

employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

Internal Revenue Service
Tax Exempt and Government
Entities Division

A Publication of Employee Plans

The 2007 Interim and Discretionary Amendments and Other Resources are Now Available

The list of [2007 Interim and Discretionary Amendments](#) is now available. Retirement plan sponsors must make interim amendments to keep their written plan document up to date between a plan's submission periods during the applicable remedial amendment cycles. The 2007 list includes guidance on the deadline for adopting amendments to comply with the final regulations under §401(a) (relating to normal retirement age) and the final regulations under §415 (relating to the qualified plan limits).•

New Additions to EP Frequently Asked Questions

The "[Retirement Plans Frequently Asked Questions on Pre-Approved and Individually Designed Plan Programs](#)" web page has been updated to address three situations:

- *Applying the "participant group allocation method" in plan operation* — The FAQ explains that when cross-testing for nondiscrimination, the employer divides plan participants into a limited number of allocation rate groups, each having the same allocation ratio.
- *Satisfying the "reasonable classification" standards with the required use of the cautionary language in the sample adoption agreement* — The FAQ states that a nonstandardized M&P plan must use the cautionary bolded language (beginning, "The specific categories of participants...") if the plan chooses the participant group allocation method. Because doing so creates a separate allocation rate for each eligible employee, the regulation prohibiting the classification of employees by name will be disregarded.
- *Electronic signatures of adoption agreement* — The FAQ provides guidance on acceptable documentation for the IRS to evaluate, during its review of a determination letter application, whether an employer adopting an M&P plan electronically did so through a reliably authenticated system that verified the employer's adoption date. The IRS will accept other types of documentation. •

EP's Priority Guidance Plan

On August 13, the Treasury Department's Office of Tax Policy and the IRS released the [2007-2008 Priority Guidance Plan](#), which lists regulatory initiatives the Service is expected to publish in the upcoming year. It includes 26 items for the retirement benefits area, three of which were published in August:

- [Notice 2007-69](#), providing transitional relief and guidance on the "normal retirement age" definition under final regulations that were released in May.
- [Proposed regulations](#) on the income tax treatment of incidental health insurance benefits provided under a qualified plan.
- [Notice 2007-67](#), extending the transitional relief provided to Indian tribal governments as to whether a retirement plan is a governmental plan under Code §414(d) as amended by the 2006 Pension Protection Act. •

Definition of Normal Retirement Age Has Changed

The Defined Benefit Listing of Required Modification ([DB LRM](#)) package, released in June, has been modified. The August changes ([DB LRM - 08-2007](#)) amended DB LRM #14 to grant temporary relief until the effective date of the revised definition of normal retirement age. The IRS also modified the "Note to Reviewer" in DB LRMs #35, #40, and #54. •

Requirements for "Separate Agreements" for §412(i) Pension Plans

This article discusses the information that must be included in the "separate agreements" between plan sponsors and the insurance companies issuing individual insurance contracts that are used to fund 412(i) pension plans. The IRS has received requests from practitioners to explain the information needed for a 412(i) separate agreement to be acceptable to the IRS.

412(i) plans are pension plans funded exclusively by the purchase of life insurance and annuity contracts. They are not subject to the funding rules that apply to other defined benefit plans if they meet all of the requirements of section 412(i) of the tax code and satisfy relevant IRS guidance. IRS regulations (§1.412(i)-1(b)(2)(ii)) issued under this Code section sets forth the timing, amount, and duration of contract premium payments, provisions of which must be in the contracts themselves, or alternatively, in a "separate agreement" with the issuer of the individual contracts.

If a separate agreement is used, it must be executed between the plan sponsor and the contract issuer at plan inception and amended (or a new separate agreement must be entered into) each time the plan adds a participant or whenever a participant receives a benefit increase.

Separate agreements containing the information in Part A (see below) will be considered acceptable by the IRS, if the reconciliation record described in Part B is also maintained by the plan sponsor.

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A. Required Data for Each Participant Whose Benefits are Funded under Contracts to which the Separate Agreement Applies

1. Participant's name, social security number, date of birth, date of hire, and date of participation in the plan.
2. For each contract funding benefits for this participant:
 - a. Form number, contract number, and issue date of the contract.
 - b. The dollar amount of the level premium, premium frequency (e.g., monthly, annual), premium payment period (e.g., 10 years, to normal retirement age), the due date or payment date of the first required premium, and the due date of each subsequent premium (e.g., first day of each month). *(Note: All requirements of §1.412(i)-1(b)(2)(ii) concerning premium payment dates must be satisfied.)*
 - c. The projected guaranteed annuity benefits provided by the contract (under the normal form at the participant's normal retirement age), assuming that premiums are paid in accordance with the separate agreement.
 - d. A list of all optional forms of payment provided under the contract and the actuarial factors used to derive each optional form at the participant's normal retirement age.

B. Required Reconciliation

The plan sponsor must maintain records demonstrating that a plan's projected annuity benefits at normal retirement age under all forms of payment are equal in form and amount to the projected guaranteed annuity benefits at normal retirement age under all forms provided by all contract(s) that fund a participant's benefits (as shown in all separate agreements relating to an individual participant). *(NOTE: All payment forms and amounts under the contract(s) and the plan must be identical at normal retirement age for the plan to satisfy the requirements of §412(i).)*

For this purpose, the IRS allows the plan sponsor to reconcile the dollar amount of the normal form of payment at the participant's normal retirement age under the plan and the contract(s), and then to demonstrate that the actuarial factors used to calculate all optional forms are identical under the plan and all contracts used to fund the plan benefits. The reconciliation information itself need not be part of the separate agreement(s) with the insurer(s). •

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