

IRS Provides Determination Letter Guidance Revenue Procedure 2016-37

In 2015, the IRS announced that it was eliminating the five year remedial amendment cycle for individually designed plans and that determination letters for such plans would only be available for initial plan qualification and as permitted by the IRS. Earlier this year, the IRS announced that determination letters for individually designed plans would no longer contain an expiration date. These IRS announcements left plan sponsors and practitioners with many questions and concerns regarding the ongoing qualification status of individually designed plans.

Revenue Procedure 2016-37 provides additional guidance on the changes to the determination letter program for individually designed plans as well as some guidance for pre-approved plans. This ALERT covers some of the highlights for individually designed plans. The Revenue Procedure is detailed and provides a number of explanatory examples.

Key takeaways:

- The five year remedial amendment period for individually designed plans is eliminated as of January 1, 2017. Determination letter requests can be submitted for initial plan qualification; qualification upon plan termination and “other circumstances”.
- The IRS will provide an Operational Compliance List each year. The list will contain qualification requirement changes effective during a calendar year. To remain compliant, a plan must comply with the items on the Operational Compliance List as well as each relevant qualification requirement.
- The IRS also intends to publish annually, a Required Amendments List (RAL). The RAL will establish the date that the remedial amendment period expires for changes contained on the list.
- Interim amendments still apply to pre-approved plans.

What are “other circumstances”?

In addition to initial qualification and qualification upon termination, the IRS will consider providing determination letters for individually designed plans in special circumstances including:

- Significant law changes
- New approaches to plan design and
- The inability of certain types of plans to convert to pre-approved plans.

The IRS’ work load and resources will be significant factors in determining whether to permit plans to submit for a determination letter.

IRS has announced that no other circumstances will be considered in 2017.

How is the remedial amendment period affected?

Disqualifying provisions can be corrected during the remedial amendment period. Disqualifying provisions include the absence of a required provision from a plan; an amendment which

causes the plan to not satisfy IRC requirements, and plan provisions that change as a result of IRS guidance. Currently, the remedial amendment period depends on whether the plan is a new plan or an amendment to an existing plan.

The current remedial amendment period generally begins on the date the amendment (or new plan) is adopted or put into effect and ends on the later of the due date (including extensions) for filing the employer's tax return for the taxable year in which the amendment (or new plan) is adopted or effective (whichever is later) or the last day of the plan year in which the amendment (or new plan) is adopted or effective (whichever is later).

Revenue Procedure 2016-37 changes the remedial amendment period and is geared to the RAL. The remedial amendment period for a change included in the RAL will generally be the end of the second calendar year following the year in which the list is issued. A change will not appear on the RAL until the IRS has issued guidance including any model amendments. The first RAL will apply to changes effective during the 2016 calendar year.

What does this mean for plan sponsors?

The short answer is to add another item to your compliance calendar. Incorporate review of the RAL and Operational Compliance lists to your self-audit efforts. If you do not have an established self-audit process, now is the time to start one.

Note: all links are active as of the date of issuance of this ErisaALERT.

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