



IRS ANNOUNCES CURTAILMENT OF DETERMINATION LETTER PROGRAM

The Internal Revenue Service (“IRS”) recently announced a significant contraction of the determination letter program for individually designed qualified retirement plans. The changes described in [Announcement 2015-19](#) curtail plan sponsors’ ability to gain ongoing assurance from the IRS that the terms of their plans continue to satisfy the Internal Revenue Code’s qualification requirements after initial qualification.

Background. Sponsors of qualified plans currently may request an IRS determination on whether their plan documents satisfy the various mandates required for favorable tax treatment. For individually designed plans, determination letter requests may be made every five years on a staggered remedial amendment cycle. Receipt of a determination letter ensures that a plan sponsor can correct certain document errors and avoid disqualification of its plan.

Program Changes. IRS Announcement 2015-19 makes the following changes to the determination letter program for individually designed plans:

- Effective immediately, the IRS will no longer accept off-cycle determination letter applications except for new and terminating plans.
- Effective January 1, 2017, the IRS will eliminate the staggered five-year remedial amendment cycles. Sponsors of Cycle E plans (sponsored by employers with EINs ending in 0 or 5) will continue to be permitted to submit their determination letter requests until January 31, 2016, and Cycle A plans (sponsored by employers with EINs ending in 1 or 6) will be permitted to file between February 1, 2016 and January 31, 2017 to get a determination letter under the current program.
- Effective January 1, 2017, plan sponsors generally will be permitted to submit a determination letter application only for initial plan qualification and for qualification upon plan termination. Determination letter applications will be permitted in certain other limited circumstances to be announced in future guidance.

Amendment Timing. Plan sponsors will continue to be expected to keep their plans updated for legal and design changes, and the curtailment of the determination letter program may require plan sponsors to adopt certain amendments sooner than they would be required under the current program.

Implications for Plan Sponsors. Under the updated determination letter program, sponsors of individually designed plans may be at risk that their plans could become disqualified following the issuance of the initial plan determination letter. Pre-approved prototype and volume submitter plans will continue to receive IRS letters, so some plan sponsors may choose to amend their plans to convert from an individual plan design to a pre-approved plan design. However, pre-approved plans currently are not available for certain types of plans, and many defined benefit pension plans may have difficulty fitting their complex designs into a pre-approved plan format.

The IRS is considering ways to make it easier for plan sponsors to comply with the qualified plan document requirements going forward. The IRS may provide model amendments, not require plan provisions or amendments to be adopted if they are irrelevant to a particular plan, or expand plan sponsors' options to document qualification requirements through incorporation by reference. The IRS is seeking comments on changes to the remedial amendment period and interim amendment rules, what guidance should be issued to assist plan sponsors that wish to convert their individually designed plans into pre-approved plans, and changes to other IRS programs (such as the Employee Plans Compliance Resolution System).

Going forward, sponsors of individually designed plans will need to enhance their review procedures and ensure that required interim amendments and discretionary amendments are adopted within prescribed time limits.

Please contact the Thompson & Knight attorney with whom you regularly work or any of the following employee benefits attorneys to discuss this development.

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