Comments on IRS Revenue Ruling 2001-51, Limitations on Benefits and Contributions Under Qualified Plans

June 24, 2002

Carol Gold, Director Employer Plans
Internal Revenue Service
1111 Constitution Avenue, NW
TE/GE Employee Plans Division
Washington, DC 20224-0001

Re: Comments on IRS Revenue Ruling 2001-51, Limitations on Benefits and Contributions Under Qualified Plans

Dear Ms. Gold:

The guidance provided by Revenue Ruling 2001-51 is very useful to the retirement plan community. ASPPA members appreciate the Service's efforts to quickly issue EGTRRA guidance. One area in particular, however, raises concerns for our membership, that is, the identification of a suspension of benefits conflict where the §415 limits restrict a current accrual due to the "plateau" of the dollar limit between age 62 and age 65 for plans with a normal retirement date prior to age 65 [1].

ASPPA is a national organization of 5,000 members who provide actuarial, consulting, administrative, legal and other services for about one-third of the qualified retirement plans in the United States, the majority of which are maintained by small businesses. ASPPA's mission is to educate pension actuaries, consultants, administrators and other benefits professionals and to preserve and enhance the private retirement system as part of the development of a cohesive and coherent national retirement income policy. Its large and broad-based membership gives it unusual insight into current practical problems with ERISA and qualified retirement plans, with a particular focus on the issues faced by small employers.

The Problem

In short, the identification of a suspension of benefits issue in the context of the recent EGTRRA change fails to acknowledge that the issue has potentially been a problem for over 25 years. A similar plateau exists when the 100% of compensation limit serves to limit a particular individual's benefit. [2] In the case of the 100% of compensation limit, the suspension of benefits issue would not be restricted to just plans with pre-age 65 normal retirement dates. The Service has provided sample language in LRM 55 (and Notice 2001-57) for plans when there is a conflict between the §415 limit and the suspension of benefits rule. [3]

We are concerned that the suspension of benefits issue was addressed in Rev Rul 2001-51 without providing an opportunity for comment and without providing relief for past breaches (if any). There has been considerable discussion and debate recently about the interplay of a number of plan qualification rules that involve both plan limits and plan minimums [4].

In the absence of guidance settling suspension of benefits issues, we recommend that the best course of action in these matters would be an announcement stating that these issues are being considered and that temporary relief for plans will be provided until the matters are sorted out. There is precedence in the case of a §415 rule that seemed to conflict with the nonforfeitability rules of §411. Notice 83-10, G-10, acknowledged that reductions in a defined benefit accrued benefit due to the §415(e) restriction because of new contributions

made to a defined contribution plan would not violate §411.

The Solution?

We believe that the best approach to the suspension of benefits issue would be relief stating that a 415 limit will not be viewed as an impermissible forfeiture of benefits. In the alternative, additional guidance (including confirmation of the sample plan language in LRM 55 as adequate), and sample notices for addressing this issue would be of tremendous assistance to plan sponsors working to update plans for GUST and EGTRRA and should be provided.

Because approved plan language may not have addressed the suspension of benefits issue in the past, it would be helpful if the Service acknowledged that sponsors with up-to-date determination letters need not make adjustments of any kind for past actions (or inaction). Plan documents that made no mention of this and received favorable letters through the determination letter process should be able to rely on those letters without the need to make adjustments of any kind.

Administrative Rule of Convenience

If the Service does not provide the preferred relief noted above, ASPPA recommends that the guidance should emphasize that for those who choose the route of suspending benefit payments, in addition to providing notice in some form, care must be taken to actually pay a monthly benefit for any month in which the participant does not accrue 40 hours of employment under the suspension of benefit rules. Since it is not possible to pay these required amounts in the same limitation year a pension at the full 415 limit is paid, payment must be made in limitation years when there is "room" in the otherwise applicable limit. Plans should be permitted to address these payments on an annual, rather than monthly, basis.

These comments were written by Kurt F. Piper, Marjorie R. Martin, John K. Seymour, Robert R. Mitchell, Lawrence Deutsch and Jeffrey Wadle, members of ASPPA's Actuarial Subcommittee and are filed on behalf of ASPPA's Government Affairs Committee.

Sincerely,

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[1] Q-4: What special considerations for a defined benefit plan that has a normal retirement age less than 65 must be taken into account once the amendments to Section 415 under EGTRRA are effective for the plan?

A-4: In the case of a defined benefit plan with a normal retirement age less than 65, the requirements for nonforfeitability of benefits and actuarial increase for delayed retirement

of Section 411 of the Code must be coordinated with the requirements of Section 415. Under Section 411, if benefits are not paid to a participant after the participant attains the plan's normal retirement age, and the plan's terms do not provide for the "suspension" of the participant's benefits in accordance with section 411(a)(3)(B) of the Code and 29 CFR Section 2530.203-3, then the participant's benefit must be actuarially increased for late retirement to avoid any forfeiture of the participant's benefit. However, under Section 415 as amended by EGTRRA, the dollar limitation applicable to a participant does not increase between ages 62 and 65. If a participant continues to work past a plan's normal retirement age that is less than 65, and the participant's benefit equals the Section 415 dollar limitation at an age between 62 and 65, any actuarial increase to the participant's benefit after that age and prior to age 65 would violate Section 415. In such a case, in order to satisfy Sections 415 and 411, the terms of the plan must either provide for the in-service payment of the participant's benefit (where the participant has attained normal retirement age and has a benefit that cannot be actuarially increased without violating Section 415), or provide for the suspension of benefits in accordance with Section 411(a)(3)(B) of the Code and 29 CFR Section 2530.203-3.

[2] A plateau also existed at other times in connection with the dollar limit. For example, in the original ERISA rule the dollar limit was not actuarially adjusted for commencement after age 65, a frozen benefit level applies to certain individuals grandfathered when TEFRA changes were introduced (which also included a dollar limit plateau), and tax-exempt plans had a level limit from age 62 to 65 up until the EGTRRA change. We will refer to all of these various situations when we use the term "plateau."

[3] LRM 55, for example, provides an option which applies the suspension of benefit rules to either:

( ) all participants in the plan

( ) only those participants described in section ___ of the plan whose benefits, if actuarially increased, would exceed the limitations of Section 415 of the Code.

Notice 2001-57, in addition, provides the following instructions regarding the sample language for EGTRRA changes:

If a plan's normal retirement age (NRA) is below 65, the plan's provisions regarding post-NRA accruals and actuarial increases for deferred benefits must be coordinated with the following amendment to ensure that the plan does not violate Section 401(a) of the Code. In order to avoid such a violation, a plan may have to pay benefits at NRA, notwithstanding a participant's continued employment, or provide for the suspension of benefits in accordance with Section 411(a)(3)(B) of the Code.

[4] Specific rules dealing with §411(b)(1)(G) have never been finalized. There is considerable confusion about whether an accrued benefit can ebb and flow based on changes in factors taken into account in a plan's formula such as decreases in average compensation or increases in covered compensation. While opinions have been expressed in public forums, official guidance on this requirement remains unwritten; and at least one court has ruled to the contrary (DiCioccio v. Duquesne Light Co., No. 93-4420613, US District Court, WD Pennsylvania). The interplay of the §411(b)(1)(A, B, and C) accrual rules with top-heavy minimum accruals and "wearaway" benefit rules, particularly in light of cash balance plan conversions, remains unclear.

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