



# IRS Determination Letter Program

Retirement Plans  
Phone Forum

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# PRESENTERS


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# Topics to Be Discussed

- Overview of the program – current and future status
- Pre-approved specimen rulings program
- Determination letters for pre-app adopters
- Individually designed plan applications
- 403(b) rulings program(s)



# **Overview – Current Determination Letter Program: Our goals for this year**

- Issuing opinion and advisory letters for the defined benefit pre-approved plans by the 3rd quarter; and,
- Analyzing previous cycle data and filing patterns and implement effective changes to the staggered process.
- Interim amendments: evaluation of their service and need

# Future Determination Letter program goals:

- Complete implementation of a program for IRC 403(b) arrangements by:
  - Opening the pre-approved plan program by 4/1/2010, and
  - Issuing draft revenue procedure on a program for individually designed 403(b) arrangements by 6/30/2010.
- About to issue Pre-App DB letters, and begin anew with Pre-App DC submission window, which will tentatively open February 1, 2011.

# Pre-Approved Six Year Cycle

| Year                    | DC Plans   | DB Plans   |
|-------------------------|--|--|
| One / 2005<br>(2/15/05) | <b>All DC Plans Submitted<br/>Based on Current Law</b> | <b>No Action</b>                                       |
| Two / 2006              | <b>IRS Review</b>                                      | <b>No Action</b>                                       |
| Three/2007<br>(2/1/07)  | <b>IRS Review</b>                                      | <b>All DB Plans Submitted<br/>Based on Current Law</b> |
| Four / 2008             | <b>Employers Restate DC<br/>Plans</b>                  | <b>IRS Review</b>                                      |
| Five / 2009             | <b>Employers Restate DC<br/>Plans</b>                  | <b>IRS Review</b>                                      |
| Six / 2010              | <b>Employers Restate DC<br/>Plans thru 4/30</b>        | <b>Employers Restate DB<br/>Plans</b>                  |



# **Status of EGTRRA Submissions**

## **DC Pre-approved plan adopters**

- Announcement 2008-23 announced opening of a two-year adoption window as of May 1, 2008, for EGTRRA restatements
- The remedial amendment period to adopt pre-approved DC documents ends April 30, 2010
- Applications intending to come in within RAP must be on the correct form:
  - Form 5307 for most
  - Form 5300 for some



# Status of EGTRRA Submissions

## DC Pre-approved plan adopters

- General rule:
  - Form 5307 for verbatim or minor-change adopters (volume submitter)
  - Prototype adopters can make no changes to adoption agreements or basic plan document provisions
    - Any change takes plan out of Form 5307
    - Exception for “other” parameters





# **Status of EGTRRA Submissions**

## **DC Pre-approved plan adopters**

- Volume adopters have greater leeway
  - Can make “minor modifications” and remain on Form 5307
  - Service determines what is “minor”
- Form 5300 for major changes and “special rulings”
  - Requires amendment up to current Cumulative List
  - Unless 5300 submission required, only due to special ruling request



# **Status of EGTRRA Submissions**

## **DC Pre-approved plan adopters**

- These considerations apply to how the plan must be sent in to the Service, and what standard of review will be applied
- A second question raised is with regard to the effect changes to pre-approved language have on amendment cycle status



# **Status of EGTRRA Submissions**

## **DC Pre-approved plan adopters**

- Employer amendment of M&P or VS plan into a type not allowed in the pre-approved program more than one year after the date of initial pre-approved adoption remains in the six-year cycle for the current cycle, and then switches to the five-year IDP remedial amendment cycle
- If change made within one year or is complete textual re-write, drops to IDP cycle immediately



# **Status of EGTRRA Submissions**

## **DC Pre-approved plan adopters**

- Employer adoption which causes such a plan to be treated as an individually designed plan must file a determination letter application for continued reliance.
  - E.g. Amendment into class-based allocation formula
- Application must be filed during the approximate two-year period within the applicable 6-year remedial amendment cycle
- Next and future filings will be determined with regard to sponsor EIN



# **Status of EGTRRA Submissions**

## **DC Pre-approved plan adopters**

- The application will be reviewed using the Cumulative List the Service would have used if the plan had been submitted as an on-cycle plan. For current applications, this will be the 2009 List
- Generally, this will require amendments to a volume specimen document template
- A prototype will be amended with “tack-on” amendments



# **Status of EGTRRA Submissions**

## **DC Pre-approved plan adopters**

- At some point after April 30, 2010, envision possibly closing program to DC adopters
- Possible exception for new plans
- Would also tie-in with opening of DB submission window
- Once DB submission window open, we would accept Form 5307 submissions only from EGTRRA approved DB adopters



# **Status of EGTRRA Submissions DB Specimen Plans**

- Under the staggered system, submission of pre-approved defined benefit plans is delayed for a couple of years behind the defined contribution plans
- DB specimen plans must have been submitted between February 1, 2007 and January 31, 2008; significantly less than DC submissions
- Currently nearing the completion of the DB review process

# Individually Designed 5 Year Cycle

| Last digit of Plan Sponsor's TIN | Cycle | EGTRRA RAP Ends | Next RAP ends |
|----------------------------------|-------|-----------------|---------------|
| 1 or 6, electing groups          | A     | 1/31/2007       | 1/31/2012     |
| 2 or 7, multiple employers       | B     | 1/31/2008       | 1/31/2013     |
| 3 or 8, governments              | C     | 2/2/2009        | 1/31/2014     |
| 4 or 9, multiemployers           | D     | 1/31/2010       | 1/31/2015     |
| 5 or 0                           | E     | 1/31/2011       | 1/31/2016     |



# Individually Designed Plans/Receipts by Cycle

| Cycle | Projected receipts | Actual receipts | Percentage completed |
|-------|--------------------|-----------------|----------------------|
| A     | 10,800             | 7244            | 96%                  |
| B     | 7800               | 9986            | 75%                  |
| C     | 11500              | 6837            | 25%                  |
| D     | 11500              | 2653            | 5%                   |
| E     | 7000               | 0               | 0%                   |



# EGTRRA Submissions for Individually Designed Plans

- The first submission period was Cycle A. This group consisted of employers whose EIN ended in the digit 1 and 6
  - These plans were reviewed against the 2005 Cumulative List and were required to be submitted by January 31 2007
- Unlike pre-approved plans, no timing distinction is made between defined benefit and defined contribution plans



# EGTRRA Submissions for Individually Designed Plans

- Submissions are now being made for employers in Cycle E. This submission cycle will end on January 31, 2011
- Cycle D has a special rule in effect with regard to restatement amendments to comply with the Pension Protection Act of 2006 (“PPA ’06”)
- PPA ’06 permits a plan sponsor to delay adopting a plan amendment pursuant to statutory provisions under PPA ’06 until the last day of the first plan year beginning on or after January 1, 2009 (January 1, 2011 for governments)

# Resolving PPA issues for Individually Designed Plans

- PPA '06 (and WRERA's technical correction provisions) defer conforming textual amendments
- Cycle D ended on 1/31/2010, so most Cycle D plans were subject to review for PPA '06
- Due to this difference, Notice 2008-108 allows plans with PYEs 2/1/2010 or later to defer PPA restatement provisions until Cycle E
- Would come in one-time only as Cycle E submitter, then revert to Cycle D



# Individually Designed Government Plan Extension

- Recent guidance extends government plans 401(b) period to Cycle E
- Extension allows additional time to comply with governmental plan regulations
- Don't need election; can stay in C and receive priority
- In *EP News* first, now in Rev. Proc. 2010-6

# Interim Amendment Issues

- Interim amendments are required to correct disqualifying provision (i.e. new statute) – usually executed by due date of sponsor's tax return (exception for statutory delay provisions)
- Discretionary amendments are non-mandatory for compliance; usually executed by end of effective year
- Both can be “corrected in final” by restatement at end of remedial period



# Interim Amendment Issues

- As noted earlier, PPA '06 amendments are subject to deferral
- One such issue relates to non-spouse beneficiary rollover
- Question is raised how to handle these and other interim amendments for purposes of determination letter filings



# Interim Amendment Issues


- General rule: for individually designed plans, copies of all interim and discretionary amendments must be included in 5300 submission package
- For DC pre-approved plans, this is deemed satisfied by sponsor certification as part of ruling process; Announcement 2008-23 eliminates need to file actual amendments





# Interim Amendment Issues

- Submission package must include copies of restatement document and interim amendments if required for employer signature
- For example, volume practitioner authorized to execute interim amendments on behalf of clients does not have to submit
- If practitioner does not carry this authority, interims must be submitted



# Opening of 403(b) Program

- Final regulations issued 7/26/2007, first set of regulations since 1965
- Require administration pursuant to written plan document
- Document required to set forth participant and integral plan operative terms
- Areas of concern:
  - Difficulty meeting deadline
  - Receiving approval reliance



# Inauguration of 403(b) Program

- Document reliance to be provided under a ruling program
- Announcement 2009-34 contains a draft, open to comments, of the rules we intend to use
- Prototype program first, modeled on Rev Proc 2005-16, want to open in 2nd quarter of calendar year 2010



# Inauguration of 403(b) Program

- 401(b) to 403(b): adopt written document on or before 12/31/2009, can correct any defects by adopting prototype once subsequently approved
- This 401(b)-equivalent, offering retroactive reliance, will be program specific, not systemic



# Inauguration of 403(b) Program

- No volume submitter; but will provide differentiation between standardized and non-standardized benefit packages
- Both programs will replace prior practice which was to provide similar reliance through PLR requests



# Inauguration of 403(b) Program

- Anticipate that most employers will use and can rely on prototype approval
- 403(b) assets limited to insurance annuity contracts and custodial accounts that are stock in regulated investment company (i.e. mutual fund)
- Anticipate that these financial entities will be the document providers, and can accommodate most adopters on prototype platform



# Inauguration of 403(b) Program

- Individually designed program to follow next
- IDP only for limited situations where nondiscrimination issues are extant
- Can use model language in Rev Proc 2007-71 for these purposes
- Website has been updated with far more model language than was originally covered under 2007-71



# Benefits Of A Favorable Determination Letter

- IRS Publication 794 addresses the significance of a Favorable Determination Letter
- The Publication also points out some features that may affect the qualified status of a plan and nullify your determination letter





# What is an EP Determination Letter?

- A ruling by the Service that the terms of an employer's retirement plan satisfy the applicable requirements of the Internal Revenue Code
- If the Service approves the terms of the retirement plan document, the employer and employees who participate in the plan receive the favorable tax treatment accorded a tax-qualified retirement plan



# Why Employers Want Letter

- Although not required, employers generally may want a favorable determination letter because the letter:
  - Provides a relatively inexpensive form of insurance for the employer that the Service has ruled that the plan is qualified
  - Provides added protection under bankruptcy law



# Tax Advantages of a Qualified Retirement Plan

- Employer: Upfront deduction for contributions made to plan
- Employees/Participants:
  - Tax-free build-up of income in the tax-exempt pension trust
  - Non-recognition of income until amounts are distributed from the trust



# Determination Filing Reminders

- Individually designed plans must be **restated** when they are submitted
- Working copy or proposed restatement are acceptable.
- Form 5307 submissions will only be accepted for EGTRRA approved adopters (Announcement 2007-90)
- Elimination of redlining requirements at Rev. Proc. 2009-6, sec. 6.05




# Determination Filing Reminders

- Include copies of interim amendments with IDP submission, but not for pre-approved Form 5307 submissions
- Include copies of discretionary amendments (if any) for both



# Other Document Issues

- In addition, submitting a restated plan in proposed form is permitted, provided that the copies of timely executed interim and discretionary amendments and the prior plan document to which these amendments apply are also submitted with the application
- A plan that is submitted in proposed form, and any proposed amendments, in the case of a plan submitted as a working copy, must be adopted no later than 91 days after the date of the determination letter in order to maintain reliance



# Common Reasons a Plan is Returned Incomplete

- Individually designed plans aren't restated for the applicable Cumulative List (working copy plans must be restated)
- Insufficient user fees
- EGTRRA Good Faith Amendments missing
- Interim Amendments missing
- In general, prototype plans using Form 5300 must also restate for the applicable Cumulative List (exceptions are noted in Announcement 2008-23)



# Other Issues:

- Demo requested, but not submitted
- Related/pertinent documents missing (i.e. initial plan document, Meeting Minutes/BOD Resolutions for terminating plans, merger related documents, etc.)
- Related plans – mention them in your cover letter along with EIN. (Some have the same plans in multiple files)
- Terminating plans aren't being amended for PPA and other currently applicable guidance such as HEART and WRERA






# EP Determination Letter Application Forms

- All EP Determination Letter Application Forms are in the process of being updated
- Form 5307 is available on the web
- New form F5316 for Group Trust Rulings
  - All forms are in “block format” with barcode



# Reminders for Completing the New Forms

- All data must be entered in Courier 10 point font
- Alpha characters should be entered in all capital letters
- The applications have formatted fields that limit the number of characters entered per field



# “Dos and Don’ts”/ DL Submissions

## Do:

- Enclose correct user fee – one check per application, stapled to front of Form 8717 (or enclose signed Form 8717 certification, if exempt from user fee)
- Use current version of the applicable form
- Include pertinent information in your cover letter (i.e., details of why applying, what documents are being submitted, if plan was involved in a merger, if plan was submitted to VCP & received a compliance statement, etc.)



# “Dos”, continued

- Ensure application is complete - make sure that all required documents are included in the package. Submit original forms and documents when possible (copies don't always scan well). See Form instructions for required documents and attachments
- Ensure that plan documents/amendments are signed and dated, if applicable

## “Dos”, continued

- Include copies of prior Determination Letter and VCP Compliance Statement, as applicable (and current EGTRRA/prior GUST opinion or advisory letter, if pre-approved plan)
- Clearly identify each document using titles/page numbers, or identifying separator sheets

# “Dos”, continued

- Ensure that Form 2848 is correctly completed and *timely* signed
- Separate multiple applications with brightly-colored paper (not clips, binders)
- File application on time – the earlier, the better
- Pre-Approved Plans:
  - Include Form 8905, if applicable
  - State if VS is word-for-word adopter
    - if not, list modifications and explain



# “Don’ts”

- Don’t use staples (except to attach check to Form 8717) or paper clips or binders
- Don’t attach sticky notes
- Don’t punch holes in the application
- Don’t use odd-size or color paper (except for multiple applications, see above)
- Don’t include unnecessary documents (e.g., SPD, instructions, etc.)!



# Review of plan language

- Submissions are reviewed for conformity with all necessary law
- For termination applications, this includes all law in effect as of the date of termination - shortens applicable remedial amendment period
- If an agent or specialist discovers language in a pre-approved plan that appears to be incorrect, the procedures in EP Determinations Quality Assurance Bulletin FY- 2008 No. 2, Correcting Pre-Approved Master, Prototype and Volume Submitter Plan Language, apply





# Recommended Filing Order

1. Cover letter that identifies the items listed below, as well as any information that is relevant to the plan being submitted (i.e., the application is being filed on or off-cycle, the plan was involved in a merger or that it was submitted to IRS Voluntary Compliance Unit, the plan is currently under audit, that this plan is being submitted with a related plan, etc.)
2. Form 8717 (with correct user fee or signature if exempt)
3. Authorization to represent employer (Form 2848 and/or Form 8821)



# Recommended Filing Order

4. Application Form (5300, 5310, 5307, etc)
5. Attachments to the questions on the application (i.e., controlled group statements)
6. Schedule Q – file ONLY if requesting a ruling – don't file if all boxes are marked “no”
7. Demonstrations
8. Notice to participants – if applicable



# Recommended Filing Order

9. Meeting Minutes/Resolutions (formal actions) approving amendments, restatements or actions involving the plan (i.e., mergers, termination of the plan, etc.)
10. List of modifications to Volume Submitter plans
11. Restated plan (IDP) or Adoption Agreement (Pre-approved plans)
12. EGTRRA Good Faith Amendments
13. All executed interim/discretionary amendments (in chronological order)



# Recommended Filing Order

14. Current Trust Agreement

15. Verification of prior law (i.e., GUST determination letter or prior adoption agreement and/or plan documents with any amendments not covered by favorable determination letters)

16. All other pertinent documents (i.e., merger agreements, compliance statements, etc.)

**Please do not bind information!!!**

# Website Information

The screenshot shows a Microsoft Internet Explorer browser window displaying the IRS.gov website. The address bar shows the URL: <http://www.irs.gov/retirement/article/0,,id=218539,00.html>. The page title is "Determination, Opinion and Advisory Letters for Retirement Plans - Microsoft Internet Explorer".

The website header includes the IRS logo and the text "IRS.gov". Navigation links include "Home", "Change Text Size", "Contact IRS", "About IRS", "Site Map", "Español", and "Help". A search bar is located on the right side of the header.

The main navigation menu includes links for "Individuals", "Businesses", "Charities & Non-Profits", "Government Entities", "Tax Professionals", "Retirement Plans Community", and "Tax Exempt Bond Community". Below this, there are links for "Benefits Practitioner", "Plan Participant/Employee", and "Plan Sponsor/Employer".

The page content is titled "Determination, Opinion and Advisory Letters for Retirement Plans". It explains that the Employee Plans Determinations program issues determination letters for individually designed retirement plans and opinion and advisory letters for pre-approved retirement plans. It states that there are many benefits to obtaining a favorable determination, opinion or advisory letter.

Retirement plans may be individually designed plans, drafted to meet the particular needs of an employer, or [pre-approved plans](#) (Master and Prototype (M&P) and Volume Submitter (VS) plans).

If the plan meets the form requirements of the Code, the IRS will issue a favorable:

- determination letter for an individually designed plan;
- opinion letter for a M&P plan; or
- advisory letter for a VS plan.

**Update a Plan**  
Retirement plans must be periodically amended to comply with current law. The IRS provides many resources to help you keep your plan up-to-date.

**Apply for a Letter**  
How, when and where to apply for a [determination, opinion or advisory](#) letter for a retirement plan.

**Check the Status of Your Letter**  
How to check on the status of a determination, opinion or advisory letter application.

**Learn the Scope and Benefit of a Favorable Letter**  
The extent to which you can rely on a favorable determination, opinion or advisory letter, and factors that may affect the status of your favorable letter.

**Additional Resources**

**Retirement Plans Community Topics**

- [Newsletters](#)
- [Published Guidance](#)
- [Forms/Pubs/Products](#)
- [Correcting Plan Errors](#)
- [Examinations/Enforcement](#)
- [Employee Plans FAQs](#)
- [Types of Plans](#)
- [Contact EP/Services](#)
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**IRS Resources**

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