

## Part I

### Section 415 -- Limitations on Benefits and Contributions Under Qualified Plans

Rev. Rul. 2001-51

#### **I. Purpose**

This revenue ruling provides guidance relating to the increases in the limitations of § 415 of the Internal Revenue Code (Code) enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Pub. L. 107-16. Specifically, this revenue ruling provides questions and answers on:

- Benefit increases that may be provided as a result of the increased § 415 limitations under EGTRRA;
- Plan amendments that may be adopted to take into account the increased § 415 limitations under EGTRRA;
- The effect of the increased § 415 limitations under EGTRRA on other qualification requirements; and
- How the “sunset” provision of EGTRRA is taken into account for purposes of §§ 412 and 404.

#### **II. Background**

##### Rules in Effect Prior to EGTRRA

Section 415 of the Code imposes limitations on contributions and benefits under qualified plans. The benefits that may be provided to a participant under a defined benefit plan must not exceed the limitations of § 415(b). Section 415(b) provides that benefits provided to a participant under a defined benefit plan must not exceed the lesser of the defined benefit dollar limitation of § 415(b)(1)(A) and the defined benefit compensation limitation of § 415(b)(1)(B), both adjusted as required under § 415(b). The defined benefit dollar limitation prior to the effective date of the EGTRRA amendment is \$90,000, adjusted annually for cost-of-living increases under § 415(d), with the adjusted limit effective January 1 of the following calendar year. The defined benefit dollar limitation in effect for a calendar year (e.g., \$140,000, effective January 1, 2001) applies to all limitation years that end with or within the calendar year. Prior to the effective date of the EGTRRA amendment, the defined benefit dollar limitation is adjusted under § 415(b)(2) for commencement of benefits before or after a participant’s social security retirement age. Under § 415(b)(5), the defined benefit dollar limitation is adjusted for less than 10 years of participation. The defined benefit compensation limitation is equal to a participant’s high 3-year average compensation, adjusted, if applicable, under

§ 415(b)(5) for less than 10 years of service. The limitations of § 415 as in effect immediately prior to the effective date for a plan of changes enacted under EGTRRA are referred to in this revenue ruling as the “pre-EGTRRA § 415 limitations.”

Annual additions credited to a participant’s account under a defined contribution plan must not exceed the limitations of § 415(c). Section 415(c) provides that annual additions credited on behalf of a participant under a defined contribution plan must not exceed the lesser of the defined contribution dollar limitation of § 415(c)(1)(A), or the defined contribution compensation limitation of § 415(c)(1)(B). Prior to the effective date of the EGTRRA amendment, the defined contribution dollar limitation is \$30,000, adjusted annually under § 415(d) for cost-of-living increases, with the adjusted limit effective January 1 of the following calendar year. The defined contribution dollar limitation in effect for a calendar year (e.g., \$35,000, effective January 1, 2001) applies to all limitation years that end with or within the calendar year. Prior to the effective date of the EGTRRA amendment, the defined contribution compensation limitation is 25 percent of a participant’s compensation.

Section 411(a) prescribes rules as to when an employee’s right to his or her normal retirement benefit must become nonforfeitable under a qualified plan. Section 411(d)(6) generally prohibits a plan amendment, except for an amendment described in § 412(c)(8), that has the effect of decreasing a participant’s accrued benefits under the plan.

Section 1106(h) of the Taxpayer Reform Act of 1986, Pub. L. 99-514, provides that notwithstanding any other provision of law, except as provided in regulations prescribed by the Secretary of the Treasury, a plan may incorporate by reference the limitations under § 415 of the Code. In Notice 87-21, 1987-1 C.B. 458, Q&A-11, the Service provided guidance for plans to incorporate by reference the limitations of § 415, for limitation years beginning on or after January 1, 1987.

Section 401(a)(4) prescribes nondiscrimination rules for qualified plans. Section 1.401(a)(4)-2 of the Income Tax Regulations imposes requirements relating to nondiscrimination in amount of employer contributions under a defined contribution plan. For this purpose, § 1.401(a)(4)-2(b) provides two safe harbor tests, and § 1.401(a)(4)-2(c) provides a general test. In order to satisfy either of the safe harbors, a plan must provide for either a uniform allocation formula or a uniform points allocation formula as described in the regulation.

Section 1.401(a)(4)-3 imposes requirements relating to nondiscrimination in amount of benefits under a defined benefit plan. For this purpose, § 1.401(a)(4)-3(b) provides several safe harbor tests, and § 1.401(a)(4)-3(c) provides a general test. In order to satisfy any of the safe harbors, a plan must provide for a uniform normal retirement benefit, uniform post-normal retirement benefit, and uniform subsidies. Plans that satisfy the general test may do so by testing benefits with or without the application of the § 415 limitations.

### Changes Under EGTRRA

Section 611(a)(1) of EGTRRA increased the defined benefit dollar limitation of § 415(b) of the Code to \$160,000, effective for limitation years ending after December 31, 2001. Under section 611(a)(2) of EGTRRA, effective for limitation years ending after December 31, 2001, the § 415(b) dollar limitation is reduced for commencement of benefits prior to age 62, rather than for commencement of benefits prior to a participant's social security retirement age, and no adjustment to the dollar limitation is required where a participant's benefit commences after age 62 and not later than age 65. Under section 611(a)(3) of EGTRRA, effective for limitation years ending after December 31, 2001, the § 415(b) dollar limitation is increased when benefits commence after age 65, rather than for benefits that commence after a participant's social security retirement age.

Specific amendments affecting multiemployer plans (as defined in § 414(f)) were made to §§ 415(b)(11) and 415(f) of the Code, respectively, by sections 654(a) and (b) of EGTRRA to provide, respectively, that: (1) the defined benefit compensation limit of § 415(b)(1)(B) does not apply to a multiemployer plan, effective for limitation years beginning after December 31, 2001; and (2) multiemployer plans are not combined or aggregated (a) with any other plan which is not a multiemployer plan for purposes of applying § 415(b)(1)(B) to such other plan, or (b) with any other multiemployer plan for purposes of applying the limitations of § 415, effective for limitation years beginning after December 31, 2001.

Section 611(b) of EGTRRA increased the defined contribution dollar limitation of § 415(c)(1)(A) of the Code to \$40,000, effective for limitation years beginning after December 31, 2001. Section 632(a) of EGTRRA increased the "25 percent" in the defined contribution compensation limitation of § 415(c)(1)(B) of the Code to "100 percent," effective for years beginning after December 31, 2001.

Section 611 of EGTRRA also made changes to the methodology for determining cost-of-living increases under § 415(d) of the Code.

Section 901(a) of EGTRRA provides a "sunset" provision under which all provisions of, and amendments made by, EGTRRA shall not apply to taxable, plan, or limitation years beginning after December 31, 2010.

The Conference Report (H.R. Conf. Rep. No. 84, 107th Cong., 1<sup>st</sup> Sess. 212, 214 (2001)) that accompanies EGTRRA provides that in adopting rules regarding the application of the increases in the defined benefit plan limits, it is intended that the Secretary will apply rules similar to those adopted in Notice 99-44, 1999-2 C.B. 326, regarding benefit increases due to the repeal of the combined plan limit under former § 415(e).

### **III. Questions and Answers on § 415 Changes Under EGTRRA**

**Q-1:** What is the effective date of the increase in the dollar limitation for defined benefit plans under section 611(a) of EGTRRA?

**A-1:** In accordance with section 611(i)(2) of EGTRRA, the increase in the dollar limitation for defined benefit plans under section 611(a) of EGTRRA is effective for the first limitation year ending after December 31, 2001. Thus, the defined benefit dollar limitation applicable to any limitation year ending in 2002 is \$160,000.

With respect to limitation years ending after December 31, 2001, a defined benefit plan will not fail to satisfy § 415 solely because the plan provides that the benefit of any participant exceeds the pre-EGTRRA §415(b) limitations. Accordingly, the pre-EGTRRA § 415 limitations will not limit the benefit of a participant in a defined benefit plan whose benefit has not commenced as of the first day of the first limitation year ending after December 31, 2001. For rules regarding the application of the pre-EGTRRA § 415(b) limitations to a participant in a defined benefit plan whose benefit has commenced as of that date, see Q&A-5.

#### Example 1

Plan A is a defined benefit plan with a calendar year limitation year. When will the dollar limit applicable to the benefits of participants under Plan A be increased to \$160,000 under EGTRRA?

For participants of Plan A, the increase in the dollar limitation to \$160,000 is effective for the limitation year beginning January 1, 2002 (and ending December 31, 2002).

#### Example 2

Plan B is a defined benefit plan with a limitation year that begins February 1. When will the dollar limit applicable to the benefits of participants under Plan B increase to \$160,000 under EGTRRA?

For participants of Plan B, the increase in the dollar limitation to \$160,000 is effective for the limitation year beginning February 1, 2001 (and ending January 31, 2002).

**Q-2:** If a defined benefit plan is not amended to take into account the increased § 415 limitations under EGTRRA, how may the benefits of plan participants be affected?

**A-2:** If a defined benefit plan is not amended to take into account the increased § 415 limitations under EGTRRA, the effect on the benefits of plan participants will depend on the plan's existing provisions for applying the limitations of § 415 and any other relevant plan provisions. In some circumstances, a plan's existing provisions could result in automatic benefit increases for participants as of the effective date of the increased § 415 limitations for the plan. For example, the increased § 415 limitations under EGTRRA

could result in automatic benefit increases for participants in defined benefit plans that incorporate by reference the limitations of § 415.

Example

Participant B, a participant in a defined benefit plan (Plan R) with a limitation year beginning March 1, 2001, and ending February 28, 2002, retires on April 1, 2001, at age 65 (Participant B's social security retirement age) and receives a single-sum distribution of his benefit on May 1, 2001. On retirement, Participant B's annual benefit in the form of an annuity under the plan formula was \$170,000, but Participant B's accrued benefit under the plan was limited to \$140,000 to satisfy § 415. Participant B received the single-sum equivalent of an annual benefit of \$140,000. The terms of Plan R incorporate the limitations of § 415 of the Code by reference. What effect does the increase in the defined benefit dollar limitation under EGTRRA have on Participant B's benefit?

The defined benefit dollar limitation in effect for 2001 (\$140,000) was used in the calculation of the single sum distributed on May 1, 2001. The increase in the defined benefit dollar limitation to \$160,000 under EGTRRA is effective for Plan R for the limitation year beginning March 1, 2001, and ending February 28, 2002. Therefore, the \$160,000 dollar limitation applies to Participant B's benefit, and Participant B's benefit must increase. Participant B must receive an additional lump sum amount to reflect the higher dollar limitation applicable to Participant B's benefit. The additional lump sum benefit is calculated as the actuarial equivalent of the excess of (1) Participant B's accrued benefit in the form of a straight life annuity when the dollar limitation applicable at Participant B's retirement age under EGTRRA is taken into account, over (2) Participant B's accrued benefit in the form of a straight life annuity when the pre-EGTRRA dollar limitation applicable at Participant B's retirement age is taken into account.

**Q-3:** How do the increased § 415(b) limitations under EGTRRA affect the methodology used to apply the § 415(b) limitations to a benefit under a defined benefit plan that is not payable in the form of an annual straight life annuity within the meaning of § 415(b)(2)(A)?

**A-3:** The determination as to whether such a benefit satisfies the 415(b) limitations generally follows the same steps and procedures as those used in Q&A-7 and Q&A-8, as applicable, of Rev. Rul. 98-1, 1998-1 C.B. 249, with the following modifications. As in Rev. Rul. 98-1, to satisfy the limitations of § 415(b), a participant's benefit must not exceed the lesser of the § 415(b) dollar limitation applicable to the participant and the § 415(b) compensation limitation applicable to the participant. See Rev. Rul. 98-1 for a more detailed description of the methodology used in the steps below.

**Step 1,** the determination of the annual benefit in the form of a straight life annuity commencing at the same age that is actuarially equivalent to the plan benefit, is unchanged from Q&A-7 and Q&A-8, as applicable, of Rev. Rul. 98-1.

**Step 2**, the determination of the § 415(b) dollar limitation that applies at the age the benefit is payable under Q&A-7 and Q&A-9, as applicable, of Rev. Rul. 98-1, is modified to reflect the increase of the defined benefit dollar limitation to \$160,000, and the amendment of § 415(b)(2)(C) and § 415(b)(2)(D), as described in the following two paragraphs.

Effective for limitation years ending after December 31, 2001, § 415(b)(2)(C) as amended by EGTRRA provides that the § 415(b) dollar limitation is reduced when a participant's benefit commences prior to age 62, rather than for a benefit that commences prior to a participant's social security retirement age, and there are no age adjustments to the dollar limitation where a participant's benefit commences after age 62 and no later than age 65. Where a participant's benefit commences prior to age 62, the § 415(b) dollar limitation applicable to the participant at the earlier age is the annual benefit payable in the form of a straight life annuity commencing at the earlier age that is actuarially equivalent to the § 415(b) dollar limitation applicable to the participant at age 62, calculated using assumptions that satisfy § 415(b)(2)(E).

Effective for limitation years ending after December 31, 2001, § 415(b)(2)(D) as amended by EGTRRA provides that the § 415(b) dollar limitation is increased when a participant's benefit commences after age 65, rather than for a benefit that commences after a participant's social security retirement age. Where a participant's benefit commences after age 65, the § 415(b) dollar limitation applicable to the participant at the later age is the annual benefit payable in the form of a straight life annuity commencing at the later age that is actuarially equivalent to the § 415(b) dollar limitation applicable to the participant at age 65, calculated using assumptions that satisfy § 415(b)(2)(E).

**Step 3**, the determination of the § 415(b) compensation limitation applicable to the participant, is unchanged. However, see Q&A-8 of this revenue ruling for new rules relating to multiemployer plans.

**Q-4:** What special considerations for a defined benefit plan that has a normal retirement age less than 65 must be taken into account once the amendments to § 415 under EGTRRA are effective for the plan?

**A-4:** In the case of a defined benefit plan with a normal retirement age less than 65, the requirements for nonforfeitability of benefits and actuarial increase for delayed retirement of § 411 of the Code must be coordinated with the requirements of § 415. Under § 411, if benefits are not paid to a participant after the participant attains the plan's normal retirement age, and the plan's terms do not provide for the "suspension" of the participant's benefits in accordance with § 411(a)(3)(B) of the Code and 29 C.F.R. § 2530.203-3, then the participant's benefit must be actuarially increased for late retirement to avoid any forfeiture of the participant's benefit. However, under § 415 as amended by EGTRRA, the dollar limitation applicable to a participant does not increase between ages 62 and 65. If a participant continues to work past a plan's normal retirement age that is less than 65, and the participant's benefit equals the § 415 dollar

limitation at an age between 62 and 65, any actuarial increase to the participant's benefit after that age and prior to age 65 would violate § 415. In such a case, in order to satisfy §§ 415 and 411, the terms of the plan must either provide for the in-service payment of the participant's benefit (where the participant has attained normal retirement age and has a benefit that cannot be actuarially increased without violating § 415), or provide for the suspension of benefits in accordance with § 411(a)(3)(B) of the Code and 29 C.F.R. § 2530.203-3.

**Q-5:** May a defined benefit plan provide for benefit increases to reflect the increased § 415 limitations under EGTRRA for a current or former employee who has commenced benefits under the plan prior to the effective date of such increases?

**A-5:** A defined benefit plan may provide for benefit increases to reflect the increased § 415 limitations under EGTRRA for a current or former employee who has commenced benefits under the plan prior to the effective date of the § 415 increases under EGTRRA, but only if the employee or former employee is a participant in the plan on or after that effective date. For this purpose, an employee or former employee is a participant in the plan on a date if the employee or former employee has an accrued benefit (other than an accrued benefit resulting from a benefit increase that arises solely as a result of the increases in the § 415 limitations under EGTRRA) on that date. Thus, benefit increases to reflect the increases in the § 415 limitations under EGTRRA cannot be provided to current or former employees who do not have accrued benefits under the plan on or after the effective date of the § 415 increases under EGTRRA for the plan. However, if a current or former employee accrues additional benefits under the plan that could have been accrued without regard to the increased § 415 limitations under EGTRRA (including benefits that accrue as a result of a plan amendment) on or after the effective date of the increased § 415 limitations under EGTRRA for the plan, then the current or former employee may receive a benefit arising from the increased § 415 limitations under EGTRRA.

**Q-6:** How is the maximum permissible benefit increase calculated for a current or former employee who has commenced benefits under a defined benefit plan in a form not subject to § 417(e)(3) prior to the effective date of the increased § 415 limitations under EGTRRA?

**A-6:** For any limitation year beginning on or after the effective date for the plan of the increased § 415 limitations under EGTRRA, the benefit payable to any current or former employee who has commenced benefits under the plan prior to such effective date in a form not subject to § 417(e)(3) may be increased to a benefit that is no greater than the benefit that could have been provided had the provisions of EGTRRA been in effect at the time of the commencement of benefit. Thus, the annual benefit for limitation years beginning on or after the effective date for the plan of the increased § 415 limitations under EGTRRA is limited to the § 415(b) limitation for the employee (increased for cost-of-living adjustments, if the plan provides for such adjustments) based on the employee's age at the time of commencement. Benefits attributable to limitation years beginning before the effective date for the plan of the increased § 415 limitations under EGTRRA

cannot reflect benefit increases that could not be paid for those years because of § 415(b). In addition, any plan amendment to provide an increase as a result of the increased § 415 limitations under EGTRRA can be effective no earlier than the effective date of the increased § 415 limitations under EGTRRA for the plan.

### Example

Plan A has a calendar year limitation year, and provides that retiree benefits limited by § 415 are increased as COLA adjustments are made under § 415(d). Participant S, a participant of Plan A, retired in 2000 at age 60 with 20 years of participation. Participant S's social security retirement age is 66. Participant S's annual benefit under the plan formula before limitation for § 415 was \$180,000, and this benefit was limited by the defined benefit dollar limit to \$85,252 (the applicable mortality table and 6 percent are used under the plan for early retirement purposes). The defined benefit compensation limitation applicable to Participant S was \$200,000 and, thus, did not limit Participant S's benefit. How will Participant S's benefit be affected by the changes made to § 415 under section 611 of EGTRRA?

Following the increase in the § 415(b) dollar limit on January 1, 2001, to \$140,000, Participant S's benefit was increased to \$88,409 [ $\$85,252 \times (\$140,000 / \$135,000)$ ]. After the § 415(b) increase in the dollar limit under EGTRRA is applicable to Plan A for the limitation year beginning January 1, 2002, Participant S's annual benefit may be increased to an amount equal to the annual benefit commencing at age 60 that is actuarially equivalent (calculated using actuarial assumptions that satisfy § 415(b)(2)(E)) to an annual benefit of \$160,000 payable at age 62. In other words, Participant S's benefit may be increased to an amount equal to the benefit that a 60 year old could receive if the defined benefit dollar limit is \$160,000 (with no reduction in the dollar limit for benefits that commence before age 65 and on or after age 62, but reduced actuarially for benefits that commence before age 62). Participant S's annual benefit may be increased to \$134,720. However, Participant S may not receive this increased benefit until January 1, 2002.

**Q-7:** How is the maximum permissible benefit increase calculated for a current or former employee under a defined benefit plan whose benefit is payable in a form subject to § 417(e)(3) prior to the effective date of the increased § 415 limitations under EGTRRA?

**A-7:** In the case of a form of benefit that is subject to § 417(e)(3), the benefit payable for any limitation year beginning on or after the effective date for the plan of the increased § 415 limitations under EGTRRA may be increased by an amount that is actuarially equivalent to the amount of increase that could have been provided had the benefit been paid in the form of a straight life annuity. Benefits attributable to limitation years beginning before the effective date for the plan of the increased § 415 limitations under EGTRRA cannot reflect benefit increases that could not be paid for those years because



of § 415(b). In addition, any plan amendment to provide an increase as a result of the increased § 415 limitations under EGTRRA can be effective no earlier than the effective date of the increased § 415 limitations under EGTRRA for the plan.

### Example

Participant D, a participant in a defined benefit plan (Plan T) with a calendar year limitation year and plan year, retires on January 1, 2001, D's 64<sup>th</sup> birthday, with 25 years of service and participation. Participant D's social security retirement age is 65. The terms of Plan T provide for increases in retiree benefits (that are limited by § 415(b)) as the § 415 limits are increased for COLAs under § 415(d). On retirement, D's annual benefit in the form of an annuity under the plan formula, before limitation for § 415, is \$200,000. Participant D's accrued benefit under the plan in the form of an annuity is limited to \$130,667  $[(140,000) \times (1 - (5/9)(12)(.01))]$  to satisfy § 415(b). Participant D's benefit is payable in the form of 10 equal annual installments commencing January 1, 2001. For purposes of actuarial equivalence for early commencement and optional forms, the plan provides for the use of the applicable mortality table and the applicable interest rate (assumed to be 6 percent for purposes of this example). What is the maximum benefit increase that D can receive under Plan T as a result of the increased § 415 limitations under EGTRRA?

When D's benefits began, the benefit was calculated as a straight life annuity of \$130,667 per year, adjusted for payment as 10 annual payments. The annuity benefit of \$130,667 was multiplied by an age 64 annuity factor (calculated using the applicable mortality table and the applicable interest rate), and the resulting amount was spread over 10 years, using the applicable interest rate. Participant D has an accrued benefit under Plan T when EGTRRA becomes effective for Plan T on January 1, 2002. If Plan T is amended to provide for such increases to retired participants, then D's benefit, if payable in the form of a straight life annuity, could be increased to a straight life annuity of \$160,000 in the limitation year beginning January 1, 2002. As of January 1, 2002, D has nine remaining installment payments. The remaining nine installment payments could be increased by the actuarial equivalent (spread over a period of nine years) of the value of the increase in the straight life annuity that would have been payable beginning January 1, 2002, if D had elected a straight life annuity on retirement rather than the installment payment option. That is, the maximum increase that D is permitted to receive in 2002 as a result of the § 415(b) increase under EGTRRA is the amount equal to the product of \$29,333 ( $\$160,000 - \$130,667$ ) times an age 65 annuity factor (derived using the applicable mortality table and the applicable interest rate), spread over 9 years at an assumed interest rate equal to the applicable interest rate.

**Q-8:** In addition to the changes enacted to § 415 under section 611 of EGTRRA, how did the § 415(b) limitation specifically applicable to multiemployer defined benefit plans change under EGTRRA?

**A-8:** As provided in section 654 of EGTRRA, the compensation limitation of § 415(b)(1)(B) of the Code does not apply to multiemployer defined benefit plans for limitation years beginning after December 31, 2001. Additionally, the § 415 aggregation rules affecting multiemployer plans were changed to provide that, for limitation years beginning after December 31, 2001, a multiemployer plan is not combined or aggregated (1) with a non-multiemployer plan for purposes of applying the § 415(b)(1)(B) compensation limit to the non-multiemployer plan, or (2) with any other multiemployer plan for purposes of applying the § 415 limitations.

**Q-9:** What is the effective date of the increase in the § 415(c)(1)(A) dollar limitation for defined contribution plans?

**A-9:** As provided in section 611(b) of EGTRRA, the increase in the § 415(c)(1)(A) dollar limitation for defined contribution plans under EGTRRA is effective for the first limitation year beginning after December 31, 2001.

Example

Plan C is a defined contribution plan with a limitation year that begins February 1. What is the § 415(c)(1)(A) limitation applicable to Plan C for the limitation years beginning February 1, 2001, and February 1, 2002?

Reg. § 1.415-6 (Limitation for defined contribution plans) provides that the dollar limitation of § 415(c)(1)(A) is adjusted for cost-of-living increases under § 415(d), and the COLA-adjusted dollar limitation is effective as of January 1 of each calendar year and applies to limitation years that end during that calendar year. The limitation year beginning February 1, 2001, ends in the calendar year 2002 (on January 31, 2002), so the defined contribution dollar limitation that applies to the limitation year is the defined contribution dollar limit in effect January 1, 2002, without regard to EGTRRA (\$35,000, increased if applicable, to reflect increases in the cost-of-living, announced by the Service). The defined contribution dollar limit effective January 1, 2002, has not yet been announced. The increase in the defined contribution dollar limitation to \$40,000 under EGTRRA (adjusted under § 415(d), if applicable) is first effective for Plan C for the limitation year beginning February 1, 2002, and ending January 31, 2003.

**Q-10:** What is the effective date for the increase in the compensation limitation for defined contribution plans under § 415(c)(1)(B)?

**A-10:** As provided in section 632(a) of EGTRRA, the 25 percent compensation limitation in § 415(c)(1)(B) of the Code is increased to 100 percent, effective for the first limitation year beginning after December 31, 2001.

**Q-11:** How will a defined contribution or defined benefit plan that takes into account the increased § 415 limitations under EGTRRA as of the first day of the first limitation year

for which the increases are effective for the plan, satisfy the nondiscrimination in amount of benefits requirement?

**A-11:** A defined contribution or defined benefit plan that uses the safe harbor and takes into account the increased § 415 limitations under EGTRRA as of the first day of the first limitation year for which the increases are effective for the plan, will not fail to satisfy the uniformity requirements of §§ 1.401(a)(4)–2(b) or 1.401(a)(4)–3(b)(2) merely because the increased § 415 limitations under EGTRRA are taken into account under the plan.

For purposes of the general test for nondiscrimination in amount of contributions, increased contributions allocated under the terms of a defined contribution plan due to the increased § 415 limitations under EGTRRA must be taken into account in accordance with the rules of § 1.401(a)(4)–2(c)(2)(ii) for the plan year for which the increased allocations are made. For purposes of the general test for nondiscrimination in amount of benefits, increased benefits provided to an employee under the terms of a defined benefit plan due to the increased § 415 limitations under EGTRRA must be included as increases in the employee’s accrued benefit (within the meaning of § 411(a)(7)(A)(i)) and the employee’s most valuable optional form of payment of the accrued benefit (within the meaning of § 1.401(a)(4)–3(d)(1)(ii)) in accordance with the rules of § 1.401(a)(4)–3(d), and must be included in the computation of both the normal and most valuable accrual rates for any measurement period that includes the plan year for which the increase occurs. If the limitations of § 415 are taken into account in testing the plan for limitation years for which the increased § 415 limitations under EGTRRA are effective for the plan, those limitations must reflect the increased § 415 limitations under EGTRRA.

**Q-12:** If benefit increases are provided to employees and former employees under a plan as a result of the increased § 415 limitations under EGTRRA, how are the requirements of §§ 1.401(a)(4)–5 and 1.401(a)(4)–10 satisfied?

**A-12:** If benefit increases resulting from the increased § 415 limitations under EGTRRA are provided as of the effective date of the increased § 415 limitations under EGTRRA for the plan to either (1) all current and former employees who have an accrued benefit under the plan immediately before the effective date of the increased § 415 limitations under EGTRRA, or (2) all employees participating in the plan that have one hour of service after the effective date of the increased § 415 limitations under EGTRRA for the plan, through the adoption of a plan amendment, then the timing of such an amendment satisfies the requirements of § 1.401(a)(4)–5, and the requirements of § 1.401(a)(4)–10(b) are satisfied. If, as of the effective date of the increased § 415 limitations under EGTRRA for the plan, benefit increases are provided to either of the two groups described in the preceding sentence through the operation of the plan’s existing provisions, then the requirements of §§ 1.401(a)(4)–5 and 1.401(a)(4)–10(b) are satisfied. If benefit increases due to the increased § 415 limitations under EGTRRA are provided only to a certain group of current or former employees not described in the preceding paragraph through the adoption of a plan amendment, or if a plan amendment to reflect the increased § 415 limitations under EGTRRA is effective as of a later date than the effective date of the increased § 415 limitations under EGTRRA for the plan, then the

timing of such an amendment (considered in conjunction with the effect of the increased § 415 limitations under EGTRRA) must satisfy a facts-and-circumstances determination under § 1.401(a)(4)–5(a)(2), and the requirements of § 1.401(a)(4)–10 must be applied.

**Q-13:** May a plan be amended to limit the extent to which a participant’s benefit would otherwise automatically increase under the terms of the plan as a result of the increased § 415 limitations under EGTRRA?

**A-13:** A plan may be amended to limit the extent to which a participant’s benefit would otherwise automatically increase under the terms of the plan as a result of the increased § 415 limitations under EGTRRA, if the amendment is adopted before the effective date of the increased § 415 limitations for the plan. However, see Q&A-14 for certain qualification requirements that may be affected by such an amendment. A plan sponsor may wish to make a plan amendment to preclude a benefit increase that would otherwise occur as a result of the increased § 415 limitations under EGTRRA in order to provide time for the plan sponsor to consider the extent to which a benefit increase relating to the increased § 415 limitations under EGTRRA should or should not be provided at some later date consistent with all relevant qualification requirements. A plan amendment to limit the extent to which such a benefit increase would otherwise occur that is not both adopted prior to, and effective as of, the first day of the first limitation year for which the increased § 415 limitations under EGTRRA are effective for the plan may fail to satisfy § 411(d)(6). Therefore, a plan amendment that is intended to limit such a benefit increase should be both adopted prior to, and effective as of, the first day of the first limitation year for which the increased § 415 limitations under EGTRRA are effective for the plan. The following is an example of language that could be used by a plan sponsor, on an interim or permanent basis, in amending a defined benefit plan that would otherwise provide for a benefit increase due to the increased § 415 limitations under EGTRRA, to retain the effect of the pre-EGTRRA § 415 limitations in determining a participant’s accrued benefit under the plan (without failing to satisfy § 411(d)(6)):

*Effective as of the first day of the first limitation year for which the increased § 415 limitations under EGTRRA are effective for the plan (the “Effective Date”), and notwithstanding any other provision of the Plan, the accrued benefit for any participant shall be determined by applying the terms of the Plan implementing the limitations of § 415 as if the limitations of § 415 continued to include the limitations of § 415 as in effect on the day immediately prior to the Effective Date.*

**Q-14:** Are there qualification requirements that may not be satisfied if a plan continues to limit benefits after the first day of the first limitation year for which the increased § 415 limitations under EGTRRA are effective for the plan using the pre-EGTRRA § 415 limitations?

**A-14:** There are some qualification requirements that may not be satisfied if a plan continues to limit benefits using the pre-EGTRRA § 415 limitations after the first day of the first limitation year for which the increased § 415 limitations under EGTRRA are effective for the plan. Any exception from the otherwise applicable qualification rules

that is permitted solely in order to satisfy the maximum limitations on contributions or benefits under § 415 with respect to a participant does not apply if the participant's contributions or benefits are below the limitations of § 415. Thus, such an exception is not permitted where a plan limits benefits in a manner that is more restrictive than required under § 415. For example, at any time on or after the first day of the first limitation year beginning on or after January 1, 2002, a qualified defined contribution plan could not provide that the provisions of § 1.415-6(b)(6) would be applied to place an amount that does not exceed the limitations under § 415, but that does exceed the pre-EGTRRA § 415 limitations, in an unallocated suspense account as an excess annual addition. Similarly, a qualified cash or deferred arrangement could not provide that the provisions of § 1.415-6(b)(6)(iv) would be applied to permit the distribution of elective deferrals that do not exceed the limitations under § 415, but that exceed the pre-EGTRRA § 415 limitations. The qualification issues described in this Q&A-14 may arise whenever a lower limitation is applied under a plan in lieu of a statutory § 415 limitation that applies for the limitation year.

**Q-15:** How may a plan that continues to limit benefits after the first day of the first limitation year for which the increased § 415 limitations under EGTRRA are effective for the plan, using the pre-EGTRRA § 415 limitations, satisfy the nondiscrimination in amount of benefits requirement?

**A-15:** Section 1.401(a)(4)-2(b)(4)(iv) provides that the use of safe harbors by defined contribution plans, for nondiscrimination in amount of contributions purposes, is not precluded by plan provisions (which must apply uniformly to all employees) that (1) limit allocations otherwise provided under the allocation formula to a maximum dollar amount or a maximum percentage of plan year compensation, (2) limit the dollar amount of plan year compensation taken into account in determining the amount of allocations, or (3) apply the restrictions of § 409(n) or the limits of § 415. Section 1.401(a)(4)-3(b)(6)(v) provides that the use of safe harbors by defined benefit plans, for nondiscrimination in amount of benefits purposes, is not precluded by plan provisions (which must apply uniformly to all employees) that (1) limit benefits otherwise provided under the benefit formula or accrual method to a maximum dollar amount or to a maximum percentage of average annual compensation or in accordance with § 401(a)(5)(D), (2) apply the limits of § 415, or (3) limit the dollar amount of compensation taken into account in determining benefits. Because the pre-EGTRRA § 415 limitations uniformly limit allocations or benefits to a maximum dollar amount or percentage of compensation, a plan that continues to apply the pre-EGTRRA § 415 limitations does not fail to satisfy a safe harbor solely because it continues to apply such limitations.

If a plan continues to limit benefits using the pre-EGTRRA § 415 limitations, on or after the first day of the first limitation year for which the increased § 415 limitations under EGTRRA are effective for the plan, the annual additions or accrued benefits that are taken into account in performing the general tests for nondiscrimination in amount of contributions or benefits must reflect the plan provisions that limit benefits in this manner.

**Q-16:** How are the increased § 415 limitations under EGTRRA treated under the plan for purposes of § 412?

**A-16:** For purposes of § 412, any increase in the liabilities of a plan as a result of the increased § 415 limitations under EGTRRA must be treated as occurring pursuant to a plan amendment effective no earlier than the first day of the first limitation year for which the increased § 415 limitations under EGTRRA are effective for the plan (whether the increase in liabilities under the terms of the plan arises pursuant to a plan amendment, or pursuant to existing plan provisions, i.e., where benefits automatically increase as of the date the increased § 415 limitations under EGTRRA are effective for the plan). Accordingly, any amortization base that is established under § 412 for an increase in liabilities under a plan resulting from the increased § 415 limitations under EGTRRA must have an amortization period of 30 years. A plan amendment that makes the increased § 415 limitations under EGTRRA effective for a plan cannot be taken into account for purposes of § 412 prior to the effective date of the increased § 415 limitations under EGTRRA for the plan.

**Q-17:** How is the sunset provision of section 901 of EGTRRA taken into account for purposes of §§ 412 and 404 of the Code, and with respect to the calculation of benefit payments that must not exceed the limitations of § 415?

**A-17:** The “sunset” provision of section 901 of EGTRRA is not taken into account for purposes of § 412 of the Code for years beginning on or before December 31, 2010. Thus, for example, projected benefits under a defined benefit plan are computed assuming that the increase in the dollar limitation to \$160,000, as adjusted under § 415(d), remains in effect for limitation years beginning after December 31, 2010. Section 404(j) provides that benefits or contributions in excess of the limitations of § 415 are not taken into account in computing the amount of any deduction allowable under paragraphs (1), (2) (3), (4), (7), or (9) of § 404(a). For years beginning on or before December 31, 2010, the determination that contributions do not exceed the limitation of § 404(j) is made without regard to the sunset provision of section 901 of EGTRRA. Until further guidance is provided, a participant’s benefit will be tested for satisfaction of the § 415 limitations using the limitations currently in effect and applicable to the participant.

#### **IV. Effect on Other Documents**

Rev. Rul. 98-1 is modified.

#### **DRAFTING INFORMATION**

The principal author of this revenue ruling is Ann Trichilo of Employee Plans. For further information regarding this revenue ruling, please contact the Employee Plans’ taxpayer assistance telephone service at 1-877-829-5500, between the hours of 8:00 a.m. and 9:30 p.m. Eastern time, Monday through Friday (a toll-free number). Ms. Trichilo may be reached at (202) 283-9695 (not a toll-free number).