

EMPLOYEE BENEFITS LEGAL ALERT

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Plan Determination Letter Procedures

The Internal Revenue Service has finalized procedures for a new system of staggered remedial amendment periods and new procedures for retirement plan sponsors seeking Internal Revenue Service approval to file for determination letters to ensure tax code compliance.

Employers sponsoring a retirement plan which is based upon an Internal Revenue Service pre-approved plan, such as the Krugliak, Wilkins, Griffiths & Dougherty Volume Submitter Plan, will need to apply for advisory letters only once every six years. Once the Internal Revenue Service approves of the Volume Submitter Plan document, employers that wish to adopt the plan will have approximately a two-year period in which to do so. Employers adopting a Volume Submitter Plan, while still forced to apply to the Internal Revenue Service for an advisory opinion letter on the tax qualified status of the plan, will more than likely enjoy the benefits of lower plan administration and plan document maintenance costs.



Even though plan sponsors will have until the end of their remedial amendment period to adopt retroactive plan amendments as needed, plans must be in operational compliance with the written plan documents, including any interim amended plan provisions, which may have a retroactive effective date. Interim plan amendments will still be necessary when there are statutory or regulatory changes with respect to plan qualification requirements that will impact provisions of the written plan document. Please note that the new procedures will not alter the requirements of Internal Revenue Code section 411(d)(6), which prohibit a plan amendment from decreasing a plan participant's accrued benefit or eliminating or reducing any early retirement benefit or retirement type subsidy.

Under the new determination letter program, every individually designed employee plan will have a five-year remedial amendment (a faster, more cumbersome cycle than used for the pre-approved plans). The IRS's goal is to create a fixed regular cycle for the adoption of remedial plan amendments under the Internal Revenue Code and the submission of determination letter applications.

The goal of the Internal Revenue Service in establishing the plan determination letter procedures is to ensure that all plans will be updated on a semi-regular basis. Sponsors of both individually designed plans and pre-approved plans should evaluate the effects of the new determination letter cycles and the extension of the EGTRRA remedial amendment period for their plan. If you have any questions regarding this article, or if your company would like to investigate establishing a retirement plan for the benefit of its employees, please contact one of the attorneys of the Krugliak, Wilkins, Griffiths & Dougherty Employee Benefits Group.

NOTE: This general summary of the law should not be used to solve individual problems since slight changes in the fact situation may require a material variance in the applicable legal advice.

This update has been prepared by Krugliak, Wilkins, Griffiths & Dougherty Co., L.P.A. as a general summary of the law and is not a substitute for legal advice. If you have any questions regarding this topic, call (330) 497-0700 or e-mail legal@kwgd.com.

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