GROOM
LAW GROUP
www.groom.com

October 16, 2003

CHECKLIST OF REQUIRED AND OPTIONAL EGTRRA AMENDMENTS AND OTHER RECENT GUIDANCE FOR QUALIFIED DEFINED BENEFIT PLANS

Compensation and Section 415 Limits

Description	Required or Optional	Effective Date	Comments
Elective deferrals under section 132(f)(4) plans are compensation for purposes of section 415 limits on plan benefits and contributions.	Required	Years beginning after December 31, 1997.	The Community Renewal Tax Relief Act of 2000 clarified that pre-tax contributions for "qualified transportation fringe benefits" (e.g., employer-paid parking and transit passes) that are not includible in gross income also are compensation for purposes of section 415. Notice 2001-37 provides additional guidance, including a model amendment. Rev. Proc. 2002-73 extends the time to amend plans until the latest of (1) end of the first plan year beginning on or after January 1, 2002, (2) the end of the plan's GUST remedial amendment period (generally Sept. 30, 2003 for pre-approved plans who don't file for GUST determination letters), or (3) June 30, 2003. The deadline for adopters of M&P and volume submitter plans that file for GUST determination letters by January 31, 2004, is extended until the 91st day after the final determination letter is issued. Rev. Proc. 2003-72.

Description	Required or Optional	Effective Date	Comments
The annual amount of compensation that may be taken into account in determining benefits under a qualified plan increases to $200,000, with future indexing in $5,000 increments ($205,000 for 2004).	Optional (but required for other purposes, including (a) nondiscriminatio n testing (*i.e.,* increasing compensation will make it easier to pass the applicable tests); and (b) limiting deductions under Code § 404 (*i.e*., increasing it will increase deductions)).	For accruals in plan years beginning after December 31, 2001.	Notice 2001-56 provides the following guidance on implementation of the higher compensation limit by plans that base accruals on average compensation for a period of years: • Plans may provide for application of the $200,000 limit to prior years (*e.g.*, if the plan has a high-3 or high-5 formula). An example clearly illustrates the impact on benefits of a participant with compensation over $200,000 for the relevant period. Notice 2001-57 contains a sample amendment (DB plans, § 611(c)). • Plans are not required to apply the higher limit retroactively. • Plans may adopt any cap above $170,000 and below $200,000 for future years. • Plans can adopt the $200,000 limit retroactively in determining retirement benefits to be paid after December 31, 2001, to employees who retired on or before December 31, 2001, provided that (1) the plan amendment clearly reflects this intent (e.g., the model IRS language should not be sufficient), and (2) for plans that are subject to nondiscrimination provisions, increased limit applies to all former employees (or all former employees who retain an accrued benefits under the plan) and is effective as of the first plan year beginning after December 31, 2001. See Rev. Rul. 2003-11.

Description	Required or Optional	Effective Date	Comments
Testing and 415 compensation modified to include "deemed 125 compensation" "Deemed 125 compensation" occurs when an employee cannot elect out of group health insurance coverage, paid for on a pre-tax basis, unless he or she certifies that he or she has other health coverage. Because such an individual may not elect cash, there is no cash-or-deferred election as described in section 125. Rev. Rul. 2002-27 provides that plans may treat the cost of the health coverage as compensation under sections 415 and 414(s) even though it is not described in section 125. In Rev. Rul. 2002-27, the employee certified that he or she had no other coverage; the employer did not request additional information about other coverage. In order to comply with the guidance, we recommend that employers adopt this approach.	Optional	Plan years or limitation years beginning after December 31, 1997.	Revenue Ruling 2002-27 contains a model amendment that expands "compensation" to include "deemed 125 compensation." A plan that treated "deemed 125 compensation" as compensation between January 1, 1998 and January 1, 2002 will not be disqualified for such years if it adopts the model amendment by the end of the 2002 plan year, or, if later, the end of the GUST remedial amendment period. If a plan has not taken into account "deemed 125 compensation," it need not be amended until the end of the plan year in which it does. In the case of M&P and volume submitter plans, the time for amending the plan retroactively has been further extended: • Plans that don't file for GUST determination letters must be amended by September 30, 2003 (or, if later, 12 months after the GUST opinion/advisory letter). Rev. Proc. 2002-73. • Plans that file for GUST determination letters by January 31, 2004, have until the 91st day after the final determination letter is issued. See Rev. Proc. 2003-72.

Description	Required or Optional	Effective Date	Comments
Annual dollar limit on pension payments increased from $140,000 to $160,000, with future indexing in $5,000 increments ($165,000 for 2004). No actuarial reduction in dollar limit for retirees at least age 62. The age 55/$75,000 floor for governmental and tax-exempt employers is repealed. Actuarial increase in dollar limit begins from age 65 (not Social Security retirement age).	Optional (but required for the age 55/$75,000 floor repeal)	Limitation years ending after December 31, 2001. Note: Plans that incorporate the section 415 limit by reference, and that do not wish to apply the increased limit, should be amended before the beginning of the 2002 limitation year (the 2001 limitation year for plans with fiscal year limitation years). [However, JCWAA provided anticutback relief if the amendment was adopted by June 30, 2002.]	The Conference Report explanation of the Act indicate that the IRS will apply similar transition rules to the increase in the 415 dollar limit as applied to the repeal of the combined plan limits of old section 415(e) (see IRS Notice 99-44). This statement is reflected in Rev. Rul. 2001-51, which provides guidance on the section 415 increase. Thus, subject to certain restrictions, a plan generally could provide for benefit increases to reflect the higher 415 dollar limit for current and/or former employees who commenced benefits under the plan prior to the effective date of the change in the limit, provided that the employee or former employee retains an accrued benefit under the plan. Notice 2001-57 contains a sample amendment, which includes an option to apply to inactive participants and retirees (DB plans, § 611(a) for Non-Multiemployer Plans). Also, note that the dollar limit changes are generally effective for limitation years ending after December 31, 2001, and, therefore, may affect non-calendar year plans in 2001. Plans with normal retirement dates earlier than age 65 must reflect special rules regarding post-retirement age accruals. If a participant's benefit is limited by section 415, his benefit cannot be actuarially increased without violating section 415. In this case, the plan must either (1) provide the suspension of benefits notice, or (2) provide for the in-service distribution of the participant's benefit. *See* Revenue Ruling 2001-51 (Q&A 4). Revenue Ruling 2001-51 (Q&A 13) provides language that can be used in a plan amendment to retain the pre-EGTRRA 415 limit. This guidance also indicates that a plan utilizing the pre-EGTRRA limit may still qualify for safe harbor amounts testing under section 401(a)(4). If the plan is later amended to adopt the increased limits, the amendment will have to satisfy the applicable nondiscrimination test.

Description	Required or Optional	Effective Date	Comments
The 100% of compensation limit will no longer apply to multiemployer plans, and multiemployer plans will not be aggregated with other plans for purposes of applying the 100% limit to a non-multiemployer plan.	Required	Limitation years beginning after December 31, 2001.	Notice 2001-57 contains a sample amendment, which includes an option to apply to inactive participants and retirees (DB plans, § 611(a) for Multiemployer Plans).
A new mortality table, the "94 GAR," must be utilized for the purpose of adjusting the section 415 limit for early or late commencement, as well as for payments in a form other than a single life annuity, to the extent required by section 415(b)(2).	Required	Distributions with annuity starting dates on or after December 31, 2002. Plans may implement the new table earlier, as of any date in 2002. For a calendar year plan, a plan amendment must be adopted by December 31, 2002. However, Revenue Procedure 2002-73 extends the time for making a plan amendment until the later of (1) end of the 2002 Plan Year, or (2) end of the plan's GUST remedial amendment period.	An amendment must be adopted by the end of the plan year in which the new table takes effect. Revenue Ruling 2001-62 includes two model amendments. If a timely amendment is adopted, then the remedial amendment period will extend until the end of the EGTRRA remedial amendment period (*i.e.*, December 31, 2005, for a calendar year plan). The IRS anticipates that the overall impact of this table will increase benefits payable from a plan. Sponsors should consult with their actuaries to see what the impact will be on their plans. Then sponsors can decide whether to implement the new table earlier than its required effective date. Although the IRS anticipates that the overall impact will be to increase benefits, there might be instances where the new table results in lesser benefits. Revenue Ruling 2001-62 provides some cut-back relief where the plan is amended to reflect the new table before or at the same time as its implementation. Also, in informal Q&A guidance, as posted on the IRS website on Nov. 12, 2002, the IRS states its current position that an amendment to a cash balance pension plan adopting the new table does not violate anti-cutback rules and that advance 204(h) notice is not required.

DB Plan EGTRRA Amendments and Other Recent Guidance

Eligible Rollover Distributions and Rollover Contributions

Description	Required or Optional	Effective Date	Comments
Definition of "eligible retirement plan" for distributions out of the plan includes a (1) 403(b) annuity, and (2) governmental 457(b) plan that agrees to separately account for amounts transferred, provided that the transferee annuity/plan accepts the rollover.	Required	Distributions on and after January 1, 2002.	In order to preserve grandfathered capital gain and 10 year averaging treatment in qualified plans, the rollover still must be made to a conduit IRA or 401(a) plan. Presumably, rollovers of 457 amounts to a 401(a) or 403(b) plan become subject to the 10% early withdrawal tax. Notice 2001-57 contains a sample amendment (DB plans, § 641, 642, 643). If the plan incorporates the definition by reference, however, no amendment is necessary.
Definition of "eligible rollover distribution" for distributions out of the plan includes after-tax employee contributions to a (1) traditional IRA, or (2) tax-qualified DC plan that agrees to separately account for such contributions (and earnings).	Required (if the plan has after-tax contributions)	Distributions on and after January 1, 2002.	Notice 2001-57 contains a sample amendment (DB plans, § 641, 642, 643). If the plan incorporates the definition by reference, however, no amendment is necessary. JCWAA provides an ordering rule of pre-tax dollars rolled first, which allows participants to only roll the pre-tax funds.
Definition of "eligible retirement plan" for distributions out of the plan for surviving spouses includes a (1) 401(a) plan, (2) 403(a) plan, (3) 403(b) annuity, and (4) governmental 457(b) plan that agrees to separately account for amounts transferred, if the transferee plan/annuity accepts the rollover.	Required	Distributions on and after January 1, 2002.	Notice 2001-57 contains a sample amendment (DB plans, § 641, 642, 643). The sample amendment also covers certain alternate payees under QDROs, but such payees continue to be treated the same as employees for rollover purposes generally. If the plan incorporates the definition by reference, however, no amendment is necessary.
Revised safe harbor explanation of Section 402(f) rollover notice issued	Optional to adopt safe harbor explanation; mandatory to provide required explanation	Plans must make good faith efforts to comply with expanded notice requirements, but will not be penalized for failing to furnish expanded notices for distributions made before April 14, 2002.	Notice 2002-3 includes a model notice for use by section 401(a) and 403(b) plans and a separate notice for use by governmental plans satisfying section 457.

Description	Required or Optional	Effective Date	Comments
Rollover contributions (direct or indirect) into the plan may include taxable distributions from traditional IRAs (including SEPs), and SIMPLE IRAs after 2 years of participation. Conduit IRAs no longer exist.	Optional	Distributions on and after January 1, 2002.	The rollover amount from an IRA is deemed to come first from amounts other than nondeductible contributions (*e.g.*, income on IRAs is deemed rolled first). Notice 2001-57 contains a sample amendment (DB plans, § 641, 642, 643 "Rollover From Other Plans"). However, it does not cover SEPs or SIMPLE IRAs. If a plan incorporates the rollover rules by reference, an amendment may be necessary if the sponsor does not want to receive funds from all IRAs. If a plan references Code section 408(d)(3)(A)(ii) or conduit IRAs, an amendment may be required because conduit IRAs no longer exist (other than to preserve grandfathered capital gain and averaging treatment).
Rollover contributions (direct or indirect) into the plan may include eligible rollover distributions from a 403(b) annuity, or governmental 457(b) plan.	Optional	Distributions on and after January 1, 2002.	The rollover amount from an IRA is deemed to come first from amounts other than nondeductible contributions (*e.g.*, income on IRAs is deemed rolled first).. Similarly, JCWAA clarifies that the rollover amount from an eligible retirement plan is deemed to come first from pre-tax dollars. Notice 2001-57 contains a sample amendment (DB plans, § 641, 642, 643 "Rollover From Other Plans"). If a plan incorporates the rollover rules by reference, an amendment may be necessary if the sponsor does not want to receive funds from all types of plans.
IRS may grant relief from 60-day rollover rule in case of hardship	Optional	Distributions on and after January 1, 2002.	Some plans include the 60-day requirement in the document, in which case, an amendment should be made (*e.g.*, "unless otherwise waived by the IRS pursuant to Section 402(c)(3) of the Code"). Rev. Proc. 2003-16 provides additional guidance on the hardship exception.

DB Plan EGTRRA Amendments and Other Recent Guidance

Cashout Rules

Description	Required or Optional	Effective Date	Comments
Rollover contributions (and earnings thereon) may be disregarded in applying mandatory cash-out rules.	Optional	Effective for distributions made after December 31, 2001, with respect to participants who separated before, on or after such date.	Notice 2001-57 contains a sample amendment (DC plans, § 648), but it does not apply to DB plans. JCWAA clarified that this rule also applies to DB plans; therefore, rollover contributions can be ignored when determining if the distribution is subject to joint and survivor rules.
Automatic rollover of cash-out amounts between $1,000 and $5,000 to IRA, unless participant affirmatively elects otherwise.	Mandatory (for plans with an automatic cash-out provision)	After DOL regulations published (no later than June 7, 2004).	It is unclear whether this provision applies to surviving spouses, whether it can be avoided if the plan has a cashout provision of less than $5,000, whether the rule applies to governmental plans, or whether a charge can be imposed upon a transfer to another IRA. Presumably, Deemed IRAs may be used as the default IRA.

Description	Required or Optional	Effective Date	Comments
A new mortality table, the "94 GAR," must be utilized for the purpose of determining lump sum values under section 417(e)(3).	Required	Distributions with annuity starting dates on or after December 31, 2002. Plans may implement the new table earlier, as of any date in 2002. For a calendar year plan, a plan amendment must be adopted by December 31, 2002. However, Revenue Procedure 2002-73 extends the time for making a plan amendment until the later of (1) end of the 2002 Plan Year, or (2) end of the plan's GUST remedial amendment period.	An amendment must be adopted by the end of the plan year in which the new table takes effect. Revenue ruling 2001-62 includes two model amendments. If a timely amendment is adopted, then the remedial amendment period will extend until the end of the EGTRRA remedial amendment period (*i.e.*, December 31, 2005, for a calendar year plan). The IRS anticipates that the overall impact of this table will increase benefits payable from a plan. Sponsors should consult with their actuaries to see what the impact will be on their plans. Then sponsors can decide whether to implement the new table earlier than its required effective date. Although the IRS anticipates an overall increase in benefits, there might be instances where the new table results in lesser benefits. Revenue Ruling 2001-62 provides some cut-back relief where the plan is amended to reflect the new table before or at the same time as its implementation. Also, in informal Q&A guidance, as posted on the IRS website on Nov. 12, 2002, the IRS states its current position that an amendment to a cash balance pension plan adopting the new table does not violate anti-cutback rules and that advance 204(h) notice is not required.

DB Plan EGTRRA Amendments and Other Recent Guidance

Miscellaneous Changes

Description	Required or Optional	Effective Date	Comments
"Sunset" Provision	Optional	Effective as of the first day of the first plan year beginning after December 31, 2001, unless otherwise provided in the amendment, and ending December 31, 2010 (unless otherwise extended by law).	Informally, the IRS indicated that the sample EGTRRA preamble set forth in Notice 2001-57 may also include a sunset provision, to protect against anti-cutback claims if these provisions are not extended after 10 years, and still constitute a "good faith" amendment. Revenue Ruling 2001-51 provides that the sunset can be ignored for purposes of sections 412 (funding) and 404 (employer deduction limits). It is still unclear how the sunset should be accounted for in valuing lump sums. Note that nearly all of the portability provisions are effective January 1, 2002, while the sample preamble uses a "plan year" effective date; therefore, if the plan does not have a calendar year as the plan year, many of the amendments will need to include effective dates.
Top-heavy rules simplified, including definition of "key employee," and replacing the 5-year look-back with a 1-year look-back for most purposes. No benefit accruals required for frozen top-heavy DB plans. JCWAA extends this exception to any DB plan where no key employee (or former key employee) benefits for the plan year.	Required	Years beginning after December 31, 2001. Note: For top-heavy plans, early plan amendment may be necessary to avoid cutbacks.	Notice 2001-56 summaries the top-heavy changes and clarifies that the EGTRRA amendments 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. Notice 2001-57 contains a sample amendment (DB plans, § 613). (Note: Per JCWAA, replace the phrase "separation from service" with the phrase "severance from employment" in the sample amendment.) Notice 2001-42 provides guidance on the timing of this amendment for top-heavy plans.
Plan loans available to sole proprietors, partners, and owners of S-corporations	Required (if applicable)	Years beginning after December 31, 2001.	Most plans will not need an amendment, but loan procedures may need to be updated. Notice 2001-57 contains a sample amendment (all plans, § 612).

Description	Required or Optional	Effective Date	Comments
A direct trustee-to-trustee transfer from a 403(b) annuity or 457(b) plan to a governmental DB plan to (1) purchase permissive service credit, or (2) repay contributions and earnings previously refunded under a forfeiture of service credit under the plan or another plan maintained by a State or local government employer within the same State.	Optional	Transfers after December 31, 2001.	Presumably, governmental DB plans that wish to accept such transfers will need to contain some provision.
204(h) Notice (Failure to provide this notice may result in excise tax for qualified plans.)	Required if a plan amendment provides for a significant reduction on the accrual rate of future benefits. A reduction of early retirement benefits or retirement-type subsidies may result in such a significant reduction.	Amendments taking effect after June 17, 2001 For amendments taking effect after June 7, 2001, and before September 1, 2003, the legal requirements will be considered satisfied if the plan administrator makes a reasonable, good faith effort to comply with the statutory requirements. Transition Rule: JCWAA clarifies that if notice was provided to plan participants and representatives on or before April 15, 2001, these new rules do not apply. Final regulations were issued April 9, 2003 (68 Fed. Reg. 17277) and generally apply to amendments effective on or after September 1, 2003.	A 204(h) notice must be provided within a "reasonable" time before the effective date of the amendment. In general, this means at least 45 days (15 days for multiemployer plans), before the effective date of the plan amendment. The final regulations, which generally track the proposed regulations: • include a new provision relevant to multiemployer plans: if such a plan incorporates the terms of a collective bargaining agreement by reference, a decrease in accruals, etc., reflected in the CBA will trigger a 204(h) notice, even if the plan is not amended. • provide that an amendment of a defined benefit plan will reduce future accruals if it is reasonably expected to reduce the future annual benefit commencing at normal retirement age, expressed in the form in which the plan expresses the accrued benefit. If the plan does not express the accrued benefit in the form of an annual benefit commencing at normal retirement age, then the benefit must be expressed in the form of a single life annuity commencing at normal retirement age that is the actuarial equivalent of the accrued benefit expressed under the terms of the plan. • suggest that the IRS might view favorable actuarial assumptions used in one optional form of benefit as a retirement-type subsidy.

Description	Required or Optional	Effective Date	Comments
			• provide that the 204(h) notice must be written in a manner calculated to be understood by the average plan participant and may not include materially false or misleading information (or omit information so as to cause the information provided to be misleading). The notice must describe (a) the relevant plan provision as in effect prior to the amendment, (b) the provision as in effect after the amendment, and (c) the amendment's effective date. In addition, the notice must indicate the magnitude of the change. The regulations state that in many circumstances, these requirements can be met in a narrative description. Electronic delivery is permissible. Special rules apply to cash balance plan conversions. See Treas. Reg. § 54.4980F-1.
Revised DOL claims procedure rules.	Required	Claims filed on or after January 1, 2002.	The revised procedures may have some minor impact on plans with detailed claims procedure provisions. DOL Reg. § 2560.503-1. They may have a more substantial impact on plans that provide certain types of disability benefits.
Simplified rules for calculating MRDs.	Required (as of January 1, 2003), subject to transition rules for variable annuities and certain other increasing payments, and for governmental plans.	Years beginning on or after January 1, 2003. Amendments must be adopted by the end of the EGTRRA remedial amendment period (i.e., at least until the end of the 2005 plan year). However, for M&P and volume submitter plans, the requirement to amend is postponed until further notice. See Rev. Proc. 2003-10. (Note, until further notice determination letters for DB plans will not take into account these new rules. See Rev. Proc. 2003-10.)	Rev. Proc. 2002-29 contains a model amendment. Note: These rules are in proposed and temporary regulations. Prop. Treas. Reg. § 1.401(a)(9)-6; Temp. Treas. Reg. § 1.401(a)(9)-6T. Notice 2003-2 provides new transition rules. For example, until the end of the calendar year that the regulations are final (likely December 31, 2003), plan sponsors can continue to rely on either the 1987 or 2001 proposed regulations, rather than follow the new temporary regulations, for annuity payments. Also, governmental plans can continue to rely on these prior rules (or on reasonable good faith interpretations of the statutory rules) until the effective date of the final regulations for governmental plans, which may be later than for other plans. See Notice 2003-2. Therefore, DB plan sponsors generally should wait for Treasury to finalize the regulations before making amendments. The following issues, if applicable, should be addressed in a plan's model amendment language:

Description	Required or Optional	Effective Date	Comments
			Effective Date. A plan must state the date on which the plan began to apply the 2002 regulations (no later than January 1, 2003). The model amendments provide transition rules for plans switching to the 2002 regulations in the middle of 2002. Five-Year Rule as Default Method of Distribution. A plan may elect to retain the five-year default rule for any distributions commencing after the death of a participant. Participant/Beneficiary Election of the Five-Year Rule. A plan may permit participants and beneficiaries to elect whether to apply the five-year rule for distributions commencing after a participant's death. This election must be made no later than the earlier of (i) the September 30 of the calendar year in which distributions must commence or (ii) the September 30 of the calendar year which contains the fifth anniversary of the participant's death. Transition Rule. A plan may adopt the transition rule that permits participants already receiving distributions under the 5-year rule to convert to the life expectancy rule, assuming the 5-year period has not expired by the end of 2003. Transition Amendments for 2001 and 2002: See Announcements 2001-18 and 2001-82 for model amendments.
Deemed IRA	Optional	Plan years beginning after December 31, 2002	EGTRRA added a new plan design feature to qualified employer plans with the enactment of Code § 408(q). This new section permits participants to make IRA contributions to a "qualified employer plan." This means that traditional or Roth IRA contributions can be made to an employer's qualified plan (including a 401(a), 401(k), ESOP, 403(a) annuity, and governmental 401(a) plan). All the same IRA rules apply to a deemed IRA, but none of the qualified plan rules or limits apply. This allows employers to take advantage of commingling investments and employees to get one-stop shopping for their retirement savings needs.

Description	Required or Optional	Effective Date	Comments
			JCWAA clarifies that ERISA enforcement provisions and fiduciary responsibilities apply as if the deemed IRA was a SEP. No ERISA reporting and disclosures apply. DOL clarified that adding the deemed IRA feature would not cause a governmental plan (or its deemed IRA) to be subject to Title I of ERISA. DOL Adv. Op. Ltr. 2003-01A (Jan. 24, 2003). Rev. Proc. 2003-13 provides sample "good faith" language. In general, to add a deemed IRA feature, the plan must be amended, and the deemed IRA must be in effect, no later than the date deemed IRA contributions are accepted from employees. However, for plan sponsors who offer deemed IRAs in 2003, the plan does not need to be amended until the end of the 2003 plan year. Proposed regulations issued May 15, 2003 (68 Fed. Reg. 27493) provide additional guidance.
Restrictions on cross-testing.	Optional	Plan years beginning on or after January 1, 2002.	The IRS published final regulations that, in general, restrict the ability of certain defined contribution plans to satisfy the nondiscrimination rules on the basis of "cross-testing" (i.e., testing based on the value of the contributions actuarially projected to the participant's normal retirement age). Treas. Reg. § 1.401(a)(4)-8, 66 Fed. Reg. 34535 (June 29, 2001).
Loans	Required	Final regulations issued in 2000 generally effective for loans made in 2002 and later years. Additional final regulations issued in December 2002 generally effective for loans made on or after January 1, 2004 (except for military service loans).	In 2000, the IRS issued final regulations that provide guidance on (1) the default period for missed payments, (2) post-default interest accruals on unpaid loans, and (3) mortgage investment programs. In December 2002, the IRS issued final regulations on (1) loan refinancing, (2) the suspension of loan repayments during a leave of absence for military service, and (3) new loans following a deemed distribution of a prior loan. Most plans will not need an amendment for the 2002 regulations, but loan procedures may need to be updated.
Retroactive Annuity Starting Date.	Optional	Plan years beginning on or after January 1, 2004.	The IRS has issued final regulations that set out detailed notice, consent, calculation and other

Description	Required or Optional	Effective Date	Comments
		Presumably, this means that benefits actually commencing on or after January 1, 2004 (for a calendar year plan), with a retroactive ASD must comply with these rules.	requirements for distributions with an annuity starting date ("ASD") that precedes distribution notices and/or the date participants and spouses (if any) consent to distributions. 68 Fed. Reg. 41906 (July 16, 2003); Treas. Reg. § 1.417(e)-1. The final regulations largely implement, without change, proposed regulations issued in January 2001.
Use of new technologies for plan administration (including notice to interested parties).	Optional	Various The principles set forth in IRS Notice 99-1 should apply retroactively. The IRS final regulations were effective January 1, 2001. Treas. Reg. § 1.7476-2, is effective for determination letter applications filed on or after January 1, 2003. Before that date, employers can continue to rely on either the old final regulations or the 2001 proposed regulations. The final DOL regulations are effective October 9, 2002. Further IRS guidance is pending.	The Taxpayer Relief Act of 1997 required the IRS to issue guidance regarding the use of new technologies (e.g., e-mail, Internet and intranet systems, automated telephone voice response systems) for plan administration. IRS Notice 99-1 and final regulations under Code sections 402(f) (relating to direct rollover notices), 411(a)(11) (relating to obtaining participants' consent for distributions) and 3405(e)(10)(B) (relating to the tax withholding notice that must be provided to payees of distributions that are not eligible rollover distributions) address the use of such technologies. This guidance was issued before the enactment of the E-Sign Act; therefore, IRS is currently considering the impact of E-Sign on this prior guidance. Note, Announcement 99-6 permits electronic transmission of Form W-4P (i.e., pension withholding form), and JCWAA permits electronic transmission of Form 1099-R, with participant consent. Also, the proposed regulations under ERISA section 204(h) also allow electronic transmission. The IRS extended electronic delivery to "notices to interested parties." Treas. Reg. § 1.7476-2. The DOL has also issued final regulations on the use of electronic communications. A pension plan is entitled to use electronic media to deliver any of the documents that must be disclosed to a participant, beneficiary, or other specified individual under the labor provisions of ERISA Title I, provided that the criteria in Labor Reg. § 2520.104b-1(c) are met. This includes SPDs, SMMs, SARs, individual benefit statements, Form 5500 Annual Reports, decisions on benefit claims, investment-related

Description	Required or Optional	Effective Date	Comments
			information required to be provided under ERISA § 404(c), QDRO notices under ERISA § 206(d)(3), information concerning participant loans under ERISA § 408(b)(1), a copy of any collective bargaining agreement under which a plan is established or operated, and, presumably, benefit suspension notices. In most cases, no plan amendment should be required to reflect the IRS or DOL guidance. However, a general provision that permits the plan administrator to use electronic communications to the extent permitted by law may be advisable.
Extension of Relief From Nondiscrimination Rules for Certain Governmental Plans	Optional	January 1, 2003	Notice 2003-6 indicates that the IRS intends to extend the application of the nondiscrimination rules to governmental plans (other than state and local governments or political subdivisions, agencies, or instrumentalities thereof that are generally exempt from these rules) until the first day of the first plan year beginning on or after the date final regulations are issued. Before such date, such governmental plans will be treated as meeting nondiscrimination requirements.