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The Ferenczy Flash

FROM THE LAW OFFICES OF Ilene H. Ferenczy, LLC

The Latest Word in Employee Benefits

IRS SETS DEADLINE FOR RESTATEMENT OF PROTOTYPE AND VOLUME SUBMITTER DEFINED BENEFIT PENSION PLANS

Employers that have adopted preapproved defined benefit pension plans (that is, prototype and volume submitter plans), will need to restate the plans onto updated documents between ***April 1, 2010 and April 30, 2012***. Defined benefit pension plans are plans that provide for a promised level of benefits at retirement and then utilize an actuary to determine the level of each year's required funding. Cash balance plans are also types of defined benefit pension plans, although these plans are not yet able to use preapproved documents.

Prototype and volume submitter documents are sponsored by financial institutions and other retirement plan professionals, and are preapproved by the IRS for use by adopting employers. Existing preapproved plans comply fully with legislation adopted through 2005. However, amendments are needed to bring the plans into full compliance with laws that were enacted in 2006 through the present. The main legislation to which these new amendments relate is the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). The new restatements are commonly called "EGTRRA documents" by practitioners.

This defined benefit restatement period follows on the heels of the EGTRRA restatement period for preapproved defined contribution (e.g., 401(k), profit sharing, ESOP, or money purchase pension) plans, which will end on April 30, 2010.

The master EGTRRA preapproved documents were submitted to the IRS on or before January 31, 2008. The IRS has spent the last two years reviewing these plans and requesting changed language from the sponsors. The IRS announced last week this review is completed, and that it will issue all approvals for all preapproved plans to their sponsors (i.e., the financial institutions and professionals who submitted the master EGTRRA documents) on or about March 31, 2010. The preapproved EGTRRA documents may then be adopted by employers to bring their plans into compliance with the applicable laws.

All employers who previously adopted a preapproved defined benefit pension plan (or who have otherwise properly expressed intent to adopt a preapproved plan for EGTRRA) will have the same deadline of ***April 30, 2012***, for adopting the new EGTRRA document. Employers who adopt the new document on time will be deemed to have timely amended the plan for EGTRRA and other legislation and regulations that had effective dates ranging from 2001 through 2006 (although EGTRRA documents do not bring plans into compliance with the Pension Protection Act of 2006, for which a later deadline applies.)

In many circumstances, adopting employers will choose to rely on the IRS's approval of the

preapproved document to ensure that their actual plans conform to the law. However, employers that want to apply for an individual IRS determination letter after they have adopted the preapproved EGTRRA document may do so. This separate determination letter application may be warranted under situations such as when the plan is terminating or when the adopting employer wants to elect plan provisions that are different from the pre-approved plan terms. Employers wanting a separate favorable determination letter may apply for such letters between *May 1, 2010, and April 30, 2012*.

These deadlines for restatement and submission to the IRS **do not apply** to defined contribution plans, which, as is noted above, are about to complete their restatement cycle. **AS A REMINDER, IF YOU HAVE A PREAPPROVED DEFINED CONTRIBUTION PLAN, IT MUST BE SIGNED BY 4/30/2010.** Furthermore, individually designed plans that are not preapproved are subject to entirely different rules, which require restatement on five-year cycles based on the sponsoring employer's tax identification number.

If you have any questions, please contact our office.

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