

## **Third Six-Year Remedial Amendment Cycle for Pre-approved Defined Benefit Plans: Issuance of Opinion Letters, Plan Adoption Deadline, and Opening of Determination Letter Program**

### **Announcement 2023-6**

The Internal Revenue Service (IRS) intends to issue opinion letters for pre-approved defined benefit plans that were updated for changes in plan qualification requirements listed in Notice 2020-14, 2020-13 I.R.B. 555 (the 2020 Cumulative List) and that were filed with the IRS during the third six-year remedial amendment cycle under the remedial amendment cycle system for pre-approved plans established under Rev. Proc. 2016-37, 2016-29 I.R.B. 136 (newly approved plans). The IRS expects to issue the letters on February 28, 2023, or, in some cases, as soon as possible thereafter.

An employer intending to maintain a pre-approved plan for the third six-year remedial amendment cycle for defined benefit plans must adopt a newly approved plan on or before March 31, 2025. During the period beginning April 1, 2023, and ending March 31, 2025, the IRS will accept an application for an individual determination letter from an adopting employer eligible to submit a determination letter request under the third six-year remedial amendment cycle for defined benefit pre-approved plans.

### *Background*

Rev. Proc. 2016-37 describes a staggered remedial amendment system for pre-approved plans that are qualified under § 401(a) of the Internal Revenue Code. The revenue procedure provides separate six-year remedial amendment cycles for pre-approved defined benefit and pre-approved defined contribution plans. Section 16 of Rev. Proc. 2016-37 provides that the third six-year remedial amendment cycle for pre-approved defined benefit plans ends on January 31, 2025. Section 16 further provides that the IRS may revise the cycle dates to respond to changing circumstances and the needs of plan sponsors and that any such revision will be announced in guidance published in the Internal Revenue Bulletin.

Rev. Proc. 2017-41, 2017-29 I.R.B. 92, modifies the pre-approved letter program by combining the former master and prototype and volume submitter programs into a single opinion letter program. Under this program, providers of pre-approved plans may continue to apply for new opinion letters once every six years. Rev. Proc. 2017-41 sets forth the procedures for providers to obtain opinion letters for qualified pre-approved plans submitted with respect to the third (and subsequent) six-year remedial amendment cycles.

In order to receive opinion letters with respect to the third six-year remedial amendment cycle, Rev. Proc. 2016-37 and the 2020 Cumulative List require that providers update their pre-approved defined benefit plans for changes in plan qualification requirements set forth in the 2020 Cumulative List.

Rev. Proc. 2016-37 and Rev. Proc. 2017-41 provide that when the review process for a cycle of pre-approved plans has neared completion, the IRS will announce the date by which an adopting employer must adopt a newly approved plan. Depending on the date the review process is completed, an adopting employer will have approximately two years to adopt a newly approved

plan and, if otherwise eligible, apply for an individual determination letter.

#### *Deadline for Employer Adoption of Newly Approved Plans*

The end of the third six-year remedial amendment cycle for pre-approved defined benefit plans is extended to March 31, 2025. An adopting employer that has a defined benefit plan that is eligible for the six-year remedial amendment cycle system under section 19 of Rev. Proc. 2016-37, and that adopts a newly approved plan on or before March 31, 2025, will be considered to have adopted the plan within the third six-year remedial amendment cycle.

#### *Determination Letter Program for Adopters of Newly Approved Plans*

An adopting employer of a newly approved plan may apply for an individual determination letter (if otherwise eligible) during the period beginning April 1, 2023, and ending March 31, 2025. Additional information regarding individual determination letter applications for pre-approved plans, including guidance on employer eligibility to apply for a determination letter for a pre-approved plan and the requirements for applications filed on Form 5307 (or Form 5300, if applicable), may be found in Rev. Proc. 2023-4, 2023-1 I.R.B. 162, including sections 8, 12, and 13.

#### *Paperwork Reduction Act*

The collection of information contained in Rev. Proc. 2017-41 with respect to the pre-approved plan program has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1674.

#### *Drafting Information*

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