

IRS Extends Deadline for Making Plan Amendments

The IRS recently issued Revenue Procedure 99-23. This revenue procedure extends the amendment deadline for changes required by the Uruguay Round Agreements Act (GATT), the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Small Business Job Protection Act of 1996 (SBJPA) and the Taxpayer Relief Act of 1997 (TRA'97) collectively, referred to as "GUST." The extension also applies to amendments regarding 401(k) hardship withdrawals not being eligible for rollover as required by the IRS Restructuring and Reform Act of 1998. The extension applies to both qualified defined benefit and defined contribution plans.

General Rules

The GUST amendment deadline has now been extended to the last day of the first plan year beginning on or after January 1, 2000. Previously, the deadline was the last day of the 1999 plan year. There is no special amendment deadline provided for plans that are maintained subject to collective bargaining agreements.

Governmental Plans

The GUST amendment deadline for governmental plans has not been changed. It remains the later of (1) the last day of the 2000 plan year, or (2) the last day of the first plan year beginning on or after the "1999 legislative date." The "1999 legislative date" is the 90th day after the opening of the first legislative session beginning after December 31, 1998, of the governing body with authority to amend the plan, if that body does not meet continuously.

However, the IRS has extended the Tax Reform Act of 1986 (TRA'86) amendment deadline for governmental plans to the GUST amendment deadline. TRA'86 plan amendments include amendments required to comply with TRA'86, the Unemployment Compensation Act of 1992 (UCA) and the Omnibus Budget Reconciliation Act of 1993 (OBRA '93). Thus, a governmental plan does not need to be submitted for a determination letter on any of these changes until the end of the GUST amendment period.

Nonelecting Church Plans

Sponsors of church plans that do not elect to be covered by ERISA must now contend with two separate amendment deadlines. These plans must be amended by the last day of the 2000 plan year to reflect: TRA'86 changes other than those made to the nondiscrimination rules, UCA requirements, OBRA'93, and GUST. They must be amended by the last day of the 2001 plan year to reflect the revised TRA'86 nondiscrimination rules.

*Republished December 2004 to reflect Prudential Financial's acquisition of CIGNA's retirement business.

ADP/ACP Safe Harbor Plan Amendments

The deadline extension also applies to amendments required for an ADP/ACP safe harbor plan design. An existing 401(k) plan that adopts an ADP/ACP safe harbor design for its 1999 plan year does not have to be amended to reflect these provisions until the last day of the 2000 plan year.

However, if the amendment imposes the 401(k) withdrawal restrictions on matching or nonelective contributions used to meet the ADP/ACP safe harbor requirements, those restrictions cannot apply to contributions allocated as of a date before the beginning of the first safe harbor plan year.

GATT Amendments for Defined Benefit Plans

The extended amendment deadline also applies to the adoption of defined benefit plan amendments to comply with the interest rate and mortality table rules required by GATT, provided the amendment is effective for distributions with annuity starting dates occurring in plan years beginning after December 31, 1999. This means that defined benefit plans may use the GATT rates for calculating present values before plan amendments are adopted. However, if a plan adopts an amendment after the last day of the 1999 plan year, the amendment must provide that distributions with annuity starting dates that are after the last day of that 1999 plan year but before the date the sponsor adopts the amendment, will be the greater of the amounts determined before the amendment and the amount determined after the amendment.

Prototype and Volume Submitter Plans

In the past, the IRS has provided employers that adopt prototype or volume submitter plans additional time for making legally required amendments. Typically, adopting employers have been required to readopt the updated documents by the last day of the twelfth month following the issuance of the IRS Opinion Letters to the plan sponsor.

Revenue Procedure 99-23 does not refer to any special procedures for amendments to volume submitter and prototype plans. However, informally, IRS representatives have indicated that similar procedures will apply to GUST amendments to prototype and volume submitter plans. We will let you know if this informal position becomes official.

Next Steps

Until your plan is amended, you must keep a record of how various provisions are administered, so they can be accurately reflected in the restated document. If you have any questions about how this amendment deadline extension affects your plan, please contact your Prudential Retirement representative.

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