26 CFR 601.601: Rules and regulations.
(Also Part I, §§ 401; 1.401(b)–1.)

Rev. Proc. 98–14

SECTION 1. PURPOSE

.01 This revenue procedure opens the Internal Revenue Service's determination letter program for qualified plans that seek to comply with the changes in the qualification requirements made by the Uruguay Round Agreements Act, Pub. L. 103–465 (GATT), and the Taxpayer Relief Act of 1997, Pub. L. 105–34 (TRA '97), as well as those changes in the qualification requirements made by the Small Business Job Protection Act of 1996, Pub. L. 104–188 (SBJPA) (including § 414(u) and the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103–353 (USERRA)), that are effective before the first day of the first plan year beginning on or after January 1, 1999. Beginning April 27, 1998, the Service will consider these changes when it reviews applications for determination of the tax-qualified status of pension, profit-sharing and stock bonus plans and applications for opinion and notification letters

for pre-approved plans. This revenue procedure provides guidance to plan sponsors regarding this change in the Service's procedures.

.02 This revenue procedure also provides that the remedial amendment period for amending plans for GATT and SBJPA, which was described in Rev. Proc. 97–41, 1997–33 I.R.B. 51, will apply to plan amendments that relate to TRA '97. In addition, this revenue procedure extends the remedial amendment period under Rev. Proc. 97–41 for amending governmental plans to the extent the period would otherwise end before the last day of the last plan year beginning before January 1, 2001.

.03 Finally, this revenue procedure clarifies that a plan will not satisfy any of the nondiscrimination in amount safe harbors in the regulations under § 401(a)(4) if the plan's provisions reflecting the family aggregation requirements of § 414(q)-(6) or § 401(a)(17)(A), as in effect prior to their repeal by SBJPA, continue to apply.

SECTION 2. BACKGROUND

.01 GATT and SBJPA made a number of changes to the plan qualification requirements. Many of these changes are already in effect for most plans while other changes do not take effect until plan years beginning after December 31, 1998 or December 31, 1999. TRA '97 also made several changes to the qualification requirements. The TRA '97 changes are generally effective for plan years beginning after December 31, 1997, but certain changes are effective for plan years beginning after the date of enactment of TRA '97, August 5, 1997.

.02 In Rev. Proc. 97–41, the Service provided a remedial amendment period under § 401(b) with respect to certain amendments for GATT and SBJPA. The remedial amendment period generally permits plan amendments to be made retroactively effective if they are adopted on or before the last day of the first plan year beginning on or after January 1, 1999, and they relate to GATT and SBJPA qualification changes that are effective before the first day of that plan year. (In the case of governmental plans, as defined in § 414(d), the plan amendment deadline is the later of (i) the first day of the first plan year beginning on or after January 1, 2000, or (ii) the last day of the first plan year beginning on or after the "1999 legislative date" (that is, the 90th day after the opening of the first legislative session beginning on or after January 1, 1999, of the governing body with authority to amend the plan, if that body does not meet continuously).) Those amendments that are required to be made to retain qualified status as a result of GATT and SBJPA qualification changes must be made retroactively effective as of the date on which the qualification change became effective with respect to the plan. Operational compliance prior to actual amendment is required if the qualification change is effective before the first day of the first plan year beginning on or after January 1, 1998 (or January 1, 2000, in the case of a governmental plan). Those amendments that are not required but that amend plan provisions that are integrally related to SBJPA qualification changes may be made retroactively effective as of the first day on which the plan was operated in accordance with the amended plan provision.

.03 Rev. Proc. 98–6, 1998–1 I.R.B. 183, contains the Service's general procedures for employee plan determination letter requests. Section 3.03 of Rev Proc. 98–6 states that until further notice is given, determination letters, other than those issued for terminating plans, will not include consideration by the Service of any amendments to the qualification requirements made by TRA '97 or by GATT or SBJPA, except for § 1432 and § 1454 of SBJPA, which amended § 401(a)(26) and § 414(n), respectively.

.04 Section 1431(b)(1) of SBJPA repealed the family aggregation requirements of § 414(q)(6), effective for years beginning after December 31, 1996. Section 1431(b)(2) of SBJPA also repealed the family aggregation requirement that formerly applied under § 401(a)(17)(A), effective for years beginning after December 31, 1996. Prior to its repeal, § 414(q)(6) required the compensation and benefits of certain family members of a highly compensated employee who was a 5-percent owner or among the ten highest paid employees of the employer to be combined with the compensation and benefits of the highly compensated employee. The resulting family unit was treated as one employee for purposes of applying the nondiscrimination requirements of § 401(a)(4) to a plan. Section 401(a)(17)(A) provided similar rules with respect to the application of the limitation on compensation that may be taken into account under a qualified plan.

SECTION 3. PROGRAM OPENING

.01 Applications for determination, opinion, notification, and advisory letters involving § 401(a) or § 403(a) that are filed with the Service on or after April 27, 1998 will be reviewed taking into account the changes in the qualification requirements made by GATT and TRA '97, as well as those changes in the qualification requirements made by SBJPA that are effective before the first day of the first plan year beginning on or after January 1, 1999. However, except in the case of terminating plans, applications for determination letters involving master or prototype (M&P) and regional prototype plans that have not yet been amended to comply with the changes in the qualification requirements made by GATT, SBJPA, and TRA '97 will be reviewed without taking these changes into account.

.02 Until further notice, the Service's review of applications for determination and other letters will not consider changes in the qualification requirements made by SBJPA that are first effective in a plan year beginning after December 31, 1998. Thus, for example, the Service's review will not consider the § 401(k)(12) and § 401(m)(11) safe harbors described in § 1433(a) and (b) of SBJPA, which are effective for plan years beginning after December 31, 1998, or the repeal of § 415(e) by § 1452(a) of SBJPA, which is effective for limitation years beginning after December 31, 1999. Nevertheless, the review will take into account the changes to § 417(e) and § 415(b) made by § 767 of GATT and § 1449 of SBJPA, even though application of these changes may not be required until the first plan (or limitation) year beginning after December 31, 1999. Although defined benefit plans that are submitted for determination on or after April 27, 1998 will be required to incorporate provisions that reflect the changes to § 417(e) and § 415(b) made by GATT and SBJPA, the application of such provisions may be deferred under the plan to the extent permitted by § 417(e)(3)(B) and § 767(d)(3) of GATT (as amended by § 1449(a) of SBJPA), respectively. Like-

wise, the vesting provisions of multiemployer plans submitted on or after April 27, 1998 will have to reflect the repeal of § 411(a)(2)(C) by § 1442 of SBJPA, although application of this change may be deferred under the plan to the extent permitted by § 1442(c) of SBJPA.

.03 Except as provided below, favorable letters that are issued with respect to applications for determination or other letters filed on or after April 27, 1998 will contain a statement to the effect that the determination (or opinion) takes into account the requirements of GATT and TRA '97, as well as those requirements of SBJPA that are effective before the first day of the first plan year beginning on or after January 1, 1999.

.04 The statement described in the preceding paragraph will not be included in determination letters issued with respect to applications filed on Form 6406, *Short Form Application for Determination for Minor Amendment of Employee Benefit Plan.* The statement described in the preceding paragraph also will not be included in determination letters issued with respect to applications filed by adopters of M&P or regional prototype plans on Form 5307, *Application for Determination for Adopters of Master or Prototype, Regional Prototype, or Volume Submitter Plans, regardless of whether the opinion or notification letter for the plan contains such statement.* The statement described in the preceding paragraph will be included in opinion and notification letters issued with respect to applications filed on Form 4461–B, *Application for Approval of Master or Prototype Plan, or Regional Prototype Plan/Mass Submitter Adopting Sponsor,* only if a letter containing such a statement has been issued with respect to the mass submitter's plan.

SECTION 4. REMEDIAL AMENDMENT PERIOD FOR CHANGES IN PLAN QUALIFICATION REQUIREMENTS MADE BY TRA '97

.01 Section 1541 of TRA '97 contains provisions relating to plan amendments that are adopted as a result of TRA '97. If § 1541 applies to a plan amendment, § 1541(a) provides that the plan will be treated as operated in accordance with its terms and will not fail to satisfy the requirements of § 411(d)(6) by reason of the amendment. Section 1541 applies to a plan amendment that is made pursuant to a legislative change in the pension and employee benefit provisions of TRA '97, provided the following conditions are satisfied. First, the plan amendment must be adopted before the first day of the first plan year beginning on or after January 1, 1999 (2001, in the case of a governmental plan, as defined in § 414(d)). Second, the plan must be operated in accordance with the terms of the plan amendment beginning on the date the legislative change takes effect, or, if the amendment is not required by the legislative change, the effective date of the amendment specified by the plan. Third, the plan amendment must be made retroactively effective.

.02 Pursuant to the Commissioner's authority under § 1.401(b)–1, a plan provision is hereby designated as a disqualifying provision under § 1.401(b)–1(b) to which the remedial amendment period described in section 6 of Rev. Proc. 97–41 applies if the provision causes a plan to fail to satisfy the qualification requirements of the Code because of changes made to those requirements by TRA '97 or if the provision is integral to a qualification requirement changed by TRA '97. The operational compliance and retroactive amendment conditions described in § 1541(b)(2) of TRA '97 must be satisfied throughout such remedial amendment period with respect to any amendment of a disqualifying provision described in the preceding sentence.

.03 For example, § 1071 of TRA '97 increased the amount of the accrued benefit subject to involuntary distribution under § 411(a)(11) from $3,500 to $5,000, effective for plan years beginning after August 5, 1997. A plan provision that reflects the $3,500 limit under § 411(a)(11), as in effect prior to TRA '97, is integral to a qualification requirement changed by TRA '97. Thus, for example, a plan that contains the $3,500 limit may, for plan qualification purposes, be operated during the remedial amendment period in anticipation of a retroactive amendment reflecting the increase in the limit under § 1071 of TRA '97, provided the amendment is adopted on or before the last day of the remedial amendment period and is made retroactively effective as of the beginning of the remedial amendment period. In this case, the plan provision containing the $3,500 limit is integrally related to a qualification requirement changed by TRA '97 but the plan provision would not disqualify the plan as a result of the statutory change. Therefore, the remedial amendment period begins on the date on or after the first day of the first plan year beginning after August 5, 1997, on which the plan was first operated in anticipation of the amendment increasing the limit to $5,000. In the case of a nongovernmental plan, the remedial amendment period ends on the last day of the first plan year beginning on or after January 1, 1999.

SECTION 5. REMEDIAL AMENDMENT PERIOD FOR GOVERNMENTAL PLANS

Pursuant to the Commissioner's authority under § 1.401(b)–1, the remedial amendment period described in section 6 of Rev. Proc. 97–41 with respect to governmental plans, as defined in § 414(d), is hereby extended to the later of (i) the last day of the last plan year beginning before January 1, 2001, or (ii) the last day of the first plan year beginning on or after the "1999 legislative date." Thus, the remedial amendment period for amending a governmental plan for GATT, SBJPA, and TRA '97 will not end before the amendment deadline applicable to governmental plans under § 1541 of TRA '97.

SECTION 6. EFFECT OF REPEAL OF FAMILY AGGREGATION ON NONDISCRIMINATION SAFE HARBORS

.01 The regulations under § 401(a)(4) provide safe harbors that a plan may meet to satisfy the requirement that either the contributions or the benefits under the plan be nondiscriminatory in amount. See, for example, § 1.401(a)(4)–2(b) and § 1.401(a)(4)–3(b). The safe harbors generally are designed to ensure that a plan that meets a safe harbor will automatically satisfy the nondiscrimination in amount requirement if the plan is operated in accordance with its terms. In general, the safe harbors require a uniform allocation or benefit formula, although formulas that provide lower allocations or benefits for highly compensated employees are permitted.

.02 In section 6.09 of Rev. Proc. 97–

41, it was noted that in many cases plans would remain qualified even though the family aggregation rules of § 414(q)(6) and § 401(a)(17)(A) continued to apply under the plans subsequent to the repeal of these rules. Nevertheless, the continued application of family aggregation will cause a plan to fail to be a safe harbor plan. This is because the application of family aggregation may, in some circumstances, result in lower allocations or benefits for employees who are not highly compensated.

.03 Thus, a plan will not satisfy a nondiscrimination in amount safe harbor for a plan year beginning after December 31, 1996, unless family aggregation is disregarded in the operation of the plan and the plan is amended within the remedial amendment period, retroactive to the first day of such plan year, to eliminate its family aggregation provisions. Therefore, in an application for a determination letter (other than with respect to an M&P or regional prototype plan) that is filed on or after April 27, 1998, an employer may not designate a plan as one that is intended to satisfy a nondiscrimination in amount safe harbor if the family aggregation rules continue to apply under the plan. Instead, the employer must either demonstrate that the plan satisfies the general test for nondiscrimination in amount or request a letter that contains a caveat regarding the nondiscrimination in amount requirement.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 98–6 and Rev. Proc. 97–41 are modified.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective January 26, 1998.

DRAFTING INFORMATION

The principal author of this revenue procedure is James Flannery of the Employee Plans Division. For further information regarding this revenue procedure, contact the Employee Plans Division's telephone assistance service between the hours of 1:30 and 3:30 p.m. Eastern time, Monday through Thursday, on (202) 622-6074 (not a toll-free call). Mr. Flannery can be contacted by calling (202) 622-6214 (also not a toll-free call).