

**MEMO# 11575**

January 28, 2000

## **IRS TO OPEN MASTER AND PROTOTYPE PROGRAM**

\* See Memorandum to Pension Members No. 20-99 and Pension Operations Advisory Committee No. 29-99, dated April 27, 1999. 1 [11575] January 28, 2000 TO: PENSION MEMBERS No. 7-00 PENSION OPERATIONS ADVISORY COMMITTEE No. 6-00 RE: IRS TO OPEN MASTER AND PROTOTYPE PROGRAM

As we previously reported, the Internal Revenue Service closed temporarily its master and prototype program, effective May 10, 1999.\* The Service has announced in Revenue Procedure 2000-20 that the program will reopen on April 7, 2000, for applications from mass submitters, and on May 8, 2000, for applications from other types of sponsors. A copy of the revenue procedure is attached. The new master and prototype program combines the master and prototype and regional prototype plan programs into a unified program for the pre-approval of pension and profit sharing plans. The program will allow sponsors to obtain opinion letters that take into account all of the changes in the plan qualification requirements made by the following statutes: the Uruguay Round Agreements Act (GATT), the Small Business Job Protection Act of 1996 (SBJPA) (including section 414(u) of the Internal Revenue Code and the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)); the Taxpayer Relief Act of 1997 (TRA '97); and the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA) (collectively referred to in the revenue procedure as GUST). Prototype Sponsor Responsibilities Under the revenue procedure, a prototype sponsor generally is any person that (1) has an established place of business in the United States where it is accessible during every business day, and (2) represents to the Service that it has at least 30 employer-clients each of which is reasonably expected to adopt the sponsor's basic plan document and at least one associated adoption agreement within the 12- month period following the issuance of opinion letters under the revenue procedure. After making this representation with respect to one basic plan document, the sponsor may submit others, regardless of the number of employers that are expected to adopt such other plans. In addition, any person that has an established place of business in the United States where it is accessible during every business day may sponsor a plan as a word-for-word identical adopter or minor modifier of a mass submitter plan, regardless of the number of employers that are expected to adopt the plan. The revenue procedure also sets forth specific responsibilities for prototype sponsors. For example, sponsors will be required to make "reasonable and diligent efforts to ensure that adopting 2employers of the sponsor's M&P plan have actually received and are aware of all plan amendments and that such employers complete and sign new adoption agreements when necessary." In addition, every sponsor will be required to maintain, and to provide to the Service upon request, a list of the employers that have adopted its plan, except for those employers that, to the best of the sponsor's knowledge, ceased to maintain the plan as a prototype plan

more than three years earlier. The revenue procedure also provides that "[i]f a sponsor reasonably concludes that an employer's M&P plan may no longer be a qualified plan and the sponsor does not or cannot submit a request to correct the qualification failure" under the Service's Employee Plans Compliance Resolution System (EPCRS), the sponsor must "notify the employer that the plan may no longer be qualified, advise the employer that adverse tax consequences may result from loss of the plan's qualified status, and inform the employer about the availability of EPCRS." Mass Submitter Program The revenue procedure also includes new requirements for mass submitter status. A mass submitter can be any person that has an established place of business in the United States where it is accessible during every business day, but must submit applications on behalf of at least 30 unaffiliated sponsors each of which is sponsoring, on a word-for-word identical basis, the same basic plan document and one or more of the adoption agreements associated with that basic plan document. For purposes of this definition, affiliation is determined under sections 414(b) and (c) of the Code. A special grandfather rule provides that any person that received a favorable TRA '86 opinion letter for a plan as a mass submitter under Revenue Procedure 89-9 will continue to be treated as a mass submitter if it submits applications on behalf of at least 10 sponsors (regardless of affiliation) each of which is sponsoring, on a word-for-word identical basis, the same basic plan document and at least one of the associated adoption agreements. Once a person is treated as a mass submitter under the general rule or the grandfather rule with respect to any basic plan document, it will be treated as a mass submitter with respect to all the other basic plan documents and associated adoption agreements for which it requests opinion letters as a mass submitter, regardless of the number of identical adopters of such other plans. Amendments to Existing Plans The revenue procedure notes that some plans have been operated in a manner that is inconsistent with the plans' terms but consistent with GUST during the transition period between the effective dates of GUST and the date plans are amended for GUST. Accordingly, the revenue procedure requires that prototype adoption agreements contain elective provisions (with or without default provisions) that will allow adopting employers to conform the terms of their prototype plans to the manner in which the employers' plans were operated during the transition period. The elective provisions may be contained in a separate "snap-off" section that can be removed from the adoption agreement with respect to employers that are not using the plan to retroactively restate a plan for GUST. Furthermore, the revenue procedure states that the employer must sign the adoption agreement upon adoption or restatement of the plan. The revenue procedure provides, however, that the signature requirement may be satisfied by an electronic signature that reliably authenticates and verifies the adoption of the adoption agreement, or restatement, amendment or modification thereof, by the employer. The revenue procedure also extends the remedial amendment period for certain employers that adopt approved prototype plans until the end of the twelfth month beginning after the date on which the Service issues a GUST opinion letter for the prototype plan. In order to qualify for this extension, the employer must either have been a prior adopter of a prototype plan or certify (along with the 3sponsor) that it intends to restate its plan for GUST using a prototype plan, and the sponsor must submit its application for approval of the prototype plan to the Service by December 31, 2000. Kathy D. Ireland Associate Counsel Attachment Note: Not all recipients receive the attachment. To obtain a copy of the attachment referred to in this Memo, please call the ICI Library at (202) 326-8304, and ask for attachment number 11575. ICI Members may retrieve this Memo and its attachment from ICINet (<http://members.ici.org>).

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