

Q & A from 2009 Interim and Termination Amendments for Defined Benefit and Defined Contribution Webinar

Presented Live June 18, 2009

Effective Dates

Q: What is the 2009 Amendment effective date for section 1.4?

A: The date in section 1.4 is the overall effective date for the entire amendment. It is taken from the Effective Date field at the top of the amendment screen, which reads "Effective Date ___/___/___ unless otherwise stated by the regulations or the election made herein." This date should generally be January 1, 2009.

Q: Regarding the effective date of the 2007 Interim Amendment that will be attached to the EGTRRA restated prototype, volume submitter AA format, or volume submitter IDP: the 2009 Interim Amendment effective date will be within the current plan year, whereas, the previous 2007 Interim Amendment was effective 1/1/2007. Correct?

A: Correct, the 2009 Interim Amendment will have a current effective date while the 2007 Interim Amendment will have an earlier effective date.

Q: When the 2007 Interim is re-adopted, do we keep the same original effective date?

A: Yes. If you are re-adopting the 2007 Interim Amendment with the EGTRRA restatement, you may use the same effective date as the EGTRRA restatement. You may also use the original effective date of the 2007 Interim Amendment if it is adopted after the EGTRRA restatement.

Q: Please clarify on the Defined Contribution Section 9.3, Adoption Section, question 3 on the non-spouse beneficiary. It says that for distribution made after 12/31/06 and prior to 12/31/07, the plan will permit a non-spouse beneficiary. Then at the bottom, an effective date is needed. Can the effective date be 01/01/09, which is after 12/31/07?

A: The plan could have allowed direct rollovers on behalf of non-spouse beneficiaries after December 31, 2006. If the plan allowed these rollovers you should insert the date they were first allowed by the plan. However, after December 31, 2009 the plan is required to provide the direct rollover option to non-spouse beneficiaries. If the plan is allowing this provision as of 1/1/09, that date is fine.

Q: Under the Defined Contribution question 6 for the HEART Act Provisions, do you need to place in an effective date even if you do not select anything?

A: If you do not check 6a, you do not need to enter an effective date. The Differential Wage Payment provisions are effective whether or not you select this item and the provisions contain their own hard coded effective date.

Interim Amendments

Q: When does the 2009 Interim Amendment need to be adopted?

A: The 2009 Interim Amendment should be adopted by the end of the first plan year beginning on or after January 1, 2009.

Q: Can the 2007 and 2009 interim amendment be adopted at the same time as the EGTRRA Document?

A: See responses below under separate headings.

[2007 Interim Amendment](#)

For prototype plans, DATAIR adopted the 2007 Interim Amendment on behalf of all adopting employers. If the employer accepted all the defaults in the 2007 Interim Amendment, they did not have to sign the amendment. The same holds true after the EGTRRA restatement. Unless changes are made to the default provisions of the amendment, employers do not have to re-adopt the amendment after the EGTRRA restatement. You will want to make sure the employer has a copy of the 2007 Interim Amendment with the restated document.

For volume submitter plans, the employer was required to adopt the 2007 Interim Amendment. The same holds true after the EGTRRA restatement.

The 2007 Interim Amendment may be re-adopted at the same time as the EGTRRA restatement.

2009 Interim Amendment

The 2009 Interim Amendment should be adopted by the end of the first plan year beginning on or after January 1, 2009 for all plans.

Q: If we do the 2009 Interim Amendment, do we still need to do the 2007 Interim Amendment?

A: Yes, an Interim Amendment brings the plan up to date with the current regulations required. The 2007 and 2009 Interim Amendments are based on requirements that need to be in effect for starting in the appropriate plan year and as such do not include all of the same provisions.

Q: If you restate for EGTRRA in 2009, you will need to re-adopt the 2009 Interim Amendment, after the restatement, right?

A: Yes. If the EGTRRA Restatement is after the adoption of the 2009 Interim Amendment, then the Interim Amendment will need to be re-adopted.

Q: If a calendar year plan restates for EGTRRA with an effective date mid-year to allow for a discretionary amendment with the restatement, do we need to have the plan sponsor sign two 2009 Interim Amendments? One pre-EGTRRA and one with EGTRRA? Thanks.

A: Yes, if the plan is restated for EGTRRA with a mid-year effective date within the plan's 2009 plan year, then it will have to re-adopt the 2009 Interim Amendment after the EGTRRA restatement is adopted.

Q: Why does the plan sponsor of a prototype have to adopt the 2009 Interim but DATAIR adopted the 2007 Interim Amendment?

A: It was felt that an amendment on behalf of all adopting employers was unsuitable for the 2009 Interim Amendment because of all the discretionary provisions.

Q: My firm sponsors an IDP. Can I adopt Interim Amendments and just mail them to clients? Assume that my firm will answer all variable provisions. Thanks

A: No. The 2009 Interim Amendment must be adopted individually by each of your clients.

Q: Where DATAIR is the sponsor, will DATAIR send this Interim Amendment out to the client?

A: The adopting employers will be given notice of the amendment but you, the TPA must send out the interim amendments to each of your clients.

Q: Employer's tax return? If the employer makes no selections on the adoption section, can we not argue that all of the changes are mandatory and not elective?

A: Yes. However, if you are asking, can the employer adopt the amendment by his tax filing deadline the answer is no. Section 1107 of PPA '06 requires that an amendment intended to comply with PPA '06 must be adopted by the last day of the first plan year beginning on or after January 1, 2009.

Q: For Defined Benefit plans are any other amendments required by year-end other than the Defined Benefit Interim Amendment?

A: The Pension Funding Equity Act Amendment (PFEA).

Q: Is there a standard snap on amendment that covers all the changes? Do the Interim and Termination Amendment sections need to be filled out the employer only if they want changes? Do they need to sign the amendment or just the resolution to amend?

A: The amendments need an effective date and an adoption date. If all the defaults are accepted by the employer all the employer needs to do is sign the amendment.

Q: Can we remove sections of the Interim Amendment that does not apply to the plan?

A: We would not recommend this. However, if you do, you should be exceedingly careful.

Q: Is there a summary of which sections of the adoption section must be required versus optional?

A: See the Document System Release Notes for version 1.19b.

Questions on Sections of the Defined Contribution Amendment

Q: Regarding Sections 5 Annuity and Consent Requirements, if the plan does not have Joint and Survivor language, but has rolled over assets from a Money Purchase Plan, which is subject to J&S, do we need to offer the annuity?

A: If assets were rolled over at the direction of the participant, no. However, if assets of a Money Purchase Plan were transferred to a Profit Sharing Plan and the participant had no choice, then both the QJSA and the Qualified Options Survivor Annuity need to be offered.

Q: If the plan is a safe harbor profit sharing plan and therefore does not have to offer Joint and Survivor, does Section 5.1 Qualified Optional Survivor Annuity apply?

A: No, a Qualified Optional Survivor Annuity does not need to be offered in a plan that does not provide annuities.

Q: Section 9.3b states that the plan will permit non-spouse beneficiary rollovers. The adoption section states that the rule is required after January 1, 2010.

A: Technical corrections said that the non-spouse beneficiary direct rollover option must be offered on or after January 1, 2010.

Q: Is Section 9.3b for a non-spouse beneficiary still optional from 1/1/2007 to 12/31/2009?

A: Yes.

Q: Given that non-spousal rollovers become mandatory in 2010, should we always elect option 3 on the adoption section of the 2009 Interim Amendment? If not, won't we have to redo the Amendment? I do not see anything in the amendment that makes rollovers automatic in 2010

A: No, only if you offered the option before January 1, 2010. The requirement is hard coded so only an early implementation needs to be selected in the adoption section.

Q: Can you give more detail on the Section 12 Qualified Disaster Recovery Assistance Distribution provisions? What are the pros and cons of each adoption selection?

A: These provisions may benefit participants living in the declared disaster areas because it allows for hardship distributions on the account of the disaster, increases the loan limit and can give the participant longer to repay a distribution. There could be repayment issues with loans that are 100% of the vested account balance. If no participant resides in a disaster area then the section is of no value to the plan. The plan sponsor will need to determine what provisions if any they want to offer.

Terminating Plans

Q: If a plan is terminated in 2009, the Employer will need to restate for EGTRRA?

*A: You can terminate a GUST plan without restating for EGTRRA. You will need to make sure the GUST plan has **all** the required amendments, including the EGTRRA "Good Faith" amendment, the 2007 Interim Amendment, the RMD Final Regulations Amendment, the Automatic Rollover Amendment, the 2009 Termination Amendment and, if necessary, the ROTH and the Katrina Relief Amendments.*

Remember, however, that the 2009 Termination Amendment has not been pre-approved by the IRS. This means that you will need to submit the termination on a Form 5310 for reliance.

Q: Is the Defined Contribution 2009 Termination Amendment just like the 2009 Interim Amendment? If we have already done a 2009 Interim Amendment and then the plan terminated, will we then also need to do the 2009 Termination Amendment?

A: The 2009 Termination Amendment includes the provisions contained in the 2009 Interim Amendment. However, if the employer adopted the 2009 Interim Amendment and subsequently terminated the plan, they should adopt the 2009 Termination Amendment.

Q: If assets are not distributed within 12 months, then it is an ongoing plan per IRS. Do we have to prepare another termination amendment with a new term date?

A: Here is an excerpt from the IRS FAQs regarding Plan Termination:

"Generally, an employer is required to distribute assets from a terminated plan as soon as it is administratively feasible after the date of plan termination.

Whether distributions are made as soon as it is administratively feasible is determined under all the facts and circumstances of a given case, but generally the Internal Revenue Service views this to mean within one year after plan termination (see Rev. Rul. 89-87, 1989-2, C.B. 81)."

A plan that fails to adhere to this requirement is treated as an ongoing plan for all purposes under the Code. Unless there are valid reasons for distributions not being made within one year, the plan should be amended for subsequent changes.

Q: For Partial Terms is the 20% rule on a plan year basis or can it overlap different plan years?

A: You will not find anything in the plan about partial plan terminations. Until recently, the presumption that a 20% reduction in force is considered a partial termination was not codified. Now that it is codified and it is presumed that a 20% reduction in force is a partial termination, we have some guidance. The terminations must be involuntary. A termination can appear to be voluntary but a facts and circumstances analysis may reveal that it was not; but rather a constructive involuntary termination. A partial termination may happen over more than a one plan year. Generally, this will be limited to no more than 3 years but this is not in the Code.

On occasion, an employer has filed a request with the courts for a declaratory judgment. Such a judgment might determine if a partial termination occurred and who are the affected participants.

Core Amendments

Q: What is a Core Amendment?

A: Core Amendments are changes that have been made by DATAIR in the base documents or as part of the plan language. They are approved and submitted to the IRS. They do not require any elections from the sponsors. They do need to be provided to the sponsors and in the case of GUST documents Volume Submitter plans, to be signed by the Employer.

Q: Can you review the Core Amendments?

A: *The 2009 Core Amendments are additional amendments that DATAIR has adopted as part of the Defined Contribution documents, both GUST and EGTRRA. The system will print the appropriate amendments for each plan. You should make sure that your clients review a copy of the 2009 Core Amendments. No other action by the employer is required.* See the Document System Release Notes for version 1.19b and 1.19c for additional information.*

**Note for GUST Volume Submitter documents. The DATAIR Trust Amendment and the 2009 Waiver of Required Minimum Distribution amendment must be individually signed by the Employer. DATAIR cannot amend on behalf of the sponsors for volume submitter plans pre-EGTRRA.*

Q: Can you explain the difference between a Core amendment and an Interim Amendment?

A: *DATAIR has adopted the 2009 Core Amendments (including the Required Amendment for Cross-Tested Plans) on behalf of all adopting employers. You should make sure your clients review a copy of the Core Amendments. No other action by the employer is required.**

**Note for GUST Volume Submitter documents. The DATAIR Trust Amendment and the 2009 Waiver of Required Minimum Distribution amendment must be individually signed by the Employer. DATAIR cannot amend on behalf of the sponsors for volume submitter plans pre-EGTRRA.*

Interim amendments are required to keep a written plan document up to date during the applicable remedial amendment cycles. Your clients should review the 2009 Interim Amendment and make any desired selections in the Adoption Section. You should obtain signatures for the amendment and the resolution. You should also generate the Summary of Material Modifications.

Miscellaneous Questions

Q: Your latest release says that there is a Safe Harbor Contribution Suspension Amendment in the system; however, we do not see an option to print this after our updates. Where is this located?

A: *The Safe Harbor Contribution Suspension Amendment is currently only available for volume submitter IDP plans. The next release will include this amendment for prototypes and volume submitter Adoption Agreement formats.*

Q: SMM does not have sponsor address information. Will you be adding this?

A: Yes.

Q: On restatements, must the client resign the form 8905?

A: *The Form 8905 is only used to get an individually designed plan onto the 6-year cycle for pre-approved plans. If the plan is a volume submitter or prototype Form 8905 is not needed.*

Q: Is there are place on your website that lists all the required amendments for plans?

A: Yes. <http://www.datair.com/PDF/Required%20Amendments.pdf>

Also, see the Document System. The amendments for each version and document type are listed under "Folder View".