

employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

The Roth 401(k) Regs are Here!

While many of us were still seeing sugar plums dancing in our heads and were preparing to ring in the New Year, the elves at the IRS and Treasury were busy at work. On December 30, 2005, they released the much awaited [Roth 401\(k\) Final Regulations](#). These regulations – effective January 1, 2006 – contain amendments to the regulations under Code sections 401(k) and 401(m) and provide guidance concerning the requirements for designated Roth contributions under a qualified cash or deferred arrangement (CODA). Other hardworking elves also developed a list of [Roth 401\(k\) Contributions FAQs](#).

Designated Roth contributions under a CODA are permitted under Code section 402A, which was added by EGTRRA. Under section 402A, effective for tax years beginning on or after January 1, 2006, a plan may permit an employee who makes elective contributions under a CODA to designate some or all of those contributions as designated Roth contributions. Designated Roth contributions are elective contributions under a CODA that, unlike pre-tax elective contributions, are currently includible in gross income. However, a qualified distribution of designated Roth contributions is excludable from gross income.

Similar rules will apply to designated Roth contributions available under 403(b) plans sponsored by tax-exempt organizations and public schools.

While designated Roth contributions bear some similarity to Roth IRA contributions (Code section 408A), there are many differences between the types of arrangements, including:

- Designated Roth contributions are not limited by income.
- Pre-tax elective contributions under a CODA may not be converted to a designated Roth account.
- Designated Roth contributions do not have the specific ordering rules for distributions that are imposed on Roth IRAs.

Additional highlights of the Roth 401(k) Final Regulations include:

- The plan document must be amended to provide for designated Roth contributions.
- Designated Roth contributions are irrevocable as such.
- Designated Roth contributions must be maintained in a separate account and distributions, gains, losses and other credits or charges must be separately tracked.
- If a 401(k) plan is going to provide for designated Roth contributions, it must also offer pre-tax elective contributions.
- Forfeitures and matching contributions may not be allocated to a designated Roth account.
- Designated Roth contributions:
 - Are subject to the nonforfeitability and distribution restrictions applicable to other elective contributions;
 - Are taken into account under the actual deferral percentage test in the same manner as pre-tax elective contributions;
 - May be treated as catch-up contributions; and
 - May serve as the basis for a participant loan.

The CODA List of Required Modifications (LRMs) were also updated in January 2006 to reflect these just-issued regulations. The updated LRMs can be found at the [Retirement Plans Community web page](#).

For additional information on designated Roth contributions, see the [Treasury Press Release](#), the [final regulations](#) and [Roth 401\(k\) Contributions FAQs](#) featured at the [Retirement Plans Community web page](#).

Urgent Reminder:

Submission Deadline for DC Pre-Approved Plan Letters is January 31, 2006

The deadline for sponsors and practitioners of defined contribution (DC) pre-approved plans to submit timely applications for opinion and advisory letters is January 31, 2006. The IRS began accepting applications for such letters for these DC plans on February 17, 2005. The IRS will review these plans for changes required by the Economic Growth and Tax Relief Reconciliation Act and other guidance provided on the [2004 Cumulative List](#).

This deadline applies to:

- Master and prototype (M&P) and volume submitter mass submitters and national sponsors;
- Non-mass submitter sponsors and practitioners;
- Word-for-word identical adopters; and
- M&P minor modifier placeholder applications.

The submission periods for defined benefit (DB) pre-approved plans and individually designed plans have not yet begun. Later deadlines apply to those plans.

See the [Retirement Plans Community web page](#) for details on how to apply and to access the necessary forms

and attachments. The [web page](#) also has details on the new program, including links to guidance and a description of the later deadlines that apply to DB pre-approved and individually designed plans. •

Speaking of Deadlines:

Remember that the deadline for the Abusive Transaction Settlement Initiative in [Announcement 2005-80](#) is January 23. This Settlement Initiative is a one-time opportunity for taxpayers to voluntarily come forward and resolve certain listed and potentially abusive transactions. Go to www.irs.gov for more details on this program. •

Encore Performance: New 401(k) Resource Guide

Lest we forget in the wake of the new-fangled Roth 401(k) accounts, the old-fashioned “regular” 401(k) plans are still the most well-known and popular retirement savings vehicles.

Despite their popularity though, lots of folks have questions about how these plans work.

So...as we wrote in the [Winter 2006 Edition](#) of the *Employee Plans News*, the ever-growing [Retirement Plans Community web page](#) has now added a [new resource guide](#) for 401(k) plan sponsors and plan participants. The 401(k) Compliance Planning Group (consisting of employees throughout EP) continuously address compliance issues and recommend items to assist the Retirement Plans Community and they developed this resource guide so that plan sponsors and participants will have 401(k) plan information all contained in one place.

For plan sponsors, the guide provides information on:

- Overview of 401(k) plans;
- Starting up your plan;
- Plan qualification requirements;
- Filing requirements; and
- Other items.

For plan participants, the guide contains information regarding:

- Summary plan descriptions;
- Interested parties;
- Limitation on elective deferrals;
- General distribution rules; and
- Other items.

Is there something missing from here you would like to have added? Let us know at RetirementPlanComments@irs.gov. We want to make the Guide as user-friendly as we can so let us know your thoughts! •

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