

number of years to increase annual benefits to reflect the increases in the section 415(b) limitations pursuant to section 415(d) and subsequently is not amended to reflect later increases in the section 415(b) limitations.

[T.D. 9319, 72 FR 16919, Apr. 5, 2007]

**§ 1.415(f)-1 Aggregating plans.**

(a) *In general.* Except as provided in paragraph (g) of this section (regarding multiemployer plans), and taking into account the rules of paragraph (b)(2) (regarding the break-up of affiliated employers and affiliated service groups), paragraph (c) (regarding predecessor employers), and paragraph (d)(1) (regarding nonduplication rules) of this section, section 415(f) and this section require that for purposes of applying the limitations of sections 415(b) and (c) applicable to a participant for a particular limitation year—

(1) All defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the employer (or a predecessor employer within the meaning of paragraphs (c)(1) and (c)(2) of this section) under which the participant has accrued a benefit are treated as one defined benefit plan;

(2) All defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the employer (or a predecessor employer within the meaning of paragraphs (c)(1) and (c)(2) of this section) under which the participant receives annual additions are treated as one defined contribution plan; and

(3) All section 403(b) annuity contracts purchased by an employer (including plans purchased through salary reduction contributions) for the participant are treated as one section 403(b) annuity contract.

(b) *Affiliated employers, affiliated service groups, and leased employees—(1) General rule.* See § 1.415(a)-1(f)(1) and (2) for rules regarding aggregation of employers in the case of affiliated employers and affiliated service groups. See § 1.415(a)-1(f)(3) for rules regarding the treatment of leased employees.

(2) *Special rule in the case of the break-up of an affiliated employer or an affiliated service group—(i) In general.* A formerly affiliated plan of an employer is taken into account for purposes of ap-

plying paragraph (a) of this section to the employer, but the formerly affiliated plan is treated as if it had terminated immediately prior to the cessation of affiliation with sufficient assets to pay benefit liabilities under the plan, and had purchased annuities to provide plan benefits. See § 1.415(b)-1(b)(5)(i) for rules determining annual benefits under a terminated defined benefit plan under which annuities are purchased to provide plan benefits.

(ii) *Definitions.* For purposes of this paragraph (b)(2), a *formerly affiliated plan of an employer* is a plan that, immediately prior to the cessation of affiliation, was actually maintained by one or more of the entities that constitute the employer (as determined under the employer affiliation rules described in § 1.415(a)-1(f)(1) and (2)), and immediately after the cessation of affiliation, is not actually maintained by any of the entities that constitute the employer (as determined under the employer affiliation rules described in § 1.415(a)-1(f)(1) and (2)). For purposes of this paragraph (b)(2), a *cessation of affiliation* means the event that causes an entity to no longer be aggregated with one or more other entities as a single employer under the employer affiliation rules described in § 1.415(a)-1(f)(1) and (2) (such as the sale of a subsidiary outside a controlled group), or that causes a plan to not actually be maintained by any of the entities that constitute the employer under the employer affiliation rules of § 1.415(a)-1(f)(1) and (2) (such as a transfer of plan sponsorship outside of a controlled group).

(c) *Predecessor employer—(1) Where plan is maintained by successor.* For purposes of section 415 and regulations promulgated under section 415, a former employer is a predecessor employer with respect to a participant in a plan maintained by an employer if the employer maintains a plan under which the participant had accrued a benefit while performing services for the former employer (for example, the employer assumed sponsorship of the former employer's plan, or the employer's plan received a transfer of benefits from the former employer's plan), but only if that benefit is provided under the plan maintained by the employer.

In such a case, in applying the limitations of section 415 to a participant in a plan maintained by the employer, paragraph (a) of this section requires the plan to take into account benefits provided to the participant under plans that are maintained by the predecessor employer and that are not maintained by the employer. For this purpose, the formerly affiliated plan rules in paragraph (b)(2) of this section apply as if the employer and predecessor employer constituted a single employer under the rules described in § 1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in § 1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the predecessor employer relationship, such as a transfer of benefits or plan sponsorship.

(2) *Where plan is not maintained by successor.* With respect to an employer of a participant, a former entity that antedates the employer is a predecessor employer with respect to the participant if, under the facts and circumstances, the employer constitutes a continuation of all or a portion of the trade or business of the former entity. This will occur, for example, where formation of the employer constitutes a mere formal or technical change in the employment relationship and continuity otherwise exists in the substance and administration of the business operations of the former entity and the employer.

(d) *Special rules—(1) Nonduplication.* In applying the limitations of section 415 to a plan maintained by an employer, if the plan is aggregated with another plan pursuant to the aggregation rules of paragraph (a) of this section, a participant's benefits are not counted more than once in determining the participant's aggregate annual benefit or annual additions. For example, if a defined benefit plan is treated as if it terminated immediately prior to a cessation of affiliation under paragraph (b)(2) of this section, the plans maintained by the employer (as determined after the cessation of affiliation) that actually maintains the plan do not double count the annual benefit pro-

vided under the plan by aggregating under paragraph (a) of this section both the participant's annual benefit provided under the plan and the participant's annual benefit under the plan as a formerly affiliated plan (which is a plan that the employers formerly affiliated with the employer must take into account as a terminated plan under the rules of paragraph (b)(2) of this section). Instead, the plans maintained by the employer include the annual benefit provided to the participant under the actual plan that the employer maintains. Similarly, if a defined benefit plan maintained by an employer (the transferee plan) receives a transfer of benefits from a defined benefit plan maintained by a predecessor employer (the transferor plan) and the transfer is described in § 1.415(b)-1(b)(3)(i)(B) (which requires the transferred benefits to be treated by the transferor plan as if the benefits were provided under a plan that must be aggregated with the transferor plan that terminated immediately prior to the transfer), the transferee plan does not double count the transferred benefits under paragraph (a) of this section by taking into account both the actual benefit provided under the transferee plan and the benefit provided under the deemed terminated plan that the predecessor employer is treated as maintaining (and that otherwise would have to be taken into account by the transferee plan under the predecessor employer aggregation rules of paragraph (a) of this section). Instead, the transferee plan takes into account the transferred benefits that are actually provided under the transferee plan (see § 1.415(b)-1(b)(3)(i)(C)) and, pursuant to paragraph (c)(1) of this section, any nontransferred benefits provided under plans maintained by the predecessor employer with respect to a participant whose benefits have been transferred to the transferee plan.

(2) *Determination of years of participation for multiple plans.* If two or more defined benefit plans are aggregated under section 415(f) and this section for a particular limitation year, in applying the reduction for participation of

less than ten years (as described in section 415(b)(5)(A)) to the dollar limitation under section 415(b)(1)(A), time periods that are counted as years of participation under any of the plans are counted in computing the limitation of the aggregated plans under this section.

(3) *Determination of years of service for multiple plans.* If two or more defined benefit plans are aggregated under section 415(f) and this section for a particular limitation year, in applying the reduction for service of less than ten years (as described in section 415(b)(5)(B)) to the compensation limitation under section 415(b)(1)(B), time periods that are counted as years of service under any of the plans are counted in computing the limitation of the aggregated plans under this section.

(e) *Previously unaggregated plans—(1) In general.* This paragraph (e) provides rules for those situations in which two or more existing plans, which previously were not required to be aggregated pursuant to section 415(f) and this section, are aggregated during a particular limitation year and, as a result, the limitations of section 415(b) or (c) are exceeded for that limitation year. Paragraph (e)(2) of this section provides rules for defined contribution plans that are first required to be aggregated pursuant to section 415(f) and this section in a plan year. Paragraph (e)(3) of this section provides rules for defined benefit plans that are first required to be aggregated pursuant to section 415(f) and this section, and for defined benefit plans under which a participant's benefit is frozen following aggregation.

(2) *Defined contribution plans.* Two or more defined contribution plans that are not required to be aggregated pursuant to section 415(f) and this section as of the first day of a limitation year do not fail to satisfy the requirements of section 415 with respect to a participant for the limitation year merely because they are aggregated later in that limitation year, provided that no annual additions are credited to the participant's account after the date on which the plans are required to be aggregated.

(3) *Defined benefit plans—(i) First year of aggregation.* Two or more defined benefit plans that are not required to be aggregated pursuant to section 415(f) and this section as of the first day of a limitation year do not fail to satisfy the requirements of section 415 for the limitation year merely because they are aggregated later in that limitation year, provided that no plan amendments increasing benefits with respect to the participant under either plan are made after the occurrence of the event causing the plan to be aggregated.

(ii) *All years of aggregation in which accrued benefits are frozen.* Two or more defined benefit plans that are required to be aggregated pursuant to section 415(f) and this section during a limitation year subsequent to the limitation year during which the plans were first aggregated do not fail to satisfy the requirements of section 415 with respect to a participant for the limitation year merely because they are aggregated if there have been no increases in the participant's accrued benefit derived from employer contributions (including increases as a result of increased compensation or service) under any of the plans within the period during which the plans have been aggregated.

(f) *Section 403(b) annuity contracts—(1) In general.* In the case of a section 403(b) annuity contract, except as provided in paragraph (f)(2) of this section, the participant on whose behalf the annuity contract is purchased is considered for purposes of section 415 to have exclusive control of the annuity contract. Accordingly, except as provided in paragraph (f)(2) of this section, the participant, and not the participant's employer who purchased the section 403(b) annuity contract, is deemed to maintain the annuity contract, and such a section 403(b) annuity contract is not aggregated with a qualified plan that is maintained by the participant's employer.

(2) *Special rules under which the employer is deemed to maintain the annuity contract—(i) In general.* Where a participant on whose behalf a section 403(b) annuity contract is purchased is in control of any employer for a limitation year as defined in paragraph (f)(2)(ii) of this section (regardless of whether the employer controlled by

the participant is the employer maintaining the section 403(b) annuity contract), the annuity contract for the benefit of the participant is treated as a defined contribution plan maintained by both the controlled employer and the participant for that limitation year. Accordingly, where a participant on whose behalf a section 403(b) annuity contract is purchased is in control of any employer for a limitation year, the section 403(b) annuity contract is aggregated with all other defined contribution plans maintained by that employer. In addition, in such a case, the section 403(b) annuity contract is aggregated with all other defined contribution plans maintained by the employee or any other employer that is controlled by the employee. Thus, for example, if a doctor is employed by a non-profit hospital to which section 501(c)(3) applies and which provides him with a section 403(b) annuity contract, and the doctor also maintains a private practice as a shareholder owning more than 50 percent of a professional corporation, then any qualified defined contribution plan of the professional corporation must be aggregated with the section 403(b) annuity contract for purposes of applying the limitations of section 415(c) and § 1.415(c)-1. For purposes of this paragraph (f)(2), it is immaterial whether the section 403(b) annuity contract is purchased as a result of a salary reduction agreement between the employer and the participant.

(ii) *Determination of when a participant is in control of an employer.* For purposes of paragraph (f)(2)(i) of this section, a participant is in control of an employer for a limitation year if, pursuant to § 1.415(a)-1(f)(1) and (2), a plan maintained by that employer would have to be aggregated with a plan maintained by an employer that is 100 percent owned by the participant. Thus, for example, if a participant owns 60 percent of the common stock of a corporation, the participant is considered to be in control of that employer for purposes of applying paragraph (f)(2)(i) of this section.

(3) *Aggregation of section 403(b) annuity with qualified plan of controlled employer.* If a section 403(b) annuity contract is aggregated with a qualified

plan of a controlled employer in accordance with paragraph (f)(2) of this section, the plans must satisfy the limitations of section 415(c) both separately and on an aggregate basis. In applying separately the limitations of section 415 to the qualified plan and to the section 403(b) annuity contract, compensation from the controlled employer may not be aggregated with compensation from the employer purchasing the section 403(b) annuity contract (that is, without regard to § 1.415(c)-2(g)(3)).

(g) *Multiemployer plans—(1) Multiemployer plan aggregated with another multiemployer plan.* Pursuant to section 415(f)(3)(B), multiemployer plans, as defined in section 414(f), are not aggregated with other multiemployer plans for purposes of applying the limits of section 415.

(2) *Multiemployer plan aggregated with other plan—(i) Aggregation only for benefits provided by the employer.* Notwithstanding the rule of § 1.415(a)-1(e), a multiemployer plan, as defined in section 414(f), is permitted to provide that only the benefits under that multiemployer plan that are provided by an employer are aggregated with benefits under plans maintained by that employer that are not multiemployer plans. If the multiemployer plan so provides, then, where an employer maintains both a plan which is not a multiemployer plan and a multiemployer plan, only the benefits under the multiemployer plan that are provided by the employer are aggregated with benefits under the employer's plans other than multiemployer plans (in lieu of including benefits provided by all employers under the multiemployer plan pursuant to the generally applicable rule of § 1.415(a)-1(e)).

(ii) *Exception from aggregation for purposes of applying section 415(b)(1)(B) compensation limit.* Pursuant to section 415(f)(3)(A), a multiemployer plan, as defined in section 414(f), is not aggregated with any other plan that is not a multiemployer plan for purposes of applying the compensation limit of section 415(b)(1)(B) and § 1.415(b)-1(a)(1)(ii).

(h) *Special rules for aggregating certain plans, etc.* If a plan, annuity contract or arrangement is subject to a special limitation in addition to, or instead of,

the regular limitations described in section 415(b) or (c), and is aggregated under this section with a plan which is subject only to the regular section 415(b) or (c) limitations, the following rules apply:

(1) Each plan, annuity contract or arrangement which is subject to a special limitation must meet its own applicable limitation and each plan subject to the regular limitations of section 415 must meet its applicable limitation.

(2) The limitation for the aggregated plans is the larger of the applicable limitations for the separate plans.

(i) [Reserved]

(j) *Examples.* The following examples illustrate the rules of this section. Except to the extent otherwise stated in an example, each entity is not and has never been affiliated with another entity under the employer affiliation rules of § 1.415(a)-1(f)(1) and (2), each entity has never maintained a qualified plan (other than the plans specifically mentioned in the example), and the limitation year for each qualified plan is the calendar year.

*Example 1.* (i) *Facts.* M was formerly an employee of ABC Corporation and is currently an employee of XYZ Corporation. ABC maintains a qualified defined benefit plan (Plan ABC) and a qualified defined contribution plan in which M participates and XYZ maintains a qualified defined benefit plan (Plan XYZ) and a qualified defined contribution plan in which M participates. ABC Corporation owns 60 percent of XYZ Corporation.

(ii) *Treatment as a single employer.* ABC Corporation and XYZ Corporation are members of a controlled group of corporations within the meaning of section 414(b) as modified by section 415(h). Because ABC Corporation and XYZ Corporation are members of a controlled group of corporations within the meaning of section 414(b) as modified by section 415(h), M is treated as being employed by a single employer under § 1.415(a)-1(f)(1).

(iii) *Plan aggregation.* Under paragraph (a)(1) of this section, the sum of M's annual benefit under Plan ABC and M's annual benefit under Plan XYZ is not permitted to exceed the limitations of section 415(b) and § 1.415(b)-1; and, under paragraph (a)(2) of this section, the sum of the annual additions to M's account under the defined contribution plans maintained by ABC and XYZ may not exceed the limitations of section 415(c) and § 1.415(c)-1. For purposes of determining the limitations of section 415(b) and § 1.415(b)-1 for the aggregated plans, a year of service for either employer is considered as a year of service for purposes of § 1.415(b)-

1(g)(2) (phase-in rules for the compensation limit) and a year of participation under either plan is considered as a year of participation for purposes of § 1.415(b)-1(g)(1) (phase-in rules for the dollar limit).

*Example 2.* (i) *Facts.* The facts are the same as in *Example 1*, except that ABC Corporation and XYZ Corporation do not maintain defined contribution plans. In addition, Participant O was formerly an employee of ABC Corporation and is currently an employee of XYZ Corporation. Participant O has an accrued benefit under the ABC Plan, but Participant O has no accrued benefit under the XYZ Plan. Effective January 1, 2010, ABC Corporation sells all of its shares of stock of XYZ Corporation to an unaffiliated entity, LMN Corporation (the 2010 stock sale). After the 2010 stock sale, XYZ Corporation continues to maintain Plan XYZ. LMN Corporation maintains a qualified defined benefit plan (Plan LMN). After the 2010 stock sale, M begins to accrue benefits under Plan LMN, but O does not participate in Plan LMN.

(ii) *Affiliated employer status of the corporations.* Immediately after the 2010 stock sale, ABC Corporation and XYZ Corporation are no longer members of a controlled group of corporations under section 414(b) (as modified by section 414(h)) and accordingly are no longer treated as a single employer under the employer affiliation rules of § 1.415(a)-1(f)(1). Immediately after the 2010 stock sale, LMN Corporation and XYZ Corporation are members of a controlled group of corporations under section 414(b) (as modified by section 414(h)) and accordingly are treated as a single employer under the employer affiliation rules of § 1.415(a)-1(f)(1).

(iii) *Treatment of plans maintained by ABC Corporation after the 2010 stock sale.* Under § 1.415(a)-1(f)(1), any plan maintained by any member of a controlled group of corporations is deemed maintained by all members of the controlled group, and paragraph (a)(1) of this section requires that, for purposes of applying the limitations of section 415(b), all defined benefit plans ever maintained by an employer (as determined under the affiliation rules of § 1.415(a)-1(f)(1) and (2)) are treated as one defined benefit plan. Therefore, defined benefit plans maintained by ABC Corporation must take into account the annual benefit of a participant provided under Plan XYZ in applying the limitations of section 415(b) to the participant because Plan XYZ is a plan that had once been maintained by ABC Corporation. However, beginning with the 2010 limitation year, the aggregation of the annual benefit accrued by a participant under Plan XYZ for purposes of testing defined benefit plans maintained by ABC Corporation is limited to the annual benefit accrued by the participant under Plan XYZ immediately prior to the 2010 stock sale. This is because paragraph (b)(2)(i)

of this section provides that a formerly affiliated plan of an employer is treated as if it had terminated immediately prior to the cessation of affiliation with sufficient assets to pay benefit liabilities under the plan, and had purchased annuities to provide plan benefits. The 2010 stock sale is a cessation of affiliation under paragraph (b)(2)(ii) of this section because this event caused XYZ Corporation to no longer be affiliated with ABC Corporation under the employer affiliation rules of § 1.415(a)-1(f)(1) and (2). Immediately after the 2010 stock sale, Plan XYZ is a formerly affiliated plan with respect to ABC Corporation under paragraph (b)(2)(ii) of this section because immediately prior to the cessation of affiliation, Plan XYZ was actually maintained by XYZ Corporation (which together with ABC Corporation constituted a single employer under the employer affiliation rules of § 1.415(a)-1(f)(1) and (2)), and immediately after the cessation of affiliation, Plan XYZ is not actually maintained by ABC Corporation or any other entity affiliated with it.

(iv) *Application of rules to Participants M and O with respect to plans maintained by ABC Corporation after the 2010 stock sale.* In applying the limitations of section 415(b) to Participant M for the 2010 limitation year and later limitation years, Plan ABC must take into account the annual benefit provided under Plan ABC to Participant M and the annual benefit provided under Plan XYZ to Participant M, but treating Plan XYZ as if it had terminated immediately prior to the 2010 stock sale with sufficient assets to pay benefit liabilities under the plan, and had purchased annuities to provide plan benefits. The aggregation of Plan XYZ with Plan ABC is irrelevant for purposes of Participant O because Participant O does not have any accrued benefit under Plan XYZ (as determined prior to the 2010 stock sale).

(v) *Treatment of plans maintained by LMN Corporation and XYZ Corporation after the 2010 stock sale.* Under § 1.415(a)-1(f)(1) and paragraph (a)(1) of this section, when applying the limitations of section 415(b) to a participant under Plans LMN and XYZ for the 2010 limitation year and later years, the annual benefit provided to the participant under Plans LMN, XYZ and ABC must be aggregated. Benefits under Plan ABC must be included in this aggregation because XYZ Corporation is deemed to have once maintained Plan ABC pursuant to § 1.415(a)-1(f)(1), and since LMN Corporation and XYZ Corporation constitute a single employer under § 1.415(a)-1(f)(1), paragraph (a)(1) of this section requires the aggregation of all defined benefit plans ever maintained by LMN Corporation and XYZ Corporation. However, in performing this aggregation, a participant's annual benefit under Plan ABC is limited to the annual benefit accrued by the participant immediately prior to the 2010 stock

sale. This is because, pursuant to paragraph (b)(2)(i) of this section, Plan ABC is a formerly affiliated plan of LMN Corporation and XYZ Corporation.

(vi) *Application of rules to Participants M and O with respect to plans maintained by LMN Corporation and XYZ Corporation after the 2010 stock sale.* In applying the limitation of section 415(b) to Participant M for the 2010 limitation year and later limitation years, Plan LMN and Plan XYZ must take into account the annual benefit provided under Plans LMN and XYZ to Participant M and the annual benefit provided under Plan ABC to Participant M as if Plan ABC had terminated immediately prior to the 2010 stock sale with sufficient assets to pay benefit liabilities under the plan, and had purchased annuities to provide plan benefits. Participant O does not have an accrued benefit under Plan LMN or Plan XYZ, so the aggregation of Plan ABC with Plans LMN and XYZ is currently irrelevant with respect to Participant O. However, if Participant O were to ever participate in Plans LMN or XYZ after the 2010 stock sale, Participant O's annual benefit under Plan ABC (determined as if Plan ABC terminated immediately prior to the 2010 stock sale) would have to be aggregated with any annual benefit that Participant O accrues under Plan LMN or Plan XYZ.

(vii) *Application of nonduplication rule.* In applying paragraph (a)(1) of this section to plans maintained by ABC Corporation after 2010 stock sale, plans maintained by ABC Corporation do not take into account the deemed termination of Plan ABC since ABC Corporation maintains Plan ABC after the cessation of affiliation. Similarly, in applying paragraph (a)(1) of this section to plans maintained by LMN Corporation and XYZ Corporation after the 2010 stock sale, plans maintained by LMN Corporation and XYZ Corporation do not take into account the deemed termination of Plan XYZ since XYZ Corporation maintains Plan XYZ after the cessation of affiliation. See paragraph (d)(1) of this section.

*Example 3.* (i) *Facts.* The facts are the same as in *Example 2*, except that on January 1, 2009, Plan ABC transfers Participant M's benefit to Plan XYZ.

(ii) *Treatment of plans maintained by ABC Corporation.* Pursuant to § 1.415(b)-1(b)(3)(i)(A), M's benefit that is transferred from Plan ABC to Plan XYZ is not treated as being provided under Plan ABC for the limitation year in which the transfer occurs (2009). This is because M's transferred benefit is otherwise required to be taken into account by Plan ABC for the 2009 limitation year since Plan XYZ must be aggregated with Plan ABC pursuant to paragraph (a)(1) of this section. This result does not change for the 2010 limitation year and later limitation years, where pursuant to paragraph

(b)(2)(i) of this section, Plan XYZ becomes a formerly affiliated plan with respect to ABC Corporation due to the 2010 stock sale. Under paragraph (b)(2)(i) of this section, Plan XYZ (the formerly affiliated plan) is treated from the perspective of plans maintained by ABC Corporation (Plan ABC) as if Plan XYZ terminated immediately prior to the 2010 stock sale with sufficient assets to pay benefit liabilities under the plan, and had purchased annuities to provide plan benefits. However, the pre-2010 stock sale benefits of Plan XYZ include the January 1, 2009, transfer of Participant M's benefit. Thus, in the 2010 limitation year, M's transferred benefit is still otherwise required to be taken into account by Plan ABC on account of the aggregation of Plan XYZ with Plan ABC pursuant to paragraph (a)(1) of this section, and therefore the transferred benefit is not treated as being provided by Plan ABC.

(iii) *Treatment of plans maintained by LMN Corporation and XYZ Corporation.* Pursuant to § 1.415(b)-1(b)(3)(i)(C), Participant M's benefit that is transferred to Plan XYZ from Plan ABC must be treated as provided under Plan XYZ for purposes of applying the limitations of section 415 to Plan XYZ with respect to Participant M for the limitation year in which the transfer occurs and later years. This result does not change on account of the 2010 stock sale. When applying the limitation of section 415 to Plans LMN and XYZ for the 2010 limitation year and later years, Plans LMN and XYZ must aggregate the annual benefit provided to a participant under each plan along with the participant's benefit under Plan ABC pursuant to § 1.415(a)-1(f)(1) and paragraph (a)(1) of this section. However, under paragraph (b)(2)(i) of this section, for the 2010 limitation year and later years, this aggregation of M's Plan ABC benefit only includes the annual benefit attributable to a participant's accrued benefit under Plan ABC immediately prior to the 2010 stock sale, which (due to the 2009 transfer) is zero.

*Example 4.* (i) *Facts.* The facts are the same as in *Example 2*, except that on January 1, 2011, Plan ABC transfers Participant M's benefit to Plan XYZ.

(ii) *Treatment of plans maintained by ABC Corporation for the 2011 limitation year and later years.* Pursuant to § 1.415(b)-1(b)(3)(i)(B), M's benefit that is transferred from Plan ABC to Plan XYZ during the 2011 limitation year is treated by Plan ABC for the 2011 limitation year and later years as if the transferred benefit were provided under a plan that must be aggregated with Plan ABC that terminated immediately prior to the transfer with sufficient assets to pay benefit liabilities under the plan, and had purchased annuities to provide plan benefits. This is because M's transferred benefit is not otherwise required to be taken into account by Plan ABC for the 2011 limitation year and

later years pursuant to paragraphs (a)(1) and (b)(2)(i) of this section. While Plan ABC must take into account Participant M's annual benefit under Plan XYZ under paragraph (a)(1) of this section, Participant M's annual benefit for this purpose is limited under paragraph (b)(2)(i) of this section to M's accrued benefit under Plan XYZ immediately prior to the 2010 stock sale, and Participant M's pre-2010 stock sale accrued benefit under Plan XYZ excludes the 2011 transfer.

(iii) *Treatment of plans maintained by LMN Corporation and XYZ Corporation for the 2011 limitation year and later years.* Pursuant to § 1.415(b)-1(b)(3)(i)(C), Participant M's benefit that is transferred to Plan XYZ from Plan ABC must be treated as provided under Plan XYZ for purposes of applying the limitations of section 415 to Plan XYZ with respect to Participant M for the limitation year in which the transfer occurs and later years. In applying the limitations of section 415(b) to Plans LMN and XYZ with respect to Participant M for the 2010 limitation year and later years, the annual benefit of Participant M under Plans ABC, LMN, and XYZ must be aggregated pursuant to § 1.415(a)-1(f)(1) and paragraph (a)(1) of this section, but for this purpose, Participant M's benefit under Plan ABC is treated as if it were provided under a plan that terminated immediately prior to the cessation of affiliation of ABC Corporation and XYZ Corporation with sufficient assets to pay benefit liabilities under the plan, and had purchased an annuity to provide Participant M's benefits. (See paragraph (b)(2)(i) of this section and *Example 2*.) In applying the limitations of section 415(b) to Plans LMN and XYZ with respect to Participant M for the 2011 limitation year and later years, the annual benefit of Participant M under Plans ABC, LMN, and XYZ still must be aggregated pursuant to § 1.415(a)-1(f)(1) and paragraph (a)(1) of this section. However, beginning with the 2011 limitation year, ABC Corporation is a predecessor employer with respect to LMN Corporation and XYZ Corporation with respect to Participant M on account of the transfer of benefits from Plan ABC to Plan XYZ, pursuant to paragraph (c)(1) of this section. Therefore, Plans LMN and XYZ must take into account benefits that Participant M accrued under Plan ABC after the January 1, 2010, cessation of affiliation of ABC Corporation and XYZ Corporation that were not transferred to Plan XYZ on January 1, 2011, pursuant to paragraphs (c)(1) and (d)(1) of this section. Since all of Participant M's benefit in Plan ABC is transferred to Plan XYZ on January 1, 2011, Participant M's annual benefit from Plan ABC for purposes of aggregating Plan ABC with Plans LMN and XYZ is zero.

*Example 5.* (i) *Facts.* The facts are the same as in *Example 2*, except that instead of the 2010 stock sale, XYZ Corporation sells some of its operating assets to LMN Corporation

(and, under the facts and circumstances, the sale does not result in XYZ Corporation constituting a predecessor employer of LMN Corporation under the rules of paragraph (c)(2) of this section), and in connection with the asset sale, LMN Corporation assumes sponsorship of Plan XYZ in place of XYZ Corporation, effective January 1, 2010.

(ii) *Treatment of plans maintained by ABC Corporation and XYZ Corporation.* Pursuant to paragraph (a)(1) of this section, all defined benefit plans ever maintained by ABC Corporation and XYZ Corporation must be aggregated as a single defined benefit plan for purposes of applying the limitations of section 415(b). However, for purposes of determining the annual benefit under Plan XYZ for the 2010 limitation year and later years, the aggregation of a participant's benefit under Plan XYZ is limited to the participant's annual benefit accrued immediately prior to the January 1, 2010, transfer of sponsorship of Plan XYZ. This is because paragraph (b)(2)(i) of this section provides that a formerly affiliated plan of an employer is treated as if it were a plan that terminated immediately prior to the cessation of affiliation with sufficient assets to pay benefit liabilities under the plan, and had purchased annuities to provide plan benefits. The January 1, 2010, transfer of sponsorship of Plan XYZ is a cessation of affiliation under paragraph (b)(2)(i) of this section because this event causes Plan XYZ to no longer actually be maintained by either ABC Corporation or XYZ Corporation. Effective immediately after the January 1, 2010, transfer of sponsorship, Plan XYZ is a formerly affiliated plan with respect to ABC Corporation and XYZ Corporation under paragraph (b)(2)(ii) of this section because immediately prior to the cessation of affiliation, Plan XYZ was actually maintained by XYZ Corporation, and immediately after the cessation of affiliation, Plan XYZ is not actually maintained by either XYZ Corporation or ABC Corporation. Therefore, in applying the limitation of section 415(b) to Participant M for the 2010 limitation year and later limitation years, Plan ABC must take into account the annual benefit provided under Plan ABC to Participant M and the annual benefit provided under Plan XYZ to Participant M as if Plan XYZ had terminated immediately prior to the 2010 stock sale with sufficient assets to pay benefit liabilities under the plan, and had purchased annuities to provide plan benefits. The aggregation of Plan XYZ with Plan ABC is irrelevant for purposes of Participant O because Participant O does not have any accrued benefit under Plan XYZ (as determined prior to the 2010 transfer of sponsorship).

(iii) *Treatment of plans maintained by LMN Corporation.* Under paragraph (a)(1) of this section, all defined benefit plans ever maintained by LMN Corporation or a predecessor

employer must be aggregated as a single plan for purposes of applying the limitations of section 415(b). ABC Corporation and XYZ Corporation constitute a predecessor employer pursuant to paragraph (c)(1) of this section with respect to the participants who participate in Plan XYZ on the date of the transfer of sponsorship of Plan XYZ (the transferred participants) from XYZ Corporation to LMN Corporation, such as Participant M. This is because, effective with the January 1, 2010, transfer of sponsorship, LMN Corporation maintains a plan (Plan XYZ) under which the participants accrued a benefit while performing services for XYZ Corporation (which is in turn affiliated with ABC Corporation under § 1.415(a)-1(f)(1)) and such benefits are provided under a plan maintained by LMN Corporation. Therefore, for the 2010 limitation year and later years, the annual benefit under Plan ABC of the transferred participants (such as Participant M) must be aggregated with the annual benefit provided to such participants under Plans XYZ and LMN for purposes of determining whether Plan LMN or Plan XYZ satisfies the limitations of section 415(b). However, the aggregation of the transferred participants' Plan ABC annual benefits is limited to the annual benefit accrued under Plan ABC immediately prior to January 1, 2010, transfer of sponsorship. This is because, pursuant to paragraph (c)(1) of this section, Plan ABC is treated from the perspective of plans maintained by LMN Corporation as if Plan ABC had terminated immediately prior to the transfer of sponsorship of Plan ABC to LMN Corporation with sufficient assets to pay benefit liabilities under the plan, and had purchased annuities to provide plan benefits. ABC Corporation and XYZ Corporation do not constitute a predecessor employer with respect to Participant O. Thus, if Participant O is a participant in Plan LMN or becomes a participant in Plan XYZ after the 2010 transfer of sponsorship, neither plan aggregates Participant O's Plan ABC benefits for purposes of satisfying section 415(b). In applying paragraph (a)(1) of this section to a participant, plans maintained by LMN Corporation do not double count the participant's annual benefit. See paragraph (d)(1) of this section. Thus, such plans do not aggregate the annual benefit provided under Plan XYZ with the annual benefit from the deemed termination of Plan XYZ that LMN Corporation's predecessor employer (which is ABC and XYZ Corporations) must take into account in applying paragraph (a)(1) of this section, and instead consider the annual benefit actually provided under Plan XYZ.

*Example 6.* (i) *Facts.* N is employed by a hospital which purchases an annuity contract described in section 403(b) on N's behalf for the current limitation year. N is in control of the hospital within the meaning of section 414(b) or (c), as modified by section



415(h). The hospital also maintains a qualified defined contribution plan during the current limitation year in which N participates.

(i) *Conclusion.* Under section 415(k)(4), the hospital, as well as N, is considered to maintain the annuity contract. Accordingly, for N the sum of the annual additions under the qualified defined contribution plan and the annuity contract must satisfy the limitations of section 415(c) and § 1.415(c)-1.

*Example 7.* (i) *Facts.* The facts are the same as in *Example 6*, except that instead of being in control of the hospital, N is the 100 percent owner of a professional corporation P, which maintains a qualified defined contribution plan in which N participates.

(ii) *Conclusion.* Under section 415(k)(4), the professional corporation, as well as N, is considered to maintain the annuity contract. Accordingly, the sum of the annual additions under the qualified defined contribution plan maintained by professional corporation P and the annuity contract must satisfy the limitations of section 415(c) and § 1.415(c)-1. See § 1.415(g)-1(b)(3)(iv)(C)(2) for an example of the treatment of a contribution to a section 403(b) annuity contract that exceeds the limits of section 415(c) by reason of the aggregation required by this section.

*Example 8.* (i) *Facts.* J is an employee of two corporations, N and M, each of which has employed J for more than 10 years. N and M are not required to be aggregated pursuant to section 415(f) and this section. Each corporation has a qualified defined benefit plan in which J has participated for more than 10 years. Each plan provides a benefit which is equal to 75 percent of a participant's average compensation for the period of the participant's high-3 years of service and is payable in the form of a straight life annuity beginning at age 65. J's average compensation for the period of his high-3 years of service from each corporation is \$160,000. In July 2008, N Corporation becomes a wholly owned subsidiary of M Corporation.

(ii) *Plan aggregation analysis.* As a result of the acquisition of N Corporation by M Corporation, J is treated as being employed by a single employer under section 414(b). Therefore, because section 415(f)(1)(A) requires that all defined benefit plans of an employer be treated as one defined benefit plan, the two plans must be aggregated for purposes of applying the limitations of section 415. However, under paragraph (e)(3)(i) of this section, since the plans were not aggregated as of the first day of the 2008 limitation year (January 1, 2008), they will not be considered aggregated until the limitation year beginning January 1, 2009, provided that no plan amendment increasing benefits with respect to participant J is made after the acquisition of N by M.

(iii) *Application to Participant J.* J has a total benefit under the two plans of \$240,000,

which, as a result of the plan aggregation, is in excess of the section 415(b) limit. However, under paragraph (e)(3)(ii) of this section, the limitations of section 415(b) and § 1.415(b)-1 applicable to J may be exceeded in this situation without plan disqualification so long as J's accrued benefit derived from employer contributions is not increased (that is, J's accrued benefit does not increase on account of increased compensation, service, participation, or other accruals) during the period within which the limitations are being exceeded.

*Example 9.* (i) *Facts.* A, age 30, owns all of the stock of X Corporation and also owns 10 percent of the stock of Z Corporation. F, A's father, directly owns 75 percent of the stock of Z Corporation. Both corporations have qualified defined contribution plans in which A participates. A's compensation (within the meaning of § 1.415(c)-2) for 2008 is \$20,000 from Z Corporation and \$150,000 from X Corporation. During the period January 1, 2008 through June 30, 2008, annual additions of \$20,000 are credited to A's account under the plan of Z Corporation, while annual additions of \$40,000 are credited to A's account under the plan of X Corporation. In both instances, the amount of annual additions represent the maximum allowable under section 415(c) and § 1.415(c)-1. On July 15, 2008, F dies, and A inherits all of F's stock in Z in 2008.

(ii) *Conclusion.* As of July 15, 2008, A is considered to be in control of X and Z Corporations, and the two plans must be aggregated for purposes of applying the limitations of section 415. However, even though A's total annual additions for 2008 are \$60,000, the limitations of section 415(c) and § 1.415(c)-1 are not violated for 2008, provided no annual additions are credited to A's accounts after July 15, 2008 (the date that A is first in control of Z) for the remainder of the 2008 limitation year.

*Example 10.* (i) *Facts.* P is a key employee of employer XYZ who participates in a qualified defined contribution plan (Plan X). P is also provided post-retirement medical benefits, and XYZ has taken into account a reserve for those benefits under section 419A(c)(2). In the 2008 limitation year, P's compensation is \$30,000 and P's annual additions under Plan X are \$5,000. Pursuant to section 419A(d), a separate account is maintained for P, and that account is credited with an allocation of \$32,000 for the 2008 limitation year. It is assumed that the section 415(c)(1)(A) dollar limit for 2008 is \$46,000.

(ii) *Separate testing analysis.* Under paragraph (h)(1) of this section, Plan X and the individual medical account must separately satisfy the requirements of section 415(c), taking into account any special limit applicable to that arrangement. In this case, the contributions to Plan X separately satisfy the limitations of section 415(c). While the individual medical account is treated as a

defined contribution plan subject to the rules of section 415(c), it is not subject to the 100 percent of compensation limit of section 415(c)(1)(B), so the contributions to that account satisfy the limitations of section 415(c).

(iii) *Aggregation analysis.* The sum of the annual additions under Plan X and the amounts contributed to the separate account on P's behalf must satisfy the requirements of section 415(c). Under paragraph (h)(2) of this section, the limit applicable to the aggregated plan is equal to the greater of the limits applicable to the separate plans. In this case, the limit applicable to the medical account is \$46,000 (which is greater than the limit of \$30,000 applicable to the qualified plan), so the limit that applies to the aggregated plan is \$46,000, and the aggregated plan satisfies the requirements of section 415.

[T.D. 9319, 72 FR 16922, Apr. 5, 2007; 72 FR 28854, May 23, 2007]

#### § 1.415(g)-1 Disqualification of plans and trusts.

(a) *Disqualification of plans—(1) In general.* Under section 415(g) and this section, with respect to a particular limitation year, a plan (and the trust forming part of the plan) is disqualified in accordance with the rules provided in paragraph (b) of this section, if the conditions described in paragraph (a)(2) or (a)(3) of this section apply. For purposes of this paragraph (a), the determination of whether a plan or a group of aggregated plans exceeds the limitations imposed by section 415 for a particular limitation year is, except as otherwise provided, made by taking into account the aggregation of plan rules provided in section 415(f) and § 1.414(f)-1.

(2) *Defined contribution plans.* A plan is disqualified in accordance with the rules provided in paragraph (b) of this section if annual additions (as defined in § 1.415(c)-1(b)) with respect to the account of any participant in a defined contribution plan maintained by the employer exceed the limitations of section 415(c) and § 1.415(c)-1.

(3) *Defined benefit plans.* A plan is disqualified in accordance with the rules provided in paragraph (b) of this section if the annual benefit (as defined in § 1.415(b)-1(b)(1)) of a participant in a defined benefit plan maintained by the employer exceeds the limitations of section 415(b) and § 1.415(b)-1.

(b) *Rules for disqualification of plans and trusts—(1) In general.* If any plan (including a trust which forms part of such plan) is disqualified for a particular limitation year under the rules set forth in this paragraph (b), then the disqualification is effective as of the first day of the first plan year containing any portion of the particular limitation year.

(2) *Single plan.* In the case of a single qualified defined benefit plan (determined without regard to section 415(f) and § 1.415(f)-1) maintained by the employer that provides an annual benefit (as defined in § 1.415(b)-1(b)(1)) in excess of the limitations of section 415(b) and § 1.415(b)-1 for any particular limitation year, such plan is disqualified in that limitation year. Similarly, if the employer only maintains a single defined contribution plan (determined without regard to section 415(f) and § 1.415(f)-1) under which annual additions (as defined in § 1.415(c)-1(b)) allocated to the account of any participant exceed the limitations of section 415(c) and § 1.415(c)-1 for any particular limitation year, such plan is also disqualified in that limitation year.

(3) *Multiple plans—(i) In general.* If the limitations of section 415(b) and § 1.415(b)-1, or section 415(c) and § 1.415(c)-1, are exceeded for a particular limitation year with respect to any participant solely because of the application of the aggregation rules of section 415(f)(1) and § 1.415(f)-1 (taking into account the rules of § 1.415(a)-1(f)), then one or more of the plans is disqualified in accordance with the ordering rules set forth in paragraph (b)(3)(ii) of this section, applied in accordance with the rules of application set forth in paragraph (b)(3)(iii) of this section, subject to the special rules set forth in paragraph (b)(3)(iv) of this section, until, without regard to annual benefits or annual additions under the disqualified plan or plans, the remaining plans satisfy the applicable limitations of section 415.

(ii) *Ordering rules—(A) Disqualification of ongoing plans other than multiemployer plans.* If there are two or more plans that have not been terminated at any time including the last day of the particular limitation year, and if one