

IRS Issuing Opinion and Advisory Letters for Pre-Approved Defined Benefit Plans and Opening Determination Letter Program for Pre-approved Plan Adopters



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In [IRS Announcement 2018-05](#) , the Internal Revenue Service (IRS) indicated that it intends to issue opinion and advisory letters for pre-approved master and prototype (M&P) and volume submitter (VS) defined benefit plans that were restated for changes in plan qualification requirements listed in Notice 2012-76, 2012-52 I.R.B. 775 (2012 Cumulative List), and that were filed with the IRS during the submission period for the second six-year remedial amendment cycle under Rev. Proc. 2007-44, 2007-2 C.B. 54. The IRS expects to issue the opinion and advisory letters on March 30, 2018, or, in some cases, as soon as possible thereafter. An employer using these pre-approved plan documents to restate a plan for the plan

qualification requirements included on the 2012 Cumulative List will be required to adopt the plan document by April 30, 2020.

Starting May 1, 2018, and ending April 30, 2020, the IRS will accept an application for an individual determination letter from an employer eligible to submit a determination letter request under the second six-year remedial amendment cycle for defined benefit pre-approved plans. The IRS will announce in future guidance a delayed beginning date for the third six-year remedial amendment cycle for pre-approved defined benefit plans.

Background

Rev. Proc. 2016-37, 2016-29 I.R.B. 136, provides that every pre-approved plan has a regular, six-year remedial amendment cycle and that M&P sponsors and VS practitioners, as defined in Rev. Proc. 2015-36, 2015-27 I.R.B. 20, may apply for new opinion or advisory letters once every six years. M&P sponsors and VS practitioners generally are able to submit applications for opinion and advisory letters until January 31st of the calendar year following the opening of the six-year remedial amendment cycle, although the application period may be modified and extended.

Rev. Proc. 2007-44, 2007-2 C.B. 54, and Rev. Proc. 2011-49, 2011-44 I.R.B. 608, provided that the original submission period for the second six-year remedial amendment cycle for pre-approved defined benefit plans was February 1, 2013, through January 31, 2014. However Rev. Proc. 2015-36 later extended the end of the period to October 30, 2015. Rev. Proc. 2015-36 required M&P sponsors and VS practitioners to restate their pre-approved defined benefit plans for the qualification requirements included on the 2012 Cumulative List and to apply for new opinion or advisory letters during this submission period.

Section 14.03 of Rev. Proc. 2016-37 provides that when the review process for a cycle of pre-approved plans has neared completion, the IRS will publish an announcement providing the date by which adopting employers must adopt the newly approved plans. This date is intended to provide adopting employers a window of approximately two years in which to adopt plans and, if they are otherwise eligible, apply for an individual determination letter.

Deadline for Employer Adoption of Pre-approved Defined Benefit M&P and VS Plans

Rev. Proc. 2016-37 provides that the second six-year remedial amendment cycle for pre-approved defined benefit plans would end on January 31, 2019 unless the IRS were to revise these timing requirements. Any such revisions would be announced in future guidance. Consistent with Rev. Proc. 2016-37, this announcement extends the end of a pre-approved defined benefit plan's remedial amendment cycle with respect to the changes in plan qualification requirements included on the 2012 Cumulative List to April 30, 2020. An adopting employer whose defined benefit plan is eligible for the six-year remedial amendment cycle system under section 19 of Rev. Proc. 2016-37, and who adopts, by April 30, 2020, an M&P or VS defined benefit plan that was approved based on the 2012 Cumulative List, will be considered to have adopted the plan within the second six-year remedial amendment cycle.

Opening of Individual Determination Letter Program for Pre-approved Defined Benefit Plans

An adopting employer of an M&P or VS plan may apply for an individual determination letter (if otherwise eligible) during the period beginning May 1, 2018, and ending April 30, 2020. Additional information regarding determination letter applications for pre-approved plans, including requirements for applications filed on Form 5300 and 5307, may be found in Rev. Proc. 2018-4. (See sections 12 and 13 of Rev. Proc.

2018-4.)

Delayed Beginning Date for Third Six-Year Remedial Amendment Cycle

Section 16.01 of Rev. Proc. 2016-37 provides that the third six-year remedial amendment cycle for defined benefit pre-approved plans begins on February 1, 2019. The IRS will announce in future guidance a later starting date for this third six-year remedial amendment cycle.