Request for Comments on Revenue Procedure for the Staggered Remedial Amendment Period System

Announcement 2004–71

This announcement includes as an Appendix a draft revenue procedure that contains the Service's procedures for issuing determination letters under a staggered remedial amendment period system that establishes regular, five-year cycles under § 401(b) of the Internal Revenue Code (Code) for plan amendments and determination letter renewals for individually designed plans (that is, plans that have not been pre-approved) qualified under § 401(a). In addition, under this system, pre-approved plans (that is, master and prototype (M&P) and volume submitter plans) will generally have a regular, six-year remedial amendment cycle. The Service seeks public input before finalizing these procedures and invites interested persons to submit comments.

Background

The Service has maintained an Employee Plans determination letter program for many years, essentially in its present form. Under this program, the Employee Plans (EP) component of Tax Exempt and Government Entities (TE/GE) issues letters of determination regarding the qualified status of retirement plans under § 401(a) and the tax-exempt status of related trusts under § 501(a). Determination letters provide assurance to plan sponsors, participants and other interested parties that the terms of employer-sponsored retirement plans satisfy the qualification requirements of the Code. Qualified plans offer significant tax advantages to employers and participants.

In recent years, the Service has undertaken a comprehensive review of its policies and procedures for issuing determination letters on the qualified status of retirement plans. The impetus for this review was a need for the Service to strike a more effective balance in the application of its limited resources among the EP determinations, examinations, voluntary compliance and customer education and outreach programs. The current determination letter program has been subject to significant pe-

riodic fluctuations in workload as a result of legislative changes. These fluctuations make resource planning and allocation difficult and may have an overall negative effect on the administration of the various EP programs. Thus, a goal of the review of the determination letter program has been to identify improvements to the program that will result in a more level determination letter workflow. While this review is still ongoing, the Service has already made a number of significant improvements to the determination letter program. See, for example, Announcement 2001–77, 2001–2 C.B. 83.

Program Changes

This draft revenue procedure would establish a system of staggered five-year remedial amendment cycles for individually designed plans and a system of six-year amendment/approval cycles for pre-approved plans. These systems create fixed, regular cycles for the adoption of remedial plan amendments under § 401(b) and the submission of determination, opinion, and advisory letter applications.

In the case of individually designed plans, the five-year remedial amendment cycles would be staggered. In other words, different plans would have different five-year cycles. In general, a plan's five-year remedial amendment cycle would be determined with reference to the taxpayer identification number (TIN) of the employer that maintains the plan. Special rules are provided for plans maintained by more than one employer and plans maintained by multiple members of a controlled group or affiliated service group.

In the case of pre-approved plans, defined benefit plans would have a different six-year amendment/approval cycle schedule than defined contribution plans. The sponsor of a pre-approved document would be required to submit the plan for a new opinion or advisory letter according to the schedule set forth in the revenue procedure. An adopting employer that timely adopts the approved plan would be treated as having adopted the plan within the employer's six-year remedial amendment cycle. The Service will announce the deadline for timely adoption after the pre-approved documents in a cycle have been reviewed. It is expected that employers will have generally two years in which to adopt the pre-approved plans.

EGTRRA

This revenue procedure would provide that on February 1, 2006, the Service will begin to accept applications for determination letters for individually designed plans that take into account the requirements of Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16 (EGTRRA). This draft revenue procedure would also extend a plan's EGTRRA remedial amendment period as provided in the chart found in section 9.01, which is the Extension of the EGTRRA Remedial Amendment Period/Schedule of Next Five-Year Remedial Amendment Cycle.

Remedial Amendment Period

In the case of an individually designed plan, the end of the remedial amendment period for any disqualifying provision would be extended by this revenue procedure to the end of the five-year cycle in which the remedial amendment period would otherwise end.

In the case of a pre-approved plan, regular six-year amendment/approval cycles would be established. However defined contribution plans and defined benefit plans would have different six-year amendment/approval cycles. The schedule for the six-year amendment/approval cycles is found in section 14.01. Sponsors and practitioners would have until January 31 of the year that marks the end of the plan's first year of the six-year remedial amendment cycle to submit these plans timely for opinion and advisory letters. Adopting employers would have generally two years in which to timely adopt the pre-approved plans. The Service will announce the actual deadline for timely adoption of pre-approved plans.

Request for Comments

Interested persons are invited to comment on the draft revenue procedure, the issues addressed in this announcement, the staggered remedial amendment cycle, the six-year remedial amendment/approval cycle, or any other aspect of the pre-approved plan programs or the determination letter program.

Written comments should be submitted by January 3, 2005, to CC:PA:LPD:RU (Announcement 2004–71), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, D.C. 20044. Comments may be hand delivered between the hours of 8 a.m. and 5 p.m., Monday through Friday to CC:PA:LPD:RU (Announcement 2004–71), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave. NW, Washington, D.C. Alternatively, comments may be submitted electronically via e-mail to the following address: *Notice.Comments@irscounsel.treas.gov.* All comments will be available for public inspection.

Drafting Information

The principal author of this announcement is Dana A. Barry of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this announcement, please contact the Employee Plans' taxpayer assistance telephone service at 1–877–829–5500 (a toll-free number) between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday (a toll-free call). Ms. Barry may be reached at (202) 283–9888 (not a toll-free call).

APPENDIX

Draft Revenue Procedure

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

Rev. Proc.

SECTION 1. PURPOSE

.01 This revenue procedure establishes a system of staggered remedial amendment periods under § 401(b) of the Internal Revenue Code (Code). Under this system, every individually designed plan qualified under § 401(a) will have a regular, five-year remedial amendment cycle. The cycles are staggered and spread over five-year periods. That is, the cycles commence in different years for different plans within a five-year period, so that different plans will have different cycles, but the length of the cycle — five years — is the

same for every plan. The effect of this system is that plan sponsors of individually designed plans generally will need to adopt remedial amendments of disqualifying provisions, and will need to apply for new determination letters, only once every five years.

.02 In addition, under this system, every pre-approved plan (that is, every master and prototype (M&P) and volume submitter plan), will generally have a regular, six-year remedial amendment cycle. As a result, sponsors and adopters of pre-approved plans generally will need to apply for new opinion, advisory, or determination letters only once every six years. Pre-approved defined contribution plans will have different six-year cycles than pre-approved defined benefit plans. Thus, the same six-year remedial amendment cycle will apply with respect to all pre-approved defined contribution plans, and a separate six-year remedial amendment cycle will apply with respect to all pre-approved defined benefit plans.

.03 This revenue procedure provides that on February 1, 2006, the Service will begin to accept applications for determination letters for individually designed plans that take into account the requirements of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16 (EGTRRA). However, this revenue procedure also extends a plan's EGTRRA remedial amendment period as provided in the chart found in section 9.01, which is the Extension of the EGTRRA Remedial Amendment Period/Schedule of Next Five-Year Remedial Amendment Cycle. Therefore, plan sponsors may avoid unnecessarily filing two determination letter applications by waiting to file their EGTRRA determination letter applications within the twelve-month period preceding the end of the plan's EGTRRA remedial amendment period.

SECTION 2. BACKGROUND

.01 In Announcement 2004–32, 2004–18 I.R.B. 860, the Service announced its decision to implement a system of five-year staggered remedial amendment periods under § 401(b) of the Code for individually designed plans. The Service also announced that it was considering implementation of a system of six-year amendment/approval cycles for pre-approved plans. These decisions were the outcome of the Service's comprehensive review of its policies and procedures for issuing determination letters on the qualified status of retirement plans. The decisions were taken after consideration of public comments on two white papers on the future of the determination letter program which the Service published in 2001 and 2003.

.02 In Announcement 2004–33, 2004–18 I.R.B. 862, the Service published for comment a draft revenue procedure containing the procedures for issuing opinion and advisory letters for pre-approved plans. In the announcement, the Service also asked for comments on its proposal to implement a system of six-year amendment/approval cycles for pre-approved plans. After receiving favorable comments in response to Announcement 2004–33, the Service has decided to proceed with implementation of this system in conjunction with the implementation of the five-year staggered remedial amendment period system for individually designed plans. This revenue procedure implements both systems, effective with the opening of the determination, opinion, and advisory letter programs for EGTRRA.

.03 Section 401(b) of the Code 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.

.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 which 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, 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 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 the last day of the plan year in which the plan is put into effect. A new plan maintained by more than one employer need not be amended until 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 the due date for filing the employer's tax return (including extensions) for the taxable year in which the amendment is adopted or effective (whichever is later) or the last day of the plan year in which the amendment is adopted or effec-

tive (whichever is later). In the case of an amendment to an existing plan maintained by more than one employer, the plan need not be amended until 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 (1) 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 (2) the last day of the plan year that includes the date on which the remedial amendment period begins. A plan maintained by more than one employer need not be amended until 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 may extend the remedial amendment period at his discretion.

.09 Notice 2001–42, 2001–2 C.B. 70, provides a remedial amendment period under § 401(b), ending no earlier than the end of the 2005 plan year, in which any needed retroactive remedial plan amendments for EGTRRA must be adopted (the EGTRRA remedial amendment period). The availability of the EGTRRA remedial amendment period is conditioned on the timely adoption of required good faith EGTRRA plan amendments. In general, a good faith EGTRRA plan amendment is adopted timely if it is adopted by the later of the end of the plan year that includes the effective date of the EGTRRA change or the end of the plan's GUST remedial amendment period.[1]

.10 The end of the EGTRRA remedial amendment period is also the last day on which retroactive remedial amendments may be adopted with respect to the requirements of the final regulations under § 401(a)(9) of the Code (required minimum distributions), Rev. Rul. 2001–62, 2001–2 C.B. 632 (applicable mortality table) and Rev. Rul. 2002–27, 2002–1 C.B. 925 (deemed section 125 compensation). (Except with respect to the requirements of the final § 401(a)(9) regulations for defined benefit plans, the availability of the remedial amendment period with respect to these requirements is conditioned on the adoption of plan amendments by the time specified in the applicable guidance (or, in the case of the final § 401(a)(9) regulations published on April 17, 2002, with respect to defined contribution plans, in Rev. Proc. 2002–29, 2002–1 C.B. 1176, as modified by Rev. Proc. 2003–10, 2003–1 C.B. 259)).

.11 Rev. Proc. 2004–25, 2004–16 I.R.B. 791, extends the remedial amendment period with respect to disqualifying provisions described in § 1.401(b)–1(b)(1) that are put into effect (in the case of new plans) or adopted (in the case of existing plans) after December 31, 2001, to the end of the EGTRRA remedial amendment period. The effect of Rev. Proc. 2004–25 is to ensure that plan sponsors do not need to apply for more than one determination letter during the EGTRRA remedial amendment period simply because they have put a plan into effect or adopted voluntary plan amendments after December 31, 2001. The revenue procedure does not extend any other existing plan amendment or determination letter submission deadlines, such as the deadline for adoption of good faith plan amendments for EGTRRA or the final § 401(a)(9) regulations.

.12 Notice 2001–42 and section _.__ of Rev. Proc. 2005–6, 2005–1 I.R.B. ___, provide that until further notice, determination letters will not consider and may not be relied on with respect to whether a plan satisfies the qualification requirements of the Code as amended by EGTRRA. However, an employer's ability to rely on a favorable determination letter will not be adversely affected by the timely adoption of good faith EGTRRA plan amendments.

SECTION 3. OVERVIEW

.01 This revenue procedure establishes a system of staggered five-year remedial amendment periods or cycles for individually designed plans and a system of six-year amendment/approval cycles for pre-approved plans. These systems are established pursuant to the Commissioner's authority under § 401(b) of the Code and its underlying regulations to designate plan provisions as disqualifying provisions, impose limits and conditions on plan amendments with respect to designated disqualifying provisions, and extend the remedial amendment period, and pursuant to the Commissioner's authority under § 7805(b) to establish the effective date of any rule or regulation.

.02 These systems will create fixed, regular cycles for the adoption of remedial plan amendments under § 401(b) and the submission of determination, opinion, and advisory letter applications. The plan sponsor will continue to be able to rely on a favorable determination letter for its plan provided the sponsor applies for a new letter not later than the last twelve-month period of each five-year cycle. Similarly, sponsors of pre-approved plan documents will know that they must apply for new opinion and advisory letters once every six years, and an adopter of a pre-approved plan will know that it must adopt an updated plan once every six years.

.03 In the case of individually designed plans, the five-year remedial amendment cycles are staggered. That is, different plans will have different five-year cycles, based generally on the plan sponsor's taxpayer identification number (TIN), so that the cycle for only 20 percent of plans will end in any given year. Staggering should eliminate significant fluctuations in the

[1] The term "GUST" refers to the following:

- the Uruguay Round Agreements Act, Pub. L. 103–465;
- the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103–353;
- the Small Business Job Protection Act of 1996, Pub. L. 104–188;
- the Taxpayer Relief Act of 1997, Pub. L. 105–34;
- the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206; and
- the Community Renewal Tax Relief Act of 2000, Pub. L. 106–554.

The GUST remedial amendment period generally ended on the later of February 28, 2002, or the end of a plan's 2001 plan year. However, for certain plans eligible for an extended GUST remedial amendment period under Rev. Proc. 2000–20, 2000–1 C.B. 553, the period generally ended on September 30, 2003.

numbers of determination letter applications filed from year to year. The Service believes this will be a benefit to both the Service and the employee benefits community. In the case of pre-approved plans, defined benefit plans will have a different six-year schedule than defined contribution plans. This should also benefit both the Service and the employee benefits community.

.04 Except as provided below, in the case of an individually designed plan, the end of the remedial amendment period for any disqualifying provision is extended by this revenue procedure to the end of the five-year cycle in which the remedial amendment period would otherwise end. Thus, the end of the remedial amendment period for disqualifying provisions under § 1.401(b)–1(b)(1) (that is disqualifying provisions in new plans and discretionary plan amendments) for an individually designed plan is extended to the end of the five-year cycle in which the remedial amendment period would otherwise end. Thus, if a new plan, or a discretionary plan amendment to an existing plan, contains a provision that causes the plan to fail to meet the qualification requirements under § 401(a), the plan has until the end of the five year cycle to correct that disqualifying provision provided the amendment is retroactively effective. However, there is no extension (remedial amendment period) for the adoption of a plan, or the adoption of a discretionary plan amendment (a plan amendment that is not required or integral to a plan qualification change). These are not disqualifying provisions.

.05 The revenue procedure provides a blanket disqualifying provision designation with respect to future changes in the qualification requirements of the Code. Thus, a plan provision that either results in the failure of a plan to satisfy the qualification requirements of the Code because of a change in those requirements or that is integral to a qualification requirement of the Code that has been changed will generally be a disqualifying provision. In addition, in the case of an individually designed plan, the remedial amendment period with respect to such a disqualifying provision is extended by this revenue procedure to the end of the first five-year cycle that ends at least twelve months after the change in the qualification requirements of the Code is first listed on the Cumulative List of Changes in Plan Qualification Requirements (as described below in section 10), which will be published annually by the Service. Thus, although a change in the qualification requirements of the Code may be effective before the end of one five-year cycle, a retroactive remedial amendment on account of the change may not be required to be adopted until the end of the plan's next five-year cycle. Of course, the amendment would need to be retroactively effective as of the effective date of the change.

.06 For most amendments, operational compliance with the amendment provisions beginning on the retroactive effective date is required. For example, for any amendment that is integral to a changed qualification requirement, operational compliance with the amended plan provisions beginning on the retroactive effective date of the amendment is required for the remedial amendment period to begin. In addition, plan sponsors may be required to adopt good faith amendments (as defined in Notice 2001–42) on account of a change in the qualification requirements of the Code earlier than the end of the plan sponsor's five-year cycle.

.07 The revenue procedure does not provide relief from the requirements of § 411(d)(6) for plan amendments adopted as a result of Code or guidance changes in the plan qualification requirements. Section 411(d)(6) generally prohibits a plan amendment that decreases a participant's accrued benefits or 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.

.08 The revenue procedure provides that the time for adopting plan amendments for guidance changes is extended to the end of the first five-year remedial amendment cycle that ends at least twelve months after the change is first listed on the Cumulative List of Changes in Plan Qualification Requirements.

.09 The revenue procedure provides that determination letters generally will be reviewed on the basis of, and may be relied on with respect to, the Cumulative List of Changes in Plan Qualification Requirements that is published in the year preceding the year in which applications may be filed. The revenue procedure also provides that determination letters will include an "expiration date," stating that the letter may not be relied on after the end of the five-year cycle. These changes to the determination letter program, along with the changes to the remedial amendment period rules described above, are designed to create a system that encourages plans to be updated and submitted for new determination letters on a regular five-year schedule.

.10 In general, a plan's five-year remedial amendment cycle is determined with reference to the TIN of the employer that maintains the plan. Special rules are provided for plans maintained by more than one employer and plans maintained by multiple members of a controlled group or affiliated service group. In addition, an election is provided for controlled groups and affiliated service groups that will allow the same five-year cycle to be applied to all plans maintained by any member of the group.

.11 If there is a change in the employer that maintains the plan, for example, because of a merger, the plan's cycle following the change is determined with reference to the TIN of the new employer. However, if this would shorten the plan's current cycle so that less than twelve months would remain, the current cycle will be extended for twelve months.

.12 The six-year amendment/approval cycles for pre-approved plans are comparable to the five-year cycles for individually designed plans. Provided the sponsor of a pre-approved document submits the plan for a new opinion or advisory letter according to the schedule set forth in the revenue procedure, an adopting employer that timely adopts the approved plan will be treated as having adopted the plan within the employer's six-year remedial amendment cycle. The Service will announce the deadline for timely adoption after the pre-approved documents have been reviewed, but it is expected that employers will generally have two years in which to adopt. The last date for timely adoption will be the end of the remedial amendment cycle with respect

to all disqualifying provisions for which the remedial amendment period would otherwise end during the cycle.

.13 The revenue procedure extends a plan's EGTRRA remedial amendment period as provided in the chart found in section 9.01, which is the Extension of the EGTRRA Remedial Amendment Period/Schedule of Next Five-Year Remedial Amendment Cycle. The revenue procedure provides that applications for determination letters for individually designed plans that are filed on or after February 1, 2006, will be reviewed taking into account the requirements of EGTRRA.

PART I — INDIVIDUALLY DESIGNED PLANS

SECTION 4. ESTABLISHMENT OF FIVE-YEAR REMEDIAL AMENDMENT CYCLES FOR INDIVIDUALLY DESIGNED PLANS

.01 Beginning with the EGTRRA remedial amendment period, as herein extended, the determination of when a plan's remedial amendment period under § 401(b) of the Code ends will be based on the plan's remedial amendment cycle. In the case of an individually designed plan, the remedial amendment cycle is a five-year cycle. This Part I contains the rules and procedures for the five-year remedial amendment cycle for individually designed plans. In the case of a pre-approved plan, the remedial amendment cycle is a six-year cycle. Part II of this revenue procedure contains the rules and procedures for the six-year remedial amendment cycle for pre-approved plans.

.02 In general, a plan's five-year remedial amendment cycle is determined by reference to the last digit of the TIN of the employer that sponsors the plan. However, in particular circumstances, as described in section 5, a different rule is, or may be, used to determine a plan's five-year remedial amendment cycle.

.03 Under the general rule, a plan's five year remedial amendment cycle is determined as follows:

If the last digit of the plan sponsor's TIN is —	The plan's cycle is —
1 or 6	Cycle A
2 or 7	Cycle B
3 or 8	Cycle C
4 or 9	Cycle D
5 or 0	Cycle E

See also the chart listed below in section 9.01, which is the Extension of the EGTRRA Remedial Amendment Period/Schedule of Next Five-Year Remedial Amendment Cycle.

SECTION 5. EXCEPTIONS TO THE GENERAL RULE FOR DETERMINING A PLAN'S FIVE-YEAR REMEDIAL AMENDMENT CYCLE

.01 The following rules apply to determine the five-year remedial amendment cycle of plans maintained by more than one employer and plans maintained by employers that are part of a controlled group under § 414(b) or (c) or an affiliated service group under § 414(m).

.02 For plans that are maintained by more than one employer (that is, multiemployer and multiple employer plans), the plan's five-year remedial amendment cycle is Cycle A.

.03 For plans maintained by multiple members of a controlled group under § 414(b) or (c) or an affiliated service group under § 414(m), the plan's five year remedial amendment cycle is determined with reference to the last digit of the TIN that is or will be used to report the plan on Form 5500, *Annual Return/Report of Employee Benefit Plan*. However, see section 5.04, regarding the permitted election of a different cycle.

.04 In the case of a controlled group under § 414(b) or (c) or an affiliated service group under § 414(m), an election may be made that the five-year remedial amendment cycle for all plans maintained by any members of the group (other than multiemployer plans or multiple employer plans) will be Cycle A, or, in the case of a parent-subsidiary organization, the cycle determined by reference to the TIN of the parent. This election is to be made by the parent, in the case of a parent-subsidiary organization, or jointly by all members of the controlled or affiliated service group, in the case of any other organization. The election must list all members of the group, including each member's TIN, and all plans (other than multiemployer plans and multiple employer plans) that are maintained by each member of the group. The election is to be filed with the first determination letter application that is submitted in accordance with this revenue procedure for any plan (other than multiemployer plans and multiple employer plans) maintained by any member of the group. Once filed, the election will apply and may not be modified or revoked, except as provided below in section 6.01(3).

SECTION 6. RULES FOR DETERMINING FIVE-YEAR REMEDIAL AMENDMENT CYCLE IN CASES OF MERGER OR ACQUISITION, CHANGE IN PLAN SPONSORSHIP, OR PLAN SPIN-OFF

.01 Except as provided in section 6.02, in the case of a merger or acquisition, a change in plan sponsorship, or a plan spin-off, a plan's five-year remedial amendment cycle is determined as follows:

(1) If plans with different five-year remedial amendment cycles are merged, the five-year remedial amendment cycle of the merged plan is thereafter determined as provided in sections 4 and 5 on the basis of the TIN, controlled group status, affiliated service group status, etc., of the employer that maintains the merged plan, regardless of whether this would shorten or extend the

pre-merger five-year remedial amendment cycle of any of the plans that have merged.

(2) If a plan of an employer is acquired by another employer, the five-year remedial amendment cycle of the plan is thereafter determined as provided in sections 4 and 5 on the basis of the TIN, controlled group status, affiliated service group status, etc., of the employer that has acquired the plan, regardless of whether this would shorten or extend the pre-acquisition five-year remedial amendment cycle of the plan.

(3) If there is a change in the TIN, controlled group status, affiliated service group status, etc., of the employer that maintains a plan, the five-year remedial amendment cycle of the plan is thereafter determined as provided in sections 4 and 5 on the basis of the changed TIN, controlled group status, affiliated service group status, etc., of the employer, regardless of whether this would shorten or extend the five-year remedial amendment cycle of the plan. The change could result in the need to file a new election pursuant to section 5.04.

(4) If a portion of a plan is spun off, the five-year remedial amendment cycle of the spun-off plan is determined as provided in sections 4 and 5 on the basis of the TIN, controlled group status, affiliated service group status, etc., of the employer that maintains the spun-off plan, regardless of whether this would shorten or extend the five-year remedial amendment cycle of the plan.

.02 If, as a result of one of the transactions described in this section, a plan's current five-year remedial amendment cycle is shortened such that the period remaining in the cycle following the transaction is less than twelve calendar months, the plan's current cycle will be extended for twelve months and the next five-year cycle would be shortened accordingly. Thereafter, the plan's five-year remedial amendment cycles will be determined as provided in section 6.01. This extension does not apply to other plans of the employer that are not similarly affected.

SECTION 7. APPLICATION OF § 401(b) TO ALL FUTURE CHANGES IN QUALIFICATION REQUIREMENTS OF THE INTERNAL REVENUE CODE

Unless otherwise provided in future guidance, and subject to any future requirements with respect to the adoption of good faith plan amendments, in addition to the plan provisions designated as disqualifying provisions subject to the EGTRRA remedial amendment period as described in section 2.09, 2.10, and 2.11, a plan provision is designated as a disqualifying provision under § 1.401(b)–1(b)(3) if the provision either —

(i) results in the failure of the plan to satisfy the qualification requirements of the Internal Revenue Code by reason of a change in those requirements that is effective after December 31, 2001; or

(ii) is integral to a qualification requirement of the Internal Revenue Code that has been changed effective after December 31, 2001.

A change in a qualification requirement includes both a statutory change and a change in the requirements provided in regulations or other guidance published in the Internal Revenue Bulletin.

SECTION 8. EXTENSION OF THE REMEDIAL AMENDMENT PERIOD UNDER § 401(b) TO THE END OF THE REMEDIAL AMENDMENT CYCLE

.01 This section extends the remedial amendment periods for disqualifying provisions that would otherwise apply under § 1.401(b)–1 to the end of the remedial amendment cycle. It also extends the time for adopting certain plan amendments for changes in guidance pertaining to plan qualification requirements to the end of the remedial amendment cycle. The effect of these extensions is that plan sponsors of individually designed plans generally will not need to adopt remedial amendments of disqualifying provisions, and will not need to apply for new determination letters, more than once every five years. Plan sponsors may, however, be required to adopt good faith plan amendments for legislative or guidance changes before the end of their five-year remedial amendment cycles, with the result that plan amendments may in some cases be required more frequently than every five years.

.02 The remedial amendment period for a disqualifying provision described in § 1.401(b)–1(b)(1) is extended to the end of the plan's five-year remedial amendment cycle in which the remedial amendment period with respect to the disqualifying provision would otherwise end.

For the following examples, please refer to the chart found in section 9.01.

Example 1: The last digit of Employer A's TIN is 7. Employer A adopts a new plan, Plan X on January 1, 2006. The cycle for Plan X is Cycle B. The tax year of Employer A and the plan year of Plan X is the calendar year. Under § 1.401(b)–1 of the regulations, the initial remedial amendment period (RAP) would end on the later of the due date (including extensions) for filing Employer A's tax return for the taxable year in which Plan X is put into effect or the last day of the plan year in which Plan X is put into effect (that is, 2006). The initial RAP is extended to the end of the 5-year RAP cycle in which the RAP would have otherwise ended under § 1.401(b)–1. The initial RAP for Plan X therefore ends January 31, 2008. Any retroactive remedial amendments required for Plan X including EGTRRA amendments must be adopted by January 31, 2008, unless an application for a determination letter is submitted by that date. The plan would be retroactively effective to the first day Employer A adopted Plan X in 2006. The subsequent 5-year RAP cycles end on January 31, 2013, January 31, 2018, etc.

Example 2: Same facts as Example 1, except that Employer A, a C corporation, later adopts a discretionary plan amendment to Plan X that is both adopted and effective on January 1, 2013. The amendment results in a disqualifying provision. The RAP under § 1.401(b)–1 would end on the later of the due date for filing Employer A's tax return (including extensions) for the taxable year in which the amendment is adopted or effective (whichever is later) or the last day of the plan year in which the amendment is adopted or effective (whichever is later), that is, the later of December 31, 2013, or March 15, 2014, (assuming no extensions are secured). The RAP is extended to the end of the 5-year RAP cycle which includes the date of the end of the RAP under § 1.401(b)–1. Therefore, Employer A would be required to adopt an amendment which corrected the disqualifying provision by January 31, 2018, but the amendment would be retroactively effective to the beginning of the RAP (that is, January 1, 2013).

.03 The remedial amendment period for a disqualifying provision described in § 1.401(b)–1(b)(3) is extended to the end of the plan's first five-year remedial amendment cycle ending at least twelve months after the applicable change in the qualification requirements of the Code is first listed in the Service's Cumulative List of Changes in Plan Qualification Requirements. See section 10 for more information regarding this list.

.04 Except as otherwise required, the time by which a plan must be amended for

guidance changes relating to the plan qualification requirements is extended to the end of the plan's first five-year remedial amendment cycle ending at least twelve months after the applicable change in guidance is first listed in the Service's Cumulative List of Changes in Plan Qualification Requirements.

Example 3: The remedial amendment cycle for Plan Y is based on the last digit of Employer B's TIN, which is 4. Plan Y's cycle is Cycle D. The EGTRRA RAP for Plan Y ends January 31, 2010, and the subsequent 5-year RAP cycle ends January 31, 2015. In December 2009, guidance is published requiring plans to be amended and effective for the plan year beginning in 2010. The guidance will appear on the November 2010 Cumulative List. While Employer B updates Plan Y for the RAP that ends January 31, 2010, any remedial plan amendments that may be required because of the guidance effective in 2010 would not have to be adopted until Employer B updates Plan Y for the RAP that ends January 31, 2015. Employer B would then adopt plan provisions reflecting guidance effective in 2010 retroactive to the first day of the 2010 plan year.

SECTION 9. EXTENSION OF THE EGTRRA REMEDIAL AMENDMENT PERIOD/SCHEDULE OF NEXT FIVE-YEAR REMEDIAL AMENDMENT CYCLE

.01 The EGTRRA remedial amendment period is extended as provided in the following chart. The chart also provides the end dates of the first five-year remedial amendment cycle after EGTRRA.

If the TIN of the employer ends in —	The plan's cycle is —	The last day of the EGTRRA remedial amendment period (*i.e.*, the first cycle) is —	The next five-year remedial amendment cycle ends on —
1 or 6	Cycle A	January 31, 2007	January 31, 2012
2 or 7	Cycle B	January 31, 2008	January 31, 2013
3 or 8	Cycle C	January 31, 2009	January 31, 2014
4 or 9	Cycle D	January 31, 2010	January 31, 2015
5 or 0	Cycle E	January 31, 2011	January 31, 2016

.02 This extension of the EGTRRA remedial amendment period extends the remedial amendment period for all disqualifying provisions to which the EGTRRA remedial amendment period applies, including plan provisions required or permitted to be amended for EGTRRA, final regulations under § 401(a)(9) of the Code, Rev. Rul. 2001–62, Rev. Rul. 2002–27, and disqualifying provisions described in Rev. Proc. 2004–25.

.03 In accordance with section 8, the end of a plan's EGTRRA remedial amendment cycle is the time by which plan amendments must be adopted for other legislative changes and other guidance changes that have first been listed in the Cumulative List of Changes in Plan Qualification Requirements at least twelve months before the end of the plan's EGTRRA remedial amendment period.

.04 This extension does not waive any requirement for adoption of timely good faith EGTRRA plan amendments or other plan amendments that are required to be adopted as a condition of eligibility for the EGTRRA remedial amendment period.

SECTION 10. CUMULATIVE LIST OF CHANGES IN PLAN QUALIFICATION REQUIREMENTS

.01 The Service will publish a Cumulative List of Changes in Plan Qualification Requirements annually. The target date for publication of the list is mid-November of each year. The first list will be issued in conjunction with the opening of the EGTRRA opinion and advisory letter program for pre-approved plans.

.02 The annual Cumulative List of Changes in Plan Qualification Requirements will identify those changes in the qualification requirements of the Code as well as those items of published guidance relating to the plan qualification requirements, such as regulations and revenue rulings, that will be considered by the Service in its review of plans whose remedial amendment cycle ends on January 31 of the second calendar year following publication of the list. In other words, it is expected that determination letter applications for these plans will be submitted between February 1 of the calendar year following the publication of the annual list and January 31 of the next year, and the Service will review these plans taking into account the changes and guidance identified on the annual list. For example, it is expected that Cycle A plans will be submitted for determination letters between February 1, 2006, and January 31, 2007. The Service will review these plans on the basis of the Cumulative List of Changes in Plan Qualification Requirements that is published in the latter part of 2005.

.03 If an application for a determination letter is submitted prior to the February 1 that begins the last twelve months of the plan's remedial amendment cycle — that is, the application is filed early, or "off-cycle" — the application will be reviewed on the basis of the annual list which the Service is then using to review applications that have been filed "on-cycle." This means that the determination letter issued for the plan may not take into account any or all of the changes in qualification requirements for which the plan must be amended within the plan's current remedial amendment cycle. Consequently, the plan may need to be further amended within the cycle and another determination letter application will need to be filed within the last twelve months of the cycle if the plan sponsor wishes to preserve reliance on a determination letter. Also, the application will not be reviewed until all on-cycle plans have been reviewed and processed.

Example 4: The remedial amendment cycle for Plan Z is based on the last digit of Employer C's TIN, which is 0. Plan Z's cycle is Cycle E. The EGTRRA

RAP for Plan Z ends January 31, 2011, and the subsequent 5-year RAP cycle ends January 31, 2016. Employer C submits a determination letter application on March 1, 2009. The RAP cycle will expire on January 31, 2011. Therefore, Employer C may need to re-submit a new determination letter application during the last twelve months of the RAP cycle (between February 1, 2010, to January 31, 2011) to continue to have reliance on a determination letter after that date.

.04 The Service will not consider in its review of any determination letter application any change in the qualification requirements or published guidance that has not been identified in the applicable Cumulative List of Changes in Plan Qualification Requirements and a determination letter may not be relied on with respect to such changes or guidance.

.05 The Service may require the adoption of good faith plan amendments, as identified in the applicable Cumulative List, prior to the end of a plan's remedial amendment cycle. The Service will not consider these amendments in issuing a determination letter, and the letter may not be relied on with respect to the amendments, if the amendments relate to changes in the qualification requirements or guidance that has not been identified on the applicable Cumulative List of Changes in Plan Qualification Requirements.

SECTION 11. DETERMINATION LETTERS

.01 In general, plan sponsors of individually designed plans that wish to preserve reliance on a plan's favorable determination letter should apply for a new determination letter during the last twelve months of their plan's remedial amendment cycle, that is between February 1 and January 31 of the last year of the cycle.

.02 Determination letters issued for individually designed plans will take into account, and may be relied on with respect to, those changes in the plan qualification requirements and guidance identified on the applicable Cumulative List of Changes in Plan Qualification Requirements, as described in section 10.

.03 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 twelve months after the application was received, and will include the specific "expiration date." Thus, determination letters issued for applications filed more than twelve months prior to the end of a five-year remedial amendment cycle may not be relied on after that cycle.

.04 In appropriate circumstances, the Service may, through generally applicable published guidance, extend the expiration dates of determination letters for a particular cycle year or years.

SECTION 12. TERMINATING PLANS

The termination of a plan ends the remedial amendment cycle for the plan. Accordingly, any retroactive remedial plan amendments or other required plan amendments for a terminating plan must be adopted in connection with the plan termination. An application will be deemed to be filed in connection with plan termination 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 adopted; however, in no event can the application be filed later than twelve months from the date of distribution of substantially all plan assets.

SECTION 13. OPENING OF EGTRRA DETERMINATION LETTER PROGRAM FOR INDIVIDUALLY DESIGNED PLANS

Applications for determination letters for individually designed plans that are filed on or after February 1, 2006, will be reviewed taking into account the requirements of EGTRRA as well as other changes in qualification requirements and guidance identified on the applicable Cumulative List of Changes in Plan Qualification Requirements.

PART II — PRE-APPROVED PLANS

SECTION 14. SIX-YEAR AMENDMENT/APPROVAL CYCLE FOR M&P AND VOLUME SUBMITTER PLANS

.01 In general, sponsors of M&P plans and volume submitter plans must apply for new opinion or advisory letters for the plans every six years, according to the following schedule:

(1) Defined contribution plans	
Initial EGTRRA application due —	Next application due —
Sponsors: February 1, 2005, through January 31, 2006	February 1, 2011, through January 31, 2012
Mass Submitters: February 1, 2005, through October 31, 2005	February 1, 2011, through October 31, 2011

(2) Defined benefit plans	
Initial EGTRRA application due —	Next application due —
Sponsors: February 1, 2007, through January 31, 2008	February 1, 2013, through January 31, 2014
Mass Submitters: February 1, 2007, through October 31, 2007	February 1, 2013, through October 31, 2013

.02 An opinion or advisory letter that is issued for a pre-approved plan that is timely submitted in accordance with the preceding schedule will take into account and may be relied on with respect to the changes in qualification requirements and guidance changes listed in the Cumulative List of Changes in Plan Qualification Requirements that is published in the year before the year the filing of applications is accepted for the cycle.

.03 When the review of a cycle for a pre-approved plan has neared completion (after approximately a two-year review process), the Service will publish an announcement providing the date by which adopting employers must adopt the newly approved plans. This will be a uniform date that will apply to all adopting employers. It is expected that this date will give virtually all sponsors a two-year window for employers to adopt their updated plan. For purposes of this revenue procedure, an adopting employer means an employer who satisfies the requirements described under section 15.

.04 An adopting employer that adopts the approved M&P or volume submitter 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 with respect to all disqualifying provisions for which the remedial amendment period would otherwise end during the cycle.

.05 The Service may revise the schedule described in this section as needed to respond to changing circumstances and needs of plan sponsors.

SECTION 15. ELIGIBILITY FOR SIX-YEAR AMENDMENT/APPROVAL CYCLE

.01 An employer's plan is treated as a pre-approved plan and therefore will be eligible for the six-year amendment/approval cycle if the following requirements are satisfied:

(1) Before the end of the employer's five-year remedial amendment cycle as determined under Part I of this revenue procedure, the employer adopts a sponsor's or practitioner's approved (or interim) M&P plan or volume submitter specimen plan, or

(2) Before the end of the employer's five-year remedial amendment cycle as determined under Part I of this revenue procedure, the employer and an M&P plan sponsor or volume submitter practitioner execute Form **XXXX**, Certification of Intent to Adopt Pre-approved Plan, and

(3) By the application deadline of January 31st of the calendar year following the calendar year opening of the six-year remedial amendment cycle, the sponsor or practitioner submits an application for an opinion or advisory letter for the M&P plan or volume submitter specimen plan [as specified above] (even if the M&P plan or VS plan is an identical adoption of a mass submitter plan).

.02 If the preceding requirements found in section 15.01 are satisfied, the remedial amendment period for the plan will not expire before the end of the time period for adopting a pre-approved plan. By the end of the two-year adoption period as set forth by the Service, the employer must amend or restate its plan by adopting any pre-approved plan or individually designed plan, and if required for reliance, request a determination letter.

.03 If an employer who properly certified, prior to the end of its remedial amendment cycle, its intent to adopt a pre-approved plan but failed to adopt any pre-approved plan or individually designed plan that has been updated for all laws up to and including the applicable Cumulative List within the two-year deadline set forth by the Service and is unable to utilize its five-year remedial amendment cycle, then the adopting employer may be eligible for Employee Plans Compliance Resolution System (EPCRS).

.04 Change in Plan Status:

(1) If the status of a plan has changed due to the adoption of a different plan, the adoption and restatement of a plan, the adoption of a plan amendment or certification of intent to adopt a pre-approved plan, then the remedial amendment cycle will generally be based upon the plan's status after the change except where substantial changes were found to be made to a volume submitter plan; the six-year remedial amendment cycle will be used for application filing purposes.

(2) Except as stated in section 15.02, an employer who adopts an individually designed plan but who previously adopted a pre-approved plan will have a remedial amendment cycle for such plan which is determined under Part I of this revenue procedure.

Example 5: Employer X whose TIN ends with an 8 maintains Plan M. Plan M is a defined contribution plan and is an adoption of a pre-approved plan as of 2002. Assuming the pre-approved plan is timely submitted for EGTRRA update by the sponsor/practitioner on or before January 31, 2006, Employer X will have until January 31, 2010, to adopt the EGTRRA approved version of the pre-approved plan and have such adoption be considered timely under section 401(b) of the Code.

In 2007, Employer X decides the pre-approved plan it is using for purposes of Plan M no longer offers the flexibility it desires to provide the retirement benefits it wishes to its employees. As a result, Employer X restates Plan M in 2007 into an individually designed plan document. The result of this change in plan status in 2007 is that the EGTRRA remedial amendment period for the plan is no longer January 31, 2010, but is now January 31, 2009.

(3) 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 permits or contemplates such a change) is considered to have adopted an individually designed plan. The remedial amendment cycle in which the employer impermissi-

bly amends the M&P plan will remain the six-year remedial amendment cycle. However, the subsequent remedial amendment period is the five-year remedial amendment cycle as determined under Part I of this revenue procedure.

Example 6: Employer Y whose TIN ends with an 8 maintains Plan N. Plan N is a defined contribution plan and is an adoption of an M&P plan as of 2002. Assume the M&P plan is timely submitted for EGTRRA update by the sponsor/practitioner on or before January 31, 2006, and receives an opinion letter for such update dated January 31, 2008. This gives Employer Y until January 31, 2010, to adopt the EGTRRA approved version of the M&P plan and have such adoption be considered timely under section 401(b) of the Code.

On November 15, 2009, as part of adopting the EGTRRA approved version of the M&P plan Employer Y adopts an amendment to the approved M&P plan which alters or modifies the pre-approved provisions of the M&P plan. Thus, Employer Y's adoption of the M&P plan is no longer word-for-word identical. The result of this modification by Employer Y is that Plan N is now considered to be an adoption of an individually designed plan. When Employer Y submits Plan N for a determination letter by January 31, 2010, using Form 5300, *Application for Determination for Employee Benefit Plan*, the favorable determination letter will be stamped with an expiration date determined in accordance with Part I. In other words, Plan N's next remedial amendment cycle will be that of an individually designed plan and will expire on January 31, 2014.

(4) An employer that makes a substantial change to an approved volume submitter plan is considered to have adopted an individually designed plan solely for application filing purposes. The Service reserves the right to determine when the deviations from the language of the approved specimen plan is a substantial change and therefore requires an adopting employer to file a Form 5300. The remedial amendment cycle in which the substantial change was made and subsequent remedial amendment cycles will remain the six-year remedial amendment cycle.

Example 7: Employer Z whose TIN ends with an 8 maintains Plan O. Plan O is a defined contribution plan and is an adoption of a volume submitter plan as of 2002. The volume submitter specimen plan is timely submitted for EGTRRA update by the sponsor/practitioner on or before January 31, 2006, and receives an advisory letter for such update dated January 31, 2008. Employer Z has until January 31, 2010, to adopt the EGTRRA approved version of the volume submitter plan and to have such adoption be considered timely under IRC section 401(b).

On November 15, 2009, as part of adopting the EGTRRA approved version of the volume submitter plan, Employer Z alters or modifies the pre-approved provisions of the volume submitter plan. Thus, Employer Z's adoption of the volume submitter plan is not word-for-word identical to the approved volume submitter specimen plan. When Employer Z submits Plan O for a determination letter by January 31, 2010, using Form 5307, *Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans*, the Service specialist working the determination letter application determines the modification is not compatible with the purpose of the volume submitter program and requires Employer Z to re-file its determination letter application using Form 5300, *Application for Determination for Employee Benefit Plan*, and pay the higher user fee. Although the Service specialist working Plan O's determination letter application has required it to be filed on the form applicable to that of an individually designed plan, Plan O's next remedial amendment cycle will continue to be determined under this Part II.

SECTION 16. EFFECT ON OTHER DOCUMENTS

Reserved.

SECTION 17. EFFECTIVE DATE

Reserved.

SECTION 18. PAPERWORK REDUCTION ACT

Reserved.

DRAFTING INFORMATION

Reserved.