



Employee Plans News

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2022

+ May 25

- May 23

Impact of Missed Deadline for Restatement of Pre-approved Plans

The IRS reviews pre-approved plan submissions and issues opinion letters (and advisory letters for previous cycles) for each recurring plan amendment cycle. Each cycle provides a window for affected employers to adopt the restated plan. To maintain a plan's status as a pre-approved plan and retain uninterrupted reliance on its opinion letter, an employer must adopt each applicable cycle's restatement by the due date for that cycle.

Missed Deadline for 401(a) Defined Benefit Plans

The IRS announces the time period when employers must adopt plan restatements for 401(a) plans for each plan cycle. In Announcement 2018-05, the IRS opened the 2-year restatement window for defined benefit plans approved for Cycle 2, ending on April 30, 2020, that was subsequently extended to July 31, 2020, by Notice 2020-35.

If a restatement is not adopted by the Cycle 2 deadline, an employer's retirement plan is no longer a pre-approved plan. The employer is no longer considered a prior adopter because the employer hasn't timely adopted a pre-approved plan for the cycle immediately preceding the opening of the current cycle. The plan therefore is an individually designed plan, and as a result, the plan must be reviewed to determine if there are form defects in the following areas:

- Any prior interim and discretionary amendments made while the plan was a pre-approved plan will need to be reviewed and corrected if they do not meet the requirements of IRC 401(a).
- The rules for individually designed plans ([Rev. Proc. 2016-37, section 5](#) [PDF](#)) would govern the remedial amendment period applicable for those, and all other required changes, to determine how far back the form error occurred if one exists.

If after reviewing the plan and any interim or discretionary amendments, you determine that one or more provisions did not meet the requirements of IRC 401(a), the qualified status can be corrected. As an individually designed plan, your plan would meet the Self Correction Program (SCP) requirement of a prior letter ([Rev Proc 2021-30 section 5.01\(4\)](#) [PDF](#)). Reliance on the opinion or advisory letter from when the employer first adopted a pre-approved plan is equivalent to a determination letter (Rev Proc 2015-36, section 19.04).

If you find a defect that has existed for less than the past 3 years, you can correct it under SCP. For older form defects, you would have to file a Voluntary Correction Program (VCP) application to correct the failure.

Missed Deadline for 403(b) Pre-approved Plans

Revenue Procedure 2017-18 provided a 3-year window for an employer to restate their plan if they intended to become an IRC 403(b) pre-approved plan for Cycle 1. That window ended on March 31, 2020, and was subsequently extended to June 30, 2020, by Notice 2020-35.

A 403(b) plan had no pre-approved program prior to Cycle 1. A 403(b) plan that intended to be a pre-approved plan for Cycle 1, but failed to adopt a restatement by June 30, 2020, never became a pre-approved plan. It would be reviewed as an individually designed plan, based on the requirements of [Rev. Proc. 2019-39, sections 6-9](#) [PDF](#).

Since a 403(b) plan could not apply for a determination letter, the prior letter requirement has a more lenient condition to meet. A 403(b) plan meets the favorable letter condition in Rev Proc 2021-30 section 4.03(1), if the employer had a written plan document in place in 2009, or if later, in the year the plan was first adopted.

If you find a defect that has existed for less than the past 3 years, you can correct it under SCP. For older form defects, you would have to file a Voluntary Correction Program (VCP) application to correct the failure.

Conclusion

The failure to qualify as a pre-approved plan is not a qualification issue. Being a pre-approved plan is one method of meeting the requirement to have an updated written plan document. If the employer who sponsors a plan does not timely adopt a current pre-approved plan, it can still meet the written document requirements as an individually designed plan. Individually designed plans that don't meet those requirements can be self-corrected under the circumstances detailed in Rev. Proc. 2021-30, Part IV.

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