

# Qualified Plan News

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ING Qualified  
Plan Consulting

Mike Smith, QPA, QKA

Carla Ennis, QPA, QKA, APA

Stacia Hastings, QKA

Susan Belanger

## Helpful Web Links

Department of Labor  
[www.dol.gov/](http://www.dol.gov/)

Taking the Mystery Out of  
Retirement Planning  
[www.dol.gov/ebsa/publications/nearretirement.html](http://www.dol.gov/ebsa/publications/nearretirement.html)

Internal Revenue Service  
[www.irs.gov/](http://www.irs.gov/)

## It's Time to Restate Plans for EGTRRA

### OPN Highlights

- All Qualified Plans must be restated for EGTRRA
- New IRS staggered remedial amendment process will be used for the first time
- Adoption deadline for all pre-approved plans is April 30, 2010
- Adoption deadline for custom plans varies based on EIN number
- PPA amendment is not part of EGTRRA and will be a separate amendment to the plan

**Background** – At this time, the Internal Revenue Service (IRS) is requiring all employers to restate (re-write) their plan document to comply with the changes made by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). All plans are required to comply with EGTRRA in operation according to the effective date of each provision and **employers were required to adopt interim EGTRRA** amendments covering these provisions over the past several years. Employers must now restate their written plan documents to conform to the way the plan has been operated, by incorporating the changes made by EGTRRA. A list of some of the key changes made by EGTRRA, that

apply to defined contribution plans, is provided at the end of this QPN.

### **Plan Amendment Deadline under the New Staggered RAP Process**

- The EGTRRA restatement will be the first restatement to fall under the new IRS staggered remedial amendment period (RAP) process. Previously all plans would generally be restated during the same RAP, as specified by the IRS at the time of the restatement. This approach required a significant spike in staffing requirements for the IRS, for a fairly short period of time. The new staggered RAP process was designed by the IRS to even out their work load by spreading the RAP, for each restatement, over several years. Legislatively required changes that are made in the future will be incorporated into future RAP cycles, as appropriate. The IRS will provide a list of legislatively required changes that must be included for each future RAP restatement cycle.

*Pre-approved plans EGTRRA adoption deadline* - All pre-approved plans (i.e. prototype and volume submitter plans) will generally be restated once every six years at the Sponsor level (e.g. ING), and will all be on the same six year RAP cycle. *In April of this year the IRS announced that all employers*



*that maintain a pre-approved plan must adopt the EGTRRA approved version by April 30, 2010.*

**Custom drafted plans EGTRRA adoption deadline -** Custom drafted plans will generally be restated once every five years. These plans are broken out into five cycles based on the last digit of the employer's Employer Identification Number (EIN). Each group has a different five year RAP, one following the other in succession. It is very important for *employers that have adopted a custom drafted plan (e.g. non-ING plan) to contact their plan document provider to ensure their plan is restated for EGTRRA within the RAP guidelines. IRS Revenue Procedure 2005-66 provides important guidance relative to this matter.*

**ING pre-approved plan EGTRRA restatement process -** Employers that have adopted a pre-approved document sponsored by ING Life Insurance and Annuity Company, and that use a Third Party Administrator (TPA) to assist with plan administration and plan drafting services, will receive the EGTRRA restatement information from the TPA. The TPA will work with the adopting employer to restate the plan document for EGTRRA. All other adopters of the ING plan will receive the EGTRRA restated plan document directly from ING to be completed and executed by the adopting employer. It is the responsibility of the plan fiduciary to ensure that the plan is updated and signed by the deadline stated above. Because the restatement process can be time consuming it is important that this task is included in the planning process, to ensure the restatement deadline is met.

**Separate Amendment for PPA –** The IRS did not include the changes made by the Pension Protection Act of 2006 (PPA) in the EGTRRA restatement process. Instead, each employer will be required to adopt a separate PPA amendment at a future point in time.

**EGTRRA Key Changes –** Some of the significant changes, for defined contributions plans, made by EGTRRA include:

**Increased Portability –** Rollovers permitted among qualified plans, 403(b) plans and governmental 457(b) plans. IRA distributions may generally be rolled over into any of these plans as well.

**Catch-Up Contributions –** Participants who are at least 50 years old by the end of the plan year may, if permitted by the plan, make additional elective deferrals to a 401(k), 403(b), governmental 457(b), SARSEP or SIMPLE plan, based on regulatory limits.

**Accelerated Vesting for Match –** Employer matching contributions must be 100% vested after 3 years of service, or must vest at a rate of 20% per year beginning in the second year of service, reaching 100% in the sixth year.

**Hardship Withdrawal Suspension Reduced –** The suspension period that follows a hardship distribution made under the safe harbor hardship definition is reduced from 12 months to 6 months.

**Deduction Limit Increased –** The tax deduction that an employer may take for contributions made to a profit sharing or 401(k) plan is increased from 15% to 25% of compensation of covered employees.

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