

QUESTIONS AND ANSWERS
FROM THE 2007 REQUIRED AMENDMENTS WEBINAR

Q-1. Is the required amendment the same for defined benefit plans, and also required at this time?

A: The 2007 required amendment for defined benefit plans is not identical to the 2007 required amendment for defined contribution plans, but an amendment is required for 2007 for all defined benefit plans.

We added one 2008 PPA provision to the DB amendment regarding actuarial equivalencies in an effort to avoid later having to provide the "greater of" benefit. This amendment would not otherwise be required.

Q-2. So if my client does NOT want to extend the hardship provisions to primary beneficiaries, what needs to be executed?

A: To change the default for hardship provisions to be extended to primary beneficiaries, change F.11b in the checklist to "No."

11b. Expand the Hardship criteria to include the beneficiary of the Participant:

Q-3. There is some confusion on my part between the website 2007 Required Amendment and the 2007 Termination Plan Amendment. I understand that the intent was to use the Termination Plan amendment for terminating plans, but these are more inclusive than the Required 2007 Amendment. What is your recommendation for ongoing plans; just do the minimum necessary? I like the Term Amendment as it gives a better SMM/SPD.

A: The Termination Amendment includes all revisions to the law that went into effect in 2007, including all 2007 PPA provisions. Under section 1107 of PPA, amendments for PPA provisions are not required until 2009, other than for terminating plans. The 2007 Required Amendment only contains items that must be amended in 2007 (with certain exceptions noted). For ongoing plans we recommend using the 2007 Required Amendment.

Q-4. Most of our plans have not yet been amended to the ftwilliam.com format. They are almost all prototypes or volume submitters with another vendor. We have faithfully been doing "sponsor" amendments, and individual amendments for stuff like Roth where each client does something different. What should our strategy be? Should we adopt the ftwilliam.com sponsor amendments to the other vendor's DB and DC prototypes/volume submitter master documents, and client specific amendments where necessary? Can we wait on the ftwilliam.com restatements for now? We assume we'll need to do the ftwilliam.com sponsor amendments soon.

A: We can't really say which method may work most efficiently for you. We have tried to make our amendments as generic as possible but there is no way for us to be certain that our amendments will work with other documents. To be on the safe side we recommend that you use the other vendor's amendments until such time as the document is restated on an ftwilliam.com document.

With respect to your comment regarding "sponsor level" amendments, we believe there are options available in the 2007 list of required amendments that must be executed at the plan level that need to be executed individually. We will provide sponsor level amendments in the future, where feasible.

As a side note, even if you do not restate your plans using ftwilliam.com documents now, our EGTRRA checklists will be designed to automatically incorporate information from the GUST checklist and provide a list of additional items that need to be completed for the new document. Therefore, even if you do not formally restate the plans now, completing the ftwilliam.com checklists will help with your EGTRRA restatements.

Q-5. We are a relatively new customer and, although all of our plans were entered for purposes of generating the form 8905 most of the specifications are not entered. Can we get a list of all items that must be entered under spec's in order for the 2007 amendment to "work"?

A: There are really too many variables to be able to provide you with a complete list. We provide a Compliance List under the Admin Menu, one for DC plans and another for DB plans, that contains most of the items you will need to check within the documents to complete these amendments. For instance, in a profit sharing plan, the list will provide the plan's NRA (even though it is not directly needed for this amendment) along with a column listed as "MP Trans" indicating whether or not there are merged or transferred assets that are subject to J&S requirements that should be checked for the NRA provisions of the merged assets, if from a pension plan. With respect to hardship provisions, a plan may provide that a non-spouse beneficiary can be entitled to certain hardship withdrawals only if the plan's hardship falls under the safe harbor definition. Due to the interaction of such provisions, and certain historical provisions which may only be found in prior documents, we do not believe it possible to provide you with more than the Compliance List now available.

Q-6. If I want to change the default for all of my plans, can I do that globally, rather than have to go into each plan individually and change the default option?

A: For the 2007 required amendments, you will need to change each plan individually. We will attempt to set the system up for future such amendments, where options are available and it is feasible to do so, to provide you with the ability to globally set your own defaults.

Q-7. If we just wrote a document for a client earlier in 2007, do we need to amend it by the end of the year?

A: Yes. Any document generated prior to October 18, 2007 will need an amendment. (Executing the amendment by year-end will usually ensure timely compliance; year-end may not be the absolute deadline for all plans.)

Q-8. Do the amendments refer to specific sections of the Fort William document - do they have to be altered if we are amending a non fort william document?

A: Other than the reference to the section of the Basic Plan Document that allows for amending the plan, the amendments do not refer to specific document sections. We believe the amendments may be generic enough to be revised with minor alterations to amend a document other than an ftwilliam.com document. You need to confirm what section of the plan document allows the plan to be amended (vs. the 13.01 listed for our ftwilliam.com documents) and then review the documents you are amending to be sure the terms used in the ftwilliam.com amendment can be used in the other document(s). E.g., "restorative payments" cannot already be used to define another term. Therefore, as noted in Q&A #4 above, it would be best to use the actual vendor's amendments to amend documents other than ftwilliam.com documents.

Q-9. If you select Post Year end Comp, and you also have W-2 comp in your plan for plan purposes, does this create a conflict if the post year end comp is not included in the W-2 pay?

A: We don't think so. You can use W-2 compensation as the starting point and then modify it for post year end compensation.

Q-10. Does the definition of post severance compensation mean you cannot exclude commissions, bonuses or other types of income from a plan's definition of income?

A: No. A plan can still exclude certain types of compensation for allocation purposes, provided the exclusion is not discriminatory. Commissions, bonuses or other types of income, however, must be included for testing purposes and the determination of which participants are HCEs, key employees, etc.

Q-11. Please confirm; is 3/15/08 (for corp plans) and 4/15/08 (for sole-prop) the first real deadline for the amendment adoptions?

A: There is no absolute rule that will apply for all plans. To recap, a discretionary amendment must be adopted by the end of the plan year in which it is effective. An interim amendment generally must be adopted by the later of: (1) the due date (including extensions) for filing the income tax return for the employer's taxable year that includes the effective date of the change or (2) the last day of the plan year that includes the effective date of the change.

For example, the gap period amendment applies to 2007 plan years, even though corrections/refunds will be made in 2008. For a calendar year plan with a calendar

limitation year, whose employer also uses a calendar fiscal year, the deadline would be 3/15/08, if the employer did not file an extension.

Looking at the Code section 415 amendments, included on the IRS list, the amendments apply to limitation years beginning on or after July 1, 2007, which may or may not be the plan year. As a result, additional questions may arise. It is not entirely clear how the changes to the definition Code section 415 compensation (e.g., the inclusion or exclusion of post severance compensation, such as unused sick pay or vacation pay) may affect the definition of compensation for benefit allocation and accrual purposes. For instance, in a standardized prototype plan with a July 1, 2007-June 30, 2008 plan and limitation year, a participant could easily accrue a benefit by September 30, 2007 after completing 500 hours of service. If the plan is amended after the participant earns this service and the definition of compensation is amended in such a way that reduces the compensation taken into account for allocation purposes, there will be an impermissible Code section 411(d)(6) cutback. In order to avoid any possible Code section 411(d)(6) cutback, therefore, it is advisable to amend a plan before any participants earn a benefit under the new definition of Code section 415 compensation.

Please note, the interplay of the plan's year end and limitation year may require an amendment for the first plan year ending on or after July 1, 2007. For instance, a plan using a July 1-June 30 limitation year, an August 1-July 31 plan year with an employer fiscal year matching the plan year (July 31 year end) would be required to execute the final 415 amendments by October 15, 2007 to be timely adopted if no extension is filed.

Therefore, as noted above, we believe it will be most efficient to have all amendments executed by calendar year end. This will likely limit potential problems to those associated with limitation years beginning between 7/1/07 and 12/31/07.

Q-12. Are you saying that NRA between 55 and 62 for DB have to be determined "reasonable or unreasonable" by industry now and we can no longer assume that we can use them for a client regardless of their industry.

A: Yes; Treas. Reg. 1.401(a)-1(b)(2) states that an NRA must not be earlier than the "earliest age that is reasonably representative of the typical retirement age for the industry in which the workforce is employed."

Age 62 and older is deemed "OK." Under age 55 is presumed to not be "OK," other than for qualified public safety employees.

Between the ages of 55 and 62, relevant facts and circumstances will be used to determine what is reasonably representative for the typical retirement age in the industry (Treas. Reg. 1.401(a)-1(b)(2)(iii)).

Notice 2007-69, Part III, Section B, states, in part, "Thus, for periods prior to the date on which the Service rules on an eligible plan's normal retirement age, the plan sponsor's good faith determination of the typical retirement age for the industry in which the

covered workforce is employed will generally be given deference, assuming that the determination is reasonable under the facts and circumstances."

Q-13. What amendments must be made to terminated plans.

A: A terminated plan needs to use the 2007 Termination Amendment that appears below the "blue box" containing "Other Documents." It includes the PPA amendments because the remedial amendment period for a terminating plan ends with the plan termination.

Q-14. Do you expect there will be required amendments similar to these, each year in the future?

A: Yes, we do, although we hope they will not be as extensive as the 2007 list.

Q-15. Are there any special rules where a plan sponsor may have changed prototype sponsors?

A: Provided a plan sponsor adopted a pre-approved GUST document or executed Form 8905 prior to the end of its cycle to file its EGTRRA restatement as an individually designed plan, a plan sponsor may change prototype sponsors (even from the sponsor listed on Form 8905, if applicable).

Q-16. What happens if a Client does not adopt these amendments or adopts late?

A: The IRS would consider the plan a non-amender or a late amender. You can review Rev. Proc. 2006-27 for the requirements and fees associated with the EPCRS program.

Q-17. Are there both sponsor and employer versions of these amendments where by a TPA could adopt for all plans under prototype sponsor signature.

A: For the 2007 Required Amendments, there is no separate sponsor version. As noted above, however, we will attempt to allow you to globally set your own defaults where possible in the future, and if feasible, set up sponsor and employer versions of amendments where optional provisions apply.