

EGTRRA is the Economic Growth and Tax Relief Reconciliation Act. It was passed in 2001 and had a significant impact on Qualified Retirement Plans and 403(b) Plans. All Plans had to adopt a “good faith” amendment starting in 2002 to comply with EGTRRA, pending a full restatement that incorporates the EGTRRA provisions.

In late 2005 the Internal Revenue Service (IRS) announced a new procedure (Revenue Procedure 2005-66) establishing regular restatement cycles for qualified plans. Master, prototype and Volume Submitter plans (so-called preapproved plans) are on a uniform six-year cycle. Individually-designed plans are on a staggered five-year cycle under this new procedure. The main purpose of this new procedure is to help the IRS better manage its resources. It also provides for more stability for plan sponsors, ensuring that they need only apply for approval of their plans on a predictable schedule. Revenue Procedure 2007-44 was issued in 2007 to update the 2005 procedure and clear up some questions from that procedure.

Individually-designed plans are plans that are not on a preapproved document. Such plans include ESOPs, Cash Balance Pension Plans, Multiple-Employer Plans. Multiple-employer plans will be able to adopt a preapproved plan starting with the EGTRRA restatement. Individually-designed plans must restate on a staggered five-year cycle that is determined by the last digit of the Adopting Employer’s EIN (Employer Identification Number).

The time for full restatement of Defined Benefit Plans is upon us. The IRS has completed the approval process for all the defined benefit plans that have been submitted by document sponsors. TSC is a document sponsor. The IRS has issued its approval letters to TSC. We begin working on the restatement of our clients’ plans in April of 2011. All qualified defined benefit plans that are on prototype or volume submitter documents have until April 30, 2012 to complete their restatement. Defined Contribution plans are on a different cycle. The restatement of those plans was completed in April, 2010.

A note about 403(b) Plans

403(b) Plans are also subject to EGTRRA and the Pension Protection Act. These plans do not have the “Remedial Amendment Period” that qualified retirement plans (such as 401(k) Plans) have and they are not part of the 5-year cycle program. All 403(b) Plans must be amended for the EGTRRA and Final 403(b) regulations by the end of 2009. Our 403(b) document includes the Pension Protection Act provisions.

All plans have been operating under the EGTRRA provisions since 2002, and the Pension Protection Act made permanent the EGTRRA provisions, which were scheduled to “sunset.” This restatement in itself will not change anything in the way your plan is designed and operated. Since EGTRRA was passed, there have been other law changes, and other amendments to plans on a yearly basis to keep them in compliance with the law. These will be incorporated into the restated plan documents, or included as amendments that will be drafted with the restated plans (as happened with the last restatement).

If you are contemplating any design or operational changes in your plan, a good time to implement them is with your EGTRRA Restatement. Your Retirement Plan Consultant at TSC is always looking at ways you might improve your plan but there may be things we are not aware of that you have been considering. In the absence of any requested changes we will restate your plan to duplicate the existing provisions. Some design improvements in our new plan document will be incorporated where applicable.

Following is a list of changes from the IRS that are to be included in the EGTRRA document. Most items apply equally to 403(b) plans and to qualified retirement plans of all types

1. Code §72(p) Final Loan Regulations of 12-3-02.
2. Code §401(a)(4) Amendments to 1.401(a)(4)-8 relating to new comp plans 6-29-01.
3. Code §401(a)(9) Final Required Minimum Distribution Regulations of 4-17-02 and 6-15-04.
4. Code §401(a)(17) Compensation limit change to \$200,000 subject to COLA from EGTRRA.
5. Code §401(a)(31) Direct Rollover rule changes:
 - a. after-tax rollovers in certain situations.
 - b. automatic rollover of certain mandatory distributions effective 3-28-05.
 - c. 403(b) and 457(b) are added to the definition of eligible retirement plan.
 - d. hardships are excluded from definition of eligible rollover definition.
6. Code §401(k)
 - a. Severance from employment is a distributable event for elective deferrals.
 - b. Safe harbor hardship distribution suspension from making further elective or employee contributions is limited to 6 months.
 - c. EGTRRA increases in 402(g) and SIMPLE deferral limits.
 - d. Deferrals on post-severance compensation.
 - e. Multiple use test eliminated.
 - f. Final 401(k) and (m) Regulations, issued at the end of 2004.
7. Code §402A Roth 401(k) deferrals, as applicable.
8. Code §408(q) Deemed IRAs, Final Regulations 7-22-04.
9. Code §411(a) Faster vesting of matching contributions.
10. Code §411(a)(11) Rollover contributions disregarded from determining involuntary cash-out balance.
11. Code §414(v) Catch-up contributions.
Code §415(c) lesser of 100% of compensation or \$40,000 with COLA adjustments. For Defined Benefit Plans The annual benefit limit is increased to \$160,000, indexed in \$5,000 increments and [subject to change](#) in later years. The 100% of average compensation is repealed. There is an actuarial reduction for benefits commencing prior to age 62.
12. Code §415(c) lesser of 100% of compensation or \$40,000 with COLA adjustments. For Defined Benefit Plans The annual benefit limit is increased to \$160,000, indexed in \$5,000 increments and [subject to change](#) in later years. The 100% of average compensation is repealed. There is an actuarial reduction for benefits commencing prior to age 62.
13. Code §416, safe harbor exemption from top-heavy rules.
14. Code §4975 plan loans for Subchapter S shareholder-employees.
15. Miscellaneous
 - a. Money purchase merger into a profit sharing plan (Rev Rul 2002-42).
 - b. PEO defined contribution plan guidance (Rev Proc 2002-21 and 2003-86) .
 - c. Charging administrative expenses to former or current employees (Rev. Rul. 2004-10).

- d. Deemed 125 compensation.
- e. Post-severance compensation.
- f. Expanded Notice of a Reduction in Benefits. Expands the type of information to be provided in a notice to participants of a reduction in benefits (including the conversion to a cash balance plan) and the time period that the notice must be given.
- g. Normal Retirement Age must be reasonable and cannot be earlier than age 62 except under exceptional circumstances.
- h. Under PPA, vesting cannot be less rapid than any "top-heavy" schedule, effective Under PPA, vesting cannot be less rapid than any "top-heavy" schedule, effective in 2006
- i. Repeal of 150% of Current Liability Funding Limit. The limitation on current liabilities is increased to 165% in 2002, 170% in 2003 and is repealed for plan years beginning after December 31, 2003.