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PENSION ANALYST COMPLIANCE BULLETIN



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IRS makes minor changes to the determination letter process for 2012

In its annual update of determination letter procedures ([Revenue Procedure 2012-6](#), preceded by [Announcement 2011-82](#)), the IRS has made minor changes that are designed to improve IRS efficiency by reducing the time it takes to process determination letter applications.

Requests for coverage and nondiscrimination determinations

A standard determination review includes a review of plan document provisions to ensure that the plan's benefit or contribution formula satisfies nondiscriminatory design-based safe harbor requirements and, where applicable, section 401(k) and 401(m) requirements. Optionally, plan sponsors have been able to submit Schedule Q and appropriate demonstrations to request a determination that the plan also satisfies nondiscrimination, minimum participation, or minimum coverage requirements in operation as of a specific point in time. However, when the data used to demonstrate operational compliance with these requirements changes, this determination is no longer valid.

Due to the limited usefulness of these determinations, the IRS is eliminating their availability as of;

- February 1, 2012, for individually-designed defined benefit and defined contribution plans, other than terminating plans; and
- May 1, 2012, for prototype and volume submitter defined benefit and defined contribution plans, and for all terminating plans.

As of these dates, plan sponsors may no longer request determinations regarding a plan's operational compliance with coverage, participation, and nondiscrimination requirements. Until the application forms (Forms 5300, 5307 and 5310) are updated to reflect this change, plan sponsors should no longer complete line 13 of Form 5300, line 11 of Form 5307, or lines 13 or 14e of Form 5310.

Limited availability of determination letters for adopters of prototype and volume submitter plans

Employers that adopt a prototype or volume submitter plan document and do not modify the preapproved plan provisions may rely on the sponsoring organization's opinion or advisory letter and are not required to request their own determination letters. However, many such plan sponsors have sought the additional peace of mind provided by a determination letter and have filed simplified Form 5307 applications to obtain one.

As of May 1, 2012, the IRS will no longer accept Form 5307 applications from employers that have adopted prototype documents or that have adopted volume submitter documents and made no changes to the pre-approved provisions. The IRS will accept Form 5307 only from employers that have adopted volume submitter documents and made modifications that are not so extensive as to cause the plan to be considered an individually-designed plan.

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Required Form 5300 filings for adopters of prototype and volume submitter plans

In certain situations, employers that adopt prototype or volume submitter plan documents must submit Form 5300 to request a determination letter. Effective May 1, 2012, there are two additions to the list of circumstances requiring Form 5300 applications.

An employer that:

- Makes any changes to approved prototype document provisions, or
- Makes extensive changes to approved volume submitter provisions, or
- Adds any impermissible provisions to a prototype or volume submitter document (such as an ESOP provision),

must file Form 5300 to request a determination letter, as plans with these types of modifications are considered individually designed plans. In these situations, the plan document provisions must take into account the Cumulative List in effect when the application is filed.

However, the IRS will review a plan on the basis of the Cumulative List that was in effect when the applicable opinion or advisory letter was issued if the employer files Form 5300 solely for one or more of the following reasons:

- To request a determination regarding affiliated service group or leased employee status, or possible partial plan termination;
- The plan is a multiple employer plan;
- The IRS requires a determination letter (for example, in conjunction with a request for a minimum funding waiver);
- *Effective May 1, 2012*, the employer has added language to the plan to coordinate the application of section 415 limits or top-heavy requirements because the employer maintains multiple plans; or
- *Effective May 1, 2012*, the plan is a pension plan with a normal retirement age earlier than age 62.

In these situations, the employer's cover letter must indicate the reason for using Form 5300 and the application request must include a copy of the opinion or advisory letter issued for the plan.

Impact of these changes

Defined benefit plans that use volume submitter documents must typically make modifications to accommodate special provisions. As a result, they are rarely able to use Form 5307 to request determination letters. Therefore, the changes to the basic Form 5300 and Form 5307 filing rules should have little impact on these plans.

Sponsors of defined contribution plans that use prototype or volume submitter documents should review the revised basic Form 5300 and 5307 filing rules to determine if their plans are affected. An employer that uses Prudential Retirement's document services and is unsure of its plan document type should contact its Prudential Retirement representative for assistance.

Due to the elimination of the coverage and nondiscrimination determination options, Prudential will no longer prepare Schedule Qs or related demonstrations for any Form 5300-series filing packages.