

DATAIR 2008 EGTRRA Document Series

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What's Ahead

- ▶ Introduction to EGTRRA
 - ◆ EGTRRA Highlights and Features
 - ◆ Background Information
 - ◆ Restatement Process
- ▶ Review of Non-standardized 401(k) Adoption Agreement and Basic Plan
 - ◆ Organization of the Documents
 - ◆ Summary of Changes for EGTRRA
 - ◆ New Short Form

This webinar is Thursday, May 22 at 2 pm CST
- ▶ Review of CODA Volume Submitter Checklist and Plan Document
 - ◆ Organization of the Documents
 - ◆ Summary of Changes for EGTRRA
- ▶ Review of Determination Letter Process
 - ◆ Should I file with the IRS for a Determination Letter?
 - ◆ When do I file for a Determination Letter?
 - ◆ What other resources are available to me?
 - ◆ Document Support Team
 - ◆ Helpful Links

Introduction to EGTRRA

- ✦ EGTRRA Highlights and Features
- ✦ Background Information
 - ◆ What is EGTRRA?
 - ◆ How does EGTRRA impact Plan qualification requirements?
 - ◆ What types of plans does the EGTRRA restatement process affect?
 - ◆ What are interim and discretionary amendments?
 - ◆ What is the Cumulative List?
 - ◆ What is the Remedial Amendment Period?
 - ◆ What is the eligibility criteria for the six-year amendment/approval cycle?
 - ◆ When do I need to restate?
 - ◆ What happens if I fail to restate on time?
 - ◆ Are there any post-EGTRRA requirements for the Plan?
- ✦ Restatement Process
 - ◆ What documents do I need to restate?
 - ◆ What tools are available in DS/WIN?
 - ◆ What steps should I follow?

EGTRRA Defined Contribution Highlights

- ✦ Incorporated language and provisions required by the IRS;
- ✦ Added language for recent law changes, such as Roth 401(k) contributions and cross-testing in prototype plans;
- ✦ Added enhancements suggested by clients such as support for multiple employer volume submitter plans, and prevailing wage offsets for Davis Bacon plans;
- ✦ Added the ability to use the following approved trusts with the prototype documents:
 - ◆ 2008 Capital Bank and Trust Agreement Final
 - ◆ 2008 Capital Bank and Trust Employer Stock Addendum Final
 - ◆ Frontier Trust Agreement
 - ◆ Nationwide Trust Company Trust
 - ◆ Schwab Directed Employee Benefit Trust;

EGTRRA Defined Contribution Highlights

- ✦ Added two new document formats:
 - ◆ Short-form Prototype
 - ◆ Volume Submitter Adoption Agreement;
- ✦ Coordinated options and language between prototypes and volume submitter documents; and
- ✦ Streamlined and simplified document sections for clarity and ease of use.
- ✦ Document Registration
 - ◆ Prototypes
 - ◆ Volume Submitter
 - ◆ Within 60 days of the Adoption Date for the restatement

Defined Contribution Plan Choices

	<u>401(k)</u>	<u>PS</u>	<u>MP</u>	<u>TB</u>
Long Form Prototype Format				
Non Standardized Prototype	√	√	√	√
Standardized Prototype	√	√	√	√
NEW Short Form Prototype Format				
Non Standardized Prototype	√	√	√	√
Standardized Prototype	√	√	√	n/a
Volume Submitter Individually Designed Format				
	√	√	√	√
NEW Volume Submitter Adoption Agreement Format				
	√	√	√	√

Long Form Prototype

- Cross tested formulas
- Prevailing wage offset
- Stacked match
- Roth Deferrals
- Deemed IRA
- Automatic Compensation Reduction (ACR) option changed to allow employers to increase the ACR over time to reach a more appropriate long term savings level.

Long Form Prototype

- Compensation for ADP/ACP testing purposes may be based on plan year or entry date.
- Forfeiture allocation modified to allow administrative flexibility.
- In-service distribution option refined.

***NEW* Short Form Prototype**

- Linked to the Defined Contribution Basic Document and Trust.
- Designed to easily deliver a Plan document for small employers.
- Includes options that are most frequently selected, including cross tested formulas.

Volume Submitter IDP

- Includes all prototype options
- Custom document appearance
- Includes a multiple employer option

NEW Volume Submitter AA Format

- Includes the Core and Trust and an Adoption Agreement with prototype options.
- Includes more locations to enter custom text for alternate provisions.
- Includes a multiple employer option.
- Intended for those who desire the flexibility and customization that the Volume Submitter program affords, but in an Adoption Agreement type format.

Background Information

- What is EGTRRA?
- How does EGTRRA impact Plan qualification requirements?
- What types of plans does the EGTRRA restatement process affect?
- What are interim and discretionary amendments?
- What is the Cumulative List?

Background Information

- What is the Remedial Amendment Period?
- What is the eligibility criteria for the six-year amendment/approval cycle?
- When do I need to restate?
- What happens if I fail to restate on time?
- Are there any post-EGTRRA requirements for the Plan?

What is EGTRRA?

**Economic Growth Tax Relief &
Reconciliation Act of 2001**

How does EGTRRA impact Plan qualification requirements?

- ✦ Increased the annual contribution limits (402(g) and 415 Annual Additions);
- ✦ Allowed new types of contributions;
- ✦ Faster vesting for matching contributions, with a maximum vesting schedule of either 3-year cliff or 6-year graded vesting;
- ✦ Modified the top heavy rules;
- ✦ Modified distribution, rollover and transfer rules;
- ✦ Simplified the minimum required distribution rules; and
- ✦ Added automatic rollover for small account balances.

What types of Plans does EGTRRA affect?

- ✦ In short, all “qualified plans”
 - ◆ 401(k) Plans
 - ◆ Profit Sharing Plans
 - ◆ ESOPs
 - ◆ Plans subject to 412 Minimum Funding Requirements
 - Money Purchase Plans
 - Target Benefit Plans

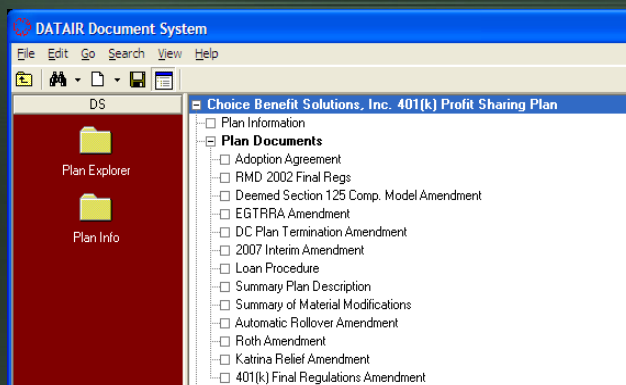
Amendments

- ✦ Required Amendments
- ✦ Interim Amendments
- ✦ Good Faith Amendments
- ✦ Optional Amendments

Legislation

- ✦ Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)
- ✦ Deficit Reduction Act of 1984 (DEFRA)
- ✦ Retirement Equity Act of 1984 (REA)
- ✦ Tax Reform Act of 1986
- ✦ Uruguay Round of General Agreement on Tariffs and Trade (Retirement Protection Act of 1994)
- ✦ Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA)
- ✦ Small Business Job Protection Act of 1996
- ✦ Taxpayer Relief Act of 1997
- ✦ Community Renewal Tax Relief Act of 2000 (CRTRA)
- ✦ Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA)
- ✦ Sarbanes-Oxley Act of 2002
- ✦ Pension Protection Act of 2006 (PPA)

Example of 401(k) Amendments in DS/WIN



What is the Remedial Amendment Period?

EGTRRA Timeline - six-year amendment / approval cycle

- ✦ 2005. Sponsors and practitioners file specimen prototype for approval.
February 17, 2005 - January 31, 2006
- ✦ 2006. Anything submitted after January 31, 2006 "non-timely".
See Revenue Procedure 2007-44.
- ✦ 2008. IRS issues Opinion and Advisory Letters on March 31, 2008.
- ✦ May 1, 2008. Adopting Employers restatement period begins.
Employers may submit applications for determination letters to IRS.
- ✦ April 30, 2010 remedial amendment period ends and
IRS Determination Letter application period ends.

Is the Plan ready for EGTRRA restatement?

➤ GUST → EGTRRA

- ◆ Is the Plan already a Pre-Approved Plan
 - Prototype or Volume Submitter
 - Updated for GUST
 - All required amendments
- ◆ “New Adopter”
 - Individually Designed Plan
 - No Prior Plan
- ◆ “Intended Adopter”
 - Individually Designed Plan with a “Certificate of Intent”
 - Executed prior to five-year cycle

When do I need to restate?

➤ **April 30, 2010**

(see Rev. Proc. 2007-44; Announcement 2008-23.)

- ◆ The last day for employers to adopt a pre-approved DC plan.
- ◆ The last day to file an application for a determination letter.

What happens if I fail to restate on time?

- ✦ If a plan misses the deadline for restating plan
 - ◆ IRS Correction Program
 - EPCRS for Non-Amenders
 - Revenue Procedure 2006-27
 - New Revenue Procedure to be released soon
- ✦ If a plan fails to register 60 days after the adoption of the restatement
 - ◆ The plan can not rely on the opinion letter
 - ◆ Treated as an Individually Designed Plan

DATAIR's EGTRRA Documents for DC Plans

- ✦ Incorporates all AMENDMENTS made within the remedial amendment period.
- ✦ Includes PLAN QUALIFICATION REQUIREMENTS based on the 2004 Cumulative List.
- ✦ Does not include the 2007 Interim Amendment, which is based on the 2006 Cumulative List (this amendment must be readopted after the EGTRRA restatement.)
- ✦ Does not include changes for the Pension Protection Act of 2006 (PPA).

What is the Cumulative List of Changes?

➤ The Cumulative List of Changes in Plan Qualification Requirements is a list of changes required to be included in a plan for qualification purposes. It is anticipated that the Cumulative List will be issued each year in approximately mid-November.

- ◆ 2004 Cumulative List (See Notice 2004-84)
- ◆ 2005 Cumulative List (See Notice 2005-101)
- ◆ 2006 Cumulative List (See Notice 2007-3)
- ◆ 2007 Cumulative List (See Notice 2007-94)

(Link: <http://www.irs.gov/pub/irs-drop/n-07-94.pdf>)

Sample Summary of Changes for EGTRRA

DATAIR MASS-SUBMITTER PROTOTYPE SUMMARY OF CHANGES FOR EGTRRA RESTATEMENT	
<small>(Location: Base Plan Provision or 401(k) Non-Standardized Long Form Adoption Agreement)</small>	
Required Minimum Distribution Final Reg.: Adopts the final IRC §401(a)(9) regulations.	
<ul style="list-style-type: none"> • 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
<i>(This amendment was required for all Defined Contribution Plans.)</i>	
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.	Definitions AA – Tab 4 Elect a, 4, b, 4 or c4 to Exclude
<i>(This was an optional amendment should be adopted if the Plan includes or will include Deemed Section 125 compensation.)</i>	
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.	

Restatement Process

- What documents do I need to restate?
- What tools are available in DS/WIN?
- What steps should I follow?

What documents do I need to restate?

- A Plan restated for GUST
- Timely Adopted Interim Amendments
- Timely Adopted Discretionary Amendments

**Note the GUST Pre-Approved or Individually Designed Plan that you are restating from should have an Opinion Letter, an Advisory Letter, or a Favorable Determination Letter before it can be restated onto one of DATAIR's Pre-Approved Plans for EGTRRA.*

What tools are available?

- DS/WIN Plan Listing
- Summary of Changes for EGTRRA
- Restatement Steps to Complete Checklist

Restatement Steps to Complete	√ When Complete
<ul style="list-style-type: none"> ➤ Step 1. Update DS/WIN for EGTRRA CD Release. ➤ Step 2. Open the plan to access the Plan Amendments screen. With this form you can open or add a new amendment. On the Plan Amendments screen click the [Add New] command button, or double-click on <Add New> in the Amendment List. ➤ Step 3. Enter a description and an effective date for the EGTRRA restatement. Then select [OK]. ➤ Step 4. The Plan Information screen will then be displayed. Verify all the indicative information. In the Plan Info tab check to see that the Plan Type and Sub Type are correct. Under the Document Info tab select EGTRRA for the Version and verify the Document Type. ➤ Step 5. When the amendment has been added to the Plan Amendment screen to your satisfaction, save your changes by pressing Save on the ToolBar or pressing Edit Save on the menu. 	

Restatement Steps to Complete	When Complete
<ul style="list-style-type: none"> <li data-bbox="363 436 1117 516">✎ Step 6. From there go to the Plan Documents screen in the folder view and complete the Adoption Agreement or Checklist. When all the changes have been made to your satisfaction, press Edit Save on the menu. <li data-bbox="363 548 1049 600">✎ Step 7. Print and Review the Adoption Agreement/Checklist, Plan Document and Trust. <li data-bbox="363 632 824 663">✎ Step 8. Make Board Resolution Selections. <li data-bbox="363 695 829 726">✎ Step 9. Print and Review Board Resolution. <li data-bbox="363 758 1122 837">✎ Step 10. Prepare 2007 Interim Amendment, Board Resolution, and Summary of Material Modifications. The 2007 Interim Amendment must be re-adopted after the Plan is restated for EGTRRA. 	

Restatement Steps to Complete	When Complete
<ul style="list-style-type: none"> <li data-bbox="363 1276 919 1308">✎ Step 11. Print and Review 2007 Interim Amendment. <li data-bbox="363 1339 854 1371">✎ Step 12. Obtain Signatures for all Documents. <li data-bbox="363 1402 1003 1434">✎ Step 13. Enter the adoption date in the Document Info screen. <u>Register the Plan with DATAIR within 60 days of adoption.</u> <li data-bbox="363 1570 997 1602">✎ Step 14. Write the registration number on the signature page. <li data-bbox="363 1633 1110 1713">✎ Step 15. Make copies of all documents for your files. Make sure the copy is a signed and dated copy with the registration number noted on the signature page. 	

<h2>Restatement Steps to Complete</h2>	✓ When Complete
<ul style="list-style-type: none"> <li data-bbox="367 428 938 453">✎ Step 16. Print the Opinion Letter or the Advisory Letter. <li data-bbox="367 478 1114 604">✎ Step 17. Deliver the original signed and dated documents to client with a copy of the Opinion Letter or Advisory Letter. The original should have the registration number noted on the signature page. Remind your client that at some point in the plan's existence, it is likely they will be asked to demonstrate the plan has been in compliance with current and prior law. These documents should be kept in the files: <ul style="list-style-type: none"> <li data-bbox="428 634 688 659">◆ Original plan document <li data-bbox="428 659 1101 684">◆ All subsequent amendments or restatements to the plan document. <li data-bbox="428 684 704 709">◆ All adoption agreements. <li data-bbox="428 709 977 735">◆ Any opinion letter or advisory letter issued by the IRS. <li data-bbox="428 735 873 760">◆ Any determination letter issued by the IRS. <li data-bbox="428 760 1052 806">◆ Board of Director's resolutions and minutes, or similar records related to the plan. 	

<h2>Restatement Steps to Complete</h2>	✓ When Complete
<ul style="list-style-type: none"> <li data-bbox="367 1270 659 1295">✎ Step 18. File your copies. <li data-bbox="367 1320 1032 1346">✎ Step 19. Prepare Determination Letter Submission (if applicable.) <li data-bbox="367 1371 1094 1417">✎ Step 20. Follow up with Summary Plan Description, Plan Specifications, and any other Administrative Forms. 	

What other resources are available to me?

- Document Support Team
- Helpful Links

Document Support Team

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Links

- ▶ DATAIR Employee Benefit Systems, Inc.
 - ◆ <http://www.datair.com/>
 - Be sure to visit the DATAIR Discussion Forum to receive email notification of all releases.
- ▶ Government Agencies
 - ◆ Internal Revenue Service (IRS)
 - Retirement Plans Community: <http://www.irs.gov/retirement/index.html>
 - ◆ Department of Labor (DOL)
 - Retirement Plans, Benefits and Savings: <http://www.dol.gov/dol/topic/retirement/index.htm>
- ▶ Employee Benefit Organizations
 - ◆ American Society of Pension Professionals & Actuaries (ASPPA)
 - <http://www.aspa.org/>
 - ◆ National Institute of Pension Administrators (NIPA)
 - <http://www.nipa.org/>
- ▶ Other Employee Benefits Sites
 - ◆ BenefitsLink
 - <http://www.benefitslink.com/>

Questions





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Retirement Document System for Windows™

For more information contact DATAIR at (630) 325-2600
or
E-Mail: support@datair.com
web: <http://www.datair.com>

Please join us for our next webinar

**Review of Non-Standardized 401(k) Adoption
Agreement and Basic Plan
including the New Short Form**

**Thursday, May 22, 2008
2 pm CST**

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

(Location: Base Plan Provision or [401\(k\) Non-Standardized 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.

Definitions

[AA - Tab 4](#)
[Elect a.4, b, 4 or c4 to Exclude](#)

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

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

2.5.6 @ d) and (f)

<ul style="list-style-type: none"> Automatic Rollover [IRC §411(a)(11)] 	AA Tab 8 @ G2
<ul style="list-style-type: none"> Limits on Elective Deferrals [IRC §402(g)(1)(B)] 	2.2.2 (a) AA Tab 5 @ D1 a.
<ul style="list-style-type: none"> 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

• Nondiscrimination Testing Methods	Tab 7 @ F1
• Limiting the use of "QNEC"	Tab 5 @ D15
• Limit QNEC or QMAC to either the ADP or ACP (no Double Use)	Tab 7 @ F2 and F3
• Elective Deferral by returning Military Employee excluded from ADP	
• Limit Distribution of Elective Deferral 6 events. - "severance from employment" replaces "separation from service"	2.7.8
• Section 415 Compensation	Definitions
• Compensation Paid After Severance	IRC §1.401(k)
<i>(This amendment was required for all 401(k) Plans.)</i>	
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>	