The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) added catch-up contributions effective for years beginning after 12/31/01. If permitted by a plan, individuals age 50 or older may make additional elective deferrals each year, referred to as “catch-up contributions”, up to a dollar limit (see table below) provided certain requirements are satisfied. Catch-up contributions are not subject to other plan limits and are excluded from consideration for most non-discrimination tests.

Catch-up contributions generally must be made available to all employees eligible to make catch-up contributions under any plan maintained by an employer that permits elective deferrals and under plans maintained by controlled groups/affiliated service groups that permit elective deferrals. This is referred to as the “Universal Availability Requirement.”

Proposed catch-up regulations were published by the IRS on October 23, 2001. Final regulations were issued July 7, 2003. Highlights of the final regulations follow.

**CATCH-UP DOLLAR LIMITS:**

<table>
<thead>
<tr>
<th>For Taxable Years Beginning in:</th>
<th>401(a) and 401(k) Plan Dollar Limit</th>
<th>SIMPLE401(k) Dollar Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>$1,000</td>
<td>$500</td>
</tr>
<tr>
<td>2003</td>
<td>$2,000</td>
<td>$1,000</td>
</tr>
<tr>
<td>2004</td>
<td>$3,000</td>
<td>$1,500</td>
</tr>
<tr>
<td>2005</td>
<td>$4,000</td>
<td>$2,000</td>
</tr>
<tr>
<td>2006*</td>
<td>$5,000</td>
<td>$2,500</td>
</tr>
</tbody>
</table>

* Subject to cost of living adjustments.

**EFFECTIVE DATE**

The final regulations apply to contributions made in taxable years beginning on or after January 1, 2004.

**ELIGIBILITY FOR CATCH-UP CONTRIBUTIONS:**

- Participant must be eligible to make regular elective deferrals
- Must be age 50 or older before the end of the participant’s taxable year (generally, the calendar year). For non-calendar plans, participants are eligible as of January 1 of the calendar year that includes their 50th birthday.

**DETERMINATION OF CATCH-UP CONTRIBUTIONS:**

- Only elective deferrals that exceed an applicable limit but do not exceed the dollar limit shown in the above table can be treated as catch-up contributions for a year.
- Catch-up contributions are determined with reference to 3 types of limits:
  - Statutory limits (limits imposed by law)
  - Employer-provided/plan limits (limits contained under the terms of the plan or as set by the plan administrator)
  - ADP Test limit (highest dollar amount of elective deferrals any HCE is permitted under the plan by reason of the ADP test)

Whether elective deferrals are catch-up contributions is determined at the end of the applicable year (plan year, calendar year, limitation year, etc.) to which the limit relates.

**Ex:** The 402(g) limit is based on the participant’s taxable year, generally the calendar year.

The 415 limit is based on the limitation year, generally, this is the same as the plan year.

The employer-provided/plan limit and ADP Test limit are based on the plan year.
Final Regulations: Catch-Up Contributions
Exhibit A

The plan administrator must look at which one of these limits is exceeded by the participant to determine whether or not excess deferrals are catch-up contributions. Only one of these limits is required to trigger catch-up.

- Plans that change employer-provided/plan limits during the year are permitted to use a time-weighted average of these limits as the employer-provided limit for the year. A plan sponsor is not permitted to lower the employer-provided/plan limit at the end of the year and have that lower limit apply for the entire year.

**Ex:** A plan that provides for a plan limit of 8% of pay for the first 6 months of the plan year and 6% for the second 6 months is permitted to use 7% \((8\% + 6\% /2)\) as the limit for the plan year. Accordingly, any elective deferrals made by a catch-up eligible participant exceeding 7% for the year is treated as a catch-up contribution.

- For non-calendar plans, elective deferrals in excess of the employer-provided/plan limit or the ADP Test limit are treated as catch-up contributions as of the last day of the plan year since the plan year is the applicable period for either of these limits.

**Ex:** Plan year ends 6/30/2005. Excess elective deferrals as of 6/30/2005 are treated as catch-up contributions up to the catch-up dollar limit for 2005 ($4,000). Participant is also permitted to make additional catch-up contributions if he/she exceeds the 402(g) limit for 2005 ($14,000).

- A plan is permitted to use the definition of compensation used for ADP/ACP testing for purposes of the time-weighted average calculation.

**DISTRIBUTION RESTRICTIONS AND VESTING**

- Catch-up contributions, like regular elective deferrals, may not be distributed until the earliest of termination of employment, retirement, disability, death, hardship and attainment of age 59½ (if allowed under the plan).

- Catch-up contributions must be 100% vested immediately.

- Catch-up contributions are “excess contributions” under the vesting rules. Therefore, a plan may treat any matching contributions relating to these excess contributions either as forfeitable or not forfeitable without violating the general nondiscrimination rules of Code section 401(a)(4).

**TREATMENT OF CATCH-UP CONTRIBUTIONS FOR PURPOSES OF CERTAIN TESTS**

Catch-up contributions are not subject to most nondiscrimination tests, e.g. ADP, ACP, 415, 410(b), 401(a)(4), etc. However, note the following exceptions:

- Matching contributions on catch-up contributions are not treated as a separate benefit structure under the general nondiscrimination rules but the matching contributions must satisfy the ACP test.

- Current year catch-up contributions are not taken into account for Code section 416 (top-heavy) or section 410(b) (coverage) testing. But, prior years’ catch-up contributions once they become part of the participant’s account balance will count toward top-heavy testing, and the average benefit percentage test (if the accrued-to-date method is used). We do not use the accrued-to-date method for our New Comparability software so this has no impact on us.

**UNIVERSAL AVAILABILITY**

- Requires that all participants eligible to make catch-up contributions be provided with the opportunity to make the same election.

- This rule applies to all plans of all employers under a controlled group or affiliated service group.

- Plans using a payroll-by-payroll method for deferrals may also provide catch-up on the same basis rather than the year-end method.
Final Regulations: Catch-Up Contributions

Exhibit A

- Different group(s) of participants may have different employer-provided/plan limits without violating the Universal Availability Requirement, as long as the nondiscriminatory availability requirements for rights, benefits and features are met.

  **Ex:** HCEs may have a lower limit than NHCEs. But, participants eligible for catch-up may not have a different limit than all other participants.

Exceptions to Universal Availability Requirement:

- Union employees covered by good faith bargaining.

- A plan that satisfies the Universal Availability Requirement before a merger/acquisition transaction is exempt from this requirement through the end of the transition period (Code section 410(b)(6)(c)).

**MULTIPLE PLANS**

- Final regulations allow a plan to permit catch-up contribution amounts in excess of the employer-provided/plan limit whether or not a participant has already utilized the catch-up opportunity under another plan of the same employer. But, if one of the plans has already treated elective deferrals as catch-up, the other plan is permitted to treat as catch-up only the remaining amount up to the catch-up dollar limit for the year.