

# Changes to IRS Employee Plans Determination Letter Program

*Presented by:*

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Rev. Proc. 2015-36

Rev. Proc. 2016-37

Rev. Proc. 2017-41

Rev. Proc. 2019-20

Rev. Proc. 2020-04

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Rev. Proc. 2017-41 makes significant changes to IRS  
"Pre-Approved" Plans Program.

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Rev. Proc. 2017-41 eliminates the distinction between  
master and prototype plans and volume submitter  
plans.

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The IRS Opinion Letter Program will pre-approve the tax-qualified status of two types of plans:

- Standardized Plans
- Non-Standardized Plans



➤ **Standardized Plan:**

- The employer must adopt plan on a word-for-word basis.
- Employer can only select from pre-approved options for plan terms and provisions.



➤ **Non-Standardized Plan:**

- Adopting employer may make minor changes to the plan's pre-approved language.
- A non-standardized plan with minor modifications may be filed with the IRS on a Form 5307 to request an individual determination letter.

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**Rev. Proc. 2016-37.**

➤ Effective January 1, 2017:

- Sponsors of individually designed plans are only permitted to submit determination letter applications for:
  - ❖ Initial Plan Qualifications (a plan for which a determination letter has not previously been issued); or
  - ❖ Qualification Upon Plan Termination (plans terminating through the distribution of all plan assets or the transfer of plan assets and liabilities to PBGC); or
  - ❖ "Other Circumstances".

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**"Other Circumstances"**. Rev. Proc. 2016-37.

The IRS may consider providing determination letters for individually designed plans in the event of:

- Significant changes in law
- New approaches in plan design; and
- The inability of certain types of plans to convert to pre-approved plans.

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1) [Rev. Proc. 2019-20](#) provides limited expansion of the IRS Determination Program for (1) statutory hybrid plans (*e.g.*, cash balance plans) and (2) merged plans.

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2) [Rev. Proc. 2019-20](#). Hybrid Plans. Any defined benefit plan using a statutory hybrid formula (e.g., cash balance plans) may apply for a new determination letter between September 1, 2019 and August 31, 2020. A statutory hybrid formula is a lump-sum based formula, or any formula that has a similar effect to a lump-sum based formula.

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3) [Rev. Proc. 2019-20](#). Sanctions Relief: The IRS will not impose any sanctions for plan document failures relating to the implementation of the final hybrid plan regulations that are discovered by the IRS in reviewing a determination letter application submitted pursuant to Rev. Proc. 2019-20.

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4) [Rev. Proc. 2019-20](#). Merged Plans. Sponsors of "merged plans" may apply for a determination letter. A "merged plan" is a plan resulting from the merger or consolidation of two or more formerly separate plans into a single plan in connection with a corporate merger, acquisition, or similar business transaction among unrelated entities.

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5) [Rev. Proc. 2019-20](#). A plan merger must be completed within the transition period under IRC Section 410(b)(6)(C) (*i.e.*, no later than the end of the plan year after the plan year that includes the date of the corporate transaction) AND the determination letter application must be submitted by the last day of the first plan year (of the merged plan) that begins after the effective date of the plan merger.

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6) [Rev. Proc. 2019-20](#). Sanctions Relief: The IRS will not impose any sanctions for plan document failures relating to a plan provision included to effectuate the plan merger. Other plan document failures discovered by the IRS during its review that result from a good faith timely adopted amendment can be corrected with a reduced sanction equal to the EPCRS / VCP fee for such plan.

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7) [Rev. Proc. 2019-20](#). A merged plan that applies for a determination letter can also have recent plan design changes reviewed as part of the application.

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**Operational Compliance List.** Rev. Proc. 2016-37.

The IRS will publish an Operational Compliance List each year.

The list will contain qualification requirement changes effective during a calendar year.

To remain compliant, a plan must comply with the items on the Operational Compliance List and each relevant qualification requirement.

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**Required Amendments List (RAL).** Rev. Proc. 2016-37.

The IRS will annually publish a Required Amendments List (RAL).

The RAL will establish the date that the remedial amendment period (RAP) expires for changes contained on that list.

Interim Amendments will still apply to pre-approved plans.

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**The Remedial Amendment Period (RAP)** will be based on the RAL.

The RAP for a change on the RAL will generally be the end of the second calendar year following the year in which the RAL is issued.

A change will not appear on the RAL until the IRS has issued guidance including possible model amendments.

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<b>Year</b>	<b>Required Amendments List</b>	<b>General Plan Amendment Deadline</b>
2016	Notice 2016-80	December 31, 2018
2017	Notice 2017-72	December 31, 2019
2018	Notice 2018-91	December 31, 2020
2019	Notice 2019-64	December 31, 2021

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## Rev. Proc. 2016-37.

- Effective January 1, 2017:
  - Staggered 5-year determination letter remedial amendment cycles for individually designed plans are eliminated.
  - Expiration dates on determination letters no longer apply. Determination letter is still valid after expiration date.



## Rev. Proc. 2015-36.

- IRS Pre-Approved Plan Programs expanded to include:
  - Employee Stock Ownership Plans (ESOPs)
  - Cash Balance Pension Plans



## QUALIFIED PLAN DOCUMENT UPDATES/ REMEDIAL AMENDMENT CYCLE.

REV. PROC. 2007-44;

REV. PROC. 2015-36;

REV. PROC. 2016-37;

REV. PROC. 2017-41



### Six-Year Cycle for Pre-Approved Plans.

- Six-Year Cycle for Pre-Approved Defined Contribution (DC) Plans.

Year	Step
5/1/2014-4/30/2016	Employers restate DC plans by adopting pre-approved plans. (PPA)
5/1/2008-4/30/2010	Employers restate DC plans by adopting pre-approved plans. (EGTRRA)

- The last day of the EGTRRA Remedial Amendment Cycle (RAC) for employers to adopt pre-approved defined contribution plans was April 30, 2010.
- The PPA RAC began 5/1/2014 and **ended 4/30/2016**.
- The next RAC for Defined Contribution Plans should begin in 2020 or 2021 and end in 2022 or 2023.

## Six-year cycle for Pre-Approved Defined Benefit (DB) Plans (including Cash Balance Plans).

- The two year RAC for employers to restate DB Plans by adopting pre-approved DB Plans commenced May 1, 2018 and will end on April 30, 2020.
- The prior two year remedial amendment cycle for employers to restate DB Plans by adopting pre-approved DB Plans commenced May 1, 2010 and ended on April 30, 2012.

## Interim Amendments.

- Summary of Interim Amendments and due dates.

Amendment	Due Date
EGTRRA Good Faith	End of 1st plan year beginning on or after January 1, 2003.
Required Minimum Distributions. IRC §401(a)(9)	End of 1st plan year beginning on or after January 1, 2003.
Mandatory Rollover/Involuntary Cash-Out	End of the Plan year that contains March 28, 2005.
IRC §401(k) final regulations	Last day of the 1st plan year beginning on or after January 1, 2006.
IRC §415 final regulations	Last day of the limitation year beginning on or after July 1, 2007.
Pension Protection Act (PPA) of 2006	Last day of the plan year beginning on or after January 1, 2009.
HEART Act IRC §§401(a)(37); 414(u)(9)	Last day of the first plan year beginning on or after January 1, 2010.
WRERA Waiver of 2009 RMDs	Last day of the first plan beginning on or after January 1, 2011.
IRC §436 Defined Benefit Plans	Last day of the first plan year beginning on or after January 1, 2013.
DOL Disability Claims Procedures	Effective April 1, 2018.



- Plan Sponsor/Employer should have copies of executed Adoption Agreement/Plan Documents and all Interim Amendments.
- Pre-Approved Plan Interim Amendments may be adopted by the entity sponsoring the Plan (*e.g.*, Insurance Company, Brokerage Firm, Bank, Law-Firm).

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### **Non-Timely Amenders.**

Tax-qualified retirement plans that missed the deadline to be amended and restated will need to be updated and filed with the IRS under the Voluntary Correction Program (VCP). VCP is part of the IRS Employee Plans Compliance Resolution System (EPCRS). The EPCRS is currently found in Rev. Proc. 2019-19.

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