

Pension
ANALYST

Compliance Bulletin

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IRS Provides Timeline for Adoption Of Certain Pre-Approved EGTRRA Plan Documents

On March 31, 2008, the IRS issued opinion and advisory letters for most prototype and volume submitter defined contribution plans that were restated to comply with the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). Prudential has received the opinion and advisory letters for our defined contribution prototype and volume submitter documents. In [Announcement 2008-23](#), the IRS provided the following timeline for the adoption and, where necessary, filing of these documents for individual plan determination letters:

Beginning ... May 1, 2008	Adopting employers may submit applications for individual determination letters, where needed.
By ... April 30, 2010	Employers using these documents to restate their plans for EGTRRA must adopt the appropriate documents and submit applications for individual determination letters, where needed.

Determination Letters May Not be Needed

In general, employers that adopt *standardized prototype plans* may rely on the sponsor's opinion letter regarding the acceptability of the plan document and any related trust account. However, in certain circumstances an employer will not have this reliance and must request a favorable determination letter to ensure that the plan document satisfies all qualification requirements.

Employers that adopt *nonstandardized prototype plans* or *volume submitter plans* may rely on the sponsor's opinion or advisory letter if:

- The employer's plan is identical to the approved prototype or volume submitter plan;
- The employer has chosen only those design options offered under the approved plan; and
- The employer has followed the terms of the plan.

As with standardized prototype plans, there are certain circumstances when an employer that meets all of these requirements will not have reliance and must request a favorable determination letter to ensure that the plan document satisfies all qualification requirements.

Requesting Determination Letters

Under existing rules, an employer that has adopted a prototype or volume submitter plan and needs to request a determination letter will generally use Form 5307 to apply for that letter. Form 5300 is used to request a

determination letter for an individually-designed plan. Currently, the IRS User Fee for a Form 5307 submission is \$300, while the User Fee for a Form 5300 submission is \$1,000.

The new IRS guidance confirms that, in some situations, adopters of prototype or volume submitter plans will need to use Form 5300 to request determination letters, rather than Form 5307. An adopting employer will need to use Form 5300 if:

- In the case of a prototype plan, the employer amended the basic plan document or adoption agreement, other than by choosing the options specifically permitted under the pre-approved document;
- In the case of a volume submitter plan, the employer made extensive or complex changes to the pre-approved provisions; or
- The adopting employer is requesting a determination regarding partial plan termination, affiliated group status, or leased employees, or for a multiple employer volume submitter plan.

Special Procedures

If an adopting employer uses **Form 5307** to request an EGTRRA determination, the IRS will review the plan on the basis of the [2004 Cumulative List of Changes in Plan Qualification Requirements](#), which was used to review the pre-approved document. The employer generally **will not** need to include with his request the plan's [EGTRRA "good faith" amendments](#) adopted before the adoption of the restated EGTRRA document, or any interim amendments adopted at any time.

In general, if **Form 5300** is used to request an EGTRRA determination, the IRS will review the plan on the basis of the Cumulative List in effect when the application is filed. *For example, if the determination application is filed using Form 5300 on May 1, 2008, the IRS will review the document provisions based on the [2007 Cumulative List](#).* This determination request **must** include copies of the plan's signed and dated EGTRRA "good faith" amendments, as well as interim and other amendments for all changes on the Cumulative List in effect when the application is filed.

If Form 5300 is filed to request a determination regarding partial plan termination, affiliated group status, or leased employees, or for a multiple employer volume submitter plan, the IRS will review the plan on the basis of the 2004 Cumulative List. In addition, the employer generally **will not** need to include with his request the plan's EGTRRA "good faith" amendments adopted before the adoption of the restated EGTRRA document, or any interim amendments adopted at any time.

Prudential Retirement's Pre-Approved Documents

Prudential Retirement is currently working with our document vendors to develop procedures for producing EGTRRA plan restatements. As soon as our process is in place, we will communicate with plan sponsors that use our document services, to let you know what our timetable will be. In the interim, if you have questions about the application of these new rules to your plan, please contact your Prudential Retirement representative.

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