

Additional Guidance Relating to Qualified Plan Compliance Amendment and Filing Deadlines

February 22, 2006

The IRS has recently issued additional guidance relating to qualified plan compliance amendment and filing deadlines. Specifically, the IRS issued Rev. Proc. 2005-76, which extends the *Heinz* deadline; Notice 2005-95, which clarifies the timing for adoption of certain compliance amendments; and Notice 2005-101, which provides a cumulative list of post-GUST changes for plans on Cycle A of the new IRS determination letter application program. (Cycle A covers employers whose EINs end in 1 or 6.) In addition, the IRS has indicated that compliance with the new relative value regulations will be based on a “good faith” compliance standard through 2006.

Rev. Proc. 2005-76 extends to January 1, 2007, the deadline for operational compliance with the Supreme Court’s holding in *Central Laborer’s Pension Fund v. Heinz*, 541 U.S. 739 (2004), which held that the anticutback rule under Code section 411(d)(6) was violated by an amendment to a multiemployer pension plan that expanded the definition of disqualifying postretirement employment and triggered suspension of early retirees’ already accrued benefits. Accordingly, a plan will not be disqualified due to an amendment adopted before June 7, 2004 that, as a result of *Heinz*, violated Code section 411(d)(6) by adding or expanding a provision under which a suspension of benefits occurs on account of certain postretirement service if the plan provides for retroactive benefits as of a date no later than January 1, 2007, restoring any improperly suspended payments, and provides notice to affected participants by that same date. The plan amendment providing these restorative payments must be adopted by the end of the plan’s EGTRRA remedial amendment period.

Notice 2005-95 clarifies the interaction of the amendment timing deadlines set forth in Rev. Proc. 2005-66 (the new determination letter application program) with the deadlines set forth in other guidance and extends the deadline for adoption of certain amendments. Specifically, Notice 2005-95 provides as follows:

[Retroactive Annuity Starting Dates \(RASDs\) \(Please click here to see the April 7, 2004 LawFlash on this topic\)](#)

- If the amendment is required (i.e., a plan provides for an RASD but did not comply with the final regulations), the amendment was required to be adopted by December 31, 2005.
- If the amendment is discretionary (i.e., a plan did not provide for an RASD and the employer wishes to add an RASD), the amendment must be adopted by the end of the plan year in which the amendment is effective (or, if later, December 31, 2005).

Automatic Rollovers ([Please click here to see the February 22, 2005 LawFlash on this topic](#))

- Amendment to comply with the automatic rollover rules must be adopted by the later of December 31, 2005, or the tax filing deadline (including extensions) for the employer's taxable year that includes March 28, 2005 (i.e., September 15, 2006 for a calendar-year employer).

Final 401(k) and 401(m) Regulations ([Please click here to see the July 28, 2005 LawFlash on this topic](#)) and ([Please click here to see the July 2005 White Paper on this topic](#))

- For plan sponsors that amend to implement the regulations for a plan year before the effective date (i.e., plan years beginning on or after January 1, 2006), the deadline for adopting the amendment is the later of December 31, 2005, or the last day of the plan year for which the amendment is effective.
- For plan sponsors that implement the regulations as of the effective date, the amendment must be adopted by the tax filing deadline for the employer's 2006 taxable year (i.e., September 15, 2007, for a calendar-year employer).

Required Minimum Distributions for Defined Benefit Plans

- Amendment must be adopted by the end of the five-year remedial amendment cycle for individually designed plans and by the end of the six-year remedial amendment cycle for preapproved plans, as prescribed by Rev. Proc. 2005-66.

Professional Employer Organizations (PEOs)

- Amendments to comply with the transitional relief for PEOs with respect to qualified defined contribution plans (i.e., either terminate the PEO plan or convert the PEO plan into a multiple-employer plan) must be adopted by the end of the five-year remedial amendment cycle for individually designed plans and by the end of the six-year remedial amendment cycle for preapproved plans, as prescribed by Rev. Proc. 2005-66.

Pension Funding Equity Act (PFEA)

- Amendments to the section 415 limits to comply with PFEA (generally increasing the interest rate used to adjust certain forms of payment for 2004 and 2005) must be adopted by the last day of the first plan year beginning on or after January 1, 2006.

Katrina Emergency Tax Relief Act of 2005 (KETRA) and the Gulf Opportunity Zone Act of 2005 (the GO Zone Act) ([Please click here to see the September 30, 2005 LawFlash on this topic](#)) and ([Please click here to see the January 4, 2006 LawFlash on this topic](#))

- Amendments to provide qualified individuals with the favorable tax treatment offered by KETRA and the GO Zone Act (which extends the relief offered to Hurricane Katrina victims under KETRA to victims of Hurricanes Rita and Wilma) with respect to distributions from eligible retirement plans must be made by the last day of the first plan year beginning on or after January 1, 2007 (January 1, 2009 for governmental plans). Where a plan that does not provide for loans or hardship distributions must be amended to provide for loans or hardship distributions, amendments must be made by the end of

the first plan year beginning on or after January 1, 2007 (as extended by the GO Zone Act).

Notice 2005-101 provides the 2005 cumulative list of changes in plan qualification requirements. The notice is intended to provide guidance to employers in Cycle A of the IRS' new determination letter program that opened February 1, 2006. The list consists of references to statutory provisions and associated guidance that prescribe changes to plan qualification requirements. The list does not provide any model amendment language or explanation of the changes.

Finally, the IRS has indicated that a "good faith" compliance standard will apply with respect to the final relative value regulations (issued in 2003) until January 1, 2007. This provides only very limited relief, since defined benefit plans are still required to provide relative value disclosures for all optional payment forms for distributions beginning on or after February 1, 2006, that comply in good faith with the 2003 final regulations.

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