

PART IIB. INTERESTED PARTY NOTICE AND COMMENT

SECTION 19. WHAT RIGHTS TO NOTICE AND COMMENT DO INTERESTED PARTIES HAVE?

Rights of interested parties

.01 Persons who qualify as interested parties under § 1.7476-1(b), have the following rights:

- (1) To receive notice, in accordance with section 20 of this revenue procedure, that an application for an advance determination will be filed regarding the qualification of plans described in §§ 401, 403(a), 409, and/or 4975(e)(7);
- (2) To submit written comments with respect to the qualification of such plans to the Service;
- (3) To request the DOL to submit a comment to the Service on behalf of the interested parties; and
- (4) To submit written comments to the Service on matters with respect to which the DOL was requested to comment but declined.

Comments by interested parties

.02 Comments submitted by interested parties must be received by EP Determinations by the 45th day after the day on which the application for determination is received by EP Determinations (however, see sections 19.03 and 19.04 of this revenue procedure for filing deadlines in cases in which the DOL has been requested to comment). Such comments must be in writing and signed by the interested parties or by an authorized representative of such parties (as provided in section 6.02(11)), and addressed to:

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

Comments must contain the following information:

- (1) The names of the interested parties making the comments;
- (2) The name and taxpayer identification number of the applicant for a determination;
- (3) The name of the plan, the plan identification number, and the name of the plan administrator;
- (4) Whether the parties submitting the comment are:
 - (a) Employees eligible to participate under the plan;

(b) Employees with accrued benefits under the plan, or former employees with vested benefits under the plan;

(c) Beneficiaries of deceased former employees who are eligible to receive or are currently receiving benefits under the plan; or

(d) Employees not eligible to participate under the plan;

(5) The specific matters raised by the interested parties on the question of whether the plan meets the requirements for qualification involving §§ 401 and 403(a), and how such matters relate to the interests of the parties making the comment; and

(6) The address of the interested party submitting the comment (or if a comment is submitted jointly by more than one party, the name and address of a designated representative) to which all correspondence, including a notice of the Service's final determination with respect to qualification, should be sent (the address designated for notice by the Service will also be used by the DOL in communicating with the parties submitting a request for comment). The designated representative may be one of the interested parties submitting the comment or an authorized representative. If two or more interested parties submit a single comment and one person is not designated in the comment as the representative for receipt of correspondence, a notice of determination mailed to any interested party who submitted the comment shall be notice to all the interested parties who submitted the comment for purposes of § 7476(b)(5).

Requests for DOL to submit comments

.03 A request to the DOL to submit to EP Determinations a comment pursuant to section 3001(b)(2) of ERISA must be made in accordance with the following procedures.

(1) The request must be received by the DOL by the 25th day after the day the application for determination is received by EP Determinations. However, if the parties requesting the DOL to submit a comment wish to preserve the right to comment to EP Determinations in the event the DOL declines to comment, the request must be received by the DOL by the 15th day after the day the application for determination is received by EP Determinations.

(2) The request to the DOL to submit a comment to EP Determinations must:

(a) Be in writing;

(b) Be signed as provided in section 19.02 above;

(c) Contain the names of the interested parties requesting the DOL to comment and the address of the interested party or designated representative to whom all correspondence with respect to the request should be sent (see also section 19.02(6) of this revenue procedure);

(d) Contain the information prescribed in section 19.02(2), (3), (4), (5), and (6) of this revenue procedure;

(e) Indicate that the application was or will be submitted to EP Determinations at the address provided in section 31 of this revenue procedure;

(f) Contain a statement of the specific matters upon which the DOL's comment is sought, as well as how such matters relate to the interested parties making the request; and

(g) 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

Right to comment if DOL declines to comment

.04 If a request described in section 19.03 of this revenue procedure is made and the DOL notifies the interested parties making the request that it declines to comment on a matter concerning qualification of the plan which was raised in the request, the parties submitting the request may still submit a comment to EP Determinations on such matter. The comment must be received by the later of the 45th day after the day the application for determination is received by EP Determinations or the 15th day after the day on which notification is given by the DOL that it declines to submit a comment on such matter (*see* section 19.07 for the date of notification). In no event may the comment be received later than the 60th day after the day the application for determination was received. Such a comment must comply with the requirements of section 19.02 of this revenue procedure and include a statement that the comment is being submitted on matters raised in a request to the DOL upon which the DOL declined to comment.

Confidentiality of comments

.05 For rules regarding the confidentiality of contents of written comments submitted by interested parties to the Service pursuant to section 19.02 or 19.04 of this revenue procedure, see § 601.201(o)(5) of the Statement of Procedural Rules.

Availability of comments

.06 For rules regarding the availability to the applicant of copies of all comments on the application submitted pursuant to section 19.01(1), (2), (3), and (4) of this revenue procedure, see § 601.201(o)(5) of the Statement of Procedural Rules.

When comments are deemed made

.07 An application for an advance determination, a comment to EP Determinations, or a request to the DOL shall be deemed made when it is received by EP Determinations or the DOL. Notification by the DOL that it declines to comment shall be deemed given when it is received

by the interested party or designated representative. The notice described in section 20.01 of this revenue procedure shall be deemed given when it is posted or sent to the person in the manner described in § 1.7476-2. In the case of an application, comment, request, notification, or notice that is sent by mail or a private delivery service that has been designated under § 7502(f), the date as of which it shall be deemed received will be determined under § 7502. However, if such an application, comment, request, notification, or notice is not received within a reasonable period from the date determined under § 7502, the immediately preceding sentence shall not apply.

SECTION 20. WHAT ARE THE GENERAL RULES FOR NOTICE TO INTERESTED PARTIES?

Notice to interested parties

.01 Notice that an application for an advance determination regarding the qualification of a plan that is described in § 401, 403(a), 409, or 4975(e)(7) and that is subject to § 410 is to be made must be given to all interested parties in the manner prescribed in § 1.7476-2(c) and in accordance with the requirements of this section. A notice to interested parties is deemed to be provided in a manner that satisfies § 1.7476-2(c) if the notice is delivered using an electronic medium under a system that satisfies the requirements of § 1.402(f)-1, Q&A-5.

Time when notice must be given

.02 Notice must be given not less than 10 days nor more than 24 days prior to the day the application for a determination is submitted. If, however, an application is returned to the applicant for failure to adequately satisfy the notification requirements with respect to a particular group or class of interested parties, the applicant need not cause notice to be given to those groups or classes of interested parties with respect to which the notice requirement was already satisfied merely because, as a result of the resubmission of the application, the time limitations of this subsection would not be met.

Content of notice

.03 The notice referred to in section 20.01 of this revenue procedure shall contain the following information:

- (1) A brief description identifying the class or classes of interested parties to whom the notice is addressed (e.g., all present employees of the employer, or all present employees eligible to participate);
- (2) The name of the plan, the plan identification number, and the name of the plan administrator;
- (3) The name and taxpayer identification number of the applicant for a determination;
- (4) That an application for a determination as to the qualified status of the plan is to be made to EP Determinations at the address provided in section 31 of this revenue procedure, and stating whether the application relates to an initial qualification, termination, or partial termination;

- (5) A description of the class of employees eligible to participate under the plan;
- (6) Whether or not EP Determinations has issued a previous determination as to the qualified status of the plan;
- (7) A statement that any person to whom the notice is addressed is entitled to submit, or request the DOL to submit, to EP Determinations a comment on the question of whether the plan meets the requirements of § 401 or 403(a); that two or more such persons may join in a single comment or request; and that if such persons request the DOL to submit a comment and the DOL declines to do so with respect to one or more matters raised in the request, the persons may still submit a comment to EP Determinations with respect to the matters on which the DOL declines to comment;
- (8) The specific dates by which a comment to EP Determinations or a request to the DOL must be received in order to preserve the right of comment (*see* section 19 of this revenue procedure);
- (9) The number of interested parties needed in order for the DOL to comment; and
- (10) Except to the extent that the additional informational material required to be made available by sections 20.05 through 20.09 of this revenue procedure is included in the notice, a description of a reasonable procedure whereby such additional informational material will be available to interested parties (*see* section 20.04 of this revenue procedure). A sample notice setting forth the above information in a case in which the additional information required by sections 20.05 through 20.09 of this revenue procedure will be made available at places accessible to the interested parties is provided in Exhibit B to this revenue procedure.

Procedures for making information available to interested parties

.04 The procedure referred to in section 20.03(10) of this revenue procedure, whereby the additional informational material required by sections 20.05 through 20.09 of this revenue procedure will (to the extent not included in the notice) be made available to interested parties, may consist of making such material available for inspection and copying by interested parties at a place or places reasonably accessible to such parties, or supplying such material by using a method of delivery or a combination thereof that is reasonably calculated to ensure that all interested parties will have access to the materials, provided such procedure is immediately available to all interested parties, is designed to supply them with such additional informational material in time for them to pursue their rights within the time period prescribed, and is available until the earlier of: 1) the filing of a pleading commencing a declaratory judgment action under § 7476 with respect to the qualification of the plan; or 2) the 92nd day after the day the notice of final determination is mailed to the applicant. Reasonable charges to interested parties for copying and/or mailing such additional informational material are permissible.

Information to be available to interested parties

.05 Unless provided in the notice, or unless section 20.06 of this revenue procedure applies, there shall be made available to interested parties under a procedure described in section 20.04 of this revenue procedure:

- (1) An updated copy of the plan and the related trust agreement (if any); and

(2) The application for determination.

Special rules if there are fewer than 26 participants

.06 If there would be fewer than 26 participants in the plan, as described in the application (including, as participants, former employees with vested benefits under the plan, beneficiaries of deceased former employees currently receiving benefits under the plan, and employees who would be eligible to participate upon making mandatory employee contributions, if any), then in lieu of making the materials described in section 20.05 of this revenue procedure available to interested parties who are not participants (as described above), there may be made available to such interested parties a document containing the following information:

- (1) A description of the plan's requirements respecting eligibility for participation and benefits and the plan's benefit formula;
- (2) A description of the provisions providing for nonforfeitable benefits;
- (3) A description of the circumstances which may result in ineligibility, or 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; and
- (5) A description of any optional forms of benefits described in § 411(d)(6) that have been reduced or eliminated by plan amendment.

However, once an interested party or designated representative receives a notice of final determination, the applicant must, upon request, make available to such interested party (whether or not the plan has fewer than 26 participants) an updated copy of the plan and related trust agreement (if any) and the application for determination.

Information described in § 6104(a)(1)(D) should not be included

.07 Information of the type described in § 6104(a)(1)(D) should not be included in the application, plan, or related trust agreement submitted to EP Determinations. Accordingly, such information should not be included in any of the material required by section 20.05 or 20.06 of this revenue procedure to be made available to interested parties.

Availability of additional information to interested parties

.08 Unless provided in the notice, there shall be made available to interested parties under a procedure described in section 20.04 of this revenue procedure any additional document dealing with the application which is submitted by or for the applicant to EP Determinations, or furnished by EP Determinations to the applicant; provided, however, if there would be fewer than 26 participants in the plan as described in the application (including, as participants, former employees with vested benefits under the plan, beneficiaries of deceased former employees currently receiving benefits under the plan, and employees who would be eligible to participate upon making mandatory employee contributions, if any), such additional documents need not be made available to interested parties who are not participants (as described above) until they, or

their designated representative, receive a notice of final determination. The applicant may also withhold from such inspection and copying any information described in § 6104(a)(1)(C) and (D) which may be contained in such additional documents.

Availability of notice to interested parties

.09 Unless provided in the notice, there shall be made available to all interested parties under a procedure described in section 20.04 of this revenue procedure the material described in sections 19.02 through 19.07 of this revenue procedure.