Retirement News for Employers

Helping Business Owners with Retirement Plans

Internal Revenue Service Tax Exempt and Government Entities

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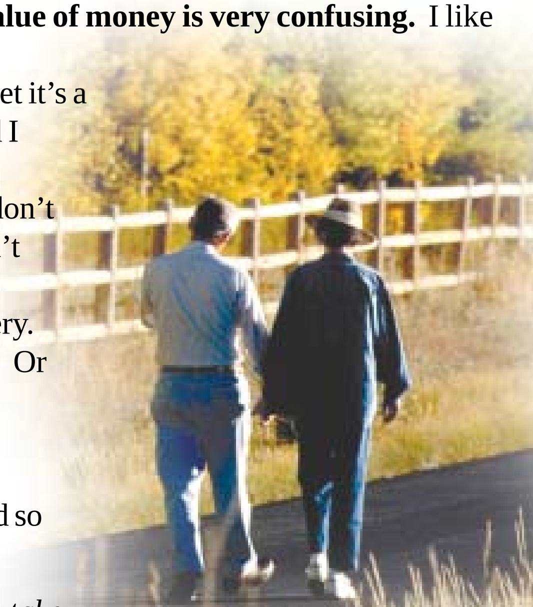
Inside This Issue

10 Reasons to Put Off Saving for Retirement

You hear it everywhere. "Plan to retire? Choose to save!" "Pay yourself first; write check #1 each month to savings." It's in the media, your friends and family remind you that saving for retirement is important and that nagging little voice keeps telling you to get busy, too. What's a person to do? You need a list of solid reasons to put off saving for retirement. Here it is!

1. **There are so many important things I need that money for NOW**. An extra dinner out this week with the family. That hot outfit I need to impress that certain someone. That fancy pair of sneakers that make the whiz bang noise with each step. A weekend trip to Bora Bora.
2. **There'll always be time to save later**. I'm just not quite ready to start. Never do today what you can put off until tomorrow.
3. **Maybe I won't live long enough to retire**. Life is so uncertain**.** Why should I miss out on the high life now when I might not even need to have money put aside for my old age?
4. **I love a challenge.** Like working into my 70's or 80's or 90's because I don't have the money not to. Like paying for food and housing and medical care on Social Security payments alone.
5. **I don't know how to begin**. There are so many ways to go about saving for retirement that I need more time to think about it. After all there's the retirement savings plan at work and IRAs and even investing in things like real estate. I just don't know where to start.
6. **All that talk about 401(k)'s and IRAs and the time value of money is very confusing.** I like a simple life. Let's focus on the here and now.
7. **I don't know how much I need for retirement**. But I bet it's a huge number. (Or "I know how much I need to retire and I don't think I can do it. So I won't do anything.")
8. **Planning for retirement is such a big undertaking.** I don't think I can save as much as I know I should, so I just won't start saving at all.
9. **I might get lucky.** You never know. I may win the Lottery. Or I may be remembered in the will of a long lost relative. Or they might find that my house is right in the middle of a diamond field.
10. **Taking care of me financially will provide wonderful character-building opportunities for my children.** And so many chances for me to feel warm gratitude toward them.



(Editor's note: If none of these reasons work for you, then take care of yourself and check out our Lots of Benefits *or* Choosing a Retirement Solution for Your Small Business *publications or visit the Retirement Plans web page at* www.irs.gov/ep *for more information on how to save for retirement.)*

The Fix Is In: Common Plan Mistakes

Mistakes happen. In fact, the IRS sees a lot of the same mistakes again and again. In "The Fix Is In" we'll help you avoid some of these common problems.

In each issue of the *Retirement News for Employers* we will present a common mistake that happens in retirement plans. We'll describe the problem, how it happened, how to fix it and how to lessen the probability of the problem happening again. Our first column focuses on the "**Failure to Obtain Spousal Consent"**.

The Issue

Many retirement plans are required to distribute benefits to participants in the form of a Qualified Joint and Survivor Annuity (QJSA). A QJSA is an annuity that provides a life annuity to the participant and a survivor annuity for the spouse's life following the participant's death. The survivor annuity must be no greater than 100% and no less than 50% of the annuity paid during the participant's life.

A QJSA must be provided to all participants under a defined benefit plan, money purchase plan or target benefit plan.

A profit sharing or stock bonus plan is not required to provide a QJSA if it satisfies these requirements:

a) The death benefit of the plan is payable in full to the surviving spouse unless the spouse has consented to another beneficiary;
b) A life annuity option cannot be elected in the plan or the participant does not elect into the plan's life annuity options; and
c) The benefit is not the result of a direct transfer from another plan which was required to provide a QJSA.

In our Summer Edition cover story, we told you about the IRS program that's available for fixing plan mistakes. Beginning with this edition, we'll show common mistakes - how they happen, ways to fix them and how to keep them from happening again.

If the QJSA rule applies to a participant, a QJSA is mandatory unless the participant elects a different form of payment available under the plan. An election by a married participant to take a different form of payment, even if it is only for a portion of the participant's benefit, is not effective unless the participant's spouse also consents to the election. If the lump sum value of the participant's benefit is $5,000 or less, a lump sum can be paid instead of a QJSA without obtaining the participant's election or the spouse's consent.

The Problem

A common plan mistake submitted for correction under the Voluntary Correction Program (VCP) is the distribution to a participant of a benefit in a form other than the required QJSA (e.g., a single lump sum) without securing proper consent from the spouse. This often happens when the sponsor's human resources accounting system incorrectly classifies a participant as not married. The failure to provide proper spousal consent is an operational qualification mistake that would cause the plan to lose its tax-qualified status.

The Fix

Normally, the correction method under VCP for a failure to obtain spousal consent requires the Plan Sponsor to notify the affected participant and spouse (to whom the participant was married at the time of the distribution) so that the spouse can provide spousal consent to the distribution actually made. If spousal consent to the prior distribution cannot be obtained because the spouse refuses to consent, does not respond to the notice or because the spouse cannot be located, the spouse is entitled to a benefit under the plan equal to the portion of the QJSA that would have been payable to the spouse upon the death of the participant had a qualified joint and survivor annuity been provided to the participant under the plan at his or her retirement. Such spousal benefit must be provided if a claim is made by the spouse.

Making Sure It Doesn't Happen Again

The QJSA rules are an important requirement that protects the interests of participant spouses. Plan sponsors should determine whether these rules apply to their plans. If they do, ensure that proper consents are secured before retirement benefits are paid out.

Want more information on fixing mistakes? Just go to **www.irs.gov/ep**, *click on "Retirement Source for Plan Sponsors/ Employers" and select "How Do I Fix a Plan Mistake?"*

Product Profile – *Have You Had Your Check-up This Year? for SIMPLE IRAs, SEPs, and Similar Retirement Plans* Publication

Does your business sponsor a SIMPLE IRA, SEP or SARSEP plan? Just as you need to give your car periodic check-ups to ensure that you have a solid, well-oiled, dependable machine when you need it, a retirement plan needs regular attention and care to keep it operating well.

The IRS has a new publication to help you maintain your plan and participant benefits. ***Have You Had Your Check-up This Year? for SIMPLE IRAs, SEPs, and Similar Retirement Plans*** is a plain language publication that provides you with basic information on:

- Tools – A checklist for a quick review highlighting some of the basic operational questions for each of three IRA-based plans: **SIMPLE IRA Plan Checklist**, **SEP Checklist** or **SARSEP Checklist**.
- Tips/Resources – Help keep the plan in good running order with other available information.
- Help – The IRS has several correction programs that provide incentives for finding and correcting mistakes earlier rather than later. After reviewing the plan and completing the appropriate checklist, you may find an error in the plan's operation. You may want to correct the error using one of the IRS correction programs.

Finally, the publication provides additional sources for more in-depth information if you need it.

The publication, as well as additional information on SIMPLE IRAs, SEPs, and similar retirement plans, can be found on the IRS website, **www.irs.gov/ep**. After November 22, copies of the publication can be ordered by calling (800) 829-3676. The number is toll-free.

How to Subscribe to *Retirement News for Employers*

The *Retirement News for Employers* will be issued only through IRS e-mail. For your free subscription, please go to the **Retirement Plans** web page and subscribe on-line by selecting "Retirement Source for Plan Sponsors/ Employers" and then "Retirement News for Employers". All editions of the *Retirement News for Employers* will be archived at the **Retirement Plans** web page.

For your convenience, we have included Internet links to referenced materials throughout the electronic version of *Retirement News for Employers*. These links are identified on the printed version by the underlined text. The electronic version may be found at the **Retirement Plans** web page.

Unenrolled Preparers, Form 2848 and the IRS

Employers may use **Form 2848**, *Power of Attorney and Declaration of Representative*, to authorize another person to represent the taxpayer before the IRS. This person must be eligible to practice before the IRS but employers have occasionally submitted the form listing ineligible representatives. In the past, the IRS has treated these invalid powers of attorney as tax information authorizations, which permit third parties to receive information about the employer's account, but not to represent the employer before the IRS.

Beginning April 1, 2004, the IRS discontinued this practice and began rejecting Forms 2848 listing ineligible representatives. As a result of this change in practice, questions have been raised regarding the role an unenrolled preparer may now play in submissions to Employee Plans (EP).

Preparation of Tax Returns and EP Examinations

The general rules regarding the practice of unenrolled preparers before the IRS are set forth in **Circular 230**. Circular 230 provides that individuals who are not CPAs, attorneys, enrolled actuaries, or enrolled agents, may practice as unenrolled preparers before the IRS to the extent they prepared the tax returns at issue.

Does someone besides yourself handle your contact with the IRS when it comes to your business's retirement plan? If so, a change in IRS practice may affect you, your plan and your plan advisor.

Publication 470, *Limited Practice Without Enrollment*, addresses the role of an unenrolled preparer with respect to tax returns. It states that an unenrolled individual who signs a return may act as an employer's representative but this representation may only encompass matters concerning the tax liability for the taxable year covered by the return.

EPCRS and the Determination Letter Program

The current guidance for submitting matters under the Determination Letter program states that the request for a letter ruling or determination letter must be signed and dated by the taxpayer or the taxpayer's authorized representative.

The same rules apply to EPCRS, the EP retirement plan correction program. The EPCRS guidance provides that the rules regarding the authority to sign an EPCRS submission and to appear before the IRS in connection with a submission are the same as for requests for letter rulings.

Limited Role for Unenrolled Preparers

So where does this leave employers with unenrolled preparers with respect to the EP Determination Letter program and EPCRS?

Is your retirement plan advisor enrolled or unenrolled? Does it even matter? Read our article to find out.

Although an unenrolled preparer does not have the authority to sign documents or submissions on behalf of the plan sponsor, an unenrolled return preparer can still submit items to the IRS or take a role in the Determination Letter or EPCRS processes. An unenrolled preparer may use a **Form 8821**, *Tax Information Authorization*, which when properly executed allows an unenrolled preparer to:

1. Provide and receive information regarding a plan to and from the IRS;
2. Receive copies of correspondence from the IRS and submit information requested by the IRS (such as participant data, asset information, etc.) as part of the review of an EPCRS submission or a Determination Letter application;
3. Discuss matters raised relative to a Determination Letter application or an EPCRS submission with EP personnel as long as any decisions regarding the application or the submission are made by the taxpayer, either in person or in writing;
4. Submit an application for an extension of time on **Form 5558**, *Application for Extension of Time to File Certain Employee Plan Returns*.

They're Here: The 2005 Dollar Limitations!

They're here – they're really, really here: next year's list of retirement plan dollar limits. Once again, we've gathered all the dollar limit numbers you need to know but didn't know where to find and put them on the **Retirement Plans web page**.

You'll find dollar limits starting in 1989 and continuing all the way through 2005. Or, if you just want to see the 2005 numbers, click on **2005 COLA News Release**.

We've got all the limits that you've grown to know and love. Besides such favorites as the deferral limit for 401(k) plans ($14,000) and the section 401(a)(17) compensation limit ($210,000), some lesser known figures are given as well. For example, the chart has the compensation amount under section 408(k)(2)(C) for SEPs ($450 in 2005 and unchanged from 2004) and the amount for determining who is a "Key Employee" – as defined in Internal Revenue Code section 416 – increased in 2005 from $130,000 to $135,000.

So, if you want to see if your 2005 COLA is diet, decaffeinated or regular, click on **COLA Table** or go to the **Retirement Plans web page**, click on "Published Guidance" and go to "Cost-of-Living Adjustment Increases". ■

Current Use of Form 2848

As of April 1, 2004, Forms 2848 are no longer accepted where the representative is an unenrolled return preparer. Determination Letter applications or EPCRS submissions submitted by an unenrolled preparer prior to that time will be treated according to prior practice. For all applications submitted after March 31, 2004, the new rules as outlined in this article will apply.

As a result, unenrolled return preparers may not use Form 2848 to receive confidential information about their clients. Unenrolled preparers should instead use Form 8821.

Future Solution?

The Advisory Committee on Tax Exempt and Government Entities (ACT) and EP recognize the important role played by benefits professionals who are not currently permitted to represent employers in their dealings with EP, but upon whom many employers depend for their expert advice regarding plan establishment and administration. Accordingly, the ACT is currently considering a recommendation that would permit enrollment for limited purposes to applicants who can demonstrate special competence in EP matters. Comments may be emailed to **tege.act@irs.gov**.

Additional information regarding this program will be provided in future newsletters. ■

DOL News

Our colleagues at the Department of Labor want to share their information with you. Look for more DOL News in future editions.

You can also check out their web site: **www.dol.gov/ebsa**.

The Department of Labor's Employee Benefits Security Administration (DOL/EBSA) continues to expand its efforts to assist employers and other plan officials in complying with the law. In this issue, we highlight new guidance and relief to help retirement plan officials and participants.

Missing Participant Guidance

On September 30, 2004, DOL/EBSA released Field Assistance Bulletin (FAB) 2004-02 providing guidance on the responsibilities of employee benefit plan fiduciaries in connection with missing participants in terminated defined contribution plans governed by the Employee Retirement Income Security Act (ERISA).

The guidance provides the steps fiduciaries must take to locate missing participants and beneficiaries when defined contribution plans are terminated, including checking related plan records and using the IRS or Social Security Administration letter-forwarding service. In cases where participants cannot be located, or fail to elect a method of distribution, the FAB indicates that plan fiduciaries can follow the new safe harbor regulation governing automatic rollovers for guidance on distributing benefits. The **FAB** is available on **DOL/EBSA's web site**.

Automatic Rollover Rules

On September 28, 2004, DOL/EBSA released a final regulation that will provide retirement plan fiduciaries with guidance to help them preserve workers' retirement savings.

Certain distributions of retirement plan benefits must be automatically rolled over into an individual retirement plan when a separated worker fails to elect a distribution method. The final rule protects retirement plan fiduciaries from liability under the Employee Income Retirement Security Act (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 plan and the selection of investments for such plans.

In order to obtain relief under the safe harbor, a plan fiduciary must satisfy certain conditions. Among other things, the selected plan provider must be qualified to offer individual retirement plans; investment products must be designed to preserve principal; and the fees and expenses for such plans may not exceed those charged by the selected plan provider to its other individual retirement plan customers.

DOL/EBSA also adopted a class exemption from the prohibited transaction rules of ERISA that permits certain plan sponsors to use their own services and products in connection with rollovers from their own retirement plan.

The **final rule** and **class exemption** were published in the Federal Register and are available on **DOL/EBSA's web site**.

Contacting Employee Plans

The *Retirement News for Employers* welcomes your comments about this edition and/or your suggestions for future articles.

Send comments/suggestions to:

EP Customer Education & Outreach
SE:T:EP:CEO
1111 Constitution Avenue, N.W., PE-4C3
Washington, DC 20224
Fax: (202) 283-9525
e-mail:
RetirementPlanComments@irs.gov

For EP Taxpayer Assistance

For retirement plans technical and procedural questions:

Please call (877) 829-5500 or visit the EP Customer Account Services section of the **Retirement Plans** web page.

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 Retirement Plan Information

Please go to the **Retirement Plans** web page.

Streamlined Registration by Plan Investment Managers

On August 24, 2004, DOL/EBSA published in the Federal Register a final rule requiring state-registered investment advisers who are seeking investment manager status under ERISA to register electronically through the Investment Adviser Registration Depository (IARD).

The rule allows plan fiduciaries to consult a single source to find out whether an investment adviser is registered while also streamlining the process through the elimination of paper filings.

Under ERISA, plan trustees are relieved of certain liabilities relating to management of plan assets by a registered investment adviser, bank or insurance company that meet certain requirements to be appointed an investment manager for an ERISA-covered plan.

The IARD is a centralized electronic filing system for investment advisers created by the Securities and Exchange Commission (SEC) and state securities regulators. A majority of state-registered investment advisers who are investment managers of ERISA-covered plans already file registration forms electronically through the IARD.

The final rule will apply to investment adviser registration filings due on or after October 25, 2004. The final rule also contains a conforming amendment to an EBSA Interpretive Bulletin on fiduciary responsibility, which deals with when registered investment advisers are eligible to be ERISA investment managers.

The **final regulation** is available on **DOL/EBSA's web site**.

IRS employees contributing to this edition of the *Retirement News for Employers* are:

Bob Brambilla
Stephanie Christenson
Evelyn DeWald
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Larry Isaacs
Teresita Laureano
Peter McConkey
Todd Newman
Mark O'Donnell
Nancy Payne
Donna Prestia
Keith Ruprecht
John Schmidt
Brenda Smith-Custer
Susan Taylor and
Rob Walsh

Extended SEP and SIMPLE Contribution Deadline for Disaster Areas

The IRS has announced special tax relief for taxpayers in several Presidentially declared disaster areas. This tax relief affects a wide range of types of returns and taxes, including Simplified Employee Pensions (SEPs) and Savings Incentive Match Plans for Employees (SIMPLE IRA plans). If you are a taxpayer affected by the disasters, you may be eligible for tax relief impacting your SEP or SIMPLE IRA plan. It is important to determine whether you are an affected taxpayer before taking advantage of the tax relief provisions. Once you determine that you are an affected taxpayer, then you can identify the specific relief available to you.

The following questions and answers help identify some of the relief available to SEPs and SIMPLE IRA plans:

Q: My business is located within a Presidentially declared disaster area and I sponsor a SEP or a SIMPLE IRA plan. How does this affect my plan contributions?

A: Sponsors of affected SEPs or SIMPLE IRA plans may have an extension of the due date for making SEP or SIMPLE IRA plan contributions.

Q: My business is physically located within one of the Presidentially declared disaster areas. Is my business's SEP or SIMPLE IRA plan affected by the President's declaration?

A: Yes, your SEP or SIMPLE IRA plan is affected and may be entitled to special relief.

Q: If my business is not located in a Presidentially declared disaster area but the SEP or SIMPLE IRA plan records are, is my SEP or SIMPLE IRA plan still affected?

A: Yes.

In the aftermath of the summer's severe weather, the IRS issued a series of disaster area tax relief measures. For the latest news on these measures, check out the main IRS web site at www.irs.gov.

Q: What extension relief period will apply to my SEP or SIMPLE IRA plan?

A: The IRS determines the extension period for each individual disaster area. This information may be found at www.irs.gov and clicking on "Disaster Area Tax Relief".

For example, if you have been affected by Hurricane Ivan (as defined in IR-2004-118) and your original or extended due date for filing any returns related to your SEP or SIMPLE IRA plan falls between September 13, 2004 and December 30, 2004, then the following tax relief applies:

1. Returns related to your SEP or SIMPLE IRA plan (e.g., Form 1120, Form 1065, Form 1040, etc.) may be made through December 30, 2004.
2. SEP or SIMPLE IRA plan contributions that affect these returns may also be made through December 30, 2004.

(Note that the date is December 30, 2004, not December 31, 2004.)

Or, if you have been affected by Tropical Depression Ivan (as defined in NJ-2004-49) and your original or extended due date for filing any returns related to your SEP or SIMPLE IRA plan falls between September 18, 2004 and December 1, 2004, then the following tax relief applies:

1. Returns related to your SEP or SIMPLE IRA plan (e.g., Form 1120, Form 1065, Form 1040, etc.) may be made through December 1, 2004.
2. SEP or SIMPLE IRA plan contributions that affect these returns may also be made through December 1, 2004.

For all of the most recent disaster area tax relief, visit www.irs.gov.

The Filing Cabinet

Forms – you can't live with them, you can't live without them. Just like you use forms when running your business – everything from spreadsheets to receipts to invoices – you also use forms when dealing with a retirement plan. And just as your business forms sometimes change, retirement forms also sometimes change. Here in *The Filing Cabinet*, the stories will keep you up to date on the stuff you need to know when you're filing retirement forms.

2004 Form 5500 Now Available

With its September 28, 2004 Media Release, DOL/EBSA, along with the IRS and Pension Benefit Guaranty Corporation announced the release of the 2004 Form 5500 and Form 5500-EZ. This represents the earliest the forms, schedules and related schedules have been made available and reflects the government's continued commitment to improve the Form 5500 filing process.

Informational copies of the forms, schedules and instructions are available for viewing on EBSA's web site www.efast.dol.gov (along with information about approved software vendors) and the Retirement Plans web page by clicking on "EP Forms & Publications" under the "Related Topics" section.

Paper copies of all the 2004 material are now available from the IRS by calling (800) TAX-FORM.

Filers are also invited to contact the EFAST Help Line for general assistance by calling (866) 463-3278.

New Publications

In keeping with our promise to supply plain-language information on different types of retirement plans, we're happy to announce the release of two publications dealing with Salary Reduction Simplified Employee Pensions (SARSEPs). Both of these new publications can be ordered by calling (800) TAX-FORM.

- **Publication 4336**, SARSEP for Small Businesses
- **Publication 4407**, SARSEP - Key Issues and Assistance

In addition, we've created two additional publications that will be available in paper format by November 22, 2004. The first, **Publication 4405**, Have You Had Your Check-Up This Year? for SIMPLE IRAs, SEPs, and Similar Retirement Plans encouraging employers and plan sponsors to take a retirement plan check-up.

The other, **Publication 4406**, 403(b) and 457 Retirement Plans (with Plan Feature Comparison Chart), outlines the features of 403(b) and 457 plans with comparisons to 401(k) plans.

All four of these new publications and are available on the Retirement Plans web page by clicking on "EP Forms & Publications" under the "Related Topics" section. ■

Net Gains

Welcome to *Net Gains*, the column devoted to providing you with the latest Retirement Plans web page information.

For those of you new to the Retirement Plans web page, this portion of the IRS web site contains almost everything you want to know about retirement plans but didn't know where to find it. Leading off this edition of *Net Gains* is the new:

EP Determination Letter Resource Guide

The IRS has posted the EP Determination Letter Resource Guide. This one-stop Resource Guide walks customers through the EP Determination Letter process and helps answer questions about the process. While it doesn't cover everything, it will help you in your search for information.

Highlights of the Resource Guide include:

- What is a Favorable Determination Letter?
- Do I need to file for a Determination Letter for my retirement plan?
- The Application Process: A review of the application process from receipt of the determination letter request to the issuance of a determination letter.
- Additional Resources: Forms, publications and links to information useful during the determination letter application process.

Its permanent home on the web can be accessed by clicking on "Retirement Source for Plan Sponsors/Employers" and then "How Do I Establish a Plan". There you'll find the "EP Determination Letter Resource Guide".

New IRA-Based Plans – and more – Pubs

Four new publications – three on IRA-based plans – have been developed and are now available on the **Retirement Plans web page** by clicking on "EP Forms & Publications" under the "Related Topics" section:

- **Publication 4336**, **SARSEP for Small Businesses** - an informational tool that provides guidance on the operation of a Salary Reduction Simplified Employee Pension (SARSEP).

- **Publication 4405**, **Have You Had Your Check-up This Year? for SIMPLE IRAs, SEPs, and Similar Retirement Plans** - an educational pamphlet that informs and encourages employers to perform a periodic "check-up" of their IRA-based plan through the use of checklists. It also contains information on how to initiate any necessary corrective actions.

- **Publication 4406**, **403(b) and 457 Retirement Plans (with Plan Feature Comparison Chart)** - an introductory brochure dealing with retirement plans for employees of various government and tax-exempt entities. It compares the plan features of tax-sheltered annuities vs. deferred compensation plans.

- **Publication 4407**, **SARSEP - Key Issues and Assistance** - an educational pamphlet that highlights various key issues dealing with operating a SARSEP and lists different resources for more help. It is also an introduction to the more comprehensive Publication 4336, *SARSEPs for Small Businesses*, mentioned above. ■

Let's Just Take It One Three-Month Period at a Time

$ = contribution

C = conference

F = file forms

Operating a retirement plan can be a time-consuming job. There are deadlines, not just for reports and forms but also for making contributions. There are conferences and seminars. And then there is information you need to give to participants.

So to help you navigate the retirement plan timeline, here is our month-by-month look at some of the important moments in the months to come. Please note that all of the filing dates below are for calendar-year plans - adjust the dates for non-calendar year plans:

C **December 2:** DOL Seminar: Getting It Right – Know Your Fiduciary Responsibilities - Dallas, TX

December 31: Deadline for -

- Making required minimum distributions for 2004.
- Distributing prior year's excess contributions - including income or losses - without losing plan's tax-qualified status.

$ **January 15, 2005:** Fourth quarterly contribution due date for 2004 calendar-year defined benefit plans.

For a comprehensive list of upcoming EP Educational Events, visit the Retirement Plans web page, select "Retirement Source for Plan Sponsors/Employers" and then "Upcoming EP Educational Events". ■