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PENSION ANALYST COMPLIANCE BULLETIN



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IRS issues guidance on user fee exemption for small plans

The IRS recently issued [Notice 2011-86](#) which provides guidance for exemption from the requirement to pay a user fee for requesting a determination letter. The guidance in this notice generally applies to applications that are filed with the IRS after January 31, 2011.

Background

In an attempt to encourage the establishment of qualified plans by small employers, the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) contained a provision that requires the IRS to waive the user fee for requesting a determination letter in the case of new small plans. [IRS Notice 2002-1](#) described the requirements that a plan must meet to be exempt from the user fee.

To be eligible for the user fee exemption, the employer sponsoring the plan must satisfy the [small employer requirement](#). However, the determination letter user fee is not waived for all plans sponsored by small employers. The fee is only waived for new plans. To qualify as a “new plan,” the determination letter must be requested before the later of:

- The last day of the plan’s fifth plan year; or
- The last day of any remedial amendment period that begins with the plan’s first five years of existence.

Notice 2011-86 clarifies the earlier guidance by explaining how to determine if an application has been filed within a remedial amendment period beginning within the plan’s first five plan years.

Notice 2011-86

Notice 2011-86 confirms that an application for a determination letter must be submitted to the IRS by the [deadline](#) described in Notice 2002-1 to be eligible for the user fee exemption. However, the IRS acknowledges that determining whether a particular determination letter application satisfies this requirement would require a review of:

- The effective dates with respect to changes required by law and published guidance;
- The adoption and effective dates of the plan and amendments to the plan; and
- The plan’s current remedial amendment cycle.

To avoid the need for a separate analysis on every application, the IRS has simplified the process for determining whether a plan meets the submission deadline.

The IRS will treat the determination letter application as having been filed by the last day of the remedial amendment period with respect to the plan beginning within the first five plan years if both of the following conditions are satisfied:

- The application is filed with the IRS by the last day of the submission period for the plan’s current remedial amendment cycle; and
- The plan is first in existence no earlier than January 1 of the tenth calendar year immediately before the year in which the submission period for the plan’s current remedial amendment cycle begins.

Example: The IRS will treat an application for a determination letter for a Cycle A plan as filed by the last day of a remedial amendment period with respect to the plan beginning within the first five plan years if the application is filed with the IRS by January 31, 2012 (i.e., the last day of the submission period for the plan’s current remedial amendment cycle) and the plan is first in existence no earlier than January 1, 2001, the year in which the submission period for the plan’s current remedial amendment cycle begins. An application for a determination letter for a Cycle B plan will be treated as

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filed by the last day of a remedial amendment period with respect to the plan beginning within the first five plan years if the application is filed with the IRS by January 31, 2013, and the plan is first in existence no earlier than January 1, 2002.

Exceptions

The IRS recognizes that there may be situations in which an application is filed by the last day of the remedial amendment period but the timing does not meet the conditions described in Notice 2011-86. In such cases, where the other requirements for the user fee exemption are also met, the applicant should not include the user fee payment with the application but should explain in the cover letter how the application meets the requirements for the exemption. If the IRS determines that the application is not exempt, the IRS will ask the applicant to submit the required user fee.

Applicability

This guidance applies to applications for determination letters that are filed with the IRS after January 31, 2011. However, this guidance does not apply to applications filed by April 30, 2012 for an EGTRRA determination letter for defined benefit plans that are eligible for the 6-year EGTRRA remedial amendment cycle ending on April 30, 2012. Those applications may be eligible for an exemption of the user fees under [guidance](#) provided by the IRS in 2003.

Next steps

If you are preparing to request a determination letter for a small plan, you should review the guidance discussed in this newsletter for the user fee exemption. If the exemption applies, you should submit Form 8717 (User Fee for Employee Plan Determination, Opinion and Advisory Letter Request), with your application to claim the waiver of the user fee. The determination letter filing must still include a signed Form 8717, even if a plan is eligible for the user fee exemption.

Compliance Bulletin by Prudential Retirement

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