

# ASPPA *asap*

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## Government Plans Update

**Optional Determination Letter Filing Delay** *By Kathleen M. Meagher, APM, Oakland, CA*  
**ERISA Requirements Not Applicable to Government Plans** *Bruce Ashton, APM, and Martin Heming, APM, Reish Luftman Reicher & Cohen, Los Angeles, CA*

For ASPPA members who work on government plans, the ASPPA *asap* committee has compiled the following items:

- Notice of modification to the filing cycle
- List of non-applicable requirements
- DC Governmental Plan Amendments; four page checklist which can be found on the ASPPA website at:  
<http://asppa.org/nl/09-04.Govt.Plan.ExclusionA.pdf>

### Delay in Determination Letter Filing Date

The IRS has announced a one-time modification in the staggered remedial amendment program for qualified plans maintained by governmental employers.

Originally, all governmental plans were placed in filing Cycle C pursuant to Rev. Proc. 2007-44. The due date for Cycle C applications is January 31, 2009. As a result of numerous requests from governmental plan sponsors, the IRS will now permit governmental plans to use the Cycle E filing period, with a due date of January 31, 2011.

The choice to use Cycle E is effective only for the current round of filings. After filing under Cycle E, governmental plans will revert to Cycle C, and the due date for the second determination letter application will be January 31, 2014. Cycle E filers must incorporate in their plans all changes in the Cumulative List for Cycle E and all interim amendments required during Cycles C and D.

As an incentive to remain on the Cycle C schedule, the IRS announced that governmental plans filed under Cycle C will be placed at the top of the determination letter work priority list. Governmental Cycle C filers will also be eligible for reduced fees and sanctions under the Employee Plans Compliance Resolution System (EPCRS).

This modification to the governmental plan filing schedule was announced in "Employee Plans News," dated November 5, 2008 (<http://www.irs.gov/pub/irs-tege/se1108.pdf>). It will be formally issued in published guidance in the near future.

### ERISA Requirements Not Applicable to Government Plans

#### ▲ Definition

A "governmental plan" is defined in the Internal Revenue Code §414(d) and ERISA Section 3(32) as a plan established or maintained for its employees by the government of the United States, the government of any state or political subdivision of a state or any agency or instrumentality of any of the foregoing. It also includes a plan established and maintained by an Indian tribal government and an agency or instrumentality of such a government, so long as the employees are performing essential governmental functions.

Although governmental plans have received an extension for filing for a favorable determination letter on the EGTRRA restatement, the plan must still be amended for various required provisions.

#### ▲ Governmental Plan Exemptions

Governmental plans are exempt from ERISA, including the obligation to file Form 5500. The following qualification requirements imposed by the Code on non-exempt plans *do not apply* to governmental plans. (chart follows)

*Continued on next page*

Provision	Subject Matter
401(a)(3)	Incorporate minimum participation standards of section 410
401(a)(4)	Non discrimination rules
401(a)(10)(B)	Top heavy rules
401(a)(11)	Minimum vesting standards
401(a)(12)	Benefits after a plan merger or consolidation
401(a)(13)	Assignment and alienation rules
401(a)(14)	Required beginning date
401(a)(15)	Social security benefit offsets
401(a)(19)	Nonforfeitability of benefits as a result of employee contributions
401(a)(26)	Defined benefit plan coverage rules
401(a)(29)	Benefit limitations on plans in at-risk status
401(k)*	Cash or deferred arrangements*
401(m)	Non-discrimination testing for matching contributions
410	Coverage rules
411	Minimum vesting rules
412, 430, 431 and 432	Funding rules for defined benefit pension plans
417	Minimum survivor annuity requirements
436	Limits on benefits and benefit accruals of at-risk plans (AFTAP rules)

\* A governmental plan may not include a cash or deferred arrangement under Code section 401(k) unless the plan is grandfathered prior to 1986 and has been continuously in operation since that time. However, government entities may use a pick up provision under Code section 414(h) in a profit sharing, money purchase or defined benefit pension plan. Further, a governmental plan may not operate as a 403(b) plan unless it is a public school or a 501(c)(3) entity. (Note: certain governmental agencies also obtain a ruling that they are a 501(c)(3) entity in order to be eligible to sponsor a 403(b) and possibly a 401(k) plan.)

#### ▲ Required Amendments

According to IRS guidance, a governmental plan must be amended or restated for EGTRRA by January 31, 2009. (But see optional delay discussed in first article). Assuming the plan was properly restated for GUST, the plan must meet the following additional requirements;

- The EGTRRA good faith amendment
- The minimum required distribution requirements
- The automatic rollover requirements
- The final 401(k) regulations (if the plan is a grandfathered 401(k) plan)
- The final 415 regulations

#### Expanded DC Governmental Plans Amendment Checklist

Thanks to the Groom Law Group, a four page checklist found at this link: <http://asppa.org/nl/09-04.Govt.Plan.ExclusionA.pdf> provides an extensive list of provisions that must be considered for bringing a defined contribution governmental plan into full compliance with the rules as of December, 2008.