



CLIENT BULLETIN

Upcoming 2013 Compliance Dates For Pension Plans

There is a short list of **new** compliance items for 2013 so we will also address an important item that won't occur until 2014, but will require some upfront planning – the IRS determination letter program. The following compliance items for 2012 which were discussed in *Client Bulletins 2012-05* and *2012-07* and will continue to be in force during 2013:

- Service Provider Fee Disclosures (aka "408(b)(2) disclosures") *Special Bulletin 2012-39* and *Benefit News Briefs 2012-50*
- Participant Fee Disclosures (aka "404(c) disclosures") *Special Bulletins 2012-24* and *2012-40*

PBGC Premium Increase Effective for 2013 Plan Years

First, as reported in *Benefit News Briefs 2012-36*, the **multiemployer** PBGC annual premium is being raised from \$9 per individual to \$12 for each individual for *plan years beginning after December 31, 2012*. Single-employer premiums were also raised.

Multiemployer pension plans covered by the PBGC (i.e. defined benefit plans) should take note of this and prepare for the increased cost.

More information on the PBGC premiums can be found at the PBGC website at: <http://www.pbgc.gov/prac/prem/online-premium-filing-with-my-paa.html>.

Determination Letter Program

Under the current remedial amendment and determination letter system, every individually designed qualified pension plan has a regular, five-year remedial amendment cycle. The next multiemployer pension plan filing Cycle begins February 1, 2014 and ends January 31, 2015.

Each year the IRS updates its determination letter procedures. This year's update is found in *Revenue Procedure 2013-6* and is available by "[clicking here](#)" and was discussed in *Special Bulletin 2013-03*. The major changes that have been made include clarifying which documents must be submitted with a determination letter application, deleting the option of submitting a "working copy" of the plan (a fully restated and signed document is now required) and a change in address for the Notice to Interested Parties. The *Revenue Procedure* is effective February 1, 2013.

A new *Revenue Procedure* will be released in 2014 before the beginning of the 2014-15 cycle that will include any additional changes to the program for the 2014-2015 cycle.

In addition to these procedural requirements for submitting a determination letter filing, the IRS releases a *Cumulative List of Changes in Plan Qualification Requirements (Cumulative List)* each fall that lists the required modifications to pension plans that will be reviewed the upcoming cycle. While the 2013 *Cumulative List* for this upcoming filing cycle will not be issued until fall of 2013, the [2012 Cumulative List](#) itemizes the following legislation that has accumulated since the last determination letter cycle that will be covered in the next cycle:

- the *Pension Protection Act of 2006 (PPA '06)*;
- the *U.S. Troop Readiness, Veterans' Care, Katrina Recovery and Iraq Accountability Appropriations Act, 2007*;
- the *Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act)*;
- the *Worker, Retiree, and Employer Recovery Act of 2008 (WRERA)*;
- the *Small Business Jobs Act of 2010 (SBJA)*;
- the *Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010)*; and
- the *Moving Ahead for Progress in the 21st Century Act (MAP-21)*.

Although amendments under the *Pension Protection Act of 2006 (PPA)* must have been approved on or before the last day of the first Plan Year beginning on or after January 1, 2009, such amendments were NOT considered by the IRS for qualification purposes during the last determination letter cycle, but will be considered in this upcoming cycle, along with any other designated items.

What Are The Benefits Of A Favorable Determination Letter?

Pension funds are not required to apply for a determination letter from the IRS, (but we suspect a Plan that has opted out of the process for a cycle or more may receive "special attention" from the IRS when it seeks its next determination letter).

Although not required, requesting and receiving a favorable determination letter provides the Trustees and contributing employers with assurance that the Plan is “qualified” and the trust “exempt” under the Internal Revenue Code (IRC). As the IRS notes:

The benefits of having a qualified Plan and operating the Plan according to its terms as approved by the IRS are that the:

- contributing employers get a business deduction for contributions made to the Plan up to the applicable limits;
- Plan participants are able to defer paying taxes on the amounts contributed to their retirement plan until distributed to the participant; and
- employer contributions and investment income grow tax free until distributed from the Plan.

<http://www.irs.gov/Retirement-Plans/Determination,-Opinion-and-Advisory-Letters>

A favorable determination letter indicates the terms of the Plan conform to the requirements of the IRC and also provides certain protections should the Plan Document be found to contain one or more defects (that may make it non-compliant) at a later date.

Employee retirement plans that fail to satisfy the requirements under IRC section 401(a) are not entitled to favorable tax treatment. Therefore, many employers desire advance assurance that the terms of their plans satisfy the qualification requirements. *IRS Publication 794 - Favorable Determination Letter*, available at: <http://www.irs.gov/pub/irs-pdf/p794.pdf>.

In addition, sometimes the Plan’s collective bargaining agreements, trust or plan document call for the Trustees to obtain a favorable determination letter. When in doubt, review your documents.

We generally recommend that the Trustees file for a determination letter with each cycle, but the Trustees' final decision should be made in consultation with Fund Counsel.

The Trustees may choose to engage Fund Counsel or any other qualified professional to prepare the draft document restatement and filing package.

Changes To The Upcoming Determination Letter Cycle

As we noted in *Special Bulletin 2013-03*, two items of interest to determination letter submitters not discussed in *Revenue Procedure 2013-6* are:

- *Revenue Procedure 2013-8* raised the fee for a determination letter filing using Form 5300 from \$2,000 to \$2,500.
- The draft Form 5300 is available by “[clicking here](#)” and the draft Instructions are available by “[clicking here](#).”

The draft revised Form 5300 asks the plan sponsor for the following additional information:

- Identify each plan amendment using a number or name (*i.e.*, "First Amendment").
- Classify each plan amendment as an interim amendment only, a discretionary amendment only or both.
- Disclose the due date of the plan sponsor's tax return, including extensions, if applicable, for the year in which an interim amendment was adopted.
- Designate the specific tax return form used by the plan sponsor to file its return.
- Note whether any issue was resolved during the last remedial amendment cycle before the DOL or VCP.
- Report whether the plan uses a normal retirement age below age 62, if applicable.

These changes will require more work to prepare a determination letter submission.

As we mentioned earlier, one reason we highlight the upcoming determination letter cycle a year in advance is because revising, amending and restating pension plans for submission to the IRS for a determination letter often takes longer than one would suspect, especially with these new Form 5300 requirements.

For example, the determination letter submission rules require the distribution of notices to Plan participants and other "interested parties" within specified timeframes, and preparation of several IRS and other forms for Trustee signature and submission. Documents must be collected and assembled. If amendments are signed but not dated or vice-versa, etc., then meeting minutes documenting the adoption of the amendment will need to be found. Time for review by the Administrator, Trustees and Fund Counsel of the restated Plan and these forms must also be built into the determination letter preparation timeline.

In fact, one recurring problem with determination letter submissions during the last cycle was amendments that were not dated. In each case, the IRS asked for documentation of the adoption of the amendment such as meeting minutes. As such, it is easier to make sure someone dates the amendment than to dig up old minutes. It is not enough for an amendment to be signed and have an "effective date;" it must also contain a signature date.

The following IRS link has more useful information regarding the determination letter process:

<http://www.irs.gov/Retirement-Plans/Determination,-Opinion-and-Advisory-Letters>.

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