



## **EP Customer Education and Outreach Phone Forum – March 13, 2014**

An Overview of the 2013  
Cumulative List of Changes  
in Plan Qualification



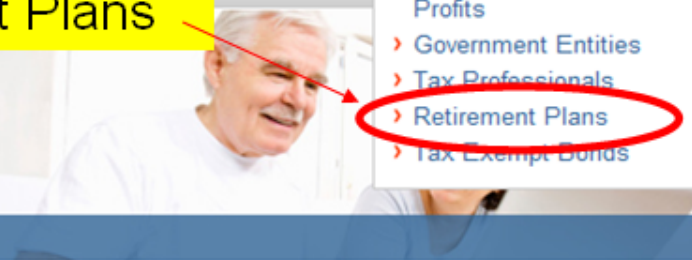
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# Retirement Plans



- [Benefit Practitioner](#)
- [Plan Participant, Employee](#)
- [Plan Sponsor](#)

## Tax Information for Retirement Plans Community

### [Help with Choosing a Retirement Plan](#)

Web guide to help you compare plans

### [File a Retirement Plan Return](#)

Forms 5500, 5500-SF, 5330, 5558 and 8955-SSA

### [Form 2848 - More Changes](#)

Use the March 2012 version to designate a representative for retirement plan issues.

### [Retirement Plans Phone Forums](#)

Check out upcoming phone forums

### [Fix-It Guides](#)

Find, Fix and avoid common mistakes in plans

### [Cost-of-Living Adjustments \(COLAs\)](#)

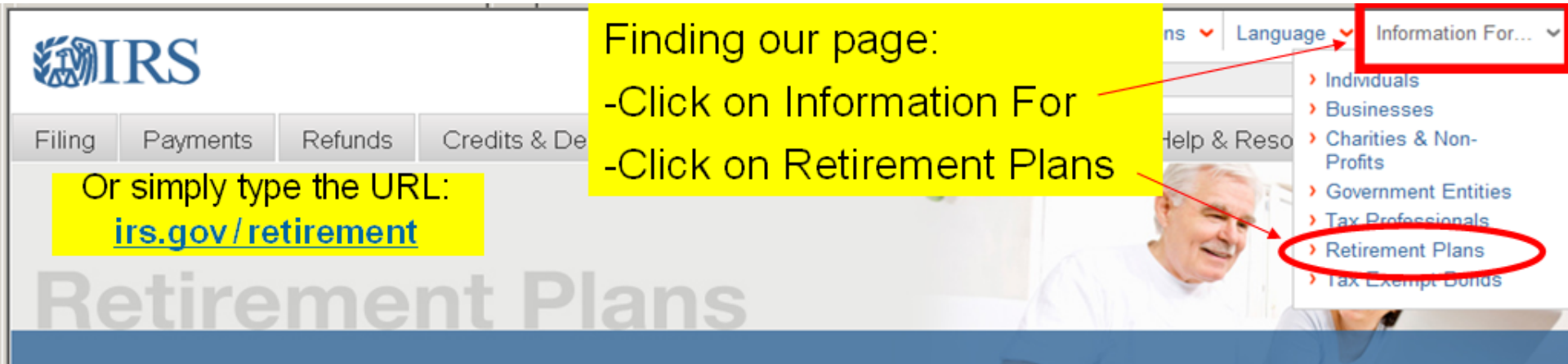
Limits on contributions and benefits

### [Examinations and Enforcement](#)

Audit guide, compliance check letters and other programs

## Topics for Retirement Plans

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Presenter



Don Kieffer

EP Technical Guidance

Mountainside, NJ

- Current determination letter program
- Pre-approved plan program
- Future possible changes/program guidance
- Cumulative List change items - Notice 2013-84
- Questions and Answers



## Determination Letter Program – Current Status

- Generally working in Cycle C<sup>2</sup> for most submissions
- Slightly behind this time frame for non-terminating ESOPs
  - Generally working about 1-2 cycles behind



## Determination Letter Program – Form Revisions

- Form 5300 and 5310 were updated Dec. 2013
  - Revisions –
    - put information collected up front on the form
    - accommodate automated processing
  - Can continue to use prior versions until  
June 30, 2014
- Form 5307 is being similarly revised.



## Determination Letter Program – Fee Revisions

- Rev. Proc. 2014-8 - effective Feb. 2, 2014, modified employee plans user fees
  - in many cases resulted in an increase
- Form 8717 and 8717-A – user fee forms
  - Fees have increased but forms have not been updated
  - use most recent version of forms until updated, but submit correct user fee





## Preapproved DC Plans

- Rev. Proc. 2011-49 operational guidance
- Second submission period for lead plans under six-year staggered cycle system was  
Feb 1, 2011 - Apr 2, 2012 (extended from 1/31/2012)
- Near the end of the review process
- Anticipate spring completion and 2-year window Announcement



## Preapproved DB Plans

- Announcement 2014-4 extended Rev. Proc. 2011-49 operational guidance
- Gave one year extension, primarily to facilitate preapproved cash balance specimen plan submissions
- Would like to stay on same course for 6-year cycles, even with one year extension



## Preapproved DB Plans

- Extended deadline applies to all DB pre-approved submission
- Until we issue future guidance, do not submit plans with cash balance features
- Higher user fees apply as of February 1, 2014
- Cycle C sponsors of individually designed plans intending to adopt a pre-approved plan - complete Form 8905 by March 31, 2014



- ESOP pre-approved plan
- Interim amendments
  - Working on guidance to reduce frequency of required interim amendments
  - Anticipate default rule = no amendments to plans until end of cycle, unless:
    - statutorily required, or
    - necessary to avoid 411(d)(6) violation



## Notice 2013-84

- “2013 Cumulative List”
- Used for Cycle D submitters
  - Individually designed plans w/ EIN ending in 4 or 9
  - Multiemployer plans
- Cycle D submission period -  
Feb. 1, 2014 - Jan. 31, 2015



## Notice 2013-84

- The Cumulative List is a benchmark for amendments the IRS looks for in determination letter applications
- Determination letter applications submitted beginning 2/1/2014, won't be reviewed for:
  - guidance issued after October 1, 2013;
  - statutes enacted after October 1, 2013;
  - statutory provisions first effective in 2014, for which there is no guidance identified in this notice; or
  - qualification requirements first effective in 2015 or later.



## Notice 2013-84

- 2013 Cumulative List contains:
  - all items from the 2009 CL through the 2012 CL: accumulation of statutory, regulatory changes affecting plan qualification requirements, enacted or issued after October 1, 2009
  - five new items - two were issued after the October 1, 2013 ordinary cutoff date
    - Mid year safe harbor non-elective reductions
    - In-plan Roth rollovers



## Notice 2013-84 reflects:

- Pension Protection Act of 2006 (PPA '06), Pub. L. 109-280;
- The U.S. Troop Readiness, Veterans' Care, Katrina Recovery and Iraq Accountability Appropriations Act of 2007, Pub. L. 110-28
- The Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act), Pub. L. 110-245
- The Worker, Retiree, and Employer Recovery Act of 2008 (WRERA), Pub. L. 110-458





## Notice 2013-84 reflects (cont.):

- The Small Business Jobs Act of 2010 (SBJA), Pub. L. 111-240
- The Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010), Pub. L. No. 111-192;
- The Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141; and
- The American Taxpayer Relief Act of 2012 (ATRA), Pub. L. 112-240.



## Notice 2013-84

- However, to be qualified, a plan must comply with all relevant qualification requirements, not just those on the 2013 Cumulative List.
- For example, terminating plans must include all law changes in effect at the time of termination (Rev. Proc. 2007-44, Section 8)



## Windsor and DOMA

- United States v. Windsor, 570 U.S. \_\_\_\_, 133 S. Ct. 2675 (2013). The Supreme Court found that Section 3 of the Defense of Marriage Act (DOMA), which provides that in determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word ‘marriage’ means only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife, is unconstitutional because it violates the principles of equal protection.



## Windsor and DOMA

- Revenue Ruling 2013-17, 2013-38 I.R.B. 201, provides that for federal tax purposes, the terms “spouse,” “husband and wife,” “husband,” and “wife” include an individual married to a person of the same sex if the individuals are lawfully married under state law, and the term “marriage” includes such a marriage between individuals of the same sex and the Service adopts a general rule recognizing a marriage of same-sex individuals that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages.



## ESOP Diversification

- Notice 2013-17, 2013-20 I.R.B. 1082, provides relief from anti-cutback rules for an amendment to an ESOP to eliminate all in-service distribution options previously used to satisfy the diversification requirements of § 401(a)(28)(B)(i).



## Mid-year Safe Harbor suspension

- Final regulations published 11/15/2013
  - permit mid-year reductions or suspensions of safe harbor *nonelective contributions* in certain circumstances for amendments adopted after 5/18/2009, and
  - revise requirements for permitted mid-year reductions or suspensions of safe harbor *matching contributions* for plan years beginning on or after 1/1/2015



# In-Plan Roth Rollover

- Notice 2013-74 - guidance under new § 402A(c)(4)(E)
  - expands rollovers from 401(k), 403(b), & governmental 457(b) plans to designated Roth accounts in the same plan (“in-plan Roth rollovers”)
  - permits in-plan Roth rollovers of otherwise nondistributable amounts
  - applies to all in-plan Roth rollovers under § 402A(c)(4)



## MAP-21 segment rates

- Notice 2013-11, 2013-11 I.R.B. 610,
  - guidance on the 25-year average segment rates used to adjust the 24-month average segment rates to compute the minimum contribution requirements for single-employer DB plans under
    - § 430 of the Code and
    - § 303 of ERISA,
  - as amended by MAP-21, for plan years beginning in 2013.





## IRS Issued Sample / Model Amendments

- Sample or model amendments:
  - Notice 2009-65 (automatic contribution features)
  - Notice 2009-82 (suspension of the required minimum distribution for 2009)
  - Rev. Rul. 2011-1 (group trusts)
  - Notice 2011-96 (limitations on the accrual and payment of benefits under underfunded single employer DB plans)

## Determination, Opinion and Advisory Letters



### What's New

- > List of Pre-Approved Plans
- > Governmental Plans Can Elect Second Cycle E

The Employee Plans Determinations program issues determination letters for individually designed retirement plans and opinion and advisory letters for pre-approved retirement plans. There are many benefits to obtaining a favorable determination, opinion or advisory letter!

Retirement plans may be individually designed plans crafted to meet the particular needs of an employer, or [pre-approved plans](#) (Master and Prototype (M&P) and Volume Submitter (VS) plans).

If the plan meets the form requirements of the program, you may be eligible for a favorable letter:

- determination letter for an individually designed plan;
- opinion letter for a M&P plan; or
- advisory letter for a VS plan.

### [Update a Plan](#)

Retirement plans must be periodically amended to comply with the requirements of the program. Use the resources to help you keep your plan up-to-date.

### [Apply for a Letter](#)

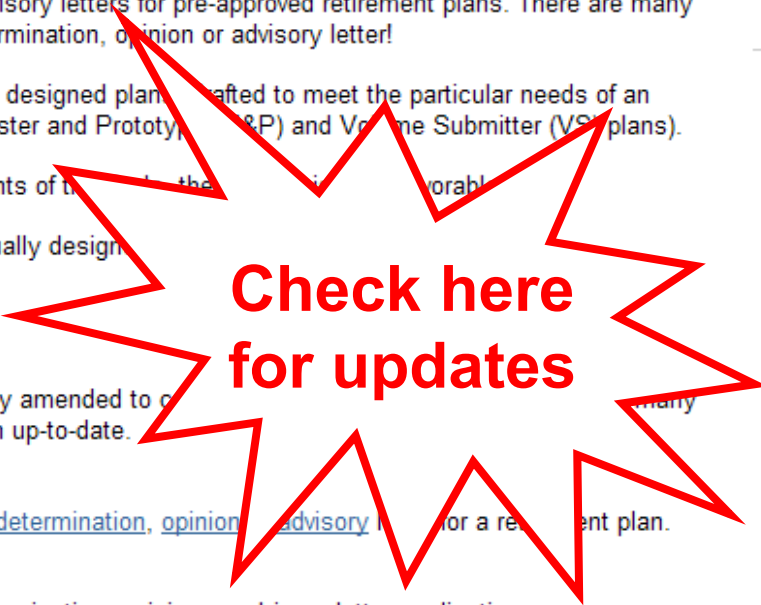
How, when and where to apply for a [determination](#), [opinion](#) or [advisory letter](#) for a retirement plan.

### [Check the Status of Your Letter](#)

How to check on the status of a determination, opinion or advisory letter application.

### [Learn the Scope and Benefit of a Favorable Letter](#)

The extent to which you can rely on a favorable determination, opinion or advisory letter, and factors that may affect the status of your favorable letter.



[www.irs.gov/Retirement-Plans/Determination,-Opinion-and-Advisory-Letters](http://www.irs.gov/Retirement-Plans/Determination,-Opinion-and-Advisory-Letters)

