TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

JAN 29 2014

Judith W. Boyette, Esq.
Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105

Re: Compliance Statement for: Mendocino County Employees' Retirement Association
Control Number: 911705511
Employer Identification Number: 94-6116617
Plan No.: 001

Dear Ms. Boyette:

The enclosed documents are sent to you under the provisions of a power of attorney currently on file with the Internal Revenue Service.

The determination letter issued with respect to your client's recent application as part of their Voluntary Correction Program submission is also enclosed for your reference.

If you have any questions, please contact Danielle Norris, ID# 1002853909 by phone at 202-317-8726 or by fax at 202-317-8811.

Sincerely,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Copy of Letter to Taxpayer
Copy of signed Compliance Statement
Copy of Determination letter
Publication 794

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: JAN 29 2014

BOARD OF RETIREMENT OF MENDOCINO
COUNTY EMPLOYEES RETIREMENT
ASSOCIATION
C/O JUDITH W BOYETTE
HANSON BRIDGETT LLP
425 MARKET ST 26TH FL
SAN FRANCISCO, CA 94105

Employer Identification Number:
94-6116617
DLN:
601072018
Person to Contact:
MAXINE B TERRY ID# 50016
Contact Telephone Number:
(202) 283-9644
Plan Name:
MENDOCINO COUNTY EMPLOYEES
RETIREMENT ASSOCIATION
Plan Number: 001

Dear Applicant:

We have made a favorable determination on the plan identified above based on the information you have supplied. Please keep this letter, the application forms submitted to request this letter and all correspondence with the Internal Revenue Service regarding your application for a determination letter in your permanent records. You must retain this information to preserve your reliance on this letter.

Continued qualification of the plan under its present form will depend on its effect in operation. See section 1.401-1(b)(3) of the Income Tax Regulations. We will review the status of the plan in operation periodically.

The enclosed Publication 794 explains the significance and the scope of this favorable determination letter based on the determination requests selected on your application forms. Publication 794 describes the information that must be retained to have reliance on this favorable determination letter. The publication also provides examples of the effect of a plan's operation on its qualified status and discusses the reporting requirements for qualified plans. Please read Publication 794.

This letter relates only to the status of your plan under the Internal Revenue Code. It is not a determination regarding the effect of other federal or local statutes.

This determination letter gives no reliance for any qualification change that becomes effective, any guidance published, or any statutes enacted, after the issuance of the Cumulative List (unless the item has been identified in the Cumulative List) for the cycle under which this application was submitted.

This letter may not be relied on after the end of the plan's first five-year remedial amendment cycle that ends more than twelve months after the application was received. This letter expires on January 31, 2014. This letter considered the 2009 Cumulative List of Plan Qualification Requirements.

This determination letter is applicable for the plan adopted on 01/01/1948.

BOARD OF RETIREMENT OF MENDOCINO

This determination is subject to your adoption of the proposed amendments submitted in your letter dated 12/30/2013. The proposed amendments should be adopted on or before the date prescribed by the regulations under Code section 401(b).

This determination letter is based solely on your assertion that the plan is entitled to be treated as a Governmental plan under section 414(d) of the Internal Revenue Code.

This determination letter is applicable to the plan and related documents submitted in conjunction with your application filed during the remedial amendment cycle ending 2009.

This is not a determination with respect to any language in the plan or any amendment to the plan that reflects Section 3 of the Defense of Marriage Act, Pub. L. 104-199, 110 Stat. 2419 (DOMA) or U.S. v. Windsor, 133 S. Ct. 2675 (2013), which invalidated that section.

If you have questions concerning this matter, please contact the person whose name and telephone number are shown above.

Sincerely,

Andrew E. Zuckerman
Director, EP Rulings & Agreements

Enclosures:
Publication 794

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JAN 29 2014

Board of Retirement of Mendocino County
Employees' Retirement Association
c/o James M. Anderson
Administrator
625B Kings Court
Ukiah, CA 95482

Re: Compliance Statement for: Mendocino County Employees' Retirement Association
Control Number: 911705511
Employer Identification Number: 94-6116617
Plan No.: 001

Dear Mr. Anderson:

Enclosed is your compliance statement. A compliance statement constitutes an enforcement resolution solely with respect to certain failures of an employee retirement plan that is intended to satisfy the requirements of the Internal Revenue Code. It does not constitute a ruling letter within the meaning of Revenue Procedure 2013-4, 2013-1 I.R.B. 126, or a determination letter within the meaning of Revenue Procedure 2013-6, 2013-1 I.R.B. 198. The compliance statement should not be construed as affecting the rights of any party under any other law, including Title I of the Employee Retirement Income Security Act of 1974.

The determination letter issued with respect to your recent application as part of your Voluntary Correction Program submission is also enclosed for your reference.

At a later date, you may be required to verify that the correction of the failures and any modification of administrative procedures (upon which your enforcement resolution is conditioned) have been timely made.

Copies of this compliance statement and of this letter have been sent to your authorized representative in accordance with a power of attorney on file in this office. If you have any questions, please contact please contact Danielle Norris, ID# 1002853909 by phone at 202-317-8726 or by fax at 202-317-8811.

Sincerely,

Carlton A. Watkins

for Manager, Employee Plans Voluntary Compliance

Enclosures:
Compliance statement
Determination letter
Publication 794

cc: Judith W. Boyette Esq. & Nancy G. Hilu, Esq.

INTERNAL REVENUE SERVICE
VOLUNTARY CORRECTION PROGRAM
COMPLIANCE STATEMENT

Date: JAN 29 2014

Re: Mendocino County Employees' Retirement Association
SE:T:EP:RA Control Number: 911705511
Employer Identification Number: 94-6116617
Plan No.: 001

I. APPLICANT'S DESCRIPTION OF QUALIFICATION FAILURES

Board of Retirement of the Mendocino County Employees' Retirement Association ("Applicant") administers the Mendocino County Employees' Retirement Association ("MCERA") as established under the County Employees' Retirement Law of 1937 ("CERL") (together referred to as the "Plan"), and has submitted a request to the Internal Revenue Service ("the Service") under the Voluntary Correction Program for a compliance statement relating to qualification failures under section 401(a) of the Internal Revenue Code ("Code"). The Plan uses the twelve-month period that ends on December 31 as its plan year.

Failure #1: ("CERL Failure")

The Plan does not include language required under section 401(a)(7) of the Code that members must become 100% vested in benefits accrued upon plan termination or the complete discontinuance of employer contributions.

Failure #2: ("CERL Failure")

The Plan provides for a reasonable good faith interpretation of section 401(a)(9) of the Code as permitted by the Pension Protection Act of 2006 as applicable to governmental plans. With respect to payments of survivor benefits to other than the surviving spouse and the surviving child of the member, the Plan does not include the basic rules under 401(a)(9) as they apply to governmental plans since CERL does not include provisions that comply with Treasury Regulation 1.401(a)(9)-6, Q&A-2 addressing how life annuities must be paid in these survivor situations in order to satisfy the required minimum distribution requirements.

Failure #3: ("CERL Failure")

The Plan provides the required limitation under section 401(a)(17) on the amount of compensation that can be taken into account for purposes of computing benefits. The language used in the CERL to adopt the grandfathered section 401(a)(17) rules did not take into account that a retirement system could operate on a calendar year basis.

Failure #4: ("CERL Failure")

The Plan was not amended to comply with the requirements of section 401(a)(31) of the Code under the Unemployment Compensation Amendments of 1992 ("UCA") regarding rollover distributions or the requirements of section 402(c) of the Code regarding accepting eligible rollovers in the Plan or the Economic Growth and Tax Relief

Reconciliation Act of 2001 ("EGTRRA") regarding the expansion of the definition of eligible retirement plans to include 403(b) and 457(b) plans until 2009.

CERL § 31685.2 allows nonmembers who are a party to a domestic relations order to obtain a refund of the accumulated contributions in his or her separate account under the plan but does not provide that these alternate payees may make rollovers from a system as required by section 402(c) and Treasury Regulation § 1,402(c)(2), Q&A-12(a).

Failure #5: ("CERL Failure")
The Plan provides health benefits to retirees but does not contain the plan language required by section 401(h) of the Code.

Failure #6: ("CERL Failure")
The Plan includes a provision that may violate the Uniformed Services Employment and Reemployment Rights Act ("USERRA") rules regarding granting service credit applicable to qualified military service in a plan that does not provide for mandatory employee contributions.

Failure #7: ("CERL Failure")
The Plan incorporates section 415 of the Code by reference but does not set out the detailed provisions of section 415 that are required or optional under section 415, including not explicitly providing the actuarial equivalence factors, which plan will be "primary" in the case of where a member participates in more than one defined benefit plan of the employer, and the treatment of any benefits that may be subject to the defined contribution limits.

Failure #8: ("CERL Failure")
The Plan does not comply with the restrictions on distributions before the earliest of death, disability, normal retirement age, severance from employment or plan termination. The following CERL provisions permit distributions prior to these events in certain circumstances: CERL §§ 31486.2, 31489, 31496.7 and 31499.2 (refunds): CERL § 31553 (withdrawals by elective officers): CERL § 31564 (participating district withdrawals): CERL § 31627.2 (refunds of supplemental member contributions): CERL § 31653 (refunds of contributions for military credit): CERL § 31680.1 (temporary reemployment of judges): CERL §§ 31680.2 and 31680.3 (reemployment limitations).

Failure #9: ("CERL Failure")
The Plan contains a provision (CERL § 31656) that permits a party other than the employer to make a contribution to the Plan on behalf of an employee who is on authorized leave to serve as an official of a recognized employee bargaining unit.

Failure #10: ("CERL Failure")
The Plan permits a refund of contributions in violation of the exclusive benefit rule which requires that plan assets must be used for the exclusive benefit of employees and their beneficiaries (CERL § 31564).

Failure #11: ("MCERA Failure")
The Plan did not comply the requirements of Section 401(h) of the Code and did not pay benefits from an account structured to comply with 401(h). In addition, from June 30, 2002 through June 30, 2006, MCERA credited amounts to retiree health insurance reserves even where MCERA had no excess earnings in violation of CERL 31592.4, which increased MCERA's unfunded actuarial liability by $9,557,912.

Failure #12: ("MCERA Failure")
The Plan failed to revise its 402(f) notices to reflect the law changes made by EGTRRA and the Pension Protection Act of 2006 ("PPA").

Failure #13: ("MCERA Failure")
The Plan failed to comply with the minimum distribution requirements of section 401(a)(9) of the Code with regard to two Plan members.

Failure #14 ("MCERA Failure")
The Plan established incorrect contributions rates for Plan Years ending June 30, 2010, June 30, 2011 and June 30, 2012, which led to member overpayments and employer underpayments of approximately $290,000, $275,000 and $200,000 in the aggregate, respectively, for each of those years. The member contributions consisted of pre-tax salary reduction contributions (employer pick-up contributions under section 414(h)(2) of the Code) and pre-tax contributions made by employers on behalf of members without any reduction in the members' salary.

II. APPLICANT'S CORRECTION

Failure #1: ("CERL Failure")
The Applicant will correct the qualification failure by adopting the proposed amendments to the CERL that satisfy the requirements of section 401(a)(7) of the Code.

Failure #2: ("CERL Failure")
The Applicant will correct the failure by adopting proposed model regulations in accordance with a reasonable good faith interpretation of section 401(a)(9) of the Code and the Treasury regulations thereunder, as applicable to a governmental plan.

Failure #3: ("CERL Failure")
The Applicant will correct the failure by adopting the proposed amendments to the CERL and the proposed model regulations which will ensure that compliance with 401(a)(17) of the Code as applicable to a governmental plan.

Failure #4: ("CERL Failure")
The Applicant has corrected the qualification failures by adopting CERL § 31485.15, effective January 1, 2009. It will also adopt proposed model regulations, which provide the rules regarding rollover distributions and accepting rollover contributions and satisfy the requirements of sections 401(a)(31) and 402(c) of the Code.

Failure #5: ("CERL Failure")
The Applicant will correct the qualification failure by adopting the proposed amendments to the CERL and the proposed model regulations that satisfy the requirements of section 401(h) of the Code.

Failure #6: ("CERL Failure")
The Applicant will correct the qualification failure by adopting an amendment to the CERL deleting the provision not in compliance with USERRA.

Failure #7: ("CERL Failure")
The Applicant will correct the failure by adopting the proposed model regulations that comply with the Code and Treasury regulations issued under section 415(b) and (c) of the Code that are required or optional under section 415 as applicable to a governmental plan.

Failure #8: ("CERL Failure")
The Applicant will correct the qualification failure by adopting the proposed amendment to the CERL and adopting the proposed model regulations that satisfy the distribution requirements of section 401(a) of the Code.

Failure #9: ("CERL Failure")
The Applicant will correct the qualification failure by adopting the proposed amendment to the CERL to provide that only the employer may make contributions to the retirement system on behalf of his or her employee who is on authorized leave to serve as an official of a recognized employee bargaining unit.

Failure #10: ("CERL Failure")
The Applicant will correct the qualification failure by adopting the proposed amendment to the CERL to remove the provision permitting refunds of contributions in violation of the exclusive benefit rule.

Failure #11: ("MCERA Failure")
The Applicant has indicated that it ceased providing retiree health benefits as of August 1, 2011. Up to that date, the Applicant complied with the proposed model regulations that satisfy the requirements of section 401(h) of the Code. The Applicant will ensure that the $9,557,912 in unfunded actuarial accrued liability improperly credited to retiree health reserves (and not to pension reserves) shall be repaid to the Plan by: 1) crediting the $658,653 in unused health reserves as of June 30, 2012 to the Plan, and 2) using employer contributions to pay off the remaining balance in amortized installments.

Failure #12: ("MCERA Failure")
The Applicant will correct the operational failure by utilizing "safe harbor" 402(f) notices prescribed by IRS Notice 2009-68 for all future distributions.

Failure #13: ("MCERA Failure")
The Applicant corrected the failure by distributing the required minimum distributions plus interest to the affected Plan members.

Failure #14: ("MCERA Failure")
The Applicant corrected the failure by: 1) correcting the rates effective January 1, 2012, 2) crediting the excess member contributions to the participating employers with affected members, and 3) reducing required future contributions for those contributing employers with affected members on a dollar-for-dollar basis, provided that these employers directly repay affected members the amount attributable to deductions from the affected members' salaries.

III. APPLICANT'S REVISION OF ADMINISTRATIVE PROCEDURES
The State Association of County Retirement Systems ("SACRS") has established an ad hoc task force to deal with tax compliance. SACRS intends to establish an on-going committee (or modify the charter of an existing committee) to monitor tax compliance issues for all SACRS member plans such as the Plan. This committee will meet at least annually and more often if necessary. It will be tasked to review tax compliance issues and make recommendations for any new CERL or model regulation provisions or changes.

IV. APPLICANT'S PAYMENT
The Applicant will neither attempt to nor otherwise amortize, deduct, or recover from the Service any compliance fee paid in connection with this compliance statement, nor receive any Federal tax benefit on account of payment of such compliance fee.

V. ENFORCEMENT RESOLUTION
The Service will not pursue the sanction of plan disqualification on account of the qualification issues described above.

This compliance statement is conditioned on (1) there being no misstatement or omission of material facts in connection with the submission, (2) the completion of all corrections described within one hundred fifty (150) days of the date of the compliance statement, and (3) the issuance of a favorable determination letter with respect to the plan as a result of determination letter application control number 601072018 submitted to the Service in relation to the qualification failures covered by this submission. If one or more of the failures described in this submission are being corrected via proposed plan amendments and such amendments are associated with the above referenced determination letter application then the Applicant may adopt such amendments by the later of: 150 days of the date of the compliance statement or ninety-one (91) days after the issuance of a favorable determination letter by the Service. For governmental plans within the meaning of § 414(d) the deadline to adopt these amendments is further extended to the 91st day after the close of the first legislative session that begins more than one hundred twenty (120) days after a favorable determination letter is issued for the plan.

Mendocino County Employees' Retirement Association

This compliance statement considers only the acceptability of the correction method(s) and the revision(s) of administrative procedures described in the submission and does not express an opinion as to the accuracy or acceptability of any calculations or other material submitted with the application. In no event may this compliance statement be relied on for the purpose of concluding that the Plan or Plan Sponsor (as defined in the applicable revenue procedure setting forth the Employee Plans Compliance Resolution System) was not a party to an abusive tax avoidance transaction. The compliance statement should not be construed as affecting the rights of any party under any other law, including Title I of the Employee Retirement Income Security Act of 1974.

Approved: Carlton A. Watkins

for Manager, Employee Plans Voluntary Compliance
Tax Exempt and Government Entities Division

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: JAN 29 2014

Employer Identification Number:
94-6116617
DLN:
601072018
Person to Contact:
MAXINE B TERRY ID# 50016
Contact Telephone Number:
(202) 283-9644
Plan Name:
MENDOCINO COUNTY EMPLOYEES
RETIREMENT ASSOCIATION
Plan Number: 001

BOARD OF RETIREMENT OF MENDOCINO
COUNTY EMPLOYEES RETIREMENT
ASSOCIATION
625B KINGS COURT
UKIAH, CA 95482

Dear Applicant:

We have made a favorable determination on the plan identified above based on the information you have supplied. Please keep this letter, the application forms submitted to request this letter and all correspondence with the Internal Revenue Service regarding your application for a determination letter in your permanent records. You must retain this information to preserve your reliance on this letter.

Continued qualification of the plan under its present form will depend on its effect in operation. See section 1.401-1(b)(3) of the Income Tax Regulations. We will review the status of the plan in operation periodically.

The enclosed Publication 794 explains the significance and the scope of this favorable determination letter based on the determination requests selected on your application forms. Publication 794 describes the information that must be retained to have reliance on this favorable determination letter. The publication also provides examples of the effect of a plan's operation on its qualified status and discusses the reporting requirements for qualified plans. Please read Publication 794.

This letter relates only to the status of your plan under the Internal Revenue Code. It is not a determination regarding the effect of other federal or local statutes.

This determination letter gives no reliance for any qualification change that becomes effective, any guidance published, or any statutes enacted, after the issuance of the Cumulative List (unless the item has been identified in the Cumulative List) for the cycle under which this application was submitted.

This letter may not be relied on after the end of the plan's first five-year remedial amendment cycle that ends more than twelve months after the application was received. This letter expires on January 31, 2014. This letter considered the 2009 Cumulative List of Plan Qualification Requirements.

This determination letter is applicable for the plan adopted on 01/01/1948.

BOARD OF RETIREMENT OF MENDOCINO

This determination is subject to your adoption of the proposed amendments submitted in your letter dated 12/30/2013. The proposed amendments should be adopted on or before the date prescribed by the regulations under Code section 401(b).

This determination letter is based solely on your assertion that the plan is entitled to be treated as a Governmental plan under section 414(d) of the Internal Revenue Code.

This determination letter is applicable to the plan and related documents submitted in conjunction with your application filed during the remedial amendment cycle ending 2009.

This is not a determination with respect to any language in the plan or any amendment to the plan that reflects Section 3 of the Defense of Marriage Act, Pub. L. 104-199, 110 Stat. 2419 (DOMA) or U.S. v. Windsor, 133 S. Ct. 2675 (2013), which invalidated that section.

If you have questions concerning this matter, please contact the person whose name and telephone number are shown above.

Sincerely,

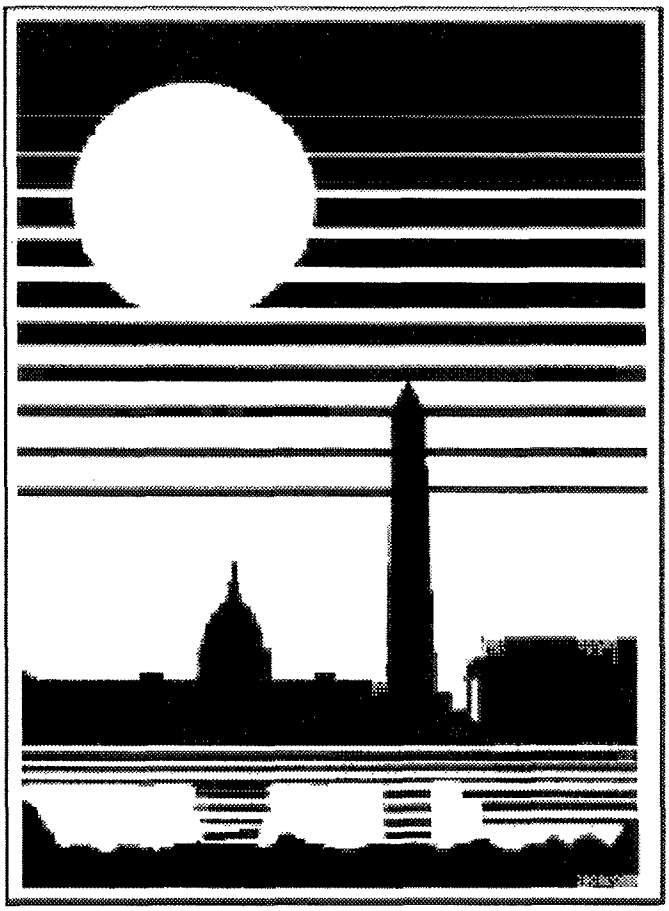
Andrew E. Zuckerman
Director, EP Rulings & Agreements

Enclosures:
Publication 794

IRS

Favorable Determination Letter

Publication 794
(January 2013)



Introduction

This publication explains the significance of a favorable determination letter, points out some features that may affect the qualified status of an employee retirement plan and nullify the determination letter without specific notice from us, and provides general information on the reporting requirements for the plan.

Significance of a Favorable Determination Letter

An employee retirement plan qualified under Internal Revenue Code (IRC) section 401(a) (qualified plan) is entitled to favorable tax treatment. For example, contributions made in accordance with the plan document are generally currently deductible. However, participants will not include these contributions in income until the time they receive a distribution from the plan. In some cases, taxation may be further deferred by rollover to another qualified plan or individual retirement arrangement. (See Publication 575, Pension and Annuity Income, for further details.) Finally, plan earnings may accumulate tax free. Employee retirement plans that fail to satisfy the requirements under IRC section 401(a) are not entitled to favorable tax treatment. Therefore, many employers desire advance assurance that the terms of their plans satisfy the qualification requirements.

The Internal Revenue Service (IRS) provides such advance assurance through the determination letter program. A favorable determination letter indicates that, in the opinion of the IRS, the terms of the plan conform to the requirements of IRC section 401(a). A favorable determination letter expresses the IRS's opinion regarding the form of the plan document. However, to be a qualified plan under IRC section 401(a) entitled to favorable tax treatment, a plan must satisfy, in both form and operation, the requirements of IRC section 401(a), including nondiscrimination and coverage

requirements. If elected, a favorable determination letter may also provide assurance that the plan satisfies certain of these nondiscrimination requirements in form. See the following topic, Limitations and Scope of a Favorable Determination Letter, for more details.

Limitations and Scope of a Favorable Determination Letter

A favorable determination letter is limited in scope. A determination letter generally applies to qualification requirements regarding the form of the plan.

Generally no reliance for nondiscrimination requirements. Generally, a favorable determination letter does not consider, and may not be relied on with regard to whether a plan satisfies the nondiscrimination requirements of IRC section 401(a)(4).

However, if elected by the applicant, a determination letter may be relied on with respect to whether the terms of the plan satisfy one of the design-based safe harbors in Regulation sections 1.401(a)(4)-2(b) and 1.401(a)(4)-3(b), pertaining to the requirement that either the contributions or the benefits under a qualified plan be nondiscriminatory in amount.

No reliance for coverage requirements.
A favorable determination letter does not consider, and may not be relied on with regard to whether a plan satisfies the minimum participation requirements of IRC section 401(a)(26) and the minimum coverage requirements of IRC section 410(b).

No reliance for changes in law and guidance subsequent to publication of the applicable Cumulative List.
Every year, the IRS publishes a Cumulative List of Changes in Plan Qualification Requirements, (Cumulative List). The Cumulative List identifies changes in the qualification requirements that the IRS will consider in reviewing determination letter applications that are filed during the 12-month "submission period" that begins on the February 1st following publication of the applicable list.

A determination letter for an on-going individually designed plan is based on the Cumulative List in effect for the submission period in which the determination letter application is filed (that is, the "applicable Cumulative List"). See sections 4, 13, and 14 of Revenue Procedure 2007-44 for further details.

Generally, a determination letter issued to an adopting employer of a pre-approved volume submitter plan with minor modifications is based on the list for which the volume submitter practitioner filed its application for an advisory letter for the volume submitter specimen plan (that is, the "applicable Cumulative List," in the case of a volume submitter plan).

For terminating plans, a determination letter is based on the law in effect at the time of the plan's proposed date of termination. See section 8 of Rev. Proc. 2007-44.

A favorable determination letter generally may not be relied on for any guidance published, or any statutes enacted, after the issuance of the "applicable Cumulative List" or for any qualification requirements that become effective in a calendar year after the calendar year in which the submission period begins, except for guidance that is included in the "applicable Cumulative List." See section 4.03 of Rev. Proc. 2007-44.

Other limitations. In addition, the following apply generally to all determination letters:

• If the employer maintain two or more retirement plans, any of which were either not submitted to the IRS for determination or not disclosed on each application, certain limitations and requirements will not have been considered on an aggregate basis. Therefore, the employer may not rely on the determination letter regarding the plans when considered as a total package.

• A determination letter does not consider the special requirements relating to: (a) IRC section 414(m) (affiliated service groups), (b) IRC section 414(n) (leased employees), or (c) a partial termination of a plan unless the application includes requests that the letter consider such requirements.

• A determination letter does not consider whether actuarial assumptions are reasonable for funding or deduction purposes or whether a specific contribution is deductible.

• A determination letter does not express an opinion whether disability benefits or medical care benefits are accident and health plan benefits under IRC section 105 or whether contributions are contributions by an employer to accident and health plans under IRC section 106.

• A determination letter does not express an opinion on whether the plan is a governmental plan defined in IRC section 414(d).

• A determination letter does not express an opinion on whether contributions made to a plan treated as a governmental plan defined in IRC section 414(d) constitute employer contributions under IRC section 414(h)(2), nor on whether a governmental excess benefit arrangement satisfies the requirements or IRC section 415(m).

• A determination letter does not express an opinion on whether the plan is a church plan within the meaning of section 414(e).

Become familiar with the terms of the determination letter. Call the contact person listed on the determination letter if any of the terms in the determination letter are not understood.

Retention of Information. Whether a plan meets the qualification requirements is determined from the information in the written plan document, the application form, and the supporting information submitted by the employer. **Therefore, the employer must retain a copy of the application, information submitted with the application and all other correspondence.**

Other Conditions for Reliance. We have not verified the information submitted with the application. The determination letter will not provide reliance if:

(1) there has been a misstatement or omission of material facts, (for example, the application indicated that the plan was a governmental plan and it was not a governmental plan);

(2) the facts subsequently developed are materially different than the facts on which the determination was made; or

(3) there is a change in applicable law.

Amendments to the plan for changes in law and guidance. A favorable determination letter issued for an individually designed plan provides reliance up to and including the expiration date identified on the determination letter. This reliance is conditioned upon the timely adoption of any necessary interim amendments as required by section 5.04 of Rev. Proc. 2007-44. A favorable determination letter issued to an adopting employer of a pre-approved volume submitter plan with minor modifications provides reliance up to and including the last day of the six-year remedial amendment cycle,, conditioned upon the timely adoption of any necessary interim amendments as required by section 5.04 of Rev. Proc. 2007-44. Also see Rev. Proc. 2011-49, 2011-44 I.R.B. 609 sections 5.01 and 15.05.

Plan Must Qualify in Operation

Generally, a plan qualifies in operation if it satisfies the coverage and nondiscrimination requirements and is maintained according to its terms. However, a plan generally must be operated in a manner that satisfies any change in the qualification requirements for the period beginning when the change is effective, even if the plan has not yet been amended for the change. Changes in facts on which the determination letter was issued may mean that the determination letter may no longer be relied upon.

Some examples of the effect of a plan's operation on a favorable determination are:

Contributions or benefits in excess of the limitations under IRC section 415. A retirement plan may not provide retirement benefits or, in the case of a defined contribution plan, contributions and other annual additions, that exceed the limitations specified in IRC section 415. The plan contains provisions designed to provide benefits within these limitations. The plan is disqualified if these limitations are exceeded.

Top heavy minimums under IRC section 416. If this plan is top heavy in according with IRC 416, the plan must provide certain minimum benefits and vesting for non-key employees. If the plan provides the minimum benefits and accelerated vesting only for years during which the plan is top heavy, failure to identify such years and to provide the accelerated vesting and benefits will disqualify the plan.

Actual deferral percentage or contribution percentage tests. If this plan provides for cash or deferred arrangements, employer matching contributions, or employee contributions, the determination letter considers whether the terms of the plan satisfy the requirements specified in IRC section 401(k)(3) or 401(m)(2), in form. However the determination letter does not consider whether special nondiscrimination tests described in IRC section 401(k)(3) or 401(m)(2) have been satisfied in operation.

Reporting Requirements

Most plan administrators or plan sponsors/employers who maintain an employee benefit plan must file a Form 5500 series annual return/report.

A "Final" Form 5500 series annual return/report must be filed if the plan is terminated.

Form 5330 for prohibited transactions. Transactions between a plan and someone having a relationship to the plan (disqualified person) are prohibited, unless specifically exempted from this requirement. A few examples are loans, sales and exchanges of property, leasing of property, furnishing goods or services, and use of plan assets by the disqualified person. Disqualified persons who engage in a prohibited transaction for which there is no exceptions must file Form 5330 by the last day of the seventh month after the end of the tax year of the disqualified person.

Form 5330 for tax on nondeductible employer contributions to qualified plans - If contributions are made to this plan in excess of the amount deductible, a tax may be imposed upon the excess contribution. Form 5330 must be filed by the last day of the seventh month after the end of the employer's tax year.

Form 5330 for tax on excess contributions to cash or deferred arrangements or excess employee contributions or employer matching contributions - If a plan includes a cash or deferred arrangement (IRC section 401(k)) or provides for employee contributions or employer matching contributions (IRC section 401(m)), then excess contributions that would cause the plan to fail the actual deferral percentage or the actual contribution percentage test are subject to a tax unless the excess is eliminated within 2½ months after the end of the plan year. Form 5330 must be filed by the due date of the employer's tax return for the plan year in which the tax was incurred.

Form 5330 for tax on reversions of plan assets - Under IRC section 4980, a tax is payable on the amount of almost any employer reversion of plan assets. Form 5330 must be filed by the last day of the month following the month in which the reversion occurred.

Form 5310-A for certain transactions - Under IRC section 6058(b), an actuarial statement is required at least 30 days before a merger, consolidation, or transfer (including spin-off) of assets to another plan. This statement is required for all plans. However, penalties for non-filing will not apply to defined contribution plans for which:

(1) The sum of the account balances in each plan equals the fair market value of all plan assets,

(2) The assets of each plan are combined to form the assets of the plan as merged,

(3) Immediately after a merger, the account balance of each participant is equal to the sum of the account balances of the participant immediately before the merger, and

(4) The plans must not have an unamortized waiver or unallocated suspense account.

Penalties will also not apply if the assets transferred are less than three percent of the assets of the plan involved in the transfer (spinoff), and the transaction is not one of a series of two or more transfers (spinoff transactions) that are, in substance, one transaction.

The purpose of the above discussions is to illustrate some of the principal filing requirements that apply to pension plans. This is not an exclusive listing of all returns and schedules that must be filed.