

IRS Opens Prototype Determination Letter Program

The IRS opened its determination letter program for prototype plans on May 8, 2000. Updated plan documents must take into account all changes to qualification requirements made by the:

- Uruguay Round Agreements (GATT);
- Uniformed Services Employment and Reemployment Act of 1994 (USERRA);
- Small Business Job Protection Act of 1996 (SBJPA);
- Taxpayer Relief Act of 1997 (TRA '97); and
- IRS Restructuring and Reform Act of 1998 (IRRA).

Collectively these acts are referred to as GUST.

Traditionally, prototype plan updates are a two step process. First, the prototype plan sponsor (e.g., Prudential) must update the basic plan document and adoption agreements and request new Opinion Letters. Once the sponsor receives the Opinion Letters, adopting employers must re-adopt their documents, and, if necessary, file with the IRS to request their own Determination Letters.

Prototype plan sponsors need to file updated prototype plan documents with the IRS to obtain new Opinion Letters by the December 31, 2000 deadline.

Deadline for Adopting Employers

Employers that adopt a prototype document will have until the later of the last day of their 2001 Plan Year or the end of the twelfth month following the date the prototype plan sponsor receives its Opinion Letters to re-adopt the prototype plan, and, if necessary, to file with the IRS for Determination Letters.

Restated Document Required

Adopting employers must completely restate their plans to reflect GUST provisions. A simple amendment of existing documents is not allowed.

Proof of Operational Compliance Required

Each employer's restated plan must describe how the plan operated during prior years from the effective date of any GUST-required provision through the adoption date of the restatement. Your prototype document may have a separate, free-standing section to accommodate this requirement.

Important New Prototype Rules and Options

The IRS has also provided many new rules and options for prototype plans. A few of the more important new rules or options are:

- The testing method (i.e., Prior Year or Current Year) used for Actual Deferral Percentage (ADP) and Actual Contribution Percentage (ACP) tests must be stated in the plan document. The same method must be used for both ADP and ACP testing. The plan must also state the method or methods to be used for correcting any contribution in excess of those allowed under these tests (i.e., corrective distributions or corrective contributions). Any changes must be appropriately reflected in the plan.
- A safe-harbor 401(k) and 401(m) plan design may be used in a prototype plan.
- A profit sharing plan using a non-standardized adoption agreement may use a uniform points allocation formula.
- The rule allowing employers to exclude employees of an acquired company from minimum coverage testing during the transition period from the date of acquisition through the last day of the following plan year has been extended to plans using a standardized adoption agreement. Provided certain requirements are met, adopting employers using standardized adoption agreements will be allowed to exclude employees of an acquired company from their plan during the transition period. At the end of the transition period, the employees must be covered under the standardized prototype plan.

Next Steps

Prototype plan sponsors will be submitting their prototype plan documents to the IRS for approval before the end of this year. IRS review and approval of the prototype documents could take six months to one full year. You will need to make updates to, and formally adopt, your prototype plan documents (and, in some cases, file with the IRS) by the later of the last day of your 2001 Plan Year or within one year of your prototype plan sponsor receiving its Opinion Letters. We will provide you with further information about the process, as it becomes available. Please call your Prudential representative with any questions or concerns you may have regarding this information.

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