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Mark: Hi everyone. Thank you for joining us today. I'm Mark O'Donnell, director of TEGE Communications and Liaison. I'd like to welcome you to our phone forum entitled Overview of the 2013 cumulative list of changes in plan qualification. Today, you'll be hearing from Don Kieffer, technical guidance, tax law specialist.

Before we start, I'd like to point out of a couple of things. We'll email a certificate of completion to everyone registered for today's forum if you attend the entire phone forum. Enrolled agents, enrolled retirement agents, actuaries can receive continuing education credit for this session. Other tax professionals should consult their licensing organization to see if today's session qualifies for continuing education credit.

As with all our presentations, the comments expressed by the speakers should not be construed as formal IRS guidance. Here at the IRS, we have many retirement plan resources available for you. If you take a look at slide two of the handout, you'll see a link to our retirement plans web page. You can also get there by going to the main irs.gov landing page where you click on the information for drop down box in the upper right hand side of the screen and select retirement plans.

If you now take a look at slide three, you'll see a picture of how you can subscribe to our free electronic newsletters. To subscribe, select newsletters in the left navigation bar to subscribe then select retirement needs for employers, our newsletter for employers sponsoring the [inaudible 00:01:36] and employee plans news, our newsletter for retirement plans professionals. Now, let's hear from Don.

Don: Okay, thank you Mark, and good morning for those of you on the west coast, good afternoon for the rest of us. Again, I'd like to welcome you to the 2013 Cumulative List Phone Forum. I'm going to start on slide five, which is the agenda of items we're going to cover today.

First, I'm going to go over a little bit about our current determination letter program, where we are in the work schemes, what type of plans we're generally working on, and then we'll also discuss some of the guidance that we put out for or that are going to affect cycle D filings both in the form and the user fee structure.

Then, we'll spend a little bit of time talking about the preapproved program. Right now, we're getting near the end of the DC, defined contribution, window. For the last two and a half years,

we've been reviewing lead plans that were submitted and we're coming close to the end of that review process. I'll talk about where we go next.

Also, on the defined benefis side, we just came out with guidance in the form of IRS Announcement 2014-4 as it effects preapproved defined benefit lead plan submissions. We'll spend a very little bit of time on that.

Then, we also want to talk about some possible future guidance that we are likely to see down the road. One of them deals with interim amendments and that would directly affect those of you in our audience today because this topic that we're talking about today can kind of be distilled down to what things have to be done in an interim amendment for 2013 so I'll talk about some guidance that might effect that.

Then, the bulk of today's presentation, I want to devote to IRS Notice] 2013-84, which is the cumulative list or better known as the Cycle D list. What I'll do is go down each of the new items that was issued for this 2013 list, tell you which ones we think trigger language or planned document requirements, what has to be done in terms of the planned amendment, whether it's required or not.

Then, at the end, I'll take some questions and answers. As was mentioned in the introduction, we've got a full house today so I don't think I can take any live. I have about 12 to 15 submitted in advance. We'll cover those and I can multi-task a little bit so if during the course of this presentation I raise a question that you have, if you email it to me, I can pick it up if it's a short one and cover it live.

Anything I can't pick up and cover either from advance or submitted today, I will definitely come back to you, the questioner, with a response individually and then I know in the past we've been asked occasionally if we could compile these and put out like a list of frequently asked questions or something like that and put it on the web. If we have enough demand for that and if we have enough questions, we can look into doing that as well.

With that, let's start on slide six. We'll talk very briefly about where we are as we go into cycle D. As it shows, we're currently working in the most recent cycle C filings. Now, these are submissions that were sent to the service between February 1, 2013 and January 31st of this year. Now, Slide 6 is the exact same form from a year ago and had a similar slide.

I think then we were working about two or three cycles behind and for ESOPS probably two more cycles behind that. I think when I did an ESOP determination letter phone forum maybe two and a half years ago, the slide that was talking about how far we were behind on ESOPS was maybe four cycles or five cycles behind the current submission one.

If you have no other knowledge other than just looking at the slides from these three phone forums, what will be evident is in the course of the last year, we've made a tremendous push to try to get our inventory corrected and resolved in a much more timely manner and try to get it

much further caught up between the submission date and the date that we are, the current date, the date of the current cycle. We've tried to eliminate that back log in a number of ways by really refining some of the review time and the way we review applications and also to look for a lot more systemic efficiencies in how we process them.

We are still a little bit behind this in terms of ESOPs but I think if we, if I do this again next year, maybe we won't have a second bullet on slide six. Eventually those might become more assimilated into the general work scheme at least in terms of timing it.

Now, going to slide seven, we made two changes that are going to affect cycle D filings. One is the form change and the other is a fee change. The form change is revisions to the application forms to cover for determination letters. These are Forms 5300 and 5310.

In general, we revised the forms to put some of the information that we otherwise would have gone out and contacted applicants for, we were going to corroborate materials that are in the submission for, just try to get that material moved up into the front of the application. But the bigger reason for doing it was again to try to expedite and get these efficiencies that I just talked about in terms of our automated processing to allow the filing portion of the review process to go through a little bit more smoothly and by making these forms readable into our systems so we can extract the information through the scanning or however else we can do it in the upfront processing of the application.

Now, these were changed in December of 2013 and we've given what is essentially a six month grace period to continue using the old form until June. If you are going to file in early in the cycle, you can file in on the old versions of the 5300 and 5310. If you come in later, you are likely to get a letter from the IRS saying you need to resubmit your materials on the new forms

We are doing the same type of changes with 5307. Parenthetically, if you recall in 2011, we issued IRS announcement 2011-82, which limited the ability to come in for a 5307 filing to adopters of volume submitter plans, which make minor modifications. Having that change, we are going to need to eventually modernize and restyle the form and also update it for faster and more efficient systemic processing. I think you will see revisions to that point coming down the road shortly as well.

Now, on slide eight, we also made a change to fees. Every year for those of you that are familiar with IRS administrative practice, you know that the Internal Revenue bulletin contains that year's -1 through -8 guidance. -6 is always the determination letter program requirements for that year. -8 has the schedule of user fees and effective February 2nd, -8 was revised to put in a modest increase depending on the type of forms filed for certain types of applications and rulings requested].

Although the fees may have gone up, the current forms, form 8717, which is the user fee form for individual design and individual employer submissions, and 8717-A for preapproved lead submissions, the forms have not yet been revised to pick up the newly established fees so

again, if you are going to file in early in the cycle, you are going to continue to use the old forms because that's all that we have out there.

Make sure you look at the Revenue Procedure to ensure you are submitting it in with the correct fee because the form may not have the appropriate fee for the type of submission that you are making. Eventually, the form will be updated and when it is, you will have to use that form but in the meantime, just make sure you are coming in with the correct fee, otherwise we would return the submission to you.

Now, let's talk about preapproved plans. On slide nine, I discuss briefly about where we are with our defined contribution review. These are plans that were submitted, what was originally going to be February 1, 2011 through January 31, 2012, we gave administrative guidance in December of 2012 to give a bit of an extension. Since that time, we've been in the process of reviewing the lead plan submissions for all the various defined contribution specimens that were submitted and we're coming to the end of that review process.

Now, for the past two cycles, we would usually in the first federal fiscal quarter, October through December, try to finish up the last get together, I guess, all the last ones that we've got left, start to send out the preliminary email notifications to each individual submitter to say we're done with your application and we will issue an opinion advisory letter when we've finished everybody else.

We would try to finish everybody else somewhere between January and February and then in March issue an announcement that says, you know, we're finished, the letters are going out, and then the two year window to adopt is and then the first two submission windows that was May 1 through April 30th, two years following.

We're coming close to all those dates. We're still trying to make that same goal. We would like to keep the six year program on this familiar one year window to submit, two plus years to review, and then something in the early spring saying the two year window is May through April, that's our goal to get finished up. We're getting very close to that. Eventually, very shortly, we'll come out with our announcement that says specifically what the window is. We're trying to again keep it close to what we've had before so as we go down to the wire here, you'll have to look for us to see how close we get.

On slide ten, I talk a little bit about the defined benefit submission window. That would have originally extended from February 1, 2013, through January 31, 2014. We gave an extension to that submission period window in IRS Announcement 2014-4, which was issued about a week before the end of the deadline. That extension was to enable us to set up a preapproved cash balance review component as part of this defined benefits six year submission cycle.

A couple of thoughts about this. First of all, we'd like that one to stay on the same familiar ground, which is, you know, about a 2 plus year review process, finish it up in the first federal fiscal quarter, start the filling in the email notifications going out and then ultimately the

announcement going out in the early part of the spring and then a two year window immediately behind that.

We're going to have to do it this time with a one year set back because we were given effectively a one year extension for anybody to submit any preapproved defined benefit lead plan submission, not just those that are going to come in with cash balance features. That's going to short us off one year in the front of what we would normally take to work all these.

But again, as I frequently point out, the six year cycle has got a one year of wiggle room or extra time built into it so we'll probably wind up consuming that and try to shoot for staying on the same course. Now, if we go to slide 11, I noted that the guidance giving this extension came out in January and we received quite a few responses back from people this was great and we really would like to use a preapproved cash balance submission but coming out a week before when we've already scheduled clients to go in with individually designed 5300s, it may not be as helpful as thought.

We are trying to work on a newsletter article and some frequently asked questions, which would allow you to withdraw any cycle C plan that intends to, cycle C filing for a plan that intends to use the eventual preapproved defined benefit plans especially what we're trying to target are cash balance plans that otherwise would be on the preapproved track to allow you to withdraw them and get your user fee refunded.

We are in the process of issuing an article that will have the specifics about how you can do this. In general terms, any determination letter can be withdrawn by any applicant once they file it in but generally the service does not refund the user fee, nor do we return the submission materials.

What we're trying to do is make an extension as kind of a concession since we got this out so late into the filing cycle that would allow you not only to withdraw but receive your user fee refund as long as you adopt the Form 8905 and do it by the end of this month and then we'll give a couple extra weeks] to take the withdrawal out as well. All that should be in the newsletter article that we're coming out with soon. It will tell you how to do it and if you want to, where to send the request and how we'll process it.

Now, let me shift gears and talk a little bit about future guidance on slide 12 and two things that we are working on in the background. One is an ESOP preapproved program. Very similar to what we are doing with cash balance, trying to add in an ESOP component to our defined contributions six year window.

The difference is what we're trying to do with ESOP's, we've had a head start. We started this maybe two years ago so we have got four to five years of advanced lead time to get it ready. We're trying to do ESOPs. I like to tease my colleagues. You are trying to do in four to five years what I have about six months to get ready.

The good news is we have a lot more advanced lead time because we'll need it on the ESOPs side. If you think of a planned document as 60 to 70 pages of text, a huge portion of that text is ESOP specific language. In a cash balance portion, the amount of language in the document that is cash balance specific is a lot less so we think we can do it even with a reduced amount of time.

The other thing we are looking to come out with is guidance in interim amendments. For those of you that have followed IRS planned document policy discussions, you might recall back in 2010 the TEGE advisory committee, better known as The ACT, came out with an assessment of the determination letter program, which recommended that we reduce the amount of interim amendments required. We have been working on trying to come out with some type of guidance that relieves sponsors of having to do this kind of annual amendment to the plan.

Right after that came out, we were pretty focal out there on the speaking trail and then our articles talking about the different things that we were looking at. We were at one time, The Act had recommended a “core” versus “non-core” approach where you would only have to do an interim amendment if it was core to the plans operations. We came out with a notice based alternative where if somehow the SPD, summary plan description summary material modification could wind up doing double duty and serve as your interim amendment.

We were talking about all those things and I guess got kind of quiet and people understood that, I think to hopefully not think we were not doing anything bad or that had slowed down our work. In fact, behind the scenes, we've been going full tilt on trying to come up with some type of appropriate guidance. If you look at our current priority guidance plan for this year, I think there are about 41 or 42 items and guidance regarding interim amendments is on there on like number 22 or number 23.

We are looking at some type of a default role where you would not be required to do an interim amendment unless it is specifically required by the statute or by the regulation, which has changed language that says, you know, to do this, you have to do an interim amendment by such date or if the change was necessary to avoid a 44(d)(6) violation. If we can get that type of guidance finished and out, we would hope that would satisfy the various concerns the public has about reducing the frequency of amendments and our concerns about compliance.

Let me pick a quick example. Let's say a non-spouse beneficiary roll over. I'm doing this off the top of my head. I believe that was added into the Code by PPA 2006, the Pension Protection Act, as an optional change. So, if an employer wanted to do that, they could do it with an interim amendment. PPA would have delayed the required date for that amount until 2009. Then, [in late 2008] the Worker Reemployment and Employment Rghts Act of 2008 basically made that requirement mandatory and said this is a great idea, you need to put this into your plans.

Depending on what type of language the PPA interim had, you might have to do a second one for WRERA to conform to the change and then clean it up in the final restatement at the end of

the cycle. For nonspouse beneficiary rollovers, you would have one, possibly two interim amendments and then the third in the final document. If this type of guidance comes out and alleviates that, you would basically only have to do it once. You would eliminate prior interim amendments because as regard to non-spouse beneficiary roll over, I don't think there was a specific requirement that you would immediately amend with the plan.

Okay. Now, on slide 13, let's start talking about the Cycle D cumulative list. Notice 2013-84. This list is used for cycle D submitters, people coming into the determination letter program with individually designed plans for either multi-employer plans or for sponsors who have their tax ID number ending in either a 4 or a 9.

The submission period is February 1, 2014 through January 31, 2015. If you look on slide 14, these are the things that this list covers. In general, it covers everything between 2009 and up to October 1, 2013. The list is published each year with what is essentially a cutoff date beyond which guidance won't be added to the requirements for the plan submissions for that year.

Now, there is actually two exceptions to this general rule, which I will cover momentarily but in general, when we're talking about 2013-84, we're talking about all the applicable law between 2009 and 2013. The way our cumulative lists work is they aggregate all of the laws issued during this period. If you pick up 2013-84, it has essentially all of the newly added statutes, regulations, guidance, and in this case a court decision, which I will talk about momentarily, that has been issued since October 1, 2009 up through October 1, 2013.

What I'm going to cover today are the things that are newly added this year. If you were to just take 2013-84 and search for the new items, you could even just use the word new in a word search, I think you would wind up with seven or eight different hits. A couple of them are on the list twice or three times even because they refer to different sections of the code. What I'm going to do is just cover each change once and the things that were newly added for requirements for this year.

Now, I said that if I recall, as I am going to go through, there is five items. I think they are placed on the list seven or eight times. Now, on those five items, two of them or three depending on your point of view, and I'll talk about this momentarily, two of them are things that were placed on the list even though the actual piece of guidance didn't come out. One is the In-plan Roth rollovers, which will be my last point to cover today, and the other was the Safe Harbor suspension reduction. Both of those are on the list for the 2013 Cycle D list even though the actual pieces of guidance came out after October 1st.

If you look at slides 16 and 17, those statutes, eight in all, are the things that our final determination letters in cycle D will express reliance on. This will be essentially the scope of reliance for an IRS cycle D determination letter. Eight different statutes. If you can think of a good acronym for these, I'd love to hear it. You know, we had the GUST remedial amendment period, which was an acronym of four acronyms.

The first five year period was just referred to as the EGTRRA cycle. If you can think of a good one for this, I'd love to hear it. We just tend to refer to this as the second six year cycle but there are eight statutes in all under which the list up through 2013-84 and for which our cycle D determination letters will rule on and give reliance.

Now, again, one final point before we go to the list items. When you submit for cycle D, a plan has to meet all of the various requirements of the code, not just the new ones and not just the things that are on the list so for example, when you come in during cycle D, we might look at the plans eligibility very closely and see that the definition of hours of service is satisfied. Those components of qualification are still required but just don't happen to be change items that are put on the annual accumulative list. Think of the lists, and especially this one, as being the new items added to this entire body of qualification requirements.

As always, terminations generally cut off extra time to make those changes. If you have a plan that is going to terminate in the next year, even though that plan might be a Cycle E tax payer usually the termination is shortened out the remaining time under the remedial amendment period terminating plans have to address all of the law changes in effect at the plans date of termination, even if you might otherwise have had an open remedial amendment period for ongoing plans.

Now, let's start with the five items and slides 19 and 20 relate to the recent supreme court decision on June 26th in the *United States vs. Windsor*, which overruled or declared unconstitutional Section three of the Defense of Marriage Act, which I'm going to refer to here as DOMA and declared that the federal statute defining marriage to be only for opposite sex couples was unconstitutional.

Now, when we set this list, I'm sorry, when we set this phone forum up, I think it was back in the early fall. I was thinking March 13th was so far down the road, we would likely have the implementing guidance for employee benefit plans out already and it would be water under the bridge. Unfortunately, that guidance is currently due and is imminent but we don't have it yet. I can only very briefly go into Windsor and its effect on employee benefit plans.

We do have specific guidance out and the critical guidance for terms of amending plans and what has to be in the amendment is still pending but is and let me just talk about what we've got out so far. First, and the second item on the list is IRS Notice 2013-17.

I like to think of the IRS as administrative guidance under DOMA as being really three things. The income tax guidance, the employment tax guidance, and the employee plan guidance. The income tax guidance was 2013-17. That's what is on the list. It says the spouse includes same sex partners, lawfully married in the United States, where marriage is initially established, which is generally referred to as a state of celebration enroll. It holds that this determination is valid even if the state of DOMA itself doesn't sort of recognize the celebration.

If you look at 2013, it does give you somewhat of a clue and a little bit of a clue as to where we are going in terms of the eventual employee plans guidance. It does point out the issues about having a unified definition, how this might affect planned administration. It discusses what would be the alternate consequences of the state of domicile rule were recognized.

If you look at the revenue one, that does give you somewhat of a clue as to what will eventually come out in our employee plans guidance. It also points out that whatever guidance we come at with is going to apply only to marriages, not to domestic partnerships or civil unions or any of the lesser unifications that different states might grant. It would only be applicable for marriage.

The effective date of 2013-17 was September 16, 2013 and I'm going to take a step out of employee plans. If you were looking at this for purposes of income tax filings in very lay terms, what it says is for the 2013 years forward, same sex married couples must file joint returns. For 2012, they can do so electively, and for 2011, they can go back and amend as well as long as the refund statute of limitations period is open]. That's the income tax guidance.

The other guidance, the employment tax guidance is IRS Rev. Ru.. 2013-61, which gives these two alternates to correct employment tax over payments in the 2013 fourth quarter, 940-941 filings. The other piece of guidance, which is not on the list, was guidance that the Department of Labor issued. It was on September 18, 2013 nearly contemporaneous with our list item 2013-17. It notes that the Department has the primary employee plan implementation and interpretive authority for most of the non-tax plan terms, specifically including the term spouse as it is used for non-tax purposes.

It also includes a similar rule to IRS 2013-17 guidance invoking the state of celebration rule. That's about all I can really talk about in terms of DOMA and Windsor because we don't have the guidance out. I can only say what we're here to talk about today is really things that have to go into the plan, what are the amendment requirements to install the various changes in law and the guidance that we're going to come out with will deal with those things.

If you are looking for some information in this regard before it comes out, we do have a series of frequently asked questions on our web page about DOMA and Windsor. In regards to employee plans, here is what it says. We are going to come out with guidance and the guidance will tell you the degree to which you have to do a required plan amendment and more importantly when that amendment is due and how it is to be applied retroactively.

I have to apologize somewhat. I really thought March 13th was an appropriate day to do this phone forum and cover the guidance that we're coming out with but since we don't have it out yet, that's about all I can really say at this time.

Okay, let's switch to slide 21 and totally change gears and talk about ESOP diversification requirements. I'm going to go through this a little bit expeditiously. If you want more

information, we did, I did a phone forum on ESOP plan language requirements two years ago, which is still there. You can read the material on the web and even listen, I think, to my discussion and I'm pretty sure we covered the diversification requirements in depth, especially some of the questions that were raised. I'm going to give this the kind of short cut treatment and description here.

The thing that is on the cumulative list is IRS notice 2013-17, which is really an anticut back protection offered to plan participants. I'm sorry, to plan sponsors. Let me talk first about 401(a)(28) and then we'll talk about the relief that's given in the notice, then I will discuss the amendment requirement and then I'll tell you how you can get some more information.

First, 401(a)(28). 401(a)(28) is a rule that applies to ESOPs. It says if you are subject to this rule, which most ESOPs are, you can, you have to allow certain participants to be able to diversify their investments out of employer stock, to get out of the employer stock in ESOP and get into something else. There are specific rules about who, when, how it has to be done. I'll save that for another time.

In general, it's a section that requires certain plan participants to be given the diversification right. (a)(35)401(a)(35) is another section of the code that also has certain rules for diversification. It applies to all applicable defined contribution plans. This was added into the law, if I recall correctly, as part of PPA. This was after the Sabanes-Oxley movement and all the other aspects about giving participants wider choice to get out of certain investments.

You've got (a)(28)(a)(28) requirements that cover diversification and (a)((a)(35)) requirements that cover diversification. I like to think of this as two interlocking circles in a diagram and if we move the two circles together, you have an overlap in the middle. Notice 2013-17 is guidance directed at the people that are in the overlap in the middle in this then diagram. People that were subject to (a)(28) and are now subject to (a)(35) usually because the employer becomes publicly traded.

The last thing about (a)(28). There are three ways to satisfy this diversification requirement. One is to allow a portion of a participants account that is subject to diversification to be distributed out after a 90 day election period. The second with the move basically to move that investment into employer stock into one of three possible investment options offered after that 90 day period.

You have number one with distribution out of the plan, number two was move it into one of three alternate investment options provided by the employer. Both of those are in form 1(a)(28). We actually created administratively a third one, which was to transfer that amount to another plan of employer that has the three investment alternative options and that if you have interest in it is actually in an IRS Notice 88-56.

You have three possible ways to satisfy diversification. We're concerned about plans that use the first one. The people that distribute their account out. Again, we talked about the then

diagram, two interlocking circles. The people that were subject to (a)(28), now are subject to (a)(35), and who satisfied their (a)(28) diversification by using option one distribution out of the plan. Those are the people that are concerned with most 2013-17.

Those people would have to get rid of the distribution because the distribution to satisfy diversification no longer works. Those people have to get rid of that as a way to satisfy the plans diversification requirement. Now, ordinarily to get rid of an optional form of benefit, that would be a cut back and violates 411(d)(6) because the employee has already accrued the right to use that or to expect that form of distribution.

Notice 2013-17 says in laymens terms for the people in the center of the overlap of the event diagram, use number one, distributions to satisfy diversification, if they do it in the time and manner of the notice provided, you will not have a 411D6 violation. That's as quick and [inaudible 00:33:34] as I can summarize this notice.

What does this do for purposes of [inaudible 00:33:38]? Okay, so number one, we're only talking about ESOPs but number two becomes subject to (a)(35), probably because the employer is publicly traded. Number three, that use distribution as a way to satisfy their diversification requirement and number four has to now get rid of it.

For those people, they would have to make an amendment due by the later of the last day of the plan year in 2013 or the due date of the interim amendment due date for the plan year in which the plan first becomes subject to (a)(35). Now, that latter part is probably going to be the operative one that controls most employers so let me try to explain it in plain English.

Let's say you have an ESOP and the planned sponsor goes public in the fourth quarter of 2014. In 2015, that would be the first year that the plans sponsor is now subject to form 1(a)(35) requirements so that year would, an interim amendment would be due on the time of that plan year. It would be due concurrent with the employers 2015 income tax return if they were both coincide encountered to year filings, and it's a corporation and they are on extension. We're probably looking at September 15, 2016 as the due date to make the conforming amendment.

For the people that have to knock off the distribution option, they are probably looking at doing an interim amendment due date for the first plan year. An interim amendment due by the tax filing due date for the first [plan year in which the sponsor becomes subject to that rule. If you want more information, we do have a fact page on notice 2013-17. If you just Google ESOP any cut back relief, you will find a little bit of a description about (a)(28), (a)(35), and also about how to apply the notice and when the amendment is due.

Let's go next to slide 22, which is the midyear safe harbor suspension requirement. What is on the list is final regulations that the service published in, I'm sorry, that the treasury finalized on November 15th of last year. The finalization of these regs was actually finalizing regs that

were originally proposed in 2009, which came out right after, if you recall, the 2008, September 2008 financial crisis.

At that time, the service received many public comments to give some type of relief right after the financial crisis for plans that otherwise had all these large required contributions due, especially from employers that would have to make up those contributions out of assets that were now depleted or downturned in market value and what came out in 2009 were proposed solution regulations or proposed relief regulations.

Prior to 2009, for example, matching contributions could be stopped only on 30 days of advanced notice to participants if the plan passed ACP testing but for Safe Harbor plans that satisfied the Safe Harbor using the 3% non-elective, there was no corresponding stop mechanism for that non elective 3% contribution.

The proposed rate gave a way for employers to stop that contribution. The only other alternative would have been to terminate the plan. We received a number of comments from employers saying you know, if we don't get some relief, we're going to have to terminate our Safe Harbor arrangement and then the concern comes how many of these people will come back into the private pension system. That was the impetus behind getting some type of relief out.

We came out with the 2009 proposed regs as a way to try to grant that relief. What is on the list in the 2013 cumulative list is the finalization of those proposed regs. Now, the final regs largely followed the proposed regs that do have a couple of significant changes. One is that they unified the requirements more closely between a non-elective and a matching contribution.

A second is that they changed up the business hard ship standards. The proposed regs required the employer to show that they were experiencing a substantial business hardship and there were different prongs to showing a substantial business hardship, one of which was that the employer was in an industry that had substantial turnover in unemployment and many commentators and employers felt you know, you are making us show that other people are having problems and not just ourselves so that standard was changed to be operating as an economic loss, which we consider only the employers unique circumstances.

The regs also in finalization provided that as an alternate to showing hardship like I just described, the employer could provide a Safe Harbor notice that includes a statement that the plan they've amended during the plan year to reduce or suspend contributions is the one that is out there 30 days in advance and explains the amendment.

That's what brings us onto the cumulative list. That this regulation has an amendment requirement that might be triggered for the employer that wants to suspend the Safe Harbor contributions. What is the amendment requirement? We are now, forget my event diagram

description. We're only talking about Safe Harbor 401(k) plans where an employer wants to suspend in the current year, wants to stop the Safe Harbor non elective or Safe Harbor match.

This is only directed to employers that are trying to do this. This is not the language that we are going to assist on every cycle D filing or contingency language that must be in the plan. We're only talking about employers that want to take advantage of this because they are having a hardship and now want to suspend contributions.

To reduce or suspend these types of employers, we have to amend before the last day of the plan year in which the suspension reduction occurs, effective at least 30 days after having given the employees notice of suspension.

The final regs do say that employers can still rely on the proposed amendments for any amendments that were adopted after May 18, 2009. That was the day that they were originally proposed at the federal register. Changes for the matching contributions, I did say there were some changes to kind of harmonize what we allow for stopping matching and Safe Harbor. The changes for the matching contributions are maybe a little bit more, I don't know what word to use, stringent, I guess than what was in the proposed regs. Those changes don't come in, the more restrictive aspects at least, don't come in until next year so you could still suspend matching contributions in 2014 using the proposed regs that were proposed in 2009 as the method of operation to do it.

That again is the amendment requirement, the last day of the plan year for an employer that wants to stop or suspend Safe Harbor contributions. Let's go to slide 23, which is the in-Plan Roth roll over guidance under IRS notice 2013-74.

In-plan Roth's were actually added into the law in the small business job act of 2010. What notice 2013-74 provides is interpretive guidance under ATRA, the American Tax Relief Act of 2012, which I think is the last item on our list that we're discussing today.

ATRA expanded the types of contributions that are eligible for in plan Roth to also include non-distributable amounts. What is non-distributable amounts? Well, prior to ATRA, the only things that could be in plan Roth rolled over were amounts that were already distributable. For example, a profit sharing plan can make an in service distribution only on these objectives specified conditions in the plan. The most common of which is two years of plan participation or five years of asset growth. We usually call that the "2/5" rule.

If you have not met the 2-5 rule, it was a distributor rule so that the in-plan Roth's don't roll over. If it didn't [inaudible 00:41:50] it could not. Under ATRA, you can now basically roll over

any type of qualified deferred compensation accrual to the extent that it's vested. It doesn't just have to be distributable.

Under the guidance, plan sponsors can restrict the type of things that are eligible. They have to start out on the plan. As long as whatever they are restricting and are allowing doesn't violate 401(a)(4), they can stop it or cease it at any time as long as they do it respectively and don't have a 411(d)(6) violation, and they don't need to do a 402(f) notice to describe the types of consequences of a new plan Roth roll over. The roll over date will usually start the five year clock for purposes of Roth qualified distributions.

That in a nutshell, as quick as I could do it, is an overview of 2013-74, ATRA, small business job act, and everything that you need to know about in plan Roth roll overs. That it basically can be made out of a variety of pension accounts as long as they are vested, they don't have to be distributable. It just can't be done in a way that is discriminatory or cuts back the benefit.

What are the amendment requirements? Well, what we would say is this would generally be a discretionary amendment that has to be done by the last day of the plan year in which the employer wants to make it effective.

Two notes about this. Number one, no plan has to offer an in plan Roth roll over provision. It's totally up to the employer as to whether they want to offer it at all. Again, the only caveat is that it can't be offered in a way that's non, that's discriminatory and if it's taken away, it can't be done in a way that creates a 401(a)(4) violation].

Number two, the addition of an optional form of benefits subject to the discretionary amendment rules usually has to be done by the last day of the plan year but what 2013-74 did was it said well, in order to give extra time for this to sink in, for 2013, the interim amendment is extended until the last day of 2014. You have December 31, 2014 for an employer that wants to do this, they can make an interim amendment on account of either the 2013 or the 2014 plan years.

After 2014, it has to be done by the last day of the year in which the feature is installed into the plan. This also does apply to Safe Harbor plans, the December 31, 2014 date, but again, for 2015 and beyond, for Safe Harbor plans, your probably most conservative approach would be to adopt it in advance of even doing it even though the regular discretionary amendment due date applies.

For 403(b), let me just briefly throw this in and we'll move off. Employers that have timely adopted 403(b)s have until the end of the 403(b) remedial amendment period, which is as of right now TBA. It will be when the IRS finishes reviewing the preapproved specimens for 403(b) documents and then comes out with that announcement that opens up the adoption end of it, very much like I mentioned earlier we're waiting for the defined contribution side of things.

Whenever that is announced, that would be the last day the employers would have on the 403(b) document to write in the in-plan Roth roll over feature. After that, it would be the last day of the first plan year in which the feature] will be added to the plan.

That is the amendment requirements for in plan Roth roll over. Let me go to our final item on the cumulative list, which is Notice 2013-11, which is the map 21 segment rates.

2013-11, which is the item on the list provides a 25 year average segment rate for computing minimum required contributions for single employers defined benefit plans. Now, what is on the list, the Notice, is only giving you the actual rate. This is guidance enacted under MAP 21 by the way.

The notice used the historical corporate bond data to construct the 24 month average yield curves going back to October 1987 and it puts forth the rates that have to be used for various segments for going on.

This is only, again, the rates. The general guidance on how to apply map 21, not just the periodic rates that you have to use for calculations is provided in IRS Notice 2012-61. I think I covered 2012-61 last year. We also did a phone forum on MAP 21 rates so I don't want to go too far in depth discussing them.

I will say to speed up a little bit here because we're getting down to the last 10 minutes I wanted for questions. In general, this doesn't invoke an amendment requirement, not specifically Notice 2013-11. Most of the way plans are constructed, they have in the appropriate part, rates will be used as prescribed by the secretary for incorporating the rate changes by reference or something of that regard.

You would not go to the document and amend it for changes in rates. Usually, you have language that says these rates will be essentially self-adjusting. You would not be required to do a Notice 2013-11 amendment added to the current year's cumulative list.

Okay, we're getting very low on time. Let me cover a couple quick things. If you go to slide 25, again, as I started today, the 2013 cumulative list has all the different components of law, both statutes, regulations, and IRS administrative guidance going back to October of 2009.

There are five things for which we do, I'm sorry, four things for which we do publish model amendments, none of them are supplied by this list, all of them are in last years or the years prior.

Notice 2009-65 has the automatic contribution or ACA language. Notice 2009-82 has the RMD suspension language for 2009. If you will remember after the financial crisis in 2008, many participants asked the IRS for guidance on stopping receiving their otherwise required 401(a)(9)

minimum required distributions and 2009-82 was the relief guidance that was sought and that also provided model language for plan sponsors.

2011-11 is a regular rule on group trusts and model group trust language. Parenthetically, our current guidance plan for this year, which I think has about, as I said, I think has about 41 or 42

items. It has on there a group trust guidance for certain group trusts with Puerto Rico investments. I think that guidance is actually very close to coming out as well.

Finally, notice 2011-96 limits, which is the 436 guidance, and the model 436 amendment. I covered that last year on last year's phone forum but the 2011-96 gives you a model 436 amendment.

That is the 2013 cumulative list as quick as I could go through it. A couple points before we go into taking questions. Number one, we would like to, as Mark has said earlier, in terms of coming to the website and getting our forums and interacting lists, one of the things we would like to hear from you if you feel so inclined is to whether you think this type of a format going down the list and describing each item and whether or not it triggers an amendment requirement is not only valuable but it is a substitute.

We've been asked a number of times can we put out some type of a product like a check list or a worksheet or a yes or no columns page on whether interim amendments are required for any given thing. As I have tried to describe today, many of the different change items are totally situational. You know, do you have an ESOP, is it subject to this, do you offer that. It's very difficult to put out a chart that shows yes or no. You have to do an interim amendment.

If you are so inclined, if you want to give us your feedback about whether you think this is helpful going down it and identifying it as opposed to doing that written product, we would certainly like to hear from you. I suppose that does presuppose we don't own any interim amendments as I've described in the earlier slide. But while we keep them going, just if you think this is a valuable way to convey what your compliance requirements are in those regards, we would by all means like to hear from you. You can do it right through the email box.

For those of you that submitted questions or [when you enrolled. On slide 26, that's where we post all our new things. If you look in the what's new in the upper right hand column, that's probably where you are going to see, for example, a link to DOMA guidance or guidance under Windsor, or as mentioned about group trusts. Different things like that that come up that are new, usually go up under the what's new tag and from there you can link to what we usually do is create a sub page to hold the various content we are going to [announce].

Okay so with that, let me take some questions. I've got about 12 or 15 in advance. I'll do as many as I can right now until we get to the top of the hour. Whatever I can't get to, I promise

for those of you that sent them in, I will contact you directly probably tomorrow or the very early part of next week at the latest.

Let's take the first one. Could I please cover whether the amendments required for multi-employer defined benefit plans under this list for number one, the temporary zone-free and

funding improvement rehabilitation period extension under WRERA], the Worker Retiree and Reemployment Recovery Act of 2008, which is item 24 on the current list.

Number two, the amortization of net investment losses under the Preservation of Access Care for Medicare Beneficiaries Act. I don't think that there is any amendment required for either of these. We would view both of these as what we would describe as operational changes, things that have changed funding or the calculations required to fund the plan, it would not necessarily need an amendment to the text of the plan itself.

Next question, this question deals with the HEART act, which is on the cumulative list. Must a plan contain any specific language expressly including differential wage payments in the definition of compensation for section 415 purposes. Per Notice 2010-15, these payments are always included in compensation for section 415 purposes anyway.

In general terms, no, you don't have to amend the definition of section 415 compensation to specifically pick this up. In fact, you can incorporate the definition of compensation for section 415 purposes by reference. For example, if you have a plan that says compensation shall mean, [full compensation within the meaning of section 415(c)(3) of the Code, that definition automatically picked up differential wage payments.

Where you might find an IRS reviewer asking you to put this in, is if that definition says, you know, compensation for 415 shall include amounts contributed under 132(f)(4), which is the CRA amendment, 457(b) or the other itemized things that go into 415 and this one is not in there.

If you are itemizing all the different components but you left this out, you might find a reviewer will call you on it and say look, you have all those other things listed, add this one in too while you are at it but most of the time I think the average plan that goes through us, we're probably not going to ask you to specifically add in that into the definition].

Next question. I have one other point. I do have a couple questions on DOMA. I'm going to put them aside, clip them, and then when the guidance comes out, I'll call you back and answer you directly but that's probably going to have to wait. If it's not out by then, it might have to wait possibly beyond tomorrow or early next week.

Cycle E cash balance plan received a favorable determination letter dated December 27, 2011, it's a calendar year, it contains language for 436 purposes, however, the sponsor did not adopt

the interim amendment for 436 by December 31, 2013. Does a remedial amendment need to be adopted and submitted through VC or can the sponsor rely on a good faith determination that the interim amendment was not necessary pursuant to Section 603 of Rev. Proc. 2007-44.

Excellent question. As I said moments ago, 2011-96 provided a 4:36 model. Notice 2012-70, I'm doing this off the top of my head so I hope I got the right site. 2012-70 hopefully said the

due date for adopting this model 436 amendment in general was the interim amendment due date for 2013, which would be the due date that the sponsor's 2013 concurrent income tax return.

Here you have a plan that was sent into us on a cycle E cash balance so that means you came in by January 2011 and were out by December so I guess we did pretty good. You were in and out very quickly, had 436 language in there but then didn't come back in 2013 and adopt a 436 model.

Ultimately, the answer to your question is whether what you had in there was close enough to what we have as model language in 2011-96 to serve as the interim amendment for the plan. If so, then you don't have any issue.

If not, which is what I would tend to think would be the case, then you would have a non-amender. Now, you don't have to have the model language directly but you have got to get whatever the model language provides in substance or kind of get close.

You cannot rely on a determination in good faith that the plan doesn't have to do it for two reasons. Number one, we put out a notice to show you when it was due and number two, we sent a notice out to show what language it has to be. You can't rely on the good faith determination that it's not needed. What you might be able to rely on is that the language you had was good enough or was sufficient and I would suggest take a look at the model and see how close you come.

If you want to be conservative, you could bring this into us in VCP as an interim amendment failure for those of you that have done VCP filings in the past. This used to be an Appendix F case and regular run of the mill. Now, when we restyled the various appendices to our VC program in 2013-12, I think this is now Schedule (C)(1) and I believe that this is the only failure, you'd still pay the same $375. Really, this goes on you to take a look at the plan documents, see how close you've come to the 436 model language, and see if what you've got in there suffices as the interim and can do double duty.

Next question, and this is probably going to be the last because I'll probably run off the clock. This is two questions. I'll try to get both in. How do we organize the submission of a plan that has had four plans merge into it since the last cycle so that it's not mistaken as a submission of five different plans, which is an excellent question. We've done, by mistake, in the past taken

an application like that, broken it up and run it out a separate submissions rather than as one aggregated one.

Sometimes we do receive applicants who bring the cover letter in and say here are my five plans I'm submitting for a determination letter and there are five component plans and there are others that say here is my plan for my submission for one determination letter, which has five subsidiary parts.

The way I would suggest you do this is orient your filings so that your 5300 is towards the top, spell out what you are doing on a cover letter that clearly says this is one submission, one plan. Usually when we only see one user fee, we won't create and establish satellites, we'll create this all as one but as soon as you orient the application forms at the top and spell it out clearly in the cover letter, we should probably get it right.

I've got about another ten to twelve plan related questions on various topics and for those of you that I was not able to get to, I do promise I will get back to you individually as soon as I can with a response.

With that, I think we are almost out of time. On behalf of Mark O'Donnell, myself, and the entire IRS customer education and outreach phone forum plans efforts, I want to thank you for attending today's forum and I hope you found this valuable to understand your compliance requirements. Thank you and have a nice day.