

**OVERVIEW OF DETERMINATION LETTER /
PLAN DOCUMENT
CURRENT GUIDANCE**

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PRESENTERS



**Andy Fedders, Group Manager
Employee Plans Determinations
Cincinnati, OH**

**Don Kieffer, Area Manager
Employee Plans Determinations
Mountainside, NJ**

Agenda

- Current program status
- Recent IRS determination letter guidance
- ACT Report recommendations and IRS change initiatives
- Common errors / issues in determination letter submissions
- Multiemployer / cash balance determination issues
- Future program changes ?
- Questions and Answers

Determination Letter Program – Current Status

- Generally working in Cycle D with regard to complex submissions
- Into Cycle E, and even A² in less complicated submission work
- Behind this time frame with regard to non-terminating ESOPs

Preapproved Plans

- Rev. Proc. 2011-49 operational guidance
- Extension to April 2, 2012 granted at IRS Announcement MMDDYYYY
- Set to begin work / start contacting submitters shortly
- On DB side, preparing for April 30, 2012 RAP date

Recent guidance plan document / determination letter guidance

- Rev. Proc. 2011-49 = pre-approved program operating guidelines
 - update / modification to 2005-16
- Notice 2011-85 = hybrid plan regs. amendment guidance
- Notice 2011-86 = user fee guidance
 - does not contain fee schedule or current form

Recent guidance plan document / determination letter guidance

- Governmental plans ANPRM
- On horizon:
 - Governmental plans NPRM
 - EPCRS Update
 - Service-based NRA
 - 403(b)

The ACT Report

- TEGE Advisory Committee prepared a final report in June of 2010 on its analysis of the IRS EP Determination letter program.
- The report made several recommendations for alternate ways for IRS to structure its determination letter program
- Among them were changing interim amendment rules to lessen their frequency: changes for only “core” amendments or for 411(d)(6) benefits only, along with a new annual notice

- The ACT Report also recommended adopting some refinements to processing
 - Enabling system enhancements to expedite case processing
 - Adding extra staffing
 - Creating a governmental plans differentiated case and EPCRS process
- **Where is IRS with respect to implementing these changes ?**

Service-proposed alternates

- Recently, IRS has announced several other changes that it has “self-proposed”, including
 - Eliminating non-discrimination demonstrations
 - Limiting Form 5307 submissions to volume modifiers
- And discussed others that it is “thinking about”
 - Requesting / requiring use of a uniform plan / submission checklist
 - Expanding pre-approved plans to other types of designs

Where does IRS stand with regard to these and any future changes ?

Most Common Errors – Determination letter applications

- 415 issues related to post-employment severance (required vs. optional)
- Inclusion of 415 correction methods
- Failure to update for the Final 415 regulations (effective 7/1/07)
- Not properly completing the Form 8821 – Line 5 is not completed for unenrolled preparer to receive information
- Failure to amend for the Pension Equity Funding Act (2004)

Determination Application Issues

Un-executed documents - Developing trend where applications include documents that aren't signed.

Lack of modification statements for pre-approved plans.

Late amendments – Why not use the Voluntary Compliance Program?

Determination Application Issues

Cover letters lack explanation of unusual items like cycle changing events or situations that don't fit into line items on the application.

New plans submitted in the original (unmodified) IRC 401(b) period don't include any indication of that period.

Prior Law Compliance

If the plan previously received a determination letter, the application must include a copy.

If a prior letter is not available include an explanation and a copy of the prior plan (and any applicable opinion or advisory letter). Include interim and discretionary amendments subsequent to the prior letter or prior plan adoption.

Merged Plans

Documentation of prior law compliance is needed for all plans involved in the merger.

Provide the most recent determination. If a prior letter is not available include an explanation and a copy of the prior plan (and any applicable opinion or advisory letter) for all plans involved in the merger. Include interim and discretionary amendments subsequent to the prior letter or prior plan adoption.

Definitely Determinable

Determinations regarding whether DC allocation formulas are pre-determined and whether DB formulas are definitely determinable are still applicable when Demos are eliminated. The Service may request additional explanation and information in the process of making such determination.

Compliance Statements

Review of determination applications for which a Compliance Statement has been issued can reveal additional disqualifying defects that were not voluntarily disclosed in the VC application.

Correction of any such defects must be made prior to the issuance of a determination letter.

Multiemployer Plans

Reliance on letter / extrinsic documents

Multiemployer plans frequently incorporate plan terms into the plan document by reference to ancillary documents such as collective bargaining agreements and reciprocity agreements.

Multiemployer Reliance

Plans that incorporate sections of ancillary agreements can:

- (a) append the specifically incorporated provisions to the plan document and subject them to any reliance provided by the FDL, or
- (b) forgo reliance by not appending the specific section of the incorporated documents.

Multiemployer Caveats

This determination letter does not provide reliance for any portions of the document that incorporate the terms of an auxiliary agreement (collective bargaining, reciprocity and/or participation agreement), unless the exact language of the sections that are being incorporated by reference to the auxiliary agreement have been appended to the document.

Multiemployer Reliance

- The applicant for a FDL selects the incorporated provisions for which reliance will be granted by electing to append or not append the incorporated terms.
- The Service is not granting any reliance for any reason for incorporated plan terms that are not appended to the plan.

Cash Balance Plans

The definition of the accrued benefit as a single life annuity at normal retirement age - IRC 411(a)(7) – was not changed by PPA nor has it been changed by the final hybrid plan regulations or the proposed hybrid plan regulations.

Cash Balance Plans

The present value of the accrued benefit can be expressed as the single-sum hypothetical balance in the accumulation account at any point in time. However, the accrued benefit is still expressed as an annuity at NRA and projected interest credits up to NRA remain part of the accrued benefit.

Cash Balance Plans

Accrual Rules

Certain cash balance plan formulas require the inclusion of a minimum interest rate in order to satisfy the 133 1/3 percent accrual rule.

PPA did not provide any relief regarding accrual rules.

Future changes

- 403(b) program
- EPCRS update
- Decisional guidance on interim amendments
- Other changes possible for the determination letter program?
 - Think most will be “invisible”
 - Don’t see other “no longer accept” type changes in immediate short term

Employee Plans

The screenshot shows the IRS Retirement Plans Navigator website. At the top left, it says "IRS RETIREMENT PLANS NAVIGATOR". In the top right, there is the Internal Revenue Service logo and the text "Internal Revenue Service". Below the logo, it says "An easy retirement plan guide for small employers". On the left side, there is a navigation menu with the following items: HOME, ABOUT THE NAVIGATOR, CHOOSE A PLAN, MAINTAIN A PLAN, CORRECT A PLAN, PLAN COMPARISON TABLE, HELPFUL LINKS, and GLOSSARY. The main content area features a large image of a smiling woman in the foreground and a blurred group of people in the background. Overlaid on the image is the text: "Get the information you need quickly." followed by a paragraph: "Looking for the right retirement plan for you and your employees? We'll help make your decision easier. Already have a plan? You can keep it compliant with the help of our checklists and guides. And should you find a mistake, we'll help you correct it." Below this image, there is a section titled "Help your employees plan ahead." with a paragraph of text: "There are [Lots of Benefits](#) (.pdf file) for you and your employees in setting up a retirement plan. Get information on common retirement plan options to help you choose a plan right for your business. If you already have a retirement plan, get information on maintaining that plan and correcting common plan errors." At the bottom, there are three boxes, each with a heading and a short description: "CHOOSE A PLAN" (Narrow your search for the right plan for your business.), "MAINTAIN A PLAN" (Get the information you need to ensure your company's retirement plan stays tax law compliant.), and "CORRECT A PLAN" (If you've found a mistake in your plan, we can help you correct it.).

Dedicated site for Small Businesses:

- Choose,
- Maintain, &
- Correct

Employee Plans

The screenshot shows the IRS Retirement Plans Navigator website. The main heading is "RetirementPlans.irs.gov" with the Internal Revenue Service logo. Below the heading is the text "An easy retirement plan guide for small employers". The left sidebar contains navigation links: HOME, ABOUT THE NAVIGATOR, CHOOSE A PLAN, MAINTAIN A PLAN, CORRECT A PLAN, PLAN COMPARISON TABLE, HELPFUL LINKS, and GLOSSARY. The main content area features a "Plan comparison table" section with a "Compare Selected" button. The table is organized into sections: Type of Plan, Setting Up and Operating a Plan, Plan Assets, and Maximum Contributions. The table compares ten plan types: Payroll Deduction IRA, SEP, SIMPLE IRA, Safe Harbor 401(k), 401(k), Profit-Sharing, Defined Benefit, 403(b), and 457(b). The table rows include "May use IRS Model Form as plan document", "Annual return required", "Annual nondiscrimination testing", "Invested in IRAs", and "Employee" contributions.

	<input type="checkbox"/> Payroll Deduction IRA	<input type="checkbox"/> SEP	<input type="checkbox"/> SIMPLE IRA	<input type="checkbox"/> Safe Harbor 401(k)	<input type="checkbox"/> 401(k)	<input type="checkbox"/> Profit-Sharing	<input type="checkbox"/> Defined Benefit	<input type="checkbox"/> 403(b)	<input type="checkbox"/> 457(b)
Setting Up and Operating a Plan									
May use IRS Model Form as plan document	No	Yes	Yes	No	No	No	No	No	No
Annual return required	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes
Annual nondiscrimination testing	No	No	No	Yes	Yes	Yes	Yes	Yes ¹	No
Plan Assets									
Invested in IRAs	Yes	Yes	Yes	Other ²	Other ²	Other ²	Other ²	Other ²	Other ²
Maximum Contributions									
Employee	Up to \$5,000	0	Up to \$11,500	Up to \$16,500	Up to \$16,500	0	0	Up to \$16,500	Up to \$16,500

Features the On-line Comparison Table

How Can I Find Out More?

www.irs.gov/ep

The screenshot shows the IRS website's Retirement Plans Community page. At the top, there is a navigation bar with links for Home, Contact IRS, About IRS, Site Map, Español, and Help. Below this is the Internal Revenue Service logo and the United States Department of the Treasury. A search bar is located on the right side. The main navigation menu includes links for Individuals, Businesses, Charities & Non-Profits, Government Entities, Tax Professionals, Retirement Plans Community, and Tax Exempt Bond Community. The Retirement Plans Community section is highlighted, and it contains links for Benefits Practitioner, Plan Participant/Employee, and Plan Sponsor/Employer. Below the navigation, there is a section titled "Tax Information for Retirement Plans Community" with a sub-section "Retirement Plans Community Topics" listing various resources such as Newsletters, Published Guidance, EP Forms/Pubs/Products, Correcting Plan Errors, Examinations/Enforcement, EP FAQs, and Types of Plans. A small image of people in a meeting is also visible.

newsletters

The image shows the cover of the "Employee Plans News" newsletter. It features a collage of diverse people smiling and working. The text on the cover includes "Promotional Copy Volume 2" in a red oval, "employee plans news" in large white letters, and "Internal Revenue Service Tax Exempt and Government Entities Division" in smaller text. Below the main title, it says "Employee Plans News - The Who, What, When, Why and Where of Retirement Plans". At the bottom, a short paragraph states: "Each quarter, the Employee Plans News brings you the latest and greatest retirement plan information. Our articles are".

Questions and Answers

