

IRS DETERMINATION LETTER RULES AND TIMING DEPEND UPON PLAN CHARACTERISTICS

Over the past few years, the IRS has modified many of its procedures in response to budget reductions by Congress. Tax qualified retirement plans are one of many aspects of IRS operations affected by budget cuts and dwindling IRS resources. The determination letter program that was established decades ago for IRS review and approval of retirement plan documents is being dramatically changed to accommodate reduced resources. These changes touch on pre-approved defined contribution and defined benefit plans, as well as including expansion of “pre-approved” plan documents for cash balance arrangements, and Section 403(b) plans. In addition, the IRS recently announced a reduction in the number of events that could trigger a request for IRS review and approval. Elimination of the Five-Year Cycle for individually designed retirement plan restatements, with IRS review and approval, is the most recent change under IRS Revenue Procedure 2016-37.

Simply put, an IRS determination letter for a retirement plan means that the plan document language has been reviewed and approved by the IRS. As a result, if an approved plan is audited by the IRS, the IRS document reviewer cannot cause the plan to lose its income tax benefits and thus

may not propose financial penalties against the employer sponsoring the plan due to that language. Employers who sponsor tax qualified retirement plans are almost always advised by experts to either use a pre-approved plan document or obtain a favorable IRS determination letter for their “individually designed plan.” This article examines various types of retirement plans and how each type of plan is affected by current IRS rules.

Pre-approved Defined Contribution Plans

Defined contribution plans consist of 401(k), profit sharing, combination profit sharing with 401(k) features, money purchase, and target benefit plans that are qualified under Internal Revenue Code section 401(a). IRS procedures permit these plans to use one of several pre-approved plan documents. These documents frequently use a “check-a-box” approach where the basic plan provisions are contained in a document without variables and specific plan design provisions are located in a companion Adoption Agreement describing selected plan design variables such as eligibility requirements, vesting provisions, etc. While a good deal of flexibility is provided in these pre-approved documents, some employers find them unsuitable for certain desired sophisticated plan provisions and must use an individually designed plan. As

Continued on Page 2

a practical matter, pre-approved plans are often available from Third Party Administrators (TPA), while individually designed plans are usually completed by law firms or in house attorneys.

Pre-approved defined contribution plans are normally required to be replaced once every six years with an updated pre-approved plan document. They were most recently restated during a time period ending on April 30, 2016 for the Pension Protection Act (PPA), and they will probably be amended and restated again by April 2022. The need for one or more interim amendments in this six-year period (2016 to 2022) may also be possible.

Likewise, if there is a “discretionary” amendment desired by the plan sponsor for the plan year 2017, such as to provide a plan “loan” feature, that amendment must be adopted by the end of the 2017 plan year for which this plan provision is desired. Of course, any amendment that will reduce future accrued benefits must be adopted on a prospective basis.

Pre-approved Defined Benefit Plans

Defined benefit plans qualified under Internal Revenue Code Section 401(a), other than cash balance plans, are currently permitted to use pre-approved plan documents. Cash balance plans will be permitted to use a pre-approved document in the future, once the IRS completes its

review and approval of draft documents already submitted by commercial retirement document providers. Most pre-approved plans use the Basic Document plus Adoption Agreement approach described above for defined contribution plans. The deadline for amending and restating pre-approved defined benefit plan documents has been extended for at least one year while the IRS reviews cash balance plan provisions that are scheduled to be included in the next Six-Year Cycle.

Pre-approved defined benefit plans were last updated with an amendment and restatement period that ended in April 2012. As yet there is no official date for the next round of document restatements, but some experts expect restatements reflecting updated plan language will be required to be adopted between Spring 2018 through Spring 2020.

NRS clients with cash balance plan documents have completed an IRS Form 8905 that documents their intent to use a pre-approved document when one is available. Execution of Form 8905 does not force the employer to adopt a pre-approved document. In the interim, these plans will adopt any plan amendments that may be necessary to comply with new laws and regulations.

Individually Designed Defined Contribution and Defined Benefit Plans

The IRS's recently published Revenue Procedure 2016-37 deals with the elimination of the Five-Year Cycle for individually designed plan restatements and how individually designed plans must be periodically updated in the future. Effective January 1, 2017, individually designed plans may no longer submit restatements for IRS approval under the Five-Year Cycle. Instead, they must adopt amendments that are described in an annually published "Required Amendments List". These amendments may be adopted as late as the end of the *second* calendar year following the year the amendment is effective.

Please note, however, that the two-year "grace" period for *adopting* required amendments does not change the plan sponsor's need to continually operate the plan in accordance with periodic law changes.

Code 403(b) Plans

Defined contribution retirement plans described in Internal Revenue Code section 403(b) were required to prepare and maintain written plan documents since 2009. However, no determination letter program as yet exists for such plans. Pre-approved plans may be part of the general defined contribution restatement program involving restatements by April 2022, but

the IRS may choose to implement pre-approved 403(b) plans earlier than that date. Some practitioners anticipate the pre-approved documents will become available in Spring 2017 and be available for restating existing plans until May 2019.

Terminating Plans

Whenever a tax qualified retirement plan is terminated, employers are urged by their advisors to submit the matter to the IRS for their review and approval. As noted earlier in this article, the IRS remains committed to reviewing and approving terminating plans. Termination of a qualified retirement plan requires that any amendments pending for later adoption by active plans must be immediately adopted by terminating plans. While the IRS review of terminating plans involves review and approval of plan document language, it also includes examination of other issues including vesting, benefit calculations and payment. Even plans with pre-approved plan documents are urged to submit a plan termination to the IRS for approval. Terminating pre-approved plans can get review and approval of any interim amendments adopted without pre-approved language in addition to approval of benefit payment items.



**REMINDERS FOR
AUGUST 2016**

August 15 – Minimum funding requirements for Defined Benefit, Money Purchase, and Target Benefit plan years ended 11/30/15 must be met by August 15 in order to avoid excise taxes. An electronic transfer must be completed or a check mailed by this date.

August 15 – Retirement plan employer contributions are due in order to be deducted on employer tax returns due to be filed August 15, 2016.

August 15 – Forms 5500 Series/8955-SSA – Forms that are on extension are due for the Plan Year ended 10/31/15.

August 31 – Forms 5500 Series/8955-SSA – Forms are due for the Plan Year ended January 31, 2016 for plans that are not on extension.

For more information or to request a proposal, please visit our website at www.NRServices.com, or for sales support, please contact:

CENTRAL & EASTERN TIME

Jim Houpt
Executive Vice President
T| (800) 627-1610 x 507
E| jim.houpt@NRServices.com

Amber Waddell
Sales Representative
T| (800) 627-1610 x 501
E| amber.waddell@NRServices.com

PACIFIC & MOUNTAIN TIME

Nate DeLong
Sales Representative
T| (800) 350-2172 x 260
E| nate.delong@NRServices.com

Suzan Hall
Sales Representative
T| (800) 350-2172 x 224
E| suzan.hall@NRServices.com