

IRS Now Accepting “Cycle D” Determination Letter Applications

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Under the IRS’s determination letter program, all individually designed plans (i.e., those that are *not* maintained on a prototype or volume submitter document) are on a five-year cycle for renewing their determination letters. Plans in “Cycle D” could begin filing their determination letter applications on February 1, 2014. The deadline for filing those applications is January 31, 2015.

Two main categories of plans fall within Cycle D.

- The first consists of all individually designed plans that are sponsored by employers whose employer identification number ends with either “4” or “9.”
- The other category includes all multiemployer plans, as described in Internal Revenue Code Section 414(f). In the first Cycle D (five years ago), multiemployer plans with plan years beginning on February 2, 2009, or later were permitted to submit their applications in Cycle E, instead. However, there is no indication that the IRS will permit a similar delay for non-calendar-year, multiemployer plans in *this* Cycle D.

Though this Cycle D filing deadline may seem a long way off, keep in mind that several steps must be completed in order to meet the deadline. In addition to the actual application, a determination letter filing now requires a complete restatement of the plan document. At a minimum, all amendments adopted since the plan’s prior restatement must be incorporated into the plan document, which must then be formally approved, signed, *and dated* on behalf of the sponsor. (Yes, the IRS is getting very sticky about seeing dates next to all signatures.)

In addition, this restatement must reflect all of the relevant changes listed on the “2013 Cumulative List of Changes in Plan Qualification Requirements,” as set forth in [IRS Notice 2013-84](#). It will take some time to review the plan document against this extensive list, and then make the necessary revisions. Moreover, the IRS has repeatedly advised sponsors that applications filed early in a cycle will receive a more prompt response.

If a Cycle D plan fails to file a determination letter application by the January 31st

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deadline, the plan's existing determination letter will become obsolete. This could be a problem if the IRS were to audit the plan and determine that any of its provisions fail to comply with any Tax Code requirements.

Given the importance of meeting the January 31st filing deadline – as well as the effort involved in reviewing and restating each plan document – sponsors of Cycle D plans would be well-advised to initiate this restatement and application process without delay.

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