



Employer Services Advisory

FEBRUARY 10, 2011

CONTACTS

If you have any questions about the VCP program or would like assistance in filing an application on your behalf, please contact one of the following MLA Employee Benefits & Executive Compensation professionals listed below.

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Reduced Correction Fees Available For Late EGTRRA Restatements Until April 30, 2011

The deadline is fast approaching for eligible employers to take advantage of the ability to pay a reduced fee to correct their failure to timely restate their retirement plan documents (originally due by April 30, 2010). As background, April 30, 2010 was the last day for certain employers to amend their plans to satisfy the requirements of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") by restating their plan documents. This deadline applies to those employers with defined contribution plans, such as 401(k) plans and profit sharing plans, who use plan document forms that are pre-approved by the IRS (called 'prototype' or 'volume submitter' plans). If you use a prototype or volume submitter plan document and you missed the April 30, 2010 deadline, the tax-qualified status of your plan is in jeopardy. This violation can only be corrected using IRS correction procedures. **Fortunately, recent IRS guidance permits employers to correct the late restatement under the IRS' Voluntary Correction Program ("VCP") and pay a reduced application fee so long as the VCP application is submitted by April 30, 2011.**

To correct your late restatement for EGTRRA, you must submit a written application under the VCP program and pay an application fee. However, the application fee is based on the number of plan participants and ranges from \$375 (for plans with 20 or fewer participants) to \$12,500 (for plans with over 10,000 participants). If the VCP application is submitted by April 30, 2011 (and the late EGTRRA restatement is the only failure for which you are submitting the application), the application fee will be reduced by 50%. Thus, submitting a VCP application by April 30, 2011 could result in significant cost savings.

Once the IRS approves your VCP application, it will issue a compliance statement. This compliance statement is your assurance that the IRS will treat the EGTRRA restatement as if it were timely-adopted and not seek to revoke the tax-qualified status of your retirement plan. We have seen the IRS responding quickly, usually within a few months, to approve VCP correction applications.

should confirm that you adopted the EGTRRA restatement document provided to you by your plan document provider before the April 30, 2010 deadline. If you did not meet the deadline, you should consider filing for correction under VCP by April 30, 2011 to take advantage of the reduced application fees.

With a team of attorneys who are highly experienced in the employee benefits field, MLA can provide answers to questions and assistance in adding these features to your retirement plan.

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