Facilitating Compliance with Qualified Plan Document Requirements

Announcement 2016-32

This announcement requests comments on ways in which the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) can improve compliance with plan qualification requirements by making it easier for plan sponsors to satisfy requirements for qualified plan documents, particularly in light of the changes to the determination letter program described in Rev. Proc. 2016-37, 2016-29 I.R.B. 136. Rev. Proc. 2016-37 provides, in part, that the five-year staggered remedial amendment cycle system will be eliminated effective January 1, 2017. Rev. Proc. 2016-37 further provides that a sponsor of an individually designed plan will be permitted to submit a determination letter application only for initial qualification, for qualification upon plan termination, and in certain other circumstances to be determined by Treasury and the IRS.

REQUEST FOR COMMENTS

Treasury and the IRS request comments on the following:

1. Incorporation by reference. Stakeholders have suggested that expanding the use of incorporation by reference could help plan sponsors avoid inadvertent errors in plan documents. A list of Internal Revenue Code requirements that the IRS currently permits to be incorporated by reference for purposes of meeting the qualification requirements is provided in Internal Revenue Manual Exhibit 7.11.1-3, *Employee Plans Determination Letter Program*, which can be found at IRS.gov at: https://www.irs.gov/irm/part7/irm_07-011-001.html. Comments are requested on any additional qualification requirements plan sponsors believe should be permitted to be incorporated by reference in their retirement plans and the areas in which guidance relating to incorporation by reference would provide the greatest assistance. Commenters are requested to describe the reasons why incorporation by reference of a particular qualification requirement would be appropriate (for example, in view of the characteristics of a type of plan or the characteristics of a type of plan sponsor). Comments are also requested on suggested language that could be used in plan documents to incorporate qualification requirements by reference. See, for example, § 1.401(a)(9)-1, Q&A-3.

2. Circumstances under which plan provisions may not be required. Plan sponsors have raised concerns about being required to include certain plan provisions or amendments in situations in which the provisions or amendments are not applicable, or not yet applicable, to their plans. For example, the provisions of § 401(a)(35), which impose diversification requirements on certain defined contribution plans that hold or are treated as holding publicly traded employer securities under § 401(a)(35)(F), are not required to be included in certain plans, including plans maintained by tax-exempt organizations or sole proprietorships, but are currently required to be included in certain other plans, even if the plans do not provide for the acquisition or holding of publicly

traded employer securities. Comments are requested on whether certain plan provisions or amendments should be required to be included in a plan only if the underlying qualification requirements are applicable to that plan (for example, because of the type of plan, employer, or benefits offered). In considering which provisions should be required only if applicable, Treasury and the IRS request that commenters also consider the extent to which a provision may become applicable in a future period, and the likelihood that the plan sponsor would fail to amend the plan when circumstances change.

3. Conversion to pre-approved plans. Treasury and the IRS understand that some plan sponsors are considering a transition from sponsoring an individually designed plan to using a pre-approved plan document (that is, a plan document pre-approved by the IRS as a master or prototype plan or a volume submitter plan) in light of the changes to the determination letter program for individually designed plans. Comments are requested on any impediments to that process, and how Treasury and the IRS could reduce or eliminate those impediments. For example, comments are welcome on difficulties encountered in the process of conversion, as well as on aspects of the pre-approved plan program that may cause the program to be unattractive to a plan sponsor.

4. Additional ways to facilitate compliance. Comments are requested on any additional guidance or other actions by Treasury and the IRS that would facilitate compliance with qualified plan document requirements, particularly in light of the changes to the determination letter program.

Comments may be submitted in writing on or before December 15, 2016. Comments should be mailed to Internal Revenue Service, CC:PA:LPD:PR (Announcement 2016-32), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044, or sent electronically to notice.comments@irscounsel.treas.gov. Please include “Announcement 2016-32” in the subject line of any electronic communications. Alternatively, comments may be hand delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to CC:PA:LPD:PR (Announcement 2016-32), Courier’s Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, D.C. All comments will be available for public inspection and copying.

In addition, Treasury and the IRS anticipate issuing a revenue procedure shortly that will modify Rev. Proc. 2013-12, 2013-4 I.R.B. 313, the existing consolidated statement of the correction programs under the Employee Plans Compliance Resolution System (EPCRS). The new EPCRS revenue procedure is expected to modify EPCRS to accommodate changes to the determination letter program made by Rev. Proc. 2016-37 and is expected to invite comments on the modifications.

DRAFTING INFORMATION

The principal author of this announcement is Angelique Carrington of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this announcement, contact Ms. Carrington at (202) 317-4148 (not a toll-free number).