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IRS Announces New Determination Program



Determination Program

On June 29, 2016, [Revenue Procedure 2016-37](#), generally effective **January 1, 2017**, was released changing the:

- **Determination Letter Program** for tax-qualified *individually designed plans* (IDPs); and
- **Requirements** for when plan amendments *must be adopted* under IRC Section 401(b)

While Revenue Procedure 2016-37 covers many changes and plan sponsors should *carefully review* the revenue procedure, **most relate to when an IDP:**

- Must be amended for law and other guidance changes; and
- May request a determination letter

However, Revenue Procedure 2016-37 also makes *clarifying changes* to the six-year remedial amendment cycle system for **pre-approved qualified plans** and *modifies* the six-year remedial amendment cycle system. In addition, this revenue procedure delays until **August 1, 2017**, the beginning of the **12-month submission period** for master and prototype (M&P) plan sponsors and volume submitter (VS) practitioners to submit pre-approved defined contribution plans for *opinion* or *advisory letters* during the third six-year remedial amendment cycle.

Background

Rev. Proc. 2007-44 provided a **5-year remedial amendment cycle (RAC) system** for amended IDPs to request a determination letter generally every 5 years. Under that system, plans had to adopt *interim amendments* for items on the Cumulative List of required plan changes. This system required IDPs to amend on an interim basis by the **end of the year in which the amendments became effective**. IDPs would then have to make *final conforming amendments* at the end of their 5-year RAC cycle.

Announcement 2015-19 stated that the RAC system would end, and a replacement system for the IRC Section 401(b) period would be created. Rev. Proc. 2016-37 *ends* the RAC system and replaces it with a *new approach* to the remedial amendment period.

When must IDPs be amended?

An IDP's IRC Section 401(b) remedial amendment period for required amendments will be tied to a **Required Amendment List** (RA List) *unless* legislation or other guidance states otherwise. Interim amendments will *no longer be required* for IDPs. The RA List is the annual list of *all the amendments* for which an IDP must be amended to *retain* its qualified plan status. The IRS will publish the RA List **after October 1 of each year**. Generally, plan sponsors must adopt any item placed on RA List by the **end of the second calendar year** following the year the RA List is published. For example, plan amendments for items on the 2016 RA List generally must be adopted by December 31, 2018.

Discretionary amendments will still be required by the end of the plan year in which the plan amendment is operationally put into effect, as under Rev. Proc. 2007-44.

Rev. Proc. 2016-37 doesn't change a plan's **operational compliance standards**. Employers need to operate their plans in compliance with *any change* in qualification requirements from the effective date of the change, *regardless* of the plan's **401(b) period** for adopting amendments. To assist employers, the IRS intends to provide an **Operational Compliance List** annually to identify changes in qualification requirements that are effective *during* a calendar year.

When may a plan apply for a Determination Letter?

Under Rev. Proc. 2016-37, a plan can request a determination letter *only* if any of these apply:



- It has *never* received a letter before
- The plan is **terminating**
- The IRS makes a **special exception**. They anticipate making exceptions based on program capacity to work additional applications, and the need for rulings in certain areas. The IRS will measure need in a variety of ways including *annual input* from the EP community.



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Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in 10 states including Pennsylvania, New Jersey, Delaware, New York and Florida. We are also able to practice in additional

states that have passed firm mobility.

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