

of this section), in order to comply with the maximum benefit safe harbor, the employee may not receive an aggregate allocation under all defined contribution plans of the employer in excess of five percent of plan year compensation (i.e., 50 percent of the defined contribution maximum described in paragraph (g)(3)(iv) of this section).

(iii) *Special rule for floor-offset arrangements.* In the case of a floor-offset arrangement (as described in § 1.401(a)(4)-8(d)), the minimum or maximum benefit rules are applied to each plan as if the other plan did not exist. Thus, the defined benefit plan must provide at least 100 percent of the defined benefit minimum (or no more than 100 percent of the defined benefit maximum) based on the gross benefit prior to offset, and the defined contribution plan must provide at least 100 percent of the defined contribution minimum (or no more than 100 percent of the defined contribution maximum).

(5) *Certain contingency provisions ignored.* For purposes of this paragraph (g), an employee's accrual or allocation rate is determined without regard to any minimum benefit or any maximum benefit limitation that is applicable to the employee only if the separate line of business fails otherwise to satisfy the requirement of administrative scrutiny.

(6) *Employees taken into account.* For purposes of this paragraph (g), an employee is taken into account if the employee is taken into account for purposes of applying section 410(b) with respect to any testing day for the testing year. For this purpose, employees described in section 410 (b)(3) and (b)(4) are excluded. However, section 410(b)(4) is applied with reference to the lowest minimum age requirement applicable, and with reference to the lowest service requirement applicable under any plan of the employer that benefits employees of the separate line of business, as if all the plans were a single plan under § 1.410(b)-6(b)(2). For purposes of the minimum benefit requirement of paragraph (g)(2) of this section, section 410(b)(4) may be applied with reference to the lowest minimum age requirement, and with reference to the lowest minimum service requirement, applicable under any plan of the employer

that benefits highly compensated employees of the separate line of business, as if all the plans were a single plan under § 1.410(b)-6(b)(2), or, if no plan of the employer benefits highly compensated employees of the separate line of business, with reference to the greatest age and service requirements permitted under section 410(a)(1)(A). The employees of the separate line of business are determined by applying § 1.414(r)-7 to the employees taken into account under this paragraph (g)(6). An employee is treated as a highly compensated employee for purposes of this paragraph (g) if the employee is treated as a highly compensated employee for purposes of applying section 410(b) on any testing day for the testing year. For the definition of "testing day," see § 1.414(r)-11(b)(6).

[T.D. 8376, 56 FR 63446, Dec. 4, 1991, as amended by T.D. 8548, 59 FR 32919, June 27, 1994; T.D. 9169, 69 FR 78153, Dec. 29, 2004]

§ 1.414(r)-6 Qualified separate line of business—administrative scrutiny requirement—individual determinations.

(a) *In general.* A separate line of business (as determined under § 1.414(r)-3) that does not satisfy any of the safe harbors in § 1.414(r)-5 for a testing year nonetheless satisfies the administrative scrutiny requirement of § 1.414(r)-1(b)(2)(iv)(D) if the employer requests and receives from the Commissioner an individual determination under this section that the separate line of business satisfies the requirement of administrative scrutiny for the testing year. This section implements the individual determinations provided for under section 414(r)(2)(C). The Commissioner shall issue such an individual determination only when it is consistent with the purpose of section 414(r), taking into account the non-discrimination requirements of sections 401(a)(4) and 410(b). Paragraph (b) of this section authorizes the Commissioner to establish procedures for requesting and granting individual determinations.

(b) *Authority to establish procedures.* The Commissioner may, in revenue rulings and procedures, notices, and other guidance, published in the Internal Revenue Bulletin (see

§ 601.601(d)(2)(ii)(b) of this chapter), provide any additional guidance that may be necessary or appropriate for requesting and granting individual determinations under this section. For example, such guidance may specify the circumstances in which an employer may request an individual determination and factors to be taken into account in deciding whether to grant a favorable individual determination. In addition, such guidance may describe situations that automatically fail the administrative scrutiny requirement.

[T.D. 8376, 56 FR 63452, Dec. 4, 1991, as amended by T.D. 8548, 59 FR 32920, June 27, 1994]

§ 1.414(r)-7 Determination of the employees of an employer's qualified separate lines of business.

(a) *Introduction*—(1) *In general.* This section provides the rules for determining the employees of each qualified separate line of business operated by an employer. Paragraph (a)(2) of this section lists the specific provisions of the regulations for which these rules apply. Paragraph (b) of this section provides the procedure for assigning the employees of the employer among the qualified separate lines of business of the employer and for determining the day or days on which such assignments must be made. Under this procedure, each employee (i.e., a substantial-service employee or a residual shared employee as defined in § 1.414(r)-11(b)(2) and (4)) is assigned to a single qualified separate line of business in a consistent manner for all purposes listed in paragraph (a)(2) of this section with respect to the testing year and plan years beginning within the testing year. Paragraph (c) of this section provides methods for allocating residual shared employees among qualified separate lines of business.

(2) *Purposes for which this section applies.* This section applies solely for purposes of determining whether—

(i) A separate line of business satisfies the statutory safe harbor of § 1.414(r)-5(b) for a testing year (see § 1.414(r)-5(b)(3) for the employees taken into account for this purpose);

(ii) A separate line of business satisfies the merger and acquisition safe harbor of § 1.414(r)-5(d) for a testing year (see § 1.414(r)-5(d)(2) for the em-

ployees taken into account for this purpose);

(iii) A separate line of business satisfies the average benefits safe harbor of § 414(r)-5(f) for a testing year (see § 414(r)-5(f)(4) for the employees taken into account for this purpose);

(iv) A separate line of business satisfies the minimum or maximum benefits safe harbor of § 414(r)-5(g) for a testing year (see § 1.414(r)-5(g)(6) for the employees taken into account for this purpose);

(v) A plan of the employer satisfies sections 410(b) and 401(a)(4) for a plan year (see § 414(r)-8(d)(3) for the employees taken into account for this purpose); or

(vi) A plan of the employer satisfies section 401(a)(26) for a plan year (see § 414(r)-9(c)(3) for the employees taken into account for this purpose).

(b) *Assignment procedure*—(1) *In general.* To apply the provisions listed in paragraph (a)(2) of this section with respect to a testing year or plan year, as the case may be, each of the employees taken into account under that provision must be assigned to a qualified separate line of business of the employer on one or more testing days (or section 401(a)(26) testing days) during the year. The first day for which this assignment procedure is required for a testing year is the first testing day. See § 414(r)-11(b)(6), (7) and (8) (definitions of “testing day”, “first testing day” and “section 401(a)(26) testing day”). Section § 414(r)-8 may require that the assignment procedure be repeated for testing days that fall after the first testing day (including testing days that fall after the close of the testing year in a plan year that begins in the testing year). Accordingly, new employees may be taken into account for the first time on these later testing days who were not taken into account on the first testing day. Section § 414(r)-9 may have the same effect with respect to section 401(a)(26) testing days that fall after the first testing day.

(2) *Assignment for the first testing day.* The employees taken into account under a provision described in paragraph (a)(2) of this section with respect to the first testing day for a testing