

MEMO# 35514

November 27, 2023

IRS Updates Procedures for Pre-approved Qualified Plans and Pre-approved 403(b) Plans

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: IRS Updates Procedures for Pre-approved Qualified Plans and Pre-approved 403(b) Plans

The IRS has issued Revenue Procedure (Rev. Proc.) 2023-37^[1] updating the pre-approved plan programs for qualified plans and 403(b) plans and combining them into one revenue procedure.

Rev. Proc. 2023-37 covers the following rules for pre-approved plans:

- Rules regarding remedial amendment periods, the remedial amendment cycle system, and plan amendment deadlines (effective November 21, 2023);
- Procedures for a provider to apply for an opinion letter confirming that the form of the provider's plan satisfies the applicable requirements (effective beginning with Cycle 4 for qualified pre-approved plans and for Cycle 3 for 403(b) pre-approved plans); and
- Procedures for an adopting employer to apply for a determination letter regarding the adopting employer's plan (applicable to applications submitted by adopting employers of qualified pre-approved plans with respect to Cycle 4 or later, and by adopting employers of 403(b) pre-approved plans with respect to Cycle 2 or later).

Timing for Upcoming Qualified Plan Cycles and Current 403(b) Plan Cycle

Rev. Proc. 2023-37 announces that the submission period for a provider of a defined contribution pre-approved qualified plan for a Cycle 4 opinion letter will begin on February 1, 2024 and end on January 31, 2025. For defined benefit pre-approved plans, Cycle 4 will begin on April 1, 2025.

For 403(b) pre-approved plans, the Cycle 2 submission period ended on May 1, 2023. The Rev. Proc. notes that although Cycle 2 has already begun, Cycle 2 opinion letters have not been issued and the employer adoption window has not begun.

Other Changes

Rev. Proc. 2023-37 combines the programs for qualified pre-approved plans and 403(b) pre-approved plans, which were previously covered in separate revenue procedures. According to the Rev. Proc., the purpose of combining the programs is that it "allows for the rules for the different types of Pre-approved Plans to be more easily conformed to each other, to the extent practicable."

In consolidating the two programs into one revenue procedure, Rev. Proc. 2023-37 explains that several changes were made "to conform, clarify, and update the rules." For example, the interim amendment rules were updated to provide that, if an adopting employer does not correct a failure to timely adopt an interim amendment within two years after the specified time period, then the adopting employer's plan will be treated as an individually designed plan. In another change, Rev. Proc. 2023-37 provides that for an employer to be eligible to adopt a pre-approved plan that was not in existence in the immediately preceding Cycle, the plan must have been submitted for an opinion letter for the Cycle before the employer adopts it.

Rev. Proc. 2023-37 describes other significant changes in section 3.02.

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Notes

[1] Revenue Procedure 2023-37 is available at <https://www.irs.gov/pub/irs-drop/rp-23-37.pdf>.

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