

EMPLOYEE PLANS - ISSUE FOCUS

TERMINATIONS

July 1, 2016

Rev. Proc. 2016-6 (as annually updated) provides that a terminating plan must be amended for all current law which is applicable to the plan even if the date by which the plan is required to be amended has not yet passed. [See also Section 8 of Rev. Proc. 2007-44 regarding plan termination.]

Therefore, even though remedial amendment periods for the Pension Protection Act of 2006 (PPA '06), the U.S. Troop Readiness, Veterans' Care, Katrina Recovery and Iraq Accountability Appropriations Act of 2007, the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART) and Worker, Retiree, and Employer Recovery Act of 2008 (WRERA), the Small Business Jobs Act of 2010 (SBJA), the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010), the Moving Ahead for Progress in the 21st Century Act (MAP-21), the American Taxpayer Relief Act of 2012 (ATRA), the Highway and Transportation Funding Act of 2014 (HATFA), the Cooperative and Small Employer Charity Pension Flexibility Act (CSEC Act) the Consolidated and Further Continuing Appropriations Act of 2015, and the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 may not be closed, a terminating plan is required to be properly amended to conform to these statutory provisions.

This report will update those previously provided Issue Foci with the "New" items listed on the 2015 Cumulative List identified below, as well as other provisions of the several Acts listed above which would be applicable to plans terminating in their 2016 plan year. Please note that this update is not an all inclusive list of required plan changes. Therefore, determination specialists should review terminating plans for compliance with all applicable law in effect at the date of termination.

Appendix

EXPLANATION OF THE “NEW” QUALIFICATION REQUIREMENTS FROM NOTICE 2015-84 (2015 CL)

401(a)(4):

Notice 2015-28, 2015-14 I.R.B. 848, extends the temporary nondiscrimination relief previously established in Notice 2014-5 for certain “closed” defined benefit pension plans.

Change: Notice 2014-5, 2014-2 I.R.B. 276, provided temporary nondiscrimination relief for certain "closed" defined benefit pension plans, by permitting certain sponsors of a DB/DC combo plan (consisting of a closed DB plan and an ongoing DC plan) to demonstrate that the aggregated plans satisfy § 401(a)(4) nondiscrimination requirements on an aggregated basis. Under Notice 2014-5, even if the aggregated plans would not otherwise satisfy required conditions for testing on an aggregated basis, if certain conditions are met (i.e. entire arrangement satisfied nondiscrimination prior to issuance of the Notice) plans get a reprieve from nondiscrimination testing for plan years through 2015, or until such time as additional guidance is issued.

Notice 2015-28 extends the relief provided in Notice 2014-5 for an additional year, in anticipation of the issuance of proposed amendments to § 401(a)(4) regulations, if the conditions of Notice 2014-5 are satisfied. During this extension period, the remaining provisions of the nondiscrimination regulations under § 401(a)(4) (including the rules relating to the timing of plan amendments under Treas. Reg. § 1.401(a)(4)-5) continue to apply.

Effective Date: Notice 2014-5 was issued April 3, 2014, and was generally effective immediately. Notice 2015-28 extends the temporary nondiscrimination relief provided in Notice 2014-5 for an additional year by applying that relief to plan years beginning before 2017, and is generally effective immediately as well.

Plan Language: None required, this is a testing issue only.

401(a)(9):

Notice 2015-49, 2015-30 I.R.B. 79, informs taxpayers that amendments will be proposed to the § 401(a)(9) required minimum distribution regulations to address the use of lump sum payments to replace annuity payments being paid by a qualified defined benefit pension plan and that these amendments are intended to apply as of July 9, 2015, except with respect to certain accelerations of annuity payments described in the notice.

Change: Some defined benefit plans may provide a limited period during which certain retirees who are currently receiving joint and survivor, single life, or other life annuity payments may elect to convert that annuity into a lump sum payable immediately. Because of concerns that these “de-risking” provisions essentially enable the transfer of longevity risk and investment risk from the plan to its retirees, future amendments to § 401(a)(9) regulations would prohibit, in most cases, changes to the annuity payment period for ongoing annuity payments from a defined benefit plan, including changes accelerating (or providing an option to accelerate) ongoing annuity payments.

The Notice provides that until these amended regulations are issued, plans containing a lump sum risk-transferring program will generally receive a caveat on any final determination letter issued to the plan, expressing no opinion as to the federal tax consequences of the lump sum risk-transferring program. Once such final regulations are promulgated, the only provisions that will be permitted are those (1) that were adopted (or specifically authorized by a board, committee, or similar body with authority to amend the plan) prior to July 9, 2015; (2) with respect to which a private letter ruling or determination letter was issued by the IRS prior to July 9, 2015; (3) with respect to which a written communication to affected plan participants stating an explicit and definite intent to implement the lump sum risk-transferring program was received by those participants prior to July 9, 2015; or (4) adopted pursuant to an agreement between the plan sponsor and an employee representative (with which the plan sponsor has entered into a collective bargaining agreement) specifically authorizing implementation of such a program that was entered into and was binding prior to July 9, 2015.

Effective Date: July 9, 2015

Plan Language: The use of de-risking provisions is optional, and as described in the Notice, only those provisions which satisfy the four above-noted conditions for grandfathering are acceptable. Defined benefit plan sponsors indicating in their determination letter submission that the plan contains no such provision will receive a final letter caveated to express no opinion as to the federal tax consequences of the replacement, or proposed replacement, of any joint and survivor, single life or other annuity being paid with a lump sum payment or other accelerated form of distribution

411(f):

Division P of the Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. No. 113-235, section 2 adds § 411(f) which provides a special rule for determining normal retirement age for certain existing defined benefit plans.

Change: Section 2 of Division P of the Consolidated and Further Continuing Appropriations Act of 2015 added IRC § 411(f) to provide a special rule for determining the normal retirement age (NRA) for certain existing defined benefit plans. Under new § 411(f), a defined benefit plan will not be treated as failing to meet applicable Code and ERISA NRA requirements if the plan, on or before December 8, 2014, provided an NRA which is the earlier of (i) an age otherwise permitted under § 411(a)(8); or (2) the age at which a participant completes the number of years (not less than 30) of benefit accrual service specified by the plan. However, this provision only applies with respect to participants in the plan on or before January 1, 2017, or employed by the employer or related group members on or before this date.

Effective Date: December 8, 2014.

Plan Language: Not required. A plan's normal retirement age must otherwise comply with IRC § 411(a)(8) and regulations thereunder.

420:

Section 2007 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 amends § 420 to extend the provisions relating to transfers to December 31, 2025.

Change: Sections 40241 and 40242 of MAP-21 amended IRC § 420 to extend the provisions relating to transfers of excess pension assets to retiree health accounts and to expand those provisions to allow transfers to retiree group term life insurance accounts. Pre-existing law allows an employer sponsoring a defined benefit plan with assets exceeding 125% of the plan's current liability or funding target to transfer excess pension assets to fund retiree health benefits or retiree group term life insurance to an account under the plan. This provision was scheduled to expire after December 31, 2013, however MAP-21 extended this ability through December 31, 2021.

Section 2007 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 further extended this provision for an additional four years through December 31, 2025.

Effective Date: Effective for transfers after December 31, 2013.

Plan Language: Optional. Plan language would be required only if necessary to enable such a transfer.

432(e)(9):

Section 432(e)(9), as amended by the Multiemployer Pension Reform Act of 2014 (MPRA), contained in Division O of the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, permits plan sponsors of multiemployer plans to suspend benefits if certain conditions are satisfied.

Change: MPRA amended IRC § 432(e)(9) and ERISA § 305(e)(9) to permit the sponsor of a multiemployer defined benefit plan in critical and declining status to submit a proposal to suspend benefits in certain situations. MPRA requires approval of a plan sponsor's proposed suspension if the plan is eligible for the proposed suspension and it satisfies §§ 432(e)(9)(C) through (F). Procedural requirements for submitting this proposal are contained in Revenue Procedure 2015-34, 2015-27 I.R.B. 4

Effective Date: June 17, 2015.

Plan Language: Optional, and applicable to multiemployer defined benefit plans only.

Temporary regulations provide guidance to enable plan sponsors of multiemployer plans to suspend benefits if certain conditions are satisfied (80 Fed. Reg. 35207)

Change: As noted above, MPRA amended IRC § 432(e)(9) and ERISA § 305(e)(9) to permit the sponsor of a multiemployer defined benefit plan in critical and declining status to submit a proposal to suspend benefits in certain situations. Implementing temporary regulations provide guidance on administering a vote by multiemployer plan participants regarding suspension of benefits when such a plan is determined to be in critical and declining status. Under these regulations, Treasury may designate one or more service providers to facilitate the administration of the vote, a service provider may assist in distributing the ballot package to eligible voters and collecting and tabulating the votes and if a service provider is designated to collect and tabulate votes, then the service provider will provide the Treasury Department with the report of the results of that vote.

Effective Date: June 17, 2015.

Plan Language: Optional, and applicable to multiemployer defined benefit plans only.