Issue 2011-8
December 16, 2011

employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

Internal Revenue Service
Tax Exempt and Government
Entities Division

A Publication of Employee Plans

- Significant changes to the Employee Plans Determination Letter Program - Announcement 2011-82
- Relief for IRA owners who have certain agreements with their brokers or financial institutions - Announcement 2011-81
- 2011 Cumulative List of Changes in Plan Qualification Requirements - Notice 2011-97

Changes to the Employee Plans Determination Letter Program

Announcement 2011-82, issued December 16, 2011, outlines changes to the determination letter application process that will take effect next year. These changes eliminate features of the determination letter program that are of limited utility to plan sponsors in comparison with the burdens they impose. The changes also are expected to improve our efficiency by reducing the time it takes us to process determination letter applications.

The changes include:

- eliminating coverage and nondiscrimination demonstrations, and,
- limiting Form 5307, *Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans*, filings to those employers who have made limited changes to their volume submitter (VS) plans.

Elimination of Coverage and Nondiscrimination Demos
Previously, a plan sponsor could submit *Schedule Q* (Form 5300), *Elective Determination Requests*, with its determination letter application and include data demonstrating compliance with coverage or nondiscrimination requirements.

We will eliminate this option to request a determination on such demonstrations beginning:

- February 1, 2012, for plans with a 5-year remedial amendment cycle (other than terminating plans), and
- May 1, 2012, for terminating plans and plans with a 6-year remedial amendment cycle.

As a result, the determination letter may not be relied on with respect to whether the plan satisfies the requirements of IRC sections 401(a)(4) or (26) or section 410(b). However, we will continue to review whether a plan's benefit or contribution formula satisfies the nondiscriminatory design-based safe harbor and IRC sections 401(k) and 401(m).

Form 5307 Applications

Generally, employers who adopt pre-approved Master or Prototype (M&P) or VS plans can rely on the plan's opinion or advisory letter that the form of the plan meets most qualification requirements.

Beginning May 1, 2012, we will accept determination letter applications filed on Form 5307 only from VS plan adopters who:

- modify the terms of the approved specimen plan, and
- have not made modifications that cause the plan to be treated as an individually designed plan.

We won't review a VS plan adopter's "off-cycle" Form 5307 application until we've reviewed all on-cycle applications. Off-cycle applications are those filed on or after May 1, 2012, but before the plan's next "on-cycle" submission period begins.

The on-cycle submission period for pre-approved defined benefit plans ends on April 30, 2012. We will continue to accept, through April 30, 2012, applications filed on Form 5307 for VS plans and M&P plans, including defined contribution plans, under procedures currently in effect. A Form 5307 application for a "new" defined contribution plan (that is, a plan whose initial remedial amendment period under Treas. Reg. section 1.401(b)-1 ends after April 30, 2010) that is filed before May 1, 2012, will be treated as an on-cycle application. A Form 5307 application for any other defined contribution plan that is filed before May 1, 2012, will be treated as an off-cycle application and might not be reviewed before the next two-year filing window available for pre-approved plans.

Form 5300 Applications for M&P and VS Plans

Currently, pre-approved plan adopters must file Form 5300 to get a determination letter for their plans if they make material changes to the plans. The announcement lists the existing circumstances and adds two other circumstances under which an application for a pre-approved plan must be filed on a Form 5300. Starting May 1, 2012, employers must file Form 5300 (instead of Form 5307) if they:

- add language to a pre-approved M&P plan to meet IRC sections 415 and 416 requirements because of required aggregation, or
- have a pre-approved plan with a normal retirement age earlier than 62.

Affected Forms

Form	Description of change	When it takes effect
Form 5300, Schedule Q	Demonstrations of coverage and nondiscrimination requirements no longer accepted	• Individually designed plans: applications filed on or after February 1, 2012 (other than terminating plans) • Pre-approved plans and terminating plans: applications filed on or after May 1, 2012
Form 5310, Schedule Q		
Form 5310, Line 13 and 14e	Do not complete	
Form 5300, Line 13	Do not complete	
Form 5307, Line 11	Do not complete	
Form 8717, Column A	Column does not apply	
Form 5307	May be filed only by adopters who modify the terms of the specimen approved plan	• Adopting employers: Applications filed on or after May 1, 2012

Additional Guidance

Revenue Procedure 2012-6, to be published in IRB 2012-1 on January 3, 2012, will reflect these changes further.

Certain Agreements Affecting IRAs

The IRS issued Announcement 2011-81 on December 12, 2011, granting temporary relief to IRA owners who have the following types of agreements with their brokers or financial institutions:

- indemnification agreements where the IRA owner agrees to reimburse a broker or other financial institution for losses incurred in the IRA, or
- cross-collateralization agreements where the IRA owner grants a security interest in either a non-IRA account in favor of an IRA or in an IRA in favor of a non-IRA account.

Pending additional guidance, the IRS will not take any action against an IRA solely because it's involved in one of these agreements, provided no action has been taken under such agreement against the IRA assets.