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PENSION ANALYST COMPLIANCE BULLETIN



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IRS provides guidance regarding modified determination letter program for individually designed plans

In 2015, the [IRS announced](#) that it would be making major changes to the determination letter program for individually designed defined benefit and defined contribution qualified plans. On January 4, 2016, the IRS released an advance copy of [Notice 2016-03](#), providing the following interim guidance regarding some of these changes.

- Controlled groups and affiliated service groups that maintain more than one plan will be allowed to submit determination letter applications during the final Cycle A submission period, beginning February 1, 2016 and ending January 31, 2017, only if they had made a Cycle A election for the previous filing cycle.
- Expiration dates on determination letters issued before January 4, 2016 are no longer operative.
- The deadline for an employer that does not currently use a pre-approved defined contribution plan document to adopt a pre-approved plan and apply for a determination letter is extended from April 30, 2016 to April 30, 2017.

These changes do not require employers that use individually designed plan documents to make any changes to their documents or procedures at this time. However, the extended deadline for adopting a new pre-approved plan provides an opportunity to convert these plans to a pre-approved format, which could provide additional peace of mind regarding document qualification once all of the changes to the determination letter program for individually designed plans take effect.

Controlled Group Cycle A elections

Under the five-year remedial amendment cycle rules for individually-designed plans, a plan's filing cycle (A through E) is generally determined by the last digit of the plan sponsor's employer identification number (EIN). However, if members of a controlled group or an affiliated service group maintain multiple plans that would have to be submitted under different filing cycles based on the sponsoring employers' EINs, those employers may jointly elect to file all plans in Cycle A. This election must be made by the end of the applicable Cycle A.

In [Announcement 2015-19](#), the IRS announced that the final filing cycle under the five-year rules will be Cycle A beginning February 1, 2016 and ending January 31, 2017. Normally, controlled groups and affiliated service groups would have until January 31, 2017 to make an election to file all of their plans in that Cycle A. Notice 2016-03 modifies this rule and permits only those groups that had made a Cycle A election by January 31, 2012 to file in the final Cycle A.

Determination letter expiration dates

Since the inception of the five-year remedial amendment cycle program, determination letters issued to individually designed plans have contained specific expiration dates. After that date, the plan sponsor may no longer rely on that letter to prove that the plan document satisfies plan qualification requirements. These expiration dates encourage ongoing determination letter application filings.

With the elimination of the five-year cycles and the IRS's desire to review plan documents only at initial plan adoption and upon plan termination, there was an expectation that the determination letter expiration dates would be rendered

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inoperative. Notice 2016-03 confirms this expectation but does not provide guidance regarding the extent to which a plan sponsor may rely on a determination letter when changes are later made to applicable law or the plan is amended.

Extended deadline to adopt new pre-approved defined contribution plans

Pre-approved (master and prototype and volume submitter) plans are subject to a six-year remedial amendment cycle. This six-year period generally provides pre-approved plan sponsors with two years to submit updated documents to the IRS for review, the IRS with two years to review and approve the documents, and employers with two years to adopt the updated documents. The second six-year cycle for defined contribution plans ("PPA restatements") began on February 1, 2011. The deadline for employers to adopt these documents and apply for a determination letter, if permissible (only employers that have made limited changes to volume submitter documents may apply for determination letters) is April 30, 2016.

Notice 2016-03 extends this adoption and filing deadline to April 30, 2017, but only for new pre-approved defined contribution plans adopted on or after January 1, 2016. The primary intent of providing this extension is to facilitate the conversion of existing individually designed plans into pre-approved plans.

The IRS provides the following examples of situations where the April 30, 2017 deadline is available:

Employer A has maintained Plan X, an individually designed defined contribution plan, for many years prior to January 1, 2016. Employer A has until April 30, 2017 to adopt a PPA restatement pre-approved plan, and apply for a determination letter, if permissible.

Employer B establishes Plan Y, an individually-designed defined contribution plan, on January 1, 2016. Employer B has until April 30, 2017 to adopt a PPA restatement pre-approved plan, and apply for a determination letter, if permissible.

Presumably, an employer that wishes to take advantage of this option still needs to complete and sign Form 8905. If the plan is a Cycle A plan, Form 8905 must be executed before January 31, 2017. For plans that would have filed under other Cycles, it is currently unclear whether or when Form 8905 would need to be completed.

The extended adoption deadline is *not* available to employers that adopted a pre-approved plan before January 1, 2016 and simply want to replace that document with a pre-approved plan offered by a different plan sponsor.

Additional guidance expected

The IRS is expected to issue additional guidance before the January 1, 2017 elimination date of the five-year amendment cycle. Several industry groups, including the American Retirement Association, the ERISA Industry Council (ERIC), and the American Benefits Council provided extensive comments to the IRS regarding open issues related to these major changes by the October 1, 2015 comment deadline. Hopefully the issues raised by these groups will be addressed in the forthcoming guidance, which we expect will be released over the course of the next 12 months.

Compliance Bulletin by Prudential Retirement

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