

April 30 EGTRRA Restatement Deadline Approaching for Defined Contribution Plan Documents

March 9, 2010

Plan sponsors are reminded that April 30, 2010 is the deadline for adopting preapproved master and prototype (M&P) and volume submitter (VS) defined contribution plan documents that have been updated to comply with the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and other changes in plan qualification requirements.

Additionally, plan sponsors that desire to file their M&P and VS defined contribution plans for determination letters from the IRS must submit the request to the IRS on or before April 30, 2010.

Background

In late 2005, the IRS announced a uniform six-year remedial amendment cycle for M&P and VS plan restatements. All preapproved defined contribution plans are on the same amendment cycle; preapproved defined benefit plans are on a separate cycle.

Prototype plan document sponsors previously submitted their updated EGTRRA restated plan documents to the IRS for its review and approval. The IRS finished its review process in early 2008 and issued opinion/advisory letters for such plans.

In Announcement 2008-33, the IRS indicated that an adopting employer that is eligible for the six-year remedial amendment cycle and that adopts an EGTRRA-approved M&P or VS defined contribution plan by April 30, 2010 will be considered to have timely adopted the restated plan document.

Filing for a Determination Letter

There is no requirement that an M&P or VS preapproved plan adopter file for a determination letter with the IRS. However, a plan sponsor may want to file for a determination letter for a number of reasons, including, for example, to ensure that a plan passes coverage testing. On the other hand, many plan sponsors may determine that there is no benefit to be gained by filing for a separate determination letter.

In the event a preapproved plan document is changed to add appendices or to add plan provisions that were not pre-stated options in the M&P or VS plan document, it may be questionable as to whether or not

a plan sponsor may rely on the plan's opinion/advisory letter. In such a situation, it may be advisable to consider filing for an IRS determination letter.

We recommend that the plan sponsor consult its legal counsel to assist it in determining whether filing for a determination letter is necessary or not.

If you have any questions or would like more information on any of the issues discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

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