



## BENEFIT NEWS BRIEFS

### *Changes to the Determination Letter Process In 2015*

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The IRS announced changes to the determination letter program for retirement plans which generally apply to Form 5300 series determination letter applications *received by the IRS after February 1, 2015*. These application processing procedures were discussed in a recent [IRS Employee Plans News email newsletter](#) and are described in [Revenue Procedure 2015-6](#), Section 6.13.

The Newsletter noted a determination letter application will undergo: (1) a review for procedural completeness and (2) a review for technical efficiencies, both of which are discussed below. In addition, we will also discuss the new IRS reference lists and the future of the determination letter program.

#### ***Procedural Review***

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The application for determination letter must include all required documents and information. Failure to supply missing information within 30 days of its request will result in the application being closed. The procedural review process was summed up as:

- **Initial review for completeness** – The submission must include all information and documents required by [Revenue Procedure 2015-6](#), including the Form 5300 series application and Procedural Requirements Checklist.
- **Submission of the Form 5300 Checklist is now mandatory** – In a change from prior years, applicants must include the Form 5300 submission checklist as part of the last pages of the determination letter submission form.
- **30 days to submit missing information** – If an applicant fails to include all of the required information and documents with the application, the IRS will send the applicant a *List of Missing Items*. Applicants will have 30 days to respond and submit the required items. If an applicant fails to submit the required items by the deadline, it will result in the application being closed, the IRS retaining the submission and the user fee being forfeited.

### ***Technical Review***

Determination letter applications that are procedurally complete will proceed to technical review. During this portion of the process, the reviewer may ask the applicant for additional information or documents. Sometimes plan amendments are undated and the reviewer may request meeting minutes showing the date of execution of the amendment.

Similar to the procedural review process above, if additional information or actions are requested, such as amending the plan, the applicant will have a certain period of time to respond. If the applicant fails to respond in that time period, the IRS will notify the applicant of an additional “grace” period in which to respond.

An applicant’s failure to respond to IRS technical review requests by the end of the “grace” period will result in the application being closed, the IRS retaining the submission and the user fee being forfeited.

### ***Closed Applications***

If an application is closed for failure to respond and either the final response deadline or the postmark date of the submitted response occurs before the end of the plan sponsor’s remedial amendment cycle, the applicant will be given a set period of time to submit a **new on-cycle** application, along with a **new** user fee (as the old fee would have been forfeited).

If an application is closed for failure to respond and both the final request deadline and the postmark date of any part of your response to that final request occur after the end of the plan’s remedial amendment cycle, the remedial amendment cycle **will not be extended**. Any subsequent application resubmission in such a case will be treated as an **off-cycle** filing. Off-cycle applications will generally not be reviewed until all on-cycle plans have been reviewed and processed.

### ***Use Of New Plan Amendment Reference Lists***

The Newsletter also discussed the new IRS interim amendment [reference lists](#). Applicants can use the lists to track where particular law changes from each relevant annual [Cumulative List](#) are applicable to the applicant’s plan document. Each reference list contains the items from the Cumulative List that were first added that year. For example, the 2014 reference list contains items that were new on the 2014 Cumulative List. See excerpt below:

| Plan name _____            |     | EIN _____  |   | Plan number _____     |  |
|----------------------------|-----|--|---|-----------------------|--|
| <b>2014 Reference List</b> |     |  |   |                       |  |
| ✓                          | N/A | 2014 Cumulative List ( <a href="#">Notice 2014-77</a> ) New Provisions | Plan Section Reference  | Date Amendment Signed |  |
| 1                          | □   | □  | <a href="#">Revenue Ruling 2014-9</a> , 2014-17 I.R.B. 975, provides procedures a plan administrator may use in order to reasonably conclude that an amount is a valid rollover contribution. |                       |  |

The IRS encourages applicants to include completed reference lists with the determination letter application to help expedite review of the submission. Although not currently required, the use of these reference lists may become mandatory in the future.

### ***The Future of the Determination Letter Program***

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Even as the IRS continues to take steps to make the determination letter program more efficient, continued reports of statements by IRS officials seem to indicate that the IRS determination letter program for individually designed retirement plans will be drastically curtailed. According to published reports, the IRS would still process initial plan determination letters and also termination determination letter submissions. However, the IRS wouldn't review interim amendments on a cyclical basis, as is currently done. Apparently, the IRS might still provide the determination letter service to certain limited plans or on certain issues.

Even if the cyclical determination letter process currently in effect is changed as outlined above, the IRS has indicated that individually designed plans would still need to make interim amendments and track the changes in the annual Cumulative List.

More details on changes to the individually designed plan determination letter process are expected to be announced this summer.

### ***Additional IRS Determination Letter Resources***

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- [\*Apply for a determination letter – individually designed plans\*](#)
- [\*Determination letter review process\*](#)
- [\*Determination, opinion and advisory letters\*](#)

Employee Plans newsletters can be accessed at: <http://www.irs.gov/Retirement-Plans/Employee-Plans-News>. The Newsletter discussed in this Benefit News Briefs is *Issue No. 2015-7, June 23, 2015*. Interested readers can sign up online for a free subscription to the IRS Employee Plans Newsletters at: <https://service.govdelivery.com/accounts/USIRS/subscriber/new>.

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