

Pension ANALYST

Important Information

Plan Administration and Operation

May 2008



IRS Updates Staggered Remedial Amendment Cycle Process

WHO'S AFFECTED This information applies to qualified defined benefit and defined contribution plans, including multiemployer plans, governmental plans and non-electing church plans. Currently, it does not apply to ERISA 403(b) plans, non-ERISA 403(b) programs, or section 457(b) plans.

BACKGROUND AND SUMMARY To retain tax-qualified status, a defined benefit or defined contribution plan must comply with Internal Revenue Code section 401(a) in both form (i.e., the plan document) and operation. For assurance that a plan document meets the qualification requirements, the plan sponsor may ask for a formal IRS review. If the document meets all qualification requirements at the time of review, the IRS will issue a favorable determination letter, opinion letter, or advisory letter (depending on the type of plan document).

Generally, plan sponsors are not required to obtain determination letters. However, if a plan is submitted for IRS review during the “remedial amendment period” and the IRS discovers disqualifying defects, the plan sponsor will have an extended period of time in which to retroactively amend the plan to correct the defects, without penalty. Under the staggered remedial amendment cycle process that was introduced in 2005, the IRS normally reviews individually-designed plan documents every five years. Prototype and volume submitter plan documents are reviewed over a six-year cycle.

In mid-2007, the IRS updated its remedial amendment cycle procedures. [IRS Revenue Procedure 2007-44](#) attempts to clarify the earlier guidance provided by Revenue Procedure 2005-66 and to resolve some of the issues and problems created by that guidance.

ACTION AND NEXT STEPS Plan sponsors should review the information contained in this publication to understand how the new remedial amendment cycles apply to their plans and will affect plan administration. If Prudential Retirement provides document services for your plan, we will work with you to ensure that your documents are updated in a timely manner. In addition, we will monitor the remedial amendment cycles and provide you with the materials you will need to file a timely request for a determination letter, if necessary.

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For all types of plans, a new remedial amendment cycle process first takes effect for plan amendments reflecting changes made by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). Under these rules, prototype and volume submitter plans have a six-year filing cycle and individually-designed plans have a five-year filing cycle.

Prototype and Volume Submitter Plan Amendment Cycles

Sponsors of **defined contribution** prototype and volume submitter plans (such as Prudential) were required to submit restated documents reflecting EGTRRA provisions to the IRS to obtain opinion and advisory letters by January 31, 2006. On March 31, 2008, the IRS issued opinion and advisory letters for most of these plans. By April 30, 2010, employers that wish to use these documents to restate their plans for EGTRRA must adopt the appropriate documents and submit applications for individual determination letters, where needed. The next remedial amendment cycle will begin on February 1, 2011, with plan sponsors submitting restated documents for opinion and advisory letters.

Originally, some sponsors of **defined benefit** prototype and volume submitter plans were required to submit their EGTRRA documents to the IRS by October 31, 2007, while other sponsors had a January 31, 2008, filing deadline. IRS Revenue Procedure 2007-44 extended the October 31, 2007 deadline to January 31, 2008. These documents will likely not be available for adoption by employers until early 2010. The next remedial amendment cycle will then begin on February 1, 2013.

Individually-Designed Plan Amendment Cycles

The five-year filing cycle for both **defined benefit and defined contribution individually-designed plans** is generally determined by the last digit of the sponsoring employer’s Employer Identification Number (EIN). In the case of a jointly trustee single employer collectively-bargained plan, where the joint board of trustees is treated as the plan sponsor on Form 5500, the EIN used on the Form 5500 determines the plan’s filing cycle. Similarly, if a plan is maintained by multiple members of a controlled group or an affiliated service group (collectively, a “controlled group”) and is not a governmental plan, multiple employer plan, or multiemployer plan, the EIN used on the Form 5500 determines the plan’s filing cycle. Certain types of plans, identified in the following chart as “Special Situations” have specific filing cycles regardless of the sponsoring employer’s or employers’ EINs:

Cycle	Last Digit of Employer’s EIN	Special Situations	EGTRRA Filing Cycle Submission Period	Next Filing Cycle Submission Period
A	1 or 6		2/1/2006 – 1/31/2007	2/1/2011 – 1/31/2012

Cycle	Last Digit of Employer's EIN	Special Situations	EGTRRA Filing Cycle Submission Period	Next Filing Cycle Submission Period
B	2 or 7	All Multiple Employer Plans, except governmental plans	2/1/2007 – 1/31/2008	2/1/2012 – 1/31/2013
C	3 or 8	All Governmental Plans – single employer, multiemployer, and multiple employer ^[RP 2007-44, Section 3.03(1)]	2/1/2008 – 1/31/2009	2/1/2013 – 1/31/2014
D	4 or 9	All Multiemployer Plans, except governmental plans	2/1/2009 – 1/31/2010	2/1/2014 – 1/31/2015
E	5 or 0		2/1/2010 – 1/31/2011	2/1/2015 – 1/31/2016

In general, no special rules apply for non-electing church plans or plans sponsored by other tax-exempt organizations. However, some special options are available for controlled group situations and for related tax-exempt organizations.

Special Options for Groups of Related Employers

If the members of a controlled group maintain more than one individually-designed plan, all of the employers may jointly elect to use filing Cycle A for all plans other than governmental plans, multiple employer plans, multiemployer plans, and jointly trustee single employer collectively-bargained plans. In the case of a parent-subsidiary controlled group, this election may be made by the parent company on behalf of all of the members.

If multiple plans are maintained by members of a parent-subsidiary controlled group, the parent company can elect to apply the remedial amendment cycle applicable to its EIN to all of the plans, except for governmental plans, multiple employer plans, multiemployer plans, and jointly trustee single employer collectively-bargained plans.

A similar filing option election is available to groups of tax-exempt organizations that are related but do not constitute a controlled group, if:

- The individual organizations maintain separate plans;
- The plans contain substantially similar provisions; and
- A centralized organization (such as a national headquarters or administrative committee) handles substantially all of discretionary authority for plan administration and operation.

If the group of related organizations also includes taxable entities, this election may apply to their plans that have substantially similar provisions.

Election of Optional Filing Cycles

An election to use filing Cycle A for all plans maintained by the members of a common controlled group must be made by the end of Cycle A (i.e., would have had to be made by January 31, 2007, for the EGTRRA Filing Cycle). All other elections must be made (i.e., signed and dated) by the end of the earliest cycle for which a determination letter application would have had to be submitted.

If members of a related group make a joint election, the election must list:

- All members of the group that are eligible for the election, including each member's EIN; and
- All qualified plans eligible for this election that are sponsored by each group member.

If a new member joins the group, that member must make an election within one year in order for the election to remain valid for all of the existing members.

If the parent in a controlled group or a centralized organization of a group of tax-exempt entities makes an election on behalf of all of the members of the group, the parent or centralized organization must maintain all the required information. However, its election may include a provision applying the election to all eligible plans maintained by subsidiaries or entities added to the group in the future, and revoking the election for all subsidiaries or entities that leave the group in the future. The parent or centralized organization must maintain an up-to-date list of all participating members and their eligible plans.

Every time a group member files a request for a determination letter for a plan covered by one of these elections, it must include with its application a copy of the election, along with an updated list of current information. In the case of a joint election, any new member elections must also be included.

Other Special Situations

In addition, special filing rules apply to [merger or acquisition situations](#), [changes in plan sponsorship](#), [plan spin-off situations](#), changes in a plan's status as a multiemployer or multiple employer plan, and [situations where individually-designed plans are replaced with prototype or volume submitter plans or prototype or volume submitter plans are amended to become individually-designed plans](#). For more information about these special rules, please see the appropriate "related document."

Off-Cycle Filings

In general, there will be no advantage in requesting a determination letter at any time other than during the applicable filing cycle. Determination letters now routinely expire at the end of the cycle that is more than 12 months after the date the determination letter application is received.

For example, if a multiemployer plan sponsor files a determination letter request on July 1, 2013, seven months before the start of the applicable filing cycle, the plan will not be able to rely on that letter after January 31, 2015.

In addition, the IRS generally will not review off-cycle determination applications until all on-cycle requests have been reviewed and processed. However, Revenue Procedure 2007-44 now recognizes some special circumstances where off-cycle applications will be given the same priority as on-cycle applications:

- **Terminating plans** that file determination applications no later than the later of (a) one year from the plan termination effective date, or (b) one year from the date on which the action terminating the plan is adopted, but in no event later than 12 months from the date of distribution substantially all plan assets.
- **New individually-designed plans** whose next on-cycle filing period ends at least two years after the end of the filing period in which the determination request is made.
- Situations involving an **urgent business need**, as determined by the IRS based on all relevant facts and circumstances.

Cumulative Lists

Originally, the IRS had intended to publish a "Cumulative List of Changes in Plan Qualification Requirements" in November of each year. This List identifies the qualification requirements and other published guidance that the IRS will consider in reviewing plans with remedial amendment cycles ending on January 31 of the second year following the publication of the List. *For example, the 2005 Cumulative List,*

published as [Notice 2005-101](#), was used in reviewing Cycle A individually-designed plans during the EGTRRA filing cycle ending on January 31, 2007. The 2004 Cumulative List ([Notice 2004-84](#)) was used in reviewing pre-approved defined contribution plans that received their opinion and advisory letters on March 31, 2008.

However, due to the volume of guidance being issued, the IRS was never able to meet its self-imposed deadline for publishing these Cumulative Lists. As a result, Revenue Procedure 2007-44 provides that the IRS plan document reviews will not take into consideration any:

- Regulatory or related guidance published, or new laws enacted, after the October 1 immediately preceding the date the Cumulative List is issued;
- Qualification requirements that become effective in a calendar year after the calendar year in which the submission period begins; or
- Laws that become effective in the year the submission period begins, for which no guidance is identified on the Cumulative List.

Of course, terminated plans must be amended to reflect all qualification requirements that apply as of the plan termination date, including requirements that do not appear on the most current Cumulative List.

The Cumulative List used to review determination letter requests for pre-approved plans is determined by the type of application form (Form 5307 or 5300) used to request the determination. For more information, refer to our April 2008 *Compliance Bulletin*, [“IRS Provides Timeline for Adoption of Certain Pre-Approved EGTRRA Plan Documents.”](#)

Discretionary and Interim Amendments

Even though plan sponsors only have to file their plans with the IRS every five or six years, they may need to amend them more frequently than that. Specifically, plans will have to be amended to reflect discretionary changes to the plan design and to reflect certain statutory or regulatory changes.

In general, *discretionary amendments* must be adopted by the end of the plan year in which the amendment is effective.

Amendments to reflect statutory or regulatory changes (“*interim amendments*”) generally must be adopted by the later of:

- The due date, including extensions, for filing the employer’s tax return for the tax year that includes the first day of the plan year in which the amendment is effective; or
- The last day of the plan year in which the amendment is effective.

Interim amendments to multiemployer or multiple employer plans must be adopted by the last day of the tenth month following the last day of the plan year in which the change was effective.

Special amendment adoption deadlines also apply to governmental plans and plans maintained by tax-exempt employers, including church plans:

For governmental plans, the deadlines for adopting both discretionary and interim amendments is the later of (a) the standard deadlines, described above, or (b) the last day of the next regular legislative session beginning after the amendment’s effective date in which the governing body with authority to amend the plan can consider a plan amendment under applicable laws.

Tax-exempt employers that file a Form 990 series return must adopt interim amendments by the later of:

- The later of (a) the 15th day of the 10th month after the end of the employer's tax year, or (b) the due date, including requested extensions, for filing the Form 990 series return for the tax year that includes the first day of the plan year in which the amendment is effective; or
- The last day of the plan year in which the amendment is effective.

Tax-exempt employers that do not file a Form 990 series return must adopt interim amendments by the later of:

- the 15th day of the 10th month after the end of the employer's tax year that includes the first day of the plan year in which the amendment is effective; or
- The last day of the plan year in which the amendment is effective.

The IRS now provides a list of [Recent Guidance that May Require Interim or Discretionary Amendments](#) on its Website.

Relief for PPA Amendments

In general, plan sponsors must adopt amendments reflecting the provisions of the Pension Protection Act of 2006 (PPA) no later than the last day of the first plan year beginning on or after January 1, 2009. Sponsors of governmental plans have until the last day of the first plan year beginning on or after January 1, 2011, to adopt these amendments. Revenue Procedure 2007-44 clarifies that these special amendment deadlines apply to both interim and discretionary amendments.

Next Steps

Prudential Retirement has received the EGTRRA opinion and advisory letters for our defined contribution prototype and volume submitter plans. We are currently working with our document vendors to develop procedures for producing EGTRRA plan restatements and will be communicating with plan sponsors regarding our restatement timetable. Our defined benefit volume submitter document was submitted to the IRS for its advisory letter during the amendment cycle ending on January 31, 2008, but may not be available for employer adoption or re-adoption until 2010. In the meantime, we are prepared to provide drafts of interim and discretionary amendments that may be needed to keep these plans in formal compliance with new laws or regulations or plan design changes.

If Prudential provides document services for your plan and your amendment deadline is determined by reference to your EIN, it is important that we have your correct EIN on file, so that we can contact you in the appropriate timeframe regarding required plan restatements. For these purposes, it is important to let us know if either of the special controlled group elections is made, or if there has been an employer merger or acquisition, change in plan sponsorship or plan spin-off that affects the EIN associated with your plan.

If you have any questions about the remedial cycles or their effect on your plan, please contact your Prudential Retirement representative for assistance.

Pension Analyst by Prudential Retirement

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