

**CHAPTER 16 EGTRRA CHANGES TO QUALIFIED PLANS**

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INTERNAL REVENUE SERVICE  
TAX EXEMPT AND GOVERNMENT ENTITIES

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## INTRODUCTION

On June 7, 2001, the President signed into the Economic Growth and Tax Reconciliation Act of 2001, EGTRRA, Public Law 107-16. Sections 601 to 666 of EGTRRA provide for changes to plans subject to IRC 401(a), 403(b) and 457, and IRAs subject to IRC408. The general effective date for most of these changes is for years beginning after December 31, 2001. A major exception to this rule applies to Defined Benefit Plans. The IRC 415(b) changes contained in EGTRRA are generally effective for Limitation Years ending after December 31, 2001.

The changes brought about by EGTRRA may require terminating plans to be amended for EGTRRA. Terminating plans are required to be amended to the extent necessary to satisfy all law currently in effect on the date of termination. Thus, plans terminating in Plan Years beginning after December 31, 2001, may be required to be amended for EGTRRA. In addition, Defined Benefit Plans that terminate during Limitation Years ending after December 31, 2001, may be required to be amended to comply with section 415(b) as amended by EGTRRA. Sample plan amendments for EGTRRA were published in Notice 2001-57. Qualified Plans generally must adopt these sample amendments, or similar amendments that are a "Good Faith" effort to incorporate the EGTRRA changes, by the later of: the last day of the first plan year beginning after December 31, 2001, or the end of the GUST remedial amendment period for the Plan. Terminating plans, which may be required to be amended for EGTRRA prior to the time good faith amendments would otherwise be required, generally may use the sample amendments to satisfy the requirement to amend on termination.

In accordance with Notice 2001-42 and Notice 2001-57, in order for a plan to operate in compliance with changes brought about by EGTRRA, the plan must adopt the sample amendments or other "Good Faith" EGTRRA amendments, by the last day of the period stated above. In accordance with Notice 2001-42 the EGTRRA 401(b) period will not end before the last day of the first plan year beginning after December 31, 2004. However, as Notice 2001-57 states, "The availability of the EGTRRA remedial amendment period is conditioned on the timely adoption of required 'Good Faith' EGTRRA plan amendments.". Therefore, a plan must adopt the EGTRRA sample Amendments or other "Good Faith" amendments, applicable to the plan, by the last day of the first plan year beginning after December 31, 2001, unless the GUST remedial amendment period for the plan extends the period. EGTRRA plan amendments are required where the plan is required to comply with e an EGTRRA provision or the employer wishes to implement a specific

optional EGTRRA provision and the language in the plan is not consistent with the EGTRRA provision.

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.

The chapter highlights the major EGTRRA changes affecting IRC401(a) plans, and their effective dates. It is not intended to be all inclusive. The sample Amendments contained in Notice 2001-57 follow at the end of this chapter.

## **I EGTRRA CHANGES TO CERTAIN LIMITS UNTER 401(k), 401(m), 457 AND 408(p)**

Effective for Plan years beginning after December 31, 2001, EGTRRA made the following changes to IRC401(k) and IRC401(m), plans.

### **A. INCREASED ELECTIVE DEFERRAL AMOUNTS**

Section 611 of EGTRRA, P.L. 107-16, increased the IRC402(g) limit for elective deferrals made by eligible plan participants as follows:

<b>For Taxable Years Beginning in Calendar Years</b>	<b>IRC402(g) Limit Applicable Dollar Amount</b>
2002	\$11,000
2003	\$12,000
2004	\$13,000
2005	\$14,000
2006 or thereafter	\$15,000

In the case of taxable years beginning after December 31, 2006, the Secretary will adjust the \$15,000 amount under paragraph (1)(B), at the same time and in the same manner as under section IRC415(d), except that the base period will be the calendar quarter beginning July 1, 2005, and any increase under this paragraph which is not a multiple of \$500 shall be rounded to the next lowest multiple of \$500.

For purposes of IRC457 plans, in sections (b)(2)(A) and (c)(1), the \$7,500 has been replaced with the “Applicable Dollar Amount” (based on the above schedule for IRC402(g)), and subsection (b)(3)(A) has replaced \$15,000 with twice the dollar amount in effect under (b)(2)(A) of IRC457.

**Employee Plans CPE Topics For 2002**

Section 611 of EGTRRA, P.L. 107-16, also increased the IRC408(p) limit for elective employer contributions to a simple retirement account on behalf of an employee, (e.g. Simple 401(k) plans)

As follows:

<b>For Taxable Years Beginning in Calendar Years</b>	<b>IRC408(p)(2)(A)(ii) Applicable Dollar Amount</b>
2002	\$7,000
2003	\$8,000
2004	\$9,000
2005 or thereafter	\$10,000

In the case of a year beginning after December 31, 2005, the Secretary shall adjust the \$10,000 amount under clause (i) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter beginning July 1, 2004, and any increase under this subparagraph which is not a multiple of \$500 shall be rounded to the next lower multiple of \$500.

**B .VESTING:**

Section 633 of EGTRRA, P.L. 107-16 requires that, for Plan years beginning after December 31, 2001, Matching Contributions, defined in IRC401(m)(4)(A), must vest at least as rapidly as under one of the following schedules: three year cliff, or six year graded. If three year cliff is used, the participant must be 100% vested after three years of service, and if six year graded is used, the participant must be vested in accordance with the following schedule:

<b>Years of Service</b>	<b>The Nonforfeitable Percentage</b>
2	20%
3	40%
4	60%
5	80%
6	100%

This requirement applies to participants with an hour of service under the plan in a plan year beginning after December 31, 2001, and to matching contributions for plan years beginning after that date. Of course, a plan can provide that the same vesting schedule will apply to all participants with matching contributions and/or to all matching contributions.

### **C. ELIMINATION OF THE MULTIPLE-USE TEST**

Effective for Plan Years beginning after December 31, 2001, Section 666 of EGTRRA, P.L. 107-16 eliminates the requirement that a 401(k) and 401(m) arrangement, satisfy the Multiple-Use test found in Income Tax Regulations Section 1.401(m)-2. Section 666 of EGTRRA deleted paragraph (A) of IRC401(m)(9). Paragraph (A) required regulations to prevent the multiple use of the alternative limitation with respect to any Highly Compensated Employee. Note that these changes are not retroactive, but prospective in application. Therefore for plan years beginning before January 1, 2002, a 401(k) and 401(m) arrangement, would still have to satisfy the Multiple-Use Test.

### **D. TAX CREDITS FOR LOW INCOME PARTICIPANTS**

Individuals with compensation below certain thresh-holds, are entitled to a tax credit based on their elective deferral. The elective deferral taken into account cannot exceed \$2,000. The Adjusted Gross Income, (AGI) limits are as follows: Joint Return with (AGI) not over \$30,000, a tax credit of 50% of elective deferrals up to \$2,000; for a Joint Return with (AGI) over \$30,000 but not over \$32,500, 20% of the first \$2,000 deferred; for Joint Return with (AGI) over \$32,500 but not over \$50,000, 10% of the first \$2,000 deferred. For Head of Household with (AGI) not over \$22,500, the tax credit is 50% of the first \$2,000 deferred, for Head of Household with (AGI) over \$22,500 up to \$24,375, the tax credit is 20% of the first \$2,000 deferred, for Head of Household with (AGI) over \$24,375 up to \$37,500, it is 10% of the first \$2,000 deferred. For all other filers with (AGI) not over \$15,000, the tax credit is 50% of the first \$2,000 deferred, for all other Filers with compensation over \$15,000 up to \$16,250, it is 20% of the first \$2,000 deferred, for all other Filers with income over \$16,250 up to \$25,000, it is 10% of the first \$2,000 deferred.

These tax credits are available for salary reduction contributions to 401(k) plans, 403(b) annuities, governmental 457 plans, 408(p) SIMPLE IRA plans, and salary reduction SEPs. The credits are also available for contributions to IRA accounts (traditional and Roth) and for voluntary after-tax employee contributions to qualified plans and 403(b) annuities. The individual must be 18 or older by the end of the tax year, and not be a full-time student or dependent. See Announcement 2001-106, 2001-44 I.R.B. 416, for more details.

**E. HARDSHIP DISTRIBUTION ISSUES**

The regulations under section 401(k) provide that a distribution is a hardship distribution if it is made on account of immediate and heavy financial need and is necessary to satisfy that need. The regulations provide a safe harbor for when 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 and employee contributions under all plans of the employer for 12 months. EGTRRA reduces the period of required prohibition under the safe harbor to 6 months. For more information about this change, see Notice 2001-56, 2001-38 I.R.B. 277, and Notice 2002-4, 2002-2 I.R.B. 298.

IRC402(c)(4)(C), specifies distributions that are excluded from IRC402(c) eligible rollover treatment and thus from the direct rollover requirements of IRC401(a)(31). EGTRRA has amended and expanded this definition. The Old Law provision: “(C) any hardship distribution described in section 401(k)(2)(B)(i)(IV)” is changed to: “(C) any distribution which is made upon hardship of an employee”, is excluded from eligible rollover treatment under IRC402(c) and thus from the direct rollover requirements of IRC401(a)(31).

**II EGTRRA CHANGES TO IRC415(C) AND IRC415(B)**

**A. EGTRRA CHANGES TO IRC415(c)**

Section 611 and Section 632 of EGTRRA amends Internal Revenue Code 415(c), effective for plan years beginning after December 31, 2001, as follows:

<b>IRC415(c)(1) prior to EGTRRA</b>	<b>IRC415(c) after EGTRRA</b>
<p>IN GENERAL.—Contributions and other additions with respect to a Participant exceed the limitation of this subsection if, when expressed as an annual addition (within the meaning of paragraph (2)) to the participant’s account, such annual addition is greater than the lesser of:</p> <p style="text-align: center;">\$30,000 or 25% of the participant’s compensation</p>	<p>IN GENERAL.--Contributions and other additions with respect to a Participant exceed the limitation of this subsection if, when expressed as an annual addition (within the meaning of paragraph (2)) to the participant’s account, such annual addition is greater than the lesser of:</p> <p style="text-align: center;">\$40,000 or 100% of the participant’s compensation</p>

**B. EGTRRA CHANGES TO IRC415(B)**

Section 611 of EGTRRA amended the section 415 defined benefit limitations as follows: The IRC415(b)(1)(A) dollar limit has been increased from \$90,000, as adjusted by cost of living adjustments under IRC415(d), to \$160,000, as adjusted by cost of living adjustments under IRC415(d). The adjustments to the IRC415(b)(1)(A) dollar limit, as determined by IRC415(b)(2)(C) and IRC415(b)(2)(D), have also been changed by EGTRRA. EGTRRA eliminated the reduction to the IRC415(b)(1)(A) dollar limit from Social Security Retirement Age down to age 62 but requires a reduction to the IRC415(b)(1)(A) dollar limit below age 62. EGTRRA also changed the adjustments increasing the IRC415(b)(1)(A) dollar limit. Prior law provided that the IRC415(b)(1)(A) dollar limit is increased for distributions commencing after Social Security Retirement Age. EGTRRA provides for an increase to the IRC415(b)(1)(A) dollar limit for distributions commencing after age 65. The EGTRRA changes to IRC415(b) are illustrated by the following:

<b>OLD IRC415(b)(2)(C) reduction to the IRC415(b)(1)(A) dollar limit</b>	<b>EGTRRA IRC415(b)(2)(C) reduction to the IRC415(b)(1)(A) dollar limit</b>
<p>\$90,000, as adjusted by IRC415(d) was reduced from Social Security using Retirement Age down to age 62 using the factors from Notice 87-21, ie., 5/9s of 1% for the first 36 months down to age 62, and 5/12s of 1% for the next 24 months until the reduction reaches the participant's 62<sup>nd</sup> birth date. Below age 62 the IRC415(b)(1)(A) dollar limit, is reduced using 5% and the "Applicable Mortality Table" or the plan's interest rate and mortality table (or other tabular factor), whichever produces the smaller IRC415(b)(1)(A) dollar limit at the age of distribution.</p>	<p>\$160,000, as adjusted by IRC415(d), is reduced below age 62 using 5% and the "Applicable Mortality Table", or the Plan's interest rate and mortality table (or tabular factor), whichever produces the smaller dollar limit at the age of distribution.</p>



<b>OLD IRC415(b)(2)(D) increase to The IRC415(b)(1)(A) dollar limit</b>	<b>EGTRRA increase to the IRC415(b)(1)(A) dollar limit</b>
The IRC415(b)(1)(A) dollar limit is increased for distributions commencing after Social Security Retirement Age, using 5% and the "Applicable Mortality Table" or the plan's interest rate and mortality table (or other tabular factor) whichever produces the smaller IRC415(b)(1)(A) dollar limit increase at the age of distribution.	The IRC415(b)(1)(A) dollar limit is increased for distributions commencing after age 65, using 5% and the "Applicable Mortality Table" or the plan's interest rate and mortality table (or other or tabular factor), whichever produces the smaller IRC415(b)(1)(A) dollar limit increase at the age of distribution.

Under EGTRRA, between ages 62 and 65, the IRC415(b)(1)(A) dollar limit remains constant.

For plans other than multiemployer plans, the IRC415(b)(1)(B) limit remains unchanged. Please note that the effective date for these changes is for Limitation Years Ending after December 31, 2001, which differs from the other EGTRRA effective dates.

**C. REV. RUL. 2001-51. REV. RUL. 2001-51, 2001-45 I.R.B. 427, PROVIDES GUIDANCE REGARDING THE EGTRRA CHANGES TO IRC415.**

### **III EGTRRA CHANGES TO IRC401(A)(17)**

EGTRRA Section 611 changed the IRC401(a)(17) compensation limit from \$150,000, as adjusted by cost of living adjustments, to \$200,000, as adjusted by cost of living adjustments. Sections 404(l), 408(k) and 505(b)(7) have been amended to conform to this change. For purposes of cost of living adjustments, the following were amended by EGTRRA: the base period has been amended from October 1, 1993 to July 1, 2001, and the cost of living increments have been changed from multiples of \$10,000 to multiples of \$5,000. The effective date is for Plan Years beginning after December 31, 2001. However, see Notice 2001-56 for additional information regarding the effective date of this change in plans that determine accruals or allocations using prior year compensation.

## IV EGTRRA CHANGES TO IRC414, --CATCH UP CONTRIBUTIONS

Section 631 of EGTRRA added IRC414(v) to the Internal Revenue Code. This section provides that an “eligible participant,” defined as a participant in the plan who has attained the age of 50 before the close of the plan year, can make an additional elective deferral to a plan, without regard to the limits of IRC402(g), IRC415, IRC402(h), IRC403(b), IRC404(a), IRC404(h), IRC408(k), IRC408(p), or IRC457. The amount that such participant can elect to defer, under IRC414(v), to a plan is based upon the following schedule:

Taxable Years Beginning	The applicable dollar amount
2002	\$1,000
2003	\$2,000
2004	\$3,000
2005	\$4,000
2006 and thereafter	\$5,000

In the case of a plan described in section IRC401(k)(11) (“Safe-Harbor” 401(k) Plans) and IRC408(p) (Simple 401(k) plans), the applicable dollar amount shall be determined in accordance with the following table:

Taxable Years Beginning	The applicable dollar amount
2002	\$500
2003	\$1,000
2004	\$1,500
2005	\$2,000
2006 and thereafter	\$2,500

Catch-up elective deferrals made during the plan year cannot exceed the lesser of the participant’s IRC415(c)(3) compensation for the year, reduced by other elective deferrals made by the participant, or the IRC414(v) amount. An individual age 50 or over is not eligible to make a catch-up until the individual’s other elective deferrals have reached their statutory ceiling (e.g. 402(g) and 415), or a comparable plan limit. If an individual is given the right under a plan to make a catch-up elective deferral, then all eligible plan participants in all plans of the employer’s controlled group must be given the right to make catch-up elective deferrals. Catch-up elective deferrals are not taken into account for the otherwise applicable nondiscrimination (ADP Test) or coverage requirements or IRC415 limitations on contributions or deduction limits,

otherwise required by IRC401(a)(4), 401(a)(26), 401(k)(3), 401(k)(11), 401(k)(12), 403(b)(12), 408(k), 408(p), 408B, 410(b), or 416.

Proposed regulations under IRC414(v) are in REG-142499-01, 2001-45 I.R.B. 476. Also see Notice 2002-4 regarding the universal availability requirement for catch-up contributions.

## **V EGTRRA CHANGES TO IRC416 TOP HEAVY RULES**

Effective for Plan Years beginning after December 31, 2001, EGTRRA made the following changes to IRC416 Top-Heavy rules:

### **A. DEFINITION OF KEY EMPLOYEE**

<b>Old IRC416(i)(1)(A) definition of Key Employee</b>	<b>EGTRRA IRC416(i)(1)(A) definition of Key Employee:</b>
<p>(A) IN GENERAL.—The term “key Employee” means an employee who, at Any time during the plan year or any of</p> <p>(i) an officer of the employer having an annual compensation greater than 50 percent of the amount in effect under section 415(b)(1)(A) for any such plan year,</p> <p>(ii) 1 of the 10 employees having annual compensation from the employer of more than the limitation in effect under section415(c)(1)(A) and owning (or considered as owning within the meaning of 318) the largest interest in the employer,</p> <p>(iii) a 5% owner of the employer or</p> <p>(iv) a 1% owner of the employer having an annual compensation from the employer of more than \$150,000.</p>	<p>(A) IN GENERAL.—The term “key employee” means an employee who at any time during the plan year, is, The 4 preceding plan years, is</p> <p>(i) an officer of the employer having an annual compensation greater than \$130,000,</p> <p>(ii) a 5% owner of the employer, or</p> <p>(iii) a 1% owner of the employer having an annual compensation from the employer of more than \$150,000,</p>

**B. THE DEFINITION OF AMOUNTS USED TO DETERMINE IF A PLAN IS TOP-HEAVY WAS AMENDED BY EGTTTRA AS FOLLOWS**

Old IRC416(g)(3) definition	EGTTTRA 416(g)(3) definition
(3) DISTRIBUTIONS DURING LAST 5 YEARS TAKEN INTO ACCOUNT	(3) DISTRIBUTIONS DURING LAST YEAR BEFORE DETERMINATION DATE TAKEN INTO ACCOUNT.
<p>For purposes of determining—</p> <p>(A) the present value of the cumulative accrued benefit for any employee, or</p> <p>(B) the amount of the account of employee such present value or amount shall be increased by the aggregate distributions made with respect to such employee under the plan during the 5-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group</p>	<p>(A) IN GENERAL.—For purposes of determining:</p> <p>(i) the present value of the cumulative accrued benefit for any employee, or the amount of the account of any employee, such present value or amount shall be increased by the aggregate distributions made with respect to such employee under the plan during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.</p> <p>(B) 5-YEAR PERIOD IN CASE OF IN-SERVICE DISTRIBUTION.—the case of any distribution made for Service, death, or disability, subparagraph shall be applied by substituting '5-year period' for '1-year period'.</p>

**C. KEY EMPLOYEES TAKEN INTO ACCOUNT WAS AMENDED BY EGTRRA AS FOLLOWS**

Old IRC416(g)(4)(E)	EGTRRA IRC416(g)(4)(E)
(E) Benefits not taken into account if employee not employed for last 5 years	(E) Benefits not taken into account if employee not employed for last year before determination date.

#### **D. EXEMPTION OF 401(k) SAFE HARBOR PLANS FROM IRC416 TOP-HEAVY RULES**

EGTRRA, Section 613 provides that “The term ‘top-heavy’ plan shall not include a plan that consists solely of—(i) a cash or deferred arrangement which meets the requirements of section 401(k)(12), and (ii) matching contributions with respect to which the requirements of section 401(m)(11) are met.” Therefore, EGTRRA exempted “Safe-Harbor” 401(k) and 401(m) plans from the requirements of IRC416. This is assuming that the plan is solely a cash or deferred arrangement that consists of deferrals to a “Safe-Harbor” 401(k) plan as defined by IRC401(k)(12); and the employer matches provided by the plan satisfy the IRC401(m)(11) “Safe-Harbor” provisions.

What if the “Safe-Harbor” 401(k) and 401(m) arrangement is a member of an aggregation group that is top-heavy, what then? If the 401(k) and 401(m) “Safe-Harbor” arrangement would be treated as top-heavy, merely because it is a member of an aggregation group which is a top-heavy group, contributions under the plan may be taken into account in determining whether any other plan in the group meets the requirements of IRC416(c)(2).

#### **E. IRC416 CHANGES UNIQUE TO DEFINED CONTRIBUTION PLANS**

For purposes of the defined contribution minimum contribution requirement under IRC416(c)(2)(A), Employer Matching contributions under IRC401(m)(4)(A) shall now be taken into account in determining the minimum contribution to non-key employees. IRC401(m)(4)(A) includes employer matching contributions made to a defined contribution plan on behalf of an employee on account of an employee contribution made by such employee, and any employer contribution made to a defined contribution plan on behalf of an employee on account of an employee’s elective deferral.

## **F. IRC416 CHANGES UNIQUE TO DEFINED BENEFIT PENSION PLANS**

IRC416(c)(1) requires a minimum accrual for non-key employees for top-heavy years in a defined benefit plan. The minimum accrual requirement is 2% of average compensation per year, up to a maximum of 20%. Section 613 of EGTRRA provides an exemption to this minimum accrual requirement of IRC416(c)(1), as follows: "EXCEPTION FOR FROZEN PLAN.—For purposes of determining an employee's 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)) no Key Employee or former Key Employee."

## **G. EFFECTIVE DATE**

The above changes are effective for plan years beginning after December 31, 2001. They are effective for purposes of determining if 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 changes. See Notice 2001-56.

### **Conclusion**

EGTRRA simplifies the definition of Key Employee; deletes the four year look back rule for determining who is a Key Employee; generally eliminates the four year look back rule regarding distributions; allows IRC401(m), employer provided matching contributions to be taken into account in meeting the IRC416(c)(2)(A) minimum contribution to Non-Key Employees in top-heavy years; and eliminates the required accrual minimum for defined benefit plans in top-heavy years if no Key or Former Key employee benefits.

## **VI EGTRRA CHANGES TO IRC404 AND IRC412**

### **FOR DEFINED CONTRIBUTION PLANS**

For purposes of the IRC404 deduction limits for profit sharing and stock bonus plans, Section 616 of EGTRRA amended IRC404(a)(3)(A)(i)(I) to delete: "15 percent of compensation otherwise paid or accrued during the taxable year to the beneficiaries under the stock bonus or profit-sharing plan"; and replace it with: "25 percent of compensation otherwise paid or accrued during the taxable year to the beneficiaries under the stock bonus

or profit sharing plan.” In addition, Section 614 of EGTRRA amended IRC404 by adding new subsection (n), which states as follows: “ELECTIVE DEFERRALS NOT TAKEN INTO ACCOUNT FOR PURPOSES OF DEDUCTION LIMITS.—Elective deferrals (as defined in section 402(g)(3)) shall not be subject to any limitation contained in paragraph (3), (7), or (9) of subsection (a), and such elective deferrals shall not be taken into account in applying any such limitation to any other contributions.” What this would mean, in practice, is the following: Assume an employer sponsors only a 401(k) profit sharing plan, the profit sharing and IRC401(m) structures in the plan would be subject to the 25 percent of compensation paid or accrued during the taxable year deduction limit. The Elective Deferrals to the IRC401(k) structure would not be counted against the employer’s deduction limit of 25% of compensation paid or accrued during the taxable year.

EGTRRA also changed the definition of compensation to be used by IRC404, in section 616. The EGTRRA amendment to the definition of compensation used by IRC404 now requires the inclusion of sections (C) and (D) of the IRC415(c)(3) definition of compensation. Therefore, the disability rules of IRC415(c)(3)(C), relating to amounts of compensation the participant would have received but for the disability is now added to the IRC404 definition of compensation; and under IRC415(c)(3)(D), IR402(g)(3) elective deferrals, contributions to IRC125 cafeteria plans, contributions to IRC457 plans and IRC403(b) plans, and IRC132(f) Transportation Fringes, are now included in the definition of IRC404 compensation.

The effective date of these changes is for years beginning after December 31, 2001.

**FOR DEFINED BENEFIT PLANS**

EGTRRA section 651 amended the 160 percent of the current liability funding limit. Section 651 amended IRC412(c)(7) as follows, the “applicable percentage” is now the “applicable percentage” for plan years beginning before January 1, 2004. The “applicable percentage” itself has been changed. The new “applicable percentage” is as follows:

<b>In the case of a plan year Beginning in</b>	<b>The Applicable Percentage</b>
2002	165%
2003	170%

The current liability full funding limit is repealed for plan years beginning in 2004 and later.

A minor change was made to IRC404(a)(1)(D). This was amended to address defined benefit plans with 100 or fewer participants to provide that unfunded current liability shall not include the liability attributable to benefit increases for highly compensated employees (as defined in section 414(q)) resulting from a plan amendment which is made or becomes effective, whichever is later, within the last 2 years.

This is effective for Plan Years beginning after December 31, 2001.

## **VII EGTRRA CHANGES TO PLAN DISTRIBUTIONS AND ROLLOVERS**

### **A. VARIOUS DISTRIBUTION AND ROLLOVER PROVISIONS:**

EGTRRA made several changes to distribution and rollover requirements. I would not cover this requirement as it is not effective until DOL issues final regs.

EGTRRA Sections 641 to 649 provide for various rollover and distribution provisions for qualified plans, IRAs, IRC457 Plans, and IRC403(b) plans. Account balances in an IRC457 plan can be transferred to and from another Plan, or to an IRA, in a trust to trust transfer, as long as separate accounting of the amount transferred is maintained. The rollover will come under the requirements of IRC401(a)(31), e.g. a trust to trust transfer of an eligible rollover to an eligible plan. These provisions have also been extended to IRC403(b) plans, see section 641 of EGTRRA. These changes are effective for distributions after December 31, 2001. Section 643 allows for rollovers of after-tax contributions, thus protecting their earnings from taxation, in an IRC401(a)(31) eligible rollover to an IRA or 401(a) defined contribution plan that accept such roll-overs. Surviving Spouses will be able to rollover their account balance to an IRA, a 403(b), a 457, or a 401(a) plan that accepts such rollovers. EGTRRA permits the Secretary to waive the requirement that distributions be redeposited into a plan or an IRA within 60 days, in certain limited circumstances. Finally, qualified plans, 403(b), and 457 plans can accept rollovers from IRAs under certain circumstances.



## **VIII. ELIMINATION OF USER FEE FOR CERTAIN NEW PLANS**

Section 620 of EGTRRA eliminates the user fee for a determination letter for certain “new plans” of smaller employers. Plans ineligible for this treatment are as follows: a determination letter request made after the later of (A) the fifth plan year the pension benefit plan is in existence, or (B) the end of the remedial amendment period with respect to the plan beginning within the first 5 plan years is ineligible for this waiver of the user fee. In addition, applications made by the sponsor of any prototype or similar plan which the sponsor intends to market to participating employers, is ineligible to waive the user fee under this provision. The eligible sponsors are those whose plans were in existence less than 5 plan years or are in a remedial amendment period that began within the first five years that the plan was in existence. The rules of IRC414, and the rules regarding mergers and spin-offs must be considered in determining a plan’s effective date. An eligible sponsor is an employer who satisfies the requirements of IRC408(p)(2)(C)(i)(I) and has at least one non-highly compensated employee participating in the plan. The requirements of IRC408(p)(2)(C)(i)(I) are as follows: and eligible employer is an employer which had no more than 100 employees who received at least \$5,000 in compensation from the employer for the preceding year, e.g. the calendar year before the calendar year in which the determination letter request is made. Since this waiver is based on the plan’s remedial amendment period, what time frames would we be looking at? Please consider the following example: The earliest date on which a plan’s GUST remedial amendment period could have begun is December 8, 1994, the date of enactment of the Uruguay Round Agreements Act (GATT). For user fee purposes, the Service will treat the GUST remedial amendment period as beginning on December 8, 1994, in all cases. The first day of the 5-year period ending on December 8, 1994, is December 8, 1989. Thus, a GUST determination letter application for a plan that was first in existence on or after December 9, 1989, may be eligible for elimination of the user fee. This applies only to determination letter requests made after December 31, 2001. Please see Notice 2002-1. Form 8717 has been revised to reflect this EGTRRA change. For additional information, see Notice 2002-1, 2002-2 I.R.B. 283.