

October 1, 2015

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Internal Revenue Service
CC:PA:LPD:PR (Announcement 2015-19)
Room 5203
PO Box 7604
Ben Franklin Station
Washington, DC 20044

RE: Announcement 2015-19 – Revisions to the Employee Plans Determination Letter Program

Ladies and Gentlemen:

The Committee on Investment of Employee Benefit Assets (CIEBA) is pleased to respond to the request of the U.S. Treasury Department and the Internal Revenue Service (the Service) for comments regarding Announcement 2015-19, relating to Revisions to the Employee Plans Determination Letter Program. While we are sympathetic to the challenges the Service faces with reduced budgets and decreased staffing, the dramatic cuts to the longstanding determination letter program are both unwarranted and potentially damaging to the retirement system. Rather than abandoning a system that has worked well for plan sponsors, participants and the government, we urge the Service to work with the pension community on creative solutions to maintain a comprehensive determination letter program while relieving excessive burdens on the Service.

CIEBA members are the chief investment officers of more than 100 of the Fortune 500 companies who individually manage and administer Employee Retirement Income Security Act (ERISA) - governed corporate retirement plan assets. CIEBA members voluntarily sponsor plans and manage almost \$2 trillion of retirement assets on behalf of 17 million participants, representing a very significant portion of the largest private defined benefit and defined contribution pension plans in the U.S.

As voluntary sponsors of this country's largest defined benefit and defined contribution plans, CIEBA members have a strong commitment to the long-term health and viability of the retirement system. As plan fiduciaries and investment professionals responsible for millions of plan participants, we are committed to helping plan participants prepare for retirement.

Background

The longstanding determination letter program for qualified plans has existed to provide plan sponsors with assurance that their plan documents comply with applicable federal laws and regulations and are therefore eligible for tax-favored status. It is standard practice to seek a favorable determination letter for an individually designed retirement plan. Plan sponsors, auditors, fiduciaries, and others customarily rely on a favorable determination letter to establish that a plan's terms comply with ERISA and tax code requirements.

Originally, most plan documents were individually designed and deadlines for requesting determination letters were tied into specific events, as well as the sponsoring employer's tax filing deadline (due to the impact of plan qualification on the tax deductibility of employer contributions). With the growth in the number of plans offered, the Service began to encourage the use of pre-approved Master and Prototype or Volume Submitter documents. Once the base Prototype and Volume Submitter documents were reviewed and approved by the Service, many adopting employers did not need to request additional reviews to receive assurance that their documents were tax-qualified and the process for those that did need an additional review was more streamlined. In fact, the Service recently extended the availability of these pre-approved programs to plan designs that were not previously eligible – specifically, to defined benefit cash balance plans in 2015 and to defined contribution employee stock ownership plans in 2017.

To further reduce the burden on resources and assist with strategic planning, the Service developed review cycles in mid-2007. For Prototype and Volume Submitter plans, a six-year cycle applies; for individually designed plans, a five-year cycle applies, with filing deadlines generally determined by the last digit of the sponsoring employer's employer identification number (EIN). In 2015, individually designed plans were completing the second restatement cycle with Cycle "E" filings.

Due to the continued strain on resources, Announcement 2015-19 announces the complete elimination of the five-year determination letter amendment cycle, effective January 1, 2017. Accordingly, plan sponsors will no longer be able to apply for determination letters on their individually designed defined contribution and defined benefit plans, except for initial qualification and qualification upon termination.

Request for Comments

The Service has requested comments on these changes to the determination letter program. The Service is looking for comments regarding the following specific issues:

1. What changes should be made to the basic remedial amendment period rules under Code section 401(b) as a result of the elimination of these review cycles?
2. What additional considerations should be taken into account in connection with the current interim amendment requirement?
3. What guidance should be issued to assist plan sponsors that want to convert an individually designed plan into a pre-approved prototype or volume submitter plan?
4. What changes should be made to other programs in conjunction with this change in the determination letter program – for example, revisions to EPCRS?

Discussion

CIEBA is very concerned that the sudden and unanticipated discontinuance of the determination letter program significantly increase the risk and cost of maintaining a plan and could lead to further declines in plan sponsorship.

The determination letter program has been in effect since 1944, and it has been a valuable tool for plan sponsors as well as the regulators. The tax laws passed by Congress and the multitude of regulations issued by the Treasury Department to regulate retirement plans and, in particular, defined benefit plans are extraordinarily complex.

The determination letter program is critically important to employers because it provides them with comfort that, at the very least, their plans are designed in a manner with the law. As you are aware, non-compliance with the tax laws can have serious repercussions, including plan disqualification, excise taxes, and non-deductibility of contributions.

The determination letter program is especially important for large, complex plans – such as those sponsored by CIEBA members – where pre-approved documents or model amendments are not applicable. It is common for large defined benefit plans to have multiple benefit formulas that result from the merger of other plans acquired by the sponsor. Similarly, it is common for the defined benefit plans of large corporate sponsors to include both a traditional defined benefit formula, as well as a cash balance or pension equity formula that replaced the traditional formula at some later date. This plan design complexity requires the flexibility of individually-designed documents that need the protection provided by a determination letter. The termination of the

current determination letter program for these plans would adversely affect CIEBA members much more than most plan sponsors.

The termination of the determination letter program will also have a profoundly negative effect on the ability of plan sponsors to both manage their plans and conduct business. Various third parties currently rely on a determination letter as evidence of tax qualification before entering into a transaction with a plan sponsor. For example, it is standard practice in business mergers and acquisitions to require determination letters concerning the tax qualification of any plans involved. A current determination letter provides third-party validation of tax qualification for plan auditors, and plan recordkeepers and custodians routinely request evidence that incoming plan assets are tax qualified. Buyers and sellers in corporate transactions, plan auditors, and investment providers would likely require much greater and much more expensive due diligence to confirm a plan's qualified status.

Finally, we note that the ending the determination letter program will negatively affect the Service's ability to regulate the private retirement system. Over the years, the determination letter program has contributed to a close working relationship between the pension community and the Service. The program provides a nudge to employers to ensure that their plans are compliant, and it helps the Service identify potential problems early, preventing larger ones. In short, the program creates a system in which both employers and the Service are able to proactively resolve issues. If the Service moves to terminate the determination letter program, it can only result in poorer communication and more problems down the road.

Recommendations

CIEBA believes that there are many policy reasons to preserve the determination letter program for individually designed plans. We also believe that there are ways to balance the administrative burden on the Service with the benefits to retirement stakeholders. For example, the Service could extend the staggered filing system from five years to seven or eight years, or could develop a stream-lined submission process similar to the process for pre-approved plans. To address the needs of individually designed plans, the Service could limit the determination letter program to large plans with assets and/or participants over a predetermined size. Alternatively, the Service could allow individually designed plans to seek private rulings for non-routine amendments as well as in cases of plan mergers or spin-offs or material changes in benefit formulas.

If the Service moves ahead with the proposed dramatic cuts to the determination letter program, CIEBA recommends that the Service provide plan sponsors with other protections from audit sanctions or retroactive plan disqualification.

As discussed above, CIEBA strongly urges the Service to reconsider its decision to eliminate the five-year determination letter cycle.

CIEBA appreciates the opportunity to provide comments on the Announcement. If you have questions or if we can be of further assistance, please contact me at 301-961-8677. Thank you for your consideration of our views.

Sincerely,

Deborah K. Forbes
Executive Director