPA firms). As one attendee expressed, "Finally, you folks are here. I hope you're here to stay, we've been waiting a long time for this type of information and assistance."

For further information about the IRS Nationwide Tax Forums, go to www.paintl.com/fver and visit "IRS Information" or call (301) 593-0200. You can also get information about Tax Forums at www.irs.gov/efile and then going to the "Tax Professionals" section and visiting the "Tax Professionals Corner." To view a copy of the EP presentation, go to the Retirement Plans Web page at www.irs.gov/ep, select "More Topics" under the "Topics" section, and then select "Retirement Plans for Small Businesses." ■



Practitioners had the opportunity to interact with TE/GE employees at the IRS Forum Exhibit Hall in Atlanta, GA (top) and Atlantic City, NJ (bottom)

► For information about IRS Nationwide Tax Forums, go to www.paintl.com/fver and visit "IRS Information" or call (301) 593-0200.

EPCRS Made Even Easier and More Comprehensive

As we stated in our [July Special Edition](#), Employee Plans has expanded the Employee Plans Compliance Resolution System (“EPCRS”). [Revenue Procedure 2002-47](#) updates EPCRS, a wide-ranging set of correction programs designed for sponsors of retirement plans that are intended to satisfy the applicable sections of the Code but have not done so for a period of time.

Among the highlights of the new improved compliance system are:

- Extension of the self-correction period for significant operational compliance failures where the plan sponsor assumes a plan in connection with a corporate merger, acquisition, or other transaction.
- An indefinite extension of the anonymous submission procedure along with expanding the group of plans eligible to use it.
- Increasing and providing various *de minimis* rules.

There are numerous other clarifications, updates, and modifications of the prior correction programs. For a [Summary of Changes](#) to EPCRS by Rev. Proc. 2002-47 please visit the Retirement Plans Web page at www.irs.gov/ep and go to the "Correction" under "More Topics".

For a PowerPoint presentation on the EPCRS program prepared by Marianne Davis, Program Coordinator for EP Voluntary Compliance, go to www.irs.gov/ep, select “More Topics” under the “Topics” section, and then select “Correction.” This presentation provides an excellent summary of EPCRS reflecting the changes made by Rev. Proc. 2002-47. ■

Employee Plans Published Guidance

(June 2002 - August 2002)

Revenue Rulings

[Rev. Rul. 2002-42, 2002-28 I.R.B. 76](#)

This revenue ruling pertains to partial termination and notice questions resulting from EGTRRA increases in the section 404(a)(3) limits.

[Rev. Rul. 2002-43, 2002-28 I.R.B. 85](#)

This revenue ruling pertains to the calculation of the first tier prohibited transactions excise tax when excise tax rates change.

[Rev. Rul. 2002-45, 2002-29 I.R.B. 116](#)

This revenue ruling pertains to “restorative payments” to qualified defined contribution plans.

[Rev. Rul. 2002-46, 2002-29 I.R.B. 117](#)

This revenue ruling pertains to the deductibility of certain contributions.

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Notices

[Notice 2002-43, 2002-27 I.R.B. 38](#)

This Notice requests comments on “phased retirement” in the context of defined benefit plans.

[Notice 2002-46, 2002-28 I.R.B. 96](#)

This notice requests comments on optional forms of benefits in the instance of defined benefit plans.

[Notice 2002-48, 2002-29 I.R.B. 130](#)

This notice pertains to the Service’s position on the deductibility of certain contributions.

Regulations

[T.D. 9006, 67 Fed. Reg. 47454](#)
(July 19, 2002)

These final Income Tax Regulations pertain to notice to interested parties under section 7476 of the Code and changes to the Statement of Procedural Rules at section 601.201(o).

[T.D. 9005, 67 Fed. Reg. 47692](#)
(July 22, 2002)

These final Regulations pertain to a narrow exception from the exclusive benefit rule of section 401(a)(2) for multi-employer plans.

[REG-124256-02, 67 Fed. Reg. 48067](#)
(July 23, 2002)

These proposed Regulations pertain calculation of net earnings to the on certain distributions from IRAs.

Revenue Procedures

[Rev. Proc. 2002-29, 2002-24 I.R.B. 1176](#)

This revenue procedure contains model, minimum distribution amendments under §401(a)(9) for qualified plans.

[Rev. Proc. 2002-35, 2002-24 I.R.B. 1187](#)

This revenue procedure contains a streamlined procedure for GUST non-amenders.

[Rev. Proc. 2002-47, 2002-29 I.R.B. 133](#)

This revenue procedure updates the Employee Plans Compliance System.

Note: With respect to Revenue Ruling 2002-27, all questions on cafeteria plans should be directed to 1-800-829-1040.

The Corner of Forms & Pubs

Welcome back to “The Forms Corner.” As you may have noticed from the article’s title, we have expanded both the title of this column and its subject matter. Now it’s bigger and better, new and improved. Sure, it’s not as famous as Hollywood & Vine but, in time, we aim to make our little corner well known in its own right. The information contained here at “The Corner” will continue to be brief, although topics needing further details will get their own full-length articles (such as the article on the new *Choosing* publication contained earlier in this newsletter). Our lead story at the new (and improved) “Corner of Forms and Pubs” concerns the *Choosing* publication:

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- The new ***Choosing A Retirement Solution for Your Small Business*** publication (Publication 3998) is now available. This publication is geared toward small business owners interested in having a retirement plan. The publication is the cornerstone of the Service's program to encourage small business owners to adopt and sponsor retirement plans and to inform these small business owners that not all plans are complex or costly.
- **Additional Guidance on Required Minimum Distributions-** In our last edition we told you about new guidance coming from the Service regarding the required minimum distribution rules. Recently, the Service issued a supplement to [Publication 590](#) providing further assistance. The [supplement](#) contains all of the tables someone would need to determine their required distributions from an IRA, 401(k), 403(b) or other similar plans.
- **Revised Form 5310 ("Application for Determination Upon Termination")-** Also, our last edition reported that this revised Form 5310 would have been available by now. As of press time, this revised form had not yet been posted. This revised form now makes the use of Schedule Q optional for all determination letter requests. Paper copies of this form will be available through the IRS Distribution Centers by November 1, 2002. Check at the Retirement Plans Web page at www.irs.gov/ep for the latest developments.
- **The Troubleshooter's Guide is here-** The Pension and Welfare Benefits Administration (PWBA) has completed its revision of the popular *Troubleshooter's Guide To Filing the ERISA Annual Report (Form 5500)*. You can access the revised version by visiting the PWBA Web site at www.dol.gov/pwba and looking under the "In Focus" section.

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

Relief For PEO Defined Contribution Plans

On April 24, 2002, the Service issued [Revenue Procedure 2002-21, 2002-19 I.R.B. 911](#), which provides relief from disqualification for defined contribution (DC) plans maintained by Professional Employer Organizations (PEOs).

PEOs are commonly known as employee leasing companies and leasing organizations. According to an industry trade association, PEOs currently provide administrative services for more than 100,000 businesses throughout the country. They may also assist the businesses in monitoring compliance with various employment-related laws and regulations (e.g., COBRA, OSHA, and ADEA). Additionally, some PEOs maintain employee benefit plans, such as 401(k) plans and health plans.

PEOs have similarities to traditional leasing companies, but there are some distinct differences. For example, with PEOs, the employees usually have had a previous relationship with the employer. Generally, a PEO operates by entering into a service agreement with an employer (known as a client) whereby the client contracts with the PEO to perform certain functions, such as payroll and personnel type functions, for employees who continue to provide the services they had previously provided to the client.

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As PEOs grew and evolved, the Service began to have some concerns regarding compliance by PEOs with the tax laws. Thus, the Service conducted a study to see if PEOs were in compliance with tax laws. Study findings indicated that PEOs were generally in compliance with filing requirements and timely and fully paid appropriate taxes. However, there was a problem: apparently, PEOs were setting themselves out as the common law employer of the employees performing services for their clients.

The critical issue in determining who is the employer of an individual is which entity has the right to direct and control the employees. Generally, in the cases reviewed by the Service, the Service found that the PEOs did not have the requisite level of control to be considered the employer of the employees. Thus, the Service had concerns that DC plans maintained by the PEOs for individuals performing services for clients may violate the exclusive benefit rule of Code section 401(a)(2). The Service also had a concern that plans maintained by PEOs as single-employer plans may be violating other Code provisions, such as the nondiscrimination requirements in section 401(a)(4) and section 401(k), and the coverage requirements in section 410(b).

Recognizing the complexity involved in this area, the Service has fashioned an administrative solution to the problem: a PEO maintaining Code section 401(k) plans for individuals performing services for its clients may either terminate the current single-employer plan or convert the single-employer plan to a multiple-employer plan. If a PEO takes advantage of the remedial relief provided in the revenue procedure, these plans will not be treated as violating, or as having violated, the exclusive benefit rule solely because the plan provides benefits to individuals performing services for the clients of the PEO.

The impact of the revenue procedure is that it could require some PEOs to change the basic structure of their retirement plans. Additionally, PEOs that are currently maintaining plans as single-employer plans will be required to change the methods they are currently using to collect and test data to insure that the converted multiple-employer plan satisfies the qualification requirements. In addition, for the affected PEOs, plan documents will need to be amended and clients must be made aware of their options and potential additional responsibilities.


The revenue procedure provides a reasonable time for PEOs and clients to comply with the required remedial actions. It also provides for a decision date (which for calendar year plans is May 2, 2003) by which the PEO and client must select among the various options. After the decision date, in general, PEOs must be in compliance by a specified compliance date, which for a calendar year plan is January 1, 2004. ■

Vesting of Separated Participants upon Plan Termination

Despite a 1984 General Counsel Memorandum (GCM), there remains some confusion on the issue of full vesting for participants – who have yet to incur a forfeiture in accordance with plan terms – as a result of plan termination. This topic is a recurring determination letter issue, a potential examination issue and also tends to show up during plan termination sessions at various benefits conferences.

When a complete or partial plan termination happens, the result is full vesting for affected participants. In April 1984, the Service concluded in GCM 39310 that a partially vested

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The Service had questions and concerns about certain plans maintained by PEOs which may be violating Code provisions. In response, the Service has fashioned an administrative solution to the problem.

participant who separates from service and would not incur a forfeiture of their benefit under the terms of a qualified plan must be vested in their accrued benefit (to the extent funded) at plan termination.

A defined contribution (DC) plan may provide for acceleration of forfeitures under the cash-out rules of Internal Revenue Code section 411. Except in the case of a non-vested participant, forfeiture cannot precede distribution under the cash-out rules. If a DC plan does not use the cash-out provisions, it may provide that forfeiture will still occur through use of the break-in-service rules of section 411 (at the end of the applicable break-in-service period).

In a plan that uses the break-in-service rules to determine when forfeiture occurs, if the plan terminates before forfeiture occurs, partially vested separated participants are affected employees who must become fully vested. This is regardless of whether they received a prior distribution.

Conversely, in the case of a plan that uses the cash-out rules, a participant who separates from service and is paid their vested accrued benefit has no years left for purposes of accruing benefits. In a plan that uses years of service to determine accrued benefits, a cashed-out employee has no accrued benefit and nothing in which to fully vest at plan termination. The rationale in GCM 39310 applies to defined benefit plans as well as DC plans. ■

Quick Hits – Sound Bites in Print

Welcome back to a recently added feature of *Employee Plans News*: Quick Hits. Below are headlines of recent and expected developments.

■ **A PowerPoint Presentation by Paul Shultz** - In recent benefits conferences, Paul Shultz, Director, Employee Plans Rulings & Agreements has been giving a presentation entitled “Update: What Is Happening at IRS Employee Plans?” In his appearances, Mr. Shultz brings the audience up to date on the latest developments in EP. Among the discussion points in his talks are EP organization charts, recent guidance, and pending/current guidance projects. If you would like to view the PowerPoint slides, just go to the Retirement Plans Web page at www.irs.gov/ep.

■ **New and Expanded Weighted Average Interest Rates** - In our last edition we told you how to access the monthly weighted average interest rate (used for determining a defined benefit plan’s current liability) by going to the Retirement Plans Web page at www.irs.gov/ep, then selecting “Published Guidance” under the “Topics” section. Now we have added a link at the top of this table that provides 120% of the weighted average figures for the months of 2001. These figures are given for purposes of calculating the quarterly payments under section 412(m) for plan years beginning in 2002.

■ **2002-2003 Priority Guidance Plan** - On July 10, 2002, the Service announced a guidance plan with 250 projects scheduled for the 12-month period from July 2002 through June 2003. Among the items listed under Employee Benefits are additional guidance for: sections 72(p) and (t); IRAs; 401(k), 403(b), and 457 plans; and catch-up contributions under section 414(v). To see the complete Priority Guidance Plan go the Service Web site www.irs.gov, then go to the “Tax Professionals, IRS Resources, Administrative Information and Resources” section.

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FY 2003 EMPLOYEE
PLANS WORK PLAN

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In September 2002, program guidance for all Employee Plans managers and agents was issued for FY 2003. This annual work plan document provides priorities in each of the three primary EP program areas: Customer Education & Outreach (CE&O), Rulings & Agreements (which includes determinations, voluntary compliance, and technical activities), and Examinations. The CE&O section focuses on how EP will assist external customers in understanding their tax responsibilities. The Rulings & Agreements section discusses actions that will be taken to address the GUST amendment workload, critical areas of focus to enhance the Voluntary Compliance program, and the processing of Master & Prototype applications and private letter rulings. The Examinations program guidance outlines the strategic goals for identifying and correcting non-compliance. This document is available under the "More Topics" section of our web site at www.irs.gov/ep.

■ **Should Participants Get More Investment Advice?** - The Pension and Welfare Benefits Administration (PWBA) is soliciting public comment as to whether participants in self-directed retirement plans should get more plan and investment information than they currently do. The comment period expires October 15. Written comments should be sent to Gerald Lindrew, Office of Policy and Research, Department of Labor, PWBA, 200 Constitution Avenue NW, Room N-5647, Washington, DC 20210. The telephone number is (202) 693-8410 and the fax number is (202) 219-4745.

■ **The Advisory Committee on Tax Exempt and Government Entities (ACT) report** - The report of recommendations of ACT on five issues concerning employee retirement plans and other TE/GE jurisdiction is now available. ACT members presented their report to the IRS in a public meeting in Washington, DC on June 21, 2002. Of particular interest to retirement plan professionals are reports II, IV, and V. ACT welcomes comments on its report from the public.

■ **New Mailbox for Comments** - The *Employee Plans News* has a new e-mail address for your comments or suggestions: RetirementPlanComments@irs.gov. ■

SWBA/IRS 13th Annual Benefits Conference

The Service, in association with the SouthWest Benefits Association (SWBA), announces the 13th Annual Employee Benefits Conference for Practitioners and Plan Sponsors. This year's conference will be held on Monday and Tuesday, October 21 and 22, at the Renaissance North Hotel in Dallas, Texas. The conference will feature speakers from the Service (both local and Washington offices), Department of Treasury, Department of Labor Pension and Welfare Benefits Administration, Pension Benefit Guaranty Corporation, and the SWBA.

Topics at this year's conference include:

- How to become a fiduciary, without really trying.
- Attorney/Client privilege under ERISA.
- HIPAA privacy provisions for group health plans.
- New DOL claims regulations.
- 401(k) and 403(b) plans.
- Bankrupt and financially strapped plan sponsors.
- Plan funding and the demise of the 30-year bond.
- Use of Employer Stock in Qualified Plans.

Throughout the conference IRS specialists will be available to discuss, one-on-one, issues or problems relating to 401(k) Plans, 403(b)/457 Plans, Multi-employer Plans, Voluntary Compliance, Determinations, and other Retirement Plan topics at "Interactive IRS Tables" located in the break areas.

For more information regarding the conference such as continuing education credits, and special airfares and rental car rates, please visit the SWBA Web site at www.swba.org, or you may call them at (214) 382-3035.

Hotel reservations should be made through the Renaissance North Hotel.

Renaissance North Hotel
4099 Valley View Lane
Dallas, TX 75244
Phone: (972) 385-9000

2002-2003 Calendar of EP Benefits Conferences

UPCOMING EVENTS:

Name	Date(s)	Location	Non-IRS Co-Sponsor(s)	For Further Information, Please Contact
Los Angeles Benefits Conference	01/30/03-01/31/03	Los Angeles, CA	American Society of Pension Actuaries (ASPA)	www.aspa.org or ASPA Meeting Department (703) 516-9300
SWBA/IRS 13th Annual Employee Benefits Conference	10/21/02-10/22/02	Dallas, TX	SouthWest Benefits Association (SWBA)	www.swba.org SWBA Meeting Department (214) 382-3035

RECENT EVENTS:

Name	Date(s)	Location	Non-IRS Co-Sponsor(s)	For Information, See
15th Annual Cincinnati Employee Benefits Conference	06/20/02-06/21/02	Cincinnati, OH	Department of Labor & Cincinnati Bar Association	EP Benefits Conferences Calendar at www.irs.gov/ep
Northeast Benefits Conference (2 Locations)	06/13/02-06/14/02	Natick (Boston), MA White Plains, NY	American Society of Pension Actuaries (ASPA)	
11th Annual Mid-Atlantic Employee Benefits Conference	05/16/02-05/17/02	Philadelphia, PA	American Society of Pension Actuaries (ASPA)	
Great Lakes Benefits Conference (Formerly Midstates Benefits Conference)	05/02/02-05/03/02	Chicago, IL	American Society of Pension Actuaries (ASPA) & more than 20 cooperating sponsors	



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