



IRS Extends Remedial Amendment Period for Governmental Plans

The IRS has modified the staggered determination letter submission system for individually designed governmental plans. In [Revenue Procedure 2009-36](#), the IRS provides that effective August 31, 2009, the remedial amendment cycle for governmental plans will not end until the 91st day after the close of the first legislative session beginning more than 120 days after a determination letter is issued to the plan. In addition, the IRS also formalized its November 2008 guidance that governmental employers may make a one-time election to file for a determination letter under Cycle E rather than Cycle C.

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. In [Revenue Procedure 2005-66](#), updated in [Revenue Procedure 2007-44](#), the IRS established staggered five-year determination letter submission cycles for individually designed plans. Governmental plans were assigned to Cycle C. The first Cycle C commenced on February 1, 2008 and ended on January 31, 2009.

Based on feedback from governmental plan sponsors and practitioners, the IRS issued [FAQs](#) modifying the determination letter procedure for governmental plans to make it easier for them to file (e.g., not requiring a single restated plan document under certain circumstances and allowing a summary of amendments made prior to the current plan version).

Despite these changes, many governmental plans still faced obstacles in meeting the Cycle C deadline. In a special November 2008 edition of its [Employee Plans News](#) publication, the IRS announced a one-time opportunity for governmental plans to delay filing for determination letters until Cycle E, which commences February 1, 2010 and ends January 31, 2011. (See our November 17, 2008 [For Your Information](#).)

Revenue Procedure 2009-36

Extension of Remedial Amendment Period. IRS Regulation §1.401(b)-1(e)(3) provides that the remedial amendment period (e.g., the time in which a plan may be retroactively amended to correct any defects in its terms) ends on the 91st day after an IRS determination letter is issued to the plan. The IRS may extend the remedial amendment period at its discretion.

In Revenue Procedure 2009-36, the IRS recognizes that 91 days may not allow enough time for governmental bodies to adopt any retroactive remedial amendments necessary for their plans to receive favorable determination letters because the laws and procedures applicable to the governmental body may prevent it from considering the amendments prior to that time. The IRS now extends the remedial amendment period for governmental filers to the 91st day after the last day of the first regular legislative session beginning more than 120 days after the date the IRS' final determination letter is issued. This extension is effective as of August 31, 2009.

One-Time Cycle E Election. The IRS also formalized the one-time election of Cycle E originally announced in the special *Employee Plans News* noted above. It confirms the ability of a sponsor of an individually designed governmental plan to elect Cycle E (instead of the default Cycle C) as the plan's initial remedial amendment cycle for EGTRRA amendments. The Cycle E election is made by filing a determination letter application during the Cycle E submission period (February 1, 2010 through January 31, 2011) – no special forms are required. A sponsor that originally submitted under Cycle C (February 1, 2008 through January 31, 2009) may withdraw its application and refile during Cycle E. If Cycle E is elected, the plan must meet all requirements of the Cycle E Cumulative List, and all interim amendments required during Cycles C and D must have been timely adopted. The one-time election of Cycle E applies only to that plan and only to that cycle. Therefore, if a governmental plan sponsor elects the initial Cycle E ending on January 31, 2011, it should file for a new determination letter during the next Cycle C filing period (February 1, 2013 – January 31, 2014). This one-time election is available to sponsors retroactive to November 5, 2008.

BUCK COMMENT. *Plan sponsors should consider the many advantages of filing a determination letter request, such as ensuring current compliance with IRS requirements, the opportunity to adopt retroactive remedial amendments without penalties, and protecting the tax-favored status of employee rollovers. Further, plan sponsors that have discovered documentary or operational non-compliance may want to consider using the Employee Plans Compliance Resolution System (EPCRS) prior to filing a determination letter request as self-correction and the Voluntary Correction Program (VCP) may not be available once a plan is under IRS review.*

Conclusion

The IRS extension is useful as it takes into account the practical realities facing governmental bodies with amending authority. The revenue procedure also reaffirms the ability of governmental filers who were not able to meet the Cycle C deadline to make a one-time election under Cycle E (by January 31, 2011). Buck's consultants would be pleased to assist governmental plan sponsors with preparing plan documentation, determination letter applications and remedial amendments.

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.