

## Every Company's Retirement Plan Must be Amended this Year

By [Marty Heming](#), Reish, Luftman Reicher & Cohen

Every retirement plan, including pension, profit sharing and 401(k) plans, regardless of whether the plan is a prototype, volume submitter, or individually drafted, must be amended to comply with the final Internal Revenue Code ("Code") Section 415 regulations issued by the IRS. Code Section 415 restricts (i) the amount of the employer contribution that may be allocated to a single participant in a defined contribution plan, or (ii) the amount of the annual benefit that may be paid to a participant in a defined benefit plan.

The 415 final regulations affect more than the maximum limits on the benefits or allocations for a participant. This is true—as a practical matter—because the definition of compensation for the purposed Code Section 415 is likely to be the same as the definition of compensation for other purposes, such as allocations of contributions or determining benefits.

If a plan document is not amended before the deadline, it will be subject to disqualification by the IRS. Generally, the deadline is the last day for filing the corporate tax return for the plan year commencing on or after July 1, 2007. For example, if the plan year is used to measure the Code Section 415 limitation, and the plan year is the calendar year, then the deadline is the filing of the corporate tax return for the 2008 calendar year.

Despite this general rule, the deadline may be earlier in 2008 depending on how the plan is written. This means that, if your company has a qualified retirement plan, it should be amended in the near future to avoid qualification problems.

If the plan is a prototype, the sponsor of the prototype will supply the company with an amendment to be signed. If you have an individually drafted plan, such as cash balance or employee stock ownership plan, then you must hire an attorney or other advisor to create the amendment.

---

Any U.S. federal income tax advice contained in this communication (including any attachments) is neither intended nor written to be used, and cannot be used, to avoid penalties under the Internal Revenue Code or to promote, market or recommend to anyone a transaction or matter addressed herein.

---

© 2008 Reish Luftman Reicher & Cohen. All rights reserved. The *REPORT TO PLAN SPONSORS* is published as a general informational source. Articles are general in nature and are not intended to constitute legal advice in any particular matter. Transmission of this report does not create an attorney-client relationship. Reish Luftman Reicher & Cohen does not warrant and is not responsible for errors or omissions in the content of this report.