

So Long, Farewell: The Demise of the Determination Letter Program

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Effective January 1, 2017, the staggered 5-year determination letter remedial amendment cycles for individually designed plans will end. This means that plan sponsors will no longer be able to request a determination regarding the qualified status of its individually designed plan every five years. Instead, individually designed plans will be able to receive a determination letter only on initial plan qualification and for qualification upon termination. We are currently filing determination letter applications for plans that fall in Cycle E (EIN ends in 5 or 0). Cycle A (EIN ends in 1 or 6), beginning February 1, 2016, will therefore be the final cycle under the current structure.

In addition, effective July 15, 2015, the IRS will no longer accept off cycle determination letter applications unless the request pertains to a new or terminating plan.

Many questions remain unanswered at this time. Should plan sponsors consider abandoning their individually designed plan? This may not be a viable solution for complex retirement plans. How does this affect the interim amendment rules? How will this affect the IRS's voluntary correction program? Will IRS audits now include a comprehensive review of plan provisions for qualification requirements? How will this change affect the due diligence process in a merger & acquisition situation?

What we do know is that the IRS is considering ways to make it easier for plan sponsors to comply with the qualified plan document requirements and is requesting comments on certain issues relating to this announcement. We will continue to monitor this development and keep you posted on future guidance.

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