

An Overview of the 2012 Cumulative List of Changes in Plan Qualification

EP Customer Education and Outreach
Phone Forum

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Agenda

- Current determination letter program
- Changes to determination filing procedures for Cycle C – IRS Re. Proc. 2013-6
- Changes to determination letter submissions related to VC
- Cumulative List change items - Notice 2012-76
- Future possible changes / program guidance
- Questions and Answers

Determination Letter Program – Current Status

- Generally working in Cycle E with regard to complex submissions
- Into 2nd Cycles A and B with regard to terminations and less complicated submission work
- Slightly behind this time frame with regard to non-terminating ESOPs

Preapproved Plans

- Rev. Proc. 2011-49 operational guidance
- Currently underway within the middle of the DC review process
- Target date to complete would be first quarter 2014
- This would result in targeted March 31, 2014 approval letters, and 2 year window 4/1/2014 – 3/31/2016

Recent Determination Letter Guidance

- Notice 2012-76 – Cycle C Cumulative List
- Rev. Proc. 2013-6 – annual determination letter filing guidance
- Rev. Proc. 2013-12 – EPCRS guidance
- Rev. Proc. 2013-XX – 403(b) Program guidance

Rev. Proc. 2013-6

In addition to minor revisions, the following substantive changes were made:

1. Section 7.04 clarifies documents to submit with a determination letter application;
2. Section 7.05 is revised to eliminate the definition of “working copy”;
3. Section 9.03 – Form 5307s only during 2-year window
4. Section 12.02 is revised to state that calculations (sample or otherwise) are to be submitted along with Form 6088.
5. Sample Notice to Interested Parties is revised to change the address. **Correction at IRS Announcement 2013-13**

Modifications in EPCRS to Determination Letter Submissions

- Section 6.05 was revised to specify that a determination letter application **is not** to be submitted under EPCRS if:
 - Model amendments or IRS approved pre-approved plans are used to fix any type of qualification failure.
 - Demographic Failures.

Modifications in EPCRS to Determination Letter Submissions

- Non-amender failures limited to specific late “good faith amendments”, “interim amendments” and “Optional law changes” defined in section 6.05(3)(a).
- Operational failures corrected by plan amendments by off-cycle plan sponsors. Will need to submit a DL application when on-cycle.
- Failure to adopt amendments required under the terms of a favorable determination letter.

Notice 2012-76

- Used for Cycle C submitters
 - Plans sponsored by single employers with sponsor EINs ending in 3 and 8
 - Jointly trustee single employer collective bargaining plans and multi-sponsor controlled group plans, with 5500 filing EINs ending in 3 and 8
 - Governmental plan § 414(d) submitters
- Also used for second round DB specimen plans

Notice 2012-76

- Primarily utility is as a benchmark for the amendment of plans and review of submissions into the determination letter program.
- In general, the Service will not consider in its review of any determination letter application for the submission period that begins February 1, 2013, any:
 1. guidance issued after October 1, 2012;
 2. statutes enacted after October 1, 2012;
 3. qualification requirements first effective in 2014 or later; or
 4. statutory provisions that are first effective in 2013, for which there is no guidance identified in this notice.

Notice 2012-76 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
- 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; and
- The Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141.

Notice 2012-76

- However, in order to be qualified, a plan must comply with all relevant qualification requirements, not just those on the 2012 Cumulative List.
- For example, terminating plans must include all law changes in effect at the time of termination. See section 8 of Rev. Proc. 2007-44 regarding plan termination.

Notice 2012-76

- Exceptions:
 - Final Regulations under § 411(d)(6) {providing limited exception to the anti-cutback rules for bankrupt plan sponsor to eliminate a single-sum or other optional accelerated forms of benefit)
 - Notice 2012-70 extension of the deadline to amend a defined benefit plan to satisfy the requirements of § 436.

Notice 2012-76

- The Service's review of a determination letter application filed in the Cycle C submission period will not consider the 2010 final hybrid plan regulations (other than with respect to § 411(a)(13)(A)) unless the plan has been amended to satisfy those regulations. For this purpose, the Service will only consider those provisions of the regulations that are effective for plan years beginning on or after January 1, 2011.

Group and Puerto Rico Trusts

- Notice 2012-6, 2012-3 I.R.B. 293, extends and expands the transition relief provided under Rev. Rul. 2011-1 for certain group trusts, certain retirement trusts that qualify under the Puerto Rico Internal Revenue Code that participate in group trusts, and certain qualified retirement plans that benefit Puerto Rico residents. The notice also provides additional time for governmental retiree benefit plans described in § 401(a)(24) to be amended to satisfy the applicable requirements of Rev. Rul. 2011-1.

Group and Puerto Rico Trusts

- Expansion of relief originally conferred in 2011
- Rev. Rul. 2011-1 includes model amendments that should be adopted by the group trust.
- Generally, no specific amendment requirement for employers participating in the group trust.

Governmental Plan NRA

- Notice 2012-29 provides that the Service and Treasury intend to modify the normal retirement age regulations to clarify that governmental plans that do not provide for in-service distributions before age 62 do not need to have a definition of normal retirement age and to modify the age-50 safe harbor rule for qualified public safety employees. The notice also provides that the Service and Treasury intend to amend the normal retirement age regulations to extend the effective date for governmental plans to annuity starting dates that occur in plan years beginning on or after the later of (1) January 1, 2015 or (2) the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date that is 3 months after the final regulations are published in the Federal Register.

Governmental Plan NRA

- The 2007 NRA regulations are to be modified to change the effective date for governmental plans to annuity starting dates that occur in plan years beginning on or after the later of
 1. January 1, 2015 or
 2. the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date that is 3 months after the final regulations are published in the Federal Register.

Defined Benefit Rollover

- Rev. Rul. 2012-4, 2012-8 I.R.B. 386, describes whether a qualified defined benefit pension plan that accepts a direct rollover of an eligible rollover distribution from a qualified defined contribution plan maintained by the same employer satisfies §§ 411 and 415 in a case in which the defined benefit plan provides an annuity resulting from the direct rollover.

Hybrid Plan Regs.

- Notice 2012-61 provides that certain provisions in the 2010 final hybrid plan regulations will not be effective for plan years beginning before January 1, 2014.

Protected Benefits in Bankruptcy

- Final Regulations under § 411(d)(6), which provide an additional limited exception to the anti-cutback rules to a plan sponsor who is a debtor in a bankruptcy proceeding, were published on October 8, 2012 (77 Fed Reg. 66915).

DC J&S

- Rev. Rul. 2012-3, 2012-6 I.R.B. 383, describes how the qualified joint and survivor annuity (“QJSA”) and the qualified preretirement survivor annuity (“QPSA”) rules, described in §§ 401(a)(11) and 417, apply when a deferred annuity contract is purchased under a profit sharing plan.

Transfers to Retiree Health Accounts

- Sections 40241 and 40242 of MAP-21 amend § 420 to extend the provisions relating to transfers of excess pension assets to retiree health accounts and to expand those provisions to allow transfers to retiree group term life insurance accounts.

§ 436 Benefit Restrictions

- §1.436-1 provides guidance on the application of § 436, which provides a series of limitations on the accrual and payment of benefits under underfunded single employer defined benefit plans.

§ 436 Benefit Restrictions

- Notice 2011-3, 2011-2 I.R.B. 263, provides guidance on the special rules relating to the relaxation of § 436 rules that were included in the funding relief for single employer defined benefit pension plans under PRA 2010.

§ 436 Benefit Restrictions

- Notice 2011-96, 2011-52 I.R.B. 915, provides a sample plan amendment that plan sponsors may adopt to satisfy § 436 regarding limitations on the accrual and payment of benefits. The notice also extends both the deadline to amend a plan to satisfy § 436 and the period during which such an amendment is eligible for relief from the anti-cutback requirements of § 411(d)(6).

§ 436 Benefit Restrictions

- Notice 2012-70, 2012-51 I.R.B. This notice extends the deadline, as set forth in Notice 2011-96, 2011-52 I.R.B. 915, to amend a defined benefit plan to satisfy the requirements of § 436 and provides associated relief from the requirements of § 411(d)(6).

IRS Issued Sample / Model Amendments

- Sample or model amendments are contained at:
 - Notice 2009-65, 2009-39 I.R.B. 413 (automatic contribution features);
 - Notice 2009-82, 2009-41 I.R.B. 491 (suspension of the minimum distribution requirement for 2009);
 - Rev. Rul. 2011-1, 2011-2 I.R.B. 251 (group trusts); and
 - Notice 2011-96, 2011-52 I.R.B. 915 (limitations on the accrual and payment of benefits under underfunded single employer defined benefit plans).

Recent Determination letter changes

- Recent program changes include:
 - Eliminating non-discrimination demonstrations
 - Limiting Form 5307 submissions to volume modifiers
- Others that are in discussion
 - Requesting / requiring use of a uniform plan / submission checklist
 - Expanding pre-approved plans to other types of designs

Where does IRS stand with regard to these and any future changes ?

Future changes

- 403(b) program
- Decisional guidance on interim amendments
 - Possibly included with eventual update to Rev. Proc. 2007-44
- Pre-approved Cash Balance and ESOP specimen programs

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Determination, Opinion and Advisory Letters



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 for an employer, or [pre-approved plans](#) (Master and Professional (M&P) plans).

If the plan meets the form requirements of:

- 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 current law. The IRS provides many 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.

What's New

- > [List of Pre-Approved Plans](#)
- > [Governmental Plans Can Elect Second Cycle E](#)

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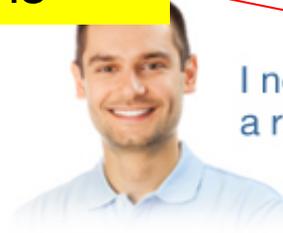
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Questions and Answers

