

**THOUGHT LEADERSHIP**

LEGAL UPDATES

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## IRS Guidance on Correction of Failure to Restate Pre-Approved Plans

On August 20, 2010, the IRS published guidance in Retirement News for Employers - Summer 2010, for adopting employers of IRS pre-approved defined contribution plans that missed the April 30, 2010 deadlines to restate the plan to conform to the requirements of the Economic Growth and Tax Relief Reconciliation Act of 2001 and request determination letters from the IRS. The failure to adopt an approved restatement by April 30, 2010 may result in IRS disqualification of the plan. To avoid the risk of plan disqualification, the IRS Voluntary Correction Program ("VCP") may be used to correct the failure.

Under VCP generally, an employer pays a fee, identifies plan qualification failures and proposes a method of correction. If the method of correction is accepted by the IRS, the IRS issues a compliance statement setting forth the agreement between the IRS and the employer. The new guidance includes a VCP submission kit that may be used by plans that failed to adopt an approved restatement by the April 30, 2010 deadline. There is an opportunity for an application fee that is reduced from the normal VCP application fee schedule, if the failure to adopt an approved restatement is the only failure and a VCP application is filed on or before April 30, 2011. Reduced fees are based on the number of employees covered by the plan.

An employer is not required to request a determination letter in connection with a VCP filing, according to the new guidance. However, an employer may request one by filing an "off-cycle" request after receiving a VCP compliance statement from the IRS. An off-cycle filing means that the application will be placed on hold and will not be processed until all on-cycle applications have been reviewed. Some exceptions apply to the off-cycle filing requirement.

### What This Means to You

If you sponsor an IRS pre-approved defined contribution plan (including a volume submitter document sponsored by Husch Blackwell Sanders LLP) and failed to restate your plan on an approved restatement by the April 30, 2010 deadline, you can avoid disqualification by restating the plan and filing a VCP application to correct the failure. If the only failure that requires correction is the failure to adopt an approved restatement by the April 30, 2010 deadline, filing the VCP application on or before April 30, 2011 will qualify for a reduced application fee.

**Contact Info**

Please contact a member of our Employee Benefits and Executive Compensation practice group if you have questions or if we can assist in any way.

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