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Articles

OTHER DEVELOPMENTS

Law Firms Instituting Their Own Determination Letter Programs to Fill IRS Gap Regarding Five-Year Remedial Amendment Period Cycle Rulings (03/20/2017)

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Pension and Benefits Week, 03/20/2017

## Law Firms Instituting Their Own Determination Letter Programs to Fill IRS Gap Regarding Five-Year Remedial Amendment Period Cycle Rulings

To fill in the gap left by IRS's decision to eliminate its staggered five-year remedial amendment cycle system for individually designed plans, some private law firms have instituted their own private determination letter program. Specifically, **Wagner** Law Group, Ballard Spahr, and Groom Law Group have revealed that they will be offering such services.

In Rev Proc 2016-37, IRS modified its determination letter program for qualified plans by eliminating, as of January 1, 2017, the staggered five-year remedial amendment cycle system for individually designed plans. Specifically, IRS limited the scope of the program so that a sponsor of an individually designed plan will be permitted to submit a determination letter application only for *initial* plan qualification, for qualification upon plan *termination*, and in certain other circumstances (see Pension and Benefits Week ¶ 1 7/5/2016). IRS's limitations left a gap in the system.

In response, **Wagner** Law Group said that it is instituting its own "Private Determination Letter Program" (PDLP), which will "help protect the tax-qualified status of all types of individually-designed retirement plans by providing a comprehensive review of the current document and any amendments by our experienced attorneys based on the plan's most recently issued favorable determination letter and subsequent IRS guidance." The **Wagner** Law Group's PDLP will, when appropriate, issue to the plan sponsor, a detailed written opinion letter "that its plan

has been properly amended for applicable changes in the law and that any design changes made to the plan meet all requirements under the Internal Revenue Code.”

Ballard Spahr has also reacted. “Now that the IRS determination letter program is gone, both employers and plan administrators realize just how useful it really was,” Kurt Anderson, Counsel at Ballard Spahr, told Thomson Reuters. “Ballard's new Retirement Letter Opinion Letter Program will, we think, help fill the void by providing fiduciaries with a procedure to demonstrate ongoing compliance and possibly reduce audit costs, and for employers to efficiently be able to show lenders and partners in corporate transactions that their plans remain in good order,” said Anderson.

Additionally, Groom Law Group has also developed a “Document Compliance Service” (DCS) for maintaining IRS-compliant retirement plan documents. “In light of the IRS curtailment of the determination letter program and the ongoing need to demonstrate the tax-qualified status of a plan, an opinion of counsel that the form of the document is tax-qualified is an important next step for plan sponsors, and this step demonstrates strong internal controls, which in the event of an IRS audit is an important factor if sanctions are discussed,” Elizabeth Thomas Dold, Principal at Groom Law Group, told Thomson Reuters.

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