

Post-EGTRRA Restatement Defined Contribution Interim Amendments¹

Revised law	Description of Amendment
Final 415 Regulations Deadline: generally is the later of the end of the plan year the amendment is required to be effective (Jan. 1, 2008) or the due date for the employer's extended tax return (for a single employer plan with a calendar year plan year, limitation year and tax year, the due date was 3/15/09 for a corporation, or 9/15/09 if the tax return is extended).	
Treas. Reg. §1.415(c)-1 et. al.	Comprehensive final regulations interpreting the Code §415 limit on contributions for defined contribution plans.
Pension Protection Act of 2006 (PPA) Deadline: generally is the end of 2009 plan year.	
Code §401(k)(2)(B)(i)(IV)*	Hardship distributions from a § 401(k) plan: permitting the treatment of a participant's beneficiary under the plan the same as the participant's spouse or dependent in determining whether the participant has incurred a hardship.
Code § 401(k)(2)(B)(i)(V)*	Permits reservists called to active duty to take in-service distributions from a § 401(k) plan (extended by HEART).
Code §§ 401(k)(8)(A)(i) and 401(m)(6)(A)	Provides for the elimination of the gap income rule for excess contributions and excess aggregate contributions.
Code §§401(k)(13), 401(m)(12), and 416(g)(4)(H)*	Permits qualified automatic contribution arrangements (QACA).
Code §414(w)*	Permits eligible automatic contribution arrangements (EACA).
Code § 402(c)(2)(A)	Permits nontaxable distributions from a qualified plan to be directly rolled over tax free to another qualified plan or a § 403(b) plan if the separate accounting requirements are met.
Code §§ 402(c)(11), 402(f), 417	Permits non-spouse beneficiaries to directly roll over distributions from a qualified plan to an individual retirement plan— WRERA subsequently amended this provision to make it mandatory for years after December 31, 2009.
Code § 411(a)	Provides for a faster vesting schedule of employer nonelective contributions.
Code §§ 411(a)(11), 402(f), and 417	Provides that notice required to be provided under §§ 402(f), 411(a)(11), and 417 may be provided as much as 180 days before the annuity starting date.
Code § 417	Provides for the qualified optional survivor annuity benefit.
Code § 401(a)(36)*	Permits a pension plan distribution to a participant who has attained age 62 and who has not separated from employment at the time of the distribution.
Code § 401(a)(35) (Also see Notice 2011-19)	Requires that certain defined contribution plans provide employees with the freedom to divest employer publicly traded securities.
Code §408A(e)	Permits rollovers from non-Roth plan accounts to Roth IRAs.
Heroes Earnings Assistance and Relief Act of 2008 (HEART) Deadline: generally is the end of the 2010 plan year.	
Code §401(a)(37)	Provides for certain mandatory death benefits in case of a participant's death while performing qualified military service.
Code §414(u)(9)	Permits optional benefits for participants who die or become disabled while performing qualified military service.

Code §414(u)(12)	Clarifies that differential wages are compensation for 415 purposes, but not necessarily allocation or nondiscrimination purposes.
Code §414(u)(12)(B)*	Permits distributions on account of “deemed” severance that occurs in case of service in the uniformed services.
Small Business Jobs Act of 2010 (In-plan Roth Rollovers) Deadline: generally is the later of the end of the plan year the amendment is effective or December 31, 2011.	
Code §402A(c)(4)*	Permits the rollover of non-Roth distributable accounts to Roth accounts within the same plan.
Worker, Retiree and Employer Recovery Act of 2008 (WRERA) Deadline: generally the end of the 2011 plan year.	
Code §401(a)(9)(H)* ²	Regarding the suspension of the required minimum distribution rules for the 2009 calendar year.
Code §402(g)(2) ³	Provides for the elimination of the gap income rule for excess distributions.
American Taxpayer Relief Act of 2012 (In-plan Roth Transfers) Deadline: To be determined by future IRS guidance.	
Code §402A(c)(4)(E)*	Permits the transfer of non-Roth accounts not available for distribution to Roth accounts within the same plan.

*** These items require amendment only if the plan optionally applied these provisions.**

¹ A plan sponsor may use the streamlined VCP correction procedure under Schedule 1 to resolve late adoption of interim amendments after the EGTRRA restatement. See Rev. Proc. 2013-12, Appendix C, Part II, Schedule 1. If a plan sponsor failed to adopt timely an interim amendment that pre-dated the EGTRRA restatement (e.g., final 401(k) regulations), the plan sponsor would need to resolve the failure under the streamlined procedure for nonamendments. See Schedule 2. Streamlined VCP submission for late interim amendments no longer permits missed interim amendments to be listed generally (e.g., all interim amendments required by PPA). All interim amendments must be listed with particularity. The IRS stated that the name of the amendatory Congressional Act and the changed Code section should be listed. This form is designed to satisfy that requirement. In addition, the IRS requires information, such as page numbers, of where to find the amendatory language in the plan document or plan amendment attached to the Streamline VCP submission for late interim amendments. For purposes of this form, the term “interim amendment” includes both required amendments to comply with changes in the law and discretionary amendments required to implement optional law changes. This list does not include amendments specific to governmental plans or multiemployer plans or defined benefit plans.

² Plans that did not suspend or have 2009 RMDs do not have to be amended for this item. See WRERA §201(c)(2)(B)(ii).

³ Many plans do not need this because the plan never required distribution of gap period income for 402(g) corrections.

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