



## *What is EGTRRA?*

EGTRRA is an acronym for the Economic Growth and Tax Relief Reconciliation Act, which was signed into law by President Bush on June 7, 2001. EGTRRA included a large number of changes to qualified retirement plans.

## *What changes to my qualified plan document does EGTRRA require?*

The following list highlights some of the changes required for an IRS-approved EGTRRA Restatement (a detailed list is at the end of this material):

- Limits increased:
  - ❖ Compensation limit (\$245,000 in 2009)
  - ❖ Elective deferral limit (\$16,500 in 2009)
  - ❖ Defined benefit annual limit (\$195,000 in 2009)
  - ❖ Defined contribution limit (\$49,000 in 2009)
  - ❖ Deduction limited to 25% of compensation
- Loan programs can include sole proprietors, partners, and S corporation shareholders
- Identifying “key employees” no longer requires use of the 4 year look-back rule
- To be considered an officer, an employee must earn more than \$150,000
- Matching contributions are now counted toward satisfying the top-heavy minimums
- A safe harbor 401(k) plan is generally deemed to not be top-heavy
- Elective deferrals are no longer considered under §404 deduction limits
- 401(k) and 403(b) plans can permit Roth deferrals
- Participants who are age 50 or older can make catch-up contributions
- Vesting schedules maximums: 3 year cliff or 6 year graded
- The hardship prohibition for making elective deferrals is now a 6 month period
- Rollover amounts can be ignored when calculating cash-outs

## *Why do we have to restate our qualified plan document?*

When Congress enacts significant changes to the law, the IRS requires retirement plan sponsors to re-write their plan documents to reflect the regulatory and legislative

changes. This is commonly known as “restating” your plan. The last restatement that took place was in 2001 to conform to the changes required by GUST. Going forward, the IRS has developed a new system to help control their workflow. The IRS’s system requires individually designed plans to restate their qualified plans

every 5 years and prototype and volume submitter plans (“pre-approved plans”) to restate their qualified plans every 6 years.

### ***We have done EGTRRA amendments, why do we have to restate our plan documents?***

When new regulations are issued or new legislation is enacted, the Treasury Department requires plan sponsors to quickly amend their plan document to reflect these changes as “good faith” compliance with the law. During the restatement cycle, the IRS requires plan sponsors to fully incorporate all regulatory and voluntary plan amendments into the qualified plan document itself. Once you have several tack-on amendments, your qualified plan document becomes more confusing to interpret. The IRS has stated that the more amendments you have, the more complex your qualified plan becomes, and the likelihood of mistakes increases dramatically. For these reasons, the Treasury Department requires that all qualified plans be restated for EGTRRA.

### ***What types of qualified plans must be restated due to EGTRRA?***

All qualified plans must be restated. This includes prototype plans, volume submitter plans, and individually designed plans.

### ***What happens if we do not restate our qualified plan for EGTRRA?***

If you do not restate your plan it will no longer be a “qualified” plan. Since your plan would no longer be in compliance with the law, it would lose its tax-favored status, causing the following repercussions:

- You would lose the deductibility of employer contributions to the plan;
- Your employees’ vested account balances would become immediately taxable; and
- The trust would lose its tax-exempt status and become a taxable trust.

All of these events are unacceptable, and can be avoided by restating your plan document as required by the Treasury Department.

## *The following is a detailed list of changes required by the Treasury Department in an EGTRRA Restatement:*

The list is organized by the corresponding code section of the Internal Revenue Code.

1. 72(p): Section 1.72(p)-1 of the Income Tax Regulations relating to plan loans was published on December 3, 2002 (67 Fed. Reg. 71821). (2004 C. L.).

2. 401(a): Final Regulations under § 401(a) of the Code regarding permissible normal retirement ages were published May 22, 2007 (72 Fed. Reg. 28604). (2006 C. L.).

- Notice 2007-69, 2007-35 I.R.B. 468, provides temporary relief, until the first day of the first plan year that begins after June 30, 2008, for certain pension plans under which the definition of normal retirement age may be required to be changed to comply with the regulations. Accordingly, the final regulations will not be taken into account in the Service's review of plans submitted for determination letters during the Cycle C submission period unless the plan, by its terms, is ineligible for the relief under Notice 2007-69 or the relief ends for the plan before December 31, 2008.

(New).

3. 401(a)(4):

- Amendments to § 1.401(a)(4)-8 of the Regulations relating to new comparability plans were published on June 29, 2001 (66 Fed. Reg. 34535). (2004 C. L.).

- Rev. Rul. 2001-30, 2001-2 C.B. 46. (2004 C. L.).

- Amendments to § 1.401(a)(4)-9 of the Regulations relating to new comparability plans were published on June 29, 2001 (66 Fed. Reg. 34535). (2005 C. L.).

- Rev. Rul. 2004-21, 2004-1 C.B. 544. (2005 C. L.).

4. 401(a)(9):

- Sections 1.401(a)(9)-1 through -9 of the Regulations were published on April 17, 2002 and June 15, 2004 (67 Fed. Reg. 18988 and 69 Fed. Reg. 33288). (2004 C. L.).

5. 401(a)(17):

Section 401(a)(17) of the Code was amended by § 611(c) of EGTRRA to increase the compensation limit to \$200,000. (2004 C. L.).

- Notice 2001-56, 2001-2 C.B. 277. (2004 C. L.).

6. 401(a)(31):

- Section 401(a)(31) was amended by § 643(b) of EGTRRA to allow employees' after-tax contributions to be rolled over under certain circumstances. (2004 C. L.).

- Section 401(a)(31)(B) was amended by § 657(a) of EGTRRA (as amended by § 411(t) of JCWAA) to provide for the automatic rollover of certain mandatory distributions. The effective date is March 28, 2005. (2004 C. L.).

- Notice 2005-2, 2005-1 C.B. 337. (2004 C. L.).

- Sections 641, 642 and 643 of EGTRRA (as amended by § 411(q) of JCWAA) amended the definition of eligible retirement plan in § 402 of the Code to include a § 403(b) annuity contract and eligible governmental § 457(b) plan. (2004 C. L.).

- Section 636(b) of EGTRRA modified the definition of eligible rollover distribution to exclude hardship distributions. (2004 C. L.).

7. 401(k) & 401(m):

- Section 401(k)(2) and § 401(k)(10) of the Code were amended by § 646(a)(1) of EGTRRA to permit distributions of elective deferrals from a § 401(k) plan upon severance from employment. (2004 C. L.).
- Notice 2002-4, 2002-1 C.B. 298. (2004 C. L.).
- Section 636(a) of EGTRRA directed the Secretary of the Treasury to revise the regulations relating to safe harbor hardship distributions of elective deferrals from § 401(k) plans so that the time the employee is prohibited from making elective and employee contributions is reduced from one year to six months after a hardship distribution. (2004 C. L.).
- Notice 2001-56. (2004 C. L.). • Notice 2002-4. (2004 C. L.).
- Section 401(k)(11) of the Code was amended by § 611(f) of EGTRRA to increase the maximum amount of qualified salary reduction contributions that can be made to SIMPLE 401(k) plans. (2004 C. L.).
- Section 402(g) of the Code was amended by § 611(d) of EGTRRA to increase the applicable dollar amount. (2004 C.L.).
- Section 401(m)(9) of the Code was amended by § 666 of EGTRRA to eliminate the multiple use test. (2004 C. L.).
- Final Regulations under § 401(k) and § 401(m) of the Code were published on December 29, 2004 (69 Fed. Reg. 78144). (2004 C. L.).
- Announcement 2007-59, 2007-25 I.R.B. 1448, provides that a plan will not fail to satisfy the requirements of a § 401(k) safe harbor plan because of a mid-year change to implement a designated Roth contribution program. (New).

8. 402A: Section 402A of the Code was added by § 617 of EGTRRA to offer optional treatment of elective deferrals as designated Roth contributions to defined contribution plans, effective for taxable years beginning after December 31, 2005. (2004 C. L.).

- Final Regulations under § 401(k) and § 401(m) of the Code relating to designated Roth contributions were published on January 3, 2006 (71 Fed. Reg. 6). (2005 C. L.).
- Notice 2006-44, 2006-1 C.B. 889, provides a sample amendment for Roth § 401(k) plans. (2006 C. L.).
- Final Regulations under § 402A of the Code were published on April 30, 2007 (72 Fed. Reg. 21103). (2006 C. L.).

9. 404:

- Section 404(k)(2)(A) of the Code was amended by § 662(a) of EGTRRA (as amended by § 411(w) of JCWAA) to allow ESOP dividends to be reinvested without the loss of dividend deductions. (2005 C. L.).
- Notice 2002-2, 2002-1 C.B. 285, provides guidance with respect to the changes made to § 404(k) of the Code and on the effective date of § 409(p) of the Code. (2005 C. L.).

10. 408(q): Section 408(q) of the Code was added by § 602 of EGTRRA (as amended by § 411(i) of JCWAA) to allow for deemed individual retirement accounts (IRAs) in an eligible retirement plan. (2004 C. L.).

- Section 1.408(q)-1 of the Regulations was published on July 22, 2004 (69 Fed. Reg. 43735). (2004 C. L.).

11. 409: Section 409(p) of the Code was added by § 656 of EGTRRA relating to restrictions on the allocation of employer securities in an ESOP maintained by an S corporation. (2005 C. L.).

- Section 1.409(p)-1T of the Regulations was published on July 21, 2003 (68 Fed. Reg. 42970). (2005 C. L.).
- Section 1.409(p)-1T of the Regulations was published on December 17, 2004 (69 Fed. Reg. 75455). (2005 C. L.).

- Rev. Proc. 2003-23, 2003-1 C.B. 599, as modified and superseded by Rev. Proc. 2004-14, 2004-1 C.B. 489, allows a direct rollover from an ESOP maintained by an S corporation to an individual retirement account (IRA). (2005 C. L.).
- Rev. Rul. 2003-6, 2003-1 C.B. 286, provides guidance with respect to whether an ESOP maintained by an S corporation is eligible for the delayed effective date of § 409(p) under § 656(d)(2) of EGTRRA. (2005 C. L.).
- Rev. Rul. 2004-4, 2004-1 C.B. 414, provides guidance relating to synthetic equity owned by a disqualified person in a nonallocation year of an ESOP maintained by an S corporation. (2005 C. L.).
- Final Regulations were published on December 20, 2006 (71 Fed. Reg. 76134) that provide guidance concerning requirements under § 409(p) for ESOPs holding stock of S corporations. (2006 C. L.).

12. 410(b): Final Regulations were published on July 21, 2006 (71 Fed. Reg. 41357) permitting some employees of tax-exempt organizations to be excluded when determining whether a § 401(k) plan meets the § 410(b) minimum coverage requirements. (2006 C. L.).

13. 411(a):

- Section 411(a) of the Code was amended by § 633 of EGTRRA (as amended by § 411(o) of JCWAA) to provide for faster vesting of matching contributions. (2004 C. L.).
- Rev. Rul. 2003-65, 2003-1 C.B. 1035. (2005 C. L.).
- Amendments to § 1.411(d)-3 of the Final Regulations were published on August 9, 2006 (71 Fed. Reg. 45379) with respect to the interaction between the anti-cutback rules of § 411(d)(6) and the nonforfeitability requirements of § 411(a). (2006 C. L.).

14. 411(a)(11): Section 411(a)(11)(D) of the Code was added by § 648(a) of EGTRRA (as amended by § 411(r) of JCWAA) to allow amounts attributable to rollover contributions to be disregarded in determining the value of an account balance for involuntary distributions. (2004 C. L.).

15. 411(d)(3):

- Rev. Rul. 2007-43, 2007-28 I.R.B. 45, provides guidance regarding the partial termination of a defined contribution plan. (New).

16. 411(d)(6):

- *Central Laborers' Pension Fund v. Heinz*, 124 S. Ct. 2230 (2004). (2005 C. L.).
- Rev. Proc. 2005-23, 2005-1 C.B. 991, as modified by Rev. Proc. 2005-76, 2005-2 C.B. 1139. (2005 C. L.).
- Amendments to § 1.411(d)-3 of the Final Regulations were published on August 9, 2006 (71 Fed. Reg. 45379) with respect to the interaction between the anti-cutback rules of § 411(d)(6) and the nonforfeitability requirements of § 411(a). (2006 C. L.).
- Section 645(b)(3) of EGTRRA directed the Secretary of the Treasury to issue regulations under § 411(d)(6)(B). (2005 C. L.).
- Section 1.411(d)-3 of the Regulations was published on August 12, 2005 (70 Fed. Reg. 47109). (2005 C.L.).
- Amendments to § 1.411(d)-3 of the Final Regulations were published on August 9, 2006 (71 Fed. Reg. 45379) with respect to a utilization test. (2006 C. L.).
- Section 411(d)(6)(D) and § 411(d)(6)(E) of the Code were added by § 645 of EGTRRA to permit the elimination of certain optional forms of benefit under certain conditions. (2005 C. L.).
- Section 1.411(d)-4, Q&A-2(e) of the Regulations was published on January 25, 2005 (70 Fed. Reg. 3475) to implement § 411(d)(6)(E). (2005 C. L.).

17. 412:

- Rev. Rul. 2004-20, 2004-1 C.B. 546, provides guidance with respect to whether a qualified pension plan can be a § 412(i) plan if the plan holds life insurance contracts and annuity contracts for benefits at normal retirement age in excess of a participant's benefits at normal retirement age under the plan. (2005 C. L.).
- Notice 2004-59, 2004-2 C.B. 447, provides guidance with respect to restrictions placed on plan amendments following an employer's election of an alternative deficit reduction contribution. (2005 C. L.).

18. 414(v): Section 414(v) of the Code was added by § 631 of EGTRRA (as amended by § 411(o) of JCWAA) to allow for catchup contributions for individuals age 50 or older. (2004 C. L.).

- Regulations under § 414(v) were published on July 8, 2003 (68 Fed. Reg. 40510). (2004 C. L.).
- Notice 2002-4. (2004 C. L.).

19. 415:

- Section 415(b) of the Code was amended by § 611 of EGTRRA to increase the dollar limit and change the age when the limit is reduced or increased. (2005 C. L.).
- Rev. Rul. 2001-51, 2001-2 C.B. 427. (2004 C. L.).
- Section 415(b)(2)(E)(ii) of the Code was amended by § 101(b)(4) of PFEA to fix the percentage at 5.5%. (2005 C.L.).
- Notice 2004-78, 2004-2 C.B. 879, provides the actuarial assumptions that must be used for distributions with annuity starting dates occurring during the plans years beginning in 2004 and 2005. (2005 C. L.).
- Section 415(c) of the Code was amended by §§ 611(b) and 632 of EGTRRA (as amended by § 411(p) of JCWAA) to increase the maximum annual additions permitted to the lesser of \$40,000 or 100% of compensation. (2004 C. L.).
- Rev. Rul. 2001-51, 2001-2 C.B. 427. (2004 C. L.).
- Rev. Rul. 2002-27, 2002-1 C.B. 925, provided that "compensation" within the meaning of § 415(c) could in certain situations include "deemed § 125 compensation". (2004 C. L.).
- Final Regulations under § 415 with respect to pre-PPA '06 law were published April 5, 2007 (72 Fed. Reg. 16878). (2006 C. L.).
- See section VI of this notice for PPA '06 provisions related to § 415 that are reflected in the § 415 Final Regulations. (2006 C. L.)

20. 416: Section 416 of the Code was amended by § 613 of EGTRRA (as amended by § 411(k) of JCWAA) to make several changes to the top-heavy rules. (2004 C. L.).

- Section 416(g)(4)(H) of the Code was added by § 613(d) of EGTRRA to provide certain safe harbor § 401(k) plans and § 401(m) plans an exemption from the top-heavy rules. (2004 C. L.).
- Rev. Rul. 2004-13, 2004-1 C.B. 485. (2004 C. L.).
- Section 416(c)(1)(C) of the Code was amended by § 613(e) of EGTRRA (as amended by § 411(k)(1) of JCWAA) to provide when a frozen defined benefit plan is exempt from the minimum benefit requirements. (2005 C. L.).

21. 417:

- Section 1.417(e)-1 of the Regulations was published on July 16, 2003 (68 Fed. Reg. 41906) relating to retroactive annuity starting dates. (2005 C. L.).
- Final Regulations under § 417(a)(3) were published on March 24, 2006 (71 Fed. Reg. 14798) regarding the disclosure of the relative value of optional forms of benefit. (2006 C. L.).

22. 420(c)(3)(A): Section 6613 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, amends § 420(c)(3)(A) regarding minimum cost requirements for transfers of excess pension assets to retiree health accounts. (New)

23. 4975:

- Section 4975 of the Code was amended by § 612 of EGTRRA to allow plan loans for Subchapter S shareholder employees, partners, and sole proprietors. (2004 C. L.).
- Section 4975(f) of the Code was amended by § 240 of AJCA to allow an S corporation distribution on allocated shares to pay off an exempt loan as long as equal amounts are allocated to participant accounts. (2005 C. L.).

24. *Hurricane Relief*:

- Katrina Emergency Tax Relief Act of 2005, Pub. L. 109-73. (2005 C. L.).
- Notice 2005-92, 2005-2 C.B. 1165. (2005 C. L.).
- Announcement 2005-70, 2005-2 C.B. 682. (2005 C. L.).
- Gulf Opportunity Zone Act of 2005, Pub. L. 109-135, added § 1400M and § 1400Q to the Code to provide certain tax benefits to those areas affected by Hurricanes Katrina, Wilma, and Rita. (2006 C. L.).

25. *Miscellaneous*:

- Rev. Rul. 2001-62, 2001-2 C.B. 632, provides guidance with respect to the mortality table under § 415(b)(2)(E)(v) of the Code and the applicable mortality table under § 417(e)(3)(A)(ii)(I) of the Code. (2005 C. L.).
- Rev. Rul. 2002-42, 2002-1 C.B. 76, provides guidance with respect to a situation where a money purchase pension plan is merged or converted into a profit sharing plan. (2004 C. L.).
- Rev. Proc. 2002-21, 2002-1 C.B. 911, provides guidance with respect to defined contribution retirement plans maintained by professional employer organizations. (2004 C. L.).
- Rev. Proc. 2003-86, 2003-2 C.B. 1211, amplifies Rev. Proc. 2002-21 relating to relief provided for certain defined contribution plans maintained by professional employer organizations. (2004 C. L.).
- Rev. Rul. 2003-11, 2003-1 C.B. 285, provides guidance with respect to satisfying the nondiscrimination rules under § 401(a)(4) of the Code and the minimum coverage requirements under § 410(b) of the Code when applying the increased compensation limit to former employees. (2005 C. L.).
- Rev. Rul. 2004-10, 2004-1 C.B. 484, provides guidance with respect to charging administrative expenses to former and current employees. (2004 C. L.).
- Rev. Rul. 2004-12, 2004-1 C.B. 478, provides guidance with respect to the distribution restrictions applicable to rollover contributions. (2004 C. L.).
- Rev. Rul. 2005-55, 2005-2 C.B. 284, provides guidance with respect to medical reimbursement accounts under a profit sharing plan. (2005 C. L.).
- Section 1.401(a)-21 of the Final Regulations were published on October 20, 2006 (71 Fed. Reg. 61877) setting forth standards for the use of an electronic medium to applicable notices to recipients or to make participant elections. (2006 C. L.).