

# Advisory

LABOR AND EMPLOYMENT PRACTICE GROUP | FEBRUARY 2010

WIGGIN AND DANA

*Counsellors at Law*

## *Deadlines Approaching for Qualified Prototype and Volume Submitter Plans*

### **DEADLINE TO ADOPT UPDATED PLAN DOCUMENTS**

Prototype and volume submitter document providers were recently required to update their plan documents to comply with certain tax legislation. Employer adopters of prototype and volume submitter defined contribution plans have until **April 30, 2010** to adopt the provider's updated plan document. If your company has not yet adopted an updated prototype or volume submitter document, you should contact the provider immediately to begin the process in order to ensure that your company's plan remains qualified.

### **RELIANCE ON PROTOTYPE OR VOLUME SUBMITTER PROVIDER'S IRS LETTER**

One of the advantages of adopting a prototype or volume submitter plan document is that in many cases, the adopting employer can rely on the provider's IRS opinion letter as to the plan's qualified status instead of obtaining its own IRS determination letter.

In general, an employer that adopts any prototype or volume submitter plan document can rely on the prototype provider's IRS opinion letter regarding the plan *language*, if the employer has chosen only those design options that are available under the plan.

An employer that adopts a *standardized* prototype document generally can also rely on the prototype provider's IRS opinion letter regarding the plan *operation*,

if the employer follows the terms of the plan. There are, however, circumstances in which an employer that adopts a standardized prototype document cannot rely on the provider's letter with respect to certain operational requirements. For example, if the employer maintains or maintained another qualified plan covering some of the same participants, it cannot rely on the provider's letter with respect to meeting the limitations on annual additions or the top heavy requirements.

An employer that adopts a *nonstandardized* prototype document or a volume submitter document may also be able to rely on the provider's letter with respect to certain operational requirements, depending upon the design choices the employer makes for its plan. For example, it will have operational compliance with respect to coverage testing, if the plan covers 100% of all nonexcludable employees (on a controlled group basis), and with respect to certain nondiscrimination requirements, if it adopts a safe harbor allocation formula and a nondiscriminatory definition of compensation.

**DEADLINE TO APPLY FOR AN IRS DETERMINATION LETTER** An employer that wishes to apply for its own IRS determination letter with respect to its prototype or volume submitter plan has until **April 30, 2010** to apply. In order to apply for a determination letter, an employer should contact legal counsel.

*continued next page*

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In some cases, the prototype or volume submitter provider can also assist in the preparation of a determination letter application.

**QUESTIONS?**

If you have questions about updating your plan document or obtaining an IRS determination letter, please contact Sherry Dominick, 203.498.4331, [sdominick@wiggins.com](mailto:sdominick@wiggins.com); Karen Clute, 203.498.4349, [kclute@wiggins.com](mailto:kclute@wiggins.com); or Rachel Arnedt 203.498.4397, [rarnedt@wiggins.com](mailto:rarnedt@wiggins.com).

*This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.*

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