

Revisions to the Employee Plans Determination Letter Program

Announcement 2015-19

PURPOSE

This announcement describes important changes to the Employee Plans determination letter program for qualified retirement plans. Based on the need of the Internal Revenue Service (IRS) to more efficiently direct its limited resources, effective January 1, 2017, these changes will eliminate the staggered 5-year determination letter remedial amendment cycles for individually designed plans and will limit the scope of the determination letter program for individually designed plans to initial plan qualification and qualification upon plan termination. This announcement also provides a transition rule with respect to the remedial amendment period for certain plans currently on the 5-year cycle. The IRS is requesting comments on specific issues relating to the implementation of these changes to the determination letter program. The changes to the determination letter filing procedures described in this announcement will be reflected in an update to Rev. Proc. 2007-44, 2007-2 C.B. 54, and in a successor to Rev. Proc. 2015-6, 2015-1 I.R.B. 194.

In addition to announcing changes that will be made to the determination letter program, this announcement provides that, effective July 21, 2015, the IRS will no longer accept determination letter applications that are submitted off-cycle, except as otherwise described below.

In connection with the modifications to the determination letter program described in this announcement, the Department of the Treasury (Treasury) and the IRS are considering ways to make it easier for plan sponsors to comply with the qualified plan document requirements. This may include, in appropriate circumstances, providing model amendments, not requiring certain plan provisions or amendments to be adopted if and for so long as they are not relevant to a particular plan (for example, because of the type of plan, employer, or benefits offered), or expanding plan sponsors' options to document qualification requirements through incorporation by reference.

BACKGROUND

Section 401(b) of the Internal Revenue Code (Code) provides a remedial amendment period during which a plan may be amended retroactively to comply with the Code's qualification requirements. Section 1.401(b)-1 describes the disqualifying provisions that may be amended retroactively and the remedial amendment period during which retroactive amendments may be adopted. Section 1.401(b)-1(f) provides that the Commissioner may extend the remedial amendment period at the Commissioner's discretion.

Revenue Procedure 2007-44 sets forth procedures for issuing determination letters and describes the 5-year remedial amendment cycle for individually designed

plans. Under these procedures, sponsors of individually designed plans generally are permitted to apply for determination letters once every 5 years. Section 5.03 of Rev. Proc. 2007-44 extends the remedial amendment period for the disqualifying provisions described in 5.03(1) and (2) to the end of a plan's applicable remedial amendment cycle. Section 9 of Rev. Proc. 2007-44 provides the rules and procedures for the 5-year remedial amendment cycles. In general, a plan's 5-year remedial amendment cycle is determined by reference to the last digit of the employer identification number of the employer that sponsors the plan.

Section 5.02 of Rev. Proc. 2007-44 provides that an interim amendment is a plan amendment with respect to a disqualifying provision described in section 5.01(1) or (2) of that revenue procedure. Generally, pursuant to Section 5.05 of Rev. Proc. 2007-44, interim amendments must be adopted by the later of (1) the due date (including extensions) for filing the income tax return for the employer's taxable year that includes the date on which the remedial amendment period begins, or (2) the last day of the plan year that includes the date the remedial amendment period begins.

Under section 14.01 of Rev. Proc. 2007-44, a plan's determination letter application is filed off-cycle if it is submitted anytime other than during the last 12-month period of a plan's remedial amendment cycle (that is, the 12-month period ending on January 31 of the last year of the cycle).

CHANGES TO THE DETERMINATION LETTER PROGRAM

Elimination of 5-Year Remedial Amendment Cycles

Effective January 1, 2017, the IRS will eliminate the staggered 5-year remedial amendment cycles for individually designed plans. As of that date, the IRS will no longer accept determination letter applications based on the 5-year remedial amendment cycles. However, sponsors of Cycle A plans, described in section 9.03 of Rev. Proc. 2007-44, will continue to be permitted to submit determination letter applications during the period beginning February 1, 2016, and ending January 31, 2017.

Effective January 1, 2017, a sponsor of an individually designed plan will be permitted to submit a determination letter application for a plan on initial plan qualification (that is, a plan for which a Form 5300, *Application for Determination for Employee Benefit Plan*, has not been filed or for which a Form 5300 has been filed but a determination letter was not issued with respect to the plan, regardless of when the plan was adopted) and for qualification upon plan termination. In addition, a sponsor will be permitted to submit a determination letter application in certain other limited circumstances that will be determined by Treasury and the IRS. Treasury and the IRS intend to request comments periodically from the public regarding the other limited circumstances under which a plan sponsor will be eligible to apply for a determination letter. Treasury and the IRS will identify those circumstances in published guidance on a periodic basis.

Transition Period for Individually Designed Plans

Section 5.03 of Rev. Proc. 2007-44 extends the remedial amendment period for disqualifying provisions described in section 5.03(1) and (2) to the end of a plan's applicable remedial amendment cycle. As a result of the elimination of the 5-year remedial amendment cycles, the extension of the remedial amendment period provided in section 5.03 will not be available after December 31, 2016, and the remedial amendment period definition in § 1.401(b)-1 will apply. However, the Commissioner intends to extend the remedial amendment period for individually designed plans to a date that is expected to end no earlier than December 31, 2017.

Immediate Elimination of Off-Cycle Determination Letter Applications

Effective July 21, 2015, through December 31, 2016, the IRS will no longer accept off-cycle determination letter applications, as defined in section 14 of Rev. Proc. 2007-44, except for determination letter applications for new plans, as defined in section 14.02(2) of Rev. Proc. 2007-44, and for terminating plans.

REQUEST FOR COMMENTS

The IRS requests comments on the following issues:

(1) What changes should be made to the remedial amendment period that would otherwise apply to individually designed plans under § 401(b)?

(2) Treasury and the IRS have received numerous comments concerning the rules relating to interim amendments, as described in section 5 of Rev. Proc. 2007-44. In view of the changes being made to the determination letter program, what additional considerations should be taken into account in connection with the current interim amendment requirement?

(3) What guidance should be issued to assist plan sponsors that wish to convert an individually designed plan into a pre-approved plan?

(4) What changes should be made to other IRS programs to facilitate the changes described in this announcement, including revisions to the Employee Plans Compliance Resolution System set forth in Rev. Proc. 2013-12, 2013-4 I.R.B. 313, as modified by Rev. Proc. 2015-27, 2015-16 I.R.B. 914, and Rev. Proc. 2015-28, 2015-16 I.R.B. 920?

Comments may be submitted in writing on or before October 1, 2015. Comments should be mailed to Internal Revenue Service, CC:PA:LPD:PR (Announcement 2015-19), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044, or sent electronically to notice.comments@irs.counsel.treas.gov. Please include "Announcement 2015-19" in

the subject line of any electronic communications. Alternatively, comments may be hand delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to CC:PA:LPD:PR (Announcement 2015-19), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, D.C. All comments will be available for public inspection and copying.

The principal author of this announcement is Angelique Carrington of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this announcement, contact Ms. Carrington at (202) 317-4148 (not a toll-free number).