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Director, Employee Plans
Internal Revenue Service
1750 Pennsylvania Ave., NW
Washington, DC 20006

Ms. Monika A. Templeman
Director of EP Examinations
Internal Revenue Service
31 Hopkins Plaza, Room 1450
Baltimore, MD 21201

Re: TE/GE – EPCU Compliance Check Program for pre-approved retirement plan documents

The American Society of Pension Professionals & Actuaries (ASPPA) is writing to comment on, and request modifications to, the Internal Revenue Service's Employee Plan's Compliance Unit (EPCU) Compliance Check Program for pre-approved retirement plan documents (the EPCU Program). While ASPPA understands the importance of monitoring compliance with Revenue Procedure 2000-20, the depth, timing and tone of the EPCU Program as it is currently structured is unduly burdensome on both pre-approved plan sponsors and adopting employers. The EPCU Program as presently operated could have a chilling effect on the use of pre-approved plan documents by practitioners and their clients, resulting in a significant increase in the use of individually designed documents for EGTRRA plan restatements. This would require a reallocation of IRS resources in a less productive manner.

ASPPA is a national organization of more than 6,500 retirement plan professionals who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines, including consultants, investment professionals, administrators, actuaries, accountants and attorneys. Our large and broad-based membership gives ASPPA a unique insight into current practical applications of ERISA and qualified retirement plans, with a particular focus on the issues faced by small- to medium-sized employers. ASPPA's membership is diverse but united by a common dedication to the employer-sponsored retirement plan system.

Summary of Recommendation

The following is a summary of ASPPA's recommendation. The recommendation is described in greater detail in the Discussion of Issue section.

It is understandable that the IRS would want to measure sponsors of pre-approved plans compliance with the obligations set forth in Revenue Procedure 2000-20. However, the current "compliance check" is unduly burdensome, both to those sponsors and their adopting employers, in the scope of information being requested, the time given for a response and the drafting style of the program letters. ASPPA proposes that the IRS adjust the response times

to 45 days, limit these inquiries to “off-peak” periods for practitioners and improve the communications used in this program so that they are more “user-friendly.” ASPPA has included proposed “user-friendly” communication pieces with this letter.

Discussion of Issue

One of the primary goals of Revenue Procedure 2000-20 was to encourage the use of pre-approved plans by practitioners and adopting employers. Generally, this program has been well received. Pre-approved plans are beneficial to practitioners and employers, since they are typically less costly to produce than individually designed documents. In addition, the pre-approved plan program benefits the IRS by reducing workloads for IRS staff involved with the determination letter process.

This EPCU Program was designed to check for compliance with Revenue Procedure 2000-20. An initial letter (*see* attached EPCU Sponsor Letter) is sent to the practitioner who sponsors the pre-approved document. This is a request for substantial and detailed information, including:

1. A listing of contact information for employers who have adopted the pre-approved plan document, including those who have terminated their plans in the last three years. The requested information includes e-mail addresses;
2. Copies of plan documents, opinion letters and plan amendments; and
3. Documentation of the sponsor’s processes and communication methods used in maintenance of pre-approved documents.

The sponsor is given just 21 days to respond to this request for information, which is insufficient in light of the considerable time and effort necessary to compile all the information. Additionally, documenting the operational and communication processes used by the sponsor to maintain the qualified status of adopting employer plans likely requires significant involvement of both senior management and staff.

Paragraph 3 of the EPCU Sponsor Letter states that “The practitioner community has also provided feedback to us expressing concern with the level of service provided by pre-approved plan sponsors in relation to their adopting employers.” If the stated purpose of the EPCU initiative is to gather information regarding compliance with Rev. Proc. 2000-20, then this statement is drawing a conclusion even before the underlying data is collected. As industry professionals, we understand that there may be some problems with some of the sponsors of pre-approved plans, but we believe the data will show the vast majority of pre-approved plan sponsors are meeting their compliance obligations.

While the requested items for practitioners are substantial, ASPPA understands their relevance to the compliance check. However, nothing in Revenue Procedure 2000-20 suggests that e-mail addresses must be solicited and retained. Therefore, providing e-mail address information for some employers can be problematic. Some firms also have very rigid internal security procedures and privacy policies that restrict their ability to divulge private e-mail addresses. Additionally, some business owners/clients do not consent to their e-mail address being disclosed. Until such time as the IRS mandates sponsors of pre-approved plans

to gather and maintain adopting employer e-mail addresses, providing e-mail addresses will continue to be problematic.

After the initial contact with the practitioner, the IRS selects a sampling of adopting employers and contacts them directly by letter (*see* attached EPCU Adopter Letter). The information requested in this communication is beyond the knowledge of most adopting employers as the questions are not in a simple, easy to understand format. Many, if not most, adopting employers rely on the expertise of their practitioner/sponsor to maintain and possibly assist in the operation of their plans. Yet, the adopting employer is only given a 15-day response time. Since most adopting employers will request representation from their practitioner, the time allowed for response is inadequate.

Current market conditions have turned a competitive retirement plan market into a fiercely competitive market – anything that would have a negative effect on a practitioner's ability to attract and, more importantly, retain clients has to be avoided. The tone of the EPCU Program communication pieces, especially the one to adopting employers, implies that the practitioner might not be properly servicing the client's plan. Even in a regular routine IRS plan audit, it is extremely rare that the examining agent makes such an assertion, without having first conducted an examination and gathered sufficient facts to back up such a claim. The employer letter also does not sufficiently make clear that the recipient employer is not under examination.

In the retirement plan marketplace, the client typically follows the practitioner's recommendation for the type of plan document. If practitioners determine that using pre-approved documents could jeopardize client confidence and business relationships, the logical result is that individually designed documents will be recommended and used. Obviously this is not a good result for the IRS, practitioners or employers. Practitioners are now mapping the EGTRRA restatement strategy for their firms and they cannot ignore the potential negative effects of the EPCU Program on their businesses.

Consequently, **ASPPA recommends** that the following changes be made to the EPCU Program as soon as possible:

1. Limit mailings on this program to “off-peak” practitioner periods. Practitioner's “peak periods” include 1/1 – 3/15 (1099-Rs, nondiscrimination testing, end of plan document cycle), 7/1 – 7/31 (Form 5500 filings) and 9/1 – 10/15 (Form 5500 on extension filings).
2. Extend the response period for practitioners and clients to at least 45 days, with the ability to request additional time.
3. Revise communications to sponsoring organizations to be clear, concise and respectful. (*See* attached Revised EPCU Sponsor Letter.)
4. Revise communications to adopting employers to be clear, concise and non-threatening. Simplify the client information requested and present it in an easily answered manner. (*See* attached Revised EPCU Adopter Letter.)
5. Consult with a greater diversity of stakeholders (*i.e.*, pre-approved plan sponsors and mass submitters) to better understand the market and processes you are examining before embarking on such a program in the future.



These comments were prepared by ASPPA's Plan Document Subcommittee of the Government Affairs Committee, and were primarily authored by Richard A. Hochman, APM. Please contact us if you have any comments or questions regarding the matters discussed above. Thank you for your consideration of these comments.

Sincerely,

/s/
Brian H. Graff, Esq., APM
Executive Director/CEO

/s/
Teresa T. Bloom, Esq., APM
Chief of Government Affairs

/s/
Judy A. Miller, MSPA
Chief of Actuarial Issues

/s/
David M. Lipkin, MSPA, Co-chair
Gov't Affairs Committee

/s/
Robert M. Richter, Esq., APM, Co-chair
Gov't Affairs Committee

/s/
James C. Paul, APM, Co-chair
Administrative Relations Committee
Gov't Affairs Committee

Attachments

cc: Marty Pippin, EP Technical Guidance and Quality Assurance
Andrew Zuckerman, Director, IRS Employee Plans Rulings & Agreements

EPCU Sponsor Letter

Dear Sir or Madam:

This letter is being sent to you because our records show that you sponsor a Master and Prototype (M&P) plan and that you applied for an opinion letter pursuant to Revenue Procedure 2000-20. This letter constitutes a compliance check. A compliance check is not an audit or investigation under Internal Revenue Code (IRC) Section 7605(b) or an audit under section 530 of the Revenue Act of 1978. No negative connotation should be taken from the fact that your firm was selected for this program, nor should there be any inference taken that you have done anything wrong. We are trying to gather information that will allow us to better administer the pre-approved document program and make sure that employer plans are being properly maintained and updated as necessary and that employers are properly operating their plans in accordance with their documents.

Your application for a GUST opinion letter was subject to your agreement to comply with the requirements imposed on sponsors by Revenue Procedure 2000-20. Failure to comply with those requirements may result in the loss of eligibility to sponsor an M&P plan and the revocation of opinion letters that have previously been issued to you.

Please provide the information and documentation described in the attached Request for Information within 45 days from the date of this letter. If you need additional time, contact us before the 45 day period has passed. Failure to provide this information could result in further action. You may also furnish any other documents or clarifying material that you believe will be helpful for us to review.

As part of our Information Request, we ask that you provide a list of employers that have adopted your M&P plan. Rev. Proc. 2000-20 allows us to ask for this information. As part of the compliance check, a sample of those employers will be contacted.

We are also interested in hearing your comments regarding the M&P compliance project and its impact on your firm, your clients and overall pension compliance. If you would like someone else to represent you during this compliance check, you must submit a written power of attorney. Form 2848, Power of Attorney and Declaration of Representative, may be used for this purpose.

You may obtain additional information about the Employee Plans Compliance Unit, compliance checks, our current compliance projects, and a list of frequently asked questions by visiting our Web site at www.irs.gov/ep. If you have any questions, please feel free to contact me at the telephone number listed on page 1 or e-mail me and I will be glad to answer any questions you have about the M&P Project and how it relates to your situation.

Thank you for your cooperation.

Request for Information

Important: If you would like someone else to assist and represent you during this compliance check, you must submit a written power of attorney. Form 2848, Power of Attorney and Declaration of Representative, may be used for this purpose.

1. Provide a list of employers that have adopted your M&P plan (you may exclude those who stopped using your plan more than 3 years ago) including their addresses, telephone numbers and Taxpayer Identification Numbers. If available, please also provide e-mail addresses at which the employer may be contacted. Indicate which employers have ceased to maintain the plan as an M&P plan within the last three years.
2. Do you continue to maintain the M&P plan as an M&P plan? Yes No
If no, please explain why not.
3. Send copies of the approved GUST M&P plan, opinion letter and all subsequent amendments (including 'Good Faith' EGTRRA Amendments) provided to adopting employers up to March 7, 2005, including any instructions provided to adopting employers to aid them in the adoption and amendment process.
4. Provide an explanation and documentation of the efforts made to ensure that adopting employers have received and are aware of all documents regarding plan adoption and amendment.
5. Provide an explanation and documentation of the efforts made to ensure that adopting employers have completed and signed new adoption agreements or signature pages when necessary.
6. Provide an explanation and documentation of the efforts made to ensure that adopting employers timely amend their plans when necessary.
7. Provide an explanation and documentation of the efforts made to monitor whether adopting employers continue to maintain their plan as an M&P plan.
8. Provide an explanation of how your business administers the M&P process, including information and documentation on how you monitor compliance with Rev. Proc. 2000-20. Please make sure to separately address the communications process including how you monitor the sending and receiving of materials to and from your adopting employers.
9. Please provide us with feedback, including both adverse and positive comments on the M&P compliance project and its impact on your firm, your clients and overall pension compliance.

Note: If you want to send any portion of your response in electronic format (ASCII, Excel, Access, Text File or other media contact), please contact us for additional instructions. The contact information is located on page 1.

EPCU Adopter Letter

Dear Sir or Madam:

This letter is being sent to you because you have a retirement plan for your business. The IRS has established a program for pre-approved retirement plan documents and your service provider (shown above – “Name of Sponsor”) maintains such plans for use by its clients.

We are conducting a routine compliance check of pre-approved plan providers to verify that they are fulfilling their sponsorship responsibilities under this program (as governed by IRS Revenue Procedure 2000-20). It is important that sponsors under our pre-approved program fulfill their responsibilities, so that adopting employers (like you) who use the documents can rely on their pre-approved status. **Please note that this program is a compliance check, not a plan audit and does NOT mean that there is a problem with your service provider.**

In connection with this compliance check, we contacted your service provider and required it to furnish a list of all clients using a specified plan document type. As a follow up, we are contacting a selected sampling of adopting employers, which is why you've received this letter.

Again, this letter constitutes a compliance check. A compliance check is not an audit or investigation under Internal Revenue Code (IRC) Section 7605(b) or an audit under section 530 of the Revenue Act of 1978. You and your company's retirement plan are **not** under investigation.

Please provide the information and documentation described in the attached Request for Information within 45 days from the date of this letter. If you need additional time, contact us before the 45 day period has passed. Failure to provide this information could result in further action. You may also furnish any other documents or clarifying material that you believe will be helpful for us to review.

If you would like someone else to represent you during this compliance check, you must submit a written power of attorney. Form 2848, Power of Attorney and Declaration of Representative, may be used for this purpose.

You may obtain additional information about the Employee Plans Compliance Unit, compliance checks, our current compliance projects, and a list of frequently asked questions by visiting our Web site at www.irs.gov/ep. If you have any questions, please feel free to contact me at the telephone number listed on page 1 or e-mail me at the address shown and I will be glad to answer any questions you have about the M&P Project and how it relates to your situation.

Thank you for your cooperation.

Sincerely,

Request for Information

Important: If you would like someone else to assist and represent you during this compliance check, you must submit a written power of attorney. Form 2848, Power of Attorney and Declaration of Representative, may be used for this purpose.

(check yes or no box, and provide additional information as applicable)

- | | <u>Yes</u> | <u>No</u> |
|--|------------|-----------|
| 1. Do you still use the plan document shown on page 1 for your plan? | [] | [] |

If no, please complete the following:

A. Date you stopped using the document _____

- B. Why you stopped using the document
- [] Plan terminated by company
 - [] Plan merged with another plan
 - [] Switched to another type of plan
 - [] Switched document provider
 - [] Other (explain): _____
-

- | | | |
|---|-----|-----|
| 2. Does your document provider also take care of your regular plan servicing, such as plan recordkeeping and reporting (<i>i.e.</i> , Form 5500 or 5500-EZ)? | [] | [] |
|---|-----|-----|

If yes, what other plan services do they provide?

- [] Preparation of Form 5500 series
 - [] Recordkeeping and Compliance Testing
 - [] Benefit Consulting
 - [] Trustee/Asset Management / Brokerage
 - [] Other: _____
-

If #2 is no, please complete the following (leave blank if #2 is yes):

- | | | |
|---|-----|-----|
| A. Do you have another service provider take care of your regular plan servicing, such as plan recordkeeping and reporting (<i>i.e.</i> , Form 5500 or 5500-EZ)? | [] | [] |
|---|-----|-----|

If #2A is no, please describe how your business administers the plan, including how you monitor plan qualification and compliance.

- | | |
|--|--|
| 3. How many times do you usually communicate with your plan document provider during the year? _____ | |
| How do they usually communicate with you? (Check all that apply) | |
| [] Telephone | |
| [] US Mail or other delivery service | |
| [] E-mail | |
| [] In person | |
| [] Other: _____ | |

4. Which of the following documents did your document provider give you when you adopted the plan? (Check all applicable)
- Plan Document
 - Adoption Agreement
 - Copy of Opinion Letter
 - Good faith EGTRRA Amendment (check box if provided to you before September 30, 2003)
 - Other Amendments
 - Fee Schedule or Quote
 - Other: _____

Yes **No**

5. Did you know you must sign and date a written plan amendment or a new adoption agreement if you make changes to the choices you have previously selected? [] []
- A. Have you made any such changes? [] []
- B. Did your service provider explain the consequences of the changes and provide you with a new signature page? [] []
6. Did you know that if you make changes to the adoption agreement and/or basic plan document (other than selecting from the available listed choices or blanks) that the document may no longer be considered part of our pre-approved prototype document program? [] []
- A. Have you made any such changes? [] []
- B. Did your service provider explain the consequences of the changes? [] []
7. Why did your business adopt a prototype plan document? (check all applicable)
- Recommendation of service provider
 - Ease of use
 - Other – Explain: _____

Please reply to Mailing Address or Fax Number shown on first page of this letter.

Company Name: _____

Address: _____

Tax ID #: _____