

# employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

Internal Revenue Service  
Tax Exempt and Government  
Entities Division

A Publication of Employee Plans

**page 3**  
If It Sounds Too Good to be True...

**page 4**  
Put the Cart Before the Horse?

**page 5**  
DOL Corner

**page 8**  
Incomplete Determination Letter  
Applications

**page 8**  
Revisiting the Place and Time of  
Conducting an Audit

**page 9**  
News From the Land of Form 5500

**page 9**  
News For Retirement Plan Sponsors

**page 10**  
Web Spins

**page 11**  
The Corner of Forms & Pubs

**page 11**  
Quick Hits

**page 12**  
EP Published Guidance

**page 13**  
2004 IRS Nationwide Tax Forums

**page 13**  
2004 Mid-Atlantic Benefits Conference

**page 14**  
2004 Northeast Benefits Conference

**page 15**  
2004 Great Lakes Benefits Conference

**page 15**  
LA Benefits Conference Recap

**page 16**  
Calendar of EP Benefits Conferences

## Special 3<sup>rd</sup> Anniversary Edition of EP Connections: Interview with Carol Gold

*Carol D. Gold is Director of Employee Plans in the IRS's Tax Exempt and Government Entities Division. Carol has been in public service for 28 years. She received her Bachelor of Arts degree from Duke University, her Juris Doctor from Boston University School of Law, and an L.L.M. in Taxation from Georgetown University Law Center. She is a charter fellow of the American College of Employee Benefits Counsel. In addition to her position at the IRS, she has served two terms on the Joint Board for the Enrollment of Actuaries and as an adjunct professor at Georgetown University Law Center.*

### What are some accomplishments of the Employee Plans organization that you are particularly proud of?

I think our outreach effort to small business is particularly noteworthy. It is our goal – our mission statement if you will – to administer the Code's retirement plan provisions in a way that:

- (1) Makes plans accessible to employers of all sizes,
- (2) Makes operation of plans straightforward, and
- (3) Provides opportunities for correction of errors.

I want to thank employers who have adopted and are operating retirement plans, and I particularly want to thank the many EP specialists who are involved in reaching out to the business community to provide information, assistance and support so that all segments of the workforce have a better opportunity to participate in the advantages of tax favored retirement plans. These efforts ensure that employers have access to the support they need to keep their plans in compliance. For example, we've recently provided compliance checklists and plan information packets to employers adopting IRA-based plans.

Second, we've made real progress in bringing stabilization to the determination letter process. Although stability in the rules for qualified plans is probably not attainable (I like to say that change means that plans just keep getting better), we can bring regularity to the review of plan amendments. Stabilization will enable EP *and* the private sector to allocate our attention and resources to keep plan operation in compliance with the rules as well as to the update of plan documents.

Finally, I think EP has been quite responsive to identifying and addressing abusive transactions in the retirement plan arena. Our partners in the private sector have actively brought various abusive schemes to our attention and we have responded with guidance and enforcement. Did you know that of 23 "listed transactions" (*Editor's note: a "listed transaction" is a transaction that the IRS deems abusive*), seven involve retirement schemes? I remind everyone that when we find these transactions – and we will find them – there will be penalties to pay.

*continued on page 2*

**In our first issue, you wrote a message for our readers that concerned benefits of the then new EP structure. You wrote that the primary benefit was enhanced internal coordination, including determinations, examinations, voluntary compliance and outreach. What are some of the improvements you've seen in the last three years?**

EP has come together as a more coordinated organization. Our examination, determination, voluntary compliance, and outreach programs are nationwide, and there is a better understanding of the important work each contributes to our goals. For example, before guidance is issued, it is reviewed by employees in our programs to make sure they are prepared for its administrative implications. Information about abusive tax avoidance schemes is reviewed by a cross-functional team in order to quickly elevate the issue for appropriate response. Also, we are all learning "best practices" from each other and to the extent those practices involve you, we're posting them on the internet. I suppose the information we share on the internet is perhaps one of our biggest improvements, and that improves not only internal coordination but coordination with our external stakeholders as well.

**What do you think is your biggest challenge these days as the Director of EP?**

Bringing 21<sup>st</sup> century technology to both our employees and our work processes is a challenge that is exciting and complex. In order to successfully integrate technological support into our work processes we need to team EP employees who have expertise in the examination or determination program with other experts who will develop and build the systems. This often means taking some of our most skilled and creative employees offline so that their understanding of our processes is appropriately captured in systems that will continue to support our workforce for years after many of us have retired. We often think of skills-transfer as making sure new employees have an opportunity to benefit from the know-how of experienced employees. The kind of skills-transfer that is likely to provide the biggest dividends is when employees engage in the process of building systems that will take us into the future.

**Any surprises you can tell us about?**

First, if your readers haven't already heard, the Commissioner of TEGE, Evelyn Petschek, is leaving to become Chief of Staff for Mark Everson, IRS Commissioner. We wish her well and will miss her terribly.

Second, EP is about to launch a new newsletter, one focused on the employer community. The *Retirement News for Employers* will be available in April or May.

Our hope is that this communication will help all of us in the EP community, within and without the government, provide the kind of support to employers that they deserve.

**This is the third anniversary of the *Employee Plans News*, but this year also marks the 30<sup>th</sup> anniversary of ERISA. Care to take a look at what's been accomplished in those years?**

Thirty years ago, within the IRS, our work was done by the Pension Trust Branch. In the private sector, unless you were an actuary, there were almost no opportunities to work full-time on employee plans or benefits. Now, within the IRS, EP is a significant part of one of the four operating divisions and in the private sector there are a number of firms in law, accounting, and consulting that have whole departments of benefits professionals.

During the mid-80s, there were about one million determination letter requests for TEFRA/DEFRA/REA amendments. That huge influx of requests had a major impact on the number of exams EP could conduct. On the other hand, during the recently ended GUST amendment period, we had about 260,000 determination letter applications. This reduction bears out the shift from individually-designed plans to pre-approved plans. In fact, many adopters of the pre-approved plans were "word-for-word" adopters and didn't even need to apply to us. The growth of pre-approved plans has allowed us to use our resources better. For example, we've been able to expand our customer education & outreach, voluntary compliance and exam efforts

**"EP... (is) a more coordinated organization. (All of) our programs are nationwide."**

**"(T)he information we share on the Internet is perhaps one of our biggest improvements..."**



**Evelyn Petschek, Commissioner of TEGE, is leaving to become Chief of Staff for the IRS Commissioner.**

***Employee Plans News* will feature her in a special EP Connections in the Summer 2004 Edition. Watch for it in June.**

Ten years ago, we introduced RICS, the Returns Inventory Classification System. This was a big improvement in our technology. Using RICS, we could perform targeted research based on the Form 5500 data – research based on plan type, industry, asset value or any combination of data from the form. This enabled us to begin focused enforcement initiatives. It was also during this time frame that we introduced a “voluntary compliance” initiative. This voluntary compliance initiative evolved into EPCRS, which engages the resources of the private community in efforts to keep plans in compliance.

In the last five years, we have focused on reorganizing EP to increase our ability to respond to the information and compliance needs of the community. The commitment and insight of the Advisory Committee for TE/GE (ACT) and other informal liaison groups have provided us with their counsel and advice on how to enhance EP’s engagement with plan sponsors.

**You’re a biking enthusiast. You’ve even participated in some long-distance fund-raising events. Do you think about work when you’re cycling or is that time used to “recharge” yourself?**

What I think about when I’m riding through Washington is keeping myself alive. Seriously, riding also gives me a different perspective on my work – as I ride through this beautiful city I am reminded that there is life outside of work. That’s why helping people prepare for retirement is so important. I guess our conversation has come full-circle. •

### If It Sounds Too Good to be True...

The IRS has been hearing a lot of stories about business owners getting offers relating to retirement plans that sound “too good to be true”. These offers usually involve ways to shelter all or most of the employer’s business income from tax or delay recognition of income tax. Well, if it sounds too good to be true, then it might be an abusive tax transaction.

The IRS is spending serious resources to identify and examine abusive tax transactions. Oftentimes, when promoters of these abusive tax transactions – or, “listed transactions” – are identified, the IRS gets a list of participants in these transactions. Use of abusive tax transactions could result in a substantial liability for income taxes, excise taxes and penalties.

As reported in the *February 2004 Special Edition* of the *Employee Plans News*, Tom Terry, Senior Technical Advisor to the TE/GE Commissioner, said, “Each piece of guidance – in conjunction with our new Web section on abusive tax schemes involving retirement plans – confirms our commitment to maintaining the integrity of retirement plans.”

Carol Gold, Director of Employee Plans, recently held a meeting of EP directors representing the different functions within EP. She said, “We discussed the need to provide guidance and education. The focus of our efforts, however, will be to stem abusive tax shelter schemes through an aggressive examination program.

“The EP voluntary compliance program helps plans that are legitimately providing retirement benefits to employees. Since many abusive tax transactions are not intended to provide retirement benefits to an employer’s workforce, our voluntary compliance program may not be available to turn an abusive transaction into a qualified plan. When we find these transactions – and we will find them – there will be penalties to pay.”

Roundtable participants were:

- Paul Shultz, Director, Rulings & Agreement
- Mark O’Donnell, Director, Customer Education and Outreach
- Preston Butcher, Director, Examinations

“Together”, said Ms. Gold, “the participants represent EP’s guidance, education and enforcement efforts.”

Hear some scheme that sounds too good to be true?



EP has some free advice for you.

Comments start with Mr. Shultz: "Rulings & Agreements is pleased to join with those in other functions of EP to counter abusive tax shelters. In the past several months, we've published numerous pieces of guidance on these transactions. And we will continue our efforts to protect genuine retirement plans.

"Promoters and other unscrupulous persons are intent on taking unfair and inappropriate advantage of our voluntary tax system. They develop unreasonable positions and then use those positions for their own financial advantage as well as persuade other taxpayers, often less sophisticated, sometimes simply greedy, to take advantage of their unfounded position. Sad to say, but retirement plans is one area where their abuses find fertile soil."

Next, words from Mr. O'Donnell: "As the guidance comes out, my office is making sure that the word is getting to the right people. We want promoters of these schemes to know the consequences of selling abusive tax transactions. We are providing information to plan professionals and employers so they can avoid being duped by promoters of abusive tax transactions. Our communication plan includes information on the [Retirement Plans web page](#), articles in the *Employee Plans News* and information targeted to employers who might be vulnerable to these abusive tax transactions. We hope that our effort will reduce the size of the problem."

Finally, some words from the head of enforcement, Mr. Butcher: "EP examinations is implementing a comprehensive examination program dealing particularly with abusive tax transactions relating to IRC 412(i) plans, 401(k) accelerated deductions and ESOPs. Extensive coordination on such examination programs is occurring with other functions such as SB/SE, LMSB and Counsel. A comprehensive range of small and larger plans are the focus of a wide variety of examination, enforcement, communication and compliance strategies."

The IRS has launched an "EP Abusive Tax Transactions" section on the Retirement Plans web page at [www.irs.gov/ep](http://www.irs.gov/ep). The section identifies listed transactions involving retirement plans and provides recently issued guidance – such as Treasury regulations and IRS revenue rulings – intended to shut down transactions the IRS deems abusive. The section warns promoters and plan professionals about the consequences of participating in such schemes. It also provides a hotline for reporting suspected abusive transactions to the IRS. •

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## Put the Cart Before the Horse? Plans Restated for GUST After EGTRRA Amendments Adopted

The IRS has issued general technical assistance regarding plans that have been restated for GUST subsequent to the adoption of good faith EGTRRA amendments. A question had been raised as to whether the sponsors of these plans should be required to readopt the EGTRRA amendments.

The [technical assistance memo](#) concludes that a GUST plan restatement should not be treated as superseding previously adopted EGTRRA plan amendments that are not incorporated or reflected in the restatement provided the plan is operated in a manner consistent with the EGTRRA plan amendments. For this purpose, the memo notes, a plan should be presumed to be operating in compliance with the EGTRRA plan amendments in any case (such as a determination letter application) in which the operation of the plan cannot be determined.

The technical assistance memo will be followed when resolving issues that may be identified in the course of a determination or examination. •

### 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](http://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](http://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](http://www.irs.gov/ep).

**Together again: the IRS and EBSA present the joint publication *401(k) Plans for Small Businesses*.**



**What's faster than EFAST?**

**Why, EFAST2 of course.**

**Find out more in the 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 to develop and issue the *401(k) Plans for Small Businesses* publication and worked with the IRS on the expanded Web version. In issuing the publication, EBSA Assistant Secretary Ann L. Combs stated, "It is crucial that we encourage small businesses to provide these valuable benefits to workers. This publication draws a clear road map for employers who want to provide a plan, but need some friendly directions along the way." The publication is available on EBSA's Web site at <http://www.dol.gov/ebsa/publications/401kplans.html> or through EBSA's toll free number, 1-866-444-EBSA (3272).

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 DOL/EBSA's 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".

### **EFAST2 – Electronic Filing for Annual Reports**

On March 5, DOL/EBSA issued a request for public comments on proposed changes to the ERISA Filing Acceptance System (EFAST) to capitalize on web-based technology that promotes more cost-effective and efficient ways to comply with ERISA filing requirements.

ERISA requires employee benefit plans to report annually on their financial condition and operations. In 1999, DOL/EBSA created the EFAST system to simplify and expedite the receipt and processing of the Forms 5500 and 5500-EZ annual reports.

The redesigned system, known as EFAST2, will make use of web-based technology to improve the collection and distribution of information about employee benefit plans. DOL/EBSA annually receives an estimated 1.4 million annual reports. Because much of today's technology was not available when EFAST was first implemented, DOL/EBSA now has the opportunity to improve the system.

The request for comment seeks public comments on issues related to:

- Completing and filing the annual reports electronically via a DOL Web site;
- Whether electronic filing of the annual reports should be mandatory;
- Whether filing fees should be charged;
- Simplifying the electronic signature and authentication procedure;
- Developing data specifications for accepting filings via the Internet;
- Improving the handling of third-party attachments and attestations;
- Consistency in treatment of paper and electronic filings;
- Requiring each plan filing annual reports to obtain a unique Employer Identification Number (EIN); and
- Web-based distribution of annual reports.

Comments should be provided to the Department by April 5, 2004. Written comments should be addressed to the EFAST Program Office, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5649, Washington, DC, 20210, Attention: EFAST RFC. Comments may also be submitted electronically at [EFAST2@dol.gov](mailto:EFAST2@dol.gov). The request for comments is available on DOL/EBSA's Web site and the EFAST Web site at <http://www.efast.dol.gov/efastRFC.html>.

*continued on page 6*

## Automatic Rollovers

On March 2, DOL/EBSA published a proposed rule and class exemption in the Federal Register. The proposed rule provides guidance on how employers and financial institutions can implement the new requirement that retirement plan distributions between \$1,000 and \$5,000 be automatically rolled over into an individual retirement plan unless the worker directs otherwise. By following the terms of the regulation, employers will meet their fiduciary responsibility in choosing the IRA or annuity provider and investment of the funds.

The Economic Growth and Tax Relief Reconciliation Act (EGTRRA) requires that certain distributions of retirement plan benefits between \$1,000 and \$5,000 be automatically rolled over into an individual retirement plan when a separated worker fails to elect a distribution method. The proposed regulation protects retirement plan fiduciaries from liability under ERISA by providing a safe harbor in connection with two aspects of the automatic rollover process – the selection of an institution to provide the individual retirement plans and the selection of investments for such plans.

In order to obtain relief under the safe harbor, plan fiduciaries must satisfy certain conditions. Among others, these relate to the types of institutions that are qualified to offer individual retirement plans, the investment products in which funds can be invested, and the limitations on the fees and expenses that may be assessed against the individual retirement plan funds.

DOL/EBSA also proposed a class exemption to enable certain plan sponsors to use their own services and products in connection with rollovers from their own retirement plans.

Comments on the proposed regulation should be submitted by April 1, 2004 to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Attn: Automatic Rollover Regulation. Electronic responses may be addressed to [e-ori@dol.gov](mailto:e-ori@dol.gov) and should be marked “Automatic Rollover Regulation” on the subject line. The proposed regulation is posted on EBSA’s Web site under Proposed Rules at <http://www.dol.gov/ebsa/regs/fedreg/proposed/2004004551.htm>.

Comments on the proposed exemption should be addressed to the Office of Exemption Determinations in Room N-5649 at the above address or electronically to [moffitt.betty@dol.gov](mailto:moffitt.betty@dol.gov). The proposed exemption is on EBSA’s Web site under Notices at <http://www.dol.gov/ebsa/regs/fedreg/notices/2004004552.htm>.

## Guidance on Fiduciary Duties in Response to Mutual Fund Abuses

On February 17, DOL/EBSA issued guidance on the duties of plan fiduciaries in light of alleged abuses involving mutual funds. The guidance addresses the obligations of fiduciaries to review their mutual fund and pooled investment fund investments with respect to reported and potential late trading and market-timing abuses. The guidance also provides examples of steps that fiduciaries can take to deal with market-timing concerns within their own plans without losing the protections of section 404(c) of ERISA.

DOL/EBSA Assistant Secretary Ann L. Combs also announced that day that EBSA is conducting reviews of mutual funds, similar pooled investment funds, and service providers to such funds to determine whether there have been any violations of ERISA. As with EBSA’s investigations involving corporate fraud and similar misconduct, these investigations are being coordinated with other Federal agencies through the Corporate Fraud Task Force.

The guidance is available on DOL/EBSA’s Web site at <http://www.dol.gov/ebsa/newsroom/sp021704.html> under Compliance Assistance.

## Final Class Exemption on Settlement of Litigation

On December 31, 2003, DOL/EBSA published in the Federal Register a class exemption to facilitate the settlement of litigation between employee benefit plans and related parties.

The final exemption responds to questions raised by the employee benefits community concerning whether plans that release legal claims against related parties in exchange for cash violate the prohibited transaction provisions of ERISA. The exemption allows plans to release such claims in exchange for cash, securities, and the promise of additional benefits. The exemption also allows related parties to pay amounts owed to plans over time.

The exemption requires that the terms of the settlement be approved by a fiduciary not involved in the transaction that is the subject of the litigation. It also requires the settlement to be reasonable in light of the plan's likelihood of full recovery, the risks and costs of litigation, and the value of foregone claims.

The exemption should remove any uncertainty and allow plan fiduciaries to properly carry out their responsibilities under ERISA by focusing on the merits of the settlement.

The exemption is available on DOL/EBSA's Web site at <http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2003/pdf/03-32191.pdf> under Compliance Assistance.

## 2003 Form 5500 and Guidance on Filing Requirements

On December 29, 2003, DOL/EBSA, along with the IRS and PBGC released the 2003 Form 5500 and Form 5500-EZ. The forms are essentially unchanged from the 2002 forms. Minor modifications have been made to the instructions and attachments to be filed with the forms.

Beginning this year, the Forms 5500 and 5500-EZ with the official hand print forms and instructions will not be automatically mailed to filers of record. A postcard will be mailed instead to remind filers of the filing obligation. The official government printed forms are available now at the IRS distribution sites by calling 1-800-TAX-FORM. Filers should monitor the EFAST Web site for information on approved software vendors for completing 2003 Form 5500 by computer and for electronic filing options. Filers may contact the EFAST Help Line for general assistance by calling 1-866-463-3278.

DOL/EBSA, the IRS and PBGC also issued tips to avoid common filing errors. The practical, common sense tips cover some of the most frequently occurring Form 5500 filing problems. The Agencies hope the tips will reduce the number of basic filing errors we encounter when processing the Form 5500 and Form 5500-EZ returns, and also help filers avoid getting EFAST correspondence regarding these basic mistakes.

In addition, DOL/EBSA issued Frequently Asked Questions (FAQs) for small pension plans that use the audit exception. The FAQs explain the conditions that small pension plans must meet to be eligible for a waiver of the annual audit requirement and includes model summary annual report language for the required participant notice under the exception.

Information copies of the forms, schedules, instructions are available at <http://www.dol.gov/ebsa/5500main.html>, the tips at <http://www.dol.gov/ebsa/form5500tips.html>, and FAQs at [http://www.dol.gov/ebsa/faqs/faq\\_auditwaiver.html](http://www.dol.gov/ebsa/faqs/faq_auditwaiver.html). The documents are also available on the EFAST Web site at [www.efast.dol.gov](http://www.efast.dol.gov).

**Whether it's in the form of regs, notices, proposed rules or class exemptions, the IRS and DOL are committed to providing the information you need to operate retirement plans.**



**Need help?**

**We have toll free phone numbers, FAQs, web sites.**

**The IRS and DOL are your Form 5500 resources.**

## Incomplete Determination Letter Applications: Did You Cross Your Eyes and Dot Your Tees?

Recently, many of the applications that EP Determinations has received do not contain all of the information required by [Rev. Proc. 2003-6](#) or [2004-6](#) and the instructions to the application forms. For example, several application packages have been submitted with only a Form 8717 and Form 5307. Such applications are considered grossly deficient.

Applicants are reminded that, pursuant to Section 6.15 of Rev. Procs. 2003-6 and 2004-6, the IRS may return applications that are determined to be incomplete. Applications that do not contain the items required by the instructions to the application forms and by the applicable revenue procedure will be returned to the party that submitted them (either the plan sponsor or the power of attorney).

Applications returned as incomplete must be completed and sent back to the IRS within 30 days from the date of the return letter. The return letter will include a list of items and information that is needed to complete the application package and will also indicate the address to which that information should be mailed.

Plan sponsors and their representatives are reminded that *failure to return complete application packages within the 30-day period could result in the loss of relief* provided under Code section 401(b).•

## Revisiting the Place and Time of Conducting an Audit

In our [Winter 2004 Edition](#) (page 5), we reported on why EP agents conduct audits at the taxpayer's place of business. That article generated a good deal of feedback. So Preston Butcher, Director, EP Examinations, wanted to clarify the EP position on the place of audits.

"When determining the site of an audit, it is important for us to be aware of the potential burden on small businesses that an audit may represent" said Mr. Butcher. "We're aware that many small businesses may maintain most or all of their records at the office of their accountant or representative. Holding the audit at the place of business may cause a disruption to normal business operation due to, for example, a lack of suitable working space, making inquiries of individuals who do not possess sufficient pension plan knowledge, etc."

***"(O)ur agents and their managers will use appropriate business and professional judgment in determining where and when the audit will take place..."***

In such instances, Mr. Butcher said that performing the audit at the office of the practitioner will often be more appropriate. "Even when audits are conducted at the office of the taxpayer's representative, it may be necessary to hold a telephone interview with the taxpayer to resolve questions regarding business operations," said Mr. Butcher. He added that it may also be necessary to visit the business site for a walk through to resolve questions developed from a review of the records.

"We are confident that our agents and their managers will use appropriate business and professional judgment in determining where and when the audit will take place and when it is appropriate to request a walk through of the business premises. Please feel free to direct any questions on this topic to the appropriate area manager."•

Our Winter Edition made headlines with a story on the place of audit.

Read more in [Revisiting the Place and Time of Conducting an Audit](#).



## News From the Land of Form 5500

In the *Winter 2004 Employee Plans News*, we reported that the Form 5500, *Annual Return/Report of Employee Benefit Plan*, its corresponding schedules and instructions were revised for 2003 and can be viewed on the [Retirement Plans web page](#) and the EBSA web page at [www.dol.gov/ebsa](http://www.dol.gov/ebsa).

Since then, we are proud to report; the paper copies of the forms, schedules and instructions have been printed. They are available by calling **1-800-TAX-FORM**, 24 hours a day, 7 days a week.

And now, here are some additional updates from the Land of Form 5500:

### Form 5500/5500-EZ Mailout Packages Replaced by Postcard

In a departure from prior practice, the IRS will NOT be mailing forms packages to Form 5500 and 5500-EZ filers for their 2003 filings. Instead, postcards reminding filers of their reporting responsibilities were mailed to all filers of record in early March 2004. These postcards include information on how those in need can request paper copies of the necessary forms, schedules and instructions.

This change is in response to EFAST statistics and to comments from the filing community indicating an ever-increasing trend among filers to use EFAST-approved software and not the government-printed material. In addition, this change represents a substantial savings in printing and postage costs for the IRS and EBSA.

Be on the lookout for your postcard and remember that instructions and informational copies of the forms and schedules are always available on IRS and EBSA websites.

### Look for Changes to the Schedule SSA for 2004

The Schedule SSA (Form 5500), *Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits*, remains unchanged for 2003, but changes are expected for 2004 to both the schedule and its instructions. A significant change already announced (within the 2003 instructions) is the fact that non-standard printouts will no longer be allowed to report separated vested participants on the 2004 forms.

### Updated Filing Tips for Form 5500

Accompanying the release of the 2003 Form 5500, the DOL, the Pension Benefit Guaranty Corporation and the IRS have compiled an updated list of filing tips. This revised list can be found on the [Retirement Plans web page](#). The list can also be found on the EBSA web page at [www.dol.gov/ebsa](http://www.dol.gov/ebsa).

The IRS would like filers to take special note of the first tip reminding filers that they should not file an annual Form 5500 and Schedule F for so-called "pure fringe benefit plans."

In addition, the second and third tips are far and away the two main reasons that filers receive correspondence dealing with the government's inability to accept or match filings with previous records. Properly signing and dating the Form 5500 or Form 5500-EZ and any attached schedule requiring a signature (Schedules B, P and SSA) and the correct use of EINs and Plan Numbers are of vital importance. •

Travel, if you will,  
by mouse to the  
Land of Form  
5500.



## News for Retirement Plan Sponsors

Did you hear the one about the IRS newsletter for retirement plan sponsors? Neither did we. That's why we're developing a new newsletter just for them.

Its name: *Retirement News for Employers – Helping Business Owners with Retirement Plans*.

This online newsletter devoted to retirement plan sponsors is scheduled to debut in April. Customer Education & Outreach staff are growing article sources and topics as well as developing ways to build a subscriber base.

So if you, your client or someone else you know might be interested in a sponsor-themed newsletter, watch for the launch of *Retirement News for Employers* and join the subscriber list. As the motto says, we're taking another in step in "Helping Business Owners with Retirement Plans".

Thanks for visiting  
the Land of Form  
5500 - where  
information is  
always in season.

## 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](http://www.irs.gov/ep). This edition's column takes a sampling from the wealth of retirement plan topics.

- **New Look for IRS.gov (and for the Retirement Plans web page, too)** – Thanks to public feedback, big changes have been made to navigating the IRS web site:
  - ❖ “Contents” is now “Information for”.
  - ❖ The “Topics” section has been switched with the “Resources” section and has been renamed “Related Topics”.
  - ❖ The breadcrumb trail is now on the left navigational bar instead of at the top of the page.
  - ❖ The gray text is now black – Easier to read and print.

### 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  
SE: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](mailto: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](http://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](http://www.irs.gov/ep).

- **New 401(k) Content** – In addition to the new joint IRS/DOL 401(k) publication, check out specific Retirement Plan Life Cycle information on 401(k) Plans at [www.irs.gov/ep](http://www.irs.gov/ep) by clicking on “More Topics”, then on “Types of Retirement Plans” and then on “IRC 401(k) Plans”. An expanded online version of the joint IRS/DOL publication is also available.
- **Extract Available of Retirement Plans Information** – An extract from the 2004 Small Business Resource Guide CD is now available. The extract provides retirement plan information for business owners, including why a retirement plan makes good sense, selecting the right plan, operating the retirement plan, filing information returns and more. To view, go to [www.irs.gov/ep](http://www.irs.gov/ep), click on “More Topics” then on “Retirement Plans for Small Businesses”.
- **NEW EP Abusive Tax Transactions Page** – This new page is now available on the [Retirement Plans web page](http://www.irs.gov/ep). The page reflects listed transactions involving employee benefits plans and contact information for reporting abusive tax shelters/emerging issues. Recent listed transactions include the following:
  - ❖ [Abusive Life Insurance Policies in Retirement Plans](#) (2/13/2004)
  - ❖ [S Corporation ESOP Abuses](#) (1/23/2004)
  - ❖ [Abusive Roth IRA Transactions](#) (12/31/2003)
- **What a PIP, Part Deux** – We've added a SEP Information Packet –joining the previously posted SIMPLE IRA and SARSEP Plan Information Packets – to the [Retirement Plans web page](http://www.irs.gov/ep). The web page for each packet includes a checklist with expanded explanations. Customer feedback is requested on these packets and can be provided at [RetirementPlanComments@irs.gov](mailto:RetirementPlanComments@irs.gov).

We're always adding new material to the [Retirement Plans web page](http://www.irs.gov/ep). Visit us often. •

## 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 Form 5500 for 2003). Our lead story concerns the release of the new publication dealing with 401(k) plans.

- **Joint EP/EBSA Effort** - EP and the Department of Labor's Employee Benefits Security Administration recently released a new joint publication: [Publication 4222, 401\(k\) Plans for Small Businesses](#).

The publication is designed to help small business owners and plan officials better understand the important role they play in ensuring the security of their plan and their responsibilities under ERISA. It contains basic information dealing with establishing and operating 401(k) plans. It also describes the three 401(k) plan designs currently available – traditional, safe harbor and SIMPLE 401(k) plans – and discusses the features and advantages of each.

- **Electronic Delivery** - The IRS has released [Notice 2004-10](#), which provides guidance on the electronic delivery of Form 1099-R, Form 1099-MSA, Form 1099-Q, Form 5498, Form 5498-ESA, and Form MSA payee statements. Specifically, this notice provides that a furnisher of any of the above mentioned statements can do so electronically beginning January 1, 2004. See the notice for details.

- **The Latest & Greatest** - The IRS has recently updated its popular [Publication 590](#), Individual Retirement Arrangements (IRAs). The revised pub has detailed discussions concerning Traditional, Roth and SIMPLE IRAs, explaining the rules for setting up an IRA, contributing to an IRA, and much, much more.

For further details about topics at the Corner, please visit the [Retirement Plans web page](#) and select "EP Forms and Publications". 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](mailto:RetirementPlanComments@irs.gov).

### Quick Hits

- **Correction Programs Outreach Tools** –

- ❖ **Retirement Plans Correction Programs Pamphlet** (Publication 4224) - To order, call 1-800-TAX-FORM (1-800-829-3676). To view the publication, go to [www.irs.gov/ep](http://www.irs.gov/ep) and click on "EP Forms and Publications".
- ❖ **Retirement Plans Correction Programs CD-ROM** (Publication 4050) - Order the CD-ROM by visiting [www.irs.gov/ep](http://www.irs.gov/ep) and clicking on "Educational Services".
- ❖ **Online Resource Guide** - Available on the [Retirement Plans web page](#) by clicking on "Correction".

- **Janna Skufca** is the new TE/GE Director of Customer Account Services. This key position became vacant when John Ricketts retired in January. Ms. Skufca has over 20 years of management experience in both EP and EO. Since TE/GE became one of the four operating divisions in the IRS, she has served as the Manager, EO Determinations Quality Assurance.

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

Tim Adle, Barbara Bagay, Preston Butcher, Gail Cadorette, James Flannery, Carol Gold, Dan Jones, Doug Jordan, Teresita Laureano, Peter McConkey, Todd Newman, Mark O'Donnell, Nancy Payne, Donna Prestia, Wiley Ransom, Mike Rubin, Bonnie Schaumberg, John Schmidt, Paul Shultz, Brenda Smith-Custer, Tom Terry, Rick Westley and Teresa Williams

## Employee Plans Published Guidance

(January 2004 – March 2004)

### Regulations

[T.D. 9099, 68 Fed. Reg. 70141, 2004-2 I.R.B. 255](#)

These final regulations pertain to the disclosure of relative values of optional forms of benefit. Unless there is a retroactive annuity starting date, these regulations generally pertain to QJSAs with annuity starting dates on or after 10/01/2004 and QPSAs on or after 07/01/2004.

[REG-126967-03, Fed. Reg. 7384](#)  
(February 17, 2004)

These proposed regulations pertain to insurance and annuity contracts and sections 402(a), 79 and 83 of the Code.

### Revenue Rulings

[Rev. Rul. 2004-4, 2004-6 I.R.B. 414](#)

This revenue ruling pertains to ESOPs, subchapter S corporations, synthetic equity, nonallocation years, and “listed transactions”.

[Rev. Rul. 2004-10, 2004-7 I.R.B. 484](#)

This revenue ruling pertains to significant detriment, section 1.411(a)-11(c)(2)(i) of the I.T.Regulations and Department of Labor Field Assistance Bulletin 2003-3.

[Rev. Rul. 2004-11, 2004-7 I.R.B. 480](#)

This revenue ruling pertains to the application of section 410(b)(6)(C) of the Code to certain acquisitions and dispositions.

[Rev. Rul. 2004-12, 2004-7 I.R.B. 478](#)

This revenue ruling pertains to rollovers and portability as a result of sections 641 through 643 of EGTRRA.

[Rev. Rul. 2004-13, 2004-7 I.R.B. 485](#)

This revenue ruling pertains to the provisions of section 416(g)(4)(H) of the Code.

[Rev. Rul. 2004-20, 2004-10 I.R.B.](#)  
(February 13, 2004)

This revenue ruling pertains to the deductibility of contributions to qualified retirement plans and lists certain transactions as “listed transactions”.

[Rev. Rul. 2004-21, 2004-10 I.R.B.](#)  
(February 13, 2004)

This revenue ruling pertains to the nondiscrimination rules where there is a highly compensated employees in a section 412(i) plan.

### Notices

[Notice 2004-8, 2004-4 I.R.B. 333](#)

This notice alerts taxpayers that certain transactions involving Roth IRAs may cause there to be excess contributions, disallowance of deductions and/or prohibited transactions, and are “listed transactions”.

### Revenue Procedures

[Rev. Proc. 2004-4, 2004-1 I.R.B. 125](#)

The basic EP/EO letter ruling and general information letter revenue procedure is updated.

[Rev. Proc. 2004-5, 2004-1 I.R.B. 167](#)

The basic EP/EO technical advice revenue procedure is updated.

[Rev. Proc. 2004-6, 2004-1 I.R.B. 197](#)

The basic EP determination letter revenue procedure is updated.

[Rev. Proc. 2004-8, 2004-1 I.R.B. 240](#)

The basic EP/EO user fee revenue procedure is updated.

[Rev. Proc. 2004-14, 2004-7 I.R.B. 489](#)

This revenue procedure modifies and supersedes Rev. Proc. 2003-23 by allowing both an ESOP and subchapter S corporation to repurchase shares of a subchapter S corporation directly rolled over to an IRA.

[Rev. Proc. 2004-15, 2004-7 I.R.B. 490](#)

This revenue procedure supersedes Rev. Proc. 94-41 and provides updated guidance on requesting waivers of the minimum funding standards.

[Rev. Proc. 2004-16, 2004-10 I.R.B.](#)

This revenue procedure provides interim guidelines on the proper method of valuing insurance contracts. •

## 2004 IRS Nationwide Tax Forums

### A New Site, a New Presentation and a New Way to Register

The 2004 IRS Nationwide Tax Forums will be held in six locations across the country starting in July. Each conference runs for three days and contains a variety of seminars and an exhibit hall. A brand new location - Minneapolis, MN – has been added this year. Tax professionals can earn up to 18 Continuing Professional Education credits at each forum site.

Both Employee Plans and Exempt Organizations will present seminars at the Tax Forums. The EP seminars are “**The ABCs of 401(k)**” and an update of last year’s “**‘No Fuss’ Retirement Plans**” (“No Fuss” plans include both SEPs and SIMPLEs). EO will present two seminars: “**Form 990: Tips and Tools**” (an overview of the major sections of the form and explanation of the most common filing errors) and “**Do’s and Don’ts for Churches and other Section 501(c)(3) Organizations**”. EO will also present a three-hour Workshop (pre-registration required): “**Applying for Tax Exempt Status**”.

**This year – for the first time – registration for the IRS Nationwide Tax Forums will be on-line!**

The IRS Tax Forum Exhibit Hall gives practitioners an opportunity to interact with Service employees and other tax professionals. Also at the Exhibit Hall, the operating divisions within the IRS offer the latest tax products and services. Top firms in the industry will display their booths at the Exhibit Hall.

The locations and dates are:

Atlantic City, NJ	July 6-8	Sheraton Atlantic City
Orlando, FL	July 20-22	The Peabody Orlando
Minneapolis, MN	August 3-5	Hyatt Regency Minneapolis
New Orleans, LA	August 17-19	New Orleans Marriott
San Antonio, TX	August 31-September 2	Marriott Rivercenter
Las Vegas, NV	September 14-16	Rio All Suites Hotel

To get additional information about Tax Forums, visit [www.irs.gov](http://www.irs.gov) and then go to the Tax Professionals section and click on 2004 IRS Nationwide Tax Forums. Be sure to check back with [www.irs.gov](http://www.irs.gov) for additional seminar topics, workshop information and the link that will take you to the on-line registration process. •

## May 2004 Mid-Atlantic Employee Benefits Conference

The 2004 Mid-Atlantic Employee Benefits Conference will be held on May 24-25, 2004, at the Park Hyatt Hotel in Philadelphia, PA. This annual conference is jointly sponsored by the IRS and the American Society of Pension Actuaries (ASPA). The conference attendees are pension practitioners including actuaries as well as CPAs, enrolled agents and attorneys from private industry, public practice and the federal government.

The conference will feature panel discussions with public and private sector participants. It also will provide a unique opportunity for attendees to meet and discuss common areas of interest with government representatives. Using an interactive panel format, discussions will focus on issues that are important to attendees. Also planned is a special pre-conference panel discussion/Q&A session on Sunday evening, May 23.

The conference will feature discussions on:

- 401(k) regulations;
- Plan design;
- Recent court cases that affect retirement plans;
- Pre-retirement distribution issues;
- IRC sections 403(b), 457, 401(a)(9), and 412(i);
- Record retention; and
- Compensation issues.

Online registration, ABCs of 401(k)s and a new site: the 2004 IRS Nationwide Tax Forums are better than ever!



Local and Washington update sessions will be presented: the former will cover local EP procedures in the Mid-Atlantic area and the latter will cover legislation and guidance with a national scope. The conference will also feature the very successful "Forget-Me-Nots" session on both days. These shorter sessions will focus on some of the important topics relative to retirement plans.

Interactive Tables will be offered again this year to provide an opportunity for the attendees to meet informally for one-on-one discussions with EP specialists in the areas of Voluntary Compliance/Closing Agreement Program (VC/CAP), 401(k), 403(b)/457, Actuarial Issues, Customer Education and Outreach and Customer Service, Multi-employer Audit Program (MAP), Employee Plans Team Audit (EPTA) and Determinations. The Department of Labor will also staff an Interactive Table.

The Conference is an essential learning and interactive experience for serious pension practitioners. EP and ASPA invite pension practitioners to join them at this conference. For further information including how to register, you may visit the Mid-Atlantic Benefits Conference home page on the ASPA web site at [www.aspa.org](http://www.aspa.org).

## June 2004 Northeast Employee Benefits Conference

Select your date and location! The IRS, in association with the Northeast Area's Pension Liaison Group, and the American Society of Pension Actuaries (ASPA), announces the scheduling of this year's Northeast Employee Benefits Conference.

NEW Boston location! This year, the conference will be held on June 10<sup>th</sup> at the Sheraton Framingham Hotel, Framingham, MA. On June 11<sup>th</sup>, the conference will be repeated at the Crowne Plaza in White Plains, NY. These two sites provide pension professionals from New York and New England the opportunity to attend a conveniently located conference.

The conference educates attendees about current regulatory, legislative, and administrative topics. The conference also provides participants an opportunity to discuss employee benefit issues with colleagues as well as local and national government employees from the IRS and Department of Labor. Throughout the day you will have the opportunity to meet and discuss your issues with notable IRS employees such as Carol Gold, Director of Employee Plans; Preston Butcher, Director of EP Examinations; Jim Holland, Manager EP Technical; Marty Pippins, Manager EP Technical Guidance and Quality Assurance, and other government speakers.

This year's agenda includes panel discussions on the latest Washington Updates, DOL and Title I issues, Late Breaking Developments & Regulations (including a comprehensive break-out session entitled "From Regs to Riches" which covers recent regulations on 401(a)(9), 401(k) and 417), Distribution Planning, DB and DC Plan Designs, Controlled Groups/Affiliated Service Groups/SLOB Issues, and an IRS update on the Employee Plans Compliance Resolution Program (EPCRS).

For more information and to pre-register for the Northeast Benefits Conference, contact the ASPA Meetings Department at (703) 516-9300 or visit the ASPA website at [www.aspa.org](http://www.aspa.org).

**It's Spring and that can only mean one thing: EP Benefits Conferences are in full swing.**

**Choose the site that suits you best: The Great Lakes Conference in Chicago, the Mid-Atlantic Conference in Philadelphia and the Northeast Conference in Framingham, MA and White Plains, NY.**

**On the horizon: the Cincinnati Benefits Conference later in June.**

## April 2004 Great Lakes Benefits Conference

Mark your calendars for April 29 -30, 2004 because the IRS is again partnering with the American Society of Pension Actuaries (ASPA) and more than twenty cooperating sponsors to hold the annual Great Lakes Benefits Conference in Chicago. The Great Lakes Benefits Conference is an opportunity to meet and discuss employee benefit issues with private practitioners and government agency representatives. The program focuses on exchanging information, advancing knowledge and fostering sound principles, procedures, and practices.

General Sessions at this year's conference include:

- Washington Legislative and Regulatory Update
- PEOs and Other Employee Leasing Arrangements
- Preparing your client for an IRS Audit
- Recent Court Cases

Scheduled Breakout Sessions include:

- EPCRS Update
- The Latest and Greatest Topics on 401(k) Plans
- The Ins and Outs of Plan Amendments
- Mergers & Acquisitions
- Aggressive vs. Abusive Tax Practices
- Mock DOL Audit
- Defined Benefits Workshop Issues – Using General Testing to Improve Plan Design

Scheduled government speakers include:

- Preston R. Butcher, Director EP Examinations, IRS
- Paul T. Shultz, Esq., Director EP Rulings and Agreements, IRS
- Marjorie Hoffman, Esq., TE/GE, Office of Chief Counsel, IRS
- William F. Sweetnam, Esq., Office of Tax Policy, Department of the Treasury, and
- Steven Haugen, Deputy Regional Director, Chicago Regional Office, DOL.

The Conference will be held April 29 -30, 2004 at the Hyatt McCormick Place. Sessions will start Thursday at 8:30 am and will conclude Friday at 5:30 pm. A "Meet the Speakers" reception will be held Thursday evening at 5:30 pm. The Hyatt McCormick Place is located at: 2233 S. Martin Luther King Drive, Chicago, IL 60616. The hotel will provide conference attendees with free shuttle service to Michigan Avenue, Navy Pier and the Museum campus.

For more information contact the ASPA Meetings Department at (703) 516-9300 or visit the ASPA web site at [www.aspa.org](http://www.aspa.org).

## LA Benefits Conference Recap

The IRS in association with the American Society of Pension Actuaries (ASPA), National Institute of Pension Administrators (NIPA), Western Pension & Benefits Conference (WP&BC) and twenty one other cooperating sponsors presented the 2004 Los Angeles Benefit Conference on January 28-30 at the Hilton Universal City & Towers in Universal City, California.

On the 28<sup>th</sup>, a pre-conference was held to provide an opportunity for practitioners to converse with IRS employees regarding current issues. Conference speakers included practitioners and representatives from the Department of Labor; Internal Revenue Service; the Office of Senator Jeff Bingaman; the House Ways and Means Committee; and Senate Health, Education, Labor, and Pension Committee.

*continued on page 16*

## LA Benefits Conference Recap *continued from page 15*

Government speakers included:

- Paul Shultz, Director of Rulings and Agreements, IRS
- Martin Pippins, Manager, Guidance and Quality Assurance, IRS
- Virginia C. Smith, Director of Enforcement, DOL

Topics at this year's conference included:

- Washington Update
- Aggressive Tax Practices
- Sophisticated Defined Benefit and/or Cash Balance Plan Design
- Mergers and Acquisitions
- The Proposed 401(k) Regs: Friend or Foe?
- DOL Investigation

At the conference, EP had five "interactive tables" where conference attendees had the opportunity to discuss with EP managers and specialists issues regarding EPCRS, Determinations, 401(k), Actuarial Issues and Large Case Audit. Based on the favorable attendee feedback, EP anticipates presenting the interactive tables again at the next year's conference.

For more information regarding future conferences, visit the ASPA website at [www.aspa.org](http://www.aspa.org) or contact ASPA at (703) 516-9300. •

## Calendar of EP Benefits Conferences

### UPCOMING EVENTS...

Name	Date(s)	Location	Co-Sponsor(s)	For Further Information, Please Contact
<b>Great Lakes Benefits Conference</b>	04/29/04-04/30/04	Chicago, IL	ASPA & other cooperating sponsors	<a href="http://www.aspa.org">www.aspa.org</a> or ASPA Meeting Department (703) 516-9300
<b>Mid-Atlantic Benefits Conference</b>	05/24/04-05/25/04	Philadelphia, PA	ASPA	
<b>Northeast Benefits Conference</b> (2 Locations)	06/10/04-06/11/04	Framingham, MA & White Plains, NY	ASPA & NE Area Pension Liaison Group	
<b>17<sup>th</sup> Annual Cincinnati Employee Benefits Conference</b>	06/17/04-06/18/04	Cincinnati, OH	Cincinnati Bar Association	Education Department (513) 381-8213

### RECENT EVENTS...

Name	Date(s)	Location	Non-IRS Co-Sponsor(s)	For Information, See
<b>Los Angeles Benefits Conference</b>	01/29/04-01/30/04	Los Angeles, CA	ASPA, NIPA, WP&BC and other cooperating sponsors	<i>EP Benefits Conferences Calendar at</i> <a href="http://www.irs.gov/ep">www.irs.gov/ep</a>
<b>SWBA/IRS 14<sup>th</sup> Annual Employee Benefits Conference</b>	10/15/03-10/16/03	Dallas, TX	Southwest Benefits Association (SWBA)	
<b>Mountain States Benefits Conference</b>	09/11/03-09/12/03	Denver, CO	ASPA and WP&BC	



# IRS

Department of the Treasury  
Internal Revenue Service

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**Internal Revenue Service**  
**Tax Exempt and Government**  
**Entities Division**

**Employee Plans News**

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