

Chapter 2

SUMMARY OF EGTRRA AND RECENT LAW PROVISIONS

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Outline, EGTRRA Provisions for Qualified Plans

Introduction The following is a summary of the different topics that are covered with this chapter.

EGTRAA Preamble **A. Amendment of the plan for EGTRRA preamble**

- (i) Adoption and effective date of amendment
- (ii) Superceding of inconsistent provisions

Limits on retirement plan contributions and benefits **A. Increase In Compensation Limit IRC 401(a)(17)**

- (i) Defined Contribution Plans
- (ii) Defined Benefit Plans

B. IRC 415 Limitations

- (i) Limitations on Contributions IRC 415(c)/Compensation
- (ii) Limitations on Annual Benefits IRC 415(b)/ Compensation
 - a) Non - Mutiemployer Plans
 - b) Multiemployer Plans
- (iii) The New Applicable Mortality Table Rev.Rul. 2001-62
- (iv) Elective Deferral Limit
 - a) Elective Deferrals – Contribution Limitation IRC 402(g)
 - b) SIMPLE 401(k) Plans
 - c) IRC 457 Plans

Top heavy rules, IRC section 416 **A. Determination of Top-Heavy Status For Defined Contribution and Defined Benefit Plans**

B. Minimum Benefits For Defined Contribution and Defined Benefit Plans

C. Modification of Top-Heavy Rules For IRC 401(k)(12) And IRC 401(m)(11)

Continued on next page

Outline, EGTRRA Provisions for Qualified Plans, Continued

Faster vesting	Faster vesting of employer matching contributions IRC 411(a)(12).
Repeal of multiple use test	Repeal of multiple use test.
Distributions from section 401(k) plan	<ul style="list-style-type: none"> A. Distributions On Hardship B. Distributions On Severance From Employment (Same Desk Rule) C. Catch Up Contributions
Rollovers	<p>A. Defined Contribution Plans</p> <ul style="list-style-type: none"> i) Direct Rollovers of Plan Distributions ii) Additional Types of Rollovers Accepted by The Plan iii) Employers My Disregard Rollovers For Purposes Of Cash-Out Rules iv) Automatic Rollovers of Certain Involuntary Distributions <p>B. Defined Benefit Plans</p> <ul style="list-style-type: none"> i) Direct Rollovers of Plan Distributions ii) Additional Types of Rollovers Accepted by the Plan
Loans from small business owners	Loans from small business owners
IRC 404 and 412 limits	<ul style="list-style-type: none"> A. Defined Contribution Plans <ul style="list-style-type: none"> (i) Elective Deferrals Not Taken Into account for Purposes of Deduction Limits (ii) Deduction Limits (iii) Compensation Under A Deferred -Payment Plan B. Defined Benefit Plans <ul style="list-style-type: none"> (i) Deduction For Contributions To Fund Termination Liability.

Continued on next page

Outline, EGTRRA Provisions for Qualified Plans, Continued

ESOP	A. ESOP Dividends May Be Reinvested Without Loss of Dividends Deduction. B. Prohibited Allocation of Stock In An S Corporation ESOP
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Elimination of IRS Fees	Elimination of IRS user fees for certain determination letter requests regarding employer plans
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Miscellaneous issues	<ol style="list-style-type: none">1- Minimum Distribution Requirements<ol style="list-style-type: none">A) Defined Contribution PlansB) Defined Benefit Plans2- Individual Retirement Arrangements (deemed IRAs)3- Treatment of Self-Employment Income of Members of Certain Religious Faiths.4- Option to Treat Elective Deferrals as After Tax Contributions5- Small Business Tax Credit for New Retirement Plan Expenses6- Equitable Treatment for Contributions of Employees to Defined Contribution Plans (Tax-Sheltered Annuities)7- Equitable Treatment for Contributions of Employees to Defined Contribution Plans (section 457 Plans)8- Repeal of Coordination Requirements for Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations9- Waiver of 60-Day Rule10- Treatment of Forms of Distribution11- Minimum Distribution and Inclusion Requirements for Section 457 Plans12- Phase in Repeal of 160 Percent of Current Liability Funding Limit13- Modification of Timing of Plan Valuations14- Individual Retirement Arrangements (IRAs)
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Part II, EGTRRA Provisions for Plan Termination

**EGTRRA
Amendments
for All Plans**

- 1) Preamble
 - 2) Plan Loans for Owners Employees
-

**Provisions for
DC plans**

- A) All Defined Contribution Plans
 1. Increase in Compensation Limit
 2. Limitation on Contributions
 3. Modifications of Top-Heavy Rules
 4. Direct Rollovers of Plan Distributions
 5. Additional Types of Rollovers Accepted by the Plan
 6. Rollovers Disregarded in Involuntary Cash-Outs
 - B) IRC 401(m) Provisions
 1. Vesting of Employer Matching Contributions
 2. Repeal of Multiple Use Test
 - C) IRC 401(k) Provisions
 1. Elective Deferrals-Contribution Limitation
 2. SIMPLE 401(k) Plans
 3. Modification of Top-Heavy Rules for 401(k)(12) and 401(m)(11)
 4. Distribution on Hardship
 5. Distribution on Severance From Employment
 6. Catch-Up Contributions
 - D) Additional Provisions for Plans Terminating on or After January 1, 2003
-

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Part II, EGTRRA Provisions for Plan Termination, Continued

**Provisions for
DB plans**

- A) Increase in Compensation Limit
 - B) Limitations on Annual Benefits
 - 1. Non-Multiemployer Plans
 - 2. Multi-Employer Plans
 - C) Modifications of Top-Heavy Rules
 - D) Direct Rollovers of Plan Distributions
 - E) Additional Types of Rollovers Accepted by The Plan
 - F) The New Applicable Mortality Table Rev. Rul. 2001-62
 - G) Additional Provisions for Plans Terminating on or After January 1, 2003
-

**Published
Guidance**

- Notice 2001-56
- Notice 2001-57
- Notice 2002-3
- Notice 2002-4
- Notice 2002-71
- Rev. Proc. 2003-13
- Rev. Proc. 2002-29
- Rev. Rul. 2001-51
- Rev. Rul. 2001-62
- Rev. Rul. 2002-27

NOTE: Rev. Proc. 2002-10, which merely advises sponsors of IRA, SEP and SIMPLE IRA prototype documents of the necessity of submitting their EGTRRA-amended documents for an opinion letter, was deleted. The rev. proc. does not specifically provide guidance on interpreting and implementing an EGTRRA statutory change, and no reference to it appears to be necessary.

EGTRRA AND RECENT LAW PROVISIONS FOR QUALIFIED PLANS-In general

Introduction

EGTRRA , which was enacted on June 7, 2001, includes numerous changes to the qualified plan rules. Almost all of these changes are effective in years beginning after December 31, 2001. Many of the changes are not mandatory; if a plan sponsor chooses to implement an optional provision of EGTRRA the plan must be amended to conform provisions to plan operation.

Remedial amendment period-in general

Notice 2001- 42, 2001-30 I.R.B. 70, designated as disqualifying provisions under Treas.Reg. 1.401(b)-1(b) plan provisions that

- (1) must be amended to satisfy the qualification requirements of the Code because of changes in those requirements made by EGTRRA or
- (2) are integral to qualification requirements changed by EGTRRA.

The remedial amendment period under 401(b) for a disqualifying provision ends on the last day of the first plan year beginning on or after January 1, 2005.

Conditions for availability of EGTRRA RAP

The availability of the EGTRRA remedial amendment period is conditioned on the **timely adoption** of required good faith EGTRRA plan amendments. A plan is required to have a good faith EGTRRA plan amendment in effect for a year if:-

1. The plan is required to implement a provision of EGTRRA for the year, or the plan sponsor chooses to implement an optional provision of EGTRRA for the year, and
 2. The plan language , prior to the amendment, is not consistent either with the provision of EGTRRA or with the operation of the plan in a manner consistent with EGTRRA, as applicable.
-

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EGTRRA AND RECENT LAW PROVISIONS FOR QUALIFIED PLANS-In general, Continued

Defining timely adoption	<p>A good faith EGTRRA plan amendment is timely if it is adopted no later than the later of</p> <ol style="list-style-type: none"> (1) the end of the plan year in which the EGTRRA change in the qualification requirements is required to be, or is optionally, put into effect under the plan, <u>or</u> (2) the end of the GUST remedial amendment period for the plan. See Notice 2001-42 and Notice 2001- 57.
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EGTRRA Preamble

Amending the plan for EGTRRA Preamble	<ul style="list-style-type: none"> • Amendment is optional • Effective Date: First day of the first plan year beginning after December 31, 2001. • Plan sponsors that do not adopt this or a similar provision will have to modify some of the amendments that follow to specify dates and supersede inconsistent plan provisions.
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Sample Amendment	<p>Preamble</p> <ol style="list-style-type: none"> 1. Adoption and effective date of amendment- This amendment of the plan is adopted to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). This amendment is intended as good faith compliance with the requirements of EGTRRA and guidance issued thereunder. Except as otherwise provided, this amendment shall be effective as of the first day of the plan year beginning after December 31, 2001. 2. Supersession of inconsistent provisions- - This amendment shall supersede the provisions of the plan to the extent those provisions are inconsistent with the provisions of this amendment.
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EGTRRA Preamble, Continued

Reference Notice 2001-57

Limits on Contributions and benefits

Introduction This section covers the following topics:

A. Increase In Compensation Limit IRC 401(a)(17)

- (i) Defined Contribution Plans
- (ii) Defined Benefit Plans

B. IRC 415 Limitations

- (i) Limitations on Contributions IRC 415(c)/Compensation
- (ii) Limitations on Annual Benefits IRC 415(b)/ Compensation
 - Non - Mutiemployer Plans
 - Multiemployer Plans
- (iii) The New Applicable Mortality Table Rev.Rul. 2001-62
- (iv) Elective Deferral Limit
 - Elective Deferrals – Contribution Limitation IRC 402(g)
 - SIMPLE 401(k) Plans
 - IRC 457 Plans

Increase in 401(a)(17) limit

Introduction

- EGTRRA Section 611(c): The compensation limit is increased from \$170,000 (limit in effect for 2001) to \$200,000. This amount is indexed in \$5,000 increments.
 - Amendment is optional
 - Effective Date: Years beginning after December 31, 2001.
-

Explanation of provision

The amendment should be adopted if the plan sponsors want to increase the limit on annual compensation taken into account under the plan in plan years beginning after December 31, 2001, to \$200,000.

If the plan bases allocations for plan years beginning after December 31, 2001 on compensation for periods beginning before January 1, 2002, the amendment should be modified to include provisions similar to the prior year limit and adoption agreement provisions of the sample amendment for EGTRRA §611(c) for defined benefit plans.

Also see Notice 2001-56 for guidance regarding the effective date of the change made by EGTRRA §611(c).

Sample Amendment-DC plan

Section _____ Increase In Compensation Limits

The annual compensation of each participant taken into account in determining allocations for any plan year beginning after December 31, 2001, shall not exceed \$200,000 as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustments period that begins with or within such calendar year.

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Increase in 401(a)(17) limit, Continued**Sample
Amendment-
DB plan**

Section _____ Increase In Compensation Limits

The last sentence of the first paragraph of the amendment and the related adoption agreement provision are applicable to plans that base benefit accruals in plan years beginning after December 31, 2001, on compensation for periods beginning before January 1, 2002. Also see Notice 2001-56 for guidance regarding the effective date.

1. **Increase in limit** The annual compensation of each participant taken into account in determining benefit accruals in any plan year beginning after December 31, 2001, shall not exceed \$200,000. Annual compensation means compensation during the plan year or such other consecutive 12-month period over which compensation is otherwise determined under the plan (the determination period). For purposes of determining benefit accruals in a plan year beginning after December 31, 2001, compensation for any prior determination period shall be limited as provided by the employer in the adoption agreement.
2. **Cost-of-living-adjustment** The \$200,000 limit on annual compensation in paragraph 1 shall be adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

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Increase in 401(a)(17) limit, Continued**Adoption
Agreement
provision**

Compensation Limit for Prior Determination Periods:

In determining benefit accruals in plan years beginning after December 31, 2001, the annual compensation limit in paragraph 1 of Section -----, Increase in Compensation Limit, for determination periods beginning before January 1, 2002, shall be: (choose one)

_____ \$200,000.

_____ \$150,000 for any determination period beginning in 1996 or earlier; \$160,000 for any determination period beginning in 1997, 1998, or 1999; and \$170,000 for any determination period beginning in 2000 or 2001.

References

Notice 2001-56, Notice 2001-57, IRC 401(a)(17) and Act §611(c).

Section 415 (c) limits

Introduction

EGTRRA Section 611(b) and 632

Amendment is generally required: Plans may impose lower limits on contributions and allocations than the limits under section 415(c) of the Code. A plan that correctly incorporates the 415(c) limits by reference will automatically reflect the EGTRRA changes and need not to be amended.

Effective Date: Limitation years beginning after December 31, 2001.

Explanation of provision-contributions

- Increase the dollar limit under section 415(c) from \$35,000 to \$40,000 with future indexing in multiple of \$1,000.
- Increase in compensation limit under section 415(c) from 25% to 100%.

Sample Amendment

Section _____ Limitations on Contributions

1. Effective date: This section shall be effective for limitation years beginning after December 31, 2001.
2. Maximum annual addition: Except to the extent permitted under section _____ of this amendment [enter the section of the amendment that provides for catch –up contributions under EGTRRA 631] and section 414(v) of the Code, if applicable, the annual addition that may be contributed or allocated to a participant’s account under the plan for any limitation year shall not exceed the lesser of:
 - a. \$40,000, as adjusted for increase in the cost-of-living under section 415(d) of the Code, or
 - b. 100 percent of the participant’s compensation, within the meaning of section 415(c)(3) of the Code, for the limitation year.

The Compensation Limit referred to in (b) shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or section 419 A (f)(2) of the Code), which is otherwise treated as annual addition.

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Section 415 (c) limits, Continued

References References: - Rev.Rul. 2001-51, Q&A 9&10, Notice 2001-57, Section 415(c) of the Code and Act §611(b) and §632

Section 415 (b) limits-Non-Multi employer plan**Overall
Explanation of
provisions**

-
- a) Increase in Annual Benefit from \$140,000 to \$160,000, with future indexing in \$5,000 increments.
 - b) No actuarial reduction in dollar limit for retirees at age 62 – 65.
 - c) Actuarial increase in dollar limit begins from age 65.
 - d) Age 55/75,000 floor for tax exempt and governmental employers is repealed.
 - e) Multiemployer plans will not be aggregated with other plans for purposes of applying the 100% limit to a non-multiemployer plan.
-

**Introduction,
non multi-
employer****EGTRRA Section 611(a)**

Amendment is optional For plans that do not incorporate section 415(b) limits by reference.

Effective Date:- Years beginning after December 31, 2001.

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Section 415 (b) limits-Non-Multi employer plan, Continued**Sample
Amendment**

Section _____ Limitations On Benefits

1. Effective date. This section shall be effective for Limitation years ending after December 31, 2001

2. Effect on participants: Benefit increases resulting from the increase in the limitations of section 415(b) of the Code will be provided to those participants specified by the employer in the adoption agreement.

3. Definitions.

3.1 Defined benefit dollar limitation: - The “defined benefit dollar limitation” is \$160,000, as adjusted, effective January 1 of each year, under section 415(d) of the Code in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies.

3.2 Maximum permissible benefit: - The “maximum permissible benefit” is the lesser of the defined benefit dollar limitation or the defined benefit compensation limitation (both adjusted where required, as provided in (a) and, if applicable, in (b) or (c) below).

- a) If the participant has fewer than 10 years of participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of participation in the plan and (ii) the denominator of which is 10. In the case of a participant who has fewer than 10 years of service with the employer, the defined benefit compensation limitation is the number of years (or part thereof) of service with the employer and (ii) the denominator of which is 10.

Continued on next page

Section 415 (b) limits-Non-Multi employer plan, Continued

**Sample
Amendment
(continued)**

- b) If the benefit of a participant begins prior to age 62, the defined benefit dollar limitation applicable to the participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the participant at age 62 (adjusted under (a) above, if required). The defined benefit dollar limitation applicable at an age prior to age 62 is determined as the lesser of (i) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in section _____ of the plan and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate and the applicable mortality table as defined in section _____ of the plan. Any decrease in the defined benefit dollar limitation determined in accordance with this paragraph shall not reflect a mortality decrement if benefits are not forfeited upon the death of the participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account
- c) If the benefit of a participant begins after the participant attains age 65, the defined benefit dollar limitation applicable to the participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the participant at age 65 (adjusted under (a) above if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age 65 is determined as (i) the lesser of the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in section _____ of the plan and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate assumption and the applicable mortality table as defined in section _____ of the plan. For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored.

Continued on next page

Section 415 (b) limits-Non-Multi employer plan, Continued**Adoption
Agreement****Adoption Agreement Provision**

Benefit Increases resulting from the increase in the limitations of section 415(b) of the Code shall be provided to: (choose one.)

_____ all current and former participants (with benefits limited by section 415(b)) who have an accrued benefit under the plan immediately prior to the effective date of this section (other than an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations under section 415(b)).

_____ all employees participating in the plan who have one hour of service on or after the first day of the first limitation year ending after December 31, 2001.

**Explaining
Sample
Amendment**

The last two sentences of section 3.2 (b) of the amendment and the last two sentence of section 3.2 (c) may be modified to conform to Notice 87-21, 1987-1 C.B. 458, and Notice 83-10, 1983-1 C.B.536. These notices provide alternatives with regard to the application of the mortality decrement in making the adjustments under section 3.2(b) and (c) of the amendment. In addition to the following amendment, non-multiemployer plans should be amended as necessary to reflect EGTRRA section 654(b). Section 654(b) of EGTRRA changed section 415 aggregation rules to provide that, for limitation years beginning after December 31, 2001, a multiemployer plan is not combined or aggregated with non-multiemployer plan for purposes of applying the section 415(b)(1)(B) of the Code compensation limit to the non-multiemployer plan.

If a plan's normal retirement age (NRA) is below 65, the plan's provisions regarding post-NRA accruals and actuarial increases for deferred benefits must be coordinated with the following amendment to ensure that the plan does not violate section 401(a) of the Code. In order to avoid such a violation, a plan may have to pay benefits at NRA, notwithstanding a participant's continued employment, or provide for the suspension of benefits in accordance with section 411(a)(3)(B) of the Code.

415(b) limit—Multiemployer Plan

Introduction EGTRRA Section 611(a) and 654

Amendment is optional For multiemployer plans that do not incorporate section 415(b) limits by reference.

Effective Date: - Years beginning after December 31, 2001.

Continued on next page

415(b) limit—Multiemployer Plan, Continued**Sample
Amendment**

Section _____ Limitations On Benefits

1. Effective date: This section will be effective for limitation years ending after December 31, 2001, except as provided in section 3.2(d).

2. Effect on participants: - Benefit increases resulting from the increase in the limitations of section 415(b) of the Code will be provided to [enter one of the following 2 options: all current and former participants (with benefits limited by section 415(b)) who have an accrued benefit under the plan immediately prior to the effective date (other than an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations under section 415(b)); all employees participating in the plan who have one hour of service on or after the first day of the first limitation year ending after December 31, 2001].

3. Definitions

3.1 Defined benefit dollar limitation. The “defined benefit dollar limitation” is \$160,000, as adjusted, effective January 1 of each year, under section 415(d) of the Code in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies.

3.2 Maximum permissible benefit: The “maximum permissible benefit” is the defined benefit dollar limitation (adjusted where required, as provided in (a) and, if applicable, in (b) or (c) below, and limited, as provided in (d) below).

- (a) If the participant has fewer than 10 years of participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of participation in the plan and (ii) the denominator of which is 10.

Continued on next page

415(b) limit—Multiemployer Plan, Continued

**Sample
Amendment**
(continued)

- (b) If the benefit of a participant begins prior to age 62, the defined benefit dollar limitation applicable to the participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the participant at age 62 (adjusted under (a) above, if required). The defined benefit dollar limitation applicable at an age prior to age 62 is determined as the lesser of (i) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in section _____ of the plan and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate and the applicable mortality table as defined in section _____ of the plan. Any decrease in the defined benefit dollar limitation determined in accordance with this paragraph (b) shall not reflect a mortality decrement if benefits are not forfeited upon the death of the participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.
- (c) If the benefit of a participant begins after the participant attains age 65, the defined benefit dollar limitation applicable to the participant at the later age is the annual benefit in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the participant at age 65 (adjusted under (a) above, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age 65 is determined as (i) the lesser of the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using the interest rate and mortality table (or other tabular factor) specified in section _____ of the plan and (ii) the actuarial equivalent (at such age) of the defined benefit dollar limitation computed using a 5 percent interest rate assumption and the applicable mortality table as defined in section _____ of the plan. For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored.

Continued on next page

415(b) limit—Multiemployer Plan, Continued**Sample
Amendment**
(continued)

(d) Notwithstanding the above, for limitation years before January 1, 2002, the maximum permissible benefit will not exceed the defined benefit compensation limitation. In the case of a participant who has fewer than 10 years of service with the employer, the defined benefit compensation limitation shall be multiplied by a fraction, (i) the numerator of which is the number of years (or part thereof) of service with the employer and (ii) the denominator is 10.

**Explaining the
sample
amendment**

The last two sentences of section 3.2(b) of the amendment and the last sentence of section 3.2(c) may be modified to conform to Notice 87-21, 1987 C.B. 458, and Notice 83-10, 1983-1 C.B.536. These notices provide alternatives with regard to the application of the mortality decrement in making the adjustments under section 3.2(b) and (c) of the amendment.

Section 3.2(d) of the amendment should be deleted if the plan's limitation year is the calendar year.

Section 654(b) of EGTRRA changed section 415 aggregation rules to provide that, for limitation years beginning after December 31, 2001, a multiemployer plan is not combined or aggregated with non-multiemployer plan for purposes of applying section 415(b)(1)(B) compensation limit to the non-multiemployer plan. This change is not reflected in this language for multiemployer plans.

If a plan normal retirement age (NRA) is below 65, the plan's provisions regarding post-NRA accruals and actuarial increases for deferred benefits must be coordinated with the following language to ensure that the plan does not violate section 401(a) of the Code. In order to avoid such violation, a plan may have to pay benefits at NRA, notwithstanding continued employment, or provide for the suspension of benefits in accordance with section 411(a)(3)(B) of the Code.)

References

Notice 2002-71, Rev.Rul. 2001-51, section 415(b) of the Code and Act §611(a) and §654.

415 limit—the new applicable mortality table

Introduction

Amendment is required

Effective Date: Distributions with annuity starting dates on or after December 31, 2001. Plans may implement the new table earlier, as of any date in 2002.

Rev. Rul. 2001-62

Explanation of provision

- A new mortality table ('94 GAR) applies for purposes of valuing benefits subject to Code §417(e) (e.g., lump sum benefits) and maximum benefit determinations under Code § 415.
 - The same effective date must apply for 417 and 415 purposes.
 - A non-calendar year plan will have a mid-plan year change unless the plan adopts the new table effective as of the first day of the 2002 plan year.
 - Plan that incorporates the applicable mortality table by reference should amend to establish the effective date of the amendment.
-

Explaining the appendix of Rev. Rul. 2001-62

The Appendix in Rev. Rul. 2001-62 provides two alternative model amendments that a plan sponsor, or a sponsor of a pr-approved plan, may adopt to comply with this revenue ruling.

- The first model amendment is intended to have the effect of adopting the mortality table set forth in this revenue ruling for purposes of adjusting any benefit or limitation under § 415(b)(2)(B), (C), or (D). The applicable mortality table used for purposes of satisfying the requirements of §417(e).
- The second model amendment is intended to have the effect of substituting the mortality table set forth in Rev. Rul. 95-6 for all purposes under the plan for which the use of the mortality table set forth in Rev. Rul. 95-6 is specified.

A plan sponsor should consider which of these two approaches is appropriate for the particular plan, or whether some other approach should be chosen for the plan.

Continued on next page

415 limit—the new applicable mortality table, Continued**Model
Amendment 1**

1. Effective date. This section shall apply to distributions with annuity starting date on or after _____.
2. Notwithstanding any other provisions to the contrary, the applicable mortality table used for purposes of adjusting any benefit or limitation under §415(b)(2)(B), (C), or (D) of the Internal Revenue Code as set forth in section ____ of the plan and the applicable mortality table used for purposes of satisfying the requirements of §417(e) of the Internal Revenue Code as set forth in section ____ of the plan is the table prescribed in Rev. Rul.2001-62
3. For any distribution with an annuity starting date on or after the effective date of this section and before the adoption date of this section, if application of the amendment as of the annuity starting date would have caused a reduction in the amount of any distribution, such reduction is not reflected in any payment made before the adoption date of this section. However, the amount of any such reduction that is required under §415(b)(2)(B) must be reflected actuarially over any remaining payments to the participant.

Note. This amendment should be used for plans that reference the applicable mortality table only for the purposes of adjusting any benefits or limitation under §415(b)(2)(B), (C), or (D) of the Internal Revenue Code and satisfying the requirements of §417(e) of the Internal Revenue Code. Paragraph 3 of this amendment should be used only if the effective date of the amendment is earlier than the adoption date of the amendment.

Continued on next page

415 limit—the new applicable mortality table, Continued**Model
Amendment 2**

1. Effective date. This section shall apply to distributions with annuity starting dates on or after _____.
2. Notwithstanding any other plan provisions to the contrary, any reference in the plan to the mortality table prescribed in Rev. Rul. 95-6 shall be construed as a reference to the mortality table prescribed in Rev. Rul. 2001-62 for all purposes under the plan.
3. For any distribution with an annuity starting date on or after the effective date of this section and before the adoption date of this section, if application of the amendment as of the annuity starting date would have caused a reduction in the amount of any distribution, such reduction is not reflected in any payment made before the adoption date of this section. However, the amount of any such reduction that is required under §415(b)(2)(B) must be reflected actuarially over any remaining payments to the participant.

Note: This amendment should be used for plans that specifically:

- reference the mortality table provided in Rev. Rul. 95-6 and apply that table for other purposes as well as for purposes of adjusting any benefit or limitation under §415(b)(2)(B), (C), or (D) and
- satisfying the requirements of §417(e), where the plan sponsor wishes to replace the mortality table provided in Rev. Rul. 95-6 with the mortality table provided in Rev. Rul. 2001-62 for all purposes.

If the plan references the mortality table prescribed in Rev. Rul. 95-6 using some other label (such as, for example, the GAM 83 blended mortality table), the plan's term should be used in place of the reference to the mortality table prescribed in Rev. Rul. 95-6. Paragraph 3 of this amendment should be used only if the effective date of the amendment is earlier than the adoption date of the amendment.

Limits on contributions and benefits-elective deferrals

Elective deferral limits-402(g)

EGTRRA section 611(d)

Amendment is optional Unless the plan correctly incorporates the limitation of section 402(g) of the Code by reference, the plan cannot permit the higher amount of elective deferrals under EGTRRA unless it adopts the following or similar amendment.

Effective Date: _ years beginning after December 31, 2001.

Explanation of provision

The provision increases the dollar limit on annual elective deferrals under section 401(k) plans, section 403(b) annuities and salary reduction SEP's from \$10,000 "indexed" to the "applicable dollar amount"

2002 ----- \$11,000

2003 ----- \$12,000

2004 ----- \$13,000

2005 ----- \$14,000

2006 and later \$15,000

with indexing in \$500 increments thereafter.

Sample amendment

Section _____ Maximum Salary Reduction Contributions

No participant shall be permitted to have elective deferrals made under this plan, or any other qualified plan maintained by the employer during any taxable year, in excess of the dollar limitation in section 402(g) of the Code in effect for such taxable year, except to the extent permitted under section _____ of this amendment {enter the section of the amendment that provides for catch-up contributions under EGTRRA section 631] and section 414(v) of the Code, if applicable.

References

Notice 2002-71, section 402(g)(1)(B) of the Code and Act §611(d).

Simple 401k plans

Introduction

EGTRRA section 611(f)

Amendment is optional This language is not necessary if the plan correctly incorporates the limitation in section 408(p)(2)(A)(ii) of the Code.

Effective Date:- **Years beginning after December 31, 2001**

Explanation of provision

The provision increases the maximum annual elective deferrals that may be made to a SIMPLE plan to \$7,000 in 2002. In 2003 and thereafter, the SIMPLE plan deferral limit is increased in \$1,000 annual increments until the limit reaches \$10,000 in 2005. Beginning after 2005, the \$10,000 dollar limit is indexed in \$500 increments.

Sample Amendment

Maximum Salary Reduction Contributions:- Except to the extent permitted under section ____ of this amendment [enter the section of the amendment that provides for catch-up contributions under EGTRRA section 631] and section 414(v) of the Code, if applicable, the maximum salary reduction contribution that can be made to this plan is the amount determined under section 408(p)(2)(A)(ii) of the Code for the calendar year.

References

Notice 2002-71, section 408(p)(2)(E) of the Code and Act §611(f)

Section 457 plans

Introduction

- EGTRRA section 611(e)
 - Amendment is optional
 - Effective Date:- Years beginning after December 31, 2001.
-

Explanation of provision

The provision increases the dollar limit on deferrals under a section 457 plan to conform to the elective deferral limitation. Thus, the limit is \$11,000 in 2002, and is increased in \$1,000 annual increments thereafter until the limit reaches \$15,000 in 2006. The limit is indexed thereafter in \$500 increments. The limit is twice the otherwise applicable dollar limit in the three years prior to retirement, subject to certain restrictions.

References

Section 457 (b) of the Code and Act §611(e)

Top Heavy Rules-determination of top heavy status

Introduction

- EGTRRA section 613
 - Amendment is required However, the amendment is not required for plans that consist solely of:
 1. a cash or deferred arrangement which meets the safe harbor requirements of section 401(k)(12) of the Code and
 2. matching contributions with respect to which the safe harbor requirements of section 401(m) (11) of the Code are met.
 - Effective Date:- Plan years beginning after December 31, 2001.
-

Explanation of provision

- Cash or deferred arrangements that use a safe harbor contribution feature automatically satisfy the top-heavy contribution requirement.
 - In determining if a plan is a top-heavy, distributions during the year ending on the date the top-heavy determination was made are taken into account. *(However, in-service distributions made during the preceding five –years must be taken into account, Section 613(c) of P.L. 107-16.)*
 - A key employee is now defined to include an employee: (1) who earns more than **\$130,000** and is an officer; (2) a 5% owner; or (3) 1% owner with compensation in excess of \$150,000. The top-10 owner key employee category has been repealed, along with the 4-year look-back rule for key – employee status; the look-back rule is now limited to the year ending on the top-heavy determination date.
 - Matching contributions are now taken into account when satisfying the minimum benefit requirements for top-heavy plans
-

Continued on next page

Top Heavy Rules-determination of top heavy status, Continued**Sample
Amendment**

Section _____ Modification Of Top-Heavy Rules

Effective date: This section shall apply for purposes of determining whether the plan is top-heavy plan under section 416(g) of the Code for plan years beginning after December 31, 2001, and whether the plan satisfies the minimum benefits requirements of section 416(c) of the Code for such years. This section amends section ___ of the plan {enter the section of the plan that includes top-heavy requirements}.

1. Determination of top-heavy status

2.1 Key employee- Key employee means any employee or former employee (including any deceased employee) who at any time during the plan year that includes the determination date was an officer of the employer having annual compensation greater than \$130,000 (as adjusted under section 416(i)(1) of the Code for plan years beginning after December 31, 2002), a 5 percent owner of the employer , or a 1 percent owner of the employer having annual compensation of more than \$150,000. For this purpose, annual compensation means compensation within the meaning of section 415(c)(3) of the code. The determination of who is a key employee will be made in accordance with section 416(i)(1) of the Code and the applicable regulations and other guidance of general applicability issued thereunder.

2.2 Determination of present values and amounts- This section shall apply for purposes of determining the present values of accrued benefits and the amounts of account balances of employees as of the determination date.

2.2.1 Distributions during year ending on the determination date- The present values of accrued benefits and the amounts of account balances of an employee as of the determination date shall be increased by the distributions made with respect to the employee under the plan and any plan aggregated with the plan under section 416(g)(2) of the Code during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which , had it not been terminated, would have been aggregated with the plan under section 416(g)(2)(A)(i) of the Code. In the case of a distribution made for a reason other than separation from service, death, or disability, this provision shall be applied by substituting 5 year period for 1-year period.

Continued on next page

Top Heavy Rules-determination of top heavy status, Continued

**Sample
Amendment
(continued)**

2.2.2 Employees not performing services during year ending on the determination date- The accrued benefits and accounts of any individual who has not performed services for the employer during the 1-year period ending on the determination date shall not be taken into account.

Top Heavy-minimum benefits for DB and DC plans

**Sample
Provision for
DC plans**

B-1. Minimum Benefits / Defined Contribution Plans:

B-1.1 Matching contributions- Employer matching contributions shall be taken into account for purposes of satisfying the minimum contribution requirements of section 416(c) (2) of the Code and the plan. The preceding sentence shall apply with respect to matching contributions under the plan or, if the plan provides that the minimum contribution requirement shall be met in another plan, such other plan. Employer matching contributions that are used to satisfy the minimum contribution requirements shall be treated as matching contributions for purposes of the actual contribution percentage test and other requirements of section 401(m) of the Code.

B-1.2 Contributions under other plans- The employer may provide in the adoption agreement that the minimum benefit requirement shall be in another plan (including another plan that consists solely of a cash or deferred arrangement which meets the requirements of section 401(k)(12) of the Code and matching contributions with respect to which the requirements of section 401(m)(11) of the Code are met).

Continued on next page

Top Heavy-minimum benefits for DB and DC plans, Continued**Adoption Agreement**

Minimum Benefits for Employees Also Covered Under Another Plan:

(The employer should describe below the extent, if any, to which the top-heavy minimum benefit requirement of section 416(c) of the Code and section ____ of the plan shall be met in another plan. This should include the name of the other plan, the minimum benefit that will be provided under such other plan, and the employees who will receive the minimum benefit under such other plan.)

Minimum benefits for DB plans

Minimum benefits- For purposes of satisfying the minimum benefit requirements of section 416(c) (1) of the Code and the plan, in determining years of service with the employer, any service with the employer shall be disregarded to the extent that such service occurs during a plan year when the plan benefits (within the meaning of section 410(b) of the Code) no key employee or former key employee.

References

Notice 2001-56, Notice 2001-57, IRC 416 and Act §613.

Modification of top heavy rules-401(k)(12) and 401(m)(11)

Introduction

- EGTRRA section 613
 - Amendment is optional, except for plans with a cash or deferred arrangement
 - Effective Date: Years beginning after December 31, 2001.
-

Sample language

The following sample language is only for plans that consist solely of a cash or deferred arrangement which meets the requirements of section 401(k)(12) of the Code and matching contributions with respect to which the requirements of section 401(m)(11) of the Code are met.

Sample amendment:

Section ____ Modification Of Top-Heavy Rules

The top-heavy requirements of section 416 of the code and section ____ of the plan shall not apply in any year beginning after December 31, **2001**, in which the plan consists solely of a cash or deferred arrangement which meets the requirements of section 401(k)(12) of the Code and matching contributions with respect to which the requirements of section 401(m)(11) of the Code are met.

References

Notice 2002-71, section 416(g)(4)(H) of the Code and Act section 613.

Faster Vesting of employer matching contributions-411(a)(12)

Introduction

- EGTRRA section 633
 - Amendment is required
 - Effective Date:- Contributions made for plan years beginning after December 31, 2001. The provision does not apply to any employee until the employee has an hour of service after the effective date. In applying the new vesting schedule, service before the effective date is taken into account.
-

Explanation of provision

Plans that provide for matching contributions, as defined in §401(m)(4)(A) of the Code, that do not vest at least as rapidly as under one of the two alternative schedules in EGTRRA §633 must be amended to satisfy EGTRRA §633 for contributions for plan years beginning after December 31, 2001, *e.g. either 6 year graded or 3 year cliff, based on years of service.*

Collective bargaining agreements

In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified by the date of the enactment of this Act, the amendments made by this section shall not apply to contributions on behalf of employees covered by any such agreement for plan years beginning before the earlier of-

(A) the later of-

(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after such date of the enactment); or

(ii) January 1, 2002, or

(B) January 1, 2006

Continued on next page

Faster Vesting of employer matching contributions- 411(a)(12), Continued

**Sample
Amendment**

The following amendment is effective for plan years beginning after December 31, 2001, but applies to all matching contributions under the plan, including contributions for plan years beginning before January 1, 2002.

- The amendment may be modified to limit its application to contributions for plan years beginning after December 31, 2001.
- The amendment may also be modified to provide for any other vesting schedule that is at least as rapid as one of the alternative schedules in EGTRRA §633.

Section ____ VESTING OF EMPLOYER MATCHING CONTRIBUTIONS

1. Applicability. This section applies to participants with accrued benefits derived from employer matching contributions that complete an hour of service under the plan in a plan year beginning after December 31, 2001. If elected by the employer in the adoption agreement, this section shall also apply to all other participants with accrued benefits derived from employer matching contributions.
2. Vesting schedule- A participant's accrued benefit derived from employer matching contributions shall vest as provided by the employer in the adoption agreement. If the vesting schedule for employer matching contributions in Option 3 of the adoption agreement is elected, the election in section ____ of the plan [enter the section of the plan that provides for the election of the former vesting schedule under section 411(a)(10) of the Code] shall apply.

Continued on next page

Faster Vesting of employer matching contributions-411(a)(12), Continued

Adoption agreement

Adoption Agreement Provisions

Application of section ____, Vesting of Employer Matching Contributions:

(Check the following option to apply section ____, Vesting of Employer Matching Contributions, to all participants with accrued benefits derived from employer matching contributions, rather than just those who complete an hour of service under the plan in plan year beginning after December 31, 2001.)

____ Section ____, Vesting of Employer Matching Contributions, shall apply to all participants with accrued benefits derived from employer matching contributions.

Vesting Schedule for Employer Matching Contributions:

____ Option 1. A participant's accrued benefit derived from employer matching contributions shall be fully and immediately vested.

____ Option 2. A participant's accrued benefit derived from employer matching contributions shall be nonforfeitable upon the participant's completion of three years of vesting service.

____ Option 3. A participant's accrued benefit derived from employer matching contributions shall vest according to the following schedule:

Years of vesting service	Nonforfeitable percentage
2	20
3	40
4	60
5	80
6	100

References

Notice 2001-57, IRC 411(a)(12) and Act §633.

Repeal of multiple use test

Introduction

- EGTRRA section 666
 - Amendment is required for plans subject to the multiple use test
 - Effective Date:- Years beginning after December 31, 2001.
 - The provision repeals the multiple use test.
-

**Sample
Amendment**

Section _____ Repeal Of Multiple Use Test

The multiple use test described in Treasury Regulation section 1.401(m)-2 and section ____ of the plan shall not apply for plan years beginning after December 31, 2001.

References

Notice 2001-57, IRC 401(m)(9) and Act §666.

Distributions from 401(k) plan-Hardship

Introduction

- EGTRRA section 636(a)
 - Amendment is required for all 401(k) Safe Harbor Plans
 - Language is optional for all other 401(k) Plans
 - Effective Date:- Calendar years beginning after December 31, 2001
-

Explanation of provision

1. Section 636(a) of EGTRRA directs the Secretary of the Treasury to revise the regulations relating to hardship distributions under section 401(k)(2)(B)(i)(IV) of the Internal Revenue Code 1986 to provide that the period during which an employee is prohibited from making elective and employee contributions in order for a distribution to be deemed necessary to satisfy financial need shall be equal to 6 months.
 2. In addition, any distribution made upon hardship of an employee is not an eligible rollover distribution. Thus, such distributions may not be rolled over, and are not subject to the withholding rules applicable to distributions that are not eligible rollover distributions.
 3. The provision does not modify the rules under which hardship distributions may be made. For example, as under present law, hardship distributions of qualified employer matching contributions are only permitted under the rules applicable to elective deferrals.
-

Sample amendment

Section _____ Suspension Period Following Hardship

A participant who receives a distribution of elective deferrals after December 31, 2001, on account of hardship shall be prohibited from making elective deferrals and employee contributions under this and all other plans of the employer for 6 months after receipt of the distribution. A participant who receives a distribution of elective deferrals in calendar year 2001 on account of hardship shall be prohibited from making elective deferrals and employee contributions under this and all other plans of the employer for the period specified by the employer in the adoption agreement.

Continued on next page

Distributions from 401(k) plan-Hardship, Continued

**Adoption
Agreement**

Suspension Period for Hardship Distributions: (choose one.)

____ A participant who receives a distribution of elective deferrals in calendar year 2001 on account of hardship shall be prohibited from making elective deferrals and employee contributions under this and all other plans of the employer for 6 months after receipt of the distribution or until January 1, 2002, if later.

____ A participant who receives a distribution of elective deferrals in calendar year 2001 on account of hardship shall be prohibited from making elective deferrals and employee contributions under this and all other plans of the employer for the period specified in the provisions of the plan relating to suspension of elective deferrals that were in effect prior to this amendment.

References

Notice 2001-56, Notice 2001-57 and Act §636(a).

Distributions from 401k-severance from employment (same desk rule)

Introduction

- EGTRRA section 646
- Amendment is optional
- Effective Date:- Applies to distributions after December 31, 2001, regardless of when the severance of employment occurred.

Explanation of provision

The provision modifies the distribution restrictions applicable to section 401(k) plans, section 403(b) annuities, and section 457 plans to provide that distributions may occur upon severance from employment rather than separation from service.

In addition, the provisions for distribution from a section 401(k) plan based upon a corporation's disposition of its assets or a subsidiary are repealed. This special rule is no longer necessary under the provision.

Sample Amendment

Section ____ Distribution Upon Severance From Employment

1. Effective date. If elected by the employer in the adoption agreement, this section shall apply for distributions and severance from employment occurring after the dates specified in the adoption agreement.
2. New distributable event. A participant's elective deferrals, qualified nonelective contributions, qualified matching contributions; and earnings attributable to these contributions shall be distributed on account of the participant's severance from employment. However, such a distribution shall be subject to the other provisions of the plan regarding distributions, other than provisions that require a separation from service before such amounts may be distributed.

Continued on next page

Distributions from 401k-severance from employment (same desk rule), Continued**Adoption
agreement**

Section _____, Distribution Upon Severance from Employment, shall apply for distributions after:

_____ (Enter a date no earlier than December 31, 2001).

(Choose one)

_____ regardless of when the severance from employment occurred.

_____ for severances from employment occurring after _____. (Enter date.)

References

Notice 2001-57, IRC 401(k)(2)(B), IRC 401(k)(10) and Act §646.

401k-catch up contributions

Introduction

- EGTRRA section 631
 - Amendment is optional
 - Effective Date:- Applies to contributions in tax years beginning after December 31, 2001
-

Explanation of provision-general rule

Under section 414(v) of the Code, an individual age 50 or over is permitted to make catch-up contributions (up to a dollar limit provided in section 414(v)(2) of the Code) under an applicable employer plan if certain requirements provided in section 414(v) are satisfied. Section 414(v) also provides that a plan generally will not violate any provision of the Code by permitting these catch-up contributions to be made.

Nondiscrimination requirements

Section 414(v)(4)(A) provides that an applicable employer plan shall be treated as failing to meet the nondiscrimination requirements under section 401(a)(4) with respect to benefits, rights, and features unless the plan allows all eligible participants to make the same election with respect to catch-up contributions.

Section 414(v)(4)(B) provides that, for this purpose, all plans maintained by employers who are treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as one plan.

Proposed regulations section 1.414(v)-1(e) provides that an applicable employer plan that offers catch – up contributions will not satisfy the requirements of section 401(a)(4) of the Code unless all catch –up eligible participants who participate under any applicable employer plan maintained by the employer are provided with the effective opportunity to make the same dollar amount of catch-up contributions.

Continued on next page

401k-catch up contributions, Continued**Eligible participant for catch up**

Proposed regulations section 1.414(v)-1(a)(4) provides that a catch –up eligible participant is an employee who:

- is eligible to make elective deferrals during the plan year under an applicable employer plan (without regard to Code 414(v) or the proposed regulations), and
 - is age 50 or over (or is treated as age 50 as of January 1 of a year in accordance with Proposed Regulations 1.414(v)-1(a)(4)(ii)).
-

Eligible plan for catch up

An applicable employer plan is a:

- section 401(k) plan,
 - SIMPLE IRA plan,
 - simplified employee pension,
 - plan or contract that satisfies the requirements of Code section 403(b), or
 - 457 eligible government plan.
-

Employer defined

The term “employer” under the proposed regulations has the same meaning as this term under Regulations Section 1.410(b)-9. Under section 1.410(b)-9, the definition of employer includes the employer maintaining the plan and those employers required to be aggregated with the employer under section 414(b), (c), (m), or (o).

Continued on next page

401k-catch up contributions, Continued**Sample amendment**

Section _____ Catch-Up Contributions

__ If elected by the employer in the adoption agreement, all employees who are eligible to make elective deferrals under this plan and who have attained age 50 before the close of the plan year shall be eligible to make catch-up contributions in accordance with, and subject to the limitations of, section 414(v) of the Code. Such catch-up contributions shall not be taken into account for purposes of the provisions of the plan implementing the required limitations of sections 402(g) and 415 of the Code. The plan shall not be treated as failing to satisfy the provisions of the plan implementing the requirements of section 401(k)(3), 401(k)(11), 401(k)(12), 410(b), or 416 of the Code, as applicable, by reason of the making of such catch-up contributions.

Adoption agreement provision

Section _____, Catch – up Contributions: (choose one).

_____ shall apply to contributions after ____ . (Enter December 31, 2001 or a later date).

_____ shall not apply.

Reference

Notice 2002-4, Notice 2001-57, Proposed Regulations 1.414(v)-1 and Act § 631.

Rollovers-DC plans

**Introduction-
direct rollovers**

- EGTRRA section 636(b), 641, 642 and 643
 - Amendment is required
 - Effective Date Distributions made after December 31, 2001
-

**Explanation of
provision**

1. Distributions from tax-qualified plans, 457 plans and 403(b) plans can all be rolled over into *any of these* arrangements-although these plans would not be required to accept these rollovers.
 2. Hardship distributions are not eligible rollover distributions.
 3. Rollovers of after-tax contributions to a qualified plan or traditional IRA are now permitted.
 4. Spousal rollover permitted from the distributing plan to a tax-qualified plan, 403(a) plan, 403(b) plan or 457 plan in which the spouse participates.
-

Continued on next page

Rollovers-DC plans, Continued

Sample amendment

1. Effective date: This section shall apply to distributions made after December 31, 2001.
2. **Modification of definition of eligible retirement plan.** For purposes of the direct rollover provisions in section ____ of the plan, an eligible retirement plan shall also mean an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.

This paragraph should be deleted in the case of plans that do not provide for hardship distributions:

3. **Modification of definition of eligible rollover distribution to exclude hardship distributions.** For purposes of the direct rollover provisions in section ____ of the plan, any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.

Continued on next page

Rollovers-DC plans, Continued

Sample amendment
(continued)

This paragraph should be deleted in the case of plans that do not have after- tax contributions:

4. **Modification of definition of eligible rollover to include after-tax employee contributions.** For purposes of direct rollover provisions in section ___ of the plan, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is so includible.

References

Notice 2001-57, section 401(a)(31)(B) of the Code, section 402(c)(2) of the Code, section 402(c)(9) of the Code, section 402(c)(4)(C) of the Code, Act §636(b), §641, §642 and §643.

Additional types of rollovers-DC plans

Introduction

- EGTRRA section : 641, 642 and 643
 - Amendment is optional
 - Effective Date: Distributions made after December 31, 2001.
-

Explanation of provision

1. A plan is not required to accept rollover contributions, including direct rollovers under section 401(a)(31) of the Code. The following optional sample amendment may be used to specify additional types of rollovers the plan will accept pursuant to EGTRRA sections 641, 642 and 643. A plan that accepts rollovers may be required to separately account for such amounts.
 2. The provision provides that eligible rollover distributions from qualified retirement plans, section 403(b) annuities, and governmental section 457 plans generally could be rolled over to any of such plans or arrangements.
 3. Similarly, distributions from an IRA generally are permitted to be rolled over into a qualified plan, section 403(b) annuity, or governmental section 457 plan. The direct rollover and withholding rules are extended to distributions from a governmental section 457 plan, and such plans are required to provide the written notification regarding eligible rollover distributions.
 4. The rollover notice (with respect to all plans) is required to include a description of the provisions under which distributions from the plan to which the distribution is rolled over may be subject to restrictions and tax consequences different than those applicable to distributions from the distributing plans. Qualified plans, section 403(b) annuities, and section 457 plans would not be required to accept rollovers.
-

Continued on next page

Additional types of rollovers-DC plans, Continued

Sample amendment

Section _____ Rollovers From Other Plans

If provided by the employer in the adoption agreement, the plan will accept participant rollover contributions and/or direct rollovers of distributions made after December 31, 2001, from the types of plans specified in the adoption agreement, beginning on the effective date specified in the adoption agreement.

Adoption agreement-direct rollover

The plan will accept a direct rollover of an eligible rollover distribution from:

(Check each that applies or none)

___ a qualified plan described in section 401(a) or 403(a) of the code, excluding after tax employee contributions.

___ a qualified plan described in section 401(a) or 403(a) of the Code, including after-tax employee contributions.

___ an annuity contract described in section 403(b) of the Code, excluding after-tax employee contributions.

___ an eligible plan under section 457(b) of the code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

Adoption agreement-Rollover Contributions from Other Plans:

The plan will accept a participant contribution of an eligible rollover distribution from: (Check each that applies or none.)

___ a qualified plan described in section 401(a) or 403(a) of the Code.

___ an annuity contract described in section 403(b) of the Code.

___ an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

Continued on next page

Additional types of rollovers-DC plans, Continued

**Adoption
Agreement-
Rollover
Contributions
from IRA's**

The plan : (Choose one.)

will

will not

accept a participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be included in gross income.

**Adoption
agreement-
effective date**

Effective Date of Direct Rollover and Participant Rollover Contribution Provisions:

Section _____, Rollovers From Other Plans, shall be effective:

_____ (Enter a date no earlier than January 1, 2002.)

References

Notice 2001-57, and Act §641, §642 and §643.

Employers may disregard rollovers for purposes of cash out rules-DC plans

Introduction

- EGTRRA section 648
 - Amendment is optional
 - Effective Date: Distributions made after December 31, 2001
-

Explanation of provision

The sample amendment may be adopted by plans that provide for involuntary cash-outs, other than plans that are subject to the qualified joint and survivor annuity requirements of section 401(a)(11) and 417 of the Code. This amendment will result in the involuntary distribution of a separated participant's account over \$5,000 if the portion of the account that is not attributable to rollover contributions is \$5,000 or less.)

Sample amendment

Section ____ Rollovers Disregarded in Involuntary Cash-outs

1. Applicability and effective date: This section shall apply if elected by the employer in the adoption agreement and shall be effective as specified in the adoption agreement.
 2. Rollovers disregarded in determining value of account balance for involuntary distributions. If elected by the employer in the adoption agreement, for purposes of section ____ of the plan [enter the section of the plan that provides for the involuntary distribution of vested accrued benefits of \$5,000 or less], the value of a participant's nonforfeitable account balance shall be determined without regard to that portion of the account balance that is attributable to rollover contributions (and earnings allocable thereto) within the meaning of sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) of the code. If the value of the participant's nonforfeitable account balance as so determined is \$5,000 or less, the plan shall immediately distribute the participant's entire nonforfeitable account balance.
-

Continued on next page

Employers may disregard rollovers for purposes of cash out rules-DC plans, Continued

**Adoption
agreement**

Treatment of Rollovers in Application of involuntary Cash-out Provisions:

The employer: (choose one)

___ elects

___ does not elect

To exclude rollover contributions is determining the value of the participant's nonforfeitable account balance for purposes of the plan's involuntary cash-out rules.

If the employer has elected to exclude rollover contributions, the election shall apply with respect to distributions made after:

_____ (Enter a date no earlier than December 31, 2001.)

with respect to participants who separated from service after:

_____ (Enter date. The date may be earlier than December 31, 2001.)

References

Notice 2001-57, section 411(a)(11)(D) of the Code and Act §648.

Automatic rollovers for certain mandatory distributions-DC plans

Introduction

- EGTRRA section 657
- Amendment is required
- Effective Date: Distributions that occur after the Department of Labor has adopted
- final regulations implementing the provision.
- No immediate action is required.

Explanation of provision

The provision makes a direct rollover the default option for involuntary distributions that exceed \$1,000 and that are eligible rollover distributions from qualified retirement plans. The distribution must be rolled over automatically to a designated IRA, unless the participant affirmatively elects to have the distribution transferred to a different IRA or a qualified plan or to receive it directly.

The written explanation provided by the plan administrator is required to explain that an automatic direct rollover will be made unless the participant elects otherwise. The plan administrator is also required to notify the participant in writing (as part of the general written explanation or separately) that the distribution may be transferred without cost to another IRA.

Continued on next page

Automatic rollovers for certain mandatory distributions-DC plans, Continued

Explanation of provision
(continued)

The provision amends the fiduciary rules of ERISA so that, in the case of an automatic direct rollover, the participant is treated as exercising control over the assets in the IRA upon the earlier of:

- (1) the rollover of any portion of the assets to another IRA, or
- (2) one year after the automatic rollover.

The provision directs the Secretary of Labor to issue safe harbors under which the designation of an institution and investment of funds in accordance with the provision are deemed to satisfy the requirements of section 404(a) of ERISA. In addition the provision authorizes and directs the Secretary of the Treasury and the Secretary of Labor to give consideration to providing special relief with respect to the use of low-cost individual retirement plans for purposes of the provision and for other uses that promote the preservation of tax-qualified retirement assets for retirement income purposes.

References

Section 402(f)(1) of the Code, section 401(a)(31) of the Code and Act §657.

Direct rollovers-DB plans

Introduction

- EGTRRA section 641, 642 and 643
 - Amendment is required
 - Effective Date : Distributions made after December 31, 2001
-

Sample amendment

Sample amendment:

1. Effective Date. This section shall apply to distributions made after December 31, 2001.

2. **Modification of definition of eligible retirement plan.** For purposes of the direct rollover provisions in section ___ of the plan, an eligible retirement plan shall also mean an annuity contract described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.

This Paragraph is Required Only for Plans That Have After-Tax Contributions.

3. **Modification of definition of eligible rollover distribution to include after-tax employee contributions.** For purposes of the direct rollover provisions in section ___ of the plan, a portion of a distribution shall not fail to be an eligible rollover distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions, which are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

Additional types of rollovers accepted—DB plans

Introduction

- EGTRRA section 641, 642 and 643
 - Amendment is optional
 - Effective Date: Applies to rollovers of distributions made after December 31, 2001.
-

Explanation of provision

A plan is not required to accept rollover contributions, including direct rollovers under section 401(a)(31) of the code. The following optional sample amendment may be used to specify additional types of rollovers the plan will accept pursuant to EGTRRA section 641, 642 and 643. A defined benefit plan that accepts rollovers must separately account for such amounts.

Sample amendment

Section ____ Rollovers From Other Plans

If provided by the employer in the adoption agreement, the plan will accept participant contributions and/or direct rollovers of distributions made after December 31, 2001, from the types of plans specified in the adoption agreement, beginning on the effective date specified in the adoption agreement.

Continued on next page

Additional types of rollovers accepted—DB plans, Continued**Adoption
agreement
provisions**

Direct Rollovers: The plan will accept a direct rollover of an eligible rollover distribution from: (Check each that applies or none.)

a qualified plan described in section 401(a) or 403(a) of the Code.

an annuity contract described in section 403(b) of the Code.

an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

Participant Rollover Contributions from Other Plans: The plan will accept a participant contribution of an eligible rollover distribution from: (Check each that applies or none.)

a qualified plan described in section 401(a) or 403(a) of the Code.

an annuity contract described in section 403(b) of the Code.

an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

Continued on next page

Additional types of rollovers accepted—DB plans, Continued

**Adoption
agreement
provisions**
(continued)

Participant Rollover Contributions from IRAs: The plan: (Choose one.)

will

will not

accept a participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.

Effective Date of Direct Rollover and Participant Rollover Contribution

Provisions: Section ____, Rollovers From Other Plans, shall be effective:

_____ (enter a date no earlier than January 1, 2002.)

References

Section 401(a)(31) of the Code, section 402(c)(8)(B) of the Code, section 403(b) of the Code, section 408 of the Code, section 457 of the Code, Notice 2001-57 and Act §641, §642 and §643.

Loans for small businesses

Introduction

- EGTRRA section 612
 - Amendment is required for plans that provide loans to participants but which prohibit the making of loans to owner-employees or Subchapter S shareholder employees. If the plan does not have such provision the language is optional.
 - Effective Date: Years beginning after December 31, 2001.
-

Explanation of provision

Statutory exemption to a prohibited transaction for loans between a party in interest and a plan now also applies to loans between a plan and a shareholder employee or owner-employee.

Sample amendment

Section _____. Plan Loans For Owner-Employees And Shareholder Employees

Effective for plan loans made after December 31, 2001, plan provisions prohibiting loans to any owner-employee or shareholder-employee shall cease to apply.

References

Notice 2001-57, section 4975(f)(6) of the Code and Act §612(a).

Section 404 and 412 limits-DC plans-elective deferrals

Introduction

- EGTRRA section 614
 - Amendment is optional
 - Effective Date: Years beginning after December 31, 2001.
-

Explanation of provision

Elective deferral contributions are not subject to the deduction limits, and the application of a deduction limitation to any other employer contribution to a qualified retirement plan does not take into account elective deferral contributions.

Sample amendment

Elective deferrals are not taken into account when calculating deduction for contribution under section ____ of the plan. [enter section of the plan that provides for employer contributions.]

References

Section 404(n) of the Code and Act §614.

Section 404 and 412—DC plans, deduction limits

Introduction

- EGTRRA section 616(a)
 - Amendment is optional
 - Effective Date: Years beginning after December 31, 2001.
-

Explanation of provision

The annual limitation on the amount of *contributions to a profit-sharing or stock bonus plan that is deductible is increased from 15 percent to 25* percent of compensation of the employees covered by the plan, for the year.

Also, except to the extent provided in regulations, a money purchase pension plan is treated like a profit-sharing or stock bonus plan for purposes of the deduction rules.

References

Section 404(a)(3)(A) of the Code and Act §616.

Section 404, 412—DC plans, compensation under a deferred payment plan

Introduction

- EGTRRA section 616(a)
- Amendment is optional
- Effective Date: Years beginning after December 31, 2001.

Explanation of provision

The definition of compensation for purposes of the deduction rules includes salary reduction amounts *included in the definition of compensation under section 415*.

References

Section 404(a)(3)(A) of the Code and Act section 616(a).

Section 404 and 412-DB plans-deduction for contributions to fund termination liability

Introduction

- EGTRRA section 652
 - Amendment is optional
 - Effective Date: Plan years beginning after December 31, 2001.
-

Explanation of provision

The special rule allowing a deduction for *unfunded* current liability generally is extended to all defined benefit pension plans, i.e., the provision applies to multiemployer plans and plans with 100 or fewer participants. The special rule does not apply to plans not covered by the PBGC termination insurance program.

The provision also modifies the special rule by providing that the deduction is for up to 100 percent of *unfunded* termination liability, determined as of the end of the plan year in which the plan terminated.

In the case of a plan with less than 100 participants for the plan year, termination liability does not include the liability attributable to benefit increases for highly compensated employees resulting from a plan amendment which was made or became effective, whichever is later, within the last two years before the date of termination.

References

Section 404(a)(1) of the Code, section 4972(c) of the Code and Act §652.

ESOP Dividends May Be Reinvested Without Loss of Dividend Deduction

Introduction

- EGTRRA section 662
 - Amendment is optional
 - Effective Date: Taxable years beginning after December 31, 2001.
-

Explanation of provision

In addition to the deductions permitted under present law for dividends paid with respect to employer securities that are held by an ESOP, an employer is entitled to deduct dividends that, at the election of plan participants or their beneficiaries, are

- (1) payable in cash directly to plan participants or beneficiaries,
- (2) paid to the plan and subsequently distributed to the participants or beneficiaries in cash no later than 90 days after the close of the plan year in which the dividends are paid to the plan, or
- (3) paid to the plan and reinvested in qualifying securities.

The provisions permits the Secretary to disallow the deduction for any ESOP dividend if the Secretary determines that the dividend constitutes, in substance, the avoidance or evasion of taxation.

References

Section 404(k)(2) of the Code and Act §662.

Prohibited allocations of stock in an S Corp ESOP

Introduction

- EGTRRA section 656
 - Amendment is required
 - Effective Date: Generally effective with respect to plan years beginning after December 31, 2004. In the case of an ESOP established after March 14, 2001, or an ESOP established on or before such date if the employer maintaining the plan was not an S corporation on such date, the provision is effective with respect to plan years ending after March 14, 2001.
-

Explanation of provision

Under the provision, if there is a nonallocation year with respect to an ESOP maintained by an S corporation:

- (1) the amount allocated in a prohibited allocation to an individual who is a disqualified person is treated as distributed to such individual (i.e., the value of the prohibited allocation is includible in the gross income of the individual receiving the prohibited allocation);
- (2) an excise tax is imposed on the S corporation equal to 50 percent of the amount involved in a prohibited allocation; and
- (3) an excise tax is imposed on the S corporation with respect to any equity owned by a disqualified person.

It is intended that the provision will greatly limit the establishment of ESOP's by S corporations to those that provide broad-based employee coverage and that benefit rank-and-file employees as well as highly compensated employees and historical owners.

References

Notice 2002-2, Section 409(p) of the Code, section 4975(e)(7) of the Code, section 4979A of the Code and Act §656.

Elimination of IRS user fees for certain determination letter requests

Introduction

- *EGTRRA section 620*
 - Effective Date: Determination letter requests made after December 31, 2001.
-

Explanation of provision

A smaller employer (100 or fewer employees) is not required to pay a user fee for a determination letter request with respect to the qualified status of a retirement plan that the employer maintains if the request is made before:

- (1) the last day of the fifth plan year after the establishment of the plan, or
- (2) if the request is made before the end of the plan's first remedial amendment period and the plan was in existence less than five years prior to the beginning of the plan's first remedial amendment period.

The provision would apply only to requests by employers for determination letters concerning the qualified retirement plans they maintain. Therefore, a sponsor of a prototype plan or volume submitter plan is required to pay a user fee for a request for an opinion or advisory letter.

A small employer that adopts a prototype or volume submitter plan, however, is not required to pay a user fee for a determination letter request with respect to the employer's plan, if they meet the above criteria.

References

Notice 2002-1 and Act §620.

Section 401(a)(9)--minimum distribution requirements-DC plans, sample amendment

Introduction

- Amendment is required
 - Effective Date: For determining required minimum distributions for calendar *years beginning after December 31, 2002*
-

Section 1, general rules

- 1.1. Effective Date. Unless an earlier effective date is specified in the adoption agreement, the provisions of this article will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.
- 1.2. Coordination with Minimum Distribution Requirements Previously in Effect: If the adoption agreement specifies an effective date of this article that is earlier than calendar years beginning with the 2003 calendar year, the required minimum distributions for 2002 under this article will be determined as follows:
 - If the total amount of the 2002 required minimum distributions under the plan made to the distributee prior to the effective date of this article, (*determined under the 1987 Income Tax Regulations*), equals or exceeds the required minimum distributions determined under this article, (*determined under the 2002 Final and Temporary Income Tax Regulations*), then no additional distributions will be required to be made for 2002 on or after such date to the distributee.
 - If the total amount of 2002 required minimum distributions under the plan made to the distributee prior to the effective date of this article is less than the amount determined under this article, then required minimum distributions for 2002 on and after such date will be determined so that the total amount of required minimum distributions for 2002 made to the distributee will be the amount determined under this article.

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Section 401(a)(9)--minimum distribution requirements-DC plans, sample amendment, Continued

**Section 1,
general rules
(continued)**

1.3.Precedence. The requirements of this article will take precedence over any inconsistent provisions of the plan.

1.4.Requirements of Treasury Regulations Incorporated. All distributions required under this article will be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Internal Revenue Code.

1.5.TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this article, distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that relate to section 242(b)(2) of TEFRA.

Continued on next page

Section 401(a)(9)--minimum distribution requirements-DC plans, sample amendment, Continued

Section 2, time and manner of distribution

2.1 Required Beginning Date. The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's required beginning date.

2.2. Death of Participant Before Distribution begins. If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

- (a) If the participant's surviving spouse is the participant's sole designated beneficiary, then, except as provided in the adoption agreement, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 70½, if later
- (b) If the participant's surviving spouse is not the participant's sole designated beneficiary, then, except as provided in the adoption agreement, distributions to the designated beneficiary will begin by December 31, of the calendar year immediately following the calendar year in which the participant died.
- (c) If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.
- (d) If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to the surviving spouse begin, this section 2.2, other than section 2.2(a), will apply as if the surviving spouse were the participant.

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Section 401(a)(9)--minimum distribution requirements-DC plans, sample amendment, Continued

Section 2, time and manner of distribution
(continued)

For purposes of this section 2.2 and section 4, unless section 2.2(d) applies, distributions are considered to begin on the participant's required beginning date. If section 2.2(d) applies, distributions are considered to begin on the date of distributions are required to begin to the surviving spouse under section 2.2(a). If distributions under any annuity purchased from an insurance company irrevocably commence to the participant before the participant's required beginning date (or to the participant's surviving spouse before the date distributions are required to begin to the surviving spouse under section 2.2(a)), the date distributions are considered to begin is the date distributions actually commence.

2.3. Forms of Distribution. Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with sections 3 and 4 of this article. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and the Treasury regulations.

Continued on next page

Section 401(a)(9)--minimum distribution requirements-DC plans, sample amendment, Continued

**Section 3,
required
minimum
distributions
during lifetime**

3.1 Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

- (a) the quotient obtained by dividing the participant's account balance by the distribution period in the Uniform Lifetime Table set forth in section 1.410(a)(9)-9 of the Treasury regulation, using the participant's age as of the participant's birthday in the distribution calendar year, or
- (b) if the participant's sole designated beneficiary for the distribution calendar year is the participant's spouse, the quotient obtained by dividing the participant's account balance by the number in the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the distribution calendar year.

3.2. Lifetime Required Minimum Distributions continue through year of Participant's Death. Required minimum distributions will be determined under this section 3 beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the participant's date of death.

Continued on next page

Section 401(a)(9)--minimum distribution requirements-DC plans, sample amendment, Continued

Sample amendment, Section 4, required distributions after death

4.1. Death on or After Date Distributions Begin.

- (a) Participant's Survived by a Designated Beneficiary. If the participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the participant's death is the quotient obtained by dividing the participant's account balance by the longer of the remaining life expectancy of the participant or the remaining life expectancy of the participant's designated beneficiary, determined as follow:
- (1) The participant's remaining life expectancy is calculated (*from the tables under the Income Tax Regulations*), using the age of the participant in the year of death, reduced by one for each subsequent year.
 - (2) If the participant's surviving spouse is the participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated, (*using the tables under the Income Tax Regulations*), and using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
 - (3) If the participant's surviving spouse is not the participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated, (*using the tables under the Income Tax Regulations*), and using the age of the beneficiary in the year following the year of the participant's death, reduced by one for each subsequent year.

Continued on next page

Section 401(a)(9)--minimum distribution requirements-DC plans, sample amendment, Continued

Sample amendment, Section 4, required distributions after death
(continued)

(b) No Designated Beneficiary. If the participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the participant's death is the quotient obtained by dividing the participant's account balance by the participant's remaining life expectancy calculated, *(using the tables under the Income Tax Regulations)*, and using the age of the participant in the year of death, reduced by one for each subsequent year.

4.2. Death before Date Distributions Begin

(a) Participant Survived by Designated Beneficiary. Except as provided in the adoption agreement, if the participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the participant's death is the quotient obtained by dividing the participant's account balance by the remaining life expectancy of the participant's designated beneficiary, determined as provided in section 4.1.

(b) No Designated Beneficiary. If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(c) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the participant dies before the date distributions begin, the participant's surviving spouse is the participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under section 2.2(a), this section 4.2 will apply as if the surviving spouse were the participant.

Continued on next page

Section 401(a)(9)--minimum distribution requirements-DC plans, sample amendment, Continued

Section 5, definitions

- 5.1 Designated Beneficiary. The individual who is designated as the beneficiary under section ____ of the plan and is the designated beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.
- 5.2 Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year, which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under section 2.2. The required minimum distribution for the participant's first distribution calendar year will be made on or before the participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

Continued on next page

Section 401(a)(9)--minimum distribution requirements-DC plans, sample amendment, Continued

**Section 5,
definitions
(continued)**

5.3 Life expectancy. Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.

5.4 Participant's account balance. The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of the dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

5.5. Required Beginning date. The date specified in section ____ of the plan.

Minimum distribution requirements, sample adoption agreement, DC plans

**Adoption agreement-
introductory language**

(Check and complete section 1 below if any required minimum distributions for the 2002 distribution calendar year were made in accordance with the section 401(a)(9) Final and Temporary Regulations.)

**Section 1
Effective Date
of Plan
Amendment**

____. Article ____, Minimum Distribution Requirements, applies for purposes of determining required minimum distributions for distribution calendar year s beginning with the 2003 distribution calendar year as well as required minimum distributions for the 2002 distribution calendar year that are made on or after ____.

(Check and complete any of the remaining sections if you wish to modify the rules in sections 2.2 and 4.2 of Article ____ of the plan.)

**Section 2
Election to
apply 5-Year
Rule to
designated
beneficiaries.**

____ If the participant dies before distributions begin and there is a designated beneficiary, distribution to the designated beneficiary is not required to begin by the date specified in the section 2.2 of Article ____ of the plan, but the participant 's interest must be distributed to the designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the participant's death. If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to either the participant or the surviving spouse begin, this election will apply as if the surviving spouse were the participant.

This election will apply to:

____ All distributions.

____ The following distributions: _____.

Continued on next page

Minimum distribution requirements, sample adoption agreement, DC plans, Continued

**Section 3.
Election to
Allow
Participants or
Beneficiaries to
Elect 5-Year
Rule**

___ Participants or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in sections 2.2 and 4.2 of Article ___ of the plan applies to distributions after the death of a participant who has a designated beneficiary.

The election must be made no later than the earlier of

September 30 of the calendar year in which distribution would be required to begin under section 2.2 of Article ___ of the plan, or by

September 30 of the calendar year which contains the fifth anniversary of the participant's (or , if applicable, surviving spouse's) death.

If neither the participant nor beneficiary makes an election under this paragraph, distributions will be made in accordance with sections 2.2 and 4.2 of Article ___ of the plan, if applicable, the elections in section 2 above.

**Section 4,
election to
allow
designated
beneficiary to
elect 5 year rule**

___ A designated beneficiary who is receiving payments under the 5-year rule may make a new election to receive payments under the life expectancy rule until December 31, 2003, provided that all amounts that would have been required to be distributed under the life expectancy rule for all distribution calendar years before 2004 are distributed by the earlier of December 31, 2003 or the end of the 5-year period.

Reference

Rev. Proc. 2002-29

Minimum distributions, DB plans, sample language

Introduction

Effective Date: The final and temporary regulations apply for determining required minimum distributions for calendar years beginning on or after January 1, 2003.

**Section 1,
general rules**

1.1. Effective Date. Unless an earlier effective date is specified in the adoption agreement, the provisions of this article will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

1.2. Coordination with Minimum Distribution Requirements Previously in Effect: If the adoption agreement specifies an effective date of this article that is earlier than calendar years beginning with the 2003 calendar year, required minimum distributions for 2002 under this article will be determined as follow.

- If the total amount of 2002 required minimum distributions under the plan made to the distributee prior to the effective date of this article equals or exceeds the required minimum distributions determined under this article, then no additional distributions will be required to be made for 2002 on or after such date to the distributee.
- If the total amount of 2002 required minimum distributions under the plan made to the distributee prior to the effective date of this article is less than the amount determined under this article, then required minimum distributions for 2002 on and after such date will be determined so that the total amount of required minimum distributions for 2002 made to the distributee will be the amount determined under this article.

Continued on next page

Minimum distributions, DB plans, sample language, Continued

**Section 1,
general rules
(continued)**

- 1.3. Precedence. The requirements of this article will take precedence over any inconsistent provisions of the plan.
- 1.4. Requirements of Treasury Regulations Incorporated. All distributions required under this article will be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Internal Revenue Code.
- 1.5. TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this article, other than section 1.4, distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that relate to section 242(b)(2) of TEFRA.

Continued on next page

Minimum distributions, DB plans, sample language, Continued**Section 2, time and manner of distributions**

2.1 Required Beginning Date. The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's required beginning date.

2.2. Death of Participant Before Distribution begins. If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

- a. If the participant's surviving spouse is the participant's sole designated beneficiary, then, except as provided in the adoption agreement, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 70½, if later.
- b. If the participant's surviving spouse is not the participant's sole designated beneficiary, then, except as provided in the adoption agreement, distributions to the designated beneficiary will begin by December 31, of the calendar year immediately following the calendar year in which the participant died.
- c. If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.
- d. If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to the surviving spouse begin, this section 2.2, other than section 2.2(a), will apply as if the surviving spouse were the participant.

For purposes of this section 2.2 and section 5, distributions are considered to begin on the participant's required beginning date (or if section 2.2(d) applies, the date distributions are required to begin to the surviving spouse under section 2.2(a)). If distributions from an annuity purchased from an insurance company irrevocably commence to the participant before the participant's required beginning date (or to the participant's surviving spouse before the date distributions are required to begin to the surviving spouse under section 2.2(a)), the date distributions are considered to begin is the date distributions actually commence.

Continued on next page

Minimum distributions, DB plans, sample language, Continued**Section 2, time and manner of distributions**
(continued)

2.3. Forms of Distribution. Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with sections 3, 4 and 5 of this article.

If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and the Treasury regulations.

Any part of the participant's interest which is in the form of an individual account described in section 414(k) of the Code will be distributed in a manner satisfying the requirements of section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts.

Continued on next page

Minimum distributions, DB plans, sample language, Continued**Section 3,
determination
of amount to be
distributed
each year**

3.1. General Annuity Requirements. If the participant's interest is paid in the form of annuity distributions, under the plan, payments under the annuity will satisfy the following requirements:

- a. the annuity distributions will be paid in periodic payments made at intervals not longer than one year;
- b. the distribution period will be over a life (or lives) or over a period certain not longer than the period described in section 4 or 5;
- c. once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;
- d. payments will either be nonincreasing or increase only as follows:
 - by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;
 - to the extent of the reduction in the amount of the participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in section 4 dies or is no longer the participant's beneficiary pursuant to a qualified domestic relations order within the meaning of section 414(p);
 - to provide cash refunds of employee contributions upon the participant's death; or
 - to pay increased benefits that result from a plan amendment.

Continued on next page

Minimum distributions, DB plans, sample language, Continued**Section 3,
determination
of amount to be
distributed
each year
(continued)**

3.2. Amount Required to be distributed by Required Beginning Date. The amount that must be distributed on or before the participant's required beginning date (or, if the participant dies before distributions begin, the date distributions are required to begin under section 2.2(a) or (b)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the participant's required beginning date.

3.3. Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

Continued on next page

Minimum distributions, DB plans, sample language, Continued**Section 4,
requirements
for annuity
distributions
that commence
during a
participant's
lifetime**

4.1. Joint Life Annuities Where the Beneficiary is not the Participant's Spouse. If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspouse beneficiary, annuity payments to be made on or after the participant's required beginning date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Q & A -2 of section 1.401(a)(9)-6T of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a nonspouse beneficiary and a period certain annuity, the requirements in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

4.2. Period Certain Annuities. Unless the participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the participant's lifetime may not exceed the applicable distribution period for the participant under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date.

If the annuity starting date precedes the year in which the participant reaches age 70, the applicable distribution period for the participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the participant as of the participant's birthday in the year that contains the annuity starting date. If the participant's spouse is the participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the participant's applicable distribution period, as determined under this section 4.2, or the joint life and last survivor expectancy of the participant and the participant's spouse as determined under the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations., using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

Continued on next page

Minimum distributions, DB plans, sample language, Continued**Section 5,
when
participant dies
before date
distribution
begins**

5.1. Participant Survived by Designated Beneficiary. Except as provided in the adoption agreement, if the participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the participant's entire interest will be distributed, beginning no later than the time described in section 2.2(a) or (b), over the life of the designated beneficiary or over a period certain not exceeding:

(a) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the participant's death; or

(b) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

5.2. No Designated Beneficiary. If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

5.3. Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the participant dies before the date distribution of his or her interest begins, the participant's surviving spouse is the participant's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this section 5 will apply as if the surviving spouse were the participant, except that the time by which distributions must begin will be determined without regard to section 2.2(a).

Continued on next page

Minimum distributions, DB plans, sample language, Continued

**Section 6,
definitions**

6.1. Designated Beneficiary. The individual who is designated as the beneficiary under section ____ of the plan and is the designated beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

6.2. Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year, which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to section 2.2.

6.3. Life expectancy. Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.

6.4. Required beginning date. The date specified in section ____ of the plan.

Minimum distributions, DB, Sample AA language

Introduction (Check and complete section 1 below if any required minimum distributions for the 2002 distribution calendar year were made in accordance with the section 401(a)(9) Final and Temporary Regulations.)

Section 1 effective date of plan amendment _____. Article ___, Minimum Distribution Requirements, applies for purposes of determining required minimum distributions for distribution calendar years beginning with the 2003 calendar year, as well as required minimum distributions for the 2002 distribution calendar year that are made on or after ____ (Check and complete any of the remaining sections if you wish to modify the rules in sections 2.2 and 5 of Article __ of the plan.)

Section 2- election to apply 5 year rule to desig. beneficiaries If the participant dies before distributions begin and there is a designated beneficiary, distribution to the designated beneficiary is not required to begin by the date specified in the section 2.2 of Article ____ of the plan, but the participant 's interest will be distributed to the designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the participant's death.

If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to either the participant or the surviving spouse begin, this election will apply as if the surviving spouse were the participant.

This election will apply to:

____ All distributions.

____ The following distributions: _____.

Continued on next page

Minimum distributions, DB, Sample AA language, Continued**Section 3,
election to
allow
participants or
beneficiaries to
elect 5 year rule**

___ Participants or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in sections 2.2 and 5 of Article ___ of the plan applies to distributions after the death of a participant who has a designated beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under section 2.2 of Article ___ of the plan, or by September 30 of the calendar year which contains the fifth anniversary of the participant's (or, if applicable, surviving spouse's) death. If neither the participant nor beneficiary makes an election under this paragraph, distributions will be made in accordance with sections 2.2 and 5 of Article ___ of the plan, if applicable, the elections in section 2 above.

**Section 4,
election to
allow design.
beneficiaries to
elect
distributions
over life
expectancy**

___ A designated beneficiary who is receiving payments under the 5-year rule may make a new election to receive payments under the life expectancy rule until December 31, 2003, provided that all amounts that would have been required to be distributed under the life expectancy rule for all distribution calendar year before 2004 are distributed by the earlier of December 31, 2003 or the end of the 5-year period.

References

Rev. Proc. 2002-29

Individual Retirement Arrangements (deemed IRAs)

Introduction

- EGTRRA section 602
 - Amendment is optional
 - Effective Date: Plan years beginning after December 31, 2002.
-

Explanation of provision

If an eligible retirement plan permits employees to make voluntary employee contributions to a separate account or annuity that

1. is established under the plan, and
2. meets the requirements applicable to either traditional IRAs or Roth IRAs,

then a separate account or annuity is deemed a traditional IRA or a Roth IRA, as applicable, for all purposes of the Code. For example, the reporting requirements applicable to IRAs apply.

The deemed IRA, and contributions thereto, are not subject to the Code rules pertaining to the eligible retirement plan. In addition, the deemed IRA, and contributions thereto, are not taken into account in applying such rules to any other contributions under the plan.

The deemed IRA, and contributions thereto, are subject to the exclusive benefit and fiduciary rules of ERISA to the extent otherwise applicable to the plan, and under IRC408, but may not be subject to all the ERISA reporting and disclosure, participation, vesting, funding, and enforcement requirements applicable to the eligible retirement plan.

An eligible retirement plan is a qualified plan (Sec. 401(a)), tax- sheltered annuity (Sec. 403(b)), or governmental section 457 plans.

Continued on next page

Individual Retirement Arrangements (deemed IRAs), Continued**Sample amendment**

(The following sample amendment may be adopted only by a plan trustee by a person eligible to act as a trustee of an IRA under §408(a)(2) and plans that designate an insurance company to issue annuity contracts under §408(b). Additional language that satisfies §408 or 408 A must also be added to the plan.)

Section ____ Deemed IRAs

1. Applicability and effective date:. This section shall apply if elected by the employer in the adoption agreement and shall be effective for plan years beginning after the date specified in the adoption agreement.
2. Deemed IRAs. Each participant may make voluntary employee contributions to the participant's _____ [insert "traditional" or "Roth"] IRA under the plan. The plan shall establish a separate _____ [insert "account" or "annuity"] for the designated IRA contributions of each participant and any earnings properly allocated to the contributions, and maintain separate recordkeeping with respect to each IRA.
3. Reporting duties. The _____ [insert "trustee" or "issuer"] shall be subject to the reporting requirements of section 408(i) of the Internal Revenue Code with respect to all IRAs that are established and maintained under the plan.
4. Voluntary employee contributions. For purposes of this section, a voluntary employee contribution means any contribution (other than a mandatory contribution within the meaning of section 411(c)(2) of the Code) that is made by the participant and which the participant has designated, at or prior to the time of making the contribution, as a contribution to which this section applies.
5. IRAs established pursuant to this section shall be held in _____ [insert "a trust" or "an annuity"] separate from the trust established under the plan to hold contributions other than deemed IRA contributions and shall satisfy the applicable requirements of sections 408 and 408A of the Code, which requirements are set in section _____ [insert the section of the plan that contains the IRA requirements].

Continued on next page

Individual Retirement Arrangements (deemed IRAs), Continued**Adoption
agreement**

Adoption agreement provisions

Section ____ of the plan, Deemed IRAs: (check one)

____ shall be effective for plan years beginning after December 31, ____ (enter year later than 2001).

____ shall not apply.

References

Rev. Proc. 2003-13, section 408 of the Code and Act §602.

Treatment of self employment income of members of certain religious faiths

Introduction

- EGTRRA section 611(g)
- Amendment is optional
- Effective Date: Taxable years beginning after December 31, 2001.

Explanation of provision

The provision amends the definition of compensation for purposes of all qualified plans and IRA's (including SIMPLE arrangements) to include an individual's net earnings that would be subject to self-employment taxes (SECA) but for the fact that the individual is covered by a religious exemption.

References

Section 401(c)(2) of the Code, section 408(p)(6)(A) of the Code and Act §611(g).

Option to treat elective deferrals as after tax contributions

Introduction

- EGTRRA section 611(g)
 - Amendment is optional
 - **Effective Date:** Taxable years beginning after December 31, 2005.
-

Explanation of provision

Employees may designate some elective contributions as after-tax contribution “Roth contributions.” These contributions decrease a participant’s elective contributions. These contributions are subject to special distribution rules, similar to those of Roth IRAs. Distributions attributable to these contributions are not included in the employee’s gross income, if the distribution is not made prior to the 5 year period beginning on the date the contribution was made or if made on account of the employee becoming disabled, the attainment of 59 ½ or the estate of the deceased participant. These contributions can only be rolled over into another similar arrangement or to a Roth IRA.

References

Section 402A of the Code and Act §617.

Small Business Tax Credit for New Retirement Plan Expenses

- Introduction**
- EGTRRA section 619
 - Amendment is optional
 - Effective Date: The credit is effective with respect to costs paid or incurred in taxable years beginning after December 31, 2001, with respect to plans established after such date.
-

Explanation of provision Small businesses (fewer than 100) receive a 50% credit for implementation expenses incurred up to \$500. The remainders of the expenses are deductible up to the applicable limitations.

References Section 38(b) of the Code, section 45E of the Code and Act §619.

Equitable Treatment for Contributions of Employees to Defined Contribution Plans (Tax-Sheltered Annuities)

Introduction

- Amendment is required
 - Effective Date: Years beginning after December 31, 2001.
-

Explanation of provision

The provision repeals the exclusion allowance applicable to contributions to tax-sheltered annuities; Thus, such annuities are subject to the limits applicable to tax-qualified plans.

The provision also directs the Secretary of the Treasury to revise the regulations relating to the exclusion allowance under section 403(b)(2) to render void the requirement that contributions to a defined benefit plan be treated as previously excluded amounts for purposes of the exclusion allowance, for taxable years beginning after December 31, 1999 and prior to January 1, 2002.

References

Section 403(b) of the code and Act §632.

Equitable Treatment for Contributions of Employees to Defined Contribution Plans (section 457 plans)

- Introduction**
- EGTRRA section 632
 - Amendment is required
 - Effective Date: Years beginning after December 31, 2001
-

Explanation of provision The provision increases the 33-1/3 percent of compensation limitation on deferrals under a section 457 plan to 100 percent of compensation.

References Section 457 of the code and Act §632(c)

Repeal of Coordination Requirements for Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations

- Introduction**
- Amendment is optional
 - Effective Date: Years beginning after December 31, 2001.
-

Explanation of provision Elective deferrals are not required to be coordinated with other pre-tax contributions for purposes of complying with pre-tax limit applicable to 457 plans. This rule would apply if an employee participates in a 457 plan and tax-qualified plan during the same taxable year.

References Section 457(c) of the Code and Act §615.

Waiver of 60 day rule

Introduction

- EGTRRA section 644
 - Amendment is optional
 - Effective Date: Distributions made after December 31, 2001.
-

Explanation of provision

The 60day rollover period is waived if the rollover cannot occur with that period of time due to disaster, events beyond the control of the participant, or if failure to permit the rollover after the 60day period would not be in good conscience.

References

Section 402(c)(3) of the Code, section 408(d)(3) of the Code and Act §644(a) & (b).

Treatment of forms of distribution

Introduction

- Amendment is optional
 - Effective Date: Years beginning after December 31, 2001
-

Continued on next page

Treatment of forms of distribution, Continued

Explanation of provision	<p>A transferee plan of defined contribution plan assets will not be treated as failing to comply with 411(d)(6) of the Code, even if all the forms of distribution are not available under the transferee plan, if:</p> <ol style="list-style-type: none">1. there is a direct transfer;2. the transfer is permitted;3. the participant makes a voluntary election to transfer after receiving notice of the elimination of certain forms of benefit under the transferee plan; and4. the transferee plan permits single sum distributions. <p>Further, a plan is not treated as reducing a benefit if:</p> <ol style="list-style-type: none">1. the plan eliminates a benefit formerly available under the other plan;2. a single sum distribution is available at the same time as the distribution permitted by the amendment; and3. the single sum distribution is the same or greater than that available prior to the amendment.
References	<p>Section 411(d)(6)(D) of the Code and Act §645(a) & (b).</p>

Minimum Distribution and Inclusion Requirements for Section 457 Plans

Introduction	<ul style="list-style-type: none">• <u>EGTRRA section 649</u>• <u>Amendment is required</u>• <u>Effective Date:</u> Distributions after December 31, 2001.
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Continued on next page

Minimum Distribution and Inclusion Requirements for Section 457 Plans, Continued

Explanation of provision	The provision provides that amounts deferred under section 457 plan of a State or local government are includible in income when paid. The provision also repeals the special minimum distribution rules applicable to section 457 plans. Thus, such plans are subject to the minimum distribution rules applicable to qualified plans.
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References	Section 457 of the code and Act §649.
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Phase in Repeal of 160 Percent of Current Liability Funding Limit

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- | | |
|---------------------|---|
| Introduction | <ul style="list-style-type: none">• <u>EGTRRA section 651</u>• <u>Amendment is optional</u>• <u>Effective Date:</u> Plan years beginning after December 31, 2001. |
|---------------------|---|
-

Explanation of provision	The provision gradually increases and then repeals the current liability full funding limit. The current liability full funding limit is 165 percent of current liability for plan years beginning in 2002 and 170 percent for plan years beginning in 2003. The current liability full funding limit is repealed for plan years beginning in 2004 and thereafter. Thus, in 2004 and thereafter, the full funding limit is the excess, if any, of (1) the accrued liability under the plan (including normal cost), over (2) the value of the plan's assets.
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References	Section 412(c)(7) of the Code and Act §651.
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Modification of Timing of Plan Valuations

Introduction

- EGTRRA section 661
 - Amendment is required
 - Effective Date: Plan years beginning after December 31, 2001.
-

Explanation of provision

The provision incorporates into the statute the proposed regulation regarding the date of valuations. The provision also provides, as an exception to this general rule, that the valuation date with respect to a plan year may be any date within the immediately preceding plan year if, as of such date, plan assets are not less than 125 percent of the plan's current liability.

Information determined as of such date is required to be adjusted actuarially, in accordance with the Treasury regulations, to reflect significant differences in plan participants. An election to use a prior plan year valuation date, once made, may only be revoked with the consent of the Secretary.

References

Section 412 of the Code and Act §661.

Individual Retirement Arrangements (IRAs)

Introduction

- EGTRRA section 601
 - Amendment is optional
 - Effective Date: Generally effective for taxable years beginning after December 31, 2001.
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Explanation of provision

The provision increases the maximum annual dollar contribution limit for IRA contributions from \$2,000 to \$3,000 for 2002 through 2004, \$4,000 for 2005 through and 2007 and \$5000 for 2008 and thereafter. After 2008, the limit is adjusted annually for inflation in \$500 increments.

Individuals who have attained age 50 may make additional catch-up IRA contributions. The otherwise maximum contribution limit (before application of the AGI phase-out limits) for an individual who has attained age 50 before the end of the taxable year is increased by \$500 for 2002 through 2005 and \$1,000 for 2006 and thereafter.

References

Section 219 of the Code, section 408 of the Code and Act §601

PART 2: EGTRRA PROVISIONS FOR PLAN TERMINATION

Introduction

Notice 2001-57 provides sample plan amendments for the changes to the plan qualification requirements under section 401(a) of the Internal Revenue Code that were made by the Economic Growth and Tax Relief Reconciliation Act of 2001, (EGTRRA), Public Law 107-16. These sample amendments will help plan sponsors and adopters of pre-approved plans to comply with the requirements of EGTRRA, Public Law 107-16, that terminate after the effective date of EGTRRA, (e.g. plans that terminate in plan years beginning after December 31, 2001).

In some cases, plan sponsors may be able to adopt the sample amendments verbatim. In other cases, plan sponsors may have to modify the sample amendments to make the amendments appropriate for adoption in their plans.

Sample amendments

The sample amendments are examples of plan amendments that satisfy the good faith requirements and should not be viewed as interpretive guidance on the EGTRRA changes to the qualification requirements.

The suggested amendments are effective as of the first day of the plan year beginning after December 31, 2001, and therefore apply to plans terminating in plan years beginning after December 31, 2001..

Plan sponsors adopting model amendments

Plan sponsors that adopt the sample amendments may have to modify the amendment's effective dates to ensure that no optional plan amendment is effective earlier than the date on which the corresponding EGTRRA change is required to be put into effect under the plan. For plans maintained by an employer pursuant to a collective bargaining agreement, the effective date of the sample amendment for EGTRRA section 633, addressing vesting of matching contributions, may be modified to reflect the effective date in section 633(c)(2) of the Act..

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PART 2: EGTRRA PROVISIONS FOR PLAN TERMINATION,

Continued

**Good faith
EGTRRA
amendments**

Good faith EGTRRA plan amendments are generally not required to be adopted earlier than:

- the end of the plan year in which the amendments are required to be, or
- are optionally, put into effect.

Earlier adoption may be necessary in order to avoid a decrease or elimination of benefits protected by section 411(d)(6) of the code.

In the case of plans terminating in plan years beginning after December 31, 2001, the EGTRRA amendments should be:

- adopted as of the date of termination and
- must be effective as of the first day of the plan year beginning after December 31, 2001,

See the discussion of section 411(d)(6) of the Code in section III of Notice 2001-42.

**Organization of
this portion of
material**

The following requirements reference to the material above. See the information above for an explanation and sample plan language.

EGTRRA Amendment for All Plans**Items**

- 1) **Preamble (Article I A (i))**
- 2) **Plan Loans for Owner Employees §612 (Article VIII)**

Provisions for Defined Contribution Plans

All DC plans

- 1- Increase in Compensation Limit §611(c) (Article II A (i))
 - 2- Limitation on Contributions §611(b) and §632 (Article II B (i))
 - 3- Modification of Top-Heavy Rules §613 (Article III A, B, & C)
 - 4- Direct Rollovers of Plan Distributions §636(b), §641, §642 and §643 (Article VII A (i))
 - 5- Additional Types of Rollovers Accepted by the Plan §641, §642 and §643 (Article VII A (ii))
 - 6- Employers May Disregard Rollovers For purposes of Cash-Out Rules §648 (Article VII A. (iii))
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B) IRC 401(m) Provisions

Vesting and multiple use

- 1- Vesting of Employer Matching Contributions §633(Article IV)
 - 2- Repeal of Multiple Use Test §666 (Article V)
-

C) IRC 401(k) Provisions

- 1- Elective Deferrals – Contribution Limitation §611(d) (Article II B.(iv)(a))
 - 2- SIMPLE 401(k) Plans §611(f) (Article II B.(iv)(b))
 - 3- Modification of Top-Heavy Rules for 401(k)(12) and 401(m)(11) §613(Article III (C))
 - 4- Distribution on Hardship §636(a)(Article VI A)
 - 5- Distribution upon Severance From Employment §646 (Article VI B)
 - 6- Catch-Up Contributions §631 (Article VI C)
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D) Additional Provisions for Plans Terminating on or After January 1, 2003

Minimum Distribution Requirements (Article XII 1 A)

III Provisions for Defined Benefit Plans

- A. Increase in Compensation Limit §611(c) (Article II (A) (ii))
 - B. Limitations on Annual Benefits
 - 1- Non-Multiemployer Plans §611(a) (Article II B (ii) (a))
 - 2- Multi-Employer Plans §611(a) and §654 (Article II B (ii) (b))
 - C. Modifications of Top-Heavy Rules §613 (Article III A & B)
 - D. Direct Rollovers of Plan Distributions §614, §642 and §643 (Article VII B (i))
 - E. Additional Types of Rollovers Accepted by the Plan §641, §642 and §643 (Article VII B (ii))
 - F. The New Applicable Mortality Table Rev. Rul. 2001-62 (Article II B. (iii))
 - G. Additional Provisions for Plans Terminating on or After January 1 2003.
 - Minimum Distribution Requirements (Article XII 1 (B))
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