

MEMO: PROCEDURE FOR NOTIFICATION OF INTERESTED PARTIES
CONCERNING AN ADVANCED DETERMINATION OF THE QUALIFIED
STATUS OF A PLAN

Before the Internal Revenue Service can issue an advance determination as to the qualified status of certain retirement plans, the applicant must notify the persons who qualify as interested parties, as outlined below.

A. WHO ARE THE INTERESTED PARTIES?

1. General Rules:

- (a) In the case of initial plan qualification, in the case of an amendment made to comply with ERISA, or in the case of an amendment affecting the participation provisions of the plan, interested parties are all present employees of the employer who are eligible to participate in the plan and all other present employees of the employer whose principal place of employment is the same as employees eligible to participate.
- (b) In the case of a plan amendment (other than amendments under paragraphs (a) or (c)), interested parties shall include all present employees of the employer eligible to participate in the plan.
- (c) In the case of plan termination, interested parties include all present employees with accrued benefits under the plan, all former employees with vested benefits under the plan, and all beneficiaries of deceased employees currently receiving benefits under the plan.
- (d) In the case of a collectively bargained plan (as described in IRC § 413(a)), all present employees covered by the collective bargaining agreement pursuant to which the plan is maintained shall be interested parties.

2. Definitions:

- (a) An employee is "eligible to participate" in a plan if the employee:
 - (i) is a participant in the plan;
 - (ii) would be a participant if he met the minimum age and service requirements of the plan; or
 - (iii) would be a participant upon making mandatory participant contributions under the plan.
- (b) A "place of employment" includes all worksites within a plant, installation, store, office, or similar facility. Any employee who has no

principal place of employment shall be treated as though such employee's principal place of employment is the place to which he regularly reports to the employer.

- (c) An employer is a member of a "controlled group of corporations or a group of businesses under common control" if:
 - (i) a common parent corporation or parent organization directly or indirectly owns 80% or more of the total voting power or the value of all shares of the stock of a subsidiary corporation or 80% or more of the profits interest or capital interest of an unincorporated subsidiary business; or
 - (ii) five or fewer individuals, estates, or trusts own at least 80% of the total voting power or value of stock of a corporation or at least 80% of the profits interest or capital interest of an unincorporated business, and if more than 50% of the total combined voting power or the total value of stock of the corporation or 50% of the profits interest or capital interest of an unincorporated business is identical to that of another corporation or unincorporated business. See Temp. Reg. § 11.414(c).

3. Special Rules:

- (a) If a principal owner (a person who owns 5% or more of the employer; see Reg. § 11.414(c)- 3(d)(2)) of the employer or of a common parent of the employer (where the employer is a member of a parent-subsidary group of trades or businesses under common control under IRC § 414(b) or (c)) is eligible to participate in the plan and if the number of employees employed by the employer and all other members of the controlled group is 100 or less, then all employees of the employer will be interested parties.
- (b) If qualification of the plan is dependent upon proper integration of the plan benefits with benefits provided under Social Security; and if such integration possibly could result in any participant's benefit being reduced to zero; and if the amendment affects contributions to or benefits payable from the plan, then such amendment shall be considered to affect plan participation and paragraph (a) of the General Rules (above) shall apply.

4. Exceptions: In the prescribed situations the following persons shall not be considered to be interested parties:

- (a) In the case of initial plan qualification, employees excluded under IRC § 410(b)(2)(B) referring to air pilots or IRC § 410(b)(2)(C) referring to nonresident aliens with no earned income from U.S. sources;

- (b) In the case of initial plan qualification, an employee not eligible to participate because he has not satisfied the minimum age and service requirements, if any, in a plan if the plan clearly meets the eligibility standards of IRC § 410(b)(1)(A);
- (c) In the case of initial plan qualification to which special rule 3(a) does not apply, an employee not eligible to participate in the plan for which an application is being submitted if such employee is eligible to participate in any other plan of the employer with respect to which a favorable determination letter is outstanding or in a plan of another employer whose employees by reason of IRC § 414(b) or (c) concerning controlled groups are treated as employees of the employer making the application; and
- (d) In the case of initial plan qualification to which special rule 3(a) does apply, an employee not eligible to participate in the plan for which an application is being submitted if such employee is eligible to participate in a collectively bargained plan under IRC § 413(a) maintained by the employer with respect to which a favorable determination letter is outstanding or in a plan of another employer whose employees, by reason of IRC § 414(b) or (c) concerning controlled groups, are treated as employees of the employer making the application.

B. METHODS OF NOTIFICATION:

1. General Rules:

- (a) For present employees, notification can be made in person, by mail, by posting, by printing the notice in a publication of the employer or an employee organization which is distributed in such manner to be reasonably available to employees, or through an electronic medium. The following requirements should be met in order provide a notice through electronic media:
 - (i) The electronic system must be reasonably designed to provide the information in the notice in a manner that is no less understandable that a written paper document;
 - (ii) The system must alert the recipient, at the time the notice is provided, to the significance of the information in the notice (including the subject matter of the notice), and provide any instructions needed to access the notice, in a manner that is readily understandable. In other words, if the notice will be posted on the intranet, an email should be sent to all intended recipients explaining the importance of the notice and how to access the notice on the intranet.

- (iii) The electronic medium used to provide the notice must be a medium that the recipient has the effective ability to access. In other words, the recipient must have access to email and (if used) the intranet at a location where the recipient reasonably is expected to perform the duties of his or her job.
 - (iv) At the time the notice is provided, the recipient must be advised that he or she may request and receive the applicable notice in writing on paper at no charge, and, upon request, that the applicable notice must be provided to the recipient at no charge. This statement can be added to the original email alerting the recipient of the notice.
- (b) When Section A(1)(c) of this memo is applicable, notification of former employees or beneficiaries can be made in person or by mail to the last known address of such former employee or beneficiary. However, if compliance with this method of notification will present unusual financial or administrative burdens or, by reason of peculiar circumstances, cannot be expected to result in adequate and timely notice, an alternative method of notification can be used, provided that such method is reasonably calculated to provide timely notice to interested parties or their representatives. If an alternative method of notification is used, the application for determination must be accompanied by a full description of the method of notification, including a description of the particular financial or administrative burdens that would have occurred if notice had been given according to the standard prescribed method. Additional consumer consent requirements will apply if a notice will be distributed to former employees or beneficiaries electronically.

2. Special Rule: Regardless of which method is used to notify an employee, if an interested party who is a present employee is in a unit of employees covered by a collective bargaining agreement between employee representatives and one or more employers, notice also shall be given in person or by mail to the collective bargaining representative of such interested party.

C. WHEN IS NOTIFICATION TO BE GIVEN?

- 1. Notification must be made not less than 10 days nor more than 24 days prior to the date that the application for determination is submitted.

D. CONTENT OF NOTICE:

The form attached as Exhibit A has been proposed by the Internal Revenue Service as meeting the requirements with respect to notification of interested parties, provided that certain plan documents either are attached to the notice or are available for inspection and copying by interested parties. The Internal Revenue Service updates a Revenue Procedure

annually that sets forth the detailed requirements concerning the content of the notice. In 2010, this Revenue Procedure is numbered 2010-6.

E. WHERE SHOULD NOTICE BY POSTING BE GIVEN?

1. At locations within the principal places of employment (see Section A(2)(b)) of the interested parties which are used for employer notices to employees with regard to labor-management relations; or
2. If the plan is maintained pursuant to a collective bargaining agreement, at the locations described in Section E(1) or at the locations within the geographical area in which interested parties are employed used by employee representatives for notices to employees with regard to labor-management relations matters.

F. ADDITIONAL MATERIALS TO BE MADE AVAILABLE:

The following materials shall be made available to interested parties for inspection and copying until the earlier of the filing of a pleading commencing a declaratory judgment action under IRC § 7476 with respect to plan qualification or the 92nd day after the day the notice of final determination is mailed to the applicant:

1. An updated copy of the plan and trust;
2. The application for determination and accompanying documents; Form 6088 (if required) may be excluded from the application; however if a Form 6088 was required as a part of the filing, information showing the number of individuals covered and not covered, listed by compensation range, must be made available to the interested parties;
3. Any additional documents submitted to the Internal Revenue Service; and
4. A copy of Revenue Procedure 2010-6 (or the latest Revenue Procedure issued annually by the Internal Revenue Service regarding this topic) or a document explaining the procedure for submitting comments concerning the key application to the District Director. (This memo, specifically Section G, can serve this purpose.)

If the number of employees eligible to participate in the plan (including as participants former employees with vested benefits under the plan and employees who would be eligible to participate upon making mandatory employee contributions) is less than 26, the following information, in lieu of the documents specified under No. 1 and No. 2 above, shall be available to interested parties not eligible to participate in the plan:

1. A description of the plan's requirements for eligibility for participation and benefits and the plan's benefit formula;
2. A description of the vesting provisions;

3. A description of the circumstances which may result in ineligibility, denial, or loss of benefits;
4. A description of the source of financing of the plan and the identity of any organization through which benefits are provided;
5. A description of any optional forms of benefit that have been reduced or eliminated by Plan amendment; and
6. The coverage schedule or other demonstration submitted with the application to show the Plan meets the requirements of sections 401(a)(4) and 410(b).

Once an interested party or designated representative receives a notice of final determination, the applicant must make available upon request to such interested party an updated copy of the plan and trust and the application for determination.

G. PROCEDURE FOR SUBMITTING COMMENTS TO EP DETERMINATIONS CONCERNING AN APPLICATION

1. A comment submitted by an interested party or parties to EP Determinations specified in the notice to interested parties must be in writing, signed by such interested party or by an authorized representative of such parties, and shall contain the following:
 - (a) Name or names of interested party or parties making the comment;
 - (b) Name and taxpayer identification number of the applicant for determination;
 - (c) Name of the plan, the plan identification number and the name of the plan administrator;
 - (d) Whether the party or parties submitting the comments are:
 - (i) present employees eligible to participate under the plan;
 - (ii) present employees with accrued benefits under the plan, former employees with vested benefits under the plan, beneficiaries of deceased former employees who are eligible to receive or are currently receiving benefits under the plan; or
 - (iii) present employees not eligible to participate under the plan;
 - (e) Specific matter raised by the interested parties concerning the qualification and how such matter relates to the interests of such party or parties making the comment; and

- (f) The correspondence address of the interested party submitting the comment. If more than one interested party submits the comment, a representative to receive correspondence and notice on behalf of all interested parties shall be appointed, and his address shall be stated.

A comment submitted to EP Determinations must be received by him on or before the 45th day after the date on which the application is received by EP Determinations.

- 2. An interested party or parties may request the Department of Labor to submit a comment to EP Determinations by submitting a written statement signed by the interested party or a designated representative containing the information specified in paragraph 1 above and addressed to:

Deputy Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210
Attention: 3001 Comment Request

In addition to the information specified in paragraph 1 above, a request to the Department of Labor must contain the following information:

- (a) The address of EP Determinations to whom the application was or will be submitted.
- (b) The specific matters upon which the Department of Labor's comment is sought, as well as how such matters relate to the interested parties making the request.
- (c) The number of persons who must request the Department of Labor to comment.

Such comment must be received by the Department of Labor on or before the 25th day after the date on which the application is received by EP Determinations, or if the interested party wishes to preserve the right to submit a comment to EP Determinations if the Department of Labor declines to comment, on or before the 15th day after the day that the application is received by EP Determinations.

- 3. If the Department of Labor declines to comment on one or more matters raised in a request under paragraph 2 above, the interested party or parties may submit a comment to EP Determinations on any matter on which the Department of Labor declines to comment and should include a statement to that effect as well as the information required under paragraph 1 above. Such comment must be received on or before the later of the 45th day after the date on which the application is received by EP Determinations or the 15th day after the day that the Department

of Labor notifies the interested party that it declines to comment, but in no event later than 60 days after the date that the application is received by EP Determinations.

4. Written comments submitted by interested parties will not be treated as confidential material and may be inspected by persons outside the IRS, including the applicant.

EXHIBIT A

1. Notice to: _____

An Application is to be made to the Internal Revenue Service for an advance determination on the qualification of the following employee pension benefit plan.

2. Name of Plan: _____

3. Plan ID #: _____

4. Name and address of Applicant: _____

5. Employer Identification #: _____

6. Name and address of Plan Administrator: _____

7. The application will be filed on _____ for an advance determination as to whether the plan meets the qualification requirements of Sections 401(a) and 403(a) of the Internal Revenue Code of 1986, with respect to the plan's (initial qualification, amendment, termination, or partial termination). The application will be with

EP/EO Determination Letters
Stop 31
Internal Revenue Service
P.O. Box 12192
Covington, KY 41012-0192

8. The employees eligible to participate under the plan are _____.

9. The Internal Revenue Service (has or has not) issued a determination letter with respect to the qualification of this plan.

Rights of Interested Parties

10. You have the right to submit to EP Determinations, at the address below, either individually or jointly with other interested parties, your comments as to whether this plan meets the qualification requirements of the Internal Revenue Code.

Internal Revenue Service
EP Determinations
Attn: Customer Service Manager
P.O. Box 2508
Cincinnati, OH 45202

You may instead, individually or jointly with other interested parties, request the Department of Labor to submit, on your behalf, comments to EP Determinations regarding qualification of the plan. If the Department declines to comment on all or some of the matters you raise, you may, individually, or jointly if your request was made to the Department jointly, submit your comments on these matters directly to EP Determinations.

Requests for Comments by the Department of Labor

11. The Department of Labor may not comment on behalf of interested parties unless requested to do so by the lesser of 10 employees or 10 percent of the employees who qualify as interested parties. The number of persons needed for the Department to comment with respect to this plan is (lesser of 10 or 10% of interested parties). If you request the Department to comment, your comment must be in writing and must specify the matters upon which comments are requested, and must also include:
 1. the information contained in items 2 through 5 of this Notice; and
 2. the number of persons needed for the Department to comment.

A request to the Department to comment should be addressed as follows:

Deputy Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210
Attention: 3001 Comment Request

Comments to the Internal Revenue Service

12. Comments submitted by you to EP Determinations must be in writing and received by him by (45 days after application is received). However, if there are matters that you request the Department of Labor to comment upon on your behalf, and the Department declines, you may submit comments on these matters to EP Determinations to be received by him within 15 days from the time the Department notifies you that it will not comment on a particular matter, or by (45 days after application is received), whichever is later, but not after (60 days). A request to the Department to comment on your behalf must be received by it by (15 days after application is received) if you wish to preserve your right to comment on a matter upon which the Department declines to comment or by (25 days after application is received) if you wish to waive that right.

Additional Information

13. Detailed instructions regarding the requirements for notification of interested parties may be found in sections 19 and 20 of Revenue Procedure 2018-4. Additional information concerning this application (including, where applicable, an updated copy of the plan and

related trust; the application for determination; any additional documents dealing with the application that have been submitted to the IRS; and copies of section 19 of Revenue Procedure 2018-4) is available at the office of Plan Manager during normal business hours for inspection and copying. (There may be a nominal charge for copying and/or mailing.)