

MEMO# 16051

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INTERNAL REVENUE SERVICE RELEASES SECOND WHITE PAPER ON DETERMINATION LETTER PROCESS

[16051] May 13, 2003 TO: PENSION COMMITTEE No. 13-03 PENSION OPERATIONS ADVISORY COMMITTEE No. 26-03 RE: INTERNAL REVENUE SERVICE RELEASES SECOND WHITE PAPER ON DETERMINATION LETTER PROCESS The Internal Revenue Service has issued a second white paper in connection with its review of the design of the Employee Plans determination letter program. This paper summarizes the comments on the options included in the Service's first white paper on this topic,¹ and describes in detail the three options that remain under consideration. First, the white paper discusses the possibility of maintaining the status quo in light of the program changes that were instituted by Announcement 2001-77.² These changes reduced the number of plan sponsors that applied for determination letters by, among other things, expanding adopting employer reliance on prototype plans. The second option would introduce a system of staggered remedial amendment periods (RAPs) that would create five-year RAP "cycles" for each plan, with favorable determination letters valid until the end of the five-year cycle. Under this option, plans would not have to be amended more frequently than every five years, and the applicable cycle would be based on the employer's tax identification number (TIN). According to the white paper, however, the general rule would require prototype plan sponsors to update their plans and have them re-approved every year. Employers with a RAP ending in a particular year could update their plans using the approved prototype document that was last approved prior to the calendar year in which the employer's RAP ends. The white paper also includes within the second option an alternative rule under which prototype plans would be required to be amended and submitted for new opinion letters every five years, with the five-year cycle based on the prototype sponsor's TIN. An employer that adopted the approved plan within one year of its approval would be treated as adopting the 1 See Institute Memorandum to Pension Committee No. 61-01 and Pension Operations Advisory Committee No. 54-01, dated August 27, 2001. 2 See Institute Memorandum to Pension Committee No. 43-01, dated June 29, 2001. 2 plan within the RAP. Under this alternative, the five-year cycle for the prototype sponsor would serve as the basis for the RAP cycle of the employer's plan. Under the third option, plans might be required to be amended every year, with assistance from the Service in the form of annual lists of required amendments and model amendments. If this option were to be adopted without any changes to the RAP, then plan sponsors might have to request new determination letters as frequently as every year in some cases in order to preserve reliance. In the prototype context, the prototype sponsor would submit an application for an opinion letter every year, and, if employer adoption were required,³ employers would have to adopt the amendments within 12 months of the issuance of the new opinion letter.

Different rules would apply if this third option were combined with the staggered RAP option. In this circumstance, compliance with the annual plan amendment requirements would be a condition precedent for the RAP and for continued reliance on a determination letter prior to its "expiration date." By the end of the five-year cycle, a plan sponsor would be required to retroactively "true-up" its plan with respect to all amendments required to be adopted during the five-year cycle. The Service has requested comments on the options set forth in this white paper by September 2, 2003. Kathy D. Ireland Senior Associate Counsel Attachment (in .pdf format) 3 The white paper notes that prototype plans must include a provision allowing the sponsor to amend the plan on behalf of adopting employers; therefore, in some cases, employers would not be required to take any action.

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