

## HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### INCOME TAX

**Rev. Rul. 2001-40, page 276.**

**Refund or credit of an overassessed tax.** This ruling modifies Rev. Rul. 78-127 (1978-1 C.B. 436) by clarifying when the Service allows a refund or credit of an over-assessed tax. Rev. Rul. 78-127 modified.

### EMPLOYEE PLANS

**Notice 2001-56, page 277.**

**EGTRRA effective dates; compensation limit; top-heavy determination date; section 401(k) hardship distribution.** This notice provides guidance relating to the effective dates for sections of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) relating to (1) the increase in the compensation limit of section 401(a)(17) of the Code, (2) the modification to the top-heavy rules of section 416 of the Code, and (3) the suspension period for hardship distributions from a section 401(k) plan. Notice 98-52 modified.

**Notice 2001-57, page 279.**

**Qualified plans; sample EGTRRA plan amendments.** This notice sets forth various sample amendments that may be adopted by qualified plan sponsors as "good faith" plan amendments to reflect certain changes made by the Economic Growth Tax Relief and Reconciliation Act of 2001 (EGTRRA). Notice 2001-42 modified.

### EMPLOYMENT TAX

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### EXEMPT ORGANIZATIONS

**Announcement 2001-89, page 291.**

A list is provided of organizations now classified as private foundations.

Finding Lists begin on page ii.



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Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities

and by applying the tax law with integrity and fairness to all.

## Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and proce-

dures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

### **Part II.—Treaties and Tax Legislation.**

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

### **Part III.—Administrative, Procedural, and Miscellaneous.**

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the first Bulletin of the succeeding semiannual period, respectively.

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# Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

## Section 6407.—Date of Allowance of Refund or Credit

*26 CFR 301.6407-1: Date of allowance of refund or credit*

This revenue ruling modifies Revenue Ruling 78-127 by clarifying when the Internal Revenue Service allows a refund or credit of an overassessed tax.

### Rev. Rul. 2001-40

#### PURPOSE

This revenue ruling modifies the discussion of section 6407 of the Internal Revenue Code (the Code) in Rev. Rul. 78-127 (1978-1 C.B. 436). Specifically, this revenue ruling clarifies when the Internal Revenue Service (the Service) allows a refund or credit of an overassessed tax.

#### LAW AND ANALYSIS

Section 6407 of the Code states: “The date on which the Secretary first authorizes the scheduling of an overassessment of any internal revenue tax shall be considered as the date of allowance of refund or credit in respect of such tax.”

Congress adopted the rule defining the scheduling date as the allowance date in the Revenue Act of 1926. See section 1116 of the Act, the predecessor of current section 6407 of the Code. The rule was designed to reflect Service processing practice. The legislative history explains:

In the case of refunds, interest is allowed “to the date of the allowance of the refund.” In practice, the Commissioner first signs a schedule of over-

assessments, which is sent to the collector, in order to determine whether the overpayment should be credited or refunded. The committee amendment proposes to fix as the date on which the refund is allowed the date on which the Commissioner signs the schedule of overassessments. (S. Rep. No. 52, 69th Cong., 1st Sess. 38 (1926).)

Section 301.6407-1 of the Regulations on Procedure and Administration reflects the legislative intent that the Secretary would delegate authority to allow refunds and credits to Internal Revenue Service officials. Over the years, different certifying officers have been authorized to schedule overassessments and allow refunds and credits.

In addition, the Service has revised the method of scheduling overassessments and allowing refunds and credits. For example, the Service does not currently use Form 1166 to schedule overassessments. It may use different paper forms or electronic entries to schedule and allow refunds and credits. Regardless of processing method, the taxpayer’s account will reflect the date that the certifying officer schedules the overassessment.

#### HOLDING

Consequently, references to the Form 1166 and other processing forms are removed from Rev. Rul. 78-127. The two paragraphs beginning “Section 6407 of the Code...” are modified to read as follows:

Section 6407 of the Code provides that the date on which the Secretary first authorizes the scheduling of an over-

assessment of any internal revenue tax shall be considered the date of allowance of any refund or credit of the tax. Section 301.6407-1 of the regulations delegates scheduling authority to a certifying officer. The certifying officer authorizes a credit or refund by signing a schedule of overassessments identifying the taxpayer and the amount of the overassessment.

The date the summary record of assessment is signed, and the date on which the schedule of overassessments is signed are dates of authorization for the purpose of section 301.6521-1(c) of the regulations.

#### EFFECT ON OTHER REVENUE RULING(S)

Rev. Rul. 78-127 is modified.

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Tiffany P. Smith of the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue ruling, contact Tiffany Smith at (202) 622-4910 (not a toll-free call).

## Part III. Administrative, Procedural, and Miscellaneous

### Effective Dates for Certain Amendments Made by the Economic Growth and Tax Relief Reconciliation Act of 2001

#### Notice 2001-56

##### I. Purpose

This notice provides guidance relating to the effective dates for §§ 611(c), 613, and 636(a) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Pub. L. 107-16. Section 611(c) of EGTRRA increases the compensation limit of § 401(a)(17) of the Internal Revenue Code (Code) and related sections. Section 613 of EGTRRA modifies the rules in § 416 of the Code regarding determination of top-heavy status. Section 636(a) of EGTRRA directs the Secretary to revise the regulations relating to hardship distributions under § 401(k)(2)(B)(i)(IV) of the Code.

Notice 2001-42 (2001-30 I.R.B. 70), provides a remedial amendment period for EGTRRA, in which any needed retroactive remedial EGTRRA plan amendments may be adopted. The availability of the EGTRRA remedial amendment period is conditioned on the timely adoption of required good faith EGTRRA plan amendments. See Notice 2001-57, page 279, this bulletin, for sample good faith amendments. Although a good faith plan amendment need not reflect all guidance issued under EGTRRA, the plan's operation must be consistent with that guidance, beginning with the effective date of that guidance.

##### II. Compensation Limit under § 401(a)(17)

###### A. Background

Section 401(a)(17) of the Code limits the annual compensation that may be taken into account for purposes of determining a participant's benefit accruals under a defined benefit plan or a participant's allocations under a defined contribution plan. Section 401(a)(17) also limits the annual compensation that may be taken into account for purposes of certain nondiscrimination requirements, including those in §§ 401(a)(4), 401(a)(5),

401(1), 401(k), 401(m), 403(b)(12), 404(a)(2), and 410(b)(2), and for purposes of determining whether a definition of compensation is nondiscriminatory under § 414(s)(3). Under § 401(a)(17) as in effect prior to the effective date of the EGTRRA amendment, the compensation limit is \$150,000, indexed in \$10,000 increments for cost-of-living adjustments. For 2001, the compensation limit is \$170,000. A higher compensation limit applies to eligible participants in certain governmental plans. See Treas. Reg. § 1.401(a)(17)-1(d)(4)(ii).

Section 611(c) of EGTRRA amended § 401(a)(17) of the Code by increasing the \$150,000 limit (as adjusted) to \$200,000, and changing the method used for cost-of-living adjustments. Section 611(c) of EGTRRA made similar amendments to §§ 404(l), 408(k), and 505(b)(7) of the Code.

###### B. Effective Date

Section 611(i)(1) of EGTRRA provides that the increase in the compensation limit of § 401(a)(17) of the Code applies to years beginning after December 31, 2001. Thus, for purposes of determining benefit accruals or the amount of allocations for plan years beginning on or after January 1, 2002, compensation taken into account may not exceed the compensation limit under § 401(a)(17), as amended by § 611(c) of EGTRRA. In the case of a plan that uses annual compensation for periods prior to the first plan year beginning on or after January 1, 2002, to determine accruals or allocations for a plan year beginning on or after January 1, 2002, the plan is permitted to provide that the \$200,000 compensation limit applies to annual compensation for such prior periods in determining such accruals or allocations.

The compensation limit under § 401(a)(17) of the Code is adjusted for cost-of-living increases in accordance with § 401(a)(17)(B), as amended by EGTRRA, as of the beginning of a calendar year. As under pre-EGTRRA law, any such increases shall apply only with respect to annual compensation during the plan year or other 12-month period

over which compensation is determined that begins with or within such calendar year (and any subsequent calendar year).

*Example. B is a participant in a nongovernmental defined benefit plan, Plan A. Plan A has a calendar plan year, and a benefit formula that provides for an annual benefit at normal retirement age equal to the product of: (years of service) x (1 percent) x (high 3-year average compensation). For this purpose, high 3-year average compensation is the average of the compensation over the 3 consecutive plan years for which the average is the highest, and compensation for each year is limited to \$150,000, as adjusted for cost-of-living increases. As of December 31, 2001, B has 10 years of service and compensation of \$250,000 for each of the 3 years 1999, 2000, and 2001. B's high 3-year average compensation of \$166,667 is determined as the average of annual compensation (as limited by § 401(a)(17) of the Code) of \$160,000 for 1999, \$170,000 for 2000, and \$170,000 for 2001. B's annual benefit under the plan formula as of December 31, 2001, is \$16,667, calculated as  $(10) \times (.01) \times (\$166,667)$ .*

*In 2002, Plan A is amended (1) to use the \$200,000 compensation limit for compensation paid in years beginning after December 31, 2001, and (2) to use the \$200,000 compensation limit for compensation paid in years beginning prior to January 1, 2002, in determining benefit accruals in years beginning after December 31, 2001. B has annual compensation of \$250,000 for 2002. A high 3-year average compensation of \$200,000 is determined for B as of December 31, 2002, as the average of annual compensation (as limited by § 401(a)(17) of the Code, as amended by EGTRRA) of \$200,000 for 2000, \$200,000 for 2001, and \$200,000 for 2002. As of December 31, 2002, B's annual benefit under the plan formula is \$22,000, calculated as  $(11) \times (.01) \times (\$200,000)$ .*

*Plan A is not required to implement the EGTRRA increase in the compensation limit under § 401(a)(17) of the Code in its benefit formula. Plan A could retain the compensation limit in effect prior to EGTRRA, or provide for any other compensation limit that is less than the compensation limit as amended by EGTRRA. Accordingly, Plan A could be amended to provide that the increased compensation limit applies only to annual compensation paid in plan years beginning on or after January 1, 2002. In that case, a high 3-year average compensation of \$180,000 would be determined for B as of December 31, 2002, as the average of annual compensation of \$170,000 for 2000 and \$170,000 for 2001 (both as limited by § 401(a)(17) of the Code, as in effect prior to amendment by EGTRRA), and \$200,000 for 2002 (as limited by § 401(a)(17) of the Code, as amended by EGTRRA). B's annual benefit as of December 31, 2002, would be \$19,800, calculated as  $(11) \times (.01) \times (\$180,000)$ .*

### III. Determination of Top-Heavy Status under § 416

#### A. Background

Section 416(a) of the Code provides that a plan that is a top-heavy plan for a plan year must satisfy the vesting and minimum benefit requirements of § 416(b) and (c) for the plan year. A defined benefit plan is a top-heavy plan for a plan year if, as of the determination date, the present value of the cumulative accrued benefits under the plan for key employees exceeds 60 percent of the present value of the cumulative accrued benefits under the plan for all employees. A defined contribution plan is a top-heavy plan for a plan year if, as of the determination date, the aggregate of the accounts of key employees under the plan exceeds 60 percent of the aggregate of the accounts of all employees under the plan. The determination date with respect to any plan year is the last day of the preceding plan year or, in the case of the first plan year of a plan, the last day of such plan year. The determination of whether a plan is top-heavy is made in accordance with the requirements of § 416(g) (including the aggregation requirements of § 416(g)(2)).

Section 613 of EGTRRA amended several provisions of § 416 of the Code, including provisions related to the requirements for determining whether a plan is a top-heavy plan for a plan year. Section 613(a) of EGTRRA modified the definition of "key employee" in § 416(i)(1) of the Code by increasing the compensation threshold for determining when officers are key employees to \$130,000 and by eliminating the ten employees owning the largest interests in the employer as a separate category of key employees. Section 613(c) of EGTRRA also provides that the determination of key employee status is made based on the plan year ending on the determination date, thereby eliminating the additional 4-year lookback period for determining key employee status. In general, § 613(c) of EGTRRA modified §§ 416(g)(3) and 416(g)(4)(E) of the Code to exclude from the determination of top-heavy status (1) distributions made prior to the 1-year period ending on the determination date (except that a 5-year period is retained for in-service distributions) and (2) the accrued benefits and account balances of employees who per-

formed no service for the employer during the 1-year period ending on the determination date.

#### B. Effective Date

Section 613(f) of EGTRRA provides that the amendments made by § 613 apply to years beginning after December 31, 2001. Thus, the EGTRRA amendments to § 416 of the Code apply for purposes of determining whether a plan is top-heavy for the first plan year beginning after December 31, 2001, even though the determination date for that plan year is before the effective date of the EGTRRA amendment.

Thus, for example, for a plan with a calendar plan year (other than a plan in its first plan year), the determination of whether the plan is top-heavy for the plan year beginning January 1, 2002, is made as of December 31, 2001. This determination is made in accordance with the provisions of § 416 of the Code, as amended by EGTRRA. For example, for purposes of identifying key employees in accordance with § 416(i)(1)(A) of the Code as amended by EGTRRA, officers with annual compensation greater than \$130,000 for 2001 are key employees, and the additional 4-year lookback period does not apply for purposes of that determination.

### IV. Hardship Distributions

#### A. Background

Elective deferrals under a qualified cash or deferred arrangement subject to § 401(k) of the Code may not be distributable to participants prior to the occurrence of one of the events specified in § 401(k)(2). One of these events is a hardship of the employee. Treas. Reg. § 1.401(k)-1(d)(2)(i) provides that a distribution is treated as made on account of an employee's hardship if it is made on account of an immediate and heavy financial need and is necessary to satisfy the financial need. Treas. Reg. § 1.401(k)-1(d)(2)(iv)(B) provides a safe harbor pursuant to which a distribution is deemed necessary to satisfy an immediate and heavy financial need. One of the requirements of the safe harbor is that the employee is prohibited from making elective contributions and employee contributions under the plan and all other plans

maintained by the employer for at least 12 months after receipt of the hardship distribution. See Treas. Reg. § 1.401(k)-1(d)(2)(iv)(B)(4).

Sections 401(k)(12) and 401(m)(11) of the Code provide design-based safe harbor methods for satisfying the actual deferral percentage (ADP) test contained in § 401(k)(3)(A)(ii) and the actual contribution percentage (ACP) test contained in § 401(m)(2) based on matching contributions that meet certain conditions and that satisfy certain notice requirements. Notice 98-52 (1998-2 C.B. 632), provides that a plan will not fail to satisfy the ADP matching contribution safe harbor merely because an eligible employee's ability to make elective deferrals is suspended for 12 months following a hardship distribution. Notice 98-52 also provides that a plan will not fail to satisfy the ACP matching contribution safe harbor merely because an eligible employee's ability to make elective deferrals and employee contributions is suspended for 12 months following a hardship distribution. See Treas. Reg. § 1.401(k)-1(d)(2)(iv)(B)(4) and sections V.B.1.c.iv and VI.B of Notice 98-52.

Section 636(a) of EGTRRA directs the Secretary of the Treasury to modify the regulations regarding hardship distributions to provide that the period during which an employee is prohibited from making elective deferrals in order for the distribution to be deemed necessary to satisfy a financial need shall be 6 months (instead of 12 months).

#### B. Effective Date

Section 636(a) of EGTRRA provides that the regulations as revised in accordance with § 636(a) shall apply to years beginning after December 31, 2001. Thus, the revised regulations will be effective for calendar years beginning after December 31, 2001, rather than effective only with respect to hardship distributions received after December 31, 2001. For example, a plan that provides for hardship distributions in accordance with the safe harbor in Treas. Reg. § 1.401(k)-1(d)(2)(iv)(B) may be amended to provide that an employee who receives a hardship distribution in 2001 is prohibited from making elective deferrals and employee contributions for 6 months after receipt of the distribution (or until Janu-

ary 1, 2002, if later). However, a plan sponsor generally could retain its existing suspension period for all hardship distributions (or for all hardship distributions prior to January 1, 2002).

However, in order to continue to rely on the matching contribution safe harbor in § 401(k)(12) or § 401(m)(11) of the Code to satisfy the ADP or ACP test, a plan must reduce the period during which elective deferrals and employee contributions are suspended following a hardship distribution from 12 months to 6 months for calendar years beginning after December 31, 2001. A plan will not fail to satisfy this requirement merely because it provides that the reduction from 12 months to 6 months applies only to hardship distributions made after December 31, 2001.

## V. Effect on Other Documents

Notice 98-52 is modified.

## DRAFTING INFORMATION

The principal author of this notice is Ann Trichilo of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans' taxpayer assistance telephone service at (202) 283-9516 or (202) 283-9517, between the hours of 1:30 p.m. and 3:30 p.m. Eastern Time, Monday through Thursday. Ms. Trichilo may be reached at (202) 283-9695. These telephone numbers are not toll-free.

## Sample Plan Amendments for the Economic Growth and Tax Relief Reconciliation Act of 2001

### Notice 2001-57

#### I. Purpose

This notice provides sample plan amendments for the changes to the plan qualification requirements under § 401(a) of the Internal Revenue Code that were made by the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16 ("EGTRRA"). These sample amendments will help plan sponsors and sponsors and adopters of pre-approved plans comply with the re-

quirement to adopt good faith EGTRRA plan amendments on a timely basis.

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.

The sample amendments are examples of plan amendments that satisfy the good faith requirement and should not be viewed as interpretive guidance on the EGTRRA changes to the qualification requirements. Other guidance will address the EGTRRA changes. See, for example, Notice 2001-56, p. 277, this bulletin.

#### II. Background

*EGTRRA.* EGTRRA, which was enacted on June 7, 2001, includes numerous changes to the qualified plan rules. Most of these changes are effective in years beginning after December 31, 2001. While many of the changes are not mandatory, a plan sponsor that chooses to implement an optional provision of EGTRRA will have to amend its plan to conform plan provisions to plan operation.

*EGTRRA Remedial Amendment Period Requirements.* 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 effect of this designation is to provide a remedial amendment period under § 401(b), ending no earlier than the end of the 2005 plan year, in which any needed retroactive remedial EGTRRA plan amendments may be adopted (the EGTRRA remedial amendment period).

The availability of the EGTRRA remedial amendment period is conditioned on the timely adoption of required good faith EGTRRA plan amendments. There are two circumstances in which a good faith EGTRRA plan amendment is required. First, a plan is required to have a good faith EGTRRA plan amendment in effect for a year if the plan is required to implement a provision of EGTRRA for the year and the plan language, prior to the amendment, is not consistent with the provision

of EGTRRA. Second, a plan is required to have a good faith EGTRRA plan amendment in effect for a year if the plan sponsor elects to implement a provision of EGTRRA for the year and the plan language, prior to the amendment, is not consistent with the operation of the plan in a manner consistent with EGTRRA. A good faith EGTRRA plan amendment is timely if it is adopted no later than the later of (i) 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 or (ii) the end of the GUST remedial amendment period for the plan.<sup>1</sup>

*Good Faith.* A plan amendment is a good faith EGTRRA plan amendment only if the amendment represents a reasonable effort to take into account all of the requirements of the applicable EGTRRA provision and does not reflect an unreasonable or inconsistent interpretation of the provision.

#### III. Sample EGTRRA Plan Amendments

*In General.* As provided in Notice 2001-42, the Service is publishing sample EGTRRA plan amendments that can be adopted or used in drafting individualized good faith plan amendments for individually designed and pre-approved plans. In some cases, plan sponsors may be able to adopt the sample amendments in this notice verbatim. In other cases, plan sponsors may have to modify the sample amendments to make them appropriate for adoption in their plans.

The availability of the EGTRRA remedial amendment period is conditioned on the timely adoption of good faith

<sup>1</sup> The term "GUST" refers to the following:

- the Uruguay Round Agreements Act, Pub. L. 103-465;
- the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353;
- the Small Business Job Protection Act of 1996, Pub. L. 104-188;
- the Taxpayer Relief Act of 1997, Pub. L. 105-34;
- the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206; and
- the Community Renewal Tax Relief Act of 2000, Pub. L. 106-554

Unless section 19 of Rev. Proc. 2000-20, 2000-6 I.R.B. 553, as modified by Notice 2001-42, applies, the GUST remedial amendment period generally ends on the last day of the 2001 plan year.

EGTRRA plan amendments, as noted above. Many of the issues and questions concerning the EGTRRA changes to the qualification requirements are not addressed in the sample amendments. Therefore, the sample amendments may not contain all those provisions that will be necessary to comply with the EGTRRA changes once guidance on the changes is issued. Nevertheless, proper adoption of the sample amendments, or plan amendments that are materially similar to the sample amendments, will, with respect to the EGTRRA provisions addressed in the amendments that a sponsor adopts, satisfy the good faith plan amendment requirement and allow the amended plan provisions to be retroactively amended within the EGTRRA remedial amendment period.

Of course, regardless of whether a plan sponsor adopts the sample amendments in this notice or its own good faith amendments, the operation of the plan must also reflect a good faith, reasonable interpretation of EGTRRA. Plan operation will not reflect a good faith, reasonable interpretation of EGTRRA unless the operation is consistent with published guidance beginning no later than the effective date of the guidance.

Some of the sample amendments reflect other guidance issued with respect to the applicable section of EGTRRA. Notice 2001-56 provides guidance with respect to the effective dates of the increase in the § 401(a)(17) compensation limit under EGTRRA § 611(c), the changes to the top-heavy requirements of § 416 under EGTRRA § 613, and the change to the suspension period for hardship distributions in a § 401(k) plan under EGTRRA § 636(a). The Service and Treasury will issue additional guidance on other EGTRRA changes in the near future, including the increase in the § 415(b) dollar limit under EGTRRA § 611(a) and the catch-up contribution provisions under EGTRRA § 631. The sample amendments in this notice, materially similar amendments, and other good faith amendments will continue to be good faith EGTRRA plan amendments, even after the publication of additional guidance. However, as provided above, a plan will have to be operated in accordance with such additional guidance as of the effective date of the guidance, notwithstanding

the provisions of the plan's good faith amendments.

*Good Faith.* The sample amendments, and plan amendments that are materially similar to the sample amendments, are sufficient to satisfy the good faith plan amendment requirement. A plan amendment that represents a reasonable effort to take into account all of the requirements of the applicable EGTRRA provision and does not reflect an unreasonable or inconsistent interpretation of the provision will not fail to be a good faith plan amendment merely because it is not materially similar to a sample EGTRRA plan amendment.

*Scope of the Sample Amendments.* The sample amendments address most of the EGTRRA changes for which plan amendments are either required or optional. The sample amendments do not address changes not generally applicable to plans; changes not effective prior to the issuance of regulations; and changes under EGTRRA §§ 602 and 617, regarding deemed individual retirement accounts and annuities and Roth contribution programs in qualified plans, respectively. The good faith plan amendment requirement described above applies with respect to all the EGTRRA changes to the plan qualification requirements, including those that are not addressed in the sample amendments. The sample amendments also do not address EGTRRA changes regarding deduction limits and excise taxes.

Some amendments that would generally be optional may, in certain circumstances, be required. Plan sponsors should make the determination of which amendments are appropriate after reviewing the EGTRRA changes in the context of their plans and particular circumstances. The sample amendments include notes to assist plan sponsors in this determination.

*Format of the Sample Amendments.* The format of the sample amendments generally follows the design of pre-approved plans, including all M&P plans, that employ a "basic plan document" and an "adoption agreement." Thus, each sample amendment includes language designed for inclusion in a basic plan document. In addition, some of the sample amendments include language designed for inclusion in an adoption agreement to allow the employer to indicate whether, or when, the corresponding basic plan docu-

ment provision will be effective in the employer's plan and to select among options related to the application of the basic plan document provision. Sponsors may modify the amendments to specify the "default" option that will apply if an employer does not select an alternative option in the adoption agreement.

Sponsors of plans that do not use an adoption agreement should modify the format of the amendments to incorporate the appropriate adoption agreement option(s) in the terms of the amendments. The adoption agreement format is not used in the sample amendment for multi-employer plans for EGTRRA §§ 611(a) and 654, regarding changes in the limitations of § 415(b) of the Code.

Pre-approved plans that are amended for EGTRRA in any manner other than by the adoption of a separate, clearly identified addendum to the plan (or basic plan document) and/or adoption agreement, limited to the provisions of EGTRRA, will be treated as individually designed plans. The sample EGTRRA plan amendments in this notice are designed to be easily incorporated in such a separate addendum, so that a pre-approved plan will not be treated as an individually designed plan.

The sample amendments have been designed to facilitate their adoption in cases where the plan's language, including definitions, is similar to the sample plan provisions in the Service's *Listing of Required Modifications* (which is available at <http://www.irs.gov/ep>). Thus, the sample amendments generally do not provide definitions of terms used in the amendments if equivalent terms should already be defined in a plan. Among these terms are the following: annual addition, annual benefit, defined benefit compensation limitation, determination date for top-heavy status, elective deferrals, eligible retirement plan, eligible rollover distribution, limitation year, and matching contributions. Of course, a sponsor needs to ensure that the terminology of its good faith EGTRRA plan amendments is consistent with the plan's existing terminology and definitions. The sample amendments generally do not address issues of plan design. Sponsors may want to add to or modify the sample amendments to address these issues.

The sample amendments are arranged in these categories: all plans, defined

contribution plans, section 401(k) plans, and defined benefit plans.

*Effective Dates.* Sponsors that adopt the sample amendments may have to modify the amendments' effective dates to ensure that no optional plan amendment is effective earlier than the date on which the corresponding EGTRRA change is put into effect under the plan. For plans maintained pursuant to a collective bargaining agreement, the effective date of the sample amendment for EGTRRA § 633, regarding faster vesting of matching contributions, may be modified to reflect the effective date in § 633(c)(2).

*Time and Manner of Adoption.* Although 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 § 411(d)(6). See the discussion of § 411(d)(6) in section III of Notice 2001-42.

A pre-approved plan may be amended by the document's sponsor to the extent authorized. For example, a sponsor of an M&P plan may amend the plan on behalf of adopting employers. If the amendment of a pre-approved plan includes an addendum to the adoption agreement, the addendum is effective only if signed and dated by the employer.

*Determination Letters and Reliance.* Until further notice, the Service will not consider EGTRRA in issuing determination, opinion, and advisory letters, and such letters may not be relied on with respect to the EGTRRA changes, regardless of whether the plan has been amended by the adoption of the sample EGTRRA plan amendments. However, an employer's ability to otherwise rely on a favorable letter will not be adversely affected by the timely adoption of good faith EGTRRA plan amendments.

*Possible Subsequent Required Amendments.* The Service and Treasury will provide additional guidance on EGTRRA. Plans amended by the timely adoption of good faith EGTRRA plan amendments, including the sample amendments, may have to be amended again by the end of the EGTRRA remedial amendment period to comply with additional guidance. In addition, as pro-

vided above, plans will have to be operated consistent with such additional guidance as of the effective date of the guidance.

*Application to Other Plans.* Although the sample amendments are designed for plans qualified under § 401(a), some of the sample amendments may be used in an appropriate context in other plans, including § 403(b) plans. Future guidance will address the EGTRRA changes applicable to § 457 plans.

#### IV. Effect on Other Documents.

Notice 2001-42 is modified.

#### DRAFTING INFORMATION

The principal drafter of this notice is James Flannery of Employee Plans. For further information regarding this notice, please contact Employee Plans' taxpayer assistance telephone service at (202) 283-9516 or (202) 283-9517, between the hours of 1:30 p.m. and 3:30 p.m. Eastern Time, Monday through Thursday. Mr. Flannery may be reached at (202) 283-9613. These telephone numbers are not toll-free.

#### SAMPLE EGTRRA PLAN AMENDMENTS FOR ALL PLANS

##### Sample Preamble Adopting Good Faith Amendments and Superseding Inconsistent Plan Provisions

(The following sample preamble is optional. However, plan sponsors that do not adopt this or a similar provision will have to modify some of the amendments that follow to specify effective dates and supersede inconsistent plan provisions.)

#### AMENDMENT OF THE PLAN FOR EGTRRA

##### PREAMBLE

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 is to be construed in accordance with EGTRRA and guidance issued thereunder. Except as otherwise provided, this amendment shall be effective

as of the first day of the first 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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#### Sample Plan Amendment for § 612 of EGTRRA

(The following amendment is required for plans that provide loans to participants but prohibit the making of loans to owner-employees or Subchapter S shareholder-employees.)

#### 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.

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#### SAMPLE EGTRRA PLAN AMENDMENTS FOR DEFINED CONTRIBUTION PLANS

##### Sample Plan Amendment for §§ 611(b) and 632 of EGTRRA

(Although plans may impose lower limits on contributions and allocations than the limits under § 415(c) of the Code, the following amendment will generally be required in order to avoid a related violation of § 401(a). This could occur, for example, if the plan allocates excess annual additions to a suspense account. (See Notice 99-44, Q&A-8, 1999-2 C.B. 326.) A plan that correctly incorporates the § 415(c) limits by reference will automatically reflect the EGTRRA changes and need not be amended.)

#### 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 increases 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 419A(f)(2) of the Code) which is otherwise treated as an annual addition.

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#### **Sample Plan Amendment for § 611(c) of EGTRRA**

(The following sample amendment is optional. It should be adopted if the plan sponsor wants 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).)

#### **SECTION \_\_\_\_\_. INCREASE IN COMPENSATION LIMIT**

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 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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#### **Sample Plan Amendment for § 613 of EGTRRA**

(The following sample amendment applies to all plans that are required to include provisions to determine whether the plan is top-heavy and that apply if the plan is top-heavy. The amendment is required. However, the amendment is not required for plans that consist solely of a cash or deferred arrangement which meets the safe harbor requirements of § 401(k)(12) of the Code and matching contributions with respect to which the safe harbor requirements of § 401(m)(11) of the Code are met. For these plans, see the sample plan amendments for EGTRRA § 613 under **Sample Plan Amendments for Section 401(k) Plans.**)

#### **SECTION \_\_\_\_\_. MODIFICATION OF TOP-HEAVY RULES**

1. Effective date. This section shall apply for purposes of determining whether the plan is a 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 provisions].

2. 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 2.2 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."

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.

3. Minimum benefits.

3.1 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.

3.2 Contributions under other plans. The employer may provide in the adoption agreement that the minimum benefit requirement shall be met 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).

(Adoption agreement provision)

**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.)

**Sample Plan Amendment for § 633 of EGTRRA**

(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 De-

ember 31, 2001. 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 shall apply to participants with accrued benefits derived from employer matching contributions who 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 § 411(a)(10) of the Code] shall apply.

(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 a 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

**Sample Plan Amendment for §§ 636(b), 641, 642, and 643 of EGTRRA**

(The following sample amendment is required. However, the third paragraph should be deleted in the case of plans that do not provide for hardship distributions. The fourth paragraph should be deleted in the case of plans that do not have after-tax employee contributions.)

**SECTION \_\_\_\_\_. DIRECT ROLLOVERS OF PLAN DISTRIBUTIONS**

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.

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.

4. 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 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 not so includible.

**Sample Plan Amendment to Specify Additional Types of Rollovers Accepted by the Plan Pursuant to EGTRRA §§ 641, 642, and 643**

(A plan is not required to accept rollover contributions, including direct rollovers under § 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 §§ 641, 642, and 643. A plan that accepts rollovers may be required to separately account for such amounts.)

**SECTION \_\_\_\_\_. ROLLOVERS FROM OTHER PLANS**

If provided by the employer in the adoption agreement, the plan will accept par-

ticipant 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 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, 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.

**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.

**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.)

**Sample Plan Amendment for § 648 of EGTRRA**

(The following optional 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 §§ 401(a)(11) and 417 of the Code. Note that 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.)

**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.

(Adoption agreement provisions)

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

The employer: (choose one)

\_\_\_ elects

\_\_\_ does not elect

to exclude rollover contributions in determining the value of the participant's non-forfeitable 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.)

### Sample Plan Amendment for § 666 of EGTRRA

(The following sample amendment is required for plans subject to the multiple use test described in Treas. Reg. § 1.401(m)-2.)

#### 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.

### SAMPLE PLAN AMENDMENTS FOR SECTION 401(k) PLANS

#### Sample Plan Amendment for § 611(d) of EGTRRA

(Unless the plan correctly incorporates the limitation of § 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.)

#### SECTION \_\_\_\_\_. ELECTIVE DEFERRALS — CONTRIBUTION LIMITATION

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 contained 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 § 631] and section 414(v) of the Code, if applicable.

#### Sample Plan Amendment for § 611(f) of EGTRRA

(The following sample amendment is only for SIMPLE 401(k) plans. This amendment is not necessary if the plan correctly incorporates the limitation in § 408(p)(2)(A)(ii) of the Code.)

#### SECTION \_\_\_\_\_. 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 § 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.

#### Sample Plan Amendment for § 613 of EGTRRA

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

#### 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.

#### Sample Plan Amendment for § 631 of EGTRRA

(The following amendment is optional.)

#### 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.

#### Sample Plan Amendment for § 636(a) of EGTRRA

(The following sample amendment is optional for section 401(k) plans (other than plans described in § 401(k)(12) or 401(m)(11) of the Code) that use the safe harbor (deemed) standards for hardship distributions of elective contributions set forth in Treas. Reg. § 1.401(k)-1(d)(2)(iv). The amendment is required for a plan described in § 401(k)(12) or 401(m)(11) of the Code. Also see Notice 2001-56 for guidance regarding the effective date of the change made by EGTRRA § 636(a).)

SECTION \_\_\_\_\_. SUSPENSION PERIOD FOLLOWING HARDSHIP DISTRIBUTION

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.

(Adoption agreement provision)

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.

**Sample Plan Amendment for § 646 of EGTRRA**

(The following amendment is optional.)

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 severances from employment occurring after the dates specified in the adoption agreement.

2. New distributable event. A participant's elective deferrals, qualified non-elective 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.

(Adoption agreement provision)

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.)

**SAMPLE PLAN AMENDMENTS FOR DEFINED BENEFIT PLANS**

**Sample Plan Amendment for § 611(a) of EGTRRA for Non-Multiemployer Plans**

(The following sample amendment is optional for non-multiemployer plans that do not incorporate the § 415(b) limits by reference.

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 (1987-1 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 § 654(b). Section 654(b) of EGTRRA changed the § 415 aggregation rules to provide that, for limitation years beginning after December 31, 2001, a multiemployer plan is not combined or aggregated

with a non-multiemployer plan for purposes of applying the § 415(b)(1)(B) 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 § 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 § 411(a)(3)(B) of the Code.)

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 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 of which is 10.

(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 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 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.

(Adoption agreement provision)

Benefit Increases Resulting from the Increase in the Limitations of Section 415(b) of the Code

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.

### Sample Plan Amendment for §§ 611(a) and 654 of EGTRRA for Multiemployer Plans

(The following sample amendment is optional for multiemployer plans that do not incorporate the § 415(b) limits by reference.

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 (1987-1 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.

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 the § 415 aggregation rules to provide that,

for limitation years beginning after December 31, 2001, a multiemployer plan is not combined or aggregated with a non-multiemployer plan for purposes of applying the § 415(b)(1)(B) compensation limit to the non-multiemployer plan. This change is not reflected in this amendment for multiemployer plans. Plan sponsors should review their plans to determine if a plan amendment for EGTRRA § 654(b) should be adopted.

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 § 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 § 411(a)(3)(B) of the Code.)

### SECTION \_\_\_\_\_. LIMITATIONS ON BENEFITS

1. Effective date. This section shall 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 ad-

justed 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, if applicable, 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.

(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 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 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.

(d) Notwithstanding the above, for limitation years beginning 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 of which is 10.

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**Sample Plan Amendment for § 611(c) of EGTRRA**

(The following sample amendment is optional. It should be adopted if the plan sponsor wants to increase the limit on annual compensation taken into account under the plan in plan years beginning after December 31, 2001, to \$200,000.

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 of the change made by EGTRRA § 611(c).

**SECTION \_\_\_\_\_. INCREASE IN COMPENSATION LIMIT**

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.

(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.

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**Sample Plan Amendment for § 613 of EGTRRA**

(The following sample amendment applies to all plans that are required to include provisions to determine whether the plan is top-heavy and that apply if the plan is top-heavy. The amendment is required.

The amendment may be modified in accordance with § 416(f) of the Code and the regulations thereunder to provide that the minimum benefit requirement shall be satisfied by benefits or contributions, including employer matching contributions, under another plan, including another plan that consists solely of a cash or deferred arrangement which meets the requirements of § 401(k)(12) of the Code and matching contributions with respect to which the requirements of § 401(m)(11) of the Code are met. See section 3 and the adoption agreement provision for the sample plan amendment for EGTRRA § 613 for defined contribution plans.)

**SECTION \_\_\_\_\_.** MODIFICATION OF TOP-HEAVY RULES

1. Effective date. This section shall apply for purposes of determining whether the plan is a 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 provisions].

2. 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 2.2 shall apply for purposes of determining the present val-

ues 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."

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.

3. 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.

**Sample Plan Amendment for §§ 641, 642, and 643 of EGTRRA**

(The following sample amendment is required. However, the third paragraph should be deleted in the case of plans that do not have after-tax employee contributions.)

**SECTION \_\_\_\_\_.** DIRECT ROLLOVERS OF PLAN DISTRIBUTIONS

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.

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 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.

**Sample Plan Amendment to Specify Additional Types of Rollovers Accepted by the Plan Pursuant to EGTRRA §§ 641, 642, and 643**

(A plan is not required to accept rollover contributions, including direct rollovers under § 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 §§ 641, 642, and 643. A de-



financed benefit plan that accepts rollovers must separately account for such amounts.)

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 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.

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.)

## Part IV. Items of General Interest

### Foundations Status of Certain Organizations

#### Announcement 2001–89

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

*Former Public Charities.* The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

- Academie-Therapeutic Equestrian Park, Gladwin, MI  
Affection Connection Rescue League, Macomb, MI  
Affordable Housing Ventures, Inc., Dade City, FL  
Affordable Neighborhood Economic Development, Inc., Jacksonville, FL  
Aids Memorial Monument Foundation, Inc., Orlando, FL  
Airseds Institute, Inc., Holland, MI  
All Kentucky Ag Expo, Inc., Lexington, KY  
American Cross Foundation, Amarillo, TX  
American Foundation for Education in Health Care, Inc., Tampa, FL  
Angels Group, Inc., Leesburg, FL  
Angelvision, Inc., Parsippany, NJ  
Association of Ethiopian Community in Colorado, Inc., Aurora, CO  
Athletic Booster Club, Inc., New Smyrna Beach, FL  
Atlantic Non-Profit Housing Corp., Los Angeles, CA  
Autism Community of the Upper Midwest, Fargo, ND  
B.V. Assisted Living, Inc., Melbourne, FL  
Bay Area Cheerleader Association, Inc., Tampa, FL  
Bird Lovers of the Bluegrass, Inc., Lexington, KY  
Black-Footed Ferret Recovery Foundation, Wheatland, WY  
Black Wolf Farm, Inc., Lipan, TX  
Blessed Sacrament Athletic Boosters Association, Inc., Fort Mitchell, KY  
BRE CD, Inc., Chicago, IL  
Candyland Kinder Kollege Enterprise, Marrero, LA  
Cave Services, Inc., St. Petersburg, FL  
Cedar Springs Volunteer Fire Department, Inc., Scottsville, KY  
Central Florida Center for Grieving Children, Inc., Maitland, FL  
Chase Place Housing, Inc., Dunn, NC  
Cherith House Ministries, Inc., Blackey, KY  
Childrens Hope International, Inc., Plant City, FL  
Christ Healing & Restoration Ministries, Inc., Walton, KY  
Christ the Redeemer Foundation, Inc., Louisville, KY  
Circle Non-Profit Housing Corporation, Elizabethtown, KY  
Citizens Against Domestic Violence, Inc., New York, NY  
CJS Angels, Inc., Maitland, FL  
Cloverport Community Volunteer Fire Department, Incorporated, Cloverport, KY  
Colins Park, Inc., Ormond Beach, FL  
Community Fund for America, Colchester, VT  
Comprehensive Healthcare Services, Inc., Auburn, AL  
Concern Citizens of Tripoli, Inc., Loughman, FL  
Cornelia Lluberes Family Fund, Inc., New York, NY  
Cristoasis, Elgin, IL  
Daughters of Jerusalem, Inc., Louisville, KY  
Deaf Heritage Library and Cultural Center, Lehi, UT  
Deb Richard Foundation, Inc., Ponte Vedra Beach, FL  
Dogwood Invitational, Inc., Jacksonville, FL  
Dorton Volunteer Fire Department, Dorton, KY  
East Bay Rockies Fast Pitch Girls Softball, Inc., Wilmauma, FL  
East Little Rock Community Development Corporation, East Little Rock, AR  
Eastern KY Needy Childrens Foundation, Pikeville, KY  
Emerald Coast Foundation, Fort Walton Beach, FL  
Equal Start Child Development Center, Inc., Jacksonville, FL  
Eye Research Foundation, Albany, NY  
Faith in Action in Northwest Florida, Inc., Pensacola, FL  
Family Services Home Makers, Inc., Philadelphia, PA  
Far Corners Medical Missions, Inc., Cerritos, CA  
Fishing for Success, Inc., Gainesville, FL  
Fleming County Hospital Foundation, Inc., Flemingsburg, KY  
Florida Association of Healthy Starts Coalition, Inc., Clearwater, FL  
Florida Horse Trainers Association, Brooksville, FL  
Florida Indian Alliance, Inc., Petersburg, FL  
Florida Performing Arts, Inc., Ormond Beach, FL  
Forsyth Foundation, Inc., Golden Valley, MN  
Friends of the Lynn Haven Library, Inc., Lynn Haven, FL  
Friends of Wakulla Springs State Park, Inc., Wakulla Springs, FL  
Good Shepherd Christian Charities, Mitchell, IL  
Grace Citadel of Social and Job Training Programs, Inc., Newark, NJ  
Green Networking for Orange County, Gibsonia, PA  
Half Moon Bay Coastside Sister City Committee, Half Moon Bay, CA  
Havanna Non-Profit Housing Corporation, Tampa, FL  
Health Alliance Foundation, Inc., Louisville, KY  
Helping Hand Financial Services, Inc., Dade City, FL  
Henry Clay Football Boosters, Inc., Lexington, KY  
HPC Foundation For Hospice Care, Port Smith, AR  
Independence Civic Association, Independence, KY  
Institute For Health and Human Performance, Inc., Orlando, FL  
International Leadership Foundation, Inc., Altamonte Springs, FL

International Peace Contest,  
Beachwood, OH

Isef Kentucky, Inc., Louisville, KY

Jacksonville Community Access  
Network, Inc., Jacksonville, FL

Kanapaha Park Development Committee,  
Incorporated, Gainesville, FL

Keenes Creek Youth Organization,  
Duluth, MN

Kids Safe Education Foundation,  
Encino, CA

Kinsman Transportation, Inc., Orlando, FL

Korean Association of North Florida,  
Inc., Jacksonville, FL

Lansing Housing Commission City-Wide  
Resident Council, Lansing, MI

Lee Middle School Foundation, Inc.,  
Orlando, FL

LUCI Let us Conserve, Del Rio, TX

Managed Care Institute, Harleysville, PA

Management Technologies International,  
Inc., Poulsbo, WA

Mangrove Action Group, Naples, FL

Marion Non-Profit Housing Corporation,  
Tampa, FL

Maryland Space Research Institute, Ltd.,  
Columbia, MD

Mason County Historical Society, Inc.,  
Maysville, KY

Medical Mission-Ecuador, Inc.,  
Nicholasville, KY

Mercy Ministries, Inc., San Jose, CA

Michaele Vollbracht Humanitarian  
Foundation, Inc., Safety Harbor, FL

National Alliance for Quality Health  
Care, Inc., Clearwater, FL

National Animal Health Alliance, Inc.,  
Trilby, FL

National Forensic Science Technology  
Center, Inc., Largo, FL

Network of Humane Organization of  
Florida, Inc., Beverly Hills, FL

Neustart Social Services, Inc.,  
Eagan, MN

New Beginnings of South West Florida,  
Inc., Sarasota, FL

New Heart, Ashland, KY

New Life Hope Foundation, Inc.,  
Orlando, FL

North American Indian Center of Western  
Florida, Inc., Homosassa Springs, FL

Northside Improvements Corporation,  
Lexington, KY

Oasis Ministries International, Inc., of  
Tampa Florida, Ormond Beach, FL

Ohio Black Expo Boxing Association,  
Inc., Cleveland, OH

Ohio County Kinship, Inc., Hartford, KY

Old James County Chapter of East  
Tennessee Historical Society,  
Ooltewah, TN

Open Door Community Services, Inc.,  
Titusville, FL

Operation Win, Inc., Houston, TX

Orlando Singers, Inc.,  
Altamonte Springs, FL

Pals Society, Inc., Milton, FL

Parent Education Project, Sanford, FL

Pet-A-Pup Therapy Dogs, Inc.,  
Cape Coral, FL

Philadelphia Support Resources Corp.,  
Jamison, PA

Plantation Retreat and Conference  
Center, Inc., Tallahassee, FL

Pleasant Hills Dolphins Swim Team,  
Pleasant Hill, MO

Proud to be Good Charitable Foundation,  
St. Augustine, FL

Punjabi Sangh of Florida, Inc.,  
Altamonte Springs, FL

Reach Out International, Inc.,  
Clendenin, WV

Reaching Out Against Guns Endangering  
Our Youth, Inc., Jacksonville, FL

Reaching Out For Christian Kids,  
Scottsville, KY

Reality Check, Inc., Leesburg, FL

Renewed Hope, Inc., Bartlesville, OK

Rex Logan Dean Hoskins Memorial  
Fund, Inc., Manchester, KY

Rising Suns Home, Inc., Greensboro, NC

Rybnikov Foundation, Inc., Osprey, FL

Safehouse Ministries, Inc., St. Louis, MO

Santa Fe High School Band Booster  
Association, Inc., Santa Fe, NM

Search & Rescue Dogs of Broken Arrow  
Oklahoma, Inc., Broken Arrow, OK

Seven Hills Charitable Fund, Inc.,  
Spring Hill, FL

Shaktikrupa Charitable Foundation, Inc.,  
Tampa, FL

Shelter to Endemic Wildlife Appreciation  
Recovery Discovery, Orlando, FL

Shiloh Foundation, Rockville Center, NY

South Louisville Football Association,  
Louisville, KY

Space Coast Water Ski Club, Inc.,  
Melbourne, FL

Sparta Volunteer Fire Department,  
Sparta, KY

Speaking Life Ministries, Inc.,  
Wilmington, DE

St. John Lutheran School Foundation,  
Inc., Ocala, FL

Sunset Terrace Resident Organization,  
Little Rock, AR

Tampa Jazz Club, Inc., Tampa, FL

Theatre of the Mind, Inc., Glendale, CA

Thistleberry Ministries, Belfair, WA

Time Has Come Ministry, Inc.,  
Miami, FL

Turning Point of Brevard, Inc.,  
Merritt Island, FL

Twin City Performing Arts, Inc.,  
Monroe, LA

Velvet Bird Cage, Chicago, IL

Victim Trauma Care, Inc.,  
Tallahassee, FL

Volunteer Firefighter Charitable Trust,  
Panama City, FL

WCC II, Inc., Uncasville, CT

West Central Florida Urban League  
Sponsoring Committee, Inc., Ocala, FL

West Fresno School District Foundation  
No. 1819326, Fresno, CA

What's Up Club, Houston, TX

Wheelchair Sports USA, Inc., of Florida,  
St. Petersburg, FL

Wildlife Sanctuary Fund, Inc.,  
Ormond Beach, FL

Wiseburn Education Foundation,  
Hawthorne, CA

Youth in Action, Covington, KY

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

## Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it ap-

plies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

## Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.

E.O.—Executive Order.  
ER—Employer.  
ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign Corporation.  
G.C.M.—Chief Counsel's Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.

PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.  
PRS—Partnership.  
PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statements of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

## Numerical Finding List<sup>1</sup>

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