



Issue 2011-4
March 23, 2011

employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

Internal Revenue Service
Tax Exempt and Government
Entities Division

A Publication of Employee Plans

Preparer Tax Identification Number

PTINs are not required to prepare most Employee Plans [forms](#)

ESOPs – Definition of Readily Tradable Employer Securities

[Explains](#) when employer securities are “readily tradable on an established securities market” or “readily tradable on an established market”

New 6-Year Cycle for Pre-Approved Defined Contribution Plans

Sponsors applying for opinion or advisory letters during the current cycle must [verify compliance](#) with the prior cycle

Review Your Client’s Retirement Plan

A [few suggested questions](#) to get the conversation started

Employee Plans Compliance Unit’s Funding Deficiency Project

To determine whether plan sponsors corrected [funding deficiencies](#), filed required excise tax return(s) and paid the taxes

403(b) Plans

- [Ineligible submissions](#) for the Voluntary Correction Program
- [New guidance](#) (Rev. Rul. 2011-7) on 403(b) plan terminations
- [Updated](#) frequently asked questions

Compliance Checks - I Received a Letter, Now What?

Monika Templeman’s Desk Side Chat explains [compliance checks](#) and how to respond to a letter

Latest 401(k) Questionnaire Developments

[Next steps](#) in the project, including consequences for those who declined to complete the Questionnaire

EP Phone Forum

March 24 - [Form 5330 Completion and Processing Tidbits](#) – Avoiding common mistakes

Free Webinars

- March 30, 2:00 EST – [Requirements for Federal Tax Return Preparers](#) – PTIN guidelines, program accomplishments, plans for competency testing and continuing education, background checks and electronic filing requirements

- April 7, 2:00 EST – [Retirement Plans for Small Businesses](#) – Start and operate a low-maintenance retirement plan. E-mail this webinar [flyer](#) to your clients

We're Glad You Asked!

- You can contribute to [both](#) a retirement plan and an IRA
- Which plan contributions are [subject to taxes](#)

Updated Publications:

- [Pub. 560](#), *Retirement Plans for Small Business (SEP, SIMPLE and Qualified Plans)* (2010) (pdf)
- [Pub. 571](#), *Tax-Sheltered Annuity Plans (403(b) Plans) For Employees of Public Schools and Certain Tax-Exempt Organizations* (Dec. 2010) (pdf)
- [Pub. 575](#), *Pension and Annuity Income* (2010) (pdf)
- [Pub. 590](#), *Individual Retirement Arrangements (IRAs)* (2010) (pdf)
- [Pub. 3998](#), *Choosing A Retirement Solution for Your Small Business* (Oct. 2010) (pdf)
- [Pub. 4224](#), *Retirement Plan Correction Programs* (Oct. 2010) (pdf)
- [Pub. 4285](#), *SEP Checklist* (Dec.2010) (pdf)

Recurring Columns:

- [DOL Corner](#)
- [PBGC Insights](#)
- [EP Published Guidance](#)
- [Calendar of EP Benefits Conferences](#)

Many EP Forms Do Not Require a Preparer Tax Identification Number

Who Needs a PTIN

All tax return preparers who are paid to prepare, or to assist in preparing, all or substantially all of any U.S. federal tax return, claim for refund or other tax form submitted to the IRS, except those forms specifically excluded by Notice 2011-6, need a PTIN.

EP professionals must obtain a PTIN if they prepare most tax forms, including:

- Form 945X, *Annual Return of Withheld Federal Income Tax*, and
- Form 5330, *Return of Excise Taxes Related to Employee Benefit Plans*.

Employee Plans professionals aren't required to obtain a PTIN to prepare these forms specifically listed in [Notice 2011-6](#):

- Form 5500 series, *Annual Return/Report of Employee Benefit Plan*, (the series includes Forms 5500, 5500-EZ, 5500-SF and all schedules, including the Schedules B, SB and MB);
- Form 5500 series also [includes](#) the following forms if they are prepared either in conjunction with the filing of Form 5500 filing or to request an extension of time to file a Form 5500 series return:
 - Form 8955-SSA, *Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits*, and
 - Form 5558, *Application for Extension of Time to File Certain Employee Plan Returns*;
- Forms 5300, 5307, and 5310, which deal with Determination, Opinion and Advisory Letters for retirement plans; and Form 8717, *User Fee for Employee Plan Determination, Opinion, and Advisory Letter Request*.

How to Obtain or Renew a PTIN

All tax return preparers, including those who already have a PTIN, need to [register](#) in a new online system (or mail a [Form W-12](#)) prior to preparing any return after December 31, 2010. If you already have a PTIN, upon registering you will generally be reassigned the same number. The fee to obtain or renew a PTIN is \$64.25.

Transitional Relief for Pending PTIN Applications:

Under [Notice 2011-11](#), if you've made a good faith effort to timely obtain a PTIN but experienced processing issues, you may prepare returns while your application is pending. IRS will permit tax return preparers who receive an:

- IRS notice stating that IRS was unable to process their online PTIN application, or,
- IRS acknowledgment of receipt of the paper PTIN application,

to prepare and file tax returns or claims for refund for compensation after they comply with the notification or acknowledgment letter's instructions. These tax return preparers may, for the 2011 filing season (or until they receive a new PTIN), use their PTIN issued before September 28, 2010 (or their social security number if they do not have a previously issued PTIN).

PTIN Application Checklist

- Social Security Number

- Personal information (name, mailing address, date of birth)
- Business information (name, mailing address, telephone number)
- Previous year's individual tax return (name, address, filing status). Tax return information is required to authenticate your identity. If you filed your tax return in the past 8 weeks, please use a previous year's individual tax return.
- Explanations for any felony convictions.
- Explanations for any problems with your U.S. tax obligations.
- Credit or debit card for the \$64.25 PTIN user fee
- If applicable, any U.S.-based professional certification information (CPA, attorney, enrolled agent, enrolled retirement plan agent, enrolled actuary, certified acceptance agent, or state license) including certification number and state of issuance

Competency Tests

Certain paid tax return preparers will also need to pass a competency test, which is expected to become available in mid-2011. Individuals who pass the competency test will be IRS Registered Tax Return Preparers.

If you register and obtain a PTIN before the competency exam is available, you will have until the end of 2013 to take and pass the exam. Anyone who does not have a PTIN when testing begins will have to pass the exam before they can get a PTIN and start preparing federal tax returns.

Exceptions - the following individuals will be exempt from testing:

- Attorneys, certified public accountants, and enrolled agents who are active and in good standing with their licensing agency
- Supervised preparers (those who do not sign returns but are employed by attorney or CPA firms or other recognized firms at least 80 percent owned by attorneys, CPAs, enrolled agents, or enrolled retirement plans agents and who are directly supervised by an attorney, CPA, enrolled agent or enrolled retirement plans agent)
- Those who do not prepare Form 1040 series returns

Continuing Education Requirements

A new continuing education requirement will require Registered Tax Return Preparers to complete 15 hours of continuing education each year. The start date for continuing education has not been determined.

Exceptions - the same individuals who are exempt from PTIN testing are exempt from PTIN continuing education.

Circular 230 Ethics Rules

A return preparer who obtains a PTIN under these rules is subject to the duties and restrictions governing practice before the IRS under Circular 230.

For the most recent PTIN information:

- visit www.irs.gov; or
- call Toll-free at 877-613-PTIN (7846) (or TTY: 877-613-3686) Monday through Friday, 8:00 a.m. to 5:00 p.m. Central.

ESOPs - Definition of Readily Tradable Employer Securities

[Notice 2011-19](#) defines when employer securities held by an [employee stock ownership plan](#) are “readily tradable on an established securities market” or “readily tradable on an established market.”

ESOPs should use the definition of readily tradable securities found in the [final regulations](#) under Code §401(a)(35). Under the regulations, which may be relied upon for periods after March 14, 2011, an employer security is readily tradable on an established securities market and readily tradable on an established market if it is:

- traded on a [registered national securities exchange](#); or
- traded on a foreign national securities exchange that is:
 - officially recognized, sanctioned or supervised by a governmental authority, and
 - the security is [deemed](#) by the SEC as having a ready market.

Current SEC rules deem a security on the FTSE Group All-World Index to have a ready market.

Notice 2011-19 is effective for plan years beginning on or after January 1, 2012. However, the notice will become effective for plan years beginning on or after January 1, 2013, for any plan that is sponsored by an employer where neither the employer nor any members of its controlled group (under Code §409(l)) have any stock traded on a registered national securities exchange on March 14, 2011, but do have on this date, stock traded on a foreign national securities exchange that is officially recognized, sanctioned or supervised by a governmental authority, and is deemed by the SEC as having a ready market.

New 6-Year Cycle for Pre-Approved Defined Contribution Plans

On February 1, 2011, the IRS began accepting [applications](#) for opinion or advisory letters for [pre-approved DC plans](#) for the second [6-year remedial amendment cycle](#).

For the IRS to consider an application for the current cycle, the [pre-approved DC plan sponsor/practitioner](#) must verify compliance with the first cycle in one of the following ways:

1. stating that this is the first time for which an opinion or advisory letter has ever been requested;
2. attaching the plan’s most recent opinion or advisory letter based on the Economic Growth and Tax Relief Reconciliation Act of 2001 and the 2004 Cumulative List; or
3. including a satisfactory explanation of why an opinion or advisory letter for the plan was not requested during the first cycle and how the EGTRRA and 2004 Cumulative List qualification requirements were timely satisfied by employers who adopted the plan.

For example, if an M&P sponsor received an opinion letter for GUST, but did not secure a letter for EGTRRA and the 2004 Cumulative List, the IRS will not issue a letter to the plan in the current cycle unless the sponsor satisfies the third item above.

If a pre-approved DC plan sponsor/practitioner cannot satisfy one of the three conditions, they must correct this qualification failure under the [Voluntary Correction Program](#) before applying for an opinion or advisory letter in the current cycle.

Review Your Client's Retirement Plan

Are you meeting with business clients this tax season? If so, ask them about their retirement plan. Here are a few questions you can use to get the conversation started.

Is your current plan right for your business?

Many businesses have plans that may be too complicated or don't meet their current goals and needs. Compare different types of plans using the [IRS Retirement Plans Navigator](#) based on features like:

- required annual returns,
- required testing,
- using IRAs to fund your plan,
- allowing employer and employee contributions, or
- permitting plan loans and hardship distributions.

Do you know and understand your plan's terms?

Many employers aren't aware of their plan's terms and, therefore, have trouble operating it correctly. Make sure your client knows and understands:

- which employees are [eligible](#) to participate in the plan,
- how the plan defines employee compensation for purposes of contributions,
- the amount and timing of any required employer contributions,
- the type of notices that have to be provided to employees and when,
- any required nondiscrimination testing and when those tests have to be performed, and
- whether annual returns have to be filed.

Have you updated your plan for recent law changes?

Laws change and plans must be amended for new requirements. Assess the plan's compliance with:

- all current IRS requirements using the latest [Cumulative List](#) and [published guidance](#), and
- the [Department of Labor's](#) current rules and regulations.

Are there any new features you might want to add to the plan?

Employers may not be aware of plan features that could benefit their employees. For example, ask if they want to add:

- [automatic enrollment](#), and
- [designated Roth accounts](#).

Are you operating your plan correctly?

Many employers fail to follow the law or the plan's terms, which can lead to plan disqualification - a disastrous result for both the employer and the employees! Review the plan to ensure that:

- employees are allowed to participate in the plan when they are eligible;

- the right amount of employee and employer contributions are made based on:
 - the plan's definition of compensation,
 - employee elections, and
 - the plan's terms;
- employee contributions are deposited on time (inform them of DOL's [7-day safe harbor period](#));
- loans and hardship distributions, if allowed by the plan, are administered properly; and
- employee notices are issued on time.

Use the [Fix-It-Guides](#) to find, fix and avoid common plan errors.

Are you taking advantage of free IRS resources?

- Encourage your clients to [subscribe](#) to *Retirement News for Employers*, a free newsletter for employers,
- Inform your clients who use a pre-approved retirement plan about our [Pre-Approved Retirement Plans - Tips for Employers](#).

Sponsoring a retirement plan involves ongoing responsibilities, so keep the conversation open all year long!

The EPCU Insider - Funding Deficiencies Project

Read the latest news from our shop so you can be informed if you happen to receive a letter from us. The EPCU addresses pension compliance by using questionnaire studies designed to pinpoint troublesome areas while creating minimal burden to taxpayers.

The goal of the Employee Plans Compliance Unit's [Funding Deficiencies Project](#) is to ensure that plan sponsors who have reported funding deficiencies correct them. When a plan sponsor reports a funding deficiency on a filed Form 5500 return, the EPCU will determine whether a funding deficiency exists. If it appears one does exist, we will send a compliance check. We will determine whether the plan sponsor corrected the funding deficiency, filed the required excise tax return(s) and paid the appropriate taxes. Both defined benefit and defined contribution plans are included in this project. If you receive a letter, please provide the answers to the questions within the time frame allowed. Non-responders could be later audited.

Responses to our project have shown the main reasons for funding deficiencies are:

- sharply increased funding requirements due to plan investment losses, and
- inability to meet funding requirements due to reduced plan sponsor income.

Category of Responses

The responses to the compliance checks can generally be divided into the following:

- Excise tax return issues
- Contribution issues (not made, amounts, timeliness)
- Taxpayer has filed for bankruptcy
- Plan sponsor issues (sponsor no longer exists, has been merged or incorporated into another business)
- No funding deficiency existed (contribution made within 8 ½ months after close of plan year)
- Taxpayer is engaged in discussions with IRS Rulings & Agreements for funding waivers and/or termination letters
- Taxpayer is or has engaged in discussions with DOL and/or PBGC
- Incorrect completion of the Schedule R or Schedule B filed with the form 5500 return

Excise taxes – When a plan has a funding deficiency, Code §4971(a) imposes an excise tax of 10% (5% for multiemployer plans) of the unmet funding requirements at the end of the plan year regardless of mitigating circumstances. This tax cannot be waived. Code §4971(b) imposes a 100% tax on the funding deficiency that is not corrected within the taxable period. Code §4971 taxes are reported on Form 5330, *Return of Excise Taxes Related to Employee Benefit Plans*, for the sponsor's tax year end and are due the later of:

- 7 months after the end of the employer's tax year, or
- 8 ½ months after the last day of the plan year that ends with or within the sponsor's tax year.

Funding reminders:

Time period for funding – The period to make timely deposits to a plan is within 8 ½ months after the end of a plan year. For a calendar year plan, a plan sponsor can contribute until September 15 of the following year, which for defined contribution plans is often after the Form 5500 series return has been filed.

Funding waiver – A funding waiver allows additional time to fund the plan and avoid Code §§4971(a) and 4971(b) excise taxes. A single-employer plan sponsor must file a request for a funding waiver within 2 ½ months after the close of the plan year. For a calendar year plan, a plan sponsor can file a waiver until March 15 of the following year. Plans must meet certain requirements to qualify for a funding waiver. Plan sponsors should work closely with the plan actuary to timely file for a waiver.

Pension Relief Act 2010 – This Act [allows](#) plan sponsors to pay their unfunded liabilities over a longer period of time.

Freezing the plan – Freezing a plan will not eliminate an existing funding deficiency, but it can stop the plan from accruing additional liabilities.

Communication – Communication among the plan sponsor, actuary, benefits practitioner and participants is essential to ensure proper funding of employee plans. Plan sponsors should provide complete information about their business so that the actuary can set appropriate assumptions. The actuary should notify plan sponsors of their funding obligations, help them develop funding policies and inform them of the implications of their intended contributions.

Visit our EPCU Web page for additional information on our [funding deficiencies project](#). Please e-mail any suggestions focusing on areas of potential noncompliance to EPCU@irs.gov.

Some 403(b) Plan Errors are Ineligible for Voluntary Correction Program

Recently, we have received several Voluntary Correction Program submissions for 403(b) retirement plan failures that are currently ineligible for correction through VCP. Ineligible submissions include cases where:

- the plan's [written program](#) did not satisfy the legal requirements under Code §403(b) and the 403(b) final regulations, or the plan failed to adopt a written plan program before December 31, 2009; or
- the plan failed to operate according to its written program's terms.

We will return all VCP submissions (including fees) containing ineligible failures.

An employer sponsoring a 403(b) plan may currently use VCP to correct employer eligibility and demographic failures, and the operational failures listed in [Revenue Procedure 2008-50 §5.02\(2\)\(a\)](#). We are in the process of updating Revenue Procedure 2008-50 to expand EPCRS to include post-December 31, 2008 failures.

Stay tuned to our [newsletters](#) and our [website](#) for additional information.

403(b) Plan Termination - New Guidance

[Revenue Ruling 2011-7](#) provides examples of how to terminate a 403(b) retirement plan funded in different ways and explains when distributions from the terminated plan are taxable.

Terminating a 403(b) Plan

If allowed by the terms of the plan, a 403(b) plan sponsor (employer) may:

- terminate the plan; and
- distribute accumulated benefits to the participants and beneficiaries on termination.

To terminate the plan, the plan sponsor must take the following steps:

1. **Adopt a binding resolution**
 - a. establishing a plan termination date,

- b. ceasing plan contributions,
 - c. fully [vesting](#) all benefits on the termination date, and
 - d. authorizing the distribution of all benefits as soon as administratively practicable after the termination date;
2. **Generally, stop contributions** by the sponsor or any [related entity](#) to any other 403(b) plan during the period that begins on the termination date and ends 12 months after all benefits have been distributed from the terminated plan (this requirement may be disregarded if at all times during the period beginning 12 months before the termination and ending 12 months after all benefits have been distributed, fewer than 2% of the employees who were eligible to participate in the terminated plan are eligible to participate in another 403(b) plan of the sponsor);
 3. **Notify** all plan participants and beneficiaries of the plan's termination;
 4. **Provide** a [402\(f\) rollover notice](#) to participants and beneficiaries; and
 5. **Distribute all plan assets** within 12 months of the plan's termination date to all participants and beneficiaries as follows:
 - a. **fully paid individual annuity contracts** issued by an insurance company are distributed by delivering the contracts to the individuals, or by single-sum liquidating distributions, if permitted under the contract;
 - b. **group annuity contracts** are distributed by issuing individual certificates to the individuals evidencing fully paid contract benefits, or by single-sum payments, if permitted under the contract; and
 - c. **mutual fund custodial accounts** are paid by distributing the individual's account balance (in cash or in kind) to the individual or by a direct transfer, if elected by a participant or beneficiary, to another eligible retirement plan.

403(b) plans subject to [ERISA](#) may have to comply with [additional requirements](#).

Tax on Distributions from a Terminated 403(b) Plan

- Distribution of a fully paid individual annuity contract or an individual certificate evidencing fully paid contract benefits is not a taxable event. Individuals are taxed when amounts are actually paid from the annuity contracts.
- Distributions from mutual fund custodial accounts are taxable when paid unless such amounts are directly rolled over or transferred within 60 days to an IRA or an eligible retirement plan.

Desk Side Chat With Monika Templeman-Compliance Checks-What Do I Do When I Get a Letter from the EPCU?

Monika Templeman, Director of EP Examinations, responds to questions and offers insights on retirement plan topics uncovered during audits. You may provide feedback or suggest future topics for discussion by e-mailing her at: RetirementPlanComments@irs.gov.

Monika, along with standard examinations, your office is performing more compliance checks. Why do both?

We need to be proactive in assisting plans to stay in compliance. Performing compliance checks in addition to standard examinations allows us to leverage our examination resources, significantly increasing coverage and expanding our enforcement presence through correspondence-based contacts. This approach has proven so successful that we have expanded the [Employee Plans Compliance Unit](#) to three work groups. The EPCU is able to resolve many issues without an audit, such as determining whether a record-keeping or reporting requirement is being met or matching information

to resolve errors or discrepancies, while helping to educate taxpayers at the same time. We also use Compliance Check Questionnaires to learn more about compliance issues and behaviors impacting the health of retirement plans.

What are the differences between a compliance check and an examination of a return?

There are several key differences. A compliance check contact is not an audit or an investigation under Code §7605(b) and does not preclude a plan sponsor's use of IRS correction programs to inexpensively correct plan errors. Although a compliance check involves verifying information on a return filing, books and records are not inspected. In comparison, an examination involves a revenue agent visitation to determine tax liability and involves inspection of the books and records. The agent verifies that the plan is in overall compliance in form and in operation. A significant difference is that, unlike a compliance check letter from the EPCU, upon receipt of a written or oral Notice of Audit, the plan sponsor is prohibited from filing a Voluntary Correction Program application under EPCRS.

How are taxpayers contacted for compliance checks?

Generally, EPCU uses written correspondence and/or telephone calls to contact plan sponsors. The IRS does not initiate communications with taxpayers through e-mail.

What steps should plan sponsors take if they receive a letter from the EPCU?

First, read the correspondence and make sure you understand the request. If you have questions about it, contact the person whose name appears on the letter. Then, gather and provide the information requested in the letter.

Can the plan sponsor send more information?

The plan sponsor can always provide more information, including documents to help resolve any issue that the EPCU raises.

What could happen if the plan sponsor does not answer the EPCU letter?

Failure to answer the correspondence could result in further action, including examination of the plan.

Do taxpayers have the opportunity to see the results of the EPCU projects?

Yes. We include [summary reports](#) on completed EPCU projects at www.irs.gov/retirement. These reports provide a recap of the project's background and results. We encourage plan sponsors to use these reports as an internal control check for their plan.

What are the EPCU current projects?

Our current projects include a [SIMPLE IRA project](#) to check for potential non-amenders, a [SEP project](#) requesting plan sponsors complete a short questionnaire and international projects on [domestic trusts](#) maintained by foreign entities and [foreign distributions](#) to confirm reporting and payment of early distribution taxes by individuals with foreign addresses.

For a complete list of current projects and more information, visit the [EPCU Web page](#).

401(k) Questionnaire - Next Steps

In May 2010, the [Employee Plans Compliance Unit](#) sent letters to a statistically valid sample of 1,200 401(k) plan sponsors who were instructed to complete the 401(k) Questionnaire online by visiting a secure website and using a PIN number provided in the cover letter. The EPCU recently completed the 401(k) Questionnaire Project's information-gathering phase. Our next phase is to evaluate responses from the completed questionnaires to:

- better understand 401(k) plan compliance issues,
- determine how our tools and voluntary compliance programs are working, and

- identify participant awareness and plan sponsor compliance issues.

Monika Templeman, Director, Employee Plans Examinations, recently discussed the next steps in the process.

Non-responders: We will conduct a full-scope examination of plans whose sponsors who did not return the Questionnaire to provide the data needed for our 401(k) market segment analysis.

Responders: We would like to thank the plan sponsors who completed the Questionnaire. While the plans of responding sponsors are not exempted from future EP examinations or compliance checks, any notice of examination would not be a direct result of their answers on the questionnaire.

All Plan Sponsors: We encourage all plan sponsors to use the [Questionnaire](#) as an internal control tool to review your plan and determine if it is in compliance. Follow up by using our [correction programs](#) to fix any plan mistakes.

Interim Report: We will post an interim report to our [website](#) with general findings from the Questionnaire by the end of September.

Final Report: We will post a final report to our website next year.

Stay tuned to our newsletter for announcements on the release of the interim and final reports.

We're Glad You Asked!

Can I contribute to a traditional or Roth IRA if I'm covered by a retirement plan at work?

Traditional IRAs

Yes, you can contribute to a traditional IRA even if you participate in an employer-sponsored retirement plan. For 2010 and 2011, you can contribute up to \$5,000 annually (\$6,000 if you are 50 or older by the end of the year). However, if you or your spouse is covered by an employer retirement plan, this will affect how much, if any, of your contribution is [tax-deductible](#). See [Publication 590, Individual Retirement Arrangements \(IRAs\)](#), for the rules on who can contribute, what compensation to use, and when and how to make IRA contributions.

Roth IRAs

You can also contribute to a Roth IRA even if you participate in an employer-sponsored retirement plan. You can contribute up to \$5,000 (\$6,000 if you are 50 or older by the end of the year), but the amount you can contribute may be reduced or even eliminated depending on your modified adjusted gross income ([MAGI](#)) and your filing status. For example, for 2010, you can make the maximum contribution to a Roth IRA if your filing status is married filing jointly and your MAGI is under \$167,000, assuming you have at least \$5,000 (\$6,000) in earned income for the year. If your MAGI is between \$167,000 to \$177,000, your maximum Roth contribution for 2010 is reduced. You cannot make a Roth IRA contribution for 2010 if your MAGI is \$177,000 or more. See the 2010 Pub. 590 for all the MAGI limits for 2010 and 2011.

Contributing to both traditional and Roth IRAs

There is no limit on the number of Roth IRAs and traditional IRAs you can own; however, your combined annual contributions to all of them cannot exceed the maximum annual contribution limit (\$5,000; \$6,000 if 50 or older).

If you are in a SEP or SIMPLE IRA plan

The rules above also apply if you're covered by a [SEP](#) or [SIMPLE IRA](#) plan at work. A Roth IRA cannot be used to hold contributions made under these plans, but in most cases you can make a regular traditional IRA contribution (\$5,000/\$6,000) to your SEP IRA.

We're Glad You Asked!

Are contributions made to retirement plans subject to withholding for FICA, Medicare or federal income tax?

Whether or not a contribution to a retirement plan is subject to withholding depends on the type of contribution.

Generally, employee [salary reduction](#) contributions:

- **are** subject to withholding for Social Security (FICA) and Medicare taxes.
- **are not** subject to withholding for federal income tax, unless they are after-tax or designated Roth contributions.

Generally, employer [matching and nonelective](#) contributions:

- **are not** subject to withholding for FICA, Medicare or federal income tax.

See [Publication 15-A](#), *Employer's Supplemental Tax Guide*, for additional details, including special rules for contributions to plans sponsored by government and nonprofit organizations.

General Form W-2 Reporting Instructions:

- Do not include pre-tax contributions made under a salary reduction agreement in Box 1.
- Include all employee pre-tax, after-tax and designated Roth contributions in Social Security and Medicare wages.
- Include the proper code and amount in Box 12.
- Check all applicable boxes in Box 13.
- Complete Box 14 if you want to provide your employees information on the amount of employer matching and nonelective contributions made to the plan and on the amount of voluntary or mandatory employee after-tax contributions made.

See the 2011 [Instructions](#) for Forms W-2 and W-3 for additional details.

Additional Resources

- [Publication 560](#), *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*
- [Publication 525](#), *Taxable and Nontaxable Income*

DOL Corner

The Department of Labor's Employee Benefits Security Administration (DOL/EBSA) announced new guidance as featured below. You can subscribe to [DOL/EBSA's](#) homepage for updates

Proposed Definition of "Fiduciary" of Employee Benefit Plans

On October 22, DOL/EBSA published a [proposed rule](#) to update the definition of "fiduciary" to more broadly define the term as a person who provides investment advice to plans for a fee or other compensation.

The proposed amendment would update the definition to take into account changes in the marketplace and in the practices of investment advice providers.

As the proposal notes, the 1975 rule's approach to fiduciary status may inappropriately limit DOL/EBSA's ability to protect plan sponsors, plans, participants and beneficiaries from conflicts of interest that may arise from today's diverse and complex fee practices in the retirement plan services market. The 1975 regulation may leave many employers, participants and beneficiaries, who expect to receive unbiased advice, unaware of the potential conflicts of interest of those who provide investment advice for a fee.

The proposed rule, which more closely reflects the statutory definition, is designed to remedy this problem, and protect plan officials and participants who expect unbiased advice, by giving a broader and clearer understanding of when individuals providing such advice are subject to ERISA's fiduciary standards.

DOL/EBSA held a public hearing on March 1 and 2 on the proposed regulation. The transcript will be posted when available on the [dedicated web page](#) that has public comments, the hearing agenda and testimony. The public hearing record will remain open for 15 days after the date the official transcript of the hearing is posted on [DOL/EBSA's](#) website. DOL/EBSA will make an announcement to alert the public to the availability of the transcript and the specific date on which the record will close.

Extension of Applicability Date of Fee Disclosure Regulation

On February 11, DOL/EBSA announced its intention to extend the applicability date for the new ERISA §408(b)(2) disclosure rules until January 1, 2012.

DOL/EBSA published an [interim final regulation](#) on July 16, 2010, requiring certain service providers to employee pension benefit plans to disclose information to assist plan fiduciaries to understand the reasonableness of the fees being charged for plan services and assess potential conflicts of interest that might affect the quality of those services. The new requirements are scheduled to apply to plan contracts or arrangements for services in existence on or after July 16, 2011.

"The Department intended to have final rules in place sufficiently in advance of the July 16 applicability date to avoid compliance problems for both plans and their service providers," said Phyllis C. Borzi, Assistant Secretary of DOL/EBSA. "Given the need to ensure a careful review of all the valuable input we received on the interim final rule, including suggestions for a summary document to further assist plan fiduciaries in their review of furnished information, we now believe plans and plan service providers would benefit from an extension of the rules' applicability date. An extension of the applicability date to January 1, 2012, will ensure that we have the time we need to get the final rule right and that plans and their service providers have the time they need to undertake orderly and efficient efforts following publication of the final rule," Borzi said.

Target-Date Retirement Fund Disclosures

On November 30, DOL/EBSA published a [proposed rule](#) to enhance target-date retirement fund disclosures. The proposed rule would amend the "qualified default investment alternative regulation" and the "participant-level disclosure regulation" to provide more specificity regarding the information that must be disclosed to participants and beneficiaries concerning investments in target-date funds.

The proposed amendments require new disclosures about the design and operation of target-date or similar investments, including an explanation of:

- The investment's asset allocation
- How that allocation will change over time, with a graphic illustration
- The significance of the investment's "target" date

The proposed amendments also require a statement concerning the risk that a participant investing in a target-date fund may lose money in that investment, even if they are close to retirement.

The comment period has closed. [Comments](#) are available on DOL/EBSA's website.

Annual Funding Notice Requirement

On November 18, DOL/EBSA published a [proposed rule](#) under the Pension Protection Act to implement the annual funding notice requirement under ERISA §101(f).

The proposed regulation requires administrators of all defined benefit plans subject to Title IV of ERISA to provide an annual funding notice to the Pension Benefit Guaranty Corporation, each plan participant and beneficiary, each labor organization representing such participants or beneficiaries and, in the case of a multiemployer plan, to each employer that has an obligation to contribute to the plan. Prior to implementation of PPA, only multiemployer plans were required to disclose any funding information.

[Comments](#) are available on DOL/EBSA's website.

PBGC Insights

Proposed Rule on Shutdown Benefits: On March 11, 2011, PBGC issued for comment a [proposed rule](#) to amend its regulation on [Benefits Payable in Terminated Single-Employer Plans](#). The amendments implement Pension Protection Act of 2006, §403, which provides that the phase-in period for PBGC's guarantee of benefits contingent on occurrence of an "unpredictable contingent event" (such as a plant shutdown) starts no earlier than the date of the event. Comments due by May 10, 2011.

Single-Employer Plans: Funding Relief Notification to PBGC: [IRS Notice 2011-3](#) (Q&As N-6 and N-7) tell single-employer plans how to inform PBGC when electing funding relief under the Pension Relief Act of 2010. The deadline is 30 days after the date of the election.

Information about My Plan Administration (My PAA) Accounts: For system security, PBGC is deactivating My PAA accounts no longer used to e-file premiums. This includes removing the plans in those accounts. To assist PBGC, please request deactivation of your account if you are no longer e-filing premiums by contacting PBGC's premium customer service representatives (e-mail_premiums@pbgc.gov or call 800-736-2444 and select the "premium" option). Otherwise, PBGC will e-mail holders of unused My PAA accounts to confirm that their accounts should be deactivated.

To keep your My PAA Account active and updated:

- Log in to your My PAA account at least once per year.
- If your account needs updating (e.g., name, e-mail address), log in and click on the "My Account" link at the top of any page in My PAA.
- If you forget your user ID or password, use the links on the right side of the [My PAA](#) Login page.
- If you are locked out of your account or you need help, contact PBGC's premium representatives (e-mail_premiums@pbgc.gov or call 800-736-2444 and select the "premium" option).

For more information on My PAA, review the [Online Premium Filing with My PAA](#) page at www.pbgc.gov.

New Look for PBGC's Website: PBGC recently redesigned its [website](#) to offer faster, easier ways to find information. All previous website content still exists; however, the information may be in a new location. In addition to the home page, check out the:

- [Practitioners Page](#)
- [Resources Page](#) (where you'll now find laws and regulations, other guidance such as disaster relief announcements, technical updates, and enrolled actuary meeting blue books, and additional resources such as PBGC's guide for small businesses)
- [About PBGC Page](#) (where you'll find PBGC's frequently asked questions)
- [Contact Us Page](#) (via a link in the upper right corner of every page)