

Chapter 2

Determination Processing

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*INTERNAL REVENUE SERVICE
TAX EXEMPT AND GOVERNMENT ENTITIES*

Overview

Introduction

This chapter is intended to provide determination specialists with a detailed overview of many of the practical issues encountered while processing a determination letter request. This chapter will also provide some insight into the role that the Quality Assurance Staff plays in the determination letter process and an overview of the future determination processing via the New Tax Exempt Determination System (TEDS).

During any given fiscal year, a determination specialist is responsible for processing hundreds of determination letter requests, whether as a determination or a screening case. Along the way the specialist will encounter numerous procedural issues that must be resolved. Many of these issues will exist in some form in the large majority of cases reviewed. This chapter may be used as a practical guide to assist in the resolution of these issues.

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Overview, Continued

Objectives At the end of this chapter, the determination specialist should have a general overview of several determination case review procedures. Specific topics are arranged in sections that will cover:

- Case File Review Reminders
 - User Fees
 - Requests For Case Files From The Federal Records Center
 - Commonly Issued Letters
 - Special Case Processing:
 - Withdrawals Procedures
 - EP Examination Referrals Procedures
 - Proposed Adverse (Unagreed Case) Procedures
 - TEQMS Reports
 - TEDS
-

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Analyzing Determination and Screening Case Files

Introduction This section will cover helpful reminders and suggestion on how to review a case file.

Beginning Review/Case File Assembly Plans are analyzed in accordance with the screening and determination guidelines using the appropriate tools of analysis. It is often easier to first organize the file according to the Case File Assembly guidelines, and then begin the technical review of the case.

Organize Case File The case file should be assembled in accordance with QAB 2004-1 which supplements the instructions in IRM section 7.11.1.3 (rev. 09-2002).

- IRM 7.11.1.3.1 lists Material **Open** to Public Inspection (**right side** of folder)
- IRM 7.11.1.3.2 lists Material Not Open to Public Inspection (left side of folder)

Review EP Determinations Input Sheet The next step might be verification of the following information:

- User Fee
- Plan Sponsor name and address
- Case Grade
- Plan Name
- Plan Number
- Number of participants
- POA name and address

Correcting errors on the Input Sheet will help improve the quality of the finished product, the determination letter. A misspelled employer name, street, and/or incorrect plan number, etc is considered an error for purposes of evaluating the quality of the determination letter.

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Analyzing Determination and Screening Case Files, Continued

Verify the User Fee Specialists are responsible for the collection of the appropriate user fee. The zero dollar user fee, created by EGTRRA (as described in Notice 2002-1) presents a new set of rules. Specialist should be aware of situations that are inconsistent with the requirements of Notice 2002-1. Exemptions from user fees will be discussed in detail in the next section of this chapter.

Read Cover Letter The cover letter is the representative's summary of the submission and may include information aside from information required by the application form that is important to the case. Examples include:

- changes to the plan name or number since the last determination was issued,
 - declaration of a VCP submission,
 - volume submitter modifications, etc.
-

Form 8717 **Form 8717, User Fee for Employee Plan Determination Letter Request**
If requesting an exemption from User Fees, the Certification must be signed. If the Certification is signed by the POA instead of the employer, the power to do so must be authorized by the Form 2848 (see Item 5 below).

Form 2848 **Form 2848, Power of Attorney and Declaration of Representative**
Item 3. Tax matters – make sure the year or period has not expired
Item 5. Signatures of taxpayer and representative - Form 2848 confers a general power of attorney, expressly providing authorization to perform “any and all acts”, subject to the stated exceptions (26 CFR §601.501(b)(9)(i)). This means that once the taxpayer signs the Form 2848 and gives over the Power of Attorney to someone else, that individual may take action on the taxpayer's behalf (relevant to the determination letter process) that is not expressly prohibited by the Form 2848.
Item 7. Notices and communications – if the second box is checked, indicate on the Closing Transmittal that the second POA is to receive copies of correspondence.

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Analyzing Determination and Screening Case Files, Continued

**Form 8821 –
Unenrolled
Return
Preparers**

Form 8821, Tax Information Authorization

Unenrolled Return Preparers may NOT use Form 2848 to represent their clients before the IRS, effective 3/2004 – see Rev. Proc. 2004-4. The newly revised Form 2848 clarifies the limitations on these individuals. These limited practitioners (category “h” of Form 2848, Part II) may only represent taxpayers on the examination of a return prepared by the unenrolled return preparer. An “examination of a return” does not include filing an application for an EP Determination Letter. Unenrolled Preparers must use Form 8821, which allows EP to release copies of correspondence to the Preparers. Although Unenrolled Preparers can perform limited activities, they do not have the authority to sign documents on behalf of the plan sponsor, advocate positions, amend plan documents, or negotiate closing agreements. There are NO circumstances under which an Unenrolled Preparer could sign Forms 5300, 5307, 5310 or 8717. It does not matter whether the Unenrolled Preparer is employed by a firm or professional association – the power of attorney is granted to an individual, not a firm.

Applications

Forms 5300, 5307, 5310, and 6406

Verify signature, date, and that all questions have been answered. There are individuals that are not answering the coverage and nondiscrimination questions described on lines 11 and 12 of the Form 5307 and the corresponding lines 13 and 14 on the Form 5300 and specialist that are not pursuing the answers. The questions should be answered, even if the answer is “no”.

Secure all required attachments (i.e., Schedule Q (if necessary), list of Controlled Groups, additional plans maintained by employer, an explanation if the plan is under investigation, etc.)

**Prior
Determination
Letter**

Secure a copy of the prior determination letter. If a copy cannot be secured, try verifying that a letter was issued through EDS or microfiche (if available).

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Analyzing Determination and Screening Case Files, Continued

Prior Law Compliance	Verify the compliance history of the plan, if there are no prior determination letters. While it is preferable to review all of a plan's amendments and restatements, if this is not practical because the documents are too old or no longer exist, securing documents as far back as the plan's TRA '86 restatement may be sufficient. The file should be documented accordingly. See QAB 2000-2 , as revised for more details.
Prior Opinion Letters	Since employers and practitioners often do not have prior opinion letters, check Announcement 92-122 (Partial TRA '86 Pre-Approved List) for a partial list of TRA compliant MP/Prototype and VS submitters. Additional letters may be available on microfiche in Cincinnati.
Initial Plan Document	If the application is for an initial filing for a plan which came into existence after 1994, secure, if not originally submitted, the initial plan document or adoption agreement, the corresponding approval/advisory letter (or basic plan document) and any subsequent amendments which may have been omitted.
Amendments	Secure signed and dated copies of all amendments. Check Board Resolutions for amendatory language. Verify that the execution date of an amendment is timely and corresponds to the proper plan year for remedial amendment period purposes.
Remedial Amendment Period	Deadlines for all legislative changes are discussed in another chapter, but, review all documents for the timely adoption of TRA '86, GUST, CRA, EGTRRA (if applicable), and Code section 401(a)(9) amendments, etc.
Trusts	Review the trust document and any trust amendments. Secure amendments if the trust contains a disqualifying provision. Include the date of the trust document/amendment in a caveat (caveat 26, 27 or 7027) if the trust document has a different execution date than the plan document.

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Analyzing Determination and Screening Case Files, Continued

Plan Review

While there is no “one size fits all” checklist for reviewing a plan, Form 5621 and the worksheets provide excellent starting points for issue clarification. An example of an important element of the review, which is not on any checksheet, is how the remedial amendment period was met. This should be documented on Form 5621 so that an individual that reviews the plan will be aware that the issue has been addressed by the specialist.

For determination cases, requests for additional information are generated using the 1196 Letter. (See section on Letters later in this chapter).

For screening cases, requests for additional information are faxed. The 1196 letter is not used. The TEGE fax transmittal can be found on the shared server. Consult the screening folder on the shared server for additional guidance.

Case Review Conclusions

Conclusions for both determination and screening cases can be documented on Form 5621. As mentioned before, this form can be used to explain how the plan met the current or any prior remedial amendment period. This form may also be used as a tool to document the conclusions of issues discovered during the review.

Elimination of User Fees for Certain Determination Letter Requests

Introduction This section provides guidance on how to determine whether a plan qualifies for the elimination of the user fee and provides procedures for securing and refunding a user fee.

The Law [Rev. Proc. 2004-8](#), as revised annually, provides guidance for complying with the Service's user fee program as it pertains to requests for determination letters on matters under the jurisdiction of the Commissioner, Tax Exempt and Government Entities (TE/GE). Form 8717, *User Fee for Employee Plan Determination Letter Request*, is used as an attachment to a determination letter application to transmit the payment of the required user fee or to certify exemption from the fee pursuant to §620 of the Economic Growth and Tax Reconciliation Act of 2001 (EGTRRA).

Section 620 of EGTRRA provides that, effective January 1, 2002, the Secretary of the Treasury, or the Secretary's delegate, shall not require the payment of user fees for certain determination letter requests. [Notice 2002-1](#) provides the initial guidance implementing EGTRRA's mandate. [Notice 2003-49](#) amplified, but did not supercede, the guidance provided in Notice 2002-1.

Notice 2002-1 In general any determination letter request described in §3.01 of [Rev. Proc. 2002-6](#), as revised annually, is exempt from the user fee if the requirements of Notice 2002-1 are met. However, under Notice 2002-1, Q&A 2, the following requests are never exempt from paying a user fee:

- Requests regarding the qualified status of a group trust under Rev. Rul. 81-100 (1981-1 C.B. 326),
 - Requests for a waiver of the minimum funding requirements, and
 - Requests for an opinion or advisory letter by a sponsor of any master or prototype or volume submitter specimen plan.
-

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Elimination of User Fees for Certain Determination Letter Requests, Continued

Notice 2002-1: Basic Requirements for User Fee Elimination

In general, under Notice 2002-1 a determination letter request must meet two basic requirements in order to be exempt from the user fee requirements:

1. An “eligible employer” (as defined below) must maintain the plan, *and*
2. A request for a determination letter must be filed after December 31, 2001

However, not all requests filed after December 31, 2001 are exempt from the user fee.

Eligible Employer (Definition)

In order to be an “eligible employer” for user fee purposes of the elimination of the user fee, there must be:

- a. At least one non-highly compensated employee participating during the plan year immediately preceding the year the determination request was made. If this is the first plan year then there must be at least one non-highly compensated employee eligible to participate during the plan year.

In order to be participating, a participant must be benefiting (receiving an allocation or accrual) under the plan for that plan year. See Notice 2002-1, Q & A 9.

- b. The employer cannot have more than 100 employees who received at least \$5,000 of compensation during the calendar year immediately preceding the year the determination request was made. See IRC §408(p)(2)(C)(i)(I).
 - In determining who is an “eligible employer” for purposes of Notice 2002-1, all employers aggregated under IRC §414(b), (c) or (m) will be considered as a single employer and leased employees under §414(n) must be treated as employed by the employer.
 - If the employer is part of a multiple employer, then all employers must meet the “eligible employer” definition separately.
-

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Elimination of User Fees for Certain Determination Letter Requests, Continued

Deadline for Making Determination Letter Request

The deadline for making a determination letter request is the later of:

- The end of the fifth plan year the plan is “in existence”; or
- The end of any remedial amendment with respect to the plan beginning within the first five plan years.
 - A plan is considered “in existence” on the first day the plan was in effect. However a plan established as part of a spin-off from another plan will be considered “in existence” on the first day the plan from which it was spun-off was in effect.
 - A plan established as part of a merger between two or more plans will be considered “in existence” on the earliest date any of the merged plans was in effect.
 - For user fee purposes December 8, 1994 is considered the beginning of the GUST RAP for all plans. The first day of the five-year period ending on December 8, 1994 is December 9, 1989. Therefore, a plan must have been in existence on or after December 9, 1989 in order to have the user fee requirement eliminated.

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Elimination of User Fees for Certain Determination Letter Requests, Continued

Notice 2003-49

[Notice 2003-49](#) amplifies the guidance in Notice 2002-1 by describing when the EGTRRA remedial amendment period begins for purposes of determining if a determination letter application is eligible for elimination of the user fee.

- Defined Contribution Plans: For user fee purposes, January 1, 2002 is considered the beginning of the EGTRRA RAP for all DC plans. The first day of the five-year period ending on January 1, 2002 is January 2, 1997. Therefore, a plan must have been in existence on or after January 2, 1997 in order to have the user fee requirement eliminated.
- Defined Benefit Plans: For user fee purposes, January 2, 2001 is considered the beginning of the EGTRRA RAP for all DB plans. The first day of the five-year period ending on January 2, 2001 is January 3, 1996. Therefore, a plan must have been in existence on or after January 3, 1996 in order to have the user fee requirement eliminated.

** A flow chart demonstrating the requirements for exemption from a user fee under both the GUST and EGTRRA remedial amendment periods is attached as Exhibit A.

User Fee Processing Procedures

Securing a User Fee

Except when an Area Specialist is screening a case, the following procedures are to be used for securing a user fee. When a specialist or user fee coordinator determines that the submitted user fee is not sufficient he/she will:

1. Make contact with the taxpayer or their representative and secure the additional user. ***Any check received must be processed and deposited within 48 hours of receipt.*** The user fee check should be reviewed to ensure that it has been properly completed; including, but not limited to verifying that the check:
 - a. Has an acceptable date. Generally, if the check is within a year, of the current date, it is acceptable, unless the check specifically states a timeframe (i.e., void after 90 days),
 - b. Has adequate number of signatures (some checks require multiple signatures),
 - c. Is made payable to the Internal Revenue Service or Dept. of the Treasury.

In securing a user fee, a certified check or money order is preferable.

2. Once the additional user fee has been secured, the Technical Analysis Control Sheet (Form 5621) should be documented and the following information forwarded to the Secretary/Group Clerk.
 - a. Copy of the first page of the application, and
 - b. The original Form 8717 (make a copy for the file), and
 - c. The check (make a copy for the file), and

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User Fee Processing Procedures, Continued

Securing a User Fee (continued)

d. Either:

1. An EDS User Fee Field Update Form, if the case does not have to be dumped and reestablished (see Exhibit B); or
 2. If the case must be dumped and reestablished, a completed Reestablished Case Transmittal Form (see Exhibit C) and the case file. Place copies of the Reestablished Case Transmittal Form, copy of the application, the original F8717, and the check on the outside of the case file - secure all with a rubber band.
-

Determining if a Case Is to be Dumped and Reestablished

To determine if a case should be dumped and reestablished, the screener/user fee coordinator will determine what the new control date would be if a new case were to be established.

The new control date will be the postmark date. If the postmark is missing or is illegible use the date (the IRS receive date) stamped on the envelope as the postmark date. If there is not a date stamp on the envelope, use the current day's date as the postmark date. If two different postmark dates are present, use the earliest date as the postmark date. (See IRM 3.45.1.5.1, rev. July 1, 2003 and 7.13.3.9.2, rev. April 15, 2003)

If the new control date is:

1. **90 days or less** from the original control date, you will *not* dump and reestablish the case.
 2. If the new control date is 91 days or more, you will follow the dump and reestablish procedures.
-

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User Fee Processing Procedures, Continued

Securing a User Fee

When a technical screener determines that the submitted user fee is not sufficient he/she will:

(Screening Case: Area Offices)

1. Stop processing the case
2. Complete the Incorrect User Fee Form (see Exhibit D)
3. Update EDS to status 58 specialist number 31250
4. Prepare F3210 Document Transmittal (see Exhibit E), *and*
5. Forward case to:

Internal Revenue Service
550 Main Street – Room 5106
Cincinnati, OH 45202
Attn: Letitia Young – Group 7521

Refunding a User Fee

Except when an Area Specialist is screening a case, the following procedures are to be used for refunding a user fee. If a specialist discovers that the taxpayer is entitled to a refund, the specialist will prepare and forward the following information to the Secretary/Group Clerk:

1. Copy of Form 8717 (with signed Certification, if applicable)
 2. Copy of first page of the application
 3. Completed Form 1725 – Make sure that the form includes the following info:
 - Sponsor's name,
 - Employer Identification Number,
 - Plan Number,
 - Amount of refund, *and*
 - Reason for Refund.
-

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User Fee Processing Procedures, Continued

**Refunding a
User Fee**

If a technical screener discovers that the taxpayer is entitled to a refund, the screener will prepare and forward (or fax to (513) 263-3522) the following information to the EP User Fee Adjustment Clerk at:

**(Screening
Case: Area
Offices)**

Internal Revenue Service
550 Main Street – Room 4024
Cincinnati, OH 45202

1. Copy of Form 8717 (with signed Certification, if applicable),
 2. Copy of first page of the application, and
 3. Completed Form 1725 – Make sure that the form includes the following info:
 - a. Sponsor's name,
 - b. Employer Identification Number,
 - c. Plan Number,
 - d. Amount of refund, and
 - e. Reason for Refund.
 4. Prepare document transmittal – Form 3210 (See Exhibit E)
-

**Dishonored
Check
Procedures**

If the screener is notified (via Notice of Dishonored Check Form – see Exhibit F) or discovers that EDS has 4 “Bs” (BBBB) shown as the first four digits on the name line, the bank has not honored the check (dishonored check) and the screener will:

- Follow the instructions on the Notice of Dishonored Check from the User Fee Adjustments Clerk.
 - If payment is not received by the response due date (30 days from the date of the letter), you will process the case as an incomplete submission (closing code 03).
-

Federal Records Request

Purpose This section provides step-by-step instructions on how to request a case from the Federal Records Center (FRC) and give reasons why such a request may be necessary

Old Plan Only Available From Federal Records During the course of a determination request, it may become necessary to secure a prior plan or amendment.

Example: Employer A adopted an amendment in 1998 changing the vesting schedule to a 3-year cliff. The plan has a prior letter from 1997 and the employer lost his TRA '86 plan in a flood. A Federal Records Request for the file from the previous letter should likely contain the TRA '86 plan. By securing the plan, the determination specialist can determine if the new vesting schedule is more or less generous.

Related Cases The employer may have multiple related plans sent in to the Cincinnati Submission Processing Center at different times. Issues can arise in the course of a determination letter request that require the other case.

Letter Correction An employer may ask for a review of a determination letter that he believes is not correct. The file for that case may need to be retrieved to determine if the letter should be modified.

Miscellaneous There are numerous other reasons for needing a case from the Federal Records Center. The following section will show how to obtain a case file. This process is time consuming and expensive for the Service. Employers are responsible for maintaining copies of plan documents. Thus, only use this procedure when it is necessary.

Continued on next page

Federal Records Request, Continued

Federal Records Request Form

How to Obtain a Federal Record Center File:

1. Double click the Computer Icon on the Desktop,
 2. Double click the H:\ icon (must have access to the shared drive),
 3. Double click on the “tege emplan” folder,
 4. Double click on the “Letters & Forms” folder,
 5. Double click on the “Forms” folder, and
 6. Find the icon called “FRC case request” and double click on it. See Exhibit G.
 7. You can fill out the form on the computer and print the form, or print the form and complete manually.
-

How to Complete the FRC Request Form

Once the form has been located, it is necessary to find the information needed to complete the form.

Note: If multiple plans are requested for the same employer, each plan requires a separate request form.

Information Needed

- The Name of the Employer,
 - The Employer’s EIN,
 - Case Number,
 - Box Number (where the case is located), and
 - Sequence and Accession Numbers.
-

Continued on next page

Federal Records Request, Continued

**Use EDS to
Obtain Needed
Information
Using the Case
Number.**

Sign on to EDS.

1. Enter your user name and password,
2. Hit [Enter] on the next two screens,
3. At the EP/EO Terminal Selection Screen hit [3 or 4, as applicable] then [Enter],
4. At the EDS Main Menu hit [4] then [Enter],
5. At the EP/EO Nile Applications Menu hit [4] then [Enter],
6. Select [1] Cincinnati from the following Menu and hit [Enter],
7. Hit [Enter or Q], and
8. Enter the case number in the Case Number block and hit [ESC].

When using the top of the screen you can enter the first letter of the word or arrow over to the word and hit [Enter]. Use the letter "E" to exit.

When you are within the table itself you will need to use the Tab button to move from each field.

The Box Number, EIN, and Sequence Numbers should be present on the screen. Make a print of the screen and complete the FRC request form.

Continued on next page

Federal Records Request, Continued

Obtaining the Case Number with Only the EIN

If the case number is not available but the EIN is, EDS can be used to find the case number.

1. Hit [2] then [Enter] at the EDS Menu from step 5 above,
2. Hit [3] then [F1] at the EP Determination System Menu,
3. Hit [1] and [F1] at the Inventory Control System Menu,
4. Hit [1] and [tab] down to the EIN blank,
5. Enter the EIN followed by [F1].

If [F2] is shown on the bottom of the next screen, you will have the option of two or more cases to choose from. Write down each potential case number first, before selecting a record. EDS will show the most recently filed applications first and will continue in reverse chronological order until there are no more records to search.

Note: An employer may have more than one plan and/or may have filed and received more than one determination letter on any particular plan, for instance GUST and TRA '86. Each plan submission represents one EDS record.

Cincinnati Groups

If a specialist in Cincinnati is making the request, send the form to the group secretary who will secure managerial approval and will send the form to the Records Unit.

Outside Cincinnati

If the Specialist is located in another area, send the form to the group secretary (with a note requesting managerial approval) who will then forward the request to:

Records Unit-Room 4010
Internal Revenue Service
550 Main Street
Cincinnati, OH 45202

Continued on next page

Federal Records Request, Continued

**Returning the
Case to the
Federal
Records**

Be certain to leave copies of correspondence or some other clear indication of any and all change made to the file and why the changes were necessary.

The file will come with a form from the Records Unit attached to the top of the case. The case should be returned with that form.

Selected Letters Issued by Specialist and Explanations

**IRM 7.13.5
(Rev. 4/2003)**

The IRM has a list of all of the EDS letters that are available to a determination specialist in the course of a case review. A separate manual section covers each letter. This section provides a list of the most commonly used letters.

Note: All letters consist of “automatic” paragraphs that are paragraphs that are preprogrammed and require no specialist action in order to appear on the letter. Some letters contain “selective” paragraphs. These paragraphs require a specific entry that the specialist is responsible for providing at the time of the case closure; they can be either a choice between pre-determined paragraphs, unique to that specific letter or they may have to be created by the specialist.

**Letters for
Additional
Information**

Letter 1196 – First Request for Additional Information.

The 1196 for an initial request from a determination specialist.

Letter 1955 - Second and Subsequent Request for Additional Information

The 1955 when addition information is required but a request has already been made.

Letter 1197 - Final Request for Additional Information (Commonly referred to as the Ten-day Letter-requires manager approval)

The 1197 letter should be used as a final request, when no response has been received from the Employer or Power of attorney from prior requests, or when the response is so grossly deficient and addition requests have not yielded sufficient results.

**Determination
Letters**

Letter 835 - Favorable Determination Letter

Letter 1132 - Favorable Termination Letter

Continued on next page

Selected Letters Issued by Specialist and Explanations,
Continued

Letters for which No Ruling is Given (Returning Case) – Service Initiated

Letter 1012 - Returning Incomplete EP Applications

A 1012 Letter must be issue with any plan submission that is being returned as incomplete. The letter will include an attachment with a list of the missing items. All paragraphs of this letter are automatic.

Letter 2234 - Returning Substantially Deficient Plans

A 2234 letter may be used when a plan submission does not have enough information to provide a basis for a ruling. The application in most cases should be so grossly deficient that there are a large number of missing items needed for a ruling like the application form itself, missing plan, no user fee, etc.

Letter 1924 - Return Application If The Service Is Not Authorized Issue a Ruling

This letter should be used when a specialist does not have authority to issue a ruling (e.g. a request to review a cafeteria plan).

Revenue Procedure 2004-6 (Revised Annually) discusses areas in which determination letters will not be issued.

Letter for Which No Ruling is Given (Return Case) – Taxpayer Initiated

Letter 2044 - EP Withdrawal Letter

This letter is issued when a taxpayer requests a withdrawal. The taxpayer must request a withdrawal in writing which should remain in the file.

Continued on next page

Selected Letters Issued by Specialist and Explanations,
Continued

**Letters Issued
for Special
Circumstances**

Letter 1938 - EP Suspense Letter

This letter is issued in three circumstances:

- A case may need to be placed in suspense when advice from Headquarters has been requested on an issue involving that case.
 - A case may also need to be placed in suspense when a Court decision is pending on an issue similar to an issue in the specialist’s case.
 - Finally, a case may be placed in suspense when waiting on relevant information from another area office. There are three selective paragraphs in the 1938 letter that reflect those situations.
-

Letter 1399

Technical Advice Request – Notice to Taxpayer

- This letter should be issued when a Technical Advice request is being issued to Washington involving an issue in the course of a determination.
-

Letter 1755

EP Proposed Adverse Letter

- This letter is prepared as part of the adverse package sent to quality assurance when the determination specialist’s group manager has approved an adverse ruling.
-

Special Case Processing Situations: Withdrawals

Introduction

There are times when an applicant decides to withdraw their request for a determination letter. During the course of the review, if the application is to be withdrawn, a *written request* should be *secured* from the employer or their representative. While withdrawal requests are not encouraged, they cannot be denied.

This section will explain when and how applications may be withdrawn from the determination letter process and contains the following topics:

- consequences of a withdrawal, and
 - procedures for withdrawing applications.
-

Consequences of Withdrawing an Application

In the case of a withdrawal, the Service will **not** issue a determination of any type. The requirements of IRC § 7476 (Declaratory judgments relating to qualification of certain retirement plans) are considered to have been met when the failure to issue a determination letter stems from a withdrawal request. However, the Service may consider the information submitted in connection with the withdrawn request in a subsequent examination.

The following consequences occur:

- The 60-day holding period allowing interested parties to comment does not apply.
 - Generally, the user fee is not refundable (see Rev. Proc. 2004-8, § 10, as updated annually).
 - The entire case file is retained by the Service. The employers and POAs receive only the 2044 Letter.
 - Alert the employer/POA that the case will be referred to the EP Examination Division. Use Form 5666 (rev. 01-2004) (see section on EP Examination Referrals).
-

Continued on next page

Special Case Processing Situations: Withdrawals, Continued

Completing the Closing Sheet

Complete a Closing Transmittal Sheet as usual but note these special entries:

- Select 2044 Letter (as prepared on EDS),
- Use caveat 8000 to provide the date of the withdrawal request,
- Enter closing code "04",
- Enter the law indicator for the last law change which can be verified:

TRA '86	D
GUST 1	G
GUST 3	K
No prior law can be verified	N

Timing of the Withdrawal Request

Until a determination letter (or adverse determination letter) is issued, an employer may withdraw an application at any point in the review process. If an appeal to a proposed adverse determination letter is filed, a request for a determination letter may be withdrawn at any time prior to the forwarding of the proposed adverse action to the Chief, Appeals Office. See Rev. Proc. 2004-6 §6.21, updated annually.

Special Case Processing Situations: Case Referrals to EP Examination Division

Reasons for a Referral

A referral may be necessary for various reasons, for instance withdrawal of case (with audit potential), review of the plan reveals issues that affect the qualification of a plan or a review of the plan reveals issues not affecting plan qualification.

Some examples of possible issues include reversions, loans and prohibited transactions, minimum funding issues, and changes to the demographics of a demonstration which raise questions as to whether the operation of the plan adheres to its form.

EP specialists generating referrals to the Examination Division should complete Form 5666 (rev. 01-2004) TEGE Referral/Information Report and submit it to the group manager for approval. See Exhibit H

If the referral is for examination of issues that do not affect plan qualification (i.e. prohibited transaction, minimum funding, unrelated business income, deemed distribution), the determination case file should be closed out in accordance with established procedures.

Consider a Closing Agreement

If the qualification failures are limited to defects in plan language, no examination referral is necessary. The specialist should contact the closing agreement coordinator to discuss the possibility of a closing agreement to remedy the defects and avert disqualification of the plan.

New QAB

A new QAB was issued in June 2004 to provide specific steps and information for processing EP exam referrals. Review the bulletin for additional information at the following site: [Quality Assurance Bulletins](#).

Notify Employer/POA

Prior to case closure, it may be necessary to advise the employer and/or POA that an examination referral will be made.

Continued on next page

Special Case Processing Situations: Case Referrals to EP Examination Division, Continued

**Form
5666**

Complete an electronic version or paper copy of Form 5666 in accordance with the following instructions (see Exhibit H attached):

1. Check the box at the top to indicate a referral.
2. Complete the following blocks of Line 1:
 - A, B and C: Name of the plan* and address of employer
 - D: Forward report to: Internal Revenue Service - TE/GE
Division EP Classification Unit
9350 Flair Dr., 2nd Flr.
El Monte, CA 91731-2885
 - E: Source of Information: "Application Request"
 - J: Name/EIN of Related Case: (if applicable)
 - L: Prepared By: Specialist's name (include your telephone number)
 - M: Approved By/Date: Manager's name and date
 - P (1-12): EIN
 - P (40-42): Plan Number
 - O: Information obtained: Provide a brief summary/explanation of why the application is being referred. Since the classifiers are reviewing only the Form 5666 and do not have the case file, the explanation should provide enough information to convince the classifier to assign the referral to an exam group.

Item O should also include a request for the specialist to be contacted by one of the following, depending on the disposition of the referral:

1. EP Classification Unit, if the referral is not accepted,
2. EP Examination group manager, if the plan will not be examined, or
3. Internal Revenue Agent at the time he or she is assigned the referral.

*If the plan name is different from the name of the employer, include the name of the employer under Line 1, item O.

Continued on next page

Special Case Processing Situations: Case Referrals to EP Examination Division, Continued

Possible Supplemental Paperwork

Examples of attachments that may provide additional information:

- A. Letter 2044 – withdrawal letter,
 - B. Withdrawal request,
 - C. First page of the application (Form 5300, 5307, 5310, etc.),
 - D. Application cover letter,
 - E. Employer/POA correspondence,
 - F. All information requests, and
 - G. Any other pertinent documents.
-

Submitting the Case for Manager Approval

Complete an envelope for mailing the entire referral package to the EP Classification Unit: Internal Revenue Service

Attn.: Division EP Classification Unit
9350 Flair Dr., 2nd Flr.
El Monte, CA 91731-2885

Using a paper clip, attach the completed Form 5666 with all its supporting documentation to the envelope. Forward the entire file to the Group Manager for approval.

Submitting the Case for Manager Approval - Area Procedures

If the specialist is not located in the same city as their manager, prepare the case as describe above, except the case should be forwarded to the group secretary to have them secure the manager’s signature on Form 5666.

Continued on next page

Special Case Processing Situations: Case Referrals to EP Examination Division, Continued

Referral Disposition - Referral not Accepted

If the EP Classification Unit does not assign the referral to EP Examinations or if the EP Examination Group Manager declines to examine the plan, the specialist will resume processing the case. The specialist should work the case to completion and issue the determination letter. Before the letter is issued, the specialist should consult with the closing agreement coordinator about the possibility of a closing agreement to remedy the operational failure(s).

Referral Disposition - Referral Accepted

If the plan is examined, the determination case should be placed in group suspense until the examination is closed. The determination specialist should maintain periodic contact with the examining agent to keep informed of the status of the examination.

Special Case Processing Situations: Adverse Procedures

“Last Resort”

Very few determination letter applications with disqualifying language are handled using adverse procedures. An adverse case is commonly referred to as an unagreed case. The case is not actually “adversed” at the specialist level; therefore it should technically be called a potential adverse case.

Quality Assurance Staff (QAS) is expected to issue a QAB on this topic by the end of this fiscal year which will be posted on the website at the following link (in addition to all other QABs): [Quality Assurance Bulletins](#), please visit the site to see if the bulletin has been issued.

Other Tools Available to Avoid Adverse Procedures

There are several avenues available that may be used to avoid adverse procedures; the first step would be to consult with the group manager. Make certain that all of these options have been examined before an adverse is pursued:

1. Negotiation to modify the disqualifying language.
2. If applicable, return an application for lack of response. See [QAB 2001-3](#).
3. Audit CAP or Closing Agreement Procedures. There is a separate chapter within this 2004 CPE text. [Rev. Proc. 2003-44](#).
4. Technical Advice Procedures. QAS is currently awaiting approval of a revised version of this QAB. Please check the website to see if the new version is available. There is also a separate technical advice chapter within the 2004 CPE text.
5. Written withdrawal of application by plan sponsor prior to the issuance of a final adverse determination letter or if a protest is filed prior to the issuance of a final adverse action to the Appeals office. See [Rev. Proc. 2004-6](#), Section 6.21 and this is covered within this chapter on Determination Processing.

Continued on next page

Special Case Processing Situations: Adverse Procedures, Continued

Specialist Responsibilities

The determination specialist shall be responsible for the following actions in developing an adverse case.

- Pending the release of the QAB, the specialist should ensure that the case file is fully developed with all facts and information so that case can be processed once procedures are available.
 - The case file should be fully developed to sustain any position of the Service. It is important to note that only information that is contained within the case file is what will be considered should the case proceed to tax court at some time in the future.
-

Develop Case

In addition to providing all relevant facts as to the law and all relevant arguments, the specialist's responsibilities include, but are not limited to, the following actions:

- a) Be certain to document and fully complete Forms 5621 and 5464A in accordance with current procedures. Form 5621 should be legible and contain the names of contacts, time, summary of conversation or actions taken on the case, etc.
 - b) Put file in case file assembly order according to the [QAB 2004-1](#).
 - c) Be certain to check that all issues have been addressed. Do not start adverse procedures without pursuing all potential plan deficiencies.
 - d) Discuss each feature of the plan to which exception is taken, including those for which unexecuted "correcting amendments" have been received. These correcting amendments are not acceptable in this instance until they are adopted through the closing agreement process. Use EDS Letter 1755(DO/CG).
-

Document File

Clearly document case file to show that all appropriate resolution methods and procedures were considered and/or attempted. Mention that the taxpayer refused Audit CAP, or that Audit CAP was not available.

Continued on next page

Special Case Processing Situations: Adverse Procedures, Continued

Inform Taxpayer of Rights

The determination specialist should thoroughly inform taxpayer and POA of the proposed adverse determination letter process and appeal rights.

- Explain the appeal process. (See Notice 402.), and
- Explain the various processing steps that will take place before the 30-day letter is issued. (See EDS Letter 1755.).

Prepare Adverse Package

The Specialist should prepare proposed adverse package of material, which, at a minimum, will contain a EDS Letter 1755 (“30-day letter”), an Attachment A - Unagreed Report, Notice 402, Notice 1214, and a cover/summary memo (see Exhibit I).

Format of Attachment A; Unagreed Report

The specialist should draft an Attachment A - Unagreed Report which, should contain the following sections:

- **Issues,**
This section that will raise issue(s) that are the subject of the Unagreed Report.
- **Facts/Law ,**
This section will discuss case law, Code sections, Regulations and other authority that relate to the issues discussed in the Issue section.
- **Service Position ,**
This section will state why the Service believes that the plan does not meet 401(a) of the Code.
- **Taxpayer Position, and**
This section will state why the Taxpayer believes that the plan meets 401(a) of the Code. Include any comments that have been made with respect to the Service’s position on the issue(s).
- **Conclusion.**
This section should restate the issues in a clear and concise manner, including any responses/comments to arguments discussed in the Taxpayer Position section.

Continued on next page

Special Case Processing Situations: Adverse Procedures,
Continued

Other steps Finally, the Specialist should do the following:

Prepare 5666 Prepare Form 5666 (rev. 01-2004), TEGE Referral/Information Report. (See Exhibit H) See the related topic in this chapter.

Obtain Manager Approval Obtain managerial approval of completed case file. The Manager should sign and date the case file before transmittal to Quality Assurance.

Transfer Case to QA Transfer case file to EP Determinations Quality Assurance for pre-issuance review under cover of Form 3198A, Special Handling Notice at:

Internal Revenue Service—TE/GE
EP Determinations Quality Assurance
P.O. Box 2508
Cincinnati, OH 45201
Attn: Rm. 7008

NOTE: Cases that are not fully developed will be returned to the specialist on a Reviewer's Memorandum, which will detail deficiencies in the case.

TEQMS and QAS Reports: TEQMS Measurement Standard Changes for FY 2004

Background TEQMS is a system designed to measure the quality of the Employee Plans determination letter process. TEQMS is a measure of organizational quality that is designed to achieve statistical validity at the national level. It does not measure quality for an individual or group, but EP as a whole. TEQMS evaluates two types of cases which are randomly selected by EDS for review:

1. Screening cases with closing codes of 06 & 09, *and*
 2. Determination cases with closing codes of 00, 01 & 40.
-

Determination Standards EP Determination cases are reviewed for six quality standards.

1. Complete application,
2. Timeliness,
3. Technical Issues,
4. Workpapers support conclusion,
5. Case administration, and
6. Customer Relations/Professionalism.

These quality standards are further divided into quality elements which are sub-divided into quality aspects and may be further sub-divided into reason codes and process measures.

There are 8 designated “key” quality elements and aspects which are those that have been determined to be priorities for a quality determination. For example, Element 4B :“Did the workpapers support the findings and conclusions of issues?” and Element 5C: “Were proper determination letters prepared?”

Continued on next page

TEQMS and QAS Reports: TEQMS Measurement Standard Changes for FY 2004, Continued

Significant Change for Determination Cases

Determination Standard 2, Timeliness, Element A, which had consisted of the single question – “Was the determination case processed timely?” was changed to “Did the customer receive timely service (control date to date selected for review)?” This determination element was given a significant amount of added detail through ten process measures in order to more accurately measure the various segments of the case processing procedures.

The ten new process measures are:

Process Measure	Action	Number of Days
1	Control date (postmark date) to date received by the Cincinnati Submissions Processing Center (CSPC)	5
2	Date received by the CSPC to date case is established on EDS (status 50)	5
3	Date case is established on EDS to date case is graded, updated to status 60 and put on the shelf in Centralized Files Unit (CFU)	5
4	Date case is put on the shelf in CFU to the date it is assigned to a screener (status 62)	23
5	Date case is technically screened and updated to determination status (Status 51 for Cincinnati and Status 75 for Area cases)	8
6	Date case is updated from Status 51[75] to date case is assigned to a determination specialist (status 52)	25
7	Date case is assigned to a determination specialist (status 52) to date specialist reviews case and requests information	23
8	Date specialist requests information to date POA/ER responds	32
9	Date final information is received to date specialist submits case to manager (status 55)	7
10	Date specialist submits case to manager to date manager reviews and closes case	7
	TOTAL PROCESSING TIME	140

Continued on next page

TEQMS and QAS Reports: TEQMS Measurement Standard Changes for FY 2004, Continued

**Additional
Change for
Determination
Cases**

Additionally, determination question 2C “Were appropriate issues identified by the screener?” was removed because screeners are not required to identify all issues prior to assigning to group and key status from Standard 5, Case Administration, Element A “Were POA requirements followed?” was removed because the determination function requires minimal procedures for perfecting the Form 2848.

**Screening
Elements**

EP Screening cases are reviewed for five quality elements.

1. Was the merit closure case properly identified?
 2. Were proper determination letters prepared?
 3. Were appropriate closing and case file assembly actions taken?
 4. Did the customer receive timely service (control date to date selected for review)?
 5. Was the taxpayer treated professionally and were all rights properly observed?
-

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TEQMS and QAS Reports: TEQMS Measurement Standard Changes for FY 2004, Continued

Changes for Screening Cases

Screening Element D, which had consisted of the single question – “Was the case timely closed?” was changed to “Did the customer receive timely service (control date to date selected for review)?” This screening element was given a significant amount of added detail through eight reason codes (process measures) in order to more accurately measure the various segments of the case processing procedures.

The eight new reason codes are:

Reason Codes	Action	Number of Days
1	Control date (postmark date) to date received by the Cincinnati Submissions Processing Center (CSPC)	5
2	Date received by the CSPC to date case is established on EDS (status 50)	5
3	Date case is established on EDS to date case is graded, updated to status 60 and put on the shelf in Cincinnati (Cincinnati Processing Unit process)	5
4	Date case is put on the shelf in Cincinnati to the date it is assigned to a screener (status 62)	23
5	Date case is assigned to a screener to the date the screener reviews the case and requests information	8
6	Date screener reviews the case and requests information to POA/ER response date	15
7	Date POA/ER responds to date specialist submits case to manager (status 55)	7
8	Date specialist submits case to manager to date manager reviews and closes case	7
	TOTAL PROCESSING TIME	75

Continued on next page

TEQMS and QAS Reports: TEQMS Measurement Standard Changes for FY 2004, Continued

Changes for Both Types of Cases

Effective with Fiscal Year 2004 (October 1, 2003), the single error rule has been eliminated. This rule stated that an error would only fail one element or aspect, though it could cause multiple failures. Only the most significant failure would be counted.

For example, if a technical issue was not addressed in the work papers, the reviewer should rate the appropriate element or aspect under the technical standard “NO” rather than the work paper standard.

These changes also removed the ability of the reviewer to consider mitigating facts & circumstances in determining whether a case failed a particular TEQMS element or aspect.

All timeframes are now based upon calendar days, as opposed to some being based upon work days.

Types of Reports Issued by Quality Assurance-TEQMS Reports

Purpose EP Determinations Quality Assurance Staff issues quarterly and annual reports with respect to TEQMS. These reports provide measures of overall performance on the determination quality standards and screening elements. These reports are also used to identify potential areas of improvement, provide feedback on specific root causes of issues and identify potential training/CPE needs. These reports do not provide evaluative information for individual examiners.

Aspects Within Specialist's Control Of the many aspects that the TEQMS Reports review, many are within the control of the specialist. Examples of the aspects within the specialist's control that directly affect the quality scores are:

- ensuring the application was properly completed,
 - ensuring necessary documents / schedules were attached to the application,
 - ensuring that the proper information requests were prepared,
 - ensuring that the work papers were legible and organized,
 - ensuring that the findings and conclusions were properly documented,
 - ensuring the case chronology record was properly completed,
 - ensuring that the POA requirements were followed,
 - ensuring the appropriate information reports/referrals were prepared,
 - ensuring the special handling procedures were followed,
 - ensuring the appropriate EDS closing actions were taken, and
 - collecting the proper user fee.
-

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Types of Reports Issued by Quality Assurance-TEQMS Reports, Continued

Aspects Within Specialist's Control
(continued)

- ensuring interactions and correspondence with the taxpayer/representative were courteous and professional
 - keeping the taxpayer apprised of the status of the case throughout the determination process
 - observing and protecting the rights of the taxpayer/representative
 - timely initiating the review of the case
 - timely submitting the case to the manager for closing
 - ensuring time spent on case is commensurate with complexity of issues (be sure to fully document any complicated issues and the step taken to resolve those issues)
 - timely closing the case
 - determining correctly plan qualification / operational issues
-
-

Recurring Issue Reports

Background Beginning in March 2001, EP Determinations Quality Assurance began issuing quarterly recurring issue reports. The purpose of these reports is to highlight specific technical issues where there are frequent mistakes made by the specialists.

Below are several issues which have been identified in recent recurring issue reports.

Recurring issue #1—Compensation definition

Issue 1: Compensation Definition

Problem The definition of compensation for purposes of IRC 415 was amended by SBJPA and CRA. These changes had specific effective dates. Plans must contain the required language and the proper effective dates.

All plans must be amended effective for limitation years beginning after December 31, 1997 to include elective deferrals, as defined in IRC §402(g)(3), and any amount contributed by the employer at the election of the employee and not included in the employee's gross income by reason of §§125, 457 and after January 1, 2001, §132(f)(4).

Recurring issue #2-top paid group election

Problem and Notice 97-45 Notice 97-45, Section V provides guidance on the Top-Paid Group Election.

An employer may make a top-paid group election for a determination year. This election must be affirmatively stated in the plan. The effect of the election is that an employee (who is not a 5-percent owner at any time during the determination year or the look-back year) with compensation in excess of \$80,000 (as adjusted) for the look-back year is an HCE only if the employee was in the top-paid group for the look-back year. A top-paid group election, once made, applies for all subsequent determination years unless changed by the employer by plan amendment. **The plan language may not permit employer discretion.**

Continued on next page

Recurring issue #2-top paid group election, Continued

**statutory
definition of
“Highly
Compensated
Employee”**

IRC §414(q)(1) describes a highly compensated employee (HCE) as any employee who:

(A) was a 5-percent owner at any time during the year or the preceding year, or

(B) for the preceding year had compensation from the employer in excess of \$80,000 and, **if the employer so elects**, was in the top-paid group for the preceding year.

(The \$80,000 amount is adjusted at the same time and in the same manner as under IRC §415(d), except that the base period is the calendar quarter ending September 30, 1996)

**Top Paid
Group
Language
Examples**

The following are examples of acceptable language with respect to the top paid group election as indicated in the definition of an HCE.

Example 1:

The term "highly Compensated employee" means any employee who; (A) was a 5-percent owner (as defined in section 416(i)(1) of the Code) of the employer at any time during the current or the preceding year, or (B) for the preceding year - (i) had compensation from the employer in excess of \$80,000 (as adjusted by the Secretary pursuant to section 415(d) of the Code, except that the base period shall be the calendar quarter ending September 30, 1996), and (ii) was in the top-paid group of employees for such preceding year.

Analysis: This language is acceptable as subsection (ii) clearly provides that the top-paid group election is applicable.

Continued on next page

Recurring issue #2-top paid group election, Continued

**Top Paid
Group
Language
Examples
(continued)**

Example 2:

The term "highly Compensated employee" means any employee who; (A) was a 5-percent owner (as defined in section 416(i)(1) of the Code) of the employer at any time during the current or the preceding year, or (B) for the preceding year - (i) had compensation from the employer in excess of \$80,000 (as adjusted by the Secretary pursuant to section 415(d) of the Code, except that the base period shall be the calendar quarter ending September 30, 1996), and (ii) if the employer elects by plan amendment the application of this clause for the preceding year, was in the top-paid group of employees for such preceding year.

In determining who is a Highly Compensated Employee the Employer does not make a top-paid group election.

Analysis: This language is acceptable as the plan is clearly stating that the employer did not make the election.

Recurring issue #3-415(b)(2)(E) amendments

Problem

The General Agreement on Tariffs and Trade (GATT) and the Small Business Job Protection Act of 1996 (SBJPA) amended Internal Revenue Code (IRC) §415(b)(2)(E) effective for limitation years beginning after December 31, 1994. This section briefly discusses the three aspects of §415(b)(2)(E) that result in recurring errors:

1. Correct effective dates,
2. Age Adjustments, and
3. Form of Benefit Adjustments.

A more complete discussion of §415(b)(2)(E) is included in another chapter of this CPE text.

Continued on next page

Recurring issue #3-415(b)(2)(E) amendments, Continued

Revenue Ruling 98-1 and June 9, 1998 Field Directive

Revenue Ruling 98-1 and the June 9, 1998 Field Directive provide clarification and guidance regarding the changes to IRC §415(b)(2)(E). An employer has two options in amending its plan for these changes.

1. A plan may apply the new requirements to all benefits under the plan as of the effective date of the Retirement Protection Act of (the first day of the first limitation year beginning in 1995), including benefits that accrued before such date; or
 2. A plan may protect the portion of a participant's benefit that accrued on or before a date that is earlier than the first day of the limitation year beginning after December 31, 1999.
-

Benefit provided at or after age 62, but before Social Security retirement age

Where a retirement benefit is provided at or after age 62 but *prior* to the participant's social security retirement age (SSRA), then plans should be amended to provide that the benefit may not exceed an annual benefit of \$90,000 reduced by:

- (i) in the case of a participant whose SSRA is 65, 5/9 of 1% for each month by which benefits commence before the month in which the participant attains age 65, or
 - (ii) in the case of a participant whose SSRA is greater than 65, 5/9 of 1% for each of the first 36 months and 5/12 of 1% for each of the additional months (up to 24) by which benefits commence before the month in which the participant attains SSRA.
-

Benefit prior to age 62

If the benefit begins before age 62, the benefit must be limited to the actuarial equivalent of the participant's limitation for benefits commencing at age 62, with the reduced dollar limitation for such benefits further reduced for each month by which benefits commence before the month in which the participant attains age 62.

SSRA is age 65 if the participant was born before 1/1/38, age 66 if born before 1/1/55, and age 67 if born after 12/31/54.

Continued on next page

Recurring issue #3-415(b)(2)(E) amendments, Continued

Actuarial equivalence prior to first limitation year beginning in 1995

Prior to the first day of the first limitation year beginning in 1995, in order to determine actuarial equivalence for this purpose, the interest rate assumption used by the plan may not be less than the greater of 5 percent or the rate specified in the plan for determining actuarial equivalence for early retirement.

Actuarial equivalence for limitation years beginning on or after January 1, 1995

For limitation years beginning on or after January 1, 1995 (and for employers who have elected to treat these rules as in effect on or after December 8, 1994), if the benefit begins before age 62, the benefit may not exceed the lesser of the equivalent amount computed using the interest rate and mortality table (or tabular factor) used in the plan for actuarial equivalence for early retirement benefits, and the amount computed using 5 percent interest and the applicable mortality table (to the extent that the mortality decrement is used prior to age 62), regardless of whether the benefit is or is not subject to §417(e)(3).

See IRC §§415(b)(2)(C) and 415(b)(2)(E)(i), Treas. Reg. §§1.415-3(e) and 1.415-3(b)(1)(i), Notice 83-10, 1983-1 C.B. 536 and Notice 87-21, Q&A 5, 1987-1 C.B. 458, and Rev. Rules. 95-6 and 98-1.

Note: EGTRRA made significant changes to these rules.

Continued on next page

Recurring issue #3-415(b)(2)(E) amendments, Continued

**Form
Adjustments-
introduction**

If a retirement benefit in any form other than a straight life annuity is offered, or if the employees contribute or make rollover contributions, then this benefit must be adjusted to a straight life annuity, beginning at the same age, which is the actuarial equivalent of such benefit.

**Form
Adjustments-
prior to 1995**

Prior to the first day of the first limitation year beginning in 1995, the plan should provide that in order to determine the actuarial equivalence of different forms of benefit payment, the interest rate assumptions may not be less than the greater of:

- 5 percent or
 - the rate specified in the plan for determining actuarial equivalence for the particular form of retirement benefit.
-

**Form
Adjustments-
after 1995**

For limitation years beginning on or after January 1, 1995 (and for employers who have elected to treat these rules as being effective on an earlier date that is on or after December 31, 1994), the actuarially equivalent straight life annuity for purposes of applying the limitations under §415(b) to benefits that are not subject to §417(e)(3) is equal to the greater of the equivalent annual benefit computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial equivalence for the particular form of benefit payable, and the equivalent annual benefit computed using a 5 percent interest rate assumptions and the applicable mortality table.

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Recurring issue #3-415(b)(2)(E) amendments, Continued

Benefits subject to section 417(e)

For plan benefits subject to §417(e)(3), the equivalent annual straight life annuity is equal to the greater of the equivalent annual benefit computed using:

- the interest rate and mortality table, or tabular factor, specified in the plan for actuarial equivalence for the particular form of benefit payable, and
- the equivalent annual benefit computed using the applicable interest rate and the applicable mortality table.

The applicable interest rate used for determining actuarial equivalencies is the annual interest rate on 30-year Treasury securities as specified by the Commissioner. The applicable mortality table is the mortality table described in Rev. Rul. 95-6. IRC §§415(b)(2)(B), 415(b)(2)(E) and 417(e)(3), Rev. Rul. 95-6, Rev. Rul. 98-1, and Notice 83-10, 1983-1 C.B. 536, G-2.

Note: Effective for distributions on or after 12-31-02 Rev. Rul. 2001-62 must be satisfied (GAR 94 Table).

Recurring issues #4-quality of determination letters

Problem

The quality of determination letters continues to be a concern. Given that the determination letter is our final product, it is extremely important that these letters are completely accurate. These errors included incorrect or missing amendment dates, incorrect law ruling caveats, omissions of caveats, incorrect caveats and non-caveat related issues. Non-caveat related examples include errors in the spelling of the employer and POA names and addresses, and the plan name.

Recurring issues #5-GUST Remedial Amendment Verification

Problem Specialists continue to fail to adequately verify and document how volume submitter and master and prototype plans meet the requirements for extending the remedial amendment period.

Rev. Proc. 2000-20, §19 Rev. Proc. 2000-20, §19.03 provides that the GUST remedial amendment period can be extended if:

1. The employer adopted (or certified its intent to adopt) a volume submitter or master and prototype (M&P) plan of a sponsor/practitioner that submitted for a GUST advisory or opinion letter on or before December 31, 2000, and
2. The employer adopted (or certified its intent to adopt) such a plan by the expiration of the *original* GUST remedial amendment period for their plan.

The original GUST remedial amendment period was the later of February 28, 2002 or the last day of the plan year beginning in 2001.

§19.06 provides that an M&P plan or a volume specimen plan may have been modified to the extent that it would be *considered* individually designed. *Nevertheless*, for purposes of §19, *such a plan will be eligible or the extension* of the remedial amendment period.

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Recurring issues #5-GUST Remedial Amendment Verification, Continued

Additional Remedial Amendment Period (RAP) Extension

If the above requirements are met under Rev. Proc. 2000-20 (as modified by Rev. Proc. 2000-27; Rev. Proc. 2001-55; Rev. Proc. 2002-6; Rev. Proc. 2002-29; Rev. Proc. 2002-73; and Notice 2001-42), the GUST remedial amendment period was extended to the later of:

- September 30, 2003,
 - The end of 12th month after the advisory or opinion letter is issued for the plan under review by the determination specialist, or
 - If applicable, the end of the 12th month after the last advisory or opinion letter is issued to the same sponsor/practitioner.
-

Final RAP Extension - Rev. Proc. 2003-72

Rev. Proc. 2003-72 further extended the deadline for applying for determination letters until January 31, 2004. An alert was released on the EP Home Page which stated that because January 31, 2004 was a Saturday, the Service would treat an application as timely filed if the application is received or postmarked by February 2, 2004.

In order to qualify for the extension under Rev Proc 2003-72 the plan's GUST remedial amendment period must end on or after September 30, 2003, and before January 1, 2004. A sanction of \$250 was due if the employer had not adopted a GUST amendment. For an expanded coverage see the enclosed chapter on closing agreements.

December 31, 2003 Recurring Issues Report

The December 31, 2003 Recurring Issues Report notes that:

Specialists should indicate how the extended GUST RAP was verified by updating the Form 5621 and adding supporting evidence to the file.

Recurring issue #6-Form 5310, minimum coverage or nondiscrimination in amounts—for terminating plans

**Rev. Proc.
2004-6**

Rev. Proc. 2004-6, §12.04, as revised annually, states that a determination letter request for a terminating plan may not decline to have the plan reviewed for minimum coverage or nondiscrimination in amount requirements unless

- The plan has received a favorable determination letter stating that the plan has satisfied the coverage and nondiscrimination in amount requirement through the average benefit or general test, as applicable,
- The favorable determination letter was issued during the immediately preceding three year period, and
- There has been no material changes in the facts (including benefits provided under the plan and employee demographics) or the law upon which the determination was based.

The Schedule Q is optional for terminating plans, but the minimum coverage requirements and nondiscrimination in amount requirement must be demonstrated. Typically, it is easiest for a practitioner to use the new version of Form 5310 (rev. 11-02) or an old version Schedule Q (rev. 7/98).

Recurring issues #7-401(k) and (m), ratio and dollar leveling

Introduction

In situations where a plan fails either the ADP test under IRC §401(k) or the ACP test under IRC §401(m), it is necessary to either distribute or re-characterize (provided the plan already allows for employee after-tax contributions) the amount of the excess contributions or excess aggregate contributions so as to pass those tests. Prior to SBJPA, the determination of which HCEs had excess contributions and the determination of the amount distributed to each HCE were determined using the ratio leveling method.

After SBJPA (effective for plan years beginning after December 31, 1996) the determination of which HCEs had excess contributions is still determined using the ratio leveling method, however, the amounts distributed to each HCE are now determined under the dollar leveling method.

Continued on next page

Recurring issues #7-401(k) and (m), ratio and dollar leveling,
Continued

Problem Many plans are still using the pre-SBJPA method of handling excess contributions and excess aggregate contributions. Other plans use language that is confusing or deficient. Therefore, it is important to read the provisions closely to ensure accuracy.

Definitions Excess Contributions: The deferral amounts of the HCEs that are treated as causing the failure of the ADP test.

Excess Aggregate Contributions: The contribution amounts of the HCEs that are treated as causing the failure of the ACP test.

Dollar Leveling Method Under the dollar leveling method the HCEs are ranked in order of their actual deferral or contribution dollar amounts. The HCE with the highest deferral or contribution amount has his/her **amount reduced** until either

- 1) the total amount has been distributed, or
- 2) the HCE with the next highest deferral or contribution amount is reached.

This reduction process continues until the total amount has been distributed. See IRC §§401(k)(8)(C), 401(m)(6)(C) and Notice 97-2.

Continued on next page

Recurring issues #7-401(k) and (m), ratio and dollar leveling, Continued

Ratio Leveling Method

In order to determine the total excess amount, the ratio leveling method is used. Under the ratio leveling method, the HCEs are ranked in order of their Actual Deferral Percentages (“ADP”) or Actual Contribution Percentage (“ACP”).

Next, the HCE with the *highest ADP/ACP has his/her ADP/ACP reduced* until either

- 1) the adjusted ADP/ACP of the HCE group reaches a percentage that allows the plan to pass the ADP/ACP test, or
- 2) the HCE with the next highest ADP/ACP is reached.

This process continues until the adjusted ADP/ACP is sufficient to allow the plan to pass the ADP/ACP test.

The amount of actual dollars that are needed to reduce each HCE to the ADP/ACP necessary to pass the ADP/ACP test are aggregated and then distributed using the dollar leveling method.

Example- Facts

As an illustration of the methods cited above review the following example from Chapter Seven of the 2003 Determinations CPE text.

There are three HCEs in a §401(k) plan:

- **HCE 1** has compensation of \$80,000 and elective contributions of \$8,800 for an ADP of 11%
- **HCE 2** has compensation of \$100,000 and elective contributions of \$9,000 for an ADP of 9%
- **HCE 3** has compensation of \$150,000 and elective contributions of \$10,500 for an ADP of 7%

The HCE ADP is 9%. (Average of 11, 9 and 7%)

Continued on next page

Recurring issues #7-401(k) and (m), ratio and dollar leveling,
Continued

**Example-
Determining
the Amount of
Excess
Contributions**

Assume the HCE ADP needs to be 8% to pass the ADP test. The amount of excess contributions is determined by multiplying one or more HCE's compensation by the percentage that such HCE's ADP would have to be reduced in order to produce an HCE ADP of 8%. The ratio leveling method is used to determine the amount of HCE excess contributions to be reduced.

Start with the highest ADP, which is HCE 1's 11%. This percentage is reduced to the next highest, HCE 2's 9%, and then both HCE 1 and HCE 2's reduced ADPs are further reduced to 8.5%, so that the HCE ADP using these reduced ADPs is 8%. [average of 8.5, 8.5 and 7)

- HCE 1's ADP reduction by 2.5% [11% reduced to 8.5%] produces excess contributions of \$2,000 (2.5% x \$80,000)
- HCE 2's ADP reduction by 0.5% [9% reduced to 8.5%] produces excess contributions of \$500 (0.5% x \$100,000).

The total amount of excess equals \$2,500.

**Distributing
excess using
Dollar method-
step 1**

Using the above facts and the dollar leveling method, the excess amount of \$2,500 would be allocated as follows:

Step 1

HCE 3 (HCE with the highest elective contribution amount) gets back \$1,500, reducing HCE 3's elective contribution from \$10,500 to \$9,000 (same as HCE 2).

Continued on next page

Recurring issues #7-401(k) and (m), ratio and dollar leveling,
Continued

Distributing the excess using Dollar method-step 2

Step 2

At this point, HCE 2 and HCE 3 have the same contribution amount of \$9,000.

HCE 3 gets back \$ 200, reducing HCE 3's elective contribution from \$9,000 to \$8,800 (same as HCE 1).

HCE 2 gets back \$ 200, reducing HCE 2's elective contribution from \$9,000 to \$8,800 (same as HCE 1).

At the end of this step, only \$1,900 [$\$1,500 + \400] of the \$2,500 excess has been distributed and each HCE has an elective contribution balance of \$8,800. For the remaining \$600, each HCE receives \$200.

Distributing the excess using dollar method-step 3

Step 3

HCE 1 gets back \$ 200, reducing HCE 1's elective contribution from \$8,800 to \$8,600.

HCE 2 gets back \$ 200, reducing HCE 2's elective contribution from \$8,800 to \$8,600.

HCE 3 gets back \$ 200, reducing HCE 3's elective contribution from \$8,800 to \$8,600.

Conclusion of Example

Thus, the excess amount of \$2500 would be distributed in the following amounts:

- HCE 3 receives \$1,900 ($\$1,500 + \$200 + \200)
 - HCE 2 receives \$400 ($\$200 + \200), *and*
 - HCE 1 receives \$200.
-

Continued on next page

Recurring issues #7-401(k) and (m), ratio and dollar leveling,
Continued

**If distribution
had been made
under ratio
level.**

If the distribution had been made under the ratio leveling method would have been dramatically different. The total amount of excess of \$2,500 would have been distributed in the same manner that the amount was determined, \$2,000 to HCE 1 and \$500 to HCE 2.

The dollar leveling method determines distributions based on amounts of elective deferrals and contributions, rather than percentages of compensation, resulting in more highly paid HCEs receiving distributions.

The New Tax Exempt Determination System (TEDS)

Background The Tax Exempt Determination System, (TEDS), is a new, innovative system for processing EP and EO determination applications. The new system incorporates user-friendly technology and will, eventually, support every phase of determination processing. TEDS will, ultimately, replace the Electronic Data System (EDS) as our inventory control system for all EP and EO application forms and correspondence.

TEDS Release 1 Summary

What is TEDS? TEDS will consist of all data processing activities that occur from the point in time when TE/GE application packages or correspondence is received, through the completion of the determination process. Future releases of TEDS will also incorporate new technology such as; self-service capabilities for our EP and EO customers, electronic filing, and accessibility of scanned determination files, etc. Terms specific to TEDS will be defined later in this section.

TEDS Release 1 Summary The testing phase of TEDS Release 1 (TEDS Pilot) began July 28, 2003 and was officially completed March 16, 2004. At that time, TEDS officially began processing the first application packages for Forms 5307 (Rev. 9/01).

Even though Release 1 is just the beginning of TEDS system development, it brings several new enhancements to the determination process:

- Scanning of Form 5307 (Rev. 9/01) determination applications at the Cincinnati Submissions Processing Campus, (CSPC)
- TEDS automatic case grading and classification will determine whether a case will be processed as a proposed auto-closure or be processed as a manual case in EDS,
- Automatic selection of cases for review by Quality Assurance Staff (QAS),
- The ability to review cases online.

Continued on next page

TEDS Release 1 Summary, Continued

TEDS Release 1 Summary (continued)

- Accelerated case closure for cases meeting certain criteria (business rules),
- Automatic creation of draft determination letters based on the information obtained from the application during data entry.
- Capability to modify draft, closing, or regenerated determination letters, and
- Capability to view and reproduce copies of final determination letters.

Because TEDS is a web-based application, case file images and copies of determination letters are available anytime, anywhere by IRS personnel with access to the Intranet

TEDS Release 1 Determination Processing

Auto-Closure vs. Manual Processing

Two separate processes occur simultaneously during Release 1:

1. Cases Processed through TEDS.

All Forms 5307 (Rev. 9/01), that pass all of the business rules at CSPC will continue to be processed in TEDS as a proposed “Auto-Closure” cases.

2. Cases Processed through EDS.

All other EP and EO forms will continue to be processed in EDS; including TEDS cases that do not pass all of the business rules (“Manual” cases).

TEDS cases will be transferred to EDS in “Status 50.” These cases will be processed using the same procedures as other EDS cases.

TEDS Definitions

Business Rules	<p>Unique statements of fact based on the information provided to us on Form 5307, Form 8717, and Form 2848. Once the information is entered into TEDS, it is used to make decisions regarding how the case should be processed, such as:</p> <ul style="list-style-type: none">• Can the case be processed as a proposed “Auto-Closure” or “Manual” case,• To determine the complexity of the case (case grade), and• To create a proposed draft determination letter.
Auto-Closure Case	<p>A case that passes <u>all</u> of the “Auto-Closure” business rules is recommended by TEDS as a proposed “Auto-Closure” case.</p>
Manual Case	<p>“Manual” case processing is the process of <u>transitioning a TEDS case to the manual process</u> in EDS, because of the failure of one or more “Auto-Closure” business rules or because of a subsequent event such as:</p> <ul style="list-style-type: none">• Receipt of a dishonored check,• Failed QAS review,• Unpostable (Employer Identification Number (EIN) or name control mis-match), and• Receipt of additional information - requires a specialist review the information in order to make a determination.

How to Identify a TEDS Case

TEDS Case Label Information

After a case is processed by CSPC, a label is printed and applied to the front of the case folder. The label will be used to identify all cases processed by TEDS. If a case fails the business rules, the label will indicate that the case is a “Manual” case. If the case passes all of the business rules, the label will indicate that the case has been classified as a proposed “Auto-Closure” case.

The Duplicate TEDS Case # field (indicated below) will only appear when there is a duplicate case associated with the new determination application.

Note:

A TEDS case will not have an Input Sheet attached to the outside of the case folder.

TEDS Case Label

BBTS#:	DLN:
Non-Scan Item:	Case #:
EIN:	Plan #:
Control Date:	Form #:
Sponsor Name:	Case Grade:
Manual/Automatic Status Flag	
<u>Duplicate TEDS Case #:</u>	

Processing TEDS Manual Cases

Once a TEDS case transitions to manual processing in EDS, the case will be processed the same as any other EDS case.

TEDS Release 2a Summary

**Release 2a
Functionality**

The initial development of the second release of TEDS has begun. Release 2a will include the following TEDS capabilities:

- Migration of EDS functionality to TEDS (replacement of EDS)
 - Automated QAS sampling and mandatory review case selection,
 - Data entry of all remaining EP and EO application forms,
 - Generation of developmental letters (letters to request additional information during case review) as well as determination letters.
 - Scanning will be performed after case closure for all EP and EO cases,
 - EO Cyber Assistant (initial phase),
 - TEDS/TEGE Reporting and Electronic Examination System (TREES) compatibility,
 - Release 2a will provide the foundation for future capabilities such as; self-service, workflow, etc.
-

Release 2a User Group Members

Release 2a User Group Recently, NTEU solicited new User Group members for Release 2a which includes EP, EO, and CSPC team members as follows:

Consultants/Facilitators

Dan Evans, TEDS Project Lead
Vickie Surguy, Area Manager, EP Determinations
Monika Templeman, OCM TEDS Project & EP Area Manager, Great Lakes

EP User Group Members

Maxine Dougherty, Program Analyst
Lori Kay, Determination Specialist
Fran Steinke, TEDS Analyst
Melody Thompson, Determination Specialist
JoAnna Weber, Group Manager
Walt Wells, QAS Representative

EO User Group Members

Jane Baniewicz, Program Analyst
Mike Rachael, Program Analyst
Cindy Westcott, Area Manager, EO Determinations
Dale Pepper, QAS Representative
Kevin Phegley, Staff Assistant
Sheila Robinson, Specialist
Guy Stone, Specialist
Jon Waddell, Manager

CSPC User Group Members

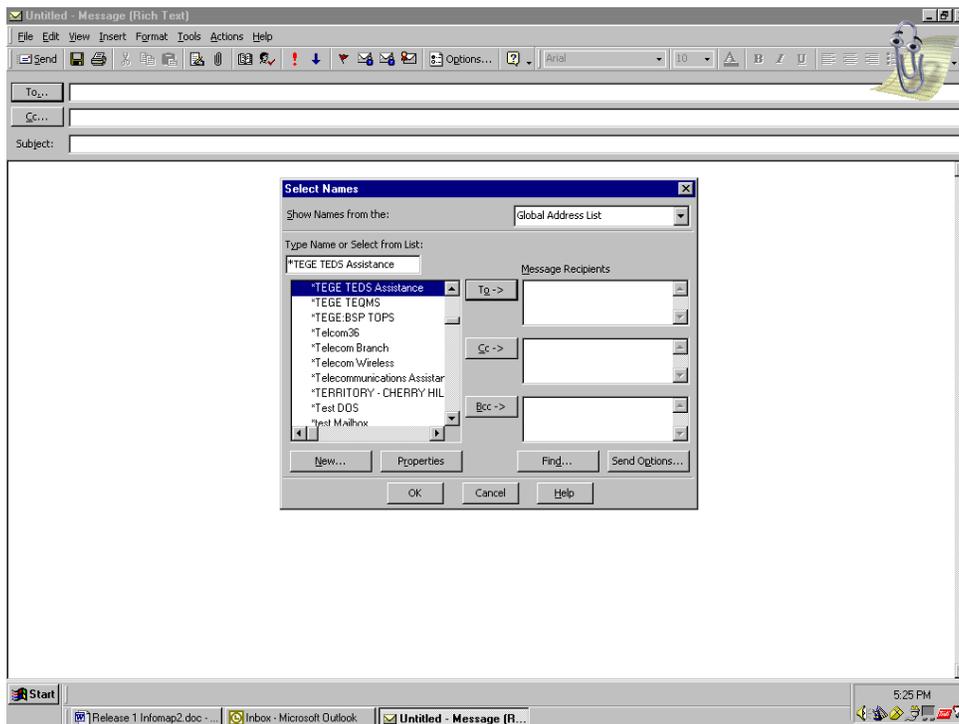
Sherry Whitaker, Service Center Program Analyst, OCM TEDS Project
Marie Sebastian, Dept. Manager
Rose Simon, Supervisory Clerk

How to contact TEDS team

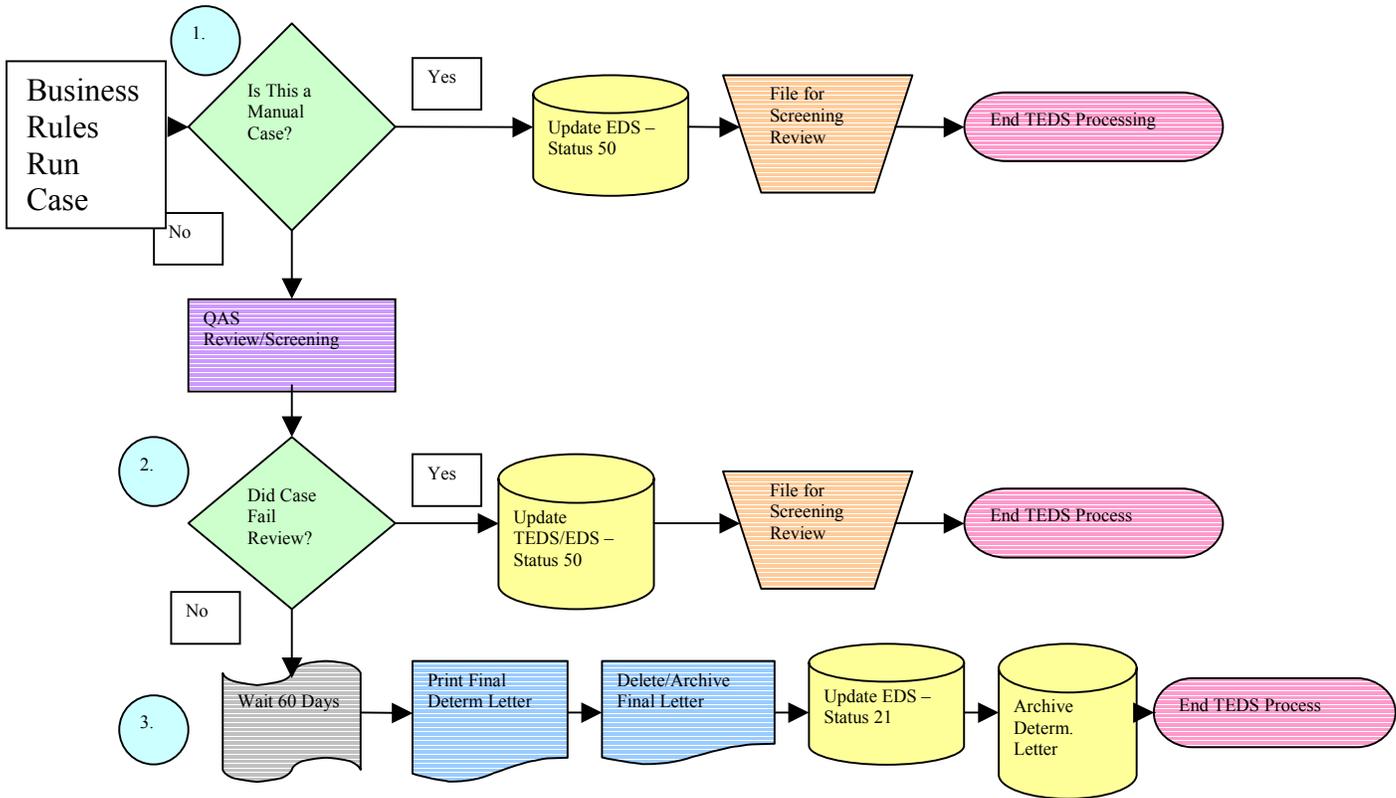
An “Outlook” mailbox has been created for TEDS users. The mailbox can be used to email questions, offer suggestions, or alert the TEDS team of any problems.

The organizational mailbox can be accessed by clicking on the “New Message” icon and clicking on the “To” button and typing in the following address:

***TEGE TEDS Assistance**



TEDS-Business rule run case

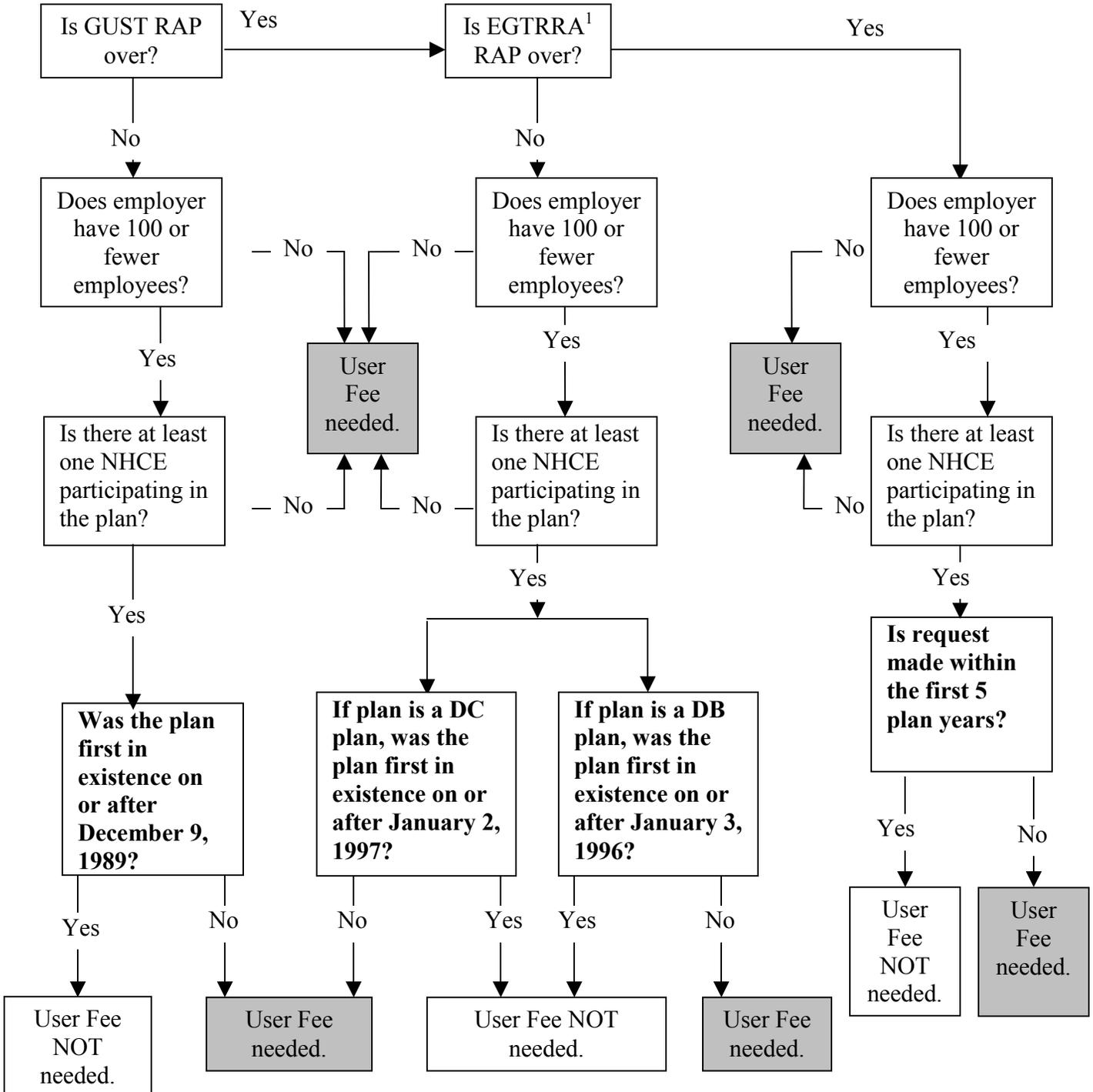


1. Cases that do not pass all of the business rules are updated to Status 50, and processed manually in EDS.
2. Cases that fail QA Review, or other information is received such as; a dishonored check or misc. info., will cause the cases to transition to Status 50, and will also be processed manually in EDS.
3. Cases that pass all of the business rules and complete the 60-day waiting period will be closed Status 21, Automatic Closure in TEDS. The closing status will be updated in EDS.

USER FEE FLOWCHART

Exhibit A

(Page 1 of 2)



USER FEE FLOWCHART

Exhibit A, Continued

(Page 2 of 2)

¹The remedial amendment period for EGTRRA is the end of the first plan year on or after January 1, 2005. The availability of the EGTRRA remedial amendment period is conditioned on the timely adoption of required good faith EGTRRA plan amendments. There are two circumstances in which a good faith EGTRRA plan amendment is required. First, a plan is required to have a good faith EGTRRA plan amendment in effect for a year if the plan is required to implement a provision of EGTRRA for the year and the plan language, prior to the amendment, is not consistent with the provision of EGTRRA. Second, a plan is required to have a good faith EGTRRA plan amendment in effect for a year if the plan sponsor elects to implement a provision of EGTRRA for the year and the plan language, prior to the amendment, is not consistent with the operation of the plan in a manner consistent with EGTRRA. A good faith EGTRRA plan amendment is timely if it is adopted no later than the later of (i) the end of the plan year in which the EGTRRA change in the qualification requirements is required to be, or is optionally, put into effect under the plan or (ii) the end of the GUST remedial amendment period for the plan. *Good Faith.* A plan amendment is a good faith EGTRRA plan amendment only if the amendment represents a reasonable effort to take into account all of the requirements of the applicable EGTRRA provision and does not reflect an unreasonable or inconsistent interpretation of the provision. NOTICE 2001-57



Exhibit B-EDS User Fee Field Update Form

**EDS - USER FEE FIELD
UPDATE FORM**

This form should be completed when initial or additional user fee payments have been secured and original case does not have to be dumped and reestablished.

Prepared by: _____

Date: _____

EDS Case Number: _____

Plan Name: _____

EIN: _____ **Plan Number:** _____

Please update the User Fee Field on EDS to reflect a total User Fee of: \$ _____

Update Completed by: _____

Date: _____

This form should be returned to the "Preparer" and filed on the right side of the case file with any other miscellaneous documents. Case may not be closed until this form is completed and returned from the Group Secretary.

Exhibit C-Re-establish case transmittal form

RE-ESTABLISH CASE TRANSMITTAL FORM

Prepared by (Specialist's Name and EDS #): _____ Date: _____

Original Case (Instructions: Specialist should complete all line items except new case # which, should be completed by the person establishing the case).

Dump (EDS) case number: _____ Control Date: _____

Name of Case: _____

Form # to be dumped: _____.

Specialist's Time: _____ Case Grade: _____ Closing Code: 30

Zero-out user fee on original case (circle yes or no): YES NO

New case:

Form to be established: _____

Control date: _____ (Is the control date 90 days or less from the original submission's control date? If yes, **STOP – Do not follow the dump & reestablish procedures.**)

Input user fee of (if zero, enter 0): \$ _____

New (EDS) Case# _____ in status _____ to Specialist # _____.

Established by (secretary name): _____

Date: _____

(Rev. 3/9/04)

Exhibit D-Incorrect user fee form

INCORRECT

USER

FEE

EXPLANATION:

SCREENER NAME: _____ GROUP #: _____

SPECIALIST #: _____
(specialist # should be the number the established case will be updated to)

Address case should be returned to:
(this is the area address)

Chapter 2- Determination Processing

Exhibit E-document transmittal

Document	To (Show complete and correct address) Internal Revenue Service 550 Main Street – Room 5106 Cincinnati, OH 45202 Attn: Letitia Young – Group 7521	Release date	Page _ of
		Transmittal code (from Serial no. - To)	
		Numbered	Unnumbered

Document Identification			Remarks	Shipment Information	
Quantity	Code or Type	Instructions: When transmitting reports please show the type of report and the period covered. For other items, show identifying information such as blocks, DLN, EIN, SSN, etc.		Container No.	Rec'd (√)
	5307	Jon Doe, Inc. Profit Sharing Plan 001 31-111111 Case # 111111119	Please process the following User Fee Cases (1)		

From (Originator must supply complete address below) Internal Revenue Service 401 W. Peachtree Street N.W. Atlanta, GA 30308-3589	Releasing official (signature and title) George Jones
	Received and Verified (signature and title)
	Originator telephone number 404-338-8139
	Date Acknowledged

Form **3210** (Rev. 7-90)

Department of the Treasury
Internal Revenue Service

Exhibit F-Notice of dishonored check

NOTICE OF DISHONORED CHECK

Date: _____

Screener/Specialist's Name: _____ Specialist's Number: _____

Address: _____

Phone Number: _____ Group Number: _____

Name of Case: _____

DLN/Case Number: _____

EIN: _____ Plan Number: _____ Amount of Dishonored Check: \$ _____

COMMENTS:

- The User Fee Adjustments clerk has updated the User Fee field on EDS to "0" (zero).
- The User Fee Adjustments clerk has also updated the first name line on EDS to show four B's (BBBB) before the name to prevent the case from being closed before the new payment is secured. Once payment is forwarded to the User Fee Adjustments clerk, she will update the name line and remove the four B's.

SCREENER/SPECIALIST INSTRUCTIONS:

1. Please secure a new user fee in the form of a cashier's check or money order for the case identified above. A copy of the dishonored check and the debit voucher are attached.
2. Once payment is secured, the screener/specialist should document the F5621 that the user fee was secured, and prepare and forward the following information to the Secretary/Group Clerk:
 - a. Copy of the first page of the application and
 - b. The original Form 8717 (make a copy for the file) and
 - c. Check (make a copy for the file) and
 - d. An EDS User Fee Field Update Form

SECRETARY/SPECIALIST INSTRUCTIONS:

1. Update the user fee field on EDS to reflect the accurate dollar amount per the EDS User Fee Field Update Form and
2. Make a screen print from the EDS EP Upmast Screen and
3. Sign and date the EDS User Fee Field Update Form and
4. Return the EDS User Fee Field Update Form to the preparer for the case file and
5. Prepare User Fee Transmittal Form
6. Cincinnati secretaries should forward the following items to the EP User Fee Adjustments Clerk (Room 4024). Area secretaries/specialists should forward the following items to the EP User Fee Adjustments Clerk, 550 Main Street- Room 4024, Cincinnati, OH 45202.
 - a. User Fee Transmittal Form and
 - b. Copy of the first page of the application and
 - c. Original F8717 and
 - d. Check and
 - e. Screen print from the EDS EP Upmast Screen

Exhibit G-forward to Records Unit

Internal Revenue Service
(Forward to the Records Unit)

_____ RETRIEVE EP CASE FORM THE FEDERAL RECORDS CENTER

Name _____

EIN _____

Box Number _____

Sequence Number _____

Accession Number _____

Case Number _____

_____ ASSOCIATE THE ATTACHED INFORMATION WITH EP CASE FILE

Name _____

EIN _____

Box Number _____

Sequence Number _____

Accession Number _____

Case Number _____

INSTRUCTIONS: The box and sequence number can be found on the EDS computer screen. After accessing EDS, take the following steps:

- 1) Select 4 – Other EP/EO Applications from the EDS Main Menu
- 2) Select 4 – Federal Records Center Menu
- 3) Select 1 – Query Cincinnati Database
- 4) Hit enter to query the database
- 5) Enter the case number, name or EIN
- 6) Press the “escape key” to retrieve the needed information
- 7) If an entry appears for the box number and the sequence number then print the screen
- 8) To exit the federal records database, press the “E” key, then select the “X” key twice. This will return you to the EDS Main Menu.

REQUEST FROM: Name: _____

Group: _____

Phone Number: _____

Approval: _____
Name Date

Exhibit I-Internal Revenue Service Memorandum

Internal Revenue Service Memorandum

Date: 12/28/2004

To:

From:

Subject

This case involves a 5300 application filed for the Corporation 401(k) Profit Sharing Plan. The plan was amended to comply with UCA '92 and OBRA '93 on October 14, 1996, when the TRA '86 remedial amendment period ended on December 31, 1994.

A Closing Agreement to remedy the plan document failures was attempted, but the negotiations were unsuccessful. The representative for the sponsor contends that plan qualification was restored by the adoption of the September 1995 amendments.

An unagreed case report was prepared which proposes that an adverse determination letter be issued to the employer.