Cycle A

Employee Benefit Plans

Note:

Plans submitted during the Cycle A submission period must satisfy the applicable changes in plan qualification requirements listed in Section IV of Notice 2010-90, 2010-52 I.R.B. 909 (the 2010 Cumulative List).

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Explanation No. 6

Limitations on Contributions and Benefits

The purpose of Form 8384, Worksheet Number 6, is to assist in determining if a plan meets the major requirements of § 415. However, there may be § 415 issues not mentioned in the worksheet that could affect the plan's qualification.

Generally, a "Yes" answer to a question on the worksheet indicates a favorable conclusion while a "No" answer signals a problem concerning plan qualification. This rule may be altered by specific instructions for a given question. Please explain any "No" answer in the "Comments" section of the worksheet.

In order for a plan to qualify, it must preclude the possibility that the § 415 limitations will be exceeded; that is, the plan must preclude the possibility that annual additions (under a defined contribution plan) or distributions (under a defined benefit plan) will exceed the limitations. Also, a defined benefit plan (other than a plan that is not subject to the requirements of § 411, such as a governmental or nonelecting church plan) must preclude the possibility that an accrual will exceed the § 415 limitations. However, no specific plan language is prescribed to comply with § 415. For example, if Plan X, which is a money purchase plan, has (1) a contribution formula of 100 percent of compensation actually paid or made available, as defined in § 1.415(c)-2 of the regulations, or $40,000 (as adjusted under § 415(d)), whichever is less; (2) does not allow employee contributions; (3) allocates employer contributions every year; and (4) uses all forfeitures to reduce employer contributions, then no other provisions are necessary with respect to § 415 as long as Plan X is the only plan maintained, or that has ever been maintained, by the employer.

A plan will not fail to meet the definitely determinable benefit or definite predetermined allocation formula requirement merely because it incorporates the limitations of § 415 by reference. However, if a

limitation of § 415 may be applied in more than one manner, the plan must specify the manner in which the limitation is to be applied instead of incorporating the limitation by reference, unless a statutory or regulatory default rule exists. If a default rule exists, in order to deviate from the default rule the plan must specify the manner in which the limitation is to be applied, as well as generally incorporating the limitations of § 415 by reference. Also see the latest revision of the *EP Determinations Quality Assurance Bulletin* (QAB FY-2010 No.2) regarding Code sections that may be incorporated by reference.

This explanation reflects changes to the limitations of § 415 made by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), the Pension Funding Equity Act of 2004 (PFEA '04), the Pension Protection Act of 2006 (PPA '06), the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) and the final regulations under § 415. The final regulations under § 415 generally apply for limitation years beginning on or after July 1, 2007, that is, for calendar year limitation years, the 2008 limitation year. A special grandfather rule discussed later in this explanation applies to defined benefit plans.

The sections cited at the end of each line explanation are to the Internal Revenue Code and the Income Tax Regulations, unless otherwise specified.

The technical principles in this publication may be changed by future regulations or guidelines

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I. GENERAL DEFINITIONS

Line a. If the plan does not define the limitation year, it is deemed to use the calendar year and this question should be answered "N/A". A different 12-month period may be designated in the plan or an amendment to the plan. Any change to the limitation year may only be made through an amendment to the plan and only to a 12-month period commencing within the current limitation year. This will create a short limitation year which must be separately tested for § 415 purposes. If the plan is a defined contribution plan, and the limitation year is changed, the dollar limitation with respect to the short limitation year is determined by multiplying (A) the applicable dollar limitation for the calendar year in which the short limitation year ends by (B) a fraction, the numerator of which is the number of months (including fractional months) in the short limitation year, and the denominator of which is twelve (see Explanation No. 6 line II.b). In general, the compensation limitation would be determined by considering only the compensation paid or made available during the short limitation year. If a defined contribution plan is terminated, this also creates a short limitation year requiring the same adjustments of the limitations. A defined benefit plan does not have to make any special adjustments to the dollar limitation for a short limitation year with regard to the accrual of benefits.

If the employer (or the controlled group, if applicable) maintains multiple defined contribution plans with different limitation years, each plan must satisfy the limitations in effect for that plan for that plan's limitation year taking into account the participant's annual additions under the plan as well as the participant's annual additions under all the other plans required to be aggregated with the plan that would be counted under the plan for the limitation year if they had been credited under the plan. If the employer (or the controlled group, if applicable) maintains multiple defined benefit plans with different limitation years, each plan must satisfy the limitations in effect for that plan for that plan's limitation year taking into account the participant's annual benefit under all the plans required to be aggregated. See II.e. and III.k., below. 1.415(j)-1

Line b. Section 415 (c)(3) compensation is required for purposes of applying the limitations of § 415. The following items are includable in compensation for purposes of § 415: (a) wages, salaries, fees for professional services and other amounts received (whether or not in cash) for personal services actually rendered in the course of employment with an employer maintaining the plan to the extent includible in gross income (including but not limited to commissions paid salesmen, compensation for service on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or expense allowances under a nonaccountable plan (as described in Regs. § 1.62-2(c); (b) earned income (with respect to employees within the meaning of § 401(c)(1)); (c) amounts described in §§ 104(a)(3), 105(a) and 105(h) but only to the extent they are includible in the employee's gross income; (d) amounts paid or reimbursed by the employer for moving expenses incurred by the employee to the extent that such amounts are not deductible under § 217; (e) the value of a nonstatutory option (i.e., an option not described in § 1.421-1(b)) granted to an employee by the employer to the extent the value is includible in the employee's gross income; (f) the amount includible in the employee's gross income upon making the election in § 83(b)**;** (g) amounts includible in gross income under § 409A or §457(f)(1)(A) or because of constructive receipt, and (h) differential wage payments as defined in section 3401(h)(2) for years beginning after December 31, 2008.

For purposes of (a) and (b) above in this Line b., compensation includes foreign earned income (as defined in § 911(b)), whether or not excludable from gross income under § 911. Compensation under (a) and (b) above is also to be determined without regard to the exclusions from gross income in §§ 872, 893, 894, 931 and 933. A plan may provide that compensation that is excludable from gross income under the aforementioned sections and that is not effectively connected with a trade or business in the U.S. will not be treated as compensation with respect to nonresident aliens who do not participate in the plan, provided the rule applies uniformly. (This is a rule of administrative convenience that is relevant in the determination of who is a key employee for purposes of the top-heavy rules of § 416 and who is a highly compensated employee within the meaning of § 414(q)).

The following items are excludable from compensation for purposes of § 415: (a) contributions (other than elective contributions described in §§ 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or § 457(b)) made by the employer to a plan of deferred compensation (including a simplified employee pension described in § 408(k) or a simple retirement account described in § 408(p), and whether or not qualified) to the extent that the contributions are not includible in the gross income of the employee for the taxable year in which

contributed; (b) distributions from a plan of deferred compensation (whether or not qualified), except, a plan may provide that distributions from an unfunded nonqualified plan are included for § 415 when the distributions are includible in income; (c) amounts realized from the exercise of a nonstatutory option, or when restricted stock (or property) held by an employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture; (d) amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option (as defined in § 1.421-1(b)); (e) other amounts which receive special tax benefits, such as premiums for group term life insurance (to the extent the premiums are not includible and are not salary reduction amounts under § 125); and (f) other items of remuneration similar to (a) through (e).

Compensation, for § 415 purposes, includes any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of §§ 125(a), 132(f)(4) , 402(e)(3), 402(h)(1)(B), 402(k) or 457(b). A plan may provide that amounts under §125 include any amounts excludable under § 106 that are not available to a participant in cash in lieu of group health coverage because the participant is unable to certify that he or she has other health coverage (deemed § 125 compensation). An amount will be treated as an amount under § 125 only if the employer does not request or collect information regarding the participant's other health coverage as part of the enrollment process for the health plan.

The plan may adopt a safe harbor definition of § 415 compensation by using either simplified compensation, § 3401(a) wages, or income reported under § 6041, § 6051 and § 6052.

The safe harbor definition under "simplified compensation" includes only those items specified as includable under (a), (b), and (h) of the first paragraph of this Line b and excludes all those items listed as "excludable." See above.

The safe harbor definition under "§ *3401(a) wages"* includes wages within the meaning of § 3401(a) (for purposes of income tax withholding at the source), plus amounts that would be included in wages but for an election under §§ 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).

The safe harbor definition under "*Information required to be reported under* §§ *6041, 6051 and 6052".* includes "§ *3401(a) wages* plus all other payments of compensation to an employee by his employer (in the course of the employer's trade or business) for which the employer is required to furnish the employee a written statement under §§ 6041(d), 6051(a)(3), and 6052. This safe harbor definition of compensation may be modified to exclude amounts paid or reimbursed by the employer for moving expenses incurred by an employee, but only to the extent that, at the time of the payment, it is reasonable to believe that these amounts are deductible by the employee under §217.

The plan may also use its § 415 definition of compensation to determine its benefit formula or contribution rate. Regardless of what definition of compensation the plan uses for other purposes, to answer this question "Yes" the definition of compensation used to apply the § 415 limitations must preclude the possibility that these limitations will be exceeded. Therefore, if the plan does not use a safe harbor definition of compensation described above in applying the § 415 limitations but instead uses a definition of compensation that may include one of the exclusions stated in the regulatory definition, the plan fails to meet this requirement. On the other hand, a plan does not fail to meet this requirement merely because it fails to include in its definition of compensation some of the items mentioned above.

Except as provided below, in determining compensation for the limitation year, the plan must use compensation actually paid or made available (or, if earlier, includible in gross income) in such year. The plan may provide that compensation also includes amounts earned but not paid in a year because of the timing of pay periods if the amounts are paid in the first few weeks of the next year, the amounts are included uniformly and consistently for similarly situated employees, and amounts are not included in more than one limitation year.

As a general rule, post-severance compensation paid in a limitation year may not be treated as § 415 compensation unless it is paid (or treated as paid) prior to the employee's severance from employment. However, § 1.415(c)-2(e)(3)(i) and (ii) of the regulations, effective July 1, 2007, requires certain post-severance compensation to be included as § 415 compensation while other post-severance compensation may optionally be included if the plan so provides. Post-severance compensation must be included if (a) the compensation is paid by the later of (1) 2 ½ months after severance from employment, or (2) the end of the limitation year that includes the date of severance from employment; and (b) absent a

severance from employment, the compensation would have been paid to the employee while the employee continued in employment with the employer as regular compensation for services rendered during the employee's regular working hours or as compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar compensation. A plan may optionally provide that compensation for purposes of § 415 also includes post-severance compensation that is paid by the later of (1) 2 ½ months after an employee's severance from employment or (2) the end of the limitation year that includes the date of the employee's severance from employment if (a) the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued; or (b) the payment is received by the employee pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includible in gross income.

Any payments not described above are not considered compensation if paid after severance from employment (even if they are paid by the later of 2 ½ months following severance from employment or the end of the limitation year that includes the date of severance) except for salary continuation payments to a participant who is permanently and totally disabled within the meaning of § 22(e)(3), provided the participant was not highly compensated immediately before becoming disabled or salary continuation applies to all participants who are permanently and totally disabled for a fixed or determinable period.

Back pay is treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and other compensation that would be includible in compensation for purposes of § 415.

For limitation years beginning on or after July 1, 2007, a plan's definition of compensation for a year that is used for purposes of § 415 may not reflect compensation for a year greater than the limit under § 401(a)(17) that applies to that year.

If an employee is employed by two or more members of a controlled group of corporations, compensation for such employee includes compensation from all the employers in the controlled group whether or not they maintain the plan. This also applies to compensation from two or more members of commonly controlled trades or businesses and affiliated service groups.

In the case of an annuity contract described in § 403(b) the term "participant's compensation" for purposes of § 415 means includible compensation determined under § 403(b). If a §403(b) annuity contract is aggregated with a qualified plan maintained by an employer that is controlled by a participant on whose behalf the contract was purchased, the total compensation from both employers is taken into account in applying the limitations of Part II of this explanation to the plan and contract on an aggregate basis.

415(c)(3)
1.415(c)-2

II. LIMITATIONS ON CONTRIBUTIONS

Line a. Annual additions include (a) employer contributions, (b) employee contributions, and (c) forfeitures credited to a participant's account for any limitation year. Elective contributions and employee and matching contributions subject to the requirements of § 401(m) are annual additions regardless of whether they result in excess aggregate contributions, even if such excesses are corrected through distribution or recharacterization. Catch-up contributions under §414(v), on the other hand, are not annual additions. Excess deferrals that are distributed in accordance with Regs. § 1.402(g)-1(e)(2) or (3) also are not annual additions. Amounts allocated to an individual medical account, as defined in § 415(l)(2), which is part of a pension or annuity plan maintained by the employer, and amounts attributable to post-retirement medical benefits allocated to the account of a key employee, as defined in § 419A(d)(3), under a welfare benefit fund, as defined in § 419(e), maintained by the employer are treated as annual additions to a defined contribution plan. However, the percentage of compensation limitation described in line II.b. does not apply to such amounts. Annual additions under a § 403(b) annuity contract also are treated as annual additions to a defined contribution plan.

Repayment by an employee of a cash-out or previously withdrawn mandatory contributions which result in the restoration of amounts that were forfeited because of these distributions are not annual additions. Similarly, transfers of employer or employee contributions from another qualified plan, repayments of loans, or rollovers accepted by the plan are not annual additions. Also, payments made to restore losses to a plan resulting from actions by a fiduciary for which there is a reasonable risk of liability under Title I of ERISA or under other federal or state law are not annual additions if similarly situated plan

participants are treated similarly with respect to payments. The regulations describe other amounts which are not annual additions and some amounts which are considered annual additions for limitation years other than the limitation year in which actually credited to the participant's account. These regulations should be consulted to determine whether the plan correctly treats such amounts as annual additions. Generally, amounts are credited to a participant's account if they are allocated to the account under the terms of the plan as of any date within the limitation year unless such allocation is dependent upon participation in the plan as of any time after such allocation date.

415(c);
415(l); ;
419A(d)(2) and (3);
419(e)
1.415(c)-1

Line b. A defined contribution plan must preclude the possibility that annual additions credited to any participant's account in a limitation year will exceed the limitations of § 415. For limitation years beginning after December 31, 2001, the limitation is the lesser of $40,000 or 100% of compensation. The $40,000 figure will be adjusted annually by the Secretary for increases in the cost of living, with references to quarters and base periods, independently of the defined benefit dollar limit. Any adjustments will be in $1000 increments. A defined contribution plan may provide for an automatic increase in the dollar limitation to reflect cost-of-living increases, but is not required to do so. A new plan may use the dollar limitation in effect for its first limitation year and adjust the limit from that point. For limitation years beginning on or after July 1, 2007, a plan's definition of compensation for a year that is used for purposes of § 415 may not reflect compensation for a year greater than the limit under § 401(a)(17) that applies to that year.

Alternative limits apply to annual additions under a § 403(b) annuity contract for a participant who is an employee of a church or a convention or association of churches. These alternative limits permit minimum annual additions of up to $10,000 for a limitation year, not to exceed $40,000 for all limitation years, regardless of the general limits. A separate rule permits a $3,000 minimum annual addition for church employees who are foreign missionaries and whose adjusted gross income does not exceed $17,000. The regulations should be consulted regarding the interaction of these two minimums.

If you are reviewing a defined benefit plan that provides for employee contributions (whether mandatory or voluntary), such employee contributions are treated as a separate defined contribution plan for § 415 purposes. Therefore such employee contributions must comply with this limitation requirement.

415(c)(1);
415(d)(1);
415(d)(3);
415(d)(4);
1.415(c)-1

Line c. The regulations under § 415 that were in effect for limitation years beginning before July 1, 2007 (the 1981 regulations) set forth permitted correction methods for excess annual additions that arose under certain circumstances. See II.c. of the version of this explanation, rev. 3-2006, for an explanation of the correction methods. The correction methods under the 1981 regulations have been deleted in the final regulations, effective for limitation years beginning on or after July 1, 2007. Therefore, correction for excess annual additions are generally permitted under the Employee Plans Compliance Resolution System (EPCRS) under Rev. Proc. 2008-50, 2008-35 I.R.B. 464. If the plan contains the correction methods of the 1981 regulations, the plan must limit the application of the methods to limitation years beginning before July 1, 2007.

Preamble to Final § 415 Regulations;
Rev. Proc. 2008-50

Line d. A defined contribution plan may provide for contributions on behalf of a participant who has become permanently and totally disabled (as defined in § 22(e)(3)) even though the participant has no actual compensation. In such cases, the disabled participant is deemed to have compensation each year equal to the rate of compensation paid immediately before the participant became permanently and totally disabled, if greater than the disabled participant's actual compensation for the year.

A plan may either provide for the continuation of contributions on behalf of all permanently and totally disabled participants (as defined in § 22(e)(3)) for a fixed or determinable period or provide for the continuation of contributions only for those employees who were nonhighly compensated when they became disabled.

Contributions made with respect to the imputed compensation of a disabled participant must be

nonforfeitable when made.

Note that this imputed compensation rule for disabled participants is separate from the salary continuation rule for disabled participants described in line b above.

415(c)(3)(C);
1.415(c)-2(g)(4)

Line e. The sum of the annual additions credited to a participant's account in any limitation year for all of the qualified defined contribution plans of the employer or a predecessor employer (which, for this purpose, include plans qualified under § 401(a), annuity plans described in § 403(a), and simplified employee pensions described in § 408(k)), regardless of whether a plan is terminated, may not exceed the limitations of § 415(c). See line III.g. for the definition of predecessor employer.

A qualified defined contribution plan maintained by any member of a controlled group of corporations or commonly controlled trades or businesses (as defined in § 414(b) and (c) as modified by § 415(h)) or any member of an affiliated service group (as defined in § 414(m)), is considered maintained by all of the members for this purpose.

There are two exceptions to the foregoing plan aggregation rules that pertain to multiemployer plans, as defined in § 414(f). First, multiemployer plans are not aggregated with other multiemployer plans for purposes of §415. Second, if the employer maintains a multiemployer plan and that plan so provides, only the benefits (i.e., annual additions) under the multiemployer plan that are provided by the employer are treated as benefits (annual additions) provided under the employer's plans that are not multiemployer plans.

A qualified defined benefit plan maintained by the employer to which employee contributions are made is considered a separate defined contribution plan for this purpose to the extent such employee contributions constitute annual additions in the limitation year. Also, employer contributions allocated to (1) an individual medical benefit account maintained under a pension or annuity plan or (2) the account of a key employee under a welfare benefit trust described in § 419(e) to provide post-retirement medical benefits are treated as annual additions to a defined contribution plan.

The provisions of the plans must preclude the possibility that the total annual additions allocated to any participant in all such plans will exceed these limitations in any limitation year whether or not the § 415 limitations are incorporated by reference. Note that if the plans cannot have common participants, this requirement is satisfied.

A money purchase plan may provide for the automatic freezing or reduction of contributions to insure the limitations of § 415 are met without violating the requirement that benefits be definitely determinable if the plan provision precludes employer discretion.

A profit-sharing or stock bonus plan may also contain a provision for the automatic freezing or reduction of contributions without violating the definite predetermined allocation formula requirement if the plan provision precludes employer discretion. For example, if two defined contribution plans of one employer would otherwise provide for aggregate contributions exceeding the limitations of § 415(c), the plan provisions must specify, without involving employer discretion, which plan will reduce contributions and allocations to prevent an excess annual addition and how the reduction will occur.

A § 403(b) annuity contract is considered a plan maintained by the employee and must be aggregated when the employee is in control of the employer. Effective for limitation years beginning after December 31, 2001, the special election for § 403(b) annuity contracts purchased by educational organizations, hospitals, home health service agencies and certain churches is eliminated.

Also see line III.g. for additional special rules that may also apply to defined contribution plans.

415(f)(1)
415(k)(4)
1.401(a)-1(b)(1)(ii) and (iii); 1.415(a)-1(d); 1.415(c)-1; 1.415(f)-1

III. LIMITATIONS ON BENEFITS - General Rule

(Note: This explanation, including this Part III, reflects the requirements of the final regulations under § 415 that are effective for limitation years beginning on or after July 1, 2007. A defined benefit plan is considered to satisfy the limitations of § 415(b) with respect to benefits accrued or payable under the plan as of the end of the last limitation year beginning before July 1, 2007 under plan provisions (including a plan's limitation year) that were adopted and in effect before April 5, 2007. This grandfather rule is available only if the plan provisions adopted and in effect on

April 5, 2007 satisfied the requirements of § 415 and related published guidance in effect before the final regulations. See the revision of this explanation, rev. 3-2006, for an explanation of the prior guidance. A plan is not ineligible for the grandfather rule because the plan has not yet been amended for the changes to § 415(b) made by PFEA '04 and PPA '06 or because the plan considered compensation in excess of the § 401(a)(17) limit in applying the compensation limit described in line III.a. for limitation years before the final regulation effective date. See line III.b. For a participant with grandfathered benefits, additional benefits cannot accrue after the effective date (limitation years beginning on or after July 1, 2007) of the final regulations unless and until the sum of such additional benefits and the participant's grandfathered benefits satisfies the requirements of the final regulations.

Section 415(b)(2)(E)(v) of the Code was amended by § 103(b)(2)(B)(i) of the WRERA, providing that the mortality table used for adjusting limitations (form adjustments or age adjustments) on defined benefit plans shall be the applicable mortality table within the meaning of § 417(e)(3)(B) of the Code, which is based on mortality table under § 430((h)(3)(A).

Line a. The maximum annual benefit to which any participant may be entitled during the limitation year may not exceed the lesser of $160,000 (effective for the first limitation year ending after December 31, 2001) or 100 percent of the participant's average compensation for the three consecutive calendar years of employment (or lesser period if the employee does not have three consecutive years) which produce the greatest aggregate compensation. The percentage of compensation limit does not apply, however, to a governmental plan as defined in § 414(d), a multiemployer plan as defined in § 414(f), a collectively bargained plan that is described in § 415(b)(7), or to a participant in a plan maintained by a church described in § 3121(w)(3)(A) who has never been a § 414(q) highly compensated employee of the church.

A different 12-month period may be used if uniformly and consistently applied in a manner specified in the plan. For a participant who has had a severance from employment and is then rehired, the years for which the participant performed no service and received no compensation are ignored, and the years immediately preceding and following this break period are treated as consecutive.

The annual benefit is a benefit payable annually as a straight life annuity. The benefits attributable to employee contributions and rollover contributions are not taken into account for purposes of this limitation. Social security supplements and benefits transferred from another defined benefit plan, other than an elective transfer of a participant's distributable benefits, are taken into account.

The dollar limitation and the compensation limitation will be adjusted annually by the Commissioner to reflect the increase in the cost-of-living. The increased limits apply to any limitation year ending with or within the calendar year for which the increase is effective, but a participant's benefits may not reflect the adjustment prior to January 1 of that calendar year.

A plan may provide for automatic increases in the dollar and compensation limitations by incorporating by reference the annual adjustments under § 415(d). However, if a plan incorporates the adjustments by reference, the annual adjustment to the dollar limitation will not apply to a participant after a severance from employment, unless the plan so specifies. Likewise, the annual adjustment to the compensation limitation, which applies only after a participant's severance from employment, will not apply unless the plan so specifies. Instead of automatically incorporating the cost-of-living adjustments by reference, a plan may be amended from time to time to take into account these increases. The regulations provide two safe harbors that allow distributions that are increased pursuant to plan amendments to be treated as continuing to satisfy the limitations of § 415(b). These safe harbor provisions of the regulations should be consulted when reviewing such a plan amendment. Finally, if a distribution option that is not subject to § 417(e)(3), such as a QJSA, includes an automatic benefit increase feature which will never cause a distribution to exceed the limitations at the annuity starting date as increased by the subsequent annual adjustments, the increased benefit will continue to satisfy § 415(b). If a plan contains a provision for cost-of-living increases other than one of those described above, the cost-of-living adjustments must be taken into account under the multiple annuity starting date rule explained below for purposes of satisfying the limitations of § 415(b).

The plan provisions must preclude the possibility that an annual benefit in excess of this limitation will be accrued or become payable at any time. It is not enough that no participant has actually accrued a benefit in excess of this limitation. In addition, if a participant has distributions commencing at different times (i.e., multiple annuity starting dates), the limitations must be satisfied as of each annuity starting

date, actuarially adjusting for past and future distributions.

415(b)(1), 415(b)(3), and 415(d)(1)

1.415(a)-1(d)(3)(v), 1.415(b)-1(b), 1.415(b)-1(c)(5), 1.415(d)-1

Line b. For limitation years beginning on or after July 1, 2007, compensation for any 12-month period taken into account in determining average compensation for the high three years may not include compensation in excess of the limitation under § 401(a)(17) for the calendar year in which the 12-month period begins. A participant's high 3 years shall be the period of consecutive calendar years (not more than 3) during which the participant had the greatest aggregate compensation from the employer.

Under the grandfather rule described in the note preceding the explanation for line III.a., a plan that previously considered compensation in excess of the § 401(a)(17) limit in applying the compensation limitation of line III.a. preserves the benefit previously accrued for a participant.

401(a)(17) 1.415(b)-1(a)(5)(i) 1.415(c)-2(f)

Line c. If a defined benefit plan provides a retirement benefit in any form other than a straight life annuity, the plan benefit must be adjusted to an actuarially equivalent straight life annuity beginning at the same age. If the form of benefit is a straight life annuity or a qualified joint and survivor annuity, no adjustments are necessary. Examples of benefits that are not in the form of a straight life annuity are an annuity with a post-retirement death benefit or a lump sum.

In making these adjustments the following values are not taken into account: (1) the value of a qualified joint and survivor annuity to the extent such value exceeds the sum of (A) the value of a straight life annuity beginning on the same date and (B) the value of any post-retirement death benefits payable even if the annuity was not in the qualified joint and survivor form; (2) the value of ancillary benefits not directly related to retirement benefits (such as pre- retirement disability and death benefits, and post- retirement medical benefits); and (3) the value of benefits which include an automatic benefit increase feature, provided the benefit form is not subject to the requirements of § 417(e)(3), such as a QJSA, and the amount payable in any limitation year is limited to the limitations of § 415 in effect at the annuity starting date as subsequently increased by the annual cost-of-living adjustments under the Code. Social Security supplements are directly related to retirement benefits and should be taken into account.

The assumptions that are required to be used in adjusting the benefit depend on whether the benefit form is subject to the present value requirements of § 417(e)(3) and when the payment commences. Benefits subject to § 417(e)(3) include all forms except any annual benefit that (i) is nondecreasing for the life of the participant or, in the case of a QPSA, the life of the participant's spouse; or (ii) decreases during the life of the participant merely because of (a) the death of the survivor annuitant (but only if the reduction is to a level not below 50% of the annual benefit payable before the death of the survivor annuitant) or (b) the cessation or reduction of Social Security supplements or qualified disability benefits (as defined in § 411(a)(9)).

Where the adjustment is based on the interest rate specified in the plan, the rate specified in the plan includes the rate used to derive factors specified in the plan. Of course, different interest rate assumptions may be specified to determine the actuarial equivalence of different forms of benefit under the plan, and in such cases, the rate specified in the plan means the rate applicable to that particular benefit form.

(i) For limitation years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity for purposes of applying the limit in Ill.a. to benefits that are not subject to § 417(e)(3) is equal to the greater of the annual amount of the straight life annuity (if any) payable to the participant under the plan commencing at the same annuity starting date as the other benefit form, and the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable computed using a 5 percent interest rate assumption and the applicable mortality table under § 417(e)(3) (that is, the table in Rev. Rul. 2001-62).

(ii) For limitation years beginning before July 1, 2007, the actuarially equivalent straight life annuity for purposes of applying the limit in Ill.a. to benefits that are not subject to § 417(e)(3) is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit computed using whichever of the following produces the greater annual amount: (1) the interest rate and mortality table or other tabular factor specified in the plan for adjusting benefits in the same form as the participant's benefit; and (2) a 5 percent interest rate assumption and the applicable mortality table.

Line d.

(i) For plan benefits subject to § 417(e)(3), if the annuity starting date is in a plan year beginning after 2005, the actuarially equivalent straight life annuity equals the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable, using whichever of the following produces the greatest annual amount: (1) the interest rate and the mortality table or other tabular factor specified in the plan for adjusting benefits in the same form; (2) a 5.5 percent interest rate assumption and the applicable mortality table; and (3) the applicable interest rate under § 417(e)(3) and the applicable mortality table, divided by 1.05.

(ii) For plan benefits subject to § 417(e)(3), if the annuity starting date is in a plan year beginning in 2004 or 2005, the actuarially equivalent straight life annuity equals the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable, using whichever of the following produces the greater annual amount: (1) the interest rate and mortality table or other tabular factor specified in the plan for adjusting benefits in the same form; and (2) 5.5 percent interest and the applicable mortality table.

(iii) For plan benefits subject to § 417(e)(3), if the annuity starting date is on or after the first day of the first plan year beginning in 2004 and before December 31, 2004, the plan may apply the transition rule described in § 101(d)(3) of PFEA '04 in lieu of the rule described in the preceding paragraph to determine the amount of the participant's benefit. The transition rule is explained in Notice 2004-78. Section 103(a) of WRERA changed the deadline to adopt PFEA'04 amendments from the end of the 2008 plan year to the end of the 2009 plan year.

415(b)(2)(B), 415(b)(2)(E) and 417(e)(3)
1.415(b)-1(a), (b) and (c), 1.417(e)-1(d)
Rev. Proc. 2008-62, 2008-2 C.B. 935,
Rev. Rul. 2001-62, 2001-2 C.B. 632
Notice 2004-78, 2004-2 C.B. 879
Final Regulations under § 430 (h) (3), 73 FR 44632

Line e. If a defined benefit plan provides a retirement benefit which begins before age 62, the dollar limitation determined under line Ill.a. must be adjusted (that is, reduced for early commencement). How the dollar limitation is adjusted for early commencement depends on whether the annuity starting date is in a limitation year beginning before July 1, 2007 or in a limitation year beginning on or after that date. If the annuity starting date is in a limitation year beginning on or after July 1, 2007, the adjustment that is required further depends on whether the plan offers an immediately commencing straight life annuity at both the age of benefit commencement and age 62.

The adjustments described below for pre-62 benefit commencement take into account mortality in determining actuarial equivalence. However, to the extent the plan does not forfeit benefits upon the participant's death before the annuity starting date, the plan does not have to take into account the mortality decrement for the probability of death between the annuity starting date and age 62 in determining actuarial equivalence for purposes of the age adjustments. If the plan does not charge participants for providing a qualified preretirement survivor annuity, the plan is treated as not forfeiting benefits on death.

(i) If the annuity starting date is before age 62 and occurs in a limitation year beginning before July 1, 2007, the adjusted dollar limitation is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the dollar limitation determined under line III.a. For purposes of this adjustment, actuarial equivalence is computed using whichever of the following produces the smaller annual amount: (1) the interest rate and mortality table or other tabular factor specified in the plan for determining actuarial equivalence for early retirement purposes; or (2) a 5 percent interest rate assumption and the applicable mortality table.

(ii) If the annuity starting date is before age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the adjusted dollar limitation is also the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the dollar limitation determined under line III.a. However, in this case, actuarial equivalence is computed without regard to the plan's actuarial factors, using a 5 percent interest rate assumption and the applicable mortality table and expressing the participant's age based on completed calendar months as of the annuity starting date.

(iii) If the annuity starting date is before age 62 and occurs in a limitation year beginning on or after July 1,

2007, and the plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the adjusted dollar limitation is the lesser of (1) the adjusted dollar limitation determined in accordance with the preceding paragraph; and (2) the product of the dollar limitation under line III.a. multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan at the participant's annuity starting date to the annual amount of the immediately commencing straight life annuity under the plan at age 62, both determined without applying the limitations of § 415.

415(b)(2)(C), 415(b)(2)(E)(i) and (v)
1.415(b)-1(d)

Line f. If the plan provides a retirement benefit which begins after age 65, the plan *may* provide for the dollar limitation determined under line Ill.a. to be adjusted (that is, increased for delayed commencement), although a participant's benefit continues to be limited to 100% of the participant's high three-year compensation. How the dollar limitation is adjusted for delayed commencement depends on whether the annuity starting date is in a limitation year beginning before July 1, 2007 or in a limitation year beginning on or after that date. If the annuity starting date is in a limitation year beginning on or after July 1, 2007, the adjustment that is required further depends on whether the plan offers an immediately commencing straight life annuity at both the age of benefit commencement and age 65.

The adjustments described below for post-65 benefit commencement take into account mortality in determining actuarial equivalence. However, to the extent the plan does not forfeit benefits upon the participant's death before the annuity starting date, the plan may *not* take into account the mortality decrement for the probability of death between age 65 and the annuity starting date in determining actuarial equivalence for purposes of the age adjustments. If the plan does not charge participants for providing a qualified preretirement survivor annuity, the plan is treated as not forfeiting benefits on death.

(i) If the annuity starting date is after age 65 and occurs in a limitation year beginning before July 1, 2007, the adjusted dollar limitation is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the dollar limitation under line III.a. For purposes of this adjustment, actuarial equivalence is computed using whichever of the following produces the smaller annual amount: (1) the interest rate and the mortality table or other tabular factor specified in the plan for determining actuarial equivalence for delayed retirement purposes; or (2) a 5 percent interest rate assumption and the applicable mortality table.

(ii) If the annuity starting date is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the adjusted dollar limitation is also the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the dollar limitation determined under line III.a. However, in this case, actuarial equivalence is computed without regard to the plan's actuarial factors, using a 5 percent interest rate assumption and the applicable mortality table and expressing the participant's age based on completed calendar months as of the annuity starting date.

(iii) If the annuity starting date is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the adjusted dollar limitation is the lesser of (1) the adjusted dollar limitation determined in accordance with the preceding paragraph; and (2) the product of the dollar limitation under line III.a. multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan at the participant's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the plan at age 65, both determined without applying the limitations of this article. The adjusted immediately commencing straight life annuity at the participant's annuity starting date means the annual amount of such annuity payable to the participant, computed without regard to the participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity at age 65 means the annual amount of such annuity that would be payable to a hypothetical participant who is age 65 and has the same accrued benefit as the participant.

415(b)(2)(D), 415(b)(2)(E)(iii) and (V)
1.415(b)-1(e)

Line g. Under § 411, if benefits are not paid to a participant upon attainment of normal retirement age

(NRA), the plan must either provide for the suspension of the participant's benefit under § 411(a)(3)(B) or actuarially increase the benefit for late retirement to avoid an impermissible forfeiture of the benefit. If the NRA under the plan is less than 65, the requirement to actuarially increase the benefit after NRA could, when coupled with the fact that the § 415 dollar limit is not adjusted between age 62 and age 65, cause the plan to violate § 415. This would occur where the participant works past NRA and the benefit equals the § 415 dollar limit at an age between 62 and 65. Any actuarial increase after that age and prior to age 65 would violate § 415. Accordingly, if the plan's NRA is less than 65, the plan must coordinate the requirements for nonforfeitablity of benefits and actuarial increase for delayed retirement with the limits of § 415. One way to satisfy these requirements is to suspend the participant's benefit as permitted under § 411(a)(3)(B). However, the prohibition on amending a plan to place greater restrictions or conditions on § 411(d)(6) protected benefits by adding or modifying a suspension of benefits provision may eliminate suspension as an option. In this case, the plan must provide for the in-service payment of the participant's benefit if the participant has reached NRA and the benefit cannot be actuarially increased without violating § 415.

411(a)
1.411(d)-3(a)(3), 1.411(d)-3(j)(3)
Rev. Rul. 2001-51, 2001-2 C.B. 427, Q&A-4

Line h. The annual benefit (without regard to the age at which benefits commence) payable with respect to a participant is not considered to exceed the otherwise applicable limitations on benefits under § 415(b) if (a) the employer-derived retirement benefits under the plan and all other defined benefit plans of the employer do not in the aggregate exceed $10,000 for the limitation year or any prior limitation year, and (b) the employer has not at any time maintained a defined contribution plan in which the participant participated. In the case of a multiemployer plan, the $10,000 minimum benefit rule applies regardless of whether the participant ever participated in another plan of the employer, provided that no such other plan was maintained as a result of collective bargaining with the same employee representative as the multiemployer plan. For purposes of the special exception for total benefits not in excess of $10,000, mandatory employee contributions to a defined benefit plan, an individual medical benefits account under § 401(h), and a postretirement medical benefits account under § 419A(d)(1) are not considered separate defined contribution plans. Also, no upward adjustment need be made to the value of the retirement benefit payable under the plan if the benefit payable is not in the form of a straight life annuity.

415(b)(4)

1.415(b)-1(f)

Line i. The percentage of compensation limitation described in line III.a. and the $10,000 minimum benefit limitation in line III.g. must be reduced for a participant who begins to receive retirement benefits under the plan when the participant has less than ten years of service. The reduction is accomplished by multiplying the otherwise applicable limitation by the following fraction: Years of service with the employer including the current limitation year (but not less than one), divided by 10.

For this purpose, a year of service may be determined on any reasonable and consistent basis.

415(b)(5)(B)
1.415(b)-1(g)(2)

Line j. The dollar limitation of III.a. is reduced for participants with less than 10 years of participation in the plan. Specifically, the dollar limitation is multiplied by a fraction, the numerator of which is the number of years (computed to fractional parts of a year, but not less than one) of participation in the defined benefit plan of the employer, and the denominator of which is 10.

For purposes of determining a participant's years of participation, the participant shall be credited with a year of participation (computed to fractional parts of a year) for each accrual computation period for which: (1) the participant is credited with at least the service required to accrue a benefit, and (2) the participant is included as a plan participant under the eligibility provisions of the plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a year of participation credited to the participant shall equal the amount of benefit accrual service credited to the participant for such accrual computation period. For example, if under the terms of a plan, a participant receives 1/10 of a year of benefit accrual service for an accrual computation period for each 200 hours of service, and the participant is credited with 1,000 hours of service for the period, the participant is credited with 1/2 a year of

participation.

For purposes of determining years of participation, a participant who is permanently and totally disabled within the meaning of § 415(c)(3)(C)(i) for an accrual computation period is credited with a year of participation for that period.

The plan must be established before the end of the accrual computation period in order to credit a participant with any part of a year of participation for that period.

415(b)(5)(B)

1.415(b)-1(g)(1)

Line k. All the qualified defined benefit plans ever maintained by the employer or a predecessor employer (whether or not such plans are terminated) are treated as one defined benefit plan for purposes of the limitations under § 415(b). For this purpose, a qualified defined benefit plan maintained by any member of a controlled group of corporations or commonly controlled trades or businesses (as defined in §§ 414(b) and (c) as modified by § 415(h)), or any member of an affiliated service group (as defined in § 414(m)), is considered maintained by all the members. If the employer maintains a plan that provides a benefit which the participant accrued while performing services for a former employer, the former employer is a predecessor employer with respect to the participant in the plan. A former entity that antedates the employer is also a

there are insufficient assets for the payment of all benefit liabilities, the benefits taken into account are the benefits that are actually provided to the participant.

Benefits transferred to another plan - If a participant's benefits are transferred to another defined benefit plan of the employer and the transfer is not a transfer of distributable benefits pursuant to § 1.411(d)-4, Q&A-3(c), of the regulations, the transferred benefits are not treated as being provided under the transferor plan (but are taken into account as benefits provided under the transferee plan). If a participant's benefits are transferred to another defined benefit plan that is not maintained by the employer and the transfer is not a transfer of distributable benefits, the transferred benefits are treated by the employer's plan as if such benefits were provided under annuities purchased to provide benefits under a plan of the employer that terminated immediately prior to the transfer with

predecessor employer with respect to a participant if, under the facts and circumstances, the employer constitutes a continuation of all or a portion of the trade or business of the former entity.

There are three exceptions to the foregoing plan aggregation rules that pertain to multiemployer plans, as defined in § 414(f). First, multiemployer plans are not aggregated with other multiemployer plans for purposes of § 415. Second, if the employer maintains a multiemployer plan and that plan so provides, only the benefits under the multiemployer plan that are provided by the employer are treated as benefits provided under the employer's plans that are not multiemployer plans. Third, a multiemployer plan is disregarded for purposes of applying the percentage of compensation limitation under lines III.a. and III.h. to a plan which is not a multiemployer plan.

The final regulations contain rules for determining the benefit to be taken into account in the case of plan termination or transfer of benefits to another plan, where a plan ceases to be affiliated and aggregated with the employer's plan under line III.j. because of the break-up of the § 414(b), (c) or (m) group, and with respect to the situation where the employer maintains a plan under which a participant accrued a benefit while performing services for a predecessor employer.

Plan termination – If the plan terminates with sufficient assets for the payment of all benefit liabilities and a participant has not yet commenced benefits, the benefits taken into account for § 415 purposes are the benefits provided pursuant to the annuities purchased to provide the participant's benefits at each possible annuity starting date. If

sufficient assets to pay all benefit liabilities. In the case of a transfer of distributable benefits, the amount transferred is treated as a benefit paid from the transferor plan.

Cessation of affiliation because of break-up of the § 414(b), (c) or (m) group – The formerly affiliated plan continues to be treated as a plan of the employer, but it is treated as if it had terminated immediately prior to the cessation of affiliation (e.g., the sale of a member of the group outside the group or the transfer of plan sponsorship outside the group) with sufficient assets to pay participants' benefit liabilities under the plan and had purchased annuities to provide benefits.

Plan maintained by successor employer - If the employer maintains a defined benefit plan that provides benefits accrued by a participant while performing services for a predecessor employer, the

participant's benefits under any plan maintained by the predecessor employer are treated as provided under a plan maintained by the employer. However, for this purpose, the plan of the predecessor employer is treated as if it had terminated immediately prior to the event giving rise to the predecessor employer relationship (such as transfer of benefits or plan sponsorship) with sufficient assets to pay participants' benefit liabilities under the plan, and had purchased annuities to provide benefits; the employer and the predecessor employer shall be treated as if they were a single employer immediately prior to such event and as unrelated employers immediately after the event; and if the event giving rise to the predecessor relationship is a benefit transfer, the transferred benefits shall be excluded in determining the benefits provide under the plan of the predecessor employer.

1.401(a)-1(b)(1)(iii)

The provisions in the plans must preclude the possibility that the total annual benefit payable to any participant under all defined benefit plans maintained by the employer or a predecessor employer will exceed these limitations whether or not the § 415 limitations are incorporated by reference. The use of a plan provision which automatically freezes or reduces the rate of benefit accrual to insure that these limitations are not exceeded will not violate the requirement that benefits must be definitely determinable if the plan provision precludes employer discretion. Note that if the plans cannot have common participants, this requirement is satisfied.

415(f)(1)(A)

1.415(a)-1(d)(1)

1.415(f)-1