

A New Determination Letter Program

Changes Ahead for Individually Designed Plans

Approximately one year after the IRS announced the intended elimination of the remedial amendment cycle program for plans requesting a determination letter, Revenue Procedure 2016-37 was released fulfilling that intention and offering a new approach.

On June 29, 2016, the IRS released Rev. Proc. 2016-37 which eliminates and replaces the remedial amendment cycle program for individually designed plans, despite contrary recommendations from the Employee Plans Subcommittee of the Advisory Committee on Tax-Exempt and Government Entities. Previously, individually designed plans could request a determination letter, stating that the form of their plan meets Internal Revenue Code requirements, every 5 years. In June of 2015, the IRS announced that this 5-year cycle would be eliminated. Beginning January 1, 2017, a plan may only request a determination letter in one of the following scenarios:

- The plan has not received a determination letter previously.
- The plan is terminating.
- The IRS makes a special exception.

The IRS anticipates making special exceptions based on staffing and workload capacity. If able to handle additional applications, the IRS will decide whether to issue determination letters for additional situations such as law changes.

The IRS intends to publish a Required Amendments list after October 1st annually which will determine an individually designed plan's remedial amendment period, unless legislation or guidance dictates otherwise. This annual list will contain the amendments with which plans must comply to maintain tax-qualified status. Generally, plans must be in full compliance by adopting the amendments by the end of the second calendar year following the year in which the Required Amendments list is published. In example, the general compliance deadline for the amendments listed on the 2016 Required Amendments list is December 31, 2018. Interim amendments are no longer required; however discretionary amendments will still be required by the end of the plan year in which the amendment is operationally put into effect.

Additionally, the IRS intends to publish an Operational Compliance List to identify changes in qualification requirements effective during the calendar year and to assist sponsors in achieving operational compliance.

For more information on the new IRS Determination Letter Program, please view the [IRS Fact Sheet](#) or [Revenue Procedure 2016-37](#).