

DATAIR MASS-SUBMITTER PROTOTYPE SUMMARY OF CHANGES FOR EGTRRA RESTATEMENT 401(k) Non-Standardized

(Location: Base Plan Provision or [Adoption Agreement](#))

Required Minimum Distribution Final Reg.:

Adopts the final IRC §401(a)(9) regulations.

- Time and Manner of Distribution
- RMD During Participant's Lifetime
- RMD After Participant's Death
- TEFRA grandfather provision
- Definitions: RBD, Surviving Spouse
- 5-year election rule

2.5.4

AA – Tab 8 @ G9

(This amendment was required for all Defined Contribution Plans.)

Deemed Section 125 Compensation:

Model amendment to adopt the provisions of Revenue Ruling 2002-27, which addresses the issue of automatic enrollment procedures into a group health plan and how to include compensation for IRC §415(c) on compensation.

(This was an optional amendment should be adopted if the Plan includes or will include Deemed Section 125 compensation.)

Definitions

**AA - Tab 4
Elect a.4, b, 4 or c4 to
Exclude**

Economic Growth and Tax Relief Reconciliation Act (EGTRRA):

Good-Faith amendment to adopt several changes to the Internal Revenue Code impacted by EGTRRA. This amendment also includes EGTRRA technical corrections.

- Loan allowed for owner-employee [72(p)(1)]

3.5.1

Loan Policy

- New Top Heavy Rules [IRC §416]

2.6.1

AA Tab9 @ H6, H8

- New Vesting Requirements for Matching Contribution[IRC §411(a)(B)]

AA Tab 6

@ E3 i and j

- Definition of Eligible Retirement Plan [IRC §402]

Definitions

- After Tax allowed in Eligible Rollover Distribution \$ now excludes Hardship Distributions [IRC §401(a)(31)]

Definitions

- Expanded Rollover Distribution Rules [IRC §401(a)(31)]

2.5.6

AA Tab 9 @ H3

- Expanded Rollover into Plan Rules [IRC §401(a)(31)]

Portability 3.9.3

AA Tab 9 @ H3

- Involuntary Cash-out /Mandatory Cash-out – Rollover Exclusion
- Automatic Rollover [IRC §411(a)(11)]

2.5.6 @ d) and (f)

AA Tab 8 @ G2

- Limits on Elective Deferrals [IRC §402(g)](1)(B)

2.2.2 (a)

AA Tab 5 @ D1 a.

- Allow Catch-Up Contributions [IRC §414(v)]

**Definitions &
@ 2.2.2 c.**

	AA Tab 5 @ D3
<ul style="list-style-type: none"> Exclude Catch-up from ED Limit [IRC §402(g)(1)(C)] 	2.2.2 (a)
<ul style="list-style-type: none"> Top Heavy do not apply to Safe Harbor 401(k) Plan with Matching Contributions [IRC §416(g)(3)(H)] 	2.9.1 (g) (iii) AA Tab 5 @ D17 - 22
<ul style="list-style-type: none"> 6 months suspension following Hardship Distribution [IRC §401(k)] 	2.5.10 (h)
<ul style="list-style-type: none"> Distribution due to “severance from employment” replaces “separation from service” [IRC §401(k)(2) and IRC §401(k)(10)] 	2.7.8
<ul style="list-style-type: none"> Maximum Annual Addition Limit [IRC §415(c)] 	
<ul style="list-style-type: none"> Increase Annual Compensation Limit[IRC §415(c)] <p><i>(This amendment was required for all Defined Contribution Plans.)</i></p>	Definitions
<p>Automatic Rollover Amendment: Good-faith amendment to adopt the provisions of IRC §401(a)(31) to address how to treat mandatory distributions from the plan.</p>	
<p><i>(This amendment was required for all Defined Contribution Plans.)</i></p>	2.5.6(d) AA – Tab 9 @ G2
<p>Roth Amendment: [IRC §1.401(k)(2)] Good faith amendment to allow participants to designate elective deferrals as Roth contributions. Effective for participant tax years beginning after January 1, 2006.</p>	
<ul style="list-style-type: none"> Elective Deferral now include Roth (After-Tax) Contributions Distribution Rules for Roth Accounts <p><i>(This was an optional amendment should be adopted if the Employer wanted to allow for Roth Contributions in the Plan)</i></p>	Definition 2.2.2 AA Tab 4 @ D4
<p>Katrina Amendment: Good-faith amendment to provide relief given under the Katrina Emergency Tax Relief Act of 2005, Notice 2005-92 and Announcement 2005-70.</p>	
<p><i>(This was an optional amendment should be adopted if the Employer wanted to allowed distributions from the Plan under KETRA.)</i></p>	Not Specifically referenced
<p>401(k) Final Regulations Amendment: Good faith amendment that adopts changes to IRC §401(k) and IRC §401(m) of the Code. Also, included is Post-Severance Compensation under IRC §415.</p>	Majority @ 2.7.1 and 2.9.1
<ul style="list-style-type: none"> Hardship Rules – expanded list of “deemed “ immediate and heavy financial needs 	2.5.10 Tab 9 – Elect to Permit
<ul style="list-style-type: none"> Nondiscrimination Testing Methods 	Tab 7 @ F1
<ul style="list-style-type: none"> Limiting the use of “QNEC” 	Tab 5 @ D15
<ul style="list-style-type: none"> Limit QNEC or QMAC to either the ADP or ACP (no Double Use) 	Tab 7 @ F2 and F3
<ul style="list-style-type: none"> Elective Deferral by returning Military Employee excluded from ADP 	
<ul style="list-style-type: none"> Limit Distribution of Elective Deferral 6 events. - “severance from employment” replaces “separation from service” 	2.7.8
<ul style="list-style-type: none"> Section 415 Compensation 	Definitions
<ul style="list-style-type: none"> Compensation Paid After Severance 	IRC §1.401(k)
<p><i>(This amendment was required for all 401(k) Plans.)</i></p>	

2007 Interim Amendment:

Based on the 2006 Cumulative List of Changes in Plan Qualification Requirements.

• Vesting – Participant Election to remain under pre-amendment schedule	
• Normal Retirement Age for IRC §401(a) plans that must comply with minimum funding requirements of Section IRC §412/	
• Limit on Compensation IRC §401(a) (17) - \$200,000	
• Break in Service – rules for “severance of employment”	
• Compensation after “severance of employment” paid 2 ½ months	
• Restorative Payments - excluded from annual additions	
• Reversion upon Plan Termination – “excess” over 415(c)	
<i>Adopted by DATAIR on behalf of all Word-for-Word Sponsors. Effective for Limitation Years on or after January 1, 2007.</i>	

A Map to the EGTRRA Adoption Agreement for DATAIR 401(k) Non-Standardized Plans

<u>Description of Adoption Agreement Option</u>	<u>See GUST</u>	<u>For EGTRRA</u>	
		<u>NS Long Form</u>	<u>NS Short Form</u>
General			
This Plan shall be funded solely by Insurance Contracts (Insurance Addendum)	n/a	**Intro	Intro
Plan Year			Part 1/Core
A. Eligibility and Service Provisions			
Eligible Employees	A2	A1	A1/Core
Highly Compensated Employee Determination	A3	A2	Core
Eligibility Computation Period	A1	A3	C3
Hour of Service	A9	A4	Core
Service with Predecessor Employers/Prior Employers	A10	*A5	Core
Elective Deferral Eligibility Requirements	A5	*A6	A2
Non-Elective Contributions Eligibility Requirements	A4	*A7	A3
Matching Contributions Eligibility Requirements	A8	*A8	A3
Break in Service	A14	A9	Core
Entry Date - Elective Deferrals	A12	*A10	A4
Entry Date - Non Elective Contributions	A11	*A11	A4
Entry Date - Matching Contributions	A13	*A12	A4
Disability	n/a	**A13	Core
<i>Note: Changed GUST options A6 and A7 and moved to EGTRRA D1 and D2.</i>			
B. Date Provisions			
Anniversary Date	B1	B1	Core
Valuation Date	B2	*B2	B1
Normal Retirement Age	B3	*B3	Core
Normal Retirement Date	B4	B4	Core
Early Retirement Age	B5	*B5	N/A
Early Retirement Date	B6	B6	N/A
Limitation Year	B7	B7	Core

* Change to GUST option.

** New option

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C. Compensation			
Compensation	C1	*C1	C1/Core
Modifications to Compensation	C2	C2	C2
Compensation Computation Period	C3	C3	C3/Core
Compensation for Elective Deferrals	C4	C4	C1
Compensation for Matching Contribution	C5	C5	C1
Compensation for Code Sections 415 and 416	C6	*C6	C1
D. Contribution and Allocation			
Elective Deferrals	A6	*D1	D1
Automatic Compensation Reduction	A7	*D2	D2
Catch-up Contributions	n/a	**D3	Core
Roth Deferrals	n/a	**D4	Core
Deemed Individual Retirement Account	n/a	**D5	N/A
Voluntary Employee Contributions (After-Tax Only)	n/a	**D6	N/A
Requirement to Share in Non-Elective Contribution Allocation	D1	D7	D3
Non-Elective Contribution	D2	D8	D4
Allocation Method for Non-Elective Contributions	D3	*D9	D5
Requirement to Share in Matching Contribution Allocation	D4	D10	D3
Allocation Method for Matching Contributions	D6	*D11	D6
Limitations on Matching Contributions	D9	D12	Brd Resolution
Supplemental Discretionary Matching Contributions	D7	D13	N/A
Allocation Date for Non-Elective Contributions and Matching Contributions	D8	*D14	D7
Allocation of Qualified Non-Elective Contributions (QNEC)	D10	*D15	Core
Allocation of Qualified Matching Contributions (QMAC)	D11	*D16	Core
Safe Harbor CODA Provisions	D12	*D17	D8
ADP Test Safe Harbor Contribution	D13	*D18	D9
ACP Test Safe Harbor Contribution	D14	*D19	D9
Vesting of the Additional ACP Test Safe Harbor Matching Contributions	D15	*D20	N/A
Timing of Safe Harbor Matching Contributions	D16	*D21	Core
Compensation for Safe Harbor Contributions	D17	*D22	Core
401(k) SIMPLE Provisions	D18	*D23	D10

* Change to GUST option.

** New option

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E. Vesting Provisions			
Years of Vesting Service	E1	*E1	Core
Excluded Years	E2	*E2	Core
Vesting Schedule	E3	*E3	E1
Prior Vesting Schedule	E4	*E4	N/A
Top-Heavy Vesting Schedule	E5	*E5	Core
Re-Employment	E6	*E6	Core
Forfeitures	E7	*E7	E2/Core
Requirement to Share in Allocation of Forfeitures	E8	E8	E2
Application of Forfeitures of Non-Elective Contributions	E9	*E9	E2
Reallocation to Participants of Forfeitures of Non-Elective Contributions	E10	*E10	E2
Application of Forfeitures of Matching Contributions	E11	*E11	E2
Reallocation to Participants of Forfeitures of Matching Contributions	E12	*E12	E2/Core
Restoration of Forfeitures	E13	*E13	Core
<i>Note: Changed GUST option E14 and moved to EGTRRA G2.</i>			
F. CODA Limitation Provisions			
Prior Year - Current Year	F1	*F1	F1
Actual Deferral Percentages (ADP)	F2	F2	Core
Actual Contribution Percentage (ACP)	F3	F3	Core
Excess Aggregate Contributions	F4	F4	Core
Recharacterization of Excess Contributions	n/a	**F5	N/A
G. Distribution Provisions			
Method of Distribution	G1	*G1	Core
Mandatory Cash Out Provisions	E14	*G2	G1
Survivor Annuity Percentage	G2	G3	Core
Distribution Determination Date	G4	*G4	Core
Time of Distribution	G3	*G5	Core
Hardship Distributions of Elective and Roth Deferrals	G5	*G6	G2
In Service Distributions	G6	*G7	Core
Qualified Domestic Relations Orders	G7	G8	Core
Required Minimum Distributions	G8	*G9	G3

* Change to GUST option.

** New option

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<u>Description of Adoption Agreement Option</u>	<u>See GUST</u>	<u>NS Long Form</u>	<u>NS Short Form</u>
H. Other Administrative Provisions			
Earnings	H1	*H1	Core
Loans	H2	H2	H1
Rollovers	H3	*H3	Core
Investment Control	H4	*H4	H2
Life Insurance Authorization	H5	*H5	Core
Top-Heavy Assumptions	H7	*H6	Core
Valuation Date	H8	*H7	Core
Minimum Top-Heavy Allocation	H9	H8	H3
Multiple Plans Provisions	H10	H9	H4
Top-Heavy Duplications	H12	*H10	H5
Excess Annual Additions Correction	H11	H11	Core
Trustee Authority	H14	*H12	Trust

Note: Removed GUST Life Insurance Limits option H6.

* Change to GUST option.

** New option

**DATAIR 401(k) NON-STANDARDIZED SHORT FORM
SUMMARY OF CORE PROVISIONS
(This does not replace the Base Plan Document)**

The following provisions are built into the Core document for the Short Form and do not allow for optional choices:

Anniversary Date – The Anniversary Date is the last day of the Plan Year.

Break in Service - A Break in Service occurs if an Employee fails to complete more than 500 Hours of Service during the Plan Year.

Catch-up Contributions (Section 2.2.2(c)) - Are permitted.

Compensation - For all Plan purposes, a Participant's Compensation is based on the Plan Year and shall be equal to Compensation as defined for Wages, Tips and Other Compensation Box on Form W-2.

Distributions - Distributions to Participants who resign, die, have a Disability, or are discharged prior to retirement shall be made at the Participant's election within a reasonable period as soon as practical following the date of termination, based on the preceding Valuation Date. In the event the Participant fails to return the necessary paperwork for a distribution and the Account balance is less than \$1,000, the Employer may distribute without the Participant's election.

Earnings - Earnings will be credited solely as of the immediately preceding Valuation Date to Participants who receive distributions on any date other than a Valuation Date.

Eligibility Computation Period - The initial Eligibility Computation Period begins on the Employment Commencement Date and ends on the anniversary thereof, subsequent computation periods shall be the Plan Year.

Eligible Employees - An Employer that is a member of a controlled group or affiliated service group must adopt this Plan for its Employees to be eligible to Participate in this Plan.

Excluded Years – All Years of Vesting Service are taken into account.

Forfeitures (Section 2.4.4) - Forfeitures are determined as of the earlier of the last day of the Plan Year in which the Plan Administrator distributes the Participant's entire vested interest, or the last day of the Plan Year of the 5th consecutive Break in Service. In order to share in the allocation of these Forfeitures the Participant must be eligible to receive an allocation of the respective type of contribution.

Highly Compensated Employee Determination – Highly Compensated Employee means any Employee who is a 5-percent owner at any time during the year or the preceding year, or in the preceding year were considered in the top 20% of employee by pay.

In Service Distributions (Section 2.5.12) – Are permitted from all accounts. For Elective Deferrals, Roth Deferrals, Qualified Non-Elective, Qualified Matching and ADP Test Safe Harbor Contributions the participant must be age 59 ½ . All other Accounts must be fully vested and

allocated for 2 years **or** require participation for at least 5 years. There are no restrictions on distributions from rollover accounts.

Limitation Year – The Limitation Year is the Plan Year.

Normal Retirement Age and Date - Normal Retirement Age is the later of age 65 or the first day of the Plan Year of the fifth anniversary of participation in the Plan. For each Participant the Normal Retirement Date is the actual date Normal Retirement Age is attained.

Plan Year -The twelve (12) consecutive month period designated by the Employer in the Adoption Agreement.

Rollovers (Section 3.9.3) - Direct Rollover and Participant Rollover Distributions from other qualified plans and IRAs are permitted to this Plan. Rollovers are accepted from all Employees before Plan entry.

Roth Deferrals (after-tax) (2.2.2(a)). Are permitted.

Service with Predecessor Employers - Counted only when Employer has adopted a plan of the Predecessor Employer.

Top Heavy Valuation Date - For purposes of computing the Top-Heavy Ratio, the Valuation Date is the last day of the prior Plan Year.

Valuation Date - The Valuation Date is the last day of the Plan Year.

Years of Vesting Service - The computation period is the Plan Year in which an Employee performs at least 1,000 Hours of Service.

Cross Tested Plans in the Non-Standardized Prototypes

What you need to know about using the prototype documents for cross tested plans

Allocation groups are not limited. Rate Groups are limited

This means that you can have as many allocations defined in your plan as needed. However, when you test for 401(a)4 the rate groups that are being tested are limited.

Rate Group Limits

1) HCE rate groups can not exceed 25

2) NHCE rate groups limited based on the number of NHCEs. Not to exceed 25 rate groups.

The number of rate groups allowed are specified up to 30 NHCEs. After 30 NHCEs there is a sliding scale. This scale is capped at 25 rate groups, or 125 and above NHCEs.

To get the number of rate groups allowed, take Number of NHCEs divide by 5 then round up and that is the total number of rate groups. Example with 57 NHCEs: 57 divided by 5=11.4, rounded up is 12 rate groups.

<u># NHCEs</u>	<u>Number of rate groups</u>
0-2	1
3-8	2
9-11	3
12-19	4
20-29	5
30	6
.	
.	
57	12
.	
.	
125+	25

Exceeding the limit of rate groups will cause the plan to no longer be considered a prototype plan.

Links to information regarding Rate Groups limitations for prototypes

<http://www.irs.gov/retirement/article/0,,id=158688,00.html>

http://www.irs.gov/pub/irs-tege/lrm_crosstest.pdf

EGTRRA Document Registration

Each EGTRRA Prototype and Volume Submitter document must be registered with the document sponsor. For plans adopted under DATAIR's name, they must be registered with us, for plans adopted under the name of a word-for-word adopter; the records are maintained by the word-for word adopter.

This is by virtue of Revenue Procedure 2005-16 which requires every document sponsor to maintain a current list of plans adopted under their name, and communicate with adopting employers periodically. Historically, for TRA-86 and GUST documents we collected data annually to comply with Revenue Procedures 89-13 and 2000-20, however it has since been determined that a delay of up to a year delay in collecting this data does not fully comply with the intent of the requirement.

Although the TRA and GUST adoption agreements had standard required language requiring registration, we expanded the language for EGTRRA and added a process whereby the adopting employer is able to independently verify that the requirement has been met.

The language in the signature recitals includes:

This Plan must be registered with the Plan Sponsor within 60 days of adoption of this document, and the Document Serial Number assigned by the Plan Sponsor shall be affixed to this signature page. The adopting employer must notify the Plan Sponsor through the document provider if the plan is terminated, merged, or of any changes in the name, address, or EIN of the adopting employer at least annually, and within 30 days of any request of the Plan Sponsor. If the adopting Employer terminates its relationship with the document provider its plan will no longer be considered a prototype sponsored by the Plan Sponsor.

Unregistered use of this document will result in the Plan no longer participating in this Master/Prototype Plan, and the document will be considered an individually designed plan, without reliance on the opinion letter of the Plan Sponsor, which could result in the disqualification of the plan.

... as well as the addition of a place to enter the Document Serial Number below the signatures.

Q: What happens if the document isn't registered?

A: In short, if the document isn't registered, it isn't considered a pre-approved plan and treated as an individually designed document that has no reliance on opinion or advisory letters. Keep in mind that plans using individually designed plan documents have different restatement cycles, so it is critically important to know if the plan is part of the pre-approved document program or not.

Q: What's involved the process of registering?

A: We have made the registration process as simple as pressing a button on the third tab of the Plan Information screen. The button transmits plan identifying information to DATAIR via the internet and, retrieves a unique serial number for the plan. The entire process takes less than 2 seconds.

Q: Can I register plans in bulk?

A: No. Since you should be entering the amendment adoption date into the system when the plan is adopted, you are already on the screen where the registration can be done at the same time.

Q: I'm a Word-for-Word Adopter. Do I need to register my plans with DATAIR?

A: If you are a word for word adopter, you are required to comply with Rev Proc 2005-16 for plans adopted under your name. Thus, you do not need to register the documents with DATAIR; however the document must be registered with you as the document sponsor.

While it may seem odd that you need to register documents with yourself, there are a couple of advantages. It does provides additional leverage for you to receive payment for any document you provide to a client. Additionally, if you sever your relationship with the adopting employer, the plan will cease to be a part of the prototype or volume submitter program. Thus, they can not continue to rely on the advisory or opinion letter, and you no longer would have a responsibility to provide amendments and meet other document sponsorship requirements.

Q: As a Word-for-Word adopter, do I need to place a serial number on each document?

A: Yes. The registration process for you can be more informal, but the signature pages do require a document serial number of some sort to be applied. You can enter a serial number of your own choosing, or you can use DATAIR's registration process if you wish to have the Document System create the unique serial numbers for you. You remain the Document Sponsor even you use the Document System's automated numbering system.

Q: If I amend the plan, does a new Document Serial Number need to be issued?

A: A new serial number is required if any of the following are changed:

- EIN
- Three-digit Plan Number
- Plan Type (i.e. 401(k), Profit Sharing, Money Purchase)
- Document Type/Format (i.e. Non-Std Prototype, Std Prototype, Volume Submitter)
- Document Sponsor (DATAIR or Word-for-Word Adopter)

However, if the plan is amended, and none of the above parameters have changed, the same serial number will apply to the new amendment. The system will warn you if a change that requires a new registration is made when you press Save on the Plan Information screen.

Q: Does this new registration process replace annual sponsor reporting?

A: No. We also need to need to know about changes of address, and status of the plan, so ongoing reporting is required. We are considering the possibility of implementing a system that would notify us in real time of changes to address, plan status, etc. as a replacement for annual reporting as a future enhancement.

Q: Previously, only prototypes were subject to sponsor reporting, why are volume submitter documents required under EGTRRA?

A: Under Rev Proc 2005-16, volume submitter documents that include language permitting document sponsors to amend the plan on behalf of adopting employers (which all DATAIR documents include) are subject to the same recordkeeping and other requirements as prototypes.

Q: Can I register the plan before it is adopted?

A: Yes. You may register the document prior to adoption to eliminate the possibility of forgetting to register it later or having to manually enter the registration number on the signature page. However, if you have any doubt that the document will be adopted, we recommend that you do not do this.

Q: I don't have internet access on my computer, how can I register the document?

A: You can use another workstation that has internet access. We will also be adding a feature to our web site that will allow you to manually register a plan in the near future.

Q: What information about my plan is transmitted to DATAIR when I register the plan?

A: Only plan and document identifying information that is required for compliance with Rev Proc 2005-16 is transmitted. We do not collect plan provisions or other proprietary information