



TOPIC: RULES FOR IMPLEMENTING CHANGES IN IRC SECTION 415 LIMITS

**EXECUTIVE  
SUMMARY:**

THE ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT (EGTRRA) INCREASED THE IRC SECTION 415 LIMITS FOR MULTIEMPLOYER AND OTHER PLANS. IN REVENUE RULING 2001-51 (10/16/2001), THE IRS AND TREASURY DEPARTMENT PROVIDE SOME GUIDANCE ON HOW THE CHANGES WORK. THIS ISSUE OF *MULTI-ELERT* PROVIDES HIGHLIGHTS OF THOSE CHANGES.

PURPOSE: INFORMATIONAL

CATEGORY: AGENCY – OPERATIONAL GUIDANCE

ISSUER: INTERNAL REVENUE SERVICE

TARGET AUDIENCE: PENSION PLAN ADMINISTRATORS, FUND COUNSEL, AUDITORS AND TRUSTEES

INPUT REQUESTED: N/A

OFFICIAL COMMENT PERIOD ENDS: N/A

NCCMP DEADLINE: N/A

FORWARD COMMENTS TO: [Multi-elert@nccmp.org](mailto:Multi-elert@nccmp.org)

REFERENCE: VOL.1, ISSUE 3, Rules for Implementing Changes in IRC Section 415 Limits

FOR ADDITIONAL BACKGROUND SEE: Revenue Ruling 2001-51

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s you know, the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) increased the IRC section 415 limits for multiemployer and other plans. In Revenue Ruling 2001-51 (10/16/2001), the IRS and Treasury Department provide some guidance on how the changes work. Here are the highlights of that guidance.

## **1. Section 415 Limit Increases for Defined Benefit Plans - Application to Current Retirees**

EGTRRA increased the dollar limit on the annual benefit payable from a defined benefit plan, from \$140,000 to \$160,000. It also increased the limits by basing the maximum on an annuity beginning at age 62, which means that the dollar limit will be higher for early retirement benefits. In addition, for multiemployer pension plans the 415 limit based on 100% of pay was repealed, along with the requirement that multiemployer benefits be counted in testing single employer plans under one of the 415 limits. The changes will generally take effect in 2002.

In Revenue Ruling 2001-56, the IRS has confirmed that the higher limits can be applied to benefits of people who retired before the EGTRRA amendments take effect. The concept is straightforward: go back and recalculate each retiree's benefit at the date of retirement, but use the limits provided by the new law rather the section 415 limits that applied at the time. However, because the limits do not actually go up until 2002, those higher benefits are not payable until 2002.

This will mean instant relief for people affected by the repeal of the 100%-of-pay limit. If a participant had a plan benefit of \$70,000 but her high-3 year average pay was \$50,000 when she retired at age 65, the plan has been paying her \$50,000/year. Starting in 2002, it can pay her the full \$70,000 earned under the plan.

The rule has a slightly different impact on people whose early retirement benefits were capped by the section 415 dollar limit. The new limit for them is based on their age when they started to receive benefits. For example, a plan participant who took early retirement at age 55 could be receiving an annuity of as much as roughly \$62,000 a year, in 2001.<sup>1</sup> In 2002 that person's benefit could go up to about \$96,000 - the age-55 maximum dollar amount under the new section 415 rules - regardless of the retiree's actual age in 2002. (The exact amount of the new early retirement limits may be a little different for different plans, because the calculations are based on each plan's actuarial factors.)

## **2. Effective Dates and Plan Amendments**

The effective dates of these changes are based on a plan's "limitation year" under section 415. The limitation year is the calendar year, unless the plan document specifically identifies a different 12-month period as the limitation year. The great majority of plans are on calendar-year limitation years, even if their official plan year is not the calendar year.

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<sup>1</sup> If the early retiree had worked for a labor union or other tax-exempt organization, the previous maximum age-55 benefit would have been higher (roughly \$83,000 a year) because the previous early retirement limits were more generous for those employers' plans.

The increase in the section 415 dollar limit for defined benefit plans is effective for limitation years ending after December 31, 2001. The repeal of the 100%-of-pay limit for multiemployer plans, the rollback of the aggregation requirements and the increase in the defined-contribution plan 415 limits (to 100% of the participant's pay or, if lower, \$40,000) all take effect starting with limitation years beginning after December 31, 2001.

A plan's trustees can decide when and whether the higher limits actually take effect for a particular plan, and whether to apply them to people who have already retired as well as to future retirees. Plan language will control. A plan amendment will be needed to raise the limits if the text of the plan currently describes how benefits are limited in language that fits section 415 before the EGTRRA changes. To put the change in place as early as possible, these plan amendments will be needed by the end of the plan year during which the new rule takes effect (this would be December 31, 2002, if the plan year and the limitation year are both based on the calendar year).

By contrast, if a plan's section 415 language is very general and simply incorporates the section 415 limits by reference, the changes might go into effect automatically unless the plan is amended to prevent that. Such an amendment would need to be adopted before the new limits take effect under the law<sup>2</sup>. A plan might want to prevent the new limits from taking full effect right away if:

- \* Retirees whose benefits were affected by section 415 have already been made whole, through a non-qualified plan, or
- \* The plan cannot afford to fund the benefits up to the higher level now permitted.

### **3. Section 415 Increases and Defined Benefit Plan Funding**

Increases in benefits resulting from the section 415 changes are to be treated for minimum funding purposes as resulting from a plan amendment that is effective on the date the 415 increases are made applicable to the benefits. As discussed above, this will depend on the adoption of a plan amendment that changes the limits currently defined in the plan, but in some cases it could result from the automatic operation of the current terms of the plan.

### **4. Nondiscrimination**

A plan is deemed to meet the nondiscrimination requirements of IRC section 401(a)(4) if it adopts the new limits as of the effective date under the law and makes them generally applicable, either to current and future retirees or only to future retirees. If a plan makes the new, higher section 415 limits effective as of a later date, or applies the higher limits selectively, it will have to demonstrate that the result is not discriminatory.

For multiemployer plans, this will be a consideration only for participants who are neither covered by a collective bargaining agreement nor bargaining-unit alumni. Single employer plans, such as plans maintained for local union officers and staff, need to avoid discrimination

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<sup>2</sup> Revenue Ruling 2001-56 includes sample plan language that can be used for that purpose.

when adopting amendments increasing the dollar limits and reflecting the fact that multiemployer benefits no longer need to be added in when testing the single employer benefits under the 100%-of-pay limit in section 415. (That pay-based limit still applies to single employer plans even though it has been repealed for multiemployer plans).

## **5. Sunset**

For federal budget purposes, EGTRRA includes a "sunset" provision: which all of its features, including the section 415 changes lapse on December 31, 2010. Revenue Ruling 2001-56 says that plans can ignore this when funding for and paying benefits, including lump sums, and when determining maximum deductible contributions.

Most observers believe that the EGTRRA changes will be made permanent before the sunset date. However, plans want to keep records of the participants whose benefits would have been reduced under the old law, and warn them, in case the old limits go back into effect.

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*Plan trustees and plan sponsors should rely on their own attorneys and other professional advisors for advice on the meaning and application of Revenue Ruling 2001-56.*

*If you have questions about the NCCMP, or about this or other Elerts, please be in touch with Randy G. DeFrehn, Executive Director, NCCMP, at (202) 756-4644 or by email at [rdefrehn@nccmp.org](mailto:rdefrehn@nccmp.org).*

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