

## Part III – Administrative, Procedural and Miscellaneous

### **2005 Cumulative List of Changes in Plan Qualification Requirements**

Notice 2005-101

#### I. PURPOSE

This notice contains the 2005 Cumulative List of Changes in Plan Qualification Requirements (2005 Cumulative List) described in section 4 of Rev. Proc. 2005-66, 2005-37 I.R.B. 509. The 2005 Cumulative List is to be used primarily by plan sponsors of individually designed plans that fall in Cycle A. Those will be single employer individually designed defined contribution plans, including employee stock ownership plans (ESOPs), and individually designed defined benefit plans.

The 2005 Cumulative List in section 4 of this notice does not extend the deadline by which a plan must be amended to comply with any statutory, regulatory, or guidance changes. The general deadline for timely adoption of an interim or discretionary amendment can be found in section 5.05 of Rev. Proc. 2005-66.

#### II. BACKGROUND

Rev. Proc. 2005-66 sets forth procedures for issuing opinion, advisory, and determination letters and establishes the five-year remedial amendment cycle for individually designed plans and the six-year remedial amendment cycle for pre-approved plans. In addition, section 5.05 of Rev. Proc. 2005-66 provides the deadline for timely adoption of an interim amendment or discretionary amendment. Notice 2005-95, 2005-51 I.R.B. (December 19, 2005) provides transitional relief relating to deadlines that would otherwise apply under Rev. Proc. 2005-66.

Under section 4 of Rev. Proc. 2005-66, the Internal Revenue Service intends to annually publish a Cumulative List to identify statutory, regulatory and guidance changes that must be taken into account in plan sponsor's submissions to the Service for opinion, advisory and determination letters whose remedial amendment period begins on February 1st following issuance of the Cumulative List.

In Notice 2004-84, 2004-2 C.B. 1030, the Service published the 2004 Cumulative List of Changes in Plan Qualification Requirements (2004 Cumulative List). The 2004 Cumulative List was used primarily by plan sponsors and practitioners in drafting defined contribution pre-approved plans (that is, defined contribution

plans that are master and prototype or volume submitter plans) that must be submitted to the Service for review by January 31, 2006. Thus, the 2004 Cumulative List set forth only those plan qualification requirements that applied to defined contribution pre-approved plans. Plan qualification requirements included statutory changes and guidance that became effective after December 31, 2001 and any relevant qualification requirements not contained in the 2004 Cumulative List. The Service also stated that plan language for guidance issued after December 14, 2004 would not be reviewed, unless it was on the 2004 Cumulative List.

### III. APPLICATION OF 2005 CUMULATIVE LIST

This notice is being issued in conjunction with the opening of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16 (EGTRRA) determination letter program for individually designed plans. The Service announced the opening of the initial five-year remedial amendment cycle for Cycle A in Rev. Proc. 2005-66. Thus, the Service will start accepting determination letter applications for Cycle A individually designed plans (i.e., the last digit of the plan sponsor's employer identification number is 1 or 6) on February 1, 2006. The 12-month submission period for individually designed plans is intended to end January 31, 2007.

The 2005 Cumulative List informs plan sponsors of issues the Service has specifically identified for review in determining whether an individually designed plan has been properly updated. Specifically, the 2005 Cumulative List reflects law changes under EGTRRA (with technical corrections made by the Job Creation and Worker Assistance Act of 2002 (JCWAA), Pub. L. 104-147), the Pension Funding Equity Act of 2004 (PFEA), Pub. L. 108-218, and the American Jobs Creation Act of 2004 (AJCA), Pub. L. 108-357. In order to be qualified, a plan must comply with all relevant qualification requirements (that is, all qualification requirements in effect, or guidance published before the issuance of the Cumulative List), not just those on the 2005 Cumulative List. The only two items on the 2005 Cumulative List that are not yet published are listed under section 402A.

The Service will not review plan language for any qualification change that becomes effective, any guidance published, or any statutes enacted after December 13, 2005, unless it is on the 2005 Cumulative List. Thus, plan sponsors of individually designed plans may not rely on determination letters with respect to plan language reflecting any guidance issued after December 13, 2005, unless that guidance is on the 2005 Cumulative List.

### IV. 2005 CUMULATIVE LIST OF CHANGES IN PLAN QUALIFICATION REQUIREMENTS

The following list consists of statutory provisions and associated guidance which reflect changes to plan qualification requirements. Miscellaneous guidance is also provided. The Service has identified below plan qualification requirements which were not on the 2004 Cumulative List as “(New)”. The 2005 Cumulative List adds statutory changes and guidance that have become effective after December 31, 2001 for defined benefit plans and ESOPs. It is also updated for plan qualification requirements published in 2005 for defined contribution plans. Thus, the 2005 Cumulative List contains those plan qualification requirements first listed in the 2004 Cumulative List as well as additional 2005 plan qualification requirements.

1. 72(p): Section 1.72(p)-1 of the Income Tax Regulations relating to plan loans was published on December 3, 2002 (67 Fed. Reg. 71821).
2. 401(a)(4):
  - Amendments to § 1.401(a)(4)-8 of the Regulations relating to new comparability plans were published on June 29, 2001 (66 Fed. Reg. 34535).
    - Rev. Rul. 2001-30, 2001-2 C.B. 46.
  - Amendments to § 1.401(a)(4)-9 of the Regulations relating to new comparability plans were published on June 29, 2001 (66 Fed. Reg. 34535). (New).
  - Rev. Rul. 2004-21, 2004-1 C.B. 544. (New)
3. 401(a)(9):
  - Sections 1.401(a)(9)-1 through -9 of the Regulations were published on April 17, 2002 and June 15, 2004 (67 Fed. Reg. 18834 and 69 Fed. Reg. 33288).
4. 401(a)(17): Section 401(a)(17) of the Code was amended by § 611(c) of EGTRRA to increase the compensation limit to \$200,000.
  - Notice 2001-56, 2001-2 C.B. 277.
5. 401(a)(31):
  - Section 401(a)(31) was amended by § 643(b) of EGTRRA to allow employees’ after-tax contributions to be rolled over under certain circumstances.
  - Section 401(a)(31)(B) was amended by § 657(a) of EGTRRA (as amended by § 411(t) of JCWAA) to provide for the automatic rollover of certain mandatory distributions. The effective date is March 28, 2005.
    - Notice 2005-5, 2005-3 I.R.B. 337.
  - Sections 641, 642 and 643 of EGTRRA (as amended by § 411(q) of JCWAA) amended the definition of eligible retirement plan in § 402 to include a § 403(b) annuity contract and eligible governmental § 457(b) plan.

- Section 636(b) of EGTRRA modified the definition of eligible rollover distribution to exclude hardship distributions.
6. 401(k) & 401(m):
- Section 401(k)(2) and § 401(k)(10) of the Code were amended by § 646(a)(1) of EGTRRA to permit distributions of elective deferrals from a § 401(k) plan upon severance from employment.
    - Notice 2002-4, 2002-1 C.B. 298.
  - Section 636(a) of EGTRRA directed the Secretary of the Treasury to revise the regulations relating to safe harbor hardship distributions of elective deferrals from § 401(k) plans so that the time the employee is prohibited from making elective and employee contributions is reduced from one year to six months after a hardship distribution.
    - Notice 2001-56.
    - Notice 2002-4.
  - Section 401(k)(11) of the Code was amended by § 611(f) of EGTRRA to increase the maximum amount of qualified salary reduction contributions that can be made to SIMPLE 401(k) plans.
  - Section 402(g) of the Code was amended by § 611(d) of EGTRRA to increase the applicable dollar amount.
  - Section 401(m)(9) of the Code was amended by § 666 of EGTRRA to eliminate the multiple use test.
  - Final Regulations under § 401(k) and § 401(m) of the Code were published on December 29, 2004 (69 Fed. Reg. 78144).
7. 402A: Section 402A of the Code was added by § 617 of EGTRRA to offer optional treatment of elective deferrals as designated Roth contributions to defined contribution plans, effective for taxable years beginning after December 31, 2005.
- Final Regulations under § 401(k) and § 401(m) of the Code relating to designated Roth contributions are expected to be published soon.
  - Proposed Regulations under § 402A are expected to be published soon.
8. 404:
- 404(k)(2)(A) of the Code was amended by § 662(a) of EGTRRA (as amended by § 411(w) of JCWAA) to allow ESOP dividends to be reinvested without the loss of dividend deductions. (New).
    - Notice 2002-2, 2002-1 C.B. 285 provides guidance with respect to the changes made to § 404(k) of the Code and on the effective date of § 409(p) of the Code. (New).
9. 408(q): Section 408(q) of the Code was added by § 602 of EGTRRA (as amended by § 411(i) of JCWAA) to allow for deemed individual retirement accounts (IRAs) in an eligible retirement plan.

- Section 1.408(q)-(e)(8)(T) of the Regulations was published on July 22, 2004 (69 Fed. Reg. 43735).
10. 409: Section 409(p) of the Code was added § 656 of EGTRRA relating to restrictions on the allocation of employer securities in an ESOP maintained by an S corporation. (New).
- Section 1.409(p)-1T of the Regulations was published on July 21, 2003 (68 Fed. Reg. 42970). (New).
  - Section 1.409(p)-1T of the Regulations was published on December 17, 2004 (69 Fed. Reg. 75455). (New).
  - Rev. Proc. 2003-23, 2003-1 C.B. 599 as modified and superseded by Rev. Proc. 2004-14, 2004-1 C.B. 489 allows a direct rollover from an ESOP maintained by an S corporation to an individual retirement plan (IRA). (New).
  - Rev. Rul. 2003-6, 2003-1 C.B. 286 provides guidance with respect to whether an ESOP maintained by an S corporation is eligible for the delayed effective date of § 409(p) under § 656(d)(2) of EGTRRA. (New).
  - Rev. Rul. 2004-4, 2004-1 C.B. 414 provides guidance relating to synthetic equity owned by a disqualified person in a nonallocation year of an ESOP maintained by an S corporation. (New).
11. 411(a):
- Section 411(a) of the Code was amended by § 633 of EGTRRA (as amended by § 411(o) of JCWAA) to provide for faster vesting of matching contributions.
  - Rev. Rul. 2003-65, 2003-1 C.B. 1035. (New).
12. 411(a)(11): Section 411(a)(11)(D) of the Code was added by § 648(a) of EGTRRA (as amended by § 411(r) of JCWAA) to allow amounts attributable to rollover contributions to be disregarded in determining the value of an account balance for involuntary distributions.
13. 411(d)(6):
- *Central Laborers' Pension Fund v. Heinz*, 124 S.Ct. 2230 (2004). (New).
    - Rev. Proc. 2005-23, 2005-18 I.R.B. 991 as modified by Rev. Proc. 2005-76, 2005-50 I.R.B. (December 12, 2005). (New).
  - Section 411(d)(6)(D) and § 411(d)(6)(E) of the Code were added by § 645 of EGTRRA to permit the elimination of certain optional forms of benefit under certain conditions. (New).
    - Section 1.411(d)-4, Q&A-2(e) of the Regulations was published on January 25, 2005 (70 Fed. Reg. 3475) to implement § 411(d)(6)(E). (New).
  - Section 645(b)(3) of EGTRRA directed the Secretary of the Treasury to issue regulations under § 411(d)(6). (New).

- Section 1.411(d)-3 of the Regulations was published on August 12, 2005 (70 Fed. Reg. 47109). (New).
14. 412:
- Rev. Rul. 2004-20, 2004-1 C.B. 546 provides guidance with respect to whether a qualified pension plan can be a § 412(i) plan if the plan holds life insurance contracts and annuity contracts for benefits at normal retirement age in excess of a participant's benefits at normal retirement age under the plan. (New).
  - Notice 2004-59, 2004-2 C.B. 447 provides guidance with respect to restrictions placed on plan amendments following an employer's election of an alternative deficit reduction contribution. (New).
15. 414(v): Section 414(v) of the Code was added by § 631 of EGTRRA (as amended by § 411(o) of JCWAA) to allow for catch-up contributions for individuals age 50 or older.
- Regulations under § 1.414(v) were published on July 8, 2003 (68 Fed. Reg. 40510).
  - Notice 2002-4.
16. 415:
- Section 415(b) of the Code was amended by § 611 of EGTRRA to increase the dollar limit and change the age when the limit is reduced or increased. (New).
  - Rev. Rul. 2001-51, 2001-2 C.B. 427.
  - Section 415(b)(2)(E)(ii) of the Code was amended by § 101(b)(4) of PFEA to fix the percentage at 5.50%. (New).
  - Notice 2004-78, 2004-2 C.B. 879 provides the actuarial assumptions that must be used for distributions with annuity starting dates occurring during the plans years beginning in 2004 and 2005. (New).
  - Section 415(c) of the Code was amended by §§ 611(b) and 632 of EGTRRA (as amended by § 411(p) of JCWAA) to increase the maximum annual additions permitted to the lesser of \$40,000 or 100% of compensation.
  - Rev. Rul. 2001-51, 2001-2 C.B. 427.
  - Section 1.415(c)-2(e) of the Proposed Regulations under § 415 was published on May 31, 2005 (70 Fed. Reg. 31214).
  - Rev. Rul. 2002-27, 2002-1 C.B. 925 provided that "compensation" within the meaning of § 415(c) could in certain situations include "deemed § 125 compensation".
17. 416: Section 416 of the Code was amended by § 613 of EGTRRA (as amended by § 411(k) of JCWAA) to make several changes to the top-heavy rules.

- Section 416(g)(4)(H) of the Code was added by § 613(d) of EGTRRA to provide certain safe harbor § 401(k) plans and § 401(m) plans an exemption from the top-heavy rules.
    - Rev. Rul. 2004-13, 2004-1 C.B. 485.
  - Section 416(c)(1)(C) of the Code was amended by § 613(e) of EGTRRA (as amended by § 411(k)(1) of JCWAA) to provide when a frozen defined benefit plan is exempt from the minimum benefit requirements. (New).
18. 417: Section 1.417(e)-1 of the Regulations was published on July 16, 2003 (68 Fed. Reg. 41906) relating to retroactive annuity starting date. (New).
19. 4975:
- Section 4975 of the Code was amended by § 612 of EGTRRA to allow plan loans for Subchapter S shareholder-employees.
  - Section 4975(f) of the Code was amended by § 240 of AJCA to allow an S corporation distribution on allocated shares to pay off an exempt loan as long as equal amounts are allocated to participant accounts. (New).
20. Katrina Relief:
- Katrina Emergency Tax Relief Act of 2005, P.L. 109-73. (New).
    - Notice 2005-92, 2005-51 I.R.B. (December 19, 2005). (New).
  - Announcement 2005-70, 2005-40 I.R.B. 682. (New).
21. Miscellaneous
- Rev. Rul. 2001-62, 2001-2 C.B. 632 provides guidance with respect to the mortality table under § 415(b)(2)(E)(v) of the Code and the applicable mortality table under § 417(e)(3)(A)(ii)(I) of the Code. (New).
  - Rev. Rul. 2002-42, 2002-1 C.B. 76, provides guidance with respect to a situation where a money purchase pension plan is merged or converted into a profit sharing plan.
  - Rev. Proc. 2002-21, 2002-1 C.B. 911, provides guidance with respect to defined contribution retirement plans maintained by professional employer organizations.
  - Rev. Proc. 2003-86, 2003-2 C.B. 1211, amplifies Rev. Proc. 2002-21 relating to relief provided for certain defined contribution plans maintained by professional employer organizations.
  - Rev. Rul. 2003-11, 2003-1 C.B. 285 provides guidance with respect to satisfying the nondiscrimination rules under § 401(a)(4) of the Code and the minimum coverage requirements under § 410(b) of the Code when applying the increased compensation limit to former employees. (New).

- Rev. Rul. 2004-10, 2004-1 C.B. 484, provides guidance with respect to charging administrative expenses to former and current employees.
- Rev. Rul. 2004-12, 2004-1 C.B. 478 provides guidance with respect to the distribution restrictions applicable to rollover contributions.
- Rev. Rul. 2005-55, 2005-34 I.R.B. 284 provides guidance with respect to medical reimbursement accounts under a profit sharing plan. (New).

The following guidance contains sample or model amendments: Notice 2001-57, 2001-1 C.B. 279 (miscellaneous EGTRRA amendments); Rev. Rul. 2001-62, 2001-2 C.B. 632 (applicable mortality table); Rev. Proc. 2002-29, 2002-2 C.B. 1176 (required minimum distribution amendments); Rev. Proc. 2003-13, 2003-1 C.B. 317 (required language for deemed IRAs); and Notice 2005-5 (automatic rollover).

#### DRAFTING INFORMATION

The principal author of this notice is Dana A. Barry of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number) between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday (a toll free call). Ms. Barry may be reached at (202) 283-9888 (not a toll-free call).