



Navigating the Staggered Remedial Amendment Period: A General Guide for Section 414(d) Governmental Plans



#### Presenters

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#### Overview of Presentation

- What is a determination letter?
- ✓ Why should I apply for a determination letter?
- When should I apply for a determination letter?
- ✓ How do I apply for a determination letter?



# What is a Determination Letter?

- A determination letter is issued by the IRS to assure the plan sponsor that the *form* of the plan document conforms to the requirements of the law.
- Generally, if the plan sponsor operates the plan in accordance with the terms of the IRS approved plan document, the plan will satisfy the law in *operation*.



# IRS Authority for Retirement Plans

- ▼ The IRS has authority over the federal income tax treatment of retirement plan benefits
- The IRS can disqualify any plan which does not meet the requirements of the Internal Revenue Code
- For a governmental plan, disqualification could result in the immediate taxation to all or part of the plan participants' benefits under the plan
- ✓ Only the IRS has jurisdiction to determine a plan's tax qualified status



# Why Should A Governmental Plan Apply for a Determination Letter?

- ✓ Determination letter tells the plan sponsor that its plan provisions meet the requirements of the law
- ✓ Once the IRS approves a plan, even if it contains an improper provision, the plan sponsor is provided reliance on the determination letter
- Filing a timely request for a determination letter provides the plan sponsor additional time to correct improper plan provisions
- Certain aspects of the Voluntary Compliance program require you to have a current determination letter



# What are the Disadvantages of a Determination Letter?

- ▼ There are costs involved in assembling all the material required for a determination letter including the IRS fee for the determination letter application.
- ✓ A determination letter is only good until the end of the plan's next cycle filing period.
- The plan is still required to amend for most changes in the law between the issuance of the determination letter and the end of the plan's next cycle period.



# When Do I apply for a Determination Letter?

- ✓ Under the new staggered remedial amendment process, each plan is generally assigned one of five cycles based on the Employer's EIN
  - Under the old system, all plans would come in at once
  - New approach intended to alleviate huge backlogs
- ∀ However, all governmental plans are deemed to be Cycle C filers pursuant to Rev. Proc. 2007-44
- ✓ Submission period for Cycle C started on February 1, 2008, and ends on January 31, 2009



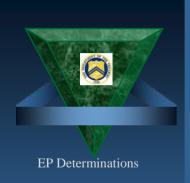
# How Do I Apply for a Determination Letter?

- ✓ The plan sponsor must complete a Form 5300
- ✓ A user fee must be submitted with the Form 5300
- ✓ Submit a copy of the plan document (including all amendments and other material that contain the terms and provisions of the plan) along with the current trust documents
- The plan provisions must be updated to include all applicable items on the latest Cumulative List for Cycle C filers.



# Latest IRS Guidance for Determination Letter Applications

- ▼ Rev. Proc. 2008-6 contains application procedures, including submitting restated plan and amendments
- Rev. Proc. 2008-8 lists user fees
- Notice 2007-94 contains Cumulative List listing the plan qualification requirements IRS considers in its review
- ➤ Rev. Proc. 2007-44 describes the staggered remedial amendment program and when to submit plans



## Common Problems with Determination Letter Applications

- ▼ Failure to update the plan for all items on the Cumulative List
- ▼ Incorrect or missing user fee
- ▼ Failure to timely adopt required changes to the plan by the time prescribed by law
- ▼ Terminating plans failure to amend for required law changes up to the date of termination



## Can I File for a Determination Letter Other than in Cycle C? (Off-Cycle Filing)

- ▼ Off-cycle filings are permitted
- Disadvantages
  - Not reviewed until all on-cycle applications are reviewed by the IRS. This could include multiple on-cycle filers
  - Plan is required to amend for all items on the latest Cumulative List for on-cycle filers
  - Determination letter expires at the end of the next Cycle C period.



## Exceptions for Review of Off-Cycle Filers

- ➤ Some applications will have the same priority as on-cycle filings including:
  - Terminating plans
  - New plans whose next regular on-cycle submission period ends at least 2 years after the end of the off-cycle submission period
  - Service requires submission
  - Urgent business need



### How Do I Stay Qualified?

- ▼ Timely amend your plan for all required law changes between each Cycle C
- Adopt interim amendment by later of the due date of the tax return or the last day of the plan year in which the amendment is effective
- Certain governmental plans must amend by the last day of the next regular legislative session after the amendment is effective for any required law changes
- Exception for PPA '06 extended deadline to amend by the last day of the first plan year beginning on or after January 1, 2011
- Operate in accordance with IRS approved plan terms



## What is the Remedial Amendment Period?

- ✓ Gives you extra time to retroactively correct form defects
- Remedial amendment period for governmental plans that timely adopt amendments is extended to January 31, 2009
- ✓ A determination letter request can extend the time for making retroactive amendments while request is pending



## Update on Application Process

- Cycle C plan submissions to date (including governmental plans)
- ✓ Problem with mini-spikes last minute filers each year



### Summary

- ✓ Staggered remedial amendment cycles are a new approach to submitting and issuing determination letters in an effort to avoid huge inventory backlogs
- ✓ Governmental plans are being submitted on-cycle now for the first time under this program
- ▼ The Service welcomes suggestions/input from governmental plans community
- Questions?