

# Employee Plans CPE Technical Topics for 1999

## OTHER PUBLISHED ACTUARIAL GUIDANCE

Coordinated by Al Reich

*Employee Plans Division  
National Office*

*Internal Revenue Service  
Office of Assistant Commissioner (Employee Plans and Exempt Organizations)  
CP:E*

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This actuarial section provides the following publications:

The field directive and the checksheet with respect to Rev. Rul. 98-1,  
Rev. Rul. 98-1, and  
Rev. Rul. 95-6

#### FIELD DIRECTIVE

Regional Chief Compliance Officers  
District Director, Key District Offices (EP/EO)  
Information Copy: EP/EO Division Chiefs

Director, Employee Plans Division CP:E:EP

#### Processing Determination Letter Applications for Defined Benefit Plans

This memorandum provides technical guidelines and a checksheet to be used for reviewing determination letter applications for defined benefit plans for certain changes in the qualification requirements made by the General Agreement on Tariffs and Trade (GATT), and the Small Business Job Protection Act of 1996 (SBJPA). It also provides that determination letter applications for terminating plans should no longer be suspended on account of issues relating to changes made by GATT and SBJPA.

Our memorandum of June 20, 1997 provided that, until further notice, determination letters for **ongoing** plans would not include consideration of changes to the qualification requirements under GATT and SBJPA except for the changes made to Code section 401(a)(26), and certain determinations under Code section 414(n).

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The memorandum also stated that **terminating** plans were required to be amended to comply with the qualification changes made by GATT and SBJPA in connection with plan termination. While this memorandum stated that determination letters that considered such changes could begin to be issued to a significant number of terminating defined benefit plans, key district offices were to suspend processing applications for terminating defined benefit plans that were affected by certain specific changes to the qualification requirements made by GATT and SBJPA.

The specific qualification issues that could trigger suspension of an application for a terminating plan were;

- (1) the definition of highly compensated employees if the plan sponsor maintained more than one plan,
- (2) repeal of family aggregation rules if the plan was a defined benefit plan that was not specifically described in section A.1(i), (ii), (iii) or (iv) of the attachment,
- (3) interest and mortality assumptions that must be used in applying the adjustments to limitations under section 415(b)(2)(E) to benefits under qualified defined benefit plans if the plan was not specifically described in section A.4(i), (ii), (iii), or (iv) of the attachment, and
- (4) modifications to the definition of Social Security Retirement Age.

On August 18, 1997, the Service issued guidance on the definition of a highly compensated employee in Notice 97-45, 1997-33 I.R.B. 7. As a result of such guidance, we issued a September 30, 1997 memorandum instructing the key district offices that determination letters for terminating plans should no longer be suspended on account of issues relating to changes to the definition of a highly compensated employee made by SBJPA.

On December 23, 1997, the Service issued Rev. Rul. 98-1, 1998-2 I.R.B. 5, which provides guidance to plan sponsors on implementing the changes to section 415(b)(2)(E) under GATT and SBJPA. Pursuant to this memorandum, with respect to qualification requirements under section 415(b)(2)(E), determination letter applications for terminating plans should be treated as follows.

- (1). Applications for terminating plans dated before the date of this memorandum that are currently in suspense because they were **not** described in one of the four categories of section A.4 of the attachment to

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our June 20, 1997 memorandum, should now be processed for section 415 requirements based on the guidance in Rev. Rul. 98-1 and this memorandum.

- (2). Applications for terminating plans dated before the date of this memorandum that are currently in process because they **were** described in one of the four categories in section A.4 of the attachment to the June 20, 1997 memorandum may be completed in accordance with the instructions in that memorandum. We note that, because plans in categories A.4(ii), (iii) and (iv) are described with reference to dates in 1997 and 1996, most of these plans in process will be described in category A.4(i). However, the plan sponsor should be permitted to change the proposed amendments to the plan dealing with the section 415(b)(2)(E) requirements to take into account the guidance provided in Rev. Rul. 98-1.
- (3). All applications for terminating plans dated on or after the date of this memorandum must be reviewed for compliance with the changes to section 415(b)(2)(E) based on Rev. Rul. 98-1 and the guidance attached to this memorandum.

In addition, key district offices may now issue determination letters for terminating plans that have been amended to incorporate the SBJPA amendments to the definition of Social Security Retirement Age under section 401(a)(5) of the Code or to eliminate family aggregation. Accordingly, determination letters for all terminating plans that take into consideration the GATT and SBJPA amendments may now be issued.

Recently the Service issued Rev. Proc. 98-14, 1998-4 I.R.B. 22. Section 1.01 of Rev. Proc. 98-14 provides that, beginning April 27, 1998, the Service will consider changes to the qualification requirements made by GATT, SBJPA, the Taxpayer Relief Act of 1997 and the Uniformed Services Employment and Reemployment Rights Act of 1994 when it reviews applications for determination letters for all pension and profit sharing plans. Therefore, the guidance in Rev. Rul. 98-1 and the attachment to this memorandum should be used to process all defined benefit plans for requirements under section 415(b).

If you, or members of your staff, have questions regarding this memorandum, please contact Martin Pippins at (202) 622-7434 or Mark O'Donnell at (202) 622-7105.

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## Requirements for Amending Defined Benefit Plans Under Rev. Rul. 98-1

### Background

Section 415(b)(2)(E) provides rules regarding the actuarial assumptions to be used in making the adjustments to benefits and limitations under section 415(b)(2)(B), (C), and (D) of the Code. Section 417(e)(3) provides rules regarding the actuarial assumptions to be used to determine the present value of a participant's accrued benefit for certain forms of benefit.

Sections 415(b)(2)(E) and 417(e)(3) of the Code were amended by section 767 of the Retirement Protection Act of 1994 (RPA '94), which is included in GATT. Section 767(a) of RPA '94 prescribed a mortality table and changed the applicable interest rate that must be used to determine the present value of a form of benefit subject to section 417(e)(3). Section 767(b) added section 415(b)(2)(E)(v), which requires that the prescribed mortality table also be used for adjusting any benefit or limitation under section 415(b)(2). Section 767(b) also revised the interest rate that must be used for adjusting a benefit or limitation under section 415(b)(2) in the case of a form of benefit subject to section 417(e)(3).

The amendments made by section 767(b) of RPA '94 were modified by section 1449 of SBJPA. In particular, under section 1449(a), the provisions of section 415(b)(2)(E) of the Code (as modified by section 767(b) of RPA '94), were not required to be applied to benefits accrued before the later of the date a plan amendment applying the amendments made by section 767(b) is adopted or made effective, but not later than the first limitation year beginning after 1999. Further, section 1449(b) of SBJPA provides that the applicable interest rate provided under section 417(e)(3) (as amended by RPA '94) applies only to adjustments of benefits under section 415(b)(2)(B) (for benefits forms subject to section 417(e)(3)) and not to adjustments under section 415(b)(2)(C) and section 415(b)(2)(D) (adjustments to the section 415(b) dollar limitation on benefits commencing before, and after, the participant's Social Security Retirement Age, respectively).

Rev. Rul. 95-29, 1995-1 C.B. 81, provided guidance on the changes to section 415(b)(2)(E) that were made by RPA '94. Rev. Rul. 98-1 modified and superseded Rev. Rul. 95-29 to take into account the amendments under SBJPA.

Rev. Proc. 97-41, 1997-33 I.R.B. 51, provided guidance to sponsors of qualified plans with respect to the date by which they must be amended to comply with the changes in the law made by RPA '94 and SBJPA.

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## Requirements

The following material is intended to highlight the requirements of Rev. Rul. 98-1 as they apply to plan amendments needed to comply with section 415(b)(2)(E) as amended by GATT and SBJPA. The revenue ruling uses certain terms, such as *freeze date* or *old-law benefit*, when referring to provisions that must now be incorporated into qualified plans. While the use of such terms is convenient for purposes of the revenue ruling, they are not, by themselves, sufficiently specific or detailed for purposes of the actual wording of a plan amendment. Plan amendments must specify the manner in which a participant's benefit will be determined in sufficient detail to satisfy the definitely determinable requirements of section 401(a)(25). Thus, for example, a plan amendment should not simply refer to the freeze date for a plan, but should provide that a participant's benefits accrued before a named date will be treated in one manner and benefits accrued after such named date will be treated in a different manner.

### A. Effective Date for Plan Amendments (Q&A-1)

The changes to section 415(b)(2)(E) under GATT and SBJPA (referred to in Rev. Rul. 98-1 as the section 415(b)(2)(E) changes) are effective as of the first day of the first limitation year beginning after December 31, 1994, except that an employer may also elect to treat the section 415(b)(2)(E) changes as being effective as early as December 8, 1994. This date is referred to in Rev. Rul. 98-1 as the RPA '94 section 415 effective date, and it applies regardless of the date that the changes to section 417(e)(3) under GATT are made effective for the plan. **The employer must adopt plan language establishing the RPA '94 section 415(b)(2)(E) effective date as the effective date for the section 415(b)(2)(E) changes.**

Generally, this date may be adopted in a retroactive plan amendment. However, an RPA '94 section 415(b)(2)(E) effective date that is between December 8, 1994 and the first day of the first limitation year beginning after December 31, 1994, must have been established in a plan amendment adopted on or before such earlier effective date.

### B. Employer Options for Plan Amendments

In general employers may elect one of two overall options for implementing the new requirements under section 415(b)(2)(E).

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The first option is to apply the new requirements to all benefits under the plan as of the RPA '94 section 415 effective date (i.e., the first day of the first limitation year beginning in 1995), including benefits that accrued before such date.

The second option is to protect some portion of a participant's benefit that accrued on or before a date that is earlier than the first day of the limitation year beginning after December 31, 1999. This option will require more detailed and complicated plan amendments.

### Option 1 - Retroactive Application to all Plan Benefits (Q&A-10)

The employer may apply the section 415(b)(2)(E) changes to all plan benefits, including plan benefits accrued before the RPA '94 section 415 effective date, without violating section 411(d)(6). If the plan already incorporates the provisions of section 415 by reference, this option will automatically apply as of the RPA '94 section 415 effective date. If the plan does not already incorporate section 415 by reference, the plan must be specifically amended to apply the section 415(b) limitations to all plan benefits taking into account the applicable interest rate and applicable mortality table. (See Q&A-7 and Q&A-8 of Rev. Rul.98-1.) **This may be the simplest option for certain employers who wish to make minimal plan amendments.**

Note, however, that where a plan incorporates section 415 by reference, to the extent the limitations of section 415(b) can be applied in more than one manner, the plan must specify the manner in which the limitation will apply ( See Q&A-11 of Notice 87-21). In the case of a terminating plan that is not being amended to incorporate the GATT changes to section 417(e)(3), a plan that otherwise incorporates the provisions of section 415 by reference must specify the date that will be used to determine the applicable interest rate, which must be a date permitted by the regulations under section 417(e)(3). The applicable mortality table used for purposes of section 415(b)(2)(E)(v) may be incorporated by reference to Rev. Rul. 95-6, 1995-1 C.B. 80.

### Option 2 - Protection of Accrued Benefits (Q&A-12)

If the plan was adopted and in effect on December 7, 1994, the employer may amend the plan to provide that the section 415(b)(2)(E) changes will not apply (i.e., will not be made effective) for benefits accrued by a participant as of a date specified in the plan amendment. This specified date is referred to in Rev. Rul. 98-1 as the participant's freeze date. **Employers who wish to implement this option must make specific plan amendments, taking into account the four requirements highlighted below.**

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### Old-law Benefits (Q&A-13):

The accrued plan benefit to which the section 415(b)(2)(E) changes will not be applied is referred to in Rev. Rul. 98-1 as the old-law benefit. **This benefit must be specifically defined under the terms of the plan as amended. The date as of which such accrued benefit is determined (freeze date) must also be stated in the plan amendment.** Changes in plan provisions (other than certain plan amendments described in C. below) and cost-of-living adjustments to the section 415(b)(2)(A) dollar limitation effective after the freeze date are not taken into account.

### Freeze Date (Q&A-13, Q&A-22):

The date as of which the old-law benefit is determined is referred to in Rev. Rul. 98-1 as the freeze date. **The plan amendment must state that the section 415(b)(2)(E) changes will be applied to benefits accruing after a specified date (freeze date) but not to benefits accruing on or before such date.** The freeze date may be any date before the plan's final implementation date (as defined in the next paragraph), and the employer may choose to provide different freeze dates for different participants under the plan. Such treatment, however, is a benefit, right or feature that must satisfy the requirements of section 1.401(a)(4)-4 of the regulations.

### Final Implementation Date (Q&A-12):

A plan's final implementation date is the date as of which the section 415(b)(2)(E) changes are fully applicable to all new benefit accruals for all participants under the plan. This date is the earlier of: (i) the later of the date that a plan amendment applying the section 415(b)(2)(E) changes is adopted or made effective, and (ii) the first day of the first limitation year beginning after December 31, 1999. For purposes of determining the plan's final implementation date, the date that a plan amendment applying the section 415(b)(2)(E) changes is made effective is the earliest date that the section 415(b)(2)(E) changes apply to all new benefits accruing under the plan. The adoption date is the date the amendment is executed and may be either before or after the date that the section 415(b)(2)(E) changes are made effective for the plan, but not later than the last day of the remedial amendment period. The remedial amendment period for most plans (other than governmental plans) ends on the last day of the first plan year beginning on or after January 1, 1999.

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**Plan amendments must provide that determinations under section 415(b) with respect to a participant's old-law benefit that are made before the final implementation date are based on relevant provisions of the plan as adopted and effective on December 7, 1994.** The relevant provisions are those that are integral to applying the limitations of section 415(b) as in effect prior to GATT and SBJPA. In particular, this will be an issue if the plan is amended after December 7, 1994 to change the plan interest rate or plan mortality table used for purposes of section 417(e)(3) under the plan to compute optional forms of benefit such as single sums. **Plan amendments must provide that determinations after the final implementation date will take all amendments made after December 7, 1994 into account.** See Q&A-15 for examples illustrating the effect of plan amendments adopted and effective after December 7, 1994.

### (4) Method for applying the section 415(b) Limitation (Q&A-14):

The method by which section 415(b) is applied to a participant's total plan benefit, where some or all of the total benefit is an old-law benefit, may vary. Q&A-14 of Rev. Rul. 98-1 describes three methods that may be used along with an illustrative example of each method. **Plan amendments must be specific as to the method that will be used for any participant, i.e., the plan amendment cannot simply reference one of the methods in the revenue ruling.** Different methods may be used for different participants, but such treatment is a benefit, right or feature that must satisfy the requirements of section 1.401(a)(4)-4 of the regulations.

### C. Possible Reductions to Old-law Benefit (Q&A-15)

Once the plan is amended to specify a freeze date, plan amendments made after the freeze date may not be applied to increase the old-law benefit, but some plan amendments may reduce the old-law benefit. Plan amendments that may reduce the old-law benefit are described in Q&A-15 along with examples. **If the terminating plan is, or has been, amended after December 7, 1994, the plan amendment to implement the section 415(b)(2)(E) changes must preclude any increases in the old-law benefit and must provide for any applicable reductions to a participant's old-law benefit in accordance with Q&A-15.** In particular, the date that the section 417(e)(3) changes under GATT are made effective for the plan must be considered in connection with this issue.

### D. Interaction between section 417(e)(3) Amendments and section 415(b)(2)(E) Amendments



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Plan amendments to implement the GATT section 417(e)(3) changes are especially likely to be amendments that affect a participant's old-law benefit pursuant to Q&A-15 of Rev. Rul. 98-1 as discussed above. **Plan amendments to comply with the GATT section 417(e)(3) changes, and plan amendments to comply with the GATT and SBJPA section 415(b)(2)(E) changes, are not required to be adopted or made effective on the same date.** See Q&A-21. However, the manner in which the plan is amended to comply with the section 417(e)(3) changes can have an effect on the manner in which the plan must be amended to comply with the section 415(b)(2)(E) changes.

If, under the plan as amended, the section 415(b)(2)(E) changes are applied to all plan benefits beginning on the RPA '94 section 415 effective date (i.e., there is no old-law benefit for any participant) **there is no need to consider any interaction between the section 415(b)(2)(E) amendments and the section 417(e)(3) amendment.**

If the plan terminates before it is required to comply with the GATT changes to section 417(e)(3), and the plan is not amended for these changes (i.e., the pre-GATT provisions of section 417(e)(3) as in effect under the plan on December 7, 1994 are applied to all benefits), **there is no need to consider any interaction between the section 415(b)(2)(E) amendments and the application of section 417(e)(3) under the plan.**

If the plan is amended to provide an old-law benefit under section 415(b) for some or all plan participants, and the plan is amended to comply with the GATT changes to section 417(e)(3), then:

- (1) If the section 417(e)(3) amendments to the plan provide that section 417(e)(3) as amended by GATT is not applied to any participant's benefits accruing before that participant's freeze date **there is no need to consider any interaction between the section 415(b)(2)(E) amendments and the section 417(e)(3) amendments.**
- (2) If the section 417(e)(3) amendments provide that section 417(e)(3) as amended by GATT applies to a participant's benefits under the plan that accrue before that participant's freeze date (i.e., apply to the old-law benefit), then, **if the section 417(e)(3) amendment is adopted and effective before the participant's freeze date, the section 415(b)(2)(E) amendment must provide that the participant's old-law benefit,**

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before the application of the section 415(b) limitations, is determined by applying the new section 417(e)(3) assumptions for the plan. Whether or not the section 417(e)(3) amendment is adopted and effective before the freeze date, the section 415(b)(2)(E) amendments must provide that section 415(b) limitations that are applied to the old-law benefit are calculated without taking the section 417(e)(3) amendment into account until on or after the final implementation date for the plan.

### E. Repealing Amendment (Q&A-16)

Plans may have been amended after the enactment of GATT but before the enactment of SBJPA to take the section 415(b)(2)(E) changes into account. Such an amendment may be repealed as part of the amendments designed to bring the plan into compliance with the section 415(b)(2)(E) changes on or before the last day of the remedial amendment period. See Q&A-16.

### F. Interaction Between Plan Operation and Plan Amendment (Q&A-18)

An employer may amend the plan in any way that is permitted under Rev. Rul. 98-1 regardless of whether the amendment is consistent with prior operation of the plan. However, the effective date of the plan amendment must be the RPA '94 section 415 effective date for the plan, and, to the extent necessary, **plan operations must be retroactively conformed to the provisions of the plan as amended.** Thus, some prior distributions may have to be adjusted. If distributions under the plan were made in a form of benefit that is subject to section 417(e)(3) for periods before August 20, 1996, then, to the extent such distributions reflected section 415(b)(2)(E) prior to revision by section 1449(b) of SBJPA, they may be, but are not required to be, adjusted to conform with section 415(b)(2)(E) as amended by section 1449(b) of SBJPA. **Distributions made for periods after August 20, 1996 must, to the extent applicable, be adjusted to reflect the revisions made by section 1449(b) of SBJPA. Adjusted distributions must conform to the actual amendment adopted to comply with the section 415(b)(2)(E) changes.** See Q&A-11.

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Appendix - Checksheet for Plan Amendments that Implement Section 415(b)(2)(E)  
Changes of RPA '94 and SBJPA '96PRIVATE \_

1. What is the adoption date of the plan amendment (or portion thereof) that implements the changes made to section 415(b)(2)(E) by section 767(b) of RPA '94?

The plan amendment must be adopted on or before the last day of the remedial amendment period, or in connection to plan termination if earlier.

2. What is the effective date of the plan amendment (or portion thereof) that implements the changes made to section 415(b)(2)(E) by section 767(b) of RPA '94?

The effective date of such a plan amendment must be the first day of the first limitation year beginning after December 31, 1994 (or the first day of the first limitation year for the plan, if later). However, an employer may elect to make the plan amendment effective as of an earlier date that is on or after December 8, 1994 but such election may not be made on a retroactive basis.

3. Does the plan amendment (or portion thereof) apply the changes made to section 415(b)(2)(E) to all plan benefits, including benefits accrued before the first day of the first limitation year beginning after December 31, 1994?

If yes, and the plan already incorporates section 415 by reference, the 415 amendment merely needs to specify the applicable interest rate (see section 417(e)(3)) used under the plan for 415 purposes (the applicable mortality table under Rev. Rul. 95-6 may be incorporated by reference, or may be specified if desired).

If yes, and the plan does not incorporate section 415 by reference, the plan amendment must specify that the applicable interest rate and applicable mortality table will be used for purposes of converting benefit distributions in forms subject to section 417(e)(3) to an annual benefit pursuant to section 415(b)(2)(B). The plan amendment must also state the effective date as required in (2) above, and provide that the changes to section 415(b)(2)(E) will apply to all plan benefits, including benefits accrued prior to the first day of the first limitation year beginning after December 31, 1994.

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If no, the following information must be specified in the plan amendment:

(a) the date as of which the changes to section 415(b)(2)(E) are applied to new benefit accruals, but not to benefits accrued before such date (referred to in Rev. Rul. 98-1 as the freeze date).

(b) the earlier of (i) the later of the date that the plan amendment applying the changes to section 415(b)(2)(E) is adopted or made effective, and (ii) the first day of the first limitation year beginning after December 31, 1999 (referred to in Rev. Rul. 98-1 as the final implementation date).

(c) the benefits to which the changes to section 415(b)(2)(E) are not applied (referred to in Rev. Rul. 98-1 as old-law benefits).

(d) the method used to apply section 415(b) to plan benefits, providing the method satisfies the requirements of Q&A-14 of Rev. Rul. 98-1.

(e) specific provisions that preclude any future increases in the benefits to which the changes to section 415(b)(2)(E) are not applied.

(f) provisions that insure that determinations under section 415(b) with respect to a participant's benefits to which the changes to section 415(b)(2)(E) are not applied that are made for periods before the date in 3(b) above are based on the relevant provisions of the plan as adopted and in effect on December 7, 1994.

(g) if applicable, a specific amendment that repeals a prior 415 amendment that applied changes to section 415(b)(2)(E) made by RPA '94.

4. The following question relates to plan amendments under section 417(e)(3). If the answer to 3 is no, and if an amendment implementing changes made to section 417(e)(3) by RPA '94 was effective prior to the date in 3(a) above, was such an amendment (and any other amendments effective prior to the date in 3(a) above) taken into account in determining participants' benefits as of the date in (3)(a) above?

If yes, and the plan does not incorporate 415 provisions by reference, provisions under 3(f) are required.

If no, the amendment must be changed so that the section 417(e)(3) amendment is taken into account in determining participant's benefits as of the date in 3(a) above in accordance with a statement under 3(f).

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Rev. Rul. 98-1

Section 415. - Limitations on Benefits and Contributions under Qualified Plans

(Also ' 417.)

1998-2 I.R.B. 5; REV. RUL. 98-1

January 12, 1998

This revenue ruling modifies and supersedes Rev. Rul. 95-29, 1995-1 C.B. 81, which provided questions and answers on the limitations on benefits and contributions under ' 415 of the Internal Revenue Code (Code), as amended by the Uruguay Round Agreements Act, Pub. L. No. 103-465 (GATT), which includes the Retirement Protection Act of 1994 (RPA '94). This revenue ruling takes into account the applicable provisions of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188 (SBJPA), after the technical correction made by the Taxpayer Relief Act of 1997, Pub. L. No. 105-34 (TRA '97).

Until further guidance is issued, the guidance provided by these questions and answers may be relied on to administer plans. If, and to the extent, future guidance is more restrictive than the guidance in this revenue ruling, the future guidance will be applied without retroactive effect. No inference should be drawn regarding issues not raised that may be suggested by a particular question and answer or as to why certain questions, and not others, are included.

## **Background**

Section 415 provides that benefits accrued or payable under a qualified defined benefit plan may not exceed certain specified limitations. In general, annual benefits are limited to the lesser of \$ 90,000, as adjusted for cost-of-living increases (\$ 130,000 for 1998) and the 10-year phase-in under ' 415(b) (5) (A) (the ' 415(b) dollar limitation), or 100 percent of the participant's average compensation for the participant's high three consecutive years, as adjusted for the 10-year phase-in under ' 415(b) (5) (B) (the ' 415(b) compensation limitation).

Section 415(b) (2) (B) provides, with certain exceptions, that, if a benefit is payable other than as an annual straight life annuity, the benefit must be actuarially adjusted to an equivalent annual straight life annuity. Sections 415(b) (2) (C) and (D) require that, if a benefit is payable beginning at an age other than the participant's social security retirement age (SSRA), the ' 415(b) dollar limitation at that age equals the annual

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benefit that is actuarially equivalent to the ' 415(b) dollar limitation at the participant's SSRA.

Section 415(b) (2) (E) provides rules regarding the actuarial assumptions to be used in making the adjustments required under ' 415(b) (2) (B), (C), and (D). Section 415(b) (2) (E) (i) generally requires that, for purposes of adjusting any limitation or benefit under ' 415(b) (2) (B) or (C), the interest rate assumption shall not be less than the greater of 5 percent or the rate specified in the plan. Section 415(b) (2) (E) (iii) generally requires that, for purposes of adjusting any limitation under ' 415(b) (2) (D), the interest rate assumption shall not be greater than the lesser of 5 percent or the rate specified in the plan.

Section 417(e) (3) provides rules regarding the actuarial assumptions to be used to determine the present value of a participant's accrued benefit.

Sections 415(b) (2) (E) and 417(e) (3) of the Code were amended by ' 767 of RPA '94. Section 767(a) provided a specific mortality table and changed the applicable interest rate that must be used to determine the present value of a benefit subject to ' 417(e) (3) (' 417(e) (3) changes). Section 767(b) added ' 415(b) (2) (E) (v), which requires the mortality table prescribed by the Secretary to be used for adjusting any benefit or limitation under ' 415(b) (2). Section 767(b) also revised the interest rates used for adjusting a benefit or limitation in the case of a form of benefit subject to ' 417(e) (3) by inserting a new ' 415(b) (2) (E) (ii), which required that in such a case the applicable interest rate be substituted for the 5 percent interest rate specified in ' 415(b) (2) (E) (i).

The amendments made by ' 767(b) of RPA '94 were modified by ' 1449 of SBJPA. The amendments made by ' 1449 of SBJPA are effective as if included in ' 767 of RPA '94.

In general, ' 1449(a) of SBJPA provides that, in the case of plans adopted and in effect before December 8, 1994, the provisions of ' 767(b) shall not be required to be applied with respect to benefits accrued before the later of the date a plan amendment applying the amendments made by ' 767(b) is adopted or made effective, but not later than the first day of the first limitation year beginning after 1999. Section 1449(a) further provides that determinations under ' 415(b) (2) (E) before such date are made with respect to such benefits on the basis of ' 415(b) (2) (E) and the provisions of the plan as in effect on December 7, 1994, but only if such provisions of the plan meet the requirements of ' 415 as in effect on December 7, 1994. (Section 1604(b) (3) of TRA '97 deleted superfluous parenthetical language from this rule.) Section 1449(d) of SBJPA provides that if, within one year of the enactment of SBJPA, an amendment

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made to conform the plan to the requirements of ' 767 of RPA '94 is repealed, the original amendment is not taken into account for purposes of applying ' 1449(a).

Section 1449(b) of SBJPA amended ' 415(b) (2) (E) to provide that in the case of a form of benefit subject to ' 417(e) (3), the applicable interest rate is substituted for 5 percent solely for purposes of adjusting the benefit (and not for purposes of adjusting the ' 415(b) dollar limitation). Thus, regardless of the form of benefit, the interest rate used to reduce the ' 415(b) dollar limitation for benefits payable before SSRA is determined under the rules of ' 415(b) (2) (E) (i) (that is, it cannot be less than the greater of 5 percent or the rate specified in the plan).

Section 415(d) (1) (B) provides that the ' 415(b) compensation limitation is adjusted annually for cost-of-living increases in the case of participants who have separated from service. Section 732 of GATT changed the periods used to compute increases in the cost of living for purposes of these adjustments.

Rev. Rul. 95-29 provided guidance on limitations on benefits and contributions under ' 415 of the Code, as amended by GATT, including RPA '94. This revenue ruling modifies and supersedes Rev. Rul. 95-29.

Rev. Proc. 97-41, 1997-33 I.R.B. 51, provides guidance to sponsors of plans that are qualified under ' 401(a) of the Code with respect to the date by which they must adopt amendments to comply with changes in the law made by GATT and SBJPA.

### Questions and Answers

The following terms are used in this revenue ruling:

- ' 415(b) compensation limitation. See Background.
- ' 415(b) dollar limitation. See Background.
- ' 415(b) (2) (E) changes. See Q&A-1.
- ' 417(e) (3) changes. See Background.
- ' 1449(b) revisions. See Q&A-11.

Age-adjusted dollar limit. See Q&A-7.

Applicable interest rate. See Q&A-4.

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Applicable mortality table. See Q&A-6.

Final implementation date. See Q&A-12.

Old-law benefits. See Q&A-12.

Old-law limitations. See Q&A-13.

Participant's freeze date. See Q&A-13.

Plan rate and plan mortality table. See Q&A-7.

Repealing amendment. See Q&A-16.

RPA '94 ' 415 effective date. See Q&A-1.

### **(1) General Rules and Effective Dates**

Q-1. When are the changes to ' 415(b) (2) (E) made by ' 767(b) of RPA '94 (' 415(b) (2) (E) changes) effective?

A-1. Under ' 767(d) (1) of RPA '94, the ' 415(b) (2) (E) changes are generally effective as of the first day of the first limitation year beginning in 1995, except that an employer may elect to treat the ' 415(b) (2) (E) changes as being effective on an earlier date that is on or after December 8, 1994. For purposes of this revenue ruling, the date described in the preceding sentence is the RPA '94 ' 415 effective date.

Plan amendments that apply the ' 415(b) (2) (E) changes must be effective as of the RPA '94 ' 415 effective date. However, ' 1449(a) of SBJPA provides a rule under which the ' 415(b) (2) (E) changes are not required to be applied to certain benefits even after the RPA '94 ' 415 effective date. See Q&A-12.

Q-2. What plan benefits are subject to the interest rate prescribed by ' 415(b) (2) (E) (ii)?

A-2. The interest rate prescribed by ' 415(b) (2) (E) (ii) applies in the case of a form of benefit subject to ' 417(e) (3). See ' 417(e) (3) and the Income Tax Regulations thereunder to determine whether a form of benefit is subject to ' 417(e) (3).



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Q-3. Are plans that are not subject to ' 417(e) (3) subject to the requirements for assumptions under ' 415(b) (2) (E) (ii) and (v)?

A-3. Plans that are not subject to ' 417(e) (3), such as governmental plans and certain church plans, are not subject to the interest rate requirement under ' 415(b) (2) (E) (ii), but are subject to the mortality table requirement under ' 415(b) (2) (E) (v).

Q-4. What is the applicable interest rate, as defined in ' 417(e) (3), as referenced by ' 415(b) (2) (E) (ii)?

A-4. The regulations under ' 417(e) (3) (currently ' 1.417(e)-1T(d) (3) (i)) provide that the applicable interest rate under ' 417(e) (3) is the annual interest rate on 30-year Treasury securities as specified by the Commissioner.

Q-5. What is the time for determining the applicable interest rate?

A-5. A plan that has been amended to reflect the ' 417(e) (3) changes must use the same date for determining the applicable interest rate for purposes of applying the ' 415(b) (2) (E) changes as it uses for purposes of ' 417(e) (3). A plan that has not yet been amended to reflect the ' 417(e) (3) changes may use any date for determining the applicable interest rate for purposes of applying the ' 415(b) (2) (E) changes that is permitted under ' 417(e) (3) and the regulations thereunder (currently ' 1.417(e)-1T(d) (4)) for use in determining the applicable interest rate for purposes of ' 417(e) (3).

Q-6. What mortality table must be used to make adjustments to benefits and limitations under ' 415(b) (2) (E)?

A-6. Section 415(b) (2) (E) (v), added by RPA '94, provides that, for purposes of adjusting any benefit or limitation under ' 415(b) (2) (B), (C), or (D), the mortality table used shall be the table prescribed by the Secretary. Rev. Rul. 95-6, 1995-1 C.B. 80, provides the mortality table (applicable mortality table) which generally must be used for these purposes. For purposes of adjusting any limitation under ' 415(b) (2) (C) or (D), to the extent that a forfeiture does not occur upon death, the mortality decrement may be ignored prior to age 62 and must be ignored after SSRA. See Q&A G-3 and Q&A G-4 of Notice 83-10, 1983-1 C.B. 536.

Q-7. How are the ' 415(b) limitations applied to a benefit under a defined benefit plan that is not payable in the form of an annual straight life annuity within the meaning of ' 415(b) (2) (A) and that is not subject to ' 417(e) (3)?

A-7. The determination as to whether such a benefit satisfies the ' 415(b) limitations generally is made by comparing the equivalent annual benefit determined in Step 1 with

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the lesser of the age-adjusted dollar limit determined in Step 2 and the ' 415(b) compensation limitation determined in Step 3.

Step 1: Under ' 415(b) (2) (B), determine the annual benefit in the form of a straight life annuity commencing at the same age that is actuarially equivalent to the plan benefit. In general, ' 415(b) (2) (E) (i) and (v) require that the equivalent annual benefit be the greater of the equivalent annual benefit computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial equivalence for the particular form of benefit payable (plan rate and plan mortality table, or plan tabular factor, respectively) and the equivalent annual benefit computed using a 5 percent interest rate assumption and the applicable mortality table. This step does not apply to a benefit that is not required to be converted to a straight life annuity pursuant to ' 415(b) (2) (B) (for example, a qualified joint and survivor annuity).

Step 2: Under ' 415(b) (2) (C) or (D), determine the ' 415(b) dollar limitation that applies at the age the benefit is payable (age-adjusted dollar limit). The age-adjusted dollar limit is the annual benefit that is actuarially equivalent to an annual benefit equal to the ' 415(b) dollar limitation payable at the participant's SSRA.

If the age at which the benefit is payable is 62 or greater, and less than the participant's SSRA, the age-adjusted dollar limit is determined by reducing the ' 415(b) dollar limitation at the participant's SSRA using adjustment factors that are consistent with the factors used to reduce old-age insurance benefits under the Social Security Act. Pursuant to Q&A-5 of Notice 87-21, 1987-1 C.B. 458, the ' 415(b) dollar limitation at the participant's SSRA is reduced by 5/9 of 1 percent for each of the first 36 months by which benefits commence before the month in which the participant's SSRA is attained and by 5/12 of 1 percent for each additional month.

If the age at which the benefit is payable is less than 62, the age-adjusted dollar limit is determined by reducing the age-adjusted dollar limit at age 62 on an actuarially equivalent basis. In general, ' 415(b) (2) (E) (i) and (v) require that the reduced age-adjusted dollar limit be the lesser of the equivalent amount computed using the plan rate and plan mortality table (or plan tabular factor) used for actuarial equivalence for early retirement benefits under the plan and the amount computed using 5 percent interest and the applicable mortality table (used to the extent described in Q&A-6).

If the age at which the benefit is payable is greater than the participant's SSRA, the age-adjusted dollar limit is determined by increasing the ' 415(b) dollar limitation at the participant's SSRA on an actuarially equivalent basis. In general, ' 415(b) (2) (E) (i) and (v) require that the increased age-adjusted dollar limit be the lesser of the equivalent amount computed using the plan rate and plan mortality table (or plan

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tabular factor) used for actuarial equivalence for late retirement benefits under the plan and the equivalent amount computed using 5 percent interest and the applicable mortality table (used to the extent described in Q&A-6).

Step 3: Determine the participant's ' 415(b) compensation limitation. This limitation is equal to the participant's compensation averaged over the consecutive three-year period producing the highest average, as provided in ' 415(b) (3).

The plan does not satisfy the ' 415(b) limitations unless the equivalent annual benefit determined in Step 1 is no greater than the lesser of the age-adjusted dollar limit determined in Step 2 and the ' 415(b) compensation limitation determined in Step 3.

Q-8. How is ' 415(b) (2) (B) applied to a benefit under a defined benefit plan that is in a form of benefit subject to ' 417(e) (3)?

A-8. If a defined benefit plan provides a benefit in a form that is subject to ' 417(e) (3), the determination of the equivalent annual benefit is the same as in Q&A-7, Step 1, except that, under ' 415(b) (2) (E) (ii), the applicable interest rate is substituted for the 5 percent interest rate under ' 415(b) (2) (E) (i). Thus, the equivalent annual benefit must be the greater of the equivalent annual benefit computed using the plan rate and plan mortality table (or plan tabular factor) and the equivalent annual benefit computed using the applicable interest rate and the applicable mortality table.

Example: Plan A provides that single-sum distributions are determined as the actuarial present value of the annual straight life annuity payable at the actual retirement date. Plan A provides that a participant's single sum is determined as the greater of the present value using 6 percent interest and the UP-1984 Mortality Table and the present value using the applicable interest rate and applicable mortality table. In accordance with ' 417(e) and the regulations thereunder, Plan A provides that the single sum is not less than the actuarial present value of the normal retirement benefit using the applicable interest rate and the applicable mortality table. The plan has been amended to apply the ' 415(b) (2) (E) changes and, in accordance with that amendment, the ' 415(b) (2) (E) changes are applied to all accrued benefits for all participants under the plan.

Participant M, whose SSRA is age 65, retires at age 60 from Plan A and elects to receive a distribution in the form of a single sum. Under the plan formula, and before the application of ' 415 under the plan, the amount of the single sum is \$ 950,000, which is the present value of the early retirement benefit based upon 6 percent interest and the UP-1984 mortality table. This benefit must be converted to an actuarially equivalent straight life annuity commencing at age 60 in order to apply ' 415 under the

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plan. Assuming that the plan's applicable interest rate under ' 417(e) (3) is 8 percent, the conversion is made as follows:

First, divide \$ 950,000 by an immediate straight life annuity purchase rate at age 60 using the plan rate and plan mortality table for determining single sums. Based on 6 percent interest and the UP-1984 Mortality Table, the equivalent annual benefit is \$ 950,000/10.596, or \$ 89,656. Second, divide \$ 950,000 by an immediate straight life annuity purchase rate at age 60 using the applicable interest rate and the applicable mortality table. Based on 8 percent interest and the applicable mortality table, the equivalent annual benefit is \$ 950,000/10.098, or \$ 94,078. The equivalent annual benefit for purposes of ' 415 is the greater of the two resulting amounts, or \$ 94,078.

Q-9. How is the age-adjusted dollar limit determined under ' 415(b) (2) (C) when a benefit is payable before SSRA in a form subject to ' 417(e) (3)?

A-9. If a defined benefit plan provides a form of benefit subject to ' 417(e) (3) and the benefit is payable before a participant's SSRA, the age-adjusted dollar limit is determined in the same manner as in Q&A-7, Step 2. Thus, the ' 415(b) dollar limitation at the participant's SSRA is reduced by 5/9 of 1 percent for each of the first 36 months by which benefits commence before the month in which the participant's SSRA is attained and by 5/12 of 1 percent for each additional month and, if the age at which the benefit is payable is less than 62, is further reduced in accordance with ' 415(b) (2) (E) (i) and (v).

Example: Plan A described in Q&A-8 also provides that early retirement annuity benefits are equal to the normal form of annuity benefit payable at age 65, reduced by 4 percent for each year by which the early retirement age is less than 65. Participant M's retirement age is age 60, and Participant M has more than 10 years of plan participation at age 60. The age-adjusted dollar limit at age 60 is computed as follows:

The age-adjusted dollar limit at age 62 is determined by reducing the ' 415(b) dollar limitation at SSRA (assumed to be \$ 125,000) by a factor of 5/9 of 1 percent for 36 months. This results in an age-adjusted dollar limit of \$ 100,000 at age 62, which is further reduced as described below.

First, using the plan tabular factor for early retirement reductions of 4 percent per year, the benefit adjustment factor at age 62 would be 88 percent (100%-(4% x 3)). At age 60, the factor would be 80 percent (100%-(4% x 5)). Accordingly, the actuarially equivalent benefit at age 60 reduced in accordance with plan factors is equal to \$ 100,000 x 80%/88%, or \$ 90,909.

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Second, even though Participant M's distribution is in the form of a single sum which is subject to ' 417(e) (3), the age-adjusted dollar limit at age 62 is now reduced using an interest rate of 5 percent and the applicable mortality table. Assuming no mortality decrement is applied prior to age 62 (which is permitted because plan benefits are not subject to forfeiture upon death prior to the annuity starting date), the actuarially equivalent benefit at age 60 is \$ 86,661.

The age-adjusted dollar limit at age 60 is the lesser of \$ 90,909 and \$ 86,661, or \$ 86,661. Because the equivalent annual benefit of \$ 94,078 exceeds the age-adjusted dollar limit at age 60, the single-sum benefit determined in Q&A-8 does not satisfy the ' 415(b) limitations.

Q-10. Does a plan amendment that applies the ' 415(b) (2) (E) changes violate ' 411(d) (6)?

A-10. In general, a plan amendment that changes the interest rate or mortality table taken into account in determining a participant's accrued benefit is subject to the anti-cutback rules under ' 411(d) (6) of the Code. However, under ' 767(d) (2) of RPA '94, a participant's accrued benefit is not considered to be reduced in violation of ' 411(d) (6) merely because the plan is amended to apply the ' 415(b) (2) (E) changes. Therefore, a plan amendment that merely applies the ' 415(b) (2) (E) changes will not violate ' 411(d) (6) even if the amendment applies those changes to previously accrued benefits, including benefits accrued before the RPA '94 ' 415 effective date. Similarly, a plan amendment that merely applies the ' 415(b) (2) (E) changes will not violate ' 411(d) (6) even if the amendment applies those changes to distributions made on or after the RPA '94 ' 415 effective date and before the amendment. In addition, an amendment that merely repeals an original ' 415(b) (2) (E) amendment, as described in Q&A-16, will be treated as an amendment to apply the ' 415(b) (2) (E) changes for purposes of ' 767(d) (2) and, therefore, will not violate ' 411(d) (6).

Q-11. How is the relief provided under ' 767(d) (2) of RPA '94 affected by the retroactive amendment to ' 415(b) (2) (E) made by ' 1449(b) of SBJPA (the ' 1449(b) revisions)?

A-11. As described in Q&A-10, the ' 411(d) (6) relief provided by ' 767(d) (2) applies only to the extent that a reduction in accrued benefits results from a plan amendment that merely applies the ' 415(b) (2) (E) changes. For this purpose, a plan amendment is considered to apply the ' 415(b) (2) (E) changes only if either the plan, as amended, reflects the ' 1449(b) revisions for all distributions for periods on and after the RPA '94 ' 415 effective date or the plan, as amended, reflects the ' 1449(b) revisions for all distributions for periods after August 20, 1996. Thus, the relief under ' 767(d) (2) does not apply to a plan amendment that fails to reflect the ' 1449(b) revisions for

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distributions for periods after August 20, 1996. Consequently, a plan that has been amended to apply the ' 415(b) (2) (E) changes without regard to the ' 1449(b) revisions must be further amended, within the remedial amendment period under ' 401(b) for disqualifying provisions under SBJPA and GATT, to reflect the ' 1449(b) revisions (that is, it must use the greater of 5 percent and the plan rate in determining the age-adjusted dollar limit for early retirement) for distributions for periods after August 20, 1996. As described in Q&A-18, plan operations must be conformed to the terms of the plan. Accordingly, distributions for periods on or after the RPA '94 ' 415 effective date may have to be redetermined.

### **(2) Transition Rules**

Q-12. Must the ' 415(b) (2) (E) changes be applied to all benefits under the plan on and after the RPA '94 ' 415 effective date?

A-12. The ' 415(b) (2) (E) changes generally must be applied to all benefits under the plan on and after the RPA '94 ' 415 effective date, or, if later, the date the plan becomes effective. However, under ' 767(d) (3) (A) of RPA '94, as amended by ' 1449(a) of SBJPA, a plan adopted and in effect before December 8, 1994, may provide that the ' 415(b) (2) (E) changes do not apply with respect to benefits accrued before the earlier of (i) the later of the date a plan amendment applying the ' 415(b) (2) (E) changes is adopted or made effective, or (ii) the first day of the first limitation year beginning after December 31, 1999. For purposes of this revenue ruling, the date described in the preceding sentence (the earlier of the dates described in (i) and (ii)) is referred to as the final implementation date, and the benefits to which the ' 415(b) (2) (E) changes are not applied are referred to as old-law benefits. For purposes of determining the final implementation date, the date in (i) above that a plan amendment applying the ' 415(b) (2) (E) changes is made effective is the earliest date as of which, under the amendment, the ' 415(b) (2) (E) changes apply to all benefits accruing for the participants under the plan.

Any amendment that provides that the ' 415(b) (2) (E) changes will not apply to certain benefits must be adopted prior to the end of the remedial amendment period under ' 401(b) for disqualifying provisions under SBJPA and GATT. In addition, except where an employer makes a repealing amendment under Q&A-16, once the final implementation date for a plan resulting from any plan amendment implementing the ' 415(b) (2) (E) changes has passed, the extent to which the ' 415(b) (2) (E) changes are not applied to certain benefits may not be changed.

Q-13. How is a participant's old-law benefit determined?

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A-13. A participant's old-law benefit is determined as of a date specified in the plan for the participant (participant's freeze date) that is before the final implementation date. The plan may provide that the freeze date for all participants is the day before the final implementation date for the plan.

Alternatively, the plan may specify an earlier date as the freeze date for some or all participants. The participant's old-law benefit is determined for each possible annuity starting date and optional form of benefit based on the participant's accrued benefit under the terms of the plan as of the participant's freeze date, after applying ' 415 as in effect on December 7, 1994 (old-law limitations), including the participation requirements under ' 415(b) (5).

Under the second sentence of ' 767(d) (3) (A) of RPA '94 (as amended by SBJPA), before the final implementation date the old-law limitations are applied using all plan terms that were in effect on December 7, 1994 (that is, without regard to amendments made after December 7, 1994) and that are relevant in determining actuarial equivalence under ' 415(b) (2) (E). Therefore, except as provided in Q&A-15, in order to determine the old-law benefit, the ' 415(b) limitations must be applied using the plan's mortality table as in effect on December 7, 1994 and, except as provided in ' 415(b) (2) (D), an interest rate that is no less than the greater of 5 percent or the plan rate as in effect on December 7, 1994 to determine actuarial equivalence. If, as of December 7, 1994, the plan rate for a particular optional form of benefit was a variable interest rate, the plan rate that would be compared to 5 percent is the value of the variable rate at the time the old-law limitations are applied, not the value of the variable rate on December 7, 1994.

Except as provided in Q&A-15, plan amendments that are adopted after the participant's freeze date are not taken into account in determining the old-law benefit, and the old-law benefit is determined without regard to cost-of-living adjustments that become effective under ' 415(d) after the participant's freeze date.

Example: Plan B has a calendar plan year and limitation year. N is currently a participant in Plan B and has never participated in any other plan. Plan B is amended on December 1, 1998, to apply the ' 415(b) (2) (E) changes. As amended, the plan specifies that the ' 415(b) (2) (E) changes will not apply to benefits accrued as of December 31, 1997 (that is, December 31, 1997, is the freeze date for all participants). Thus, any optional form of benefit provided under the plan as of the freeze date (taking into account the old-law limitations) is an old-law benefit. As of December 7, 1994, the plan provides the normal retirement benefit in the form of a straight life annuity beginning at age 65. Early retirement benefits are available at any age on or after age

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60 with an actuarial reduction. The plan rate and the plan mortality table used for the reduction are 5 percent and the UP-1984 Mortality Table, respectively.

Under the plan, single-sum distributions are available at any permitted retirement age. Single-sum distributions are calculated as the actuarial present value of the straight life annuity benefit payable at the actual retirement age using the PBGC immediate interest rate and the UP-1984 Mortality Table. In accordance with ' 417(e) and the regulations thereunder, the plan further provides that any single-sum distribution must be at least as great as the actuarial present value of the participant's accrued normal retirement benefit computed using the PBGC interest rates for deferred annuities and the UP-1984 Mortality Table. The plan has not been amended to change the interest rate or mortality table used for determining single-sum benefits or early retirement reductions at any time after December 7, 1994.

There is no forfeiture of accrued benefits under the plan on account of death prior to the annuity starting date. Under the plan, the ' 415(b) limitations are applied only after the otherwise determined benefit has been adjusted for early retirement and for any optional form of benefit, and the mortality decrement is ignored prior to age 62.

Participant N's SSRA is 65. As of the freeze date, Participant N has 10 years of participation in the plan. Under the plan formula as of N's freeze date, Participant N's accrued benefit payable at normal retirement age (before the application of ' 415 under the plan) is \$ 110,000.

If Participant N were to retire in 1999 at age 60 and to elect, with spousal consent, to receive a distribution in the form of a single sum, then Participant N's single-sum distribution at retirement (before the application of ' 415 under the plan) would equal the single-sum equivalent of the early retirement annuity benefit under the terms of the plan. Participant N's early retirement benefit accrued as of N's freeze date and payable at age 60, determined using the plan rate and plan mortality table, is \$ 75,242. Under the plan, the single-sum distribution at age 60 (before the application of ' 415 under the plan), which is based on the immediate annuity of \$ 75,242, the PBGC immediate rate of 6 percent, and the UP-1984 Mortality Table, is \$ 797,264.

The old-law limitations must now be applied under the plan to determine the old-law benefit for any optional form of benefit elected by N. In this case, the plan rate used to determine single sums is the PBGC immediate rate of 6 percent and the plan mortality table is the UP-1984 Mortality Table. The age-adjusted dollar limit at age 60 determined on the basis of ' 415(b) (2) (E) as in effect on December 7, 1994 (using 5 percent interest and the UP-1984 Mortality Table) and without taking into account cost-of-living increases under ' 415(d) after the freeze date is \$ 86,143. Because \$ 75,242 (the



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annual benefit payable at age 60 that is actuarially equivalent to \$ 797,264, determined on the basis of ' 415(b) (2) (E) as in effect on December 7, 1994) does not exceed \$ 86,143, the single-sum old-law benefit is \$ 797,264.

Alternatively, if N were to elect to receive a distribution in the form of a straight life annuity commencing at age 60, then the old-law benefit for that optional form would be \$ 75,242 because that amount does not exceed the age-adjusted dollar limit of \$ 86,143.

Q-14. How are the ' 415(b) limitations applied to a benefit under a defined benefit plan if the ' 415(b) (2) (E) changes are not applied to the old-law benefits?

A-14. If the ' 415(b) (2) (E) changes are not applied to old-law benefits, the plan can apply the ' 415(b) limitations using one of three methods as outlined below. The plan must specify which of the three methods is being used.

Method 1: Under this method, the plan applies the ' 415(b) limitations using the steps in Q&A-7, and, if applicable, Q&A-8, except that, if the benefit is not payable in the form of an annual benefit within the meaning of ' 415(b) (2) (A), the equivalent annual benefit determined in Step 1 is computed separately with respect to the old-law benefit (not to exceed the total plan benefit) and the portion of the total plan benefit that exceeds the old-law benefit. The annual benefit that is equivalent to the old-law benefit is determined in accordance with ' 415(b) (2) (E) as in effect on December 7, 1994. The determination of the annual benefit that is equivalent to the portion of the plan benefit that is in excess of the old-law benefit must reflect the ' 415(b) (2) (E) changes. The results of these two separate computations are added together to determine the equivalent annual benefit, which is then used in the remaining steps in Q&A-7.

In accordance with ' 767(d) (3) (A) as amended by SBJPA, if the determination is being made before the final implementation date, then the plan rate and plan mortality table used to determine the annual benefit that is equivalent to the old-law benefit are based on the plan provisions in effect on December 7, 1994. By contrast, if the determination is being made on or after the final implementation date, then the plan rate and plan mortality table used to determine the annual benefit that is equivalent to the old-law benefit are based on the plan provisions in effect on the date of determination.

In some cases, the use of the applicable mortality table in adjusting the ' 415(b) dollar limitation under ' 415(b) (2) (C) or (D) can result in an age-adjusted dollar limit lower than the age-adjusted dollar limit used in determining the old-law benefit. A plan

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using Method 1 may provide that in any event the participant will receive no less than the old-law benefit, limited to the extent required under Q&A-15.

Method 2: Under this method, the plan applies the ' 415(b) limitations, using the steps in Q&A-7 and, if applicable, Q&A-8, to the total plan benefit, but provides that in any event the participant will receive no less than the old-law benefit, limited to the extent required under Q&A-15.

Method 3: Under this method, the plan applies the ' 415(b) limitations by limiting a benefit only to the extent needed to satisfy either Method 1 or Method 2 described above.

The following examples illustrate the application of Method 1, Method 2, and Method 3, respectively, of this Q&A-14.

Example 1: The facts with respect to Plan B and Participant N are as described in the example under Q&A-13. In addition, before applying ' 415 under the plan, N's total single-sum benefit payable at age 60 under Plan B is \$ 950,000. This amount is the present value of N's straight life annuity benefit commencing under Plan B at age 60 and computed using the PBGC immediate rate of 6 percent and UP-1984 Mortality Table. The applicable interest rate under ' 417(e) (3) and Plan B is 8 percent.

Plan B provides that the ' 415(b) (2) (E) changes will not apply to benefits accrued through December 31, 1997, in accordance with Method 1. In addition, as allowed by Method 1, Plan B provides that in any event a participant will receive no less than the benefits accrued through December 31, 1997, limited to the extent required under Q&A-15.

Under Plan B's terms, the ' 415(b) limitations are applied to N's benefit using the steps in Q&A-7 (as modified in accordance with Q&A-8 for distributions subject to ' 417(e) (3)), except that the equivalent annual benefit determined in accordance with Step 1 of Q&A-7 is computed separately with respect to N's single-sum old-law benefit and the portion of N's total single-sum benefit that exceeds the single-sum old-law benefit, and these two amounts are added together to determine N's total equivalent annual benefit.

First, the annual benefit payable at age 60 that is actuarially equivalent to N's single-sum old-law benefit of \$ 797,264 is determined on the basis of ' 415(b) (2) (E) as in effect on December 7, 1994. If the determination were before the final implementation date, all plan terms in effect on December 7, 1994 that are relevant in determining actuarial equivalence under ' 415(b) (2) (E) would be used. In this case, the ' 415(b) (2) (E) changes apply to benefits accruing for all participants under the

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plan on and after January 1, 1998. Consequently, the date the plan amendment applying ' 415(b) (2) (E) changes is made effective (within the meaning of Q&A-12) is January 1, 1998, and the final implementation date (based on the later of the date the plan amendment is adopted or made effective) is December 1, 1998.

Because the determination is being made in 1999, which is on or after the final implementation date, actuarial equivalence is determined taking into account any amendments that affect the plan rate and plan mortality table that are adopted or become effective after December 7, 1994. However, in this case there have been no amendments after December 7, 1994, and the interest rate used for purposes of this adjustment is the greater of the plan rate for determining single sums (6 percent) or 5 percent. The mortality table used is the plan mortality table for determining single sums (UP-1984 Mortality Table). The equivalent annual benefit is \$ 75,242.

Next, the annual benefit payable at age 60 that is actuarially equivalent to the portion of N's total single-sum benefit of \$ 950,000 that exceeds \$ 797,264, or \$ 152,736, is determined taking into account the ' 415(b) (2) (E) changes. For this purpose, \$ 152,736 is first converted to an equivalent annual benefit using the plan rate (6 percent) and the plan mortality table (UP-1984 Mortality Table). On this basis, the equivalent annual benefit is \$ 14,415. The additional \$ 152,736 is also converted to an equivalent annual benefit using the applicable interest rate (8 percent) and the applicable mortality table. On this basis, the equivalent annual benefit is \$ 15,125. Under Plan B, the annual benefit that is equivalent to \$ 152,736 for purposes of ' 415 is the greater of \$ 14,415 and \$ 15,125, or \$ 15,125. Thus, the annual benefit that is equivalent to the total single sum of \$ 950,000 for purposes of ' 415 is \$ 15,125 plus \$ 75,242, or \$ 90,367.

Next, the age-adjusted dollar limit at age 60 is determined taking the ' 415(b) (2) (E) changes into account. Assuming that the ' 415(b) dollar limitation effective for the 1999 calendar year is \$ 130,000, the age-adjusted dollar limit at age 60 is the lesser of the benefit that is actuarially equivalent to the age-adjusted dollar limit at age 62 (\$ 104,000) computed using the plan rate and the plan mortality table for making early retirement adjustments (5 percent and UP-1984 Mortality Table, respectively), or \$ 89,588, and the benefit computed using 5 percent and the applicable mortality table, or \$ 90,127. Thus, N's age-adjusted dollar limit at age 60 under Plan B is the lesser of \$ 89,588 and \$ 90,127, or \$ 89,588.

Because N's total single-sum benefit is greater than the single-sum old-law benefit and because the equivalent annual benefit (\$ 90,367) exceeds the age-adjusted dollar limit (\$ 89,588), N's single-sum benefit under Plan B must be limited to \$ 942,130 (\$ 797,264 + (\$ 89,588 - \$ 75,242) x 10.098) in order to satisfy the ' 415(b) limitations.

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Example 2: The facts are the same as in Example 1, except that the plan provides that the ' 415(b) (2) (E) changes will apply to the total plan benefit, but that in any event the participant will receive no less than the old-law benefit, limited to the extent provided in Q&A-15, in accordance with Method 2.

Under Plan B's terms, the ' 415(b) limitations are applied to N's benefit using the steps in Q&A-7 (as modified in accordance with Q&A-8 for distributions subject to ' 417(e) (3)). Thus, the \$ 950,000 single-sum benefit is first converted to an equivalent annual benefit using the plan rate and plan mortality table for determining single sums (6 percent and UP-1984 Mortality Table, respectively). On this basis, the equivalent annual benefit is \$ 89,656. The \$ 950,000 single-sum benefit is then converted to an equivalent annual benefit using the applicable interest rate (8 percent) and the applicable mortality table. On this basis, the equivalent annual benefit is \$ 94,078. Under Plan B, the annual benefit that is equivalent to \$ 950,000 for purposes of ' 415 is the greater of these two amounts, or \$ 94,078.

As derived in Example 1 above, the age-adjusted dollar limit at age 60 is \$ 89,588. Because the equivalent annual annuity (\$ 94,078) exceeds this amount and because the total single-sum benefit exceeds the single-sum old-law benefit, the total single-sum benefit must be limited to \$ 904,660 (\$ 89,588 x 10.098) in order to satisfy the ' 415(b) limitations.

Example 3: The facts are the same as in Example 1, except that the plan provides that, in accordance with Method 3, a benefit is limited only to the extent necessary to satisfy the ' 415(b) limitations using either Method 1 or Method 2.

In the case of Participant N, the maximum benefit that satisfies the ' 415(b) limitations using Method 1 is \$ 942,130, and the maximum benefit that satisfies the ' 415(b) limitations using Method 2 is \$ 904,660. Thus, the maximum benefit that satisfies the ' 415(b) limitations determined in accordance with Method 3 is \$ 942,130.

Q-15. Under what circumstances does a participant's old-law benefit change after the participant's freeze date?

A-15. A participant's old-law benefit cannot increase after the participant's freeze date. However, for any date after the participant's freeze date, the participant's old-law benefit must be limited if the old-law limitations as of that later date are less than the old-law benefit determined as of the participant's freeze date. For example, if, after the freeze date, annual additions are credited to a participant's account in an existing defined contribution plan of the same employer for a limitation year beginning before January 1, 2000, increases in that participant's defined contribution fraction could result in changes

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in the defined benefit fraction that would require a further limitation of the old-law benefit (depending on the terms of the plans).

Similarly, on or after the final implementation date, the determinations of actuarial equivalence under ' 415(b) (2) (E) that apply with respect to the old-law benefit must take into account any changes in plan terms that occur after December 7, 1994, that are relevant in applying the old-law limitations.

If the equivalent annual benefit determined in this manner exceeds the age-adjusted dollar limit, the old-law benefit must be limited accordingly.

Finally, the old-law benefit is limited to the extent that the total plan benefit determined before applying ' 415 under the plan is smaller than the old-law benefit. This could happen, for example, if the plan is amended to change the interest rate generally used to apply ' 417(e) (3) in a way that would reduce a participant's total plan benefit, even if the amendment occurs after the participant's freeze date.

Example 1: As of December 7, 1994, Plan C provided that single-sum distributions were determined using the PBGC interest rates and the UP-1984 Mortality Table. Plan C also provided that, for purposes of computing the ' 415(b) limitations, an interest rate equal to the greater of 5 percent or the applicable PBGC interest rate would be used with the UP-1984 Mortality Table. Under Plan C, the ' 415(b) limitations are applied only after the otherwise determined benefit has been adjusted for early retirement and for any optional form of benefit.

In order to reflect the ' 417(e) (3) changes, Plan C is amended on January 1, 1996, effective as of that date, to substitute the applicable interest rate and the applicable mortality table for the original plan rate and the UP-1984 Mortality Table, respectively, to compute single-sum benefits under the plan. These new provisions are applied to all plan benefits (as determined before applying ' 415 under the plan), whether accrued before or after the amendment date.

Plan C is amended July 1, 1999, to apply the ' 415(b) (2) (E) changes. Plan C's terms as amended provide that the ' 415(b) (2) (E) changes will not apply to any benefits accrued under the plan as of December 31, 1999. Thus, the freeze date for all participants in the plan is December 31, 1999, and the final implementation date for Plan C is January 1, 2000.

Because the January 1, 1996 amendment applying the ' 417(e) (3) changes is effective before the freeze date, it will be taken into account in determining plan benefits before applying ' 415. However, that amendment will not be taken into account in applying the old-law limitations to determine the old-law benefit until the final

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implementation date. Accordingly, in order to apply the old-law limitations to determine the old-law benefit before the final implementation date, the interest rate used to convert a single-sum benefit to an actuarially equivalent straight life annuity is the greater of 5 percent and the original plan rate.

Plan amendments made after December 7, 1994, including the January 1, 1996 amendment to use the applicable interest rate in determining equivalent single sums for all accrued benefits, must be taken into account in applying the old-law limitations on or after the final implementation date. Therefore, on or after the final implementation date, in determining the equivalent annual benefit under ' 415(b) (2) (B), the interest rate used is the greater of 5 percent and the new plan rate under the amendment (the applicable interest rate). If the new plan rate exceeds the greater of 5 percent and the original plan rate, the old-law benefit, determined as of the freeze date, might exceed the old-law limitations when those limitations are applied on or after the final implementation date. In such a case, the old-law benefit must be further limited in order to ensure that the old-law benefit does not exceed the old-law limitations.

Example 2: The facts are the same as in Example 1, except that the freeze date for a Participant P is December 31, 1994. Participant P's benefits are being determined as of December 31, 1996. As a result of the January 1, 1996 amendment, before applying ' 415 under the plan, P's total plan benefit as of December 31, 1996 (which includes accruals after the freeze date) is smaller than P's old-law benefit. Therefore, the old-law benefit must be limited so that it does not exceed the total plan benefit. Although, as described in Example 1, the January 1, 1996 plan amendment is not taken into account in applying the old-law limitations until the final implementation date of January 1, 2000, the reduction in the total plan benefit resulting from the January 1, 1996 amendment is taken into account immediately for purposes of determining old-law benefits.

Example 3: As of December 7, 1994, Plan D provided that single-sum benefits were determined using the lesser of 6 percent and the PBGC interest rate, and the UP-1984 Mortality Table. Plan D also provided that for purposes of computing benefit adjustments under ' 415, an interest rate equal to the greater of 5 percent and the lesser of 6 percent or the PBGC interest rate would be used with the UP-1984 Mortality Table.

In order to reflect the ' 417(e) (3) changes, Plan D is amended on December 1, 1996 to substitute the applicable interest rate and the applicable mortality table for the PBGC interest rate and the UP-1984 Mortality Table, respectively, but only with respect to benefits accruing after December 31, 1996. Plan D is amended July 1, 1999 to apply the ' 415(b) (2) (E) changes. Plan D's terms as amended provide that the ' 415(b) (2)

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(E) changes will not apply to any benefits accrued under the plan as of December 31, 1994. Thus, the final implementation date for Plan D is July 1, 1999.

Because the amendment to reflect the ' 417e) (3) changes only applies with respect to benefits accruing after December 1, 1996, it has no effect on the plan rate and plan mortality table used with respect to benefits accrued under Plan D as of the freeze date (December 31, 1994). Thus, even on or after the final implementation date, when the plan rate and plan mortality table must be determined taking into account plan amendments made after December 7, 1994, the plan rate and plan mortality table that are used to apply the old-law limitations will be unaffected by the December 1, 1996 amendment to reflect the ' 417(e) (3) changes, and the old-law benefit will not have to be limited because of that amendment.

### **(3) Plan Amendments and Operational Compliance Issues**

Q-16. How does an employer apply the transitional rule of ' 1449(d) of SBJPA to a plan that was amended on or before August 20, 1996, to apply ' 767 of RPA '94?

A-16. Section 1449(d) of SBJPA provides that, if a plan amendment to apply the ' 415(b) (2) (E) changes (original amendment) was adopted or made effective on or before August 20, 1996, the employer could adopt another amendment (repealing amendment) to repeal the original amendment, and the original amendment would not be taken into account in applying ' 767(d) (3) (A) of RPA '94 as revised by ' 1449(a) of SBJPA. Pursuant to section 7 of Rev. Proc. 97-41, an original amendment is not taken into account in applying ' 767(d) (3) (A) of RPA '94 as revised by ' 1449(a) of SBJPA if a repealing amendment is adopted on or before the last day of the plan's remedial amendment period under ' 401(b) for disqualifying provisions under SBJPA and GATT. Thus, an employer adopting a repealing amendment to a plan has the same options for that plan as an employer that has not made any plan amendments to apply the ' 415(b) (2) (E) changes.

Q-17. When must qualified plans be amended to apply the ' 415(b) (2) (E) changes?

A-17. Under section 6 of Rev. Proc. 97-41, plan amendments to apply the ' 415(b) (2) (E) changes must be adopted by the last day of the plan's remedial amendment period under ' 401(b) for disqualifying provisions under SBJPA and GATT. For plans other than governmental plans, section 6 of Rev. Proc. 97-41 extended the remedial amendment period to the last day of the first plan year beginning on or after January 1, 1999. For governmental plans, the remedial amendment period is extended to a later date.

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Under section 9 of Rev. Proc. 97-41, if a plan terminates prior to the date amendments otherwise must be adopted, the plan must be amended to conform to the applicable ' 415(b) (2) (E) changes in connection with that termination.

Q-18. Must a plan amendment to apply the ' 415(b) (2) (E) changes conform the terms of the plan to the plan's operation prior to the date the plan is amended?

A-18. No. Except as discussed below, an employer may amend its plan within the remedial amendment period described in Q&A-17 to apply the ' 415(b) (2) (E) changes in any manner permitted under this revenue ruling (including an amendment to provide that the ' 415(b) (2) (E) changes will not apply to certain benefits), regardless of whether the amendment is consistent with the plan's operation prior to the date the plan is amended. However, this remedial amendment period is available only if, in accordance with ' 401(b) and the regulations thereunder, all of the provisions of the plan needed to satisfy the qualification requirements are in effect by the end of the remedial amendment period and have been made effective for all purposes for the entire period (that is, beginning with the RPA '94 ' 415 effective date). Thus, plan operations (including prior distributions from the plan) must be changed to the extent necessary to conform the operations retroactively to the terms of the plan as retroactively amended for the ' 415(b) (2) (E) changes, including, for example, plan terms that implement the ' 1449(b) revisions under Q&A-11.

The following are examples of plan amendments that apply the ' 415(b) (2) (E) changes and their effects on prior distributions.

Example 1: Employer X maintains Plan E, a qualified defined benefit plan that was adopted and effective on January 1, 1985. The plan year and the limitation year for Plan E are the calendar year. In making distributions for periods after January 1, 1995, and before August 20, 1996, Employer X applied the ' 415(b) (2) (E) changes, but did not reduce a participant's benefit below the participant's accrued benefit as of December 31, 1994.

Plan E is amended on December 1, 1999, effective on January 1, 1995, to apply the ' 415(b) (2) (E) changes. The amendment further provides that the ' 415(b) (2) (E) changes do not apply to any benefits accrued before January 1, 2000, in accordance with Method 2 of Q&A-14. Therefore, the amendment to apply the ' 415(b) (2) (E) changes is made effective (within the meaning of Q&A-12) on January 1, 2000, and Plan E has a final implementation date of January 1, 2000.

Under ' 767(d) (3) (A), determinations under ' 415(b) (2) (E) with respect to old-law benefits made before January 1, 2000, are based on ' 415(b) (2) (E) and plan terms as in effect on December 7, 1994. Plan operations must be retroactively conformed to the



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terms of the plan as retroactively amended. Therefore, distributions made from Plan E between January 1, 1995 and August 20, 1996 must be redetermined to reflect the freeze date used in the December 1, 1999 amendment.

Example 2: Employer Y maintains Plan F, a qualified defined benefit plan that was adopted and effective on January 1, 1985. The plan year and the limitation year for Plan F are the calendar year. In making distributions for periods after January 1, 1995, including distributions for periods after August 20, 1996, Employer Y applied the ' 415(b) (2) (E) changes using ' 415(b) (2) (E) (ii) as amended by RPA '94, but did not take the ' 1449(b) revisions into account.

Plan F is amended on November 1, 1999, effective on January 1, 1995, to apply the ' 415(b) (2) (E) changes. The amendment provides, that for distributions for periods after January 1, 1995, and on or before August 20, 1996, in the case of a form of benefit subject to ' 417(e) (3), the applicable interest rate is substituted for 5 percent in determining the age-adjusted dollar limits. For distributions for periods after August 20, 1996, the amendment reflects the ' 1449(b) revisions. In accordance with Method 2 of Q&A-14, the amendment further provides that the benefits of any current or former participant shall not be reduced below the participant's accrued benefit as of December 31, 1994. Therefore, the amendment adopted November 1, 1999 to apply the ' 415(b) (2) (E) changes is made effective (within the meaning of Q&A-12) on January 1, 1995, and Plan F has a final implementation date of November 1, 1999.

Plan operations (including distributions made from Plan F on or after the RPA '94 ' 415 effective date) must be retroactively conformed to the terms of the plan as retroactively amended. In this case, distributions from Plan F made before the amendment conform to the terms of the plan except to the extent that distributions for periods after August 20, 1996 did not reflect the ' 1449(b) revisions. Such distributions will have to be redetermined.

Example 3: Employer Z maintains Plan G, a qualified defined benefit plan that was adopted and effective on January 1, 1982. The plan year and limitation year are the calendar year. Plan G is amended on March 1, 1998, effective on January 1, 1995, to apply the ' 415(b) (2) (E) changes. The amendment provides that in the case of participants who terminate before February 1, 1998, the ' 415(b) (2) (E) changes do not apply to benefits accrued before January 1, 1995, in accordance with Method 2 of Q&A-14. The amendment further provides that in the case of participants who have an hour of service on or after February 1, 1998, the ' 415(b) (2) (E) changes do not apply to benefits accrued before January 1, 1999, in accordance with Method 1 of Q&A-14. In making distributions since January 1, 1995, Employer Z applied the ' 415(b) (2) (E)

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changes, but did not reduce the participant's benefit below the participant's accrued benefit as of December 31, 1994.

Plan operations (including distributions made from Plan G on or after the RPA '94 ' 415 effective date) must be retroactively conformed to apply the plan terms as retroactively amended. In the case of Plan G, distributions made for participants who terminated prior to February 1, 1998, will conform to the terms of the plan (except to the extent a distribution for a period after August 20, 1996 might have reflected ' 415(b) (2) (E) (ii), as amended by RPA '94, but before amendment by ' 1449(b) of SBJPA).  
(4) Plan Funding

Q-19. May the ' 415(b) (2) (E) changes be taken into account for purposes of the minimum funding standards under ' 412 before the plan is amended to reflect these changes?

A-19. Except as provided under ' 412(c) (12) or by the Commissioner, changes in plan benefits that become effective after the first day of the current plan year may not be anticipated for purposes of ' 412. See ' 1.412(c) (3)-I(d) (1).

In the case of a plan that is operated in accordance with the ' 415(b) (2) (E) changes, the anticipation of a plan amendment applying the ' 415(b) (2) (E) changes is hereby permitted for purposes of ' 412 until the final implementation date. For purposes of the preceding sentence, for plan years beginning before January 1, 1997, the anticipated plan amendment need not reflect the amendments made to ' 415 of the Code or ' 767 of RPA '94 by ' 1449 of SBJPA. For plan years beginning on or after January 1, 1997, a plan amendment applying the ' 415(b) (2) (E) changes may be anticipated only if the plan amendment is permitted under this revenue ruling and only if it is described in an attachment to a Schedule B of Form 5500 for the plan year that is filed on or before the due date (including extensions) for such Schedule B. The attachment must specify the extent to which the anticipated plan amendment provides that the ' 415(b) (2) (E) changes will not apply to participants' old-law benefits (including, if applicable, any freeze date under Q&A-13 and method under Q&A-14). Note that if the ' 415(b) (2) (E) changes are retroactively applied to all benefits under the plan, this must be specified in the attachment. In addition, once a Schedule B of Form 5500 is filed for a plan year, the anticipated amendment, if any, that was used in applying ' 412 for that year cannot be changed (for purposes of applying ' 412 for that year).

If no such attachment is made to Schedule B of Form 5500 for a plan year, the employer may not anticipate the ' 415(b) (2) (E) changes for that plan year and must determine the minimum funding standard using the terms of the plan.

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Q-20. What are the implications of a plan being funded on the basis of plan terms without taking the ' 415(b) (2) (E) changes into account?

A-20. If an employer has not yet amended its plan to reflect the ' 415(b) (2) (E) changes, funding on the basis of plan terms could result in a plan being funded based on benefits that exceed the ' 415(b) limitations. Because ' 404(j) provides that benefits in excess of the ' 415(b) limitations may not be taken into account in determining a deduction under ' 404, contributions that are made as a result of benefits that are in excess of the ' 415 limits are nondeductible, regardless of whether they are required under ' 412. Thus, if an employer has not yet amended its plan to apply the ' 415(b) (2) (E) changes, the employer could be required to make nondeductible contributions to the plan to satisfy the minimum funding standards, unless (in accordance with Q&A-19) a plan amendment to apply the ' 415(b) (2) (E) changes is anticipated.

However, for taxable years relating to plan years beginning prior to January 1, 1997, the Service will not assert a violation of ' 404(j) merely because contributions are made in amounts necessary to satisfy minimum funding standards calculated based on the terms of the plan, provided that the terms of the plan satisfy old-law limitations. The preceding sentence will not apply with respect to a plan year if a Schedule B of Form 5500 has been filed for that plan year prior to January 12, 1998, for which the minimum funding standards have been calculated by anticipating an amendment applying the ' 415(b) (2) (E) changes.

### (5) Miscellaneous

Q-21. Are the RPA '94 ' 415 effective date and the final implementation date for a plan affected by the date the ' 417(e) (3) changes are made effective for the plan?

A-21. No. The RPA '94 ' 415 effective date applies regardless of when the ' 417(e) (3) changes are made effective for the plan. In addition, the final implementation date for a plan may be different from the date the ' 417(e) (3) changes are made effective for the plan.

Q-22. Must a plan provide a uniform freeze date under Q&A-13 and a uniform method under Q&A-14 for all participants?

A-22. No. A plan may provide different participant freeze dates under Q&A-13 or different methods under Q&A-14 for different participants in the plan. In addition, a plan may provide no freeze date for some participants (that is, the ' 415(b) (2) (E) changes apply to the entire accrued benefit of those participants), while providing a freeze date for other participants. However, the availability of a specific participant freeze date

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under Q&A-13 or method described in Q&A-14 is a benefit, right, or feature, which must satisfy the nondiscriminatory availability requirement of ' 1.401(a) (4)-4. Furthermore, in accordance with Q&A-11 of Notice 87-21, if a limitation under ' 415 may be applied in more than one manner, the plan must specify the manner in which the limitation is to be applied.

Q-23. Are fully insured plans that meet the accrued benefit requirements of ' 411(b) by satisfying the requirements of ' 411(b) (1) (F) subject to the new requirements under ' 415(b) (2) (E) as amended by RPA '94 and SBJPA?

A-23. Yes, these plans are subject to all of the requirements of ' 415.

Q-24. How is the ' 415(b) compensation limitation adjusted for years beginning after December 31, 1994?

A-24. Section 415(d) (1) (B) provides that the ' 415(b) compensation limitation is adjusted annually for cost-of-living increases in the case of a participant who has separated from service. Section 732(b) of GATT changed the base period for computing the annual adjustments.

For a participant separating from service on or before December 31, 1994, the ' 415(b) compensation limitation for the 1995 calendar year is computed by multiplying the participant's compensation limitation, as adjusted under prior law through the 1994 calendar year, by 1.0217. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue ruling has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1563.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue ruling is in Q&A-19. This revenue ruling provides guidance on the limitations on benefits and contributions under ' 415 of the Code and ' 767 of RPA '94 as amended by ' 1449 of SBJPA, including the various options that an employer may elect when implementing the amendment. This information will be used in determining benefits taken into account for purposes of the minimum funding requirements for the plan. The collection of information is required to assure compliance with the minimum funding requirements. The likely respondents are

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businesses or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

The estimated total annual reporting burden is 35,000 hours.

The estimated annual burden per respondent varies from 15 minutes to 45 minutes, depending on individual circumstances, with an estimated average of 30 minutes. The estimated number of respondents is 70,000.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Effect On Other Documents

Rev. Rul. 95-29, 1995-1 C.B. 81, is modified and superseded.

### Drafting Information

The principal authors of this revenue ruling are John Heil and Martin Pippins of the Employee Plans Division. For further information regarding this revenue ruling, contact the Employee Plans Division's taxpayer assistance number at (202) 622-6076 (not a toll-free number) between the hours of 2:30 p.m. and 3:30 p.m., Eastern Time, Monday through Thursday. Mr. Heil's telephone number is (202) 622-7383 (also not a toll-free number). Mr. Pippins' telephone number is (202) 622-6261 (also not a toll-free number).

# Employee Plans CPE Technical Topics for 1999

Rev. Rul. 95-6

Section 415. -- Limitations on Benefits and Contributions Under Qualified Plans

(Also Section 417.)

1995-1 C.B. 80; 1995-4 I.R.B. 22; REV. RUL. 95-6

January 23, 1995

Mortality table; limitation on benefits. The applicable mortality table for purposes of adjusting any benefit or limitation under section 415(b)(2) of the Code, as amended by the Uruguay Round Agreements Act, Public Law 103-465 (GATT), is provided.

## ISSUE

What mortality table is the applicable mortality table to be used under ' 415(b)(2)(E)(v) and ' 417(e)(3)(A)(ii)(I) of the Internal Revenue Code, as amended by ' 767 of the Uruguay Round Agreements Act, P. Law 103-465 (GATT)?

## LAW AND ANALYSIS

Section 415(b) of the Code provides for limitations on benefits payable under qualified pension plans. Section 415(b)(1) provides that the limitation on benefits, when expressed as an annual benefit (i.e., a benefit payable annually in the form of a straight life annuity with no ancillary benefits) is the lesser of (A) \$ 90,000 (as adjusted for cost-of-living), or (B) 100 percent of the participant's average compensation for the high three years. Section 415(b)(2)(B) provides that if the benefit under the plan is payable in any form other than a straight life annuity, the determination of whether the limitation of ' 415(b)(1) has been satisfied shall be made by adjusting such benefit so that it is equivalent to a straight life annuity. Sections 415(b)(2)(C) and (D) provide for adjustments to the \$ 90,000 (as adjusted for cost-of-living) limit when benefits begin at an age other than at social security retirement age.

Section 767(b) of GATT added ' 415(b)(2)(E)(v) to the Code. Section 415(b)(2)(E)(v) provides that, for purposes of adjusting any benefit or limitation under ' 415(b)(2)(B), (C), or (D), the mortality table used shall be the table prescribed by the Secretary. The statute further provides that the table shall be based on the prevailing commissioners' standard table (described in ' 807(d)(5)(A)) used to determine reserves for group

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annuity contracts issued on the date the adjustment is being made (without regard to any other subparagraph of ' 807(d)(5)).

Section 417(e)(3) of the Code provides rules for the determination of the present value of plan benefits for purposes of ' 417(e). Section 767(a) of GATT amended ' 417(c)(3)(A)(i) to provide that (except for a transitional rule provided in subparagraph (B)) for purposes of paragraphs (1) and (2) of ' 417(e), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate. In addition, GATT amended ' 411(a)(11)(B) to provide that the determination of present value for purposes of ' 411(a)(11)(A) shall be calculated in accordance with ' 417(e)(3).

Section 417(e)(3)(A)(ii)(I) of the Code defines the term "applicable mortality table" as the table prescribed by the Secretary. The statute further provides that the table shall be based on the prevailing commissioners' standard table (described in ' 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date the adjustment is being made (without regard to any other subparagraph of ' 807(d)(5)).

For purposes of ' 807(d)(5) of the Code, Rev. Rul. 92-19, 1992-1 C.B. 227, sets forth the prevailing commissioners' standard table for group annuities as the 1983 Group Annuity Mortality Table (83 GAM).

The Supreme Court, in *Arizona v. Norris*, 463 U.S. 1073, 1084-1086(1983), held that the application of sex distinct actuarial tables to employees based upon their gender in calculating the amount of retirement benefits violates Title VII of the Civil Rights Act of 1964.

This revenue ruling provides the applicable mortality table to be used for purposes of adjusting benefits or limitations under ' 415(b)(2) and determining the present value of plan benefits under ' 417(c)(3) of the Code.

### **HOLDING**

The following mortality table, based upon a fixed blend of 50 percent of the male mortality rates and 50 percent of the female mortality rates from the 83 GAM, is the applicable mortality table for purposes of adjusting benefits or limitations under ' 415(b)(2) and determining the present value of plan benefits under ' 417(e)(3) of the Code. The table shows, for each age, the number living based upon a starting population of one million lives at age 5 (1[x]), and the annual rate of mortality (q[x]).

Mortality Table for Sections 415 and 417(e)

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Age	l[x]	q[x]
5	1000000.00	0.000257
6	999743.50	0.000229
7	999514.56	0.000210
8	999304.66	0.000199
9	999105.80	0.000195
10	998911.47	0.000195
11	998717.18	0.000201
12	998516.44	0.000209
13	998308.25	0.000216
14	998093.12	0.000224
15	997869.54	0.000233
16	997637.54	0.000241
17	997397.11	0.000251
18	997146.76	0.000261
19	996887.00	0.000272
20	996615.85	0.000283
21	996333.81	0.000297
22	996038.40	0.000310
23	995729.62	0.000325
24	995406.51	0.000341
25	995067.08	0.000359
26	994710.34	0.000378
27	994334.34	0.000398
28	993938.60	0.000422
29	993519.65	0.000446
30	993076.54	0.000475
31	992605.33	0.000505
32	992104.56	0.000538
33	991571.30	0.000574
34	991002.14	0.000614
35	990393.67	0.000668
36	989732.08	0.000705
37	989034.82	0.000751
38	988292.55	0.000806
39	987495.98	0.000873
40	986634.39	0.000952
41	985695.61	0.001043
42	984667.53	0.001151



## **Employee Plans CPE Technical Topics for 1999**

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43	983534.18	0.001278
44	982277.22	0.001426
45	980876.98	0.001597
46	979311.01	0.001794
47	977554.13	0.002014
48	975585.83	0.002252
49	973388.81	0.002509
50	970946.57	0.002778
51	968249.28	0.003059
52	965287.89	0.003352
53	962052.73	0.003659
54	958532.10	0.003988
55	954709.95	0.004336
56	950570.33	0.004711
57	946092.67	0.005121
58	941247.73	0.005581
59	935995.10	0.006103
60	930283.18	0.006700
61	924050.75	0.007383
62	917228.49	0.008172
63	909733.35	0.009080
64	901472.97	0.010127
65	892344.21	0.011328
66	882235.73	0.012698
67	871033.10	0.014242
68	858627.42	0.015966
69	844919.00	0.017869
70	829821.14	0.019958
71	813259.99	0.022241
72	795172.27	0.024765
73	775480.23	0.027581
74	754092.09	0.030740
75	730911.68	0.034295
76	705845.43	0.038286
77	678821.43	0.042715
78	649825.57	0.047569
79	618914.35	0.052837
80	586212.77	0.058508
81	551914.93	0.064570
82	516278.05	0.071006
83	479619.47	0.077798

## Employee Plans CPE Technical Topics for 1999

84	442306.04	0.084927
85	404742.31	0.092377
86	367353.43	0.100370
87	330482.17	0.108870
88	294502.57	0.118004
89	259750.09	0.128107
90	226474.42	0.139029
91	194988.02	0.150645
92	165614.05	0.163045
93	138611.51	0.176292
94	114175.41	0.191504
95	92310.42	0.208253
96	73086.54	0.225097
97	56635.02	0.242999
98	42872.79	0.262351
99	31625.07	0.283670
100	22654.00	0.307186
101	15695.01	0.333156
102	10466.13	0.361975
103	6677.66	0.394472
104	4043.51	0.432808
105	2293.45	0.478674
106	1195.64	0.533916
107	557.27	0.600414
108	222.68	0.680076
109	71.24	0.774845
110	16.04	1.000000

### DRAFTING INFORMATION

The principal author of this revenue ruling is Donna Prestia of the Employee Plans Division. For further information regarding this revenue ruling, please contact the Employee Plans Division's taxpayer assistance telephone service at (202) 622-6076 between 2:30 and 4:00 Eastern time (not a toll-free number) Monday thru Thursday. Ms. Prestia's number is (202) 622-7377 (also not a toll-free number).