

Chapter Nine

Qualified Plan Documents

Chapter Nine Highlights

The IRC (Internal Revenue Code) provides various regulatory requirements which must be satisfied for a Plan to receive favorable tax treatment as a Qualified Plan. These requirements, as well as the specific provisions chosen for your Plan, are contained in the Plan Documents. Additionally, the Internal Revenue Service and the Department of Labor require that certain documents be provided to all Participants and beneficiaries entitled to benefits under the Plan.

This chapter is designed to help you identify and understand these documents. It will also explain your obligations as Plan Sponsor in terms of Participant disclosure.

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9.1 YOUR PLAN DOCUMENTS

One requirement under IRC Section 401(a) is that a Plan must be in writing. The Plan Documents provided to you by TRS are drafted to comply with the requirements specified under the IRC. Periodically, the IRC is amended and your Plan must be updated accordingly.

You will need to refer to portions of the documents that pertain to specific plan provisions, such as eligibility, vesting, and contribution amounts. It is important to know where to find this information so that you can properly administer the Plan and answer employee questions correctly.

Required Plan Documents

Your Plan will consist of the following documents:

- o Adoption Agreement*
- o Certificate of Corporate Resolution*
- o Plan and Trust Document
- o Opinion/Advisory Letter
- o Favorable Determination Letter*
- o Model Amendments*
- o Plan Amendments*

* If applicable

9.2 IDENTIFYING PLAN DOCUMENTS

Adoption Agreement

All Plans for which TRS provides a document utilize an Adoption Agreement which can be easily identified from the first page of the document. The Adoption Agreement includes a series of check boxes for each optional provision available. The selections chosen for your particular plan will be indicated with an "X" in the box corresponding to the related provision.

For example, the option below shows a Plan which uses a One Year Service requirement:

15. Conditions of Eligibility

(b) (x) Completion of the following Service Requirements:

- (1) ☐ No Service.
- (2) ☐ 1/2 Year of Service.
- (3) ☒ 1 Year of Service.

Because your Plan uses an Adoption Agreement, you will be referring to this document quite often and may want to consider placing tabs at the frequently used sections.

Plan and Trust Document

You will also be given another document called the Transamerica, Inc. Prototype Defined Contribution Plan and Trust. If your plan utilizes a new comparability, age-weighted, or age neutral profit-sharing allocation formula you will be given the Volume Submitter Cross-Tested Defined Contribution Prototype Plan and Trust. These documents contain all of the boiler plate provisions required under a Plan. They also contain more detailed information about the underlying provisions supporting selections chosen in the Adoption Agreement (e.g., the Adoption Agreement permits Hardship Withdrawals, but the Plan and Trust defines exactly what qualifies as a Hardship). As the Plan and Trust Agreement is to be used in conjunction with the Adoption Agreement, both documents should be kept together

The Adoption Agreement contains your specific Plan provisions. It may also be referred to as a Prototype or Volume Submitter.

9.2 IDENTIFYING PLAN DOCUMENTS *Cont.*

Opinion/Advisory Letter

The IRS reviews all Prototypes and Volume Submitter documents submitted to them to ensure that the documents have incorporated all language required in a Qualified Plan. The IRS issues a letter on a Prototype document called an Opinion Letter. A Prototype document having an Opinion Letter indicates that the form of the document, prior to any specific Plan choices made by Plan Sponsors, has been pre-approved by the IRS for use. The letter issued by the IRS on the Corbel Volume Submitter document is called an Advisory Letter. These letters may periodically be requested by your auditors or by a former employee who is trying to roll his/her money over to his/her new Employer's Plan.

Plans using the Prototype document receive a copy of the Opinion Letter from the IRS that begins "In our Opinion." If your Plan uses the Volume Submitter document, the letter states in the first sentence that the Plan was reviewed under the volume submitter program.

Favorable Determination Letter (FDL)

The IRS may issue a FDL on a Plan based on that Plan's specific provisions. TRS will assist you with the preparation of the filing package that goes to the IRS to request this determination. Receipt of a FDL provides some protection in the event of an audit by the IRS. It shows that your Plan has been approved and is a qualified plan in form. This may prevent the imposition of possible costly retroactive corrections, sanctions and penalties due to documented deficiencies. There are other benefits to receiving a FDL on your Plan that you can discuss in detail with TRS.

9.2 IDENTIFYING PLAN DOCUMENTS CONT.

This letter can be identified by the contents of the first sentence that should read, "We have made a favorable determination on your Plan." This letter should be kept with the Plan and Trust Agreement. You may be requested to produce this letter for:

- An IRS audit
- An audit by an independent CPA
- A former employee requiring a copy for a direct rollover
- Application to one of the IRS's corrective programs

Participant Loan Program

If your Plan allows for Participant loans, you may be given a document called the Participant Loan Program. It contains all of the regulatory required provisions by which loans must be administered under the Plan.

Model/Good Faith Amendments

Occasionally, the IRC will be amended for certain law changes that will require all Plan Documents to be updated by the end of a Plan Year. Rather than require document providers to completely update and refile the entire Plan Document, the IRS has issued standardized "model" amendments in the past that are simply attached to existing documents. A set of Model Amendments were issued in 1993 and 1994 relating to direct rollovers and the cap on compensation. A set of Good Faith Amendments were issued in November 2001 to incorporate the EGTRRA (Economic Growth and Tax Relief Reconciliation Act of 2001) provisions. These Amendments should be attached to your Plan and Trust Agreement.

Plan Amendments

There may come a time when you decide to change a particular provision of your Plan (e.g., you may want to change eligibility from one year of service to six months of service). When a Plan Amendment is drafted by TRS for your review and that amendment is signed by the Plan Trustee and/or employer representative, a signed copy of the Amendment with replacement pages (if applicable) should be kept with the Adoption Agreement and/or the Plan and Trust Agreement.

Keep the most recent amendment on top as it may replace the contents of an earlier amendment.

9.3 DOCUMENTATION FOR EMPLOYEES

Summary Plan Description

The Summary Plan Description, or "SPD," is the primary method of communicating the specific Plan provisions to the Participants. ERISA requires that the SPD be written in a manner that is reasonably expected to be understood by the average plan Participant. TRS has prepared the SPD for your review and distribution to Participants.

For new Plans, the SPD must be distributed within 120 days after the plan year in which the Plan was adopted.

The SPD must be given to all new Participants within 90 days of meeting eligibility requirements.

All supplements must be distributed within 210 days of the end of the Plan Year for which an amendment is adopted.

Updating Your Summary Plan Description

- o The Department of Labor (DOL) requires that after the initial distribution, the SPD must be provided to all Participants **within 90 days** of meeting the eligibility requirements.
- o The SPD must be updated every **fifth** year if there have been any amendments that would affect the contents of the SPD. Regardless of any amendments, the SPD must be updated no later than every **10** years.
- o An updated SPD must be provided to all Participants and beneficiaries receiving benefits **no later than 210 days** (approximately seven months) after the close of the Plan Year in which a plan amendment is signed.

Summary of Material Modification (SMM)

When you amend your Plan, in addition to the Plan Amendment, TRS will prepare for your review and distribution to Participants a Summary of Material Modification, or "SMM."

- o The SMM must be distributed to all Participants and beneficiaries receiving benefits **no later than 210 days** (approximately seven months) after the close of the Plan Year for which the amendment is adopted.

9.4 REQUESTING PLAN AMENDMENTS.

You have the right to amend your Plan as your business and benefit needs change. Before you submit a request to amend your Plan, you should consult with your legal and tax advisors to ensure that the change you would like to make will meet your objectives. You should also consult your TRS Compliance Manager to discuss the potential impact such a change will have on your Plan. Some plan provisions may only be amended on a prospective basis and others may be time sensitive (i.e., before the end of the Plan Year). TRS can assist you with these issues and help you make the best decision regarding your amendment request.

Plan Amendment Letter

To facilitate the proposed amendment, you must write a letter stating the changes in the most specific terms possible. The effective date of the amendment must be included as well as a signature from a current Plan Trustee.

Sample Amendment Letter

Dear Transamerica Retirement Services:

Effective May 1, 2001, please amend our Plan as follows:

- o Eligibility should be reduced from one year of service to six months of service during which time the employee must have worked 500 hours.
- o Entry Dates should be changed from January 1 and July 1 to the first day of each month.
- o Employee Deferrals should be permitted from 1-15%.

If you have any questions about this request, please contact me at (310) 555-4444.

Sincerely,

Once completed, the letter can be mailed, faxed, or sent via email directly to TRS. Be sure to sign the amendment in a timely manner as this can have an impact on whether or not the amendment is feasible.

Plan Amendments must be requested in writing by a Plan Trustee and should include specific information. Consult your legal and business advisors, as well as your TRS Compliance Manager, for potential restrictions and implications.

One copy of the Amendment should be retained with your Plan Documents and the other should be returned to TRS.

9.5 PARTIES TO THE PLAN DOCUMENT

Document Sponsor

TRS is the Document Sponsor of the Transamerica Prototype Defined Contribution Plan and Trust. As the Document Sponsor, TRS is responsible for updating the document to comply with all legislative changes as well as regulatory and IRS guidance, including all Model Amendments.

Your Company

Plan Sponsor—The employer who maintains the plan. If the Plan Sponsor is a corporation, the board of directors may act on behalf of the corporation. Likewise, if the Plan Sponsor is a partnership, one or more of the partners may act on behalf of the partnership.

Additional Parties

Plan Trustee(s)—The individual(s) named in the Plan Document who are appointed as Trustee. The Trustees have responsibility for selecting, within the guidelines established under the Plan, the investment options offered under the Plan, overseeing the investment and management of the assets of the Trust Fund and monitoring the investment performance and security of the selected investment options. The Trustees are also responsible for all government reporting relating to the Trust.

Plan Fiduciary(ies)—Any person who (a) exercises any discretionary authority or discretionary control respecting management of the Plan or exercises any authority or control respecting management or disposition of Plan assets, (b) renders investment advice for a fee or other compensation, direct or indirect, with respect to any monies or other property of the Plan or has any authority or responsibility to do so, or (c) has any discretionary authority or discretionary responsibility in the administration of the Plan, including, but not limited to, the Trustee, the Employer and its representative body, and the Administrator.

9.5 PARTIES TO THE PLAN DOCUMENT *CONT.*

Plan Administrator—Generally named in the Plan Document as the Employer (without specifying a particular individual), unless another named individual is shown. The Plan Administrator oversees the management of the Plan in its day-to-day operation, such as determining eligibility, maintaining Participant records, handling claims and appeals, and authorizing benefit payments. In addition, the Plan Administrator is responsible for all government reporting relating to the Plan.

Agent for Service of Legal Process—The person responsible for receiving any legal papers or summons for the Plan. However, service of legal process may also be made upon the Plan Administrator or any Trustee.

9.6 LEGAL UPDATES

Periodically, the government makes changes to the IRC which require Plan Sponsors and document providers to update their documents. Some of these changes require compliance with the new law immediately in the administration of the Plan, but no immediate change is required to be made to the Plan Document itself. This is referred to as “operational compliance”. Some changes require the issuance of Model Amendments (described earlier in the chapter) which do not require signatures. Sometimes the IRS requires the Plan document to be rewritten in its entirety and submitted for IRS approval.

In June 2001, the government passed the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”). Most of the provisions affecting Retirement Plans did not take effect until January 1, 2002. Although EGTRRA provided the substance for these new changes, the legislation did not provide complete guidance on the application and administration of these changes. The IRS will continue to issue guidance instructing Plan Sponsors and document providers how to implement the changes. In December 2001, TRS amended its documents to comply with EGTRRA. Our clients who use a Transamerica cross-tested prototype receive EGTRRA amendments requiring the Plan Trustee signature. If you have any questions about this legislation or any future legislation that is passed, please contact TRS.