Plan Qualification, Rev. Proc. 2007-44

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INTERNAL REVENUE SERVICE
TAX EXEMPT AND GOVERNMENT ENTITIES

Overview

Introduction

This chapter explains Revenue Procedure 2007-44, including the general remedial amendment period concepts and the remedial amendment cycles for both individually designed plans and pre-approved plans. The chapter will also explain when an interim amendment is required. This chapter is organized in the same way as the Rev. Proc. 2007-44 and each section refers to the section in this revenue procedure.

Objectives

At the end of this chapter, you will be able to:

- Describe the remedial amendment concepts,
- Describe the remedial amendment period (RAP),
- Identify the remedial amendment cycles (RAC) for both individually designed and pre-approved plans,
- Identify when an interim amendment is required, and
- Describe on cycle and off cycle determination letter filings.

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Cyclical Remedial Amendment Periods

Introduction

Revenue Procedure 2005-66 established a system of cyclical remedial amendment periods for individually designed and preapproved qualified plans. Revenue Procedure 2007-44 updates and supersedes 2005-66. We will note the relevant changes of Revenue Procedure 2007-44 in this chapter.

Two important concepts to keep in mind:

- Remedial Amendment *Period* – is the time that a plan has to fix its disqualifying language.
- Remedial Amendment *Cycle* – is the time that a plan submits for a determination letter application and fix the plan's disqualifying language.

However, remember that obtaining a determination letter is voluntary and is not required in order for a plan to be qualified. If a plan does not have a determination letter, an agent should verify that the plan complies with all of the qualification requirements in the year of examination. For example, if the 2010 plan year is being examined, the agent should make sure that the plan complies with GUST, EGTRRA and PPA, as well as the other requirements listed on the 2009 cumulative list.

Chapter Organization

For most of the chapter, you will see a reference to section numbers on the left-hand side of each block of information. The section numbers refer to the section in Revenue Procedure 2007-44. For example, if you see section 2.08, you can refer to section 2.08 in Revenue Procedure 2007-44 for more information.

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Cyclical Remedial Amendment Periods, Continued

Pre-approved Plans

Pre-approved M&P and Volume Submitter (VS) plans generally have a regular, 6-year remedial amendment *cycle*. The applicable cycle depends on whether the plan is a defined contribution plan or a defined benefit plan. DC plans all have the same 6-year cycle, and DB plans all have the same 6-year cycle.

After the IRS reviews the specimen or lead plan, adopting employers have a 2-year period to adopt the pre-approved plan.
As a result, sponsors, practitioners, as well as adopters of preapproved plans generally need to apply for a new opinion, advisory, or determination letter only once every 6 years.

Pre-approved Plans

Master and Prototype (M&P)

An M&P plan consists of a basic plan document and an adoption agreement. The basic plan document contains non-elective provisions. The adoption agreement contains elective provisions that an adopting employer selects. An M&P may be standardized or non-standardized (see Revenue Procedure 2011-49, sections 4.09 and 4.10).

Standardized M&P

A standardized plan is a plan designed to satisfy the qualification requirements solely based on its terms. An employer who adopts a standardized pre-approved plan can rely on the opinion letter issued to the pre-approved plan sponsor as if it were its own determination letter.

Non-Standardized M&P

A non-standardized plan is a plan that provides plan design choices and elective provisions that do not ensure compliance with the nondiscrimination requirements (see Revenue Procedure 2011-49, section 19).

Pre-approved Program

The M&P program involves M&P mass submitters, M&P sponsors and adopting employers. The IRS issues an opinion letter to an M&P sponsor on the acceptability of the M&P plan's form. The sponsor then makes its plan or plans available for employers to adopt. See section 4 of Revenue Procedure 2011-49.

Mass Submitters

M&P Mass Submitter - An "M&P mass submitter" is any person that

(1) Has an established place of business in the United States where it is accessible during every business day and

(2) Submits opinion letter applications on behalf of at least 30 unaffiliated sponsors each of which is sponsoring, on a word-for-word identical basis, the same basic plan document. A flexible plan (as defined in section 12.03(1)) that is adopted by a sponsor will be considered a word-for-word identical plan.

For more information, please see section 4.08 of Revenue Procedure 2011-49.

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Pre-approved Plans, Continued

Sponsor

A "sponsor" is any person that

(1) Has an established place of business in the United States where it is accessible during every business day and

(2) Represents to the Service that it has at least 30 employer-clients each of which is reasonably expected to adopt the sponsor's basic plan document.

For more information, please see section 4.07 of Revenue Procedure 2011-49.

Volume Submitter (VS)

A VS plan is a specimen plan (sample plan) of a VS practitioner that its employer-clients adopt on an identical or substantially identical basis. It consists of a specimen plan document that offers choices over plan terms and a trust or custodial account. It may or may not have an adoption agreement.

The VS program involves mass submitters, VS practitioners and adopting employers. The IRS issues advisory letters to VS practitioners on the acceptability of the specimen plans' form. The practitioner then makes its plan or plans available for employers to adopt. See section 13 of Revenue Procedure 2011-49.

General Remedial Amendment Period Concepts

Section 2 of Rev. Proc. 2007-44

Section 2 of Rev. Proc. 2007-44 provides the background with respect to the remedial amendment period ("RAP") and provides a history of various published guidance issued before Rev. Proc. 2007-44. This section is important because it reviews remedial amendment concepts that will be used in various parts of the revenue procedure.

Section 2.01- Overview of the Remedial Amendment Period

A remedial amendment *period* is the time during which a plan may be amended retroactively to comply with the qualification requirements. The regulations describe:

- The disqualifying provisions that may be amended retroactively, and
- A plan's remedial amendment *period* during which the plan can adopt retroactive amendments (Code section 401(b)).

The Commissioner can also:

- Designate certain plan provisions as disqualifying provisions, and
- Extend the remedial amendment period.

Section 2.02

A plan that fails to satisfy the requirements of IRC section 401(a) because of a disqualifying provision does not have to make a corrective amendment until the last day of the remedial amendment period. However, the amendment must be made retroactively effective to the beginning of the remedial amendment period (Regs. Section 1.401(b)-1).

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General Remedial Amendment Period Concepts, Continued

Section 2.02 – Disqualifying Provision

There are two types of disqualifying provisions:

- A provision, omission, or amendment that causes the plan to violate the current qualification requirements
- A current provision that does not meet a change in the law or other guidance.

How a Plan can have a Disqualifying Provision

A disqualifying provision can be:

- Plan language in a new plan,
- The absence of required plan language in a new plan,
- An amendment to an existing plan which causes the plan to be disqualified,
- A plan provision that the Commissioner designates as a disqualifying provision that:
  - results in the plan's failure to satisfy the qualification requirements because such requirements have changed, or
  - is integral (related) to a qualification requirement that has changed.

Integral Requirement

A requirement that is integral to a qualification requirement is a requirement that is necessary to carry out or comply with a qualification requirement. For example, section 417(e) provides limitation on cash outs, and requires a present value calculation to determine the amount that can be distributed without the employee's consent. The assumptions that are used to carry out section 417(e) are integral requirements because these assumptions are essential to the present value calculation.

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General Remedial Amendment Period Concepts, Continued

Different Remedial Amendment Periods

There are different remedial amendment periods for different situations:

- A new plan,
- An amendment, or
- A change in qualification requirements.

Section 2.03 – Remedial Amendment Period - New Plan

A new plan must be adopted by the last day of the plan year. The RAP does not begin until the plan is established.

The remedial amendment period for a new plan with a disqualifying provision:

- Begins on the plan's effective date, and
- Ends on the later of:
  - the due date, including extensions, of the employer's tax return for the tax year in which the plan is effective, or
  - the last day of the plan year in which the plan is effective.

The extensions of the employer's tax return is only taken into account if the employer applies for the extension. Thus, if an employer does not obtain an extension for the taxable year in which the remedial amendment period ends, the remedial amendment period ends on the due date of the employer's tax return without regard to any extensions.

If the new plan is maintained by more than one employer, the plan does not need to be amended until the last day of the 10th month after the plan year that includes the plan's effective date.

Treas. Reg. Section 1.401(b)-1(d)(4) provides that a master or prototype plan shall not be considered to be a plan maintained by more than one employer. In addition, whether or not a plan is maintained by more than one employer shall be determined without regard to section 414(b) and (c). If a plan is maintained solely by an affiliated group of corporations that meet certain conditions, the plan shall be deemed to be maintained by one employer.

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General Remedial Amendment Period Concepts, Continued

Section 2.04 – Remedial Amendment Period - Plan Amendment

For a disqualifying plan amendment to an existing plan, the remedial amendment period:

- Begins on the earlier of the amendment's:
  - adoption date, or
  - effective date.
- Ends on the later of:
  - the due date of the employer's tax return, including extensions, for the tax year in which the amendment is adopted or effective (whichever is later), or
  - the last day of the plan year of the later of:
    - the amendment's adoption date
    - the amendment's effective date

Again, the employer must apply for an extension in order for the extension to be taken into account with respect to the end of the remedial amendment period.

If more than one employer maintains the plan, the plan does not need to be amended until the last day of the 10th month after the plan year in which the amendment is adopted or effective (whichever is later). See Treas. Reg. 1.401(b)-1(d)(4) or above for an explanation of "more than one employer".

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General Remedial Amendment Period Concepts, Continued

Section 2.05 – Remedial Amendment Period – Change in Qualification Requirements

For qualification changes, the remedial amendment period:

- Begins on the date the change becomes effective with respect to the plan (see *note*), and
- Ends on the later of:
  - the due date, including extensions, of the employer's tax return for the tax year that includes the date that the remedial amendment period begins, or
  - the last day of the plan year in which the remedial amendment period begins.

Note: A plan must be amended by the end of the RAP for the qualification change or disqualifying provision. The amendment must be retroactively effective to the effective date of the plan qualification change.

For a disqualifying provision related or integral to a changed qualification requirement, the remedial amendment period begins on the first day the plan was operated using that provision as amended. A plan has to operate in accordance with its provisions. If the plan does not operate in accordance with the provision as amended for the change in the qualification requirement, the plan can be disqualified.

Example 1 General Rules for Remedial Amendment Period

An employer sponsors a profit-sharing plan. The employer's tax year runs July 1 through June 30 and the employer has a six-month extension for its tax return. The plan is a calendar-year plan.

A qualification change became effective January 1, 2007. The remedial amendment period for the qualification change begins on January 1, 2007.

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General Remedial Amendment Period Concepts, Continued

Example 1 – Analysis and Conclusion

RAP begins: This plan's RAP began when the qualification change became effective - January 1, 2007.

RAP ends on the later of:

- The due date, including extensions of the employer's income tax return for the tax year that includes the date on which the remedial amendment period begins.
  - *The RAP began on January 1, 2007. The employer's tax year that included such date is the tax year ending June 30, 2007. The due date, including extensions, for this tax year is March 15, 2008. (The due date without extensions was September 15, 2007, plus six-month extension = March 15, 2008).* OR
- The last day of the plan year in which the remedial amendment period begins.
  - *Because the remedial amendment period began on January 1, 2007, the last day of the plan year which included that date was December 31, 2007.*

For the change effective on January 1, 2007, this plan has to be amended by March 15, 2008 *(which is the later of the above two dates: March 15, 2008 or December 31, 2007).*

Section 2.06

The Commissioner may extend the remedial amendment period at his discretion. Note that there have been numerous extensions for various provisions. For example, Revenue Procedure 2004-25 extended the RAP for disqualifying provisions that were put into effect after December 31, 2001. The revenue procedure extended the RAP for these provisions to the end of the EGTRRA RAP. There have been many other extensions issued by Notices for other provisions.

EGTRRA RAP and Other Guidance

Section 2.07 Notice 2001-42-Extension of the EGTRRA RAP

Notice 2001-42 provided a remedial amendment period for EGTRRA, until the end of the 2005 plan year, in which plan sponsors should have adopted any needed retroactive remedial plan amendments for EGTRRA.

To be eligible for the EGTRRA remedial amendment period, a plan sponsor had to timely adopt EGTRAA good-faith amendments. In general, a good-faith EGTRRA plan amendment is adopted timely if adopted by the later of:

- The last day of the plan year that includes the effective date of the EGTRRA change, or
- The end of the plan's GUST remedial amendment period.

Note that the employer's ability to rely on a favorable determination letter will not be adversely affected because the employer timely adopted good faith amendments. Thus, the employer still has reliance on the determination letter even if the employer later adopts good faith amendments.

GUST Remedial Amendment Period

The GUST remedial amendment period generally ended on the later of:

- February 28, 2002 or
- By the end of the plan's 2001 plan year.

However, Master and Prototype (M&P) and Volume Submitter (VS) plans were eligible for an extended GUST remedial amendment period under Revenue Procedure 2002-73. The end of the RAP for these plans was September 30, 2003.

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EGTRRA RAP and Other Guidance, Continued

Section 2.08 - Other Amendments

The EGTRRA RAP is also the time that plans can retroactively correct for:

- Minimum required distribution final regulations
- Applicable mortality tables
- Deemed section 125 compensation.

The extended EGTRRA RAP is available for these other non-EGTRRA law changes only if a plan sponsor timely adopts them by the time specified in their respective revenue procedure (401(a)(9) final regs) or revenue ruling (applicable mortality tables and deemed section 125 compensation). See Rev. Rul. 2001-62 (for the applicable mortality table), Rev. Rul. 2002-27 (deemed section 125 compensation) and Rev. Proc. 2002-29, as modified by Rev. Proc. 2003-10 (for the 401(a)(9) regulations) for further information.

Section 2.09 – Revenue Procedure 2004-25

The extended EGTRRA remedial amendment period was also granted to disqualifying provisions that did not satisfy the qualification requirements in effect at that time:

- In new plans or adopted by existing plans, and
- Made after December 31, 2001.

(Revenue Procedure 2004-25)

For example, suppose an employer amended the plan in 2002 to change the eligibility requirements to 3 years. This change violated the section 410(a) and the amendment is a disqualifying provision. The extended EGTRRA RAP can be used to correct this provision. However, if the plan was amended to change the eligibility requirement from 1 year to 6 months, this is not a disqualifying provision and no correction is available.

This extension of the EGTRRA RAP was to ensure that a plan sponsor did not need to apply for more than one determination letter during the EGTRRA remedial amendment period simply because they have adopted a new plan or voluntarily adopted non-EGTRRA plan amendments, which had disqualifying language, after December 31, 2001.

Preapproved DC Plans

Section 2.10

The IRS published the 2004 cumulative list, containing the qualification requirements that pre-approved DC plans could use to ensure their plans were qualified when submitted under the first 6-year remedial amendment cycle for pre-approved plans (Notice 2004-84).

Section 2.11 – Revenue Procedure 2005-16

The IRS began accepting applications for opinion and advisory letters for pre-approved DC plans on February 17, 2005 using the 2004 cumulative list. Their submission period ended on January 31, 2006.

IRS listed the rules for opinion and advisory letters for pre-approved plans. (Revenue Procedure 2005-16).

The IRS issued opinion and advisory letters on March 31, 2008 for these pre-approved DC plans. Employers were generally required to adopt these M&P or VS plans by April 30, 2010 (Announcement 2008-23). However, certain plans were able to file for a determination letter after April 30, 2010. In Part II of Employee Plans News, No. 2010-07 (Aug. 20, 2010), "*Post April 30, 2010 Issues Impacting Adopting Employers Who Use IRS Pre-Approved Plan Documents,"* the Service indicated that these types of applications would be accepted and treated as on-cycle submissions.

2005-16 – Ability to Amend Plans on Behalf of Adopting Employers

M&P sponsors must be able to adopt amendments for changes in the code or regulations which will apply to all adopting employers.

The M&P sponsor must make reasonable and diligent efforts to ensure that adopting employers:

- Have actually received the amendments
- Are aware of all plan amendments
- Complete and sign new adoption agreements when necessary.

(Revenue Procedure 2006-16 section 5.1)

A volume submitter plan sponsor may, but is not required to, include the authority to amend the plan on behalf the adopting employers. A list is available as to who can adopt and who cannot adopt on behalf of the employer for VS plans.

Remedial Amendment Cycles Begin under Rev. Proc. 2005-66

Section 2.13- Revenue Procedure 2005-66

Revenue Procedure 2005-66 established a system of remedial amendment periods based on cycles for individually designed plans and pre-approved qualified plans. Section 5.05 of Revenue Procedure 2005-66 also provided deadlines to timely adopt interim or discretionary amendments to plans.

Pre-approved plans:

M&P plan sponsors and VS practitioners had until January 31, 2006, to submit their DC plans to IRS to be reviewed for EGTRRA and other items on the 2004 cumulative list.

Individually designed plans:

The IRS determination letter program for the initial remedial amendment cycle for individually designed plans opened on February 1, 2006 for Cycle A plans, with an EIN of either 1 or 6. IRS reviewed plans for EGTRRA and other items on the 2005 cumulative list.

Remedial Amendment Cycles under Rev. Proc. 2007-44

Introduction

The table below provides the remedial amendment cycles under Rev. Proc. 2007-44.

Individually Designed Plans under 2007-44

Individually designed plans have a 5-year staggered remedial amendment *cycle*. A plan's particular cycle depends on the last digit of the employer's EIN. There are five cycles: A through E, with some exceptions.

Last digit of EIN	Cycle	Initial cycle ends
1 or 6	**A**	**1/31/07**
2 or 7	**B**	**1/31/08**
3 or 8	**C**	**1/31/09**
4 or 9	**D**	**1/31/10**
5 or 0	**E**	**1/31/11**

Employers need to apply for new determination letters generally once every 5 years by the last day of their cycle to be able to rely on a determination letter. (section 9.01)

This chart is for Individually Designed Plans - 5-Year Remedial Amendment Cycle for Individually Designed Plans is posted on irs.gov/ep.

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Remedial Amendment Cycles under Rev. Proc. 2007-44,
Continued

EGTRRA, Section 7 -Rev. Proc. 2007-44

The remedial amendment *cycles* are coordinated with EGTRRA remedial amendment *periods* for both individually designed and pre-approved plans.

- The EGTRRA remedial amendment *period* for individually designed plans extends to the end of the initial 5-year remedial amendment *cycle*. Thus, a plan sponsor can wait to file their EGTRRA determination letter application until the 12-month period prior to the end of the plan's initial 5-year remedial amendment cycle.

  This extension includes any disqualifying provisions that did not satisfy the current qualification requirements. See above or Rev. Proc. 2004-25.

  This extension also includes plan provisions required or permitted under the section 401(a)(9) regulations, the applicable mortality table (Rev. Rul. 2001-62) and deemed section 125 compensation (Rev. Rul. 2002-27). For more information, see sections 2.07-2.09 of Rev. Proc. 2007-55.

- The EGTRRA remedial amendment *period* for pre-approved plans extends to the end of the initial 6-year remedial amendment *cycle* (see section 18.01).

Section 4, Rev. Proc. 2007-44, Cumulative List of Changes in Plan Qualification Requirements

Section 4.01 IRS Issues a Cumulative List

Each November, the IRS will publish an annual cumulative list of changes in the plan qualification requirements. The cumulative lists identify all changes in plan qualification requirements (statutory, regulatory and other published changes).

Section 4.02 IRS Reviews Plans Based on a Specific Cumulative List

IRS reviews plans submitted during a cycle based on the cumulative list issued in November through January time frame prior to the opening of the cycle. Each individually designed plan cycle begins February 1 and the IRS will use the cumulative list issued immediately before that February 1.

Example 2 Individually Designed Cumulative List

For Cycle A individually designed plans, the submission period began February 1, 2006 and ended January 31, 2007. The cumulative list that the IRS used to review these plans was the cumulative list issued prior to February 1, 2006, or the 2005 cumulative list.

Guidance Issued that the IRS will Consider

A plan can rely on a determination letter for guidance:

- Issued on or before the October 1 before the cumulative list is issued, and
- Effective *during* the calendar year of the cycle's opening.

The plan has reliance even if these issues are not yet listed on the cumulative list.

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Section 4, Rev. Proc. 2007-44, Cumulative List of Changes in Plan Qualification Requirements, Continued

Examples 4-6 For examples 4-6, the sponsoring employer is not part of a controlled group and each plan is an individually designed plan. All plans are on a calendar year basis. The cycle is based on the employer's EIN.

Example 4 An employer has an individually designed plan with an EIN ending in 7, which is Cycle B. This employer's submission period is February 1, 2007 through January 31, 2008. A qualification requirement became effective on April 1, 2007.

Because this guidance became effective *during* the submission period (February 1, 2007-January 31, 2008), the IRS will review the qualification requirement for this determination letter application and the qualification requirement needs to be in the plan document.

Example 5 An employer has an individually designed plan with an EIN ending in 4, which is Cycle D. This employer's submission period is February 1, 2009 through January 31, 2010. Regulations were issued on September 1, 2008, which had an effective date of July 1, 2009. These regulations were not on the cumulative list that was issued in November 2008.

Since the regulations were effective in 2009, or during the calendar year of the cycle's opening (February 1 2009 through January 31, 2010), IRS will review the plan for these regulations, and the plan has reliance on them even though they were not listed on the 2008 cumulative list.

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Section 4, Rev. Proc. 2007-44, Cumulative List of Changes in Plan Qualification Requirements, Continued

Section 4.03- Guidance that the IRS will not Consider

Although section 8 provides an exception for terminating plans, the IRS will not review any opinion, advisory or determination letter application for:

1. Guidance issued after the October 1 immediately before the cumulative list is issued,
2. Statutes enacted after the October 1 immediately before the cumulative list is issued,
3. Qualification requirements effective in a calendar year *after* the calendar year in which the submission period begins, and
4. Statutes *first effective* in the year in which the submission period begins for which there is no guidance identified on the cumulative list.

Distinction between Statutory and Regulatory Change

Note the difference between a statutory and regulatory change. The Service will review a plan with respect to a regulation that is effective in the calendar year of the submission period without being listed on the cumulative list. However, the Service will not review a statute that is first effective in the calendar year of the submission period for which there is no guidance on the cumulative list. This distinction is made because a statute changing a qualification requirement with no other guidance was not yet interpreted by the IRS. As a result, the Service will not review a plan which is affected by such a statute in the absence of any interpretive guidance.

Example 6 - Guidance Issued after October 1 --IRS Will not Review

An employer has an individually designed profit-sharing plan and has an EIN ending in 8. Thus, the plan is under Cycle C. The last day of this plan's EGTRRA RAC is January 31, 2009. The beginning of the submission period is February 1, 2008.

The 2007 cumulative list was used to review this Cycle C plan. The IRS will not consider any guidance issued after the October 1 before the date the cumulative list is issued. Thus, the IRS will not consider any guidance issued after October 1, 2007.

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Section 4, Rev. Proc. 2007-44, Cumulative List of Changes in Plan Qualification Requirements, Continued

Example 7

An employer with an EIN of five sponsors an individually designed plan. The plan is Cycle E. The submission period for a Cycle E plan was February 1, 2010-January 31, 2011

The IRS will not consider a qualification requirement effective in 2011 when reviewing a plan submitted in Cycle E, which began February 1, 2010 and is based on the 2009 Cumulative List. This requirement was effective in 2011, which is the calendar year *after* the calendar year in which the submission period begins.

Plan Sponsor must Identify Issues that IRS will not Rule on but are in the Plan

If a plan sponsor submits an application which contains the qualification requirements the IRS will not review (i.e. guidance issued after October 1st, etc.), the sponsor must identify those requirements in the plan or in a cover letter. The plan sponsor cannot rely on a determination letter for those requirements.

4.05 – IRS will not Review for PPA unless the Plan is a Pre-approved Plan DB Lead Plan

The IRS will not consider PPA '06 law changes when reviewing these plan types using the 2006 and 2007 cumulative lists:

- Individually designed plans (Cycles B & C)
- Multiple employer plans (Cycle B), and
- § 414(d) governmental plans (Cycle C).

Although the plan can amend for PPA '06, the plan sponsor must identify the PPA '06 plan amendments in the DL application. The plan cannot rely on the determination letter for PPA '06, even if it contains a caveat which references the PPA '06 amendment adoption date.

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4.05 – IRS will not Review for PPA unless the Plan is a Pre-approved Plan DB Lead Plan (continued)

If the sponsoring employer never filed for a DL, the plan sponsor would still be responsible for making the amendments required by the applicable cumulative list. If the sponsoring employer's EIN ends in 2, 3, 7 or 8, the plan would have been a Cycle B or C plan. However, the sponsoring employer may be required to make interim amendments to the plan, depending on the year of examination. Please see section 5 below for interim amendments.

Conversely, M&P and VS DB lead plans were required to include PPA '06 changes listed on the 2006 cumulative list that were effective in 2006 and 2007. These opinion/advisory letters may be relied upon for these PPA 06 provisions.

Example 8 - No Determination Letter was Filed

An employer sponsors an individually designed plan. The employer never filed for a determination letter. The plan is on a calendar year basis, and the year under examination is 2010. The employer's EIN is 7, making the plan a Cycle C plan.

For a Cycle C plan, the initial cycle ends on 1/31/09. The submission period began on February 1, 2008, and the 2007 cumulative list would have been used if the plan filed for a determination letter.

Upon examination, the plan is required to be updated for everything on the 2007 cumulative list, and any interim amendments that were required from the end of the initial cycle through the 2010 plan year. If the agent finds any disqualifying provision, the plan may be disqualified or put into audit CAP to correct the disqualifying provision.

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Section 4, Rev. Proc. 2007-44, Cumulative List of Changes in Plan Qualification Requirements, Continued

Example 9 -IRS will not Review for PPA for an Individually Designed Plan in Cycle

PPA ’06 changed a plan qualification requirement and the employer's EIN ends in 7, Cycle B. This plan’s submission period was from February 1, 2007 to January 31, 2008. The 2006 cumulative list is used for this plan.

Revenue Procedure 2007- 44 specifically states that IRS will not review for PPA'06 for individually designed plans using the 2006 and 2007 cumulative lists. Thus, the plan does not have to be amended for the PPA '06 requirements when submitting for a DL application.

Section 5, Adoption of Interim and Discretionary Plan Amendments

Interim Amendments – Overview

Interim amendments are required to keep a written plan document up to date between a plan's submission periods during the applicable remedial amendment cycles. Individually designed plans can have up to 5 years before a determination letter application is submitted to the Service. Remember, a submission period is the last 12 months of a plan's remedial amendment cycle, which is based on the employer's EIN.

Section 5.05 of Rev. Proc. 2007-44.provides the general deadline for timely adoption of an interim or discretionary amendment.

Two Specific Types of Disqualifying Provisions

So far, we have covered two specific types of disqualifying provisions:

1. Disqualifying provisions under EGTRRA (described in section 2.07 of Rev. Proc. 2007-44), including changes required by:
   - the regulations under section 401(a)(9),
   - the applicable mortality (Rev. Rul. 2001-62), and
   - the deemed section 125 compensation (Rev. Rul. 2000-27 (described in section 2.08 of Rev. Proc. 2007-44), and
2. Post 2001 disqualifying provisions that were not the result of a qualification change after December 31, 2001 (Rev. Proc. 2004-25 and section 2.09 of Rev. Proc. 2007-44).

These disqualifying provisions are not part of the type of disqualifying provisions that are subject to interim amendments.

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Section 5, Adoption of Interim and Discretionary Plan Amendments, Continued

Third Type of Disqualifying Provision - Section 5.01- Post EGTRRA Qualification Change

Under section 5.01 of Revenue Procedure 2007-44, there is a third type of disqualifying provision. This is a plan provision that:

1. Is a disqualifying provision as a result of a qualification change after December 31, 2001 or

2. Is integral to a qualification change after December 31, 2001, but only if the provision is integral to a plan provision that is a disqualifying provision as defined in (1) immediately above.

This type of disqualifying provision is subject to interim amendments.

Section 5.02-Definitions

Qualification Change	A qualification change after December 31, 2001 includes a statutory or regulatory change or a change provided in other published guidance.
Absence of a Provision	A disqualifying provision also includes the absence of a plan provision required by or, if applicable, integral to the applicable qualification change.
Interim Amendment	An amendment that addresses a disqualifying provision described in section 5.01(1) or (2) (the third type of disqualifying provision above) is an interim amendment.
When Interim Amendment Must be Made	A plan sponsor must make an interim amendment before the end of the plan's remedial amendment cycle for a plan provision (or the absence of one) that does not meet post EGTRRA qualification changes (5.01(1), or is related to such a change (5.01(2)). See section 5.05 for when a plan sponsor must adopt an interim amendment.

Section 5.03-Remedial Amendment Period Extension for Disqualifying Provisions

Extension to the end of the Remedial Amendment Cycle

The remedial amendment *period* for a disqualifying provision after December 31, 2001 that does not meet the current qualification requirements is extended to the end of the applicable remedial amendment *cycle* in section 6.01. This cycle "includes the date" on which the remedial amendment period would otherwise end if:

- The disqualifying provision was a provision of, or absent from, the new plan, and
- The plan was intended, in good faith, to be qualified.

Thus, if a new plan contains a disqualifying provision, and the plan was intended to be qualified in good faith, the new plan has until the end of the remedial amendment *cycle* to fix this disqualifying provision. To determine the applicable cycle, the end of the remedial amendment period has to be before the end of the remedial amendment cycle.

Example 10 RAP for a New Plan is Extended to the End of its RAC

An employer adopted an individually designed profit-sharing plan on January 1, 2005. The plan is on a calendar year basis. The employer is a calendar-year corporation. The plan had a vesting schedule that did not meet Code section 411(a). The employer's EIN ends in 6, so the plan is on Cycle A. The employer does not have an extension on the 2005 tax return.

The vesting schedule is a disqualifying provision because the plan language does not meet the Code requirements.

Continued on next page

Section 5.03-Remedial Amendment Period Extension for Disqualifying Provisions, Continued

Example 10 RAP for a New Plan is Extended to the End of its RAC (continued)

A new plan's remedial amendment period for a disqualifying provision ends on the later of:

- The due date, including extensions, of the employer's tax return for the tax year in which the plan is effective, *(March 15, 2006)* or
- The last day of the plan year in which the plan is effective *(December 31, 2005)*

The later of March 15, 2006 or December 31, 2005, is March 15, 2006. However, this plan may be amended to correct its incorrect vesting schedule until the last day of its initial remedial amendment cycle, January 31, 2007 because its remedial amendment period is extended to the end of its remedial amendment cycle.

Example 11 RAP for a New Plan is Extended to the End of its 2nd RAC

Same facts as previous example (EIN ends in 6 – Cycle A: February 1, 2006 – January 31, 2007) except that the plan's effective date was January 1, 2007. The end of this new plan's remedial amendment period is the later of:

- March 15, 2008, or
- December 31, 2007, or

...March 15, 2008.

This new plan contains a disqualifying provision (incorrect vesting schedule), and was intended to be qualified in good faith. The new plan has until the end of the remedial amendment *cycle* to fix this disqualifying provision.

To determine the applicable cycle, the end of the remedial amendment period has to be before the end of the remedial amendment cycle.
Because March 15, 2008, is **after** the initial RAC that ends January 31, 2007, the plan has until the next RAC (January 31, 2012) to correct the vesting schedule. The second RAC (January 31, 2012) includes the date on which this plan's remedial amendment period otherwise ends (March 15, 2008).

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Section 5.03-Remedial Amendment Period Extension for Disqualifying Provisions, Continued

Example 12 – RAP for a New Plan is Extended to the End of its 1st Cycle

Employer M is a C corporation. The last digit of the EIN is 7. The employer adopts a new plan on January 1, 2006. The plan is on a calendar year basis. The RAC for this plan is Cycle B. Since employer M timely adopted the plan in good faith with the intent of sponsoring a qualified plan, the initial RAC for the plan ends January 31, 2008.

Any remedial amendments required for the plan to correct a disqualifying provision must be adopted by January 31, 2008 unless an application for determination letter is submitted by that date.

The determination letter issued for the plan would apply as of the first day of the 2006 plan year. This plan's subsequent 5-year RACs end on January 31, 2013, January 31, 2018 etc.

Existing Plan-Section 5.03(1)

This same extension applies to a disqualifying provision that is an amendment to an existing plan if the amendment was timely adopted and in good faith with the intent of maintaining the qualified status of the plan.

Continued on next page

Section 5.03-Remedial Amendment Period Extension for Disqualifying Provisions, Continued

Example 13 - RAP extended to RAC for a Plan Amendment

Refer back to the vesting schedule example in Example 10 (EIN ends in 6 – Cycle A: February 1, 2006 – January 31, 2007), except that the plan's initial effective date was January 1, 1999. On January 1, 2007, the employer amended the plan to an incorrect vesting schedule. The end of the regular remedial amendment period to make correction would be March 15, 2008.

The plan has until the end of their RAC to make correction. To determine the applicable cycle, the end of the remedial amendment period has to be before the end of the remedial amendment cycle.

Because March 15, 2008, is after the initial RAC that ends January 31, 2007, the plan has until the next RAC (January 31, 2012) to correct the vesting schedule. The second RAC (January 31, 2012) includes the date on which this plan's remedial amendment period otherwise ends (March 15, 2008).

Section 5.03(2) - Employer Determines that an Interim Amendment is not Required.

The extension of the end of a plan's remedial amendment period to the end of its remedial amendment cycle also applies when the practitioner, sponsor or employer determines, reasonably and in good faith, that the plan did not require an interim amendment.

If the IRS determines that an interim amendment is required, the plan would still be eligible for the extension to the end of the remedial amendment cycle to correct the disqualifying provision.

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Example 14 RAC is Permitted to be used for Corrective Plan Amendment

Employer's EIN ends in 7 – Cycle B: February 1, 2007 – January 31, 2008. The employer adopts a new plan on January 1, 2006. On July 1, 2010, the employer starts to operate the plan in a way that is inconsistent with the written plan document but if the plan were retroactively amended to reflect this change, the plan would not violate section 411(d)(6). This change is unrelated to a change in qualification requirement or published guidance (discretionary). The change was from 1 year of service for eligibility purposes to 3 years of service for eligibility purposes. This change only applied to new employees hired after July 1, 2010.

To conform the plan document to the plan's operation, the employer adopts an amendment by December 31, 2010, that shows the change in operation. The amendment is adopted in good faith with the intent of maintaining the qualified status of the plan. The employer submits a DL application on or before the end of its second remedial amendment cycle, January 31, 2013.

The IRS, during its review of the determination letter application, finds that the adopted amendment caused the plan to fail the qualification requirements as of the date the amendment was first made effective *(July 1, 2010)*.

When the Plan Sponsor must Correct the Disqualifying Provision

Once the IRS informs the employer that the amendment is a disqualifying provision, the employer must adopt an amendment which corrects this provision by 91 days after the date of the DL. The amendment would be retroactively effective as of the date that the amendment was operationally put into place, July 1, 2010. The amendment changed the plan from requiring 3 years of service for eligibility to 1 year of service for eligibility. The employer must also correct its operation to the extent necessary to reflect the corrective amendment.

Section 5.04 and 5.05 - Adopting Interim Amendments

General Rule

A qualified plan must be operated in accordance with written plan documents. Thus, when there are statutory or regulatory changes on plan qualification requirements that will impact provisions of the written plan document, the plan sponsor must adopt an interim amendment by the deadline in section 5.05.

General Deadline for Adopting Interim Amendments

For a disqualifying provision due to a Post EGTRRA qualification change or a provision that is integral to a disqualifying provision, an interim amendment 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 on which the remedial amendment period begins.

The extension under section 5.03 does not apply to disqualifying provisions due to post EGTRRA qualification changes after December 31, 2001.

When Remedial Amendment Period Begins

The remedial amendment period begins on the date on which the qualification change becomes effective with respect to the plan.

For a provision that is integral or related to a qualification requirement that has been changed, the remedial amendment period begins on the first day on which the plan is operated in accordance with the provision as amended.

Example 15-Facts

Employer's EIN ends in 7 – Cycle B: February 1, 2007 – January 31, 2008. The employer adopts a new plan on January 1, 2006. There was a *qualification change* effective on January 1, 2007, which requires the plan sponsor to adopt an interim amendment. Both the employer and the plan are on a calendar year. The employer has an extension for its 2007 tax return.

Continued on next page

Section 5.04 and 5.05 - Adopting Interim Amendments,
Continued

Example-15 Remedial Amendment Period Begins

The remedial amendment begins on the date that the qualification change becomes effective, which is January 1, 2007. The employer's taxable year that includes the beginning of the remedial amendment period is the 2007 taxable year. Thus, when determining the end of the remedial amendment period, you look to the due date (including extensions) of the employer's 2007 tax year.

Example-15 Due Date for Adopting an Interim Amendment

The plan sponsor must adopt the interim amendment by the later of:

- The due date (including extensions) of the employer's tax return for the year *(2007)* that includes the date the remedial amendment period begins *(January 1, 2007) which is March 15, 2008 + 6 month extension = September 15, 2008),* or
- *The last day of the plan year that includes the remedial amendment period beginning date (January 1, 2007), which is December 31, 2007.*

The plan sponsor must adopt the interim amendment by the later of:

- September 15, 2008, or
- December 31, 2007.

Example 16-Facts

The RAC for plan Y is Cycle D. The initial RAC (the EGTRRA remedial amendment period) for plan Y ends on January 31, 2010. The employer updates the plan for its EGTRRA RAC that ends January 31, 2010 for qualification requirements listed on the 2008 cumulative list.

In November 2008, the IRS issues guidance that would affect this plan's qualification beginning in its 2009 plan year. IRS issued guidance is on the 2009 cumulative list.

Continued on next page

Example 16 Guidance is not Considered

The employer submits a determination letter application on July 1, 2009. This plan's 12 month period of its last year of its RAC begins on February 1, 2009. Because the guidance issued in November 2008 was after the October 1 before the 2008 cumulative list was issued, and was not listed on the 2008 cumulative list, the IRS will not consider the guidance in this DL review but will in the employer's subsequent remedial amendment cycle.

Example 16-Interim Amendment Required

However, to reflect this guidance, the employer must adopt an interim amendment timely and in good faith.

An employer (or sponsor or practitioner, if a pre-approved plan) must adopt an amendment by:

- The due date (including extensions) of the employer's income tax return for the employer's tax year that includes the date the remedial amendment period begins, *(The RAP begins on the effective date of this change, January 1, 2009 and the employer's tax return due date for its tax year that includes January 1, 2009, is March 15, 2010),* or
- The last day of the plan year that includes the date on which the remedial amendment period begins (*The RAP begins on the effective date of this change, January 1, 2009 and the last day of the plan year that includes this date is December 31, 2009).*

The later of March 15, 2010 and December 31, 2009 is March 15, 2010. Thus, this plan sponsor must adopt this interim amendment by March 15, 2010. The interim amendment will be reviewed in the DL application submitted in the subsequent 5-year RAC.

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Section 5.04 and 5.05 - Adopting Interim Amendments,
Continued

Example 17 Qualification Requirements Effective in a Calendar Year after the Submission Period Begins

DL review:
The same facts as the above example (Cycle D: February 1, 2009 – January 31, 2010), except that the IRS issued the guidance in September 2008, and it was effective for the 2010 plan year. Because this guidance was effective in a calendar year *(2010) after* the calendar year that the submission period began *(2009)* and was not identified on the applicable cumulative list *(2008)*, the IRS will not consider the guidance in its review until the employer's subsequent RAC.

Interim amendment:
However, to reflect this guidance, the employer must timely adopt an interim amendment in good faith – by the tax filing date including extensions for 2010. The interim amendment is effective on the first day of the 2010 plan year and will be reviewed in the DL application submitted in this plan's subsequent 5-year RAC.

Discretionary Amendment

A discretionary amendment must be adopted by the end of the plan year in which the plan amendment is effective.

Exceptions to Required Dates for Interim Amendments, Sections 5.06 and 5.07

Exceptions to Interim Amendment Requirement

There are exceptions to the general date that plan sponsors must adopt interim amendments for:

- Governmental plans and tax exempt employers (section 5.06)
- Discretionary amendments and other dates specified by statutes (section 5.07).

Section 5.06(1)- Governmental Plans

For governmental plans within the meaning of section 414(d) of the Code, the adoption deadline for interim amendments or discretionary amendment is the later of:

- The deadline that would apply under the regular applicable rules of section 5.05(1) (the RAP for interim amendments) and (2) (the RAP for discretionary amendments), and
- 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 the laws and procedures applicable to the governing body's deliberations.

Section 5.06(2) – Tax Exempt Employers

For a tax exempt employer, the adoption deadline for interim amendments is provided in section 2.05 as modified in this section 5.06(2).

For purposes of determining the tax filing deadline, the following due date language is substituted for the language under section 2.05(1) describing the due date (including extensions) for filing the income tax return of the employer's taxable year.

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Exceptions to Required Dates for Interim Amendments, Sections 5.06 and 5.07, Continued

Section 5.06(2) – Tax Exempt Employers (continued)

The due date for a tax exempt employer that files a Form 990 T (Form 990 or Form 990 EZ if no form 990 T is filed) is the later of:

- The 15th day of the 10th month after the end of the employer's tax year or
- The due date for filing the form 990 series (plus extensions).

The extension has to actually be applied for and granted for the extension to apply.

For a tax exempt employer that is not required to file a form 990 series return is the 15th day of the 10th month after the end of the employer's tax year.

The calendar year is treated as a tax year if the employer does not have a tax year.

Section 5.07(1) – Exceptions to 5.05 Amendment Deadlines

Section 5.05 applies except when a statutory provision or guidance issued by the Service provides an earlier deadline to timely adopt a discretionary amendment with respect to a plan year.

Another exception to section 5.05 is when a statutory provision or guidance provides another specific deadline for the adoption of a particular type of interim amendment that is earlier or later than the deadlines under section 5.05. For example, section 5 of notice 2005-95 lists specific deadlines to amend for specific provisions.

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Exceptions to Required Dates for Interim Amendments, Sections 5.06 and 5.07, Continued

Section 5.07(2), PPA '06

Section 1107 PPA '06 is a statutory provision that changes the otherwise applicable deadlines under section 5.05. Under section 1107, a plan sponsor is permitted to delay adopting a plan amendment pursuant to PPA '06 statutory provisions or any regulation issued under PPA '06 until the last day of the first plan year beginning on or after January 1, 2009. For governmental plans, the deadline is the last day of the first plan year beginning on or after January 1, 2011.

This amendment deadline applies to both interim and discretionary amendments that are made pursuant to statutory or regulatory provisions under PPA '06.

If section 1107 applies to a plan amendment, the plan shall not fail to meet the requirements of IRC section 411(d)(6) by reason of such amendment, except as provided by the Secretary of the Treasury. Accordingly, future guidance issued by the Secretary may limit the availability of a retroactive plan amendment under section 1107 in order for the plan to meet the requirements of section 411(d)(6).

Section 5.08

Section 5.08

A plan restatement does not supersede an interim amendment that a plan sponsor adopted before the restatement if the interim amendment is effective after the restatement's effective date and the amendment is not in the restatement. However, the plan sponsor must operate the plan in a manner consistent with the interim amendment because the plan must operate in accordance with its terms.

For example, if the restatement has old 415 language, which is adopted after the interim amendment was adopted, the plan must operate in accordance with the interim amendment as of the amendment's effective date. If the plan is restated after the interim amendment's effective date, the interim amendment should be included in the plan's restatement.

Example 18 - Section 5.08

A plan sponsor adopts an interim amendment December 31, 2009, effective January 1, 2011. The plan restatement is effective January 1, 2010 and adopted January 31, 2012.

As long as this plan operated according to the interim amendment during 2011, the plan restatement effective in 2010 will not supersede the interim amendment.

A plan is presumed to be operating in accordance with the interim amendment in any case in which the operation of a plan cannot be determined. For example, with a determination letter application, the operation of the plan cannot be determined and the plan would be presumed to be operating in accordance with the interim amendment.

Section 6, Plan Amendments and Operational Requirements under Five-Year and Six-Year Remedial Amendment Cycles

Section 6.01 Section 6.01 refers to the following sections:

Section 9	Five year remedial amendment cycles for individually designed plans.
Section 9.03	Five year remedial amendment cycle is determined by the last digit of the sponsor's EIN.
Section 12	The extension for EGTRRA and schedule of the end of the five-year remedial amendment cycles.
Section 16	The six year remedial amendment cycle for pre-approved plans.
Section 18.01	The extension for EGTRRA and schedule of the end of the six year remedial amendment cycles.

With these extensions, a sponsor, practitioner, or employer generally will not need to apply for a new opinion, advisory, or determination letter more than once during any remedial amendment cycle.

Section 6.02 When a plan sponsor timely, and in good faith, adopts an interim amendment to correct a disqualifying provision, the interim amendment itself, can be a disqualifying provision. A plan sponsor must fix this by adopting a corrective amendment for this second disqualifying provision (the interim amendment which was found to be a disqualifying provision) by the end of the applicable 5- or 6-year cycle. This remedial amendment will correct both disqualifying provisions.

Section 6.03 If the plan sponsor, practitioner, or employer determines, in good faith, that no amendment was required, but that determination was incorrect, then the sponsor, practitioner, or employer must adopt a remedial amendment to correct the disqualifying provision by the end of the applicable 5-year or 6-year cycle.

Continued on next page

Section 6.04 If a plan is amended and made retroactively effective, then the plan sponsor must operate according to that amendment on its effective date. This will start the amendment's remedial amendment period.

If a plan sponsor or practitioner timely adopted a discretionary amendment (not one which is a disqualifying provision), but failed to operate the plan according to the amendment, the employer should correct the operational failure under the VCP program.

Section 6.05 This revenue procedure does not give relief for any plan amendments, (including plan amendments adopted as a result of changes to plan qualification requirements) that violate Code Section 411(d)(6).

Code Section 411(d)(6) prohibits a plan amendment that:

- Decreases a participant's accrued benefit, or
- That has the effect of eliminating or reducing an early retirement benefit or retirement type subsidy, or eliminating an optional form of benefit,

for **benefits attributable to service before the amendment.**

These are some exceptions that are not considered to violate 411(d)(6):

- Those listed in Code Section 411(d)(6) and its regulations, and
- PPA '06 Section 1107 amendments

In addition, section 411(d)(6) is not violated by a plan amendment that eliminates or decreases benefits that have not yet accrued. A plan sponsor must adopt and make the amendment effective before benefits accrue.

Section 7 – Extension of the EGTRRA Remedial Amendment Period

Sections 7.01-7.03	Note that sections 7.01-7.03 repeat the rules from section 2.07, 2.08 and 2.09. Thus, this section was covered above. This section provides the extension of the EGTRRA RAP to the end of the initial 5- and 6-year RAC.

Section 8 – Plan Termination

Section 8 Plan Termination

When a plan terminates, the termination ends the plan's remedial amendment *period*, and thus will generally shorten the plan's remedial amendment *cycle*. Accordingly, the plan sponsor must adopt any retroactive remedial plan amendments or other required plan amendments when it terminates the plan. This is true even if the plan qualification requirements are not included on the most recent cumulative list.

Terminating plans must adopt amendments that reflect qualification requirements that apply **as of the date of termination**. A plan can be amended after the date of termination if the amendment is in connection with the termination.

If a plan sponsor wants a determination letter on plan termination, a Form 5310 application for plan termination must be filed no later than the later of:

- One year from the effective date of the termination, or
- One year from the date that the plan sponsor adopts a resolution to terminate the plan.

A Form 5310 cannot be filed later than 12 months from the date the trust substantially distributes all of its assets upon plan termination.

Section 9 – Establishment of Five-Year Remedial Amendment Cycles for Individually Designed Plans

Sections 9.01 - 9.03

A plan's 5-year remedial amendment cycle is determined by the last digit of the plan's sponsors EIN. See section 9.03 or above as to how a plan's cycle is determined.

See the chart for Individually Designed Plans - 5-Year Remedial Amendment Cycle for Individually Designed Plans submission period.

Section 10 - Exceptions to the Five-Year Remedial Amendment Cycle

Section 10.01 - Section 10.05

Please refer to the following chart below to determine the remedial amendment cycles for various types of plans:

Type of plan	Remedial amendment cycle	Section
Multi-employer	Cycle D	10.02
Multiple employer	Cycle B	10.03
Governmental plan	Cycle C	10.04
Jointly Trusteed plan	EIN of Joint Trustees	10.05
Plan of a controlled group	EIN used to report Form 5500	10.05

Revenue Procedure 2009-36

Revenue Procedure 2009-36 modified Revenue Procedure 2007-44 with respect to governmental plans. The remedial amendment cycle for governmental plans will not end before the expiration of the 91st day after the close of the first legislative session that begins more than 120 days after a determination letter is issued for the plan. However, the application for the determination letter has to be timely submitted to the Service, which is on or before the end of the plan's remedial amendment cycle..

Revenue Procedure 2009-36 also modified Revenue Procedure 2007-44 to provide that the sponsor of an individually designed government plan may elect Cycle E, instead of Cycle C, as the initial (EGTRRA) remedial amendment cycle for the plan. This election is made by filing a determination letter application for the plan during the 1-year submission period for the initial Cycle E (February 1, 2010 through January 31, 2011)

The sponsor's election of Cycle E 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.

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Section 10 - Exceptions to the Five-Year Remedial Amendment Cycle, Continued

Section 10.06- Controlled Group/Affiliated Service Group Optional Cycle Elections

There is a special election for controlled groups and affiliated service groups who have more than one plan. The employers may elect that all plans maintained by any member of the group (other than a plan described in sections 10.02, 10.03, 10.04, or 10.05(1)) will file in Cycle A.

- All members of the controlled or affiliated service group must elect Cycle A, (except a parent company may elect for all companies in a parent/sub controlled group); and
- If the controlled group is a parent/sub and there is more than one plan, the parent may elect the cycle based on last digit of parent's EIN (except for plans under section 10.02 - 10.05(1)).

Section 10.07 Cycle for a Group of Tax-Exempt Organizations

A group of tax-exempt organizations can elect a cycle based on the EIN of the central organization (the one who handles the administration and operation of plans with substantially the same terms but maintained by the separate tax-exempt organizations).

Section 10.08

The elections of controlled groups, affiliated service groups and tax-exempt organizations must be signed and dated by:

- The end of the earliest cycle for which a determination letter would have been required to be submitted.

For example, if one brother-sister controlled group member is a Cycle B and another member is a Cycle C, and they want to file under Cycle A, all members of this controlled group must elect to choose Cycle A by the due date for Cycle A, because Cycle A is the earliest of A, B and C.

Section 11 - Five-Year Remedial Amendment Cycles for Mergers, Acquisitions or Spinoffs

Event	Applicable remedial amendment cycle	Section
Mergers and Acquisitions	Based on EIN, controlled group status, affiliated group status etc. of employer that **maintains** the merged, acquired plan or spun-off plan	11.01(1)
Plan sponsor change		11.01(2)
Plan spinoffs		11.01(4)

Other Rules

If a self-employed person with no employees submits a determination letter application based upon the last digit of his SSN instead of an EIN:

- The plan's cycle is the based on the SSN; but
- Subsequent 5-year remedial amendment cycles will be based on the number of the employer's EIN (section 9 or 10) (see Publication 583, *Starting a Business and Keeping Records*).

If a plan changes its status by becoming or ceasing to be a multiemployer or multiple employer plans, the plan's cycle is based on the changed status' cycle.

Section 11.02

When a plan's 5-year remedial amendment cycle changes, the plan's determination letter application should describe the cycle change and submit relevant information for the cycle-changing event. For example, if the cycle-changing event was a plan merger or spin-off, the plan sponsor should include the corporate resolutions or actions related to the merger or spin-off.

Continued on next page

Section 11 - Five-Year Remedial Amendment Cycles for Mergers, Acquisitions or Spinoffs, Continued

Section 11.03

This section provides the rules for a post-change cycle, which is a plan's 5-year remedial amendment cycle after a cycle changing event.

Section 11.03 provides for certain definitions.

- A post-change cycle is the plan's applicable 5-year RAC that would apply to the plan after the cycle changing event under section 11.01.
- A pre-change cycle is the five-five-year RAC that applied to the plan before the cycle changing event.
- An expired cycle is the applicable five-year cycle for which the plan's on cycle submission period has expired as of the date of the cycle changing event.
- An open cycle is the applicable five-year cycle during which the plan's on cycle submission period has not expired as of the date of the cycle changing event.
- An applicable cycle is the five-year cycle that applies to the plan after applying the rules under section 11.02 and 11.03.

Post Change Cycle is an 0pen Cycle

If a plan's post change cycle is an open cycle, and the period remaining in the post change cycle is less than 12 calendar months, the plan's post change cycle is extended for 12 months from the last day of the open cycle submission period. The next 5-year cycle will be shortened accordingly.

Post Change Cycle is an Expired Cycle

If a plan's post change cycle is an expired cycle, the plan's applicable cycle remains the pre-change cycle.

Post Change Cycle Ends Later than the Pre-change Cycle

If a plan's post change cycle ends later than the plan's pre-change cycle, and that pre-change cycle is an open cycle, the plan is permitted to treat the pre-change cycle as the applicable cycle.

Continued on next page

Section 11 - Five-Year Remedial Amendment Cycles for Mergers, Acquisitions or Spinoffs, Continued

Pre-change Cycle is Expired	If a plan's post change cycle ends later than the plan's pre-change cycle, and that pre-change cycle is an expired cycle, the plan is permitted to treat the pre-change cycle as the applicable cycle and does not have to resubmit a determination letter application during the post change cycle.
Both Cycles Expired	If neither the plan's post change cycle nor its pre-change cycle is an open cycle, the plan's applicable cycle is the post change cycle, regardless of whether this post change cycle begins before or after the pre-change cycle.

Section 12 - RAP Extension to RAC, Next 5-Year RAC and Additional Rules

Section 12.01 See the chart for a plan's initial remedial amendment *cycle* (EGTRRA remedial amendment *period*) and next 5-year cycle.

If the EIN of the employer ends in –	The plan's cycle is -	The last day of the initial cycle (i.e., EGTRRA remedial amendment period) is –	The next 5-year remedial amendment cycle ends on -
1 or 6	Cycle A	January 31, 2007	January 31, 2012
2 or 7	Cycle B	January 31, 2008	January 31, 2013
3 or 8	Cycle C	January 31, 2009	January 31, 2014
4 or 9	Cycle D	January 31, 2010	January 31, 2015
5 or 0	Cycle E	January 31, 2011	January 31, 2016

Section 12.02 – A Plan DL Application Filed by the End of its RAC can be Relied on

If a sponsoring employer wants the plan to have a favorable determination letter, the employer must apply for a new determination letter by the end of the EGTRRA remedial amendment cycle.
A plan can rely on an EGTRRA favorable determination letter (FDL) for:

- Qualification changes that have been added to the cumulative list published 12 months before the end of the plan's EGTRRA RAP, and
- Other qualification changes, whether or not listed on the applicable cumulative list (except for the qualification issues in section 4.03 that IRS will not review for: statutes enacted and guidance issued after October 1 before the cumulative list, etc.)

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Section 12.02 – A Plan DL Application Filed by the End of its RAC can be Relied on (continued)

Thus, for Cycle A plans, plan sponsors must have come in by the last day of their EGTRRA remedial amendment period, January 31, 2007, to be able to rely on the changes listed on their applicable cumulative list. The 12-month period prior to January 31, 2007 is February 1, 2006. The cumulative list that applies is the one issued prior to February 1, 2006, or the 2005 Cumulative List (CL).

Also, because the IRS does not consider in its review of any opinion, advisory, or determination letter any guidance issued after the October 1 before the cumulative list, the IRS will not consider any guidance issued after October 1, 2005, for this Cycle A plan.

If Plan Sponsor Never Files for a Determination Letter

Note that an exam agent is only required to confirm compliance with qualification requirements effective through the year of the examination. Generally, the agent is not required to identify and confirm the existence of form qualification compliance which is effective subsequent to the plan year under exam, even if the EGTRRA RAC has expired.

If the EGTRRA RAC has not closed and a determination letter application was not requested, then the agent needs to confirm the timely amendment of the plan document to comply with all applicable laws, regulatory guidance, or other published guidance.

Timely adoption of good faith EGTRRA, interim and discretionary amendments effective through the year of examination as specified under the applicable Cumulative List will also have to be confirmed. The agent can refer to the applicable Cumulative List to assist in determining which plan qualification provisions may be required.

Section 12.03

Except for PPA '06 amendments, plan sponsors must **restate** their individually designed plans when they submit a determination letter application with respect to the initial RAC and subsequent RAC's, rather than send multiple amendments in with their application. As a result, filing a determination letter may accelerate the deadline plan sponsors have to adopt interim amendments because they must incorporate them into the restated plan, which may be earlier than the general time they have to adopt interim amendments.

Section 13 – On-Cycle Determination Letter Filings

Section 13.01 A plan sponsor who has an individually designed plan and wants to rely on their FDL must apply for a new determination letter for each RAC during the last 12 months of their plan's RAC. The last 12 months is between February 1 and January 31 of the last year of the cycle. This is an "on cycle filing." Under Notice 2011-82, if a new plan submits for a determination letter within the plan's RAP, the plan is considered to be "on cycle".

In addition, Notice 2011-82 provides that Schedule Q and accompanying demonstration regarding coverage and nondiscrimination requirements should not be submitted for any determination letter application, including an application for a terminating plan filed on Form 5310. Such demonstrations will not be considered in the Service's review of the plan

Section 13.02 Determination letters issued timely for a particular remedial amendment cycle cannot be relied on after **the end of the next remedial cycle** and will receive a specific expiration date.

The "next remedial amendment cycle" is "the first cycle that ends more than 12 months after the application was received."

Thus, determination letters issued for applications that are filed more than 12 months prior to the end of a remedial amendment cycle may not be relied on after that cycle (the next remedial amendment cycle).

Example 18 A sponsor with an EIN of 7 maintains an individually designed plan, Cycle B, which ends January 31, 2008. The sponsor applies for a determination letter on January 1, 2008, which is within the initial remedial amendment cycle. The sponsor receives a favorable determination letter on July 1, 2009. The DL will have an expiration date of January 31, 2013.

The plan sponsor has reliance on this favorable determination letter through January 31, 2013. This is the end of the next 5-year cycle. The determination letter application was filed more than 12 months prior to the end of the second cycle, which is January 31, 2013. As a result, the plan sponsor must file another determination letter application by January 31, 2013, in order to have continued reliance on the July 1, 2009, favorable determination.

Section 14 – Off-Cycle DL Filings

Section 14.01

If a plan sponsor submits a DL application:

- Prior to the sponsor's RAC's last 12 month period, or
- After the sponsor's RAC's last 12 month period,

...the application is "off cycle."

Note that terminating plans must adopt amendments that reflect qualification requirements as of the date of termination. Note that terminating plans will be given the same priority treatment as on cycle applications. Thus, terminating plans are never really considered as "off cycle."

If a plan sponsor submits an application more than 12 months before the sponsor's RAC's ending date (the next RAC), the sponsor may not rely on the DL after that cycle. Consequently the plan sponsor may need to further amend the plan within the cycle and file another DL application in the last 12 months of its cycle. This would ensure a plan sponsor's reliance on a determination letter.

Example 19 "Off-Cycle" Cannot Rely on a DL after its Cycle and Must Resubmit Another Application

The RAC for a plan is Cycle E. The initial 5-year RAC (the EGTRRA RAP) ended on January 31, 2011. The 12 month period of the last year of the initial RAC began February 1, 2010.

The employer submitted a DL application on March 1, 2009. The 2008 cumulative list was used to review the DL application. The plan receives a favorable DL on April 30, 2010.

Because the employer submitted an application more than 12 months before its RAC's ending date, January 31, 2011, it was "off-cycle" and the plan cannot rely on the DL after January 31, 2011.

The employer should submit another DL application during the last 12 months of the plan's RAC, February 1, 2010 to January 31, 2011, to continue to have reliance on a determination letter after January 31, 2011.

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Section 14 – Off-Cycle DL Filings, Continued

IRS Reviews Off-Cycle Plans Using the Same Cumulative List Used for On-cycle

The IRS uses the same cumulative list used for an application that is filed on cycle to review off-cycle applications. This means that the determination letter issued for a plan may not consider any or all of the changes in qualification requirements for which the plan should have been amended in its current RAC.

Sections 14.02 - 14.04

IRS will review an off cycle application only after we review all on-cycle plans. There are exceptions in section 14.02. Section 14.04 notes that a new plan does not have to be submitted for a determination letter off-cycle. A new plan's initial remedial amendment *period* is extended to the end of the *cycle* which includes the end of the remedial amendment period (that the remedial amendment period ends in).

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Example 20- a New Plan's RAP is Extended to the End of its RAC

A new plan has an effective date of January 1, 2006. The plan and the taxpayer are both on a calendar year basis. The taxpayer has an EIN of 6, which is Cycle A: January 31, 2007. The taxpayer has a six-month extension for its 2006 tax return. The remedial amendment period for the plan is the later of:

- September 15, 2007 (the tax return due date), or
- December 31, 2006, or

...*September 15, 2007*.

This new plan's initial remedial amendment *period (September 15, 2007)* is extended to the end of the *cycle (January 31, 2012)* which includes the end of the remedial amendment period.

Although this new plan's effective date *(January 1, 2006)* was before the end of the first remedial amendment cycle *(January 31, 2007),* the plan's end of the remedial amendment period is within the next remedial amendment cycle ending January 31, 2012.

Section 16 - 6-year Amendment/Approval Cycle for Pre-Approved Plans

Section 16.01 This part provides the rules and procedures for pre-approved plans' 6-year remedial amendment cycles.

Mass Submitter Plans

An "M&P mass submitter" is any person that:

- Has an established place of business in the U.S., and
- Submits opinion letter applications for at least 30 unaffiliated sponsors each of which is sponsoring, on a word-for-word identical basis, the same basic plan document.

A "national sponsor" is a sponsor that has either has:

- 30 or more adopting employers in 30 or more states, or
- 3,000 or more adopting employers (Rev. Proc. 2005-16 section 4.08).

The general rule for **mass submitters and national sponsors** is that they have to submit their plans by October 31 of the year in which the 6-year RAC begins. However, this was extended to:

- DC pre-approved plans = 2-17-05 – 1-31-06
- DB pre-approved plans = 2-1-07 – 1-31-08.

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Section 16 - 6-year Amendment/Approval Cycle for Pre-Approved Plans, Continued

Explanation of Pre-Approved Dates--Background Section of Rev. Proc. 2011-49

Sponsors and practitioners of **pre-approved defined contribution plans** submitted their opinion and advisory letter applications to the Service from February 17, 2005 to January 31, 2006. The Service's review took into account the requirements of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and other items identified in Notice 2004- 84, 2004-2 C.B. 1030 (2004 Cumulative List).

Adopting employers of these pre-approved plans generally had until April 30, 2010, to adopt the plans and to apply for a determination letter.

Sponsors and practitioners of **pre-approved defined benefit plans** submitted their applications to the Service from February 1, 2007 to January 31, 2008. The Service's review took into account the requirements of EGTRRA and other items identified in Notice 2007-3, 2007-1 C.B. 255 (2006 Cumulative List).

Adopting employers of these pre-approved plans had until April 30, 2012 to adopt the plans and to apply for a determination letter.

Minor Modification

A minor modification is a minor change to an otherwise word for word adoption of the M&P mass submitter's plan that does not require an in-depth technical review. A minor modification must be submitted by the M&P mass submitter on behalf of the sponsor that will adopt the modified plan (Revenue Procedure 2011-49, section 12.03(2)) .

Non-Mass Submitter Plans

Other pre-approved sponsors (non-mass submitter, word-for-word, and minor modifiers) have until January 31 after the IRS opens their 6-year remedial amendment cycle to submit their plans for opinion or advisory letters.

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Section 16 - 6-year Amendment/Approval Cycle for Pre-Approved Plans, Continued

Section 16.03

When the IRS completes its review of the cycle of pre-approved plans, adopting employers will have approximately 2 years to adopt these plans. IRS publishes an announcement which lists the date by which adopting employers must adopt the newly approved plan.

The adopting date will be a uniform date that will apply to all adopting employers. It is expected that this date will give virtually all employers approximately a 2-year window to adopt their updated plans. An adopting employer means an employer who satisfies the requirements under section 17 of this revenue procedure.

Section 16.04 IRS Announced 2-Year Window for Adopting Employers

The announced deadline for employers to adopt the approved M&P or VS plan was April 30, 2010, for DC plans and April 30, 2012, for DB plans and:

- Is the final date that employers must sign and date their EGTRRA pre-approved plans to be considered to have adopted the plan within the employer's 6-year remedial amendment cycle, and
- Ends the plan's RAC for all disqualifying provisions for which the RAP would have ended during this cycle.

See Announcements 2008-23, for DC plans, and 2010-20, for DB plans.

Note that certain plans were able to amend and/or file for a determination letter after April 30, 2010. In Part II of Employee Plans News, No. 2010-07 (Aug. 20, 2010), "*Post April 30, 2010 Issues Impacting Adopting Employers Who Use IRS Pre-Approved Plan Documents,"* the Service indicated that these types of applications would be accepted and treated as on-cycle submissions.

Section 17 – Eligibility for Six-Year Amendment/Approval Cycle

17.01(1) and (2) Situations Where Employers are Treated as Adopting Pre-Approved Plans and Eligible for the 6-Year RAC

An employer's plan is treated as a pre-approved plan and is therefore eligible for a 6-year amendment/approval cycle if:

1. The employer is:
   - a prior adopter (section 17.02),
   - a new adopter (section 17.03),
   - an intended adopter (section 17.04), or
   - a replacement plan adopter (section 17.05); and

2. The pre-approved plan sponsor or practitioner timely submits an opinion or advisory letter application for the plan:
   - by the application deadline of October 31 or January 31, whichever is applicable, in the first year of the 6-year RAC for pre-approved plans under section 18, and
   - receives a favorable current opinion or advisory letter from the IRS before the employer adopts the plan. (See sections 17.02-17.05 below).

Note that section 23 of Rev. Proc. 2011-49 extended the October 31 deadline to January 31 for Mass Submitter plans.

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Section 17 – Eligibility for Six-Year Amendment/Approval Cycle, Continued

Section 17.01(3)(a) Definition of an Existing Pre-Approved Plan

An existing pre-approved plan is a plan that:

- Received a valid opinion or advisory letter for the 6-year cycle immediately preceding the beginning of the current 6-year cycle, and
- Has separate amendments that have not been integrated into the plan document but will be integrated when the sponsor submits the plan document.

So, for the initial 6-year cycle, a pre-approved plan is considered to be an existing plan if it received an opinion or advisory letter before:

- February 16, 2005, for DC pre-approved plans
- January 31, 2007, for DB pre-approved plans.

An existing pre-approved plan has separate interim and discretionary amendments attached to the plan that have not been incorporated into the plan document. The pre-approved plan sponsor will, however, incorporate these amendments into a restated plan when it is submitted for an opinion or advisory letter.

Section 17.01(3)(b) Interim Pre-Approved Plan

An interim pre-approved plan is a plan that either:

- Has a prior letter (with amendments incorporated in the plan), or
- Whose sponsor or practitioner has not previously applied for a letter before because the plan did not exist during the prior submission period (GUST deadline). However, the sponsor/practitioner did timely file an application under the new 6-year cycle system.

Newly Approved Version

A newly approved version of a plan is a plan that receives a favorable current opinion or advisory letter from the IRS before the employer adopts the plan.

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Section 17.02 Prior Adopter

A prior adopter is an employer that:

- Has adopted an existing or interim plan by the last day of the RAC immediately before the opening of the current 6-year cycle; and
- Timely adopts the newly approved version (EGTRRA version) of the pre-approved plan or a newly approved version of a different pre-approved plan of the same or different sponsor.

Example 21 Prior Adopter

Employer A adopted pre-approved M&P Plan X before the 6-year cycle. Plan X had a valid GUST opinion letter.

The pre-approved DC sponsor of Plan X fails to submit an application for a new opinion letter by January 31, 2006.

The pre-approved DC sponsor of Plan Y (also had a valid GUST opinion letter), timely submitted an application for a new opinion letter by January 31, 2006.

Employer A can timely adopt Plan Y in the 2-year window and still be eligible for the 6-year cycle as a prior adopter. If Employer A stays with Plan X, he will not be entitled to the 6-year remedial amendment cycle because the DC sponsor of Plan X failed to submit an application for a new opinion letter.

Example 22 - Prior Adopter of the Same Sponsor

The facts are the same as previous example, except that the employer adopts a different preapproved plan sponsored by the same sponsor within the 2-year window and this sponsor timely submitted for an opinion letter by January 31, 2006. The employer is considered to be a prior adopter and gets the 6-year RAC.

Example 23 – Employer Switches to a VS Plan

Same facts as example 21 except that the employer adopts a pre-approved DC VS plan instead of a prototype plan within the 2-year window and the sponsor timely submitted an application for an advisory letter for the VS plan by January 31, 2006. The employer is considered to be a prior adopter and gets the 6-year RAC.

Section 17 – Eligibility for Six-Year Amendment/Approval Cycle, Continued

New Adopter Definition 17.03

A new adopter is an employer that:

- has an individually designed plan, or has no plan and has not maintained any plan during the employer's current 5-year RAC, and
- adopts an existing or interim preapproved plan before the end of the employer's 5-year RAC.

Example 24 - New Adopter

Employer K has never maintained a qualified plan and based on his EIN, files under Cycle A (ends January 31, 2007).

Sponsor P timely submitted an application for an opinion letter for its pre-approved plan, an existing pre-approved DC plan, by January 31, 2006. Employer K adopts Plan P on December 15, 2006, prior to the end of the 5-year remedial amendment cycle.

Employer P is a new adopter and gets the 6-year remedial amendment cycle.

What happens if an Employer Adopts a Pre-approved Plan before it receives IRS Opinion or Advisory Letter?

An employer may adopt an interim or existing pre-approved plan before the beginning of the adoption period described in 16.03 and 16.04 (the 2-year window that adopting employers have to adopt a pre-approved plan after the opinion letters are issued(April 30, 2010 for DC plans, and April 30, 2012 for DB plans). Remember, the DC letters were issued on 3-31-08, and there was a 2-year window after 3-31-08 for adopting employers to adopt the updated pre-approved plans.

However, an employer who adopted an interim or pre-approved plan before the beginning of the adoption period must re-adopt the current version of the plan, "the newly approved version" of either the same plan or a different pre-approved plan during the 2-year window.

An employer whose 5-year cycle has not yet ended may adopt the plan during or after the 2-year window. The employer can adopt the plan until the last day of the 5-year cycle. In addition, the employer must adopt the newly approved version of the preapproved plan.

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Section 17 – Eligibility for Six-Year Amendment/Approval Cycle, Continued

Section 17.04-Intended Adopter

An intended adopter is an employer that:

- Has an individually designed plan, and
- Executes, with the sponsor/practitioner, Form 8905, *Certification of Intent to Adopt a Pre-approved Plan*, before the end of the employer's 5-year remedial amendment cycle.

Form 8905

For Form 8905:

- The sponsor/practitioner may use an electronic signature. The employer must manually sign and date the form.
- The employer is responsible for keeping the signed original, which should only be filed with the IRS if they file an application for a determination letter.
- The form can be used even if the employer's 5-year remedial amendment cycle ends before the sponsor/practitioner's deadline to apply for approval of the pre-approved plan.

See FAQs on Pre-Approved and Individually Designed Plan Programs (including Form 8905) at IRS.gov/ep.

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Example 25 - Intended Adopter

Employer Q is a Cycle A filer based on its EIN, and whose EGTRRA RAC ends January 31, 2007. Employer Q currently maintains an individually designed defined benefit plan; Plan Q. Employer Q decides to switch to a pre-approved defined benefit plan.

On January 15, 2007, Employer Q and Sponsor P execute Form 8905, *Certification of Intent to Adopt a Pre-approved Plan*. Sponsor P timely submitted their pre-approved defined benefit plan for an opinion letter by the applicable deadline.

Employer Q is an intended adopter because Employer Q and Sponsor P signed Form 8905 timely before the end of Employer Q's 5-year remedial amendment cycle.

Note that Employer Q could have adopted a different pre-approved plan with either the same or a different sponsor than the one designated on Form 8905.

Section 17.05 – Replacement Plan

A replacement plan adopter is an employer that:

- Timely adopted a pre-approved plan that is to be replaced by a replacement plan, and
- The pre-approved sponsor or practitioner does not request a letter because the plan is to be replaced by a plan of a related pre-approved sponsor due to a change in business circumstances (for example, merger, controlled group filing).

Plan Sponsor Must Include a Statement from the Current Pre-Approved Sponsor

If an employer intends to adopt a replacement plan, the employer does not have to execute Form 8905.

If the employer applies for a determination letter for a replacement plan, the employer must include a statement from the current sponsor or practitioner maintaining the plan indicating that the prior sponsor or practitioner was bought out or merged with the current sponsor who has the replacement plan.

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Section 17.06 Prior adopters, new adopters, intended adopters, and replacement plan adopters must use VCP to correct their late plan adoption if they:

- Adopt a pre-approved or individually designed plan after their current 6-year RAC, and
- Are unable to use their 5-year RAC. This would apply if the plan's 5- year RAC ended prior to the sponsor adopting and/or submitting under the current 6-year RAC.

Section 18 - Extension of the EGTRRA Remedial Amendment Period and Schedule of Next Six-Year RAC

Section 18.02 M&P sponsors and VS practitioners must apply for new opinion or advisory letters for their plans every 6 years.

Initial EGTRRA RAC Pre-Approved DC Plans

The initial EGTRRA application for these pre-approved DC plans were due February 17, 2005 through January 31, 2006:

- Mass submitters,
- Non-mass submitters, VS practitioners,
- Word for word identical adopters, and
- M&P minor modifiers.

The next application was due 6 years later, February 1, 2011, through January 31, 2012.

Initial EGTRRA RAC Pre-Approved DC Plans

The initial EGTRRA applications for pre-approved DB plans were due February 1, 2007 through January 31, 2008.

The next application is due 6 years later, February 1, 2013 through:

- October 31, 2013 (for mass submitters and national sponsors) and,
- January 31, 2014 for non-mass submitters, word-for-word adopters and M&P minor modifiers.

Section 18.03 The end of a plan's EGTTRA remedial amendment cycle is when the employer adopts the approved plan by the end of IRS announced deadline. If an adopting employer timely adopts the approved plan, the employer will be considered as adopting the plan within the employer's 6-year RAC.