

**MEMO# 16481**

September 4, 2003

## **IRS EXTENDS DEADLINE FOR CERTAIN DETERMINATION LETTER FILINGS AND FOR AMENDMENTS UNDER SECTION 401(A)(9)**

[16481] September 4, 2003 TO: PENSION MEMBERS No. 38-03 PENSION OPERATIONS ADVISORY COMMITTEE No. 56-03 RE: IRS EXTENDS DEADLINE FOR CERTAIN DETERMINATION LETTER FILINGS AND FOR AMENDMENTS UNDER SECTION 401(a)(9) The Internal Revenue Service has issued Revenue Procedure 2003-72, which (1) extends until January 1, 2004, the deadline for applying for GUST determination letters for certain employers that use prototype plans; and (2) extends the time by which defined contribution plans must be amended to comply with final and temporary regulations concerning required minimum distributions under section 401(a)(9) of the Internal Revenue Code. A copy of the revenue procedure is attached. Extension of Determination Letter Application Deadline As we previously advised,<sup>1</sup> although the GUST remedial amendment period generally expired on February 28, 2002, certain employers could qualify for an extended remedial amendment period by adopting a prototype plan or certifying their intent to adopt such a plan by the end of the otherwise applicable GUST remedial amendment period. If the employer could not rely directly on the prototype sponsor's favorable opinion letter, however, the employer was required to file a determination letter request within the extended remedial amendment period in order to be eligible for the extended remedial amendment period. Prior to Revenue Procedure 2003-72, therefore, an employer who added terms to or modified a prototype plan, or was otherwise not eligible for reliance on the prototype sponsor's opinion letter, generally was required to request a determination letter by September 30, 2003, in order to be entitled to the extension of the remedial amendment period. Revenue Procedure 2003-72 provides that an application for an "eligible plan" will be deemed to have been filed within the plan's GUST remedial amendment period if it is filed on or before January 31, 2004. A plan is an "eligible plan" for purposes of the revenue procedure if its GUST remedial amendment period ends on or after September 30, 2003, and before January 1 See Institute Memorandum to Pension Members No. 55-02 and Pension Operations Advisory Committee No. 76-02 (15372), dated November 20, 2002. 2 1, 2004, and the plan satisfies either (1) the timely amendment requirements of section 5 of the revenue procedure; or (2) the streamlined compliance requirements of section 6 of the revenue procedure. Section 5 of the revenue procedure states that the IRS will treat a plan as having been amended within the GUST remedial amendment period if plan amendments that represent a bona fide effort to comply with the GUST requirements have been adopted by the end of the remedial amendment period. Such amendments may include those that are adopted contingent on the receipt of a favorable opinion letter.

Under the streamlined compliance procedure described in section 6, a plan that does not satisfy the timely amendment requirements of section 5, but would not be a late amender without regard to GUST and other applicable requirements, can submit an application for a determination letter by January 31, 2004, that includes a compliance fee of \$250, in addition to the applicable determination letter user fee. This streamlined compliance procedure also can be used by plans for which determination letters would not have been required had the plans been timely amended to comply with GUST. For example, a standardized prototype plan that has not been amended to comply with GUST by September 30, 2003, can use this section in lieu of the Employee Plans Compliance Resolution System (EPCRS) described in Revenue Procedure 2003-442 by filing a determination letter application by January 31, 2004, and including payment of the \$250 compliance fee. The revenue procedure further notes that an eligible plan that files a determination letter application by January 31, 2004, will qualify under section 1.401(b)-1(e)(3) of the regulations for a remedial amendment period that extends through the 91st day following issuance of a favorable determination letter. Employers that amend or file their plans late and are not “eligible plans,” or do not file determination letter applications by January 31, 2004, will be considered late filers subject to the EPCRS.

**Extension of Section 401(a)(9) Amendment Deadline** The revenue procedure also extends the time by which defined contribution plans must be amended to comply with the final and temporary regulations under section 401(a)(9) until the later of (1) the last day of the first plan year beginning on or after January 1, 2003, or (2) the end of the GUST remedial amendment period.<sup>3</sup> Therefore, an employer that filed a determination letter application for an eligible plan under the conditions described above by January 31, 2004, would qualify for an extension of the plan’s GUST remedial amendment period. Accordingly, plan amendments for the final and temporary section 401(a)(9) regulations would not have to be adopted prior to the 91st day following issuance of the favorable determination letter.

<sup>2</sup> See Institute Memorandum to Pension Members No. 27-03 and Pension Operations Advisory Committee No. 32-03 (16180), dated June 9, 2003.

<sup>3</sup> The original deadline was the last day of the first plan year beginning on or after January 1, 2003, under the rules set forth in Revenue Procedure 2002-29. See Institute Memorandum to Pension Members No. 25-02 and Pension Operations Advisory Committee No. 35-02 (14765), dated May 29, 2002.

<sup>3</sup> Revenue Procedure 2003-72, however, does not extend the December 31, 2003, deadline under Revenue Procedure 2002-29 for sponsors of prototype plans to amend their defined contribution plans and furnish copies of the amendments to adopting employers. Kathy D. Ireland Senior Associate Counsel Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 16481, or call the ICI Library at (202) 326-8304 and request the attachment for memo 16481. Attachment (in .pdf format)