

SECTION 1. PURPOSE

This revenue procedure modifies Rev. Proc. 2007-44, 2007-2 C.B. 54, to provide that the sponsor of an individually designed governmental plan within the meaning of § 414(d) (“governmental plan”) may elect Cycle E (instead of Cycle C) as the second remedial amendment cycle for the plan by filing a determination letter application for the plan during the one-year submission period for the second Cycle E (February 1, 2015 through January 31, 2016) instead of the second Cycle C (February 1, 2013 through January 31, 2014). This modification applies only to the second remedial amendment cycle.

SECTION 2. BACKGROUND

.01 Section 401(b) provides a remedial amendment period during which a plan may be amended retroactively to comply with the qualification requirements of § 401(a). Section 1.401(b)-1 of the Income Tax Regulations describes the disqualifying provisions that may be amended retroactively and the remedial amendment period during which retroactive amendments may be adopted. The regulations also grant the Commissioner the discretion to designate certain plan provisions as disqualifying provisions.

.02 Section 1.401(b)-1(f) provides that the Commissioner may extend the remedial amendment period at the Commissioner’s discretion.

.03 Rev. Proc. 2007-44 provides a system of staggered, cyclical remedial amendment periods under § 401(b). Under this system, every individually designed plan has a five-year remedial amendment period or cycle, and every pre-approved plan (that is, a master and prototype or volume submitter plan) has a six-year remedial amendment period or cycle. In general, Rev. Proc. 2007-44 extends the remedial amendment period for any disqualifying provision to the end of a plan’s remedial amendment cycle that includes the date on which the remedial amendment period with respect to the provision would otherwise end under § 1.401(b)-1.

.04 The five-year remedial amendment cycle applicable to an individually designed plan is generally based on the sponsoring employer’s taxpayer identification number. However, the applicable cycle for all individually designed governmental plans under Rev. Proc. 2007-44 is Cycle C. The six-year remedial amendment cycle for pre-approved plans, including governmental plans that are pre-approved, is contained in section 18 of Rev. Proc. 2007-44.

.05 Rev. Proc. 2009-36, 2009-35 I.R.B. 304, modified Rev. Proc. 2007-44 to provide that the sponsor of an individually designed governmental plan could elect Cycle E (instead of Cycle C) as the initial remedial amendment cycle for the plan by submitting a

determination letter application for the plan during the initial Cycle E submission period (instead of the initial Cycle C submission period).

.06 Pursuant to Rev. Proc. 2007-44, the second Cycle C submission period begins February 1, 2013, and ends January 31, 2014. The second Cycle E submission period begins February 1, 2015, and ends January 31, 2016.

SECTION 3. OPTION TO ELECT CYCLE E AS INDIVIDUALLY DESIGNED GOVERNMENTAL PLAN'S SECOND REMEDIAL AMENDMENT CYCLE

.01 The Service recognizes that sponsors of governmental plans face unique issues in the process of securing approval for amendments from the governing body with authority to consider plan amendments during legislative sessions. In order to have greater flexibility to deal with these issues, the sponsor of an individually designed governmental plan may elect Cycle E (instead of Cycle C) as the plan's second remedial amendment cycle. The election is made by filing a determination letter application for the plan during the one-year submission period for the second Cycle E (February 1, 2015 through January 31, 2016). No election form or notice to the Service is required.

.02 If the sponsor of an individually designed governmental plan elects to file a determination letter application for the plan during the Cycle E submission period, all requirements for an individually designed plan submitted for a determination letter during the Cycle E submission period are applicable to the sponsor's plan, including the requirement to amend the plan for all applicable items on the Cycle E Cumulative List and the requirement to timely adopt any interim amendments that are required for a governmental plan during Cycle C and Cycle D.

.03 A sponsor's election of Cycle E, instead of Cycle C, as the second remedial amendment cycle for an individually designed governmental plan applies only to that plan and only to that cycle. For any subsequent remedial amendment cycle, the plan's cycle will revert to Cycle C. Therefore, if a sponsor of a governmental plan files a determination letter application for the plan during the second Cycle E submission period ending on January 31, 2016, the determination letter that is issued will expire at the end of the third Cycle C submission period (January 31, 2019).

.04. A determination letter issued to a sponsor of an individually designed governmental plan for the initial remedial amendment cycle ordinarily expires at the end of the second Cycle C (January 31, 2014), regardless of whether the sponsor elected Cycle E as the plan's initial cycle in accordance with Rev. Proc. 2009-36. This expiration date is hereby extended to the end of the second Cycle E (January 31, 2016) if the sponsor elects Cycle E as the plan's second remedial amendment cycle in accordance with this revenue procedure.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2007-44 is modified.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective on February 1, 2013.

DRAFTING INFORMATION

The principal author of this revenue procedure is Angelique Carrington of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the Employee Plans taxpayer assistance answering service at 1-877-829-5500 (a toll-free number) or e-mail Ms. Carrington at RetirementPlanQuestions@irs.gov.