

MEMO# 30768

July 7, 2017

IRS Announces Changes to Opinion Letter Program for Pre-Approved Plans

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July 7, 2017 TO: ICI Members
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: IRS Announces Changes to Opinion Letter Program for Pre-Approved Plans

The Internal Revenue Service has published Revenue Procedure 2017-41,[\[1\]](#) announcing significant changes to the opinion letter program for pre-approved plans intended to qualify under sections 401, 403(a) or 4975(e)(7) of the Internal Revenue Code.[\[2\]](#) The revenue procedure modifies and supersedes, in part, Rev. Proc. 2015-36,[\[3\]](#) and modifies Rev. Proc. 2017-4 and Rev. Proc. 2016-37. The newly issued Rev. Proc. 2017-41 is effective on October 2, 2017, and will apply solely to applications for opinion letters submitted with respect to a plan's third (and subsequent) six-year remedial amendment cycles.

In addition to other changes described below, the revenue procedure modifies the on-cycle submission period for the third six-year remedial amendment cycle for providers of pre-approved defined contribution plans so that it begins on October 2, 2017 and ends on October 1, 2018.[\[4\]](#) Other changes include:

- The master and prototype (M&P) and volume submitter (VS) programs are combined and replaced by a single opinion letter program involving two types of plans: Standardized Plans (plans meeting certain requirements relating to eligibility, participation, benefits and other features enumerated in the Rev. Proc.) and Nonstandardized Plans. See section 4.07 of Rev. Proc. 2017-41.
- A pre-approved plan may utilize either of two formats: a basic plan document with an adoption agreement or a single plan document. See section 4.07 of Rev. Proc. 2017-41.
- An Adopting Employer of any Nonstandardized Plan may adopt minor modifications. See section 8.04 of Rev. Proc. 2017-41.
- The prohibition against combining a money purchase plan with a 401(k) or profit-sharing plan in the same pre-approved plan document is eliminated. See sections 9.06 and 9.07 of Rev. Proc. 2017-41.
- A Nonstandardized Plan that contains an ESOP may include a § 401(k) feature. See sections 9.06 and 9.07 of Rev. Proc. 2017-41.
- Any Nonstandardized Plan may provide for either safe harbor or non-safe harbor

hardship distributions. See section 6.03 of Rev. Proc. 2017-41.

- The IRS will no longer rule on the exempt status of a pre-approved plan's related trust or custodial account under section 501(a). See section 9.03 of Rev. Proc. 2017-41.

The new program outlined in Rev. Proc. 2017-41 is intended to expand the market of pre-approved plan providers and to encourage employers that currently maintain individually-designed plans to convert to the pre-approved format, in light of the significant curtailment of the determination letter program for individually-designed plans.^[5] The changes noted above streamline and simplify the opinion letter program, increase the types of plans eligible for pre-approved status, and provide greater flexibility in the design of pre-approved plans.

The revenue procedure indicates in section 9.03 that the IRS is updating Forms 4461, 4461-A, and 4461-B (applications for requesting opinion letters for defined contribution, defined benefit, and mass submitter plans). In the meantime, applications should follow the process outlined in section 9.03, which includes completion of the submission form provided in Appendix A of the revenue procedure (*Submission for Pre-approved Defined Contribution Plan Opinion Letter*).

IRS and Treasury will accept comments on how to further improve the opinion letter program, as described in section 22 of Rev. Proc. 2017-41. There is no specified deadline for comments.

Notice 2017-37 - Cumulative List

In conjunction with Rev. Proc. 2017-41, the IRS also published Notice 2017-37,^[6] which provides the Cumulative List of Changes in Plan Qualification Requirements for pre-approved defined contribution plans for 2017. The 2017 Cumulative List is for pre-approved defined contribution plan opinion letter applications submitted during the third six-year remedial amendment cycle described above (the on-cycle submission period beginning October 2, 2017 and ending October 1, 2018).

Cumulative Lists contain specific matters the IRS has identified for review in determining whether a plan document that has been filed for an opinion letter has been properly updated. The 2017 Cumulative List contains items that relate to pre-approved defined contribution plans that were included on the 2011-2015 Cumulative Lists^[7] or were issued after October 1, 2015. Unless otherwise specified, it does not include guidance issued after February 1, 2017; statutes enacted after February 1, 2017; qualification requirements first effective in 2018 or later; or statutory provisions that are first effective in 2017 for which there is no guidance identified in the notice.

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endnotes

^[1] Rev. Proc. 2017-41 is available here: <https://www.irs.gov/pub/irs-drop/rp-17-41.pdf>.

^[2] Opinion letters for 403(b) plans are covered under Revenue Procedure 2013-22, as modified by Rev. Proc. 2014-28 and clarified by Rev. Proc. 2017-18 and Rev. Proc. 2015-22.

See ICI Memorandum No. 30533, dated January 23, 2017. Available at https://www.ici.org/my_ici/memorandum/memo30533. See ICI Memorandum No. 28002, dated March 28, 2014. Available at https://www.ici.org/my_ici/memorandum/memo28002. See ICI Memorandum No. 27160, dated April 5, 2013. Available at https://www.ici.org/my_ici/memorandum/memo27160.

[3] Rev. Proc. 2015-36 continues to apply to opinion and advisory letter applications for defined contribution plans and defined benefit plans submitted with respect to a plan's previous six-year remedial amendment cycles.

[4] Under Rev. Proc. 2016-37, the on-cycle submission period for pre-approved defined contribution plans was previously set for August 1, 2017 to July 31, 2018. See ICI Memorandum No. 30015, dated July 6, 2016. Available at https://www.ici.org/my_ici/memorandum/memo30015.

[5] See ICI Memorandum No. 29692, dated February 3, 2016. Available at https://www.ici.org/my_ici/memorandum/memo29692. See ICI Memorandum No. 30015, dated July 6, 2016. Available at https://www.ici.org/my_ici/memorandum/memo30015.

[6] Notice 2017-37 is available here: <https://www.irs.gov/pub/irs-drop/n-17-37.pdf>.

[7] For the most recent previous Cumulative List (2015), see ICI Memorandum No. 29591, dated December 23, 2015. Available at https://www.ici.org/my_ici/memorandum/memo29591.