

April 20, 2023

Mr. Eric Slack
Director, Employee Plans (SE:TEGE:EP)
Internal Revenue Service
999 N. Capitol Street, NE
Washington, DC 20002

SUBMITTED VIA EMAIL

Re: Interim Amendments for Pre-Approved Plans

The American Retirement Association (ARA) appreciates the ongoing consideration for improvements to pre-approved plan document programs, which are used by the vast majority of plan sponsors. Through the years, the Internal Revenue Service (IRS) and the Department of the Treasury ("Treasury") have revised and improved procedures relating to pre-approved plans, often incorporating input from the benefits practitioner community. Recently, with respect to interim amendments for §401(a) pre-approved plans, the IRS issued Rev. Proc. 2021-38, which provided a uniform deadline for §401(a) pre-approved plans to adopt interim amendments. ARA appreciates that the IRS recognized, and responded to, issues caused by the previous interim amendment deadline rules. ARA is writing now to suggest additional changes that would further promote compliance and ease the administration burdens of smaller plan sponsors.

The ARA is the coordinating entity for its five underlying affiliate organizations representing the full spectrum of America's private retirement system, the American Society of Pension Professionals and Actuaries ("ASPPA"), the National Association of Plan Advisors ("NAPA"), the National Tax-Deferred Savings Association ("NTSA"), the American Society of Enrolled Actuaries ("ASEA"), and the Plan Sponsor Council of America ("PSCA"). ARA's members include organizations of all sizes and industries across the nation who sponsor and/or support retirement savings plans and are dedicated to expanding on the success of employer-sponsored plans. In addition, ARA has nearly 35,000 individual members who provide consulting and administrative services to sponsors of retirement plans. ARA's members are diverse but united in their common dedication to the success of America's private retirement system.

Recommendation

ARA recommends that the deadline for interim amendments for §401(a) and §403(b) pre-approved plans be identical (or similar to) the deadline for §401(a) individually designed plans—particularly that the deadline for interim amendments to pre-approved plans should be the end of the second calendar year that begins after the issuance of the Required Amendments List (RAL) in which the change in qualification requirements appears.

In addition, ARA recommends that the IRS clarify that interim amendments to preapproved plans adopted under the RAL process receive the same 411(d)(6) protection as interim amendments adopted pursuant to statutory deadlines, as extended.

This will promote overall compliance for the industry and ease administrative burdens for the following reasons:

- Basing the deadline on the RAL will avoid or minimize amendments that eventually conflict with Treasury's guidance and ease the significant task of drafting amendments before guidance is issued. Basing the amendment deadline on appearance of an item on a RAL list

assures mass submitters and other pre-approved document providers that IRS has issued sufficient guidance for a plan to be amended accurately, just as it does for providers of individually designed plans. ARA does not see any significant policy reason why pre-approved plans should be required to amend documents earlier and under less advantageous circumstances than similarly situated individually designed plans.

- Use of the RAL with the same amendment deadline as individually designed plans (December 31 of the 2nd calendar year following issuance of the RAL) will ensure pre-approved plan providers have sufficient time to prepare amendments and work with adopting plan sponsors to execute amendments. Once guidance is issued, mass submitters must draft amendments and program and test their document systems, which generally requires approximately one year. Then providers must provide their adopting employers with the amendment. Often, the provider must assist an employer in determining whether the defaults were followed and obtain signatures for the adopting employers that did not use the amendment's defaults. Ensuring providers have at least two years to accomplish this task after guidance is issued and appears on the RAL will promote overall compliance of pre-approved plans.
- ARA believes use of the RAL may reduce the need to issue extensions to statutory deadlines, which can cause administrative difficulties and confusion when issued close to the deadline and reward providers who do not take substantial actions to comply with the original deadline. This uniform deadline should avoid confusion and promote overall compliance of the preapproved plan providers.
- In addition, the uniform deadline will promote examination efforts as the preapproved plan providers will have the same deadline as individually designed plans and the content of these amendments is likely to be more consistent across plan vendors. ARA believes that the staggered and last-minute extensions for SECURE and CARES resulted in many different positions regarding the content and timing of amendments for SECURE and CARES, which may negatively impact the IRS' examination efforts when conducting future examinations. Creating uniformity by use of the RAL will support compliance and examination efforts.

Considering the plethora of upcoming guidance and amendment activity related to both the SECURE Act and SECURE 2.0, ARA strongly encourages the IRS to implement the RAL approach to pre-approved plans.

These comments are submitted on behalf of and were prepared by ASPPA's Plan Documents Subcommittee on behalf of ARA. If you have any questions regarding the matters discussed herein, please contact Kelsey N.H. Mayo, Director of Regulatory Policy, at (704) 342-5307 or kmayo@usaretirement.org. Thank you for your time and consideration.

Sincerely,

/s/
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American Retirement Association

/s/
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