



## Governmental Plans May Delay Filing Until Cycle E

*The IRS has announced that it will permit governmental plans to delay filing determination letter applications until Cycle E – the deadline for filing under this cycle is January 31, 2011. Plan sponsors that filed applications by November 7, 2008 may withdraw them.*

### Background

Sponsors of qualified retirement plans may, but are not required to, apply to the IRS for determination letters confirming that their plans meet the qualification requirements under Section 401(a) of the Internal Revenue Code. [Revenue Procedure 2005-66](#) established a staggered determination letter submission system for individually designed plans, under which applications are submitted once every five years. The system was updated in [Revenue Procedure 2007-44](#). Governmental plans were assigned to Cycle C, which commenced on February 1, 2008 and ends on January 31, 2009.

Governmental plans are subject to some, but not all, of the qualification requirements under Section 401(a). Further, a number of special transition rules have applied to these plans over the years that delayed the effective date of certain provisions or exempted them from certain rules. Thus, some governmental plan sponsors have not felt that it was important to request determination letters. However, at a roundtable meeting in Washington D.C. in April 2008, the IRS strongly encouraged governmental plan sponsors to submit their plans to ensure that they are satisfying the tax qualification rules.

Based on feedback from a number of governmental plan sponsors and practitioners, the IRS made several modifications to make it easier for them to file (e.g., not requiring a single restated plan document under certain circumstances, allowing a summary of amendments made prior to the current plan version). These modifications were published as [FAQs](#). Despite these changes, many governmental plans are faced with other significant obstacles in meeting the deadline for Cycle C. For example, the ability to change plan provisions to reflect applicable Code provisions may be restricted based on the dates the legislative body with the authority to change the statutes is in session. Therefore, the IRS has now announced that it will give these plans the opportunity to file either during Cycle C or Cycle E.

### IRS Announcement in Employee Plan News

In a recent special edition of its [employee plans news](#) publication, the IRS announced that it is implementing a one-time modification of its staggered remedial amendment program to permit sponsors of governmental plans to

delay filing for determination letters until Cycle E. The IRS indicates that there is no action required for those governmental plans that have not already filed – they may simply wait until Cycle E and file then.

Plan sponsors that already filed an application by November 7, 2008 may request that the application be withdrawn and the user fee refunded. This request must be in writing and postmarked by January 21, 2009.

## Filing Under Cycle C

To encourage governmental plan sponsors to file under Cycle C, the IRS provides some incentives.

Governmental plan sponsors that file under Cycle C will –

- be placed at the top of the determination letter queue
- be eligible for reduced fees or sanctions under the Employee Plans Compliance Resolution System (EPCRS)
- be eligible for reduced fees (one-half) if they use the Voluntary Correction Program (VCP), and be moved to the top of the VCP queue
- be subject to a reduced sanction (one-half) for a plan document failure.

## Filing Under Cycle E

Governmental plan sponsors that file under Cycle E must take into account all requirements for a governmental plan normally filing under that cycle, including all applicable items on the Cumulative List and any amendments required during Cycles C or D. Further, the IRS notes that the opportunity to use Cycle E is a one-time only option and that the filing cycle will continue to be C in the future. Thus, whether the initial application is filed during Cycle C or Cycle E, the next determination letter application will need to be filed by the end of the second Cycle C – i.e., January 31, 2014.

## Conclusion

For many governmental plans that file for determination letters, this delay will be useful – either because they are not able to meet the current deadline or because there will be more time to receive further information on what the IRS is looking for in the applications for governmental plans. On the other hand, if a plan sponsor is ready and able to file by the Cycle C deadline, it may be advisable to do so.

Buck's consultants would be pleased to discuss with governmental plan sponsors their options and best course of action.

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*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.*