

Church Plan Compliance Deadline Delayed to Next Millennium

The IRS recently published [Notice 98-39](#), which extends the deadline for nonelecting church plans to comply with the qualified plan nondiscrimination rules as amended by the Tax Reform Act of 1986 (TRA'86).

A "church plan" is a plan established and maintained for its employees by a church or by a convention or association of churches that is exempt from Federal income tax under Internal Revenue Code section 501. A "nonelecting" church plan is a church plan that has not formally elected to be subject to the ERISA minimum participation, vesting and funding rules.

Delayed Effective Dates

Under the new extension, nonelecting church plans do not have to comply with the IRS TRA'86 regulations relating to:

- General nondiscrimination rules (Code sections 401(a)(4) and 401(a)(5));
- Permitted disparity ("integration") rules (Code section 401(l)); and
- The nondiscriminatory definition of compensation (Code section 414(s))

until the first day of the *first plan year beginning on or after January 1, 2001*.

For plan years beginning before January 1, 2001, sponsors of nonelecting church plans must operate their plans in accordance with a reasonable, good faith interpretation of these rules. The determination of whether a plan is operated "in good faith" is generally made on the basis of all relevant facts and circumstances, including the extent to which the plan sponsor resolves unclear issues in its favor. A plan that operationally complies with the final rules before the 2001 plan year is considered to be operating in good faith compliance.

Delayed Amendment Deadline

Notice 98-39 also extends the deadline for amending nonelecting church plans to comply with these TRA'86 nondiscrimination rules. The new deadline is *the last day of the 2001 plan year*.

However, it is important to note that this amendment deadline extension *only* applies to plan provisions relating to general nondiscrimination, permitted disparity and the nondiscriminatory

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definition of compensation. *All other TRA'86 amendments, including those relating to the revised section 401(k) and 401(m) rules, must be adopted by the last day of the 1999 plan year.*

In addition, plan sponsors must amend their plans to comply with the changes made by the Unemployment Compensation Act of 1992 (UCA'92), the Omnibus Budget Reconciliation Act of 1993 (OBRA'93), the Uruguay Round Agreements Acts of 1994 (GATT), the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), the Small Business Job Protection Act of 1996 (SBJPA) and the Taxpayer Relief Act of 1997 (TRA'97) *by the last day of the 1999 plan year.*

Why the Delay?

SBJPA contained a provision allowing the IRS to design special nondiscrimination and coverage safe harbors for nonelecting church plans. The law does not impose a deadline for developing these safe harbors. The implication of Notice 98-39 is that the IRS does not anticipate designing such safe harbors until perhaps the year 2000.

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