

Revenue Procedure 2005-66: Staggered Remedial Amendment Period System

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The IRS has released Revenue Procedure 2005-66, which sets forth a staggered remedial amendment period system for individually designed and pre-approved plans. Under this revenue procedure, every individually designed plan will have a five-year remedial amendment cycle and every pre-approved plan will have a six-year remedial amendment cycle. Practically, this means that employers now have fixed windows of time during which retirement plans must be amended to take into account the changes in the laws governing retirement plans and must be submitted to the IRS for new determination letters.

For individually designed plans, the IRS will begin accepting certain applications for determination letters on February 1, 2006. The last digit of the plan sponsor's taxpayer identification number ("TIN") will determine which plans are accepted first. An individually designed plan's five-year remedial amendment cycle will be determined as follows:

TIN ends in –	First day of initial cycle (i.e., EGTRRA remedial amendment period) is –	Last day of initial cycle is –
1 or 6		
2 or 7	February 1, 2006	January 31, 2007
3 or 8	February 1, 2007	January 31, 2008
4 or 9	February 1, 2008	January 31, 2009
5 or 0	February 1, 2009	January 31, 2010
	February 1, 2010	January 31, 2011

The revenue procedure also has streamlined the process for determining what amendments need to be made to plans, starting with the changes brought about by the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). The IRS states that it will maintain and publish a Cumulative List of Changes in Plan Qualification Requirements. This Cumulative List will identify, on a year-by-year basis, all changes in the qualification requirements resulting from changes in statutes, regulations or other guidance published by the IRS. The 2004 Cumulative List was issued in anticipation of the opening of the EGTRRA opinion and advisory letter program for defined contribution pre-approved plans. The target date for publication of subsequent Cumulative Lists is mid-November of each year. When reviewing applications for determination letters during the five- or six-year cycles established in the revenue procedure, the IRS will hold

plans accountable for items included on their respective Cumulative List.

To illustrate, a plan sponsor with a TIN ending in 3 may file an application for determination no earlier than February 1, 2008 and no later than January 31, 2009. The IRS will review the application taking into account all EGTRRA provisions and any other changes in the law noted on the 2007 Cumulative List (published mid-November 2007).

The revenue procedure also contains rules for determining a plan's five-year cycle in cases of merger or acquisition, change in plan sponsorship or plan spin-off and sets forth the remedial amendment cycle for pre-approved plans.

To discuss how Revenue Procedure 2005-66 may affect the filing of your plan, contact any of the attorneys in Holland & Hart's Benefits Law Group.

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