

IRS Announces Major Contraction of Individually Designed Plan Letter Program

It's now official. Earlier today, IRS announced that its determination letter program for reviewing individually designed plans will close effective January 1, 2017, except for initial qualification, qualification upon termination, and in other limited circumstances. Effective immediately through December 31, 2016, requests for off-cycle letters will not be accepted. IRS seeks comments on what other modifications should be made to accommodate this change.

Background

Sponsors of qualified retirement plans can request an IRS determination on whether the form of their plan (plan and trust documents) satisfies all of the various mandated requirements for favorable tax treatment under the Code. Obtaining a favorable determination letter from the IRS helps ensure that document errors can be corrected and disqualification can be averted.

IRS announced informally at recent conferences its plans to curtail the determination letter program for individually designed plans. Our [June 30, 2015 For Your Information](#) and our [July 8, 2015](#) blog post discussed the existing remedial amendment cycles and reported on the rumors.

It's Official

In [Announcement 2015-19](#), IRS gave official word on how the program for individually designed plans will change. As expected, these plans will generally be able to obtain a determination letter only for initial plan qualification and qualification upon termination. In addition, determination letters will be available in certain other limited circumstances that IRS will identify in future published guidance, on a periodic basis. IRS expects to ask the public for input about the other limited circumstances that merit review. And IRS will take other steps to assist with compliance, such as:

- Providing model amendments
- Not requiring adoption of "irrelevant" plan provisions (for example, because of the type of plan, employer or benefits offered)



- Expanding the use of “incorporation by reference,” that is, using plan language that triggers certain treatment explained in IRS guidance

Letter Request Timing

The current determination letter period — Cycle E — is open for individually designed retirement plans sponsored by employers with EINs ending in 0 or 5, and governmental plans. The deadline for Cycle E plans to submit their determination letter requests is January 31, 2016. This announcement sets the termination date for the current program at December 31, 2016, which will allow the next group, Cycle A plans for individually designed retirement plans sponsored by employers with EINs ending in 1 or 6, to get in one last letter under the program.

Amendment Timing in Light of this Change

Despite the inability to obtain an IRS “stamp of approval” on a plan change, plan sponsors will still be expected to keep their plans up-to-date. The deadline for adopting amendments to reflect mandated changes and fix errors in discretionary changes is referred to as the “remedial amendment period.” In general, this period starts when a defective amendment is adopted, or should have been adopted, and ends with the tax filing date applicable to the plan sponsor’s business tax return. Under the existing remedial amendment cycles, the remedial amendment period extends to the end of the plan’s applicable amendment cycle. Under today’s guidance, this extension will no longer be available after December 31, 2016. However, any open remedial amendment periods for individually designed plans will remain open until December 31, 2017.

Example. A plan in Cycle C had a January 31, 2014 deadline for submitting a determination letter request for changes applicable to that cycle. A subsequent change requiring a plan amendment was found to be faulty. The extended remedial amendment period will allow the plan sponsor to correct the error with an amendment by December 31, 2017.

Comment. This additional time does not necessarily mean all amendments can wait until the end of 2017. Discretionary amendments still need initial adoption by the end of the plan year the amendment is put into operation. And a plan amendment that relies on anticutback relief — such as an amendment to correct a cash balance plan’s faulty market-based interest crediting rate — would still need to be adopted by the cutoff set for obtaining relief.

Request for Comments

IRS recognizes that eliminating its cyclical review of plan amendments will create uncertainty and require changes to the Employee Plans Compliance Resolution System (EPCRS) program. (See our [April 8, 2015](#), [April 2, 2015](#), and [January 31, 2013](#) *For Your Information* publications to learn more about this program.) Thus, IRS has asked for comments by October 1, 2015, on suggested changes to the remedial amendment period and interim amendment requirements; what sort of guidance would assist plan sponsors wishing to convert to a pre-approved plan; and changes to the EPCRS program, which currently requires the submission of a current determination letter. (See our [July 2, 2015](#) *For Your Information* to learn more about the pre-approved plan program.)

In Closing

Today's guidance does not suggest that IRS will curtail its plan audit activity. It is unclear what protections the IRS might offer for plans with documentary defects found in an audit, or whether the IRS will expand the voluntary correction program to cover missed or flawed amendments.

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