



EP Rulings and Agreements

# Internal Revenue Service

GUST & EGTRRA

Northeast Conferences

June 12 & 13, 2003

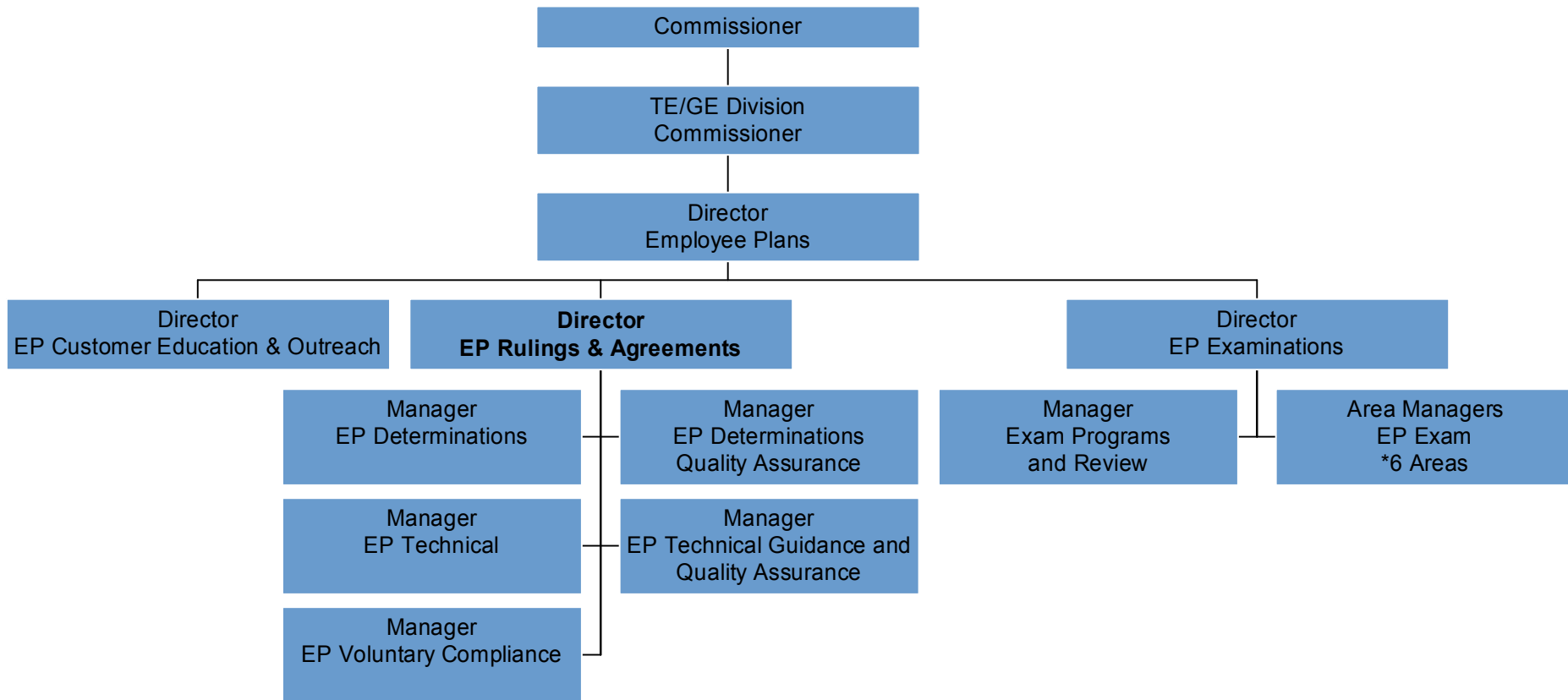


# Mission Statement

- The mission of the Tax Exempt and Government Entities Operating 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



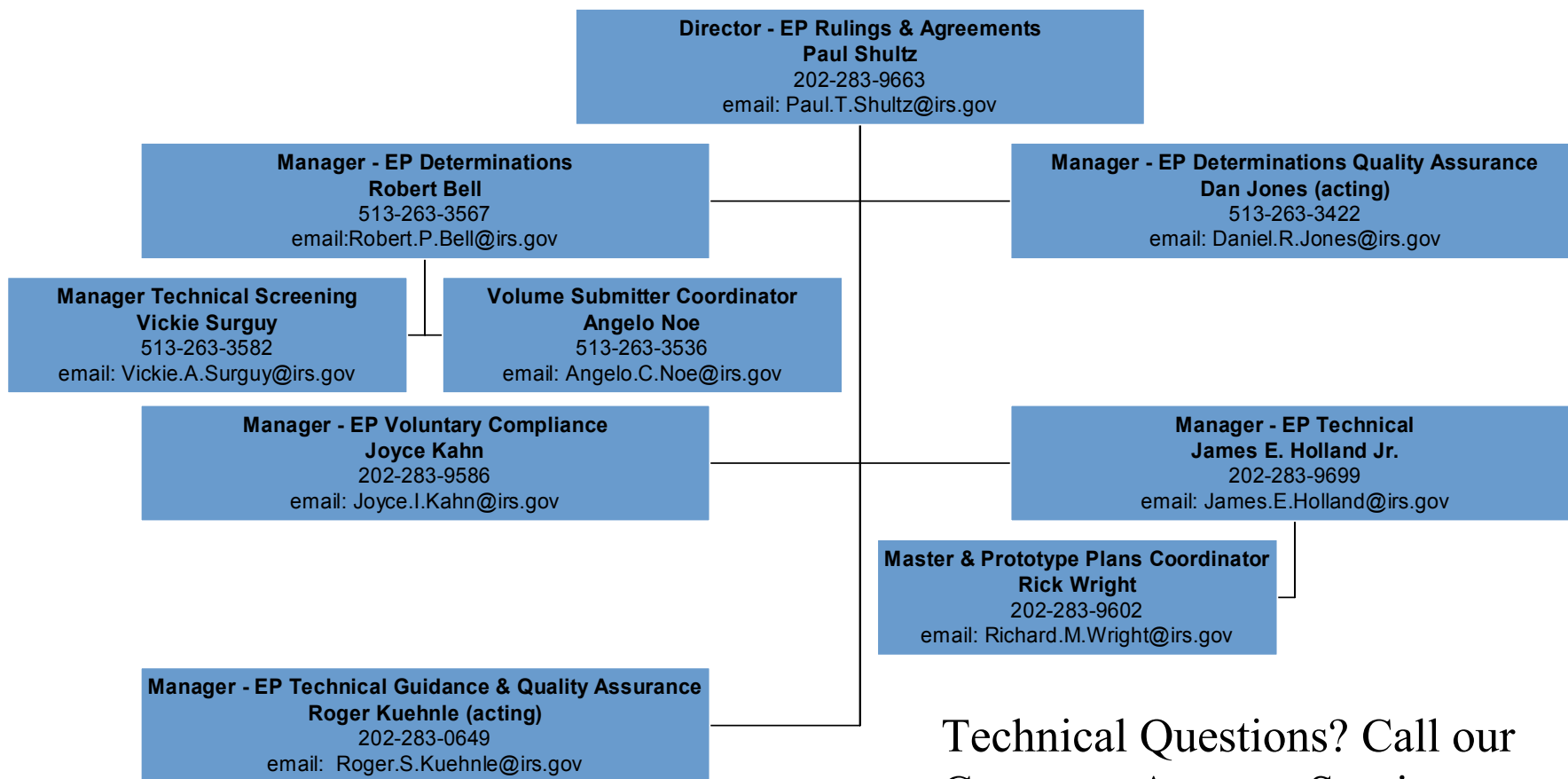
# Tax Exempt /Government Entities





EP Rulings and Agreements

# EP – Rulings and Agreements

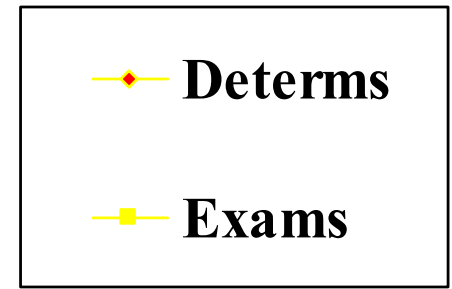
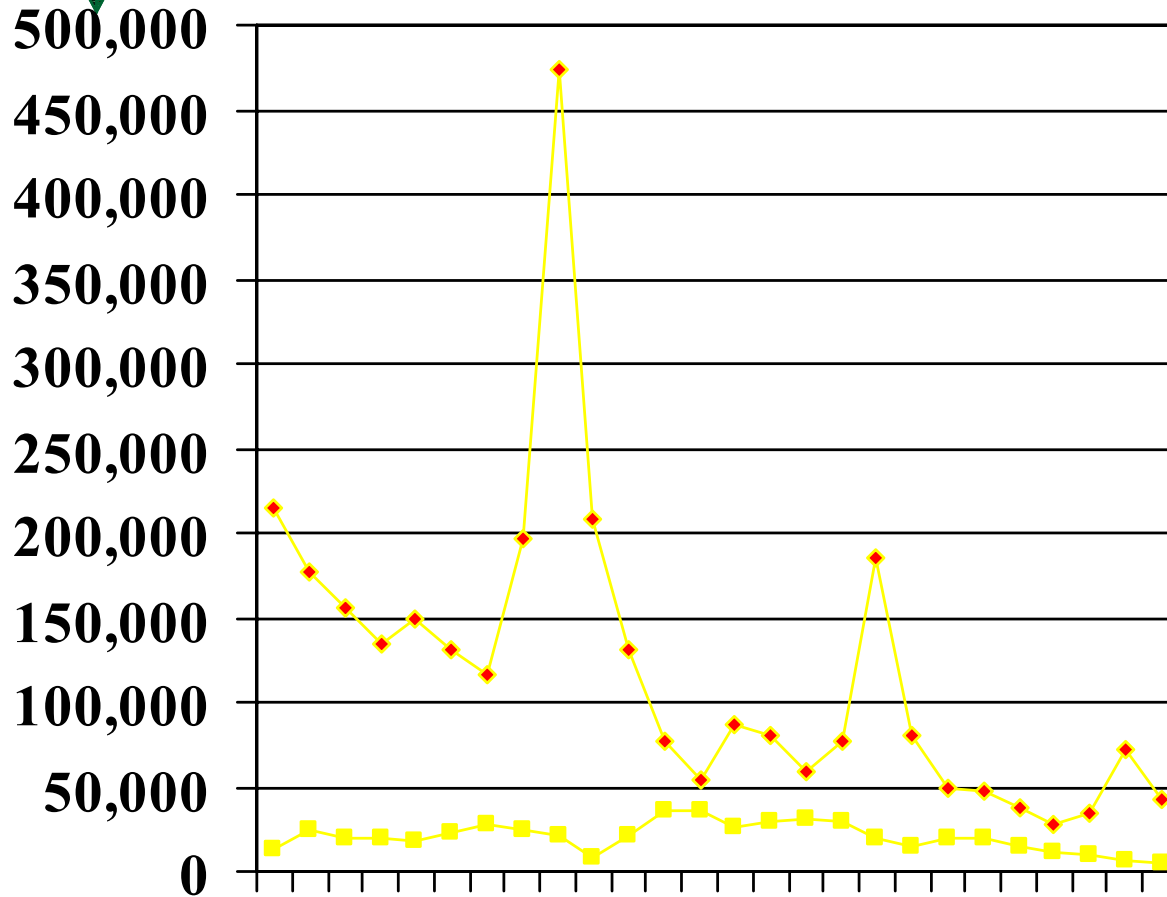


Technical Questions? Call our  
Customer Account Services on  
1-877-829-5500



EP Rulings and Agreements

# Determinations and Examinations “at a Glance”



- 1978 ERISA Final Regulations
- 1986 TDR
- 1994 TRA '86
- 2002-03 GUST

1978 1981 1984 1987 1990 1993 1996 1999 2002



# Receipts through September 30 (End FY2002)

Forms 5300/5303 40,000

Forms 5307/6406 25,000

Form 5310 8,000

Total as of September 30: 73,000





# Estimated Receipts through June 15 (FY2003)

Forms 5300/5303	8,000
Forms 5307/6406	38,000
Form 5310	4,000
Total as of June 15, 2003:	50,000





# “GUST” Projected Receipts

- GUST RAP -- Fourth since ERISA
  - Total Applications Expected over FYs 2002 & 2003
    - Normal year 30K
    - Expected over 2 years 275K
    - Now 150K
  - IDPs (on 5300)
    - Expected 100K
    - Now 50K
  - Pre-approved Plans
    - Expected 175K
    - Now 75K

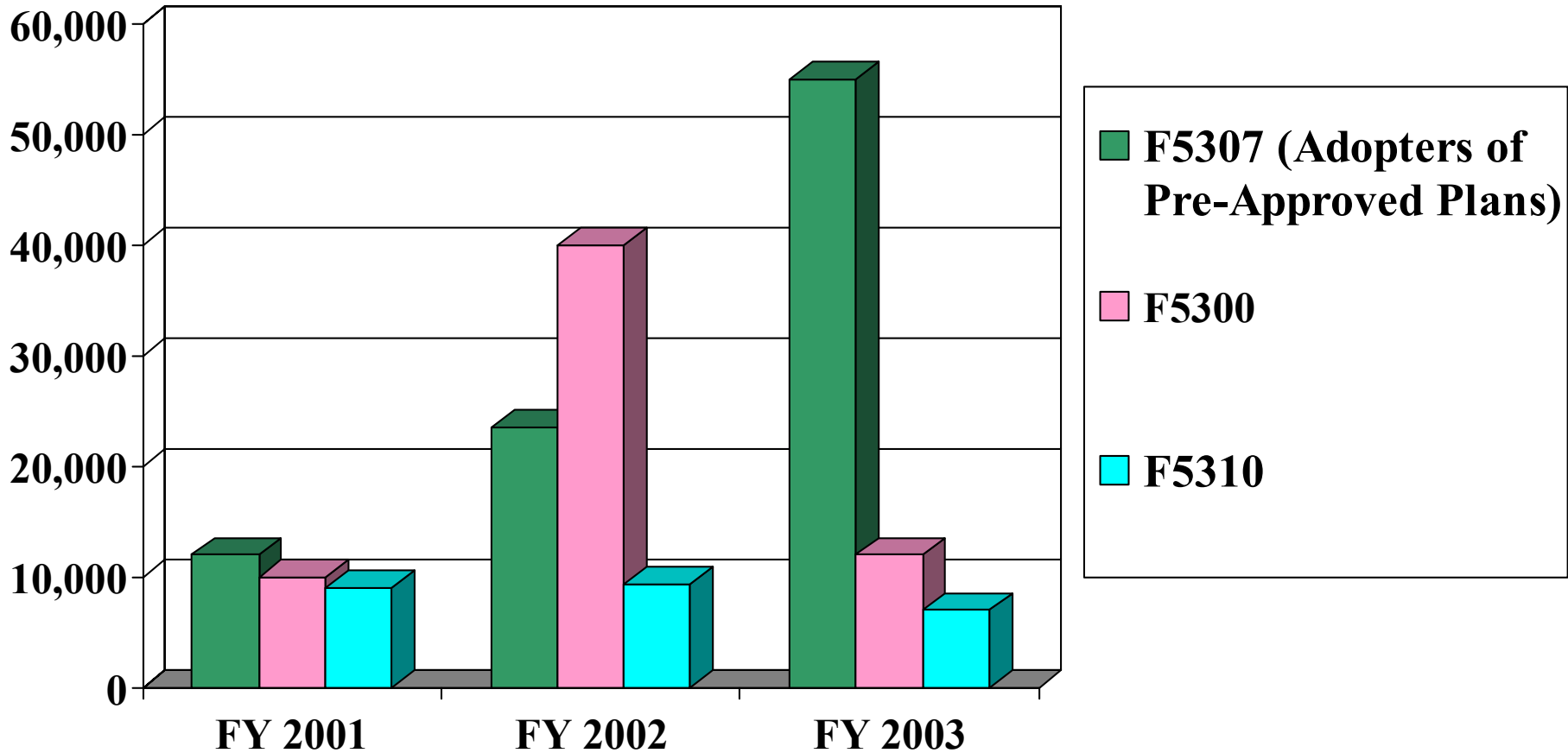






EP Rulings and Agreements

# “GUST” Projected Receipts



NOTE: FY 2003 receipts lowered by 7,000 will not be put on EDS until FY2004



# “GUST” Projected Receipts

- Why fewer applications?
  - IDPs:
    - Migration to pre-approved plans
    - Certificate usage (minimal?)
  - Pre-approved plans:
    - Optional filing for word for word adopters





# Issues Affecting Receipts

- Completion of Volume Submitter/Master & Prototypes
- Impact of Streamlining Guidance (Announcement 2001-77)
  - “Word-for-word” (plain vanilla) adopters
  - Making Nondiscrimination Test Optional
- Impact of RAP Extensions (Rev.Procs. 2001-55 and 2002-73)
  - Extension of Remedial Amendment Period for pre-approved plans to later of 9/30/03 or end of 12 months



# IRS Pre-Approved Plans

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

## **Master & Prototype**

- 214 sponsors submitted plans by 12/31/00 for GUST
- 955 plans total
- Reviewed in Washington D. C.
- Projected adopting employers seeking a determination letter – 35,000
- Number of adopting employers: More than one half million (primarily standardized plans)

## **Volume Submitter Plans**

- 385 sponsors submitted plans by 12/31/00 for GUST
- 1,100 plans total
- Reviewed in Cincinnati and the areas
- Projected adopting employers seeking a determination letter – 40,000



# Staffing for FY 2001-2003

## FY 2001

- 150 Agents Total
  - 50 Agents in Cincinnati
    - 35 doing technical screening
  - 100 Agents working determinations in their respective geographic locations

## FY 2002 & 2003

- 290 Agents Total
  - 60 Agents in Cincinnati
    - 35 doing technical screening
  - 230 Agents working determinations in their respective geographic locations
    - 75 doing technical screening



# Other Customer Service Steps

## ➤ Liaison with Customers

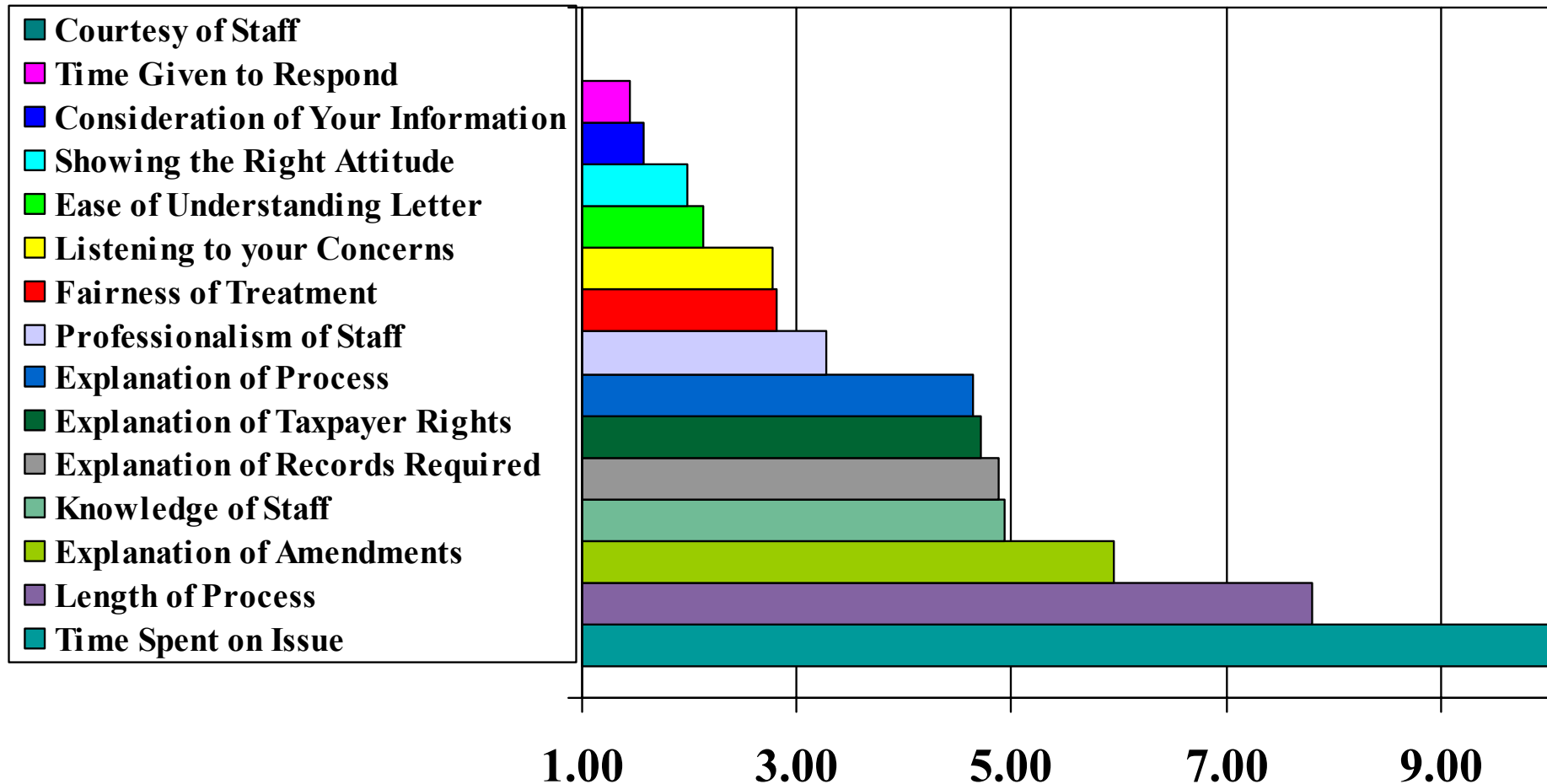
### Via Customer Education & Outreach Activities

- Provide newsletter
- Attend benefit conferences
- Meet with associations & practitioner groups
- Post updates to web site: [www.irs.gov/ep](http://www.irs.gov/ep)
- Participate in liaison group for determinations
- Provide updates to e-mail distribution list
- Review/make recommendations based on customer survey



# Customer Survey Feedback

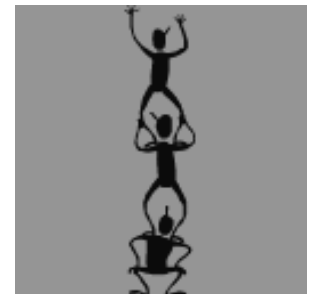
(Areas for Improvement - Based on the Likert Scale)





# Program Streamlining Steps Taken

- “Streamlined” the current program (Ann. 2001-77):
  - Filing of application (5307) optional for “word for word” adopters of pre-approved plans
  - Nondiscrimination proof (Schedule Q) optional
  - Requested highlight of changes in restated plans
  - Multiple employer plans – app. from one adopter OK

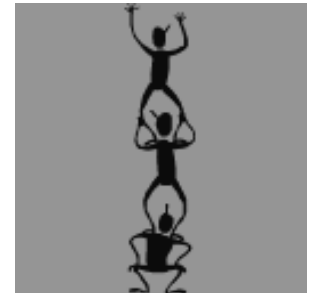






# Program Streamlining Steps Taken

- “Streamlined” the current program (Ann. 2001-77):
  - Revised Schedule Q and Forms 5300, 5307, 5310 & 6406. Internet forms can be used for submissions.
  - Eliminated Form 5303
  - Discontinued coverage/nondiscrimination caveats
  - Simplified calculation of 12 month rule (end of RAP) for adopters of Pre-Approved
    - Plans
      - 12/31/02, now extended to 9/30/03





# Creating an Electronic Application & Processing System

- Technology improvements to DL program:
  - Staged releases of new program starting with Forms 5307 (first release)
  - Later releases will include:
    - Imaging entire submission, including plan, application and supporting docs
    - Permitting electronic filing, fees and correspondence
    - Moving cases electronically
    - Retaining and retrieving up-to-date information
    - Providing customer self-service options: online access, complete forms, check status, obtain copies of letters, etc.



# Common Recurring Issues

## ➤ Plans are failing to:

- Provide the correct form adjustments when a benefit is subject to IRC 415(b)(2)(e) and failing to use the correct effective date
- Specify if they intend to utilize top-paid group or calendar year elections for any or all years. See IRC section 414(q) and Notice 97-45
- Remove the requirements of family aggregation for purposes of the definition of HCE (IRC 414(q)) and for purposes of limiting compensation (IRC 401(a)(17))



# Common Recurring Issues

- Plans are failing to provide the:
  - Required amendments
  - Reason(s) for excess annual additions
  - Correct definition of Required Aggregation Group as required by IRC 416(g)
  - Correct effective dates for changes made by GUST law
  - Ratio leveling and dollar leveling (both of them) for disposing of excess deferrals and/or excess aggregate contributions
  - Designate the method of correcting the Multiple Use Test
- Good Reference for Info: Q&As @ [www.irs.gov/ep](http://www.irs.gov/ep)



# Helpful Hints on How to Help Processing

- To expedite processing of determination applications:
  - Include all attachments, schedules, and demonstrations with application
  - Include copy of last determination letter or prior plan document
  - Highlight language changes
  - Group “like” cases together



# Remedial Amendment Periods

## ➤ What is the RAP?

- Plan with “disqualifying provision” treated if qualified if amended before end of RAP
  - To meet all law (new law, old law, guidance) requirements
  - Effective for all prior periods when plan was not amended



# Remedial Amendment Periods

- What is a “disqualifying provision”?
  - Provision or omission or amendment that causes plan not to satisfy law
  - Current provision that does not meet requirements of a new law if designated by the Commissioner
  - Provision or omission that is integral to a change in the law if designated by the Commissioner



# Remedial Amendment Periods

- When does the RAP begin?
  - New plan -- effective date
  - Amendment -- earlier of adoption or effective date
  - Required change for new law – effective date of change in IRC with respect to the plan
  - For provisions that are integral to qualification requirement of IRC that has been changed, first day plan was operated under that provision (unless Commissioner gives another date . . .)





# Remedial Amendment Periods

## ➤ When does RAP end?

- New Plan -- later of the end of initial plan year or tax return due date\*
- Amendment -- later of end of year adopted (or, if later, effective) or tax return due date
- Disqualifying provision (new law) -- later of end of year new law effective or tax return due date
- Provision designated integral to changed qualification requirement -- later of end of year plan first operated under that provision or tax return due date
- Multi-employer plan -- end of 10<sup>th</sup> month after end of initial plan year or year amendment adopted or effective, etc.

\*Tax Return Due Date = due date, including extensions, of employer tax return for tax year ending with or within plan year in which RAP would otherwise end



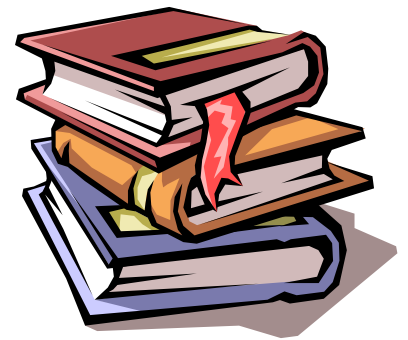
# Remedial Amendment Periods

- When is RAP extended?
  - Determination letter request within RAP -- to 91 days after DL
  - Commissioner has discretion to extend the RAP, e.g., extensions of GUST RAP
  - Requires plan is retroactively amended and employee benefit rights are restored retroactively



# GUST Remedial Amendment Period

- Laws Comprising “GUST” - they are listed in the course materials
  - USERRA 1994
  - GATT 1994
  - SBJPA 1996
  - TRA 1997
  - RRA 1998
  - CRA 2000





# GUST Remedial Amendment Period

- How does the GUST RAP work?
  - Depends on whether your client's plan document is individually designed or is an adopter of a pre-approved volume or prototype plan
  - Which type of document you have will determine which set of general rules apply
  - The general rules are developed through succeeding administrative extensions which are listed in the course materials



# GUST Remedial Amendment Period

- What if my client has an individually designed plan?
- The GUST RAP ends on the last day of your plan's 2001 plan year
  - Because of September 11th, all plans with years ending December 31 or January 31 have RAP extensions to 2/28/02. All other fiscal year ends are not extended
  - Taxpayers directly affected by the World Trade Center attack are given an additional extension until 6/30/02
- For CRA changes, you have until June 30, 2003, unless you submit for a determination letter - we will ask for this amendment as part of any currently pending submission



# GUST Remedial Amendment Period

- What if my client uses a prototype or volume approved plan?
- ***IF*** your client has either (a) adopted a volume or prototype plan, that is TRA '86 compliant, before the GUST RAP date applicable for individually designed plans; or (b) executes a written certification to adopt one of these plans
- **AND** this prototype or volume specimen was timely submitted to the IRS for approval, before December 31, 2000



# GUST Remedial Amendment Period

- THEN your client must amend for GUST by the later of
  - (a) September 30, 2003 or
  - (b) the day that is the last day of the 12th month following the date the last approval letter was issued to this sponsor for any of its timely submitted plans



# EGTRRA's Impact during the GUST RAP

## ➤ EGTRRA

- IDPs may include EGTRRA amendments in GUST plan documents
  - Pre-approved plans may include EGTRRA amendments, but must be in the form of a separate, clearly identified addendum to the plan
- IRS will not rule on EGTRRA changes now
- Notice 2001-42 explains the term “timely adoption of good faith amendments”
- Notice 2001-57 provides IRS sample “good faith” amendments
- Separate 401(b) period for EGTRRA (last day of 2005 PY)





# Integrating EGTRRA

## ➤ EGTRRA Guidance

- Plan amendments and determination letter program - Notice 2001-42
- Effective dates of increase in 401(a)(17) limit, top-heavy changes, and 401(k) hardship distribution suspension period - Notice 2001-56
- Sample “good faith” amendments - Notice 2001-57



# Integrating EGTRRA

- EGTRRA Guidance (continued)
  - Age 50 Catch-up Contributions - proposed regulations under IRC 414(v)
  - Dollar limitations including EGTRRA limits and cost-of-living allowances - Notice 2001-84
  - No user fee for new plans of small employers (EGTRRA 620) – Notice 2002-1 modifies the annual user fee Rev. Proc. (2002-8) & the annual DL Rev. Proc. (2002-6)



# Integrating EGTRRA

## ➤ EGTRRA Guidance (continued)

- Sample notice to employees regarding the nonrefundable “Saver’s Credit” -  
Announcement 2001-106
- DB 415/417 Issues, mortality tables – Rev.  
Rul. 2001-62



# Integrating EGTRRA

- EGTRRA Guidance (continued)
  - IRC 404(k) and 409(p) (changes to ESOP plans) – Notice 2002-2
  - IRC Notice 2002-4 includes language under which IRS will interpret “severance from employment” consistent with GCM 39824



# Future of the Determination Letter Program

Is there a better way to:

- Simplify the cumbersome process?
- Utilize resources available?
- Reduce the amount of time spent by all parties?





# “White Paper” #1

- Compendium of Brain-Storming Ideas (Ann. 2001-83)
  - Current process (complex)
  - Possible alternatives
  - Implementation 5-10 years
  - Comments were due by 7/01/02
  - Summary of comments to be published; revised White Paper
- Public dialogue (your input) is crucial





# “White Paper” #1 Options

- Maintain Status Quo
- Eliminate DLs (all plans) – provide model plans for employers who want reliance
- Eliminate DLs for Individually Designed Plans –continue letters for sponsors of pre-approved plans (M&Ps, VS)





# “White Paper” #1 Options

- Third-party Certification System
- Self-certification System
- Annual Registration (Schedule to 5500?)
- Issue DL Only at Initial Adoption and Termination
  - Alt: Annual Registration in between







# “White Paper” #1 Options

- Stagger Expiration of the 401(b) RAP
  - Alt: Stagger the RAP But Require Immediate Amendments for Law Changes
- Immediate Amendment for Law Changes & Again for Guidance - Required Changes
  - Alt: Immediate Amendment for Law Changes and Cyclical Amendments for Guidance-Required Changes

Note: Consider mixing and matching various options.





# Customer Concerns

- Reliance key to employers – value of 7805(b) relief
- Large complex plans want DLs
- Impact of DL on operating compliance





# Other Issues

- Cookie cutter plans
- Model provisions
- Model plans
- Small employer compliance
- Third-party administrator responsibilities





# New “White Paper” Options

- Status Quo?
  - Electronic Administration
  - Identical Adopters Automatic Reliance
- Staggered Expiration of RAPs
- Third-party Certification System
- New Feature: Annual Amendments for All





# Staggered RAP Option

- 5-Year RAP Cycle
- Based on Employer TIN
- Implement with EGTRRA RAP
- Disqualifying Provisions: Law, Other Changes



# Staggered RAP Option – Special Situations

- Multiemployer plans, etc.
- Spin-offs, mergers
- Change in plan sponsorship
- Pre-approved plans: M&P and Volume  
Submitter plans/Options



# Staggered RAP Option – Determination Letters

- New reliance rules for pre-approved plans unaffected
- Individually designed plans: “Scope” of DL includes all qualification changes within 5-year RAP cycle
- Pre-approved plans: Scope of DL linked to scope of opinion/advisory letter
- Reliance until end of next 5-year RAP cycle
  - Operational compliance with intervening changes could be required
- Letters will state “Expiration Date”



# New Option – Annual Plan Updates

- Service would publish annual list of changes in qualification rules
- Publish sample amendments, if appropriate
- “Annual” plan amendment requirement
- Special rules for pre-approved plans
- Linkage with staggered RAP option





# Partner With Us

- How can we improve the current program?
- Help us identify issues needing greatest guidance/publicity
- Prioritize guidance projects
- Provide comments on new White Paper by 9/2/03: Ann. 2003-32





# Contact Information

Share your views with us.

➤ Paul Shultz

202-283-9660

Paul.T.Shultz@irs.gov

➤ Robert Bell

513-263-3567

Robert.P.Bell@irs.gov

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

EP Guidance & General Information is available at [www.irs.gov/ep](http://www.irs.gov/ep)



E-mail is the preferred method of contact.