



Employee Plans

Internal Revenue Service

Overview: What's Happening
IRS Employee Plans?

Western Pension Conference

Summer Meeting -- Portland OR

Aug. 3, 2004



Mission Statement

- The mission of the Tax Exempt and Government Entities Division is to provide our customers top quality service by helping them understand and comply with applicable tax laws and to protect the public interest by applying the tax law with integrity and fairness to all.



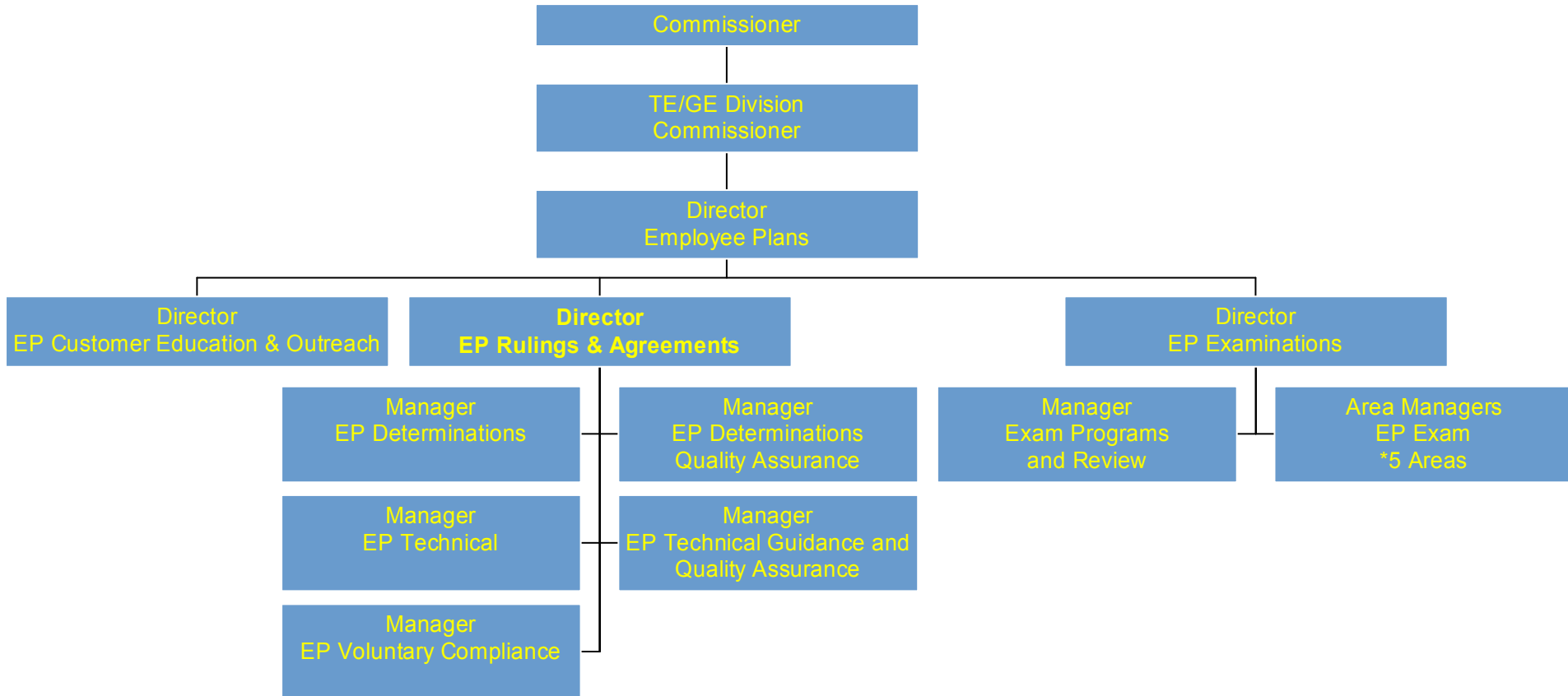
Three Key Categories

- Rulings and Agreements – or assurance
- Customer Education & Outreach –
or communication
- Examinations – or compliance





Employee Plans Organization, Within TE/GE





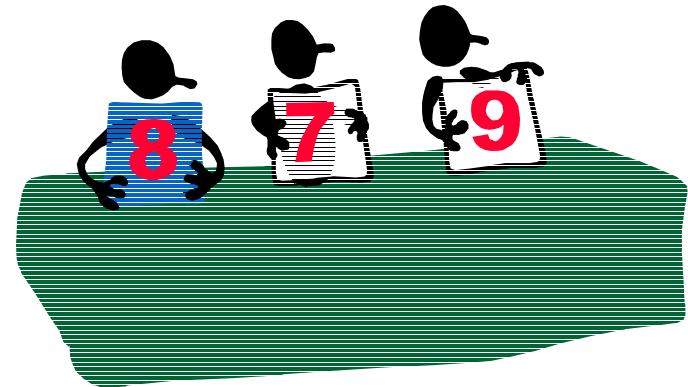
Employee Plans Workforce

- 800 over all
- 500 Examinations
- 300 Rulings & Agreements
- FY 2005 hiring 200 more employees
 - Training concern -- low number of DL applications
 - Support in training from private sector needed



How are we doing?

- Customers very satisfied
- Satisfaction level has grown
- Current satisfaction rates
 - 69% for determinations
 - 71% for examinations





Issues to Address

- Length of:
 - Examinations
 - Determinations
- Explanations of various issues
 - Taxpayer rights
 - Adjustments and amendments



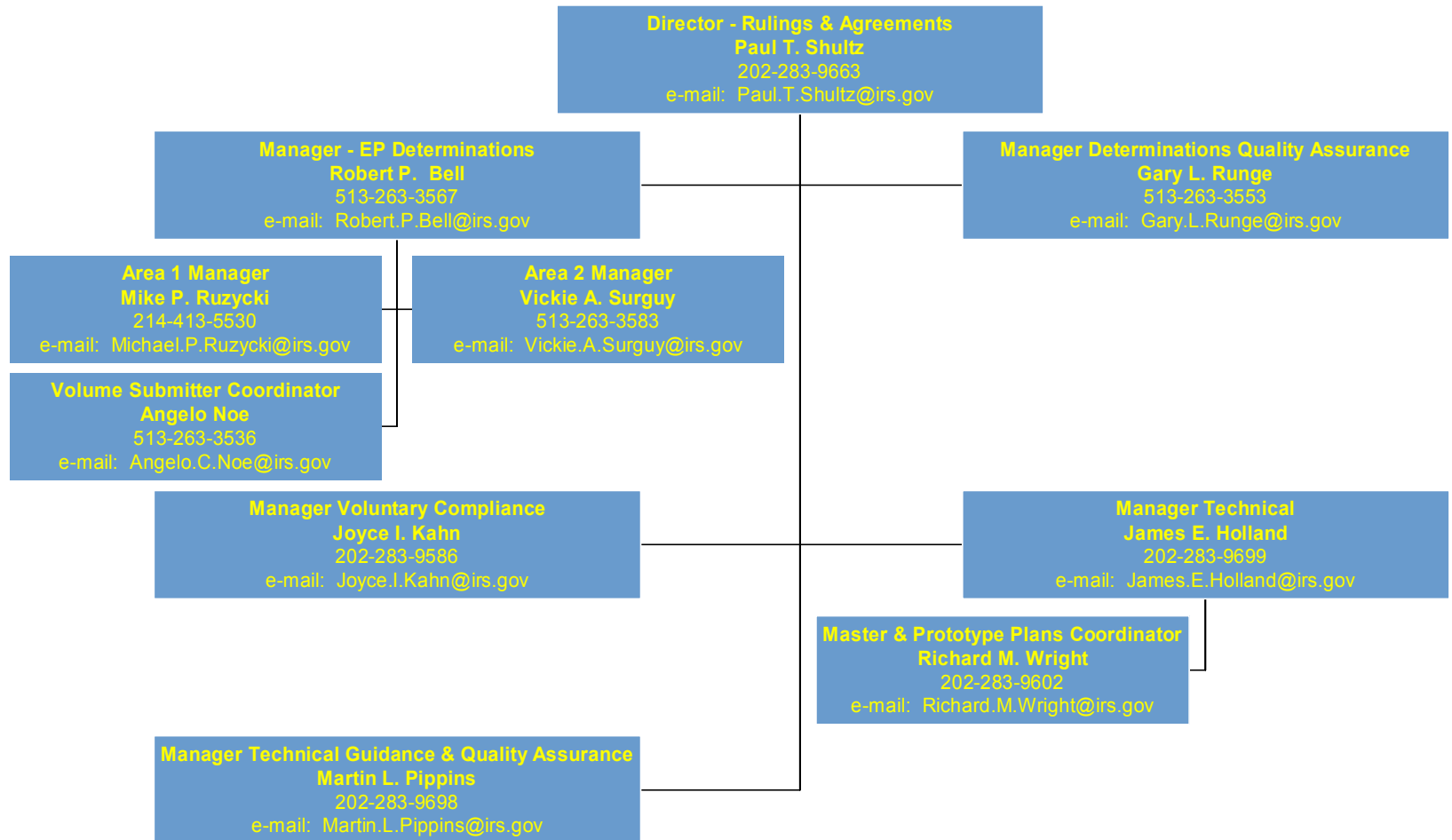


Rulings & Agreements

- Finish up GUST determination letter applications, by mid-Feb. 2005?
- Plan for future determination process, including EGTRRA submissions
- Fine tune Voluntary Compliance unit
- Address abusive tax shelters using plans
- Administer minimum funding rules for DBs



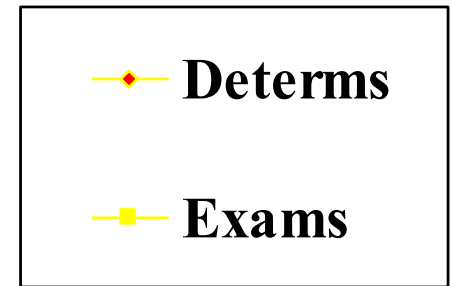
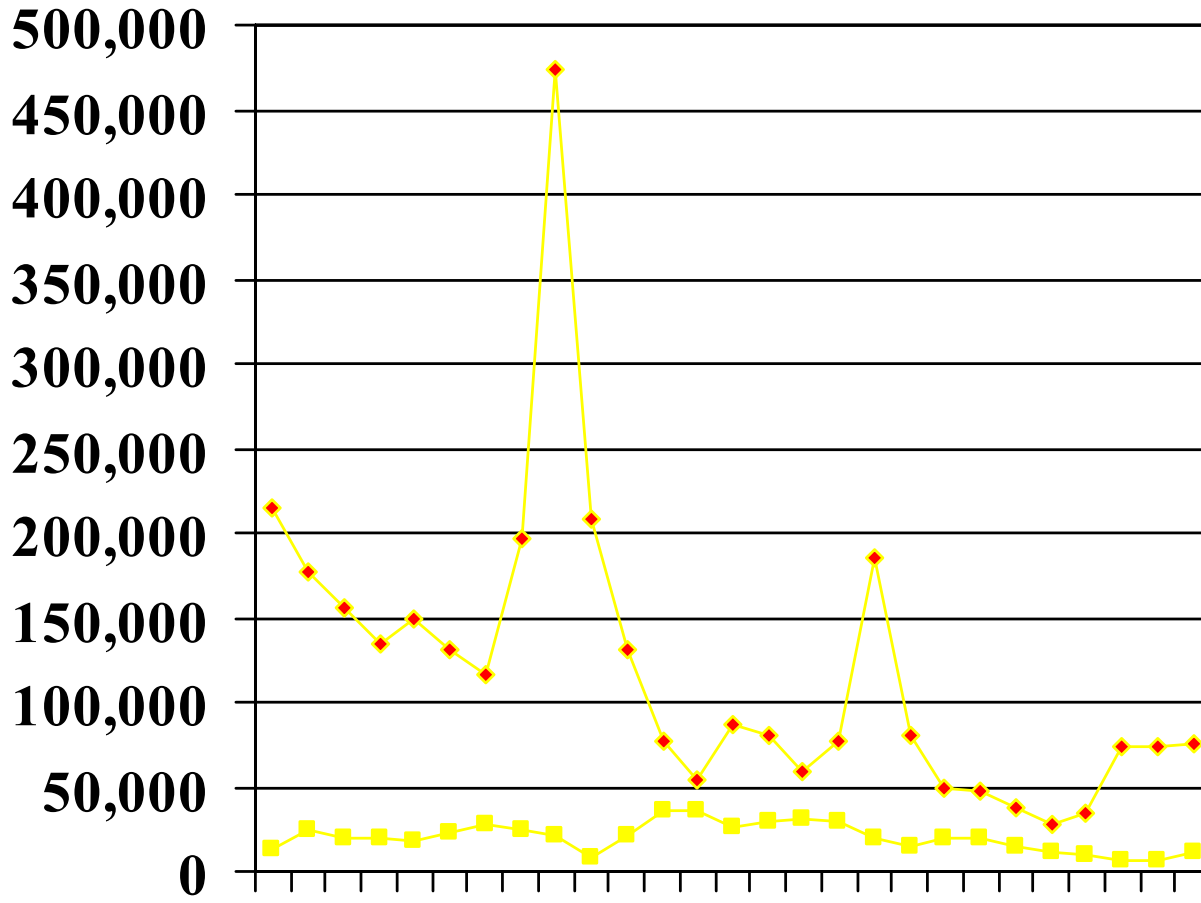
EP – Rulings and Agreements





Employee Plans

Determinations and Examinations “at a Glance”



- 1978 ERISA Final Regulations
- 1986 TDR
- 1994 TRA '86
- 2002-04 GUST

1978 1981 1984 1987 1990 1993 1996 1999 2002



Receipts for FY 2002

Forms 5300/5303	40,000
Forms 5307/6406	25,000
Form 5310	8,000
Total:	73,000



Receipts for FY2003

Forms 5300/5303	7,200
Forms 5307/6406	59,800
Form 5310	7,000
Total:	74,000



Employee Plans

Projected Receipts for FY2004

Forms 5300/5303	8,000
Forms 5307/6406	59,500
Form 5310	7,500
Total for fiscal year:	75,000



GUST RAP Receipt Summary (FY2002-04)

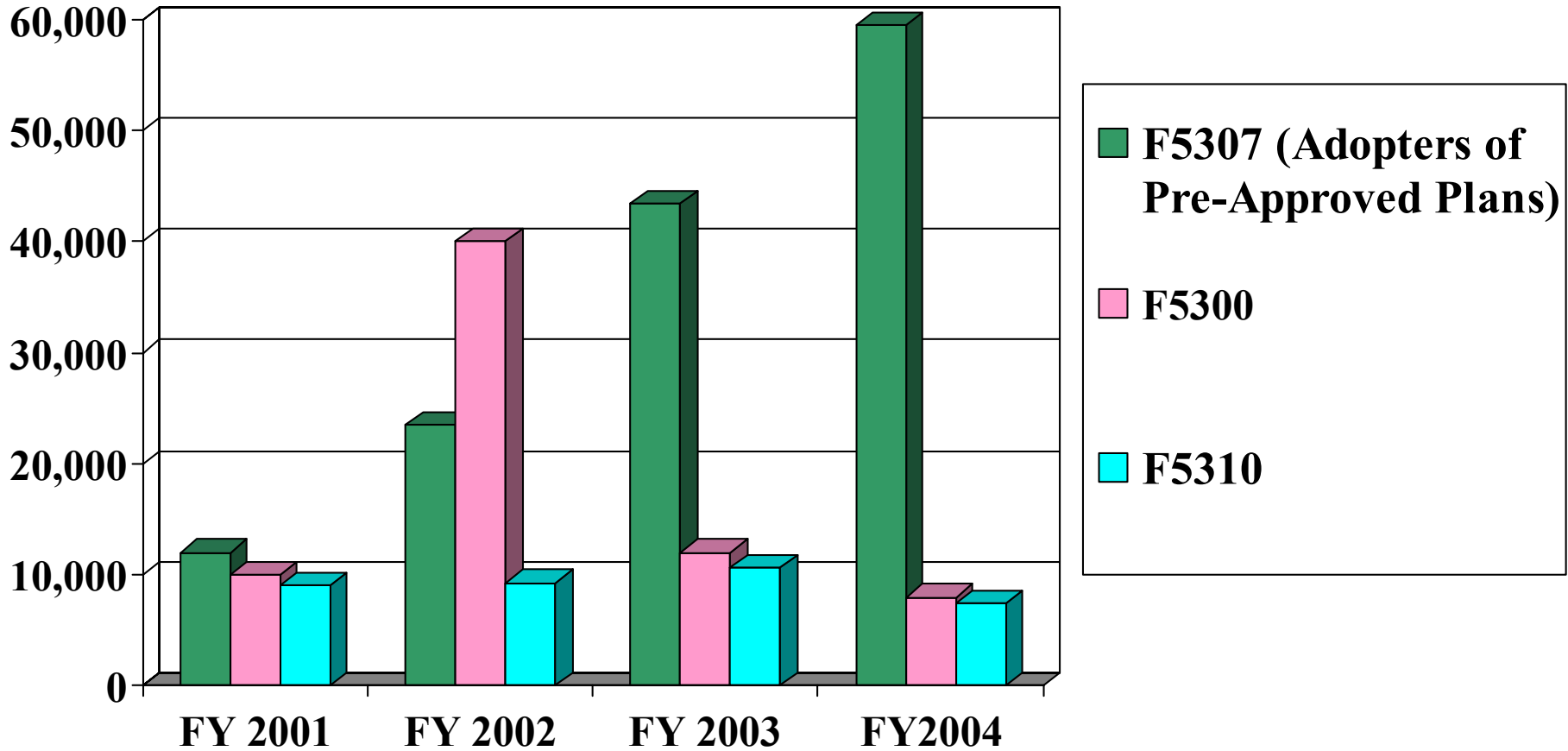
	Originally Expected	Projected Actual
Forms 5300/5303	100K	55K
Forms 5307/6406	170K	145K
Form 5310	30K	25K
Total Applications	300K	225K

Note: Normal year = 30,000 total applications



Employee Plans

“GUST” Actual Receipts





Rulings & Agreements -- Determination Letter Program

- Why fewer applications?
 - IDPs:
 - Migration to pre-approved plans
 - Pre-approved plans:
 - Optional filing for word for word adopters



Rulings & Agreements -- Determination Letter Program

- What's coming up from here?
 - Combination of M&P and VS programs? -- Ann. 2004-33
 - Non-EGTRRA substantive amendments get EGTRRA RAP -- Rev. Rul. 2004-25
 - Pre-approved plan effective date changes hurt identical adopter status -- see Draft Rev. Proc. Attached to Ann. 2004-33
 - Model plan documents?



Rulings & Agreements -- Determination Letter Program

- What's coming up from here? (continued)
 - Operating manuals? SEP/SIMPLE; 403(b); 401(k)
 - Specialization of personnel? (Determs team)
 - Customer service improvements? (Another team)
 - QABs on Website
 - Powers of Attorney (Form 2848) Issue?



IRS Pre-Approved Plans (Listed at www.irs.gov/ep)

Master & Prototype Specimens

- 200 sponsors
- 1,000 plans total
- Reviewed in Washington D. C.
- Number of adopting employers:
More than one half million
(primarily standardized plans)

Volume Submitter Plans

- 350 sponsors submitted plans
- 1,100 plans total
- Reviewed in Cincinnati and Areas
- Projected adopting employers 140,000



Plan Statistics 2003-04

- DB Plans -- 26,000 plans, 20 million participants (16.8% of private WF), 1.58 trillion assets
- DC Plans -- 840,000 plans, 64.3 million participants (58.2% of private WF), 2.68 trillion assets
- Government Plans -- 2,200 systems, 14 million participants (75.1% of gov. WF), 1.97 trillion assets
- IRAs -- 2.33 trillion assets, 3.5 million returns/deductions (2.7%)
- Social Security -- 42 million beneficiaries



Staffing for FY 2004

- 155 Agents Total -- All part of Determinations
 - 60 Agents in Cincinnati
 - Some doing technical screening
 - 95 Agents working determinations in their respective geographic locations
 - Some doing technical screening



Rulings & Agreements -- Determination Letter Program

- Why not file and move cases electronically?
 - Major systems redesign
 - Releases over next few years
 - Started pilot for 5307 in 2003
 - Capture data, maintain electronic file of plan and application that would be available for assignment, review and status updates
 - Eventually, self-service checking on status and filing of application



EGTRRA Remedial Amendment Period

- **What is the EGTRRA Remedial Amendment Period?**



EGTRRA Remedial Amendment Period

- Regulations under 401(b): Employer adopting a new plan generally has 2½ months following the close of the first plan year to submit a plan and have retroactive reliance to the beginning of the first plan year.
 - Identical-adopter prototypes and volume submitter plans -- no requirement to submit the documents. What reliance? -- Sponsor's letter (Announcement 2001-77).



EGTRRA Remedial Amendment Period -- Issues

- New plans -- What reliance if adopt new plan at this time?
- Example: Adopt plan in 2004 -- may employer submit by March 2005, include all the EGTRRA language, and have reliance?
- What about amendments of existing plans?
- Why was EGTRRA reliance not addressed in the Act?



Employee Plans

EGTRRA Remedial Amendment Period

- Notice 2001-42
 - Under Senate's parliamentary rules, EGTRRA's Title I of ERISA amendments dropped from EGTRRA because of objection under the Byrd rule ("Byrd droppings") -- EGTRRA was a budget act.
 - Notice 2001-42 -- EGTRRA RAP to end no earlier than end of 2005 plan year.
 - Employers may *not* currently submit for reliance on EGTRRA provisions.
 - No difference whether new plan or amendment of an existing plan.



EGTRRA Remedial Amendment Period

- Rev. Proc. 2004-25
 - Extends the remedial amendment period under Code §401(b) for non-EGTRRA substantive changes and new plans to the end of the EGTRRA Remedial Amendment Period.
 - Applies to all disqualifying provisions of new plans and plan amendments.



EGTRRA Remedial Amendment Period

- Rev. Proc. 2004-25 (cont'd)
 - New plans -- those first adopted after December 31, 2001.
 - Affected plan amendments -- those adopted after December 31, 2001.
 - Remedial amendment period -- applies to all disqualifying provisions, whether or not related to EGTRRA, and will end *no earlier* than the end of the plan's 2005 plan year.



EGTRRA Remedial Amendment Period

- Rev. Proc. 2004-25 (cont'd)
 - This date repeats Notice 2001-42's statement EGTRRA RAP would end no earlier than end of 2005 plan year.
 - The provisions of Notice 2001-42 were applicable only if the employer made “good faith” EGTRRA amendments.



EGTRRA Remedial Amendment Period

- Rev. Proc. 2004-25 (cont'd)
 - Rev. Proc. does *not* extend deadline for “good faith” amendments to comply with EGTRRA.
 - A “good faith” EGTRRA amendment -- timely adopted if adopted by later of (1) end of plan year that included effective date of EGTRRA change *or* (2) end of plan’s GUST RAP.



EGTRRA Remedial Amendment Period

- Rev. Proc. 2004-25 (cont'd)
 - Individually designed plans -- GUST RAP was generally later of February 28, 2002 or end of 2001 plan year.
 - Pre-approved plans -- end of GUST RAP was generally September 30, 2003 for adoption (and January 31, 2004 for filing).



EGTRRA Remedial Amendment Period

- Rev. Proc. 2004-25 (cont'd)
 - Example: New individually designed plan adopted in 2002 -- If the required “good faith” EGTRRA amendments were adopted by the due date for filing the employer’s income tax return for that year (or end of plan year, if later), the plan’s remedial amendment period will not end earlier than the end of the plan’s 2005 plan year.



EGTRRA Remedial Amendment Period

- Rev. Proc. 2004-25 (cont'd)
 - Exact date when the EGTRRA RAP will end will be stated in the future by the IRS.



Future of the Determination Letter Program

- White Paper in 2001 -- 9 Options:
 - Maintain status quo?
 - Eliminate DLs?
 - Eliminate DLs for individually designed plans?
 - Third-party certification?
 - Self-certification?
 - Annual registration?
 - DLs only on adoption and termination?
 - Staggered approach?
 - Amend after legislation and again after guidance?





Future of the Determination Letter Program

- Second White Paper May 2003
 - Status Quo
 - Staggered Expiration of RAPs
 - Narrowed alternatives to “status-quo” and a staggered approach so that work would come in on a somewhat uniform and consistent basis.
 - Extra feature: Annual amendment requirement





Future of the Determination Letter Program

- **Second White Paper -- Staggered RAP**
 - General Rule: 5-year remedial amendment period cycles
 - Plan's RAP cycle based on last digit of the plan sponsor's taxpayer identification number
 - Request DL once every 5 years
 - RAP cycles based on calendar year



Future of the Determination Letter Program

- Second White Paper -- Staggered RAP
 - Details of the 5-year cycle
 - Multiemployer plans and multiple employer plans
 - Controlled group or affiliated service group
 - Spin-offs
 - Mergers
 - Change in sponsorship
 - M&P and volume submitter plans
 - Annual update
 - Alternative 5 year cycle



Future of the Determination Letter Program

➤ Comments on Second White Paper

- IDP practitioners in general favor staggered approach -- Most providers of individually designed plans wanted to go to the staggered approach.
- M&P sponsors favor status quo -- Providers of pre-approved plans (prototypes and volume submitter) did not like either the “evergreen” approach or the staggered approach.



Future of the Determination Letter Program

- Development of bifurcated approach
 - ID plans on staggered approach
 - Conference calls with M&P and VS sponsors
 - M&P and Volume Submitter sponsors on *loose* 6-year program -- DCs come in in year 1 and DBs in year 3 of 6 year period
 - Annual amendment requirement? Withdrawn for now, but regs. will continue to require amendments for guidance changes, with models



Implementation of New Determination Letter Program



- Game Plan:
 - General notice announcing bifurcated approach
 - Follow on with draft revenue procedure describing revised DL program for comment -- Summer 2004
 - Announcement of plan to combine M&P and VS programs, attaching for comment separate draft revenue procedure describing consolidation of procedures
 - Extensive mathematical modeling of new system
 - Timeline for implementation



Implementation of New Determination Letter Program

- IRS released Announcements 2004-32 and 2004-33 in April.
- Announcement 2004-32 describes the bifurcated approach to be taken for determination letter program for the future.
- Announcement 2004-33 provides a draft revenue procedure describing combination of M&P and VS programs.



Implementation of New Determination Letter Program

- Announcement 2004-32 -- IRS lays out plans for the future of the determination letter program, including for EGTRRA submissions.
- Historical staffing and work flow issues for IRS caused by ebb and flow of submissions.
- Follows from two white papers outlining options and public comments received.



Implementation of New Determination Letter Program

➤ Individually Designed Plans

- Five- year staggered approach, with each employer's RAP ending every five years.
- RAP will depend on the last digit of Taxpayer Identification Number.



Implementation of New Determination Letter Program

Last Digit of EIN Number

Year To Be Restated

1 or 6

One

2 or 7

Two

3 or 8

Three

4 or 9

Four

5 or 0

Five



Implementation of New Determination Letter Program

- Individually Designed Plans
 - Example: if 2006 is first restatement year, the next restatement would be 2011, then 2016, etc.
 - Plans need not be amended in other years -- but for legislative and regulatory changes, interim amendments likely will be required to be timely adopted
 - IRS will issue sample or model amendments to assist employers.



Implementation of New Determination Letter Program

- Individually Designed Plans:
 - Employers will have until the end of RAP to perfect earlier “good faith” amendments.
 - IRS reserves for future whether to impose an annual amendment requirement, as envisioned in second white paper.



Implementation of New Determination Letter Program

▼ Pre-Approved Plans:

- The five-year staggered approach would not apply.
- Proposal for new six-year program not discussed in either white paper.
- All adopting employers will have same RAP, regardless of their document provider. Current 12-month rule will be eliminated.



Implementation of New Determination Letter Program Pre-Approved Plans:

Year	DC Plans	DB Plans
One/2005	All DC Plans Submitted Based on Current Law	No Action 2011- Employers Restate
Two/2006	IRS Review	No Action
Three/2007	IRS Review	All DB Plans Submitted Based on Current Law
Four/2008	Employers Restate DC Plans	IRS Review
Five/2009	Employers Restate DC Plans	IRS Review
Six/2010	No Action	Employers Restate DB Plans



Implementation of New Determination Letter Program

➤ Pre-Approved Plans:

- IRS recognizes that some flexibility might be required -- hence “loose” 6 year program.
- Individually designed plans “substantially similar” to pre-approved plans -- will receive the 6 year rap applicable to pre-approved plans.
- Need definition of “substantially similar.”



Implementation of New Determination Letter Program

➤ Pre-Approved Plans:

- Employer with individually designed plan may, before end of individual RAP, certify intent to use a pre-approved plan and thereby become subject to pre-approved plan's RAP.



Implementation of New Determination Letter Program

➤ **Pre-Approved Plans:**

**THE FUN STARTS AGAIN
IN 2005!**

For MHC Clients the Fun Starts in
2008!



Implementation of New Determination Letter Program

- Combine M&P and VS Programs:
 - Announcement 2004-33
 - Proposes changes to the M&P and Volume Submitter Programs.
 - Programs will ***NOT*** be merged into one program, as initially suggested.
 - Prototype program will continue -- and its prohibition on employers from modifying the pre-approved plan documents.
 - Proposal would narrow differences between programs.



Implementation of New Determination Letter Program

- Combine M&P and VS Programs:
 - Non-standardized prototypes allowed to include cross-tested allocation formulas.
 - Will your client still need the Volume Submitter Plan?
 - “Paired” adoption agreements eliminated as no longer necessary.
 - What did “paired” plans do?



Implementation of New Determination Letter Program

- Combine M&P and VS Programs:
 - Volume Submitter sponsors *may* amend plans on behalf of adopting employers for statutory or regulatory changes. Reverses rule requiring employers to make such amendments.
 - Comments may be submitted to the IRS by August 2, 2004.



Implementation of New Determination Letter Program

- Time line for implementation:
 - Plan for publication of draft rev. proc. promised in Ann. 2004-32 during summer 2004.
 - Comment period planned.
 - Final rev. proc. planned by March 2005.



Employee Plans

Implementation of New Determination Letter Program

Last digit of Plan Sponsor's TIN	Cycle	EGTRRA RAP ends	New RAP ends
1 or 6	A	1/31/07	1/31/12
2 or 7	B	1/31/08	1/31/13
3 or 8	C	1/31/09	1/31/14
4 or 9	D	1/31/10	1/31/15
5 or 0	E	1/31/11	1/31/16



Implementation of New Determination Letter Program

- Details of the 5-Year RAP Cycle System
 - RAP cycles end one month after the end of the calendar year, *i.e.*, 1/31.
 - Multiemployer and multiple employer plans follow Cycle A.



Implementation of New Determination Letter Program

- Details of the 5-Year RAP Cycle System (cont'd)
 - Plans of multiple members of controlled group -- cycle based on the EIN of the plan reported on Form 5500. Possible alternative election for controlled group plans.
 - Controlled group -- permitted to elect Cycle A or parent's cycle for all plans of the group
 - Merger or acquisition -- if shortens plan's RAP (e.g., new sponsor has earlier cycle) so that less than 12 months left in cycle after transaction, the current cycle for the plan is extended by 12 months.



Implementation of New Determination Letter Program

- Details of the 5-Year RAP Cycle System (cont'd)
 - RAP for new plans and discretionary amendments extended to end of 5-year RAP cycle in which RAP under 401(b) regs would otherwise end
 - Cumulative List of Changes in Plan Qualification Requirements published annually around Nov. 15.
 - RAP for legislative/guidance changes = last day of 1st RAP cycle ending after the 2nd calendar year following listing of the change on the Cumulative List



Implementation of New Determination Letter Program

- Details of the 5-Year RAP Cycle System (cont'd)
 - Ex: RAP for Plan is based on ER's EIN, ends in 1/31/10, 1/31/15, etc. Nov. 15, 2008, guidance is published requiring plans to be amended and effective for plan year beginning in 2009 and retroactively where applicable. The guidance will appear on 2008 Cumulative List. ER updates Plan for RAP that ends in 1/31/10. Plan will not reflect the guidance effective in 2009 until ER updates Plan for the RAP that ends in 1/31/15. ER would adopt by 1/31/15 plan provisions reflecting guidance effective in 2010 and later, retroactive to 1st day of the 2010 plan year.



Implementation of New Determination Letter Program

- Details of the 5-Year RAP Cycle System (cont'd)
 - Cumulative List determines what Service reviews in applications filed between 2/1 of next year and 1/31 of second year after Cumulative List published and also determines reliance
 - “Off-cycle” filings reviewed on basis of current Cumulative List
 - Note: Employer may need to amend again or apply for new letter within regular 5-year cycles (*i.e.*, more than one filing in 5-year period)
 - Earlier good faith amendments for legislative and guidance changes may be required *and* operational compliance



Implementation of New Determination Letter Program

- Details of the 5-Year RAP Cycle System (cont'd)
 - Determination letters to include “expiration date” -- *i.e.*, end of 5-year cycle
 - Terminating plans must be amended in connection with plan termination -- reviewed based on current law



Implementation of New Determination Letter Program

- Details of the 5-Year RAP Cycle System (cont'd)
 - Ex: Adoption of a new plan by ER
 - The last digit of ER A's TIN is 7 – Cycle B. ER A adopts a new plan, Plan X in 2006. The tax year of ER A and plan year of Plan X is the calendar year.
 - Question: The result?



Implementation of New Determination Letter Program

- Details of the 5-Year RAP Cycle System (cont'd)
 - Ex: Adoption of a new plan by ER (cont'd)
 - Under § 1.401(b)-1, the initial RAP would end on the later of the due date (including extensions) (2007) or last day of PY in which Plan X was put into effect (2006) – 2007. Initial RAP is extended to end of 5-yr RAP cycle which includes date of end of initial RAP under § 1.401(b)-1.
 - Answer: Initial RAP for Plan X ends January 31, 2008.



Implementation of New Determination Letter Program

- Details of the 5-Year RAP Cycle System (cont'd)
 - Ex: Adoption of discretionary plan amendment
 - Tax year and plan year are calendar years. The last digit of ER A's TIN is 7 – Cycle B. ER A adopts discretionary plan amendment that is both adopted and effective Jan. 1, 2013. The plan amendment results in disqualifying provision.
 - Question: The result?



Implementation of New Determination Letter Program

- Details of the 5-Year RAP Cycle System (cont'd)
 - Ex: Adoption of discretionary plan amendment (cont'd)
 - RAP under § 1.401(b)-1 would end on the later of the due date (including extensions) or last day of PY in which amendment was adopted or effective – 2013 or 2014. RAP is extended to end of 5-yr RAP cycle which includes date of end of RAP under § 1.401(b)-1.
 - Answer: ER A must correct disqualifying provision by January 31, 2018.



Implementation of New Determination Letter Program

- Details of the 5-Year RAP Cycle System (cont'd)
 - Ex: Disqualifying provision described in § 1.401(b)-3
 - The last digit of ER B's TIN is 4 – Cycle D. EGTRRA RAP for Plan Y ends Jan. 31, 2010. Dec. 2009, guidance published requiring plans to be amended and effective for PY beginning in 2010. Guidance appears on Nov. 2010 Cumulative List.
 - Question: The result?



Implementation of New Determination Letter Program

- Details of the 5-Year RAP Cycle System (cont'd)
 - Ex: Disqualifying provision described in § 1.401(b)-3 (cont'd)
 - ER B updates Plan Y for RAP that ends Jan. 31, 2010. Any remedial plan amendments that may be required because of guidance effective in 2010 would not have to be adopted until ER B updates Plan Y for RAP that ends Jan. 31, 2015. ER B adopts plan provisions reflecting guidance effective in 2010 retroactive to 1st day of 2010 PY.



Implementation of New Determination Letter Program

- Details of the 5-Year RAP Cycle System (cont'd)
 - Ex: Off-cycle filing
 - The last digit of ER C's TIN is 0 – Cycle E. EGTRRA RAP for Plan Z ends Jan. 31, 2011. ER C submits determination letter application on March 1, 2009. RAP cycle will expire on Jan. 31, 2011.
 - ER C must re-submit new determination letter application by end of Plan Z's RAP cycle – Jan. 31, 2011 to continue to have reliance on determination letter after that date.



Implementation of New Determination Letter Program

- Details of the 6-Year Program for Pre-approved Plans
 - Defined contribution plans
 - Initial EGTRRA opinion/advisory letter application due between February 1, 2005 – January 31, 2006
 - Lead plans due between February 1, 2005 – November 1, 2005
 - Next application due 2/1/11-1/31/12



Implementation of New Determination Letter Program

- Details of the 6-Year Program for Pre-approved Plans (cont'd)
 - Defined benefit plans
 - Initial EGTRRA opinion/advisory letter application due between Feb. 1, 2007 and Jan. 31, 2008
 - Next application due during 2/1/13-1/31/14



Employee Plans

Implementation of New Determination Letter Program

- Details of the 6-Year Program for Pre-approved Plans (cont'd)
 - IRS reviews applications based on Cumulative List published in year preceding Feb. 1 opening program
 - Announcement of adopting ER deadline after review of all plans substantially done
 - 2-year window for employers to apply
 - Adopting ER means:
 - Prior adopter (without regard to whether plan modified so as to become IDP) as of end of ER's 5-year cycle, or
 - Certified intent to adopt as of the end of ER's 5-year cycle
 - Adopting ER who adopts the plan within 2-year window is within its cycle



Implementation of New Determination Letter Program

Timeline for Implementation

Publish draft Staggered RAP cycle Rev. Proc.	8/2004
90 day comment period for draft Staggered RAP cycle Rev. Proc.	11/2004
Publish final Pre-approved Plan Rev. Proc.	12/2004
Open DC Pre-approved Plan program	2/2005
Lead plans	2/1/2002- 11/1/2006
Publish final Staggered RAP cycle Rev. Proc.	3/2005



Implementation of New Determination Letter Program

Timeline for Implementation (cont'd)

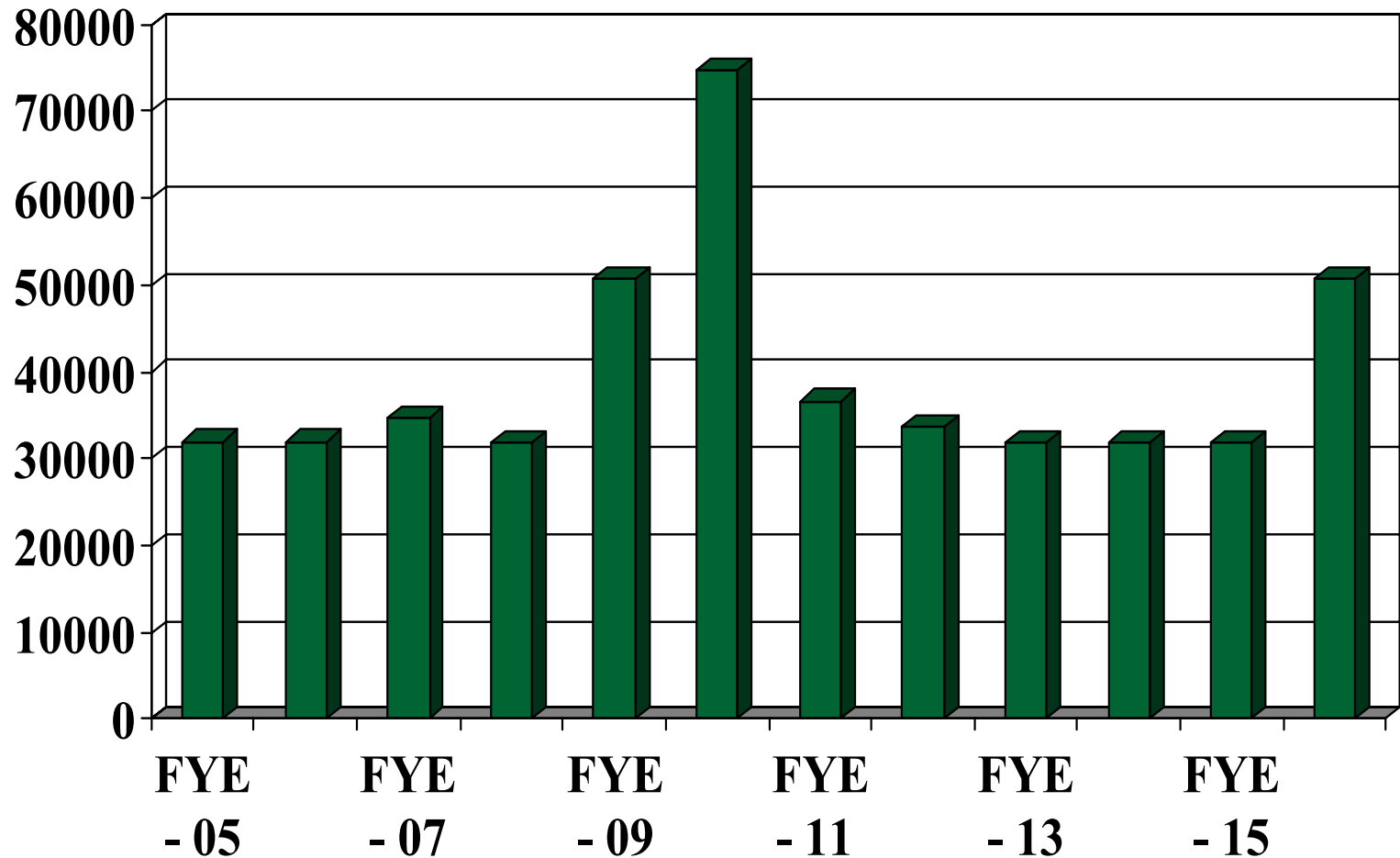
Cycle	Begins	Ends
Open IDP program for 1 st cycle	2/1/06	1/31/07
Open DB pre-approved plan prog.	2/1/07	1/31/08
Open IDP program for 2 nd cycle	2/1/07	1/31/08
Open IDP program for 3 rd cycle	2/1/08	1/31/09
Open IDP program for 4 th cycle	2/1/09	1/31/10
Open IDP program for 5 th cycle	2/1/10	1/31/11



Employee Plans

Implementation of New Determination Letter Program

Total Receipts – All Forms





Employee Plans

Contact Information

Share your views with us.

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E-mail is the preferred method of contact.

Technical Questions? Call our Customer Account Services on 1-877-829-5500; phone preferred.

Guidance & General Information is available at www.irs.gov/ep





Recent Guidance and Current Projects



➤ Recent Guidance

– Cash Balance Plans

- Age discrimination proposed regulations – December 2002
 - Traditional defined benefit plans
 - New cash balance plans
 - Converted cash balance plans
 - Pension equity plans
 - Benefits & contributions nondiscrimination portion withdrawn
 - Appropriations rider
- Interest rates proposed regulations? -- Revision of Notice 96-8 theory
- Accrual rule problem (133 1/3% rule)
- Converted plans DL applications -- Ann. 2003-1
- Treasury's Legislative proposal



Recent Guidance and Current Projects (continued)



➤ Recent Guidance

- Final 417(a)(3) Relative Value Regulations
 - Result of Congressional interest
 - Require comparisons of lump sums and annuities
 - Intended to assure greater level of informed participation
 - E.D. 7/1/04 for LS less than J&S, 1/1/05 for rest.
 - Relationship with proposed 411(d)(6) regs



Recent Guidance and Current Projects (continued)

➤ Recent Guidance

- Proposed 411(d)(6) reg. sec. 1.411(d)-3 for DB plans
 - Can eliminate redundant or non-core optional forms of benefit
 - Per EGTRRA, can reduce burdensome or complex early retirement benefits or retirement-type subsidies by de minimis amount
 - Defines early retirement benefit and retirement-type subsidy
 - Addresses case law
 - Shutdown benefits - follows Bellas, a change in IRS position
 - Post-retirement enhancements protected, contra Sheetmetal Workers
 - Can combine amendments, contra Riverside Cement
 - Permitted forfeitures - reserved for S.Ct. Heinz decision



Recent Guidance and Current Projects (continued)



➤ Recent Guidance

– Final and Proposed Minimum Distribution 401(a)(9) Regulations

- Final regulations for defined contribution plans
- Proposed regulations for defined benefit plans and annuities paid from DC plans and IRAs
- Concern about impact of DB portion of regulations
- Extension of time for compliance with regulations -- Notice 2003-2 and Rev. Proc. 2003-10
- DB plan amendment postponed to end of EGTRRA remedial amendment period
- Comply until then with 1987 or 2001 or 2002 regulations
- Deemed to satisfy until guidance is issued



Recent Guidance and Current Projects (continued)



➤ Recent Guidance

- EPCRS -- Rev. Proc. 2003-44
 - Supersedes Rev. Proc. 2002-47
 - Fixed fee schedule
 - SIMPLE guidance
 - Simplified Group Submission Procedure
 - Relief available for EGTRRA non-amenders
 - Clarifications for correction of spousal consent (QJSA) failures
 - Website helps and new CD-ROM
 - Next Rev. Proc. scheduled for this summer -- no major changes



Recent Guidance and Current Projects (continued)



➤ Recent Guidance

- 401(k) and (m) Proposed Regulations
 - Consolidation of existing guidance
 - Guidance on EGTRRA changes
 - Addresses bottom-up leveling
 - Eliminates mandatory disaggregation for ESOPs
 - Finalize by end of 2004



Recent Guidance and Current Projects (continued)

➤ Recent Guidance

- Catch-up contributions -- Final 414(v) Regs.
 - Universal availability requirement issue
 - Exception for collectively bargained plans
 - No exception for multi-employer plans
 - Prohibition on plan language re accelerated deductions





Recent Guidance and Current Projects (continued)

➤ Recent Guidance

- Relief from excise tax under 4980 (RR 2003-85) - if > 25% transferred:
 - Recipient plan is still qualified replacement plan
 - Amount transferred not includible by employer, not treated as a reversion, and no deduction allowed
 - Amount received by employer taxed at 20% rate, and is includible in income under sec. 61
- Significant shift in IRS position – conflicting PLRs from 1980's Policy:
 - helps participants
 - 4980 intended as recapture tax, not punitive
 - encourages less reversion



Recent Guidance and Current Projects (continued)



➤ Recent Guidance

- Final regs re retroactive annuity starting dates under 417(a)(7)
- Mortality tables under 412(d)(7) -- request for comments -- Notice 2003-62
- Deemed IRAs under 408(q) -- final regulations coming
 - Single trust v. separate trust issue



Recent Guidance and Current Projects (continued)

➤ Recent Guidance

- Plan expenses guidance -- Rev. Rul 2004-10
 - Allocation of expenses as allowed under DOL FAB 2003-3 doesn't violate significant detriment rule of 1.411(a)-11(c)(2)(i)
 - Cautions that, depending on the facts, allocation may violate nondiscrimination requirements



Recent Guidance and Current Projects (continued)

➤ Recent Guidance

– M&A transition rule on coverage testing --
Rev. Rul. 2004-11

- Explains transition relief for M&A's under 410(b)(6)(C)
- Significant change in plan coverage curtails 410(b)(6)(C) transition period as of date of change, but not retroactively
- Request for comments for more comprehensive guidance



Recent Guidance and Current Projects (continued)

➤ Recent Guidance

– Rollovers made easier

- Rev. Rul. 2004-12
- Permits distribution of separate rollover accounts without regard to distributable events of receiving plan
- 401(a)(11), 417, 401(a)(9), and 72(t) continue to apply, if applicable to receiving plan
- Applies to 401(a), 403(b) and 457 plans and IRAs
- Enhances portability



Recent Guidance and Current Projects (continued)

➤ Recent Guidance

- Top-heavy exception for 401(k) plans -- Rev. Rul. 2004-13
 - Exception for 401(k) plans under 416(g)(4)(H)
 - Top-heavy rules don't apply if plan satisfies 401(k)(12) or 401(m)(11) safe harbors and no other contributions are made
 - Rev Rul describes other situations where plan falls out of 416(g)(4)(H) exception



Recent Guidance and Current Projects (continued)

➤ Recent Guidance

- Funding waiver application rules -- Rev. Proc. 2004-15
 - Updates rules for applying for waiver of minimum funding under 412(d)
 - Must show temporary substantial business hardship
 - New requirement for info on executive comp arrangements



Recent Guidance and Current Projects (continued)

➤ Recent Guidance

– Electronic delivery of 1099 and 5498

- Notice 2004-10, issued in January
- Clarifies that plan administrators may deliver 1099's electronically if participants agree
- Form instructions for payors did not allow electronic delivery
- Effective for 2003 and subsequent years



Recent Guidance and Current Projects (continued)



➤ Recent guidance

- Transfers to retiree health accounts under 420 -
 - Final Reg.
 - Employer incentive - e.g. increased pension accruals - to drop retiree health coverage is counted against employer for cost maintenance requirement



Recent Guidance and Current Projects (continued)



➤ Recent guidance

- Extension of amortization periods under 412(e)
 - Update of Rev. Proc. 79-61
 - Multiemployer under-funding
 - Long-term health of plan paramount concern
 - Goal is to speed up processing of requests
 - Info required on employers, industry, funding projections
 - Equal sharing of pain – what other steps taken?



Recent Guidance and Current Projects (continued)



➤ Recent Guidance

- 457 guidance revenue ruling
 - Employer v. union establishes and maintains 457(b) governmental plan
 - Rev. Rul. 2004-57 & Ann. 2004-52
- 457 model language
- Update group trust Ruling (81-100) re 457 and 403(b) plan participation



Recent Guidance and Current Projects (continued)

➤ Abusive Tax Shelter Guidance (ATS)

- Check out website www.irs.gov/ep
- EPCRS not available.
- 412(i) Guidance
 - Fully insured DB plans not subject to funding requirements
 - Creative promoters market insurance with cash values that spring after distribution of policy following termination of plan
 - Prior guidance -- Rev. Rul. 94-75 and Notice 89-25, Q & A-10
 - Guidance to sort out good from bad practices
 - Listed as tax shelter requiring disclosures
 - Exam program





Recent Guidance and Current Projects (continued)



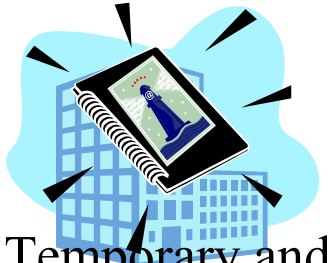
➤ Abusive Tax Shelter Guidance (ATS)

– ESOP S Corp. Effective Date Issue -- Rev. Rul. 2003-6

- EGTRRA tightened S corp. ESOP rules in 409(p)
- Effective March 14, 2001
- Exception for existing S corp. ESOPs, to 1/1/05
- Shell corporations and shell ESOPs being marketed
- Insubstantial benefits cause invalidity
- Listed tax shelter requiring disclosures



Recent Guidance and Current Projects (continued)



➤ Abusive Tax Shelter Guidance (ATS)

- ESOP S Corporation management company guidance -- Temporary and proposed 409(p) Regulations
 - Management establishes S corporation to provide management services
 - S corporation establishes ESOP and ESOP holds all S corporation shares; management sole beneficiaries
 - S corporation profits flow through to ESOP and escape tax
 - Management takes modest salaries from S corporation, balance in deferred compensation
 - Proposed regulations to shut down practice
 - Rationale: deferred compensation “synthetic equity”
 - Listed as tax shelter requiring disclosures



Recent Guidance and Current Projects (continued)

- Abusive Tax Shelter Guidance (ATS) –
 - Rev. Rul. 2004-4 – ESOP S Corp. qualified subsidiaries
 - ESOP-owned Q Subs
 - Listed transaction requiring tax shelter disclosures
 - Transition rules



Recent Guidance and Current Projects (continued)

➤ Abusive Tax Shelter Guidance (ATS)

– Roth IRAs

- Notice 2004-8 issued December 31, 2003
- Targets shielding of income earned in Roth IRA owner's business by sale to the IRA at less than fair market value
- May be prohibited transaction under 408(e)(2)(A) and 4975
- 4973 excise tax on excess contributions may be imposed
- 482 transfer rules may be applied if not arms length sale
- Listed transaction requiring tax shelter disclosures



Recent Guidance and Current Projects (continued)

➤ Abusive Tax Shelter Guidance (ATS)



– Notice on 419A(f)(5)

- Collectively-bargained exception to funded welfare plan rules of 419/419A
- Sham unions being marketed
- Intent to close down practice
- Listed as tax shelter requiring disclosures



Recent Guidance and Current Projects (continued)

➤ Abusive Tax Shelter Guidance (ATS)



– Final 419A(f)(6) Regulations

- 10-or-more employer exception to funded welfare plan rules of 419/419A
- Define “experience rated”
- Few changes from proposed regs
- Listed as tax shelter requiring disclosures



Recent Guidance and Current Projects (continued)

➤ Current Projects

– Proposed 403(b) Regulations

- No regulations since 1960's
- Consolidate guidance and capture learning
- Reflect legislative changes
- Update of Examination Guidelines
 - To reflect EGTRRA changes
 - By FY2004 (hoping . . .)





Recent Guidance and Current Projects (continued)



➤ Current Projects

– Phased retirement

- Demographic, other pressures
- Countervailing retirement policy concerns
- Statutory barriers
- Vast scope of regulatory/guidance changes necessary
- Target date 6/30/04



Recent Guidance and Current Projects (continued)



➤ Current Projects

- Proposed regs under section 415
 - Update to reflect many changes in law
 - Target date of 6/30/04



Recent Guidance and Current Projects (continued)



➤ Current Projects

– Military service accruals

- Differential salary payments to military reservist employees on active duty
- Are employees on active duty still employees?
- Intersection with USERRA
- Rev. Rul. 69-136 – not employees for employment tax
- Rev. Rul. 73-238 – accruals for former employees violate exclusive benefit rule



Recent Guidance and Current Projects (continued)



➤ Current Projects

- Possible violations of nondiscrimination rules – tax abuse:
 - One day employees
 - Different benefit structures for owners/nonowners
 - Meaningful benefits
- Plan to do guidance applying the anti-abuse standards of regulations under 401(a)(4) to prohibit at least first listed activity



Recent Guidance and Current Projects (continued)



➤ Current Projects

- Electronic technologies, generally
 - Notices from employers to participants
 - Communication by plan sponsors with the Service
 - Harmonize our rules with those of the rest of the Service and DOL
 - Just starting project



Rulings & Agreements -- Voluntary Compliance Prog.

- “Stood up” two years ago -- 4 managers, 3 national coordinators, 30 employees across U.S.
- Coordinates closely with exams -- 5 area audit coordinators
- Working inventory -- increasing receipts
- VC Council; Coordination Committee
- New Rev. Proc. 2003-44





R & A -- VC Program -- Basic Elements of EPCRS

- *Self*-correction of failures - generally does not require Service approval or the payment of any fee/sanction
- *Voluntary* correction of failures - requires Service approval and the payment of a fee
- Correction of failures identified *on audit* - requires Service approval and the payment of a negotiated sanction



R & A -- VC Program -- General

- Applies to:
 - Qualified Plans
 - 403 (b) Plans
 - SEPs, and
 - SIMPLE IRAs
- Plan Sponsors may correct any type of “Qualification” Failure
- Voluntary Correction of failures – requires Service approval and the payment of a fee



R & A -- VC Program -- General

- Prior to modification by RP 2003-44, VCP consisted of separate procedures, defined by type of failure and/or type of plan
- Under Rev. Proc. 2003-44, all of EPCRS' voluntary correction procedures were consolidated into a single Voluntary Correction Program (VCP); special procedures (e.g., VCO, VCS, VCT, and VCSEP) were eliminated
- In addition, EPCRS was expanded to cover SIMPLE IRAs



R & A -- VC Program -- VCP Compliance Fees

- Completely revised and reorganized VCP compliance fee structure
- Established a fixed fee for all VCP requests (including Anonymous Submissions) that is generally based on the number of participants/employees in the plan, as outlined on the following slides





R & A -- VC Program -- EGTRRA Non-Amenders

- EPCRS is now available to correct Qualified Plans that have failed to adopt timely good faith plan amendments for the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA)



R & A -- VC Program -- EGTRRA Non-Amenders (continued)

- Upon completion of submission, a compliance statement will be issued
 - NOTE: For ongoing plans, since our determination letter program has not opened for EGTRRA amendments, a determination letter will not be issued
- Plan Sponsor must adopt the good faith amendments within the time period specified in the compliance statement



R & A -- VC Program

Anonymous & Group Submissions

- Continue be ongoing parts of VCP
- Expanded to apply to SEPs and SIMPLE IRA Plans
- Anonymous Submissions - Guidance was added regarding when to submit:
 - Power of attorney statement,
 - Penalty of perjury statement, and
 - Related determination letter applications



R & A -- VC Program

Anonymous & Group Submissions

(continued)

- Group Submission process was simplified:
 - A power of attorney for each affected plan is no longer required
 - Eligible Organization must provide notice to affected Plan Sponsors regarding the Group Submission
 - Once the compliance statement is issued, the Eligible Organization must submit a certification that each affected Plan Sponsor received the notice



R & A -- VC Program

Anonymous & Group Submissions

(continued)

- Notice must be provided at least 90 days before the Eligible Organization provides the required certifications and identifying information regarding the affected plans to the Service
- Plan Sponsor may opt out of coverage by Group Submission



R & A -- VC Program -- Miscellaneous Helps

- Added Appendix D -- sample formats for VCP submissions
- Provided tools on internet:
 - Red-lined version of rev proc
 - Table of changes (side by side)
 - Topical index
 - PowerPoint presentation on changes
- CD-Rom available (free!)
- Joint brochure with DOL & PBGC



Rulings & Agreements -- Technical Groups in DC

- Rollover period extensions -- received over 150 requests, responded to 80 so far
 - Circumstances
 - Money trail
 - Advice received
- Funding waiver requests -- 77 so far in FY04, vs. 64 in FY03, 57 FY02, 25 FY01 & 12 average each prior year
- Amortiz. exts. under 412(e) requests likely work
- Short-fall method requests not favored





Rulings & Agreements -- Technical Groups in DC

- Re-engineering of Technical
- Focus group meeting on PLR program
- Internal focus group on technical advice work
- Best practices memo
- Emphasis on customer service





Examinations -- Customer Service

Customer Process Enhancements:

- ★ EP Specific Pub. 1
- ★ Friendlier Initial Contact Letter
- ★ Issue/Plan Specific IDRS
- ★ Limit Scope of Audit
- ★ Audit Guides



Examinations -- Customer Service

Customer Process Enhancements:

- ★ Alternative Compliance Treatments
- ★ Clearly Defined Customer Segments
- ★ Audit Schedule Agreement
- ★ Training of EP Agents
- ★ Communicate During Audit Delays



Examination Program Scope

Over the last 3 years:

- ★ Closed over **20,000** Examinations
- ★ Another 8,000 in Process
 - Large Case Support (IRC 404)
 - Referrals
 - Reported Funding Deficiencies
 - Project and Risk Assessment Cases



Examination Program Scope

Eight Criteria for a Quality EP Examination

- ★ Examination Planning
- ★ Examination Scope
- ★ Documents/Operational Compliance
- ★ Examination Techniques



Examination Program Scope

Eight Criteria for a Quality EP Examination

- ★ Workpapers/Reports
- ★ Application of Law/Tax Determination
- ★ Timeliness
- ★ Customer Relations/Professionalism



Exams -- Risk Assessment Methodology



Data Driven

- Eight years of closing data and audit reports

- 10 plan types

- 19 industry/business codes



A total of 190 potential market segments



Exams -- Risk Assessment Methodology



Emphasis on Plan Type

- 401(k)
- ESOP
- Defined Benefit
- Emerging Market Segments



Exams -- Risk Assessment Methodology



Data assessed as to

- Risk (history and past findings)
- Reliability (sufficient number of audits)



The Future – Customer/ Market Segmentation



Current Initiatives – **Multi-Employer**

- Minimum Distribution Requirements
- Crediting of Participant Accruals and Service
- Required Actuarial Adjustments for Payments Post-Normal Retirement Date
- Who Pays Sanction?



The Future – Customer/ Market Segmentation



Current Initiatives – **Multi-Employer**

- Adequacy of Books and Records
- Spousal Rights
- Vesting Provisions
- Participation Agreements
- Funding
- IRC 415 Limits



The Future – Customer/ Market Segmentation



Current Initiatives – **IRC 403(b)/457**

- Universal Availability
- Limitation Problems
- Examinations of 457 Features
(Substantial risk of Forfeiture)



The Future – Customer/ Market Segmentation



Current Initiatives – **IRC 403(b)/457**

- Excess Contributions Under IRC 402(g)
- Excess Catch-Up Contributions
- Defaulted Loans



The Future – Customer/ Market Segmentation



Current Initiatives – 401(k) Plans

- Controlled Group
- Potential for Industry Analysis
- Improperly Excluded/Included Employees
- Correctness of Contributions and Allocations



The Future – Customer/ Market Segmentation



Current Initiatives – 401(k) Plans

- Testing Errors
- Vesting Errors
- Failure to Follow Plan Terms
- Crediting Hours of Service



The Future – Customer/ Market Segmentation



Current Initiatives – **401(k) Plans**

- DOL – Late Deposit of Deferrals
- Failure to Follow Safe Harbor Language
- IRC 401(k) Accelerated Deductions



The Future – Customer/ Market Segmentation

★ **Employee Plans Team Audit (EPTA)**

- Five Groups
- Team Audit Approach
- Identification and Selection Criteria



The Future – Customer/ Market Segmentation



Current Initiatives – EPTA

- Improper IRC 420 Transfer
- Improper IRC 401(h) Account Language
- Minimum Funding
- Minimum Distributions



The Future – Customer/ Market Segmentation



Current Initiatives – EPTA

- Incorrect Vesting
- Fair Market Value of Securities
- Loans
- Excess Non-Deductible Contributions



The Future – Customer/ Market Segmentation



Potential Customer/Market Segments

- SEP/SARSEP Adopters
- Third Party Administrators
- Mergers and Acquisitions
- Non-Filers (Joint IRS-DOL Program)



Abusive Tax Avoidance Transactions (ATATs)

★ Definition

- A plan created to obtain tax benefits not allowable by law.





Abusive Tax Avoidance Transactions (ATATs)

- ★ Three common characteristics of Abusive Tax Promotions
 - promote large deductions
 - diversion of income through pass-thru entity to qualified plan that benefits few employees
 - promise tax-free distributions



Abusive Tax Avoidance Transactions (ATATs)

★ Potential Benefit Abusive Schemes

(NOTE: Abusive promotions may exist within the following structures):

- **IRC 412(i) – Springing Cash Value Life Insurance Arrangements**
- **ESOP S-Corps & Management Corps**
- **IRC 419(A)(f) – Funded Welfare Plans**



Abusive Tax Avoidance Transactions (ATATs)

★ Potential Benefit Abusive Schemes

(NOTE: Abusive promotions may exist within the following structures):

- **Roth IRA's – Shell Corporations**
- **IRC 401(k) – Accelerated Deduction Issues**



Abusive Tax Avoidance Transactions (ATATs)

★ Initial Strategy

- **Sample Audits on ESOPs and IRC 412(i)**
- **Issue Identification**



Abusive Tax Avoidance Transactions (ATATs)

- ★ Resolution Strategy Considerations
 - **Service Wide Considerations**
 - **Promoter and Investor Aspects**
 - **Reporters vs. Concealment**
 - **EPCRS not available**



Abusive Tax Avoidance Transactions (ATATs)

- ★ Resolution Strategy Considerations
 - **Sophistication of Investor**
 - **Attempts to Verify Promoter Claims**
 - **Involvement in Multiple Schemes**



Contact Information

(Can be anonymous)



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Contact Information

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Contact Information

(Can be anonymous)

**Internal Revenue Service
EP Tax Shelter Coordinator
31 Hopkins Plaza, Room 1542
Baltimore, MD 21201**



Employee Plans

Customer Education & Outreach

- Team of employees in five geographical areas across U.S.
- Support benefits conferences/speeches/outreach
- Employee Plans Newsletter
- Employee Plans Website
- Video: The Retirement Reports: Tax Sheltered Annuities and 457 Plans
- CD: Resource Guide for Tax-Sheltered Annuities and 457 Plans
- New: Retirement News for Employers



Where to Order

- www.irs.gov/ep
 - Go to Educational Outreach Products
- Contact the IRS Forms Distribution Center at 1-800-829-3676
 - Select **option 2**, *Placing an Order for Forms & Publications*
 - For video when prompted, request **Publication 3767**



TE/GE Advisory Council

- 18 Members
- Met first June 2001
- Six EP members:
 - Mary Beth Braitman Indianapolis IN
 - Douglas Kant Boston MA
 - Michael Coyne Cleveland OH
 - John Schroeder Santa Clara CA
 - Chuck Lax Detroit MI
 - Chuck Plenge Dallas TX
- Two Vacancies every year: Consider nominating someone next December!



Employee Plans

?? Questions ??

- Call: 1-877-829-5500
- Visit: EP Customer Account Services section of the Retirement Plans web page: www.irs.gov/ep for email address -- be sure to leave phone number!

