



IRS scales back the determination letter program for individually designed plans

The IRS recently released [Announcement 2015-19](#), making major changes to the determination letter program for individually designed defined benefit and defined contribution qualified plans. There is no existing determination letter program for 403(b) or governmental 457(b) plans.

Why does a plan need a determination letter?

The longstanding 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.

The official IRS position has traditionally been that plan sponsors are never required to obtain determination letters. However, 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.

Evolution of the program

Originally, most plan documents were individually designed and "deadlines" for requesting determination letters were tied into specific events, as well as the sponsoring employer's tax filing deadline (due to the impact of plan qualification on the tax deductibility of employer contributions).

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 base Prototype and Volume Submitter documents were reviewed and approved by the IRS, many adopting employers did not need to request additional reviews to receive assurance that their documents were tax-qualified and the process for those that did need an additional review was more streamlined. In fact, the IRS recently [extended the availability of these pre-approved programs](#) to plan designs that were not previously eligible – specifically, to defined benefit cash balance plans in 2015 and to defined contribution employee stock ownership plans (ESOPs) in 2017.

To further reduce the burden on IRS review resources and assist the IRS with its strategic planning, the IRS developed [review cycles in mid-2007](#). For Prototype and Volume Submitter plans, a six-year cycle applies; for individually designed plans, a five-year cycle applies, with filing deadlines generally determined by the last digit of the sponsoring employer's employer identification number (EIN). In 2015, individually designed plans were completing the second restatement cycle with Cycle "E" filings.

Announcement 2015-19

Due to the continued strain on IRS resources, Announcement 2015-19 announces the complete **elimination of the five-year determination letter amendment cycle, effective January 1, 2017.**

- **As of January 1, 2017**, plan sponsors **will only be allowed to submit requests** for determination letters **at initial plan adoption and upon plan termination.**

- Sponsors of **Cycle “A” plans** will be allowed to submit **determination letter requests** during the period beginning **February 1, 2016 and ending January 31, 2017**.
- In addition, **effective July 1, 2015**, the IRS **will no longer accept off-cycle determination letter requests**, except for applications for new plans and terminating plans. For example, a non-Cycle “A” plan that is amended to reflect a plan merger will not be able to request a determination letter.

Impact on plan sponsors

This announcement has no impact on sponsors of qualified plans that use Prototype or Volume Submitter documents. The IRS has not yet proposed changes to the approval program for these types of plans.

It does put sponsors of 403(b) plans, who had been hoping for a determination letter program of their own, on notice that they will probably not be seeing the creation of such a program. As such, they should be prepared to continue to use the Private Letter Ruling process to obtain rulings on their plan documents, if desired.

The only immediate impact of this announcement on qualified plan sponsors that use individually designed plans is the inability to request off-cycle determination letters as of July 21, 2015. It is unclear how this moratorium applies to plans that are making corrections under the Employee Plans Compliance Resolution System (EPCRS) that require the concurrent submission of a determination letter application.

IRS requests comments

The IRS has requested comments on these changes to the determination letter program. Written comments are **due on or before October 1, 2015**.

The IRS is looking for comments regarding the following specific issues:

1. What changes should be made to the basic remedial amendment period rules under Code section 401(b) as a result of the elimination of these review cycles?
2. What additional considerations should be taken into account in connection with the current interim amendment requirement? For example, should the IRS provide more model amendments, or allow additional incorporation by reference?
3. What guidance should be issued to assist plan sponsors that want to convert an individually designed plan into a pre-approved Prototype or Volume Submitter plan?
4. What changes should be made to other IRS programs in conjunction with this change in the determination letter program – for example, revisions to EPCRS?

Between the comment submission deadline of October 1, 2015 and the official program change date of January 1, 2017, it is likely that the IRS will issue additional guidance addressing situations involving plan mergers or the current EPCRS requirements to have or obtain a determination letter in certain situations.

Prudential Retirement expects to be involved in the comment process and will be closely following all related developments in order to keep our clients apprised of any changes that are made.

Compliance Bulletin by Prudential Retirement

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