

arrangement, determined under the terms of the plan. A plan must provide whether an employee who makes an affirmative election remains a covered employee. If a plan provides that an employee who makes an affirmative election described in paragraph (e)(2)(i) or (e)(2)(ii) of this section remains a covered employee, then the employee must continue to receive the notice described in paragraph (b)(3) of this section and the plan may be eligible for the excise tax relief with respect to excess amounts distributed within 6 months after the end of the plan year under section 4979(f)(1). Such an employee will also have the default election reapply if the plan provides that the employee's prior affirmative election no longer remains in effect and the employee does not make a new affirmative election.

(4) *Default elective contributions.* Default elective contributions means the contributions that are made at a specified level or amount under an automatic contribution arrangement in the absence of a covered employee's affirmative election that are—

(i) Contributions described in section 402(g)(3); or

(ii) Contributions made to an eligible governmental plan within the meaning of §1.457-2(f) that would be elective contributions if they were made under a qualified plan.

(f) *Effective/applicability date*—(1) *Statutory effective date.* Section 414(w) applies to plan years beginning on or after January 1, 2008.

(2) *Regulatory effective date.* This section applies to plan years beginning on or after January 1, 2010. For plan years that begin in 2008, a plan must operate in accordance with a good faith interpretation of section 414(w). For this purpose, a plan that operates in accordance with this section will be treated as operating in accordance with a good faith interpretation of section 414(w).

[T.D. 9447, 74 FR 8212, Feb. 24, 2009]

§ 1.415(a)-1 General rules with respect to limitations on benefits and contributions under qualified plans.

(a) *Trusts.* Under sections 415 and 401(a)(16), a trust that forms part of a pension, profit-sharing, or stock bonus plan will not be qualified under section

401(a) if any of the following conditions exists:

(1) In the case of a defined benefit plan, the annual benefit with respect to any participant for any limitation year exceeds the limitations of section 415(b) and §1.415(b)-1.

(2) In the case of a defined contribution plan, the annual additions credited with respect to any participant for any limitation year exceed the limitations of section 415(c) and §1.415(c)-1.

(3) The trust has been disqualified under section 415(g) and §1.415(g)-1 for any year.

(b) *Certain annuities and accounts*—(1) *In general.* Under section 415, an employee annuity plan described in section 403(a), an annuity contract described in section 403(b), or a simplified employee pension described in section 408(k) will not be considered to be described in the otherwise applicable section if any of the following conditions exists:

(i) The annual benefit under a defined benefit plan with respect to any participant for any limitation year exceeds the limitations of section 415(b) and §1.415(b)-1.

(ii) The contributions and other additions credited under a defined contribution plan with respect to any participant for any limitation year exceed the limitations of section 415(c) and §1.415(c)-1.

(iii) The employee annuity plan, annuity contract, or simplified employee pension has been disqualified under section 415(g) and §1.415(g)-1 for any year.

(2) *Special rule for section 403(b) annuity contracts.* If the contributions and other additions under an annuity contract that otherwise satisfies the requirements of section 403(b) exceed the limitations of section 415(c) and §1.415(c)-1 with respect to any participant for any limitation year (regardless of whether the annuity contract is a defined contribution plan or a defined benefit plan), then the portion of the contract that includes such excess annual addition fails to be a section 403(b) annuity contract, and the remaining portion of the contract is a section 403(b) annuity contract. However, the status of the remaining portion of the contract as a section 403(b) annuity

contract is not retained unless, for the year of the excess and each year thereafter, the issuer of the contract maintains separate accounts for each such portion. In addition, if the benefit under an annuity contract that is a defined benefit plan and that otherwise satisfies the requirements of section 403(b) exceeds the limitations of section 415(b) and § 1.415(b)-1 with respect to any participant for any limitation year, then the contract fails to be a section 403(b) annuity contract.

(3) *Section 403(b) annuity contract.* For purposes of section 415 and regulations promulgated under section 415, the term *section 403(b) annuity contract* includes arrangements that are treated as annuity contracts for purposes of section 403(b). Thus, such term includes custodial accounts described in section 403(b)(7) and retirement income accounts described in section 403(b)(9).

(c) *Regulations—(1) In general.* This section provides general rules regarding the application of section 415. For further rules regarding the application of section 415, see—

(i) Section 1.415(b)-1 (for general rules regarding the limits applicable to defined benefit plans);

(ii) Section 1.415(b)-2 (for special rules for defined benefit plans where a participant has multiple annuity starting dates);

(iii) Section 1.415(c)-1 (for general rules regarding the limits applicable to defined contribution plans);

(iv) Section 1.415(c)-2 (for rules regarding the definition of compensation for purposes of section 415);

(v) Section 1.415(d)-1 (for rules regarding cost-of-living adjustments to the various limits of section 415);

(vi) Section 1.415(f)-1 (for rules for aggregating plans for purposes of section 415);

(vii) Section 1.415(g)-1 (for rules regarding disqualification of plans that fail to satisfy the requirements of section 415); and

(viii) Section 1.415(j)-1 (for rules regarding limitation years).

(2) *Cross references to special rules for section 403(b) annuity contracts.* For special rules relating to section 403(b) annuity contracts, see—

(i) Section 1.415(c)-2(g)(1) and (3) (relating to the definition of compensa-

tion for section 403(b) annuity contracts);

(ii) Section 1.415(f)-1(f) (relating to rules for section 403(b) annuity contracts for purposes of aggregating plans);

(iii) Section 1.415(g)-1(b)(3)(iv)(C) (regarding disqualification of a section 403(b) annuity contract aggregated with a qualified defined contribution plan if the aggregated plans exceed the limitations of section 415(c));

(iv) Section 1.415(g)-1(c) (relating to the plan year for section 403(b) annuity contracts); and

(v) Section 1.415(j)-1(e) (relating to the limitation year for section 403(b) annuity contracts).

(3) *Cross references to special rules for governmental plans.* For special rules relating to governmental plans, see—

(i) Paragraph (f)(4) of this section (regarding permissive service credits);

(ii) Paragraph (g)(2) of this section (providing a delayed effective date for governmental plans);

(iii) Section 1.415(b)-1(a)(6)(i) (providing an exception from the compensation-based limit of section 415(b)(1)(B) for governmental plans);

(iv) Section 1.415(b)-1(a)(7)(ii) (regarding a special limitation for certain governmental plans making an election during 1990);

(v) Section 1.415(b)-1(b)(4) (regarding qualified governmental excess benefit arrangements);

(vi) Section 1.415(b)-1(d)(3) and (4) (regarding age adjustments to the dollar limit of section 415(b)(1)(A) for employees of police and fire departments and members of the Armed Forces of the United States, and for survivor and disability benefits);

(vii) Section 1.415(b)-1(g)(3) (regarding adjustments to applicable limitations for years of participation, and adjustments to applicable limitations for years of service for survivor and disability benefits under governmental plans);

(viii) Section 1.415(c)-1(b)(2)(ii) and (3)(iii) (regarding amounts not treated as annual additions under governmental plans); and

(ix) Section 1.415(c)-2(e)(5) (providing an alternative rule for inclusion of compensation after a severance from employment for governmental plans).

(4) *Cross references to special rules for multiemployer plans.* For special rules relating to multiemployer plans as defined in section 414(f), see—

(i) Paragraph (e) of this section (regarding benefits or contributions taken into account where a plan is maintained by more than one employer);

(ii) Paragraph (f)(5)(ii) of this section (providing a special definition of severance from employment for multiemployer plans);

(iii) Section 1.415(b)-1(a)(6)(ii) (providing an exception from the compensation-based limit for multiemployer plans);

(iv) Section 1.415(b)-1(f)(3) (regarding the application of the minimum \$10,000 limitation on benefits in the case of a multiemployer plan);

(v) Section 1.415(f)-1(g) (providing special rules for aggregating multiemployer plans with other plans); and

(vi) Section 1.415(g)-1(b)(3)(ii) (regarding plan disqualification rules where a multiemployer plan is aggregated with a plan that is not a multiemployer plan and the aggregated plans exceed the limitations of section 415).

(5) *Cross references to special rules for plans that are not subject to the requirements of section 411.* For special rules relating to plans that are not subject to the requirements of section 411, see—

(i) Paragraph (d)(1) of this section and § 1.415(b)-1(a)(7)(iii) (providing that the rule limiting accruals to the section 415(b) limits does not apply to plans that are not subject to the requirements of section 411); and

(ii) Section 1.415(b)-1(b)(2)(iii) (providing rules for applying the section 411(c) factors in determining the annual benefit attributable to employee contributions for plans that are not subject to the requirements of section 411).

(6) *Cross references to special rules for plans maintained by churches.* For special rules relating to plans maintained by churches as defined in section 3121(w)(3)(A), see §§ 1.415(b)-1(a)(6)(iv) and 1.415(b)-1(a)(7)(iv) (providing an exception from the compensation-based limit for participants who have never been a highly compensated employee of the church).

(d) *Plan provisions—(1) In general.* Although no specific plan provision is required under section 415 in order for a plan to establish or maintain its qualification, the plan provisions must preclude the possibility that any distribution under a defined benefit plan or annual addition under a defined contribution plan will exceed the limitations of section 415. In addition, a defined benefit plan that is subject to the requirements of section 411 must preclude the possibility that any accrual under the plan will exceed the limitations of section 415. A defined benefit plan may include provisions that automatically freeze or reduce the rate of benefit accrual (or limit the benefit payable in the case of a plan that is not subject to the requirements of section 411), and a defined contribution plan may include provisions that automatically limit the annual addition to a level necessary to prevent the limitations of section 415 from being exceeded with respect to any participant. For rules relating to this type of plan provision and the definitely determinable benefit requirement for pension plans, see § 1.401(a)-1(b)(1)(iii). Because § 1.401(a)-1(b)(1)(iii) requires that the operation of such a provision preclude discretion by the employer, if two defined benefit plans that are aggregated under the rules of section 415(f) would otherwise provide for aggregate benefits that might exceed the limits of section 415(b), the plan provisions must specify (without involving employer discretion) how benefits will be limited to prevent a violation of section 415(b).

(2) *Special rule for profit-sharing and stock bonus plans.* A provision of a profit-sharing or stock bonus plan that automatically freezes or reduces the amount of annual additions to ensure that the limitations of section 415 will not be exceeded must comply with the requirement set forth in § 1.401-1(b)(1)(ii) or (iii) (as applicable) that such plans provide a definite predetermined formula for allocating the contributions made to the plan among the participants. If the operation of a provision that automatically freezes or reduces the amount of annual additions to ensure that the limitations of section 415 are not exceeded does not involve discretionary action on the part

of the employer, the definite predetermined allocation formula requirement is not violated by the provision. If the operation of such a provision involves discretionary action on the part of the employer, the definite predetermined allocation formula requirement is violated. For example, if two profit-sharing plans of one employer otherwise provide for aggregate contributions which may exceed the limits of section 415(c), the plan provisions must specify (without involving employer discretion) under which plan contributions and allocations will be reduced to prevent an excess annual addition and how the reduction will occur.

(3) *Incorporation by reference*—(i) *In general*. A plan is permitted to incorporate by reference the limitations of section 415, and will not fail to meet the definitely determinable benefit requirement or the definite predetermined allocation formula requirement, whichever applies to the plan, merely because it incorporates the limits of section 415 by reference.

(ii) *Section 415 can be applied in more than one manner, but a statutory or regulatory default rule exists*. Where a provision of section 415 is permitted to be applied in more than one manner but is to be applied in a specified manner in the absence of contrary plan provisions (in other words, a default rule exists), if a plan incorporates the limitations of section 415 by reference with respect to that provision of section 415 and does not specifically vary from the default rule, then the default rule applies. With respect to a provision of section 415 for which a default rule exists, if the limitations of section 415 are to be applied in a manner other than using the default rule, the plan must specify the manner in which the limitation is to be applied in addition to generally incorporating the limitations of section 415 by reference. For example, if a plan generally incorporates the limitations of section 415 by reference and does not restrict the accrued benefits to which the amendments to section 415(b)(2)(E) made by the Uruguay Round Agreements Act of 1994, Public Law 103-465 (108 Stat. 4809) (GATT), apply (as permitted by Q&A-12 of Rev. Rul. 98-1 (1998-1 CB 249) (see § 601.601(d)(2) of this chapter), which re-

flects the amendments to section 767 of GATT made by section 1449 of the Small Business Job Protection Act of 1996, Public Law 104-188 (110 Stat. 1755)), then the amendments to section 415(b)(2)(E) made by GATT apply to all benefits under the plan.

(iii) *Section 415 can be applied in more than one manner with no statutory or regulatory default*. If a limitation of section 415 may be applied in more than one manner, and if there is no governing principle pursuant to which that limitation is applied in the absence of contrary plan provisions, then the plan must specify the manner in which the limitation is to be applied in addition to generally incorporating the limitations of section 415 by reference. For example, if an employer maintains two profit-sharing plans, and if any participant participates in more than one such plan, then both plans must specify (in a consistent manner) under which of the employer's two profit-sharing plans annual additions must be reduced if aggregate annual additions would otherwise exceed the limitations of section 415(c).

(iv) *Former requirements*. A plan is not permitted to incorporate by reference formerly applicable requirements of section 415 that are no longer in force (such as the limits of former section 415(e)).

(v) *Cost-of-living adjustments*—(A) *In general*. A plan is permitted to incorporate by reference the annual adjustments to the limitations of section 415 that are made pursuant to section 415(d). See § 1.415(d)-1 for additional rules relating to cost-of-living adjustments under section 415(d).

(B) *Cost-of-living adjustments not included in accrued benefit until effective*. Notwithstanding that a plan incorporates the increases to the applicable limits under section 415(d) by reference, the accrued benefit of a participant for purposes of section 411 and any amount payable to a participant for purposes of § 1.415(b)-1(a)(1) are not permitted to reflect increases pursuant to the annual increase under section 415(d) of the dollar limitation described in section 415(b)(1)(A) or the compensation limit described in section 415(b)(1)(B) for any period before the annual increase becomes effective. See

§1.415(d)-1(a)(3) for rules relating to when the annual adjustments to the dollar and compensation limitations are effective. A plan amendment does not violate the requirements of section 411(d)(6) merely because it eliminates the incorporation by reference of the increases under section 415(d) with respect to increases that have not yet occurred.

(C) *Application of increase in defined benefit dollar limit to participants who have incurred a severance from employment or commenced receiving benefits.* If a plan incorporates by reference the annual adjustments to the limitations of section 415 pursuant to this paragraph (d)(3)(v), the plan will be treated as applying the section 415(d) cost-of-living adjustments to the maximum extent permitted under the safe harbor described in §1.415(d)-1(a)(5), except to the extent provided in this paragraph (d)(3)(v)(C). Thus, such a plan is not subject to the requirements of §1.415(b)-1(b)(1)(iii) (providing special rules for determining the annual benefit of an employee in the case of multiple annuity starting dates) with respect to benefit increases that result solely from an increase in the section 415(b) limits pursuant to section 415(d). If a plan incorporates by reference the annual adjustments to the limitations of section 415 pursuant to this paragraph (d)(3)(v), the annual increase under section 415(d) of the dollar limitation described in section 415(b)(1)(A) does not apply with respect to a participant if the increase is effective after the participant's severance from employment with the employer maintaining the plan (or, if earlier, after the annuity starting date in the case of a participant who has commenced receiving benefits), unless the plan specifies that this annual increase applies. Similarly, if a plan incorporates by reference the annual adjustments to the limitations of section 415 pursuant to this paragraph (d)(3)(v), the annual increase under section 415(d) of the compensation-based limitation described in section 415(b)(1)(B) does not apply with respect to a participant for increases that are effective after the participant's severance from employment with the employer maintaining the plan (or, if earlier, after the annuity

starting date in the case of a participant who has commenced receiving benefits), unless the plan specifies that this annual increase applies.

(D) *Treatment of cost-of-living adjustments for funding and deduction purposes.* In general, the annual increase under section 415(d) of the dollar limitation described in section 415(b)(1)(A) and the compensation limitation described in section 415(b)(1)(B) is treated as a plan amendment, regardless of whether the plan reflects the increase automatically through operation of plan provisions in accordance with this paragraph (d)(3)(v) or the plan is amended to reflect the increase (pursuant to §1.415(d)-1(a)(5)). However, where a plan reflects the annual increase under section 415(d) of the dollar limitation described in section 415(b)(1)(A) or the compensation limitation described in section 415(b)(1)(B) automatically through operation of plan provisions pursuant to this paragraph (d)(3)(v), the funding method for the plan is permitted to provide for this annual increase to be treated as an experience loss for purposes of applying sections 404, 412, and 431.

(e) *Rules for plans maintained by more than one employer.* Except as provided in §1.415(f)-1(g)(2)(i) (regarding aggregation of multiemployer plans with plans other than multiemployer plans), for purposes of applying the limitations of section 415 with respect to a participant in a plan maintained by more than one employer, benefits and contributions attributable to such participant from all of the employers maintaining the plan must be taken into account. Furthermore, in applying the limitations of section 415 with respect to a participant in such a plan, the total compensation received by the participant from all of the employers maintaining the plan is taken into account under the plan, unless the plan specifies otherwise.

(f) *Special rules—(1) Affiliated employers.* Pursuant to section 414(b) and §1.414(b)-1, all employees of all corporations that are members of a controlled group of corporations (within the meaning of section 1563(a), as modified by section 1563(f)(5), and determined without regard to section 1563(a)(4) and (e)(3)(C)) are treated as

employed by a single employer for purposes of section 415. Similarly, pursuant to section 414(c) and regulations promulgated under section 414(c), all employees of trades or businesses that are under common control are treated as employed by a single employer. Thus, any defined benefit plan or defined contribution plan maintained by any member of a controlled group of corporations (within the meaning of section 414(b)) or by any trade or business (whether or not incorporated) that is part of a group of trades or businesses that are under common control (within the meaning of section 414(c)) is deemed maintained by all such members or such trades or businesses. Pursuant to section 415(h), for purposes of section 415, sections 414(b) and 414(c) are applied by using the phrase “more than 50 percent” instead of the phrase “at least 80 percent” each place the latter phrase appears in section 1563(a)(1) and in the regulations under section 414(c) (except for purposes of determining whether two or more organizations are a brother-sister group of trades or businesses under common control under the rules in § 1.414(c)-2(c)).

(2) *Affiliated service groups.* Any defined benefit plan or defined contribution plan maintained by any member of an affiliated service group (within the meaning of section 414(m)) is deemed maintained by all members of that affiliated service group.

(3) *Leased employees—(i) In general.* Pursuant to section 414(n), except as provided in paragraph (f)(3)(ii) of this section, with respect to any person (referred to as the recipient) for whom a leased employee (within the meaning of section 414(n)(2)) performs services, the leased employee is treated as an employee of the recipient, but contributions or benefits provided by the leasing organization that are attributable to services performed for the recipient are treated as provided under a plan maintained by the recipient.

(ii) *Exception for leased employees covered by safe harbor plans.* Pursuant to section 414(n)(5), the rule of paragraph (f)(3)(i) of this section does not apply to a leased employee with respect to services performed for a recipient if—

(A) The leased employee is covered by a plan that is maintained by the leasing organization and that meets the requirements of section 414(n)(5)(B); and

(B) Leased employees (determined without regard to this paragraph (f)(3)(ii)) do not constitute more than 20 percent of the recipient’s nonhighly compensated workforce.

(4) *Permissive service credit under governmental plans.* See section 415(n) for rules regarding the application of the limitations of sections 415(b) and (c) where a participant makes contributions (including a transfer described in section 403(b)(13) or section 457(e)(17)) to a defined benefit governmental plan to purchase permissive service credit under the plan.

(5) *Definition of severance from employment—(i) General rule.* For purposes of this section and §§ 1.415(b)-1, 1.415(b)-2, 1.415(c)-1, 1.415(c)-2, 1.415(d)-1, 1.415(f)-1, 1.415(g)-1, and 1.415(j)-1, whether an employee has a severance from employment with the employer that maintains a plan is determined in the same manner as under § 1.401(k)-1(d)(2) except that, for purposes of determining the employer of an employee, the modifications provided under section 415(h) (described in paragraph (f)(1) of this section) to the employer aggregation rules apply. Thus, an employee has a severance from employment when the employee ceases to be an employee of the employer maintaining the plan, and an employee does not have a severance from employment if, in connection with a change of employment, the employee’s new employer maintains such plan with respect to the employee. The determination of whether an employee ceases to be an employee of the employer maintaining the plan is based on all of the relevant facts and circumstances.

(ii) *Multiemployer plans.* A participant in a multiemployer plan (within the meaning of section 414(f)) is not treated as having incurred a severance from employment with the employer maintaining the multiemployer plan for purposes of this section and §§ 1.415(b)-1, 1.415(b)-2, 1.415(c)-1, 1.415(c)-2, 1.415(d)-1, 1.415(f)-1, 1.415(g)-1, and 1.415(j)-1 if the participant continues to

be an employee of another employer maintaining the multiemployer plan.

(6) *Qualified domestic relations orders.* A benefit provided to an alternate payee (as defined in section 414(p)(8)) of a participant pursuant to a qualified domestic relations order (as defined in section 414(p)(1)(A)) is treated as if it were provided to the participant for purposes of applying the limitations of section 415. See § 1.401(a)-13(g)(4)(iv).

(7) *Effect on other requirements.* Except as provided in § 1.417(e)-1(d)(1), the application of section 415 does not relieve a plan from the obligation to satisfy other applicable qualification requirements. Accordingly, the terms of the plan must provide for the plan to satisfy section 415 as well as all other applicable requirements. For example, if a defined benefit plan has a normal retirement age of 62, and if a participant's benefit remains unchanged between the ages of 62 and 65 because of the application of the section 415(b)(1)(A) dollar limit, the plan satisfies the requirements of section 411 only if the plan either commences distribution of the participant's benefit at normal retirement age (without regard to severance from employment) or provides for a suspension of benefits at normal retirement age that satisfies the requirements of section 411(a)(3)(B) and 29 CFR 2530.203-3. Similarly, if the increase to a participant's benefit under a defined benefit plan in a year after the participant has attained normal retirement age is less than the actuarial increase to the participant's previously accrued benefit because of the application of the section 415(b)(1)(B) compensation limitation (which is not adjusted for commencement after age 65), the plan satisfies the requirements of section 411 only if the plan either commences distribution of the participant's benefit at normal retirement age (without regard to severance from employment) or provides for a suspension of benefits at normal retirement age that satisfies the requirements of section 411(a)(3)(B) and 29 CFR 2530.203-3.

(g) *Effective date*—(1) *General rule.* Except as otherwise provided, this section and §§ 1.415(b)-1, 1.415(c)-1, 1.415(c)-2, 1.415(d)-1, 1.415(f)-1, 1.415(g)-1, and

1.415(j)-1 apply to limitation years beginning on or after July 1, 2007.

(2) *Governmental plans.* In the case of a governmental plan as defined in section 414(d), this section and §§ 1.415(b)-1, 1.415(c)-1, 1.415(c)-2, 1.415(d)-1, 1.415(f)-1, 1.415(g)-1, and 1.415(j)-1 apply to limitation years that begin more than 90 days after the close of the first regular legislative session of the legislative body with authority to amend the plan that begins on or after July 1, 2007. A governmental plan is permitted to apply the provisions of this section and §§ 1.415(b)-1, 1.415(c)-1, 1.415(c)-2, 1.415(d)-1, 1.415(f)-1, 1.415(g)-1, and 1.415(j)-1 to limitation years beginning on or after July 1, 2007, provided the plan applies all the applicable provisions of this section and §§ 1.415(b)-1, 1.415(c)-1, 1.415(c)-2, 1.415(d)-1, 1.415(f)-1, 1.415(g)-1, and 1.415(j)-1 for such limitation years.

(3) *Option to apply regulations earlier.* A plan may apply the rules in § 1.415(c)-2(e) regarding post-severance compensation payments for limitation years prior to the effective date described in paragraphs (g)(1) and (2) of this section. This early application affects the rules relating to the definition of compensation in § 1.401(k)-1(e)(8) and § 1.457-4(d).

(4) *Grandfather rule for preexisting benefits.* A defined benefit plan is considered to satisfy the limitations of section 415(b) for a participant with respect to benefits accrued or payable under the plan as of the end of the limitation year that is immediately prior to the effective date of final regulations under this section and §§ 1.415(b)-1, 1.415(c)-1, 1.415(c)-2, 1.415(d)-1, 1.415(f)-1, 1.415(g)-1, and 1.415(j)-1 (as provided under paragraph (g)(1) or (2) of this section) pursuant to plan provisions (including plan provisions relating to the plan's limitation year) that were both adopted and in effect before April 5, 2007, but only if such plan provisions meet the applicable requirements of statutory provisions, regulations, and other published guidance relating to section 415 in effect immediately before the effective date of final regulations under this section and §§ 1.415(b)-1, 1.415(c)-1, 1.415(c)-2, 1.415(d)-1, 1.415(f)-1, 1.415(g)-1, and 1.415(j)-1 (as provided under paragraph

(g)(1) or (2) of this section). Plan provisions will not be treated as failing to satisfy these requirements merely because the plan has not been amended to reflect changes to section 415(b) made by the Pension Funding Equity Act of 2004, Public Law 108-218 (118 Stat. 596), and the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780). In addition, plan provisions will not be treated as failing to satisfy these requirements merely because the plan's definition of compensation for a limitation year that is used for purposes of applying the limitations of section 415(b)(1)(B) reflects compensation for a plan year that is in excess of the limitation under section 401(a)(17) that applies to that plan year. If benefits under a plan are accrued after the applicable effective date under paragraph (g)(1) or (2) of this section, then the sum of the benefits grandfathered under the first sentence of this paragraph (g)(4) and benefits accrued after the applicable effective date must satisfy the requirements of section 415, taking into account the requirements of this section and §§ 1.415(b)-1, 1.415(c)-1, 1.415(c)-2, 1.415(d)-1, 1.415(f)-1, 1.415(g)-1, and 1.415(j)-1.

[T.D. 9319, 72 FR 16895, Apr. 5, 2007]

§ 1.415(b)-1 Limitations for defined benefit plans.

(a) *General rules*—(1) *Maximum limitations*. Except as otherwise provided under this section, a defined benefit plan fails to satisfy the requirements of section 415(a) for a limitation year if, during the limitation year, either the annual benefit (as defined in paragraph (b)(1)(i) of this section) accrued by a participant (whether or not the benefit is vested) or the annual benefit payable to a participant at any time under the plan exceeds the lesser of—

(i) \$160,000 (as adjusted pursuant to section 415(d), § 1.415(d)-1(a), and this section); or

(ii) 100 percent of the participant's average compensation for the period of the participant's high-3 years of service (as adjusted pursuant to section 415(d), § 1.415(d)-1(a), and this section).

(2) *Defined benefit plan*. For purposes of section 415 and regulations promulgated under section 415, a defined benefit plan is any plan, contract, or ac-

count to which section 415 applies pursuant to § 1.415(a)-1(a) or (b) (or any portion thereof) that is not a defined contribution plan within the meaning of § 1.415(c)-1(a)(2). In addition, a section 403(b) annuity contract that is not described in section 414(i) is treated as a defined benefit plan for purposes of section 415 and regulations promulgated under section 415.

(3) *Plan provisions*. As required in § 1.415(a)-1(d)(1), in order to satisfy the limitations on benefits under this section, the plan provisions (including the provisions of any annuity) must preclude the possibility that any annual benefit exceeding these limitations will be accrued (except as provided in paragraph (a)(7)(iii) of this section), distributed, or otherwise payable in any optional form of benefit (including the normal form of benefit) at any time (from the plan, from an annuity contract that will make distributions to the participant on behalf of the plan, or from an annuity contract that has been distributed under the plan). Thus, for example, a plan that is subject to the requirements of section 411 will fail to satisfy the limitations of this section if the plan does not contain terms that preclude the possibility that any annual benefit exceeding these limitations will be accrued or payable in any optional form of benefit (including the normal form of benefit) at any time, even though no participant has actually accrued a benefit in excess of these limitations.

(4) *Adjustments to dollar limitation for commencement before age 62 or after age 65*. The age-adjusted section 415(b)(1)(A) dollar limit computed pursuant to paragraph (d) or (e) of this section is used in place of the dollar limitation described in section 415(b)(1)(A) and paragraph (a)(1)(i) of this section in the case of a benefit with an annuity starting date that occurs before the participant attains age 62 or after the participant attains age 65.

(5) *Average compensation for period of high-3 years of service*—(i) *In general*. Except as otherwise provided in this paragraph (a)(5), for purposes of applying the limitation on benefits described in this section, the period of a participant's high-3 years of service is the period of 3 consecutive calendar years