Transcript for Employee Plans Technical Guidance

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Moderator: Welcome to the EP Phone Forum on Technical Guidance. At this time, all participants are in a listen-only mode. Today's conference is being recorded. At this time, it is my pleasure to turn the conference over to your host, Mr., John Schmidt. Please go ahead sir.

J. Schmidt: Hello everybody. I'm John Schmidt, the staff assistant within Employee Plans Customer Education & Outreach at the Internal Revenue Service, and I'd like to welcome you all to today's phone forum entitled Technical Guidance. Today we'll be hearing from Rhonda Migdail and Ingrid Grinde. Both Rhonda and Ingrid are Employee Plans Technical Guidance and Quality Assurance Group managers here in Washington D.C. Both are involved in the development and issuance of revenue procedures, revenue rulings, notices, and other guidance published by the Internal Revenue Service.

I'd like to point out a few things before we start. Everyone registered for this forum will receive a certificate of completion by e-mail, approximately one week after the forum. You must attend the entire live forum to receive that certificate. Enrolled agents and enrolled retirement plan agents are entitled to continuing professional education credit for this session. Other types of tax professionals should consult their licensing organization to see if this session qualifies for continuing professional or educational credit.

For more information on Employee Plans Technical Guidance, please visit the Retirement Plans Website at www.irs.gov/ep. You can also get there by going to the main IRS Web page and clicking on the Retirement Plans Community tab along the top. Look to the left-hand navigation bar, and click on Published Guidance.

While visiting our Website, you might also want to subscribe to our free electronic newsletters. The link for newsletters is also in the left-hand navigation bar. We have two newsletters, the *Retirement News for Employers*—for small employers sponsoring a retirement plan, and the *Employee Plans News*— for retirement plan professionals.

So without further ado, here is our first speaker, Rhonda Migdail.

R. Migdail: Good afternoon everyone, and thank you so much for joining us today. We're going to talk about Employee Plans Technical Guidance, and the first item that I wanted to cover, because we've had some personnel changes in EP Guidance, and I think it's always helpful for the public to understand how our organization works and who is currently in which role; I'm going to quickly go through that.

Robert Choi is currently the acting Employee Plans director. He has taken the place of Michael Julianelle who has now moved on to Collections, and Andy Zuckerman is the director of EP Rulings and Agreements. I know that many of you are very familiar with Andy. Joyce Kahn is currently the acting manager in EP Technical Guidance, and Ingrid and I each have a group of employees, and we both report to Joyce. So that's our Guidance group. That's within EP on the IRS Commissioner's side, but I'm sure, as many of you know that when we work on Guidance projects, generally, we also work with Chief Counsel and Treasury, and the three organizations try to work together at providing guidance.

Today, as an overview for what we're going to cover, we're going to talk about the Priority Guidance Plan, of course, focusing on the 2010-2011 plan. We're going to talk about some ongoing Guidance initiatives. Ingrid is going to talk about the EP Determination Letter Program, and then I'm going to come back and talk about the international and governmental plan initiatives.

To begin, the Priority Guidance Plan is established each year, and it is not established by EP alone. It is a joint effort between Treasury and IRS— and IRS consisting of both Chief Counsel as well as our EP office. The Guidance Plan runs from July 1st through June 30th of each year, so we're already well into our current 2010-2011 plan. The 2010-2011 plan was published on December 7th, 2010, and it is readily available on the Web. If anyone needs a cite to the guidance plan, you can use the contact information at the end of the presentation to ask us for a citation to that; we can provide that information on the Priority Guidance Plan. Besides working on the items that are specifically noted there, during the course of the year, we frequently have to revise what we're doing because Congress sometimes intervenes and provides some new legislation.

So for fiscal year 2010, there were two instances of legislation being enacted during the year. The first was when the Pension Relief Act of 2010 was enacted, providing some funding guidance and relief for single employer and multiemployer plans, and also when Congress enacted the Small Business Jobs Act of 2010, which dealt with guidance on in-plan rollovers to designated Roth accounts under IRC Section 402A(c)(4). It was interesting because that legislation was enacted pretty late in the year, and yet it contains special tax rules for the 2010 year. Of course, we had to drop some of the projects we had been working on and quickly work

on getting guidance out on this, which we were able to do successfully. Notice 2010-84 (which was published in November of last year) provides specific rules on that special tax treatment.

You may all have noticed that on the 2009-2010 Priority Guidance Plan there had been 42 projects identified, and yet on the 2010-2011 plan, there were only 30 projects identified. It's not that we're working any less; we're still working very hard, but there are also some competing issues and programs that we (and others) are working on. For example, Chief Counsel is doing a lot of work implementing the healthcare plan legislation, and there are a variety of issues arising from that. So we had to make some room for those projects as well as accommodating some of the legislative efforts that we just spoke about.

I'm going to begin my review of current guidance by talking about some of the funding provisions and guidance that we have provided this year, including those items published pursuant to the Pension Relief Act of 2010 that I previously mentioned.

For single-employer plans, we issued in July (which was soon after that legislation was enacted) Notice 2010-55 that indicated we were going to be providing further guidance and advised plan sponsors that they could wait for that forthcoming guidance before taking any implementation steps. We did issue Notice 2011-3 in December, which provided guidance on a number of topics addressed in PRA '10 including installment acceleration amounts, excess compensation amounts, excess shareholder payment amounts, issues related to mergers and acquisitions, required notices, eligible charity plans and reporting requirements—in other words, a number of the issues about which we were getting a number of questions.

With respect to multiemployer plans, we put out Notice 2010-56—again, it was issued at the same time as Notice 2010-55 in July—indicating that there would be further guidance forthcoming. However, we did provide some limited guidance at that time on reporting and disclosure issues that were imminent for many of the multiemployer plan sponsors. Then we issued Notice 2010-83 in November, which addressed a number of the remaining outstanding issues including important guidance on the extended amortization period for eligible net investment losses and asset valuation. There were a number of other topics addressed in that Notice as well, relating to those topics where we were still receiving numerous inquiries. Guidance related to the solvency test, restrictions on plan amendments increasing benefits, applicable notice requirements, certification of status and reporting requirements was included. In December, we issued Revenue Procedure 2010-52, which was an update on the Multiemployer Amortization Revenue Procedure.

With respect to international guidance which is near and dear to my heart, in very late December of 2010, we issued a Revenue Ruling. In fact, it was so late in the year, that it was numbered Revenue Ruling 2011-1.

That guidance related to the treatment of group trusts and, specifically as it relates to international, addressed whether a Puerto Rico plan and trust under section 1022(i)(1) of ERISA could participate in a group trust. But that guidance also expanded the scope of Revenue Ruling 81-100 by permitting the participation of custodial accounts under 403(b)(7), retirement income accounts under 403(b)(9), and governmental retiree benefit plans under Section 401(a)(24), including those governmental plans that provide retiree welfare benefits in group trusts. Revenue Ruling 2011-1 also expanded 81-100 by permitting PBGC to hold assets of terminated plans in commingled trust funds. That was another issue that had been frequently raised to us and we felt the need to address it.

But getting back to the Puerto Rico plan issue, we dealt with that particular issue in Revenue Ruling 2011-1 by extending the transition relief that had been previously provided in Revenue Ruling 2008-40 for Puerto Rico plans for an additional year, until the end of 2011. For those who may be interested, we are currently working on some additional guidance with respect to Puerto Rico plans and trusts in that regard.

With that, I'm going to turn it over to Ingrid.

I. Grinde: I'm on slide number ten right now. I'm going to discuss first a revenue ruling that was recently issued in February, and I'll go into a little detail on that because it's so recent—on 403(b) plan termination. We issued that on February 22nd and it describes how an employer can terminate a Section 403(b) plan. It contains four situations.

For a little bit of background, the regs under 403(b) were issued in 2007, and they allowed employers to terminate plans and make distributions, but commentators requested that we clarify some things. For example, Participants are the legal owners of individual contracts and custodial accounts, so how can an employer force participants to take distributions even if the plan is terminated? What is a termination distribution when the plan is invested in individually owned annuity contracts, group annuity contracts, or custodial accounts? So there were some unanswered questions, and this revenue ruling addresses some of those. It basically makes it clear that employers can distribute annuity contracts, and they won't be taxed until the money is withdrawn. I it provides for four scenarios that illustrate how distributions can be made, depending on how the plan is funded.

For example, distributions of fully paid individual insurance annuity contracts can be made to participants when the plan is funded solely through the use of these, and single-sum payments where permitted. Another example is where the plan is funded by a group annuity contract, then you can make distributions of individual certificates to participants and beneficiaries, and the certificate should evidence that the interest of the participant is fully paid under the contract.

There is also a scenario where distributions that are equivalent to a recipient's custodial account balance are made to a participant or beneficiary or to an IRA plan, depending on the recipient's election. The revenue ruling indicates in such a case that it is included in gross income unless the amount is rolled over.

Finally, there's also an example of a money purchase plan where distributions have to made in accordance with the qualified joint and survivor pre-retirement survivor annuity rules and by purchasing and distributing a fully paid annuity. The revenue ruling also points out there are other indications of plan termination that include a binding resolution to terminate the plan and cease all contributions—that all benefits will be fully vested as of the plan termination date, and all benefits will be distributed as soon as practical thereafter. So I just wanted to go into some detail on that because it's so new.

Next and totally unrelated is Revenue Procedure 2010-48 issued in November 2010. It has guidance to drafters and users of preapproved IRAs and model IRAs. We have been getting questions on the extent to which IRAs had to be amended to reflect changes in law, and if IRAs are amended to reflect these changes, could IRA sponsors get IRS approval.

Basically, the revenue procedure provides that preapproved IRAs may be amended and may come in for an opinion letter. This is optional. By the way, Section 2.06 of that revenue procedure has a good summary of the statutory changes since 2002 relating to IRAs with cites and summaries of the various provisions. It also addressed model IRAs, the use of the forms when updated are recommended, and you need to operate in accordance with changes in the law even if you don't amend for them. The main change is that there are revised procedures for annuities for prototype sponsors of individual retirement annuities that use one IRA endorsement with several annuity contracts. The Rev. Proc. makes it clear: you can just submit one endorsement and not all of the contracts, rather than submitting all of the contracts. This will reduce the user fees. That way you don't have to get an opinion letter for each contract unless you want to.

On to slide 11, this is Notice 2010-77 dealing with various extensions. We extended the deadline to amend until the last day of the first plan year beginning on or after January 1, 2011, in other words, the end of the 2011 plan year, first for adopting certain defined benefit plan amendments relating to Section 401(a)(29) and 436 on funding based limits. The reason we provided this one-year extension for 436 was that there were some new laws that affected 436 on benefits and benefit accrual that came up, so we gave an additional extension. The notice also has an extension for certain requirements under 411, relating to cash balance and other applicable DB plans. The plan still has to operationally comply with the requirements. Then there were also some provisions in the notice on determination letters and what the Service will review for and when with respect to those requirements.

Next on slide 12, now, I'm going to discuss some ongoing guidance, but actually, some of the items listed on this PowerPoint have been issued. We prepared this PowerPoint and posted it, but we've recently issued some of this guidance, so it's no longer ongoing. I'll point out which ones those are as I go along.

First, a 403(b) Plan Prototype Program: Basically, there will be an upcoming revenue procedure on a preapproved program for 403(b) plans, as well as, we're working on LRMs with language for 403(b) plans. Brief background, we issued final regs for 403(b) in 2007. We had model language for public schools in Rev. Proc. 2007-71. Notice 2009-3 delayed the written plan document requirement to December 31, 2009, and you had to operate in reasonable good faith during 2009. Announcement 2009-34 had a draft revenue procedure and LRM attached, asking for public comments on a program for prototypes. Then we also issued Announcement 2009-89 making it clear as long as you meet the requirements under Notice 2009-3 and you eventually adopt either a preapproved plan or apply for an individual determination letter when available, then you'll have a remedial amendment period to amend the plan to correct any form defects retroactive to January 1, 2010. So we're working on that prototype program now.

Next, here's an item on guidance on definition of readily tradable securities for ESOPs, and that, actually, has been very recently issued. It was issued as Notice 2011-19, on February 28, 2011. That notice basically makes it clear that the same definition under 401(a)(35) applies for interrelated code sections on the term, "readily tradable on an established securities market." This definition applies for purposes of various code sections relating to … voting rights, put options, when an independent appraiser is required for valuations, and a provision regarding gain on sale of qualified employer securities.

The reason that this is important is for ESOPs is if you don't have stock that is readily tradable on an established securities market, you need to meet other code section requirements for stock that doesn't meet this definition. For example, ESOPs generally have to meet certain diversification requirements under 401(a)(28). For employer securities that aren't readily tradable, valuations have to be made by an independent appraiser. Another example is that participants have put option rights if securities aren't readily tradable, which means that the employer needs to have cash on hand to purchase securities, so you have to jump through some more hoops in that case. This notice is effective for plan years beginning on or after January 1, 2012, but there is an extension for certain plans with common stock not "readily tradable on an established securities market" under the SEC but under a foreign national securities' exchange, it's effective for plan years beginning on or after January 1, 2013 for them.

Briefly, some other ongoing guidance: we have guidance planned on eligible combined plans under Section 414(x). The Pension Protection Act of 2006 provided for a new type of plan that combines a Section 401(k) plan with a defined benefit plan. We're developing proposed regulations providing guidance on the requirements that would apply to these plans—like certain

benefits, contributions, vesting, and uniformity requirements that would have to be satisfied so that a plan constitutes a Section 414(x) plan. If they do that, then they can use some more liberal rules, including non-discrimination and reporting rules that apply, compared to the rules that would apply to a separate 401(k) plan and a separate defined benefit plan.

We also have final regulations planned on the suspension … or reduction of Safe Harbor non-elective contributions under Section 401(k) and (m). We previously issued proposed regulations on this, and the reason for this guidance was based on concerns that employers experiencing a business hardship might be unable to meet their contribution obligations under the plan and might have to terminate their plan to avoid these financial obligations. So we wanted to give them an alternative, and the proposed regs would permit an employer to amend its Safe Harbor plan during the plan year to reduce or suspend Safe Harbor non-elective contributions, provided that employees get notice and some other requirements. So the final regulations would clarify some of these and also address some comments that we received.

Next, I wanted to go into some other ongoing guidance initiatives. There is one that has been going on for some time—guidance on governmental plan status under Section 414(b). There are two separate pieces; one relates to the general definition under Section 414(b) relating to when an entity is eligible to have a governmental plan, and there is another portion relating to special rules for Indian tribal governments. It would be issued in a proposed format and it's anticipated there would be plenty of opportunity for people to submit written comments. We plan a public hearing and other meetings because we really want people's input on this. It would be comprehensive guidance, but it's also in proposed format, and we think that it will be helpful to get comments from the public on that.

It really relates to determining whether an entity is closely related enough to a government to be considered as an agency or an instrumentality of a governmental entity eligible to have a governmental plan under 414(b). It has become increasingly difficult for us to figure out whether an entity is truly an agency or instrumentality when it's several layers removed from a government, so we don't currently issue letter rulings on whether such an entity is governmental. But we do issue determination letters to entities that would represent to us that they are governmental, so we have been working on this guidance for a while, and we need uniform criteria before we issue letter rulings again.

And as I mentioned, there is also an Indian tribal government part PPA (Pension Protection Act) amended 414(d) to say that Indian tribal governments can have governmental plans but with stricter standards. Basically, you can't have employees performing mainly commercial activities and participate in an Indian tribal government plan. So we're working on guidance with standards on how to determine activities that are governmental or commercial, and how to classify employees to determine what category they fit under. So that, as I said, would be in a proposed format.

We're also working on, it's actually completed and in the clearance process, guidance on procedures for ruling requests under section 414(e) for church plans. A draft revenue procedure would require that the plan sponsor give notice to participants before we issue a letter ruling to an entity that has a church plan under 414(e). The reason for this is that church plans that don't elect to be subject to ERISA aren't subject to as many requirements under the code. We feel that participants and other interested parties should be notified of this and have an opportunity to comment before a letter ruling is issued.

My final part before I turn it over to Rhonda again for a while is Form 8955-SSA and related guidance. This is something just hot off the presses; it came out yesterday in the form of Announcement 2011-21. It designates the Form 8955-SSA Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits as the form to be used to satisfy the reporting requirements of Section 6057(a) for plan years beginning on or after January 1, 2009.

This used to be filed on Form SSA, but the Department of Labor had a mandate that plans file a 5500 annual return electronically and the old SSA form was removed. So we created a new form along with the Social Security Administration. The guidance provides the date for filing the form 8955-SSA for the 2009 and 2010 plan years. In general, you have to file that form by the last day of the seventh month following the last day of that plan year, plus extensions, but we realized plan administrators may need more time to complete the new 8955-SSA. So the due date for the 2009 and 2010 plan years is the later of the due date that generally applies for filing the form for the 2010 plan year and August 1, 2011.

For example, in the case of the 2009 plan year, no Form 8955-SSA is required before August 1, 2011. It's all spelled out in the announcement—again, it's Announcement 2011-21. It also clarified that plan administrators can use the 2009 form for 2010 as well, and we recognize that some plan administrators may have used the old form or might be in the process of completing it, so we will allow this for Schedule SSAs filed no later than April 20, 2011. In that case, you do not also have to file the new form.

Now I'm going to turn it over to Rhonda for a while.

R. Migdail; Okay, thank you very much Ingrid. That was very informative. We are now on slide 14, and I am going to talk a little bit about our efforts on issues related to ensuring participants receive lifetime income from defined contribution plans. This project, in general, arose because of the trend in recent years of a declining number of defined benefit plans and an increase in the number of defined contribution plans.

Under a defined benefit plan, as you may know, the normal form of benefit is an annuity, and that distribution option ensures that employees in those plans receive an annuity for their lifetime, and potentially for their spouses as well, so that they don't outlive the benefits that they've accumulated.

However, in a defined contribution plan, the normal form of benefit is generally not an annuity because the provision of annuities requires the implementation of certain other additional tax-qualification requirements like the joint and survivor annuity rules, which many defined contribution plan sponsors had not been willing to include in those plans. So there was some concern on the part of the Department of Labor (DOL), Treasury, and the IRS that individuals might outlive their retirement savings. As a result, DOL published a request for information soliciting public comment on whether there would be interest in looking at issues related to facilitating the provision of lifetime income from defined contribution plans. Hundreds of comments were submitted in response, and in fact, there was a two day public hearing that was held in 2010 with representatives from Treasury, IRS, and DOL on issues related to the provision of lifetime income, through annuitization and otherwise, in defined contribution plans.

The law and communications related to defined contribution plans have been primarily focused, over the past decade or so, on insuring that individuals accumulated enough assets in their defined contribution plans to afford them a reasonable retirement benefit, but the emphasis has been on the accumulation phase (during their working lives) and not on the distribution phase (beginning at termination or retirement). So this project is looking at ways to ensure that the amounts that participants have accumulated for retirement actually last for their lifetime. So the issues that we're looking at are basically those that create barriers to providing annuities or lifetime income for a participant's retirement from a defined contribution plan, and current discussions are focusing on several provisions of the code, including section 417(e)(3) for example. With respect to this issue, we are looking at whether there is a potential for partial annuitization. In other words, would people be able to, basically split their distribution so they could use part of it to purchase annuities, and part of it could be taken as a lump sum directly or rolled over to an IRA.

Another issue is DB/DC sub-annuitization, which relates to the potential transfer of amounts that are accumulated in defined contribution plans to defined benefit plans sponsored by the same employer— in other words, whether there would be any way to encourage rollovers of those amounts accumulated in DC plans to DB plans at the time of the participant's retirement--so that the participant could increase their annuity under the defined benefit plan by using the amounts that have been accumulated in the defined contribution plan.

Code section 401(a)(9) raises some additional issues: for example, what is the impact of the required minimum distribution rules on longevity insurance? When we talk about longevity insurance, we are talking about a type of insurance that we understand certain insurers are looking to provide where the product is sold to the individual at the time of their retirement, but the distributions don't begin until the participant reaches 80 or 85. The point there is that if a person has an accumulation of assets in their defined contribution plan, they can ensure that if they outlive their expected mortality, they still have a stream of income to live on. So a piece of the distribution they are entitled to at termination or retirement would be used to purchase this longevity insurance. When it eventually is distributed, under the rules as they stand now, the statute provides that you have to take out a certain amount each year. That's a required minimum distribution. But the fact is that if this annuity doesn't start until 85, how do you satisfy those required minimum distribution rules?-- that is an issue that's being examined now..

And of course, we are looking at the application of the qualified joint and survivor annuity rules: If someone purchases an annuity from a defined contribution plan with plan assets, when do those rules apply? So, for example, if a plan sponsor wanted to offer an individual an opportunity each year to use a certain amount of their contribution to the plan to purchase an annuity that would be available at retirement, would the qualified joint and survivor rules apply at the point of the purchase? Would they apply at retirement? There are a lot of really fascinating statutory issues of that nature that we're currently looking at.

With respect to all of the issues related to providing lifetime income options from defined contribution plans, it is unclear whether there are any administrative or interpretive solutions that we (Treasury and IRS) can implement on our own or whether solutions to these issues would need to be resolved through legislative fixes.

On slide 15, we talk about guidance on pick-up arrangements under Section 414(h)(2), and just as a brief summary, pick-up arrangements are where employees make contributions to their retirement plan (generally these are for governmental plans) and the governmental employer agrees to "pick up" those contributions and they become recharacterized as employer contributions. Governmental plans cannot have 401(k) type arrangements, i.e., cash or deferred arrangements where there is an election offered to the employee between deferring an amount as a contribution to a plan or receiving that amount in cash. But there is an exception in the 401(k) regulations for a one time irrevocable election made by an employee.

In the past, the employee's election to defer amounts in "pick up" arrangements have fit within that exception, but with some of the recent adverse financial situations facing some governmental plans, a number of these plans have been looking at alternative benefit formulas which would reduce the amount of contributions both employees and employers would need to contribute to the plan which can be accomplished by offering employees a choice between the current plan formula or a new formula that would require less employee contributions.

But there is a concern that offering such a choice might violate the cash or deferred rules, and so we are currently looking at these situations. There are a lot of competing interests that are involved in the resolution of this situation, but we're hopeful that we will be able to provide some guidance in the near future.

On slide 16, we talk about the definition of normal retirement age for purposes of governmental plans. Final regulations on normal retirement age were issued a number of years ago, but there was a delayed effective date for the application of those regulations to governmental plans, which has now been extended to 2013. The application of the normal retirement age regulations to governmental plans is now one of the projects that is on this year's guidance priority plan. It's not just an issue of the application of the final regulations on normal retirement age to governmental plans; it also deals with the somewhat related issue of the interpretation of the pre-ERISA vesting standards that apply to governmental plans. This issue has gained importance most recently because during Cycle C and Cycle E of the determination letter process, we were permitting governmental plans to come in for a determination letter. During Cycle C, we had almost 1,700 plans that came in, and so far, we're still counting for Cycle E, but at last count there were close to 400 more plans that had come in for determination letters and nearly 200 more that came in to the voluntary compliance (VC) process. So we are looking at the definition of normal retirement age. Our group has spent much time and effort reviewing all of the pre-ERISA rulings and guidance on the issue, and there is no single answer that we have found as a result of that review. We've seen normal retirement age defined as an age, defined as a combination of age and service, and in some instances as service only. So we are looking at all of those various situations and are very hopeful that we will be able to provide some guidance in the very, very near future to be able to resolve the issue, at least with respect to the pre-ERISA vesting issue which has arisen in the determination letter processing and also looking towards providing broader guidance on normal retirement age for governmental plans.

Another ongoing guidance initiative is related to the proposed multi-employer regulationss under Section 432. We have already published guidance on the certification requirement—that was published a few years ago. But we have been diligently working on guidance related to what needs to be included in a funding improvement plan and rehabilitation plan. We were sidetracked for a while with all of the funding relief legislation that was passed under WRERA and the Pension Relief Act of 2010 (PRA '10), but we are beginning to turn our attention back to those proposed regulations.

Finally, we are working on guidance to update the EPCRS procedures: Again, that project is being diligently worked and is relatively far along. We know there have been a number of issues with respect to 403(b) plans in particular and particularly, potential 403(b) document issues. So again, we are hopeful that we will be able to provide guidance in the near future.

With that, I'm going to turn this back to Ingrid to talk about the Employee Plans Determination Letter Program.

I. Grinde: We're on slide 17 now, and I'm going to go into what's happening with the Determination Letter Program and the staggered remedial amendment period. There's always something going on here. Right now, we're in the second set of five-year cycles for individually designed plans under Cycle A, so we've already been through the first set of cycles A through E. We're also in the second six-year cycle for preapproved defined contribution plans. The on-cycle submission for these plans began on February 1, 2011 and ends on January 31, 2012, except for an October 31, 2011 deadline for mass submitter pre-approved plans. We have the group here that has worked on issues relating to this. We call ourselves the staggered RAP group, and we're busy updating Rev. Proc. 2005-16 right now, which has procedures that relate to the pre-approved plan submissions for opinion and advisory letters.

We're also working on updating the defined contribution LRMs that have language to assist M&P sponsors to update their plans, and the Cycle A alert guidelines, which are used by employee plan specialists during the review of plans. We did receive a question in advance that I'll respond to here, and it was a three part question. It was first, "When do you expect the revised Form 8717 to be issued?" second, "Will the exemption from the user fee for small new plans continue post EGGTRA?" and three, "Does the exemption apply to small plans that have a prior determination letter? For example, during the EGTRRA remedial amendment, a defined contribution plan adopted after 1997 that in 2002 applied for and later received a GUST "determination letter."

For your first question, Form 8717 is the form you submit when you apply for a letter on your plan that lists user fees. We explained in the *employee plans news* on January 31, 2011 that you should continue to use the old Form 8717 until the new one is available and submit the old form with the new user fees that are set forth in Rev. Proc. 2011-8— that's the annual revenue procedure on user fees. We do anticipate that the new form and instructions will be out in late spring, early summer. I don't want to give a definite date here, but we are working on that.

With respect to the second question on whether the exemption from the user fee for small new plans will continue—yes, the exemption from the user fee will continue and we are working on some guidance related to this, and that should also address the third question on whether it applies to small plans that have a prior determination letter. It is possible with respect to the third issue that a plan could be exempt from user fees with a respect to more than one application. So we are working on guidance related to this exemption, and we've previously issued guidance in Notice 2002-1 and Notice 2003-49, which will be amplified by our new guidance.

Going on to slide 18—the 2010 cumulative list. Notice 2010-90, that was issued in December 2010, and this is the list that will be used to review applications for Cycle A and defined contribution pre-approved plans that I previously mentioned. Normally on the cumulative list, we have a cutoff date of October 1, 2010. We generally don't consider guidance or statutes issued or enacted after that date unless we state otherwise in the cumulative list. This time around, we did include some guidance that came out after the general October 1st cutoff date. This includes the Notice 2010-84 on in-plan Roth rollovers that Rhonda mentioned—issued on November 26, 2010. We included this because people were waiting for our guidance to determine what they wanted to do in 2010 and also the discretionary amendment. So we felt that people would want this included on the cumulative list.

We also included final regulations that were issued October 19, 2010 regarding hybrid plans, and we included the final regulations in our review because they came out so soon after the cutoff date, and they are so significant. So we included that, but we did not include the proposed regs related to this. Instead the good faith standard applies to those, and the reference to the proposed regulations are in a footnote in the cumulative list. We also had Notice 2010-77, which as I mentioned before, extends the deadline to the end of the 2011 plan year for various items.

My final slide before I turn it over to Rhonda again, relates to general developments in the employee plans determination letter program. As I said before, there is always something happening in this area, and in June 2010, the IRS advisor committee for TE/GE (ACT), issued a report on the staggered remedial amendment program, with extensive analysis and recommendations to improve the program. We've looked at their recommendations and we continue to do so. So as you probably know, one of the major issues is interim amendments, and that's something that we've really been looking at. There are ongoing discussions on the staggered RAP approach. Individually designed plans are restated and submitted every five years for determination letters, and preapproved plans every six years. But in the meantime, employers have to timely adopt interim amendments.

This has been the focus of a lot of debate. On the one hand, it increases the likelihood that employers will be aware of changes in the law, and plans will be updated. But it is costly for practitioners, and time consuming, and also requires more IRS resources. So the ACT report, after extensive analysis, recommended alternatives including periodic amendments of core requirements or requiring only those amendments necessary to avoid a 411(d)(6) cutback. So I just wanted to mention that there are ongoing discussions on that. We anticipate that Rev. Proc. 2007-44, which is the main revenue procedure describing the staggered remedial amendment approach, will be simplified and clarified based on issues that have been brought to our attention by particular groups.

Now, I'm going to turn it back over to Rhonda, and she is going to discuss the general international and governmental plan initiatives.

R. Migdail: Thank you, Ingrid. With respect to the international initiatives, this is something that began in 2008. Commissioner Shulman announced an IRS-wide initiative, and of course, TE/GE plays one part in that. As a result of the Commissioner's announcement, the ACT took it upon itself to provide us with a report in June 2009 entitled: "International Pension issues in a Global Economy," which contained more than 30 recommendations for guidance and issues for us in EP to look at. The international initiative has a TE/GE focus. In other words, we've established an international steering committee to ensure that all of the functions within TE/GE: EP, EO and GE are all working together and coordinating their efforts. There is a large emphasis on training, since we are still towards the beginning of this project, I wouldn't say in its infancy. We're probably in the toddler stage at this point, but we are ensuring that all of the TE/GE employees are being trained on relevant issues, and we are not just working within TE/GE on this, but we are also working with LB&I very closely. So there have been a couple of programs where we have had joint TE/GE and LB&I training.

We're looking at specific topics—subjects including withholding, domestic versus foreign trusts, sourcing of income, etc., and we are developing a two year training plan at this point. But we are very focused on ensuring that we are working effectively together, whether it is internally within TE/GE or with other operating divisions within the IRS. Another one of our priorities for this year is developing a memorandum of understanding with LB&I on the procedures for referrals between our two organizations.

We have also recently implemented an internal TE/GE intranet Website, which contains a number of resources, training materials, some of which have already been placed on the overall IRS Website for access to the public. We are hoping that the website will be expanded over the coming months.

There are a number of current projects that we are working on, and I'm just going to briefly go through some of those. The Hacienda Project has been going on for a couple of years now. Hacienda is the Department of Treasury in Puerto Rico, and our people in EP have been working very closely with those in Puerto Rico providing training for audits of Puerto Rico plans, and that continues. We're in the second phase of that project right now. Just in February, a group of people from our office went down to the Virgin Islands to train agents in the Virgin Islands to prepare them for working on a number of audits in the USVI.

We also, as I had mentioned previously, issued Revenue Ruling 2011-1, which provides some guidance on Puerto Rico plans and group trusts, and on the 2010-2011 guidance plan. We also have indicated that we are working on various other items of guidance in the international area, and we are looking at a variety of topics ranging from rollovers to currency conversion to other issues that arise. With respect to FBAR, FinCEN, which is within the Department of Treasury, has the primary jurisdiction over FBAR issues, but as you may be aware, FinCen has just recently this past month, issued final regulations on FBAR, which become effective the end of this month, and so I just wanted to mention that for all of your benefit. We have been working with FinCEN on FBAR issues. They did provide us with copies of the final regulations. We think that some of the issues contained in the final regulations related to qualified plans including issues related to governmental plans and signature authority are very beneficial for our purposes.

We are looking at providing informal as well as formal guidance on a variety of international topics and, as I said, we've been working with LB&I on training. There are also some coordinated examination efforts that have already begun where LB&I and TE/GE and EP are working together, and those efforts will continue.

Going on to slide 23 on the governmental plan initiative, our basic premise has been to achieve voluntary compliance through outreach, education, guidance, and compliance. It began with the roundtable in April 2008. Again, this is a project where we are working as one TE/GE, and in particular here, EP is working very closely with the FSLG (Federal State and Local Governments) and the Indian Tribal Governments (ITG) functions within GE. We are trying to ensure sufficient communication with the governmental plan community.

As I had mentioned previously, Cycle C and Cycle E were open to governmental plans, and we have received, between the two cycles, over 2,000 applications, which we're very pleased about. On November 26, 2010 in *employee plan news* there is an article on governmental plan determination letters under Cycle E; the article gave information on filing for determination letters and discussed a number of substantive issues.

As I hope you could tell from the review I did on current guidance projects, we are working on a number of issues currently related to governmental plans including the 414(d) regulations that Ingrid discussed, the 414(h)(2) issues and normal retirement age. We continue to develop our Web-based resources and other materials, and we want to continue that dialogue. As Ingrid mentioned, on the 414(d) regulations, which we hope will come out soon, there are going to be a number of town hall meetings and meetings with Indian tribal governments for consultation purposes. That guidance will be coming out in proposed form, so as Ingrid said, there will be plenty of time for comment on that. At the same time, we are also looking at publishing a topical index to a handbook, for which we will be soliciting comments from the governmental community as well as a chart of provisions that are applicable to those plans.

I am being queued that we are out of time, and so I am going to turn it over to John to close out the session.

J. Schmidt: Thank you, Rhonda. In fact I want to thank you and Ingrid for your enthusiasm in pulling together today's topic and, of course, your willingness to deliver the presentation. Most importantly, I want to thank those of you that called in and took part in today's phone forum. Enjoy the rest of the day, and have a great weekend. Thanks.

Moderator: Ladies and gentlemen, that does conclude our conference for today. Thank you for your participation and for using AT&T Teleconference Service. You may now disconnect.