

employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

Internal Revenue Service
Tax Exempt and Government
Entities Division

A Publication of Employee Plans

- page 2**
Making Guidance a Continued Priority
- page 2**
EP Connections: Interview With Bob Bell
- page 5**
TEDS: Who's "Ted"?
- page 6**
Pre-Approved Plans ...
- page 6**
Examiner Tips: Checking For Checks
- page 7**
Bad Plan Provision? ...
- page 8**
MAP Reading
- page 9**
Playing Catch-up ...
- page 10**
New Correction Programs Products
- page 11**
Significant EP Published Guidance
- page 12**
Which Way to the Forums?
- page 13**
EP Partners With Another ...
- page 13**
Mountain States Benefits Conference
- page 14**
The Corner of Forms & Pubs
- page 14**
Web Spins
- page 15**
14th Annual SWBA/IRS Conference
- page 15**
LA Benefits Conference
- page 16**
Calendar of EP Benefits Conferences

Ahh... Relief

For the past several months, the IRS has been reminding the approximately 750,000 small and mid-size businesses using "off-the-shelf" Master & Prototype (M&P) and Volume Submitter retirement plans of the need to update their plans by September 30, 2003. Now the IRS has granted a degree of relief to these businesses.

As reported in the [August 2003 Special Edition](#), pursuant to [Rev. Proc. 2003-72](#), plan sponsors who don't act by the September 30 deadline have until January 31, 2004 to apply for determination letters to keep their plans qualified but will need to pay a compliance fee in order to be eligible for this extended deadline.

As Rev. Proc. 2003-72 provides, the deadline for filing a determination letter request is extended to January 31, 2004 for employers who adopt their plan amendments by the September 30, 2003 deadline. In addition, employers who don't amend their plans by September 30, 2003 will still be able to keep their plans qualified provided they apply for a determination letter by January 31, 2004 and pay a \$250 compliance fee.

A later filing deadline for those who need it ... but act now

For example, employers with M&P plans who don't adopt their plan amendments by September 30, now have until January 31, 2004 to submit their determination letter request with the IRS to keep their plan qualified but they must also submit the \$250 compliance fee.

Paul Shultz, Director of Employee Plans Rulings & Agreements, said, "We've heard from the benefits community about the pressure that the fast approaching deadline is causing employers, especially small business owners. We're still encouraging employers to act NOW while providing relief for those who need it most."

Further information about the September 30 deadline, the extension and Rev. Proc. 2003-72 is available at the Retirement Plans web page at www.irs.gov/ep.

Making Guidance a Continued Priority

A short time ago, the Treasury's Office of Tax Policy and the IRS announced the 2003-2004 Priority Guidance Plan. Included in the list are 25 employee plans-related items. The Plan reflects public comments and indicates guidance that the IRS intends to issue by June 2004. The Plan also has an appendix with the more routine guidance that is published each year.

Paul Shultz, Director, EP Rulings & Agreements, said, "The Guidance Plan allows us to set priorities for the coming months. Among the guidance items we hope to issue in the next several months are:

- How the distribution rules apply where contributions in one type of plan, e.g., 457 or 403(b), have been rolled over into another type of plan, e.g., 401(a);
- How the tax qualification issues might impact some of the scenarios described in the DOL's recent Field Assistance Bulletin concerning use of plan assets to pay certain plan expenses;
- Proposed regulations easing the application of the cut-back prohibition of 411(d)(6) to defined benefit plans (following up on our 2001 guidance easing the rules for defined contribution plans);
- Rules dealing with abusive practices using 412(i) insured defined benefit plans; and
- Final regulations on communicating to participants concerning the relative value of annuities and lump sum amounts under 417(a)."

Mr. Shultz invited members of the retirement plan community to continue sending their comments to the IRS. "Our guidance program will only be successful if we get the insights of taxpayers and practitioners", said Mr. Shultz. "These are the people who have experience with the current rules and who will have to apply the new ones."

In order to promote flexibility in addressing new projects as they develop, the IRS will update the Guidance Plan quarterly. The updates may contain guidance projects that the IRS will address in the following year as well. In addition, these updates will provide for continued public comment on guidance projects. To access the 2003-2004 Priority Guidance Plan, go to the IRS website at www.irs.gov, select "Tax Professionals", then "More Topics" and click on "2003-2004 Priority Guidance Plan".

EP Connections: Interview with Bob Bell

Bob Bell is the Manager of EP Determinations. He graduated in 1975 from Wittenberg University in his hometown of Springfield, Ohio, where he earned a B.A. in Psychology. Bob joined the IRS in October 1978 as a Tax Auditor in Michigan and then in Ohio. In 1983, he joined the EP/EO Division as an EP Specialist and became an EP Group Manager in 1988. In 1995, Bob was selected as Chief, EP/EO Branch and in 2000 he was selected as the Manager, EP Determinations Quality Assurance.

You became the new EP Determinations Manager on May 1st of this year. How is staffing going? Are the new managers in place?

Determination staffing and assignment are essentially complete and have been since late May. There might still be a few additions or deletions to the Determination workforce in the days and weeks to come but we're pretty much where we need to be right now.

"Our guidance program will only be successful if we get the insights of taxpayers and practitioners ..."

EP has a new Manager of Determinations. Meet Bob Bell here and read what he has to say about TEDS, the White Papers and more.

continued on page 3

Interview with Bob Bell *continued from page 2*

The new managers have all been identified and they line up this way:

AREA 1: Mike Ruzycki (Dallas), Area Manager
Bob Peak (El Monte, CA)
Donna Sum (El Monte, CA)
LaVelma Tyson (Atlanta)
Dan Jones (Cincinnati)
Deborah Komar (Cincinnati)
Denny Miceli (Cincinnati)

AREA 2: Vickie Surguy (Cincinnati), Area Manager
Maged Abudayyeh (Chicago)
Joyce DeWitt (Baltimore)
Don Kieffer (Brooklyn)
Steve Detillian (Cincinnati)
Cathy Waite (Cincinnati)
Crickette Weber (Cincinnati)

A new term we're hearing is "dedicated groups". What are "dedicated groups" and how will they affect your customers?

"Dedicated Groups" consist of those employees who have been selected to perform exclusively Determination duties. Most of them volunteered for such an assignment, indicating their high level of interest and expertise in that area of Employee Plans. Because the Dedicated Groups employees want to be there and because they have significant experience in performing Determination duties, we anticipate an even higher level of service to our customers.

Additionally, we are working very hard on enhancing the consistency with which we approach issues. We want to eliminate any geographical disparities in the way we work cases so that practitioners, who often deal with several employees in several parts of the country, will be able to rely on uniform issue positions.

How will the new TEDS (Tax Exempt Determination System) program benefit your customers and the determinations employees?

When fully operational, TEDS will modernize the Determination process for both our customers and our employees.

For our customers, TEDS will allow electronic submission of applications and user fees. It will also give them the ability to track the status of their applications and even to access certain information that is not subject to disclosure restrictions, such as their most recent favorable Determination Letter. TEDS will allow our customers to update certain entity information, such as name, address and phone number. This will eliminate the need for most contact with the TE/GE Customer Account Services call site.

Because case file images are stored in TEDS, our Determinations or Examinations employees will be able to access them electronically. Other new features include automated letter generation, case grading and classification; automatic identification of user fee discrepancies; electronic notification of case assignment; electronic association of closing letters and all related correspondence with the original case file images; and more accurate information flowing to the Master File.

(Editor's Note: See the related story on TEDS on page 5.)

continued on page 4

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.

What impact do you think the Second White Paper will have on your customers and your employees?

At this point we can only speculate on what the outcome of the Second White Paper will be. However, it is clear that many parties to the discussion favor leveling the peaks and valleys that EP so often experiences as a result of legislative changes and the application deadlines that result from them. I think if we can be successful in accomplishing that, we will be doing everyone a favor.

The establishment of a schedule for submitting Determination Letter applications will allow practitioners to know in advance when they must prepare those applications for their clients. That will enable them to better predict their resources than they can do now. Likewise, those of us in EP will be able to better deliver a balanced enforcement and determination workplan by spreading out our receipts over time and processing that inventory of cases with the dedicated Determination employees we have. The number of those employees was determined with reference to a “normal” year but the spikes in inventory that we experience when an application deadline is approaching throw us out of the “normal” category and force us to borrow resources from EP Examinations, which we don’t want to do. Leveling receipts would go a long way toward alleviating that problem.

What is the best way to get the current status of a FDL application?

Until TEDS permits practitioners and plan sponsors to check this information online (and that will be a while yet), the best way to get it is to call Customer Account Services at (877) 829-5500.

It seems that some applications go through the system fairly quickly while others (that are similar) get stuck - is there any way to get an estimate as to when a case in unassigned inventory will be assigned to an agent? Are there things that a filer can do to help with the application process? Are you seeing the same problems with applications?

Not surprisingly, less complex applications, generally Forms 5307, go through the Determination process quickest. Our emphasis is on closing as many cases as possible through what we call “accelerated processing.” This process involves the cursory inspection of applications to determine if they can be closed with minimal or no contact. This occurs as soon as possible after an application has been filed. Since every application we receive goes through this process, those with similar features should be disposed of in a similar manner. Those applications that warrant further scrutiny and cannot be closed through accelerated processing are assigned to one of our groups for a more in-depth review. If there is a delay in the completion of a case, this is the point at which it will most likely occur.

We made a business decision to close as many cases as we could, as quickly as we could, which means that we have been applying most of our resources to accelerated processing. The downside of that approach is that those cases deemed to be more complex were given lower priority while we worked to close the large influx of GUST applications that were less complicated. Quite a few of the complex cases accumulated over time and we are now assigning them as soon as possible since our inventory of accelerated processing cases has diminished. But it’s very difficult to predict when a specific case will be assigned to an agent.

We attempt to keep cases from the same practitioner together as a means of processing those cases faster. In fact, we will assign a practitioner number to those who request them and all applications with that number will be assigned to the same area for review. (*Editor’s note: See the articles in the [Spring/Summer 2002 Edition](#) and the [Summer 2003 Edition](#)) Our [web site](#) has instructions on how to obtain a practitioner number. Those instructions can be found at Question 11 of the “FAQs Regarding the Determination Letter Process” - select “More Topics” under the “Topics” section, click on “EP FAQs” and then click on “FAQs Regarding the Determination Letter Program”. Also, Question 7 provides useful guidance on items that should be considered prior to filing a Determination application in order to prevent processing delays. •*

“I think if we can be successful (in leveling the peaks and valleys of DL applications), we will be doing everyone a favor.”

“We made a business decision to close as many cases as we could, as quickly as we could ...”

TEDS: Who's "Ted"?

TEDS – the new Tax Exempt Determination System – will be a revolutionary new system for processing Employee Plans (EP) and Exempt Organizations (EO) determination applications. The new system has user-friendly technology that utilizes commercial-off-the-shelf products. According to Monika Templeman, EP Area Manager for Great Lakes and TEDS Project Team member, "This innovative technology will truly improve customer service and productivity. Customer feedback re-enforced the need to improve and modernize determination letter processing, with the goal being a more interactive and less paper intensive system."



When complete, TEDS highlights will include:

- Scanning and electronic imaging of determination applications
- Generating acknowledgement notices and other correspondence to filers
- Automatic generation of final EP and EO determination letters
- Providing management information for work planning and resource management
- Providing self-service capabilities for customers

Dan Evans, an EP analyst working on the TEDS project, said, "When TEDS is fully deployed, the improvements for TE/GE customers will include:

- Ease of filing (electronic and paper),
- Ease of obtaining a duplicate copy of a letter, and
- Other self-service capabilities, including address and phone number changes."

Mr. Evans said that IRS Determinations employees would also benefit from TEDS, "For our employees, TEDS advantages include:

- Electronic accessibility of case information (including stored files),
- Electronic receipt of correspondence, and
- Automation of routine tasks such as generating and printing of determination letters."

Ms. Templeman added, "For all, there will be faster processing of applications."

TEDS is being launched in seven stand-alone releases. The decision to divide the TEDS project into stand-alone releases will help to better accommodate the complexity of the Determination Letter program. Release 1, now in pilot testing, starts with one of the easiest forms to accommodate – Form 5307, used for pre-approved employee plans – and provides only limited capabilities for IRS employees. During Release 2, tentatively scheduled for deployment in 2005, Release 1 capabilities will be expanded to accommodate all EP forms as well as all of the EO application forms. These first two releases will lay the foundation for the benefits planned for TE/GE customers in later releases.

Paul Shultz, Director, EP Rulings and Agreements, explained why he felt that it is important for practitioners to know about TEDS (and its potential) when considering the options in the two Determination Letter Program White Papers. Mr. Shultz said "When you couple the great migration of plans from the individually designed universe to the pre-approved universe with the advent of TEDS, the need for resources for our program may have significantly declined and may decline quite a bit more. If the first trend continues, and if more and more pre-approved plans become word-for-word adopters and also decide not to apply for a determination letter, our program shrinks quite significantly. Furthermore, the word-for-word adopters who do come in generally will be automatically reviewed and closed by TEDS. The new system is needed and desirable, and as we implement each of the seven TEDS Releases, the new innovations will be most valued."

When fully implemented – later releases are tentatively scheduled for 2005-2007 – TEDS will change how determination letter applications are filed, processed and answered. Ultimately, applications will be filed electronically. The IRS will review, process and issue determination letters electronically. Practitioners and applicants will be able to use the Internet to communicate with the IRS, check on the status of a submission and obtain duplicate letters via e-mail. This should make everyone's job easier, practitioners and IRS employees alike, and move the process along much faster than now. Further progress on TEDS will be shared in future issues. •

TEDS will change how determination letter requests are filed, processed and answered. Ultimately, requests will be filed electronically and the IRS will review, process and issue determination letters electronically.

Pre-Approved Plans and Announcement 2001-77: Model Amendments

The [Fall 2001 Edition](#) of the *Employee Plans News* contained an article summarizing conditions under which an adopting employer of a pre-approved (M&P or volume submitter) plan would meet the “identical” plan requirements of [Announcement 2001-77](#).

The IRS has received a number of inquiries regarding the effect that adoption of IRS-provided model amendments has on applying the “identical” plan requirements. The model amendments include:

- 1) [Notice 2001-37](#) (IRC 132(f) regarding qualified transportation fringes)
- 2) [Revenue Ruling 2001-62](#) (the applicable mortality table for purposes of IRC 415(b)(2)(E)(v) and IRC 417(e)(3)(A)(ii)(1))
- 3) [Revenue Ruling 2002-27](#) (deemed IRC 125 compensation)
- 4) [Revenue Procedure 2002-29](#) (IRC 401(a)(9) Final and Temporary Regulations)

A plan sponsor who adopts the model amendment will have reliance that the form of its plan satisfies the requirements of the respective guidance, and the adoption of such an amendment will not adversely affect the plan sponsor’s or the adopting employer’s reliance on a favorable determination, opinion or advisory letter. Thus, the adoption of an IRS-provided model amendment wouldn’t cause the plan to fail the “identical” plan requirements of Announcement 2001-77 (assuming such requirements were previously satisfied).

In addition to the IRS-provided model amendments, sample amendments were issued under [Notice 2001-57](#) for purposes of satisfying the EGTRRA “good faith” plan amendment requirement. These sample amendments are deemed to satisfy the “good faith” requirement. Here again, the adoption of an IRS-provided sample amendment or other good faith EGTRRA amendments, as provided in Notice 2001-57, will not result in a plan failing to meet the “identical” plan requirements of Announcement 2001-77 (assuming such requirements were already fulfilled).

Examiner Tips: Checking For Checks

When examining a plan, the IRS checks to ensure that required minimum distributions (RMDs) are being made. Here are some tips from EP examiners on complying with the RMD rules.

It’s always a good idea to review the employee census data and determine if any participants attained the age of 70½ in the calendar year prior to the year under examination. A non-5% owner can delay the receipt of a MRD beyond April 1st of the calendar year following attainment of age 70½ to as late as April 1st of the calendar year following the year of actual retirement from the employer maintaining the plan. But, a 5% owner must begin receiving MRDs by April 1st of the calendar year following attainment of age 70½.

If there’s an individual that should be receiving RMDs from a plan, review each [Form 1099-R](#) and verify that the participant is indeed receiving distributions. If a participant is receiving a 1099-R, review the RMD calculation to make sure the minimum amount is getting properly distributed.

If there is a participant who should be receiving a 1099-R but isn’t, ask why the RMD isn’t being made.

As an example, a plan sponsor has a profit-sharing plan and a money purchase pension plan for the 2002 calendar year. There is a 5% owner who had attained the age of 70½ during 2001 but is not receiving minimum distributions. Further review finds that the participant, in addition to their account balances in both plans, also had some large IRAs. The participant aggregated the IRA assets with the profit-sharing and money purchase plan assets in order to arrive at the amount of the RMD. The RMD was then made from one of the IRA accounts.

The current plan compared to the original pre-approved plan: Identical Twin or Fraternal Twin? Or maybe not even in the same family?

Our EP examiners share their experience: Get their tips on making sure plan participants receive their required minimum distributions.

Now, if only we can get them to share their chili recipes

continued on page 7

Examiner Tips *continued from page 6*

At first glance, this would appear to be a reasonable explanation. Section 1.408-8 (Q&A-9) of the regulations – which provides RMD rules for IRAs – states, IRAs can be aggregated when determining the amount of a RMD. The actual distribution can then be taken from any one or more of the individual's IRAs.

But care must be taken to not confuse the IRA rules with the rules that govern qualified plans. Under the section 401(a)(9) regulations, qualified plans cannot be aggregated for purposes of testing the RMD rules. Each plan must separately satisfy the requirements of section 401(a)(9).

So, in this example, the participant is not allowed to aggregate the profit sharing and money purchase plan assets with the IRA assets in order to determine the amount of the RMD. The profit-sharing plan and the money purchase plan must separately and independently satisfy the requirements of section 401(a)(9). Accordingly, the participant should have separately calculated and received RMDs from both the profit sharing and money purchase plans during the 2002 calendar year.

A Voluntary Compliance note: If a plan fails to pay RMDs, [Rev. Proc. 2003-44](#) provides that the permitted correction method is to distribute the RMDs. •

Bad Plan Provision? Maybe Revenue Procedure 97-41 Can Help

Long ago, in a galaxy far, far away - OK, it was September 1999 in Cleveland - a plan was amended to impose a seven-year cliff vesting schedule in place of a six-year graded schedule. The plan immediately began operating under the amended schedule and 25 current and former participants who were previously vested in their account balance had their vested benefit eliminated.

Flash forward to August 2003: The plan sponsor realizes that the seven-year cliff vesting schedule and corresponding reductions in participant vesting comprise a violation of the minimum vesting requirements of section 411(a). The sponsor's first instinct is to prepare a VCP request in accordance with [Rev. Proc. 2003-44](#) and voluntarily submit the plan to the IRS.

But the failures are not GUST-related and the remedial amendment period to correct the plan document failure arising from the amendment presumably expired on September 15, 2000, the extended due date of the Form 1120 filed for 1999 (when the amendment was adopted).

However, the sponsor learns that the GUST remedial amendment period for the plan – open until September 30, 2003 - applies to the disqualifying provision. *Why?* Simply refer to section 6.05 of [Rev. Proc. 97-41](#): "...the (GUST) remedial amendment period with respect to all disqualifying provisions of new plans adopted or effective after December 7, 1994, and all disqualifying provisions of existing plans arising from a plan amendment adopted after December 7, 1994, that causes the plan to fail to satisfy the requirements of section 401(a) as of the date the amendment is adopted or effective (whichever is earlier), will not expire earlier than the last day of the first plan year beginning on or after January 1, 1999. (Note: This deadline was extended by guidance such as [Rev. Proc. 2002-73](#))"

Even if the GUST remedial amendment period for the plan had expired, the relief granted by [Rev. Proc. 97-41](#) would be available until 91 days after the date of a GUST determination letter issued in response to an application filed within the remedial amendment period.

This broad expansion of section 401(b) relief permits a plan provision described in section 6.05 of [Rev. Proc. 97-41](#) to be corrected by amendment at any time prior to the close of the plan's GUST remedial amendment period without resorting to EPCRS.

That takes care of the disqualifying provision but the sponsor wonders, "Do I still need to file a VCP submission to resolve the 25 operational failures that resulted from the defective vesting schedule?" No – But only if: 1) the corrective amendment is made retroactively effective to when the defective amendment took effect, and 2) the amendment terms are applicable to all 25 participants who had their vested benefit eliminated. Otherwise, section 401(b) relief is not available, and a VCP filing would be necessary for both the disqualifying provision and the related operational failures.

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

Milo Atlas, Bob Bell, Diane Bloom, Gavin Chafin, Richard Ervi, James Flannery, Terri Holloway, William Hunt, Joyce Kahn, Buck Kerr, Roger Kuehnle, Wil Laird, Teresita Laureano, Peter McConkey, Lisa Mojiri-Azad, Corene Morton, Todd Newman, Greg Nix, Angelo Noe, Mark O'Donnell, Rick Parker, Nancy Payne, Sharon Polo, Donna Prestia, Wiley Ransom, Mike Rubin, John Schmidt, Paul Shultz, Brenda Smith-Custer, Monika Templeman and Mikio Thomas

Bad Plan Provision? *continued from page 7*

Another scenario to consider: If the amendment had replaced the six-year graded vesting schedule with a three-year cliff schedule without a corresponding adjustment to participant vesting to reflect the amended schedule, is it possible to just amend the plan to restore the six-year graded schedule without resorting to EPCRS? No – Although the amendment was adopted after 12/7/94, neither vesting schedule violated section 411(a). And, the expanded GUST remedial amendment period would not be available. The operational failure was due only to the failure to comply with the plan's new terms and unless the plan qualifies for self-correction (SCP), VCP would be necessary to preserve plan qualification. If the IRS discovers the failure first during an examination or determination letter review, Audit CAP is the only EPCRS program available.

One last thing to remember: Section 6.05 of Revenue Procedure 97-41 does not apply to TRA '86 provisions, which had a separate remedial amendment period that generally ended on the final day of the 1994 plan year. •

MAP Reading

In the mid-1990's, EP formed the Multiemployer Audit Program (MAP). In March 2001, EP established the Multiemployer Compliance Planning Group, which is charged with determining the future direction of MAP. Members of the Multiemployer Compliance Planning Group include revenue agents and managers representing all six examination areas and most EP offices along with representatives from Chief Counsel and Division Counsel. This diversity provides a well-rounded perspective for achieving compliance among multiemployer plans.

Since early 2000, the EP Examination Program has maintained a nationwide audit presence for multiemployer plans. All assignments of multiemployer plans are now limited to Senior EP Specialists who have received specialized training on the unique characteristics of these plans. These examiners have also been provided with the audit tools, techniques and support that are necessary to conduct a proper examination of a multiemployer plan.

MAP members meet throughout the year to share examination findings and techniques. As a result, the Compliance Planning Group has identified a number of violations that appear to be specific to the administration of multiemployer defined benefit plans throughout the country. While many other violations have been identified, this article discusses just a few. Corene Morton, MAP member said, "It is our hope that administrators will pay adequate attention to and correct these failures once they are properly communicated to them."

Common failures include:

- Not actuarially adjusting a participant's retirement benefit when commencement is delayed beyond the plan's normal retirement date in accordance with plan provisions;
- Not actuarially adjusting a participant's retirement benefit when commencement is delayed beyond the plan's normal retirement date in accordance with Code sections 401(a)(9)(C)(iii) and 411(b)(1)(H); and
- Not commencing benefits in accordance with Code section 401(a)(9)(C).

The following is a typical scenario that agents find when auditing multiemployer plans:

The plan administrator requires participants to file an application for retirement benefits prior to the start of such benefit, regardless of plan requirements. The plan does not follow a "best practice" of actively pursuing terminated vested participants approaching normal retirement age to facilitate the commencement of these benefits. Also, annual statements sent to these participants typically do not indicate that they are eligible for a benefit even when sufficient information exists to determine the participant's vested benefit. Inactive participants beyond their normal retirement dates apply for and are granted benefits that are calculated as if the participant applied in a timely manner.



Sometimes it can be hard running a multiemployer plan. Mistakes can and do happen. There are several correction programs available through EPCRS to fix such mistakes.

The plan fails to make retroactive benefit payments for these missed months or limits the payments to an arbitrary number, usually three. The plan does not actuarially adjust the benefit to correct for its delayed commencement and rarely includes any interest to recognize the time value of money lost due to the delay. In effect, participants who fail to apply for their benefit immediately upon reaching their normal retirement date under the plan are forfeiting a monthly benefit for each month that they are late. This issue is more prevalent when a plan's normal retirement age is less than 65 because many employees may be unaware that they are eligible for benefits at this earlier age.

Plans that utilize their own personnel to calculate benefits often fail to properly adjust a participant's benefit for increases due to a delayed commencement of a participant's normal retirement benefit. This frequently occurs when the worksheets and/or computer systems are not designed to provide for this adjustment.

Failure to actively pursue participants who are either approaching or have exceeded their required beginning dates due to the failure of the plan to maintain updated databases for both active and inactive participants often results in noncompliance with Code section 401(a)(9)(C).

The issue of missing participants often poses a serious problem for plans when trying to comply with Code section 401(a)(9)(C). Plan administrators often fail to take advantage of tools available for finding missing participants, such as the IRS Letter Forwarding Program. (For more information, go to www.irs.gov/ep, select "More Topics" and click on "Contacting Missing Participants or Beneficiaries".)

The unique character and traits of a multiemployer plan may lend themselves to the conditions that result in these types of violations. But they do not absolve the plan of these requirements. Instead, they should highlight to multiemployer plan administrators the additional attention and effort that is needed to keep track of plan participants, to maintain a complete participant database (i.e., service credit, dates of birth, current address, marital status, etc.) and to properly communicate plan benefits. Adequate training and supervision for personnel that process these applications is also needed.

What options are there in the event that violations are discovered? Deciding to do nothing will subject the plan to possible disqualification if discovered on audit. To avoid this drastic step, there are several correction programs available through EPCRS to correct failures prior to audit – programs such as SCP (if you meet the requirements) or VCP. EPCRS also allows correction of failures discovered during examination through Audit CAP. As a general rule, if you choose VCP, the fixed Compliance Fee in most cases will be significantly less than the Audit CAP sanction. Refer to [Rev. Proc. 2003-44](#) for further guidance on these programs.

Questions relating to this article can be sent directly to either Corene Morton or William Hunt by email at Corene.K.Morton@irs.gov or William.Hunt@irs.gov, respectively. Requests for Group members to speak at an event or conference should be sent to Mikio Thomas, CE&O Area Analyst, by email at Mikio.S.Thomas@irs.gov.

Playing Catch-up With Multiemployer Plans

Section 414(v) – added to the Code in 2001 by EGTRRA and amended in 2002 by JCWAA – permits eligible participants in certain plans to make additional elective deferrals during the year. These additional deferrals are known as "catch-up contributions". An "eligible participant" is one who is 50 or older and who is otherwise prohibited from making any more elective deferrals during a year.

Section 414(v)(4) provides that a plan permitting catch-up contributions will not satisfy the nondiscrimination rules under section 401(a)(4) unless all eligible participants under all applicable employer plans are permitted to make catch-up contributions. This is commonly referred to as the "universal availability requirement" and public comments have asked that plans covering collectively bargained employees – including multiemployer plans – be exempted from this requirement.

A multiemployer plan is a plan maintained pursuant to one or more collective bargaining agreements and to which more than one employer is required to contribute. Applying the universal availability requirement to a multiemployer plan would have far-reaching consequences.



The IRS Letter Forwarding Program is a valuable tool for finding missing participants.

The IRS is getting some questions about how catch-up contributions apply to multiemployer plans...

“Playing Catch-Up...” provides some answers to those questions.

Playing Catch-Up... *continued from page 9*

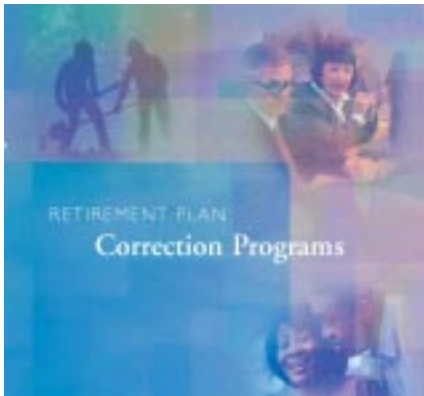
For example, if any contributing employer to a section 401(k) multiemployer plan had another plan that provided for catch-up contributions, then the multiemployer plan would also have to provide for catch-up contributions and so would all other applicable employer plans maintained by all the other contributing employers. Continuing, if any of the contributing employers also contributed to another multiemployer plan, then the “taint” would continue.

In response, the final 414(v) regulations provide that a plan does not fail the universal availability requirement just because collectively bargained employees do not have the opportunity to make catch-up contributions. So, if an employer contributes to a multiemployer plan (or any plan covering collectively bargained employees), the employer’s non-collectively bargained employees can be given the opportunity to make catch-up contributions without regard to whether collectively bargained employees are provided the same opportunity. Similarly, a multiemployer plan could provide for catch-up contributions on an employer-by-employer basis to collectively bargained employees – without having to provide for catch-up contributions for the collectively bargained employees of all other participating employers. •

A Cornucopia of New Correction Programs Products

Furthering its mission to help retirement plan sponsors and practitioners, EP has developed three new outreach tools that promote and explain the correction programs under the Employee Plans Compliance Resolution System (EPCRS). These new tools are available in a variety of formats: hard copy, CD-ROM and online.

First up is the **Retirement Plan Correction Programs Pamphlet** ([Publication 4224](#)). This guide gives a brief synopsis of IRS, DOL and PBGC correction programs. This tool is an excellent awareness document for plan sponsors and practitioners and explains the help available for a variety of plan problems.



The new Retirement Plan Correction Programs CD-ROM gives retirement plan sponsors and practitioners information on correction programs from three government agencies.

EP has also developed a **Retirement Plan Correction Programs CD-ROM** (Publication 4050). This new CD-ROM provides an in-depth guide to the correction programs sponsored by the IRS, DOL and the PBGC. Highlights of the CD-ROM include:

- Revenue Procedure 2003-44 and a linked in-depth topical index;
- A plain-language explanation of IRS retirement plan correction programs and procedures with links to definitions and sections of Rev. Proc. 2003-44;
- Video clips explaining the need for ongoing retirement plan self-audit programs and available correction programs;
- A “Guide to Common Qualification Requirements” to help employers understand their responsibilities under the law;
- Examination Guidelines;
- Links to the IRS, DOL and PBGC web sites;
- FAQ’s on IRS and DOL correction programs and
- FAQ’s on IRA-Based Plans (SEP, SARSEP and SIMPLE).

The CD-ROM is an excellent reference tool for practitioners and sponsors alike.

Finally, EP has posted an **Online Version** of the materials (minus video clips) on the *Retirement Plans Correction Program CD-ROM*. Go to the Retirement Plans web page at www.irs.gov/ep, select “More Topics” and go to “Correction”. This tool is an excellent place for both plan sponsors and practitioners to find the latest information on the correction programs plus have ready access to the information on the CD-ROM. •



The new Retirement Plan Correction Programs pamphlet gives an overview of IRS, DOL and PBGC programs.

Employee Plans Published Guidance

(July 2003 – September 2003)

Revenue Rulings

[Rev. Rul. 2003-62, 2003-25 I.R.B. 1034](#)

This revenue ruling pertains to distributions from a qualified retirement plan and their application to cafeteria plans.

[Rev. Rul. 2003-65, 2003-25 I.R.B. 1035](#)

This revenue ruling pertains to vesting service upon the resumption of accruals.

[Rev. Rul. 2003-83, 2003-30 I.R.B. 128](#)

This revenue ruling pertains to whether certain funding methods are reasonable entry age normal funding methods.

[Rev. Rul. 2003-85, 2003-32 I.R.B. 291](#)

This revenue ruling pertains to a reversion, a qualified replacement plan, and the application of the IRC section 4980 excise tax.

[Rev. Rul. 2003-88, 2003-32 I.R.B. 292](#)

This revenue ruling pertains to the statute of limitations and IRC section 4971 excise taxes.

Notices

[Notice 2003-49, 2003-30 I.R.B. 294](#)

This notice describes the application of section 620 of EGTRRA to certain determination letter requests.

[Notice 2003-62, 2003-38 I.R.B.](#)
(September 3, 2003)

This notice requests comments from the public with respect to the mortality tables that will be used for plan years beginning on or after 01/01/2005 under IRC section 412(l)(7) and section 302(d)(7) of ERISA.

Regulations

[T.D. 9072, 68 Fed. Reg. 40510](#)
(July 8, 2003)

These final regulations under IRC sections 402 and 414(v) implement the catch-up rules and may be relied upon prior to their 01/01/2004 applicability date.

[REG-112039-03, 68 Fed. Reg. 40581](#)
(July 8, 2003)

These proposed regulations pertain to IRC section 411(d)(6)(E) as added by EGTRRA.

[REG-121122-03, 68 Fed. Reg. 41087](#)
(July 10, 2003)

These proposed regulations under IRC section 1042 involve ESOPs.

[T.D. 9075, 68 Fed. Reg. 41230](#)
(July 11, 2003)

These final regulations under IRC section 457 apply to deferred compensation plans of state and local governments and certain tax-exempt organizations.

[T.D. 9076, 68 Fed. Reg. 41906](#)
(July 16, 2003)

These final regulations under IRC section 417(a)(7) pertain to retroactive annuity starting dates for defined benefit plans.

[T.D. 9079, 68 Fed. Reg. 42254](#)
(July 17, 2003)

These final regulations pertain to certain funded welfare benefit plans and IRC section 419A(6)(f).

[REG-108639-99, 68 Fed. Reg. 42465](#)
(July 17, 2003)

These proposed regulations under IRC section 401(m) update and expand upon existing published guidance to recent current law.

[T.D. 9081, 68 Fed. Reg. 42970](#)
(July 21, 2003)

These temporary regulations under section 409(p) pertain to the allocation of stock of a subchapter S corporation to an ESOP.

Revenue Procedures

[Rev. Proc. 2003-72, 2003-38 I.R.B.](#)
(August 28, 2003)

This revenue procedure extends the application date for certain pre-approved plans to request EP determination letters.

Which Way to the Forums?

The IRS, in general, and EP, specifically, continue to expand their presence in the Small Business arena.

To illustrate that point: This year's Nationwide Tax Forums had more topics and more attendees than ever.

The 2003 IRS Nationwide Tax Forums just concluded. The forums were held in six locations across the country throughout the summer and each seminar ran for three days and had a variety of sessions designed for tax professionals. Topics included:

- Earned Income Tax Credit (EITC) Hot Topics
- Retirement plans
- How to apply for tax-exemption

Each Forum also featured an exhibit hall.

Employee Plans presented a session entitled "[*No Fuss*](#)" Retirement Plans. This session helped practitioners show their clients how to establish and operate Simplified Employee Pensions (SEPs) and Savings Incentive Match Plans for Small Employers (SIMPLEs). The session also explained common problems with SEPs and SIMPLEs. In addition the Employee Plans Compliance Resolution System (EPCRS) was discussed as a way to bring plans that have problems back into compliance. The EP sessions were very well attended and folks were glad to have a better understanding of the available IRA-based retirement plans.

Exempt Organizations (EO) presented sessions entitled "Introduction to Exempt Organizations" and "Do's and Don'ts for Churches and Religious Organizations". They also offered a workshop entitled "Applying for Tax-Exempt Status". The EO sessions were also very well attended – so much so that by the time the last forum came around, the workshop was expanded from one session to four.



TE/GE Staff were available at each of the IRS Nationwide Tax Forums to answer questions and hand out related materials.

Other operating divisions of the IRS also participated, as did other government agencies, among them the Social Security Administration. EP and EO session 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 exhibit hall, practitioners had the opportunity to interact with TE/GE employees. Many of the questions answered at the TE/GE booth concerned 401(k) plans, SEPs, SIMPLEs, disaster relief and charitable and non-profit organizations. Practitioners stopping by the TE/GE booth also took advantage of the opportunity to pick up IRS publications, forms and promotional items. Attendees had favorable feedback on both the presentations and the booth.

The Tax Forum audiences are a group of practitioners that EP has recently been reaching out

to. Traditionally, EP has worked closely with the practitioners in the benefits and retirement area. In contrast, attendees of the Tax Forums are predominantly general tax practitioners (i.e. enrolled agents and small CPA firms). •

EP Partners With Another Small Business Organization

On September 9-10, 2003, EP participated in the Entrepreneurial Woman's Conference held at the historic Navy Pier in Chicago. The non-profit Women's Business Development Center (WBDC) sponsored the event. The WBDC is nationally recognized for its work on behalf of small and women-owned businesses.

The WBDC assists businesses – from the home-based child care business to the high-potential technology company – at all phases of the development cycle through counseling, financial assistance and access to information and resources. The WBDC certifies upwards of 500 women-owned businesses as Women Business Enterprises and more than 3,500 women business owners participate in its events annually.

As part of EP's national initiative for enhancing pension plan awareness in the small business community, EP hosted an exhibit booth and gave out relevant publications and other information. One popular hand-out was [Publication 3998](#), *Choosing a Retirement Solution for Your Small Business* – an excellent source of information on different types of retirement plans for small businesses.

EP is looking forward to a continued partnership with the WBDC through the Entrepreneurial Woman's Conference. These vehicles promote pension plan awareness and compliance to prospective pension benefit providers. And in that vein, EP will continue to partner with other organizations in the small business market. •

Mountain States Benefits Conference


The inaugural Mountain States Benefits Conference was held in Denver on September 11-12. The event was co-sponsored by the IRS, ASPA and the Western Pension and Benefits Conference. The program focused on current regulatory, legislative and actuarial topics. Panelists from the IRS, Department of Labor, Health and Human Services, the Pension Benefit Guaranty Corporation, ASPA and benefits experts from private industry discussed topics including:

- Washington Update
- Aggressive and Questionable Practices
- Recent 401(k) Guidance
- Updates on 403(b) and 457 Plans and Voluntary Compliance

Luncheon speakers were Evelyn Petschek, Commissioner, Tax Exempt and Government Entities (TE/GE) and Gwen Florio, International Correspondent for *The Denver Post*.

The IRS also offered "interactive booths" where conference attendees could have one-on-one discussions with EP specialists in Compliance Programs, Determination Letters, 401(k) plans, 403(b) and 457 plans and Customer Education and Outreach. In addition, attendees had an opportunity to pick up IRS publications, forms and promotional items.

For further information on the Mountain States Benefits Conference as well as other IRS co-sponsored Benefits Conferences, go to www.irs.gov/ep. Click on "More Topics" under the "Topics" section, and then select "Benefits Conferences Calendar". •



This month, EP provided education and outreach services at two new ventures: the Entrepreneurial Woman's Conference in Chicago and the inaugural Mountain States Benefits Conference in Denver.

Want an EP speaker at your next event? Go to: www.irs.gov/ep and click on "Educational Services".

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.



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

Bookmark us now. You'll thank us later.

The Corner of Forms & Pubs

Welcome back to The Corner of Forms & Pubs – the EP version of Hollywood & Vine. The information here at The Corner is brief although topics needing further details will get their own full-length articles (such as the article on the new Correction Programs products). Our lead story at The Corner concerns the availability of the revised Form 5310-A:

- **Leaner, Sleeker Form 5310-A now available** – The [Form 5310-A, Notice of Merger, Consolidation or Transfer of Plan Assets or Liabilities](#) was revised in July 2003. Although the form is not an application and does not generate a response from the IRS, it is a *required* notice. The updated version does away with the duplicate first page (the pink scannable page) and conforms to changes made in the rest of the Form 5300 series over the past two years.
- **News From the Fringe** – On July 14, 2003, the IRS issued News Release 2003-89 reminding employers and retirement plan professionals that they no longer have to file information about fringe benefit plans. The IRS suspended the requirement for an annual Form 5500 and Schedule F last year for such so-called “pure fringe benefit plans.”
- **Everything You Ever Wanted To Know About...Notices?** – EP now offers information and advice in responding to certain IRS notices on its website. The CP 213 Notice is sent to notify filers of a “proposed” IRS penalty due to the late or incomplete Form 5500 or Form 5500-EZ return/report. The information is presented in Q&A format and is intended to assist you in drafting a response should you receive such a notice.

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. Paper copies of Forms & Pubs can also be requested by calling 1-800-TAX-FORM. If you have comments about forms or pubs, contact us at RetirementPlanComments@irs.gov.

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 wide world of retirement plan topics.

- **Fringe Benefit Plans** – The IRS suspended the requirement for an annual Form 5500 and Schedule F last year for so-called “pure fringe benefit plans”. EP has posted content about the suspension at www.irs.gov/ep. Once there, you'll see a news release on the topic along with other fringe benefit plan-related links.
- **New Correction Programs Tools** – No, this isn't a case of déjà vu all over again. The first Web Spins column told you some online EPCRS tools. Well, now we have even more helpful online products, such as the new EPCRS promotional tri-fold publication and the latest version of the Correction Programs CD-ROM featuring information about not only EPCRS but also corrections programs available from EBSA and the PBGC. Just select “More Topics” and then go to “Correction”. (See related story on correction products in this edition.)
- **More FAQs** – Even **more USERRA FAQs** are now posted in the FAQs section under “More Topics”. Also, we recently posted a series of **FAQs on Notice CP 213** (See related story at *The Corner of Forms & Pubs* in this edition).
- **Life Cycle Information** – EP has been promoting the concept of the “Retirement Plan Life Cycle” in its outreach efforts. To further broadcast that message, EP has posted content about the Life Cycle at www.irs.gov/ep. Once you're there, select “More Topics” and then click on “Retirement Plan Life Cycle”. You'll find resource guides on many types of plans.

14th Annual SWBA/IRS Employee Benefits Conference

The Service and the SouthWest Benefits Association (SWBA) are presenting the 14th Annual SWBA/IRS Employee Benefits Conference on October 15-16, in Dallas, Texas. This year's conference features top government officials and leading private industry experts in the world of employee benefits. The curriculum provides insight into the hottest topics of employee plans and direct answers to troubling plan questions. Do not miss this opportunity to learn and interact with your peers at this premier employee benefits conference.

Featured Speakers include:

- Carol Gold, Director, Employee Plans
- Paul Shultz, Director, EP Rulings and Agreements
- W. Thomas Reeder, Associate Benefits Tax Counsel, U.S. Dept. of Treasury
- Steve Eischen, Regional Director of the EBSA, U.S. Dept. of Labor
- Timothy D. Houser, Associate Solicitor, Plan Benefits Security Division, U.S. Dept. of Labor
- Alicia Aceves Smith, HIPAA Privacy Specialist/Equal Opportunity Specialist, U.S. Dept. of Health and Human Services.

Featured Sessions include:

- *IRS National Office Presentation*
- *Executive Compensation Update*
- *IRS Focus on Abusive Tax Practices*
- *Managing Compensation & Benefit Programs for 'Troubled' Plan Sponsors*
- *Voluntary Correction Update*
- *HIPPA Privacy & Security*
- *401(k), 403(b), and 457 Plans*
- *ERISA Governance – 1 hour Ethics Credit*

In addition to the above topics, the IRS and DOL/EBSA will staff Interactive Tables with specialists in selected areas of employee benefits. For more information regarding the conference, such as special hotel rates and airfares, and to register for the conference, visit the SWBA website at www.swba.org, or call them at 214-382-3035.

2004 Los Angeles Benefits Conference

The Service and the American Society of Pension Actuaries (ASPA) are presenting the 2004 Los Angeles Benefit Conference on January 29–30 in Universal City, California. The conference will feature speakers from the IRS, DOL/EBSA and ASPA.

For the first time, IRS TE/GE experts will have 'Interactive Tables' throughout the conference to address questions, relevant issues and problems with the conference attendees. Some of the featured speakers include:

- Paul Shultz, Director EP Rulings and Agreements
- James Holland, Manager, Employee Plans Technical
- Virginia C. Smith, Director of Enforcement, U.S. Department of Labor
- Billy Beaver, Regional, Director, DOL/EBSA
- Bette J. Briggs, Regional Director, DOL/EBSA

Featured Sessions include:

- Latest Washington Update
- New 401(k) Regulations
- Updates on Voluntary Compliance
- Department of Labor Investigations
- Aggressive Tax Practices

For more information regarding the conference, such as special hotel rates and airfares, and to register for the conference, visit the ASPA website at www.aspa.org, or call them at 703-516-9308.

The annual SWBA/IRS and Los Angeles Employee Benefits Conferences:



Two more opportunities to hear IRS speakers and learn about the hottest benefits topics.

Calendar of EP Benefits Conferences

UPCOMING EVENTS...

Name	Date(s)	Location	Non-IRS Co-Sponsor(s)	For Further Information, Please Contact
SWBA/IRS 14th Annual Employee Benefits Conference	10/15/03-10/16/03	Dallas, TX	Southwest Benefits Association (SWBA)	www.swba.org
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

RECENT EVENTS...

Name	Date(s)	Location	Non-IRS Co-Sponsor(s)	For Information, See
Mountain States Benefits Conference	09/11/03-09/12/03	Denver, CO	ASPA and WP&BC	EP Benefits Conferences Calendar at www.irs.gov/ep
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	
Mid-Atlantic Benefits Conference	05/13/03-05/14/03	Philadelphia, PA	ASPA	
Great Lakes Benefits Conference	05/01/03-05/02/03	Chicago, IL	ASPA & other cooperating sponsors	



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