

Part IV. ---Items of General Interest

Announcement 2005-37

Authority of Volume Submitter Practitioner to Amend for Adopting Employers

Section 15.05 of Rev. Proc. 2005-16, 2005-10 I.R.B. 674, effective February 17, 2005, permits a Volume Submitter (VS) plan to include a provision (“implementing amendment”) that authorizes the VS practitioner to amend the plan on behalf of adopting employers. This announcement explains how a VS practitioner adopts the implementing amendment, describes the type of amendments that can be made on behalf of adopting employers, provides practitioners with interim relief of 60 days to adopt the implementing amendment in certain cases, and contains sample language for the implementing amendment.

Procedures for adopting implementing amendment

There are 3 steps to implement these procedures:

- The VS practitioner must send an authorization form and a copy of the proposed amendment to each adopting employer. The authorization form should inform the employer that if it does not accept this implementing amendment or adopt another pre-approved plan, the employer’s plan will become an individually designed plan. The authorization form should also require the employer to state whether it accepts or rejects the practitioner’s authority to amend on its behalf.
- Each employer must return the completed form to the practitioner, signed and dated.
- Generally, the VS practitioner should not adopt the implementing amendment for a plan until it receives responses from all adopting employers. However, interim relief for certain amendments is provided below.

For a defined contribution VS plan, the implementing amendment will be reviewed as part of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16 (EGTRRA) submission of the VS plan under Rev. Proc. 2005-16 if the plan is amended by the date the VS practitioner submits a timely application for an advisory letter. (Applications are due October 31, 2005 for mass submitter and national sponsor applications and January 31, 2006 for other defined contribution pre-approved plans.) With respect to a defined benefit VS plan, which has a later submission date, the implementing amendment will also be reviewed as part of the EGTRRA submission if the plan is amended by the date the VS practitioner submits a timely application for a defined benefit plan.

Types of Amendments Made for Adopting Employers

Section 15.05 of Rev. Proc. 2005-16 provides that the authority to amend on behalf of employers extends to changes in the Code, regulations, revenue rulings, and other statements published by the Service, including model, sample or other required good faith amendments, and corrections of prior approved plans. The practitioner must make all required and discretionary amendments for adopting employers. Depending on the circumstances, the employer may also need to sign the amendments. For example, the employer would sign a good faith amendment that requires the adopting employer to choose some optional provisions. As described in section 15.05, if the employer makes certain amendments causing it to be considered an individually designed plan, the practitioner's authority to amend on behalf of that particular employer no longer applies.

Interim Relief for Certain Automatic Rollover Amendments

Under Notice 2005-5, 2005-3 I.R.B. 337, plan amendments complying with automatic rollover provisions under § 401(a)(31)(B) of the Code must be adopted by the end of the first plan year ending on or after March 28, 2005. It is possible certain practitioners may have amended VS plans on behalf of employers to comply with the automatic rollover provisions before amending the VS plan to include an implementing amendment. If this was done, the VS practitioner should comply with the above procedures by receiving the signed authorization form from all of the employers and adopting the implementing amendment giving the practitioner the general authority to make amendments for adopting employers (see sample language below) within 60 calendar days of May 9, 2005. This implementing amendment should be effective as of the date the practitioner first made the specific plan amendment on behalf of employers to comply with the automatic rollover provisions. For example, a practitioner who, on or after February 17, 2005 but before May 9, 2005, adopted a plan amendment on behalf of employers to reduce the mandatory cash-out amount to \$1000, must comply with the procedures described above except that for purposes of this specific amendment reducing the mandatory cash-out amount, the practitioner will be deemed to have received timely authorization if the practitioner receives the signed authorization form from all of the employers and adopts the implementing amendment within 60 calendar days of May 9, 2005.

Sample Plan Language - Implementing Amendment

Practitioners may or may not be able to adopt this sample language verbatim, depending on the circumstances.

The practitioner will amend the plan on behalf of all adopting employers, including those employers who have adopted the plan prior to this amendment, for changes in the Code, regulations, revenue rulings, other statements published by the Internal Revenue Service, including model, sample or other required good faith amendments, but only if their adoption will not cause such plan to be individually designed, and for corrections of prior approved plans. These amendments will be applied to all employers who have adopted the plan.

The practitioner will no longer have the authority to amend the plan on behalf of any adopting employer as of either: (1) the date the Service requires the employer to file Form 5300 as an individually designed plan as a result of an employer amendment to the plan to incorporate a type of plan not allowable in the Volume Submitter program, as described in Rev. Proc. 2005-16, or (2) as of the date the plan is otherwise considered an individually designed plan due to the nature and extent of the amendments. If the employer is required to obtain a determination letter for any reason in order to maintain reliance on the advisory letter, the practitioner's authority to amend the plan on behalf of the adopting employer is conditioned on the plan receiving a favorable determination letter.

The VS practitioner will maintain, or have maintained on its behalf, a record of the employers that have adopted the plan, and the VS practitioner will make reasonable and diligent efforts to ensure that adopting employers have actually received and are aware of all plan amendments and that such employers adopt new documents when necessary. This amendment supersedes other provisions of the plan to the extent those other provisions are inconsistent with this amendment.