



## Employee Benefits & Executive Compensation ADVISORY ■

**NOVEMBER 3, 2015**

### Qualified Retirement Plan Amendments and IRS Filings – Upcoming Deadlines

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This advisory reminds plan sponsors of deadlines for amending qualified retirement plans and for submitting certain plans to the IRS for a determination letter, as well as other significant changes to the determination letter process.

In some years, qualified retirement plans must adopt required amendments or interim amendments before certain deadlines. However, not every year has required or interim amendments that must be adopted. Although it appears that for most plans no such amendments are required in 2015, plan sponsors that have added optional features to a retirement plan during 2015 (e.g., a plan loan feature) must ensure that the associated “discretionary” amendments are signed no later than December 31, 2015 (for calendar-year plans). Please consult your plan’s legal representative to determine whether any discretionary plan amendments are required.

“Cycle E” plans (defined below) will generally need to be amended and restated no later than January 31, 2016. If a Cycle E plan has discretionary amendments, those amendments still must be adopted by December 31, 2015 (for calendar-year plans).

#### **Cycle E Filings Due by January 31, 2016**

##### **A. Individually Designed Plans**

The IRS has established staggered deadlines for employers to file their qualified retirement plans with the IRS for a determination letter. While changes to this program are imminent (see Section II below), under the existing program, every individually designed qualified retirement plan is assigned a specific five-year cycle (Cycles A-E), typically based upon the last digit of the plan sponsor’s employer identification number (EIN). If the plan sponsor’s EIN ends in 5 or 0, the plan will generally be a Cycle E plan. Additionally, governmental plans that did not file under Cycle C may file under Cycle E.

Plan sponsors that fall under Cycle E and that desire to obtain an IRS determination letter must submit their Cycle E plans for a determination letter no later than January 31, 2016. Plan sponsors should verify the EIN of their subsidiaries or other divisions maintaining their own separate plans.

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Prior to each cycle, the IRS issues guidance (in the form of a Notice entitled “Cumulative List of Changes in Plan Qualification Requirements”) on the provisions that must be included in each plan that is being submitted for a determination letter. Plan sponsors should review the Cumulative List issued in connection with Cycle E filings ([Notice 2014-77](#)) to make sure that all required amendments are included in the plan document.

## **B. Pre-Approved Plans**

Master and prototype plans and volume submitter plans (“pre-approved plans”) are generally required to be updated and restated on a six-year cycle. The current cycle for pre-approved defined contribution pre-approved plans (e.g., 401(k) plans) runs from May 1, 2014, to April 30, 2016. This means that all updated pre-approved defined contribution plans must be signed no later than April 30, 2016. Note, however, that under current IRS rules, pre-approved defined contribution plans may only file for a determination letter under limited circumstances and must generally do so by April 30, 2016. If you provide benefits under a pre-approved defined contribution plan, you should consult your plan’s legal advisor regarding the April 30, 2016, deadline.

## **II. Changes to the Determination Letter Process**

Recently, the IRS announced that it will be modifying its determination letter program beginning in 2017 ([Announcement 2015-19](#)). Under this change, the five-year amendment cycle will end, and the IRS will no longer issue determination letters, with a few exceptions:

1. Cycle A plans (i.e., plans where the plan sponsor’s EIN ends in 1 or 6) will still be able to file for a determination letter by January 31, 2017.
2. The IRS will still issue determination letters for new plans and plan terminations.

The IRS is expected to issue additional guidance and is expected to offer additional relief regarding the determination letter process.

## **III. Conclusion**

Plan sponsors should review their qualified retirement plans now to ensure compliance with required amendment and filing deadlines. Please do not hesitate to contact your Alston & Bird attorney if we can assist you in proper filing procedures for your qualified retirement plan and to discuss any plan amendments and applicable deadlines.

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If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

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