



# IRS won't issue determination letters for preapproved PEPs

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Determination letters issued for modified third-cycle preapproved defined contribution (DC) plans won't cover amendments adding a pooled employer plan (PEP) feature, IRS recently [announced](#). IRS is currently developing model PEP language for employers to use if they want assurance that their amendments satisfy the applicable Internal Revenue Code requirements.

The Setting Every Community Up for Retirement Enhancement (SECURE) Act ([Pub. L. No. 116-94](#)) authorized PEPs — a new type of open multiple-employer plan — starting Jan. 1, 2021. IRS issued opinion letters for preapproved DC plans for the third remedial amendment cycle on June 30, 2020, covering changes through the [2017 Cumulative List](#). Employers that make minor modifications to preapproved plan documents have until June 30, 2022, to apply for a determination letter using [Form 5307](#). However, these determination letters won't cover the addition of a PEP feature since the SECURE Act change occurred after the publication of the 2017 Cumulative List. Opinion letters issued for the fourth remedial amendment cycle presumably will cover these provisions.

IRS is currently working on model language for PEP plans. Employers may write their own amendments to add a PEP feature, but only the IRS language will give reliance on those provisions. The deadline for adopting SECURE Act amendments — including amendments adding a PEP feature — is the last day of the first plan year starting on or after Jan. 1, 2022 (2024 for governmental plans).

## Related resources

### Non-Mercer resources

- [Employee Plans News](#) (IRS, Jan. 20, 2021)
- [Pre-approved retirement plans](#) (IRS, April 29, 2020)

- [Division O of Pub. L. No. 116-94, SECURE Act \(Congress, Dec. 20, 2019\)](#)

### **Mercer Law & Policy resources**

- [DOL finalizes pooled plan provider registration requirements \(Nov. 20, 2020\)](#)
- [Third remedial amendment cycle dates set for preapproved DC plans \(June 9, 2020\)](#)
- [SECURE Act set to become law as part of spending deal \(Dec. 19, 2019\)](#)

### **Other Mercer resources**

- [Pooled employer plans \(PEPs\)](#)

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