

Employee Plans News - Issue Number 2010-07 - August 20, 2010

1. [Post April 30, 2010, Issues Impacting Adopting Employers Who Use IRS Pre-Approved Plan Documents](#)

Information for employers who failed to adopt an approved EGTRRA restated plan document (with links to the [Voluntary Correction Program Submission Kit](#) to resolve the failure) or failed to submit a determination letter application for their EGTRRA restated plan by April 30, 2010.

2. **Tax Return Preparers**

IRS [announces](#) new tax return preparer application system and user fee, and releases proposed regulations to amend Circular 230 rules.

Post April 30, 2010, Issues Impacting Adopting Employers Who Use IRS Pre-Approved Plan Documents

April 30, 2010, was the last day of the two-year period for adopting employers of EGTRRA pre-approved defined contribution (DC) plans to adopt an approved restated document and file for a determination letter application, as described in [Announcement 2008-23](#). Since then, the IRS has received numerous inquiries from adopting employers who failed to file a determination letter application with respect to a DC pre-approved plan by April 30, 2010, but would now like to do so. The inquiries relate to the following separate situations:

- The adopting employer failed to adopt the approved EGTRRA restated plan document by April 30, 2010; or
- The adopting employer timely adopted an approved EGTRRA restated plan document by April 30, 2010, but failed to submit a determination letter application for the plan to the IRS by April 30, 2010.

This article is separated into two parts. Part I discusses the actions that need to be taken if an EGTRRA pre-approved DC restated plan document was not timely adopted by April 30, 2010. Part II addresses determination letter processing issues that apply to Form 5307/5300 determination letter applications made after April 30, 2010, in regard to pre-approved DC plans.

Part I - Adopting Employer Adopts EGTRRA Pre-Approved DC Plan Document After April 30, 2010

In general, under the six-year remedial amendment cycle rules described in [Revenue Procedure 2007-44](#), the failure of an adopting employer of a pre-approved DC plan to adopt the approved EGTRRA restatement of the plan document by April 30, 2010, will adversely affect the qualified status of the employer's plan. (See Part II of this article for a discussion relating to applicable amendment and submission timeframes, including the timeframes that apply to pre-approved "Cycle E" plans.)

The IRS has established a system of correction programs that permits employers to correct errors in and preserve the tax benefits of their retirement plans. This system, the Employee Plans Compliance Resolution System ([EPCRS](#)), is currently set forth in [Revenue Procedure 2008-50](#). The Voluntary Correction Program (VCP) is a component of EPCRS. Under VCP, an applicant may, for a reasonable fee, submit an application to the IRS, which identifies a plan's errors and proposes correction methods for those errors. If the correction methods are acceptable, the IRS issues a compliance statement to the applicant setting forth the agreement between the IRS and the applicant. VCP is available as long as the plan (or, in the case of a tax-exempt entity, the adopting employer) is not under examination by the IRS. See [Section 5.07 of Revenue Procedure 2008-50](#) for the definition of "under examination."

To assist adopting employers who wish to make a VCP submission to resolve this qualification failure, the IRS has developed a [Voluntary Correction Program Submission Kit](#), which provides detailed instructions for those adopting employers who wish to make a VCP submission to resolve the failure to adopt plan amendments timely.

An individual determination letter application in regard to the pre-approved DC plan is not required to be submitted to the IRS in connection with the VCP filing. An employer adopting a pre-approved plan is usually entitled to rely on the opinion or advisory letter issued with respect to the plan. However, if an adopting employer desires to obtain an individual determination letter with respect to its plan, then, after receiving an executed compliance statement from the IRS, the adopting employer may make an off-cycle determination letter application to the IRS as discussed in Part II of this article.

Part II - Post April 30, 2010, Form 5307/5300 Determination Letter Application Filings For Plan Sponsors Who Use Pre-Approved DC Plans

Except as otherwise provided below, applications for pre-approved DC plans submitted after April 30, 2010, will be treated as off-cycle filings. This means that the application will be placed in suspense and generally will not be worked by the IRS until on-cycle applications have been reviewed. For post April 30, 2010, off-cycle applications that have already been submitted, the IRS will contact the adopting employers and offer them the right to withdraw such applications. If such withdrawal request is made, the IRS will refund any user fees that have been paid.

Exceptions to Off-Cycle Treatment

Post April 30, 2010, applications for individual determination letters for pre-approved DC plans in the following categories will be considered on-cycle and will be worked in order with other timely submitted on-cycle applications.

1. An application that is submitted on or before January 31, 2011 for:
 - a. A plan maintained by a non-governmental employer with an Employer Identification Number (EIN) ending in a 5 or 0 - the EINs that correspond to Cycle E;
 - b. A plan maintained by a non-governmental employer with an EIN ending in 4 or 9 whose first plan year beginning on or after January 1, 2009 and ends on or after February 1, 2010 (see section IV of [Notice 2008-108](#)); or
 - c. A plan maintained by a governmental employer (see [Revenue Procedure 2009-36](#)).

Although the six-year EGTRRA remedial amendment cycle for pre-approved DC plans under Revenue Procedure 2007-44 ended on April 30, 2010, the five-year EGTRRA remedial amendment cycle for plans described in a. through c. above ends on January 31, 2011. Determination letter applications that are filed for these plans on or before that date will be considered to be on-cycle.

2. An application received by July 30, 2010, if the employer and its plan qualify for the special relief in [Notice 2010-48](#). This Notice extended the deadline for adopting and submitting a DC pre-approved plan to July 30, 2010, for plans affected by certain recent federally declared disasters.

If a plan described in categories one or two above is submitted on Form 5307, the plan will be reviewed on the basis of the 2004 Cumulative List. If the plan is submitted using Form 5300, the plan will be reviewed on the basis of the [Cumulative List](#) in effect on the date the application is submitted, unless the Form 5300 is submitted solely because the adopting employer is requesting a determination regarding partial termination, affiliated service group status or leased employees (see [Announcement 2008-23](#)).

An adopting employer submitting a determination letter application for a plan, which meets one of the two categories for on-cycle treatment should indicate which category the plan is eligible for in the cover letter to the application.

IRS Announces New Return Preparer Application System and User Fee; IRS Also Releases Proposed Regulations to Amend Circular 230 Rules

WASHINGTON — The Internal Revenue Service today announced that a new online application system for compensated tax return preparers is expected to go live in mid-September. The IRS has proposed to require all individuals who receive compensation for preparing all or substantially all of a federal tax return or claim for refund after Dec. 31, 2010, to have a Preparer Tax Identification Number (PTIN).

Under the proposed regulations, compensated tax return preparers will need to obtain, or reapply for, a PTIN and pay a user fee using this new comprehensive system, which is part of a series of steps planned to increase [oversight of federal tax return preparation](#). Tax return preparers will be creating PTIN accounts with the IRS when they use the new system.

“This is an important first step because it lays the groundwork in our efforts to ensure the quality and integrity of professional tax return preparation, which most taxpayers rely on in one form or another,” said IRS Commissioner Doug Shulman.

Compensated tax return preparers would pay a \$64.25 user fee the first year for a PTIN based on two underlying costs. The IRS proposes to collect \$50 per user to pay for outreach, technology, and compliance efforts associated with the new program. And the third-party vendor will receive \$14.25 per user to operate the online system and provide customer support.

Under the proposed regulations, compensated tax return preparers will be required to renew their PTINs annually and pay the associated user fee. The amount of the fee may change in future years as the actual program costs are periodically reevaluated.

Under the proposed regulations, the requirement to sign up on the new system will apply to all compensated tax return preparers of federal tax returns regardless of whether they currently possess a PTIN. Tax return preparers who already have a PTIN generally will be reassigned the same number. Any individual who plans to prepare all or substantially all of a tax return for compensation must obtain a PTIN even if the individual is not subject to the testing and continuing education requirements that will be required under Circular 230, according to the IRS’ proposed regulation. Access to the online application system will be through the Tax Professionals page of IRS.gov.

The IRS [previously announced](#) its portion of the total annual fee in proposed regulations (REG-139343-08) and interested parties have until Aug. 23, 2010, to submit comments on the regulations. A hearing on the proposed regulations is scheduled for Aug. 24, 2010. The launch of the new online application system and proposed user fees are dependent on the publication of final regulations on user fees and final regulations of the requirement to obtain a PTIN.

Proposed Regulations Released Related to Circular 230

The IRS also today released proposed regulations that would amend Treasury Circular 230, the rules governing practice before the IRS. The proposed regulations generally would extend current regulations that apply to attorneys, certified public accountants and other specified tax professionals to all tax return preparers, including currently unenrolled tax return preparers.

The proposed regulations (REG-138637-07) would clarify the definition of practice, establish a new registered tax return preparer designation and the eligibility requirements for becoming a registered tax return preparer, repropose standards with respect to the preparation of tax returns, revise rules regarding continuing education providers, and amend multiple other sections of Circular 230. Tax professionals and other interested parties have until Oct. 7, 2010, to submit comments regarding the proposed regulations.

Existing PTIN Application Process to Suspend Operations

In preparation for the launch of the comprehensive new PTIN system, the IRS will cease issuing PTINs effective Aug. 22 using Form W-7P, Application for Preparer Tax Identification Number, and through e-services – Online Tools for Tax Professionals. If you apply for a PTIN before Aug. 22, 2010, you will have to reapply once the new online PTIN application system begins.