

## Employee Benefits Plan Newsletter

# IRS Determination Letter Update and Other Guidance from the IRS

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In the beginning of every year, the Internal Revenue Service (IRS) updates and restates its revenue procedures governing the processes for applying for letter rulings, determination letters, and other guidance regarding employee benefit plans. For 2019, the relevant Revenue Procedures are 2019-1 and 2019-4.

This article will focus on one aspect that was changed by Revenue Procedure (Rev. Proc.) 2019-4 regarding the issuance of determination letters for qualified retirement plans. We will also provide in this newsletter other information of interest to the employee benefits plan community; namely, 403(b) plans and cafeteria plans.

### Rev. Proc. 2019-4

Process changes in the Rev. Proc. include:

- The new Rev. Proc. makes a change to Revenue Procedure 2018-4, Section 8.02, to add new section 3 ["Other Circumstances"] to provide a new category for which a determination letter can be requested. Although this category has been added to the recent Rev. Proc., the IRS does not specify or define "other circumstances." It is anticipated that the IRS will issue further guidance to identify the circumstances that will satisfy the criteria for the IRS to accept a determination letter application.

In 2016, the IRS changed its process of issuing determination letters and adopted a new approach which identified its issuance of a determination only in limited circumstances. At that time, the IRS identified the issuance of a determination letter only when a plan had never received a letter previously, or when the plan was terminating. The agency also noted that it would make an exception in special situations.

- Rev. Proc. 2019-4 made revisions to reflect changes to the IRS's Voluntary Correction Program (VCP), including required use of pay.gov for application submissions and user fee payments beginning April 1, 2019. Previously, VCP applications were submitted by "paper" to the IRS. A prior [newsletter](#) discussed the VCP and its usefulness to plan sponsors and employers.
- Code sections 414(b), (c), and (m) (i.e., the controlled group rules) have been added to the list of topics not covered by determination letters.

### 403(b) Plans

Many 403(b) plan sponsors have started to receive IRS approved prototype or volume submitter type of plan documents from their record keeper or other service provider. These "new" plan documents are required to be adopted by March 31, 2020.

The plan documents provided are pre-populated with provisions that are included in the existing plan document. However, there are several additional choices and required attachments that will require consideration prior to completion. One example of this process: all amendments that have been made to a plan since its inception [whether it is the 2009 plan year — this was the initial year the IRS required a 403(b) plan document — or a subsequent plan year] will be required to be identified in the new plan document. A prior *Employee Benefits Plan Newsletter* provided additional information on the 403(b) plan document update. That newsletter can be found [here](#).

### **Cafeteria Plan/Section 125 of the Code**

Several employers have recently contacted our Employee Benefit Services Group (EBSG) professionals regarding the requirements to create/maintain a cafeteria plan document. Employers have informed us that their payroll provider has contacted them requesting this plan document (since pretax deductions are being made from employees' wages) or HR departments that have performed an internal audit of their compliance matters regarding employee benefits.

A cafeteria plan is an employer-provided and maintained written plan that offers employees the opportunity to choose between a taxable benefit (e.g., cash) and at least one (1) qualified (nontaxable) benefit.

The written plan must include provisions that: specifically describe each benefit available under the plan and the related eligibility requirements for each; the procedures for making elections; the manner and amount in which employer contributions may be made (e.g., salary reduction agreements); and state the plan year.

The most common cafeteria plan documents we assist clients with creating include the ability of employees to contribute toward health premiums, and to fund medical and/or dependent care reimbursement accounts (commonly referred to as flexible spending accounts) with pretax dollars.

The information provided herein is not intended to provide all the compliance and reporting requirements of a cafeteria plan. A subsequent newsletter will discuss those matters (e.g., Form 5580 and nondiscrimination testing). For further information on the plan document creation, operations, or nondiscrimination requirements, please contact your client services partner or any of the individuals listed below.

### **Contact Us**

The Employee Benefit Services Group at PKF O'Connor Davies is available to assist employers with the various compliance reporting and other requirements imposed by federal agencies. We also provide a full spectrum of compliance services for qualified retirement plans, non-qualified deferred compensation plans, and welfare plans.

For more information, please contact your client services partner or either of the following:

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