

## § 1.415(b)-1

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(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

(taking into account the rule in paragraph (a)(5)(iii) of this section) during which the employee had the greatest aggregate compensation (as defined in § 1.415(c)-2) from the employer, and the average compensation for the period of a participant's high-3 years of service is determined by dividing the aggregate compensation for this period by 3. For purposes of this paragraph (a)(5), in determining a participant's high-3 years of service, the plan may use any 12-month period to determine a year of service instead of the calendar year, provided that it is uniformly and consistently applied in a manner that is specified under the terms of the plan. As provided under § 1.415(c)-2(f), because a plan is not permitted to base benefits on compensation in excess of the limitation under section 401(a)(17), a plan's definition of compensation for a year that is used for purposes of applying the limitations of section 415 is not permitted to reflect compensation for a year that is in excess of the limitation under section 401(a)(17) that applies to that year. See §§ 1.401(a)(17)-1(a)(3)(i) and 1.401(a)(17)-1(b)(3)(ii) for rules regarding the effective date of increases in the section 401(a)(17) compensation limitation for a plan year and for a 12-month period other than the plan year.

(ii) *Short periods of service.* For a participant who is employed with an employer for less than 3 consecutive years, the period of the participant's high-3 years of service is the actual number of consecutive years of service (including fractions of years, but not less than one year). In such a case, the limitation of section 415(b)(1)(B) of 100 percent of the participant's average compensation for the period of the participant's high-3 years of service is computed by dividing the participant's compensation during the participant's longest consecutive period of service by the number of years in that period (including fractions of years, but not less than one year). The rule in paragraph (a)(5)(iii) of this section is used for purposes of determining a participant's consecutive years of service.

(iii) *Break in service.* In the case of a participant who has had a severance from employment with an employer that maintains the plan and who is

subsequently rehired by the employer, the period of the participant's high-3 years of service is calculated by excluding all years for which the participant performs no services for and receives no compensation from the employer maintaining the plan (referred to as the break period), and by treating the year of service immediately prior to and the year of service immediately after the break period as if such years of service were consecutive. See § 1.415(d)-1(a)(2)(iii) for a special rule for determining a rehired participant's section 415(b)(1)(B) compensation limit in the case of a plan that adjusts the compensation limit for limitation years after the limitation year in which the participant incurs a severance from employment.

(iv) *Examples.* For purposes of these examples, except as otherwise stated, the plan year and the limitation year are the calendar year, and the plan uses the calendar year for purposes of determining the period of high-3 years of service. In addition, except as otherwise stated, it is assumed that the plan's normal retirement age is 65, and all participants discussed in these examples have at least ten years of service with the employer and at least ten years of participation in the plan at issue. It is also assumed that none of the plans in the examples are governmental plans. The following examples illustrate the rules of this paragraph (a)(5):

*Example 1.* (i) *Facts.* Plan A, which was established on January 1, 2008, covers Participant M, who was hired on January 1, 1990. Participant M's compensation (as defined in § 1.415(c)-2) from the employer maintaining the plan is \$140,000 each year for 1990 through 1992, is \$120,000 each year for 1993 through 2007, and is \$165,000 for 2008 and 2009. Assume that for Plan A's 2008 and 2009 limitation years, the section 415(b)(1)(A) age-adjusted dollar limit for M is \$185,000 and \$190,000, respectively, prior to the reduction of the age-adjusted dollar limit pursuant to paragraph (g)(1) of this section (which requires a reduction in the dollar limit if a participant has less than 10 years of participation in the plan).

(ii) *Conclusion.* As of the end of the 2008 limitation year, the period of M's high-3 consecutive years of service runs from January 1, 1990, through December 31, 1992, and M's average compensation for this period is \$140,000. Thus, the limitation under section

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415(b)(1)(B) for the 2008 limitation year is \$140,000. As of the end of the 2009 limitation year, the period of M's high-3 consecutive years of service runs from January 1, 2007, through December 31, 2009, and M's average compensation for this period is \$150,000. Thus, the limitation under section 415(b)(1)(B) for the 2009 limitation year is \$150,000.

*Example 2* (i) *Facts*. Participant N is a participant in Plan B. N's compensation for 2008, 2009, and 2010 is \$300,000 for each year. N's average compensation for the period of N's high-3 years of service (determined before the application of section 401(a)(17)) is \$300,000, based on N's compensation for 2008, 2009, and 2010. For all years before 2008, Participant N's compensation was less than the then-applicable section 401(a)(17) limit. On January 1, 2011, N commences receiving benefits from Plan B at the age of 75, 10 years after attaining N's normal retirement age under Plan B, when the age-adjusted section 415(b)(1)(A) dollar limit for benefits commencing at that age is \$293,453.

(ii) *Conclusion*. Pursuant to § 1.415(c)-2(f) and section 401(a)(17), Plan B is not permitted to provide for a definition of compensation that includes compensation for a year that is in excess of the limitation under section 401(a)(17) that applies to that year. Accordingly, the limitation under section 415(b)(1)(B) based on N's average compensation for the period of N's high three years of service must not reflect compensation for a year that is in excess of the limitation under section 401(a)(17) that applies to that year. Thus, if the limitation under section 401(a)(17) for years beginning in 2008, 2009, and 2010 is \$230,000, \$235,000, and \$240,000, respectively, then the limitation under section 415(b)(1)(B) based on N's average compensation for the period of N's high three years of service is \$235,000.

*Example 3*. (i) *Facts*. The facts are the same as in *Example 2*, except that N commences receiving benefits from Plan B on January 1, 2008, at the age of 75, 10 years after attaining N's normal retirement age under Plan B. In addition, N's period of high three years of service is from January 1, 2003, through December 31, 2005, and N's average compensation for this period is \$300,000. The section 401(a)(17) limits for 2003, 2004 and 2005 are \$200,000, \$205,000, and \$210,000, respectively. As of December 31, 2007, pursuant to plan provisions adopted and in effect on January 1, 2007, N's accrued benefit under Plan B, payable in the form of a straight life annuity, actuarially adjusted to reflect commencement 10 years after normal retirement age, is \$300,000. Plan B has not been amended during 2007, and that as of December 31, 2007, Plan B satisfied all of the requirements of section 415(b) with respect to N's accrued benefit, pursuant to statutory provisions, regulations, and other published guidance in

effect immediately before the limitation year beginning on January 1, 2008.

(ii) *Conclusion*. Under § 1.415(a)-1(g)(4), Plan B is considered to satisfy the section 415(b)(1)(B) compensation limit with respect to N's benefit payable at age 75 of \$300,000 (which N accrued prior to January 1, 2008), for limitation years beginning after December 31, 2007. This is because § 1.415(a)-1(g)(4) provides that plan provisions will not be treated as failing to satisfy the requirements of section 415(b)(1)(B) merely because the plan's definition of compensation that is used for purposes of applying the limitations of section 415(b)(1)(B) reflects compensation in excess of the section 401(a)(17) limitation for limitation years beginning before January 1, 2008. N, however, cannot accrue any additional benefits under Plan B for limitation years beginning after December 31, 2007, until N's section 415(b)(1)(B) compensation limit, as limited by § 1.415(c)-2(f) and section 401(a)(17), increases above \$300,000.

*Example 4*. (i) *Facts*. Participant O participates in Plan C, maintained by Employer X. Plan C does not adjust a participant's section 415(b)(1)(B) compensation limit for limitation years after the limitation year in which the participant incurs a severance from employment. Prior to separating from employment with X in 2010, O's average compensation for O's period of high-3 years of service is \$50,000, based on O's compensation for 2007, 2008, and 2009, which was \$50,000 for each year. O's compensation for 2010 was \$45,000. O's compensation is \$0 for 2011. In 2012, O is rehired by X and resumes participation in Plan C. O's compensation in 2012 is \$45,000, and is \$70,000 in 2013.

(ii) *Conclusion*. As of the end of the 2013 limitation year, O's average compensation for O's period of high-3 years of service is \$53,333, based on O's compensation in 2010, 2012, and 2013. See paragraph (a)(5)(iii) of this section.

*Example 5*. (i) *Facts*. The facts are the same as in *Example 4*, except that, in accordance with § 1.415(a)-1(d)(3)(v), Plan C incorporates by reference section 415(d) adjustments to a participant's section 415(b)(1)(B) compensation limit for limitation years after the limitation year in which the participant incurs a severance from employment. Assume that the annual adjustment factor described in § 1.415(d)-1(a)(2)(ii) for 2011 through 2013 is 1.03 for each year. Thus, disregarding O's rehire by X, O's average compensation for O's period of high-3 years of service for the 2013 limitation year is equal to \$54,636 ( $\$50,000 * 1.03 * 1.03 * 1.03$ ).

(ii) *Conclusion*. Under § 1.415(d)-1(a)(2)(iii), O's average compensation for O's period of high-3 years of service for the 2013 limitation year is \$54,636.

(6) *Exceptions from compensation limit*. The limit under paragraph (a)(1)(ii) of

this section (100 percent of the participant's average compensation for the participant's high-3 years of service) does not apply to—

- (i) A governmental plan (as defined in section 414(d));
- (ii) A multiemployer plan (as defined in section 414(f));
- (iii) A collectively bargained plan that is described in section 415(b)(7); or
- (iv) A participant in a plan maintained by an organization described in section 3121(w)(3)(A) who has never been a highly compensated employee (within the meaning of section 414(q)) of the organization.

(7) *Special rules*—(i) *Total benefits not in excess of \$10,000.* See section 415(b)(4) and paragraph (f) of this section for an exception from the limits of section 415(b)(1) and paragraph (a)(1) of this section with respect to retirement benefits that do not exceed \$10,000 for the limitation year.

(ii) *Governmental plans electing during 1990.* For a special limitation applicable to certain governmental plans electing the application of this rule during the first plan year beginning after December 31, 1989, see section 415(b)(10).

(iii) *Defined benefit plans not subject to the requirements of section 411.* In the case of a defined benefit plan that is not subject to the requirements of section 411, the limitations described in this paragraph (a) are not required to be applied to the annual benefit accrued by a participant before the benefit is payable. However, such a defined benefit plan is subject to the limitations described in this paragraph (a) with respect to the annual benefit payable to a participant at any time under the plan.

(iv) *Application of compensation limitation exception to a church employee who becomes a highly compensated employee—*(A) *In general.* If a participant who was described in paragraph (a)(6)(iv) of this section for a prior limitation year later becomes a highly compensated employee (within the meaning of section 414(q)) of the organization that maintains the defined benefit plan, the plan is not treated as failing to satisfy the compensation-based limitation described in paragraph (a)(1)(ii) of this section with respect to the participant

if the requirements of paragraph (a)(7)(iv)(B) of this section are satisfied with respect to the participant.

(B) *Limitation on accruals.* The requirements of this paragraph (a)(7)(iv)(B) are satisfied with respect to a participant if no plan amendments increasing the participant's benefits are adopted during the limitation year in which the participant first becomes a highly compensated employee (within the meaning of section 414(q)) of the organization that maintains the plan, and there is no increase in the participant's accrued benefit derived from employer contributions (including increases as a result of increased compensation or service) in subsequent limitation years.

(b) *Annual benefit*—(1) *In general*—(i) *Definition of annual benefit*—(A) *Straight life annuities.* For purposes of this section and §1.415(b)-2, the term *annual benefit* means a benefit that is payable in the form of a straight life annuity. A *straight life annuity* means an annuity payable in equal installments for the life of the participant that terminates upon the participant's death. Examples of benefits that are not in the form of a straight life annuity include an annuity with a post-retirement death benefit and an annuity providing a guaranteed number of payments. If a benefit is payable in the form of a straight life annuity, no adjustment is made to the benefit to account for differences in the timing of payments during a year (for example, no adjustment is made on account of the annuity being payable in annual or monthly installments).

(B) *Other benefit forms.* With respect to a benefit payable in a form other than a straight life annuity, the annual benefit is determined as the straight life annuity payable on the first day of each month that is actuarially equivalent to the benefit payable in such other form, determined under the rules of paragraph (c) of this section.

(ii) *Rules for determination of annual benefit.* The annual benefit does not include the annual benefit attributable to either employee contributions or rollover contributions (as described in sections 401(a)(31), 402(c)(1), 403(a)(4),

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403(b)(8), 408(d)(3), and 457(e)(16)), determined pursuant to the rules of paragraph (b)(2) of this section. The treatment of transferred benefits is determined under the rules of paragraph (b)(3) of this section. Paragraph (b)(4) of this section discusses the treatment of qualified governmental excess benefit arrangements.

(iii) *Determination of annual benefit in the case of multiple annuity starting dates*—(A) *General rule.* If a participant has or will have distributions commencing at more than one annuity starting date, then the limitations of section 415 must be satisfied as of each of the annuity starting dates, taking into account the benefits that have been or will be provided at all of the annuity starting dates. This will happen, for example, where benefit distributions to a participant have previously commenced under a plan that is aggregated for purposes of section 415 with a plan under which the participant receives current accruals. In determining the annual benefit for such a participant as of a particular annuity starting date, the plan must actuarially adjust the past and future distributions with respect to the benefits that commenced at the other annuity starting dates. For limitation years to which § 1.415(b)-2 applies, these adjustments must be made using the rules of § 1.415(b)-2. For purposes of this paragraph (b)(1)(iii) and § 1.415(b)-2, the determination of whether a new annuity starting date has occurred is made without regard to the rule of § 1.401(a)-20, Q&A-10(d) (under which the commencement of certain distributions may not give rise to a new annuity starting date).

(B) *Scope of multiple annuity starting date rules.* The rules provided in this paragraph (b)(1)(iii) and § 1.415(b)-2 apply for purposes of determining the annual benefit of a participant where a new distribution election is effective during the current limitation year with respect to a distribution that previously commenced. The rules of this paragraph (b)(1)(iii) and § 1.415(b)-2 also apply for determining the annual benefit of a participant for purposes of applying the limitations of section 415(b) and this section where benefit payments are increased as a result of plan

terms or a plan amendment applying a cost-of-living adjustment or similar benefit increase, unless the increase is described in paragraph (b)(1)(iii)(C) of this section.

(C) *Safe harbors for certain benefit increases.* An increase to benefit payments as a result of plan terms or a plan amendment applying a cost-of-living adjustment or similar benefit increase is described in this paragraph (b)(1)(iii)(C) if the increase—

(1) Has previously been accounted for as part of the annual benefit under the rules of paragraph (c) of this section;

(2) Is not required to be accounted for as part of the annual benefit, pursuant to the exception for certain automatic benefit increase features under paragraph (c)(5) of this section;

(3) Is pursuant to a plan provision that automatically incorporates section 415(d) cost-of-living adjustments under § 1.415(a)-1(d)(3)(v); or

(4) Complies with one of the safe harbors described in § 1.415(d)-1(a)(5) or (6) (providing safe harbors for annual and other periodic adjustments to distributions).

(2) *Determination of annual benefit attributable to employee contributions and rollover contributions*—(i) *In general.* If employee contributions (other than contributions described in paragraph (b)(2)(ii) of this section) or rollover contributions are made to the plan, the annual benefit attributable to these contributions is determined as provided in this paragraph (b)(2).

(ii) *Certain employee contributions disregarded.* For purposes of this paragraph (b)(2), the following are not treated as employee contributions:

(A) Contributions that are picked up by a governmental employer as provided under section 414(h)(2).

(B) Repayment of any loan made to a participant from the plan.

(C) Repayment of a previously distributed amount as described in section 411(a)(7)(B) in accordance with section 411(a)(7)(C).

(D) Repayment of a withdrawal of employee contributions as provided under section 411(a)(3)(D).

(E) Repayments that would have been described in paragraph (b)(2)(ii)(C) or (b)(2)(ii)(D) of this section except

that the plan does not restrict the timing of repayments to the maximum extent permitted by section 411(a).

(iii) *Annual benefit attributable to mandatory employee contributions.* In the case of mandatory employee contributions as defined in section 411(c)(2)(C) and § 1.411(c)-1(c)(4) (or contributions that would be mandatory employee contributions if section 411 applied to the plan), the annual benefit attributable to those contributions is determined by applying the factors applicable to mandatory employee contributions as described in section 411(c)(2)(B) and (C) and regulations promulgated under section 411 to those contributions to determine the amount of a straight life annuity commencing at the annuity starting date, regardless of whether the requirements of sections 411 and 417 apply to that plan. For purposes of applying such factors to a plan that is not subject to the requirements of section 411, the applicable effective date of section 411(a)(2) (which is used under § 1.411(c)-1(c)(3) to determine the beginning date from which statutorily specified interest must be credited to mandatory employee contributions) must be determined as if section 411 applied to the plan, and in determining the annual benefit that is actuarially equivalent to these accumulated contributions, the plan must determine the interest rate that would have been required under section 417(e)(3) as if section 417 applied to the plan. See § 1.415(c)-1(a)(2)(ii)(B) and (b)(3) for rules regarding treatment of mandatory employee contributions to a defined benefit plan as annual additions under a defined contribution plan.

(iv) *Voluntary employee contributions.* If voluntary employee contributions are made to the plan, the portion of the plan to which voluntary employee contributions are made is treated as a defined contribution plan pursuant to section 414(k) and, accordingly, is a defined contribution plan pursuant to § 1.415(c)-1(a)(2)(i). Accordingly, the portion of a plan to which voluntary employee contributions are made is not a defined benefit plan within the meaning of paragraph (a)(2) of this section and is not taken into account in determining the annual benefit under the

portion of the plan that is a defined benefit plan.

(v) *Annual benefit attributable to rollover contributions.* The annual benefit attributable to rollover contributions from an eligible retirement plan, as defined in section 402(c)(8)(B) (for example, a contribution received pursuant to a direct rollover under section 401(a)(31)(A)), is determined in the same manner as the annual benefit attributable to mandatory employee contributions if the plan provides for a benefit derived from the rollover contribution (other than a benefit derived from a separate account to be maintained with respect to the rollover contribution and actual earnings and losses thereon). Thus, in the case of rollover contributions from a defined contribution plan to a defined benefit plan to provide an annuity distribution, the annual benefit attributable to those rollover contributions for purposes of section 415(b) is determined by applying the rules of section 411(c) as described in paragraph (b)(2)(iii) of this section, regardless of the assumptions used to compute the annuity distribution under the plan and regardless of whether the plan is subject to the requirements of sections 411 and 417. Accordingly, in such a case, if the plan uses more favorable factors than those specified in section 411(c) to determine the amount of annuity payments arising from rollover contributions, the annual benefit under the plan would reflect the excess of those annuity payments over the amounts that would be payable using the factors specified in section 411(c). See § 1.415(c)-1(b)(3)(i) for rules excluding rollover contributions maintained in a separate account that is treated as a defined contribution plan pursuant to section 414(k) from annual additions to a defined contribution plan.

(3) *Treatment of transferred benefits—*  
(i) *In general—*(A) *Treatment of transferor plan if transferred benefits are aggregated with transferor plan.* Except as provided in paragraph (b)(3)(ii) of this section, when there has been a transfer of benefits from one defined benefit plan to another plan, to the extent the benefits transferred to the transferee plan are otherwise required to be taken into account pursuant to section 415(f)

and § 1.415(f)-1 in determining whether the transferor plan satisfies the limitations of section 415(b) for a limitation year, the transferred benefits are not treated as being provided under the transferor plan. This will occur, for example, if the employer sponsoring the transferor plan and the employer sponsoring the transferee plan are in the same controlled group within the meaning of section 414(b).

(B) *Treatment of transferor plan if transferred benefits are not aggregated with transferor plan.* Except as provided in paragraph (b)(3)(ii) of this section, when there has been a transfer of benefits from one defined benefit plan to another plan, to the extent the benefits transferred to the transferee plan are not otherwise required to be taken into account pursuant to section 415(f) and § 1.415(f)-1 in determining whether the transferor plan satisfies the limitations of section 415(b) for a limitation year, the transferred benefits are treated by the transferor plan as if such benefits were provided under annuities purchased to provide benefits under a plan that must be aggregated with the transferor plan and that terminated immediately prior to the transfer with sufficient assets to pay all benefit liabilities under the plan, in accordance with the rules of paragraph (b)(5)(i) of this section. This will occur, for example, in the case of a transfer of benefits between defined benefit plans maintained by employers that are not required to be aggregated under sections 414(b) and (c) (as modified by section 415(h)) or sections 414(m).

(C) *Treatment of transferee plan.* Except as provided in paragraph (b)(3)(ii) of this section, where there has been a transfer of benefits from one defined benefit plan to another defined benefit plan, the transferee plan must take into account the transferred benefits in determining whether it satisfies the limitations of section 415(b).

(ii) *Elective transfer of distributable benefit.* Where, as described in § 1.411(d)-4, Q&A-3(c) (permitting certain elective transfers of distributable benefits), a distributable benefit is transferred to a defined benefit plan from either a defined contribution plan or a defined benefit plan, the amount transferred is treated as a benefit paid from the

transferor plan, and the annual benefit provided by the transferee defined benefit plan does not include the annual benefit attributable to the amount transferred (determined as if the transferred amount were a rollover contribution subject to the rules of paragraph (b)(2)(v) of this section). The rule in the preceding sentence applies regardless of whether the requirements of section 411 apply to the plan and, in the case of a transfer from a defined contribution plan that is not subject to the requirements of section 411 (such as a governmental plan) to a defined benefit plan, the rule applies even if the participant's benefits are not distributable from the defined contribution plan at the time of the transfer.

(4) *Treatment of qualified governmental excess benefit arrangements.* Pursuant to section 415(m), in determining whether a governmental plan (as defined in section 414(d)) meets the requirements of this section, the annual benefit does not include benefits provided under a qualified governmental excess benefit arrangement, as defined in section 415(m)(3). Thus, the limitation of section 415(b) does not apply to benefits to the extent the benefits are provided under a qualified governmental excess benefit arrangement.

(5) *Treatment of benefits provided under a terminated plan—(i) Terminated plan with sufficient assets.* If a defined benefit plan is terminated with sufficient assets for the payment of the benefit liabilities of all plan participants and a participant in the plan has not yet commenced benefits under the plan, for purposes of satisfying section 415(b) with respect to the participant, all other defined benefit plans maintained by the employer that maintained the terminated plan are required to take into account the benefits provided pursuant to the annuities purchased to provide benefits under the terminated plan at each possible annuity starting date. In such a case, see paragraph (b)(1)(iii) of this section for rules regarding the determination of a participant's annual benefit if the participant commences receiving benefits under the terminated plan.

(ii) *Terminated plan with insufficient assets.* If a defined benefit plan is terminated and there are not sufficient

assets for the payment of the benefit liabilities of all plan participants, for purposes of satisfying section 415(b) with respect to a participant, all other defined benefit plans maintained by the employer that maintained the terminated plan are required to take into account the benefits that are actually provided to the participant under the terminated plan. For example, in the case of a plan that is subject to Title IV of the Employee Retirement Income Security Act of 1974 (88 Stat. 829), Public Law 93-406 (ERISA), and that terminates with insufficient assets for the payment of the benefit liabilities of all plan participants, all other defined benefit plans maintained by the employer that maintained the terminating plan must take into account benefits that are paid by the Pension Benefit Guaranty Corporation. In such a case, see paragraph (b)(1)(iii) of this section for rules regarding the determination of a participant's annual benefit if the participant commences receiving benefits under the terminated plan.

(iii) *Other guidance.* The Commissioner may provide guidance regarding the rules applicable to terminated plans (and plans that are deemed to have been terminated pursuant to paragraph (b)(3)(i)(B) of this section) in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See § 601.601(d) of this chapter.

(c) *Adjustment to form of benefit for forms other than a straight life annuity—*  
(1) *In general.* This paragraph (c) provides rules for adjusting a form of benefit other than a straight life annuity to an actuarially equivalent straight life annuity beginning at the same time for purposes of determining the annual benefit described in paragraph (b) of this section. Paragraph (c)(2) of this section describes how to adjust a benefit paid in a form to which section 417(e)(3) does not apply. Paragraph (c)(3) of this section describes how to adjust a benefit paid in a form to which section 417(e)(3) applies. Paragraph (c)(4) of this section describes benefit forms for which no adjustment is required. Paragraph (c)(5) of this section provides an exception from the requirements of this paragraph (c) with re-

spect to certain automatic benefit increase features. Paragraph (c)(6) of this section sets forth examples illustrating the application of this paragraph (c). The Commissioner may, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin set forth simplified methods for adjusting a form of benefit other than a straight life annuity to an actuarially equivalent straight life annuity beginning at the same time for purposes of determining the annual benefit described in paragraph (b) of this section. See § 601.601(d)(2) of this chapter.

(2) *Benefits paid in a form to which section 417(e)(3) does not apply.* For a benefit paid in a form to which section 417(e)(3) does not apply, the actuarially equivalent straight life annuity benefit is the greater of—

(i) The annual amount of the straight life annuity (if any) payable to the participant under the plan commencing at the same annuity starting date as the form of benefit payable to the participant; or

(ii) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the participant, computed using a 5 percent interest assumption and the applicable mortality table described in § 1.417(e)-1(d)(2) for that annuity starting date.

(3) *Benefits paid in a form to which section 417(e)(3) applies—*(i) *In general.* Except as otherwise provided in this paragraph (c)(3), for a benefit paid in a form to which section 417(e)(3) applies, the actuarially equivalent straight life annuity benefit is the greatest of:—

(A) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial equivalence;

(B) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest



assumption and the applicable mortality table for the distribution under § 1.417(e)-1(d)(2); or

(C) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under § 1.417(e)-1(d)(3) and the applicable mortality table for the distribution under § 1.417(e)-1(d)(2)), divided by 1.05.

(ii) *Special rule for distributions in plan years beginning in 2004 and 2005.* For a distribution to which section 417(e)(3) applies and which has an annuity starting date occurring in plan years beginning in 2004 or 2005, except as provided in section 101(d)(3) of the Pension Funding Equity Act of 2004, Public Law 108-218 (118 Stat. 596), the actuarially equivalent straight life annuity benefit is the greater of—

(A) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial equivalence; or

(B) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption and the applicable mortality table for the distribution under § 1.417(e)-1(d)(2).

(4) *Certain benefit forms for which no adjustment is required—(i) In general.* For purposes of the adjustments described in this paragraph (c), the following benefits are not taken into account:

(A) Survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity (as defined in section 417(b)) to the extent that such benefits would not be payable if the participant's benefit were not paid in the form of a qualified joint and survivor annuity.

(B) Ancillary benefits that are not directly related to retirement benefits, such as preretirement disability bene-

fits not in excess of the qualified disability benefit, preretirement incidental death benefits (including a qualified preretirement survivor annuity), and post-retirement medical benefits.

(ii) *Rules of application—(A) Social security supplements.* Although a social security supplement described in section 411(a)(9) and § 1.411(a)-7(c)(4) may be an ancillary benefit, it is included in determining the annual benefit because it is payable upon retirement and therefore is directly related to retirement income benefits.

(B) *Qualified joint and survivor annuities combined with other distributions.* If benefits are paid partly in the form of a qualified joint and survivor annuity (QJSA) and partly in some other form (such as a single-sum distribution), the rule of paragraph (c)(4)(i)(A) of this section (under which survivor benefits are not included in determining the annual benefit) applies to the survivor annuity payments under the portion of the benefit that is paid in the form of a QJSA.

(5) *Exception for certain automatic benefit increase features—(i) General rule.* Notwithstanding paragraph (b)(1)(i)(B) of this section, no adjustment is required to a benefit that is paid in a form that is not a straight life annuity to take into account the inclusion in that form of an automatic benefit increase feature, as described in paragraph (c)(5)(ii) of this section, if:

(A) The benefit is paid in a form to which section 417(e)(3) does not apply.

(B) The plan satisfies the requirements of paragraph (c)(5)(iii) of this section.

(ii) *Definition of automatic benefit increase feature.* An automatic benefit increase feature is included in a form of benefit if that form provides for automatic, periodic increases to the benefits paid in that form, such as a form of benefit that automatically increases the benefit paid under that form annually according to a specified percentage or objective index, or a form of benefit that automatically increases the benefit paid in that form to share favorable investment returns on plan assets.

(iii) *Requirements.* A plan satisfies the requirements of this paragraph

(c)(5)(iii) with respect to a form of benefit that includes an automatic benefit increase feature if the form of benefit without regard to the automatic benefit increase feature satisfies the requirements of section 415(b) and this section, and the plan provides that in no event will the amount payable to the participant under the form of benefit in any limitation year be greater than the section 415(b) limit applicable at the annuity starting date (which is the lesser of the age-adjusted section 415(b)(1)(A) dollar limit described in paragraph (a)(1)(i) of this section or the section 415(b)(1)(B) compensation limit described in paragraph (a)(1)(ii) of this section), as increased in subsequent years pursuant to section 415(d) and § 1.415(d)-1. If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity, then the preceding sentence is applied by reducing the section 415(b) limit applicable at the annuity starting date to an actuarially equivalent amount (determined using the assumptions specified in paragraph (c)(2)(ii) of this section) that takes into account the death benefits under the form of benefit (other than the survivor portion of a QJSA).

(6) *Examples.* The following examples illustrate the provisions of this paragraph (c). For purposes of these examples, except as otherwise stated, actuarial equivalence under the plan is determined using a 5 percent interest assumption and the mortality table that applies under section 417(e)(3) as of January 1, 2003. It is assumed for purposes of these examples that the interest rate that applies under section 417(e)(3) and § 1.417(e)-1(d)(3) for relevant time periods is 5.25 percent and that the mortality table that applies under section 417(e)(3) and § 1.417(e)-1(d)(2) for relevant time periods is the mortality table that applies under section 417(e)(3) as of January 1, 2003. In addition, it is assumed that all participants discussed in these examples have at least ten years of service with the employer and at least ten years of participation in the plan at issue, all payments other than a payment of a single sum are made monthly, on the first day of each calendar month, and each

plan's normal retirement age is 65. The examples are as follows:

*Example 1.* (i) *Facts.* Plan A provides a single-sum distribution determined as the actuarial present value of the 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 determined using the otherwise applicable actuarial assumptions of the plan and the present value determined using the applicable interest rate and the applicable mortality table for the distribution under section 417(e)(3). In accordance with § 1.417(e)-1(d)(1), Plan A also provides that the single sum is not less than the actuarial present value of the accrued benefit payable at normal retirement age, determined using the applicable interest rate and the applicable mortality table under section 417(e)(3) and § 1.417(e)-1(d). Participant M retires at age 65 with a benefit under the plan formula (and before the application of section 415) of \$152,619 and elects to receive a distribution in the form of a single sum. Under the plan and before the application of section 415, the amount of the single sum is \$1,800,002 (which is based on the 5 percent interest rate and applicable mortality table as of January 1, 2003, since that present value is greater than the present value that would have been determined using the applicable interest rate (5.25 percent) and the applicable mortality table (the January 1, 2003, table) for the distribution under section 417(e)(3)).

(ii) *Conclusion.* For purposes of this section, the annual benefit is the greatest of the annual amount of the actuarially equivalent straight life annuity commencing at the same age (determined using the plan's actuarial factors), the annual amount of the actuarially equivalent straight life annuity commencing at the same age (determined using a 5.5 percent interest assumption and the applicable mortality table for the distribution under § 1.417(e)-1(d)(2)), and the annual amount of the actuarially equivalent straight life annuity commencing at the same age (determined using the applicable interest rate and applicable mortality table for the distribution under §§ 1.417(e)-1(d)(2) and (d)(3) divided by 1.05. Based on the factors used in the plan to determine the actuarially equivalent lump sum (in this case, an interest rate of 5 percent and the applicable mortality table as of January 1, 2003), \$1,800,002 payable as a single sum is actuarially equivalent to an immediate straight life annuity at age 65 of \$152,619. A single sum payment of \$1,800,002 is actuarially equivalent to an immediate straight life annuity at age 65 of \$159,105, using a 5.5 percent interest assumption and the applicable mortality table under § 1.417(e)-1(d)(2). Based on the applicable interest rate and the applicable mortality table for the distribution under

§§ 1.417(e)-1(d)(2) and (d)(3), \$1,800,002 payable as a single sum is actuarially equivalent to an immediate straight life annuity at age 65 of \$155,853. \$148,432 is the result when this annual amount is divided by 1.05. With respect to the single-sum distribution, M's annual benefit for purposes of section 415(b) is equal to the greatest of the three resulting amounts (\$152,619, \$159,105, and \$148,432), or \$159,105.

*Example 2.* (i) *Facts.* The facts are the same as in *Example 1*, except that Participant M elects to receive his benefit in the form of a 10-year certain and life annuity. Applying the plan's actuarial equivalence factors, the benefit payable in this form is \$146,100.

(ii) *Conclusion.* Since the form of benefit elected by M is a form of benefit to which section 417(e)(3) does not apply, the annual benefit for purposes of this section is the greater of the annual amount of the plan's straight life annuity commencing at the same age or the annual amount of the actuarially equivalent straight life annuity commencing at the same age, determined using a 5 percent interest rate and the applicable mortality table described in § 1.417(e)-1(d)(2) for that annuity starting date. In this case, the straight life annuity payable under the plan commencing at the same age is \$152,619. Because the plan's factors for actuarial equivalence in this case are the same standardized actuarial factors required to be applied to determine the actuarially equivalent straight life annuity, the actuarially equivalent straight life annuity using the required standardized factors is also \$152,619. With respect to the 10-year certain and life annuity distribution, M's annual benefit is equal to the greater of the two resulting amounts (\$152,619 and \$152,619), or \$152,619.

*Example 3.* (i) *Facts.* The facts are the same as in *Example 1*. Participant M retires at age 62 with a benefit under the plan (before the application of section 415) of \$100,000 (after application of the plan's early retirement factors) and a Social Security supplement of \$10,000 per year payable until age 65. N chooses to receive the accrued benefit in the form of a straight life annuity. The Plan has no provisions under which the actuarial value of the Social Security supplement can be paid as a level annuity for life.

(ii) *Conclusion.* Because the form of benefit elected by M is a form of benefit to which section 417(e)(3) does not apply and because the plan does not provide for a straight life annuity beginning at age 62, the annual benefit for purposes of this section is the annual amount of the straight life annuity commencing at age 62 that is actuarially equivalent to the distribution stream of \$110,000 for three years and \$100,000 thereafter, where actuarial equivalence is determined using a 5 percent interest rate and the applicable mortality table described in § 1.417(e)-1(d)(2) for the annuity starting date. In this case, the

actuarially equivalent straight life annuity is \$102,180. Accordingly, with respect to this distribution stream, N's annual benefit is equal to \$102,180. The results are the same without regard to whether the Social Security supplement is a QSUPP (as defined in § 1.401(a)(4)-12).

*Example 4.* (i) *Facts.* Plan B is a defined benefit plan that provides a benefit equal to 100 percent of a participant's average compensation for the period of the participant's high-3 years of service, payable as a straight life annuity. For a married participant who does not elect another form of benefit, the benefit is payable in the form of a joint and 100 percent survivor annuity benefit that is a QJSA within the meaning of section 417 and that is reduced from the straight life annuity. For purposes of determining the amount of this QJSA, the plan provides that the reduction is only half of the reduction that would normally apply under the actuarial assumptions specified in the plan for determining actuarial equivalence of optional forms. The plan also provides that a married participant can elect to receive the plan benefits as a straight life annuity, or in the form of a single sum distribution that is the actuarial equivalent of the joint and 100 percent survivor annuity determined using the applicable interest rate and the applicable mortality table under section 417(e)(3) and § 1.417(e)-1(d). Participant O elects, with spousal consent, a single-sum distribution.

(ii) *Conclusion.* The special rule that disregards the value of the survivor portion of a QJSA set forth in paragraph (c)(4)(i) of this section only applies to a benefit that is payable in the form of a qualified joint and survivor annuity. Any other form of benefit must be adjusted to a straight life annuity in accordance with paragraph (c)(1) of this section. Accordingly, because the benefit payable under the plan in the form of a single-sum distribution is actuarially equivalent to a straight life annuity that is greater than 100 percent of a participant's average compensation for the period of the participant's high-3 years of service, the limitation of section 415(b)(1)(B) has been exceeded.

*Example 5.* (i) *Facts.* Plan C is a defined benefit plan that provides an option to receive the benefit in the form of a joint and 100 percent survivor annuity with a 10-year certain feature, where the survivor beneficiary is the participant's spouse.

(ii) *Conclusion.* Since this form of benefit is not subject to section 417(e)(3), for a participant at age 65, the annual benefit with respect to the joint and 100 percent survivor annuity with a 10-year certain feature is determined for purposes of this section as the greater of the annual amount of the straight life annuity payable to the participant under the plan at age 65 (if any), or the annual

amount of the straight life annuity commencing at age 65 that has the same actuarial present value as the joint and 100 percent survivor annuity with a 10-year certain feature (but excluding the survivor annuity payments pursuant to paragraph (c)(4)(i)(A) of this section), computing using a 5 percent interest assumption and the applicable mortality table described in §1.417(e)-1(d)(2) for the annuity starting date. This latter amount is equal to the product of the annual payments under this optional form of benefit and the factor that provides for actuarial equivalence between a straight life annuity and a 10-year certain and life annuity (with no annuity for the survivor) computed using a 5 percent interest rate and the applicable mortality table described in §1.417(e)-1(d)(2) for the annuity starting date.

*Example 6.* (i) *Facts.* Plan E provides a benefit at age 65 of a straight life annuity equal to the lesser of 90 percent of the participant's average compensation for the period of the participant's high-3 years of service and \$148,500. Upon retirement at age 65, the optional forms of benefit available to a participant include payment of a QJSA with annual payments equal to 50 percent of the annual payments under the straight life annuity, along with a single-sum distribution that is actuarially equivalent (determined as the greater of the single sum calculated using a 5 percent interest assumption and the section 417(e)(3)(A)(ii)(I) mortality table in effect on January 1, 2003, and the single sum calculated using the section 417(e)(3)(A)(ii)(II) applicable interest rate and the section 417(e)(3)(A)(ii)(I) applicable mortality table for the distribution) to 50 percent of the annual payments under the straight life annuity. Participant Q retires at age 65. Q's average compensation for the period of Q's high-3 years of service is \$100,000. Q elects to receive a distribution in the optional form of benefit described above, under which the annual payments under the QJSA are \$45,000 and the single-sum distribution is equal to \$530,734. Q's spouse is 3 years younger than Q.

(ii) *Determination of annual benefit.* Q's annual benefit under Plan E for purposes of section 415(b) is determined as the sum of the annual benefit attributable to the QJSA portion of the distribution and the annual benefit attributable to the single-sum portion of the distribution.

(iii) *Annual benefit attributable to QJSA portion.* Because survivor benefits are not taken into account in determining the annual benefit attributable to the QJSA portion of the distribution, the annual benefit attributable to the QJSA portion of the distribution is determined as if that distribution were a straight life annuity of \$45,000 per year commencing at age 65. Thus, no form adjustment is needed to determine the annual benefit attributable to the QJSA portion of the dis-

tribution, and the annual benefit attributable to the QJSA portion of the benefit is \$45,000.

(iv) *Annual benefit attributable to single sum portion.* The annual benefit attributable to the single sum portion of the distribution is determined as the greatest of the annual amount of the actuarially equivalent straight life annuity commencing at the same age (determined using the plan's actuarial factors), the annual amount of the actuarially equivalent straight life annuity commencing at the same age (determined using a 5.5 percent interest assumption and the applicable mortality table under §1.417(e)-1(d)(2) for the distribution), and the annual amount of the actuarially equivalent straight life annuity commencing at the same age (determined using the applicable interest rate and applicable mortality table under section 417(e)(3) and §§1.417(e)-1(d)(2) and (d)(3) for the distribution) divided by 1.05. With respect to the single-sum distribution, the annual amount of the actuarially equivalent straight life annuity commencing at the same age determined using the plan's actuarial factors is equal to \$45,000. The annual amount of the actuarially equivalent straight life annuity commencing at the same age determined using a 5.5 percent interest assumption and the applicable mortality table under §1.417(e)-1(d)(2) for the distribution is \$46,912. The actuarially equivalent straight life annuity commencing at the same age determined using the applicable interest rate and the applicable mortality table under section 417(e)(3) and §§1.417(e)-1(d)(2) and (d)(3) for the distribution is equal to \$45,954. This amount divided by 1.05 is equal to \$43,766. Thus, the annual benefit attributable to the single sum portion of the benefit is \$46,912.

(v) *Conclusion.* Q's annual benefit under the optional form of benefit for purposes of section 415(b) is equal to the sum of the annual benefit attributable to the QJSA portion of the distribution and the annual benefit attributable to the single sum portion of the distribution, or \$91,912. Because Q's average compensation for the period of Q's high-3 years of service is \$100,000, the distribution satisfies the compensation limit of section 415(b)(1)(B).

*Example 7.* (i) *Facts.* Plan D is a defined benefit plan with a normal retirement age of 65. The normal retirement benefit under Plan D (and the only life annuity available under Plan D) is a life annuity with a fixed increase of 2 percent per year. The increase applies to the benefit provided in the prior year and is thus compounded. The plan provides that the benefit is limited to the lesser of 84 percent of the participant's average compensation for the period of the participant's high-3 years of service or 84 percent of the age-adjusted section 415(b)(1)(A) dollar limit (which is assumed to be \$180,000 at age

65). Plan D does not incorporate the section 415(d) cost-of-living adjustments to the section 415(b) limits for limitation years following the limitation year in which a participant incurs a severance from employment. Participant P retires at age 65, at which time P's average compensation for the period of P's high-3 years of service is \$165,000. Under Plan D, P commences receiving benefits in the form of a life annuity of \$138,600 with a fixed increase of 2 percent per year.

(i) *Conclusion.* Because Plan D does not provide for a straight life annuity and the form of benefit is not subject to section 417(e)(3), P's annual benefit for purposes of section 415(b) is the annual amount of the straight life annuity, commencing at age 65, that is actuarially equivalent to the distribution stream of \$138,600 with a fixed increase of 2 percent per year, where actuarial equivalence is determined using a 5 percent interest rate and the applicable mortality table for the distribution under section 417(e)(3) and § 1.417(e)-1(d)(2). In order to satisfy the requirements of section 415 and this section, this annual benefit must not exceed 100 percent of the average compensation for the period of the participant's high-3 years of service, or \$165,000. Using a 5 percent interest rate and the section 417(e)(3) applicable mortality table for the distribution, the actuarially equivalent straight life annuity is \$165,453, which exceeds \$165,000. Accordingly, the plan fails to satisfy the compensation-based limitation of section 415(b)(1)(B).

*Example 8.* (i) *Facts.* The facts are the same as in *Example 7*, except that Plan D incorporates by reference the section 415(d) cost-of-living adjustments to the section 415(b) limits as described in § 1.415(a)-1(d)(3)(v) and Plan D provides that the benefit is limited to the applicable section 415(b) limit. Under Plan D, P commences receiving benefits at age 65 in the form of a life annuity of \$138,221 with a fixed increase of 2 percent per year.

(ii) *Conclusion.* Because Plan D does not provide for a straight life annuity and the form of benefit is not subject to section 417(e)(3), P's annual benefit for purposes of section 415(b) is the annual amount of the straight life annuity, commencing at age 65, that is actuarially equivalent to the distribution stream of \$138,221 with a fixed increase of 2 percent per year, where actuarial equivalence is determined using a 5 percent interest rate and the applicable mortality table for P's annuity starting date under section 417(e)(3) and § 1.417(e)-1(d)(2). In order to satisfy the requirements of section 415(b) and this section, this annual benefit must not exceed 100 percent of P's average compensation for the period of P's high-3 years of service, or \$165,000. Using a 5 percent interest rate and the section 417(e)(3) applicable mortality table for the distribution, the actuarially equivalent straight life annuity is \$165,000, which does not exceed \$165,000. Accordingly,

the plan satisfies the compensation-based limitation of section 415(b)(1)(B).

(iii) *Section 415(d) adjustments.* In addition to the fixed 2 percent per year automatic increase, P's benefit will be increased in limitation years following the limitation year in which P retires in accordance with the plan provisions that incorporate by reference the section 415(d) cost-of-living adjustments to the section 415(b) limits (or, if Plan D did not incorporate by reference the section 415(d) adjustments, P's benefit may be increased pursuant to plan amendments that comply with the safe harbors provided in § 1.415(d)-1(a)(5) or (6)), and such increases will not cause P's benefit to violate the requirements of section 415(b). For example, if in a later limitation year the applicable section 415(b) limit is increased by 3 percent pursuant to section 415(d) and § 1.415(d)-1, P's benefit payable under Plan D will be increased by both the fixed automatic 2 percent per year increase and by the 3 percent section 415(d) cost-of-living adjustment. The effect of the combined increases may result in P's benefits for a year exceeding the then applicable dollar limit under section 415(b), but the plan will not violate section 415(b).

*Example 9.* (i) *Facts.* The facts are the same as in *Example 7*, except that the plan provides that benefits are limited to the lesser of 100 percent of the participant's average compensation for the period of the participant's high-3 years of service or 100 percent of the age-adjusted section 415(b)(1)(A) dollar limit. Assume that P retires at age 65 with a benefit in the form of a life annuity of \$165,000 per year with a fixed increase of 2 percent per year. Additionally, assume that Plan D incorporates by reference the section 415(d) cost-of-living adjustments to the section 415(b) limits as described in § 1.415(a)-1(d)(3)(v) and the plan provides pursuant to paragraph (c)(5) of this section that in no event will a benefit payable from the plan, as increased by the fixed increase of 2 percent per year, be greater than the section 415(b) limit applicable as of the annuity starting date for the benefit (increased pursuant to the rules of section 415(d) and § 1.415(d)-1).

(ii) *Conclusion.* The benefit payable to P at age 65 is not required to be adjusted to take into account the fixed increase of 2 percent per year. This is because the benefit payable to P satisfies the requirements of section 415(b) without regard to the fixed increase of 2 percent per year, and pursuant to paragraph (c)(5) of this section, the plan provides that the benefit payable to P, as increased by the fixed increase of 2 percent per year, will never be greater than the section 415(b) limit applicable as of P's annuity starting date (increased in subsequent limitation years pursuant to the rules of section 415(d) and § 1.415(d)-1).

(iii) *Section 415(d) adjustments.* In addition to the fixed 2 percent per year automatic increase, P's benefit will be increased in limitation years following the limitation year in which P retires in accordance with the plan provisions that incorporate by reference the section 415(d) cost-of-living adjustments to the section 415(b) limits (or, if Plan D did not incorporate by reference the section 415(d) adjustments, P's benefit may be increased pursuant to plan amendments that comply with the safe harbors provided in §1.415(d)-1(a)(5) or (6)), and such increases will not cause P's benefit to violate the requirements of section 415(b). However, pursuant to paragraph (c)(5)(iii) of this section, P's benefit during any limitation year, as increased by the 2 percent per year automatic increase feature and any plan provisions that incorporate by reference the section 415(d) cost-of-living adjustments or any plan amendments that increase P's benefits, cannot exceed the then applicable section 415(b) limit (as increased pursuant to section 415(d) and §1.415(d)-1).

*Example 10.* (i) *Facts.* Employer T maintains a defined benefit plan. Under the terms of the plan, all benefits in pay status (other than single sum payments) are adjusted upwards or downwards annually depending on an annual comparison of actual return on plan assets and an assumed interest rate of 4 percent. Thus, the plan does not offer a straight life annuity form of benefit, and the plan must determine for purposes of applying the section 415(b) limits the actuarially equivalent straight life annuity for benefits provided under the plan.

(ii) *Conclusion.* Benefits under the plan are paid in a form to which section 417(e)(3) does not apply. In determining the actuarially equivalent straight life annuity of benefits that are subject to the annual investment performance adjustment, the plan must assume a 5 percent return on plan assets. See paragraph (c)(2) of this section. Therefore, in determining the actuarially equivalent straight life annuity, the plan must assume that the form of benefit payable under the plan will be an annuity that increases annually by a factor equal to 1.05 divided by 1.04. This increasing annuity is then converted to an actuarially equivalent straight life annuity under paragraph (c)(2) of this section using a 5 percent interest rate and the applicable mortality table described in §1.417(e)-1(d)(2) for the relevant annuity starting date.

*Example 11.* (i) *Facts.* R is a participant in a defined benefit plan maintained by R's employer. Under the terms of the plan, R must make contributions to the plan in a stated amount to accrue benefits derived from employer contributions.

(ii) *Conclusion.* R's contributions are mandatory employee contributions within the meaning of section 411(c)(2)(C) and, thus, the annual benefit attributable to these con-

tributions is not taken into account for purposes of testing the annual benefit derived from employer contributions against the applicable limitation on benefits. However, these contributions are treated as contributions to a defined contribution plan maintained by R's employer for purposes of section 415(c). See §1.415(c)-1(a)(2)(ii)(B). Accordingly, with respect to the current limitation year, the limitation on benefits (as described in paragraph (a)(1) of this section) is applicable to the annual benefit attributable to employer contributions to the defined benefit plan, and the limitation on contributions and other additions (as described in §1.415(c)-1) is applicable to the portion of the plan treated as a defined contribution plan, which consists of R's mandatory contributions. These same limitations would also apply if, instead of providing for mandatory employee contributions, the plan permitted voluntary employee contributions, because the portion of the plan attributable to voluntary employee contributions and earnings thereon is treated as a defined contribution plan maintained by the employer pursuant to section 414(k), and thus is not subject to the limitations of section 415(b).

*Example 12.* (i) *Facts.* V is a participant in a defined benefit plan maintained by V's employer. Under the terms of the plan, V must make contributions to the plan in a stated amount to accrue benefits derived from employer contributions. V's contributions are mandatory employee contributions within the meaning of section 411(c)(2)(C). Thus, the annual benefit attributable to these contributions is not taken into account for purposes of testing the annual benefit derived from employer contributions against the applicable limitation on benefits. V terminates employment and receives a distribution from the plan that includes V's mandatory employee contributions. Subsequently, V resumes employment with the employer maintaining the plan. V recommences participation in the plan and repays the prior distribution from the plan (including the portion of the distribution that included V's prior mandatory employee contributions to the plan) with reasonable interest.

(ii) *Conclusion.* In determining V's annual benefit under the plan for purposes of applying the limitations of section 415(b), no portion of V's repayment of the prior distribution is treated as employee contributions. See paragraphs (b)(2)(ii)(C), (D) and (E) of this section. However, V's annual benefit under the plan is determined by excluding the portion of the annual benefit attributable to V's employee contributions to the plan made both prior to the first distribution and during V's subsequent recommencement of plan participation.

(d) *Adjustment to section 415(b)(1)(A) dollar limit for commencement before age*

**§ 1.415(b)-1**

**26 CFR Ch. I (4-1-10 Edition)**

62—(1) *General rule*—(i) *Calculation using statutory factors.* For a distribution with an annuity starting date that occurs before the participant attains the age of 62, the age-adjusted section 415(b)(1)(A) dollar limit generally is determined as the actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a deferred straight life annuity commencing at age 62, where annual payments under the straight life annuity commencing at age 62 are equal to the dollar limitation of section 415(b)(1)(A) (as adjusted pursuant to section 415(d) and § 1.415(d)-1 for the limitation year), and where the actuarially equivalent straight life annuity is computed using a 5 percent interest rate and the applicable mortality table under § 1.417(e)-1(d)(2) that is effective for that annuity starting date (and expressing the participant's age based on completed calendar months as of the annuity starting date). However, if the plan has an immediately commencing straight life annuity payable both at age 62 and the age of benefit commencement, then the age-adjusted section 415(b)(1)(A) dollar limit is equal to the lesser of—

(A) The limit as otherwise determined under this paragraph (d)(1)(i); and

(B) The amount determined under paragraph (d)(1)(ii) of this section.

(ii) *Calculation using plan factors.* The amount determined under this paragraph (d)(1)(ii) is equal to the section 415(b)(1)(A) dollar limit (as adjusted pursuant to section 415(d) and § 1.415(d)-1 for the limitation year) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan to the annual amount of the straight life annuity under the plan commencing at age 62, with both annual amounts determined without applying the rules of section 415.

(2) *Mortality adjustments*—(i) *In general.* For purposes of determining the actuarially equivalent amount described in paragraph (d)(1)(i) of this section, to the extent that a forfeiture does not occur upon the participant's death before the annuity starting date, no adjustment is made to reflect the

probability of the participant's death between the annuity starting date and the participant's attainment of age 62, unless the plan provides for such an adjustment. To the extent that a forfeiture occurs upon the participant's death before the annuity starting date, an adjustment must be made to reflect the probability of the participant's death between the annuity starting date and the participant's attainment of age 62.

(ii) *No forfeiture deemed to occur where qualified preretirement survivor annuity payable.* For purposes of paragraphs (d)(2)(i) and (e)(2)(i) of this section, a plan is permitted to treat no forfeiture as occurring upon a participant's death if the plan does not charge participants for providing a qualified preretirement survivor annuity (QPSA) (as defined in section 417(c)) on the participant's death, but only if the plan applies this treatment both for adjustments before age 62 and adjustments after age 65. Thus, in such a case, the plan is permitted to provide that, in computing the adjusted dollar limitation under section 415(b)(1)(A), no adjustment is made to reflect the probability of a participant's death after the annuity starting date and before age 62 or after age 65 and before the annuity starting date.

(3) *Exception for certain participants of certain governmental plans.* Pursuant to section 415(b)(2)(G) and (H), no age adjustment is made to the dollar limit for commencement before age 62 for any qualified participant. For this purpose, a qualified participant is a participant in a defined benefit plan that is maintained by a state, Indian tribal government (as defined in section 7701(a)(40)), or any political subdivision of a state or Indian tribal government with respect to whom the service taken into account in determining the amount of the benefit under the defined benefit plan includes at least 15 years of service of the participant—

(i) As a full-time employee of any police department or fire department that is organized and operated by the state, Indian tribal government, or political subdivision maintaining such defined benefit plan to provide police protection, firefighting services, or emergency medical services for any

area within the jurisdiction of such state, Indian tribal government, or political subdivision; or

(ii) As a member of the Armed Forces of the United States.

(4) *Exception for survivor and disability benefits under governmental plans.* Pursuant to section 415(b)(2)(I), no age adjustment is made to the dollar limit for commencement before age 62 for a distribution from a governmental plan (as defined in section 414(d)) on account of the participant's becoming disabled by reason of personal injuries or sickness, or as a result of the death of the participant.

(5) *Special rule for commercial airline pilots.* Pursuant to section 415(b)(9), no age adjustment is made to the dollar limit for early commencement on or after age 60 for a participant if—

(i) The participant is a commercial airline pilot;

(ii) The participant separates from service upon or after attaining age 60; and

(iii) As of the time of the participant's retirement, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age occurring on or after age 60 and before age 62.

(6) *No decrease in age-adjusted section 415(b)(1)(A) dollar limit on account of age or service.* Notwithstanding any other provision of this paragraph (d), the age-adjusted section 415(b)(1)(A) dollar limit applicable to a participant does not decrease on account of an increase in age or the performance of additional service.

(7) *Examples.* The following examples illustrate the application of this paragraph (d). For purposes of these examples, it is assumed that the dollar limitation under section 415(b)(1)(A) for all relevant years is \$180,000, that the normal form of benefit under the plan is a straight life annuity payable beginning at age 65, and that all payments other than a payment of a single sum are made monthly, on the first day of each calendar month. The examples are as follows:

*Example 1.* (i) Plan A provides that early retirement benefits are determined by reducing the accrued benefit by 4 percent for each

year that the early retirement age is less than age 65. Participant M retires at age 60 with exactly 30 years of service with a benefit (prior to the application of section 415) in the form of a straight life annuity of \$100,000 payable at age 65, and is permitted to elect to commence benefits at any time between M's retirement and M's attainment of age 65. For example, M can elect to commence benefits at age 60 in the amount of \$80,000, can wait until age 62 and commence benefits in the amount of \$88,000, or can wait until age 65 and commence benefits in the amount of \$100,000. Plan A provides a QPSA to all married participants without charge. Plan A provides (consistent with paragraph (d)(2)(ii) of this section) that, for purposes of adjusting the dollar limitation under section 415(b)(1)(A) for commencement before age 62 or after age 65, no forfeiture is treated as occurring upon a participant's death before retirement and, therefore, in computing the adjusted dollar limitation under section 415(b)(1)(A), no adjustment is made to reflect the probability of a participant's death after the annuity starting date and before age 62 or after age 65 and before the annuity starting date.

(ii) The age-adjusted section 415(b)(1)(A) dollar limit that applies for commencement of M's benefit at age 60 is the lesser of the section 415(b)(1)(A) dollar limit multiplied by the ratio of the annuity payable at age 60 to the annuity payable at age 62, or the straight life annuity payable at age 60 that is actuarially equivalent, using 5 percent interest and the applicable mortality table effective for that annuity starting date under section 417(e)(3)(A)(ii)(I) and § 1.417(e)-1(d)(2), to the deferred annuity payable at age 62 of \$180,000 per year. In this case, the age-adjusted section 415(b)(1)(A) dollar limit at age 60 is \$156,229 (the lesser of \$163,636 (\$180,000\* \$80,000/\$88,000) and \$156,229 (the straight life annuity at age 60 that is actuarially equivalent to a deferred annuity of \$180,000 commencing at age 62, determined using 5 percent interest and the applicable mortality table, without a mortality decrement for the period between 60 and 62)).

*Example 2.* (i) The facts are the same as in *Example 1*, except that participant M elects to retire at age 60, 6 months, and 21 days.

(ii) Under paragraph (d)(1)(i) of this section, M is treated as age 60 and 6 months (or, age 60.5). Absent the rule provided in paragraph (d)(6) of this section, the age-adjusted section 415(b)(1)(A) dollar limit that applies for commencement of M's benefit at age 60.5 is the lesser of the section 415(b)(1)(A) dollar limit multiplied by the ratio of the annuity payable at age 60.5 to the annuity payable at age 62, or the straight life annuity payable at age 60.5 that is actuarially equivalent, using 5 percent interest and the applicable mortality table for that annuity starting date under section 417(e)(3)(A)(ii)(I) and



§ 1.417(e)-1(d)(2), to the deferred annuity payable at age 62 of \$180,000 per year. The age-adjusted section 415(b)(1)(A) dollar limit at age 60.5 is \$161,769 (the lesser of \$167,727 (\$180,000\* \$82,000/\$88,000) and \$161,769 (the straight life annuity at age 60.5 that is actuarially equivalent to a deferred annuity of \$180,000 commencing at age 62, determined using 5 percent interest and the applicable mortality table, without a mortality decrement for the period between 60.5 and 62)).

*Example 3.* (i) The facts are the same as in *Example 1*, except the plan provides that, if a participant has 30 or more years of service, no reduction applies for benefits commencing at age 62 and later.

(ii) Absent the rule provided in paragraph (d)(6) of this section, the age-adjusted section 415(b)(1)(A) dollar limit that applies for commencement of M's benefit at age 60 is the lesser of the section 415(b)(1)(A) dollar limit multiplied by the ratio of the annuity payable at age 60 to the annuity payable at age 62, or the straight life annuity payable at age 60 that is actuarially equivalent, using 5 percent interest and the applicable mortality table for that annuity starting date under section 417(e)(3)(A)(ii)(I) and § 1.417(e)-1(d)(2), to the deferred annuity payable at age 62 of \$180,000 per year. In this case, because M has 30 years of service and would be eligible for the unreduced early retirement benefit at age 62, the age-adjusted section 415(b)(1)(A) dollar limit at age 60 would be \$144,000 (the lesser of \$144,000 (\$180,000\* \$80,000/\$100,000) and \$156,229 (the straight life annuity at age 60 that is actuarially equivalent to a deferred annuity of \$180,000 commencing at age 62, determined using 5 percent interest and the applicable mortality table, without a mortality decrement for the period between 60 and 62)).

(iii) However, at age 59 11/12 with 29 11/12 years of service, the age-adjusted section 415(b)(1)(A) dollar limit for M is \$155,311 (the lesser of \$162,955 (\$180,000\* \$79,667/\$88,000) and \$155,311 (the straight life annuity at age 59 11/12 that is actuarially equivalent to a deferred annuity of \$180,000 commencing at age 62, determined using 5 percent interest and the applicable mortality table, without a mortality decrement for the period between 59 and 62)). Thus, after applying the rule provided in paragraph (d)(6) of this section, the age-adjusted section 415(b)(1)(A) dollar limit that applies for commencement of M's benefit at age 60 is \$155,311.

*Example 4.* (i) The facts are the same as in *Example 1*, except that the plan provides that, if a participant has 30 or more years of service, then no reduction is made in early retirement benefits if the early retirement age is at least age 62 and, in the case of an early retirement age before age 62, the early retirement benefit is determined by reducing the accrued benefit by 4 percent for each

year that the early retirement age is less than age 62.

(ii) The age-adjusted section 415(b)(1)(A) dollar limit that applies for commencement of M's benefit at age 60 is the lesser of the section 415(b)(1)(A) dollar limit multiplied by the ratio of the annuity payable at age 60 to the annuity payable at age 62, or the straight life annuity payable at age 60 that is actuarially equivalent, using 5 percent interest and the applicable mortality table for that annuity starting date under section 417(e)(3)(A)(ii)(I) and § 1.417(e)-1(d)(2), to the deferred annuity payable at age 62 of \$180,000 per year. In this case, because M has 30 years of service and would be eligible for the unreduced early retirement benefit at age 62, the age-adjusted section 415(b)(1)(A) dollar limit at age 60 is \$156,229 (the lesser of \$165,600 (\$180,000\* \$92,000/\$100,000) and \$156,229 (the straight life annuity at age 60 that is actuarially equivalent to a deferred annuity of \$180,000 commencing at age 62, determined using 5 percent interest and the applicable mortality table, without a mortality decrement for the period between 60 and 62)).

*Example 5.* (i) The facts are the same as in *Example 1*, except that Participant M chooses to receive benefits in the form of a 10-year certain and life annuity under which payments are 97 percent of the periodic payments that would be made under the immediately commencing straight life annuity. Annual payments to M are 97 percent of \$80,000, or \$77,600. Additionally, M's average compensation for the period of M's high-3 years of service is \$120,000. As in *Example 1*, the age-adjusted section 415(b)(1)(A) dollar limit at age 60 is \$156,229.

(ii) In the case of a form of benefit to which section 417(e)(3) does not apply, the annual benefit for purposes of this section is the greater of the annual amount of the plan's straight life annuity commencing at the same age or the annual amount of the actuarially equivalent straight life annuity commencing at the same age, determined using a 5 percent interest rate and the applicable mortality table for that annuity starting date under section 417(e)(3)(A)(ii)(I) and § 1.417(e)-1(d)(2). In this case, the straight life annuity payable under the plan commencing at the same age is \$80,000. The annual amount of the straight life annuity that is actuarially equivalent to the \$77,600 benefit payable as a 10-year certain and life annuity is determined by applying the required standardized factors (a 5 percent interest assumption and the applicable mortality under section 417(e)(3)(A)(ii)(I) and § 1.417(e)-1(d)(2), and is \$79,416. With respect to the 10-year certain and life annuity commencing at age 62, M's annual benefit is equal to the greater of the two resulting amounts (\$80,000 and \$79,416), or \$80,000. Because M's annual benefit is less than the age-adjusted section 415(b)(1)(A) dollar limit and is less than the

section 415(b)(1)(B) compensation limit, M's benefit satisfies section 415.

*Example 6.* (i) Participant O is a full-time civilian employee of the Harbor Police Division of the State of X Port Authority. The Harbor Police Division provides police protection services. O performs clerical services for the Harbor Police Division. O is a participant in the defined benefit plan that is maintained by the State of X with respect to whom the years of service taken into account in determining the amount of the benefit under the plan includes 10 years of service working for the Harbor Police Division and 5 years of service as a member of the Armed Forces of the United States.

(ii) For a distribution with an annuity starting date that occurs before O attains the age of 62, there is no age adjustment to the section 415(b)(1)(A) dollar limit.

*Example 7.* (i) Participant R is a full-time employee of the Emergency Medical Service Department of County Y (which is not a part of a police or fire department) who performs services as a driver of an ambulance. R is a participant in the defined benefit plan that is maintained by County Y with respect to whom the years of service taken into account in determining the amount of the benefit under the plan includes 15 years of service working for County Y. R does not have service credit for time in the Armed Forces of the United States.

(ii) The age adjustments to the limitations of section 415(b)(1)(A) pursuant to section 415(b)(2)(C) and (D) will apply if R commences receiving a distribution at an age to which either of those adjustments applies.

(e) *Adjustment to section 415(b)(1)(A) dollar limit for commencement after age 65—(1) General rule—(i) Calculation using statutory factors.* For a distribution with an annuity starting date that occurs after the participant attains the age of 65, the age-adjusted section 415(b)(1)(A) dollar limit generally is determined as the actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a straight life annuity commencing at age 65, where annual payments under the straight life annuity commencing at age 65 are equal to the dollar limitation of section 415(b)(1)(A) (as adjusted pursuant to section 415(d) and § 1.415(d)-1 for the limitation year), and where the actuarially equivalent straight life annuity is computed using a 5 percent interest rate and the applicable mortality table under § 1.417(e)-1(d)(2) that is effective for that annuity starting date (and ex-

pressing the participant's age based on completed calendar months as of the annuity starting date). However, if the plan has an immediately commencing straight life annuity payable as of the annuity starting date and an immediately commencing straight life annuity payable at age 65, then the age-adjusted section 415(b)(1)(A) dollar limit is equal to the lesser of—

(A) The limit as otherwise determined under this paragraph (e)(1)(i); and

(B) The amount determined under paragraph (e)(1)(ii) of this section.

(ii) *Calculation using plan factors.* The amount determined under this paragraph (e)(1)(ii) is equal to the section 415(b)(1)(A) dollar limit (as adjusted pursuant to section 415(d) and § 1.415(d)-1 for the limitation year) multiplied by the adjustment ratio described in paragraph (e)(2)(i) of this section.

(2) *Adjustment ratio—(i) General rule.* For purposes of applying the rule of paragraph (e)(1)(ii) of this section, the adjustment ratio is equal to the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan described in paragraph (e)(2)(ii) of this section to the adjusted age 65 straight life annuity described in paragraph (e)(2)(iii) of this section.

(ii) *Adjusted immediately commencing straight life annuity.* The adjusted immediately commencing straight life annuity that is used for purposes of paragraph (e)(2)(i) of this section is the annual amount of the immediately commencing straight life annuity payable to the participant, computed disregarding the participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are applied to offset accruals. For this purpose, the annual amount of the immediately commencing straight life annuity is determined without applying the rules of section 415.

(iii) *Adjusted age 65 straight life annuity.* The adjusted age 65 straight life annuity that is used for purposes of paragraph (e)(2)(i) of this section is the annual amount of the straight life annuity that would be payable under the plan to a hypothetical participant who

is 65 years old and has the same accrued benefit (with no actuarial increases for commencement after age 65) as the participant receiving the distribution (determined disregarding the participant's accruals after age 65 and without applying the rules of section 415).

(3) *Mortality adjustments*—(i) *In general.* For purposes of determining the actuarially equivalent amount described in paragraph (e)(1)(i) of this section, to the extent that a forfeiture does not occur upon the participant's death before the annuity starting date, no adjustment is made to reflect the probability of the participant's death between the participant's attainment of age 65 and the annuity starting date. To the extent that a forfeiture occurs upon the participant's death before the annuity starting date, an adjustment must be made to reflect the probability of the participant's death between the participant's attainment of age 65 and the annuity starting date.

(ii) *No forfeiture deemed to occur where QPSA payable.* See paragraph (d)(2)(ii) of this section for a rule deeming no forfeiture to occur if the plan does not charge participants for providing a QPSA on the participant's death.

(4) *Examples.* The following examples illustrate the application of this paragraph (e):

*Example 1.* (i) Plan A provides that monthly benefits payable upon commencement after normal retirement age (which is age 65) are increased by 0.5 percent for each month of delay in commencement after attainment of normal retirement age. Plan A provides a QPSA to all married participants without charge. Plan A provides (consistent with paragraph (d)(2)(ii) of this section) that, for purposes of adjusting the dollar limitation under section 415(b)(1)(A) for commencement before age 62 or after age 65, no adjustment is made to reflect the probability of a participant's death between the annuity starting date and the participant's attainment of age 62 or between the age of 65 and the annuity starting date. The normal form of benefit under Plan A is a straight life annuity commencing at age 65. Plan A does not provide additional benefit accruals once a participant is credited with 30 years of service. Participant M was credited with 30 years of service under Plan A when M attained age 65. M retires at age 70 on January 1, 2008, with a benefit (prior to the application of section 415) that is payable monthly in the form of a straight life annuity of \$195,000, which re-

flects the actuarial increase of 30 percent applied to the accrued benefit of \$150,000. It is assumed that all payments under Plan A, other than a payment of a single sum, are made monthly, on the first day of each calendar month. It is also assumed that the dollar limit in 2008 is \$185,000.

(ii) The age-adjusted section 415(b)(1)(A) dollar limit at age 70 is the lesser of the section 415(b)(1)(A) dollar limit multiplied by the ratio of the adjusted immediately commencing straight life annuity payable at age 70 (computed disregarding the rules of section 415 and accruals after age 65, but including actuarial adjustments) to the adjusted age 65 straight life annuity (computed disregarding the rules of section 415 and any accruals after age 65), or the straight life annuity payable at age 70 that is actuarially equivalent, using 5 percent interest and the applicable mortality table for that annuity starting date under section 417(e)(3)(A)(ii)(I) and § 1.417(e)-1(d)(2), to the straight life annuity payable at age 65, where annual payments under the straight life annuity payable at age 65 are equal to the dollar limitation of section 415(b)(1)(A). In this case, the age-adjusted section 415(b)(1)(A) dollar limit at age 70 is \$240,500 (the lesser of \$240,500 (\$185,000\* \$195,000/\$150,000) and \$271,444 (the straight life annuity at age 70 that is actuarially equivalent to an annuity of \$185,000 commencing at age 65, determined using 5 percent interest and the applicable mortality table, without a mortality decrement for the period between 65 and 70)).

*Example 2.* (i) The facts are the same as in Example 1, except that Plan A does not limit benefit accruals to 30 years of credited service, and thus M accrues benefits between ages 65 and 70.

(ii) Since M's accruals after attaining age 65 are disregarded for purposes of determining the age-adjusted section 415(b)(1)(A) dollar limit applicable to M at age 70, the result is the same as in *Example 1*.

*Example 3.* (i) The facts are the same as in *Example 1*, except that Plan A does not limit benefit accruals to 30 years of credited service. However, benefit accruals after an employee has reached normal retirement age (age 65), are offset by the actuarial increase that the plan provides for commencement of benefits after normal retirement age.

(ii) The result is the same as in *Example 1*, even if the actuarial increases for post-age 65 benefit commencement provided under Plan A do or do not fully offset M's benefit accruals after attaining age 65. This is because benefit accruals after age 65 are disregarded for purposes of determining the age-adjusted section 415(b)(1)(A) dollar limit applicable to M after age 65.

(f) *Total annual payments not in excess of \$10,000*—(1) *In general.* Pursuant to section 415(b)(4), the annual benefit

(without regard to the age at which benefits commence) payable with respect to a participant under any defined benefit plan is not considered to exceed the limitations on benefits described in section 415(b)(1) and in paragraph (a)(1) of this section if—

(i) The benefits (other than benefits not taken into account in the computation of the annual benefit under the rules of paragraph (b) or (c) of this section) payable with respect to the participant under the plan and all other defined benefit plans of the employer do not in the aggregate exceed \$10,000 (as adjusted under paragraph (g) of this section) for the limitation year, or for any prior limitation year; and

(ii) The employer (or a predecessor employer) has not at any time maintained a defined contribution plan in which the participant participated.

(2) *Computation of benefits for purposes of applying the \$10,000 amount.* For purposes of paragraph (f)(1)(i) of this section, the benefits payable with respect to the participant under a plan for a limitation year reflect all amounts payable under the plan for the limitation year (other than benefits not taken into account in the computation of the annual benefit under the rules of paragraph (b) or (c) of this section), and are not adjusted for form of benefit or commencement date.

(3) *Special rule with respect to participants in multiemployer plans.* The special \$10,000 exception set forth in paragraph (f)(1) of this section applies to a participant in a multiemployer plan described in section 414(f) without regard to whether that participant ever participated in one or more other plans maintained by an employer who also maintains the multiemployer plan, provided that none of such other plans were maintained as a result of collective bargaining involving the same employee representative as the multiemployer plan.

(4) *Special rule with respect to employee contributions.* Notwithstanding §§ 1.415(c)-1(a)(2)(ii)(B) and 1.415(c)-1(b)(3), mandatory employee contributions under a defined benefit plan described in paragraph (b)(2)(iii) of this section are not considered a separate defined contribution plan maintained by the employer for purposes of para-

graph (f)(1)(ii) of this section. Thus, the special dollar limitation provided for in this paragraph (f) applies to a contributory defined benefit plan.

Similarly, for purposes of this paragraph (f), an individual medical account under section 401(h) or an account for postretirement medical benefits established pursuant to section 419A(d)(1) is not considered a separate defined contribution plan maintained by the employer.

(5) *Examples.* The application of this paragraph (f) may be illustrated by the following examples. For purposes of these examples, it is assumed that each participant has 10 years of participation in the plan and service with the employer. The examples are as follows:

*Example 1.* (i) B is a participant in a defined benefit plan maintained by X Corporation, which provides for a benefit payable in the form of a straight life annuity beginning at age 65. B's average compensation for the period of B's high-3 years of service is \$6,000. The plan does not provide for mandatory employee contributions, and at no time has B been a participant in a defined contribution plan maintained by X. With respect to the current limitation year, B's benefit under the plan (before the application of section 415) is \$9,500.

(ii) Because annual payments under B's benefit do not exceed \$10,000, and because B has at no time participated in a defined contribution plan maintained by X, the benefits payable under the plan are not considered to exceed the limitation on benefits otherwise applicable to B (\$6,000).

(iii) This result would remain the same even if, under the terms of the plan, B's benefit of \$9,500 were payable at age 60, or if the plan provided for mandatory employee contributions.

*Example 2.* (i) The facts are the same as in *Example 1*, except that the plan provides for a benefit payable in the form of a life annuity with a 10-year certain feature with annual payments of \$9,500. Assume that, after the adjustment described in paragraph (c) of this section, B's actuarially equivalent straight life annuity (which is the annual benefit used for demonstrating compliance with section 415) for the current limitation year is \$10,400.

(ii) For purposes of applying the special rule provided in this paragraph for total benefits not in excess of \$10,000, there is no adjustment required if the retirement benefit payable under the plan is not in the form of a straight life annuity. Therefore, because B's retirement benefit does not exceed \$10,000, B may receive the full \$9,500 benefit

without the otherwise applicable benefit limitations of this section being exceeded.

*Example 3.* (i) The facts are the same as in *Example 1*, except that the plan provides for a benefit payable in the form of a single sum and the amount of the single sum that is the actuarial equivalent of the straight life annuity payable to B (\$9,500 annually), determined in accordance with the rules of section 417(e)(3) and § 1.417(e)-1(d), is \$95,000.

(ii) Because the amount payable to B for the limitation year would exceed \$10,000, the rule of this paragraph (f) does not provide an exception from the generally applicable limits of section 415(b)(1) for the single-sum distribution. Thus, the otherwise applicable limits apply to the single-sum distribution, and a single-sum distribution of \$95,000 would not satisfy the requirements of section 415(b). Limiting the single-sum distribution to \$60,000 (the present value of the annuity that complies with the compensation-based limitation of section 415(b)(1)(B)) in order to satisfy section 415 would be an impermissible forfeiture under the requirements of section 411(a). Accordingly, the plan should not provide for a single-sum distribution in these circumstances.

(g) *Special rule for participation or service of less than 10 years—(1) Proration of dollar limit based on years of participation—(i) In general.* Pursuant to section 415(b)(5)(A), where a participant has less than 10 years of participation in the plan, the dollar limit described in paragraph (a)(1)(i) of this section (as adjusted pursuant to section 415(d), § 1.415(d)-1, and paragraphs (d) and (e) of this section) is reduced by multiplying the otherwise applicable limitation by a fraction—

(A) The numerator of which is the number of years of participation in the plan (or 1, if greater); and

(B) The denominator of which is 10.

(ii) *Years of participation.* The following rules apply for purposes of determining a participant's years of participation for purposes of this paragraph (g)(1)—

(A) A participant is credited with a year of participation (computed to fractional parts of a year) for each accrual computation period for which the participant is credited with at least the number of hours of service (or period of service if the elapsed time method is used for benefit accrual purposes) required under the terms of the plan in order to accrue a benefit for the accrual computation period, and the participant is included as a plan partici-

pant under the eligibility provisions of the plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a year of participation credited to the participant is equal to the amount of benefit accrual service credited to the participant for such accrual computation period. For example, if under the terms of a plan, a participant receives 1/10 of a year of benefit accrual service for an accrual computation period for each 200 hours of service, and the participant is credited with 1,000 hours of service for the period, the participant is credited with 1/2 a year of participation for purposes of section 415(b)(5)(A) and this paragraph (g)(1).

(B) A participant who is permanently and totally disabled within the meaning of section 415(c)(3)(C)(i) for an accrual computation period is credited with a year of participation with respect to that period for purposes of section 415(b)(5)(A) and this paragraph (g)(1).

(C) For a participant to receive a year of participation (or part thereof) for an accrual computation period for purposes of section 415(b)(5)(A) and this paragraph (g)(1), the plan must be established no later than the last day of such accrual computation period.

(D) No more than one year of participation may be credited for any 12-month period for purposes of section 415(b)(5)(A) and this paragraph (g)(1).

(2) *Proration of compensation limit and special rule for total annual payments less than \$10,000 based on years of service—(i) In general.* Pursuant to section 415(b)(5)(B), where a participant has less than 10 years of service with the employer, the compensation limit described in paragraph (a)(1)(ii) of this section and the \$10,000 amount under the special rule for small annual payments under paragraph (f) of this section are reduced by multiplying the otherwise applicable limitation by a fraction—

(A) The numerator of which is the number of years of service with the employer (or 1, if greater); and

(B) The denominator of which is 10.

(ii) *Years of service—(A) In general.* For purposes of applying this paragraph (g)(2), years of service must be

determined on a reasonable and consistent basis. A plan is considered to be determining years of service on a reasonable and consistent basis for this purpose if, subject to the limits of paragraph (g)(2)(ii)(B) of this section, a participant is credited with a year of service (computed to fractional parts of a year) for each accrual computation period for which the participant is credited with at least the number of hours of service (or period of service if the elapsed time method is used for benefit accrual purposes) required under the terms of the plan in order to accrue a benefit for the accrual computation period.

(B) *Rules of application.* No more than one year of service may be credited for any 12-month period for purposes of section 415(b)(5)(B). In addition, only the participant's service with the employer or a predecessor employer (as defined in §1.415(f)-1(c)) may be taken into account in determining the participant's years of service for this purpose. Thus, if an employer does not maintain a former employer's plan, a participant's service with the former employer may be taken into account in determining the participant's years of service for purposes of this paragraph (g)(2) only if the former employer is a predecessor employer with respect to the employer pursuant to §1.415(f)-1(c)(2) (which defines predecessor employer to include, under certain circumstances, a former entity that antedates the employer).

(C) *Period of disability.* Notwithstanding the rules of paragraph (g)(2)(ii)(B) of this section, a plan is permitted to provide that a participant who is permanently and totally disabled within the meaning of section 415(c)(3)(C)(i) for an accrual computation period is credited with service with respect to that period for purposes of section 415(b)(5)(B).

(3) *Exception for survivor and disability benefits under governmental plans.* The requirements of this paragraph (g) (regarding participation or service of less than 10 years) do not apply to a distribution from a governmental plan (as defined in section 414(d)) on account of the participant's becoming disabled by reason of personal injuries or sickness,

or as a result of the death of the participant.

(4) *Examples.* The provisions of this paragraph (g) may be illustrated by the following examples:

*Example 1.* (i) C begins employment with Employer A on January 1, 2005, at the age of 58. Employer A maintains only a non-contributory defined benefit plan which provides for a straight life annuity beginning at age 65 and uses the calendar year for the limitation and plan year. Employer A has never maintained a defined contribution plan. C becomes a participant in Employer A's plan on January 1, 2006, and works through December 31, 2011, when C is age 65. C begins to receive benefits under the plan in 2012. C's average compensation for the period of C's high-3 years of service is \$40,000. Furthermore, under the terms of Employer A's plan, for purposes of computing C's nonforfeitable percentage in C's accrued benefit derived from employer contributions, C has only 7 years of service with Employer A (2005-2011).

(ii) Because C has only 7 years of service with Employer A at the time he begins to receive benefits under the plan, the maximum permissible annual benefit payable with respect to C is \$28,000 (\$40,000 multiplied by 7/10).

*Example 2.* (i) The facts are the same as in *Example 1*, except that C's average compensation for the period of his high-3 years of service is \$8,000.

(ii) Because C has only 7 years of service with Employer A at the time he begins to receive benefits, the maximum benefit payable with respect to C would be reduced to \$5,600 (\$8,000 multiplied by 7/10). However, the special rule for total benefits not in excess of \$10,000, provided in paragraph (f) of this section, is applicable in this case. Accordingly, C may receive an annual benefit of \$7,000 (\$10,000 multiplied by 7/10) without the benefit limitations of this section being exceeded.

*Example 3.* (i) Employer B maintains a defined benefit plan. Benefits under the plan are computed based on months of service rather than years of service. Accordingly, for purposes of applying the reduction based on years of service less than 10 to the limitations under section 415(b), the plan provides that the otherwise applicable limitation is multiplied by a fraction, the numerator of which is the number of completed months of service with the employer (but not less than 12 months), and the denominator of which is 120. The plan further provides that months of service are computed in the same manner for this purpose as for purposes of computing plan benefits.

(ii) The manner in which the plan applies the reduction based on years of service less than 10 to the limitations under section

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415(b) is consistent with the requirements of this paragraph (g).

*Example 4.* (i) G begins employment with Employer D on January 1, 2003, at the age of 58. Employer D maintains a noncontributory defined benefit plan which provides for a straight life annuity beginning at age 65 and uses the calendar year for the limitation and plan year. G becomes a participant in Employer D's plan on January 1, 2004, and works through December 31, 2009, when G is age 65. G performs sufficient service to be credited with a year of service under the plan for each year during 2003 through 2009 (although G is not credited with a year of service for 2003 because G is not yet a plan participant). G begins to receive benefits under the plan during 2010. The plan's accrual computation period is the plan year. The plan provides that, for purposes of applying the rules of section 415(b)(5)(B), a participant is credited with a year of service (computed to fractional parts of a year) for each plan year for which the participant is credited with sufficient service to accrue a benefit for the plan year. G's average compensation for the period of G's high-3 years of service is \$200,000. It is assumed for purposes of this example that the dollar limitation of section 415(b)(1)(A) for limitation years ending in 2010 is \$195,000.

(ii) G has 7 years of service and 6 years of participation in the plan at the time G begins to receive benefits under the plan. Accordingly, the limitation under section 415(b)(1)(B) based on G's average compensation for the period of G's high-3 years of service that applies pursuant to the adjustment required under section 415(b)(5)(B) is \$140,000 (\$200,000 multiplied by 7/10), and the dollar limitation under section 415(b)(1)(A) that applies to G pursuant to the adjustment required under section 415(b)(5)(A) is \$117,000 (\$195,000 multiplied by 6/10).

(h) *Retirement Protection Act of 1994 transition rules.* For special rules affecting the actuarial adjustment for form of benefit under paragraph (c) of this section and the adjustment to the dollar limit for early or late commencement under paragraphs (d) and (e) of this section for certain plans adopted and in effect before December 8, 1994, see section 767(d)(3)(A) of the Uruguay Round Agreements Act of 1994, Public Law 103-465 (108 Stat. 4809) as amended by section 1449(a) of the Small Business Job Protection Act of 1996, Public Law 104-188 (110 Stat. 1755). The Commissioner may provide guidance regarding these special rules in revenue rulings, notices, and other guidance published

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in the Internal Revenue Bulletin. See § 601.601(d) of this chapter.

[T.D. 9319, 72 FR 16899, Apr. 5, 2007; 72 FR 28854, May 23, 2007]

### § 1.415(b)-2 Multiple annuity starting dates. [Reserved]

### § 1.415(c)-1 Limitations for defined contribution plans.

(a) *General rules*—(1) *Maximum limitations.* Under section 415(c) and this section, to satisfy the provisions of section 415(a) for any limitation year, except as provided by paragraph (a)(3) of this section, the annual additions (as defined in paragraph (b) of this section) credited to the account of a participant in a defined contribution plan for the limitation year must not exceed the lesser of—

(i) \$40,000 (adjusted pursuant to section 415(d) and § 1.415(d)-1(b)); or

(ii) 100 percent of the participant's compensation (as defined in § 1.415(c)-2) for the limitation year.

(2) *Defined contribution plan*—(i) *Definition.* For purposes of section 415 and regulations promulgated under section 415, the term *defined contribution plan* means a defined contribution plan within the meaning of section 414(i) (including the portion of a plan treated as a defined contribution plan under the rules of section 414(k)) that is—

(A) A plan described in section 401(a) which includes a trust which is exempt from tax under section 501(a);

(B) An annuity plan described in section 403(a); or

(C) A simplified employee pension described in section 408(k).

(ii) *Additional plans treated as defined contribution plans*—(A) *In general.* Contributions to the types of arrangements described in paragraphs (a)(2)(ii)(B) through (D) of this section are treated as contributions to defined contribution plans for purposes of section 415 and regulations promulgated under section 415.

(B) *Employee contributions to a defined benefit plan.* Mandatory employee contributions (as defined in section 411(c)(2)(C) and § 1.411(c)-1(c)(4), regardless of whether the plan is subject to the requirements of section 411) to a defined benefit plan are treated as contributions to a defined contribution