



# Compensation & Benefits

ALERT

## IRS Pulls Determination Letter Program, Puts Premium on Plan Assessments by Sponsors

Effective January 1, 2017, the IRS has announced that, due to limited resources, it is eliminating the existing 5-year determination letter application staggered filing cycles for individually designed plans. Off-cycle filings are eliminated immediately.

Determination letter applications will no longer be accepted for individually designed plans, other than:

- Plans that have not received an initial determination letter (no matter when adopted) can apply for an initial determination letter.
- Terminating plans can apply for a determination upon termination.
- Cycle E filers (EIN ending in 5 or 0) can continue to file through January 31, 2016.
- Cycle A filers (EIN ending in 1 or 6 and Cycle A controlled groups) can file during the last Cycle A, which begins February 1, 2016, through the end of the Cycle on January 31, 2017.
- Certain other limited circumstances as yet to be determined.

This announcement does not address the existing six-year filing cycle for volume submitter plans, which can be filed on a Form 5307 if they have been modified by some limited individually designed language. The existing six-year filing cycle for volume submitter plans ends on April 30, 2016. Master/prototype plans, and volume submitter plans with no modifications to the pre-approved document (except to select among options under the plan) have not been allowed to file since May 2012, and must rely upon the plan's opinion letter.

Under the current system, deadlines for adopting legally-required amendments often were extended to the end of the applicable filing cycle. These filing cycle extensions will no longer be available for individually designed plans after December 31, 2016, although the IRS has announced that it intends to extend the deadlines for individually designed plans to a date that will be no earlier than December 31, 2017.

The IRS is requesting comments (October 15, 2015 deadline) on the related issues, such as the legally-required amendment rules and deadlines, the EPCRS correction program, and guidance for individually designed plans converting to pre-approved plans.

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## Routine Plan Health Check Assessments Now In Order

Prior to this change, it was relatively easy to correct errors in plan amendments – as the IRS allowed sponsors to retroactively fine-tune their amendment language, and even adopt new retroactive amendments in certain cases, during the determination letter review process. This flexibility is now gone under the new system, and it will be more important than ever to adopt carefully drafted legally-required amendments on time. Otherwise, the Employee Plans Compliance Resolution System (EPCRS) will be the only alternative for fixing plan document errors retroactively. Employers should also consider performing their own document compliance checks on a scheduled basis now that the IRS determination letter process will no longer serve that purpose. Keep in mind, however, that typically most plan errors are not plan document defects, but rather operational defects, which have never been reviewed within the determination letter process but rather are correctable under the EPCRS program.

Cycle E filers (EINs ending in 5 or 0) and Cycle A filers (EINs ending in 1 or 6 and Cycle A controlled groups) now have their last chance to apply for an updated determination letter prior to the plan's termination, unless special circumstances apply in the future. Cycle E began February 1, 2015 and ends January 31, 2016, and Cycle A begins February 1, 2016 and ends January 31, 2017. Volume submitter plans with limited individually designed language should file during the current six-year cycle, which ends April 31, 2016, as the future of the pre-approved determination letter filing program is uncertain.

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If you would like to receive additional information about the topic addressed in this alert, or have any questions, please contact any member of our Compensation & Benefits group:

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