



2007 REQUIRED AMENDMENTS



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Welcome

Vice President - Director of Consulting Services, Sheryl Deer, will review what the amendments mean and what you need to do with your documents to get them up to date. I will be discussing how to update your checklist and how to utilize our batch amendment feature.



QUESTIONS

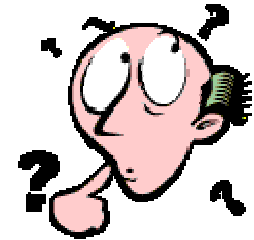
- Do to the anticipated length of the webinar, please send your questions in throughout the webinar using the question and answer option on your toolbar.
- Once we have compiled a list of questions, we will send an email to all attendees early next week listing all questions and their answers.



Why now? Are these amendments really needed?

Yes. Qualified retirement plans must:

- Operate in accordance with written plan document(s); and
- Operate in accordance with changes required by law, regulations and other guidance.



Latest Guidance: Rev. Proc. 2007-44



Section 5.02 states in part:

A change in a qualification requirement includes a statutory change or a change in the requirements provided in regulations or other guidance published in the Internal Revenue Bulletin.

Section 5.05(1) reiterates interim amendments (those the IRS considers mandatory) are generally required to be executed by the later of the:

- Due date of the employer's tax return (including extensions) for the employer's taxable year that includes the effective date of the change; or
- Last day of the plan year that includes the effective date of the change.

(See Section 5.06 for the later effective dates of government and tax-exempt employers. Note, the special provisions of government and church plans are not included in our amendments.)



IRS List of 2007 Interim and Discretionary Amendments

This list is available to you via a link in our October 18, 2007 Technical Update. You may view the Technical Update from either the ftwilliam.com's webinar page or the Recent Technical Updates link located on our Select Company screen.

(Note, we included three additional amendments, to be discussed later.)



Time Frame for Amending Plans

- Ftwilliam.com recommends all plans be amended by year-end.
- This is not an absolute deadline, but it will allow you to more efficiently comply with the deadline requirements, as you will not need to confirm which clients are on extensions or worry about differing plan year ends (calendar vs. non-calendar), and limitation year for Code section 415 purposes, etc.



NO PPA AMENDMENTS- SMM or SPD Only

- PPA amendments for active plans are not required until the 2009 plan year.
- Only notification to participants are provided in the form of an SMM for existing plans and an SPD for new plans.
- Checklist items have been added to generate the SMMs/SPD language to describe the 2007 PPA provisions.



PPA DEFAULT RESPONSES

- Default responses are included for your convenience; unless your client wants to change a default response or the plan has operated differently so that you must revise it, the SMM/SPD will generate automatically where possible.
- Very briefly, a list of the defaults follow, with Defined Contribution Plans listed first. Remember, PPA provisions are not included in the actual amendment.



DC PPA ITEMS & DEFAULTS

- Revised (top heavy) vesting schedule for non-elective contributions will only appear if there is a change from the pre-2007 vesting schedule; you will need to specify whether or not the prior vesting schedule, if different, will continue to apply to pre-2007 contribution accounts.



DC-PPA DEFAULTS con't.

Profit sharing/401(k)/403(b) plans--

- Expand hardship withdrawal provisions to primary beneficiary
- Note, only applies to safe harbor hardship withdrawals (See Notice 2007-7, Q&A 5)
- Default = Yes (August 17, 2006)



DC PPA DEFAULTS con't.

Plans with elective deferrals-

- Qualified Reservist Distributions
- Default = No

Money Purchase/Target Plans only-

- In-service distribution at age 62
- Default = No



DC PPA DEFAULT con't.

Non-standardized prototype and volume submitter plans that allow investment in employer contributions-

- Diversification rights must be provided if the employer stock is publicly traded
- Default = No, the stock is not publicly traded; if yes is answered, diversification provisions will appear in SMM/SPD



DB PPA DEFAULT PROVISION

- In-service withdrawals allowed at age 62
- Default = No



Checklist Changes and Samples

- Checklist section for definition of compensation:
 - Example of how amendment is generated based off checklist answers
 - A. General Information
 - e.g., Compensation changes
 - 21b.-21e.
 - Sample amendment with changes
 - This is not a PPA Provision, just one of the additions to the checklist for the required amendments.
 - Context sensitive help buttons.
- SAMPLE
 - Consent
 - SMM
 - Amendment



Batch Amendment Feature

- Batch print amendments and cover letters at once.
 - Only available to annual customers
 - Cover letter options
 - Reviewing your list of plans
 - Downloading to Excel
 - How to manipulate Excel so that you can see headings
 - Data sort
 - Creating labels
 - Print Options
 - Cover letter only
 - Amendment only
 - Zip file



2007 DC/DB AMENDMENTS- STANDARD PROVISIONS

These contain language that would usually be included in the Basic Plan Document. Before completing the checklist provisions, review this language; it is not necessarily intuitive, particularly since the final Code section 415 regulations revised a key definition/provision.



FINAL CODE SECTION 415 REGULATIONS

- Effective for limitation years beginning on or after July 1, 2007.
- Confusion exists as to how some of the new regulations will impact plans as well as what happens with the transition between the proposed regulations and final regulations. There is also concern relative to anti-cut-back issues that may warrant adoption prior to deadline.



415 REGULATIONS con't.

- Prior correction methods for excess 415 limits are no longer part of the regulations for DC plans, but we can continue to use Rev. Proc. 2006-27 and superseding guidance for correction purposes. (Until this Rev. Proc. is updated it is our best guide regarding corrections.)



415 REGULATIONS con't.

- Restorative payments are not annual additions for DC plans. Note, this generally refers to a plan that had a real fiduciary problem. The more common “scenario” of an employer making participants “whole” when hefty surrender charges apply upon investment/fund changes being made plan wide are not addressed and therefore, cannot be considered restorative. Hence, such payments that may avoid potential lawsuits could only apply as a new contribution to active participants, subject to annual additions and deduction limitations.



415 REGULATIONS con't.

Compensation Definition-

- Code section 401(a)(17) (maximum dollar limit, \$225,000 for 2007, \$230,000 for 2008) must not be exceeded in any year. (Not sure when that would affect a DC plan but can have real impact on DB plans.)
- New cites provided for plans defining compensation under Code section 415.



415 REGULATIONS con't.

Post Year End Compensation-

- This is an optional choice to use compensation earned in one year and paid in the first few weeks of next year (payroll delay) provided the plan uses the compensation uniformly.
- Default = No



415 REGULATIONS con't.

Post Severance Compensation—

- Actual severance pay cannot be used for plan purposes.
- Under the final regulations, post severance compensation, as we will call it in our documents, is optional and refers only to special types of payments, such as unused vacation, sick pay, other leaves of absence and nonqualified unfunded deferred compensation that would have been paid in the absence of severance. (The final regulations changed the “final paycheck” type of compensation from being optional to being required. This type of compensation is discussed in the following screen.)
- These special types of payment must be made by the later of 2-1/2 months after severance from employment or the end of the limitation year in which the severance occurs to be included as compensation.
- Default = No.



415 REGULATIONS con't.

New definition of compensation in ftwilliam.com plan requires the inclusion of what may be considered the “final paycheck.”

- Compensation such as bonuses, trailing commissions, overtime pay, shift differential, any type of pay that would have been paid to the employee had employment continued, must be included in compensation for plan purposes if it is paid by the later of 2-1/2 months after severance from employment or the end of the limitation year in which the severance occurs.
- Generally does not apply to payments resulting from military service under Code section 414(u)(1).
- Disability option is dependent upon the checklist choice and remains unchanged.



415 REGULATIONS con't.

DB Standard Provisions also include actuarial equivalency provisions for payments other than straight life annuities, those subject to and those that are not subject to Code section 417(e)(3), annuity starting dates, PFEA transitional rules, anti-cutback language for benefits accrued prior to the new regulations, adjusting dollar limitations for distributions prior to age 62 and after age 65, more than one annuity starting date, average compensation for rehired employees, automatic COLAs, employer aggregation and changes in the dollar limitation for participants in pay status.



PROTECTED BENEFITS (HEINZ CASE)

Even though plans have Code section 411(d)(6) anti-cutback language in them, additional language is added to be certain the new regulations under Treas. reg. 1.411(d)-3 that provide guidance with respect to the interaction between the anti-cutback rules of Code section 411(d)(6) and the non-forfeitability requirements of Code section 411(a) are satisfied in both DC and DB plans.



INTERIM AMENDMENTS WITH OPTIONS IN CHECKLISTS

- Post Severance Compensation-Default No
- Post Year End Compensation-Default No
- Transition Rule for PFEA distributions prior to 2005 for DB plans-Default Yes
- NRA for pension plans (Non-pension plans will simply default to No) if age is below 62, and answer yes, need to provide correction method



Additional Amendments

GAP PERIOD INCOME ON EXCESS 402(g) LIMIT

- Technical corrections are anticipated to eliminate issues for 2008. Because 2007 is unclear, we included it in our amendment. If it is necessary, it will apply to daily and monthly valued plans, assuming distributions are made by March 15, 2008.

ROTH ROLLOVERS

- Separate mandatory cash-out amounts up to \$1,000 apply to Roth and non-Roth accounts within same plan.

OTHER DB AMENDMENT

- New actuarial assumptions under Code section 430(h) (effective in 2008) were added in an attempt to avoid later having to provide the “greater of” benefits.



NORMAL RETIREMENT AGE— PENSION PLANS ONLY

- PPA added in-service withdrawals at age 62 and IRS determined “retirement” does not include a mere reduction in hours worked. (See Rev. Proc. 2007-69.)
- Age 62 deemed OK.
- Between ages 55 and 62—good faith determination by employer will be given deference, assuming determination is reasonable.
- Below age 55 deemed not OK.
- Any NRA that can be conditioned (directly or indirectly) by the completion of a number of years of service is not OK—such as ftwilliam.com’s credited service option in its DB plans. There is no safe harbor or other guidance available for an NRA that can change to an earlier age after the completion of a stated number of years of service (e.g., the earlier of age 65 or 25 years of service). There is no temporary relief offered for these plans as there is for other plans, as discussed in next screen.
- Generally effective May 22, 2007.



NRA con't.

- Other than a credited service definition, if NRA cannot be attained by age 40, (and unless the plan wants to file for a determination letter (or argue with the IRS and NRA is at least age 55) NRA can be amended effective the first day of the first plan year beginning after June 30, 2008 and must operate accordingly. The interim amendment must be adopted by the later of the last day of the first plan year beginning after June 30, 2008 or the due date (including extensions) for filing the employer's tax return for the taxable year that includes the first day of the first plan year beginning after June 30, 2008.
- Note, anti-cutback relief is limited to the elimination, as a result of an amendment that raises NRA from an "inappropriately" low age to one that satisfies the new regulations, to the elimination of the right to an in-service distribution at the earlier age. Amendments must ensure participants who would have been eligible to receive benefits under the prior NRA who severed employment, continue to be eligible for payment at the same age and in at least the same amount as under the prior NRA terms with respect to benefits accrued prior to amendment.
- Plan with NRA between ages 55 and 62 can request a favorable determination letter during its remedial amendment cycle that includes this interim amendment. If the IRS determines its NRA is not typical for its industry, corrective action will be prospective only to comply with Treas. Reg. 1.401(a)-1(b)(2) and (3).
- Plan with NRA below age 55 (and not below age 40) can request private letter ruling by June 30, 2008, again providing for prospective correction if IRS determines NRA is not typical for its industry.



NRA con't.

- Merged pension assets in DC plans
- Although this is a somewhat hidden issue, it is a possible problem for DC plans that may have merged assets with an “unacceptable” NRA by IRS standards.
- To help identify these plans, our DC Compliance list available to clients with an annual subscription has been enhanced to include the DC plan’s NRA and to note whether or not the plan contains merged or transferred pension assets.



Additional Guidance

- We anticipate getting additional guidance on our QACA Safe Harbor Notices. If so, we will have additional information to you soon after.



Questions?!

- As we stated earlier, due to the anticipated length of the webinar, we will compile a list of your questions and email them to all attendees with answers early next week.
- If anything else should come up in the meantime, please also feel free to contact us at 800.596.0714 or via email at support@ftwilliam.com.



THANK YOU!!

- Thanks again for attending our webinar, we will be in touch next week with answers to all of your questions.
- Have a wonderful weekend!!!!!!

