

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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We're With the Government and We're Here to Help You

In a pilot program, EP is developing information packets designed to help sponsors of three IRA-based retirement plans:

- SIMPLE IRAs
- SEP IRAs
- SARSEPs

Mark O'Donnell, Director, EP Customer Education and Outreach, said, "We started this initiative because we wanted business owners to be aware of the responsibilities they undertake when they establish a retirement plan. These information packets are designed to be helpful reminders to them of those responsibilities."

Using employee and employer tax information to identify probable IRA-based plan sponsors, EP mailed the information packets to:

- 100 SIMPLE IRA plan sponsors in the greater Los Angeles area, and
- 100 SARSEP sponsors in the greater Boston area.

The SEP IRA plan information packet is under development.

The centerpiece of each information packet is a one-page checklist highlighting some of the basic requirements for operating the plan. Mr. O'Donnell said, "The checklists address what we believe are some of the most common problems that arise in these plans, based on feedback from our Examinations and Voluntary Compliance programs. We are trying to put into the hands of business owners tools to help them comply with their plans' requirements." The checklist is not a comprehensive list of all the requirements for operating a plan. Use of the checklist is voluntary and sponsors are instructed not to return it to the IRS. Explanations of each question are posted on the [Retirement Plans web site](#).

In addition to the checklist, each plan information packet contains a contact letter telling each recipient about the program and how to get further information, and a postcard asking for feedback on the checklist. Each packet also contains [Publication 4224](#), Retirement Plan Correction Programs, which describes EP's correction programs for retirement plans and tells how to learn more about those programs. The feedback received so far has been overwhelmingly positive.

To view the online versions of the plan information packets – including explanations of the checklists – go the Retirement Plans web site at www.irs.gov/ep, click on "More Topics", go to "Types of Plans" and select "IRA-Based Plans".

Feedback on any of the plan information packets may be sent to us at RetirementPlanComments@irs.gov.

EP Connections: Interview with Tom Terry

Tom Terry is the Senior Technical Advisor to the TE/GE Commissioner, Evelyn Petschek. He received his BA from Princeton and his LLB and LTM from the College of William and Mary, Marshall-Wythe School of Law in 1962. After law school, Tom joined the IRS as part of the old Legislation and Regulation Division of Chief Counsel and served as an Assistant to the Commissioner. He then spent the next 23 years in private practice in the San Francisco area. In 1990, he joined the Treasury Department in the newly created position of Benefits Tax Counsel. Later, Tom re-entered private practice and then in 2001 he was named to his current position.

What is your role as Senior Technical Advisor?

The office of Senior Technical Advisor was part of the original design of the TE/GE operating division when the IRS reorganized in 1999. Fundamentally, my role is to provide advice and counsel to Evelyn and the Deputy Commissioner, as requested, on technical matters arising in any of TE/GE's functions. In addition to working on special projects that Evelyn assigns to me from time to time, I have regular duties, including reviewing published guidance by EP and EO before it goes to Evelyn for signature, reviewing published guidance circulated to TE/GE for clearance from the other operating divisions and Counsel; and working with the Advisory Committee on TE/GE ("ACT"). This past August, Evelyn asked me to take on the responsibility of coordinating TE/GE's abusive tax avoidance transaction programs and most of my time since then has been devoted to this task.

What interested you in this position?

I have been interested in tax administration for a long time. My senior thesis in college was on the federal income tax definition of taxable income. When I graduated from law school my first job was with the IRS and in the early 1990's I joined the Treasury Department's Tax Policy Office. Also while I was in private practice in San Francisco and Washington, I served on several IRS public advisory groups. When Evelyn talked to me about joining TE/GE as the Senior Technical Advisor, I thought this would be a great way to cap my career.

What do you bring to the job from your years of private practice experience?

My private practice experience is invaluable because it helps me understand and anticipate the impact of TE/GE decisions on our outside stakeholders. This is particularly true as to employee benefit matters because I have specialized in employee benefits law since ERISA was enacted in 1974. TE/GE and its predecessor organization have always had excellent relations with its stakeholders and I like to think that I have contributed to this relationship from both sides of the fence.

How would you compare your current position with private practice?

As a lawyer in private practice, my responsibility was to achieve the best result for the particular client I was representing at the time. I spent a lot of time explaining to clients why EP took the positions it did, both generally in published guidance or specifically in the determination letter or examination context. My experience was that the client needed this understanding in order to realistically evaluate the strengths and weaknesses of their position. Thus, even in private practice, I spent a lot of time thinking about and explaining the "IRS side" of a technical issue.

To answer your question more directly, I suppose the primary difference in the way you approach things in government and private practice is that in government you always have to have the big picture in mind. That is, you have to be concerned about the impact actions taken have on the overall development of the law and the tax administration to the goals of uniformity and consistency of the treatment of taxpayers.

TE/GE has a Senior Technical Advisor to the Commissioner. His name is Tom Terry. Meet him here and read what he has to say about tax shelter matters, the guidance process and more.

Tom Terry on what he brings to his current position from his private practice experience: "(It's) invaluable because it helps me understand and anticipate the impact of TE/GE decisions on our outside stakeholders."

White Paper Update

EP has reviewed the feedback on the [White Paper](#) that was published in May. Expect a published summary of the comments along with our conclusions in the near future.

GUST Reminder

January 31, 2004 is the deadline for filing applications for GUST determination letters for most M&P and volume submitter plans. For plans that were not amended to comply with GUST during the GUST remedial amendment period, a \$250 compliance fee must be submitted with the application. See [Rev. Proc. 2003-72](#) for more details.

Interview with Tom Terry *continued from page 2*

You mentioned earlier about your work on tax shelter matters. Is that your present focus?

Yes, right now I'm concentrating on organizing my office to coordinate and monitor TE/GE's abusive tax avoidance transaction enforcement strategy. Each of TE/GE's operating functions: EP, EO and GE, has its own tax shelter programs and priorities. My office is intended to act as a resource and coordinator for those programs. Also, my office will act as the central contact point for the other Operating Divisions and Chief Counsel for tax shelter matters. Consistent with this role, I represent TE/GE on several IRS-wide committees that deal with abusive tax avoidance issues. (*Editor's note: EP is developing a web-page devoted to tax avoidance issues. Look for this new section of the [Retirement Plans web site](#) in early 2004.*)

What is one of the biggest challenges you face?

As a private practitioner, and in most of my previous government positions, I have functioned as a lawyer so my focus has been on legal issues rather than the day-to-day operational issues of tax administration. Since I am now a part of the "client", my focus must be broader to be effective. I have to be aware of things like the efficient allocation of TE/GE's limited resources, the way tax returns are processed, and headquarters/field communications and relationships. After almost three years in my job I have learned a lot about these matters but I still have a lot to learn.

"My Number 1 priority... and #2 and #3... is to... carry out (our) tax shelter responsibilities..."

What is your role in published guidance process?

One of my duties is to review published guidance before it is presented to Evelyn for her signature. In some cases, I participate in the development of the guidance at an earlier stage – particularly guidance with involves abusive tax avoidance transactions.

What are your priorities for the upcoming year?

Clearly, my Number 1 priority (and, according to Evelyn, my #2, #3, etc.) is to position my office to carry out its tax shelter responsibilities as described above.

What can you tell us about EP's priorities for the upcoming year?

EP's operational priorities are set forth in its recently issued 2004 work plan and I want to help Carol Gold and the EP leadership accomplish the goals set forth in the plan in any way I can. From my vantage point, the EP enforcement initiatives – especially those relating to abusive tax avoidance transactions – are very important.

Finally, some of our readers may not know that your wife Maxine also works in TE/GE (as a Program Coordinator for Voluntary Compliance in EP).

We get to commute together. That makes things easier – we can use the carpool lanes. On the other hand, she says the jury is still out on all this "togetherness."

(*Editor's note: Maxine told the EP News, "Carpooling with Tom is OK provided I can get him to stop "talking shop" on the way to and from work."*)•

DOL Corner

The Department of Labor's Employee Benefits Security Administration (DOL/EBSA) continues to expand its compliance assistance efforts. In addition to the guidance noted below, the Agency worked with the IRS and PBGC to develop and issue the *Retirement Corrections Program* publication and worked with the IRS on the Corrections Program CD. DOL/EBSA also made available additional tools for its voluntary compliance programs, including a VFC Checklist, VFC FAQs on the Class Exemption, and a Sample Letter for the VFC, all available on the DOL/EBSA Web site at www.dol.gov/ebsa.

If you are involved with a group health plan, note that DOL/EBSA provides compliance assistance for these plans as well. Visit the Agency's Web site under "Compliance Assistance" for information on HIPAA, COBRA, the benefit claims procedure regulation and more. In addition to the updates noted below, visit the DOL/EBSA Web site for recent speeches and testimony by the Agency's Assistant Secretary Ann L. Combs and Deputy Assistant Secretary for Program Operations Alan D. Lebowitz on current issues. Speeches and testimony are on the Web site under "Newsroom".

Proposed Amendments to Prohibited Transaction Exemption 84-14

On September 3, DOL/EBSA proposed amendments to update a widely used class exemption, Prohibited Transaction Exemption (PTE) 84-14, available to plans whose assets are managed by a qualified professional asset manager (QPAM).

DOL/EBSA proposed the amendments to address concerns expressed by the financial services industry that recent consolidation of the industry has made it difficult to comply with the conditions of the QPAM exemption for monitoring corporate affiliates. The proposal would amend the class exemption to ease compliance difficulties by narrowing the restrictions on transactions with parties in interest that are related to the QPAM. This would allow plans to engage in transactions with a larger group of related parties. It will also increase the investment opportunities available to plans, allow greater efficiencies and lower costs.

The [proposed amendments](#) are available on the DOL/EBSA Web site under Compliance Assistance.

Advisory Opinion 2003-11A

On September 8, DOL/EBSA issued an advisory opinion approving the use of "profile" prospectuses by fiduciaries of participant-directed individual account plans under section 404(c) of ERISA.

The rules governing the format and content of "profile" prospectuses are set forth by the Securities and Exchange Commission. In general, a profile prospectus is intended to provide investors with clear and concise information about mutual funds in a format that is designed to communicate information effectively, while avoiding the often confusing technical and legal terms generally associated with the traditional prospectus.

The availability of profile prospectuses to section 404(c) participants will make it more likely that potential investors will actually read about the funds in which they invest and will lead to more informed investment decisions by plan participants.

The opinion makes clear that, while participants may be provided a profile prospectus in lieu of a regular prospectus, investors continue to have a right to the more detailed prospectus if they request it.

[Advisory Opinion No. 2003-11A](#) is available on the DOL/EBSA Web site under Compliance Assistance.

How to Subscribe to Employee Plans News

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 by selecting "Employee Plans News" under the "Topics" section. 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 the underlined text. The electronic version may be found at www.irs.gov/ep.

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Reporting and Disclosure Guide

On November 20, 2003, DOL/EBSA issued the Reporting and Disclosure Guide for Employee Benefit Plans. The guide will assist employers, plan sponsors, service providers, and other plan officials in meeting their reporting and disclosure obligations under ERISA.

The guide is designed to help plan officials understand the scope of ERISA's basic reporting and disclosure rules. It is the latest of DOL/EBSA's compliance assistance efforts to help the benefits community protect workers by giving them the tools and programs necessary to comply with ERISA.

For the first time, the booklet includes information on group health plan disclosure requirements under Part 7 of ERISA and the new blackout period notice, which requires 401(k) and other individual account pension plans to provide advance notice when participants' rights are suspended for direct investments, loans or distributions.

Prepared with the assistance of the Pension Benefit Guaranty Corporation (PBGC), the guide provides information and overview charts on the basic ERISA disclosures that retirement, group health and other welfare benefit plans must furnish to participants and beneficiaries. You will also find the PBGC reporting and disclosure requirements for single-employer defined benefit plans and the annual reporting requirements for the Form 5500 and Form M-1.

The [Reporting and Disclosure Guide](#) is available on the DOL/EBSA Web site under Compliance Assistance. You can also obtain copies by calling toll-free, 1-866-444-EBSA (3272).

Security Trust Company, N.A.

On November 25, 2003, DOL/EBSA participated in an announcement with the Office of the Comptroller of the Currency, the Securities and Exchange Commission and the New York Attorney General regarding Phoenix, Arizona-based Security Trust Company, N.A. Among the actions taken, the OCC announced that STC will begin a process that will result in an orderly dissolution of the bank by March 31, 2004. An order signed by the OCC requires the bank to take steps to ensure that the trust accounts and investment plans it administers experience the minimum disruption possible. DOL/EBSA participated in the OCC investigation.

For more information, see the [press release](#) issued by the four agencies on the DOL/EBSA Web site under Newsroom. •

Conducting Audits at a Taxpayer's Place of Business

With the establishment of the dedicated determination and examination groups and the decline in determination letter application requests, the EP examination groups are now able to devote their full resources to the examination program. Preston Butcher, Director, EP Examinations, said, "Our efforts are focused on conducting effective and efficient high quality audits. In this regard, we have discussed with our agents the need for audits to generally be conducted at the taxpayer's place of business, unless facts and circumstances dictate otherwise."

Section 301.7605-1(d) of the regulations sets out the IRS policy. Mr. Butcher said it's important for practitioners to understand why we have this policy and what we hope to accomplish by following the policy. "First, we don't want to use our authority to enforce the place of audit simply for the sake of demonstrating that we can. Instead, we want to insure our agents' time is efficiently used, by having access to source documents where they are stored, which is generally at the taxpayer's place of business", he said.

For example, Forms W-2, Forms 940 and 941, payroll records, personnel files and the entity's income tax return are all examples of source documents that would not normally be stored at the pension professional's place of business. A review of these and other records often leads to questions that require additional records that are at the taxpayer's place of business.

Working with the IRS and PBGC, DOL/EBSA continues to expand its compliance efforts.

Why does EP want to conduct audits at a taxpayer's place of business?

Read the EP Director of Examinations, Preston Butcher's answer here.

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

Marylou Bailey-Funk, Richard Ervi, James Flannery, Charlene Goins, Bob Henn, Mark Hoffman, Terri Holloway, Gail Jones, Teresita Laureano, Donnie Littlejohn, Peter McConkey, Todd Newman, Greg Nix, Mark O'Donnell, Nancy Payne, Sharon Polo, Donna Prestia, Wiley Ransom, Mike Rubin, Bonnie Schaumberg, John Schmidt, Brenda Smith-Custer, Tom Terry, Mikio Thomas and Rick Westley

Another goal for conducting the audit at the taxpayer's place of business is to provide an opportunity for agents to familiarize themselves with the business operations by inspecting the premises. Experience has shown that pension professionals are extremely knowledgeable regarding the plan's operation but are not as well versed in how the taxpayer conducts business. Unless an interview with the taxpayer has been pre-arranged, in these situations the representative's lack of knowledge significantly diminishes the value of the agent's initial interview. Without dealing with someone from the business who knows about its daily operations, agents often cannot resolve their questions.

Another important reason to conduct the audit at the taxpayer's place of business is the need to evaluate the internal controls that are in place for plan operations. Without having access to someone who works in the taxpayer's location, it is difficult for the agent to evaluate whether the census information provided to the pension professional is accurate. For example, does the office manager fully understand how the plan should work, including entry dates, includable compensation, related businesses that could have an impact on various operational tests, etc? If not, the information provided to the pension professional may be seriously flawed.

Said Mr. Butcher, "For these reasons, our agents will request to hold the audit at the taxpayer's place of business. If that is not a viable option (for example, if the agent's presence would disrupt the business operations), then the taxpayer or their authorized representative may submit a request to hold the audit elsewhere, outlining the reasons. If this is approved, the agent will most likely request an opportunity to conduct a walk-through of the business premises and an opportunity to direct questions to the taxpayer."

These visits can be scheduled prior to the start time of the business – for example, before office hours at a doctor's office. It is important to remember that in making decisions regarding the location of the audit, the convenience of the taxpayer must be balanced with the requirement of sound and efficient tax administration. •

Examiner Tips:

Hardship Distributions from 457(b) Plans can be Hard to Handle

(Editor's note: In our last edition, we introduced a new feature, "Examiner Tips", where we alert readers to common problems our examiners see. This edition's column deals with IRC 457 plans. In our next edition, we'll discuss issues that arise with part-time employees.)

The distribution rules for hardship withdrawals from section 457(b) plans are different from the rules for 401(k) plans. In an eligible 457(b) plan, distributions are restricted to the earlier of the calendar year in which the participant attains age 70-1/2, terminates employment or requests a distribution due to an unforeseeable emergency.

A 457(b) plan doesn't have to provide for hardship distributions but if it does, then the plan document must provide for a distribution due to unforeseeable emergency. The plan must define a severe financial hardship as one resulting from an illness or accident of:

- The participant/beneficiary,
- The participant's/beneficiary's spouse or
- The participant's/beneficiary's dependent.

Financial hardship includes loss of property due to unforeseeable circumstances arising as a result of events beyond the participant's/beneficiary's control.

Examples include:

- Imminent foreclosure of or eviction from the primary residence,
- Payment of medical expenses – including non-refundable deductibles – as well prescription drug medication, and
- The need to pay for the funeral expenses of a family member.

Generally, the purchase of a home and the payment of college tuition are *not* unforeseeable emergencies.

More exam insights from our EP examiners.

This edition's topic: When it comes to hardship distributions from a 457(b) plan, what constitutes a financial hardship?

Online EIN Update

In the [Summer 2003 Edition](#), we reported on how to get EINs online.

Since the online application was made available in April 2003, nearly half a million EINs have been issued.

If you need an EIN and would like to take advantage of this speedy process, just go to www.irs.gov and type "EIN" in the IRS Keyword search box.

Determination of an unforeseeable emergency distribution must be based on the relevant facts and circumstances and may not be made if the emergency could be relieved through reimbursement or compensation from insurance; by liquidation of the participant's assets; or cessation of deferrals under the plan. The distribution must be limited to the amount reasonably necessary to satisfy the emergency need and may include amounts necessary to pay any taxes or penalties that result from the distribution.

When examining 457(b) plans, the IRS checks to ensure that hardship distributions meet the criteria discussed above. Here are some pointers from EP examiners on hardship distributions from 457(b) plans:

- Put in place a definite procedure for handling hardship distribution requests. Communicate this process to the plan participants. Participants should be made aware of when they may request a hardship distribution. For example, a financial need to pay overdue bills, by itself, does not qualify as an unforeseeable emergency due to circumstances beyond the control of the participant. However, the loss of wages due to illness, accident, layoff or unforeseen emergency may.
- A "reasonable man" standard should be used to document the request and verify the need. This should include a complete description of the emergency expense. For example, the regulations provide that funeral expenses of a family member may qualify as a financial hardship due to unforeseen circumstances but only if the family member is a dependent as defined in Code section 152(a). So, the documentation should include on whose behalf the financial need arose.
- Verify the amount needed and limit the distribution to that amount. Secure copies of bills or statements to support the request. Obtain documentation or a statement from the participant that the need cannot be satisfied through other means such as savings accounts, credit cards, installment payments, etc.

Keep in mind that a non-emergency medical expense such as orthodontics (braces for children), laser eye surgery, and cosmetic dental procedures, although unforeseen expenses, generally will not qualify for hardship distribution. However, if one of these procedures is medically necessary (and not otherwise covered by insurance), be sure to get the proper documentation for your files. Also, medical expenses for a relative who is not a dependent will not qualify for hardship distribution under IRC 457.

While 403(b) and 401(k) plans are similar, they have different rules for hardship withdrawals. Don't let these differences trip up your 403(b).

Failure to make valid hardship distributions may cause an eligible 457(b) to become an ineligible plan, with taxation issues to all participants.

In summary, an established procedure that has been clearly communicated to the participants will help prevent improper hardship distributions from 457(b) plans. And, each hardship request is unique: The facts and circumstances in each request will determine if the hardship is due to unforeseen circumstances beyond the participant's control.

Finally, a Voluntary Compliance note: In [Rev. Proc. 2003-44](#), the IRS stated that it is considering expanding EPCRS and is interested in receiving comments regarding appropriate correction procedures for failures arising under 457(b) plans. Submissions relating to 457(b) eligible government plans will be accepted by the IRS on a provisional basis outside EPCRS. Submissions relating to other 457(b) eligible plans may be accepted outside of EPCRS as EP develops experience in the 457 area. •

The Future of Retirement Savings

(Editor's Note: On September 11, 2003, William F. Sweetnam, Jr., Benefits Tax Counsel in the Office of Tax Policy of the Department of the Treasury and J. Mark Iwry, Nonresident Senior Fellow at the Brookings Institution and Mr. Sweetnam's predecessor as Benefits Tax Counsel, spoke at John Marshall Law School regarding *The Future of Retirement Savings*.)

End of Year Guidance

The end of the year brings more than just resolutions for the upcoming year. It's the time of year when the IRS traditionally publishes a number of guidance pieces. As of our publication date, EP and Treasury staff are working hard on several major items of interest including:

- tax shelter guidance on ESOPs, Roth IRAs and other transactions;
- proposed regulations under IRC 411(d)(6);
- regulations under IRC 401(a)(9); and
- a smorgasbord of other items.

Employee Plans News will publish a special edition if events warrant. Look in your email inbox for the latest EP information.

Did *Employee Plans News* ever do a story on the required minimum distribution rules? Or on Paul Shultz?

Find out fast using the new *Employee Plans News* topical index.

Mr. Sweetnam and Mr. Iwry started off their presentation with an insider's guide to how public policy issues are developed in our political system. The informal discussion focused on advising the White House, Cabinet secretaries and Congress on pension-related issues. Mr. Sweetnam described the complexity involved in trying to get support from many different groups with competing interests in a particular piece of legislation and how institutional gridlock can be overcome. "The key", he said, "is to determine what each group needs and to craft that into a "buy in" so that the legislation could move forward." Mr. Iwry spoke to the process of reforming the pension system while maintaining stability for plan sponsors, describing how changing events and shifting political priorities shape the opportunities for change and demand flexibility.

The discussion turned to the future of retirement savings, with each presenting different views of the administration's proposal for Lifetime Savings Accounts. Mr. Sweetnam addressed the concern that there are so many types of savings, such as Medical Savings Accounts, Educational Savings Accounts, IRA's, etc., that a very complex system is now in place to keep track of all of the branches. Instead, he said, "The Administration has proposed a way to encourage savings by everyone and the proposal would also consolidate and simplify current savings programs." Mr. Iwry said that any such proposal had to be appraised in terms of fairness, fiscal responsibility and effect on national saving, including employer-based pensions. He critiqued the proposal on those three grounds, expressing concern that Roth IRA-style individual accounts allowing large contributions without income limits and with easy withdrawals would reduce retirement security for average workers, increase the budget deficit and undermine small employers' incentives to sponsor plans for employees.

Finally, they addressed the cash balance conversion issue and the impact of recent court decisions on issuance of determination letters. Mr. Sweetnam said that Treasury would be looking closely at the impact of those court decisions. Although unable to comment directly on the court decisions, he said, "Employee benefits issues might need to be addressed politically." Mr. Iwry said, "There are ways to encourage employer sponsored plans, like cash balance, while mitigating the adverse effects of conversions on older workers." He suggested Treasury join in supporting a "win-win" legislative solution that approve hybrid plans, preserving flexibility for employers while requiring reasonable transition protection for older workers in a conversion. •

That's the *Employee Plans News*

Remember the article in the *Employee Plans News* on the 401(k) Plan Compliance Group? There's a question that you'd like to ask of the leader of that group. But you can't remember the person's name. You're pretty sure the article gave the person's name and email address but you can't remember which edition had that story. Before, you would have had to go to www.irs.gov/ep, click on "Employee Plans News", go to the archive and review all of the issues and headlines.

Now, EP has a better way. We have developed a Topical Index of all the stories that have appeared in the *News* and placed that it on the Employee Plans News section of www.irs.gov/ep. Each topic will have a sub-topic if appropriate and then a list of the story headlines on that area followed by the *News* issue and page number where it appeared. Stories will be indexed by subject – sometimes with stories appearing in more than one subject area.

Some people can recall the number of a piece of guidance while others can recall better what the guidance was about. For example, there was an article about new Required Minimum Distribution rules and how Announcement 2001-82 affects those rules. The "number-oriented" people can go to "Announcements" and then "Announcement 2001-82" in the index; the "subject-inclined" people can go to "Required Minimum Distributions". Either way, the Topical Index will give the edition (and the page number) in which the story appeared.

In three short years, the *News* has covered a wide variety of retirement plan subjects with frequent updates on some topics as new legislation is enacted and new guidance is issued. Keeping up with all of these revisions can be challenging. This new Topical Index is a tool we hope our readers – some 21,000 strong and growing – will find helpful. •

The “New” 401(k) Plan?

This year at the 2003 Nationwide Tax Forums the IRS was approached by many attendees about, what is being called, the new “Solo (k)”, “Uni (k)”, or “Individual (k)” plans. The folks who asked questions about these plans were under the impression that they were a product of new legislation. We explained that they were just 401(k) plans designed for a specific type of employer. Based on the number of questions we received, we thought it practical to address this “new” arrangement.

First, there is no “new” plan under the Internal Revenue Code. The sudden appearance of these “new” plans is a result of tax law change that became effective in 2002. The law change affected how salary deferral contributions are treated when calculating the maximum contribution amount for a participant. This change created an opportunity for some people to put away additional amounts toward their retirement. But these arrangements are not a part of the tax code – rather, they were developed by practitioners and are being marketed by these same practitioners, not the IRS.

Next: Who can take advantage of these new arrangements? They are designed for business owners that do not have any employees except, perhaps, a spouse. They can be set up by incorporated and non-incorporated businesses.

These plans are being marketed for businesses that might otherwise establish a SEP or a SIMPLE. Comparisons based on the amount that can be deducted under each of these plans are being used as a reason for adopting one of these 401(k) plans. The loan aspect of a 401(k) plan is also being used as a draw. The arrangements are just 401(k) plans limited to certain types of business owners and may be a good fit for some employers.

A few simple things a business owner may want to consider when deciding whether to have a 401(k) arrangement of this type are:

- Growth plans for your business (planning to hire employees?)
- Filing requirements of a qualified plan (these arrangements are “qualified” plans)
- Fees associated with adopting a qualified plan (start-up, annual service fee, etc...)

The IRS is not promoting these plans nor are we saying these plans are bad. We simply suggest that employers use care when looking into any retirement arrangement and that they be sure the plan they decide on will be right for them. •

Employers’ Obligations to Veterans

Due to recent events, many employees in the reserves and National Guard have had to leave their civilian jobs to report for active military duty. The IRS has received a number of questions about the rights of returning veterans and the duties of their employers. As reported in the [Spring 2003 Edition](#), two laws describing those rights and duties are the Soldiers and Sailors Civil Relief Act of 1940 (SSCRA) and the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

SSCRA

Among others, one protection offered by SSCRA includes:

- A limit on the amount of interest that may be collected on debts of persons in military service of 6 percent per year during the period of military service. This limit applies to all debts incurred prior to the commencement of active duty and includes interest on credit card debt, mortgages, and car loans. This interest rate protection also applies to retirement plan loans, including pre-service debts. The interest rate reduction doesn’t occur automatically—service members must request it.

The number #1 topic raised at this year’s Nationwide Tax Forums: “Solo” 401(k) plans.

Read more about them here.

USERRA

USERRA was enacted on October 13, 1994. It revised and restated the federal law protecting veterans' reemployment. Under USERRA, which is interpreted and enforced by the Veterans' Employment and Training Service of the U.S. Department of Labor, an employee who is absent from an employer because of military service generally is entitled to reemployment rights. USERRA also requires certain other rights and benefits to be provided or made available, including, in certain circumstances, coverage under the employer's health plan. In addition, on reemployment, an employee is entitled to receive certain pension, profit-sharing and similar benefits that would have been received but for the employee's absence during military service. USERRA sets forth various rules relating to the employee's reemployment and other rights and benefits. (See [Rev. Proc. 96-49](#), Section 2, for further details.)

The Type of Military Service Covered

USERRA protects the rights of persons who have been absent from a position of employment because of "service in the uniformed services." Service in the uniformed services is defined by USERRA, Section 4303, as the performance of duty on a voluntary or involuntary basis in a uniformed service. Uniformed Service is defined as:

- Army, Navy, Marine Corps, Air Force, or Coast Guard;
- Army Reserve, Naval Reserve, Marine Corps Reserve Air Force Reserve, or Coast Guard
- Commissioned Corps of the Public Health Services
- Any other category of persons designated by the President in time of war or emergency.

Pension and Retirement Benefits – IRC 414(u)

The Small Business Job Protection Act of 1996 added IRC 414(u) to implement the special retirement plan rules provided by USERRA. The following is a brief review of the requirements of IRC 414(u):

1. The qualifying veteran does not incur a break-in-service and military service is counted for vesting and benefit accruals. In a defined benefit plan, employers must fund pension benefits that a reemployed participant did not receive due to qualifying military service. In a defined contribution plan, employers must make non-elective employer contributions that would have been made during the military service period. The employer does not have to begin the makeup contributions until after the veteran returns to civilian employment with the same employer. The employer may fund makeup contributions over a period, beginning on the date of reemployment, of three times the military service period, not to exceed five years.
2. In a 401(k) plan, the qualifying returning employee has the right to make-up any elective contributions in an amount not to exceed the maximum amount the employee would have made, but for the military leave. The returning employee has the same time period as outlined in Item 1 above to make-up missed deferrals. The employer must make up any matching contributions relating to the employee's made-up deferrals. The employer matching contributions must occur as soon as the rehired veteran pays in the missed elective contribution.
3. A rehired veteran is not entitled to missed allocations for any forfeitures that occurred during the military service period, nor earnings on makeup contributions until the contributions are actually made.
4. A rehired veteran must be permitted to make up missed contributions required to earn a benefit accrual for the military service period. If employee contributions are not required, in a defined benefit plan service must be credited for qualified military service.

5. If a plan provides for the suspension of an employee's obligation to repay a loan for any part of any period of military service, the suspension is not taken into account for purposes of IRC 72(g), 401(a), or 4975(d)(1). ([Rev. Proc. 96-49](#)). If plan loan repayments are suspended when a participant is performing military service, the participant must resume loan repayments with the payment frequency and amount at least equal to the pre-military schedule. The rehired veteran must repay the full loan amount (including interest accrued during the military service period) by the end of the maximum term for the original loan plus the military service period ([Spring 2003 Edition](#))
6. An employee is treated as receiving compensation from the employer during the period of military service equal to the compensation the employee otherwise would have received from the employer during the period, or, if the compensation the employee otherwise would have received is not reasonably certain, the employee's average compensation from the employer during the period immediately preceding the period of military service.

The U.S. Department of Labor/[Veterans Employment and Training Service](#) provides "A Non-Technical Resource Guide to USERRA".

Questions on IRC 414(u) may be directed to IRS at 1-877-829-5500 or at www.irs.gov/ep.

Employee Plans Team Audit: Are You EPTA Date?

The concept of conducting broad-scope examinations of large employer plans was born in the redesign of the EP function as part of the restructuring and modernization of the IRS.

During EP's redesign, research was conducted that revealed a major market segment of pension plans had very little audit activity. This market segment consisted of the larger plans. Those were defined as plans with 2,500 or more participants. While these plans – about 4,400 in total – represented only 1% of the total 401(a) plan universe they included some 48 million participants and had an asset value of some \$2 trillion dollars. As a market segment, these plans remained relatively untouched by the EP Examination function. EP was generally involved in audit activity when requested by the Large and Mid-Sized Business function (LMSB) or the Exempt Organizations function (EO). However, these few audits revealed that there were significant issues. Consequently, a large case examination program - EPTA - was developed to have an impact on this market segment.

Anticipating an increase in determination applications and to test whether the EPTA program could improve compliance in this market segment, a limited pilot program was authorized beginning in October 2001. Under the pilot program, three EPTA groups were formed under the leadership of Peter Breslin, Manager, EP Examinations, Program & Review with Mark Hoffman, EPTA National Coordinator, responsible for coordinating with the other Operating Divisions, LMSB and EO. The original three EPTA group were in the Gulf Coast, Great Lakes and Mid-States Areas.

With EPTA deemed a success, the pilot program became a permanent program this fiscal year. Also, three additional EPTA groups were established in the Northeast, Central Mountain and Pacific Coast Areas.

A new three-step audit selection process was designed to select only those taxpayers with a high degree of potential noncompliance for audit:

1. Returns are assigned points based on such items as number of plan participants, plan assets, and plan contributions.
2. The points are "weighted" based on such compliance items as previous audit history, type of plan, affect on participants (termination, merger, funding issues, etc.) We also consider compliance data from the Risk Assessment program.
3. Finally, a Case Selection Committee reviews all the information and selects cases for assignment.

There are 4,400 plans with 2,500 or more participants.

Those 4,400 plans represent only 1% of all 401(a) plans but they have 48 million participants and \$2 trillion in assets.

Read here to find out about EP's recent initiatives to increase compliance in these plans.

EPTA staff receive special training on identifying complex tax avoidance schemes

The EPTA program provides EP with the ability to independently select employers and plans for examination and independently complete audit activity from pre-planning to conducting the closing conference. To ensure effective coordination and minimize the burden on taxpayers, the EPTA Case Selection Committee also submits its list of selected examination cases to LMSB and EO. EPTA has about 50 plan sponsors under examination at the present time.

According to Mr. Hoffman, "Some of the broad issues we have seen to date include excess non-deductible and improper contributions, ESOP stock valuations, and vesting errors." He added, "These issues – and others – are not all-inclusive and are not necessarily found in all plans or in all audits."

EPTA agents and managers are provided specialized training on how to identify and develop issues involving complex abusive tax avoidance schemes and conducting conferences. Other training topics include constructing the audit engagement agreement, developing the administrative record, principles of statistical sampling, and using an access database.

Mr. Hoffman said, "We're in the process of staffing all of the groups. When complete, each group will have six to eight agents who will be asked to stay for two years. When their two-year period is up, the agents may rotate out or stay longer, even permanently."

EPTA case managers are involved in all aspects of the EPTA examination to ensure that EP resources are effectively and efficiently utilized and to minimize the burden on the employer wherever possible. They are responsible for planning the examination, scheduling and conducting the opening conference, conducting meetings with the EPTA audit team, conducting interim status meetings with the plan sponsor when appropriate and necessary, preparing the risk analysis's during the course of the examination, conducting the closing conference and completing the post-examination critique.

Finally, while EP has audit authority and jurisdiction for all pension returns of all plan sponsors, Mr. Hoffman said, "It's important to note that even as EPTA has jurisdiction of the pension returns, close coordination and participation with LMSB or EO is critical as they are the "lead" team on the examination."

Questions or comments about EPTA and its work can be sent to Mr. Hoffman at mark.d.hoffman@irs.gov.

Employee Plans Published Guidance

(October 2003 – December 2003)

Revenue Rulings

[Rev. Rul. 2003-124, 2003-49 I.R.B.](#)
(December 8, 2003)

This revenue ruling contains the covered compensation tables for 2004.

Notices

[Notice 2003-73, 2003-45 I.R.B. 1017](#)

This notice contains the cost-of living adjustments for pension plans, etc. for 2003.

Revenue Procedures

[Rev. Proc. 2003-86, 2003-50 I.R.B.](#)
(December 15, 2003)

This revenue procedure amplifies [Rev. Proc. 2002-21](#) pertaining to PEOs and sets forth certain transitional rules.

Announcements

[Announcement 2003-54, 2003-40 I.R.B. 762](#)

This announcement contains a list of approved non-bank trustees as of 12/31/02.

Web Spins – The Retirement Plans Site

We're back: Web Spins - the column that takes you for a quick spin around the Retirement Plans web page at www.irs.gov/ep. This edition's column takes a sampling from the profusion of retirement plan topics.



Our web site www.irs.gov/ep is updated frequently.

Bookmark us now. You'll thank us later.

- *SARSEPs Get a Life (Cycle) and Just the FAQs Ma'am* – EP has consolidated a wealth of material on SARSEPs. SARSEP information that was previously scattered throughout the main IRS site www.irs.gov and the [Retirement Plans page](#) has been updated and put under one roof. Just go to “More Topics” and select “IRA-Based Plans”. You'll find Life Cycle info, FAQs and much more.
- *COLAs: Diet and Regular* – In 2004, what are the new 415 limits? What about the catch-up contribution limits for 2004? And what is the threshold for determining who's a “control employee” for purposes of valuing fringe benefits? Go to the [Retirement Plans page](#), select “EP Published Guidance” and “Cost-of-Living Adjustments” will give you the answers to all of those questions and many more.
- *What a PIP* – As reported in this edition's cover story, EP has developed Plan Information Packets for sponsors of IRA-Based plans. If you're not one of the lucky few who received a mailout from us, you can still access the wealth of information and tips on these plans. For now, you can find the Plan Information Packets directly on the [Retirement Plans page](#). In the future, you can access the material by going to “More Topics” and selecting “IRA-Based Plans”.

We're always adding new material to the [Retirement Plans page](#). Visit us often. •

Revised Form 5500 for 2003 Coming Soon

The Form 5500, *Annual Return/Report of Employee Benefit Plan* has undergone its annual update and will soon be available on both the IRS and EBSA websites. The collection of material includes informational copies of the “hand-print” version of the Form 5500 along with its related schedules and instructions.

Although this material can be downloaded and printed, it is *not* suitable for filing. Copies of the forms and schedules (along with instructions) will be available from the IRS on February 1, 2004 by calling 1-800-TAX-FORM.

Significant changes to the form and schedules include the following:

- Form 5500 – The instructions for lines 8a and 8b plan characteristics codes are modified to include: **3I** for a pension plan that requires that all or part of the employer contributions be invested and held, at least for a limited period, in employer securities, and **4U** for a collectively bargained welfare benefit arrangement under Code section 419A(f)(5).
- Schedule B – The instructions for line 4a, *Quarterly Contributions*, are modified for new plans; the instructions for line 8c and the *Schedule of Active Participant Data* are modified to incorporate average cash balance account data; and on line 9l(2), the current liability full funding limitation is now based on 170% of current liability.
- Schedule E – Line 1 is a modification of the former line 17 (from 2002).
- Schedule H – Line 3 is reordered to clarify information concerning the accountant's opinion.
- Schedule H and Schedule I – To eliminate duplicative reporting, information concerning delinquent participant contributions reported on line 4a is no longer required to also be reported on line 4d (or Schedule G).
- Schedule SSA – The instructions are modified to clarify how to report additional separated participants.

Although the informational copies of this material were not yet available (as of press time), they should be posted on the appropriate websites no later than early January 2004. Please check www.efast.dol.gov for this material along with information concerning the ERISA Filing and Acceptance System (EFAST) and EFAST-approved software. Similarly, the informational copies will be posted to the Retirement Plans web page at www.irs.gov/ep, where you can always find other IRS forms and publications. •



The cause for dancing in the streets: The 2003 Form 5500 is coming soon! Tell your friends and neighbors.

2003: The Year That Was

The world of retirement plans was a busy one in 2003. Ranging from Lifetime Savings Accounts to televised public hearings on cash balance plans to Congressional hearings on underfunded pension plans, events covered a broad variety of retirement plan topics.

Here is our month-by-month look at just some of the highlights of 2003, retirement-style:

January:

The Administration proposes new Retirement Savings Accounts and Lifetime Savings Accounts. Legislation enacting these new accounts has not yet been passed.

February:

EP hosts an internal focus group on Technical Advice cases. Focus group members – ranging from agents to managers to senior managers – develop improvements to the tech advice process based on better communication between EP offices and more effective use of the tech advice revenue procedure.

March:

EP joins ASPA in a webcast titled “IRS/ASPA Washington Update”. Panelists include Paul Shultz, Director, EP Rulings & Agreements, and Dick Wickersham, Manager, EP Technical Guidance & Quality Assurance.

Employee Plans News celebrates its 2nd anniversary. There is much rejoicing.

April:

Television cameras, Congressional Representatives, 40 speakers and two full days of testimony. The occasion? Just another public hearing on pension policy – except this hearing is on proposed regulations for cash balance plans.

EP publishes second Determination Letter “[White Paper](#)”. This version narrows down the options from the first White Paper and asks for further public comment on the remaining choices.

Bruce Settell, Manager, EP Determinations retires (Bruce is succeeded by Bob Bell).

May:

Seven new members announced for the Advisory Committee of TE/GE (“ACT”). Also, ACT holds its annual public hearing and presents TE/GE senior management with recommendations on a wide range of issues.

Dick Wickersham, Manager, EP Technical Guidance & Quality Assurance, retires (Dick is succeeded by Marty Pippins).

June:

EP issues [Rev. Proc. 2003-44](#) on EPCRS to help even more plans stay or get compliant. The new procedure expands program eligibility, simplifies the fee structure and provides sample formats for submissions. There is much rejoicing.

July:

The 2004 IRS Nationwide Tax Forums begin in Atlantic City, NJ with stops in five more cities. Thousands of attendees see EP’s presentation: “[No Fuss](#)” Retirement Plans. Supporting content with Life Cycle and IRA-based plans information is posted on the www.irs.gov/ep.

New guidance bursts over the EP landscape. Within a 10-day period, EP issues regulations on IRC sections 401(k) and (m), 411(d)(6), 417(a)(7), 419A(f)(6) and 457. Copies of the Federal Register spotted in the hands of beachgoers.

August:

In [Rev. Proc. 2003-72](#), EP extends the Remedial Amendment Period for some M&P and Volume Submitter plan sponsors from September 30, 2003 to January 31, 2004. There is much rejoicing.

EP begins the TEDS (Tax Exempt Determination System) pilot program.

Do you have trouble remembering what you had for dinner last night, let alone remembering when the cash balance public hearing was held?

Fear not. We hereby present some of the events in the last 12 exciting months of retirement plan news.

September:

More than 90 Exam employees volunteer to join Determination groups. Also, as part of this realignment in Determ, six new groups are established and two new Area managers, Vickie Surguy and Mike Ruzucki, are selected.

The first Mountain States Benefits Conference is held in Denver.

October:

In its continuing effort to help small businesses keep their retirement plans compliant, EP releases the "Retirement Plan Correction Programs" [brochure](#) and the more in-depth CD-ROM.

EP releases [Lots of Benefits](#), Publication 4118.

November:

Plan Information Packets for IRA-Based Plans – SIMPLE IRAs, SEPs and SARSEPs – posted on the [Retirement Plans web page](#). EP mails Packets to 100 SIMPLE IRA Plan sponsors and 100 SARSEP sponsors. Each Packet has a Checklist, Correction Programs brochure and Feedback Postcard.

December:

On Capitol Hill, deficit reduction contribution relief is a hot topic in chilly Washington. As of press time, no legislation was passed or signed.

Quick Hits

Welcome back to Quick Hits. Below are headlines of recent and expected developments.

- *Meet the New Boss* – Marty Pippins was recently selected as the new head of EP's Technical Guidance and Quality Assurance. Mr. Pippins replaces Dick Wickersham, who retired in May 2003. As Guidance manager, Mr. Pippins will lead EP's efforts in publishing revenue rulings, procedures and notices. We will have an EP Connections with Mr. Pippins in a future edition.
- *LA (Not So Confidential) Benefits Conference* – The 2004 Los Angeles Benefits Conference will be held on January 29-30 at the Hilton Los Angeles/Universal City in Universal City, CA. This year's conference sessions include: Washington Update, Aggressive Tax Practices, DOL Investigations and many more. Also, the popular TE/GE "Interactive Tables" will return. For more information about this fast-approaching conference, go to the ASPA web site at www.aspa.org or go the [Retirement Plans web page](#) and click on "Educational Services".
- *They're Here! They're Really Here!* – The brand new [2004 Covered Compensation tables](#) are here. They're available in two sizes: Un-Rounded (or "actual") and Rounded (to the nearest multiple of \$3,000). Coming on the heels of the [2004 Cost-of-Living Adjustment updates](#), plan sponsors now have plenty of numbers to help them operate their plans in the new year.
- *Get 'Em While They Last* – The new EPCRS CD-ROMs are popular, very popular. EP had 45,000 of the CDs pressed and, as of the *News*' publication date, less than half of the CDs are left. So if you too would like one of these helpful and easy to use CDs, place your order now because when they're gone, they just might be gone for good. To order or view this valuable CD, go to the [Retirement Plans web page](#), select "Educational Services" and click on "Retirement Plan Correction Programs CD-ROM". An online version of the CD is available on the Retirement Plans web site by selecting "More Topics" and clicking on "Corrections".
- *The Big One* – The 2003 edition of Pub 17, "Your Federal Income Tax", is now available online. This year's edition has been updated to include information on new dividend tax rates and newly enacted tax breaks for men and women serving in the military. The publication includes information on how to file an individual tax return, what to include as income, how to calculate capital gains and losses, and how IRAs and other expenses can affect how much income to report. The publication can be obtained by going to www.irs.gov, and entering "17" in the "search forms and publications" box. Printed copies will be available in January 2004. •

A new head of guidance, an impending benefits conference, CD-ROMs and Pub 17.

Quick Hits brings you news on these topics and more.

The Corner of Forms and Pubs

Welcome back to The Corner of Forms and Pubs – the EP version of Hollywood & Vine. The information here at the Corner is brief and topics needing further details will get their own full-length articles (such as the article on the revised Form 5500 for 2003).

- The following EP-related forms and instructions were all revised in November 2003 and contain minor instructional changes from the prior versions (and in the case of the Form 4461-series include changes in Where To File):
 - ❖ Form 5330, *Return of Excise Taxes Related to Employee Benefit*
 - ❖ Form 4461, *Application for Approval of Master or Prototype Defined Contribution Plan*
 - ❖ Form 4461-A, *Application for Approval of Master or Prototype and Regional Prototype Defined Benefit Plan*
 - ❖ Form 4461-B, *Application for Approval of Master or Prototype Defined Contribution*
- The following publications have been revised for 2004 and are currently available:
 - ❖ Publication 560, *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*
 - ❖ Publication 571, *Tax-Sheltered Annuity Plans (403(b) Plans) For Employees of Public Schools and Certain Tax-Exempt Organizations*
 - ❖ Publication 575, *Pension and Annuity Income (Including Simplified General Rule)*
- In addition, EP has developed Publication 4118, *Lots of Benefits* that introduces and briefly explains the four phases of the “Retirement Plan Life Cycle.” This brochure was created in September 2003 and is currently available.

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”. Paper copies of all the forms, related instructions and publications can also be requested by calling 1-800-TAX-FORM. If you have comments concerning forms and pubs, contact us at RetirementPlanComments@irs.gov.

Employee Plans Provides FY 2004 Program Guidance

The FY 2004 EP Work Plan was issued on September 30, 2003 and provides program guidance to all EP employees. The work plan is designed to be a point of reference for all Examination, Determination, Voluntary Compliance, Technical and Customer Education & Outreach activities that will be occurring during the year. The entire text of the work plan can be found at the [Retirement Plans web page](#) by selecting “More Topics” and then clicking on “EP Work Plan”.

EP shares the IRS’s three strategic goals of: top-quality service to each taxpayer; top-quality service to all taxpayers; and productivity through a quality work environment. Efforts to achieve these goals will focus on the following six Operating Priorities:

- ❖ Increase Retirement Plan Information and Services for Small Business Customers;
- ❖ Stabilize Determination Receipts Flow;
- ❖ Refine Compliance Risk Assessment with Data from Examinations;
- ❖ Develop Education and Examination Strategies to Identify and Counter Abusive Tax Avoidance Transactions;
- ❖ Collaborate with the Department of Labor (DOL) to Prevent Abusive Retirement Transactions; and,
- ❖ Collaborate with DOL to Identify Form 5500 Non-Fileers.

Each of these Operating Priorities is described in detail within the work plan document.

The work plan also provides program priorities for Examinations, Rulings & Agreements (Determinations, Voluntary Compliance and Technical Activities) and Customer Education and Outreach.

continued on page 17

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 Avenue, N.W.
Washington, D.C. 20224

or FAX (202) 283-9525

or E-Mail
RetirementPlanComments@irs.gov

For **EP Taxpayer Assistance**

For retirement plans technical and procedural questions:

Please call (877) 829-5500

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

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

Please call (800) 829-1040

For further **Employee Plans Information:** Go to the Retirement Plans Web Page at: www.irs.gov/ep.

Examinations Areas of Emphasis

- *Risk Assessment Examinations:* The results of these examinations will be used to focus compliance activities where the potential risk of noncompliance is the highest.
- *Identifying and Countering Abusive Tax Avoidance Transactions:* Abusive tax avoidance transactions involving employee plans appear to be growing in number. An organized structure for combating tax avoidance transactions within EP will be established, as well as internal procedures for identifying and referring these transactions.
- *Enhanced Training of Workforce:* The FY 04 Training Plan emphasizes the continued development of the newer members of the workforce and the training needed to transition employees from determination work to examination work.
- *Support of the TE/GE Reporting and Electronic Examination System (TREES):* TREES will consolidate systems currently used by TE/GE agents and increase the accuracy, consistency and efficiency of the examination process. TREES will provide exam agents with “electronic exam” tools in a user-friendly environment.

Rulings and Agreements (R&A) Areas of Emphasis

- *Improve Determination Reviews:* The Determinations Quality Assurance Staff (QAS) will work with the Determination groups in an ongoing effort to improve the accuracy and quality of determination letters. The following standards are targeted for improvement:
 - ❖ Issuing Correct Determination Letters
 - ❖ Properly Determining the Qualified Status of Plans
- *Effectively Integrate Examination employees permanently reassigned to Determinations cases:* Strategies and goals for the new organizational structure will be developed. Appropriate determination training will be provided to those employees.
- *Reduce the Inventory of Determination Applications:* Approximately 22,000 applications were in inventory as of October 1, 2003. The goals are to have an inventory equal to pre-FY 02 levels of 10,000–12,000 cases and to lessen the time required to issue an applicant’s determination letter.
- *Continue Supporting the Redesign of the EP/EO Determination System (EDS):* The new Tax Exempt Determination System (TEDS) will provide critical business capabilities required by TE/GE customers and improve overall system performance and reliability. (*Editor’s note:* For more information on TEDS, see the [Fall 2003 Edition.](#))
- *Providing more efficient processing of Voluntary Compliance cases and Assisting Examinations on the consistent application of EPCRS cases:* Using resources, including EP Technical, to help reduce open case inventory; providing correction guidance on the Intranet page; and updating the EPCRS revenue procedure to further improve the correction programs. Changes will continue to focus on simplification.
- *Completing Opinion Letter requests of Sponsors of IRAs, SEPs, and SIMPLE SEPs:* A large number of requests were submitted under Rev. Proc. 2002-10, which required all prototype plans to be amended to incorporate EGTRRA changes and the final required minimum distribution rules.
- *Provide Timely Technical Guidance:* Guidance items will be issued consistent with the annual Guidance Plan established in conjunction with the Office of Chief Counsel of the IRS and the Office of Tax Policy of the Department of the Treasury.

Customer Education & Outreach (CE&O) Areas of Emphasis

- *Increase Retirement Plan Information and Services for Small Business customers:* The “Retirement Plan Life Cycle” campaign will continue. Designed to primarily assist Small Businesses, the goal of the campaign is to encourage employers to maintain retirement plans by providing information about the various stages in the life of a retirement plan:
 - ❖ Choosing
 - ❖ Establishing
 - ❖ Operating
 - ❖ Terminating

Many of the actions planned are being done in conjunction with DOL and the Small Business/Self Employed Operating Division within IRS.

- *Coordinating EP's Education and Outreach Activities:* This includes a wide range of activities from the *Employee Plans News*, to developing and posting content to the Retirement Plans web page, to benefit conferences and exhibiting at outreach events.

Customer Satisfaction

The Customer Satisfaction ratings for both Determinations and Examinations remain quite favorable despite a slippage in the Determination ratings due to the inventory build-up created by the GUST amendment workload. The results from the latest survey (for the period ending March 2003) show that 69% of Determinations' customers were "satisfied" with their service and 5% were dissatisfied and that 69% of were Examinations' customers were satisfied and 8% were dissatisfied.

While the overall ratings are favorable, EP personnel will continue to use the survey results to identify improvement opportunities for enhancing customer service. During FY 04, actions will specifically focus on Length of Process and Time Spent on Issue (Determinations) and Time Spent of Audit and Explanation of Process (Examinations).•

Additional Relief for PEO Defined Contribution Plans

On November 25, 2003, the IRS issued [Revenue Procedure 2003-86](#), providing additional guidance for certain defined contribution (DC) plans maintained by Professional Employer Organizations (PEOs) that are converting to Multiple Employer Retirement Plans (MERPs) pursuant to [Revenue Procedure 2002-21](#).

This new guidance amplifies Rev. Proc. 2002-21, which provides relief from potential disqualification for violation of the exclusive benefit rule by certain DC plans maintained by PEOs. Under Rev. Proc. 2002-21, PEOs have two options concerning their existing single employer plans. The PEO could terminate the plan or covert its existing single employer plan to a MERP. Under the conversion option, the Client Organization (CO) for whom the Worksite Employees perform services sign on as plan sponsors, which avoids the exclusive benefit rule violation. Rev. Proc. 2002-21 provides that all remedial actions and other requirements must be completed by the Compliance Date, which is December 31, 2003, for a calendar year plan.

After the publication of Rev. Proc. 2002-21, the IRS received many inquiries and comments from practitioners with respect to certain transitional issues related to the converted MERP. Rev. Proc. 2003-86 addresses these inquiries in a question and answer format. Included in the issues that are addressed are:

- Application of the successor plans rules for determining whether a Spinoff Retirement Plan can make distributions upon termination;
- How the top-heavy rules apply with respect to benefits that accrued in the PEO Retirement Plan prior to the Compliance Date;
- ADP and ACP testing for the first year of the Multiple Employer Retirement Plan;
- Application of the minimum distribution rules with respect to Worksite Employee who have attained age 70-1/2 but have not yet retired; and
- Rules for determining highly compensated employee status.

A PEO electing to use the transitional rules in the revenue procedures must adopt conforming plan amendments for the MERP no later than the last day of the remedial amendment period relating to the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). The EGTRRA remedial amendment period will end no earlier than the last day of the first plan year beginning on or after January 1, 2005. The MERP plan documents must reflect the plan's choice to treat all Worksite employees who perform services for a CO either: as if they were employees of the PEO, for all plan years up to, and including, the plan year in which the Compliance Date occurs; or as employees of the CO, for all plan years. •

First, there was relief for PEOs.

Now there's even more relief - and answers, too.

Great Lakes Benefits Conference

Mark your calendars for April 29-30, 2004: These are the dates for the 2004 EP Great Lakes Benefits Conference in Chicago. The IRS is once again partnering with the American Society of Pension Actuaries (ASPA) and over twenty other co-sponsors to present the 2004 Conference.

This conference provides pension professionals with an excellent opportunity to meet and discuss employee benefit issues with private practitioners and key government agency representatives and earn CPE credit at the same time. The conference agenda includes prominent government and private sector speakers, a variety of useful breakout sessions and two keynote luncheon speakers.

This year's agenda includes panel discussions on:

- The Latest Washington Regulations and Legislative Updates
- IRS Examination, Audit CAP and EPCRS Programs
- Latest topics on 401(k) plans

The 2004 Great Lakes Benefits Conference will be held at:

Hyatt Regency McCormick Place
2233 South Martin Luther King Drive
Chicago, IL 60616
Phone: (312) 567-1234

For more information, visit the ASPA website at www.aspa.org, or call them at (703) 516-9300. •

Mid-Atlantic Employee Benefits Conference

The 2004 Mid-Atlantic Employee Benefits Conference will be held on May 24-25 at the Park Hyatt Hotel in Philadelphia, PA. The IRS and the American Society of Pension Actuaries (ASPA) jointly sponsor this annual conference.

This year's Conference will feature discussions on 401(k) regulations, plan design, recent retirement-related court cases and compensation issues. There will also be both local and Washington update sessions. The Conference will also feature the successful "Forget-Me-Nots" session on both days.

There will also be Interactive Tables again this year. This will provide an opportunity for the attendees to meet informally for one-on-one discussions with EP specialists. The Department of Labor will also have an Interactive Table.

EP and ASPA invite pension practitioners to join them at this conference. Visit the ASPA website at www.aspa.org for more information. •

SWBA Benefits Conference Recap

The SWBA/IRS Employee Benefits Conference was held on October 15-16, in Dallas, TX. This was the 14th edition of the conference, an event co-sponsored by the SouthWest Benefits Association (SWBA) and the IRS. Panelists featured speakers representing the IRS, DOL Employee Benefits Security Administration, and the PBGC, along with SWBA members and other benefits experts.

Over the years, this conference has evolved into an event discussing issues related to both retirement and health benefit plans. For example, among this year's topics were the IRS National Office Presentation, Voluntary Compliance and 401(k) Regulation Updates, along with presentations on ERISA Pre-emption, and a discussion on Benefit Costs & Health Reimbursement Accounts. This year's conference also provided one-hour of ethics credit with a session on ERISA Governance.

Each February, the SWBA and IRS co-sponsor three intermediate level seminars. This year's events are scheduled for February 6, in Dallas; February 13, in Tulsa; and February 27, in Houston. For more information about these events, check out the SWBA website at www.swba.org. For information on next year's event, as well as other IRS co-sponsored events go to www.irs.gov/ep, select "More Topics", then "Benefits Conference Calendar". •

The Great Lakes Benefits Conference and the Mid-Atlantic Employee Benefits Conference:

Two more opportunities for public- and private-sector retirement professionals to learn and to exchange information.

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	01/29/04-01/30/04	Los Angeles, CA	American Society of Pension Actuaries (ASPA)	www.aspa.org or ASPA Meeting Department (703) 516-9300
Great Lakes Benefits Conference	04/29/04-04/30/04	Chicago, IL	ASPA & other cooperating sponsors	
Mid-Atlantic Benefits Conference	05/24/04-05/25/04	Philadelphia, PA	ASPA	

RECENT EVENTS...

Name	Date(s)	Location	Non-IRS Co-Sponsor(s)	For Information, See
SWBA/IRS 14th Annual Employee Benefits Conference	10/15/03-10/16/03	Dallas, TX	Southwest Benefits Association (SWBA)	<i>EP Benefits Conferences Calendar at</i> www.irs.gov/ep
Mountain States Benefits Conference	09/11/03-09/12/03	Denver, CO	ASPA and WP&BC	
16th Annual Cincinnati Employee Benefits Conference	06/19/03-06/20/03	Cincinnati, OH	Cincinnati Bar Association	
Northeast Benefits Conference (2 Locations)	06/12/03-06/13/03	Boston, MA & White Plains, NY	ASPA & NE Area Pension Liaison Group	



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