



2012 Plan Amendment Review No Required Interim Amendments for 2012!

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As the year comes to a close, many practitioners are reviewing their client's qualified retirement plans to determine whether any plan amendment is necessary for 2012. These plans include on-going and terminating defined contribution and defined benefit plans. This ASCi Alert 12-06 summarizes the responsibility practitioners have to ensure that their client's plans remain up-to-date with legislative and regulatory requirements and the need to amend plans for 2012.

With recent developments, the bottom line is that there are no required interim amendments required for either on-going defined contribution plans or defined benefit plans for 2012! However, employers may need to make certain discretionary amendments to their plans by the end of the 2012 plan year.

Required Interim Amendments for 2012

In order to remain qualified, employers must amend their retirement plans to reflect legislative and regulatory changes affecting the qualification requirements. These are considered "required interim amendments." An employer must adopt a required interim amendment by the end of the remedial amendment period (RAP) for the plan. Generally, the RAP deadline is the due date (including extensions) for the employer's tax return with respect to the tax year in which the change becomes effective.

ASci Insight - The Internal Revenue Service requires practitioners who are pre-approved (i.e., prototype and volume submitter) plan sponsors to make all necessary interim amendments to their plans and to timely communicate them to all adopting employers. This requirement is a condition for being a pre-approved plan sponsor. Failure to certify to satisfaction of this requirement could jeopardize a practitioner's ability to sponsor pre-approved plans and require adopting employers to switch their plans to another pre-approved plan sponsor.

Over the past several years, legislative and regulatory changes have required various required interim amendments (including PPA, HEART and WRERA). So are there any necessary required interim amendments for 2012 for on-going plans?

- **Defined Contribution Plans** - There are no required interim amendments for 2012 for on-going defined contribution plans for 2012.

ASci Insight – Earlier this year, the Internal Revenue Service issued Revenue Ruling 2012-3 relating to the application of the qualified joint and survivor annuity rules to certain lifetime income deferred annuity contracts and Notice 2012-6 relating to group trusts holding assets of Puerto Rican employees. This IRS guidance does not require any interim amendment.

- **Defined Benefit Plans** – The IRS recently announced a further delay for the required interim amendment reflecting IRC §436, which had been due by the end of the 2012 plan year. No other required interim amendments were due for the 2012 plan year. Under IRS Notice 2012-70, the new deadline to adopt a required interim amendment for Code §436 generally is the end of the 2013 Plan Year. Any amendment needed for Moving Ahead for Progress in the 21st Century Act (MAP-21) would be reflected in the required interim amendment for IRC §436.

ASci Insight – IRS already had delayed the deadline for the Code §436 amendment to the end of the 2012 plan year. (See IRS Notice 2011-96, which also provided a model Code §436 required interim amendment.) The new IRS announcement delays the deadline again to the end of the 2013 plan year. Unfortunately, the IRS waited to issue this guidance until after many practitioners (both drafters of pre-approved and individually designed plans) had provided the required interim amendment to employers. Pre-approved plan sponsors and employers who have already provided the Code §436 interim amendment to adopting employers need not rescind the amendment. However, if a sponsor or employer has not yet adopted the required interim amendment, ASCi recommends waiting until next year to do so since new required interim amendments may be necessary for the 2013 plan year.

ASci Insight - Recently, the IRS announced that plans which are utilizing the special relief for employers affected by Hurricane Sandy need to be amended by the end of the 2013 plan year. (See IRS Announcement 2012-44.) This will require an interim amendment for defined contribution and defined benefit plans that utilize the relief.

Discretionary Amendments for 2012

Discretionary amendments are not required to maintain a plan's qualified status, but instead reflect an employer's desire to change its plan design. A failure to adopt such an amendment would not result in a plan's potential disqualification. However, a discretionary amendment will control the operation of the plan.

If an amendment is discretionary, the employer must adopt the amendment by the end of the plan year in which the plan amendment is effective. So, for a calendar plan year plan, the employer generally must adopt the amendment by December 31, 2012 to make the amendment effective for the 2012 plan year. Examples of discretionary amendments include changing the conditions for plan eligibility, amending the plan's vesting schedule, or modifying a plan's allocation method conditions or distribution options.

ASCI Insight – Although the deadline for adopting a discretionary amendment may be the end of the relevant year. Employers may need to adopt an amendment earlier to avoid anti-cutback issues. IRS has stated that certain protected benefits cannot be reduced or eliminated. Once a participant's right to a benefit has accrued, an employer may only change such benefit provision prospectively.

Plan Termination Amendments

Employers must amend a terminating plan for all laws and regulations in effect as of the date of termination. This rule applies even if the remedial amendment period that would apply to an on-going plan would allow a later amendment.

If an employer intends on terminating a plan by the end of 2012, it must amend the plan to reflect the required provisions, including all relevant required interim amendments.

ASCI Insight – ASCi provides termination amendments for its pre-approved defined contribution and defined benefit plans. ASCi generally recommends that the employer submit a terminating plan (including a pre-approved plan), as amended for termination, to the IRS for a determination letter using Form 5310.

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