



New IRS Restrictions for Obtaining Determination Letters Pre-Approved Plans of Mass Submitters Become an Attractive Alternative

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Each year, the Internal Revenue Service revises its procedures for obtaining favorable determination letters and the associated user fees. Last year, the IRS significantly increased user fees for obtaining determination letters. (See [ASci Alert 11-02](#).) Although the IRS did not change the user fee schedule this year, it did place several new restrictions on the ability to receive a determination letter. Considering the fee increases from last year and the new restrictions on the ability to receive a determination letter, pre-approved prototype and volume submitter plans, especially those provided by a mass submitter, continue to provide an attractive alternative for practitioners and adopting employers.

New Determination Letter Restrictions

Late last year, the IRS announced that it planned to implement new restrictions on the issuance of determination letters starting in 2012. (See IRS Announcement 2011-82.) The IRS indicated that the new restrictions are intended to decrease the regulatory burden on the IRS by eliminating determination letter options that provide limited utility to plan sponsors. While practitioners debate whether the new restrictions are truly helpful to plan sponsors, the IRS formalized the new restrictions in Revenue Procedure 2012-6.

Rev. Proc. 2012-6 makes the following changes to the determination letter program:

- **Elimination of Demonstrations Regarding Coverage and Nondiscrimination Requirements**

Under prior procedures, when filing for a determination letter using Form 5300 for individually designed plans, Form 5307 for pre-approved prototype or volume submitter plans or Form 5310 for terminating plans, a plan sponsor had the option of seeking a determination on whether the plan satisfied certain coverage and nondiscrimination requirements. The plan sponsor would attach Schedule Q and certain demonstrations along with the Form 5300, Form 5307 or Form 5310. Note that the determination letter user fee for such requests increased from \$2,500 to \$4,500 for Form 5300 and from \$300 to \$1,800 for Form 5307. Also, note that there will be a limited ability to even file Form 5307 in the future. See below.

Effective for Forms 5300 filed on or after February 1, 2012 and for Forms 5307 and 5310 filed on or after May 1, 2012, the IRS will no longer consider, and the determination letter may not be relied upon with respect to, whether the plan satisfies the requirements of Code §§401(a)(4) (nondiscrimination), 401(a)(26) (minimum participation) or 410(b) (minimum coverage).

- **Limited Ability to File Form 5307**

Effective May 1, 2012, plan sponsors may only file Form 5307 when adopting a volume submitter plan that modifies the terms of the pre-approved volume submitter plans. Therefore, adopters of any prototype plan and any volume submitter plan that is not modified will be precluded from filing Form 5307 and receiving the reliance a determination letter may provide.

ASci Insight: The inability to receive determination letters by filing Form 5307 will, in some cases, place plan sponsors in difficult positions. The IRS has indicated that opinion letters for prototype plans and advisory letters for volume submitter plans provide sufficient “reliance” in most cases and that a separate determination letter is not necessary. Still, there are circumstances that adopters of pre-approved plans will like to have the added assurance of a determination letter. Going forward, adopting employers will not have this option.

- **Form 5300 Applications for Prototype and Volume Submitter Plans**

In certain circumstances, an employer that adopts a prototype or volume submitter plan may apply for a determination letter using Form 5300. The new procedures add two new circumstances. Effective May 1, 2012, a prototype plan must file for a determination letter if an employer adds plan provisions to satisfy the requirements of Code §§415 and 416 because of the required aggregation of plans. Also, effective May 1, 2012, an employer with a pre-approved pension plan, whether prototype or volume submitter, with a normal retirement age earlier than age 62 must file for a determination letter using Form 5300. Until May 1, 2012, the employer may file Form 5307 in either of these circumstances.

ASci Insight: The other circumstances under which an employer may obtain a determination letter as an adopter of a pre-approved prototype or volume submitter plan by filing Form 5300 are: (1) the application requests a determination regarding affiliates service group or leased employee status or partial termination; (2) the plan is a multiple employer plan; and (3) the determination letter is required by the IRS (for example, in connection with a request for a funding waiver).

The IRS will continue to accept, through April 30, 2012, Form 5307 filed for defined benefit and defined contribution plans under the current procedures.

ASCI Insight: The user fee associated with a determination letter filing depends on the form filed. The user fee for Form 5307 is \$300 and the user fee for Form 5300 is \$2,500.

Furthermore, document providers using mass submitter documents can help ensure that their pre-approved plans are up-to-date with the latest IRS requirements and utilize software to assist in the generation of IRS forms (such as the Form 5500) and plan-specific forms for participants and employers.

ASCI Insight: Sponsors of pre-approved prototype and volume submitter defined contribution plans must submit new applications for IRS approval of their restated PPA plans by April 2, 2012. Sponsors may adopt the ASCi pre-approved mass submitter plans by enrolling with ASCi prior to the deadline. For enrollment information, please contact ASCi at asci@asc-net.com.

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Using Mass Submitter Pre-Approved Plans

With the increase in user fees last year, and now the restrictions on the ability to receive determination letters, more practitioners should consider using pre-approved plans and, in particular, using mass submitter plans. Practitioners can lower the costs for themselves and their clients by adopting pre-approved plans rather than individually-designed plans. Further, the IRS is emphasizing that an opinion letter or advisory letter for a pre-approved plan provides the same reliance as a determination letter for an individually designed plan.

Pre-approved plans provided by a mass submitter provider, like ASC Institute, will save even more costs for document providers.

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