

June 4, 2018

Internal Revenue Service  
CC:PA:LPD:PR (Notice 2018-24)  
Room 5203  
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Washington, D.C. 20044

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### **Background**

We appreciate the opportunity to provide our input and recommendations as the IRS considers whether and which type of individually designed plans the agency will accept for determination letter applications. In Notice 2018-24, the IRS requests comments on the potential expansion of the scope of the determination letter program for individually designed plans. This request for comments is pursuant to the exception to the general parameters of the program provided in Announcement 2015-19 that the IRS will accept determination letter applications for individually designed plans “. . . in certain other limited circumstances that will be determined by the Treasury and the IRS.” Our comments primarily focus on the challenges sponsors of large plans that cannot or choose not to adopt a pre-approved document are grappling with in light of the curtailment of the determination letter program.

The undersigned have prepared these comments with input from others in the company.

### **Timing of Opening Determination Letter Program for Limited Circumstances**

In Notice 2018-24, the IRS requests comments on the potential expansion of the scope of the determination letter program “during the 2019 calendar year” and indicates that it will consider each year whether to accept determination letter applications in specified circumstances other than for initial qualification and qualification upon plan termination, as already permitted under Rev. Proc. 2016-37. While we appreciate the IRS taking the initiative to open the determination letter program, opening the program for just one calendar year for a specific type of plan will be of no value to the majority of plan sponsors. We believe that the same resources could be used to far better effect by allowing sponsors, on a permanent basis, to obtain a determination letter in certain limited and specific circumstances where the assurance that an IRS determination letter provides would be particularly valuable. Accordingly, our recommendations primarily relate to events that arise during the life cycle of a plan that heighten the need for a determination letter from the IRS. If making the program available under the scenarios we have described below on a permanent basis is not feasible, an alternative would be to provide a schedule that outlines the types of circumstances for which the IRS would expect to open the program over a three- or five-year period. This would provide plan sponsors with adequate time to

prepare for a determination letter filing and the IRS with a framework and schedule that would be beneficial for planning, training agents, etc.

### **Circumstances that Warrant Submission of Determination Letter Applications for Individually Designed Plans**

Following the curtailment of the determination letter program for individually designed plans and the elimination of the extended five-year remedial amendment cycle, many plan sponsors remain on the individually designed plan platform either by choice or due to an inability to transition complexities of their plans to the pre-approved platform. We see two primary categories of circumstances that we think warrant consideration by the IRS in accepting individual determination letter applications from plan sponsors. We recommend the IRS consider opening the program to accept applications under the “limited circumstances” exception for the following:

1. **Corporate transactions.** It would be extremely useful if the IRS would open the program to allow plan sponsors to submit requests for individual determination letters for plans sponsored by organizations that have undergone one or multiple significant events such as mergers or acquisitions. Buyers may be reluctant to take over sponsorship of a seller’s plan without assurances that the plan satisfies all plan document qualification requirements. The ability to request an updated determination letter for the seller’s plan would increase the likelihood that a buyer would assume sponsorship of the plan, which could be to the benefit of the plan participants.

The IRS could establish a short period after the corporate transaction (e.g., three years) in which the plan sponsor may apply to receive a determination letter. Buyers should be eligible to submit a plan irrespective of whether the seller’s plan is merged into the buyer’s pre-existing plan or if the buyer assumes and maintains the seller’s plan as a stand-alone plan. This exception should also be made available for a limited period immediately before and during the sales process, when a business is put up for sale.

2. **Significant plan changes.** We also recommend defining “limited circumstances” to encompass significant plan changes, including adopting a hybrid formula. With respect to plan conversions to a hybrid plan formula, at a minimum, limited circumstances should be defined to include obtaining a determination letter to address whether the modifications made in connection with the conversion satisfy the final regulations applicable to plans with hybrid formulas. As these regulations were only recently finalized after many years of work, many such plans have not yet been able to obtain a determination letter as to the provisions relating to such formulas or the conversion.

Offering determination letters after other significant plan changes, such as changes in benefit formulas, plan redesigns, plan freezes, adding certain non-traditional plan features or one-time offerings, etc., helps the plan sponsor mitigate the risk of implementing the change and then subsequently discovering a compliance issue with the amendment many years later. Expanding the program to include these types of plan amendments would greatly enhance the plan sponsor’s assurance of compliance, which is key to encouraging employers to continue to develop innovative plan designs that improve retirement security for participants. To limit the number of plans that qualify for submission under this option, the IRS could implement a system whereby plans can be submitted only for a significant plan change determination letter once during an established period (e.g., every five years) and require that the amendment affect the manner in which the plan meets various qualification requirements.

We appreciate the opportunity to offer these comments and would be pleased to provide any additional information that might be helpful to the IRS. Please contact either of the undersigned if you have any questions or would like to discuss our comments in more detail.

Sincerely,



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