Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters
(Also, Part I, §§ 401; 1.401(b)-1.)

Rev. Proc. 2005-66

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Part I - Overview

SECTION 1. PURPOSE

.01 This revenue procedure establishes a system of cyclical remedial amendment periods under § 401(b) of the Internal Revenue Code (Code) for individually designed and pre-approved qualified plans.

(1) Under this system, every individually designed plan qualified under § 401(a) has a regular, five-year remedial amendment cycle. The cycles are staggered and spread over five-year periods. That is, the cycles commence in different years for different plans within a five-year period, so that different plans have different cycles. The effect of this system is that plan sponsors need to apply for new determination letters generally only once every five years;

(2) In addition, under this system, every pre-approved plan (that is, every master and prototype (M&P) and volume submitter plan), generally has a regular, six-year remedial amendment cycle. As a result, sponsors, practitioners, and adopters of pre-approved plans generally need to apply for new opinion, advisory, or determination letters only once every six years. Pre-approved defined contribution plans have different six-year cycles than pre-approved defined benefit plans. Thus, the same six-year remedial amendment cycle applies with respect to all pre-approved defined contribution plans, and a separate six-year remedial amendment cycle applies with respect to all pre-approved defined benefit plans. Also, this revenue procedure

provides rules for adopting employers to adopt a pre-approved plan after the review process is completed.

.02 This revenue procedure provides that on February 1, 2006, the Service will begin to accept applications for determination letters for individually designed plans that take into account the requirements of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16 (EGTRRA), and other items that will be identified on the 2005 Cumulative List of Changes in Plan Qualification Requirements.

.03 The system for staggered five-year remedial amendment cycles and the system for six-year amendment/approval cycles are established pursuant to the Commissioner's authority under § 401(b) of the Code and its underlying regulations to extend the remedial amendment period, and pursuant to the Commissioner's authority under § 7805(b) to establish the effective date of any rule or regulation. As a result, sponsors, practitioners, and plan sponsors submit their plan only once for an opinion, advisory, or determination letter that rules on all amendments adopted and made effective within the applicable remedial amendment cycle.

.04 This revenue procedure also further extends the EGTRRA remedial amendment period for both individually designed and pre-approved plans.

(1) The EGTRRA remedial amendment period for individually designed plans is extended to the end of the initial applicable five-year remedial amendment cycle as provided in the chart found in section 12.01. Therefore, plan sponsors may avoid unnecessarily filing two determination letter applications by waiting to file their EGTRRA determination letter applications until the twelve-month period preceding the end of the plan's initial applicable five-year remedial amendment cycle;

(2) The EGTRRA remedial amendment period for pre-approved plans is extended to the end of the initial applicable six-year remedial amendment cycle as provided in section 18.01. Plan sponsors or practitioners maintaining non-mass submitter plans, as well as word-for-word identical adopters and minor modifiers, have until January 31, 2006, the end of the initial applicable remedial amendment cycle submission period (as stated in section 23 of Rev. Proc. 2005-16, 2005-10 I.R.B. 674), to submit their defined contribution M&P and volume submitter plans for review. This revenue procedure also extends the October 31, 2005 submission deadline set forth in Announcement 2005-36 to January 31, 2006, for sponsors and practitioners maintaining mass submitter plans and national sponsors who submit applications for defined contribution M&P and volume submitter plans.

SECTION 2. BACKGROUND

.01 Section 401(b) of the Code provides a remedial amendment period during which a plan may be amended retroactively to comply with the Code's qualification requirements. Section 1.401(b)-1 of the Income Tax Regulations describes the disqualifying provisions that may be amended retroactively and the remedial amendment period during which retroactive amendments may be adopted. The regulations also grant the Commissioner the discretion to designate certain plan provisions as disqualifying provisions and to extend the remedial amendment period.

.02 Section 1.401(b)-1 provides that a plan that fails to satisfy the requirements of § 401(a) solely as a result of a disqualifying provision defined under § 1.401(b)-1(b) need not be amended to comply with those requirements until the last day of the remedial amendment period with respect to the disqualifying provision, provided the amendment is made retroactively effective to the beginning of the remedial amendment period. Under § 1.401(b)-1(b)(1), a disqualifying provision includes a provision of a new plan, the absence of a provision from a new plan, or an amendment to an existing plan which causes the plan to fail to satisfy the requirements of the Code applicable to the qualification of the plan as of the date the plan or amendment is first made effective. Under § 1.401(b)-1(b)(3), a disqualifying provision includes a plan provision designated, at the Commissioner's discretion, as a disqualifying provision that either (i) results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements; or (ii) is integral to a qualification requirement of the Code that has been changed. For this purpose § 1.401(b)-1(c)(1) provides that a disqualifying provision includes the absence from a plan of a provision required by or, if applicable, integral to the applicable change in the qualification requirements of the Code, if the plan was in effect on the date the change in those requirements became effective with respect to the plan. Under § 1.401(b)-1(c)(3), the Commissioner may impose limits and provide additional rules regarding the amendments that may be made with respect to disqualifying provisions described in § 1.401(b)-1(b)(3).

.03 For a disqualifying provision of a new plan described in § 1.401(b)-1(b)(1), the remedial amendment period begins on the date the plan is put into effect and, in the case of a plan maintained by one employer, ends on the later of the due date (including extensions) for filing the employer's tax return for the taxable year in which the plan is put into effect or the last day of the plan year in which the plan is put into effect. A new plan maintained by more than one employer need not be amended until the last day of the tenth month following the last day of the plan year that includes the date the plan is put into effect.

.04 For a disqualifying provision that is an amendment to an existing plan described in § 1.401(b)-1(b)(1), the remedial amendment period begins on the

earlier of the date the plan amendment is adopted or put into effect and, in the case of a plan maintained by one employer, ends on the later of the due date for filing the employer's tax return (including extensions) for the taxable year in which the amendment is adopted or effective (whichever is later) or the last day of the plan year in which the amendment is adopted or effective (whichever is later). In the case of an amendment to an existing plan maintained by more than one employer, the plan need not be amended until the last day of the tenth month following the last day of the plan year in which the amendment is adopted or effective (whichever is later).

.05 For a disqualifying provision described in § 1.401(b)-1(b)(3), the remedial amendment period begins on the date on which the change becomes effective with respect to the plan or, in the case of a provision that is integral to a qualification requirement that has been changed, the first day on which the plan is operated in accordance with the provision as amended. In the case of a plan maintained by one employer, the remedial amendment period for a disqualifying provision described in § 1.401(b)-1(b)(3) ends on the later of (1) the due date (including extensions) for filing the income tax return for the employer's taxable year that includes the date on which the remedial amendment period begins or (2) the last day of the plan year that includes the date on which the remedial amendment period begins. A plan maintained by more than one employer need not be amended until the last day of the tenth month following the last day of the plan year in which the remedial amendment period begins.

.06 Section 1.401(b)-1(f) provides that the Commissioner may extend the remedial amendment period at his discretion.

.07 Notice 2001-42, 2001-2 C.B. 70, provides a remedial amendment period under § 401(b), ending no earlier than the end of the 2005 plan year, in which any needed retroactive remedial plan amendments for EGTRRA must be adopted (the EGTRRA remedial amendment period). The availability of the EGTRRA remedial amendment period is conditioned on the timely adoption of required good faith EGTRRA plan amendments. In general, a good faith EGTRRA plan amendment is adopted timely if it is adopted by the later of the end of the plan year that includes the effective date of the EGTRRA change or the end of the plan's GUST remedial amendment period.[1] Notice 2001-42 further

[1] The term "GUST" refers to the following:

- the Uruguay Round Agreements Act, Pub. L. 103-465;
- the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353;
- the Small Business Job Protection Act of 1996, Pub. L. 104-188;
- the Taxpayer Relief Act of 1997, Pub. L. 105-34;
- the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206; and
- the Community Renewal Tax Relief Act of 2000, Pub. L. 106-554.

provides that until further notice, determination letters will not consider and may not be relied on with respect to whether a plan satisfies the qualification requirements of the Code as amended by EGTRRA. However, an employer's ability to rely on a favorable determination letter will not be adversely affected by the timely adoption of good faith EGTRRA plan amendments.[2]

.08 The end of the EGTRRA remedial amendment period is also the last day on which retroactive remedial amendments may be adopted with respect to the requirements of the final regulations under § 401(a)(9) of the Code (required minimum distributions), Rev. Rul. 2001-62, 2001-2 C.B. 632 (applicable mortality table) and Rev. Rul. 2002-27, 2002-1 C.B. 925 (deemed section 125 compensation). Except with respect to the requirements of the final § 401(a)(9) regulations for defined benefit plans, the availability of the remedial amendment period with respect to the three requirements is conditioned on the adoption of plan amendments by the time specified in the applicable guidance (or, in the case of the final § 401(a)(9) regulations published on April 17, 2002 with respect to defined contribution plans, in Rev. Proc. 2002-29, 2002-2 C.B. 1176, as modified by Rev. Proc. 2003-10, 2003-2 I.R.B. 259).

.09 Rev. Proc. 2004-25, 2004-16 I.R.B. 791, extends the remedial amendment period with respect to disqualifying provisions described in § 1.401(b)-1(b)(1) that are put into effect (in the case of new plans) or adopted (in the case of existing plans) after December 31, 2001, to the end of the EGTRRA remedial amendment period. The effect of Rev. Proc. 2004-25 is to ensure that plan sponsors do not need to apply for more than one determination letter during the EGTRRA remedial amendment period simply because they have put a plan into effect or adopted voluntary plan amendments after December 31, 2001. The revenue procedure does not extend any other existing plan amendment or determination letter submission deadlines, such as the deadline for adoption of good faith plan amendments for EGTRRA or the final § 401(a)(9) regulations.

.10 In Announcement 2004-32, 2004-18 I.R.B. 860, the Service announced its decision to implement a system of five-year staggered remedial amendment periods under § 401(b) of the Code for individually designed plans. The Service also announced that it was considering implementation of a system of six-year amendment/approval cycles for pre-approved plans. These announcements were the outcome of the Service’s comprehensive review of its policies and procedures for issuing determination letters on the qualified status of retirement

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The GUST remedial amendment period generally ended on the later of February 28, 2002, or the end of a plan’s 2001 plan year. However, for certain plans eligible for an extended GUST remedial amendment period under Rev. Proc. 2000-20, 2000-1 C.B. 553, the period generally ended on September 30, 2003.

[2] Section 3.03 of Rev. Proc. 2005-6, 2005-1 I.R.B. 200, provides that until further notice, a determination letter will not consider and may not be relied on with respect to whether a plan satisfies the qualification requirements of the Code as amended by EGTRRA.

plans. As part of that review, the Service considered public comments on two white papers on the future of the determination letter program which the Service published in 2001 and 2003 (that is, Announcement 2001-83, 2001-2 C.B. 205 and Announcement 2003-32, 2003-1 C.B. 933).

.11 In Announcement 2004-33, 2004-18 I.R.B. 862, the Service published for comment a draft revenue procedure containing the procedures for issuing opinion and advisory letters for pre-approved plans. In the announcement, the Service also asked for comments on its proposal to implement a system of six-year amendment/approval cycles for pre-approved plans. After receiving favorable comments in response to Announcement 2004-33, the Service has decided to proceed with implementation of this system in conjunction with the implementation of the five-year staggered remedial amendment period system for individually designed plans. This revenue procedure implements both systems, effective with the opening of the determination, opinion, and advisory letter programs for EGTRRA.

.12 In Announcement 2004-71, 2004-40 I.R.B. 569, the Service published for comment a draft revenue procedure which consisted of a description of the five-year remedial amendment cycles for individually designed plans and a description of the procedures for implementing the six-year amendment/approval cycle for pre-approved plans.

.13 In Notice 2004-84, 2004-52 I.R.B. 1030, the Service published the 2004 Cumulative List of Changes in Plan Qualification Requirements which contains qualification requirements for defined contribution pre-approved plans to be used for their first submission under the six-year remedial amendment cycle.

.14 In Rev. Proc. 2005-16, 2005-10 I.R.B. 674, the Service announced the opening of the initial six-year remedial amendment cycle for defined contribution pre-approved plans. As of February 17, 2005, the Service began to accept applications for opinion and advisory letters for defined contribution pre-approved plans which take into account the qualification requirements set forth in the 2004 Cumulative List. The revenue procedure also contains the rules for issuing opinion and advisory letters for pre-approved plans.

.15 In Announcement 2005-36, 2005-21 I.R.B. 1095, the Service announced the submission deadline for sponsors and practitioners maintaining defined contribution mass submitter and national sponsor plans for the initial six-year remedial amendment cycle is October 31, 2005.

SECTION 3. CHANGES FROM DRAFT REVENUE PROCEDURE IN ANNOUNCEMENT 2004-71

.01 Announcement 2004-71 contained a draft revenue procedure setting forth the rules and procedures for both the five-year remedial amendment cycle for individually designed plans and six-year amendment/approval cycle for pre-approved plans. The Service sought public comment before finalizing these rules and procedures. This revenue procedure retains much of the original substance of the draft revenue procedure but the revenue procedure has been restructured (that is, Part II applies to all plans) and minor revisions and clarifying language have been added. The most significant of the changes are listed below.

.02 The application and extension of the remedial amendment period under § 401(b) to the end of the remedial amendment cycle has been expanded to include pre-approved plans, as well as individually designed plans. In addition, the EGTRRA remedial amendment period is extended to the end of the initial six-year remedial amendment cycle. (sections 5, 16, 18)

.03 When a plan qualification requirement changes either due to a statutory change, a regulation, or other published guidance, causing a plan to no longer be qualified, a timely adopted interim amendment will generally be required. Any other change to a plan must also be reflected in a timely adopted plan amendment. If the timely adopted plan amendment (including any required interim amendment) does not satisfy the qualification requirements, then a remedial amendment must be adopted by the end of the remedial amendment cycle. (sections 5, 6)

.04 In addition to changes and requirements identified in each year's Cumulative List of Changes in Plan Qualification Requirements, the Service will consider in its review of any opinion, advisory or determination letter application all qualification requirements in effect, or guidance published, before the issuance of the Cumulative Lists. (section 4.05)

.05 This revenue procedure provides that the submission deadline for minor modifier placeholder applications and word-for-word identical adopter applications is January 31, 2006. In addition, the January 31, 2006 submission deadline also applies to mass submitter sponsors and practitioners and national sponsors maintaining defined contribution pre-approved plans for the initial six-year remedial amendment cycle (that is, the EGTRRA remedial amendment period). (section 18.02)

.06 Rather than Cycle A, the remedial amendment cycle for multiemployer plans is Cycle D and the remedial amendment period for multiple employer plans is Cycle B. (sections 10.02, 10.03)

.07 The election offered to members of a controlled group under § 414(b) or (c) or an affiliated service group under § 414(m) is available only in situations where

there is more than one plan sponsored by the members of the controlled group or affiliated service group. (section 10.06)

.08 The revenue procedure clarifies the eligibility rules for an employer who qualifies for the six-year remedial amendment/approval cycle. (section 17)

.09 This revenue procedure provides guidance for filing procedures for an employer who amends an M&P plan but remains in the six-year remedial amendment/approval cycle as provided in section 24.02 of Rev. Proc. 2005-16, except under limited circumstances. (section 19)

.10 An adopting employer of a pre-approved plan who amends the approved plan document to incorporate a type of plan not permitted in the pre-approved plan program (that is, a type listed in sections 6.03 and 16.02 of Rev. Proc. 2005-16) or adopts an individually designed plan whose underlying plan document is not based upon a pre-approved plan will remain in the six-year remedial amendment cycle in effect on the date of such amendment or adoption, but will then shift to the five-year remedial amendment cycle for individually designed plans. Thus, the subsequent five-year remedial amendment cycle that ends after the closing of the six-year remedial amendment cycle in effect on the date of such amendment or adoption will be determined under Part III of this revenue procedure applicable to individually designed plans. (section 17.09(2))

.11 An employer who amends a pre-approved plan to such an extent that the Service determines the plan falls under section 24.03 of Rev. Proc. 2005-16 will be considered an individually designed plan for the current and future remedial amendment cycles. Thus, the remedial amendment cycle in which the employer impermissibly amends the pre-approved plan and subsequent remedial amendment cycles will be determined under Part III of this revenue procedure. (section 17.09(3))

Part II – All Plans

SECTION 4. CUMULATIVE LIST OF CHANGES IN PLAN QUALIFICATION REQUIREMENTS

.01 The Service intends to publish annually a Cumulative List of Changes in Plan Qualification Requirements (Cumulative Lists). The Cumulative Lists are intended to identify, on a year-by-year basis, all changes in the qualification requirements resulting from changes in statutes, or from regulations or other guidance published in the Internal Revenue Bulletin that are required to be taken into account in the written plan document.

.02 The 2004 Cumulative List (that is, Notice 2004-84) was issued in anticipation of the opening of the EGTRRA opinion and advisory letter program for defined

contribution pre-approved plans. The target date for publication of the Cumulative List is mid-November of each year.

.03 Each annual Cumulative List identifies changes in the qualification requirements of the Code as well as items of published guidance relating to the plan qualification requirements, such as regulations and revenue rulings, that will be considered by the Service in its review of plans whose submission period (whether for an opinion or advisory letter in the case of a pre-approved plan, or for a determination letter in the case of an individually designed plan) begins on February 1st following issuance of the Cumulative List. For example, sponsors or practitioners maintaining non-mass submitter defined contribution pre-approved plans have until January 31, 2006 to submit opinion and advisory letter applications. The Service will review these plans based upon the 2004 Cumulative List. Similarly, Cycle A individually designed plans will be submitted for determination letters between February 1, 2006 and January 31, 2007. The Service will review these plans on the basis of the Cumulative List that is expected to be issued in the latter part of 2005.

.04 The Service will not consider in its review of any opinion, advisory or determination letter application any qualification change that becomes effective, any guidance published, or any statutes enacted, after the issuance of the applicable Cumulative List (unless the item has been identified in that Cumulative List). Thus, an opinion, advisory or determination letter may not be relied on for statutory changes enacted, or guidance published, after the applicable Cumulative List unless so identified.

.05 The Service will, however, consider in its review of any opinion, advisory or determination letter application all qualification requirements in effect, or guidance published before the issuance of the applicable Cumulative List whether or not included in that Cumulative List. Thus, an opinion, advisory or determination letter may be relied on for statutory changes enacted, or guidance published, before the applicable Cumulative List whether or not identified.

SECTION 5. ADOPTION OF INTERIM PLAN AMENDMENTS AND EXTENSION OF THE REMEDIAL AMENDMENT PERIOD

.01 Designation of disqualifying provision. Unless otherwise provided in future guidance, in addition to the plan provisions designated as disqualifying provisions subject to the EGTRRA remedial amendment period as described in sections 2.07, 2.08, and 2.09 of this revenue procedure, a plan provision is designated as a disqualifying provision under § 1.401(b)-1(b)(3) if the provision either –

(1) results in the failure of the plan to satisfy the qualification requirements of the Internal Revenue Code by reason of a change in those requirements that is effective after December 31, 2001; or

(2) is integral to a qualification requirement of the Internal Revenue Code that has been changed effective after December 31, 2001 but only if the provision is integral to a plan provision that is a disqualifying provision under section 5.01(1) with respect to the plan.

.02 A change in a qualification requirement includes a statutory change or a change in the requirements provided in regulations or other guidance published in the Internal Revenue Bulletin. For purposes of section 5.01, a disqualifying provision includes the absence from a plan of a provision required by or, if applicable, integral to the applicable change in the qualification requirements of the Code.

.03 This section 5.03 extends the remedial amendment periods for disqualifying provisions described in § 1.401(b)-1(b)(1) that would otherwise apply under § 1.401(b)-1 to the end of the remedial amendment cycles described in section 6.01 if the disqualifying provision was a provision of, or absence of a provision from, a new plan and the plan was intended, in good faith, to be qualified. The same extension of the remedial amendment period applies to a disqualifying provision (including a disqualifying provision described in section 5.01) in the case where the employer adopts an amendment to an existing plan and the amendment was adopted timely and in good faith with the intent of maintaining the qualified status of the plan. In addition, the same extension of the remedial amendment period applies to a disqualifying provision described in section 5.01 in the case where the employer (or sponsor or practitioner, if applicable) reasonably and in good faith determines during the period when an interim amendment to reflect a qualification change would otherwise be required under section 5.05 that no amendment is required because the qualification change does not impact provisions of the written plan document. Thus, for example, if a sponsor, practitioner, or employer makes such a determination and the Service in its review of the opinion, advisory, or determination letter application finds that an amendment is required, the plan would still be eligible for the five or six-year remedial amendment cycle to correct the disqualifying provision as described in section 5.01. The Service will make the final determination in all cases as to whether the adoption of an interim amendment or the absence of an interim amendment was reasonable and in good faith.

.04 A qualified plan must be operated in accordance with written plan documents. Thus, when there are statutory or regulatory changes with respect to plan qualification requirements that will impact provisions of the written plan document, the adoption of an interim amendment will generally be required by the deadline set forth in section 5.05. The Service intends to concurrently identify statutory and regulatory changes to facilitate compliance with this requirement.

.05 The deadline for the timely adoption of an interim or discretionary amendment with respect to any plan is determined as follows:

(1) An employer (or a sponsor or a practitioner, if applicable) will be considered to have timely adopted a plan amendment with respect to a disqualifying provision described in section 5.01(1), if the plan amendment is adopted by the end of the remedial amendment period described in section 2.05.;

(2) An employer (or a sponsor or a practitioner, if applicable) will be considered to have timely adopted a plan amendment with respect to a plan provision that is integral to a disqualifying provision as described in section 5.01(2), if the plan amendment is adopted by the end of the remedial amendment period described in section 2.05;

(3) An employer (or a sponsor or a practitioner, if applicable) will be considered to have timely adopted a discretionary plan amendment (that is, a plan amendment not described in section 5.01), if the plan amendment is adopted by the end of the plan year in which the plan amendment is effective.

.06 For purposes of this revenue procedure, a pre-approved or individually designed plan restatement which is generally effective as of a certain date should not be treated as superseding a previously adopted interim plan amendment that is effective after the restatement's effective date and that has not been incorporated or reflected in the restatement provided the pre-approved or individually designed plan is operated in a manner consistent with the interim plan amendment. For this purpose, a plan is presumed to be operating in compliance with the interim plan amendments in any case (such as a determination letter application) in which the operation of the plan cannot be determined. This section 5.06 applies for all purposes, including the determination of plan qualification, funding requirements, and deductions.

SECTION 6. PLAN AMENDMENTS AND OPERATIONAL REQUIREMENTS UNDER FIVE YEAR AND SIX YEAR REMEDIAL AMENDMENT CYCLES

.01 The five-year remedial amendment cycles for individually designed plans are established in section 9, and the extension and schedule of the end of the five-year remedial amendment cycles are provided in section 12.01. The six-year remedial amendment cycles for pre-approved plans are established in section 16, and the extension and schedule of the end of the six-year remedial amendment cycles are provided in section 18.01. The effect of these extensions is that a sponsor, practitioner, or employer generally will not need to apply for a new opinion, advisory, or determination letter more than once during any remedial amendment cycle.

.02 An interim amendment adopted timely and in good faith to correct a disqualifying provision as described in section 5.01 can itself be a disqualifying provision as described in § 1.401(b)-1(b)(1). In this situation, a remedial amendment to correct this second disqualifying provision (that is, the interim amendment which was found to be itself a disqualifying provision) must be adopted by the end of the five or six-year cycle for individually designed plans or pre-approved plans, respectively. This remedial amendment will correct both disqualifying provisions.

.03 If as described in section 5.03, a sponsor, practitioner, or employer determined that no amendment was required, but that determination was incorrect, then the sponsor, practitioner, or employer must adopt a remedial amendment to correct the disqualifying provision by the end of the five-year remedial amendment cycle for individually designed plans, or the end of the six-year remedial amendment cycle for pre-approved plans, whichever is applicable.

.04 Operational compliance with an amended plan provision that has a retroactive effective date is required for the remedial amendment period for the amended provision to begin as of the retroactive effective date. In the situation where a sponsor, practitioner, or employer timely adopted in good faith an interim amendment which is not a disqualifying provision as described in § 1.401(b)-1(b)(1) and the sponsor, practitioner, or employer failed to operate the plan according to the terms of the interim amendment, the employer should correct the operational failure under the Employee Plans Compliance Resolution System (see Rev. Proc. 2003-44, 2003-1 C.B. 1051).

.05 This revenue procedure does not provide relief from the requirements of § 411(d)(6) for any plan amendments including plan amendments adopted as a result of statutory or guidance changes in the plan qualification requirements. Except to the extent permitted under § 411(d)(6) and the Regulations thereunder, § 411(d)(6) prohibits a plan amendment that decreases a participant's accrued benefits or that has the effect of eliminating or reducing an early retirement benefit or retirement-type subsidy, or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment. However, an amendment that eliminates or decreases benefits that have not yet accrued does not violate § 411(d)(6), provided the amendment is adopted and effective before the benefits accrue.

SECTION 7. EXTENSION OF EGTRRA REMEDIAL AMENDMENT PERIOD

.01 The EGTRRA remedial amendment period is extended to the end of the initial five and six-year remedial amendment cycles, respectively.

.02 This extension of the EGTRRA remedial amendment period extends the remedial amendment period for all disqualifying provisions to which the EGTRRA

remedial amendment period applies, including plan provisions required or permitted to be amended for EGTRRA, final regulations under § 401(a)(9) of the Code, Rev. Rul. 2001-62, Rev. Rul. 2002-27, and disqualifying provisions described in Rev. Proc. 2004-25.

.03 This extension is only available to plans that satisfy the conditions for eligibility for the EGTRRA remedial amendment period as set forth in Notice 2001-42 which requires the adoption of timely good faith EGTRRA plan amendments or other plan amendments.

SECTION 8. PLAN TERMINATION

The termination of a plan ends the plan's remedial amendment period, and thus, will generally shorten the remedial amendment cycle for the plan. Accordingly, any retroactive remedial plan amendments or other required plan amendments for a terminating plan must be adopted in connection with the plan termination (that is, plan amendments required to be adopted to reflect qualification requirements that apply as of the date of termination even if the date of termination is subsequent to the latest annual Cumulative Lists). An application will be deemed to be filed in connection with plan termination if it is filed no later than the later of (i) one year from the effective date of the termination, or (ii) one year from the date on which the action terminating the plan is adopted. However, in no event can the application be filed later than twelve months from the date of distribution of substantially all plan assets in connection with the termination of the plan.

PART III – Individually Designed Plans

SECTION 9. ESTABLISHMENT OF FIVE-YEAR REMEDIAL AMENDMENT CYCLES FOR INDIVIDUALLY DESIGNED PLANS

.01 This Part III sets forth rules and procedures for the five-year remedial amendment cycles for individually designed plans.

.02 In general, a plan's five-year remedial amendment cycle is determined by reference to the last digit of the employer identification number (EIN) of the employer that sponsors the plan (including a self-employed person with no employees). However, in particular circumstances, as described in section 10, a different rule is, or may be, used to determine a plan's five-year remedial amendment cycle.

.03 Under the general rule, a plan's five year remedial amendment cycle is determined as follows:

If the last digit of the plan sponsor's EIN is -	The plan's cycle is –

1 or 6	Cycle A
2 or 7	Cycle B
3 or 8	Cycle C
4 or 9	Cycle D
5 or 0	Cycle E

SECTION 10. EXCEPTIONS TO THE GENERAL RULE FOR DETERMINING A PLAN'S FIVE-YEAR REMEDIAL AMENDMENT CYCLE

.01 The following rules apply to determine the five-year remedial amendment cycle of a plan maintained by more than one employer and a plan maintained by multiple members of a controlled group under § 414(b) or (c) or employers that are members of an affiliated service group under § 414(m).

.02 For a plan that is a multiemployer plan under § 414(f), the plan's five-year remedial amendment cycle is Cycle D.

.03 For a plan that is a multiple employer plan, the plan's five-year remedial amendment cycle is Cycle B.

.04 For a plan that is a governmental plan under § 414(d), including a governmental plan that is a multiple employer plan, the plan's five-year remedial amendment cycle is Cycle C.

.05 For a plan maintained by multiple members of a controlled group under § 414(b) or (c) or an affiliated service group under § 414(m), the plan's five year remedial amendment cycle is determined with reference to the last digit of the EIN that is or will be used to report the plan on Form 5500, *Annual Return /Report of Employee Benefit Plan*.

.06 Notwithstanding the rules set forth in sections 9 and 10.05 for determining a plan's five-year remedial amendment cycle, if more than one plan is maintained by members of a controlled group under § 414(b) or (c) or an affiliated service group under § 414(m), the employers may elect that the five-year remedial amendment cycle for all plans maintained by any members of the group (other than multiemployer plans or multiple employer plans) will be Cycle A. The election must be made jointly by all members of the controlled or affiliated service group.

.07 If more than one plan is maintained by a controlled group under § 414(b) or (c) that falls under section 10.06 and that is a parent-subsidiary controlled group organization, an election may be made that the remedial amendment cycle be determined by reference to the last digit of the parent's EIN. This election is to be made by the parent, in the case of a parent-subsidiary controlled group.

.08 The election described in section 10.06 or 10.07 must be made by the end of the earliest cycle (determined as of the date of the election) for which a determination letter application would have been required to be submitted. For example, if one member uses Cycle B and another member uses Cycle C, the election must be made by the due date for Cycle B. The election must list all members of the group, including each member's EIN, and all plans (other than multiemployer plans and multiple employer plans) that are maintained by each member of the group. The election must be filed with the first determination letter application that is submitted in accordance with this revenue procedure for any plan (other than multiemployer plans and multiple employer plans) maintained by any member of the group. Once filed, the election will apply and may not be modified or revoked, except as provided below in section 11.01.

SECTION 11. RULES FOR DETERMINING FIVE-YEAR REMEDIAL AMENDMENT CYCLE IN CASES OF MERGER OR ACQUISITION, CHANGE IN PLAN SPONSORSHIP, OR PLAN SPIN-OFF

.01 Except as provided in section 11.02, in the case of a merger or acquisition, a change in plan sponsorship, or a plan spin-off, a plan's five-year remedial amendment cycle is determined as follows regardless of whether this would shorten or extend the five-year remedial amendment cycle of the plan. The change could result in the need to file a new election pursuant to section 10.08:

(1) If plans with different five-year remedial amendment cycles are merged, the five-year remedial amendment cycle of the merged plan is thereafter determined as provided in section 9 or 10 on the basis of the EIN, controlled group status, affiliated service group status, etc., of the employer that maintains the merged plan;

(2) If one employer acquires another employer and maintains its plan, the five-year remedial amendment cycle of the plan is thereafter determined as provided in section 9 or 10 on the basis of the EIN, controlled group status, affiliated service group status, etc., of the employer that is maintaining the plan;

(3) If there is a change in the EIN (including the expiration of the EIN), controlled group status, affiliated service group status, etc., of the employer that maintains a plan, the five-year remedial amendment cycle of the plan is thereafter determined as provided in section 9 or 10 on the basis of the changed EIN, controlled group status, affiliated service group status, etc., of the employer that maintains the plan;

(4) If a portion of a plan is spun off, the five-year remedial amendment cycle of the spun-off plan is determined as provided in section 9 or 10 on the basis of the EIN, controlled group status, affiliated service group status, etc., of the employer that maintains the spun-off plan.

(5) If a self-employed person with no employees submits a determination letter application based upon the last digit of the individual's social security number (SSN) instead of the EIN for the first determination letter submitted under this revenue procedure, the determination letter application will be processed based upon the SSN with the other on-cycle determination letter applications. However, subsequent five-year remedial amendment cycles will be determined based upon the last digit of the employer's EIN as provided in section 9 or 10 (see Publication 583, *Starting a Business and Keeping Records*);

.02 If, as a result of one of the transactions described in this section, a plan's current five-year remedial amendment cycle is shortened such that the period remaining in the cycle following the transaction is less than twelve calendar months, the plan's current cycle is extended for twelve months and the next five-year cycle will be shortened accordingly. This extension does not apply to other plans of the employer that are not similarly affected. Thereafter, the plan's five-year remedial amendment cycles will be determined as provided in section 9 or 10.

SECTION 12. EXTENSION OF THE EGTRRA REMEDIAL AMENDMENT PERIOD AND SCHEDULE OF NEXT FIVE-YEAR REMEDIAL AMENDMENT CYCLE

.01 The end of the initial remedial amendment cycle (i.e., EGTRRA remedial amendment period) as extended in section 6 is illustrated in the following chart. The chart also provides the end dates of the next five-year remedial amendment cycle.

Extension of the EGTRRA Remedial Amendment Period and Schedule of Next Five-Year Remedial Amendment Cycle			
If the TIN of the employer ends in –	The plan's cycle is -	The last day of the initial cycle (i.e., EGTRRA remedial amendment period) is –	The next five-year remedial amendment cycle ends on -
1 or 6	Cycle A	January 31, 2007	January 31, 2012
2 or 7	Cycle B	January 31, 2008	January 31, 2013
3 or 8	Cycle C	January 31, 2009	January 31, 2014
4 or 9	Cycle D	January 31, 2010	January 31, 2015
5 or 0	Cycle E	January 31, 2011	January 31, 2016

.02 In accordance with section 7 of this revenue procedure, the end of a plan's EGTRRA remedial amendment cycle is the time by which plan sponsors must apply for a new determination letter for qualification changes that have first been listed in the Cumulative Lists at least twelve months before the end of the plan's

EGTRRA remedial amendment period and other qualification changes published prior to the issuance of the applicable Cumulative Lists but not so identified.

For the following examples, refer to the chart found above in section 12.01 which is the Extension of the EGTRRA Remedial Amendment Period and Schedule of Next Five-Year Remedial Amendment Cycle. In the following examples, both the tax year of the employer and the plan year are the calendar years.

Example 1: Employer M is a C corporation. The last digit of Employer M's EIN is 7. Employer M adopts a new plan, Plan X on January 1, 2006. The cycle for Plan X is Cycle B. Since Employer M timely adopted Plan X in good faith with the intent of sponsoring a qualified plan, the initial remedial amendment cycle for Plan X ends January 31, 2008. Any remedial amendments required for Plan X to correct a disqualifying provision as described in § 1.401(b)-1(b)(1) must be adopted by January 31, 2008, unless an application for a determination letter is submitted by that date. The plan would then be retroactively effective to the first day Employer M adopted Plan X in 2006. The subsequent 5-year remedial amendment cycles end on January 31, 2013, January 31, 2018, etc.

Example 2: Same facts as Example 1. On July 1, 2010, Employer M starts to operate the plan in a manner which is inconsistent with the written plan document but an amendment to reflect the plan change when made retroactively effective would not violate § 411(d)(6). This change is unrelated to a change in qualification requirement or published guidance. To conform with plan operation, Employer M must adopt an amendment by the end of the plan year in which the plan amendment is effective. Employer M adopts an amendment by December 31, 2010 in good faith with the intent of maintaining the qualified status of Plan X. Employer M submits a determination letter application on or before the end of the second five-year remedial amendment cycle (that is, January 31, 2013). During the review of the determination letter application, the Service finds that the adoption of the amendment caused the plan to fail to satisfy the requirements of the Code as of the date the amendment was first made effective. Once the Service informs Employer M that the amendment is a disqualifying provision as described in § 1.401(b)-1(b)(1), Employer M would be required to adopt an amendment which corrects the disqualifying provision. The amendment would be retroactively effective as of July 1, 2010.

Example 3: Same facts as Example 1. The last day of the third five-year remedial amendment cycle for Employer M is January 31, 2018. Since the first day of the third remedial amendment cycle, Employer M has adopted interim plan amendments timely and in good faith with the intent of maintaining the qualified status of Plan X, as well as maintaining operational compliance. In 2017, Employer M updates Plan X for the qualification requirements stated in the 2016 Cumulative List by restating the plan in proposed form. Employer M submits a determination letter application using a working copy of the plan in a restated

format on or before January 31, 2018. Employer M receives a favorable determination letter. Employer M must adopt the proposed restated plan by 91 days after the date of the favorable determination letter to be considered timely under § 401(b) of the Code.

Example 4: The remedial amendment cycle for Plan Y is based on the last digit of Employer N's EIN, which is a 4. Plan Y's cycle is therefore Cycle D. The initial remedial amendment cycle (that is, EGTRRA remedial amendment period) for Plan Y ends January 31, 2010, and the subsequent 5-year remedial amendment cycle ends January 31, 2015. In January 2009, guidance is published effective for the plan years beginning on or after January 1, 2010. The guidance first appears on the 2009 Cumulative List. Employer N updates Plan Y for the remedial amendment cycle that ends January 31, 2010 for qualification requirements listed on the 2008 Cumulative List. Employer N submits a determination letter application on July 1, 2009. Since the guidance was published after the issuance of the 2008 Cumulative List and not identified and included on such list, the Service will not consider in its review the published guidance until Employer N's subsequent remedial amendment cycle. To reflect this published guidance, Employer N must adopt an interim amendment timely and in good faith (that is, by the end of the 2010 tax filing date (including extensions)). The interim amendment is effective as of the first day of the 2010 plan year and will be reviewed as part of the determination letter application submitted in the subsequent five-year remedial amendment cycle.

SECTION 13. ON-CYCLE FILING FOR DETERMINATION LETTERS

.01 In general, plan sponsors of individually designed plans that wish to preserve reliance on a plan's favorable determination letter must apply for a new determination letter for each remedial amendment cycle during the last twelve months of their plan's remedial amendment cycle, that is between February 1 and January 31 of the last year of the cycle. This is referred to as "on-cycle" filing.

.02 Determination letters issued for individually designed plans will include a statement that the letter may not be relied on after the end of the plan's first five-year remedial amendment cycle that ends more than twelve months after the application was received, and will include the specific "expiration date." Thus, determination letters issued for applications filed more than twelve months prior to the end of a five-year remedial amendment cycle may not be relied on after that cycle.

.03 In appropriate circumstances, the Service may, through generally applicable published guidance, extend the expiration dates of determination letters for a particular cycle year or years.

SECTION 14. OFF-CYCLE FILING FOR DETERMINATION LETTERS

If an application for a determination letter is submitted prior to or after the last twelve month period of a plan's remedial amendment cycle (that is, the twelve-month period beginning on February 1 and ending on January 31 of the last year of the cycle), the application is filed "off-cycle" and does not satisfy section 13.01. The off-cycle filing will be reviewed using the same Cumulative List that would be used for an application that was filed "on-cycle" on the same date as the "off-cycle" filing date. This means that the determination letter issued for the plan may not take into account any or all of the changes in qualification requirements for which the plan must be amended within the plan's current remedial amendment cycle. Further, as stated in section 13.02, the determination letter may not be relied on after the end of the plan's first five-year remedial amendment cycle that ends more than twelve months after the application received. Consequently, the plan may need to be further amended within the cycle and another determination letter application will need to be filed within the last twelve months of the cycle if the plan sponsor wishes to preserve reliance on a determination letter. Also, the application submitted in a particular year will not be reviewed until all on-cycle plans for that particular year have been reviewed and processed.

Example 5: The remedial amendment cycle for Plan Z is based on the last digit of Employer L's EIN, which is 0. Plan Z's cycle is Cycle E. The initial five-year remedial amendment cycle (that is, EGTRRA remedial amendment period) for Plan Z ends January 31, 2011, and the subsequent 5-year remedial amendment cycle ends January 31, 2016. Employer L submits a determination letter application on March 1, 2009. The 2008 Cumulative List will be used to review Employer L's determination letter submission. Since the initial five-year remedial amendment cycle will expire on January 31, 2011, Employer L must submit a new determination letter application during the last twelve months of the remedial amendment cycle (between February 1, 2010 to January 31, 2011) to continue to have reliance on a determination letter after that date.

SECTION 15. OPENING OF DETERMINATION LETTER PROGRAM FOR INITIAL REMEDIAL AMENDMENT CYCLE FOR INDIVIDUALLY DESIGNED PLANS

.01 This revenue procedure announces the opening, on February 1, 2006, of the determination letter program for the initial remedial amendment cycle (i.e., EGTRRA remedial amendment period) for individually designed plans that fall in Cycle A. The Service will also accept determination letter applications for individually designed plans which would be considered to be filed off-cycle.

.02 Applications for determination letters for individually designed plans that are filed on or after February 1, 2006 will be reviewed taking into account the

requirements of EGTRRA as well as other changes in qualification requirements and guidance identified on the applicable Cumulative List.

.03 In general, Form 6406, *Short Form Application for Determination for Minor Amendment of Employee Benefit Plan*, may not be used to apply for an initial remedial amendment cycle (that is, EGTRRA) determination letter and for all future determination letter application submissions in subsequent remedial amendment cycles.

.04 In general, individually designed plans must be restated when they are submitted for determination letter applications for the initial remedial amendment cycle (that is, EGTRRA remedial amendment period) and subsequent remedial amendment cycles. For this purpose, submission of a working copy of the plan in a restated format will suffice.

PART IV – Pre-approved Plans

SECTION 16. ESTABLISHMENT OF SIX-YEAR AMENDMENT/APPROVAL CYCLE FOR PRE-APPROVED PLANS

.01 This Part IV sets forth rules and procedures for the six-year remedial amendment/approval cycles for pre-approved plans.

.02 Sponsors and practitioners maintaining pre-approved plans generally have until January 31st of the calendar year following the opening of the six-year remedial amendment cycle to submit applications for opinion and advisory letters. However, sponsors and practitioners maintaining mass submitter plans and national sponsors generally have until October 31st of the calendar year in which the six-year remedial amendment cycle opens to submit opinion and advisory applications.[3] In addition, the deadline for word-for-word identical adopters and minor modifier placeholder applications is January 31st of the calendar year following the opening of the six-year remedial amendment cycle (see section 12 of Rev. Proc. 2005-16 for more details). However, sponsors and practitioners maintaining mass submitter plans are encouraged to submit their word-for-word and minor modifier placeholder applications by the earlier mass submitter submission deadline, October 31st. The Service will evaluate this new provision (that is, a different deadline for applications of mass submitter plans versus word-for-word and minor modifier placeholder applications) and may, at its discretion and through applicable published guidance, change the deadline date for the word-for-word and minor modifier placeholder applications in future six-year remedial amendment cycles.

[3] Section 18.02(1) provides a later deadline of January 31, 2006 for the initial EGTRRA application for sponsors and practitioners maintaining mass submitter plans and national sponsors who submit applications for defined contribution M&P and volume submitter plans.

.03 When the review of a cycle for pre-approved plans has neared completion (after approximately a two-year review process), the Service will publish an announcement providing the date by which adopting employers must adopt the newly approved plans. This will be a uniform date that will apply to all adopting employers. Depending upon the length of the review process, it is expected that this date will give virtually all employers approximately a two-year window to adopt their updated plans. For purposes of this revenue procedure, an adopting employer means an employer who satisfies the requirements described under section 17 of this revenue procedure.

.04 An adopting employer that adopts the approved M&P or volume submitter plan by the announced deadline will have adopted the plan within the employer's six-year remedial amendment cycle. The announced deadline will be the end of the plan's remedial amendment cycle with respect to all disqualifying provisions for which the remedial amendment period would otherwise end during the cycle.

.05 If necessary, the Service may revise the schedule described in this section to respond to changing circumstances and needs of plan sponsors.

SECTION 17. ELIGIBILITY FOR SIX-YEAR AMENDMENT/APPROVAL CYCLE

.01 An employer's plan is treated as a pre-approved plan and is therefore eligible for a six-year amendment/approval cycle if:

(1) The employer is either a prior adopter described in section 17.02, a new adopter described in section 17.03, an intended adopter described in section 17.04, or the adopter of a replacement plan that meets the conditions described in section 17.05, and

(2) The sponsor or practitioner maintaining the pre-approved plan timely submits an opinion or advisory letter application:

(a) By the application deadline of October 31st in the calendar year opening the six-year remedial amendment cycle for mass submitter and national sponsor pre-approved plans, or

(b) By the application deadline of January 31st of the calendar year following the opening of the six-year remedial amendment cycle for non-mass submitter, word-for-word adopter, and minor modifier pre-approved plans.

.02 An employer is a prior adopter if the employer's pre-approved plan was both adopted and effective as of the last day of the six-year remedial amendment cycle immediately preceding the opening of the current six-year cycle (or, in the case of the initial six-year remedial amendment cycle, February 16, 2005 for

defined contribution pre-approved plans or January 31, 2007 for defined benefit pre-approved plans.

.03 An employer is a new adopter if the employer switches from an individually designed plan before the end of the employer's five-year remedial amendment cycle as determined under Part III of this revenue procedure by adopting either a pre-approved plan that was issued a valid opinion or advisory letter or an interim pre-approved plan (e.g., a new pre-approved plan that has yet to be issued an opinion or advisory letter).

.04 An employer is an intended adopter if the employer and the sponsor or practitioner who maintains the pre-approved plan execute Form 8905, Certification of Intent to Adopt Pre-approved Plan[4], before the end of the employer's five-year remedial amendment cycle as determined under Part III of this revenue procedure. If the employer's five-year remedial amendment cycle ends with or after the applicable six-year remedial amendment cycle, the employer must adopt the current pre-approved plan rather than execute Form 8905. In this situation, the employer is not an intended adopter.

.05 An employer is an adopter of a replacement plan under the following circumstances:

(1) The employer timely adopted a pre-approved plan that is to be replaced by a "replacement" plan (that is, the plan document remaining after one of the situations described in section 17.05(3));

(2) A sponsor or practitioner maintaining the pre-approved plan does not request an opinion or advisory letter during the current six-year approval/amendment cycle because the plan is to be replaced by the plan of another sponsor or practitioner as a result of a change in business circumstances described in section 17.05(3);

(3) The sponsor or practitioner of the replacement plan and the sponsor or practitioner of the replaced plan are related in one of the following ways: (a) one was merged into the other before the last day of the submission period as described in section 17.01(2) or (b) as of the last day of the submission period as described in section 17.01(2) both are members of the same controlled group of corporations within the meaning of § 414(b) or are trades or businesses which are under common control within the meaning of § 414(c).

[4] Form 8905, Certification of Intent to Adopt Pre-approved Plan is not expected to be available to the public for several months. Therefore, the Service will announce procedures for the submission of this and other relevant forms at www.irs.gov/ep, which will be updated periodically.

.06 If the employer intends to adopt a replacement plan, the employer will not be required to execute Form 8905, Certification of Intent to Adopt Pre-approved Plan.

.07 If the employer applies for a determination letter for a replacement plan, the application must include a statement from the sponsor or practitioner maintaining the replaced plan indicating that the sponsor or practitioner bought out or merged with the sponsor or practitioner maintaining the replacement plan.

.08 If an employer described in section 17.03 or 17.05 fails to adopt a pre-approved plan or if an employer described in section 17.02 or 17.04 fails to adopt a pre-approved plan or individually designed plan by the adoption and/or submission deadline established by the Service for the current six-year remedial amendment cycle and the employer is unable to utilize its five-year remedial amendment cycle, (e.g., the employer's submission deadline under the five-year remedial amendment cycle precedes the adoption and/or submission deadline under the current six-year cycle), then the adopting employer may be eligible to correct for late adoption under the Employee Plans Compliance Resolution System.

.09 Effect of Adoption of an Individually Designed Plan:

(1) Although an employer described in section 17.09(2) will no longer be treated as maintaining a pre-approved plan, the employer will remain eligible for the current six-year remedial amendment cycle. The subsequent remedial amendment cycle is the first five-year cycle, as determined under Part III of this revenue procedure, that ends after the closing of the six-year cycle in which the determination letter application was submitted or could have been submitted. However, if the employer is also described in either section 24.02 of Rev. Proc. 2005-16 with respect to a volume submitter plan or section 19 of this revenue procedure with respect to an M&P plan, then the remedial amendment period under section 19 of this revenue procedure will apply;

(2) Under this section 17.09(2) an employer is entitled to remain in the six-year remedial amendment cycle in the current remedial amendment cycle if:

(a) the employer is a prior adopter of a pre-approved plan (as described in section 17.02) and after adopting this pre-approved plan the employer decides to adopt an individually designed plan whose underlying plan document is not based upon a pre-approved plan document, or

(b) the employer amends an approved M&P plan including its adoption agreement to incorporate a type of plan not allowed in the M&P program (e.g., as described in section 6.03 of Rev. Proc. 2005-16), or

(c) the employer amends an approved volume submitter plan to incorporate a type of plan not allowed in the volume submitter program (e.g., as described in section 16.02 of Rev. Proc. 2005-16);

(3) Notwithstanding section 17.09(1), if an employer amends an approved M&P plan including its adoption agreement or an approved volume submitter plan to such an extent that the Service determines in its discretion that the plan falls under section 24.03 of Rev. Proc. 2005-16, then the plan will be considered individually designed for purposes of this revenue procedure. The remedial amendment cycle in which the employer impermissibly amends the M&P plan or volume submitter plan and all subsequent remedial amendment cycles will be determined under Part III of this revenue procedure;

(4) If an employer described in section 17.09(2), submits a determination letter application prior to the end of any given six-year cycle, then the subsequent remedial amendment cycle is the first five-year cycle, as determined under section 9 or 10 of this revenue procedure that ends after the closing of the six-year cycle in which the determination letter application was submitted. The employer's application will be reviewed using the applicable Cumulative List based on the date of the application. However, if the end of the first five-year cycle that ends after the closing of the six-year cycle is less than twelve calendar months after the date of the favorable determination letter, then the plan's current cycle is extended for twelve calendar months and the next five-year cycle will be shortened accordingly.

Examples 6 through 9 below illustrate how different types of employer amendments to a pre-approved plan affect the employer's current and/or subsequent remedial amendment cycle and which Cumulative List the Service will use to review an employer's submission.

Example 6: Practitioner S maintains a defined contribution volume submitter specimen plan. Practitioner S timely submits an advisory letter application for the initial six-year remedial amendment cycle (that is, EGTRRA remedial amendment period) on or before January 31, 2006. Practitioner S receives an advisory letter dated January 31, 2008. The Service announces that February 1, 2008 until January 31, 2010 is the time period when employers must adopt a restated pre-approved plan and, if necessary, file a determination letter application. Employer T adopts the volume submitter specimen plan, now Plan K, on or before January 31, 2010. Employer T amends Plan K so that it is no longer word-for-word identical to the volume submitter specimen plan. Employer T submits a determination letter application using Form 5307, *Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans* on January 15, 2010. The Service will review the determination letter application based upon the Cumulative List used to review the underlying plan document, the 2004 Cumulative List.

The 2004 Cumulative List is used in this instance because the Service in its review determined that the amendments to the volume submitter specimen plan did not rise to the level that necessitated the treatment of Plan K as an individually designed plan which would require Employer T to file Form 5300, *Application for Determination for Employee Benefit Plan*. Accordingly, Employer T's subsequent remedial amendment cycle will continue to be determined under Part IV of this revenue procedure. Practitioner S would submit an application for an advisory letter within the next six year remedial amendment cycle, which ends on January 31, 2017, on or before the submission deadline for such cycle of January 31, 2012. Employer T would adopt the restated pre-approved plan and, if necessary, file a determination letter application within the time period announced by the Service.

Example 7: Employer X has maintained Plan M, a defined contribution pre-approved plan, since 2002. The last digit of Employer X's EIN is 8. Plan M is timely submitted for the initial six-year remedial amendment cycle (that is, the EGTRRA remedial amendment period) by the sponsor/practitioner on or before January 31, 2006. Generally, Employer X will have until January 31, 2011 (unless otherwise provided by the Service) to adopt the EGTRRA approved version of the pre-approved plan and have such adoption be considered timely under § 401(b) of the Code.

In 2007, Employer X decides Plan M no longer offers the flexibility it desires in providing the retirement benefits to its employees. As a result, Employer X amends and restates Plan M in 2007 into a defined contribution individually designed plan (with the intent of maintaining the qualified status of Plan M). Though Employer X is now sponsoring an individually designed plan, Employer X, a prior adopter as described in section 17.02, is still eligible for the six-year remedial amendment cycle under section 17.09(2). The Service announces that February 2, 2008 until January 31, 2010 is the time period when employers must adopt a restated pre-approved plan and, if necessary, file a determination letter application. On June 1, 2009 Employer X submits a determination letter application using Form 5300, *Application for Determination for Employee Benefit Plan* and pays the higher user fee. The Service will review the determination letter application based upon the 2008 Cumulative List (that is, the annual Cumulative List based on the date of the determination letter submission). The subsequent remedial amendment cycle is the first five-year cycle as determined under section 9 or 10 of this revenue procedure that ends after the closing of the six-year cycle in which the determination letter application was submitted; thus, the next five-year remedial amendment cycle ends January 31, 2014.

Example 8: Employer Y, whose EIN ends with an 8, maintains Plan N. Plan N is an adoption of an M&P defined benefit plan as of 2002. The M&P plan is timely submitted for the initial six-year remedial amendment cycle (that is, EGTRRA

remedial amendment period) by the sponsor on or before January 31, 2008 and the sponsor receives an opinion letter dated January 31, 2010 for the M&P plan. Generally, Employer Y has until January 31, 2013 (unless otherwise provided by the Service) to adopt the EGTRRA approved version of the M&P plan and have such adoption be considered timely under § 401(b) of the Code.

On November 19, 2012, as part of adopting the EGTRRA approved version of an M&P plan, Employer Y adopts an amendment to Plan N that creates a plan described under §414(k). Although Employer Y adopts this amendment timely and in good faith with the intent of maintaining the qualified status of Plan N, this amendment changes the provisions of the M&P plan to create a type of plan that is not allowed in the M&P program. Since Employer Y has amended the M&P plan to incorporate a type of plan for which the Service will not issue an opinion letter, Plan N is an individually designed plan. Though Employer Y is now sponsoring an individually designed plan, Employer Y, a prior adopter as described in section 17.02, is still eligible for the six-year remedial amendment cycle under section 17.09(2). The Service announces February 1, 2011 until January 31, 2013 as the time period for employers to adopt a restated pre-approved plan and, if necessary, file a determination letter application. Employer Y submits a determination letter application using Form 5300, *Application for Determination for Employee Benefit Plan* and pays the higher user fee on March 31, 2012. The Service will review the determination letter application based upon the 2011 Cumulative List (that is, the annual Cumulative List based on the date of the determination letter submission). Employer Y receives a favorable determination letter dated March 31, 2013. Employer Y's subsequent remedial amendment cycle is the first five-year cycle, as determined under section 9 or 10 of this revenue procedure that ends after the closing of the six-year cycle in which the determination letter application was submitted; thus, the next five-year remedial amendment cycle ends January 31, 2014. However, since the end of the first five-year cycle that ends after the closing of the six-year cycle is less than twelve calendar months after the date of the favorable determination letter, the current five-year cycle is extended by twelve calendar months as provided in section 17.09(5); thus the end of the five-year cycle is January 31, 2015 and not January 31, 2014. The subsequent remedial amendment cycle is shortened accordingly but the submission period deadline remains January 31, 2019.

Example 9: Employer Z, whose EIN ends with a 2, maintains Plan V. Plan V is a defined contribution plan and is an adoption of a volume submitter plan as of 2011. The volume submitter specimen plan is timely submitted for the second six-year remedial amendment cycle by the practitioner on or before January 31, 2012. The volume submitter practitioner receives an advisory letter dated January 31, 2014 for the VS specimen plan. Generally, Employer Z will have until January 31, 2017 (unless otherwise provided by the Service) to adopt the approved volume submitter plan and to have such adoption be considered timely under § 401(b) of the Code.

On November 15, 2013, Employer Z adopts an amendment to Plan V that creates an employee stock ownership plan. Although Employer Z adopts this amendment timely and in good faith with the intent of maintaining the qualified status of Plan V, this amendment changes the provisions of the volume submitter plan to create a type of plan that is not allowed in the volume submitter program. Since Employer Z has amended the volume submitter plan to incorporate a type of plan for which the Service will not issue an advisory letter, Employer Z submits a determination letter application for Plan V by November 20, 2013 using Form 5300, *Application for Determination for Employee Benefit Plan* and pays the higher user fee. The Service would use the 2012 Cumulative List in its review of the determination letter submission. Employer Z receives a favorable determination letter dated November 20, 2014. Employer Z's subsequent remedial amendment cycle is the first five-year cycle, as determined under section 9 or 10 of this revenue procedure that ends after the closing of the six-year cycle in which the determination letter application was submitted; thus, the next five-year remedial amendment cycle ends January 31, 2018.

SECTION 18. EXTENSION OF THE EGTRRA REMEDIAL AMENDMENT PERIOD AND SCHEDULE OF NEXT SIX-YEAR REMEDIAL AMENDMENT CYCLE

.01 The end of the initial remedial amendment cycle (that is, EGTRRA remedial amendment period) as extended in section 6 is illustrated in the following chart. The chart also provides the end dates (unless otherwise provided by the Service) of the next six-year remedial amendment cycle.

Extension of the EGTRRA Remedial Amendment Period and Schedule of Next Six-Year Remedial Amendment Cycle		
If the plan is -	The last day of the initial cycle (i.e., EGTRRA remedial amendment period) is –	The next six-year remedial amendment cycle ends on -
Defined Contribution	January 31, 2011	January 31, 2017
Defined Benefit	January 31, 2013	January 31, 2019

.02 In general, sponsors of M&P plans and practitioners maintaining volume submitter plans must apply for new opinion or advisory letters for the plans every six years, according to the following schedule:

(1) Defined Contribution Plans

Initial EGTRRA application due - Next application due -

Non-Mass Submitter Sponsors and Practitioners, Word-for-Word Identical Adopters, and M&P Minor Modifier Placeholder Applications:

February 17, 2005 through January 31, 2006	February 1, 2011 through January 31, 2012

Mass Submitters and National Sponsors:

February 17, 2005 through January 31, 2006	February 1, 2011 through October 31, 2011

(2) Defined Benefit Plans

Initial EGTRRA application due -	Next application due -

Non-Mass Submitter Sponsors and Practitioners, Word-for-Word Identical Adopters and M&P Minor Modifier Placeholder Applications

February 1, 2007 through January 31, 2008	February 1, 2013 through January 31, 2014

Mass Submitters and National Sponsors:

February 1, 2007 through October 31, 2007	February 1, 2013 through October 31, 2013

.03 In accordance with section 7 of this revenue procedure, the end of a plan's EGTRRA remedial amendment cycle is the time by which an employer adopts the approved plan by the end of the deadline as announced by the Service. An adopting employer that timely adopts the approved plan will be treated as having adopted the plan within the employer's six-year remedial amendment cycle.

SECTION 19. OPTION TO PERMIT ADOPTING EMPLOYER TO AMEND M&P PLAN AND REMAIN IN SIX-YEAR REMEDIAL AMENDMENT CYCLE

.01 Generally, an employer that amends any provision of an approved M&P plan including its adoption agreement (other than to change the choice of options, if the plan permits or contemplates such a change) is considered to have adopted an individually designed plan. (See section 5.02 of Rev. Proc. 2005-16.)

.02 Plan amendments that are adopted timely and in good faith with the intent of maintaining the qualified status of the plan by employers sponsoring M&P plans will be disregarded for purposes of determining an employer's remedial amendment cycle. Thus, the plan will continue to be treated as an M&P plan for purposes of this revenue procedure and therefore eligible for the six-year

remedial amendment cycle on a continuing basis as provided in section 24.02 of Rev. Proc. 2005-16, unless one of the following occurs:

(1) The employer adopts one or a series of amendments that either by itself or taken together, causes the plan to fall into one of the categories listed in section 6.03 of Rev. Proc. 2005-16, or the Service uses its discretion under section 24.03 of Rev. Proc. 2005-16 to determine that the plan is individually designed due to the amendment, or

(2) The adopting employer severs ties with the M&P sponsor (that is, does not adopt a pre-approved plan with a current opinion or advisory letter for the applicable remedial amendment cycle).

.03 An employer that adopts an amendment which causes an M&P plan to be treated as an individually designed plan under section 19.01 of this revenue procedure, but for remedial amendment cycle purposes remains eligible for the six-year remedial amendment cycle under section 19.02 of this revenue procedure, must file a determination letter application (that is, a Form 5300) for reliance. The determination letter application should be filed during the approximate two-year period within the six-year remedial amendment cycle that the Service announces for employers to adopt and submit determination letter applications, (if applicable). The Service will use the applicable Cumulative List based on the date of the determination letter submission in its review. Procedures for filing the Form 5300 are similar to the procedures set forth in section 9.09 in Rev. Proc. 2005-6, for volume submitter plans, except for the following:

(1) A list of modifications is not required to be included.

(2) Any changes adopted by the employer must be made in the form of an amendment and not incorporated into the underlying M&P plan document.

.04 If the employer is required to obtain a determination letter in order to have reliance, then the sponsor's authority to amend on behalf of the adopting employer is conditioned on the plan being covered by a favorable determination letter. However, the sponsor will no longer have the authority to amend on behalf of the employer if the amendment falls into one of the categories listed in section 6.03 of Rev. Proc. 2005-16 or section 24.03 of Rev. Proc. 2005-16.

SECTION 20. OFF-CYCLE FILING

If an opinion or advisory letter application for a new sponsor, new practitioner, or new pre-approved plan is submitted outside of the submission period within an applicable six-year cycle, the application is filed "off-cycle". The application will be reviewed using the Cumulative List the Service would have used if the plan

had been submitted as an on-cycle plan during the most-recently expired submission period that would have applied for that particular type of plan.

Example 10: Sponsor S submits an application for an opinion letter for a new defined contribution M&P pre-approved plan on January 1, 2008. This is after the submission period that ended on January 31, 2006 for the current cycle and before the submission period that begins on February 1, 2011 and ends on January 31, 2012 for the next six-year cycle. Sponsor S's application will be reviewed using the 2004 Cumulative List.

SECTION 21. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2000-27, 2000-1 C.B. 1272 is modified and superseded. Notice 2001-42, Rev. Proc. 2005-6, Rev. Proc. 2005-16 and Announcement 2005-36 are modified.

DRAFTING INFORMATION

The principal author of this revenue procedure is Dana Barry of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number) between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday (a toll free call). Ms. Barry may be reached at (202) 283-9888 (not a toll-free call).