**Welcome****Committee Handouts****Subcommittee Handouts****Joint Session Handouts****Section Program Handouts****Low Income Taxpayers Representation Workshop****Tax Bridge to Practice****Final Program****Sponsor Information****Disclaimer & Copyright****Employee Benefits Subcommittees****Employee Benefits Defined Benefit Plans Update****Presented by the Subcommittee on Defined Benefit Plans**

- "Recent PBGC Regulatory Developments (October 1, 2009, to April 15, 2011)," paper by Harold J. Ashner
- "A Window Into PBGC's Practice: Current Issues and Trends," paper by Israel Goldowitz and Erika E. Barnes

**Employee Benefits Defined Contribution Plans Update****Presented by the Subcommittee on Defined Contribution Plans**

- "Rev. Rul. 2007-43: Is there a partial termination of a plan under § 411(d)(3) of the Internal Revenue Code under the facts described in this revenue ruling?"
- "Notice 2011-19: Definition of Readily Tradable On An Established Securities Market"
- "Christy & Swan Profit Sharing Plan v. Commissioner of Internal Revenue"
- "Michael C. Hollen, DDS, v. Commissioner of Internal Revenue"
- "§ 413 Collectively bargained plans, etc."
- "DOL Request for Information Regarding Electronic Disclosure by Employee Benefit Plans"
- "DOL Hearing on Definition of "Fiduciary""

**Employee Benefits Distributions Update****Presented by the Subcommittee on Distributions Rollovers as Business Startups (ROBS)**

- "ROBS," slides by Charles F. Plenge
- "When it Looks too Good to be True... Rollovers as Business Start-Ups (ROBS)," paper by Nellie Strong and James Williamson (Texas Tax Lawyer - Fall 2010)

**Employee Benefits Legislative Update****Presented by Subcommittee on Employee Benefit Legislation**

- Materials not yet submitted for this panel.

**Employee Benefits Government and Tax Exempt Plans Update****Presented by the Subcommittee on Exempt Organization and Governmental Plans**

- Materials not yet submitted for this panel.

**Employee Benefits Fiduciary Responsibility Regulatory Update****Presented by the Subcommittee on Fiduciary Responsibilities/Plan Investments**

- "Panel Materials"

**Employee Benefits Litigation Update****Presented by the Subcommittees on Fiduciary Responsibility/Plan Investments, Litigation, and ESOPs**

- "Panel Materials"

**Employee Benefits International Update****Presented by the Subcommittee on Foreign and International Issues**

Deborah will email additional handouts if requested - They are 50+ pages long

- ["New Puerto Rico Tax Code Means Significant Changes to Retirement Plans for Puerto Rico Employees"](#)
- ["Final FBAR Regulations"](#)
- ["Final FBAR Reporting Rules Provide Relief, But No Exemption, for Pension Plans Investing in Foreign Accounts,"](#) paper by Susan P. Serota (Pillsbury Client Alert, February 28, 2011)
- ["Contributions and Accruals under Foreign Trusts: How do Section 402\(b\) and 409A Intersect?"](#)
- ["Defined Benefit Plans Update International Issues,"](#) slides by Russ Hall and Rhonda Migdail

**Employee Benefits Administrative Practices Update  
Presented by the Subcommittee on Self-Correction, Determination Letters and Other Administrative Practices**

- ["Employee Plans Compliance and Correction Q&A"](#)
- ["Form 8950: Application for Voluntary Correction Program \(VCP\)"](#)
- ["Instructions for Form 8950"](#)
- ["Form 8951: Compliance Fee for Employee Plans Voluntary Correction Program Submission"](#)
- ["Qualified Plan Amendments: What to Do By Year End 2011"](#)
- ["Employee Plans Examinations,"](#) slides submitted by Monika Templeman

**Employee Benefits Welfare Benefits Design, Funding and Regulation Update  
Presented by the Subcommittees on Welfare Plan Design and Funding, Cafeteria Plans and Reimbursement Accounts and HIPAA, COBRA & State Insurance Regulation of Welfare Plans**

- ["Form W-2 Reporting Guidance,"](#) paper by Mark L. Stember
- ["HIPAA Enforcement Update,"](#) slides by Julie Burbank
- ["HHS imposes a \\$4.3 million civil money penalty for violations of the HIPAA Privacy Rule"](#) (HHS News Release, February 22, 2011)
- ["Massachusetts General Hospital settles potential HIPAA violations"](#) (HHS News Release, February 24, 2011)

**Employee Benefits Executive Compensation, Fringe Benefits and Securities Law Update  
Presented by the Subcommittees on Executive Compensation and Fringe Benefits and Federal Securities Laws Issues**

- ["Dodd-Frank's Compensation Clawback and its Consequences,"](#) paper by Seth T. Taube and Maureen P. Reid
- ["Taxation of Executive Compensation Clawbacks,"](#) slides by Rosina B. Barker
- ["Taxing Clawbacks: Theory and Practice,"](#) paper by Rosina B. Barker and Kevin P. O'Brien (TAX NOTES, October 25, 2010)

**Employee Benefits EEOC, FMLA and Military Leave Update  
Presented by the Subcommittee on EEOC Issues/FMLA, Military and Other Leaves**

- Materials not yet submitted for this panel.

**Employee Benefits Mergers & Acquisitions Update  
Presented by the Subcommittee on Mergers and Acquisitions**

- ["Employee Benefits Mergers and Acquisitions Update – New Disclosure Rules for Golden Parachute Arrangements,"](#) slides by Vanessa A. Scott

**Employee Benefits ESOP Update  
Presented by the Subcommittee on ESOPs**

- ["Panel Agenda,"](#) submitted by W. Waldan Lloyd

**Employee Benefits Controlled Groups and Employee Status Update  
Presented by the Subcommittee on Controlled Groups, Affiliated Service Groups,**

**and Employee Status**

- "Panel Materials"

## Employee Benefits

### Employee Benefits Security Administration (EBSA) Update

- ["Department Extends Transition Relief on Internal Claims and Appeals,"](#) paper by Benjamin J. Evans

### Healthcare Reform: A Regulatory and Legislative Update

- ["Guidance on Non-Grandfathered Plans" Claim and Appeals Procedures Required by the Affordable Care Act,"](#) paper from Segal (Health Care Reform Insights, February 2011)
- ["Departments Expand Guidance and Request Information on Preventative Care Benefits that Non-Grandfathered Group Health Plans Must Provide,"](#) paper from Segal (Health Care Reform Insights, January 2011)
- ["Treasury, IRS Seek Public Input on Certain Employer Provisions of the Affordable Care Act"](#) (IR-2011-50, May 3, 2011)
- ["Notice 2011-36: Request for Comments on Shared Responsibility for Employers Regarding Health Coverage \(Section 4980H\)"](#)

### Internal Revenue Service and U.S. Department of Treasury Update

- ["Treasury & IRS Q&As"](#)

### IRS and Treasury Questions and Answers

- ["Treasury & IRS Q&As"](#)

### Looking Into the Crystal Ball: Tax Reform Legislative Proposals

- ["The Future of Retirement Policy In a World of Deficits,"](#) slides by Brian H. Graff
- ["Legislative Agenda: Health Plans,"](#) slides by William F. Sweetnam, Jr.

### Pension Benefit Guaranty Corporation Update

- ["A Window Into PBGC's Practice: Current Issues and Trends,"](#) paper by Israel Goldowitz

### Pension Plan Update

- ["Proposed Hybrid Plan Regulations: Issues Raised,"](#) slides by Priscilla E. Ryan
- ["Pension Funding Relief and Benefit Restrictions,"](#) slides by Sarah Wright
- ["Pension Funding Relief and Benefit Restrictions Background,"](#) slides by Sarah Wright

## Employment Taxes

# ABA May Tax Meeting

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

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## **SPEAKER**

**Monika Templeman, Esq.**  
Director, Employee Plans Examinations, IRS

## Employee Plans Examinations

# The State of US Retirement (Sept 2010)

- U.S. Retirement Assets **\$16.6 trillion**
  - Account for 36% of household financial assets
  - \$4.2 trillion in DC plans
    - \$2.9 in 401(k) plans
  - 49 million households owns IRAs
    - \$215 billion in Roth IRAs

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

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## Employee Plans Examinations

# Retirement Plans - Universal Statistics and Headlines

**\$4.6 trillion – gap  
between what Americans  
need for retirement &  
what they have saved**

**45% of people who  
took hardship withdrawals  
in 2009  
made them again in 2010**

**Pension Assets Fall  
\$217 Billion Short**

**Retirement Savings  
Stopped for 36% of  
Americans Older Than 44**

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

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## Employee Plans Examinations

# Employee Plans Compliance Unit (EPCU) Projects

- 401(k) Compliance Questionnaire Project
- International Projects
  - Domestic Trusts
  - Foreign Distributions
- Multi-ER Actuarial Certification
- Minimum Funding Deficiency Project
- 403(b) Universal Availability
- SIMPLE Plan Relief Follow-Up

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

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## Employee Plans Examinations

# Compliance Check vs. Audit



- EPCU contact
- **NOT** an audit/investigation
- **Verify information** on return filing
- Books/Records **not inspected**
- **Voluntary correction (VCP)** available



- **Revenue Agent** visit
- Determine **tax liability**
- Agent **verifies compliance** in form & operation
- **Inspect** books & records
- **No VCP** available upon notice of audit receipt

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## Employee Plans Examinations

# 401(k) Compliance Questionnaire Project

- 1,200 letters sent in May 2010
  - Well over 90% response rate
  - Non-responders were referred for full scope audit

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## Employee Plans Examinations

# 401(k) Compliance Questionnaire Project – Next Steps

- Analyze data received
- Produce interim report
  - 401(k) population as a whole report
- Additional analysis
- Final report
- Reports will be posted on [www.irs.gov/ep](http://www.irs.gov/ep)

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## **401(k) Compliance Questionnaire Project – Next Steps**

- Evaluate responses
  - Identify education and outreach needs
  - Expand exam enforcement programs
  - Enhance voluntary compliance program

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

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## **Funding Deficiencies Project**

- Defined benefit & defined contribution plans
- Identified by Form 5500 and related schedules
- Determine
  - Correction made timely
  - Excise tax due
  - Form 5330 filed properly

## **Funding Deficiencies Project – Findings**

- Main reasons for deficiencies
  - Plan losses on investments
  - Reduced sponsor income
- Responses include...
  - Contribution issues (amounts & timeliness)
  - Bankruptcy
  - Plan sponsor issues (no sponsor & mergers)

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## **EPCU – International Projects**

- Domestic Trusts
  - Maintained by foreign entities
  - Majority contacted are in compliance
- Foreign Distributions
  - Individuals with foreign addresses
  - Early distribution tax compliance
  - Many individuals do not understand this tax

## **International Priority Work in Progress**

- Twenty large case examinations in process
- Hacienda Project
  - Information reporting
  - Voluntary compliance
  - Joint audits
- Virgin Islands audits
- EPCU compliance checks

## **International Priority – Next Steps**

- Review & change IRS forms
  - Capture relevant international information
- Encourage voluntary compliance
- Expand enforcement coverage
  - American Samoa
  - Guam
  - Northern Mariana Islands

## Employee Plans Examinations

### **Employee Plans FY 2011 Strategies**

- Identify and address **International** issues impacting Employee Plans
- Analyze and address **401(k) plan compliance** issues
- Focus on **abusive transactions & emerging issues**

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

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## Employee Plans Examinations

### **Employee Plans FY 2011 Strategies**

- Continue to raise awareness and dialog with the **DL Governmental plans** community
- Open new **403(b)** programs
- Focus on **Staggered DL Program**
- Enhance outreach to **small businesses**

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

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## **Common Errors in All Plans**

- Plan Form Failures (Non-Amenders)
- “Compensation” - Plan vs. Operation
- Excluding Eligible Employees / Including Ineligible Employees
- Plan Loans

## **Common Errors in All Plans**

- IRC 415 Limits
- Timeliness of Deposits
- Distributions
  - Loans
  - Hardships

# Employee Plans Examinations

## Fix-It Guides

Now with video!

# 401(k) SARSEP SEP SIMPLE

-----Trends-----	-----Tips-----			
Potential Mistake	How to Find the Mistake	How to Fix the Mistake		How to Avoid the Mistake
		Corrective Action	Correction Program(s) Available	
1) Has your plan document been updated within the past few years to reflect recent law changes? <a href="#">(More)</a>	Review annual cumulative list published close to year-end to see if plan made all required law changes (e.g., Notice 2007-94). <a href="#">(More)</a>	EPCRS Adopt amendments for missed law changes  Appendix D, Part II <a href="#">(More)</a>	VCP Audit CAP <a href="#">(More)</a>	Plan sponsors need to resort to a calendar (tickler) of when amendments must be completed. Review your plan document annually. Maintain regular contact with the company that sold you the plan. <a href="#">(More)</a>

# Employee Plans Examinations

IRS RETIREMENT PLANS NAVIGATOR

Internal Revenue Service

An easy retirement plan guide for small employers

- HOME
- ABOUT THE NAVIGATOR
- CHOOSE A PLAN
- MAINTAIN A PLAN
- CORRECT A PLAN
- PLAN COMPARISON TABLE
- HELPFUL LINKS
- GLOSSARY



Help your employees plan ahead.

There are [PDF files](#) for you and your employees in setting up a retirement plan. Get information on common retirement plan options to help you choose a plan right for your business. If you already have a retirement plan, get information on maintaining the plan. And, interesting company plans are

**CHOOSE A PLAN**

Search our database for the right plan for your business.

**MAINTAIN A PLAN**

Get the information you need to ensure your company's retirement plan stays tax-law compliant.

**CORRECT A PLAN**

If you've found a mistake in your plan, we can help you correct it.

- Dedicated site for Small Businesses:
- Choose,
  - Maintain, &
  - Correct

# Employee Plans Examinations

**RetirementPlans.irs.gov** Internal Revenue Service  
An easy retirement plan guide for small employers

Plan comparison table

Compare Selected

	Type of Plan									
	Private Defined IRA	SEP	SIMPLE IRA	Safe Harbor (SIC)	401(k)	408(a)	Defined Pensions	409(a)	457(b)	
<b>Setting Up and Operating a Plan</b>										
May use IRS Model Form as plan document	No	Yes	Yes	No	No	No	No	No	No	No
Annual return required	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Annual nondiscrimination testing	No	No	No	Yes	Yes	Yes	Yes	Yes <sup>1</sup>	No	No
<b>Plan Assets</b>										
Invested in IRAs	Yes	Yes	Yes	Other <sup>2</sup>	Other <sup>2</sup>	Other <sup>2</sup>	Other <sup>2</sup>	Other <sup>2</sup>	Other <sup>2</sup>	Other <sup>2</sup>
<b>Maximum Contributions</b>										
Employee	Up to \$5,000	0	Up to \$11,500	Up to \$16,500	Up to \$16,500	0	0	Up to \$16,500	Up to \$16,500	

Features the On-line Comparison Table

# Employee Plans Examinations

## How Can I Find Out More?

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

Internal Revenue Service  
United States Department of the Treasury

Retirement Plans Community

For information on Retirement Plans Community

- Education
- Publications
- Publications
- Publications
- Publications
- Publications
- Publications

How will I be notified?  
You'll be notified by email when new publications are available. You can also sign up for our newsletter.

Sign up for the Employee Plans Newsletter

newsletters



**“Qualified Plan Amendments: What to Do By Year End 2011”**

<b>PROVISION</b>	<b>RELATED GUIDANCE</b>	<b>PLAN TYPE</b>	<b>EFFECTIVE DATE</b>
<b>Pension Protection Act of 2006</b>			
<b><i>Certain PPA Amendments below have 2011 deadlines that were extended by Notice 2010-77 (other PPA deadlines for non-governmental plans were due 12/31/09 and governmental plan PPA amendments required by 12/31/11).</i></b>			
Requirement that defined contribution plans provide employees with freedom to divest publicly traded employer securities (Mandatory)	-Code § 401(a)(35) -Treas. Reg. § 1.401(a)(35)-1 -PPA § 901(a) -Notice 2009-97 (extended amendment deadline)	Defined Contribution	-Effective for plan years beginning after December 31, 2006 -Final Regulations effective for plan years beginning after December 31, 2010
Funding-based restrictions on benefits and benefit accruals under single employer defined benefit plans (Mandatory)	-Code § 436 -Treas. Reg. § 1.436-1 -PPA § 113(a)(1) -Notice 2009-97 (extended amendment deadline) -Notice 2010-77 (extended amendment deadline)	Defined Benefit	Effective for plan years beginning after December 31, 2007
Special vesting and benefit accrual rules for cash balance and other hybrid plans (Mandatory)	-Code §§ 411(a)(13) & (b)(5) -Treas. Reg. § 1.411(a)(13)-1 -Treas. Reg. § 1.411(b)(5)-1 -PPA § 701(b) -Notice 2009-97 (extended amendment deadline) -Notice 2010-77 (extended amendment deadline, except for amendments required under Code §§ 411(a)(13)(A))	Cash balance/Hybrid	-Effective for plan years beginning after December 31, 2007 (and distributions made after August 17, 2006) -Final Regulations under Code § 411(a)(13) generally effective for plan years beginning after December 31, 2010 (December 31, 2011 for market rate of return requirement)

**Heroes Earnings Assistance and Relief Tax Act of 2008**

<i>Governmental plans must amend by end of 2012 plan year (Non-governmental plan amendments were due by 12/31/10).</i>			
Death benefits payable upon participant's death while performing qualified military service (Mandatory)	-Code § 401(a)(37) -HEART Act § 104(a) -Notice 2010-15	Defined Contribution Defined Benefit	Effective for deaths occurring on or after January 1, 2007
Treatment of differential wage payments  - as plan compensation for 415 purposes (Mandatory) - as plan compensation for contributions & benefits (Optional - Plan must specify treatment)	-Code § 414(u)(12) -Code § 3401(h) -HEART Act §§ 105(a) & (b) -Rev. Rul. 2009-11 -Notice 2010-15	Defined Contribution Defined Benefit	Effective for years beginning after December 31, 2008
Provision of benefit accruals for participant who dies or becomes disabled while performing qualified military service (Optional)	-Code § 414(u)(9) -HEART Act § 104(b) -Notice 2010-15	Defined Contribution Defined Benefit	Effective for death/disability occurring on or after January 1, 2007
6-month suspension of contributions for employee that has deemed severance from employment due to military service for more than 30 days (Optional)	-Code § 414(u)(12)(B) -HEART Act § 105(b) -Notice 2010-15	Defined Contribution	Effective for years beginning after December 31, 2008

Qualified Reservist Distributions extended for individuals called to active duty after 12/31/07 (Optional)	-Code §401(k)(2)(B)(i)(V) -HEART Act § 107(a) Notice 2010-15	Defined Contribution	Effective for years beginning after December 31, 2008
<b>Emergency Economic Stabilization Act of 2008</b>			
<i>Governmental plans must amend by end of 2012 plan year (Non-governmental plan amendments were due by 12/31/10).</i>			
Special plan distribution, withdrawal and loan options for victims of 2008 mid-western storms (Optional)	Code § 1400Q	Defined Contribution Defined Benefit	Effective October 3, 2008
<b>Worker, Retiree, and Employer Recovery Act of 2009</b>			
<i>Governmental plans must amend by the end of 2012 plan year (Non-governmental plan amendments were due by 12/31/10 except for the RMD waiver).</i>			
Suspension of 2009 required minimum distributions	-Code § 401(a)(9)(H) -WREERA § 201(a) -Notice 2009-82 -Notice 2009-98 (extended amendment deadline)	Defined Contribution	Effective for 2009 plan year (for distributions made between January 1, 2009 and November 30, 2009)
Governmental Plans may still be amended for non-spouse beneficiary : Non-spouse beneficiary rollovers from qualified plans to individual retirement plan now required (Made mandatory under WREERA)	-Code § 402(c)(11) -PPA § 829(a)(1) -WREERA § 108(f) -Notice 2007-7	Defined Contribution Defined Benefit	Effective for plan years beginning after December 31, 2009

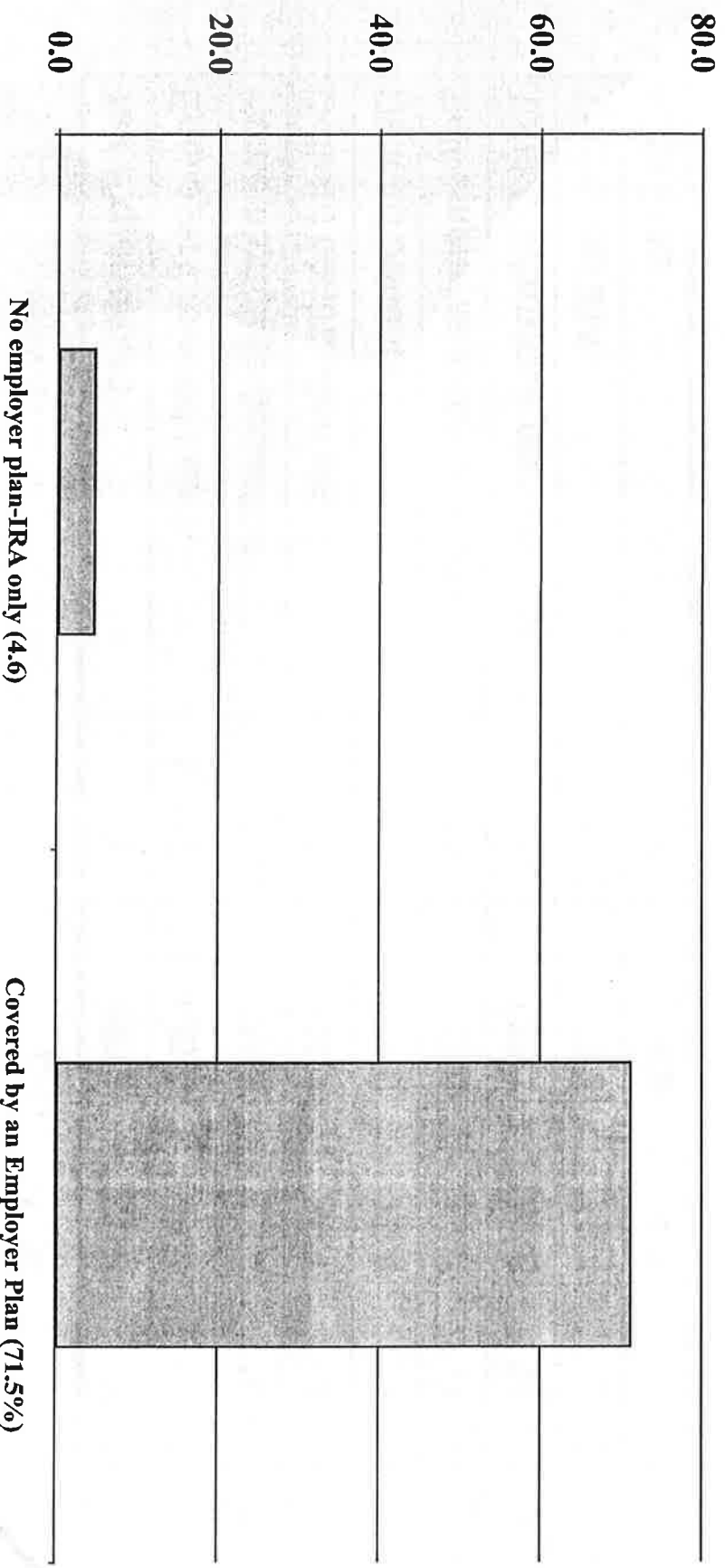
**Small Business Jobs Act of 2010**

*Governmental plans must amend by the end of 2012 plan year (Non-governmental plan amendments were due by 12/31/10).*

Roth in-plan conversion amendment may be necessary (Optional)	-Code § 402A -SBJA § 2111 -Notice 2010-84	Defined Contribution	Effective September 27, 2010 (January 1, 2011 for 457(b) plans)
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# Effectiveness of 401(k) Plans

## Participation Rates by Moderate Income (\$30,000-\$50,000) Workers Not Covered by a Workplace Retirement Plan Versus Covered by Plan



Source: Employee Benefits Research Institute (2010) estimate using 2008 Panel of SIPP (Covered by an Employer Plan) and EBRI estimate (Not Covered by an Employer Plan-IRA only).

Potential proposal - approx. amt suggested 20% comp/ \$20,000 - committee  
Dont expect anything until after next fed. election  
Contracted to RETIREMENT READINGERS  
believe misguided

# Tax Expenditures

## JCT January 2010 estimates

( <http://www.jct.gov/publications.html?func=startdown&id=3642> )

Billions

Tax Expenditure	2011	2012	2013	2014
Employer-provided health	\$ 117.3	\$ 128.0	\$ 147.4	161.0
Home mortgage deduction	93.8	94.1	98.5	106.8
Defined contribution plans	38.2	44.1	49.1	48.3
Defined benefit plans	51.9	62.0	75.8	74.6
Self-employed pension plans	15.7	17.0	17.7	18.2
Total EER-Provided retirement plans	105.8	123.1	142.6	141.1
Traditional IRAs	12.3	13.2	18.4	21.6
Roth IRAs	4.0	4.8	5.4	6.3

These are NOT  
net figures -  
These figures  
will be taxed  
@ some point  
later when  
individual retires