

## **2012 Cumulative List of Changes in Plan Qualification Requirements**

Notice 2012-76

### **I. PURPOSE**

This notice contains the 2012 Cumulative List of Changes in Plan Qualification Requirements (2012 Cumulative List) described in section 4 of Rev. Proc. 2007-44, 2007-2 C.B. 54. The 2012 Cumulative List is to be used by plan sponsors and practitioners submitting determination letter applications for plans during the period beginning February 1, 2013 and ending January 31, 2014.

Plans using this Cumulative List will primarily be single employer individually designed defined contribution plans and single employer individually designed defined benefit plans that are in Cycle C, and § 414(d) governmental plans (including governmental multiemployer or governmental multiple employer plans) that choose to file during Cycle C. Generally an individually designed plan is in Cycle C if the last digit of the employer identification number of the plan sponsor is 3 or 8. In addition, the 2012 Cumulative List will be used by sponsors of defined benefit pre-approved plans (that is, defined benefit plans that are master and prototype (M&P) or volume submitter (VS) plans) for the second submission under the remedial amendment cycle described in Rev. Proc. 2007-44.

The list of changes in section IV 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. 2007-44.

### **II. BACKGROUND**

Rev. Proc. 2007-44 sets forth procedures for issuing opinion, advisory, and determination letters and describes 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. 2007-44 provides the deadline for timely adoption of an interim amendment or discretionary amendment.

Under section 4 of Rev. Proc. 2007-44, the Internal Revenue Service announced its intention to annually publish a Cumulative List to identify statutory, regulatory, and guidance changes that must be taken into account in submissions by plan sponsors to the Service requesting opinion, advisory, and determination letters

whose submission period begins on February 1st following issuance of the Cumulative List.

In Notice 2011-97, 2011-52 I.R.B. 923, the Service published the 2011 Cumulative List of Changes in Plan Qualification Requirements (2011 Cumulative List).<sup>1</sup>

Rev. Proc. 2012-50, 2012-50 I.R.B. 708, provides that the sponsor of an individually designed governmental plan may elect Cycle E (instead of Cycle C) as the plan's second remedial amendment cycle. The election is made by filing a determination letter application for the plan during the one-year submission period for the second Cycle E (February 1, 2015 through January 31, 2016).

### III. APPLICATION OF 2012 CUMULATIVE LIST

This notice is being issued in conjunction with the determination letter program for individually designed plans eligible for Cycle C. In accordance with Rev. Proc. 2007-44, the Service will start accepting determination letter applications for Cycle C individually designed plans beginning on February 1, 2013. The 12-month submission period for Cycle C plans will end on January 31, 2014. In addition, the Service will start accepting opinion and advisory letter applications for defined benefit pre-approved plans beginning on February 1, 2013. The 12-month submission period for non-mass submitter sponsors and practitioners, word-for-word identical adopters, and M&P minor modifier placeholder applications will end on January 31, 2014. The 9-month submission period for mass submitters will end on October 31, 2013, as provided in section 18.02(2) of Rev. Proc. 2007-44.

The 2012 Cumulative List, set forth in section IV of this notice, informs plan sponsors of issues the Service has specifically identified for review in determining whether a plan filing in Cycle C has been properly updated. Specifically, the 2012 Cumulative List reflects law changes under the Pension Protection Act of 2006 (PPA '06), Pub. L. 109-280; the U.S. Troop Readiness, Veterans' Care, Katrina Recovery and Iraq Accountability Appropriations Act, 2007, Pub. L. 110-28; the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act), Pub. L. 110-245; the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA), Pub. L. 110-458; the Small Business Jobs Act of 2010 (SBJA), Pub. L. 111-240; the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010), Pub. L. No. 111-192; and the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), Pub. L. 112-141.

---

<sup>1</sup> For previous cumulative lists, see Notice 2010-90, 2010-52 I.R.B. 909; Notice 2009-98, 2009-52 I.R.B. 974; Notice 2008-108, 2008-2 C.B. 1275; Notice 2007-94, 2007-2 C.B. 1179; Notice 2007-3, 2007-1 C.B. 255; Notice 2005-101, 2005-2 C.B. 1219; and Notice 2004-84, 2004-2 C.B. 1030 for the 2010, 2009, 2008, 2007, 2006, 2005, and 2004 Cumulative Lists, respectively.

Except as provided below, the Service will not consider in its review of any determination letter application for the submission period that begins February 1, 2013, any:

- (1) guidance issued after October 1, 2012;
- (2) statutes enacted after October 1, 2012;
- (3) qualification requirements first effective in 2014 or later; or
- (4) statutory provisions that are first effective in 2013, for which there is no guidance identified in this notice.

However, in order to be qualified, a plan must comply with all relevant qualification requirements, not just those on the 2012 Cumulative List.

The Service's review of a determination letter application filed in the Cycle C submission period will not consider the 2010 final hybrid plan regulations (other than with respect to § 411(a)(13)(A)) unless the plan has been amended to satisfy those regulations. For this purpose, the Service will only consider those provisions of the regulations that are effective for plan years beginning on or after January 1, 2011.

The 2012 Cumulative List includes the following guidance issued after October 1, 2012:

Final Regulations under section 411(d)(6) which provide an additional limited exception to the anti-cutback rules to permit a plan sponsor that is a debtor in a bankruptcy proceeding to amend its single-employer defined benefit plan to eliminate a single-sum distribution option (or other optional form of benefit providing for accelerated payments) under the plan if certain specified conditions are satisfied (77 Fed Reg. 66915).

Notice 2012-70, 2012-51 I.R.B., which extends the deadline previously set forth in Notice 2011-96, 2011-52 I.R.B. 915, to amend a defined benefit plan to satisfy the requirements of § 436 and provides associated relief from the requirements of § 411(d)(6).

With respect to matters addressed by proposed regulations identified in the footnotes of section IV of this notice, the Service's review of the plan will be based on a reasonable interpretation of the statute, existing final regulations, or other published guidance. For this purpose, compliance with proposed regulations will be treated as meeting that standard. However, a determination letter cannot be relied on with respect to whether the plan complies with the proposed regulations.

Terminating plans must include all law changes in effect at the time of termination. See section 8 of Rev. Proc. 2007-44 regarding plan termination.

#### IV. 2012 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 that differ from those that were on the 2011 or earlier Cumulative Lists as “(New).”

Items from the 2007 Cumulative List that apply solely to defined contribution plans have been deleted from the 2012 Cumulative List. Thus, the 2012 Cumulative List contains those plan qualification requirements listed in the 2007 Cumulative List that are applicable to defined benefit pre-approved plans, the plan qualification requirements in the 2008, 2009, 2010, and 2011 Cumulative Lists, as well as additional 2012 plan qualification requirements. The deletions have been made to enhance the utility of the cumulative list, by removing items that would have been previously reviewed in the case of a plan that was submitted during the initial Cycle C submission period (February 1, 2008 – January 31, 2009). However, if a plan has not been previously reviewed for items on earlier cumulative lists, the items from the earlier cumulative lists must be taken into account.

1. 401(a):

- Notice 2007-69, 2007-2 C.B. 468, provides temporary relief for certain pension plans under which the definition of normal retirement age may be required to be changed to comply with the regulations, but only until the first day of the first plan year that begins after June 30, 2008. (2007 C.L.)
- Notice 2008-98, 2008-2 C.B. 1080, provides that the Service and Treasury intend to amend the normal retirement age regulations to change the effective date for governmental plans to plan years beginning on or after January 1, 2011. (2009 C. L.)
- Notice 2009-86, 2009-46 I.R.B. 629, provides that the Service and Treasury intend to amend the normal retirement age regulations to change the effective date for governmental plans to plan years beginning on or after January 1, 2013. (2010 C. L.)
- Rev. Rul. 2008-40, 2008-2 C.B. 166, provides that the transfer of amounts from a trust under a plan qualified under § 401(a) to a nonqualified foreign trust is treated as a distribution from the transferor plan and that transfer of assets and liabilities from a qualified plan to a plan that satisfies § 1165 of the Puerto Rico

Code is also treated as a distribution from the transferor plan. (2008 C. L.)

- Rev. Rul. 2008-45, 2008-2 C.B. 403, provides that the exclusive benefit rule of § 401(a) is violated if the sponsorship of a qualified retirement plan is transferred from an employer to an unrelated taxpayer and the transfer is not in connection with a transfer of business assets or operations from the employer to the unrelated taxpayer. (2008 C. L.)
- Rev. Rul. 2011-1, 2011-2 I.R.B. 251, revises the generally applicable rules for group trusts and, if certain requirements are met, permits the participation in group trusts of custodial accounts under § 403(b)(7), retirement income accounts under § 403(b)(9), and governmental retiree benefit plans under § 401(a)(24). This revenue ruling also modifies the transition relief provided in Rev. Rul. 2008-40. (2011 C. L.)
- Notice 2012-6, 2012-3 I.R.B. 293, extends and expands the transition relief provided under Rev. Rul. 2011-1 for certain group trusts, certain retirement trusts that qualify under the Puerto Rico Internal Revenue Code that participate in group trusts, and certain qualified retirement plans that benefit Puerto Rico residents. The notice also provides additional time for governmental retiree benefit plans described in § 401(a)(24) to be amended to satisfy the applicable requirements of Rev. Rul. 2011-1. (New)
- Notice 2012-29, 2012-18 I.R.B. 872, provides that the Service and Treasury intend to modify the normal retirement age regulations to clarify that governmental plans that do not provide for in-service distributions before age 62 do not need to have a definition of normal retirement age and to modify the age-50 safe harbor rule for qualified public safety employees. The notice also provides that the Service and Treasury intend to amend the normal retirement age regulations to extend the effective date for governmental plans to annuity starting dates that occur in plan years beginning on or after the later of (1) January 1, 2015 or (2) the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date that is 3 months after the final regulations are published in the Federal Register. (New)

2. 401(a)(5): PPA '06 § 861(a)(1) amended § 401(a)(5)(G) with respect to governmental plans. (2008 C. L.)

3. 401(a)(9):

- Pursuant to PPA '06 § 823, final regulations under § 401(a)(9) were published on September 8, 2009 (74 Fed. Reg. 45993), which permit a governmental plan to comply with the required minimum

distribution rules of § 401(a)(9) by using a reasonable and good faith interpretation of the statute. (2009 C. L.)

- Section 201(a) of WRERA added § 401(a)(9)(H) which provides a suspension of the required minimum distribution rules for 2009 applicable to defined contribution plans. (2010 C. L.)
  - Notice 2009-82, 2009-41 I.R.B. 491, provides guidance relating to the suspension of the required minimum distribution rules for 2009 applicable to defined contribution plans. (2010 C. L.)

4. 401(a)(22):

- Notice 2011-19, 2011-11 I.R.B. 550, provides that the terms readily tradable on an established securities market and readily tradable on an established market mean employer securities that are readily tradable on an established securities market within the meaning of § 1.401(a)(35)-1(f)(5) for purposes of § 401(a)(22). Notice 2011-19 is effective for plan years that begin on or after January 1, 2012, except for certain plans that have a delayed effective date. (2011 C. L.)

5. 401(a)(26): PPA '06 § 861(a)(1) amended § 401(a)(26)(G) with respect to governmental plans. (2008 C. L.)

6. 401(a)(28)(C):

- Notice 2011-19, 2011-11 I.R.B. 550, provides that the terms readily tradable on an established securities market and readily tradable on an established market mean employer securities that are readily tradable on an established securities market within the meaning of § 1.401(a)(35)-1(f)(5) for purposes of § 401(a)(28)(C). Notice 2011-19 is effective for plan years that begin on or after January 1, 2012, except for certain plans that have a delayed effective date. (2011 C. L.)

7. 401(a)(35): PPA '06 § 901(a)(1) added § 401(a)(35) requiring that defined contribution plans provide employees with the freedom to divest publicly traded employer securities. (2008 C. L.)

- Notice 2006-107, 2006-2 C.B. 1114. (2008 C. L.)
- Notice 2008-7, 2008-1 C.B. 276, extends certain transitional guidance and transitional relief provided to certain defined contribution plans holding publicly traded employer securities under Notice 2006-107. (2008 C. L.)
- WRERA § 109(a) amended the definition of one-participant retirement plan under § 401(a)(35)(E)(iv). (2009 C. L.)
- Notice 2009-97, 2009-52 I.R.B. 972, extends the deadline to amend for § 401(a)(35) to the last day of the first plan year that begins on or after January 1, 2010. (2010 C. L.)

- Final regulations under § 401(a)(35) were published on May 19, 2010 (75 Fed. Reg. 27927). (2010 C. L.)
8. 401(a)(36): PPA '06 § 905(b) added § 401(a)(36) regarding distributions to a participant who has attained age 62 and who has not separated from employment at the time of the distribution. (2008 C. L.)
  9. 401(a)(37): HEART Act § 104(a) added § 401(a)(37) with respect to benefits payable on the death of a plan participant while performing qualified military service. (2010 C. L.)
    - Notice 2010-15, 2010-6 I.R.B. 390, provides guidance regarding HEART Act § 104(a). (2010 C. L.)
  10. 401(k) & 401(m)<sup>2</sup>:
    - PPA '06 § 826 modified the rules relating to distributions from a § 401(k) plan on account of a participant's hardship to permit the plan to treat a participant's beneficiary under the plan the same as the participant's spouse or dependent. (2008 C. L.)
      - Notice 2007-7, 2007-1 C.B. 395, provides guidance regarding PPA '06 § 826. (2008 C. L.)
      - Announcement 2007-59, 2007-1 C.B. 1448, provides that a plan will not fail to satisfy the requirements of a § 401(k) safe harbor plan because of a mid-year change to implement the PPA '06 § 826 hardship withdrawals. (2008 C. L.)
    - PPA '06 § 827 added § 401(k)(2)(B)(i)(V) which permits reservists called to active duty after September 11, 2001 and before 2008 to take in-service distributions from a § 401(k) plan. (2008 C. L.)
    - Section 107(a) of the HEART Act extends the applicability of the qualified reservist distribution to individuals ordered or called to active duty after December 31, 2007. (2009 C. L.)
      - Notice 2010-15, 2010-6 I.R.B. 390, provides guidance regarding HEART Act § 107. (2010 C. L.)
    - PPA '06 § 861(a)(2) amended § 401(k)(3)(G) with respect to governmental plans. (2008 C. L.)
    - PPA '06 § 902(e)(3) eliminated the gap period income rule for excess contributions in § 401(k)(8)(A)(i). (2008 C. L.)
    - PPA '06 § 902 added § 401(k)(13) with respect to qualified automatic contribution arrangements. (2008 C. L.)
      - Final regulations under § 401(k) with respect to qualified automatic contribution arrangements were published on February 24, 2009 (74 Fed. Reg. 8200). (2009 C. L.)

---

<sup>2</sup> Proposed amendments to the regulations under § 401(k) and § 401(m) were published on May 18, 2009 (74 Fed. Reg. 23134) and may be relied upon until final regulations are issued.

- Rev. Rul. 2009-30, 2009-39 I.R.B. 391, provides information with respect to automatic contribution increases under automatic contribution arrangements. (2009 C. L.)
  - Notice 2009-65, 2009-39 I.R.B. 413, provides sample amendments that plan sponsors can use to add automatic contribution features to their plans. (2009 C. L.)
  - PPA '06 § 902(e)(3) eliminated the gap period income rule for excess aggregate contributions in § 401(m)(6)(A). (2008 C. L.)
  - PPA '06 § 902 added § 401(m)(12) with respect to qualified automatic contribution arrangements. (2008 C. L.)
    - Final regulations under § 401(m) with respect to qualified automatic contribution arrangements were published on February 24, 2009 (74 Fed. Reg. 8200). (2009 C. L.)
11. 402(c)(2)(A): PPA '06 § 822(a) amended § 402(c)(2)(A) to permit nontaxable distributions from a qualified plan to be directly rolled over tax-free to either another qualified plan or a § 403(b) plan if the separate accounting requirements are met. (2008 C. L.)
12. 402(c)(11): PPA '06 § 829(a)(1) added § 402(c)(11) to allow nonspouse beneficiaries to directly roll over distributions from a qualified plan to an individual retirement plan. (2008 C. L.)
- Notice 2007-7, 2007-1 C.B. 395, provides guidance regarding § 402(c)(11). (2008 C. L.)
  - WRERA § 108(f) requires that plans provide for nonspouse beneficiary rollovers under § 402(c)(11), effective for plan years beginning after December 31, 2009. (2009 C. L.)
13. 402(f): PPA '06 § 1102(a) provides that notice required to be provided under § 402(f) may be provided as much as 180 days before the annuity starting date.<sup>3</sup> (2008 C. L.)
- Notice 2007-7, 2007-1 C.B. 395, provides guidance regarding PPA '06 § 1102. (2008 C. L.)
  - Notice 2009-68, 2009-39 I.R.B. 423, provides two safe harbor explanations that may be provided to recipients of eligible rollover distributions from an employer to satisfy § 402(f). (2009 C. L.)
  - WRERA § 108(f)(2) amended § 402(f)(2)(A) with respect to the definition of eligible rollover distribution. (2009 C. L.)
14. 402(g)(2): WRERA § 109(b)(3) amended § 402(g)(2)(A)(ii) to eliminate the distribution of gap period earnings with excess deferrals. (2009 C. L.)

---

<sup>3</sup> Proposed regulations under § 402(f) were published on October 9, 2008 (73 Fed. Reg. 59575) and may be relied upon until final regulations are issued.



15. 402A: SBJA § 2112 added § 402A(c)(4) which permits rollovers from a plan account other than a designated Roth account to the plan's designated Roth account. (2010 C. L.)
  - Notice 2010-84, 2010-51 I.R.B. 872, provides guidance regarding § 402A(c)(4). (2010 C. L.)
16. 408A(e): PPA '06 § 824 added § 408A(e) which permits rollovers to Roth IRAs from accounts that are not designated Roth accounts that are part of qualified plans, § 403(b) plans, and § 457 plans. (2008 C. L.)
  - Notice 2008-30, 2008-1 C.B. 638, provides guidance regarding § 408A(e). (2008 C. L.)
17. 409:
  - Notice 2011-19, 2011-11 I.R.B. 550, provides that the terms readily tradable on an established securities market and readily tradable on an established market mean employer securities that are readily tradable on an established securities market within the meaning of § 1.401(a)(35)-1(f)(5) for purposes of § 409(h)(1)(B) and § 409(l). Notice 2011-19 is effective for plan years that begin on or after January 1, 2012, except for certain plans that have a delayed effective date. (2011 C. L.)
18. 411(a): PPA '06 § 904 amended § 411(a) to provide for faster vesting of employer nonelective contributions. (2008 C. L.)
  - Notice 2007-7, 2007-1 C.B. 395, provides guidance regarding § 411(a), as amended by § 904 of PPA '06. (2008 C. L.)
  - Rev. Rul. 2012-4, 2012-8 I.R.B. 386, describes whether a qualified defined benefit pension plan that accepts a direct rollover of an eligible rollover distribution from a qualified defined contribution plan maintained by the same employer satisfies §§ 411 and 415 in a case in which the defined benefit plan provides an annuity resulting from the direct rollover. (New).
19. 411(a)(11): PPA '06 § 1102(a) provides that notice required to be provided under § 411(a)(11) may be provided as much as 180 days before the annuity starting date. Section 1102(b) of PPA '06 requires that the notice under § 411(a)(11) also include a description of the consequences of failing to defer receipt of a distribution.<sup>4</sup> (2008 C. L.)
  - Notice 2007-7, 2007-1 C.B. 395, provides guidance regarding PPA '06 § 1102. (2008 C. L.)

---

<sup>4</sup> Proposed regulations under § 411(a)(11) were published on October 9, 2008 (73 Fed. Reg. 59575). Until final regulations are issued, a plan will be treated as complying with § 411(a)(11) if (1) the plan complies with either the proposed regulations or Q&A-32 and Q&A-33 in Notice 2007-7 or (2) the plan administrator makes a reasonable attempt to comply with § 411(a)(11).

20. 411(a)(13): PPA '06 § 701(b)(2) added § 411(a)(13) with respect to special vesting rules for applicable defined benefit plans, such as cash balance plans. (2008 C. L.)
- Notice 2007-6, 2007-1 C.B. 272, provides guidance regarding cash balance plans and other hybrid defined benefit plans. (2008 C. L.)
  - WRERA § 107(b)(2) amended § 411(a)(13)(A). (2009 C. L.)
  - Notice 2009-97, 2009-52 I.R.B. 972, extends the deadline for amending cash balance and other applicable defined benefit plans, within the meaning of § 411(a)(13)(C), to meet the requirements of § 411(a)(13) (other than § 411(a)(13)(A)) to the last day of the first plan year that begins on or after January 1, 2010. (2010 C. L.)
  - Final Regulations under § 411(a)(13) were published on October 19, 2010 (75 Fed. Reg. 64123).<sup>5</sup> (2010 C. L.)
  - Notice 2010-77, 2010-51 I.R.B. 851, extends the deadline for amending cash balance and other applicable defined benefit plans, within the meaning of § 411(a)(13)(C), to meet the requirements of § 411(a)(13) (other than § 411(a)(13)(A)) to the last day of the first plan year that begins on or after January 1, 2011. (2010 C. L.)
  - Notice 2011-85, 2011-44 I.R.B. 605, extends the deadline for adopting an interim or discretionary amendment under § 411(a)(13) (other than § 411(a)(13)(A)). (2011 C. L.)
  - Notice 2012-61, 2012-42 I.R.B. 479, provides that certain provisions in the 2010 final hybrid plan regulations will not be effective for plan years beginning before January 1, 2014. (New)
21. 411(b)(1):<sup>6</sup>
- Rev. Rul. 2008-7, 2008-1 C.B. 419, addresses (1) the application of the backloading provisions of § 411(b)(1)(A), (B), and (C) to defined benefit cash balance plans and (2) the use of a “greater of” formula in the instance of a conversion of a defined benefit pension plan to a cash balance plan, including limited § 7805(b) relief. (2008 C. L.)
22. 411(b)(5): PPA '06 § 701(b)(1) added § 411(b)(5) with respect to applicable defined benefit plans, such as cash balance plans, and special rules relating to age. (2008 C. L.)
- Notice 2007-6, 2007-1 C.B. 272, provides guidance regarding cash balance plans and other hybrid defined benefit plans. (2008 C. L.)
  - WRERA § 107(b)(1) amended § 411(b)(5). (2009 C. L.)

<sup>5</sup> Proposed regulations under § 411(a)(13) were published on October 19, 2010 (75 Fed. Reg. 64197) and may be relied upon until final regulations are issued.

<sup>6</sup> Proposed regulations under § 411(b)(1) were published on October 19, 2010 (75 Fed. Reg. 64197) with respect to a variable interest crediting rate that potentially can be negative in any given year. Proposed regulations under § 411(b)(1) were published on June 18, 2008 (73 Fed. Reg. 34665) with respect to the application of the accrual rule where plan benefits are determined on the basis of the greater of two or more separate formulas.

- Notice 2009-97, 2009-52 I.R.B. 972, extends the deadline for amending cash balance and other applicable defined benefit plans, within the meaning of § 411(a)(13)(C), to meet the requirements of § 411(b)(5) to the last day of the first plan year that begins on or after January 1, 2010. (2010 C. L.)
  - Final Regulations under § 411(b)(5) were published on October 19, 2010 (75 Fed. Reg. 64123).<sup>7</sup> (2010 C. L.)
  - Notice 2010-77, 2010-51 I.R.B. 851, extends the deadline for amending cash balance and other applicable defined benefit plans, within the meaning of § 411(a)(13)(C), to meet the requirements of § 411(b)(5) to the last day of the first plan year that begins on or after January 1, 2011. (2010 C. L.)
  - Notice 2011-85, 2011-44 I.R.B. 605, announces that the Treasury Department and the Service intend to amend the 2010 final hybrid plan regulations to postpone the effective/applicability date of § 1.411(b)(5)-1(d)(1)(iii), (d)(1)(vi), and (d)(6)(i) to plan years that begin on or after a date to be specified in those regulations that is not earlier than January 1, 2013. This notice also extends the deadline for adopting an interim or discretionary amendment under § 411(b)(5). (2011 C. L.)
  - Notice 2012-61, 2012-42 I.R.B. 479, provides that certain provisions in the 2010 final hybrid plan regulations will not be effective for plan years beginning before January 1, 2014. (New)
23. 411(d)(6):
- Final Regulations under § 411(d)(6), which provide an additional limited exception to the anti-cutback rules to a plan sponsor who is a debtor in a bankruptcy proceeding, were published on October 8, 2012 (77 Fed Reg. 66915). (New)
24. 414(d): PPA '06 § 906(a)(1) added language to the definition of governmental plan in § 414(d) with respect to Indian tribal governments. (2008 C. L.)
- Notice 2007-67, 2007-2 C.B. 467, extends the transition relief for plans subject to PPA '06 § 906 that was originally provided in Notice 2006-89, 2006-2 C.B. 772. (2008 C. L.)
25. 414(f)(6): PPA '06 § 1106(b) added § 414(f)(6) with respect to a multiemployer status election. Section 6611(a)(2) and (b)(2) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 amends § 414(f)(6). (2008 C. L.)
26. 414(u):

---

<sup>7</sup> Proposed regulations under § 411(b)(5) also were published on October 19, 2010 (75 Fed. Reg. 64197) and may be relied upon until final regulations are issued.

- HEART Act § 104(b) amended § 414(u) by adding § 414(u)(9) regarding how a plan may provide benefit accruals for a person who dies or becomes disabled while performing qualified military service. (2010 C. L.)
    - Notice 2010-15, 2010-6 I.R.B. 390, provides guidance regarding HEART Act § 104(b). (2010 C. L.)
  - Section 105(b)(1) of the HEART Act added § 414(u)(12) with respect to the treatment of differential wage payments during the period a person, while on active duty, is performing service in the uniformed services. (2010 C. L.)
    - Notice 2010-15, 2010-6 I.R.B. 390, provides guidance regarding HEART Act § 105(b)(1). (2010 C. L.)
27. 414(w): PPA '06 § 902(d)(1) added § 414(w) with respect to eligible automatic contribution arrangements. (2008 C. L.)
- WRERA § 109(b)(4), (5), and (6) amended § 414(w)(3), (5), and (6), respectively. (2009 C. L.)
  - Final regulations under § 414(w) with respect to eligible automatic contribution arrangements were published on February 24, 2009 (74 Fed. Reg. 8200). (2009 C. L.)
  - Rev. Rul. 2009-30, 2009-39 I.R.B. 391, provides information with respect to automatic contribution increases under automatic contribution arrangements. (2009 C. L.)
  - Notice 2009-65, 2009-39 I.R.B. 413, provides sample amendments that plan sponsors can use to add automatic contribution features to their plans. (2009 C. L.)
28. 414(x): PPA '06 § 903(a) added § 414(x) with respect to special rules for eligible combined plans that consist of a defined benefit plan and a qualified cash or deferred arrangement. (2010 C. L.)
29. 415:
- WRERA § 103(a) changed the deadline to adopt PFEA amendments from the end of the 2008 plan year to the end of the 2009 plan year. (2009 C. L.)
  - PPA '06 § 303 amended § 415(b)(2)(E)(ii) regarding the interest rate assumption for applying benefit limitations to lump sum distributions. (2008 C. L.)
  - PPA '06 § 832(a) amended § 415(b)(3) to eliminate the active participant restriction from the "average compensation for high 3 years" definition. (2008 C. L.)
  - PPA '06 § 906(b)(1)(A) and (B) modified §§ 415(b)(2)(H) and 415(b)(10), respectively, regarding Indian tribal governments. (2008 C. L.)
  - PPA '06 § 867(a) amended § 415(b)(11) to remove the 100% of compensation limitation for a church plan participant if the participant

has never been a highly compensated employee of the church.  
(2008 C. L.)

- WRERA § 103(b)(2)(B)(i) amended § 415(b)(2)(E)(v) to change the mortality table to the applicable mortality table within the meaning of § 417(e)(3)(B). (2009 C. L.)
- Rev. Rul. 2012-4, 2012-8 I.R.B. 386, describes whether a qualified defined benefit pension plan that accepts a direct rollover of an eligible rollover distribution from a qualified defined contribution plan maintained by the same employer satisfies §§ 411 and 415 in a case in which the defined benefit plan provides an annuity resulting from the direct rollover. (New)

30. 416:

- PPA '06 § 902(c) amended § 416(g)(4)(H) to include a plan that consists solely of a cash or deferred arrangement described in § 401(k)(13) and matching contributions with respect to which the requirements of § 401(m)(12) are met in the list of plans that are not top heavy. (2008 C. L.)

31. 417:

- PPA '06 § 1102(a) provides that notice required to be provided under § 417 may be provided as much as 180 days before the annuity starting date.<sup>8</sup> (2008 C. L.)
  - Notice 2007-7, 2007-1 C.B. 395, provides guidance regarding PPA '06 § 1102. (2008 C. L.)
- PPA '06 § 302(b) amended the applicable interest rate and mortality table to be used for determining the present value of lump sum distributions in § 417(e)(3). (2008 C. L.)
  - Rev. Rul. 2007-67, 2007-2 C.B. 1047, addresses the mortality tables required by § 417(e)(3). (2008 C. L.)
  - Notice 2008-30, 2008-1 C.B. 638, provides guidance regarding PPA '06 § 302. (2008 C. L.)
  - WRERA § 103(b)(2)(A) amended § 417(e)(3)(D)(i) by striking “clause (ii)” and inserting “subparagraph (C)”. (2009 C. L.)
- PPA '06 § 1004(a) added the qualified optional survivor annuity benefit to § 417. (2008 C. L.)
  - Notice 2008-30, 2008-1 C.B. 638, provides guidance regarding PPA '06 § 1004. (2008 C. L.)
- Rev. Rul. 2012-3, 2012-6 I.R.B. 383, describes how the qualified joint and survivor annuity (“QJSA”) and the qualified preretirement survivor annuity (“QPSA”) rules, described in §§ 401(a)(11) and 417, apply when a deferred annuity contract is purchased under a profit sharing plan. (New)

---

<sup>8</sup> Proposed regulations under § 417 were published on October 9, 2008 (73 Fed. Reg. 59575) and may be relied upon until final regulations are issued.

32. 420:
- Section 6613 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq, Accountability Appropriations Act, 2007, amends § 420(c)(3)(A) regarding minimum cost requirements for transfers of excess pension assets to retiree health accounts. (2007 C.L.)
  - PPA '06 § 114(d)(1) modified the definition of the term "excess pension assets" in § 420(e)(2). Section 6612(b) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, amends § 420(e)(2)(B). (2007 C.L.)
  - Sections 40241 and 40242 of MAP-21 amend § 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. (New)
33. 431(b)(8):
- PRA 2010 § 211(a)(2) added § 431(b)(8), which provides two special funding rules available to multiemployer plans. (2011 C. L.)
    - Notice 2010-83, 2010-51 I.R.B. 862, provides guidance with respect to the special funding rules under § 431(b)(8). (2011 C. L.)
34. 432: PPA '06 § 212(a) added § 432 which requires that a funding improvement plan or a rehabilitation plan be adopted for multiemployer plans in endangered or critical status and provides for certain benefit reductions.<sup>9</sup> (2008 C. L.)
- WRERA § 204 provides a temporary delay of designation of multiemployer plans in endangered or critical status. (2009 C. L.)
    - Notice 2009-31, 2009-16 I.R.B. 856, as modified by Notice 2009-42, 2009-20 I.R.B. 1011, provides election and notice procedures for multiemployer plans under WRERA § 204. (2009 C. L.)
    - Rev. Proc. 2009-43, 2009-40 I.R.B. 460, provides procedures with respect to the revocation of elections by multiemployer plans to freeze funded status under WRERA § 204. (2009 C. L.)
  - WRERA § 205 provides a temporary extension of the funding improvement or rehabilitation periods for multiemployer plans in endangered or critical status for 2008 or 2009. (2009 C. L.)
    - Notice 2009-31, 2009-16 I.R.B. 856, as modified by Notice 2009-42, 2009-20 I.R.B. 1011, provides election and notice

---

<sup>9</sup> Proposed regulations under § 432 were published on March 18, 2008 (73 Fed. Reg. 14417) and may be relied upon until final regulations are issued.

procedures for multiemployer plans under WRERA § 205.  
(2009 C. L.)

35. 436:

- §1.436-1 provides guidance on the application of § 436, which provides a series of limitations on the accrual and payment of benefits under underfunded single employer defined benefit plans. (New)
- Notice 2011-3, 2011-2 I.R.B. 263, provides guidance on the special rules relating to the relaxation of § 436 rules that were included in the funding relief for single employer defined benefit pension plans under PRA 2010. (New)
- Notice 2011-96, 2011-52 I.R.B. 915, provides a sample plan amendment that plan sponsors may adopt to satisfy § 436 regarding limitations on the accrual and payment of benefits. The notice also extends both the deadline to amend a plan to satisfy § 436 and the period during which such an amendment is eligible for relief from the anti-cutback requirements of § 411(d)(6). (New)
- Notice 2012-70, 2012-51 I.R.B. This notice extends the deadline, as set forth in Notice 2011-96, 2011-52 I.R.B. 915, to amend a defined benefit plan to satisfy the requirements of § 436 and provides associated relief from the requirements of § 411(d)(6). (New)

36. Miscellaneous:

- Notice 2008-21, 2008-1 C.B. 431, provides transitional guidance for 2008 under § 436 for small plans with end-of-year valuation dates. (2008 C. L.)
- Notice 2008-73, 2008-2 C.B. 717, expands transition relief of Notice 2008-21. (2008 C. L.)
- Rev. Rul. 2009-31, 2009-39 I.R.B. 395, provides guidance with respect to annual paid time off contributions. (2009 C. L.)
- Rev. Rul. 2009-32, 2009-30 I.R.B. 398, provides guidance with respect to paid time off contributions at termination of employment. (2009 C. L.)

The following guidance contains sample or model amendments: Notice 2009-65, 2009-39 I.R.B. 413 (automatic contribution features); Notice 2009-82, 2009-41 I.R.B. 491 (suspension of the minimum distribution requirement for 2009); Rev. Rul. 2011-1, 2011-2 I.R.B. 251 (group trusts); and Notice 2011-96, 2011-52 I.R.B. 915 (limitations on the accrual and payment of benefits under underfunded single employer defined benefit plans).

DRAFTING INFORMATION

The principal author of this notice is Kathleen Herrmann of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans taxpayer assistance answering service at 1-877-829-5500 (a toll free number) or e-mail Ms. Herrmann at [RetirementPlanQuestions@irs.gov](mailto:RetirementPlanQuestions@irs.gov).