

**DETERMINATION LETTER PROCESS FOR
QUALIFIED RETIREMENT PLANS**

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1. **Background.** In the past, employers were generally required to submit determination letter requests to the IRS during certain periods, which were frequently extended. The periods during which plans were required to be amended for various tax acts, such as the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”), were referred to as the remedial amendment periods (“RAPs”). In Revenue Procedure 2005-66 the IRS created a “**staggered**” determination letter program. This process was established to spread the work of the IRS over a period of years, and to free up resources to perform retirement plan audits. The new staggered periods to submit qualified retirement plans for determination letters are based upon a Plan Sponsor’s Employer Identification Number (“EIN”).
2. **Individually Designed Plans.** Individually designed retirement plans are required to be submitted for receipt of determination letters during the periods identified below based upon the new 5 year cycle:

Sponsor EIN Ending In	Cycle	Period to Submit Plans for EGTRRA Determination Letters
1 or 6	A	February 1, 2006 to January 31, 2007
2 or 7	B	February 1, 2007 to January 31, 2008
3 or 8	C	February 1, 2008 to January 31, 2009
4 or 9	D	February 1, 2009 to January 31, 2010
5 or 0	E	February 1, 2010 to January 31, 2011

It should be noted that the IRS is **discouraging** employers from filing determination letter requests “**off cycle**”. In the event that a determination letter request is submitted off cycle, it will be placed behind all employers who are required to submit their plans during the applicable cycle, and will, therefore, only be reviewed after all employer plans required to be submitted are completed. P&E only anticipates employers submitting off cycle when new determination letters are required due to acquisitions, for new plans and for unique circumstances (such as where numerous amendments have been executed and a plan’s cycle is still several years away). Furthermore, if a plan is submitted off cycle, it is still required to be resubmitted during the appropriate 5 year amendment period.

3. **Prototype/Volume Submitter Plans.** Employers who use Prototype or Volume Submitter Plans are generally required to execute IRS Form 8905 to confirm their intent to remain on such programs by the end of the applicable cycles. For employers who have

EINs ending in 1 or 6, a Form 8905 should have been signed by **January 31, 2007**. If an employer intends to remain on the Prototype Plan of an existing qualified retirement plan sponsor, the Form is not technically required to be signed. Nevertheless, P&E recommends that all employers sign a Form 8905 within their applicable cycle, based upon the EIN of the sponsor of the Plan, to confirm that they intend to remain on a Prototype or Volume Submitter Plan. If the Form is signed, the employer can actually sign another document, provided by another vendor, without any difficulties to maintain the qualified status of a retirement plan.

This Summary was prepared by the Law Firm of Palmieri & Eisenberg, located in Princeton, New Jersey, for clients and associates of the Firm. This Summary is being provided to help educate clients and employers regarding these new rules. P&E is **not** providing any legal advice to any employers to whom this Summary is provided, as a courtesy. Employers are strongly encouraged to work with their own legal counsel in reviewing these important issues.

Any advice in this summary concerning a federal tax issue is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of avoiding any tax penalties that can be imposed by the Internal Revenue Service, or for promoting, marketing or recommending any tax-related matters addressed herein in accordance with IRS Circular 230.

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