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PENSION ANALYST

Important information — Plan Administration and operation



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IRS announces changes to determination letter program

Who's affected

The IRS recently released [Revenue Procedure 2016-37](#), making major changes to the determination letter program for individually designed defined benefit and defined contribution plans. The revenue procedure also includes changes for pre-approved Master and Prototype and Volume Submitter plans.

These changes affect qualified defined benefit and defined contribution plans, ERISA 403(b) plans and qualified defined benefit and defined contribution governmental plans.

Background and summary

The IRS determination letter program for qualified plans has existed to provide plan sponsors with assurance that their plan documents comply with applicable federal laws and regulations and are therefore eligible for tax-favored status. When a qualified plan has tax-favored status, employers are eligible to take tax deductions for the contributions they make to the plan, the assets in the plan's trust are tax-exempt, and plan participants are not subject to taxation of their benefits until they receive distributions from the plan. Although the IRS position has been that plan sponsors are never required to obtain determination letters, certain correction programs require the existence of a determination letter and many plan sponsors want the security of knowing that their documents comply with legal requirements.

Originally, most plan documents were individually designed plans (IDPs). However, with the growth in the number of plans offered, the IRS began to encourage the use of pre-approved Master and Prototype (Prototype) or Volume Submitter documents. Once the IRS reviewed and approved the base Prototype and Volume Submitter documents, many adopting employers did not need to request additional reviews to receive assurance that their documents were tax-qualified.

The Internal Revenue Code (Code) provides a remedial amendment period during which a plan may be amended retroactively to comply with the Code's qualification requirements. In 2007, the IRS issued [Revenue Procedure 2007-44](#), which provided a 5-year remedial amendment cycle (RAC) system for amended IDPs to request a determination letter generally every 5 years. Under that system, plans had to adopt interim amendments for items listed on the "Cumulative List of Changes in Plan Qualification Requirements." This system required IDPs to be amended on an interim basis by the end of the year in which the amendments became effective. IDPs would then have to make final conforming amendments at the end of their 5-year RAC cycle.

Due to limited resources and budget constraints, the IRS stated in Announcement 2015-19 that the RAC system would end, and a replacement program for the remedial amendment period would be created. Rev. Proc. 2016-37 officially ends the RAC system and replaces it with a new streamlined approach to the remedial amendment period.

Action and next steps

The changes to the determination letter program are effective January 1, 2017. Plan sponsors should carefully read the information discussed in this newsletter and become familiar with the changes to the IRS determination letter program. If they have any questions regarding the impact of these changes on their plans, they should consult with their legal counsel.

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Major changes for IDPs

Elimination of determination letter program

Revenue Procedure 2016-37 officially eliminates as of January 1, 2017, the staggered 5-year remedial amendment cycle (RAC) for IDPs, described in Revenue Procedure 2007-44. As of that date, the IRS will no longer accept determination letter applications based on the 5-year RAC.

However, sponsors of Cycle A plans (i.e., generally plan sponsors with employer identification numbers ending in 1 or 6) may continue to submit determination letter applications during the period beginning February 1, 2016, and ending January 31, 2017.

Prospectively, plan sponsors of IDPs may only submit a determination letter application for the following situations:

- Initial plan qualification.
- Qualification upon plan termination. An application is filed in connection with plan termination only if it is filed no later than the later of:
 - One year from the effective date of termination; or
 - One year from the date on which the action terminating the plan is taken. However, an application may not be filed later than 12 months from the date of distribution of substantially all plan assets in connection with the plan termination.
- Other circumstances. The IRS will annually consider whether determination letter applications will be accepted for IDPs in specific circumstances. The IRS will consider the following factors in evaluating whether to accept determination letter applications for certain amended plans:
 - Significant law changes;
 - New approaches to plan design;
 - The inability of certain types of plans to convert to pre-approved plan documents (e.g. complex defined benefit plans or multiemployer plans); and
 - IRS current caseload and available resources.

Periodically, the IRS intends to request comments on additional situations in which a determination letter application may be appropriate.

Extension of remedial amendment period

The IRS also extends the remedial amendment period to correct disqualifying provisions for nongovernmental plans:

- New plans. The remedial amendment period for a new plan is extended to the later of:

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- The 15th day of the 10th calendar month after the end of the plan's initial plan year; or
- The modified Section 401(b) expiration date.
 - For a plan that is not maintained by a tax exempt employer, the modified Section 401(b) expiration date is the date the employer's income tax return (with an extension) is due.
 - For a plan that is maintained by a tax exempt employer, the modified Section 401(b) expiration date is the due date for filing the employer's Form 990 series (with an extension). If a Form 990 series filing is not required, the modified Section 401(b) expiration date is the 15th day of the 10th month after the end of the employer's tax year (treating the calendar year as the tax year if the employer does not have a tax year).
- For amendments to existing plans. The remedial amendment period is extended to the end of the second calendar year following the calendar year in which the amendment is adopted or effective, whichever is later. This extension does not apply to changes in qualification requirements reflected in the Required Amendments List. The Required Amendments List is the annual list of all the amendments for which an IDP must be amended to retain its qualified plan status
- For changes in qualification requirements. The remedial amendment period is extended to the end of the second calendar year that begins after the IRS issues the Required Amendments List.

The IRS also extends the remedial amendment period for governmental plans as follows:

- New plans. The remedial amendment period for a new plan that is a governmental plan is extended to the later of:
 - The date described [above for new nongovernmental plans](#); or
 - 90 days after the close of the second regular legislative session of the legislative body with the authority to amend the plan that begins after the end of the initial plan year.
- For amendments to existing plans. The remedial amendment period is extended to the later of:
 - The date described above for [existing nongovernmental plans](#); or
 - 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins after the calendar year in which the amendment is adopted or effective, whichever is later.
- For changes in qualification requirements. The remedial amendment period is extended to the later of:
 - The date described above for [changes in qualification requirements](#) for nongovernmental plans; or
 - 90 days after the close of the third regular session of the legislative body with the authority to amend the plan that begins on or after the date the IRS issues the Required Amendments List.

Additional changes to IDPs

The IRS also makes the following revisions applicable to IDPs:

- Effective January 1, 2017, the interim amendment requirement stated in Revenue Procedure 2007-44 will no longer apply to IDPs. This revision applies to interim amendments that would have had an adoption deadline on or after January 1, 2017.
- For disqualifying provisions that may occur due to changes in qualification requirements, the IRS plans to annually publish a Required Amendments List, which will establish the amendment deadline for a plan. The deadline will be, unless otherwise provided, the end of the second calendar year following the year in which the list is issued. In general, a change to the qualification requirements will not appear on this list until guidance has been provided with respect to the change, including any model amendments. The first Required Amendments List will apply to changes first effective during the 2016 calendar year. A disqualifying provision is a provision that causes the plan to fail to satisfy the qualification requirements of the Code.
- The IRS provides a transition rule that extends the remedial amendment period to correct certain disqualifying provisions to December 31, 2017. This period was originally set to expire on December 31, 2016.
- Reliance on determination letters. The revenue procedure confirms that effective as of January 4, 2016, determination letters issued to IDPs will no longer contain an expiration date. A plan sponsor that has received a favorable determination letter may not continue to rely on the letter with respect to a plan provision that is later amended or affected by a change in law. However, a plan sponsor may continue to rely on a determination letter for plan provisions that are not amended or affected by a change in law.

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Terminating plans

A plan termination ends the plan's remedial amendment period. Any retroactive remedial plan amendments or required plan amendments to reflect qualification requirements that apply as of the plan termination date must be adopted with a plan termination regardless of whether the requirements are included on a Required Amendments List.

Other plan amendment deadlines

Discretionary amendments are amendments that may be adopted by the plan, but are not required. A discretionary amendment must be adopted by the end of the plan year in which the plan amendment is operationally effective.

Governmental plans must adopt a discretionary amendment by the later of:

- The end of the plan year in which the plan amendment is operationally put into effect; or
- 90 days after the end of the second regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date the plan amendment is operationally put into effect.

Changes for pre-approved plans

The IRS also provided the following guidance applicable to pre-approved prototype and volume submitter plans:

- Pre-approved (master and prototype and volume submitter) plans continue to have a regular, six-year remedial amendment cycle. There is a separate six-year cycle for all defined benefit plans and a separate six-year cycle for all defined contribution plans. This six-year period generally provides pre-approved plan sponsors with two years to adopt the updated documents.
- The beginning of the 12-month submission period for prototype and volume submitter plans to submit pre-approved defined contribution plans for opinion or advisory letters during the third six-year remedial amendment cycle was scheduled to begin February 1, 2017, and end January 31, 2018. However, the third six-year remedial amendment is delayed and will begin August 1, 2017, and end July 31, 2018.
- The deadline for an employer to adopt a newly approved pre-approved defined contribution plan and to apply for a determination letter, if applicable, is extended from April 30, 2016 to April 30, 2017, for any newly approved pre-approved defined contribution plan adopted on or after January 1, 2016.
- The schedules for the second and third remedial amendment cycles for pre-approved plans will continue on six year intervals as follows

Schedule(s) of Second and Third Six-Year Remedial Amendment Cycles		
If the plan is-	The second six-year remedial amendment cycle began on-	And ends on -
Defined Contribution	February 1, 2011	January 31, 2017
Defined Benefit	February 1, 2013	January 31, 2019
If the plan is -	The third six-year remedial amendment cycle begins on-	And ends on -
Defined Contribution	February 1, 2017	January 31, 2023
Defined Benefit	February 1, 2019	January 31, 2025

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Additional changes applicable to all plans

To assist plan sponsors, in achieving operational compliance, the IRS plans to annually provide an Operational Compliance List to identify changes in qualification requirements that are effective during a calendar year. However, in order to be qualified, a plan must operationally comply with each qualification requirement, even if the requirement is not included on the Operational Compliance List.

Next steps

The IRS has introduced significant changes to the determination letter program. Plan sponsors should become familiar with the guidance discussed in this newsletter and assess the impact on their plans. If they have any questions regarding the changes in the determination letter program, they should contact their legal counsel.

It is unclear how this guidance applies to plans that are making corrections under the provisions of the [IRS' Employee Plans Compliance Resolution System \(EPCRS\)](#) that require the concurrent submission of a determination letter application. We anticipate additional IRS guidance regarding the determination letter program. We will continue to monitor IRS activity on this topic and keep you informed of these developments.

Pension Analyst by Prudential Retirement

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Editor: Julie Koos (563) 585-6811

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