



Quinquennial Qualified Retirement Plan Determination Letter Program Ending in 2017

July 23, 2015

On July 21, the IRS announced the discontinuance, effective January 1, 2017, of the every five year determination letter program for individually designed qualified retirement plans. The stated purpose of the discontinuance of this program is the IRS' "lack of resources". We suspect this will mean additional IRS agents will be assigned to plan audits.

This discontinuance means that Cycle E plans (plan sponsor's EIN ends with 5 or 0 and governmental plans) still should be submitted to the IRS no later than January 31, 2016, for an updated determination letter, and Cycle A plans (plan sponsor's EIN ends with 1 or 6) still should be submitted to the IRS for an updated determination letter during the period February 1, 2016 through January 31, 2017 (this January 31, 2017 deadline still applies even though the new rules apply effective January 1, 2017).

Effective on an after January 1, 2017, a sponsor of an individually designed plan will only be permitted to submit the plan for an IRS determination letter for its initial qualification (i.e., if the plan is a new plan or the plan has never received an IRS

determination letter) or for qualification upon termination of the plan. (Future guidance is expected to provide “additional limited circumstances” for obtaining an IRS determination letter.)

Future guidance also is expected (1) to provide model amendments that can be adopted for continued legal compliance, (2) to permit plans to incorporate new legal requirements by reference to the new statutory or regulatory requirements, and (3) to not require the adoption of previously-required amendments that have no application to the plan.

The discontinuance of the IRS determination letter program also means that the timing for adopting an amendment to a Plan to keep it in compliance with newly enacted laws or newly issued regulations will be governed by the “remedial amendment period rules” under prior IRS regulations. These rules generally allow the adoption of a retroactively effective amendment as long as the amendment is adopted by the due date, including extensions, of the plan sponsor’s tax return for the year the new law or regulation is effective.

Plan sponsors of prototype plans and individually designed plans will need to pay close attention to announcements of changes in the law that require plan amendments and be sure to adopt those amendments within the applicable “remedial amendment period”. Our future e-alerts will highlight these changes in the law, and we will continue to prepare the required amendments for individually designed plans. Although many of our clients who sponsor prototype plans have us review any amendment and restatement (and any stand-alone amendment) to those plans to be sure they are legally sufficient and consistent with the operation of the plan, we think that review will become more important to be sure the plan amendments are adopted and implemented within the remedial amendment period.

As a result of the IRS announcement, we recommend the following:

Cycle E Plans (the last digit of the EIN of the Plan sponsor is either 5 or 0, or the plan sponsor is a governmental entity) should submit the plan for a determination letter no later than January 31, 2016;

Cycle A Plans (the last digit of the EIN of the Plan sponsor is either 1 or 6) should submit the plan for a determination letter during the period February 1, 2016 through January 31, 2017;

A newly adopted individually designed plan should be submitted to the IRS for a determination letter no later than the due date, including extensions, of the plan sponsor's tax return for the year the new plan is first effective;

An individually designed plan that has never been submitted to the IRS for a determination letter should be submitted for a determination letter as soon as possible;

Plan sponsors now using prototype (or other "pre-approved") plans should consider whether it now makes more sense to use an individually designed plan because of this elimination of the quinquennial (every five year) cost of IRS determination letter submissions for individually designed plans; and

An individually designed or pre-approved plan that is terminated should be submitted to the IRS for a determination letter upon plan termination.