

Employee Plans Technical Guidance Phone Forum

Presented by:

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Current EP Guidance Organization

- Robert Choi, Acting EP Director
- Andrew Zuckerman, Director, EP R&A
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Overview

- Priority Guidance Plan
- EP Determinations Program
- General Initiatives – Governmental and International

Priority Guidance Plan

- Each year, Treasury and IRS publish a Priority Guidance Plan
- Runs from 7/1 to 6/30
- 2010-2011 Plan was published on December 7, 2010

Priority Guidance Plan

- EP Technical Guidance also works on new items that arise throughout the year (i.e., Enactment of the new legislation).
- For FY 2010:
 - Funding guidance under PRA 2010 for single employer and multiemployer plans;
 - Guidance on in-plan rollovers to designated Roth accounts under IRC section 402A(c)(4)
 - **Provision enacted as part of Small Business Jobs Act of 2010-- Notice 2010-84 (Nov. 2010)**
 - **Includes guidance on special 2010 rule**

2010-2011 Priority Guidance Plan

- 42 projects identified on the 2009 – 2011 Priority Guidance Plan
- 30 projects identified on the 2010-2011 Priority Guidance Plan. Somewhat less than in prior years — in part, recognition of continuing work on health care issues

2010-2011 Priority Guidance Plan

- Single employer plans
 - **Notice 2010-55** (July 2010) (indicating further guidance would be issued)
 - **Notice 2011-3** (Dec. 2010) (providing guidance on installment acceleration amounts, excess compensation amounts, excess shareholder payment amounts, mergers and acquisitions, elections to use an alternative amortization schedule, notice, eligible charity plans, reporting requirements)

2010-2011 Priority Guidance Plan

- **Multiemployer plans:**
 - **Notice 2010-56** (July 2010) (limited guidance on reporting and disclosure rules and indicating further guidance would be issued)
 - **Notice 2010-83** (Nov. 2010) (addressing issues on extended amortization period for eligible net investment losses, asset valuation, the solvency test, restrictions on plan amendments increasing benefits, notice requirements, decision to apply the special rules, certification of status and Form 5500 requirements)
 - **Revenue Procedure 2010-52** (Dec. 2010)- multiemployer amortization rev. proc.

2010-2011 Priority Guidance Plan

- Guidance on group trusts under Rev. Rul. 81-100
 - **Revenue Ruling 2011-1** (Dec. 2010)
 - Modifies rules for group trusts by permitting participation in group trusts of custodial accounts under 403(b)(7), retirement income accounts under 403(b)(9) and governmental retiree benefit plans under 401(a)(24) (including governmental plan providing retiree welfare benefits).
 - PBGC permitted to hold assets of terminated plans in commingled trust funds
 - Also extends transition relief provided in Rev. Rul. 2008-40 relating to plans qualifying under section 1165 of the Puerto Rico Internal Revenue Code (1022(i)(1) plans) for one year until the end of 2011.

2010 – 2011 Priority Guidance Plan

- **Revenue Ruling 2011-7** (Feb. 2011)– 403(b) Plan terminations
 - Contains four situations illustrating plan termination
- **Revenue Procedure 2010-48** (Nov. 2010)– Guidance on pre-approved IRAs
 - Pre-approved IRAs may be amended and come in for opinion letter
 - Model IRAs – when forms are updated use is recommended
 - Submit one endorsement with several annuity contracts to reduce user fees

2010-2011 Priority Guidance Plan

- **Notice 2010-77** (Nov. 2010)– Extension of deadline to end of 2011 plan year for adopting certain defined benefit plan amendments relating to:
 - Funding based limits on benefits and benefit accruals under single-employer plans (sections 401(a)(29) and 436)
 - Cash balance and other applicable defined benefit plans for certain requirements under sections 411(a)(13) and 411(b)(5)

2010-2011 Ongoing Guidance Initiatives

- 403(b) Plan Prototype Program
 - Pre-approved program for 403(b) plans
- Guidance on definition of readily tradable securities for ESOPS
 - Interrelated Code sections have same definition
- Guidance on eligible combined plans under section 414(x)
- Final regulations on suspension or reduction of safe harbor nonelective contributions under sections 401(k) and 401(m)

2010-2011 Ongoing Guidance Initiatives

- Guidance on governmental plan status under section 414(d)
- Guidance on procedures for ruling requests under section 414(e) for church plans
- Form 8955-SSA and related guidance

2010-2011 Ongoing Guidance Initiatives

- Lifetime income from defined contribution plans
 - 2-day public hearing was held in 2010 with Treasury and DOL on lifetime annuitization
 - Ensure that amounts accumulated in defined contribution plans last for an individual's remaining life
 - Looking at issues that act as barriers to providing annuities in DC plans
 - Current discussions are focusing on:
 - **417(e)(3) –potential for partial annuitization**
 - **DB/DC subannuitization—rollovers from DC to DB plans so participant can get annuity**
 - **401(a)(9) issues—impact of RMD rules on longevity insurance**
 - **QJSA rules—DC plan buying annuity with some assets—when do J& S rules apply?**

2010-2011 Ongoing Guidance Initiatives

- Guidance on pick-up arrangements under 414(h)(2)
 - Governments trying to find ways to reduce costs
 - Concerned about just reducing pick-up contributions because of state constitutions' potential prohibitions on reducing benefits
 - So some offering choice between two benefit formulas; concerns that this gives rise to CODA which could disqualify plan
 - Looking at these situations

2010-2011 Ongoing Guidance Initiatives

- Definition of normal retirement age for purposes of governmental plans
 - **Not just issue of application of final regulations on normal retirement age to governmental plans;**
 - **Also pre-ERISA vesting standard that applies to governmental plans—must have full vesting upon attainment of NRA;**
 - **Important for processing of determination letters from Cycles C and E.**
- Proposed multiemployer regulations under section 432 of PPA '06—related to funding improvement and rehabilitation plans and excise taxes under Code section 4971
- Guidance updating EPCRS procedures

EP Determination Letter Program

- Cycle A individually designed plans and pre-approved defined contribution plans submit for letters beginning Feb. 1, 2011.
- Updating Rev. Proc. 2005-16 on procedures relating to pre-approved plan submissions for opinion and advisory letters
- LRMs and Cycle A Alert Guidelines

EP Determination Letter Program

- Notice 2010-90 – 2010 Cumulative List
 - Cycle A plans and defined contribution pre-approved plans are reviewed on basis of 2010 Cumulative List
 - Cutoff date of Oct. 1, 2010 for items Service will consider in its review, except for:
 - Notice 2010-84 on in-plan Roth rollovers (issued 11/26/10)
 - Final regulations regarding hybrid plans (issued 10/19/10) and Notice 2010-77 extending deadline to amend (issued 12/20/10)

EP Determination Letter Program

- ACT report issued in June 2010 with analysis and recommendations
- Ongoing discussions related to issues in ACT report, including interim amendments
- Updating Rev. Proc. 2007-44

International Initiative

- In 2008, Commissioner Shulman announced an agency-wide IRS International Initiative
- ACT Report (June 2009)
 - “International Pension issues in a Global Economy: A Survey and Assessment of IRS’ Role in Breaking Down the Barriers”
 - Contained more than 30 recommendations
- TE/GE focus
 - Development of TE/GE International Steering Committee
 - Ensure functional units are working together

Focus on TE/GE wide project

– Training

- Not just working with TE/GE but also LB&I
- Cross-functional and cross-divisional training
- Specialized training on certain topics
 - Withholding
- Development of 2-year training plan

– Focus on procedures of working together

- MOUs

– Implementation of TE/GE website

International Initiative

- Current projects
 - Hacienda project
 - USVI project
 - Revenue Ruling 2011-1
 - 2010-2011 Guidance Plan
 - “various” items of guidance
 - FBAR
 - Informal as well as formal guidance
 - Training
 - Working with LB&I
 - Coordinated examination efforts

Governmental Plan Initiative

- Basic premise: achieve voluntary compliance through outreach, education, guidance and compliance
- April 2008 – Roundtable in Washington, D.C.
- Share information with the governmental plans community based on relevant data and continue our ongoing dialogue and outreach efforts.
 - **Work as “One TE/GE” by coordinating EP’s efforts with Federal, State and Local Government (FSLG) and Indian Tribal Governments (ITG)**
 - **Design an appropriate feedback mechanism to capture relevant information to share with the governmental plan community.**
 - **Utilize information gathered from various sources to identify those areas where more focused education and outreach is needed.**

Governmental Plan Initiative

- Cycle C/Cycle E Determination letters
 - We received nearly 1700 DL applications from governmental plans during Cycle C
 - FAQs posted on web for governmental plans to assist in filing DL and VC applications.
 - Resolving technical issues
 - Employee Plan News-November 26, 2010 article—Governmental Plan Determination Letters Under Cycle E
 - Information on filing for determination letter—why and how
 - Discussion of particular issues

Governmental Plan Initiative

- Develop web-based resources and other materials that are needed by governmental plan sponsors and participants.
 - Continue the dialogue with the governmental community and address identified compliance issues.
 - Monitor questions coming in through our dedicated governmental plans e-mail address (governmentalplansdialogue@irs.gov) and develop answers to frequently asked questions (FAQs).
- Guidance
 - as mentioned previously 414(d); NRA; 414(h)(2)

Additional Resources

- Visit our Web site on a regular basis: www.irs.gov/ep
- E-mail your questions to: RetirementPlanQuestions@irs.gov
- Call us @ (877) 829-5500 with your questions
- Subscribe and read our Newsletters:
 - *Retirement News for Employers*
 - *Employee Plans News*
- Your feedback and comments are appreciated