



IRS Opens Compliance and Enforcement Initiative for Government Plans

On April 22, 2008, the IRS hosted a [roundtable discussion](#) with representatives of the government plans community to start a dialogue to improve these plans' compliance with the Internal Revenue Code (IRC) requirements for qualified plans. As part of this initiative, the IRS is encouraging government plans to take advantage of the IRS determination letter program. (Cycle C, the first period during which government plans can file for a determination letter on their qualified status under the IRS' staggered schedule for obtaining determination letters, opened February 1, 2008 and runs through January 31, 2009.) Further, the IRS wants government plans to take advantage of the mechanisms under the Employee Plans Compliance Resolution System (EPCRS) for correcting plan errors and to make plans aware of its increasing emphasis on enforcement.

IRS Learning and Enforcement Initiative

Through its dialogue with the government plans community, the IRS hopes to learn more about –

- issues facing government plans
- their level of compliance with IRC provisions
- barriers to compliance they face
- ways the IRS can work with these plans to lower or remove barriers and improve compliance.

Once it educates itself about these plans and how they operate, the IRS plans to increase its enforcement activity. To accomplish this, the IRS intends to send a fairly comprehensive questionnaire on these issues to a random sample of government plans.

According to the IRS, it will initially send the questionnaire to a limited number of plans this summer, using the responses to broaden its understanding of government plans and to refine the questionnaire. It will also point respondents to IRS' web-based tools they can use to identify any errors in plan terms or operations. The IRS will give the plans its assurance that questionnaire responses will be used solely to educate and train IRS employees in the issues facing government plans, not to initiate audits.

The IRS then plans to send a revised questionnaire to a larger random sample of plans by the end of the 2008-2009 fiscal year. The IRS will then use what it has learned from the questionnaires to initiate an official compliance check among government plans generally, focusing on the problem areas uncovered by the questionnaires. Plans will be required to correct any errors uncovered by the compliance check. Using the

results of the compliance check as a guide, the IRS will then pick up its enforcement pace with respect to government plans.

IRS Encourages Plans to Obtain Determination Letters

As noted above, the IRS is encouraging government plans to file for a determination letter by January 31, 2009, the end of the Cycle C determination letter cycle for these plans. According to the IRS, filing for a determination letter –

- provides assurances that the plan's terms comply with all applicable IRC requirements
- extends the time a plan can be corrected retroactively for any missing or incorrect provisions found during the determination letter process until 90 days after the plan's receipt of a favorable IRS determination letter
- allows plans to take advantage of certain provisions of EPCRS, including those permitting plans to self-correct significant operational defects without disclosing the defect to the IRS or paying any sanctions.

Although some government plan sponsors take the position that a determination letter is not needed because the plan's terms have been approved by the appropriate state and local legislative bodies, the IRS does not agree. Its position is that only the IRS can determine if a plan meets the relevant IRC provisions and that the way to do so is through the determination letter process and plan audits.

Issues for Government Plans

To apply for a determination letter, the IRS is asking a plan sponsor to submit an up-to-date, restated version of the plan document for review, not just a collection of statutes or other documents. The plan document may be a compilation of existing plan provisions into a working copy of the plan; it does not need to be a newly enacted statute. When plan sponsors pointed out difficulties they may have with producing a plan document (e.g., various operational terms may be contained in session laws enacted over many years, in administrative regulations, attorney general opinions or even court decisions), the IRS indicated it will be flexible but expects a submission "in one coherent form as a plan" for it to review.

Plan sponsors also expressed concern about filing for a determination letter without knowing beforehand what corrections may be required or what penalties may be imposed should issues be uncovered during the process. The IRS pointed out that plans, even those that have not been timely amended to incorporate all required changes, may file under EPCRS. EPCRS filings can be made on an anonymous basis with the identity of the filer being revealed only when a correction method and penalties, if any, have been agreed upon. If an agreement can not be reached, the EPCRS application may be withdrawn without revealing the applicant's identity.

Plan sponsors pointed out other potential difficulties, including obtaining appropriations from cash-strapped and often disinterested legislatures for filing fees and any penalties or sanctions (which cannot be paid from plan

assets), problems with correcting defects if the correction includes a reduction in benefits or other take-away from employees in light of state constitutional provisions or other state laws prohibiting this, the long time frames needed to implement corrections due to the time and effort needed to get the appropriate legislative bodies to act, and potential political problems should the press obtain information under state freedom of information laws casting the plans in an unfavorable light.

Conclusion

The IRS' discussions show it is serious about getting government plans in line with the private sector for purposes of following IRC rules. Government plan sponsors should begin to take steps to identify and compile their plan's provisions into a working copy of the plan. Not only will this enable the plan to apply for a determination letter, it will also allow the plan to ensure that it has been properly amended to reflect all applicable IRC provisions and that the plan's administration accurately reflects its terms. Plans may also wish to self-audit their operations and correct any defects that may be uncovered under EPCRS. Finally, plans should seriously consider applying to the IRS for a determination letter by the Cycle C deadline of January 31, 2009.

Buck's consultants would be pleased to discuss the IRS initiative with you and to help with all phases of these projects.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.