October 16, 2003

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

Nondiscrimination Testing

Description	Required or Optional	Effective Date	Comments
Repeal of multiple-use test under Treas. Reg. § 1.401(m)-2.	Required	Plan years beginning after December 31, 2001.	Notice 2001-57 contains a sample amendment (DC plans, § 666). If a plan incorporates 401(m) testing by reference, however, no amendment is necessary.
Exclusion of employees of related tax-exempt employer for nondiscrimination testing of 401(k)/401(m) plan under Treas. Reg. § 1.410(b)-6(g).	Optional	Plan years beginning after December 31, 1996.	Sponsors that are part of a controlled group with a tax-exempt organization that maintains a 403(b) plan should review their 401(k) plans to see if the nondiscrimination provisions include specific reference to the treatment of employees of the related tax-exempt organization. If a plan does include such a specific reference and the sponsor wants to adopt the EGTRRA provision, a "good faith" amendment must be adopted, effective as of the 1997 plan year.
Testing 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	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

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employer did not request additional information about other coverage. In order to comply with the guidance, we recommend that employers adopt this approach.			of the plan year in which it does. In the case of M&P and volume submitter plans, the time for amending the plan is 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.
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.
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.

DC Plan EGTRRA Amendments and Other Recent Guidance

Compensation Limit for Allocations

Description	Required or Optional	Effective Date	Comments
The annual amount of compensation that may be taken into account in determining allocations 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) nondiscriminat-ion 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)).	Plan years beginning after December 31, 2001. Note: Plans that incorporate the Code § 401(a)(17) limit by reference and wish to base plan allocations on an amount less than the $200,000 cap should be amended before the 2002 plan year begins to avoid potential cutbacks.	Notice 2001-57 contains sample amendments (DC plans, § 611(c); *see also* DB plans, § 611(c)). If the plan incorporates the Code § 401(a)(17) limit by reference, no amendment is necessary to comply with the EGTRRA increase. If the plan does not incorporate the Code § 401(a)(17) limit by reference, no amendment will be necessary unless the sponsor wants to increase the compensation taken into account to reflect the increased limit. If allocations are based on pre-2002 compensation, Notice 2001-56 and Rev. Rul. 2003-11 provide guidance.

DC 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, rollover 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 (DC plans, § 636(b), 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 excludes hardship distributions from any type of plan account.	Required (if the plan provides for hardship distributions)	Distributions on and after January 1, 2002.	Notice 2001-57 contains a sample amendment (DC plans, § 636(b), 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 (DC plans, § 636(b), 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 (DC plans, § 636(b), 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.

Description	Required or Optional	Effective Date	Comments
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.
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 (DC plans, § 641, 642, 643). 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 employer plan is deemed to come first from pre-tax dollars. Notice 2001-57 contains a sample amendment (DC plans, § 641, 642, 643). 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.

Description	Required or Optional	Effective Date	Comments
Rollover contributions into the plan may include a direct rollover of after-tax employee contributions, if the plan agrees to separately account for such contributions (and earnings thereon).	Optional	Distributions on and after January 1, 2002.	Notice 2001-57 contains a sample amendment (DC plans, § 641, 642, 643). The sample amendment, however, does not provide for rollovers of after-tax contributions, if any, from a 403(b) annuity or governmental 457(b) plan because the Conference Report only discusses qualified plans. However, IRS staff informally agrees that a plain reading of the statute (prior to any technical correction) would permit rollovers of such amounts. *See* Code §§ 457(e)(16)(B), 403(b)(8)(B). JCWAA did not include any technical corrections on this issue. Therefore, a "good faith" amendment may include such a provision. 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 employer plan is deemed to come first from pre-tax dollars. If a plan incorporates the rollover rules by reference, an amendment may be necessary if the sponsor does not want to receive funds from after-tax contributions.
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.

DC Plan EGTRRA Amendments and Other Recent Guidance

Plan Contributions and 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.
Increase in contribution limit under Code § 415(c) to the lesser of (a) 100% of compensation or (b) $40,000, indexed in $1,000 increments ($41,000 for 2004).	Required (This limit determines when it is permissible to distribute excess annual additions or place them in a suspense account; a plan cannot establish a lower limit for these purposes.)	Limitation years beginning after December 31, 2001.	If a plan incorporates Code § 415(c) limit by reference, no amendment will be necessary. Notice 2001-57 contains a sample amendment (DC plans, § 611(b) and 632). Revenue Ruling 2001-51 provides guidance. Sponsors should review their plans to see if they make specific reference to a 25% or other limit on contributions. If the sponsor wants to increase such a limit on contributions in light of EGTRRA, a "good faith" amendment generally must be adopted by the end of the plan year in which the change will take effect (*e.g.*, the first plan year ending in 2002), effective as of the effective date of such change (*e.g.*, January 1, 2002).

Description	Required or Optional	Effective Date	Comments
415 compensation modified to include "deemed 125 compensation" (see page 1)	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
Increased limit on elective deferrals under Code § 402(g). Tax Years Beginning in: / Applicable Limit: 2002 $11,000 2003 $12,000 2004 $13,000 2005 $14,000 2006 $15,000 After 2006, the limit will be indexed for inflation in $500 increments, just as under current law.	Optional	Tax years beginning after December 31, 2001.	Sponsors must determine if they want to increase the limit on elective deferrals. In light of the fact that increased elective deferrals will not have a negative impact on employer deductions or annual additions, most sponsors will want to allow this increase. However, before making this change, sponsors should review the plan's ADP/ACP testing to determine if additional elective deferrals might have a negative impact on these tests. If a plan incorporates the 402(g) limit by reference, no amendment will be necessary if the sponsor wants to increase the limit. If a plan does not incorporate the 402(g) limit by reference, an amendment will be necessary if the sponsor wants to increase the limit. Notice 2001-57 contains a sample amendment (401(k) plans, § 611(d)). Plan sponsors also should review their plans to see if there are any provisions other than those reflecting 402(g) that might that unintentionally limit elective deferrals below the increased 402(g) limit.

Description	Required or Optional	Effective Date	Comments
Catch-up contributions under Code § 414(v) permitted for employees age 50 or older, provided certain requirements are met. Tax Years Beginning in: / Applicable Limit: 2002 $1,000 2003 $2,000 2004 $3,000 2005 $4,000 2006 $5,000 After 2006, the limit will be indexed for inflation in $500 increments.	Optional	Tax years beginning after December 31, 2001. Final regulations are effective for taxable years beginning on or after January 1, 2004.	Notice 2001-57 contains sample amendments (401(k) plans, §§ 611(d), 631). Proposed Treasury Regulation § 1.414(v)-1 and Notice 2002-4 provide additional guidance. JCWAA also makes some clarifying technical corrections. Final regulations, generally incorporating the prior guidance, were issued July 8, 2003 (68 Fed. Reg. 40510). Generally, if catch-up contributions are permitted in one applicable employer plan (i.e., a plan that permits elective deferral contributions), they must be permitted in all applicable employer plans in the controlled group (the "universal availability test"). The final regulations: • allow Puerto Rican employees and union employees to be disregarding in applying the universal availability test. • recommend that, in order to avoid matching catch-up contributions, a plan should state which contributions it will match, instead of stating that it will not match catch-up contributions. • seem to permit an administrative limit not set forth in the plan to be a plan limit for catch-up purposes, provided that the plan document grants the administrator express authority to lower the deferral limit, for example, to satisfy the ADP test. • simplify the calculation of catch-up contributions for plans that apply a plan limit on a payroll basis. They also provide that plans can limit catch-up contributions made for a payroll period to a pro-rata share of the annual limit. • allow a "cash availability" limit of at least 75% of pay on deferrals and catch-up contributions in the aggregate. Plans with an aggregate limit lower than 75% should consider amending by December 31, 2003. • provide special provisions for meeting the universal availability test in the context of corporate transactions. Report catch-up contributions on Form W-2. Ann. 2001-93.

Description	Required or Optional	Effective Date	Comments
Faster vesting for employer matching contributions under Code § 411(a): either 3-year cliff vesting or 6-year graded vesting.	Required	Plan years beginning after December 31, 2001.	Sponsors must review their plans' vesting schedules applicable to matching contributions and determine if an amendment is necessary to satisfy the new vesting requirement. If an amendment is necessary, sponsors will have two decisions to make: (a) whether to apply the faster vesting schedule to pre- and post-2002 matching contributions; and (b) whether to apply the faster vesting schedule to profit-sharing contributions, as well as post-2002 matching contributions. Notice 2001-57 contains a sample amendment (DC plans, § 633).
Changes in hardship withdrawal safe-harbor under Treas. Reg. § 1.401(k)-1(d): • Decrease to 6 months the suspension period following a hardship withdrawal. • Eliminate the restriction on elective deferrals during the year following the year in which the hardship withdrawal occurs.	Optional (Required for 401(k) plans that rely on the matching contribution safe harbor and safe harbor 401(m) plans)	Distributions made after December 31, 2001 (optional to apply to hardship distributions made in 2001). See Notice 2001-56.	Sponsors must review their 401(k) plans to see (a) if they are safe harbor plans, and (b) if they include an express reference to either a 12-month suspension period or a restriction on elective deferrals during the year following the year in which the hardship withdrawal occurs. 401(k) plans that rely on the matching contribution safe harbor and safe harbor 401(m) plans must adopt the 6-month suspension period and eliminate the restriction on elective deferrals during the year following the year in which the hardship withdrawal occurs. If a plan does not expressly refer to either a 12-month suspension period or a restriction for the year following the year during which the hardship withdrawal occurs, but instead refers to a suspension period as stated in regulations, no amendment will be necessary, unless the sponsor intends to utilize the pre-EGTRRA rules, which generally is permissible, except for certain 401(k)/(m) safe harbor plans. If a plan expressly refers to a 12-month suspension period or the restriction on elective deferrals for the year following the year of the hardship withdrawal, no amendment will be necessary unless the sponsor wants to adopt EGTRRA's shorter suspension period or eliminate the restriction. Notice 2001-57 contains a sample amendment (401(k) plans, § 636(a)). If a plan adopts this sample amendment, it need not adopt a separate amendment that eliminates the restriction on elective deferrals.

Description	Required or Optional	Effective Date	Comments
.			Notice 2001-56 provides further guidance. Specifically, it provides that those plans that intend to adopt the 6-month suspension period must decide whether to apply the shorter period to (a) only post-2001 withdrawals, or (b) to 2001 deferrals, as well. With respect to 2001 withdrawals, plans may provide that elective deferrals may resume after the later of (i) 6 months from withdrawal or (ii) January 1, 2002. Notice 2002-4 clarifies that (1) the elimination of the restriction on elective deferrals in the year following the year during which a hardship withdrawal occurred can be effective for 2001 hardship withdrawals and that (2) a plan (other than certain safe harbor 401(k)/(m) plans) utilizing the pre-EGTRRA restrictions will continue to satisfy the 401(k) hardship safe-harbor. This guidance is consolidated into the proposed 401(k)/(m) regulations (68 Fed. Reg. 42476) (July 17, 2003).

Description	Required or Optional	Effective Date	Comments
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. 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.

DC 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, but it does not apply to Money Purchase Pension Plans or profit-sharing plans that are subject to QJSA rules. (DC plans, § 648). JCWAA clarifies that this rule also applies to plans that are subject to the QJSA rules; therefore, rollovers 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.

DC Plan EGTRRA Amendments and Other Recent Guidance

Employer Deduction Limits

Description	Required or Optional	Effective Date	Comments
Expanded deductibility of ESOP dividends under Code § 404(k).	Optional	Tax years beginning after December 31, 2001	Sponsors of ESOPs should review their plans to see how dividends are treated. If the plan provides that dividends are distributed to participants, the sponsor might consider amending the plan to add the right to have the dividends reinvested, in which case, a "good faith" amendment generally must be adopted by the end of the plan year during which this change is effective (*e.g.*, the first plan year ending in 2002), effective as of the effective date of the change (*e.g.*, January 1, 2002). Sponsors whose plans have employer stock accounts should consider converting that part of the plan into an ESOP to take advantage of the deduction. Sponsors deciding to take advantage of this new EGTRRA provision have several issues to consider: • Whether to provide for a default election whereby dividends will be reinvested unless the participant elects otherwise; • Whether to (a) limit the election to fully vested dividends or (b) fully vest all dividends; and • Whether to apply the new provision to 2001 dividends that are either distributed or irrevocably reinvested after January 1, 2002. Notice 2002-2. JCWAA clarifies that ESOP dividends paid to the plan and, at the participant's election, reinvested are deductible in the company's tax year in which (1) the dividend is reinvested, or (2) the participant makes an election, whichever is later. JCWAA also clarifies that reinvested dividends must be 100% vested.

Description	Required or Optional	Effective Date	Comments
		.	The proposed 401(k)/(m) regulations allow the aggregation of ESOPs and non-ESOPs for ADP/ACP testing purposes – a change that will make it easier for companies to take advantage of the ESOP dividend deduction. (The proposed regulations do not provide for current reliance, however.)
Changes in employer deductions under Code § 404: (a) increase deductions to 25% of compensation (controlled group test if the employer also maintains a DB plan); (b) elective deferrals not taken into account; (c) "compensation" expanded to include elective deferrals; and (d) count $200,000 of compensation ($205,000 for 2004).	Required (required for deduction purposes, but optional for purposes of limiting plan contributions)	Tax years beginning after December 31, 2001.	Sponsors of money purchase pension plans might want to consider freezing or terminating them in light of the increase in the deduction limit applicable to defined contribution plans generally. JCWAA clarifies that the deduction limit for combined DB and DC plans does not apply if the DC plan only receives elective deferrals. Code § 404(a)(7).

DC 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. 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. Matching contributions generally may be taken into account in determining whether the minimum benefit in a top-heavy defined contribution plan has been provided. See Code § 416(g)(3)(H) for an exception. Safe-harbor 401(k) and 401(m) plans generally will not be considered top-heavy.	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 sample amendments (DC plans, § 613) (401(k) 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
Elimination of optional forms of benefits under Code § 411(d)(6) and slightly more liberal transfer rules.	Optional	Plan years beginning after December 31, 2001.	Sponsors should review their plans to determine if there are optional distribution forms that could be eliminated. In order to eliminate an optional distribution form, a "good faith" amendment must be adopted prior to the date on which the elimination is to be effective. The IRS issued proposed regulations §1.411(d)-4, Q&A-2 (68 Fed. Reg. 40581, 54876) that clarify that the 90-day notice period under the old regulations will not apply. Although the new regulations technically will not be effective until final regulations are published in the Federal Register, a plan sponsor should be able to rely on the proposed regulations. In light of the right of a transferee plan to eliminate a transferor plan's optional distribution forms in the event of a plan merger, sponsors might consider consolidating their defined contribution plans. EGTRRA expressly permits the elimination of distribution forms in this context.
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.

Description	Required or Optional	Effective Date	Comments
Repeal of "same-desk" rule.	Optional	Distributions after December 31, 2001. Note: Plans that incorporate the distribution restriction by reference to 401(k), and that wish to limit the distribution rights to those in existence before EGTRRA should be amended before January 1, 2002 to avoid potential cutbacks.	Sponsors must review their 401(k) plans to determine whether they include express language limiting distributions in the context of "same-desk" employment transfers or whether they include language that limits distributions only to the extent required by section 401(k). If the plan does not incorporate the distribution restrictions of Code § 401(k) by reference, no amendment will be necessary unless the sponsor wants to expand distribution rights to the extent permitted by EGTRRA. Notice 2001-57 contains a sample amendment (401(k) plans, § 646). Sponsors who want to adopt the expanded distribution rights must decide whether to limit the expanded rights to severances from employment that occur after 2001 or to apply the provision to prior severances, as permitted by the sample amendment. Post-2002 distributions may be made in accordance with this new provision even with respect to severances from service that occurred more than two years before the distribution date. Notice 2002-4. Even after EGTRRA, no distributable event occurs if the seller transfers plan assets to a plan maintained by the purchaser. Notice 2002-4.

Description	Required or Optional	Effective Date	Comments
204(h) Notice – For Money Purchase Plans Only	Required if an amendment reduces the amounts allocated to participants' accounts in future years. This notice is required if a MPPP is converted or merged into a profit-sharing plan. Rev. Rul. 2002-42.	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.	The proposed regulations expressly state that changes in plan investments or investment options do not require a 204(h) notice. 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. Under the proposed regulations, 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. See Prop. Treas. Reg. § 54.4980F-1, 67 Fed. Reg. 19713 (Apr. 23, 2002). Electronic delivery is permissible. The final regulations generally track the proposed regulations. They 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.

Description	Required or Optional	Effective Date	Comments
Simplified rules for calculating MRDs.	Required (as of January 1, 2003)	Years beginning on or after January 1, 2003. Amendments must generally be adopted by the last day of the first plan year beginning on or after January 1, 2003 or the end of the GUST remedial amendment period (e.g., until 91st day after the final determination letter is issued), if later. However, in the case of M&P and volume submitter plans, the deadline varies: • Plans that do not file for GUST determination letters have until December 31, 2003. • 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.	Rev. Proc. 2002-29 contains a model amendment. Notice 2003-2 provides transition rules for DC plans that hold annuity contracts. For example, until the end of the calendar year that the temporary DB regulations are final (likely December 31, 2003), the value of annuity contracts need not take into account the actuarial value of other benefits (such as minimum survivor benefits), but may simply reflect the dollar amount credited under the contract. The following issues, if applicable, should be addressed in a plan's model amendment language: 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.

Description	Required or Optional	Effective Date	Comments
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.

Description	Required or Optional	Effective Date	Comments
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 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.

Description	Required or Optional	Effective Date	Comments
Regularly scheduled suspensions of, or other limitations on, participants' rights to direct investments or obtain loans or distributions.	Optional	January 26, 2003	As a result of the Sarbanes-Oxley Act, it may be desirable to add provisions to the plan addressing regularly scheduled suspensions of, or other limitations on, participants' rights to direct investments (such as "windows" when company stock fund transactions are prohibited), or to obtain loans or distributions. If such suspensions or limitations are provided for under the plan, the plan administrator may avoid having to provide the 30-day advance written notice of such a suspension or limitation required under Sarbanes-Oxley. See DOL Final Rules, 68 Fed. Reg. 3,716. Plan provisions addressing regularly scheduled prohibitions on company stock fund transactions may also relieve insiders from the Sarbanes-Oxley prohibitions on trading company stock during such periods. See SEC Release 34-47225, 68 Fed. Reg. 4,338.