

26 CFR § 601.201: Rulings and determination letters.  
(Also Part I, §§ 401; 1.401(b)-1.)

Rev. Proc. 2016-37

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PART I – OVERVIEW

SECTION 1. PURPOSE

.01 This revenue procedure modifies the Internal Revenue Service (IRS) determination letter program for qualified plans to eliminate, as of January 1, 2017, the five-year remedial amendment cycle system for individually designed plans, currently set forth in Rev. Proc. 2007-44, 2007-2 C.B. 54. Effective January 1, 2017, a sponsor of an individually designed plan will be permitted to submit a determination letter application only for initial plan qualification, for qualification upon plan termination, and in certain other circumstances, as described in section 4.03(3) of this revenue procedure.

.02 This revenue procedure provides an extended remedial amendment period under § 401(b) of the Internal Revenue Code (Code) for individually designed plans.

.03 This revenue procedure describes and makes clarifying changes to the six-year remedial amendment cycle system for pre-approved qualified plans and modifies the six-year remedial amendment cycle system, as applicable, to reflect changes that have been made to the determination letter program for individually designed plans. In addition, this revenue procedure delays until August 1, 2017, the beginning of the 12-month submission period for master and prototype (M&P) plan sponsors and volume submitter (VS) practitioners to submit pre-approved defined contribution plans for opinion or advisory letters during the third six-year remedial amendment cycle.

.04 The extended remedial amendment period for individually designed plans and the six-year remedial amendment cycle system for pre-approved plans are established pursuant to the authority under § 401(b) and its underlying regulations to extend the remedial amendment period and pursuant to the authority under § 7805(b) to establish the effective date of any rule or regulation.

.05 This revenue procedure is effective January 1, 2017.. This revenue procedure clarifies, modifies, and supersedes Rev. Proc. 2007-44, modifies sections 2.07 and 24.03 of Rev. Proc. 2015-36, 2015-27 I.R.B. 20, and modifies sections I and III of Notice 2015-84, 2015-52 I.R.B. 880.

## SECTION 2. BACKGROUND

.01 Section 401(b) provides a remedial amendment period during which a plan may be amended retroactively to comply with the Code's qualification requirements. Section 1.401(b)-1 of the Income Tax Regulations describes the disqualifying provisions that may be amended retroactively and the remedial amendment period during which retroactive amendments may be adopted. The regulations also grant the Commissioner the discretion to designate certain plan provisions as disqualifying provisions and to extend the remedial amendment period.

.02 Section 7805(b)(1) provides that, except as otherwise provided, no temporary, proposed, or final regulation relating to the internal revenue laws shall apply to any taxable period ending before the earliest of the following dates: (i) the date on which such regulation is filed with the Federal Register; (ii) in the case of any final regulation, the date on which any proposed or temporary regulation to which such final regulation relates was filed with the Federal Register; or (iii) the date on which any notice substantially describing the expected contents of any temporary, proposed, or final regulation is issued to the public.

.03 Section 7805(b)(8) provides that the Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect.

.04 Section 1.401(b)-1 provides that a plan that fails to satisfy the requirements of § 401(a) solely as a result of a disqualifying provision defined under § 1.401(b)-1(b) need not be amended to comply with those requirements until the last day of the remedial amendment period with respect to the disqualifying provision, provided the amendment is made retroactively effective to the beginning of the remedial amendment period. Under § 1.401(b)-1(b)(1), a disqualifying provision includes a provision of a new plan, the absence of a provision from a new plan, or an amendment to an existing plan that causes the plan to fail to satisfy the requirements of the Code applicable to the qualification of the plan as of the date the plan or amendment is first made effective. Under § 1.401(b)-1(b)(3), a disqualifying provision includes a plan provision designated, at the Commissioner's discretion, as a disqualifying provision that either (i) results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements, or (ii) is integral to a qualification requirement of the Code that has been changed. For this purpose, § 1.401(b)-1(c)(1) provides that a disqualifying provision includes the absence from a plan of a provision required by or, if applicable, integral to the applicable change in the qualification requirements of the Code, if the plan was in effect on the date the change in those requirements became

effective with respect to the plan. Under § 1.401(b)-1(c)(3), the Commissioner may impose limits and provide additional rules regarding the amendments that may be made with respect to disqualifying provisions described in § 1.401(b)-1(b)(3).

.05 For a disqualifying provision of a new plan described in § 1.401(b)-1(b)(1), the remedial amendment period begins on the date the plan is put into effect and, in the case of a plan maintained by one employer, ends on the later of (i) the due date (including extensions) for filing the employer's tax return for the taxable year in which the plan is put into effect or (ii) the last day of the plan year in which the plan is put into effect. In the case of a new plan maintained by more than one employer, the remedial amendment period ends on the last day of the tenth month following the last day of the plan year that includes the date the plan is put into effect.

.06 For a disqualifying provision that is an amendment to an existing plan described in § 1.401(b)-1(b)(1), the remedial amendment period begins on the earlier of the date the plan amendment is adopted or put into effect and, in the case of a plan maintained by one employer, ends on the later of (i) the due date (including extensions) for filing the employer's tax return for the taxable year in which the amendment is adopted or effective (whichever is later) or (ii) the last day of the plan year in which the amendment is adopted or effective (whichever is later). In the case of an amendment to an existing plan maintained by more than one employer, the remedial amendment period ends on the last day of the tenth month following the last day of the plan year in which the amendment is adopted or effective (whichever is later).

.07 For a disqualifying provision described in § 1.401(b)-1(b)(3), the remedial amendment period begins on the date on which the change becomes effective with respect to the plan or, in the case of a provision that is integral to a qualification requirement that has been changed, the first day on which the plan is operated in accordance with the provision as amended. In the case of a plan maintained by one employer, the remedial amendment period for a disqualifying provision described in § 1.401(b)-1(b)(3) ends on the later of: (i) the due date (including extensions) for filing the income tax return for the employer's taxable year that includes the date on which the remedial amendment period begins; or (ii) the last day of the plan year that includes the date on which the remedial amendment period begins. In the case of a plan maintained by more than one employer the remedial amendment period ends on the last day of the tenth month following the last day of the plan year in which the remedial amendment period begins.

.08 Section 1.401(b)-1(f) provides that the Commissioner has discretion to extend the remedial amendment period.

.09 Rev. Proc. 2007-44 sets forth rules and procedures for a system of cyclical remedial amendment periods under § 401(b) for individually designed plans and for a system of cyclical remedial amendment periods under § 401(b) for pre-approved qualified plans, including the following:

(1) Section 4.01 provides that the IRS intends to publish annually Cumulative Lists of Changes in Plan Qualification Requirements (Cumulative Lists). The Cumulative Lists are intended to identify, on a year-by-year basis, all changes in qualification requirements resulting from changes in statutes, or from regulations or other guidance published in the Internal Revenue Bulletin, that are required to be taken into account in the written plan document that is submitted to the IRS for an opinion, advisory, or determination letter, as applicable.

(2) Section 5.04 provides that when there are statutory or regulatory changes with respect to plan qualification requirements that will impact provisions of the written plan document, the adoption of an interim amendment generally will be required.

(3) Section 9 generally provides that an individually designed plan's five-year remedial amendment cycle (Cycle A, B, C, D, or E) is determined by reference to the last digit of the employer identification number (EIN) of the employer that sponsors the plan. However, Section 10.06 provides that, if more than one plan is maintained by members of a controlled group under § 414(b) or (c) or an affiliated service group under § 414(m), the employers may elect that the five-year remedial amendment cycle for all plans maintained by any members of the group (other than multiemployer plans under § 414(f), multiple employer plans, governmental plans under § 414(d), or certain jointly trustee single employer collectively bargained plans) will be Cycle A. In general, the Cycle A election must be made jointly by all members of the controlled group or affiliated service group. However, in the case of a parent-subsidary controlled group, this election may be made on behalf of all of the members by the parent.

(4) Section 10.08(1) provides that, in the case of a Cycle A election under section 10.06 that does not involve a parent-subsidary controlled group, if a new member joins the controlled group, that member must make an election no later than one year from the date the new member joins the controlled group in order for other members to maintain the existing election.

(5) Section 13.02 provides that determination letters issued for individually designed plans will include a statement that the letter may not be relied on after the end of the plan's first five-year remedial amendment cycle that ends more than 12 months after the application was received, and will include a specific "expiration date."

.10 Notice 2010-90, 2010-52 I.R.B. 909, included the 2010 Cumulative List of Changes in Plan Qualification Requirements, which contains qualification requirements for pre-approved defined contribution plans to be used for the second submission period under the six-year remedial amendment cycle and for certain single employer individually designed plans.

.11 Announcement 2012-3, 2012-4 I.R.B. 335, extended to April 2, 2012, the deadline to submit on-cycle applications for opinion and advisory letters for pre-approved defined contribution plans for the plans' second six-year remedial amendment cycle.

.12 In Announcement 2014-16, 2014-17 I.R.B. 983, the IRS announced it would issue opinion and advisory letters for pre-approved defined contribution plans that were restated for changes in plan qualification requirements listed in the 2010 Cumulative List and that were filed with the IRS during the plans' second submission period under the remedial amendment cycle under Rev. Proc. 2007-44. The announcement provided that employers using these pre-approved plan documents to restate a plan for the plan qualification requirements on the 2010 Cumulative List would be required to adopt the plan document by April 30, 2016, and that the IRS would accept applications for individual determination letters from employers under the second six-year remedial amendment cycle for pre-approved defined contribution plans starting May 1, 2014 and ending April 30, 2016.

.13 Announcement 2014-41, 2014-52 I.R.B. 979, extended to June 30, 2015, the deadline for submitting on-cycle applications for opinion and advisory letters for pre-approved defined benefit plans for the plans' second six-year remedial amendment cycle, as previously extended in Announcement 2014-4, 2014-7 I.R.B. 523.

.14 Rev. Proc. 2015-36, provided rules for issuing opinion and advisory letters for pre-approved plans. This revenue procedure also extended to October 30, 2015, the deadline for submitting on-cycle applications for opinion and advisory letters for pre-approved defined benefit plans for the plans' second six-year remedial amendment cycle.

.15 Announcement 2015-19, 2015-32 I.R.B. 157, announced the elimination of the five-year remedial amendment cycle system for individually designed plans and provided that the scope of the determination letter program for individually designed plans would be limited to determination letter applications for initial plan qualification, for qualification upon termination, and in certain other circumstances. This announcement also provided a transition rule with respect to the remedial amendment period for certain plans currently operating under the five-year remedial amendment cycle system, and announced that the IRS, as of July 21, 2015, would cease accepting off-cycle determination letter applications (as defined in section 14 of Rev. Proc. 2007-44), except with respect to new and terminating plans.

.16 Notice 2015-84, included the 2015 Cumulative List of Changes in Plan Qualification Requirements, which contains qualification requirements for single employer individually designed defined contribution plans and defined benefit plans, to be used primarily by plan sponsors of such plans that fall in Cycle A.

.17 Rev. Proc. 2016-6, 2016-1 I.R.B. 200, set forth the annual update of procedures for issuing determination letters on the qualified status of plans. Rev. Proc. 2016-6 provided that, effective as of January 4, 2016, determination letters issued to sponsors of individually designed plans would no longer contain an expiration date.

.18 Notice 2016-03, 2016-3 I.R.B. 278, announced that guidance will be issued to provide that: (i) controlled groups and affiliated service groups that have previously

made a Cycle A election are permitted to submit determination letter applications during the Cycle A submission period beginning February 1, 2016, and ending January 31, 2017; (ii) expiration dates on determination letters issued prior to January 4, 2016, are no longer operative; and (iii) the period during which certain employers may, on or after January 1, 2016, establish or adopt a pre-approved defined contribution plan and, if permissible, apply for a determination letter, is extended from April 30, 2016, to April 30, 2017.

### SECTION 3. SUMMARY OF SIGNIFICANT MODIFICATIONS

.01 Consistent with Announcement 2015-19, this revenue procedure eliminates, as of January 1, 2017, the staggered five-year remedial amendment cycle system for individually designed plans, currently set forth in Rev. Proc. 2007-44. This revenue procedure also provides new rules, as described in paragraphs (1) through (5) of this section 3.01, for individually designed plans. A sponsor of an individually designed plan will be permitted to submit a determination letter application for initial plan qualification, for qualification upon termination, and in other circumstances. See section 4.03 of this revenue procedure.

(1) Effective January 1, 2017, the interim amendment requirement set forth in section 5.04 of Rev. Proc. 2007-44 will no longer apply to individually designed plans. See section 4.02 of this revenue procedure.

(2) With respect to individually designed plans, for disqualifying provisions that arise as a result of a change in qualification requirements, the Department of the Treasury (Treasury) and the IRS intend to publish annually a Required Amendments List, which will establish the deadline for a plan to be amended to comply with requirements described in section 5.03 of this revenue procedure that are identified on the list. The deadline (that is, the end of the remedial amendment period for a change to a qualification requirement included on a particular Required Amendments List) will be, unless otherwise provided, the end of the second calendar year following the year in which the list is issued. In general, a change to the qualification requirements will not appear on a Required Amendments List until guidance with respect to such change (including model amendments, if any) has been provided in regulations or in other guidance published in the Internal Revenue Bulletin. The first Required Amendments List generally will apply to changes in qualification requirements first effective during the 2016 calendar year. See sections 4, 5, and 9 of this revenue procedure.

(3) This revenue procedure extends the remedial amendment period for individually designed plans to correct disqualifying provisions (i) that are in new plans, (ii) that arise as a result of amendments made to existing plans, and (iii) that arise as a result of a change in qualification requirements. See section 5 of this revenue procedure.

(4) For individually designed plans, a transition rule extends the remedial amendment period for certain disqualifying provisions to December 31, 2017. See section 6 of this revenue procedure.

(5) The scope of review of an individually designed plan submitted for a determination letter is described in section 12 of this revenue procedure.

(6) The effect of subsequent changes in law and plan amendments on the reliance by the sponsor of an individually designed plan on a prior determination letter is described in section 13 of this revenue procedure.

.02 A description of, and clarifying changes to, the six-year remedial amendment cycle system for pre-approved plans, and modifications of the six-year remedial amendment cycle system to reflect changes that have been made to the determination letter program for individually designed plans, are provided in Part III of this revenue procedure. In addition, the time to adopt a newly approved pre-approved defined contribution plan and to file for a determination letter for certain adopters of pre-approved defined contribution plans for the second six-year remedial amendment cycle is extended to April 30, 2017.

.03 The beginning of the 12-month submission period for M&P sponsors and VS practitioners to submit pre-approved defined contribution plans for opinion or advisory letters during the third six-year remedial amendment cycle is delayed until August 1, 2017. See section 16 of this revenue procedure.

.04 To assist sponsors in achieving operational compliance with the Code's qualification requirements, the IRS intends to provide annually an Operational Compliance List that identifies changes in qualification requirements that are effective during a calendar year. See sections 10 and 17.05 of this revenue procedure.

## PART II – INDIVIDUALLY DESIGNED PLANS

### SECTION 4. ELIMINATION OF FIVE-YEAR REMEDIAL AMENDMENT CYCLE SYSTEM; OTHER MODIFICATIONS

.01 Effective January 1, 2017, the staggered five-year remedial amendment cycle system for individually designed plans is eliminated. As of that date, the IRS will no longer accept determination letter applications based on the five-year remedial amendment cycle system. However, sponsors of Cycle A plans (that is, generally, plan sponsors with employer identification numbers ending in 1 or 6) will continue to be permitted to submit determination letter applications during the period beginning February 1, 2016, and ending January 31, 2017. For this purpose, controlled groups and affiliated service groups that maintain more than one plan are permitted to submit determination letter applications during the Cycle A submission period beginning February 1, 2016, and ending January 31, 2017, provided that a prior Cycle A election with respect to the controlled group or affiliated service group had been made by

January 31, 2012 (the last day of the previous Cycle A submission period) and any new member of the controlled group or affiliated service group made a timely election to join the group in accordance with section 10.08(1) of Rev. Proc. 2007-44, if applicable. See section 10.06 of Rev. Proc. 2007-44.

.02 Effective January 1, 2017, plan sponsors of individually designed plans will no longer be required to adopt interim amendments, as required by section 5.04 of Rev. Proc. 2007-44. This change applies with respect to interim amendments that would have had an adoption deadline on or after January 1, 2017, had the interim amendment requirement remained in effect. The interim amendment requirement continues to apply to individually designed plans with respect to interim amendments with an adoption deadline prior to January 1, 2017.

.03 Effective January 1, 2017, a sponsor of an individually designed plan will be permitted to submit a determination letter application for initial plan qualification, for qualification upon termination, and in other circumstances, as described in section 4.03(1), (2), and (3) of this revenue procedure.

(1) Initial plan qualification. An employer may submit a plan for initial plan qualification on a Form 5300 (*Application for Determination for Employee Benefit Plan*) as long as a favorable determination letter has never been issued with respect to the plan. Thus, for example, an employer that maintains a plan for which a determination letter has been issued as a result of filing a Form 5300 or Form 5307 (*Application for Determination for Adopters of Modified Volume Submitter Plans*) is not eligible to submit that plan for a determination letter for initial qualification.

(2) Qualification upon plan termination. An application is filed in connection with plan termination only if it is filed no later than the later of (i) one year from the effective date of the termination, or (ii) one year from the date on which the action terminating the plan is taken. However, in no event may the application be filed later than 12 months from the date of distribution of substantially all plan assets in connection with the plan termination.

(3) Other circumstances. Consideration will be given annually to whether determination letter applications will be accepted for individually designed plans in specified circumstances other than for initial qualification and qualification upon plan termination. Circumstances that will be considered when evaluating whether to accept determination letter applications for certain amended plans or types of amendments in plans in certain future years, include, for example, significant law changes, new approaches to plan design, and the inability of certain types of plans to convert to pre-approved (that is, M&P and VS) plan documents. In addition, the IRS's current case load and resources available to process determination letter applications will be significant factors in deciding if and when to consider certain amended plans or types of amendments in plans under the determination letter program. Additional situations in which plan sponsors will be permitted to request determination letters will be announced in published guidance published in the Internal Revenue Bulletin. Treasury and the IRS

intend to request, on a periodic basis, comments on the additional situations in which the submission of a determination letter application may be appropriate. Based on an analysis of the factors listed in this section 4.03(3), including the IRS's current resources and case load, the only determination letter applications for individually designed plans that will be accepted during calendar year 2017 (other than for Cycle A plans as described in section 4.01) are applications for initial plan qualification and qualification upon plan termination.

## SECTION 5. EXTENSION OF REMEDIAL AMENDMENT PERIOD FOR INDIVIDUALLY DESIGNED PLANS

.01 The provisions of this section 5 apply to disqualifying provisions (as defined in section 5.02 and 5.03 of this revenue procedure) that are first effective on or after January 1, 2016.

.02 Pursuant to § 1.401(b)-1(b)(1), a disqualifying provision includes a provision of a new plan, the absence of a provision from a new plan, or an amendment to an existing plan that causes the plan to fail to satisfy the requirements of the Code applicable to the qualification of the plan as of the date the plan or amendment is first made effective. In addition, pursuant to § 1.401(b)-1(b)(3), a disqualifying provision includes a plan provision that has been designated by the Commissioner, in section 5.03 of this revenue procedure or subsequent guidance published in the Internal Revenue Bulletin, as a disqualifying provision by reason of a change in those requirements.

.03 Pursuant to § 1.401(b)-1(b)(3), the IRS designates a plan provision as a disqualifying provision if it:

(1) results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements that is effective after December 31, 2001;<sup>1</sup> or

(2) is integral to such disqualifying provision.

.04 A change in qualification requirements includes a statutory change or a change in the requirements provided in regulations or other guidance published in the Internal Revenue Bulletin. In addition, a disqualifying provision, as described in section 5.03 of this revenue procedure, includes the absence from a plan of a provision required by (or, if applicable, integral to) the change in the qualification requirements of the Code.

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<sup>1</sup> As provided in section 5.01 of Rev. Proc. 2007-44, December 31, 2001, was the date after which all changes in qualification requirements were designated as disqualifying provisions by the Commissioner in order for those changes to be eligible for the remedial amendment period available with respect to disqualifying provisions.

.05 Except as otherwise provided by statute, or regulations or other guidance published in the Internal Revenue Bulletin, the remedial amendment period that would otherwise apply under § 1.401(b)-1 for the disqualifying provisions described in this section 5.05 is extended as follows for plans that are not governmental plans within the meaning of § 414(d):

(1) **New plan.** The remedial amendment period for a disqualifying provision with respect to a provision of a new plan or the absence of a provision from a new plan is extended to the later of (i) the 15th day of the 10th calendar month after the end of the plan's initial plan year or (ii) the "modified § 401(b) expiration date." The modified § 401(b) expiration date is defined in this section 5.05(1)(a) and (b):

(a) The modified § 401(b) expiration date for a plan that is not maintained by a tax exempt employer is the last day of the remedial amendment period determined under § 1.401(b)-1(d)(2), applied as though the employer has an extension to file its income tax return (or partnership return of income).

(b) The modified § 401(b) expiration date for a plan maintained by a tax exempt employer is the last day of the remedial amendment period determined under § 1.401(b)-1(d)(2) applied as though the due date (including extensions) for filing the income tax return for the employer's taxable year is the date determined under the following rules. The due date for filing the employer's tax return in the case of a tax exempt employer that files Form 990-T (or Form 990 or Form 990-EZ if no Form 990-T is filed) is the later of (i) the 15th day of the 10th month after the end of the employer's tax year (treating the calendar year as the tax year if the employer does not have a tax year) or (ii) the due date for filing the Form 990 series (plus extensions). For the purpose of this section 5.05(1), an employer is treated as having obtained an extension of time for filing the Form 990 series. The due date for filing the employer's tax return in the case of a tax exempt employer that is not required to file a Form 990 series return is the 15th day of the 10th month after the end of the employer's tax year (treating the calendar year as the tax year if the employer does not have a tax year).

(2) Amendment to existing plan. The remedial amendment period for a disqualifying provision with respect to an amendment to an existing plan (other than an amendment described in section 5.05(3) of this revenue procedure) is extended to the end of the second calendar year following the calendar year in which the amendment is adopted or effective, whichever is later.

(3) Change in qualification requirements. The remedial amendment period for a disqualifying provision with respect to a change in qualification requirements (as described in section 5.04 of this revenue procedure) is extended to the end of the second calendar year that begins after the issuance of the Required Amendments List (described in section 9 of this revenue procedure) in which the change in qualification requirements appears.

.06 Except as otherwise provided by statute, or by regulations or other guidance published in the Internal Revenue Bulletin, the remedial amendment period that would otherwise apply under § 1.401(b)-1 for the disqualifying provisions described in this section 5.06 is extended as follows for plans that are governmental plans within the meaning of § 414(d):

(1) New plan. The remedial amendment period for a disqualifying provision with respect to a provision of a new governmental plan or the absence of a provision from a new governmental plan is extended to the later of: (i) the date determined in section 5.05(1) of this revenue procedure; or (ii) 90 days after the close of the second regular legislative session of the legislative body with the authority to amend the plan that begins after the end of the plan's initial plan year.

(2) Amendment to existing plan. The remedial amendment period for a disqualifying provision with respect to an amendment to an existing governmental plan (other than an amendment described in paragraph (3) of this section 5.06) is extended to the later of: (i) the date determined in section 5.05(2) of this revenue procedure; and (ii) 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins after the calendar year in which the amendment is adopted or effective (whichever is later).

(3) Change in qualification requirements. The remedial amendment period for a disqualifying provision in a governmental plan that arises as a result of a change in qualification requirements (as described in section 5.03 of this revenue procedure) is extended to the later of: (i) the date determined in section 5.05(3) of this revenue procedure; or (ii) 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date of issuance of the Required Amendments List in which the change in qualification requirements appears.

.07 This revenue procedure does not provide relief from the requirements of § 411(d)(6) for any plan amendments, including plan amendments adopted as a result of changes to the qualification requirements. Except to the extent permitted under § 411(d)(6) and the regulations thereunder, or under a statutory provision, § 411(d)(6) prohibits a plan amendment that decreases a participant's accrued benefits or that has the effect of eliminating or reducing an early retirement benefit or retirement-type subsidy, or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment. However, an amendment that eliminates or decreases benefits that have not yet accrued does not violate § 411(d)(6), provided the amendment is adopted and effective before the benefits accrue.

## SECTION 6. EXTENDED REMEDIAL AMENDMENT PERIOD TRANSITION RULE FOR INDIVIDUALLY DESIGNED PLANS

Section 5.03 of Rev. Proc. 2007-44 extends the remedial amendment period for certain disqualifying provisions under § 401(b) (including provisions designated in Rev.

Proc. 2007-44 as disqualifying provisions) to the end of a plan's applicable remedial amendment cycle. As a result of the elimination of the five-year remedial amendment cycle system for individually designed plans, the extended remedial amendment period provided in section 5.03 of Rev. Proc. 2007-44 will expire December 31, 2016. However, pursuant to this revenue procedure, the remedial amendment period is extended to December 31, 2017, for disqualifying provisions for which, as of January 1, 2017, the remedial amendment period under section 5.03 of Rev. Proc. 2007-44 has not expired. The extension provided in this section 6 does not apply to disqualifying provisions set forth on the 2016 Required Amendments List. See section 5.05(3) of this revenue procedure, which provides that the remedial amendment period for a disqualifying provision set forth on a Required Amendments List is extended to the end of the second calendar year that begins after the issuance of the Required Amendments List in which such provision appears. See also section 9 of this revenue procedure for a description of the Required Amendments List .

## SECTION 7. TERMINATING PLANS

Notwithstanding sections 5 and 6 of this revenue procedure, the termination of a plan ends the plan's remedial amendment period and, thus, generally will shorten the remedial amendment period for the plan. Accordingly, any retroactive remedial plan amendments or other required plan amendments for a terminating plan (that is, plan amendments required to be adopted to reflect qualification requirements that apply as of the date of termination) must be adopted in connection with the plan termination regardless of whether such requirements are included on a Required Amendments List.

## SECTION 8. PLAN AMENDMENT DEADLINE

.01 With respect to a disqualifying provision described in section 5 of this revenue procedure, except as otherwise provided by statute, or in regulations or other guidance published in the Internal Revenue Bulletin, the plan amendment deadline is the date on which the remedial amendment period with respect to such disqualifying provision expires. See sections 5.05 and 5.06 of this revenue procedure for the determination of the applicable remedial amendment period.

.02 With respect to a discretionary amendment (that is, an amendment that is not made with respect to a disqualifying provision), except as otherwise provided by statute, or in regulations or other guidance published in the Internal Revenue Bulletin, the plan amendment deadline is the date described in paragraph (1) or (2) of this section 8.02, as applicable.

(1) In the case of a discretionary amendment to a plan other than a governmental plan within the meaning of § 414(d), the plan amendment deadline is the end of the plan year in which the plan amendment is operationally put into effect. An amendment is operationally put into effect when the plan is administered in a manner consistent with the intended plan amendment (rather than existing plan terms). For example, the deadline for adopting a discretionary amendment with respect to a

calendar year plan that increases participants' accrued benefits and is operationally put into effect during 2018 is December 31, 2018. As another example, the deadline for adopting a discretionary amendment with respect to a calendar year plan that is operationally put into effect during 2018 to provide a new right or benefit as of January 1, 2011, with respect to participants with same-sex spouses is December 31, 2018. See Notice 2015-86, 2015-52 I.R.B. 887, Q&A-5.

(2) In the case of a discretionary amendment to a governmental plan within the meaning of § 414(d), the plan amendment deadline is the later of: (i) the end of the plan year in which the plan amendment is operationally put into effect; or (ii) 90 days after the close of the second regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date the plan amendment is operationally put into effect.

## SECTION 9. REQUIRED AMENDMENTS LIST

.01 Treasury and the IRS intend to publish annually a Required Amendments List that generally applies to changes in qualification requirements that become effective on or after January 1, 2016. The Required Amendments List establishes the date that the remedial amendment period expires for changes in qualification requirements contained on the list, as described in section 5.03 of this revenue procedure. See also section 12 of this revenue procedure, which describes the scope of review by the IRS of a plan submitted for a determination letter.

.02 In general, an item will be included on a Required Amendments List after guidance with respect to such item (including any model amendment) has been provided in regulations or in other guidance published in the Internal Revenue Bulletin. However, in the discretion of the IRS, an item may be included on a Required Amendments List in other circumstances, such as when a statutory change is enacted and it is anticipated that no guidance will be issued.

## SECTION 10. OPERATIONAL COMPLIANCE LIST

The remedial amendment period permits a plan to be amended retroactively to comply with a change in plan qualification requirements; however, a plan must be operated in compliance with a change in qualification requirements from the effective date of the change. To assist plan sponsors in achieving operational compliance, the IRS intends to provide annually an Operational Compliance List to identify changes in qualification requirements that are effective during a calendar year. In order to be qualified, however, a plan must comply operationally with each relevant qualification requirement, even if the requirement is not included on an Operational Compliance List.

## SECTION 11. EXAMPLES

Examples 1 through 7 illustrate the extended remedial amendment period for new plans, amendments made to existing plans that are not made as a result of

changes in qualification requirements, and amendments to existing plans that are made as a result of changes in qualification requirements. In each of these examples, assume that the plan is an individually designed plan that is intended to be qualified under § 401(a) and that the plan amendments meet the requirements of § 411(d)(6).

Example 1: Remedial amendment period for a new plan. Employer A, which is not a tax exempt employer, adopts a new individually designed plan, Plan M, on July 1, 2017. Plan M is effective January 1, 2017. Plan M's plan year and Employer A's tax year are the calendar year. Plan M contains a provision that does not satisfy the qualification requirements (a disqualifying provision under § 401(b)). Employer A discovers the disqualifying provision in February 2018. Pursuant to section 5.05(1) of this revenue procedure, the remedial amendment period for this disqualifying provision is extended to the later of (i) October 15, 2018 (the 15th day of the 10th calendar month after the end of the plan's initial plan year), or (ii) the modified § 401(b) expiration date. The modified § 401(b) expiration date is the later of September 15, 2018 (the due date for filing Employer A's tax return plus extensions) and the last day of the plan year in which the plan is put into effect (December 31, 2017). Thus, Employer A must correct the disqualifying provision in Plan M by October 15, 2018, retroactively effective beginning January 1, 2017, in order for Plan M to be qualified, and must correct Plan M's operation to the extent necessary to reflect the corrective amendment.

Example 2: Determination letter application filed for a new plan. The facts are the same as in Example 1, except that, instead of Employer A identifying the disqualifying provision, Employer A files a determination letter application and the IRS discovers the error. If Employer A submits Plan M for a determination letter by October 15, 2018, then, pursuant to § 1.401(b)-1(e)(3), Employer A would have until 91 days after the date a favorable determination letter is issued with respect to Plan M to adopt an amendment that corrects the disqualifying provision retroactively effective beginning January 1, 2017 (the effective date of Plan M). To maintain plan qualification, Employer A must correct Plan M's operation to the extent necessary to reflect the corrective amendment.

Example 3: Remedial amendment period for amendment to an existing plan. Employer B maintains Plan N, an individually designed plan. In 2014, the IRS issued a determination letter for Plan N. On January 1, 2018, Employer B adopts and makes effective an amendment to Plan N's vesting schedule. This amendment causes Plan N to fail to satisfy the requirements of the Code. Pursuant to section 5.05(2) of this revenue procedure, a remedial amendment to correct this disqualifying provision generally must be adopted by December 31, 2020, the end of the second calendar year following the calendar year in which the amendment is adopted or effective (whichever is later). The remedial amendment must be retroactively effective beginning January 1, 2018, the date the earlier plan amendment was effective, in order for Plan N to be qualified. Also, to maintain plan qualification, Employer B must correct Plan N's operation to the extent necessary to reflect the corrective amendment.

Example 4: Remedial amendment period for a change in qualification requirements. Employer C maintains Plan O, an individually designed plan. In July 2016, guidance is published in the Internal Revenue Bulletin that would require an amendment to Employer C's plan in order to retain the plan's qualification. The guidance is effective in 2017. The guidance is included on the 2017 Required Amendments List. Pursuant to section 5.05(3) of this revenue procedure, the remedial amendment period for items identified on the 2017 Required Amendments List expires December 31, 2019, the end of the second calendar year that begins after the issuance of the Required Amendments List in which the guidance appears; therefore, the expiration of the remedial amendment period for the disqualifying provision in Plan O is December 31, 2019. The plan amendment deadline for the change in qualification requirements is also December 31, 2019, pursuant to section 8.01 of this revenue procedure.

Example 5: Correction of amendment made due to a change in qualification requirements. Employer D maintains Plan P, an individually designed plan. In 2015, the IRS issued a determination letter for Plan P. On April 1, 2018, Employer D amends Plan P based on a change in a qualification requirement that was identified on the 2017 Required Amendments List. This amendment was effective January 1, 2017. Pursuant to section 5.05(3) of this revenue procedure, the remedial amendment period for the change in qualification requirements expires December 31, 2019, the end of the second calendar year that begins after the issuance of the Required Amendments List in which the change in qualification requirements was identified. In October 2019, Employer D discovers the amendment does not satisfy the qualification requirements of the Code; therefore, Plan P still contains a disqualifying provision. To maintain plan qualification, Employer D must correct the disqualifying provision in Plan P by amending the plan not later than December 31, 2019, retroactively effective beginning January 1, 2017, and must correct Plan P's operation to the extent necessary to reflect the corrective amendment.

Example 6: Governmental Plans - remedial amendment period for a change in qualification requirements. State E maintains Plan Q, a governmental plan within the meaning of § 414(d). In September 2015, the IRS issued a determination letter for Plan Q. The legislature of State E annually convenes January 4 and adjourns March 31. On March 1, 2020, the legislature of State E amends Plan Q based on a change in a qualification requirement that was identified on the 2018 Required Amendments List. This amendment is effective January 1, 2020. In January 2021, State E discovers the amendment created a disqualifying provision. Generally, pursuant to section 5.06(3), the legislature of State E has until the later of (i) December 31, 2020 (which is the end of the second calendar year that begins after the issuance of the Required Amendments List in which the change in qualification requirements was identified), or (ii) June 29, 2021 (which is 90 days after the close of the third regular legislative session of the legislative body of State E that began on or after the date of the issuance of the 2018 Required Amendments List) to amend Plan Q, retroactively effective beginning January 1, 2020, to correct the disqualifying provision in order for Plan Q to be qualified.

To maintain plan qualification, State E must also correct Plan Q's operation to the extent necessary to reflect the corrective amendment.

Example 7: Extended remedial amendment period transition rule. Employer F maintains Plan R, an individually designed plan. Plan R's plan year is the calendar year. Under Rev. Proc. 2007-44, section 9.03, Plan R's cycle is Cycle B. Employer F submitted Plan R for a determination letter during the Cycle B submission period for the second five-year remedial amendment cycle (February 1, 2012 – January 31, 2013) and received a determination letter in July, 2014. In October 2014, Employer F adopted a timely interim amendment, in accordance with section 5.04 and 5.05 of Rev. Proc. 2007-44, for a change in qualification requirements identified on the 2013 Cumulative List of Changes (Notice 2013-84, 2013-52 I.R.B. 82). Because Employer F adopted a timely amendment for the change in qualification requirements, the remedial amendment period for the change was extended to the end of the third Cycle B remedial amendment cycle (January 31, 2018) pursuant to section 5.03 of Rev. Proc. 2007-44.

On January 1, 2017, the five-year remedial amendment cycle system will be eliminated. As a result, the remedial amendment period under Rev. Proc. 2007-44 for the change in qualification requirements for Plan R would not extend beyond December 31, 2016. However, pursuant to the extended remedial amendment period transition rule in section 6 of this revenue procedure, the expiration of the remedial amendment period is extended to December 31, 2017, with respect to any disqualifying provision for which, as of January 1, 2016, the remedial amendment period (as extended by Rev. Proc. 2007-44) has not expired. Thus, Plan R's extended remedial amendment period for the change in qualification requirements identified on the 2013 Cumulative List will expire December 31, 2017.

## SECTION 12. SCOPE OF PLAN REVIEW

With respect to individually designed plans for which a determination letter application is submitted, the IRS review will be based on the Required Amendments List that was issued during the second calendar year preceding the submission of the determination letter application. For example, with respect to a plan submitted for a determination letter during the calendar year beginning January 1, 2020, the IRS's review will be based on the Required Amendments List that was issued in 2018, regardless of the fact that the plan otherwise would not be required to be amended for items on the 2018 Required Amendments List until December 31, 2020. The review will also take into account all previously issued Required Amendments Lists (and Cumulative Lists issued prior to 2016). Terminating plans will be reviewed for amendments required to be adopted in connection with plan termination (see section 7 of this revenue procedure). Plans submitted for initial qualification during the 2017 calendar year will be reviewed based on the 2015 Cumulative List (Notice 2015-84). With the exception of a terminating plan, an individually designed plan must be restated to incorporate all previously adopted amendments into the plan document when a determination letter application is submitted.

## SECTION 13. RELIANCE ON DETERMINATION LETTERS

.01 Rev. Proc. 2016-6 provides that, effective as of January 4, 2016, determination letters issued to individually designed plans will no longer contain an expiration date.

.02 Under this revenue procedure, expiration dates included in determination letters issued prior to January 4, 2016, are no longer operative.

.03 In general, a plan sponsor that maintains a qualified plan for which a favorable determination letter has been issued and that is otherwise entitled to rely on the determination letter may not continue to rely on the determination letter with respect to a plan provision that is subsequently amended or that is subsequently affected by a change in law. However, a plan sponsor may continue to rely on a determination letter with respect to plan provisions that are not amended or affected by a change in law. Reliance on determination letters is discussed in section 13 of Rev. Proc. 2016-4, 2016-1 I.R.B. 142 (updated annually) and section 21.01 of Rev. Proc. 2016-6, 2016-1 I.R.B. 200 (updated annually).

## PART III – PRE-APPROVED PLANS

### SECTION 14. SIX-YEAR REMEDIAL AMENDMENT CYCLE SYSTEM FOR PRE-APPROVED PLANS

.01 Under this revenue procedure, every pre-approved plan (that is, every M&P and VS plan) generally has a regular, six-year remedial amendment cycle. As a result, M&P sponsors and VS practitioners (including mass submitters), as defined in Rev. Proc. 2015-36, may apply for new opinion or advisory letters once every six years. Employers that adopt such pre-approved plans generally are on the same six-year remedial amendment cycle with respect to their plans, and, if otherwise eligible under section 20.03 of this revenue procedure and section 8 of Rev. Proc. 2016-6 (updated annually), may apply for determination letters once every six years. However, pre-approved defined contribution plans have different six-year remedial amendment cycles than pre-approved defined benefit plans. Thus, the same six-year remedial amendment cycle applies with respect to all pre-approved defined contribution plans, and a separate six-year remedial amendment cycle applies with respect to all pre-approved defined benefit plans.

.02 M&P sponsors and VS practitioners generally have until January 31st of the calendar year following the opening of the six-year remedial amendment cycle to submit applications for opinion and advisory letters. In addition, generally, the deadline for word-for-word identical adopters and minor modifier placeholder applications is January 31st of the calendar year following the opening of the six-year remedial amendment cycle (see section 12 of Rev. Proc. 2015-36 for more details). However, see section 16 of this revenue procedure, which modifies the dates of the submission

period for pre-approved defined contribution plans during the third six-year remedial amendment cycle.

.03 When the review of a cycle for pre-approved plans has neared completion (after approximately a two-year review process), the IRS intends to announce the date by which adopting employers must adopt the newly approved plans. This is expected to be a uniform date that will apply to all adopting employers. Depending upon the length of the review process, it is expected that this deadline will provide virtually all employers approximately a two-year window to adopt their updated plans. An employer that adopts the approved M&P or VS plan by the announced deadline will have adopted the plan within the employer's six-year remedial amendment cycle. The announced deadline will be the end of the plan's remedial amendment cycle for all disqualifying provisions for which the remedial amendment period would otherwise end during the cycle. For purposes of this revenue procedure, an adopting employer means an employer that satisfies the requirements described in section 19 of this revenue procedure.

#### SECTION 15. EXTENSION OF THE REMEDIAL AMENDMENT PERIOD AND DEADLINES FOR THE ADOPTION OF INTERIM AND DISCRETIONARY PLAN AMENDMENTS FOR PRE-APPROVED PLANS

.01 To promote compliance during the six-year remedial amendment cycle with statutory or regulatory changes with respect to plan qualification requirements that will affect provisions of the written plan document, the adoption of an interim amendment generally will be required.

.02 An amendment with respect to a disqualifying provision described in section 5.03 of this revenue procedure (that is, a disqualifying provision that results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements that is effective after December 31, 2001,<sup>2</sup> or that is integral to such disqualifying provision) is referred to as an interim amendment for purposes of this revenue procedure.

.03 Except as otherwise provided by statute, or in regulations or other guidance published in the Internal Revenue Bulletin, the remedial amendment period for the disqualifying provisions described in this section 15.03 is extended as follows:

(1) The remedial amendment period for any disqualifying provision described in § 1.401(b)-1(b)(1) that would otherwise apply under § 1.401(b)-1 is extended to the end of the applicable remedial amendment cycle described in section 16 that includes the date on which the remedial amendment period would otherwise end if the

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<sup>2</sup> As provided in section 5.01 of Rev. Proc. 2007-44, December 31, 2001, was the date after which all changes in qualification requirements were designated as disqualifying provisions by the Commissioner in order for the changes to be eligible for the remedial amendment period available with respect to disqualifying provisions.

disqualifying provision was a provision of, or absence of a provision from, a new plan and the plan was intended, in good faith, to be qualified. The same extension of the remedial amendment period applies to a disqualifying provision (including a disqualifying provision described in section 15.02) in the case of an adoption of an amendment to an existing plan (without regard to whether that amendment was required to be adopted) if the amendment was adopted timely and in good faith with the intent of maintaining the qualified status of the plan. However, the remedial amendment period for a disqualifying provision will not end before the last day of a plan's first applicable remedial amendment cycle in which an application for an opinion or advisory letter that considers the disqualifying provision may be submitted. The IRS will make the final determination in all cases as to whether a new plan or an amendment to an existing plan was adopted with the good faith intention of being qualified or maintaining qualified status.

(2) In addition, the extension of the remedial amendment period described in section 15.03(1) applies to a disqualifying provision described in section 15.02 in cases in which the employer (or M&P sponsor or VS practitioner, if applicable) reasonably and in good faith determines during the period when an interim amendment to reflect a qualification change would otherwise be required under section 15.01 that no amendment is required because the qualification change does not impact provisions of the written plan document. Thus, for example, if an employer (or M&P sponsor or VS practitioner, if applicable) makes such a determination and the IRS finds that an amendment is required, the plan would still be eligible for the six-year remedial amendment cycle to correct the disqualifying provisions described in section 15.02. The IRS will make the final determination in all cases as to whether the determination that no interim amendment was required was reasonable and in good faith.

(3) Notwithstanding paragraphs (1) and (2) of this section 15.03, the termination of a plan ends the plan's remedial amendment period and, thus, generally will shorten the remedial amendment period for the plan.

.04 Except as otherwise provided in sections 15.05 and 15.06 of this revenue procedure, the deadline for the timely adoption of an amendment for any pre-approved plan is determined as follows:

(1) In the case of an interim amendment, an employer (or a M&P sponsor or VS practitioner, if applicable) is considered to have timely adopted the amendment if the plan amendment is adopted by the end of the remedial amendment period described in § 1.401(b)-1(b)(3) (determined without regard to the extension under section 15.03 of this revenue procedure). See section 2.07 of this revenue procedure.

(2) In the case of a discretionary amendment (that is, one that is not an interim amendment described in section 15.02), an employer (or a M&P sponsor or VS practitioner, if applicable) is considered to have adopted the amendment timely if the plan amendment is adopted by the end of the plan year in which the plan amendment is

operationally put into effect. See section 8.02(1) of this revenue procedure for examples illustrating this deadline.

.05 Exceptions to section 15.04 amendment adoption deadlines.

Section 15.04 of this revenue procedure applies unless a statutory provision or guidance issued by the IRS sets forth an earlier deadline to timely adopt a discretionary amendment with respect to a plan year (for example, an amendment to add a qualified cash or deferred arrangement to a profit sharing plan cannot be adopted retroactively) or if a statutory provision or guidance provides another specific deadline for the adoption of a particular type of interim amendment that is earlier or later than the deadlines under section 15.04.

.06 Special deadlines for governmental and tax exempt employers.

(1) Governmental plans.

(a) For a governmental plan within the meaning of § 414(d), the adoption deadline for interim amendments is: the later of (i) the deadline that would apply under the rules of section 15.04(1), or (ii) 90 days after the close of the third regular legislative session of the legislative body with authority to amend the plan that begins on or after the date the amendment becomes effective.

(b) For a governmental plan within the meaning of § 414(d), the adoption deadline for discretionary amendments is: the later of (i) the deadline that would apply under the rules of section 15.04(2), or (ii) 90 days after the close of the second regular legislative session of the legislative body with authority to amend the plan that begins on or after the date the amendment becomes effective.

(2) Tax exempt employers. For a tax exempt employer, the adoption deadline for interim amendments set forth in section 15.04(1) and 15.05 of this revenue procedure applies, as modified in this section 15.06(2). For purposes of determining the applicable tax filing deadline, the following rule is used to determine the due date (including extensions) for filing the income tax return for the employer's taxable year under section 2.07 of this revenue procedure. The due date for filing the employer's tax return in the case of a tax exempt employer that files Form 990-T (or Form 990 or Form 990-EZ if no Form 990-T is filed) is the later of (i) the 15th day of the 10th month after the end of the employer's tax year (treating the calendar year as the tax year if the employer does not have a tax year) or (ii) the due date for filing the Form 990 series (plus extensions). For this purpose, an employer is not treated as having obtained an extension of time for filing the Form 990 series unless such extension is actually applied for and granted. The due date for filing the employer's tax return in the case of a tax exempt employer that is not required to file a Form 990 series return is the 15th day of the 10th month after the end of the employer's tax year (treating the calendar year as the tax year if the employer does not have a tax year).

.07 For purposes of this revenue procedure, a pre-approved plan restatement that generally is effective as of a certain date should not be treated as superseding a previously adopted interim plan amendment that is effective before or after the restatement's effective date and that has not been incorporated or reflected in the restatement, provided that the pre-approved plan is operated in a manner consistent with the interim plan amendment. A plan is presumed to be operating in compliance with the interim plan amendments in any case in which the operation of the plan cannot be determined.

**SECTION 16. SCHEDULES FOR THE SECOND AND THIRD SIX-YEAR REMEDIAL AMENDMENT CYCLES**

.01 The table in this section 16 sets forth the schedules for the second and third six-year remedial amendment cycles for pre-approved defined contribution and defined benefit plans. Subsequent cycles will continue on six year intervals.

Schedule(s) of Second and Third Six-Year Remedial Amendment Cycles		
If the plan is -	The second six-year remedial amendment cycle began on -	And ends on -
Defined Contribution	February 1, 2011	January 31, 2017
Defined Benefit	February 1, 2013	January 31, 2019
If the plan is -	The third six-year remedial amendment cycle begins on -	And ends on -
Defined Contribution	February 1, 2017	January 31, 2023
Defined Benefit	February 1, 2019	January 31, 2025

.02 In general, sponsors of M&P plans and practitioners maintaining VS plans must apply for new opinion or advisory letters for the plans every six years. The submission period for pre-approved defined contribution plans during the third six-year remedial amendment cycle would ordinarily begin February 1, 2017, and end January 31, 2018 (on-cycle submission period). However, pursuant to this section 16.02, the on-cycle submission period for M&P sponsors and VS practitioners to submit pre-approved defined contribution plans for opinion or advisory letters during the third six-year remedial amendment cycle will begin August 1, 2017, and end July 31, 2018.

.03 If necessary, the IRS may revise the schedules described in this section 16 to respond to changing circumstances and the needs of plan sponsors. The IRS will announce any such revisions and the timing of the submission periods within each cycle in future guidance published in the Internal Revenue Bulletin.

**SECTION 17. CUMULATIVE LISTS OF CHANGES IN PLAN QUALIFICATION REQUIREMENTS; OPERATIONAL COMPLIANCE LIST**

.01 The IRS intends to publish Cumulative Lists of Changes in Plan Qualification Requirements (Cumulative Lists) for pre-approved plans. The Cumulative Lists are intended to identify all changes in the qualification requirements that are required to be taken into account in the written plan document that is submitted to the IRS for an opinion, advisory, or determination letter, as applicable. The IRS currently anticipates that a Cumulative List will be issued in the year preceding the year in which the pre-approved defined contribution plan or defined benefit plan submission period begins. The target date for publication of a Cumulative List is December of such year.

.02 Each Cumulative List identifies changes in the qualification requirements of the Code as well as items of published guidance relating to the plan qualification requirements, such as regulations and revenue rulings, that will be considered by the IRS in its review of plans whose pre-approved plan submission period begins on the February 1st (or other date determined under section 16.02 or 16.03, as applicable) following issuance of the Cumulative List.

.03 Except as provided in the applicable Cumulative List, the IRS generally will not consider in its review of any opinion, advisory, or determination letter application any:

(1) guidance issued after the October 1 immediately preceding the date the applicable Cumulative List is issued;

(2) statutes enacted after the October 1 immediately preceding the date the applicable Cumulative List is issued;

(3) statutes that are first effective in the year in which the submission period begins for which there is no guidance identified on the applicable Cumulative List (regardless of when they are enacted); or

(4) qualification requirements (either statutory or regulatory) that become effective for the plan in a calendar year after the calendar year in which the submission period begins, regardless of when the qualification requirements are enacted or issued (for example, qualification requirements first effective in 2018, for applications submitted during the period beginning August 1, 2017, based on the 2016 Cumulative List).

.04 The IRS will, however, consider in its review of any opinion, advisory, or determination letter application all qualification requirements that are not described in section 17.03(1) through (4) of this revenue procedure. Thus, for example, a determination letter may be relied on with respect to guidance issued on or before the October 1st preceding the issuance of the applicable Cumulative List and which is effective during the calendar year in which the submission period begins, whether or not identified on the applicable Cumulative List.

In addition, in the case of a terminating plan, any retroactive remedial plan amendments or other required plan amendments (that is, plan amendments required to

be adopted to reflect qualification requirements that apply as of the date of termination) must be adopted in connection with the plan termination regardless of whether such requirements are included on an applicable Cumulative List.

.05 The remedial amendment period permits a plan to be amended retroactively to comply with a change in plan qualification requirements; however, a plan must be operated in compliance with a change in qualification requirements from the effective date of the change. To assist plan sponsors in achieving operational compliance, the IRS intends to provide annually an Operational Compliance List to identify changes in qualification requirements that are effective during a calendar year. In order to be qualified, however, a plan must comply operationally with each relevant qualification requirement, even if the requirement is not included on an Operational Compliance List.

#### SECTION 18. EXTENSION OF DEADLINE FOR AN EMPLOYER TO ADOPT A NEWLY APPROVED PRE-APPROVED DEFINED CONTRIBUTION PLAN AND TO APPLY FOR A DETERMINATION LETTER (IF APPLICABLE)

.01 Consistent with Notice 2016-03, except as provided in section 18.02 of this revenue procedure, the deadline for an employer to adopt a newly approved pre-approved defined contribution plan that was based on the 2010 Cumulative List, and to apply for a determination letter, is extended from April 30, 2016, to April 30, 2017, for any newly approved pre-approved defined contribution plan adopted on or after January 1, 2016. For plans eligible for this extension, the procedures for adopting a pre-approved plan and for filing a determination letter set forth in Rev. Proc. 2016-6 and Rev. Proc. 2007-44 will continue to apply. Thus, for example, in the case of an employer eligible for this extension that is adopting a newly approved pre-approved defined contribution plan as a modification and restatement of an individually designed plan, the rules relating to the scope of the determination letter program set forth in section 4 of this revenue procedure do not apply, and the employer is permitted, until April 30, 2017, to file a determination letter application for the plan on a Form 5307 (*Application for Determination for Adopters of Modified Volume Submitter Plans*) or a Form 5300 (*Application for Determination for Employee Benefit Plan*), regardless of whether the employer had previously filed a Form 5300 with respect to the plan.

.02 For an employer that adopted a pre-approved defined contribution plan prior to January 1, 2016, the deadline to adopt a modification and restatement of the pre-approved defined contribution plan within the current six-year remedial amendment cycle for defined contribution plans and to apply for a determination letter, if permissible, was April 30, 2016.

#### .03 Examples.

Examples 8 through 10 illustrate the deadline for an employer to adopt a pre-approved defined contribution plan and to apply for a determination letter, if permissible.

Example 8: Extended deadline for employer with an existing individually designed plan. As of June 30, 2016, Employer A maintains Plan X, an individually designed defined contribution plan. Employer A is considering converting Plan X into a pre-approved defined contribution plan. Employer A has until April 30, 2017, to adopt a newly approved pre-approved defined contribution plan within the current six-year remedial amendment cycle for defined contribution plans and to apply for a determination letter, if permissible.

Example 9: Extended deadline for employer with a new individually designed plan. Employer B adopts Plan Y, an individually designed defined contribution plan, on January 1, 2016. Employer B is considering converting Plan Y into a pre-approved defined contribution plan. Employer B has until April 30, 2017, to adopt a newly approved pre-approved defined contribution plan within the current six-year remedial amendment cycle for defined contribution plans and to apply for a determination letter, if permissible.

Example 10: Existing deadline for employer that adopted a pre-approved defined contribution plan prior to January 1, 2016. On April 1, 2010, Employer C initially adopted the VS defined contribution plan of Practitioner Z, which was approved based on the 2004 Cumulative List. On January 15, 2016, Employer C adopted the newly approved VS defined contribution plan of Practitioner Z as a modification and restatement of Employer C's existing VS defined contribution plan. The deadline for Employer C to apply for a determination letter, if permissible, was April 30, 2016. The same deadline would apply if Employer C had adopted a plan of a different VS practitioner.

## SECTION 19. ELIGIBILITY FOR SIX-YEAR REMEDIAL AMENDMENT CYCLE SYSTEM

.01 An employer's plan is treated as a pre-approved plan and therefore eligible for a six-year remedial amendment cycle system if the employer is:

- (1) a prior adopter described in section 19.02; or
- (2) a new adopter described in section 19.03.

.02 An employer is a prior adopter if the employer adopted and made effective an existing pre-approved plan, as described in section 19.05(1) of this revenue procedure, during the six-year remedial amendment cycle immediately preceding the opening of the current six-year cycle<sup>3</sup>, and the employer, within the announced adoption period described in section 14.03 of this revenue procedure, either:

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<sup>3</sup> The current six year remedial amendment cycle as of the date of publication of this revenue procedure began on February 1, 2011, for defined contribution plans and February 1, 2013, for defined benefit plans. The immediately preceding six year remedial amendment cycle ended on January 31, 2011, for defined contribution plans and January 31, 2013, for defined benefit plans.

(1) adopts the newly approved version of that pre-approved plan; or

(2) adopts the newly approved version of a different pre-approved plan maintained by either the same M&P sponsor or VS practitioner or a different M&P sponsor or VS practitioner. See section 19.05(3) of this revenue procedure for the definition of a newly approved pre-approved plan.

.03 An employer is a new adopter if the employer adopts a pre-approved plan and the employer is not a prior adopter.

.04 An employer may adopt a pre-approved plan at any time during a six-year remedial amendment cycle; however, if the employer adopts an existing pre-approved plan described in section 19.05(1) of this revenue procedure, or an interim pre-approved plan described in section 19.05(2) of this revenue procedure, it must adopt either the newly approved version of the same plan or a newly approved version of a different pre-approved plan by the end of the adoption period described in section 14.03 of this revenue procedure (see section 19.05(3) of this revenue procedure for the definition of a newly approved pre-approved plan). An employer that adopts an existing pre-approved plan or an interim pre-approved plan, but during the adoption period described in section 14.03 of this revenue procedure, adopts a plan other than a newly approved version of a pre-approved plan, will not be treated as adopting a pre-approved plan. In such case, the plan remains eligible for the current six-year remedial amendment cycle; however, if the plan is submitted for a determination letter (as permitted under section 20.03 of this revenue procedure), the plan will be reviewed on the basis of the applicable Required Amendments List as provided in section 12 of this revenue procedure.

.05 For purposes of this section 19:

(1) An existing pre-approved plan is a plan (other than a newly approved plan, as described in section 19.05(3) of this revenue procedure) that has received a valid opinion or advisory letter for the six-year remedial amendment cycle immediately preceding the opening of the current six-year remedial amendment cycle. For purposes of this definition, a plan is considered an existing pre-approved plan whether or not interim or discretionary amendments have been integrated into the pre-approved plan document.

(2) An interim pre-approved plan is a plan (other than a newly approved plan) that was not in existence in the immediately preceding six-year remedial amendment cycle and that has been or will be submitted for an opinion or advisory letter during the current six-year remedial amendment cycle. For purposes of this definition, a plan is considered an interim pre-approved plan whether or not interim or discretionary amendments have been integrated into the pre-approved plan.

(3) A newly approved plan is a pre-approved plan for which an opinion or advisory letter has been issued in the current six-year remedial amendment cycle.<sup>4</sup>

#### .06 Examples.

Examples 11 through 14 illustrate an employer's eligibility for the six-year remedial amendment cycle. In the following examples, both the tax year of the employer and the plan year are the calendar year and, except as otherwise provided, the plan has been operated in accordance with plan terms, including any interim and discretionary amendments.

Example 11: Adoption of plan maintained by different sponsor. Employer L adopted and made effective Plan X on January 1, 2011. Plan X is an existing pre-approved M&P defined contribution plan sponsored by Sponsor M. Plan Y is also a defined contribution M&P plan but sponsored by Sponsor N, which timely submitted an application by April 2, 2012 (the extended deadline to submit on-cycle applications for opinion and advisory letters for pre-approved defined contribution plans for the second six-year remedial amendment cycle, as provided in Announcement 2012-3). In Announcement 2014-16, the IRS announced that May 1, 2014 through April 30, 2016 would be the two-year window for employers to adopt newly approved pre-approved plans and file determination letters, if applicable.

Sponsor M notified Employer L that it no longer qualified as a sponsor because it did not have the requisite number of employers (30) reasonably expected to adopt Plan X. Therefore, Sponsor M did not submit a new opinion letter application for Plan X within the six-year remedial amendment cycle by April 2, 2012. Employer L timely adopts Plan Y of Sponsor N within the two-year window period (May 1, 2014 through April 30, 2016). Employer L will be considered to be a "prior adopter" within the meaning of section 19.02 of this revenue procedure and is eligible for the six-year remedial amendment cycle. The result would be the same whether Employer L switched to Plan Y because Sponsor M did not timely submit an application by April 2, 2012, for Plan X, Sponsor M timely submitted an application by April 2, 2012 but later withdrew the application, or Employer L chose not to retain the plan of Sponsor M for other reasons.

Example 12: Adoption of different plan offered by same sponsor. The facts are the same as in Example 11 except Employer L adopts Plan Z, a different pre-approved M&P defined contribution plan sponsored by Sponsor M, within the announced two-year window period and Sponsor M timely submitted an application for an opinion letter by April 2, 2012 for Plan Z. Employer L is considered to be a prior adopter and is eligible for the six-year remedial amendment cycle.

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<sup>4</sup> See section 21 of this revenue procedure for special rules applicable to an opinion or advisory letter application for a new pre-approved plan created after the submission period for the applicable six-year cycle.

Example 13: Adoption of VS plan in place of M&P plan. The facts are the same as in Example 11 except Employer L adopts Plan V, a VS defined contribution plan instead of an approved M&P plan, within the announced two-year window period and the practitioner timely submitted an application for an advisory letter for Plan V by April 2, 2012. Employer L is considered to be a prior adopter and is eligible for the six-year remedial amendment cycle.

Example 14: Adoption of plan by new adopter. Employer P has never maintained a qualified plan. Sponsor S timely submitted an application for an opinion letter for Plan Y, an interim pre-approved defined contribution M&P plan (that was not in existence in the immediately preceding six-year remedial amendment cycle), by April 2, 2012. Employer P adopted the interim pre-approved plan document of Plan Y on December 15, 2012, prior to the announced adoption period (May 1, 2014 through April 30, 2016). On March 28, 2014, the IRS issued a favorable opinion letter for Plan Y. Employer P adopted the newly approved version of Plan Y on June 1, 2014, during the announced adoption period. Employer P is a new adopter and is eligible for the six-year remedial amendment cycle.

## SECTION 20. EFFECT OF EMPLOYER AMENDMENTS ON SIX-YEAR REMEDIAL AMENDMENT CYCLE

.01 General rule. An employer that amends any provision of an approved M&P plan, including its adoption agreement (other than to change the choice of options, if the plan or adoption agreement permits or contemplates such a change), or an employer that amends provisions of a VS plan loses reliance on the opinion or advisory letter issued to the M&P sponsor or VS practitioner; however, except as provided in section 20.02 of this revenue procedure, the employer's plan will remain on the current six-year remedial amendment cycle. The employer's plan may be eligible for the six-year remedial amendment cycle that follows the current six-year remedial amendment cycle if the employer's plan satisfies the conditions set forth in section 19.01 of this revenue procedure. See section 20.03 of this revenue procedure for procedures for filing a determination application to obtain continued reliance.

.02 Ineligibility for Six-Year Remedial Amendment Cycle. A plan is ineligible for the six-year remedial amendment cycle if the employer:

(1) amends an approved M&P plan, including its adoption agreement, to incorporate, within one year of the date the employer initially adopted the M&P plan, a type of plan not allowed in the M&P program (see section 6.03 of Rev. Proc. 2015-36); or

(2) amends an approved VS plan, including its adoption agreement, if applicable, to incorporate, within one year of the date the employer initially adopted the VS plan, a type of plan not allowed in the VS program (see section 16.03 of Rev. Proc. 2015-36).

.03 Determination letter procedures.

(1) An employer that amends a M&P or VS plan loses reliance on the opinion or advisory letter of the M&P or VS plan. However, to the extent permitted in this section 20.03(2) through (5), that employer may file a determination letter application for the plan to obtain reliance. See also, Rev. Proc. 2016-6, section 8.01 (updated annually).

(2) An adopting employer described in section 20.03(1) that modifies the terms of an approved VS plan in situations in which the modifications are not extensive may apply for a determination letter on Form 5307, regardless of whether a prior determination letter has been issued with respect to the plan.

(3) An adopting employer described in section 20.03(1) that makes extensive modifications to an approved VS plan and an adopting employer that makes any modifications to an approved M&P plan may apply for a determination letter on Form 5300. An employer may submit a determination letter application on a Form 5300 only if the application is made upon initial qualification, plan termination, or in other circumstances identified by the IRS. See section 4 of this revenue procedure and Rev. Proc. 2016-6, section 8.01 (updated annually). For this purpose, an employer that previously filed an application on Form 5300 or Form 5307 with respect to the plan and was issued a favorable determination letter is not eligible to file a Form 5300 for initial plan qualification.

(4) Subject to section 20.03(5), an adopting employer described in section 20.03(2) or (3) that files a determination letter application for the plan must file the application within the announced adoption period described in section 14.03 of this revenue procedure. In such case, the employer's plan is reviewed using the Cumulative List that was used to review the underlying pre-approved plan.

(5) Section 24.03 of Rev. Proc. 2015-36 provides that, due to the nature and extent of employer amendments made to an approved M&P or VS plan, the IRS may, in its discretion, treat the plan as individually designed. In such case, although the plan remains eligible for the six-year remedial amendment cycle until the expiration of the current remedial amendment cycle in accordance with section 20.01 of this revenue procedure, the employer's plan is, in other respects, treated as an individually designed plan. Thus, for example, the IRS reviews the plan using the Required Amendments List that was issued during the second calendar year preceding the submission of the determination letter application, in accordance with section 12 of this revenue procedure.

(6) Determination letter filing procedures are set forth in Rev. Proc. 2016-6, which will be updated annually.

(7) While it is expected that an M&P sponsor and a VS practitioner, if applicable, generally will continue to amend on behalf of the adopting employer even if

the adopting employer adopts amendments to the plan, the sponsor or practitioner no longer has the authority to amend on behalf of the employer if the amendment falls into one of the categories listed in section 6.03 or section 16.03 of Rev. Proc. 2015-36 or the IRS has exercised its authority under section 24.03 of Rev. Proc. 2015-36.

#### .04 Examples.

Examples 15 through 17 illustrate how different types of employer amendments to a pre-approved plan affect an employer's eligibility for the six-year remedial amendment cycle and which applicable list (either the Cumulative List or the Required Amendments List) the IRS will use to review an employer's submission. In the following examples, both the tax year of the employer and the plan year are the calendar year and, except as otherwise provided, the plan has been operated in accordance with the plan terms, including any interim and discretionary amendments.

Example 15: Eligibility for six-year remedial amendment cycle after minor modifications. Employer X has maintained Plan M, an approved VS plan, since 2002. Employer X never received an individual determination letter for Plan M. Plan M is timely submitted for the third six-year remedial amendment cycle by the VS practitioner. During the third six-year remedial amendment cycle, Employer X makes minor modifications to Plan M. Pursuant to section 20.01 and 20.03, Plan M is eligible to remain on the six-year remedial amendment cycle and may be submitted for a determination letter application on a Form 5307 by the end of the adoption period described in section 14.03 of this revenue procedure. The IRS will review the determination letter application based upon the Cumulative List that was used to review the underlying VS plan.

Example 16: Eligibility for six-year remedial amendment cycle if plan amendments are not minor. The facts are the same as in Example 15, except that during the third six-year remedial amendment cycle, Employer X modifies Plan M to the extent that the plan is not eligible to be submitted on a Form 5307, in accordance with section 8.01(2) of Rev. Proc. 2016-6. Because Employer X has never received an individual determination letter for Plan M, pursuant to section 20.03(3) of this revenue procedure, Employer X may submit a Form 5300 determination letter application for initial plan qualification for Plan M. Employer X must submit the determination letter application for Plan M by the end of the adoption period described in section 14.03 of this revenue procedure. Plan M remains eligible for the third six-year remedial amendment cycle as described in section 20.01. The IRS will review the plan based upon the Cumulative List that was used to review the underlying VS plan.

Example 17: Eligibility for six-year remedial amendment cycle and applicability of Required Amendments List. Employer Z has never maintained a defined contribution plan and then adopts a newly approved VS plan (Plan V); however, Employer Z makes major modifications to the provisions of the plan. Employer Z submits a determination letter application on Form 5307 during the two-year window described in section 14.03 of this revenue procedure. Pursuant to section 24.03 of Rev. Proc. 2015-36, the IRS, in

its discretion, determines that Employer Z has modified the provisions of the plan to such an extent that Plan V is considered an individually designed plan. In accordance with section 20.01 of this revenue procedure, Plan V remains eligible for the third six-year remedial amendment cycle. Employer Z may submit Plan V for a determination letter for initial qualification on Form 5300. Consistent with section 12 of this revenue procedure, the IRS will use the Required Amendments List that was issued during the second calendar year preceding the submission of a determination letter application in its review of the determination letter submission for Plan V. The review will also take into account all previously issued Required Amendments Lists (and Cumulative Lists issued prior to 2016). The result in this example would be the same if Employer Z had amended Plan V to incorporate a type of plan provision not permitted in the VS program more than one year after Employer Z initially adopted Plan V (see section 16.03 of Rev. Proc. 2015-36).

## SECTION 21. OFF-CYCLE FILING

.01 An application for an opinion or advisory letter for a plan that is word-for-word identical to an approved mass submitter that has a current advisory or opinion letter is not treated as off-cycle merely because it is submitted after the end of the applicable on-cycle submission period for the six-year remedial amendment cycle. Any other application for an opinion or advisory letter that is submitted after the applicable on-cycle submission period for the six-year remedial amendment cycle is treated as an off-cycle filing. If such an off-cycle application is submitted before the beginning of the two-year window for employer adoption announced by the IRS for an applicable six-year cycle (as described in section 14.03 of this revenue procedure), the IRS generally will not review the application until it has reviewed and processed all on-cycle plans. However, the IRS may, in its discretion, determine whether the processing of off-cycle filings may be prioritized and accelerated under certain circumstances. Off-cycle applications that are submitted during or after the two-year window will not be accepted.

.02 As described in section 14.03 of this revenue procedure, the IRS intends to publish an announcement providing the date by which adopting employers must adopt the newly approved plans when the review of a cycle for pre-approved plans has neared completion. Depending on the length of the review process, it is expected that this date will provide virtually all employers approximately a two-year window to adopt the newly approved plans. However, the adoption period for employers to adopt such newly approved plans may be shorter than this approximate two-year window, depending on when the IRS finishes the review and approves such plans. In any event, for adopting employers of such newly approved plans to be eligible for the applicable six-year remedial amendment cycle, M&P sponsors or VS practitioners filing off cycle must submit new pre-approved plans prior to the beginning of such announced adoption period, to give the IRS time to review such plans and to provide time for adopting employers to adopt such plans.

.03 Adopting employers must adopt such newly approved plans within the adoption period described in section 14.03 of this revenue procedure and, if eligible to

submit for a determination letter pursuant to section 20.03 of this revenue procedure, may file a Form 5307 or Form 5300 as appropriate.

#### PART IV – EFFECT ON OTHER DOCUMENTS, EFFECT ON OTHER LAWS, EFFECTIVE DATE, DRAFTING INFORMATION

##### SECTION 22. EFFECT ON OTHER DOCUMENTS

- .01 Rev. Proc. 2007-44 is clarified, modified, and superseded.
- .02 Sections 2.07 and 24.03 of Rev. Proc. 2015-36 are modified.
- .03 Sections I and III of Notice 2015-84 are modified.

##### SECTION 23. EFFECTIVE DATE

This revenue procedure is effective January 1, 2017.

##### DRAFTING INFORMATION

The principal author of this revenue procedure is Angelique Carrington of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue procedure, contact Ms. Carrington at (202) 317-4148 (not a toll-free number).