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The IRS Paves the Way for More Preapproved Plans

By [Sheila Ninneman, J.D.](#)

On June 30, 2017, the Internal Revenue Service (IRS) issued Revenue Procedure 2017-41, which makes significant changes to the IRS' opinion letter program for preapproved retirement plans. On the same day, the IRS issued the 2017 Cumulative List, which lists changes to the qualification requirements that are required to be taken into account in preapproved defined contribution plans that are submitted for opinion letters during the third six-year remedial amendment cycle. The third cycle begins October 2, 2017 and ends on October 1, 2018. Revenue Procedure 2017-41 is effective October 2, 2017.

In our Summer 2016 article, [IRS Puts Brakes on Cyclical Determination Letter Program](#), we discussed the IRS' termination of the five-year cyclical determination letter program for individually designed plans. Essentially, determination letters for individually designed plans may only be obtained at a plan's inception and termination. Commentators predicted that the end of the cyclical program would encourage plan sponsors to convert their plans, where possible, to preapproved plan formats. In Revenue Procedure 2017-41, the IRS makes that goal explicit.

In keeping with the goal, the IRS states that the new preapproved opinion letter program increases the types of plans eligible for preapproved status, affords greater flexibility in the design of preapproved plans and eliminates the distinction between master and prototype and volume submitter plans. The new opinion letter program involves two types of plans: standardized and nonstandardized preapproved plans.

Other highlights from the Revenue Procedure include:

- A pre-approved plan may have either of two formats: an adoption agreement and basic plan document or a single plan document;
- A money purchase pension plan can now be combined with either a 401(k) or profit-sharing plan;
- An ESOP can now include a 401(k) feature, but it must be a nonstandardized plan;
- A Cash Balance plan may now provide that the rate used to determine an interest credit be based on the actual return on plan assets (not a subset of plan assets), but it must be a nonstandardized plan;
- A non-electing church plan (plans that do not elect ERISA coverage) may submit an application for an opinion letter; and
- No opinion will be issued as to the tax-exempt status of a preapproved plan's related trust or custodial account.

The IRS invites further comments on how the opinion letter program can be improved and, in particular, comments regarding ways in which individually designed plans that retain legacy benefit formulas can be converted to a preapproved plan format.

Questions? Contact your Findley Davies | BPS&M consultant with whom you normally work or [Sheila Ninneman, J.D.](#) at sninneman@findleydavies.com, or 216.875.1927, or [Jason Rothman, J.D.](#) at jrothman@findleydavies.com, or 216.875.1907.

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