

What you need to know about EGTRRA Restatements!
WEBINAR Q&A's
ftwilliam.com
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1Q: Will you mail out the Q &A via email?

A: Absolutely.

2Q: Are you saying that we should select "New Comparability - One Group per Participant" all the time because it increases flexibility? Isn't this discriminatory? Doesn't the IRS frown upon defining groups by name?

A: Yes; we suggest using a one person per group allocation under a volume submitter plan to provide increased flexibility and to avoid having to amend the plan whenever census changes in order to pass testing. The plan must be tested each year to confirm it is not discriminatory, so the testing proves it is not discriminatory. The IRS approved the one person per group method, so it should not be a problem.

3Q: Are multiple employer plans of unrelated employers automatically out of the 6-year volume submitter cycle?

A: It depends on the type of plan you use. A volume submitter document can support the multiple employer plan without moving the plan to a five year cycle. (Note, pursuant to Announcement 2008-23, even though you use a pre-approved volume submitter plan, you file a multiple employer plan using Form 5300, not Form 5307.) If you were to use a prototype, which cannot support a multiple employer plan, then the plan would automatically be considered individually designed and on a five year cycle.

4Q: How do you turn off the Safe Harbor Match?

A: The plan must be amended to a non-safe harbor plan and provide a new notice to participants at least 30 days before the safe harbor match is suspended. Participants must be provided reasonable opportunity to change their deferral elections after receiving the new notice and before the safe harbor match ceases. The plan must then satisfy ADP and ACP tests based upon the complete plan year. (We will have a sample amendment for plans with adoption agreements available on the system soon.)

5Q: If you want eligibility to be after 45 days of service, how do you modify the plan document?

A: There are two ways to accomplish this. In Section B, perhaps the easiest way is to choose "None" for minimum service under 11a, and "Yes" in 12b and enter something like, "Eligible Employees must complete 45 days of service" in 12b:

11a. Minimum service requirement for Elective Deferrals/Voluntary Contributions:
i. None

12a. In addition to the foregoing, the Plan provides for additional requirements for eligibility to make Elective Deferrals/Voluntary Contributions:
 Yes No

12b. If B.12a is "Yes", describe any other eligibility requirements: Eligible Employees must complete 45 days of service.

The same responses would be used in B.21 and 22 and B.31 and 32 for the matching and profit sharing eligibility.

The second way, which will involve changing your word document, is to utilize the provisions in B.11a so that it reads as follows (one hour of service in a one month period):

- 11a. Minimum service requirement for Elective Deferrals/Voluntary Contributions:
- i. None
 - ii. Completion of One Year of Eligibility Service (See B.11c for hours of service required for a year of service if the Plan does not use the Elapsed Time method in B.11b)
 - iii. Completion of 1 Hours of Service (not more than 1,000) in a one (1) Month period (Not to exceed 12.)
 - iv. Completion of _____ Hours of Service (not to exceed 1,000) within a twelve month period.
 - v. Completion of _____ months of service (not to exceed 12 months--elapsed time only).
- NOTE: If B.11a.iii - B.11a.v is selected, the service requirement under B.11a shall be deemed met no later than the end of an Eligibility Computation Period during which the Eligible Employee completes 1,000 Hours of Service; provided, that the individual is an Eligible Employee on the applicable entry date. Service taken into account for purposes of B.11a shall be determined under the terms and conditions as is specified for determining a Year of Eligibility Service.

Then, in your word document, change the one (1) Month to one and one-half (1.5) Months:

- 11a. Minimum service requirement for Elective Deferrals/Voluntary Contributions:
- i. None
 - ii. Completion of One Year of Eligibility Service (See B.11c for hours of service required for a year of service if the Plan does not use the Elapsed Time method in B.11b)
 - iii. Completion of 1 Hours of Service (not more than 1,000) in a one and one-half (1.5) Month period (Not to exceed 12.)
 - iv. Completion of _____ Hours of Service (not to exceed 1,000) within a twelve month period.
 - v. Completion of _____ months of service (not to exceed 12 months--elapsed time only).

Because the language was approved with a blank space, you can change what we have in the drop down box without it being considered custom language; it's just that you have to enter the change yourself in your own word document and save it on your desktop or other computer drive.

6Q: Do you recommend EGTRRA restatement on terminating plans? What will we do after the EGTRRA restatement period is over?

A: Yes, we recommend restating terminating DC plans for EGTRRA because we have heard IRS agents are asking for them when plans are submitted with Form 5310. We are guessing that terminated plans that come up for a routine audit may require fewer explanations as compared to plans that are restated for EGTRRA. It is not legally required, but it may save time in the future.

After April 30, 2010, we will need to review updated guidance (perhaps the updated Rev. Proc. 2010-6 will be available), for instructions on filing new plans drafted on pre-approved documents after this cut-off date. We hope to receive published reliance that Section 20 of Rev. Proc. 2007-44 will be superseded so that there will be reliance on the

pre-approved document prior to the date of submission. At this point in time, the Rev. Proc. is stating there will not be.

7Q: Should employers amend to EGTRRA (with the PPA addendum) before 12/31/2009 to be okay with good-faith PPA amendments?

A: We anticipate having the PPA good faith amendments for active plans available this fall. We hope the IRS will provide any additional guidance on the PPA language it wants incorporated, including language on the 2009 required minimum distribution waiver for DC plans and whether or not there will be 2009 interim amendments before then. (Note: even if you don't restate the plan this year, the PPA amendment must be completed and executed by plan year end.)

8Q: How do you handle voting rights when some participants are in self-directed brokerage accounts, and others are in mutual funds (where you don't want to allow participants to exercise voting rights)?

A: We would not suggest allowing participants to exercise voting rights as it only complicates plan operations. The plan must either allow everyone or no-one voting rights. Voting rights can increase the administrative burdens of the plan considerably.

9Q: On a new plan, is it okay to use the plan effective date wherever an effective date is written into the provisions of the plan (like when are new minimum distribution rules effective, or when are the final 401(k) regulations effective)?

A: Yes. You can also leave the defaults, even though they may be prior to the plan's effective date. The one exception to this, however, is the example you cite regarding the effective date of the final regulations for the required minimum distributions. Here the IRS wanted plans to specifically include the 2002 or 2003 year. So even though it looks a bit silly, for plans with effective dates after 2002, just use 2003 when you draft the plan.

10Q: Is a participant on temporary layoff eligible for a distribution as a terminated employee?

A: No; you need to get a final termination date from the plan sponsor before making any distribution. Someone on a temporary layoff may return to work. Until personnel or human resource records list the employee as terminated, the plan is not entitled to make any distribution, other than possible in-service distributions that may be allowed under the terms of the plan.

11Q: My audio is not the best, could you please clarify for me what you said about putting a plan on EGTRRA first and then terminating the plan. Are you saying they should start a new plan and then term the old which would avoid having to go back and get amendments to date the old plan?

A: We are not suggesting a new plan be implemented before terminating a prior plan. We are just recommending that the plan be restated on an EGTRRA document before it is terminated.

12Q: Is there a list of what is included in the doc and is only included in the spd?

A: Section J items are not included in the plan document and only show up on forms and/or the spd. The checklist items often specify to which form the information will apply if not the entire subsection. Other checklist items are applicable to the plan and spd.

13Q: Will this session be stored online where we can go back to view and listen to us?

A: The handouts are available on our website. The audio from the webinar, unfortunately, did not record well, so we are not placing it on the website.

14Q: EGTRRA documents already done what else do I need to do before April 30, 2010?

A: The good faith PPA amendments are required to be executed by the last day of the 2009 plan year and there may possibly be other 2009 required interim amendments. We are waiting for guidance from the IRS.

15Q: should we create a new set of plan documents with EGTRRA version for an old plan that is not created initially on ftwilliam.com?

A: In order to use batch features the plans need to be on our system. If the prior plan was restated for EGTRRA and all interim amendments there is no need to restate it on our system. We have conversion capabilities for most of the major document types.

16Q: When is deadline for the EGTRRA Restatements?

A: For pre-approved DC plans that are on a pre-approved GUST documents or individually drafted GUST DC plans that executed Form 8905 before the end of their EGTRRA remedial amendment period, April 30, 2010.

17Q: If I hear you correctly, Section 3.06(c) will allow you to amend an allocation formula even if the 500 or 1000 hour requirement has been met

A: That is correct.

18Q: Are all vol sub plans generated in adoption agreement format or is there an option for an individually designed format

A: There is only one DC volume submitter plan that has an adoption agreement format and that is the 401(k) volume submitter plan in prototype format, which can also be used for a "straight" profit sharing plan by noting no elective deferrals under plan features. The profit sharing, money purchase and 401(k) do not have adoption agreements. These documents are in an individually drafted format.

Our current GUST DB volume submitter plan has an adoption agreement. We will have both the "prototype format" and the "individually designed format" DB EGTRRA volume submitter documents.