

# EP DETERMINATIONS QUALITY ASSURANCE BULLETIN

FY-2008 No. 3

Date: June 10, 2008

## ADVERSE PROCEDURES--DETERMINATIONS

### I. INTRODUCTION

This Quality Assurance Bulletin (QAB) supersedes QAB 2004-6, issued August 4, 2004, to reflect changes in case file processing. For administrative reasons, adverse determination letters will now be issued by and within the determination function. These revised procedures are designed to provide EP specialists with guidance on how to develop and process proposed adverse determination cases.

### II. ADVERSE PROCEDURES AS A "LAST RESORT"

Very few determination letter applications with disqualifying language or other issues are resolved using adverse procedures. This is due, in part, to an abundance of alternative methods for handling unagreed plan language issues. EP determination specialists are encouraged to use the following procedures before they resort to adverse determination procedures:

- Negotiate with the plan's representative and/or sponsor by telephone, correspondence and or in person to clarify issue development. It may be desirable to include the group manager in any negotiation.
- If applicable, return a determination application for lack of response when there are missing administrative items and /or significant application deficiencies. See QAB 2001-3, issued January 25, 2001.
- Attempt to resolve qualification deficiencies under one of the alternatives to plan revocation contained in the Employee Plans Compliance Resolution System (EPCRS) See Rev. Proc. 2006-27. Most plan language deficiencies should be resolvable using "Audit CAP" procedures, contained at Section 13 therein.
- Technical advice procedures should be followed if the plan language issue in dispute is unusual or complex or has not been treated with uniformity

throughout the Service. Also see Rev. Proc. 2007-5, Section 4.04 for issues requiring a mandatory technical advice submission

- A plan sponsor may submit a written request to withdraw a determination application prior to the issuance of a final adverse determination letter or, if a protest is filed, prior to the forwarding of the proposed adverse action to the Appeals Office. See Rev. Proc. 2007-6, section 6.20.

### III. PROPOSING AN ADVERSE DETERMINATION LETTER: DETERMINATION SPECIALIST RESPONSIBILITIES

If the procedures and programs in Section II above do not resolve the plan language issue(s) in contention between the plan sponsor and the Service, then the determination specialist will prepare the case file for processing eventual issuance of a proposed adverse determination letter. The specialist's responsibilities include, but are not limited to, the following actions:

- Ensure full development of the case file as to all relevant facts and applicable law, and consideration of all relevant arguments that may be made by either side.

The case file, consisting of the initial submission material and all correspondence between the Service and the applicant, comprises the "administrative record." In Tax Court proceedings, decision may be based solely on the administrative record, so care must be taken to ensure that it is fully developed as to all pertinent facts and as to all relevant law and arguments. The effect of comments by the plan sponsor on the Government's conclusions should be clearly noted in the case file. (See IRM § 7.11.1.7.1)

- Clearly document the case file to show that all appropriate resolution methods and procedures were considered and/or attempted, especially noting where EPCRS was either offered and refused, or was not appropriate.
- Thoroughly inform the taxpayer and representative of the proposed adverse determination letter process and the appellate rights. See **Exhibit 1**. This includes explaining the administrative appeal process, (See Notice 402) and describing in general terms the various processing steps within the Employee Plans organization which will take place before Letter 1755 Letter (the 30-day letter) is issued, (e.g., pre-issuance review, possible referral to EP Examinations)
- Prepare the proposed adverse package of material, which, at a minimum, will contain an Attachment A (See **Exhibit 2**), Notice 402, Notice 1214, and a cover/summary memo (See **Exhibit 3**). See **Exhibit 4** for a more detailed description of the required items.

- Prepare Letter 1755 (see **Exhibit 5**) indicating the affected years. This letter gives the taxpayer 30 days to file an appeal of the proposed adverse.
- Obtain managerial approval on the completed case file by sign-off on the Case Chronology Record. The group manager should sign and date the case file before transmittal to the EP Determinations Quality Assurance Staff (QAS).
- Prepare an index with tabs.
- Place the case in status 40 (proposed adverse) on EDS. The case status should then automatically roll to status 31 (sent to review).
- Transfer the case file to QAS for pre-issuance review under cover of Form 3198-A, TE/GE Special Handling Notice, at the following address:

Internal Revenue Service--TE/GE  
 EP Determinations Quality Assurance  
 Attn: Room 7008  
 P.O. Box 2508  
 Cincinnati, Ohio 45201

IV. PRE-ISSUANCE REVIEW BY EP DETERMINATIONS QUALITY ASSURANCE: REVIEWER RESPONSIBILITIES

The function of QAS in processing adverse determination letters is to assure that:

- all other avenues of resolution have been exhausted
- the disqualification issue is valid and well presented; and
- the case file is well documented and fully developed.

Reviewer responsibilities include, but are not limited to, the following tasks:

- Contact the taxpayer and/or representative when the case is first assigned to a QAS reviewer in order to provide a contact person within the Service. Clarifying discussions could occur at this time if appropriate.
- Evaluate case file for clear and adequate documentation showing that all other possible resolution methods and procedures were considered and/or attempted.
- Evaluate technical position for soundness and uniformity. A technical advice request may be required if the Service has been inconsistent on a qualification issue. (See Section II.)

- Evaluate the completeness, clarity, and adequacy of the case file documentation and of the proposed adverse package of materials, i.e. Attachment A, Notices 402 and 1214, and cover/summary memo.
- Return case to determination specialist with a Reviewer's Memorandum if further case development is necessary, or additional information is provided by the sponsor and/or representative.

If the sponsor and/or representative refuses to make the necessary correction and instead requests relief under IRC § 7805(b) relief, such as where a prior favorable determination letter considered the same issue, the case should be returned on a no error memorandum to the specialist, with instruction to prepare a technical advice request. When this completed, the case will be returned to QAS to forward the technical advice material to Headquarters.

## V. REFERRAL OF PROPOSED ADVERSE CASE FOR EXAMINATION

After the case file is "perfected" and all appropriate forms and reports are prepared, the QAS reviewer will prepare a cover memorandum which will include a brief explanation of the facts of the case. The case will then be forwarded to the 90-day reviewer in EP QAS.

Upon receipt of the case file, the 90-day reviewer will issue the proposed adverse determination letter in accordance with Section VI. While waiting for any taxpayer and/or representative response to the proposed adverse letter, the 90-day reviewer will prepare any necessary examination referrals. Normally, no examination referrals will be sent to EP Classification until the final adverse determination letter has been issued in accordance with Section VIII. However, there may be situations when an immediate referral to EP Classification is appropriate. These instances should be discussed with the Manager, QAS.

If additional information is received that QAS feels should be reviewed by a determination specialist, the case will be returned to the specialist that worked the case. If the issue is still not resolvable after reviewing the additional information, the case file will be returned to QAS for processing after any necessary updates or changes are made to reflect the new information.

## VI. WORKING THE PROPOSED ADVERSE CASE TO COMPLETION

### A. **Issuance of Proposed Adverse Determination Letter**

The processing steps in issuing the proposed adverse determination letter are as follows:

1. The QAS reviewer will secure the approval of the Manager of QAS for the proposed adverse Letter 1755. This letter will be date stamped and sent by certified mail to the last known address of record for the taxpayer, with a copy sent to the taxpayer's authorized representative, if applicable. The QAS reviewer and manager will initial and date the file copies of Letter 1755 letter and Attachment A before sending the originals to the taxpayer and representative. At this time the case should be put into status 35 (30 day letter sent).
2. Referrals to the Department of Labor should be prepared by the specialist in accordance with the June 3, 2003 IRS/DOL Coordination Agreement via a Form 6212-B and forwarded by the 90-day reviewer when the 30 day letter is mailed.
3. Referrals to PBGC should be prepared by the specialist only on cases subject to PBGC insurance via Form 6533 and forwarded by the 90-day reviewer when the 30 day letter is mailed. For additional guidance on referrals, see IRM § 4.71.6.

## **B. Preparation of Determination Case for transmittal to Appeals**

If the plan sponsor responds to the proposed adverse determination letter by timely submitting a written appeal (also called a “protest”) within 30 days after the mailing of the letter, the case file will be prepared for submission to the Office of Appeals. Reasonable extensions of time to submit a written appeal may be granted. We recommend obtaining the request for an extension of time in writing.

The case file should be forwarded by the 90-day reviewer to Appeals shortly after receipt of the plan sponsor's written protest (preferably within five workdays). See **Exhibit 6** for the contents and case assembly rules for a case file which is transmitted to Appeals. Transmit the case file to Appeals under cover of a Form 3198-A, TE/GE Special Handling Notice. Check the "Other" box under Special Handling/Processing Instructions and include the following forwarding address:

Internal Revenue Service  
Appeals Office, MS 8000  
Attn: Records  
55 North Robinson, Suite 939  
Oklahoma City, Oklahoma 73102

The Appeals Area Team Manager will assign the case to a specific appeals officer depending on the facts and circumstances at the time, e.g. nature and complexity of the issue(s) and the workload of appeals officers at the time.

If Appeals makes a decision that is adverse to the taxpayer, it will issue the final adverse determination letter. Or alternatively, if they make a decision, which is

favorable to the taxpayer, they will prepare and issue the favorable determination letter. They will return the case file to us to enter the proper closing code on EDS and send the case on to the Federal Records Center.

### **C. Issuance of the Final Adverse Determination Letter**

In few instances, the plan sponsor will either not timely file a written protest to the 30-day letter or will agree in writing to the proposed adverse determination letter. In these situations the 90-day reviewer will process and issue a final adverse determination, Letter 1724.. The processing steps in issuing a final adverse determination letter include:

1. Prepare the case file/administrative record.
  - a. Prepare Letter 1724 letter (See **Exhibit 7**). Remove the taxpayer's position from the Attachment A. The Government's position now becomes the Conclusion.
  - b. Assemble the case file with the appropriate number of copies. See **Exhibit 8** for contents of file and case assembly rules. The Manager of QAS should indicate review and approval by initialing and dating the file copies of the final adverse determination letter.
  - c. Prepare a memorandum to use in forwarding the case file to Area Counsel for pre-issuance review. A transmittal memorandum to Area Counsel accompanies this bulletin as **Exhibit 9**.
2. Forward the case file to Area Counsel for pre-issuance review. Use the plan sponsor/employer's address for determining which Area Counsel office should receive the adverse determination letter case file for pre-issuance review See **Exhibit 10** for the Area Counsels' addresses.
3. Review Counsel's comments when the case file is returned and make any suggested changes.
4. The 90-day reviewer will secure approval for the issuance of the final adverse determination letter from the Manager, QAS.
5. The 90-day reviewer will mail the final adverse determination letter by certified mail when the case file is returned with approval.

#### **D. Post-Issuance Procedures**

The 90-day reviewer will retain the administrative file for a period of 120 days after the issuance of the final adverse determination letter while waiting to see if the plan sponsor will file a petition with the United States Tax Court.

If a petition is filed and the case is “docketed” in the Tax Court, the 90-day reviewer will follow appropriate procedures for monitoring docketed cases, including transferring the case file to the appropriate Area Counsel upon request.

If Area Counsel does not request the case file/administrative record during the 120-day period after docketing, or if the plan sponsor's name does not appear on the docket list, the case should be closed by QAS. Status 02 (Final Adverse) on EDS and forwarded to the Federal Records Center. All examination referrals to EP Classification will normally be made after issuance of the final adverse determination letter, and should include a copy of the final adverse determination letter.

**Exhibit 1**

**Internal Revenue Service**

**Department of the Treasury**

**Date:**

550 Main St., Room XXXX  
Cincinnati, OH 45202

**Person to Contact:**

**ID#:**

Address

**Telephone Number:**

**Refer Reply to:**

**Plan Name:**

**Plan Number:**

Dear Sir or Madam:

We noted certain defects in plan operation and/or form during our review of your determination application. We have attempted to resolve these defects but have been unsuccessful. Therefore, the case is being forwarded to our Quality Assurance Staff for second level review to consider disqualification of the plan. Once this second level review is completed the case may take various routes, including:

- transfer to our Employee Plans Examination Function where an examination of the plan may be conducted;
- return to the specialist for additional development; or
- a letter may be issued which will formally notify you of the proposed disqualification and explain your rights to an appeal.

The appeal process is outlined in the enclosed Notice 402. If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Employee Plans Specialist

## Exhibit 2

The following model adverse explanation attachment would be appropriate for untimely or non-Amenders for TRA 86 and/or UCA 92 and/or OBRA 93, for example. Plans having other issues or disqualifying defects could use this model as to form, but will require revision as to content

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### Attachment

#### FACTS:

xxxxxx (the Employer), Employer Identification Number of (enter number), adopted the xxxx(the Plan) on (enter date). The Plan was originally effective (enter date). The Plan year ends on (enter date). (Choice: The Plan last received a favorable determination letter from the Internal Revenue Service on (enter date). OR The Plan has never received a favorable determination letter.)

Form (Choice: 5300 or 5310) was submitted to the EP Determinations Function of the Internal Revenue Service (the Service) on (enter date). The Employer has requested a determination concerning the (Choice: qualification or continuing qualification or qualification on plan termination) of the Plan. Optional: In connection with the determination letter request, the Employer has submitted amendments signed on (enter date) with an effective date of (enter date) (and/or a restated Plan signed on (enter date) with an effective date of (enter date). These amendments and/or Plan restatement attempted to bring the Plan into compliance with section 401(a) of the Internal Revenue Code of 1986 (the Code).

#### ISSUE:

Was the Plan timely amended for the changes required by: the Tax Reform Act of 1986 (TRA '86) and/or the Unemployment Compensation Amendments of 1992 (UCA '92) and/or the Omnibus Budget Reconciliation Act of 1993 (OBRA '93)?

Would the failure to timely amend the Plan for the above law changes result in the Plan failing to satisfy the requirements of section 401(a) of the Code?

#### LAW:

Section 401(a) of the Code states the requirements for qualification of a trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries.

Section 401(b) of the Code states that a "stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the requirements of subsection (a) for the period beginning with the date on which it was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary may designate, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes for the whole of such period."

Section 1.401(b)-1(a) of the Income Tax Regulations (the Regulations) states as a general rule that "under section 401(b) a stock bonus, pension, profit-sharing, annuity, or bond purchase plan which does not satisfy the requirements of section 401(a) on any day solely as a result of a disqualifying provision (as defined in paragraph (b) of this section) shall be considered to have satisfied such requirements on such date if, on or before the last day of the remedial amendment period (as determined under paragraphs (c), (d) and (e) of this section) with respect to such disqualifying provision, all provisions of the plan which are necessary to satisfy all requirements of section 401(a), 403(a), or 405(a) are in effect and have been made effective for all purposes for the whole of such period. Under some facts and circumstances, it may not be possible to amend a plan retroactively so that all provisions of the plan which are necessary to satisfy the requirements of section 401(a) are in fact made effective for the whole remedial amendment period. If it is not possible, the requirements of this section will not be satisfied even if the employer adopts a retroactive plan amendment which, in form, appears to satisfy such requirements. Section 401(b)

## Exhibit 2

does not permit a plan to be made retroactively effective, for qualification purposes, for a taxable year prior to the taxable year of the employer in which the plan was adopted by such employer."

Section 1.401(b)-1(b) of the Regulations defines a disqualifying provision as:

- (1) a provision of a new plan, the absence of a provision from a new plan, or an amendment to an existing plan, which causes such plan to fail to satisfy the requirements of the Code applicable to qualification of such plan as of the date such plan or amendment is first made effective, or
- (2) a plan provision which results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in such requirements -

Revenue Procedure 95-12, 1995-1, C.B. 508, discusses the various extensions granted, and the deadlines, for amending plans for TRA '86, UCA '92, and OBRA '93.

**Choices: Mix and Match. Paste together. Use Earliest Date for Date of Revocation.**

### TRA '86

Employers were granted an extension under section 401(b) of the Code and the Regulations thereunder to make the amendments required by Act Section 1140 of TRA '86. This TRA '86 remedial amendment period was extended to the last day of the first plan year beginning on or after January 1, 1994.

### UCA '92

Employers were granted an extension under section 401(b) of the Code and the Regulations thereunder to make the amendments required by Act Sections 522 and 523 of the Unemployment Compensation Amendments of 1992. This remedial amendment period was extended to the last day of the first plan year beginning on or after January 1, 1994.

The amendments were required by section 401(a)(31) of the Code for Plan distributions after December 31, 1992.

### OBRA '93

Employers were granted an extension under section 401(b) of the Code and the Regulations thereunder to make the amendments required by Act Section 13212 of the Omnibus Budget Reconciliation Act of 1993. This extension is called the "OBRA '93 remedial amendment period". The last day of this period is: the later of the last day of the 1994 plan year or the time prescribed by law (including extensions) for filing the income tax return (or partnership return of income) for the employer's taxable year that includes the first day of the 1994 plan year.

The amendments were required by section 401(a)(17) of the Code for benefits accruing in plan years beginning after December 31, 1993.

### Conclusion:

**MIX, MATCH, and PASTE AGAIN**

### For TRA '86

The Plan should have been amended for the requirements of TRA '86 by (enter date); however, the Plan was not amended for

## Exhibit 2

TRA '86 until (enter date). **OR** (The Plan has not yet been amended for TRA '86.)

See Attachment A for the Code sections violated because of failure to timely amend the Plan for TRA '86.

### AND

The Plan was not timely amended for TRA '86. Therefore, the Plan is not qualified under section 401(a) for Plan years beginning on or after January 1, 1989. **OR** The Plan is not qualified under section 401(a) of the Code since its inception on (enter date). Furthermore, this letter revokes our favorable determination letter dated (enter date) that held this Plan to be a qualified Plan under section 401(a) of the Code.

### OR

The Plan was not timely amended for TRA '86. Therefore, the Plan has not been a qualified Plan under section 401(a) of the Code (**CHOICE:** for Plan years beginning on or after January 1, 1989, **OR** since its adoption on (enter date)).

### For UCA '92

The Plan should have been amended for the requirements of UCA '92 by (enter date); however, the Plan was not amended for UCA '92 until (enter date). **OR** (The Plan has not yet been amended for UCA '92.)

### AND

The Plan was not timely amended for UCA '92. Therefore, the Plan is not qualified under section 401(a) of the Code beginning January 1, 1993. Furthermore, this letter revokes our favorable determination letter dated (enter date) that held this Plan to be a qualified Plan under section 401(a) of the Code.

### OR

The Plan was not timely amended for UCA '92. Therefore, the Plan has not been a qualified Plan under section 401(a) of the Code (**CHOICE:** since January 1, 1993 **OR** since the date of Plan adoption.)

### For OBRA '93

The Plan should have been amended for the requirements of OBRA '93 by (enter date); however, the Plan was not amended for OBRA '93 until (enter date). **OR** (The Plan has not yet been amended for OBRA '93.)

### AND

The Plan was not timely amended for OBRA '93. Therefore, the Plan is not qualified under section 401(a) of the Code beginning (enter date). Furthermore, this letter revokes our favorable determination letter dated (enter date) that held this Plan to be a qualified Plan under section 401(a) of the Code.

### OR

The Plan was not timely amended for OBRA '93. Therefore, the Plan has not been a qualified Plan under section 401(a) of the Code since (**CHOICE:** enter date of failure or date of adoption).

**Taxpayer's Position: (Sample--not necessarily to be included with every case).**

## Exhibit 2

The representative of the employer believes that the amendments were adopted timely in accordance with the section 401(b) of the Code and the Plan is a qualified plan under section 401(a).

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### Attachment A

#### Law Changes Required For Plan Years Beginning After 12/31/88

#### Citations to the Internal Revenue Code

- |  |                 |
|--|-----------------|
| 1. \$200,000 Compensation Limit &<br>Family Aggregation. | 401 (a) (17)    |
| 2. Permitted Disparity.                                  | 401 (a) (5)     |
| 3. Additional Participation Requirements.                | 401 (a) (26)    |
| 4. Required Distributions.                               | 401 (a) (9) (C) |
| 5. Minimum Participation Standards.                      | 410 (a)         |
| 6. Cash or Deferred Arrangements.                        | 401 (k)         |
| 7. Minimum Vesting Standards.                            | 411 (a)         |

**Exhibit 3**

**INTERNAL REVENUE SERVICE  
MEMORANDUM**

Date:

To: Manager, EP Determinations Quality Assurance

From: XXXX, Group manager, EP Determinations Group YYYY

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Subject: Proposed Adverse Determination Case for ZZZZ Retirement Plan

We are forwarding the attached file for pre-issuance review of a proposed adverse for the following plan defects:

*(Insert details.)*

In accordance with QAB 2008-XX this case is being forwarded for your review.

If there are any questions, please contact <Agent's name> at telephone number NNN-NNN-NNNN

## Exhibit 4

### NECESSARY ITEMS IN PROPOSED ADVERSE DETERMINATION LETTER PACKAGE

(From Top to Bottom)

- **Cover/Summary Memo** (*See sample at Exhibit 3*)

The summary memo is a short overview of the case history, current adverse issue(s), and case development up to the current point. It may also be used to alert the reviewer to any special considerations in the case.

- **Attachment A--Explanation of why the Service asserts that the plan is not qualified.**

Basic contents: (*See sample at Exhibit 2*)

- Facts/Background
- Law or Law & Rationale (See IRM §§ 1.11.2.9.1 & 1.11.2.9.2 for citation guidance.)
- Conclusion and/or Government's Position
- Plan Sponsor's/Taxpayer's Position
- **Notice 402, Appeal Procedures--Adverse Determination Letter on Qualification of Employee Plans** (Rev. 10/88) and
- **Notice 1214, Helpful Contacts for Your "Notice of Deficiency"** (Rev. 1/2007)

Copies of Notices 402 & 1214 are available on the IRS Intranet, from the Forms and Documents Repository.

Section 3504 of the IRS Restructuring and Reform Act of 1998 requires the inclusion of Notices 402 & 1214 with EP proposed adverse determination letters.



Exhibit 5

**Department of the Treasury  
Internal Revenue Service**

**Date:**

**Employer Identification Number:**

**DLN:**

Name & address of POA

**Person to Contact:**

**ID#:**

**Telephone Number:**

**Plan Name:**

**Plan Number:**

Dear Sir or Madam:

We have made a proposed determination that the above plan does not meet the requirements of section 401 of the Internal Revenue Code. The enclosed explanation of this determination affects plan year(s) beginning XXXXX. You should keep this letter in your permanent records.

If you do not agree, you can appeal within 30 days from the date of this letter. To file your appeal, please follow the instructions in the enclosed Notice 402, *Appeal Procedures - - Adverse Determination Letter on Qualification of Employee Plan*, under the heading Regional Office of Appeal. If you do not appeal, your ability to obtain a declaratory judgment in the Tax Court as to the qualification of this plan will be impaired. Internal Revenue Code section 7476(b)(3) provides, in part, that, "The Tax Court shall not issue a declaratory judgment or decree under this section in any proceeding unless it determines that the petitioner has exhausted administrative remedies available to him within the Service." We believe that an appeal is necessary to exhaust the administrative remedies available within the Internal Revenue Service. If you do not file an appeal within 30 days, we will issue a final adverse determination letter.

Please mail the information requested in this letter to the following address:

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

We have sent a copy of this letter to your representative as indicated in your Power of Attorney. If you have any questions concerning this matter, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Andrew E. Zuckerman  
Director,  
Employee Plans Rulings & Agreements

Enclosures:  
Explanation  
Notice 402

## Exhibit 6

### ITEMS IN CASE FILE TRANSMITTED TO APPEALS

The case file is the physical accumulation of documents and written or printed "paper" which relate to the applicant's request for a determination letter. It consists of the administrative record and documents which are not part of the administrative record, e.g. specialist workpapers, case chronology. See IRM 7.11.1.7.3.

The indexed, tabbed, and fastened case file which is transmitted to Appeals will contain on the right side (from top to bottom):

1. **Index.**
2. **Note to File.** This is a short synopsis and commentary on the case's history up to the current time. Include an assessment of the protest and why the Government's position remains unchanged. Also include comments as to why no statutes of limitation are being protected, i.e. why there are no consent forms in the file. The specialist and group manager should initial and date this note to indicate approval.
3. **Plan Sponsor's Protest.** The protest must be reviewed for completeness and accuracy. See Notice 402 for a description of the components of the protest including the sworn statement.
4. **Correspondence.** This is correspondence between the Service and employer/POA beginning with the issuance of the 30-day letter. This section will contain the 30-day letter with Attachment A.
5. **Remainder of case file.** See EP Determinations Quality Assurance Bulletin FY-2004, No.1 issued April 8, 2004 for case file assembly requirements. This Bulletin may be found on the EP Determinations Quality Assurance page at the TE/GE, Rulings and Agreements Intranet website. Also see IRM §§ 7.11.1.3.1 & 7.11.1.3.2.



Exhibit 7

**Department of the Treasury  
Internal Revenue Service**

**Date:**

**Employer Identification Number:**

**DLN:**

Name & address

**Person to Contact:**

**ID#:**

**Telephone Number:**

**Plan Name:**

**Plan Number:**

Dear Sir or Madam:

This is a final adverse determination letter indicating that this plan does not meet the requirements of section 401 of the Internal Revenue Code for the plan year(s) beginning xxxxxxx. Enclosed is an explanation for our determination. Please keep this letter in your permanent records.

Since we have no record of receiving a written appeal for regional office consideration, we believe that you did not exhaust available administrative remedies. As indicated in Notice 402 previously sent to you, Internal Revenue Code section 7476(b)(3) provides in part, that the Tax Court shall not issue a declaratory judgment or decree under this section in any proceeding unless it determines that the petitioner has exhausted administrative remedies available to him within the Internal Revenue Service. However, if you believe you have exhausted your administrative remedies and want a declaratory judgment, your petition must be filed within the United States Tax Court before 92 days after the date this letter was mailed to you.

We have sent a copy of this letter to your representative as indicated in your Power of Attorney.

If you have any questions concerning this matter, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Andrew E. Zuckerman  
Director,  
Employee Plans Rulings & Agreements

Enclosures:  
Explanation

## Exhibit 8

### ITEMS IN CASE FILE TRANSMITTED TO AREA COUNSEL

The case file is the physical accumulation of documents and written or printed "paper" which relate to the applicant's request for a determination letter. It consists of the administrative record and documents which are not part of the administrative record, e.g. specialist workpapers, case chronology. See IRM § 7.11.1.7.3.

The indexed, tabbed, and fastened case file which is transmitted to Area Counsel will contain on the right side (from top to bottom):

1. **Index.**
2. **File copy of transmittal memorandum, final adverse letter, and Attachment A.**
3. **Note to File.** This is a short synopsis and commentary on the case's history up to the current time. Include comments as to why no statutes of limitation are being protected, i.e. why there are no consent forms in the file. The specialist and group manager should initial and date this note to indicate approval.
4. **Correspondence.** This is correspondence between the Service and taxpayer/representative beginning with the issuance of the 30-day letter.
5. **Remainder of case file.** See EP Determinations Quality Assurance Bulletin FY-2001, No. 4 (Rev.1) dated August 1, 2001 for case file assembly rules. This bulletin may be found at the TE/GE, Rulings and Agreements Intranet website for Determinations Quality Assurance. Also see IRM §§ 7.11.1.3.1 and 7.11.1.3.2.

When the case file is transmitted to Area Counsel, it will contain the following "loose" items which will not be attached to either side of the file:

1. **Transmittal Memorandum.**
2. **Two copies of final adverse determination letter with Attachment A.**

**Exhibit 9**

Internal Revenue Service  
**memorandum**

date: Month Day, Year

to: Area Counsel, XXXXX XXXXX, TE/GE

from: Manager, EP Determinations Quality Assurance T:EP:RA:QA

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subject: Pre-Issuance Review of Final Adverse Determination Letter

In accordance with IRM § 7.11.1.14.4, we are forwarding the case file and final adverse determination letter for the \_\_\_\_\_ Plan for your pre-issuance review.

If you have any questions, please contact \_\_\_\_\_ at (513) 263-3407.

**Exhibit 10**  
**Area Counsel Addresses**

AREA 01: Northeast

Area Counsel (TE/GE) (NE/MA)  
1600 Stewart Avenue, Suite 601  
Westbury, New York 11590  
Attn: Area Counsel, TE/GE

AREA 02: Mid-Atlantic

Area Counsel (TE/GE) (NE/MA)  
31 Hopkins Plaza, Suite 1300  
Baltimore, Maryland 21201  
Attn: Area Counsel, TE/GE

AREA 03: Great Lakes

Area Counsel (TE/GE) (GL/GC)  
200 West Adams St., Suite 2300  
Chicago, Illinois 60606  
Attn: Area Counsel, TE/GE

AREA 04: Gulf Coast

Area Counsel (TE/GE) (GL/GC)  
13<sup>th</sup> Floor, 4050 Alpha Road  
Dallas, Texas 75244-4203  
Attn: Area Counsel, TE/GE

AREA 05: Central Mountain

Area Counsel (TE/GE) (PC/CM)  
9<sup>th</sup> Floor, 160 Spear Street  
San Francisco, California 94105  
Attn: Area Counsel, TE/GE

AREA 06: Pacific Coast

Area Counsel (TE/GE) (PC/CM)  
3018 Federal Bldg.  
300 N. Los Angeles Street  
Stop 2000  
Los Angeles, California 90012  
Attn: Area Counsel, TE/GE