

employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

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Tax Exempt and Government
Entities Division

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Employee Plans Responds with Disaster Relief

On November 15, 2001, Employee Plans issued a [Special Edition](#) to alert the employee plans community to the release of Revenue Procedure 2001-55 which extends the GUST remedial amendment period under Section 401(b) of the Code for qualified retirement plans.

Employee Plans has responded to September 11, 2001, with the following disaster relief:

[Revenue Procedure 2001-55](#)

Time extended for GUST Remedial Amendment for ALL PLANS to February 28, 2002. Additional extensions are available for those directly affected by the terrorist attack. See the following Highlights of Revenue Procedure 2001-55. For Questions/Answers on the extension of the GUST Remedial Amendment Period, see www.irs.gov/ep.

[Revenue Procedure 2001-53](#)

Time for performing certain acts postponed. See Section 8 for Employee Benefit Issues.

[Announcement 2001-103](#)

Limited relief for defined benefit and money purchase pension plans with respect to certain penalties for failure to file complete and accurate Forms 5500 that were due on or before October 15, 2001.

[DOL News Release No. 01-36](#)

Extends deadline to file Form 5500 and Form 5500-EZ for certain plan sponsors affected by the terrorist attack. Further information may be found at www.dol.gov/dol/pwba.

[Notice 2001-68](#)

This notice supplements the tax relief granted in [Notice 2001-61](#) for taxpayers affected by the terrorist attack by clarifying and expanding the definition of **affected taxpayer**, listing additional acts for which a postponement is granted, and providing other relief. ■

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Highlights of Revenue Procedure 2001-55

Extension of GUST Remedial Amendment Period

On November 14, 2001, the IRS released [Revenue Procedure 2001-55](#) that extended the GUST remedial amendment period under Section 401(b) of the Code for qualified retirement plans.

Highlights of Revenue Procedure 2001-55

- General extension of the GUST remedial amendment period to February 28, 2002, for all plans with plan years ending before February 28, 2002 (thus includes all calendar plan years).
- Second extension of the GUST remedial amendment period to June 30, 2002 for plans directly affected by the September 11, 2001, terrorist attack.
- Additional hardship extension of the GUST remedial amendment period to December 31, 2002, for plans directly affected by the September 11, 2001, terrorist attack who can show that the plan will not be able to be amended for GUST without the plan sponsor incurring substantial hardship directly related to the terrorist attack.
- General extension of the TRA'86 remedial amendment period to February 28, 2002, for governmental plans and nonelecting church plans, if the period would otherwise end before then.
- Second extension of the TRA'86 remedial amendment period to June 30, 2002, for directly affected governmental plans and nonelecting church plans, if the period would otherwise end before then.
- The general extension to February 28, 2002 also applies to the time by which an employer must either adopt a pre-approved plan or certify its intent to adopt such a plan in order to be eligible for the extension of the GUST remedial amendment period under [Revenue Procedure 2000-20](#), as modified.
- The second extension to June 30, 2002, and additional hardship extension to December 31, 2002, does not apply to the time by which an employer must either adopt a pre-approved plan or certify its intent to adopt such a plan in order to be eligible for the extension of the GUST remedial amendment period under Revenue Procedure 2000-20, as modified. ■



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IRS Improves Employee Plans Determination Letter Process

By Paul T. Shultz, Director EP Rulings and Agreements, TE/GE, IRS, and
James P. Flannery, Project Leader, TE/GE, IRS

Mr. Shultz practiced in the employee benefits area for over 25 years, having spent most of that time with Towers Perrin, before coming to the Service in 2000. Mr. Flannery has been with the Service since 1973.

This article describes a number of actions the IRS has taken in the past year and continues to take to make the Employee Plans determination letter process work better for all concerned. The article discusses significant changes in the application procedures that will make the process simpler and more flexible, while accommodating this year's new law ([EGTRRA](#)). The authors also discuss some changes in the Service's internal procedures designed to make the process run smoother and they invite readers to participate in a dialogue on the future of the EP determination letter program.

Since this article was written, the remedial amendment period for the GUST amendments for individually designed plans has been extended an additional two months by [Revenue Procedure 2001-55](#), [2001-49 I.R.B. 552](#), to the end of February 2002. This extension applies to all individually designed plans that otherwise had a remedial amendment period expiring before February 28, 2002. This extension responds to requests from many plan sponsors and the professionals who serve them, that the events of September 11, 2001 and subsequent disruptions have interrupted progress toward amending plans by year end. Further, the remedial amendment is extended until June 30, 2002, for plans that were directly impacted by the events in New York. A further extension is available for these plans in cases of substantial hardship.

The "New IRS" is alive and well and an active, going concern. This has been amply demonstrated in recent months by the actions of the Employee Plans section (EP) of the Tax Exempt and Government Entities Division of the Service. EP has fashioned a number of new tools to address an expected 250,000 to 300,000 determination applications during the next two years. Applications will cover changes required by six separate acts of Congress beginning in 1994.¹ Qualified plans have had to modify their operations to reflect the changes in law as the changes have gone into effect, going as far back as 1994. However, actual plan amendments have not been required until now. First, the acts allowed plans to delay the adoption of plan amendments. Then, the IRS used its authority to extend the amendment deadline further while it got out the needed guidance on the legislation.

¹ The six acts are:

- the Uruguay Round Agreements Act (GATT), Pub. L. 103-465;
- the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Pub. L. 103-353;
- the Small Business Job Protection Act of 1996 (SBJPA), Pub. L. 104-188;
- the Taxpayer Relief Act of 1997 (TRA '97), Pub. L. 105-34;
- the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA '98), Pub. L. 105-206; and
- the Community Renewal Tax Relief Act of 2000 (CRA), Pub. L. 106-554.

The acronym "GUST" is used to refer to these acts collectively.

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The following people contributed to this edition of the *Employee Plans News*



Evelyn DeWald
Richard Ervl
Michael Fassino
Jim Flannery
John Heil
Joyce Kahn
Rick Kotzenmacher
Peter McConkey
Greg Nix
Mark O' Donnell
Rick Parker
Nancy Payne
Sharon Petshaft
Marty Pippins
Sharon Polo
Mike Rubin
W. Thomas Reeder
Paul Shultz
John Schmidt
Cheryl Smith
Thomas Terry
Ed Weisel
Rick Westley

Determination Letter Process *continued from page 3*

There have been three major “waves” of EP applications preceding this latest round of plan amendments - ERISA; TEFRA, DEFRA and REA; and TRA '86.² Faced with GUST and the fourth wave of applications in the past 25 years, the IRS resolved to do it faster, cheaper and better this time.

Pre-Approved Plans Approval Process

First, the Service required that all “pre-approved” plans — master & prototype (M&P) plans typically sponsored by large financial organizations and volume submitter (VS) plans typically sponsored by employee benefits practitioners — be restated for GUST and submitted to the Service by the end of last year, *i.e.*, 2000, so that the IRS could direct its resources to those plans first.³ Service personnel in Washington DC, who usually focus on private letter rulings and technical advice, have been dedicated to review the M&P applications. Meanwhile, agents in Cincinnati, the IRS' centralized determination letter processing center, and other IRS offices throughout the country, have been processing the VS applications. The goal of the organization is to substantially complete all M&P and VS applications by Feb. 1, 2002. This will expedite early applications for determination letters by employers who adopt volume submitter or nonstandardized M&P plans and either need or desire determination letters. Relaxing and simplifying its prior policies, the Service now requires adopters of pre-approved plans to adopt their GUST restatement by the later of December 31, 2002, or 12 months after the sponsor of the M&P or VS receives approval for the last plan submitted.⁴ Most adopters of M&P plans and many adopters of volume submitter plans will be able to rely on their plan's opinion or advisory letter. The adopters will not have to get their own determination letter. (More about this below.) But in those cases where they do, the adopters will also have to apply for determination letters by their GUST amendment deadline.⁵

² The Employee Retirement Income Security Act of 1974 (ERISA), Pub. L. 93-406; the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97-248; the Deficit Reduction Act of 1984 (DEFRA), Pub. L. 98-369; the Retirement Equity Act of 1984 (REA), Pub. L. 98-397; and the Tax Reform Act of 1986 (TRA '86), Pub. L. 99-514.

³ [Rev. Proc. 2000-20, 2000-6 I.R.B. 553, Section 19.01.](#)

⁴ [Notice 2001-42, 2001-30 I.R.B. 70, Section VI.](#)

⁵ [Rev. Proc. 2000-20, section 19.04, and Announcement 2001-77, 2001-30 I.R.B. 77, Section II.E.](#)

Determination Application Forms

Second, the IRS also reviewed the forms used to apply for a determination letter. In doing so, it partnered liberally with the private sector, incorporating much of the input into the final decisions on the new forms. The Service eliminated Form 5303, used for collectively bargained plans, and directed users to its [Form 5300](#), which is generally available for determination letter (DL) applications. Further, the IRS revised each of the forms to eliminate unneeded questions or alter the presentation on the form to make them more user-friendly. For example, [Form 8717](#), used to pay user fees in connection with submissions, has proved confusing to applicants who frequently pay the wrong fee and cause the IRS to spend resources clearing up the matter. The Service will be changing the layout on that form to minimize the opportunities for error.⁶

Pre-Approved Plans Adoption Deadlines

Third, in response to questions from the private sector, the Service clarified the somewhat complex rules applicable to pre-approved plans and adopters of those plans.⁷ Practitioners responded with appreciation for the “clear restatement” of the rules.

Individually Designed Plans

Fourth, as the IRS contemplated the large number of individually designed plans scheduled to arrive in late 2001 and early 2002. (Until recently, these plans were required to file by the end of the 2001 plan year to take advantage of the “remedial amendment period”). Congress in early June 2001 passed long-anticipated (but unclear in timing) major pension legislation as part of the tax reduction law, the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Pub. L. 107-16.⁸ How could the Service’s determination letter program accommodate the changes made by this new law?

Some parties urged the Service to extend the GUST remedial amendment period further (as much as three years) and let plan sponsors incorporate the changes mandated or permitted by EGTRRA, even though EGTRRA had no delayed amendment provision. This would cause even further delay in the amendment of plans to reflect changes required to become effective as far back as 1994!

⁶ [Announcement 2001-77](#), Section I.C. It should also be noted that under section 620 of EGTRRA, effective January 1, 2002, user fees will be waived for eligible small employers submitting requests for determination letters for certain newly formed plans.

⁷ [Announcement 2001-12](#), 2001-6 I.R.B. 526.

⁸ [Rev. Proc. 2000-27](#), 2000-26 I.R.B. 1272, which extended the GUST remedial amendment period to the end of the first plan year beginning on or after January 1, 2001, has recently been modified. [Rev. Proc. 2001-55](#), 2001-49 I.R.B. 552, provides a general extension of the GUST remedial amendment period to February 28, 2002.

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The Service, drawing on the views of practitioners, said “no,” and “we have a better idea.” Within three weeks of enactment of EGTRRA, the Service said to sponsors “You must bring your plans into compliance with the changes required by past legislation. We will not extend the GUST remedial amendment period. The longer the plan goes without being changed to reflect practices that are required to be followed, the greater the likelihood of failure to follow the practices.”⁹

The Service’s initial plan guidance on EGTRRA also reflected its concern with ongoing “disconnects” between plans’ terms and operations. The Service provided that sponsors that must (or wish to) comply with the EGTRRA changes must adopt the changes no later than the end of the plan year they are effective. And, since generally formal guidance will not have been issued, the plan amendments must reflect a good faith, reasonable interpretation of EGTRRA. Deferring EGTRRA amendments even to the end of the year, however, raised concerns about prohibited benefit reductions in the case of some of these amendments. The Service was able to allay concerns to a great extent by pointing out that plan amendments for the changes in the top-heavy rules - the changes that were the source of the greatest concern - generally did not need to be adopted before the end of the year. Still, the IRS encouraged employers to include the EGTRRA changes in their plans as soon as possible - even with the plans to be submitted for GUST letters - though the Service will not rule on the EGTRRA changes for now. These good faith EGTRRA plan amendments will have a new remedial amendment period, which will end no earlier than the end of the 2005 plan year, by which time it is expected that all needed guidance will have been published.¹⁰

So, a new approach has been taken — the plan must reflect the law change, even though the Service has not provided full guidance on how the change must be implemented. The Service has stated its belief that this approach is preferable to the pattern followed in years past, where plan language and plan operation have been disconnected. Many practitioners have expressed similar views. To facilitate this process for companies, the IRS told the public that, in view of the requirement that employers and sponsors of pre-approved plans must include EGTRRA changes in their plans, the Service would publish “sample amendments” that employers and sponsors could use in drafting their EGTRRA amendments. Moreover, the Service said this guidance would be published by the end of August 2001. And, keeping its word, late in August 2001 the Service posted sample amendments, along with other EGTRRA guidance, on the Employee Plans web site (www.irs.gov/ep).¹¹

⁹ [Notice 2001-42, Section I.](#)

¹⁰ *Ibid.*, Sections III and V.

¹¹ [Notice 2001-57, 2001-38 I.R.B. 279](#), contains the sample EGTRRA amendments. [Notice 2001-56, 2001-38 I.R.B. 277](#), provides guidance on the effective dates of certain EGTRRA provisions.

Streamlining the Determination Letter Process

Fifth, the Service considered what it might do to streamline the determination letter process. A small study group of personnel from both Washington, DC and Cincinnati convened and through repeated meetings and conference calls, and through some partnering with outside practitioners, came up with a series of changes to the program.

- Because the determination letter (DL) program addresses primarily the form of a plan, and not whether its operation complies with the Code, review of compliance with the nondiscrimination rules is not mandated, and thus the questions and forms and demonstrations used to determine compliance are not required. As a result, the Service decided to move two questions relating to coverage and safe harbors from Schedule Q to the determination letter application form and make these questions, as well as the Schedule Q itself, optional.¹² This is expected to result in a significant reduction in use of both customers' and the Service's resources in the DL program. Plan sponsors will still have the option to submit data showing that the plan is nondiscriminatory. In this case, the letter may be relied on regarding the nondiscrimination requirements, unless and until there is a change in facts or other information on which the letter was based, provided the information submitted to the Service is retained.¹³ The effect of the form changes is that plan sponsors now may choose not to submit extensive data. In this case, the letter will not provide reliance on the nondiscrimination requirements.

- Because pre-approved plans have been reviewed by the IRS, the Service concluded that where an employer adopts such a plan on a word-for-word basis, the employer should not be required to apply for a determination letter in order to have reliance that the form of the plan is qualified. As a result, the Service provided that applications by such employers would not be required, and that employers would have reliance as to form on the opinion or advisory letter received by the sponsor of the pre-approved plan.¹⁴ This is another change that is expected to result in substantial reduction in the use of both customer and IRS resources during the current wave of applications.

- The Service also has asked practitioners to "group" similar plans and submit them together, so as to facilitate the Service's "like" plans as a group and at the same time, providing efficiencies for both the Service and the practitioners, and potentially speedier service and less cost for employers.

- In a further effort to provide more efficient service, the IRS has also asked practitioners, where it makes sense, to highlight changes in their plans so that the agents reviewing the plans may see where the practitioner has made amendments.¹⁵

- In another change, practitioners submitting multiple employer plans may send only one of the plans and reliance as to form will extend to all adopters. This is also likely to lead to increased efficiencies.¹⁶

¹² [Announcement 2001-77, Section I.E.](#)

¹³ [Rev. Proc. 2001-6, 2001-1 I.R.B. 194, Section 21.](#)

¹⁴ *Ibid.*, Section II.

¹⁵ *Ibid.*, Section IV.

¹⁶ *Ibid.*, Section III.

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Enhancing the Screening Process

Sixth, still looking for ways to reduce the use of resources and speed the determination letter process, the Service undertook a review of its “screening” procedures. Based on its experience, in general, being able to approve certain types of plans without requiring significant document changes, the Service determined that there are many more plans that fit a “low risk” profile, dictating that they need not be fully reviewed by agents in IRS offices. In some cases, a minimal contact with the practitioner will be needed to move an application to a low-risk category, but the time spent on that contact during the screening process is well worth the effort.

Further, the Service has undertaken to broaden the screening process. Currently, 30 agents in Cincinnati perform the screening function. The IRS soon will add 15 agents in each of six areas around the country to do screening. Thus, the Service will have 120 agents screening during the high-volume period of determination letter applications. (Note that determination letter applications will be screened and, where necessary, reviewed in various locations around the country without regard to the geographical location of the employer or practitioner who made the submission.)

These are the steps that the Service has planned to provide the best business results, best customer service and best employee satisfaction it can through the period of high volume.

The events of September 11, 2001, have, of course, had their impact. The IRS has responded by postponing the end of the GUST remedial amendment period to February 28, 2002, for all plans and to June 30, 2002, for plans directly affected by the terrorist attack.¹⁷

The Future of the Determination Letter Process

What about the future? What is the Service doing about changing the system so that these “crunches” either don’t occur or are more easily handled?

Near-term, the Service is designing and testing a new electronic administration program for both Employee Plans and its sister unit, Exempt Organizations. This program will ultimately permit filing of applications by electronic means, including payment of the user fee, transfer of cases electronically from Cincinnati to the areas and back, and other appropriate steps. The IRS expects to pilot this program for [Form 5307](#) applications (pre-approved plans) in 2002. [Form 5300](#) and [Form 5310](#) applications will be tested later in the year. This new system will not help with the current mass of applications, but for the future the system should make things a lot easier, as well as reduce use of resources and speed up processing.

¹⁷ [Rev. Proc. 2001-55](#), Sections 3 and 4.

What about the long-term? Is the IRS to be continually burdened by the current fairly cumbersome determination letter program, even with its improved processing and electronic tools? Is the Service to continually have the millstone of extended remedial amendment periods?

While performing all the tasks outlined above, the Service has also engaged in extensive “brainstorming” on what to do long-term about the program. Service personnel have spoken to numerous interest groups and sought partnering on these issues. The outcome is a white paper discussing the range of options and key issues developed in the brainstorming sessions. This article will not repeat the substance of the white paper, but commends the paper for reading by all persons who have a stake in the employee plans system. Please find the white paper at www.irs.gov/ep.

The IRS has extended a warm welcome to all of its customers and other stakeholders to engage in a dialogue on the future of the determination letter program, and looks forward to holding this dialogue over the next many months, to seek a consensus among all affected parties.

The authors wish to thank Thomas D. Terry, Senior Technical Advisor to the Commissioner, TE/GE, for his suggestions and contributions to this article. ■

Determination Letter Applications for Merged Plans

During the past several months, the Tax Exempt and Government Entities Division (TE/GE) of the Service has received numerous inquiries regarding the determination letter procedures for plan mergers involving similar types of plans (i.e., two or more defined contribution plans or two or more defined benefit plans). As part of our continuing effort to streamline and simplify the determination letter process, the Service is now allowing employers to limit their request to an application for the surviving plan that will remain in effect subsequent to the merger. This procedural revision is definitely welcome news for plan sponsors who are seeking determination letters for merged plans, as it dramatically reduces the complexity and duplication of paperwork that typifies the preparation of an application for every plan involved in a merger.

It is very important for plan sponsors to remember that each merged plan associated with a determination letter request for the surviving plan must be amended to comply with applicable law, including TRA '86, and GUST. Plan sponsors should especially be aware of the anti-cutback rules of Section 411(d)(6), as the surviving plan must be amended to retain benefits or benefit options protected by Section 411(d)(6). If the merging plans have not been amended for GUST, the GUST amendments to the surviving plan can also be applied to the plans merged out of existence, but they must be adopted within the GUST remedial amendment period of *each* plan involved in the merger. If the GUST amendments are limited to the surviving plan, each plan must be separately amended for GUST prior to the close of its GUST remedial amendment period. A favorable determination letter issued for the surviving plan may be relied upon with respect to whether the merged plans were timely and correctly amended for GUST.

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[Determination Letter](#) *continued from page 9*

To expedite the determination letter process, the application should include the latest determination letter issued for each merging plan, with, if necessary, copies of the signed and dated amendments for sections 401(a)(17) and 401(a)(31). If no TRA '86 determination letter was issued for one or more of the plans, any available TRA '86 plan documents should be enclosed with the application. ■

Volume Submitter Plans and Announcement 2001-77 - When is an Employer's Plan "Identical" to a Volume Submitter Specimen Plan?

Adopting employers of M&P and volume submitter plans may rely directly on a favorable opinion or advisory letter for most qualification requirements, without the need to obtain a determination letter, provided certain conditions set forth in section II of [Announcement 2001-77](#) are met. One of these conditions is that the plan the employer adopts must be identical to an approved M&P or specimen plan and the employer may choose only options permitted under the terms of the approved plan. Section II.C.5. and 6. of Announcement 2001-77 provide additional detail concerning the "identical" plan requirement. First, the employer may not add any terms to the approved document or delete any terms of the document, other than to choose among options permitted under the document or, in the case of an M&P plan, to amend the document as permitted under Sections 5.07 and 5.11 of [Rev. Proc. 2000-20](#). Second, the employer may not amend the terms of the plan's approved trust in a manner that would cause the plan to become disqualified.

The following examples illustrate the "identical" plan requirement.

Example 1. An M&P or volume submitter specimen plan includes blank "other" options, such as an option for the employer to specify the category of employees covered under the plan. An adopting employer's selection of these options will not cause the employer's plan to fail the "identical" plan requirement of Announcement 2001-77, provided the employer completes the blanks in a manner that complies with any parameters under the plan for how the blanks may be completed.

Example 2. A volume submitter specimen plan contains two or more versions of various plan provisions. An employer that adopts the plan includes only one version of each provision in its plan but makes no other changes to the language of the approved specimen plan. The employer's plan satisfies the "identical" plan requirement.

Example 3. A volume submitter specimen plan provides vesting options: full and immediate vesting and two to six year graded vesting. An employer that adopts the plan selects neither option, but instead includes in its plan one to five year graded vesting (20% per year) that satisfies the requirements of Sections 411(a)(2) and 416(b)(1)(B). Because the vesting schedule in the employer's plan is not one of the options under the specimen plan, the employer's plan does not satisfy the "identical" plan requirement.

Example 4. Same facts as Example 3, except the specimen plan includes the following



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additional vesting option:

Years of vesting service	Vesting Percentage
1	—
2	(must be at least 20%)
3	(must be at least 40%)
4	(must be at least 60%)
5	(must be at least 80%)
6	(must be 100%)

In this case, the 1 to 5 year graded vesting schedule in the employer's plan does not cause the plan to fail to satisfy the "identical" plan requirement because the schedule complies with the parameters of the blanks in the plan language above.

Individualized Amendment of an M&P or Volume Submitter Plan Will Not Make the Plan Ineligible for the Extended GUST Remedial Amendment Period Under Rev. Proc. 2000-20.

This article discusses the effect of Section 19.06 of Rev. Proc. 2000-20, 2000-6 I.R.B. 553.

The GUST remedial amendment period generally ends on the later of February 28, 2002, or the last day of the first plan year beginning on or after January 1, 2001. However, Rev. Proc. 2000-20, as modified by [Rev. Proc. 2000-27, 2000-26 I.R.B. 1272, Notice 2001-42, 2001-30 I.R.B. 70, and Rev. Proc. 2001-55, 2001-49 I.R.B. 551](#), provides an extended GUST remedial amendment period for employers who have adopted, or intend to adopt, M&P or volume submitter plans. The extended GUST remedial amendment period is available to an employer who, by the later of February 28, 2002, or the last day of the first plan year beginning on or after January 1, 2001, adopts or certifies its intent to adopt a timely-submitted M&P plan or volume submitter specimen plan. In this case, the GUST remedial amendment period for the plan is extended to the later of December 31, 2002, or the last day of the 12th month beginning after the date of the last opinion or advisory letter issued to the M&P plan sponsor or volume submitter practitioner. An M&P plan or volume submitter specimen plan is considered "timely submitted" if an application for a GUST opinion or advisory letter for the plan was filed by December 31, 2000.

The rules described in the preceding paragraph are contained in Section 19 of Rev. Proc. 2000-20. Section 19.06 of Rev. Proc. 2000-20 discusses the effect of the adoption of an individually designed amendment of an M&P or volume submitter plan on the plan's eligibility for the extended GUST remedial amendment period. The text of Section 19.06 follows:

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.06 Certain Employer Amendments Disregarded for Purposes of This Section - An employer that has adopted an M&P plan or a volume submitter specimen plan may have modified the plan in a such a way that the plan, as adopted by the employer, would not be considered an M&P plan or a volume submitter plan. Nevertheless, for purposes of this section, such a plan will be treated as an M&P or volume submitter plan and will be eligible for the remedial amendment period extension provided by this section. For example, an employer may have adopted an individually designed GUST-related amendment to an M&P plan that would have caused the plan to be considered an individually designed plan under Section 5.02 of Rev. Proc. 89-9. Despite the individually designed amendment, the plan will be treated as an M&P plan for purposes of this section.

The Service has been asked if Section 19.06 is intended to be limited to GUST-related amendments, or if it also encompasses other types of amendments that would cause an M&P or volume submitter plan to be treated as individually designed, including amendments adopting provisions not allowed in M&P or volume submitter plans. Specifically, sponsors have asked if the amendment of an M&P plan to adopt a non-uniform allocation formula that is intended to pass nondiscrimination using cross-testing will make the plan ineligible for the extended GUST remedial amendment period under Rev. Proc. 2000-20.

An M&P or volume submitter plan that has been amended in a way that would cause the plan to be treated as individually designed is still eligible for the extended GUST remedial amendment period under Section 19 of Rev. Proc. 2000-20, regardless of the nature of the modification or whether the modification was adopted subsequent to, or in conjunction with, the initial adoption of the M&P or volume submitter plan. An amendment of an M&P plan to provide for a non-uniform formula is only one example of an amendment that would cause the plan to be treated as individually designed yet not cause the plan to be ineligible for the extended GUST remedial amendment period under Section 19 of Rev. Proc. 2000-20. Other amendments, including amendments adopting provisions not allowed in M&P or volume submitter plans, would be treated in a like manner and thus would not adversely affect a plan's eligibility for the extended GUST remedial amendment period. In addition, the adoption of multiple individually designed amendments will not cause an M&P or volume submitter plan to be ineligible for the extended GUST remedial amendment period.

Although an amendment that would cause an M&P or volume submitter plan to be treated as individually designed will not make the plan ineligible for the extended GUST remedial amendment period, the amendment will nevertheless have the effect of requiring the employer to apply for an individually designed plan determination letter on Form 5300 in order to have reliance. In addition, because a determination letter is required for reliance, pursuant to Section 19.04 of Rev. Proc. 2000-20, the employer must apply for a determination letter within the extended GUST remedial amendment period.



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EXPLANATIONS AND
PLAN DEFICIENCY
PARAGRAPHS

Alert Guidelines,
Explanations and Plan
Deficiency Paragraphs are
now available at our Web
site, www.irs.gov/ep.

Alert Guidelines,
Explanations and Plan
Deficiency Paragraphs are
tools used by Employee
Plans specialists during their
review of retirement plans.
These tools are available to
plan sponsors to use before
submitting a determination
letter application to the
Service.

Master & Prototype/Volume Submitter Listing Now Available

Employee Plans has made available a list of Master & Prototype (M&P) and Volume Submitter (VS) plans to assist employers in determining the expiration of their GUST remedial amendment period. The list is available by accessing the EP Web site at www.irs.gov/ep or by clicking on the word "list" in the following paragraph. This list contains the M&P and VS plans that were submitted to the Service for GUST opinion or advisory letters by December 31, 2000, the deadline for filing under [Revenue Procedure 2000-20](#).

The [list](#) includes the name of the M&P or VS sponsor, the file folder number or VS serial number assigned to each plan, and the plan type of each plan submitted. The list also includes the date of the GUST opinion or advisory letter for those M&P and VS plans that have been approved to date and the date of withdrawal for those applications that have been withdrawn. The list will be updated periodically. ■

EP Telephone Assistance *RapidResponse* Pilot Project

Tired of voice-mail messages and busy signals? Good news from EP!

On November 1, 2001, EPs Rulings and Agreements office began testing our *RapidResponse* pilot project for handling your telephone inquiries.

Telephone calls to the EP telephone assistance hotline in Washington, DC, are forwarded to our Customer Account Services (CAS) call site in Cincinnati, OH. In Cincinnati, EP specialists are there to receive your calls and answer your questions. We expect that our EP specialists in the CAS call site will be able to answer most of your questions. However, if you manage to stump us, we will forward your question to our National Office in Washington, DC.

You can contact the call site at (877) 829-5500 (toll-free), M-F from 8 a.m. - 6:45 p.m. EST. In addition, you can e-mail your question to us via retirementplanquestions@irs.gov. You must provide your telephone number in your e-mail message so that we can respond to your question. ■

IRS Releases Revised Applications for Determination Letter Requests

The Internal Revenue Service has released revised applications that are used by plan sponsors/employers when requesting determination letters on the qualification(s) of pension, profit-sharing, stock-bonus and annuity plans under Sections 401(a) and 403(a) of the Internal Revenue Code.

The revised forms are:

- [Form 5300](#), *Application for Determination for Employee Benefit Plan (including collectively bargained plans formerly filed on Form 5303)* (Rev. September 2001)
- [Schedule Q \(Form 5300\)](#), *Elective Determination Requests* (Rev. August 2001)
- [Form 5307](#), *Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans* (Rev. September 2001)
- [Form 5309](#), *Application for Determination of Employee Stock Ownership Plan* (Rev. August 2001)
- [Form 6406](#), *Short Form Application for Determination for Minor Amendment of Employee Benefit Plan* (Rev. September 2001)

Although applicants are strongly encouraged to use the 2001 revisions to these forms, the 1998 revisions can continue to be used until March 31, 2002. Please refer to Announcements [2001-77](#), [2001-109](#), and [2001-122](#) for more detailed information on the use of these applications.

You can order these forms, schedules, and instructions through the IRS area distribution centers at (800) 829-3676, (800) TAX-FORM. Also, this material can be downloaded from the Employee Plans Web site at www.irs.gov/ep, and used for filing purposes.

Note that these products are now available in "Fill-In" format on the IRS web site. This format enables filers to complete any of the above-mentioned forms "on screen" and print out a filled-in application that can be used for filing purposes. ■

Employees Should Plan 2002 Retirement Contributions Now to Get Full Benefit of the New Saver's Tax Credit

Qualifying employees should make plans now to benefit from the new Saver's Tax Credit next year. This tax credit, which will be available only from 2002 through 2006, will help offset the cost of the first \$2,000 contributed to IRAs, 401(k)s and certain other retirement plans. Employees in 401(k) plans may want to set up their 2002 deferral elections before January so that they can spread their contributions throughout the year.

The Saver's Tax Credit applies to individuals with incomes up to \$25,000 (\$37,500 for Head of Household) and married couples with incomes up to \$50,000. The taxpayer must also be at least age 18, not a full-time student, and not claimed as a dependent on another person's return.



UPDATED FREQUENTLY
ASKED QUESTIONS
REGARDING THE
DETERMINATION
LETTER PROGRAM AND
PROCESS

Updated frequently asked questions (FAQs) regarding the determination letter program and process are now available at our Web site, www.irs.gov/ep.

The topics covered by these FAQs include the determination letter process, plan terminations, plan language issues, merged plans and multiple employer plans.

The credit is a percentage of the qualifying contribution amount, with the highest rate for taxpayers with the least income, as shown in this chart:

Credit Rate	Married, Joint Income	Head of Household Income	Others Income
50%	up to \$30,000	up to \$22,500	up to \$15,000
20%	\$30,001 – \$32,500	\$22,501 – \$24,375	\$15,001 – \$16,250
10%	\$32,501 – \$50,000	\$24,376 – \$37,500	\$16,251 – \$25,000

See [Announcement 2001-106](#) for details about the Saver's Tax Credit and a sample notice that employers can use to help explain the Saver's Tax Credit to their employees (see [Announcement 2001-120](#) for the Spanish version). ■



CURRENT STATUS
AND FUTURE IDEAS
ON DETERMINATION
LETTER PROGRAM

The latest educational presentation by Paul Shultz, Director, EP Rulings & Agreements, outlining the current status and future ideas for the determination letter program is now available on our Web site at www.irs.gov/ep.

EGTRRA Statutory Limitations and Cost of Living Adjustments under Section 415(d) (Notice 2001-84)

Code Section	2002 Dollar Limitations
415(b)(1)(A)	\$160,000
415(c)(1)(A)*	\$40,000
402(g)(1)	\$11,000
409(o)(1)(C)(ii)	\$160,000
	\$800,000
414(q)(1)(B)	\$90,000
414(v)(2)(B)(i)	\$1,000
414(v)(2)(B)(ii)	\$500
416(i)(1)(A)(i)	\$130,000
401(a)(17)**	\$200,000
404(l)	\$200,000
408(k)(2)(C)	\$450
408(k)(3)(C)	\$200,000
408(p)(2)(E)	\$7,000
457(e)(15)	\$11,000
1.61-21(f)(5)(i)	\$80,000
1.61-21(f)(5)(iii)	\$160,000

* \$35,000 for certain plans

** \$295,000 for certain governmental plans

Form 5330 and Form 5558 Filers Take Note

The Ogden Service Center currently processes [Form 5558](#), *Extension to File Certain Employee Plan Returns* filed for Forms 5500 and 5500EZ. Beginning January 1, 2002, the Ogden Service Center will be responsible for processing all filings of the [Form 5330](#), *Return of Excise Taxes Related to Employee Benefit Plans* and those filings of the Form 5558 pertaining to extension requests for Form 5330. The address for filing these forms is:

**Internal Revenue Service
Ogden, UT 84201-0027**

The IRS is in the process of revising instructions to the Forms 5330, 5500 and 5500-EZ to reflect these changes. The 5558 instructions already include the new filing address.

Please do not send any IRS payments relating to Forms 5330, 5500 or 5500-EZ to the Pension Welfare and Benefit Administration (PWBA) or to the PWBA vendor. These payments should be sent to the address above. ■

EP Connections: Interview with Joyce Kahn

Joyce Kahn, Manager of EP Voluntary Compliance, has worked for the Service since 1987 in a variety of positions within Employee Plans in Washington, DC. As Manager of EP Voluntary Compliance, she is responsible for the oversight of TEGE's voluntary correction programs under the Employee Plans Compliance Resolution System. Prior to becoming Manager, EP Voluntary Compliance, Ms. Kahn was Chief of the Employee Plans Division Voluntary Compliance Resolution (VCR) and Tax Sheltered Annuity Voluntary Correction (TVC) programs. She has been a Project Leader in the Employee Plans Division, Projects Branches, where she worked on the development of sample language and the update of the master and prototype, regional prototype, and determination letter programs for the Tax Reform Act of 1986.

1. Joyce, why is the Service setting up an organization devoted to Voluntary Compliance?

We realize that there have been some inconsistencies in application among EP's correction programs, due, in part, to multiple parts of the Service being involved in the administration of these programs in various geographic locations. For example, with respect to case processing, procedures across the country, and the interpretation of applicable law with respect to corrections and fees may vary across programs. The new organization is designed to promote national uniformity by enabling us to increase consistency within individual programs and coordination across programs.

2. How does the new organization do that?

Voluntary Compliance will have four groups of employees that are dedicated to the voluntary correction programs under the Employee Plans Compliance Resolution System ([Rev. Proc. 2001-17](#)). These groups will be dispersed geographically around the country, but coordinated by a centralized voluntary compliance management office that handles program oversight, coordination and consistency. There are also mechanisms to ensure communication and coordination among the voluntary correction programs and our examination correction programs.



CONTACTING EMPLOYEE PLANS

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

Send comments/suggestions to:

- EP Customer Education & Outreach
T:EP:CEO Room 4C3
1111 Constitution Ave., NW
Washington, DC 20224
- FAX: (202) 283-9525
- E-mail:
■ RetirementPlanQuestions@irs.gov

For EP Taxpayer Assistance

(for technical and procedural questions):

- Please call (877) 829-5500
- E-mail:
■ RetirementPlanQuestions@irs.gov

Please provide your phone number in your e-mail message so that we can respond to your question(s).

For further Employee Plans Information:

- Please go to the Employee Plans Corner at: www.irs.gov/ep

3. I understand that you have been engaged in setting up the Voluntary Compliance organization and have done some hiring in the last few months.

Yes! I have hired four group managers and three Program Coordinators, who are part of the centralized management office, and within the next month or two, I should have the rest of the organization in place. My group managers are Janet Mak, from Brooklyn, who will manage a group of Voluntary Compliance employees from the Northeast and MidAtlantic areas; Gary Mitchell, from Chicago, who will manage our group in Great Lakes; Bill Bond, from Dallas, who will manage our Gulf Coast group, and John Sechini, from Los Angeles (Monterey Park), who will manage our employees in the Central Mountain and Pacific Coast areas. All together they bring a wealth of experience to Voluntary Compliance; technical, administrative, exam and voluntary compliance experience.

4. What about your Program Coordinators?

In Washington, DC, we have Carlton Watkins and Maxine Terry, and in Laguna Niguel, Marianne Davis. Each of these employees has had significant experience in voluntary compliance and their talent and enterprise will help the program continue to grow and improve. The Program Coordinators report directly to me.

5. Who comprises the rest of the organization to be staffed?

The Voluntary Compliance Coordinators (former Walk-in CAP coordinators) and the employees in the groups will be selected in the next month or two. Also, the Area Coordinators (formerly known as Audit CAP Coordinators) who report to the area managers are currently being selected by the area managers.

6. How many Voluntary Compliance and Area Coordinators are there?

There will be six of each arrayed across the country. Each area manager will have an area coordinator. The Voluntary Compliance Coordinators will report VC managers.

7. How many people do you expect to hire in the VC groups?

The design calls for seven to ten employees in each of the four groups. We are evaluating our staffing needs based upon our current workload.

8. What is the difference between a Program Coordinator and a VC or Area Coordinator?

The VC and Area Coordinators are responsible for case-related consistency within their group or Area. The Program Coordinators are responsible for program support on a national basis. For example, they will draft case processing procedures, develop case review standards, advise the VC and Area Coordinators on correction and other case related issues, and draft the EPCRS Revenue Procedure.

9. Speaking of the Revenue Procedure, Rev. Proc. 2001-17 introduced significant changes to EPCRS, are there major changes in the works for next year?

We are not planning on major changes, certainly not on the same scale as those made by 2001-17, but we are considering making some refinements to the current procedures in 2002.

10. What are you doing to assure consistency across your programs and across the country?

We have two formal mechanisms in place. One is the Central Coordination Committee which consists of all of the coordinators, program, VC and area, in which case related issues are raised, discussed and resolved in a way in which all can observe and participate. For high level and cross-program issues, I have convened the Voluntary Compliance Council, which consists of the Directors of EP Rulings and Agreements, Examination, and Customer Education and Outreach with representation from the area managers and my new group managers. ■

EP Customer Education & Outreach (CE & O) Staff On-Board

Employee Plans now has a dedicated staff on-board to handle customer education & outreach activities based on assigned geographic areas and outreach efforts (such as Product Development). The following staff is currently on-board and additional positions (Pacific Coast Area, *Employee Plans News Editor*, Customer Partnership Analyst) will be added over the next several months:

Name	Role	E-Mail
Mark F. O'Donnell	Director, EP CE & O	mark.f.o'donnell@irs.gov
Peter A. McConkey	Staff Assistant, EP CE & O	peter.a.mcconkey@irs.gov
Nancy E. Payne	Senior EP CE & O Analyst – Intranet/Internet	nancy.payne@irs.gov
Terri A. Holloway	Senior EP CE & O Analyst – Products Development	terri.a.holloway@irs.gov
John C. Schmidt	EP CE & O Analyst – Forms/Publications	john.c.schmidt@irs.gov
Ester G. Brock-Jones Monitoring/Planning/ Automation Tools	EP CE & O Analyst –	ester.g.brock-jones@irs.gov
Sharon M. Polo	EP CE & O Analyst – EP Rulings & Agreements and Customer Account Services	sharon.m.polo@irs.gov
Douglas M. Jordan	EP CE & O Area Analyst – Northeast Area	douglas.m.jordan@irs.gov
Mikio S. Thomas	EP CE & O Area Analyst – Mid-Atlantic Area/ Examination Programs & Review	mikio.thomas@irs.gov
William (Greg) Nix	EP CE & O Area Analyst – Gulf Coast Area	william.g.nix@irs.gov
Wiley L. Ransom	EP CE & O Area Analyst – Great Lakes Area	wiley.ransom@irs.gov
Brenda L. Smith-Custer	EP CE & O Area Analyst – Central Mountain Area	brenda.L.smith-custer@irs.gov

Taxpayer Rights - What Can Our Customers Expect From Us?

In Employee Plans, we are committed to top quality because our services directly impact the welfare of plan participants, retirees and their beneficiaries. As effective service providers, we not only help Employee Plans customers comprehend and satisfy pension law requirements, but we are committed to meeting the needs of our customers in a fair and equitable manner.

The IRS Restructuring and Reform Act of 1998 requires that we serve our customers well. But, how do we go about doing this? The IRS has created strategic goals to improve customer service. These goals affect every IRS employee. The quality of our relationship with our

customers is directly affected by two of these goals: meeting the needs of taxpayers and reducing taxpayer burden. We strive to achieve these by providing high quality service and communication, as well as making ourselves accessible to assist and educate our customers.

The Taxpayer Bill of Rights requires that we explain and protect taxpayer rights throughout the performance of our duties. The Declaration of Taxpayer Rights provides that we serve our customers with: 1) privacy and confidentiality, 2) professional and courteous service, 3) the right for them to obtain representation, 4) assurance that they will pay only the correct amount of tax and be relieved of penalties and interest whenever possible, and 5) the knowledge that they may obtain the help they need to resolve issues.

The first and foremost aspect of effective communication is to inform customers of their rights. In Employee Plans, this begins with initial customer contact. Whether by telephone or written correspondence, we are responsible to advise taxpayers, and their representatives, of their rights and answer their questions. [Publication 1, Your Rights as a Taxpayer](#) is mailed with the initial appointment letter and explains these rights and the examination process. This, however, is merely the first step.

The initial interview is an important part of the examination process. It provides a productive forum to gather information for the audit. It is also the time to convey to the taxpayer that the examination will be conducted fairly, professionally, promptly and in a courteous manner. Discussing taxpayer rights at this time promotes effective communication.

We can provide fair and courteous treatment by being accessible and flexible. Examining agents should provide their telephone numbers to taxpayers, and their representatives, and return calls promptly. We will work with you to set up a convenient time, place and method to conduct the examination. We do, however, have the authority to make the final determination of when, where and how the examination will take place pursuant to IRC Section 7605. Although we strive to alleviate taxpayer burden, we must balance this with our need to secure necessary information that can be affected by the time, place and method of the audit.

Taxpayers are often concerned about why their return is being examined. Publication 1 explains how returns are selected for audit. Examining agents are required to respond to taxpayers as accurately as possible. It is important to note, however, that we may not reveal information that is restricted. Communicating our role is an important part of the interview process. Our customers should feel comfortable that we will not disclose the information they provide to us, except as authorized by law. An audit can be more productive if customers understand why we are asking for information, how we will use it and what will happen if they refuse to provide it.

Quality service also entails providing taxpayers with methods to resolve issues. They should know that they may speak with managers and avail themselves of other options, such as the Taxpayer Advocate, if they encounter problems. In addition, Appeals and judicial review are available for unagreed issues.

Our customers can expect us to help them to understand and meet their tax responsibilities. In our efforts to promote voluntary compliance, we are responsible to protect the public interest, provide quality service and effectively communicate the rights of our customers. ■

Significant Employee Plans Published Guidance (July 2001 – November 2001)

Revenue Rulings

[Rev. Rul. 2001-55, 2001-47, I.R.B. 497](#) Covered compensation tables for 2002.

Notices

[Notice 2001-56, 2001-38 I.R.B. 277](#) Guidance on certain EGTRRA effective dates.

[Notice 2001-57, 2001-38 I.R.B. 279](#) Sample plan amendments resulting from certain EGTRRA changes in the law.

Announcements

[Announcement 2001-83, 2001-35 I.R.B. 205](#) Public announcement regarding the availability of a “white paper” pertaining to the future of the EP determination letter program.

[Announcement 2001-103, 2001-43 I.R.B. 375](#) Limited relief for defined benefit and money purchase pension plans with respect to certain penalties for failure to file complete and accurate Forms 5500 that are due on or before October 15, 2001.

[Announcement 2001-104, 2001-43 I.R.B. 376](#) Information regarding the issuance of GUST opinion letters.

[Announcement 2001-106, 2001-44 I.R.B. 416](#) Questions and answers with respect to the saver’s credit added by Section 618 of EGTRRA.

[Announcement 2001-109, 2001-45 I.R.B. 485](#) Revisions to EP determination letter application forms.

[Announcement 2001-120, 2001-50 I.R.B. 583](#) Spanish version of Announcement 2001-106.

[Announcement 2001-122, 2001-51 I.R.B. 604](#) Extended cut-off date for use of the current version of the employee plans determination letter application forms.

Regulations

[Section 7701 Regulations - T.D. 8962, 66 Fed. Reg. 41778, 2001-35 I.R.B. 201](#) Final regulations relating to certain domestic and foreign trusts.

[Section 414\(v\) Regulations - 66 Fed. Reg. 53555, REG-142499-01, 2001-45 I.R.B. 476](#) Proposed regulations relating to catch-up contributions.

Revenue Procedures

[Rev. Proc. 2001-53, 2001-47 I.R.B. 506](#) Time-sensitive actions, including approximately 32 employee benefit actions, that may be postponed by reason of service in a combat zone or a Presidentially-declared disaster area.

[Rev. Proc. 2001-55, 2001-49 I.R.B. 551](#) Extended remedial period.

Don't Make Retirement a "Taxing Event"

Available at our website, www.irs.gov/ep, is the presentation made at this past summer's 2001 Tax Forum sessions in Philadelphia, Ft. Lauderdale, Dallas, Atlanta, Cleveland, and Las Vegas. The presentation was entitled *Don't Make Retirement a "Taxing Event": Retirement Plan Tax Benefits*.

For example, the presentation focused on some of the following points:

1. BUSINESSES HAVE A VARIETY OF PLANS TO CHOOSE FROM
 - Choices involve tradeoffs between maximizing contributions and minimizing administrative complexity
 - Focusing on optimizing plan design decisions for each client will help them make the best use of tax-preferenced plans
2. VARIOUS FACTORS SHOULD BE CONSIDERED IN SELECTING A RETIREMENT PLAN
 - Employer's business profile: including number of employees, their age and compensation
 - Industry standards: What kind of benefit package is necessary to attract and retain the best workforce?
 - Owner's retirement plans: Owner's age, family and financial status, and retirement goals
3. A MAJOR FACTOR FOR A SMALL BUSINESS IN CHOOSING A RETIREMENT PLAN IS HOW MUCH ADMINISTRATIVE COMPLEXITY (AND EXPENSE) A BUSINESS OWNER IS WILLING TO TAKE ON.
4. THE RIGHT RETIREMENT PLAN MAY BE FOUND AMONG THESE TYPES OF PLANS:
 - Traditional IRAs
 - Roth IRAs
 - SEP IRA Plans
 - SIMPLE IRA Plans
 - Qualified Plans such as Profit-Sharing, 401(k)s, Money Purchase and/or Defined Benefit Plans ■

EP Exhibiting at Association of School Business Officials (ASBO) Annual Meeting

At the October 2001 ASBO Meeting in Baltimore, EP premiered its new exhibiting efforts using the key message: *Partnering to Protect Retirement Benefits*.



EP's partnering efforts are based on providing services and programs to customers such as:

- Customer Education (at speeches, benefits conferences, workshops, and panel discussions)
- Educational Products (Videos, CD-ROMs, etc.)
- Published Guidance/Publications
- *Employee Plans News*, a quarterly newsletter
- Internet Web Site
- Encouraging Voluntary Compliance
- Issuing Determination Letters

EP will be increasing its exhibiting efforts this year from previous years. If an organization is interested in EP exhibiting at their events, the organization may contact Peter McConkey at (202) 283-9531 or via electronic mail at peter.a.mcconkey@irs.gov. ■

2001-2002 Calendar of EP Benefits Conferences

Upcoming Conferences:

Name	Date(s)	Location	Non-IRS Co-Sponsor(s)	For Further Information, Please Contact
Los Angeles Benefits Conference	01/31/02-02/01/02	Los Angeles, CA	American Society of Pension Actuaries (ASPA)	www.aspa.org or ASPA Meeting Department (703) 516-9300

Recent Conferences:

Name	Date(s)	Location	Non-IRS Co-Sponsor(s)	For Information, see
SWBA/IRS 12th Annual Employee Benefits Conference	10/22/01-10/23/01	Dallas, TX	SouthWest Benefits Association (SWBA)	www.irs.gov/ep
Northeast Benefits Conference (2 Locations)	06/14/01-06/15/01	Boston, MA and White Plains, NY	American Society of Pension Actuaries (ASPA) & Northeast Area's Pension Liaison Group	
14th Annual Cincinnati Employee Benefits Conference	06/07/01-06/08/01	Cincinnati, OH	Department of Labor & Cincinnati Bar Association	
10th Annual Employee Benefits Conference (sponsored by Gulf Coast and Mid-Atlantic Areas)	05/30/01-05/31/01	Baltimore, MD	Employee Benefits Conference, Inc.	
Great Lakes Benefits Conference (formerly Midstates Benefits Conference)	04/30/01-05/01/01	Chicago, IL	American Society of Pension Actuaries (ASPA) & more than 20 cooperating sponsors	

2002 Employee Plans Work Plan

Program guidance for all employee plans managers and agents was issued on October 11, 2001 for 2002. This annual document provides program priorities in each of the three primary EP program areas: Customer Education & Outreach (CE & O), Rulings & Agreements (which includes determinations, voluntary compliance and technical activities) and Examinations. The CE & O section focuses on how EP will assist external customers to understand their tax responsibilities. The Rulings & Agreements section discusses actions that will be taken to address the GUST amendment workload, critical areas of focus to enhance the Voluntary Compliance program, and the processing of Master & Prototype applications and private letter rulings. The Examinations program guidance outlines the strategic goals for identifying and correcting non-compliance. A copy of this document has been placed on the Employee Plans homepage at www.irs.gov/ep. ■

Should I restate my plan?

Qualified retirement plans need to be updated to reflect the legislative changes enacted with GUST¹. The GUST remedial amendment period generally ends on the later of February 28, 2002 or the last day of the first plan year beginning on or after January 1, 2001. Employees Plans has received several inquiries concerning whether or not a plan needs to be restated or can it be updated for GUST with “tack-on” amendments. This article will discuss these concerns.

Generally, plans that are being updated for GUST must be restated. Section 7.04 of Rev. Proc. 2001-6, 2001-1 I.R.B. 194 provides that a restated plan, or a working copy of the plan in a restated format, generally must be submitted for a plan that has not previously received a determination letter that takes into account all requirements of GUST. However, Section 3.04 of Rev. Proc. 2000-27, 2000-26 I.R.B. 1272, provides an exception to this requirement.

The exception of Rev. Proc. 2000-27 provides that some plans are exempt from the restatement requirement if there have been fewer than four consecutive amendments since the plan was last restated, excluding amendments making only nonsubstantive plan changes, the plan has received a favorable TRA '86 determination letter, and the plan meets either of the following conditions:

1. The plan is a defined contribution plan under which the only contributions are nonelective employer contributions; or
2. The plan has received a favorable GUST I determination letter and is not adding provisions designed to satisfy the safe harbor requirements of Section 401(k)(12) or Section 401(m)(11).

For example, ABC Company maintains an individually designed profit sharing plan with no deferrals or employee contributions. The plan received a favorable determination letter for TRA '86 on August 14, 1995. The plan was amended on July 12, 1998 and again on December 3, 2001 for the applicable provisions of GUST. No deferrals or employee contributions were added. This plan would meet the exception rule in Rev. Proc. 2000-27.

Section 3.05 of Rev. Proc. 2000-27 provides in general that Form 6406, *Short Form Application for Determination for Minor Amendment of Employee Benefit Plan*, may not be used to apply for a GUST I or GUST II letter. (*GUST I refers to letters issued that considered qualification requirements other than those changes made by SBJPA that are first effective in plan years beginning after December 31, 1998 and GUST II letters were issued considering all changes including those effective after January 1, 1999*). Therefore, in the example above, the ABC Company should submit Form 5300 with a copy of the approved TRA'86 plan and the two “tack-on” amendments to apply for their GUST II determination letter. Some plans that have received a favorable determination letter for GUST I may apply for a GUST II using Form 6406, see Section 3.05 of Rev. Proc. 2000-27 for details.

The Service reserves the right to require restatement or the submission of Form 5300 in any case in which it is determined to be necessary.

In summary, applicants for a GUST favorable determination letter generally must restate their plans, or provide a working copy of the plan in the restated format, unless the plan can meet the exception provided in Section 3.05 of Rev. Proc. 2000-27. ■

¹ “GUST” refers to the following:

- the Uruguay Round Agreements Act, Pub. L. 103-465;
- the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353;
- the Small Business Job Protection Act of 1996, Pub. L. 104-188;
- the Taxpayer Relief Act of 1997, Pub. L. 105-34;
- the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206; and
- the Community Renewal Tax Relief Act of 2000, Pub. L. 106-554.

Increase in the Section 401(a)(17) Limitation

Section 401(a)(17) of the Code limits the annual compensation that may be taken into account for purposes of determining a participant's benefits under both defined benefit and defined contribution plans. EGTRRA increased the compensation limit under Section 401(a)(17) to \$200,000. The limit prior to EGTRRA was \$170,000. Although employers are not required to amend their plans to adopt the new limit, the increase in the compensation limit allows for benefit increases for participants in both defined benefit and defined contribution plans (depending on the terms of the plans). This increase in the compensation limit is effective beginning in 2002. For more details, see [Notice 2001-56](#). Additionally, a sample amendment is provided in [Notice 2001-57](#) for employers that wish to adopt the new limit. ■

Educational Services Available for Retirement Plans

To increase understanding of (and compliance with) the tax laws applicable to retirement plans, Employee Plans has developed an educational services program. Under this program, trained and experienced Employee Plans employees are available to provide educational services relating to retirement plans.

Educational services include:

- speeches
- panel participation discussing a technical and/or procedural topic
- technical/procedural training/workshop sessions
- preparation of articles for newsletters

For information on requesting educational services, visit the Employee Plans Web site at: www.irs.gov/ep and click on the subtopic *Educational Services*. ■

Form 8717 To Be Revised

Form 8717, User Fee for Employee Plan Determination Request, is being revised to allow participants to indicate that their application meets the requirements for elimination of the user fee (pursuant to Section 620 of the Economic Growth and Tax relief Reconciliation Act of 2001) and to provide for the applicant's signature in these cases. The revised Form 8717 is to be used with all section 620 applications that are filed **after** December 31, 2001 (which is when that section becomes effective). The revised form will be available on our Web site at www.irs.gov/ep shortly. Until that time, filers are permitted to file the following draft of the Form 8717 and instructions.

DRAFT

Form **8717**
 (Rev. January 2002)
 Department of the Treasury
 Internal Revenue Service

User Fee for Employee Plan Determination Letter Request

Attach to determination letter application.

For IRS Use Only
 Control number _____
 Amount paid _____
 User fee screener _____

1 Sponsor's name (employer if single-employer plan)	2 Sponsor's employer identification number
3 Plan name	4 Plan number

Caution: *If this is an application for a determination letter that meets the conditions for exemption from user fees described in section 620 of the Economic Growth and Tax Relief Reconciliation Act of 2001, complete only the certification below. For all other applications, leave the certification blank and check the appropriate box in column A or B of line 5.*

Certification

I certify that the application for a determination letter on the qualified status of _____ (name of the plan) meets the conditions for exemption from user fees described in section 620 of the Economic Growth and Tax Relief Reconciliation Act of 2001.

Signature _____ Title _____ Date _____

FORM SUBMITTED	A	B
5a. Form 5300:	with Demo 5 and/or Demo 6: <input type="checkbox"/> \$1,250	no Demo 5 and no Demo 6 <input type="checkbox"/> \$ 700
b. Form 5307:	with Demo 5 and/or Demo 6: <input type="checkbox"/> \$1,000	no Demo 5 and no Demo 6 <input type="checkbox"/> \$ 125
c. Form 5310:	with Demo 5 and/or Demo 6: <input type="checkbox"/> \$ 375	no Demo 5 and no Demo 6 <input type="checkbox"/> \$ 225
d. Form 6406:	Not applicable	<input type="checkbox"/> \$ 125
e. Multiple employer plans (Form 5300):	with Demo 5 and/or Demo 6:	no Demo 5 and no Demo 6:
(1) 1 to 10 Forms 5300 submitted	<input type="checkbox"/> (1) \$ 1,250	<input type="checkbox"/> (1) \$ 700
(2) 11 to 99 Forms 5300 submitted	<input type="checkbox"/> (2) \$ 2,000	<input type="checkbox"/> (2) \$ 1,400
(3) 100 to 499 Forms 5300 submitted	<input type="checkbox"/> (3) \$ 3,500	<input type="checkbox"/> (3) \$ 2,800
(4) Over 499 Forms 5300 submitted	<input type="checkbox"/> (4) \$ 6,500	<input type="checkbox"/> (4) \$ 5,600
f. Multiple employer plans (Form 5310):	with Demo 5 and/or Demo 6:	no Demo 5 and no Demo 6:
(1) 2 to 10 employers maintaining the plan	<input type="checkbox"/> (1) \$ 375	<input type="checkbox"/> (1) \$ 225
(2) 11 to 99 employers maintaining the plan	<input type="checkbox"/> (2) \$ 600	<input type="checkbox"/> (2) \$ 450
(3) 100 to 499 employers maintaining the plan	<input type="checkbox"/> (3) \$ 1,000	<input type="checkbox"/> (3) \$ 900
(4) Over 499 employers maintaining the plan	<input type="checkbox"/> (4) \$ 2,000	<input type="checkbox"/> (4) \$ 1,800
g. Volume submitter:		
(1) Specimen plan		<input type="checkbox"/> (1) \$ 1,500
(2) Lead specimen plan (see Rev. Proc. 2000-20)		<input type="checkbox"/> (2) \$ 3,000
(3) Specimen plan identical to lead specimen plan (see Rev. Proc. 2000-20)		<input type="checkbox"/> (3) \$ 100
h. Group trust		<input type="checkbox"/> \$ 750

Attach Check or Money Order Here

Instructions

The Omnibus Budget Reconciliation Act of 1990 requires payment of a user fee with each application for a determination letter. The user fees are listed on page 1. For more information, see Rev. Proc. 2002-8, 2002-1 I.R.B., and Rev. Proc. 2000-20, 2000-6 I.R.B. 553.

Certification for Exemption from User Fee (Section 620 of the Economic Growth and Tax Relief Reconciliation Act of 2001):

The exemption from the user fee applies to all **Eligible Employers** who request a determination letter within the first five plan years or, if later, the end of the Remedial Amendment Period that begins within the first five plan years with respect to a plan. An application from an eligible employer for a plan that was first effective on or after December 9, 1989 will automatically meet this requirement, provided the application is made by the end of the plan's GUST remedial amendment period. See Rev. Proc. 2001-55, 2001-49, I.R.B. and Rev. Proc. 2000-20, 2000-6 I.R.B. 553 as modified by Notice 2001-42, 2001-30 I.R.B. 70, regarding the GUST remedial amendment period.

An eligible employer as defined in section 408(p)(2)(C)(i)(I) of the Internal Revenue Code of 1986 is an employer which had no more than 100 employees who received at least \$5,000 of compensation from the employer for the preceding year. In addition, an eligible employer must have at least one employee who is not a highly compensated employee (as defined in section 414(q)) and is participating in the plan. The determination of whether an employer is an eligible employer under this section shall be made as of the date of the request described above.

Complete the certification only if your application meets these requirements.

Payment of User Fee:

If you do not meet the conditions for exemption, a user fee is due. Check the appropriate box in column A of line 5 if your plan uses the average benefit test to satisfy minimum coverage requirements and/or the general test to demonstrate

nondiscrimination in the amount of contributions or benefits, and you want to receive a determination letter that covers these issues; i.e., your application includes Schedule Q and a demonstration labeled Demo 5 and/or Demo 6.

Check the appropriate box in column B of line 5 if you do not want to receive a determination letter that covers the average benefit test and/or the general test (i.e., the plan is not required to use these tests or you do not want these issues considered). A general test plan is a plan that is other than a design-based safe harbor or nondesign-based safe harbor plan.

Attach a check or money order payable to the United States Treasury for the full amount of the user fee to Form 8717, if applicable. If you do not include the full amount, your application will be returned. Attach Form 8717 to your determination letter application.

If you have multiple plans (e.g., a profit-sharing plan and a money purchase plan), submit a separate determination letter application and Form 8717 for each plan.

Where To File

Send the determination letter application and Form 8717 to:

Internal Revenue Service
P.O. Box 192
Covington, KY 41012-0192

If you are using express mail or a delivery service, send the application and Form 8717 to:

Internal Revenue Service
201 West Rivercenter Blvd.
Attn: Extracting Stop 312
Covington, KY 41011

However, a request for approval of a volume submitter specimen plan must be sent to the Volume Submitter Coordinator at the following address:

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201
Attn: VSC Room 5106

If you are using express mail or a delivery service, send the request for approval of the volume submitter specimen to:

Internal Revenue Service
550 Main Street
Cincinnati, OH 45202
Attn: VSC Room 5106

SWBA/IRS Plan Administrator Skills Workshop

February 8, 2002 – Dallas, TX
February 15, 2002 – Tulsa, OK
February 22, 2002 – Houston, TX

Conference info – www.swba.org or call SWBA at (972) 478-8138

Mergers & Acquisitions: Perspectives of the Buyer vs. the Seller

Hardships, Loans, & Distributions: Plan Audit Issues & EGTRRA Changes

Health Plan Pitfalls: Privacy Issues, New SPD Rules & Claims Procedures

401(k) Plans: Responding to an audit notice from the IRS

Weathering The Storm of Vendor Changes

COBRA & Cafeteria Plan Issues: Form 5500 problems, Sec. 125 regs.

SWBA/IRS 403(b) Tax Sheltered Annuity Conference

April 26, 2002 – Dallas, TX

Conference info – www.swba.org or call SWBA at (972) 478-8138

403(b) Tax Sheltered Annuity: Definitions, Problems, EGTRRA Changes

Contribution Limitations: Definitions, EGTRRA Changes

IRC 457(b) Plans: Limitations, Distributions, Trust Requirements

IRC 457(f) Plans: Issues and Trends

403(b) & 457 Correction Programs

2002 Employee Benefits Conferences
(for more information, see www.irs.gov/ep)

Rescheduled Dates:

January 31 – February 1, 2002
Los Angeles

Conference info - www.aspa.org or call ASPA Meeting Department at (703) 516-9300.

Topics:

- Up-to-date discussions on the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001
- issues in IRS audits
- changes in the distribution rules
- IRS and DOL correction programs
- IRC 401(k) investments
- cash balance plans

Hilton Universal City and Towers
555 Universal Terrace Parkway
Universal City, CA 91608
(818) 506-2500

Additional conferences will be noted in the Winter 2002 edition.



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