

Current Developments and Issues from the office of Employee Plans Rulings and Agreements

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TECHNICAL GUIDANCE

EP Rulings & Agreements Organization

Five distinct functions under the Director, EP
R&A

1. EP Technical
2. EP Technical Guidance and Quality Assurance
3. EP Determinations
4. EP Determinations Quality Assurance
5. EP Voluntary Compliance (EPCRS)

EP Technical

- Responsible for issuance of
 - PLRs
 - Technical Advice
 - Technical Assistance
 - R-mail & Congressionals
- Current hot issues
 - New Section 403(b) programs
 - ESOPs

EP Guidance and Quality Assurance

- Responsible for EP Guidance projects
- Current hot issues
 - Staggered RAP guidance
 - Section 403(b) guidance/LRMs
 - International issues guidance

EP Guidance and Quality Assurance

- Current hot issues (continued)
 - Church Plans
 - Governmental Plans
- Section 414(d)
- Section 414(h) guidance
- Normal retirement age
 - EPCRS
 - Hybrid Plan Regs

EP Guidance and Quality Assurance

- Current hot issues (continued)
 - 2007-44 Update
 - 5500 EZ Late Filer Program
 - Lifetime annuitization


DETERMINATION

Inventory Information

- ◆ As of 9/14/11 we have 8,282 cases in unassigned inventory:

– Forms 5300	6,235	1/22/09 control date
– Forms 5307	1,675	11/24/08 control date
– Forms 5310	363	10/2/09 control date
– Forms 5316	9	3/17/10 control date


How Are Applications Processed

- ◆ Applications are processed in Covington, KY.
 - ◆ Applications are scanned into a database to create a “virtual case.”
 - ◆ Hard copy files are retained for historical purposes
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Recommended Filing Order

1. Cover letter
2. Form 8717 (with correct user fee or signature if exempt)
3. Authorization to represent employer (Form 2848 and/or Form 8821) Application Form (5300, 5310, 5307, etc)
5. Attachments to the questions on the application (i.e., controlled group statements)
6. Schedule Q – file ONLY if requesting a ruling – don't file if all boxes are marked "no"

Recommended Filing Order


7. Demonstrations
 8. Notice to participants – if applicable
 9. Meeting Minutes/Resolutions (formal actions) approving amendments, restatements or actions involving the plan (i.e., mergers, termination of the plan, etc.)
 10. List of modifications to Volume Submitter plans
 11. Restated plan (IDP) or Adoption Agreement (Pre-approved plans)
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Recommended Filing Order

12. EGTRRA Good Faith Amendments
13. All executed interim/discretionary amendments (in chronological order)
14. Current Trust Agreement
15. Verification of prior law (i.e., GUST determination letter or prior adoption agreement and/or plan documents with any amendments not covered by favorable determination letters)
16. Any and all other pertinent documents (i.e, merger agreements, compliance statements, etc.)

In order to allow for proper scanning, please do not bind information together.

Potential issues that causes delays:

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


- ◆ Not properly completing the Form 8821 – Line 5 is not completed for unenrolled preparer to receive information
- ◆ Terminating plans fail to include amendments for all law as of the date of termination
- ◆ Demo requested, but not submitted
- ◆ Related/pertinent documents missing (i.e. initial plan document, Meeting Minutes/BOD Resolutions for terminating plans, merger related documents, etc.)
- ◆ Related plans – mention them in your cover letter along with EIN. (Some have the same plans in multiple files)

CAUTION

- ◆ Plans are typically worked within the virtual environment. If you are asked to provide additional information, please:
 - Use the Application Identification Sheet (bar coded)
 - Send information to the address provided
 - Do not staple, bind or clip documents
 - Use 8 X 11 paper, (if possible)
 - Include a cover letter identifying all enclosed documents

“Dos and Don’ts”/ DL Submissions

Do:

- ◆ Enclose correct user fee.
 - ◆ Use current version of the applicable form (www.irs.gov).
 - ◆ Include pertinent information in your cover letter.
 - ◆ Ensure application is complete.
 - ◆ Ensure that plan documents/amendments are signed and dated, if applicable
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“Dos”, continued

- ◆ Include copies of prior Determination Letter and VCP Compliance Statement, as applicable (and current EGTRRA/prior GUST opinion or advisory letter, if pre-approved plan)
- ◆ Clearly identify each document using titles/page numbers, or identifying separator sheets
- ◆ Ensure that Form 2848 is correctly completed and *timely* signed

“Dos”, continued

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

“Don’ts”

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

- ◆ Copies of prior favorable determination letters should be submitted for all of the plans involved in a merger, not just the surviving plan. This is necessary because if a merged plan had not been timely amended, the existing trust may contain assets from a non-qualified plan, which could cause the merged plan to be non-qualified.

Merger Example

- ◆ A Cycle D filer (Plan W) had a plan (Plan X) that merged into Plan W in April of 2007. Plan X was a Cycle D filer. What should be filed with the IRS?
 - The GUST favorable determination letter for Plan X
 - Interim amendments made through Cycle C for Plan X


Can I file “off-cycle”?

- ◆ Yes. The IRS continues to accept applications filed outside of their normal on-cycle submission period, however, those cases are put into suspense and held until all on-cycle submissions are worked or until the plan becomes on-cycle and then returned.

(See Rev. Proc. 2007-44)

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What Amendments will be ruled on?

- ◆ All amendments adopted/effective within the five year cycle for the plan and on the cumulative list.
 - ◆ Amendments adopted/effective outside of the five year cycle will not be ruled on until the next five year cycle.
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Example

- ◆ A Cycle E filer submits all amendments for the 2005 – 2010 cumulative lists. After submission, an amendment is signed adding a discretionary amendment to the plan in 2011. This amendment would not be ruled on until the next five year submission period.

EP Determination Letter Application Forms

- ◆ All EP Determination Letter Application Forms are in the process of being updated
 - All forms are in “block format” with barcode
- ◆ New Form 5316 for Group Trust ruling requests pursuant to new Rev. Proc. Revenue Ruling 2011-1 (for applications after 1/10/11)

Reminders for Completing the New Forms

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

- ◆ Fax a cover letter explaining the correction, copy of the determination letter and any applicable information to 513-263-4330 or mail the information to:
- ◆ **Regular Postal Delivery**
Internal Revenue Service
Room 4024
PO Box 2508
Cincinnati, OH 45201

Express and Overnight Delivery
Internal Revenue Service
Room 4024
550 Main Street
Cincinnati, OH 45202

Where Can You Find Help?

- ◆ www.irs.gov/ep
- ◆ Toll free – 1-877-829-5500 (Status check)
- ◆ Annual Guidance
 - Determination Letter Program - Revenue Procedure 2011-6 (i.e., 2010-6, 2011-6, etc.)
 - User Fee - Revenue Procedure 2011-8
- ◆ Additional Guidance
 - Revenue Procedure 2005-66 (superseded by Revenue Procedure 2007-44) introduced bifurcated approach to filing for determination letters

VOLUNTARY COMPLIANCE

Voluntary Compliance

- Common Application Issues
 - Correction methods
 - How to avoid failures in the future
- Current hot issues
 - Integrating VC and DL programs
 - Upcoming EPCRS Revenue Procedure
 - VC customer satisfaction survey

Common Application Issues

Improper Loans

- Correction methods
- How to avoid failures in the future

Links for more guidance

Plan Loan Failures and Deemed Distributions
Participant Loans in 401(k) Plans

Common Application Issues

401(k) Testing or Deferral Errors

- Failure to effect employee deferrals
 - Correction and How to Avoid in the Future
- Excess Deferrals
 - Correction and How to Avoid in the Future

Links for more guidance

[401\(k\) Fix-It Guide](#)

[Excess Deferrals](#)

[Hardship Distributions in a 401\(k\)](#)

Common Application Issues

Plan Compensation Errors

- Why the Definition of Compensation is so important.
 - Areas where compensation is used.
 - Common Circumstances for Compensation Failures and how to prevent them.
- Compensation Failures and Correction Example.

Common Application Issues


PPA Section 1101 and Excise Taxes

What Does PPA state about EPCRS?


Can I request relief from certain excise taxes using EPCRS?

Comments on how to improve EPCRS should be sent to:

Internal Revenue Service
Attention: SE:T:EP:RA:VC
1111 Constitution Avenue NW
Washington, D.C. 20224

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Current hot issues

- Integrating VC and DL programs
 - Upcoming EPCRS Revenue Procedure
 - VC customer satisfaction survey
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