

Part III. Administrative, Procedural, and Miscellaneous

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

Rev. Proc. 2007-44

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PART I — OVERVIEW

SECTION 1. PURPOSE

.01 Rev. Proc. 2005–66, 2005–2 C.B. 509, established a system of cyclical remedial amendment periods under § 401(b) of the Internal Revenue Code (Code) for individually designed and pre-approved qualified plans. This revenue procedure updates and supersedes Rev. Proc. 2005–66. Section 3 describes the changes to Rev. Proc. 2005–66 in this revenue procedure.

(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 in order to continue to have a letter on which to rely.

(2) In addition, under this system, every pre-approved plan (that is, every master and prototype (M&P) and volume submitter (VS) plan), generally has a regular, six-year remedial amendment cycle. As a result, sponsors, practitioners (including mass submitters and national sponsors), as defined in Rev. Proc. 2005–16, 2005–1 C.B. 674, and generally referred to collectively in this revenue procedure as “sponsors or practitioners” unless otherwise noted, as well as 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 remedial amendment 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 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.

.03 These remedial amendment cycles are coordinated with the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16 (EGTRRA) remedial amendment period, as defined further in section 2.07 of this revenue procedure, for both individually designed and pre-approved plans.

(1) The EGTRRA remedial amendment period for individually designed plans extends 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 extends to the end of the initial applicable six-year remedial amendment cycle as provided in section 18.01.

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, provided 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 was 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 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.

.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 § 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 these 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, 2002-1 C.B. 1176, as modified by Rev. Proc. 2003-10, 2003-1 C.B. 259).

.09 Rev. Proc. 2004-25, 2004-1 C.B. 791, extended 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 did 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 Notice 2004-84, 2004-2 C.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.

.11 In Rev. Proc. 2005-16, 2005-1 C.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

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.

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.

contains the rules for issuing opinion and advisory letters for pre-approved plans.

.12 In Announcement 2005-36, 2005-1 C.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.

.13 In Rev. Proc. 2005-66, 2005-2 C.B. 509, the Service established a system of cyclical remedial amendment periods for qualified plans as described in section 1.01 above, and provided deadlines for the timely adoption of interim or discretionary amendments to plans in section 5.05.

(1) Plan sponsors or practitioners maintaining defined contribution non-mass submitter plans, as well as word-for-word identical adopters and minor modifiers, had 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, 2005-1 C.B. 674), to submit their M&P and volume submitter plans for review, taking into account the requirements of EGTRRA and other items identified on the 2004 Cumulative List. Rev. Proc. 2005-66 also extended the deadline from October 31, 2005 to January 31, 2006, for sponsors and practitioners maintaining defined contribution mass submitter plans and national sponsor plans.

(2) The determination letter program for the initial remedial amendment cycle for some individually designed plans opened on February 1, 2006. On that date, the Service began to accept applications for determination letters for individually designed plans that take into account the requirements of EGTRRA and other items identified on the 2005 Cumulative List.

.14 Notice 2005-95, 2005-2 C.B. 1172, discussed the general timing rules for plan amendments and provides that the deadlines set forth under section 5.05 of Rev. Proc. 2005-66 apply, with certain exceptions. See section 5.07 of this revenue procedure and section V of Notice 2005-95 for a list of specific exceptions. In addition, Notice 2005-95 gave transitional relief to plan sponsors, practitioners and employers, providing them with an extension of the otherwise applicable deadline under section 5.05 of Rev. Proc. 2005-66 for adopting certain plan amendments reflecting the final retroactive annuity starting

date regulations, the automatic rollover requirements under § 401(a)(31)(B), and the final § 401(k) and § 401(m) regulations.

.15 In Notice 2005-101, 2005-2 C.B. 1219, the Service published the 2005 Cumulative List of Changes in Plan Qualification Requirements, which contains qualification requirements for single employer individually designed defined contribution plans (including employee stock ownership plans) and defined benefit plans, to be used primarily by plan sponsors of such plans that fall in Cycle A.

.16 In Rev. Proc. 2006-6, 2006-1 C.B. 204, the Service provided that it would begin to accept applications for determination letters for some individually designed plans (depending on their cycle) that take into account the qualification requirements of the Code as amended by EGTRRA.

.17 In Rev. Proc. 2007-6, 2007-1 I.R.B. 189, the Service published the annual update containing procedures for issuing determination letters on the qualified status of plans.

.18 In Notice 2007-3, 2007-2 I.R.B. 255, the Service published the 2006 Cumulative List of Changes in Plan Qualification Requirements, which contains qualification requirements for defined benefit pre-approved plans for their first submission under the initial six-year remedial amendment cycle, qualification requirements for single employer individually designed defined benefit plans and single employer individually designed defined contribution plans (including employee stock ownership plans), to be used primarily by plan sponsors of such plans that fall in Cycle B, and qualification requirements for plan sponsors of multiple employer plans which are in Cycle B.

SECTION 3. CHANGES TO REVENUE PROCEDURE 2005-66

In addition to minor revisions and clarifying language, the following changes have been made to Rev. Proc. 2005-66:

.01 The revenue procedure contains more detail on the plan qualification requirements the Service will consider in its review of opinion, advisory or determination letter applications. It clarifies that:

(1) Except as otherwise provided on the applicable Cumulative List, the Service will not consider any guidance or statutes issued or enacted after the October 1st pre-

ceding the date the applicable Cumulative List is issued, qualification requirements that become effective in a calendar year following the calendar year in which the submission period begins with respect to the applicable Cumulative List, or statutes that are first effective in the year in which the submission period begins with respect to the applicable Cumulative List, for which there is no guidance specified on the Cumulative List. (sections 4.03 and 4.04); and

(2) Special rules apply with respect to the Service's review of plans for amendments to reflect the Pension Protection Act of 2006 (PPA '06) and the procedures to submit those amendments. Although individually designed plans and multiple employer plans submitting determination letter applications may be amended for PPA '06, the Service will not consider these PPA '06 provisions in its review of plans using the 2006 and 2007 Cumulative Lists. In contrast, pre-approved defined benefit plans must be amended for certain provisions of PPA '06, and the Service will consider these amendments in its review of opinion and advisory letter applications. (section 4.05)

(3) The limitations on the Service's review of certain plans summarized in (1) and (2) above do not apply to terminating plans. (sections 4.03 and 4.05)

.02 More detail on adoption deadlines for interim and discretionary amendments is provided, including special deadlines for governmental and tax-exempt employers. In addition, the revenue procedure clarifies that other statutory provisions or guidance may set forth earlier or later deadlines, such as the delayed amendment deadline under section 1107 of PPA '06. (sections 5.05, 5.06 and 5.07)

.03 The exceptions to the general rule for determining a plan's five-year remedial amendment cycle (cycle) are expanded and clarified to provide:

(1) A governmental plan's cycle (Cycle C), applies to a governmental plan that is also a multiemployer plan, as well as to a governmental plan that is also a multiple employer plan. (section 10.04)

(2) Another exception is added for a jointly trustee single employer collectively bargained plan, where the joint board of trustees is treated as the plan sponsor for purposes of Form 5500. The cycle for such a plan is determined based

on the EIN used on the Form 5500. (section 10.05)

(3) The exception specifying that a plan's cycle for multiple members of a controlled group or an affiliated service group under § 414(b), (c) or (m) is determined with reference to the last digit of the EIN used to report the plan on the Form 5500 is clarified to provide that this exception does not apply to multiemployer, multiple employer, or governmental plans. (section 10.05)

(4) The rules on alternative elections and the rules on entities that may make these elections have been revised. This revenue procedure clarifies that members of a controlled group or affiliated service group (controlled group) that may make the election to choose Cycle A include a parent-subsidiary controlled group as well as a controlled group that is not a parent-subsidiary controlled group. A parent-subsidiary group may choose an alternative election which is determined by reference to the last digit of the parent's EIN. The parent generally makes the election. Members of a controlled group, including a parent-subsidiary controlled group, that may not make this election include governmental plans and jointly trustee collectively bargained plans, as well as multiemployer and multiple employer plans. (section 10.06)

(5) A new exception is added allowing an election to be made by certain groups of tax-exempt organizations that are not controlled groups or affiliated service groups under § 414 of the Code. An election may be made by a centralized organization that the cycle is determined based on the EIN of the centralized organization, if such centralized organization handles the administration and operation of plans that have substantially the same terms and are maintained by separate tax-exempt organizations (or related taxable entities in the group maintaining plans whose terms are substantially the same). (section 10.07)

(6) Details on what to include and when to file the alternative elections under section 10.06 are provided, including a new requirement that the election be filed with each determination letter application. This revenue procedure specifies that the election applies to members maintaining qualified plans, that a new member of a controlled group or affiliated service group must make an election in order for the ex-

isting members to retain the original joint election, and that an updated list of current members and plans must be maintained. In the case of a parent-subsidiary controlled group or a group described in section 10.07 with a centralized organization, a new election does not have to be made each time a member joins or leaves the group, but an updated list must be maintained by the parent. (section 10.08)

(7) In the case of a parent that has no EIN, the highest level entity in the U.S. that has an EIN is permitted to be substituted for the parent for purposes of making the alternative elections. (section 10.09)

.04 The definitions of cycle-changing events, such as merger or acquisition, change in plan sponsorship etc., have been expanded to include a plan changing its status by becoming or ceasing to be a multiemployer plan or a multiple employer plan. Details are provided on when a change in status occurs pursuant to certain elections to be a multiemployer plan. In addition, the rules cover more scenarios to determine the applicable cycle after a cycle-changing event, describing the interaction and significance of the pre-change, post-change, open, and expired cycles. (sections 11.01 and 11.02)

.05 Additional rules relating to determination letter applications specify that individually designed plans must be restated when they are submitted for determination letters and Form 6406 may no longer be used to apply for determination letters. (sections 12.03 and 12.04)

.06 Details are provided on the types of off-cycle applications for determination letters that will be given the same priority as on-cycle applications. Applications for determination letters for terminating plans, certain new plans and applications due to urgent business need are listed. (section 14.02)

.07 Rules are rewritten to clarify that the initial remedial amendment cycle for a new plan is the applicable cycle that includes the date on which the plan's initial remedial amendment period under § 1.401(b)-1 (determined without regard to the extension in section 5.03) ends. (sections 5.03 and 14.04)

.08 More examples are added or revised to reflect what the Service will review based on the Cumulative List and to illustrate the rules regarding submissions for a new plan or existing plan whose re-

medial amendment cycle ends after the applicable § 401(b) remedial amendment period. (section 15)

.09 More details are provided on when an employer's plan is treated as a pre-approved plan and is eligible for a six-year remedial amendment cycle, including clarifying definitions of prior adopter, new adopter, intended adopter, and existing and interim plans. (sections 17.01 – 17.06)

.10 The submission deadline to submit applications for opinion and advisory letters for sponsors and practitioners maintaining defined benefit mass submitter plans and national sponsors is extended from October 31, 2007 to January 31, 2008. (section 18.02)

.11 Rules are clarified on when an employer is entitled to remain in the six-year remedial amendment cycle (six-year cycle) after adopting an individually designed plan and making certain types of amendments, with examples. These clarifying rules include the following:

(1) With certain exceptions described in (2) and (3) below, an employer that modifies a plan so that it is no longer considered an M&P or VS plan will nevertheless stay in the six-year cycle for the current and subsequent six-year cycles. (section 19.02)

(2) An employer that is an intended adopter or prior adopter of a pre-approved plan that instead adopts an individually designed plan, or an employer that amends an M&P or VS plan to incorporate a type of plan not allowed in the pre-approved program and makes such amendment more than one year after the date the employer initially adopted the pre-approved plan, remains in the six-year cycle for the current cycle, and then switches to the five-year remedial amendment cycle (five-year cycle). (section 19.03)

(3) If (a) the nature and extent of amendments made by the employer fall within section 24.03 of Rev. Proc. 2005-16, or (b) an employer amends an M&P or VS plan to incorporate a type of plan not allowed in the pre-approved plan program within one year after the date the employer initially adopted the pre-approved plan, the applicable cycle is immediately the five-year cycle. (section 19.04)

.12 This revenue procedure removes the rule under which an M&P sponsor's authority to amend on behalf of an adopt-

ing employer is conditioned on the plan being covered by a favorable determination letter if the employer is required to obtain a determination letter in order to have reliance. It also clarifies that a sponsor should generally continue to amend on behalf of the adopting employer even if the adopting employer makes amendments to the plan. However, the sponsor no longer has the authority to amend on behalf of the employer if the Service has exercised its authority under section 24.03 of Rev. Proc. 2005-16 or the amendment is an impermissible type not allowed in the M&P pre-approved program. (section 19.05(3))

.13 New details on what constitutes an off-cycle filing for pre-approved plans are added that clarify the provisions of Rev. Proc. 2005-16 on off-cycle filings including:

(1) When to submit applications for new pre-approved plans created after the submission period for the applicable six-year cycle, when adopting employers must adopt such plans, and the applicable Cumulative List that will be used in reviewing these plans. (section 20.01)

(2) Sponsors or practitioners who submitted applications for opinion or advisory letters prior to the submission deadline for the applicable six-year cycle, with respect to pre-approved plans that were in existence prior to such submission deadline, may not also submit off-cycle applications for such plans. (section 20.02)

.14 A provision is added stating the conditions under which sponsors, practitioners or employers who made a determination with respect to a particular plan based on a reasonable and good faith interpretation of Rev. Proc. 2005-66 prior to the issuance of this revenue procedure will be deemed to have complied with this revenue procedure. (section 21)

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 target date for publication of the Cumulative List is mid-November of each year. The Cumulative Lists are intended to identify, on a year-by-year ba-

sis, 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 that is submitted to the Service for an opinion, advisory or determination letter, as applicable.

.02 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 the February 1st following issuance of the Cumulative List. For example, sponsors or practitioners maintaining non-mass submitter, mass submitter and national sponsor defined contribution pre-approved plans had until January 31, 2006 to submit opinion and advisory letter applications. The Service's review of these plans is based upon the 2004 Cumulative List. Similarly, in the case of Cycle A individually designed plans submitted for determination letters between February 1, 2006 and January 31, 2007, the Service's review of these plans is on the basis of the 2005 Cumulative List.

.03 Except as provided in the applicable Cumulative List or in section 8 of this revenue procedure, the Service will not consider in its review of any opinion, advisory or determination letter application any:

(1) guidance issued after the October 1 preceding the date the applicable Cumulative List is issued (this October 1 date may be extended in the applicable Cumulative List with respect to opinion or advisory letter applications);

(2) statutes enacted after the October 1 preceding the date the applicable Cumulative List is issued;

(3) qualification requirements that become effective in a calendar year after the calendar year in which the submission period begins with respect to the applicable Cumulative List (*e.g.*, qualification requirements first effective in 2009, for applications submitted during the period beginning February 1, 2008, based on the 2007 Cumulative List); or

(4) statutes that are first effective in the year in which the submission period begins with respect to the applicable Cumulative List for which there is no guidance identified on the applicable Cumulative List.

Applications submitted which contain qualification requirements described in section 4.03(1) – (4) must identify those requirements that are in the plan, in a cover letter or in an attachment to the application. The determination letter cannot be relied upon with respect to the qualification requirements described in section 4.03(1) – (4).

.04 The Service will, however, consider in its review of any opinion, advisory or determination letter application all qualification requirements that are not described in section 4.03(1) – (4). Thus, for example, a determination letter may be relied on with respect to guidance issued on or before the October 1st preceding the issuance of the applicable Cumulative List and which is effective during the calendar year in which the submission period begins, whether or not identified on the applicable Cumulative List.

.05 Special rule for PPA Amendments

(1) Except with respect to terminating plans described under section 8 of this revenue procedure, the Service will not consider provisions of the Pension Protection Act of 2006, Pub. L. No. 109-280 (PPA '06) in its review of applications for determination letters for individually designed plans and multiple employer plans using the 2006 and 2007 Cumulative Lists. Individually designed plans and multiple employer plans can be amended, at the option of plan sponsors, to include the applicable PPA '06 provisions (other than those described in section 4.03(3) above) whether or not guidance has been issued on any particular amendment. Applications submitted with respect to individually designed plans and multiple employer plans must identify, in a cover letter or in an attachment to the application, which PPA '06 provisions the plan has been amended to include and the plan provisions that reflect those PPA '06 provisions. Determination letters issued for individually designed plans and multiple employer plans using the 2006 and 2007 Cumulative Lists may not be relied upon with respect to any plan provision identified as reflecting PPA '06, regardless of whether the plan has been amended to reflect PPA '06 pro-

visions or whether the determination letter is caveated for such dated amendments.

(2) M&P plan sponsors and VS practitioners are required to include PPA '06 law changes listed on the 2006 Cumulative List that are effective in 2006 and 2007, in plan documents submitted with their opinion and advisory letter applications for pre-approved defined benefit plans. The Service will consider PPA '06 provisions effective in 2006 and 2007 in issuing opinion and advisory letters, and such letters may be relied on with respect to such PPA '06 provisions, but only for certain PPA '06 provisions specifically listed on the 2006 Cumulative List (as noted in section IV of Notice 2007-3).

SECTION 5. ADOPTION OF INTERIM AND DISCRETIONARY 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 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 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. An amendment with respect to a disqualifying provision described in section

5.01(1) or (2) is referred to as an interim amendment for purposes of this revenue procedure.

.03 This section 5.03 extends the remedial amendment period for the disqualifying provisions described below as follows:

(1) The remedial amendment period for any disqualifying provision described in § 1.401(b)-1(b)(1) that would otherwise apply under § 1.401(b)-1 is extended to the end of the applicable remedial amendment cycle described in section 6.01 that includes the date on which the remedial amendment period would otherwise end 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 (without regard to whether that amendment was required to be adopted) if the amendment was adopted timely and in good faith with the intent of maintaining the qualified status of the plan. The Service will make the final determination in all cases as to whether a new plan or an amendment was adopted with the good faith intention of being qualified or maintaining qualified status.

(2) 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 sponsor's, practitioner's or employer's determination that no interim amendment

was required 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 Except as otherwise provided in section 5.06 and 5.07, the deadline for the timely adoption of an amendment with respect to any plan is determined as follows:

(1) In the case of an interim amendment, an employer (or a sponsor or a practitioner, if applicable) will be considered to have timely adopted the amendment if the plan amendment is adopted by the end of the remedial amendment period described in section 2.05 (determined without regard to the extension under section 5.03 of this revenue procedure).

(2) In the case of a discretionary amendment (*i.e.*, one which is not an interim amendment described in section 5.02), an employer (or a sponsor or a practitioner, if applicable) will be considered to have timely adopted the amendment, if the plan amendment is adopted by the end of the plan year in which the plan amendment is effective.

.06 Special deadlines for governmental and tax exempt employers

(1) Governmental Plans Within the Meaning of § 414(d) of the Code. The adoption deadline for interim amendments or discretionary amendments is: the later of (a) the deadline that would apply under the regular applicable rules of section 5.05(1) and (2), or (b) the last day of the next regular legislative session beginning after the amendment's effective date in which the governing body with authority to amend the plan can consider a plan amendment under the laws and procedures applicable to the governing body's deliberations.

(2) Tax Exempt Employers. In the case of a tax exempt employer, the adoption deadline for interim amendments is set forth in section 2.05 as modified in this section 5.06(2). For purposes of determining the tax filing deadline, the following is

substituted for the language under section 2.05(1) describing the due date (including extensions) for filing the income tax return for the employer's taxable year. The due date for filing the employer's tax return in the case of a tax exempt employer that files Form 990-T (Form 990 or Form 990-EZ if no Form 990-T is filed) is the later of the 15th day of the 10th month after the end of the employer's tax year (treating the calendar year as the tax year if the employer does not have a tax year) or the due date for filing the Form 990 series (plus extensions). An employer will not be treated as having obtained an extension of time for filing the Form 990 series unless such extension is actually applied for and granted. The due date for filing the employer's tax return in the case of a tax exempt employer that is not required to file a Form 990 series return is the 15th day of the 10th month after the end of the employer's tax year (treating the calendar year as the tax year if the employer does not have a tax year).

.07 Exceptions to section 5.05 amendment adoption deadlines

(1) Section 5.05 applies except when a statutory provision or guidance issued by the Service sets forth an earlier deadline to timely adopt a discretionary amendment with respect to a plan year (*e.g.*, an amendment to add a qualified cash or deferred arrangement to a profit sharing plan cannot be adopted retroactively) or where a statutory provision or guidance provides another specific deadline for the adoption of a particular type of interim amendment that is earlier or later than the deadlines under section 5.05. For example, section V of Notice 2005-95 lists specific deadlines to amend for specific provisions.

(2) Section 1107 of PPA '06 is a statutory provision that changes otherwise applicable deadlines under section 5.05. Under section 1107 of PPA '06, a plan sponsor is permitted to delay adopting a plan amendment pursuant to statutory provisions under PPA '06 (or pursuant to any regulation issued under PPA '06) until the last day of the first plan year beginning on or after January 1, 2009 (January 1, 2011 in the case of governmental plans). This amendment deadline applies to both interim and discretionary amendments that are made pursuant to PPA '06 statutory provisions or any regulation issued under PPA '06. If section

1107 of PPA '06 applies to an amendment of a plan, such a plan shall not fail to meet the requirements of Code § 411(d)(6) by reason of such amendment, except as provided by the Secretary of the Treasury. Accordingly, future guidance issued by the Secretary may limit the availability of a retroactive plan amendment under PPA section 1107 in order for the plan to meet the requirements of Code § 411(d)(6). For additional special rules relating to PPA '06 amendments, see section 4 of this revenue procedure.

.08 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 5.08 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 applicable five or six-year cycle. 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 applicable five-year or six-year cycle.

.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 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 amendment, the employer should correct the operational failure under the Voluntary Correction Program (see Rev. Proc. 2006-27, 2006-1 C.B. 945).

.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, or under a statutory provision such as section 1107 of PPA '06, § 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-year 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 regardless of whether such requirements are included on the most recently published Cumulative List). 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. See section 14 with respect to the Service's review of an application

for a determination letter with respect to a terminating 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, 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), a governmental plan and other special situations.

.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 described in section 10.02 or 10.03, the plan's five-year remedial amendment cycle is Cycle C.

.05 In the case of (1) a jointly trustee single employer collectively bargained plan where the joint board of trustees is treated as the plan sponsor for purposes of Form 5500, or (2) a plan maintained by multiple members of a controlled group under § 414(b) or (c) or an affiliated service group under § 414(m) (other than a plan described in sections 10.02, 10.03 or 10.04), 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 In lieu of the rules described in sections 9 or 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 a plan described in sections 10.02, 10.03, 10.04 or 10.05(1)) will be Cycle A. The Cycle A election must be made jointly by all members of the controlled or affiliated service group, except that this election may be made on behalf of all of the members by the parent, in the case of a parent-subsidary controlled group. Alternatively, if more than one plan is maintained by a controlled group under § 414(b) or (c) that is a parent-subsidary controlled group, the

election may be made that the remedial amendment cycle for each plan (other than a plan described in sections 10.02, 10.03, 10.04 or 10.05(1)) is determined by reference to the last digit of the parent's EIN. This alternative parent's EIN election must be made by the parent.

.07 Notwithstanding the above, if (1) separate tax-exempt organizations which are a group of related organizations but are not a controlled group under § 414(b) or (c) or an affiliated service group under § 414(m) are maintaining separate plans, (2) the terms of those plans are substantially the same, and (3) all or substantially all of the discretionary authority concerning the plans' administration and operation is handled by a centralized organization (such as a national headquarters or a common administrative committee), then an election may be made by such centralized organization that the remedial amendment cycle for all of the plans is determined based on the EIN of the centralized organization (other than a plan described in sections 10.02, 10.03, 10.04 or 10.05(1)). If the group of related organizations also includes related taxable entities to which this section 10.07 would apply if they were tax-exempt, the plans maintained by those taxable entities whose terms are substantially the same are permitted to apply the same election that can be applied for the tax-exempt entities.

.08 The elections described in sections 10.06 and 10.07 must be made (*i.e.*, signed and dated) 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 (or by the end of Cycle A, in the case of an election to choose Cycle A under section 10.06). For example, if one member is in Cycle B and another member is in Cycle C, the election to choose Cycle A under section 10.06 must be made by the due date for Cycle A.

(1) In the case of an election under section 10.06 that does not involve a parent-subsidiary controlled group, the election must be made jointly by all members sponsoring qualified plans and must list all members of the group sponsoring qualified plans that are eligible for the election (*i.e.*, plans other than those described in 10.02, 10.03, 10.04, and 10.05(1)), including each member's EIN, and the election must list all such qualified plans that are

sponsored by each member of the group. If a new member joins the controlled group, that member must make an election no later than one year from the date the new member joins the controlled group in order for other members to maintain the existing election. The members already in the group do not need to make a new election each time a new member joins, or when a member leaves the controlled group. Each time the election is filed with a determination letter application, the group must attach a copy of the original election, a copy of any additional elections executed by new members, and an updated list with current information.

(2) In the case of an election made by a parent in a parent-subsidiary controlled group, the parent must include information described in (1) and may include a designation that the election made by the parent will also apply to qualified plans eligible for the election that are maintained by subsidiaries acquired in the future, and that the election will not apply to plans of subsidiaries that, in the future, are no longer in the controlled group. If the election includes such a provision, the parent does not have to make another election each time it acquires or loses subsidiaries. However, it must maintain a list providing the information under (1) above and attach this list to the election each time the election is filed. This list must be updated to provide current information each time the election is filed with a determination letter application.

(3) In the case of an election made by a centralized organization in a group described in section 10.07, the centralized organization must include all applicable information described in (1) and may include a designation that the election made by the centralized organization will also apply to qualified plans eligible for the election that are maintained by entities added to the group in the future, and that the election will not apply to plans of entities that in the future are no longer in the group described in section 10.07. If the election includes such a provision, the centralized organization does not have to make another election each time it adds or loses members. However, it must maintain a list providing the information under (1) above and attach this list to the election each time the election is filed. The updated list must be maintained by the employer and attached to the elec-

tion submitted with a determination letter application.

(4) The election must be filed with each determination letter application that is submitted in accordance with this revenue procedure for qualified plans eligible for the election that are maintained by any member of the group. Once made, the election will apply and may not be modified or revoked, except as provided in this section and in section 11.

(5) If an election under section 10.06 and 10.07 to choose a particular cycle for all plans is not timely or correctly made in accordance with this section 10.08, a plan's applicable five-year cycle may change. See section 11 below on how to determine a plan's applicable cycle after a cycle-changing event.

.09 In the case of a parent that has no EIN (such as a foreign entity) the highest level entity in the U.S. that has an EIN is permitted to be substituted for the parent for purposes of making either election in section 10.06, for maintaining the updated list described in section 10.08(2), and for determining the relevant EIN where the election is determined by reference to the parent's EIN. In such case, a cover letter or an attachment must be submitted with each determination letter application explaining how this EIN was determined.

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

.01 Except as provided in section 11.02 and 11.03, 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*);

(6) If a plan changes its status by becoming or ceasing to be a multiemployer plan or a multiple employer plan, the five-year remedial amendment cycle of the plan is thereafter determined as provided in section 9 or 10, as applicable, on the basis of the changed status of the plan. Section 1106 of PPA '06, as amended by section 6611 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. No. 110-28, added ERISA § 3(37)(G) and Code § 414(f)(6) allowing certain plans to make an election by

August 17, 2007, to be a multiemployer plan or to revoke a previous election to not treat the plan as a multiemployer plan. Such a plan may make an election pursuant to a submission to the Pension Benefit Guaranty Corporation (PBGC). For purposes of determining the five-year remedial amendment cycle of such a plan under this revenue procedure, the change in status of the plan is deemed to occur on the date of the submission to the PBGC. However, such a plan's future five-year remedial amendment cycle will depend on the plan's status in that cycle (either as a multiemployer plan or other type of plan with a different cycle).

.02 As a result of one of the cycle-changing events described in this section, a plan's five-year remedial amendment cycle may change. In such case, a cover letter or attachment to the determination letter application with respect to the plan should note the cycle change and explain why there was a change in the plan's cycle. All relevant information directly related to the cycle-changing event should be submitted with the determination letter application. For example, if the cycle-changing event was a plan merger or spin-off, the determination letter application should include the corporate resolutions or actions that relate to the merger or spin-off. Section 11.03 provides rules on how to determine a plan's applicable cycle immediately after such an event. However, the rules under section 11.01 will apply for the plan's next following five-year remedial amendment cycle, absent any other changes that continue to make sections 11.02 and 11.03 applicable.

.03 For purposes of the rules under this section 11.03, the following definitions apply. A "post-change" cycle is the plan's applicable five-year remedial amendment cycle that would apply to the plan after the cycle-changing event under the rules in section 11.01. A "pre-change" cycle is the five-year remedial amendment cycle that applied to the plan before the cycle-changing event. An "expired" cycle is the applicable five-year cycle for which the plan's on-cycle submission period (which occurs during the last twelve months of each applicable five-year cycle) has expired as of the date of the cycle-changing event. An "open" cycle is the applicable five-year cycle during which the plan's on-cycle sub-

mission period has not expired as of the date of the cycle-changing event. An "applicable" cycle is the five-year cycle that applies to the plan after applying the rules under section 11.02 and this section 11.03.

(1) If a plan's post-change cycle is an open cycle, and the period remaining in the post-change cycle is less than twelve calendar months, the plan's post-change cycle is extended for twelve months from the last day of the open cycle submission period. The next five-year cycle will be shortened accordingly. This plan will be reviewed using the same Cumulative List that would be used for an application for an on-cycle plan submitting on the same date as this plan's submission (*i.e.*, the applicable Cumulative List is based on the date of the plan's submission).

(2) If a plan's post-change cycle is an expired cycle, the plan's applicable cycle remains the pre-change cycle.

(3) If a plan's post-change cycle ends later than the plan's pre-change cycle, and that pre-change cycle is an open cycle, the plan is permitted to treat the pre-change cycle as the applicable cycle.

(4) If a plan's post-change cycle ends later than the plan's pre-change cycle, and that pre-change cycle is an expired cycle, the plan is permitted to treat the pre-change cycle as the applicable cycle (*i.e.*, the plan sponsor does not have to resubmit a determination letter application during the post-change cycle).

(5) If neither the plan's post-change cycle nor its pre-change cycle is an open cycle, the plan's applicable cycle is the post-change cycle, regardless of whether this post-change cycle begins before or after the pre-change cycle.

SECTION 12. EXTENSION OF THE EGTRRA REMEDIAL AMENDMENT PERIOD, SCHEDULE OF NEXT FIVE-YEAR REMEDIAL AMENDMENT CYCLE AND ADDITIONAL RULES RELATING TO DETERMINATION LETTER APPLICATIONS

.01 The end of the initial remedial amendment cycle (*i.e.*, EGTRRA remedial amendment period) as extended in section 7 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 EIN of the employer ends in —	The plan's cycle is —	The last day of the initial cycle (<i>i.e.</i> , 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, in order to have a letter on which to rely 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 not described in section 4.03, whether or not identified on the applicable Cumulative List.

.03 In general, (except with respect to amendments reflecting the provisions of PPA '06 as described in section 4.05(1)), individually designed plans must be restated when they are submitted for determination letters for the initial remedial amendment cycle (that is, EGTRRA remedial amendment period) and subsequent remedial amendment cycles. As a result, the determination letter filing may accelerate the deadline for the incorporation of interim amendments into a restated plan document from the date described in section 5.05(1) of this revenue procedure (generally the employer's income tax return filing date (including extensions)), to an earlier date. For this purpose, submission of a working copy of the plan in a restated format will suffice, provided that copies of timely executed interim and discretionary amendments are also separately submitted with the application. In addition, submitting a restated plan in proposed form is permitted, provided that the copies of timely executed interim and discretionary amendments and the prior plan document to which these amendments apply are also submitted with the application. A plan that is submitted in proposed form, and any proposed amendments, in the case of

a plan submitted as a working copy, must be adopted no later than 91 days after the date of the determination letter.

.04 Effective as of July 9, 2007, Form 6406, *Short Form Application for Determination for Minor Amendment of Employee Benefit Plan*, may not be used to apply for a determination letter. An application submitted with this form will no longer be accepted by the Service.

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

.01 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. Except with respect to terminating plans described in section 8 that must adopt amendments to reflect qualification requirements that apply as of the date of termination, 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 is 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. These rules also apply to off-cycle applications that are given priority review as if they were on-cycle as described below (except for terminating plans).

.02 Generally, an off-cycle application will not be reviewed until all on-cycle plans have been reviewed and processed.

However, effective as of the date of publication of this revenue procedure, the types of applications listed below under (1)–(3) will be given the same priority as on-cycle applications. The types of applications given such review priority are:

(1) A terminating plan described in section 8.

(2) A new individually designed plan whose next regular on-cycle submission period ends at least two years after the end of the off-cycle submission period during which the plan sponsor submits its application. For this purpose, a new individually designed plan is a new plan that as of the date the application is submitted with respect to the plan would be a new plan within its initial remedial amendment cycle under § 1.401(b)–1(b)(1) of the regulations, as summarized in section 2.03 of this revenue procedure (determined without regard to the extension under section 5.03 of this revenue procedure).

(3) An off-cycle application submitted in accordance with published guidance issued by the Service specifying that a determination letter must be submitted in connection with a particular event.

.03 A sponsor of a plan may request that an off-cycle application be given the same priority review as an on-cycle application due to urgent business need. The Service will consider such requests based on the facts and circumstances. However, it is expected that such an application will be given the same priority as an on-cycle application only in limited cases where exceptional circumstances exist.

.04 Although a new plan may file off-cycle and will receive review priority under section 14.02 if it is described in section 14.02(2), a new plan does not have to be submitted for a determination letter off-cycle. This is because the initial remedial amendment period for a new plan is extended to the end of the applicable remedial amendment cycle in which the remedial amendment period would otherwise end. See section 5.03.

SECTION 15. EXAMPLES RELATING TO REMEDIAL AMENDMENT CYCLES AND PLAN AMENDMENTS

For the following examples, refer to the chart found above in section 12.01 and section 12.02 which is the Extension of the EGTRRA Remedial Amendment Pe-

riod 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 and, except as otherwise provided, the plan has been operated in accordance with the plan terms, including any interim and discretionary amendments.

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. To the extent there have been interim or discretionary amendments made, these amendments may be included in a working copy, and such working copy must be submitted in a restated format. A copy of each signed interim or discretionary amendment must be included with the application. The determination letter issued for the plan would apply as of the first day of the 2006 plan year. 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 the plan document with the plan's operation, Employer M adopts an amendment by December 31, 2010 that reflects the change in operation and such amendment is adopted 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 by 91 days after the date of the favorable determination letter. The amendment would be retroactively effective as of July 1, 2010 and Employer M must correct its operation to the extent necessary to reflect the corrective amendment.

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, (February 1, 2013) Employer M has adopted interim plan amendments timely and in good faith with the intent of maintaining the qualified status of Plan X. 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 the restated plan in proposed form 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 November 2008, guidance that would affect the qualification of Plan Y is issued effective for the plan years beginning on or after January 1, 2009. 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 issued after the October 1 preceding the date the 2008 Cumulative List was issued and was not identified and included on such list, the Service will not consider the guidance in its review until Employer N's subsequent remedial amendment cycle. To reflect this guidance, Employer N must adopt an interim amendment timely and in good faith (that is, by the tax filing date (including extensions) for 2009). The interim amendment is effective as of the first day of the 2009 plan year and will be reviewed as part of the determination letter application submitted in the subsequent five-year remedial amendment cycle.

Example 5: Same facts as Example 4, except that the guidance was issued in September 2008, effective for the plan years beginning on or after January 1, 2010. Since this guidance was effective in a calendar year following the calendar year in which the submission period began with respect to the applicable Cumulative List, as described in section 4.03 of this revenue procedure, and was not identified and included on such list, the Service will not consider the guidance in its review until Employer N's subsequent remedial amendment cycle. To reflect this guidance, Employer N must adopt an interim amendment timely and in good faith (that is, by the tax filing date (including extensions) for 2010). 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.

Example 6: 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.

Example 7: Employer Q establishes Plan K on December 18, 2006. Plan K's cycle is Cycle A. The § 401(b) remedial amendment period with respect to Plan K (determined without regard to section 5.03 of this revenue procedure) ends on September 15, 2007, since Employer Q has received an extension to file its tax return for 2006. Accordingly, under section 5.03, the remedial amendment period is extended to the end of Employer Q's next remedial amendment cycle, *i.e.*, Cycle A (January 31, 2012). Employer Q submits an application for a determination letter for Plan K on September 4, 2007. Employer Q's application is given the same priority as an on-cycle filing pursuant to section 14.02(2) for purposes of determining the priority of the Service's review, and the application will be reviewed based on the 2006 Cumulative List.

Example 8: Same as Example 7, except Employer Q submits an application for a determination letter by January 31, 2007. The 2005 Cumulative List will be used to review Employer Q's submission and Plan K must contain all of the provisions that any other Cycle A plan would be required to have.

Example 9: Same as Example 7, except that Employer Q decides to wait until the applicable submission period for Cycle A plans, February 1, 2011 through January 31, 2012, to submit an application for a determination letter. The remedial amendment period will extend to the end of that remedial amendment cycle, with respect to the adoption of Plan K and all interim amendments that Employer Q has timely adopted for all applicable periods. The Service will review Employer Q's application based on the 2010 Cumulative List.

Example 10: Employer R establishes Plan L on December 18, 2006. Plan L's cycle is Cycle D. The § 401(b) remedial amendment period with respect to Plan L (determined without regard to section 5.03 of this revenue procedure) ends on September 15, 2007, since Employer R has received an extension to file its tax return for 2006. The initial five-year remedial amendment cycle for Plan L ends on January 31, 2010. Employer R submits an application for a determination letter for Plan L on September 4, 2007. Employer R's application is given the same priority as an on-cycle filing pursuant to section 14.02(2) and the application will be reviewed based on the 2006 Cumulative List. The result would be the same for purposes of the priority of the Service's review if Plan L's cycle was Cycle E, with the same facts, (except that the initial remedial amendment cycle for Plan L as a Cycle E plan would end on January 31, 2011). However, if Plan L's cycle was Cycle C, the plan would not be given the same priority as an on-cycle filing.

Example 11: Employer S adopts Plan M on December 18, 2005, effective January 1, 2005. Plan M's cycle is Cycle A. Employer S adopts an interim amendment in 2006. Employer S submits the initial application for a determination letter for Plan M on July 1, 2011. The § 401(b) remedial amendment period with respect to the interim amendment adopted for Plan M in 2006 (determined without regard to section 5.03 of this revenue procedure) ends on September 15, 2007, since Employer S has received an extension

to file its tax return for 2006. Accordingly, under section 5.03, the remedial amendment period with respect to the interim amendment adopted in 2006 is extended to the end of the next remedial amendment cycle (January 31, 2012). Similarly, there is an extension of the remedial amendment period with respect to amendments timely adopted in subsequent years to the end of the remedial amendment cycle. However, this extension does not apply to the adoption of the plan in 2005 and any amendments made in 2005, since the § 401(b) remedial amendment period for 2005 (September 15, 2006 with extensions) was already extended to January 31, 2007 and expired at that time (the end of the Cycle A remedial amendment cycle). Because Employer S did not submit a determination letter application during the February 1, 2006 through January 31, 2007 Cycle A submission period, Plan M's initial remedial amendment period (taking into account the extension under section 5.03) ended January 31, 2007. Therefore, Employer S would not be permitted under § 401(b) to adopt any remedial amendments that might be necessary retroactively to 2005.

Example 12: Employer T adopted Plan N in August 2004, effective January 1, 2004. Employer T submits Plan N for a determination letter application in September 2006. The proposed Plan N restatement includes required § 401(k) amendments, effective January 1, 2006. The initial remedial amendment cycle for Plan N is Cycle A, ending on January 31, 2007. Employer T received an extension to file its income tax return for 2006 to September 15, 2007. The Service issued the determination letter in February 2007. Employer T must adopt restated Plan N, including the § 401(k) amendments, no later than 91 days after the date of the issuance of the determination letter, which is earlier than September 15, 2007. If Employer T had submitted a working copy with proposed amendments, these proposed amendments would also need to be adopted no later than 91 days after the date of the issuance of the determination letter.

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 non-mass submitter 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. 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). 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 letter applications.² In addition, 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.

.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 VS 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.

² With respect to the initial EGTRRA application, section 18.02 provides a later deadline of January 31, 2006 for defined contribution M&P and VS plans and January 31, 2008 for defined benefit M&P and VS plans to be submitted by national sponsors and sponsors and practitioners maintaining mass submitter plans.

.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 an existing or interim pre-approved plan (defined in (3) below) timely submits an opinion or advisory letter application for the plan:

(a) by the application deadline of October 31st or January 31st, whichever is applicable, in the first year of the six-year remedial amendment cycle for pre-approved plans, as described in section 18 of this revenue procedure, and

(b) receives a favorable current opinion or advisory letter from the Service before the employer adopts the plan as described in sections 17.02 through 17.05 below):

(3) For purposes of this section 17:

(a) An existing pre-approved plan is a plan that has received a valid opinion or advisory letter for the six-year 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). An existing pre-approved plan contains separate interim and discretionary amendments attached to the plan that have not been integrated into the plan document in restated form (but that will be integrated before the plan is submitted for an opinion or advisory letter under section 17.01(2) above).

(b) An interim pre-approved plan is either:

(i) a plan that has not previously applied for or received an opinion or advisory letter because it was not in existence before the deadline for submitting such plans in the immediately preceding period (*e.g.*, GUST deadline), or

(ii) a plan that has received a valid opinion or advisory letter for the six-year 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). An interim pre-approved plan does not contain the interim and discretionary amendments in separate documents because they have been integrated into the plan document in a restated format for purposes of submitting the plan for an opinion or advisory letter on or before the applicable date under section 17.01(2) above.

(c) A newly approved version of a plan is a plan described in section 17.01(2)(b).³

.02 An employer is a prior adopter if:

(1) the employer adopted and made effective a pre-approved plan as of the last day of the six-year remedial amendment cycle immediately preceding the opening of the current six-year cycle and that employer's pre-approved plan was an existing plan, or an interim pre-approved plan (under section 17.01(3)(b)(ii)) that has a valid opinion or advisory letter for the period preceding the opening of the current six-year cycle, and

(2) the employer, within the announced adoption period described in sections 16.03 and 16.04,

(a) adopts the newly approved version of that pre-approved plan or

(b) adopts the newly approved version of a different pre-approved plan maintained by either the same sponsor or a different sponsor.

.03 An employer is a new adopter if:

(1) the employer maintains an individually designed plan, or

(2) the employer is not currently maintaining any qualified plan (individually designed or pre-approved) and has not maintained any such plan during the current

five-year remedial amendment cycle applicable to the employer, and

(3) the employer adopts either an existing pre-approved plan or an interim pre-approved plan before the end of the employer's five-year remedial amendment cycle as determined under Part III of this revenue procedure,

An employer may only adopt an interim or an existing pre-approved plan that is not the newly approved version of the plan if the employer adopts such plan before the beginning of the adoption period described in section 16.03 and 16.04 during the applicable six-year cycle. Such an employer must re-adopt either the newly approved version of the same plan or a newly approved version of a different pre-approved plan during the adoption period. Any employer whose five-year cycle has not ended may adopt a plan during or after the adoption period, but such employer must adopt the newly approved version of a pre-approved plan.

.04 An employer is an intended adopter if:

(1) the employer currently maintains a qualified individually designed plan and

(2) such employer and a sponsor or practitioner who maintains an existing pre-approved plan or an interim pre-approved plan execute Form 8905, *Certification of Intent To Adopt a 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.⁵ However, if the employer's five-year remedial amendment cycle ends during or after the announced adoption period described in section 16.03 and 16.04 associated with the applicable six-year cycle, rather than execute Form 8905, the employer should instead adopt the newly approved version of a pre-approved plan (and will be treated as a new adopter under section 17.03).

.05 Replacement Plan

(1) An employer is an adopter of a replacement plan (defined in section 17.05(1)) under the following situations:

(a) The employer timely adopted a pre-approved plan that is to be replaced by a "replacement" plan (that is, the plan docu-

³ See section 20 of this revenue procedure for special rules applicable to an opinion or advisory letter application for a new pre-approved plan created after the submission period for the applicable six-year cycle.

⁴ Form 8905, *Certification of Intent To Adopt a Pre-approved Plan*, is available at www.irs.gov/ep.

⁵ An employer who executes Form 8905 may adopt a different pre-approved plan with either the same or a different sponsor instead of the one designated on Form 8905.

ment remaining after one of the situations described in section 17.05(1)(c)); and

(b) 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(1)(c); and

(c) 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).

(2) Effect of Adoption of Replacement Plan

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

(b) 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 replacement plan indicating that the sponsor or practitioner maintaining the replaced plan was bought out or merged with the sponsor or practitioner maintaining the replacement plan.

.06 If an employer described in section 17.02, 17.03, 17.04 or 17.05 adopts a pre-approved plan or individually designed plan after 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 Voluntary Correction Program.

Examples 13 through 17 below illustrate an employer's eligibility for the six-year cycle. In the following examples, both the tax year of the employer and the plan year are the calendar years and, except as otherwise provided, the plan has been operated in accordance with the plan terms, including any interim and discretionary amendments.

Example 13: Employer L adopted and made effective Plan X on January 1, 2005. Plan X is a pre-existing defined contribution pre-approved prototype plan sponsored by Sponsor M. Sponsor N of Plan Y, also a defined contribution prototype plan, timely submitted an application by January 31, 2006. In 2008 the Service announced that February 1, 2008 through January 31, 2010 would be the two-year window for employers to adopt restated pre-approved plans and file determination letters, if necessary.

Sponsor M notified Employer L that it no longer qualified as a sponsor because it did not have the requisite number of employees (30) reasonably expected to adopt the pre-approved plan. Therefore, Sponsor M did not submit a new opinion letter application within the six-year cycle by January 31, 2006. Employer L timely adopts Plan Y of Sponsor N within the two-year window period. Employer L will be considered to be a "prior adopter" within the meaning of section 17.02 of this revenue procedure and has timely adopted the plan within the six-year cycle. The result would be the same if Employer L switched to Plan Y because Sponsor M did not timely submit an application by January 31, 2006 for that prototype plan, or Sponsor M timely submitted an application by January 31, 2006 but later withdrew the application, or Employer L was dissatisfied with Sponsor M for other reasons.

Example 14: The facts are the same as Example 13 except Employer L adopts a different defined contribution pre-approved prototype plan, Plan Z, sponsored by Sponsor M within the announced two-year window period and Sponsor M timely submitted an application for an opinion letter by January 31, 2006 for Plan Z. Employer L is considered to be a prior

adopter and gets the six-year remedial amendment cycle.

Example 15: Same as Example 13 except Employer L adopts a defined contribution VS plan, Plan V, instead of a prototype plan within the announced two-year window period and the Sponsor timely submitted an application for an advisory letter for Plan V by January 31, 2006. Employer L is considered to be a prior adopter and gets the six-year remedial amendment cycle.

Example 16: Employer P, whose EIN ends in 6, has never maintained a qualified plan. Sponsor S timely submitted an application for an opinion letter for Plan Y, an existing pre-approved defined contribution prototype plan, by January 31, 2006. Employer P adopts Plan Y on December 15, 2006, which is prior to the end of Employer P's five-year remedial amendment cycle (Cycle A). Employer P is a new adopter and gets the six-year remedial amendment cycle.

Example 17: Employer Q, whose EIN ends in 1, currently maintains an individually designed defined benefit plan (IDP). Employer Q decides to switch from an IDP to a defined benefit pre-approved plan. On January 15, 2007, Employer Q and Sponsor S execute Form 8905, *Certification of Intent To Adopt a Pre-approved Plan*. The defined benefit pre-approved plan adopted by Employer Q was timely submitted for an opinion letter by the applicable deadline. Employer Q is an intended adopter because Employer Q and Sponsor S signed Form 8905 timely (i.e., before the end of Employer Q's five-year remedial amendment cycle).

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 VS 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 January 31, 2008

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. EFFECT OF EMPLOYER AMENDMENTS OR ADOPTION OF INDIVIDUALLY DESIGNED PLAN ON SIX-YEAR REMEDIAL AMENDMENT CYCLE

.01 General Rule

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.) An employer amending provisions of a VS plan is also

considered to have adopted an individually designed plan, although such an employer has traditionally had more discretion to make amendments that differ from the specimen document and stay in the VS program. (See section 8 and section 9 of Rev. Proc. 2007-6, 2007-1 I.R.B. 189.)

.02 Eligibility for Six-Year Cycle on Continuing Basis

Except as otherwise provided in section 19.03 and 19.04, an employer who modifies a plan in such a way that the plan, as adopted by the employer, would not be considered an M&P plan or a VS plan, will nevertheless be allowed to remain within the six-year remedial amendment cycle due to the nature of the modifications, as described in section 24.02 of Rev. Proc. 2005-16. Thus, plan amendments (other than those described in sections 19.03 and 19.04 below) that are adopted timely and in good faith with the intent of maintaining the qualified status of the plan by employers sponsoring M&P and VS plans will be disregarded for purposes of determining an employer's remedial amendment cycle. In this case, the employer will remain

eligible for the six-year remedial amendment cycle. Thus, the plan will continue to be treated as an M&P or VS 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.

.03 Temporary Eligibility for Six-Year Cycle

An employer who adopts an individually designed plan under (1) or (2) below or makes certain amendments to its M&P or VS plan as described under (3) and (4) below is entitled to remain in the six-year remedial amendment cycle only for the current remedial amendment cycle. This temporary eligibility for the six-year cycle applies if:

(1) the employer is an intended adopter (as described in section 17.04) and after timely executing the Form 8905, the employer decides to adopt an individually designed plan whose underlying plan document is not based on a pre-approved plan, or

(2) 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 replaces that plan with an individually designed plan whose underlying plan document is not based upon a pre-approved plan document, or

(3) 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 (and that amendment is adopted more than one year after the date the employer initially adopted the M&P plan (see section 6.03 of Rev. Proc. 2005–16)), or

(4) the employer amends an approved VS plan to incorporate a type of plan not allowed in the VS program (and that amendment is adopted more than one year after the date the employer initially adopted the VS plan (see section 16.02 of Rev. Proc. 2005–16));

In order to obtain reliance, such employer must submit a determination letter application during the approximate two-year period within the six-year remedial amendment cycle that the Service announces for employers to adopt plans and submit them for determination letters. The employer's plan will be reviewed using the applicable Cumulative List based on the date of the application. 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. 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.

.04 Ineligibility for Six-Year Cycle

Notwithstanding the above, if an employer amends an approved M&P plan including its adoption agreement or an approved VS 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 (that is, the employer will be subject to the applicable five-year

remedial amendment cycle based on the last digit of their EIN). The same rule applies if the employer adopts an amendment described under section 19.03(3) and (4) above within one year of adopting either the M&P plan or the VS plan.

.05 Determination letter procedures

With respect to an M&P or VS plan, an employer that adopts an amendment which causes such a plan to be treated as an individually designed plan under section 19.02 and .03 of this revenue procedure, but for remedial amendment cycle purposes remains eligible for the six-year remedial amendment cycle either on a continuing or temporary basis, must file a determination letter application for reliance. The determination letter application must 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). Depending on whether a Form 5307 or 5300 is filed, the Service will use the Cumulative List used to review the underlying document, or the Cumulative List based on the date of the determination letter submission in its review. (See examples 18 through 22).

(1) Determination letter filing procedures for VS plans are set forth in section 9 of Rev. Proc. 2007–6.

(2) With respect to M&P plans, except as otherwise provided in section 9 of Rev. Proc. 2007–6 describing when a Form 5307 must be used, an employer that adopts amendments and submits a request for a determination letter must file a Form 5300. Procedures for filing the Form 5300 are similar to the procedures set forth in section 9.09 in Rev. Proc. 2007–6, for VS plans, except for the following:

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

(b) 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.

(3) While it is expected that an M&P sponsor will generally continue to amend on behalf of the adopting employer even if the adopting employer adopts amendments to the plan, the sponsor no longer has 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 the Service has exer-

cised its authority under section 24.03 of Rev. Proc. 2005–16.

.06 Examples

Examples 18 through 22 below illustrate how different types of employer amendments to a pre-approved plan affect an employer's eligibility for the six-year remedial amendment cycle and which Cumulative List the Service will use to review an employer's submission. In the following examples, both the tax year of the employer and the plan year are the calendar years and, except as otherwise provided, the plan has been operated in accordance with the plan terms, including any interim and discretionary amendments.

Example 18: Practitioner S maintains a defined contribution VS 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 VS 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 VS 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 VS 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 19: 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 19.03.

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. 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 20: 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. The Service announces February 1, 2010 until January 31, 2012, as the time period for employers to adopt a restated pre-approved plan and, if necessary, file a determination letter application.

On November 19, 2011, Employer Y adopts the restated EGTRRA approved version of an M&P plan which includes 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 is still eligible for the six-year remedial amendment cycle under section 19.03 because Employer Y is a prior adopter as described in section 17.02 and the amendment was adopted more than one year after the date Employer Y adopted Plan N in 2002.

Employer Y submits a determination letter application using Form 5300, *Application for Determination for Employee Benefit Plan*, and pays the higher user fee on December 31, 2011. The Service will review the determination letter application based upon the 2010 Cumulative List (that is, the annual Cumulative List based on the date of the determination letter submission). Employer Y receives a favorable de-

termination 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 19.03. 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 21: Employer Z, whose EIN ends with a 2, maintains Plan V. Plan V is a defined contribution plan and is an adoption of a VS plan as of January 1, 2011. The VS specimen plan is timely submitted for the second six-year remedial amendment cycle by the practitioner on or before January 31, 2012. The VS practitioner receives an advisory letter dated January 31, 2014 for the VS specimen plan. Generally, Employer Z will have until January 31, 2016 (unless otherwise provided by the Service) to adopt the approved VS 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 (more than one year after Employer Z adopted Plan V). 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 VS plan to create a type of plan that is not allowed in the VS program. Since Employer Z has amended the VS 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.

Example 22: Same as Example 21, except that Employer Z adopts an amendment to Plan V that creates an employee stock ownership plan in 2011, the same year Employer Z adopted Plan V. Since Employer Z amended the VS plan to incorporate a type of plan for which the Service will not issue an advisory letter, within one year of adopting the VS plan, the plan is an individually designed plan that is not eligible for the six-year remedial amendment cycle. Employer Z must submit a determination letter application for Plan V during the applicable submission period for Cycle B, February 1, 2012 through January 31, 2013, using Form 5300, *Application for Determination for Employee Benefit Plan*, and pay the higher user fee. The Service would use the 2011 Cu-

mulative List in its review of the determination letter submission.

SECTION 20. OFF-CYCLE FILING

.01 If an opinion or advisory letter application for a new pre-approved plan (a plan created after the submission period for the applicable six-year cycle) 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.

(1) An opinion or advisory letter with respect to an application filed off-cycle is not retroactive and therefore may not be relied upon by sponsors, practitioners, or adopting employers for the period prior to the date of the submission for approval.

(2) As described in sections 16.03 and 16.04, the Service will publish an announcement providing the date by which adopting employers must adopt the newly approved plans when the review of a cycle for pre-approved plans has neared completion. Depending on 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. However, the adoption period for employers to adopt such new plans could be shorter than this approximate two-year window, depending on when the Service finishes the review and approves such new plans. In any event, for adopting employers of such new plans to be eligible for the applicable six-year cycle, sponsors or practitioners must submit new pre-approved plans prior to the beginning of such announced adoption period, to give the Service time to review such plans and to provide time for adopting employers to adopt such plans.

(3) Adopting employers must adopt such plans within the adoption period and must file a Form 5307 or Form 5300 as appropriate. For example, employers adopting new defined contribution pre-approved plans created after January 31, 2006, will be eligible for the six-year cycle if such opinion or advisory letter applications for new pre-approved plans are submitted before the beginning of the

announced adoption period for employers to adopt such plans (although the letter will not be retroactively effective prior to the date of the submission for approval during the first six-year cycle in which a new pre-approved plan is adopted, as described above).

.02 If a pre-approved plan in existence prior to the submission deadline for the six-year remedial amendment cycle was submitted for an application for an opinion or advisory letter by the applicable deadline, then the sponsor or practitioner of that pre-approved plan may not also submit an application for an off-cycle opinion or advisory letter.

.03 Future guidelines will address how the Service will process a pre-approved plan in existence prior to the submission deadline for the six-year remedial amendment cycle that was not submitted for an opinion or advisory letter by the applicable submission deadline.

.04 The Service has the discretion to determine whether a sponsor or practitioner is subject to section 20.03 or is submitting an application for a new pre-approved plan under section 20.01.

Example 23: Sponsor S submits an application for an opinion letter for a new defined contribution M&P pre-approved plan, Plan Y, on December 31, 2007. This is after the submission period that ended on January 31, 2006 for the current cycle, and, under the facts of this example, before the beginning of the approximate two-year window that the Service will announce for employers to adopt pre-approved plans. Sponsor S's application will be reviewed using the 2004 Cumulative List. The opinion letter will only provide reliance for the period on or after December 31, 2007. An adopting employer may not rely on the

opinion letter issued for Plan Y to extend the remedial amendment period for the employer's plan to the end of the initial six-year remedial amendment cycle, regardless of whether the employer adopts Plan Y during the approximate two-year period within the six-year remedial amendment cycle that the Service announces for employers to adopt the newly approved plans (announced adoption period). Thus, an employer adopting Plan Y to restate a plan that was established prior to December 31, 2007 would generally need to file a timely determination letter application as an individually designed plan in order to have reliance for the period prior to December 31, 2007.

SECTION 21. EFFECT ON OTHER DOCUMENTS

.01 Generally, this revenue procedure is effective on June 13, 2007.

.02 Rev. Proc. 2005-66 is clarified, modified and superseded. Rev. Proc. 2005-16 is modified.

.03 Notwithstanding section 21.02, if an employer, sponsor or practitioner (entity) has made a determination with respect to a particular plan based on a reasonable and good faith interpretation of Rev. Proc. 2005-66 that the plan is not a Cycle A plan, and under this revenue procedure the plan is a Cycle A plan, which should have been submitted to the Service by January 31, 2007, then the entity has six months from July 9, 2007 to submit the plan to the Service. The plan will be considered on-cycle for Cycle A and will be reviewed by the Service using the annual Cumulative List based on the date of the determination letter submission. Thus, for example, a plan submitted on July 31, 2007 will be reviewed on the basis of the 2006 Cumula-

tive List and the plan will be considered to have been submitted within the extended remedial amendment period.

.04 The Service will make the final determination in all cases as to whether the determination of the entity with respect to a particular plan is reasonable and in good faith, including whether it is practicable for the entity to change the determination to be consistent with this revenue procedure. An entity will not be considered to have made a determination under a reasonable and good faith interpretation of Rev. Proc. 2005-66 if it did not comply with the provisions of Rev. Proc. 2005-66 or this revenue procedure, and the reason for not complying is unrelated to the above changes (*e.g.*, missing the deadline to submit an application for an opinion or advisory letter to the Service is unrelated to the changes).

DRAFTING INFORMATION

The principal author of this revenue procedure is Ingrid Grinde of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the Employee Plans taxpayer assistance answering service at 1-877-829-5500 (a toll-free number) between the hours of 8:30 a.m. and 4:30 p.m., Eastern time, Monday through Friday or Ms. Grinde at RetirementPlanQuestions@irs.gov.