Part I

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

(Also § 417.)

Rev. Rul. 98-1

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

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

Background

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

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

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

than the lesser of 5 percent or the rate specified in the plan.

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

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

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

In general, § 1449(a) of SBJPA provides that, in the case of plans adopted and in effect before December 8, 1994, the provisions of § 767(b) shall not be required to be applied with respect to benefits accrued before the later of the date a plan amendment applying the amendments made by § 767(b) is adopted or made effective, but not later than the first day of the first limitation year beginning after 1999. Section 1449(a) further

provides that determinations under § 415(b)(2)(E) before such date are made with respect to such benefits on the basis of § 415(b)(2)(E) and the provisions of the plan as in effect on December 7, 1994, but only if such provisions of the plan meet the requirements of § 415 as in effect on December 7, 1994. (Section 1604(b)(3) of TRA '97 deleted superfluous parenthetical language from this rule.) Section 1449(d) of SBJPA provides that if, within one year of the enactment of SBJPA, an amendment made to conform the plan to the requirements of § 767 of RPA '94 is repealed, the original amendment is not taken into account for purposes of applying § 1449(a).

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

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

Rev. Rul. 95-29 provided guidance on limitations on benefits

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

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

Questions and Answers

The following terms are used in this revenue ruling:

§ 415(b) compensation limitation. See Background.

§ 415(b) dollar limitation. See Background.

§ 415(b)(2)(E) changes. See Q&A-1.

§ 417(e)(3) changes. See Background.

§ 1449(b) revisions. See Q&A-11.

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

Applicable interest rate. See Q&A-4.

Applicable mortality table. See Q&A-6.

Final implementation date. See Q&A-12.

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

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

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

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

Repealing amendment. See Q&A-16.

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

(1) General Rules and Effective Dates

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

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

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

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

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

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

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

Q-4. What is the applicable interest rate, as defined in

§ 417(e)(3), as referenced by § 415(b)(2)(E)(ii)?

A-4. The regulations under § 417(e)(3) (currently § 1.417(e)-1T(d)(3)(i)) provide that the applicable interest rate under § 417(e)(3) is the annual interest rate on 30-year Treasury securities as specified by the Commissioner.

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

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

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

A-6. Section 415(b)(2)(E)(v), added by RPA '94, provides that, for purposes of adjusting any benefit or limitation under § 415(b)(2)(B), (C), or (D), the mortality table used shall be the table prescribed by the Secretary. Rev. Rul. 95-6, 1995-1 C.B. 80, provides the mortality table (applicable mortality table) which generally must be used for these purposes. For purposes of adjusting any limitation under § 415(b)(2)(C) or (D), to the extent that a forfeiture does not occur upon death, the

mortality decrement may be ignored prior to age 62 and must be ignored after SSRA. See Q&A G-3 and Q&A G-4 of Notice 83-10, 1983-1 C.B. 536.

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

A-7. The determination as to whether such a benefit satisfies the § 415(b) limitations generally is made by comparing the equivalent annual benefit determined in Step 1 with the lesser of the age-adjusted dollar limit determined in Step 2 and the § 415(b) compensation limitation determined in Step 3.

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

Step 2: Under § 415(b)(2)(C) or (D), determine the § 415(b)

dollar limitation that applies at the age the benefit is payable (age-adjusted dollar limit). The age-adjusted dollar limit is the annual benefit that is actuarially equivalent to an annual benefit equal to the § 415(b) dollar limitation payable at the participant's SSRA.

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

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

If the age at which the benefit is payable is greater than

the participant’s SSRA, the age-adjusted dollar limit is determined by increasing the § 415(b) dollar limitation at the participant's SSRA on an actuarially equivalent basis. In general, §§ 415(b)(2)(E)(i) and (v) require that the increased age-adjusted dollar limit be the lesser of the equivalent amount computed using the plan rate and plan mortality table (or plan tabular factor) used for actuarial equivalence for late retirement benefits under the plan and the equivalent amount computed using 5 percent interest and the applicable mortality table (used to the extent described in Q&A-6).

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

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

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

A-8. If a defined benefit plan provides a benefit in a form that is subject to § 417(e)(3), the determination of the equivalent annual benefit is the same as in Q&A-7, Step 1, except that, under § 415(b)(2)(E)(ii), the applicable interest rate is substituted for the 5 percent interest rate under

§ 415(b)(2)(E)(i). Thus, the equivalent annual benefit must be the greater of the equivalent annual benefit computed using the plan rate and plan mortality table (or plan tabular factor) and the equivalent annual benefit computed using the applicable interest rate and the applicable mortality table.

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

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

equivalent straight life annuity commencing at age 60 in order to apply § 415 under the plan. Assuming that the plan's applicable interest rate under § 417(e)(3) is 8 percent, the conversion is made as follows:

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

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

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

further reduced in accordance with § 415(b)(2)(E)(i) and (v).

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

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

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

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

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

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

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

Q-11. How is the relief provided under § 767(d)(2) of

RPA '94 affected by the retroactive amendment to § 415(b)(2)(E) made by § 1449(b) of SBJPA (the § 1449(b) revisions)?

A-11. As described in Q&A-10, the § 411(d)(6) relief provided by § 767(d)(2) applies only to the extent that a reduction in accrued benefits results from a plan amendment that merely applies the § 415(b)(2)(E) changes. For this purpose, a plan amendment is considered to apply the § 415(b)(2)(E) changes only if either the plan, as amended, reflects the § 1449(b) revisions for all distributions for periods on and after the RPA '94 § 415 effective date or the plan, as amended, reflects the § 1449(b) revisions for all distributions for periods after August 20, 1996. Thus, the relief under § 767(d)(2) does not apply to a plan amendment that fails to reflect the § 1449(b) revisions for distributions for periods after August 20, 1996. Consequently, a plan that has been amended to apply the § 415(b)(2)(E) changes without regard to the § 1449(b) revisions must be further amended, within the remedial amendment period under § 401(b) for disqualifying provisions under SBJPA and GATT, to reflect the § 1449(b) revisions (that is, it must use the greater of 5 percent and the plan rate in determining the age-adjusted dollar limit for early retirement) for distributions for periods after August 20, 1996. As described in Q&A-18, plan operations must be conformed to the terms of the plan. Accordingly, distributions for periods on or after the RPA '94 § 415 effective date may have to be redetermined.

(2) Transition Rules

Q-12. Must the § 415(b)(2)(E) changes be applied to all

benefits under the plan on and after the RPA '94 § 415 effective date?

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

Any amendment that provides that the § 415(b)(2)(E) changes will not apply to certain benefits must be adopted prior to the end of the remedial amendment period under § 401(b) for disqualifying provisions under SBJPA and GATT. In addition, except where an employer makes a repealing amendment under Q&A-

16, once the final implementation date for a plan resulting from any plan amendment implementing the § 415(b)(2)(E) changes has passed, the extent to which the § 415(b)(2)(E) changes are not applied to certain benefits may not be changed.

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

A-13. A participant's old-law benefit is determined as of a date specified in the plan for the participant (participant's freeze date) that is before the final implementation date. The plan may provide that the freeze date for all participants is the day before the final implementation date for the plan. Alternatively, the plan may specify an earlier date as the freeze date for some or all participants. The participant's old-law benefit is determined for each possible annuity starting date and optional form of benefit based on the participant's accrued benefit under the terms of the plan as of the participant's freeze date, after applying § 415 as in effect on December 7, 1994 (old-law limitations), including the participation requirements under § 415(b)(5).

Under the second sentence of § 767(d)(3)(A) of RPA '94 (as amended by SBJPA), before the final implementation date the old-law limitations are applied using all plan terms that were in effect on December 7, 1994 (that is, without regard to amendments made after December 7, 1994) and that are relevant in determining actuarial equivalence under § 415(b)(2)(E). Therefore, except as provided in Q&A-15, in order to determine the old-law benefit, the § 415(b) limitations must be applied using the plan's mortality table as in effect on December 7, 1994 and, except as

provided in § 415(b)(2)(D), an interest rate that is no less than the greater of 5 percent or the plan rate as in effect on December 7, 1994 to determine actuarial equivalence. If, as of December 7, 1994, the plan rate for a particular optional form of benefit was a variable interest rate, the plan rate that would be compared to 5 percent is the value of the variable rate at the time the old-law limitations are applied, not the value of the variable rate on December 7, 1994.

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

Example: Plan B has a calendar plan year and limitation year. N is currently a participant in Plan B and has never participated in any other plan. Plan B is amended on December 1, 1998, to apply the § 415(b)(2)(E) changes. As amended, the plan specifies that the § 415(b)(2)(E) changes will not apply to benefits accrued as of December 31, 1997 (that is, December 31, 1997, is the freeze date for all participants). Thus, any optional form of benefit provided under the plan as of the freeze date (taking into account the old-law limitations) is an old-law benefit. As of December 7, 1994, the plan provides the normal retirement benefit in the form of a straight life annuity beginning at age 65. Early retirement benefits are available at any age on or after age 60 with an actuarial reduction. The plan

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

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

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

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

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

The old-law limitations must now be applied under the plan to determine the old-law benefit for any optional form of benefit elected by N. In this case, the plan rate used to determine single sums is the PBGC immediate rate of 6 percent and the plan mortality table is the UP-1984 Mortality Table. The age-adjusted dollar limit at age 60 determined on the basis of § 415(b)(2)(E) as in effect on December 7, 1994 (using 5 percent interest and the UP-1984 Mortality Table) and without taking into account cost-of-living increases under § 415(d) after the freeze date is $86,143. Because $75,242 (the annual benefit payable at age 60 that is actuarially equivalent to $797,264, determined on the basis of § 415(b)(2)(E) as in effect on December 7, 1994) does not exceed $86,143, the single-sum old-law benefit is $797,264.

Alternatively, if N were to elect to receive a distribution

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

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

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

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

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

In some cases, the use of the applicable mortality table in adjusting the § 415(b) dollar limitation under § 415(b)(2)(C) or (D) can result in an age-adjusted dollar limit lower than the age-adjusted dollar limit used in determining the old-law benefit. A plan using Method 1 may provide that in any event the participant will receive no less than the old-law benefit, limited to the extent required under Q&A-15.

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

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

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

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

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

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

First, the annual benefit payable at age 60 that is actuarially equivalent to N's single-sum old-law benefit of $797,264 is determined on the basis of § 415(b)(2)(E) as in

effect on December 7, 1994. If the determination were before the final implementation date, all plan terms in effect on December 7, 1994 that are relevant in determining actuarial equivalence under § 415(b)(2)(E) would be used. In this case, the § 415(b)(2)(E) changes apply to benefits accruing for all participants under the plan on and after January 1, 1998. Consequently, the date the plan amendment applying § 415(b)(2)(E) changes is made effective (within the meaning of Q&A-12) is January 1, 1998, and the final implementation date (based on the later of the date the plan amendment is adopted or made effective) is December 1, 1998.

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

Next, the annual benefit payable at age 60 that is actuarially equivalent to the portion of N's total single-sum benefit of $950,000 that exceeds $797,264, or $152,736, is determined taking into account the § 415(b)(2)(E) changes. For this purpose, $152,736 is first converted to an equivalent annual

benefit using the plan rate (6 percent) and the plan mortality table (UP-1984 Mortality Table). On this basis, the equivalent annual benefit is $14,415. The additional $152,736 is also converted to an equivalent annual benefit using the applicable interest rate (8 percent) and the applicable mortality table. On this basis, the equivalent annual benefit is $15,125. Under Plan B, the annual benefit that is equivalent to $152,736 for purposes of § 415 is the greater of $14,415 and $15,125, or $15,125. Thus, the annual benefit that is equivalent to the total single sum of $950,000 for purposes of § 415 is $15,125 plus $75,242, or $90,367.

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

Because N's total single-sum benefit is greater than the single-sum old-law benefit and because the equivalent annual benefit ($90,367) exceeds the age-adjusted dollar limit ($89,588), N's single-sum benefit under Plan B must be limited to

$942,130 ($797,264 + ($89,588 - $75,242) x 10.098) in order to satisfy the § 415(b) limitations.

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

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

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

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

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

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

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

Similarly, on or after the final implementation date, the determinations of actuarial equivalence under § 415(b)(2)(E) that

apply with respect to the old-law benefit must take into account any changes in plan terms that occur after December 7, 1994, that are relevant in applying the old-law limitations. If the equivalent annual benefit determined in this manner exceeds the age-adjusted dollar limit, the old-law benefit must be limited accordingly.

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

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

In order to reflect the § 417(e)(3) changes, Plan C is amended on January 1, 1996, effective as of that date, to substitute the applicable interest rate and the applicable mortality table for the original plan rate and the UP-1984 Mortality Table, respectively, to compute single-sum benefits

under the plan. These new provisions are applied to all plan benefits (as determined before applying § 415 under the plan), whether accrued before or after the amendment date.

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

Because the January 1, 1996 amendment applying the § 417(e)(3) changes is effective before the freeze date, it will be taken into account in determining plan benefits before applying § 415. However, that amendment will not be taken into account in applying the old-law limitations to determine the old-law benefit until the final implementation date. Accordingly, in order to apply the old-law limitations to determine the old-law benefit before the final implementation date, the interest rate used to convert a single-sum benefit to an actuarially equivalent straight life annuity is the greater of 5 percent and the original plan rate.

Plan amendments made after December 7, 1994, including the January 1, 1996 amendment to use the applicable interest rate in determining equivalent single sums for all accrued benefits, must be taken into account in applying the old-law limitations on or after the final implementation date. Therefore, on or after the final implementation date, in determining the equivalent annual benefit under § 415(b)(2)(B), the interest rate used is the

greater of 5 percent and the new plan rate under the amendment (the applicable interest rate). If the new plan rate exceeds the greater of 5 percent and the original plan rate, the old-law benefit, determined as of the freeze date, might exceed the old-law limitations when those limitations are applied on or after the final implementation date. In such a case, the old-law benefit must be further limited in order to ensure that the old-law benefit does not exceed the old-law limitations.

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

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

5 percent and the lesser of 6 percent or the PBGC interest rate would be used with the UP-1984 Mortality Table.

In order to reflect the § 417(e)(3) changes, Plan D is amended on December 1, 1996 to substitute the applicable interest rate and the applicable mortality table for the PBGC interest rate and the UP-1984 Mortality Table, respectively, but only with respect to benefits accruing after December 31, 1996. Plan D is amended July 1, 1999 to apply the § 415(b)(2)(E) changes. Plan D's terms as amended provide that the § 415(b)(2)(E) changes will not apply to any benefits accrued under the plan as of December 31, 1994. Thus, the final implementation date for Plan D is July 1, 1999.

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

(3) Plan Amendments and Operational Compliance Issues

Q-16. How does an employer apply the transitional rule of § 1449(d) of SBJPA to a plan that was amended on or before

August 20, 1996, to apply § 767 of RPA '94?

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

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

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

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

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

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

The following are examples of plan amendments that apply the

§ 415(b)(2)(E) changes and their effects on prior distributions.

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

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

Under § 767(d)(3)(A), determinations under § 415(b)(2)(E) with respect to old-law benefits made before January 1, 2000, are based on § 415(b)(2)(E) and plan terms as in effect on December 7, 1994. Plan operations must be retroactively conformed to the terms of the plan as retroactively amended. Therefore, distributions made from Plan E between January 1, 1995 and August 20, 1996 must be redetermined to reflect the freeze date used in the December 1, 1999 amendment.

Example 2: Employer Y maintains Plan F, a qualified defined benefit plan that was adopted and effective on January 1, 1985. The plan year and the limitation year for Plan F are the calendar

year. In making distributions for periods after January 1, 1995, including distributions for periods after August 20, 1996, Employer Y applied the § 415(b)(2)(E) changes using § 415(b)(2)(E)(ii) as amended by RPA '94, but did not take the § 1449(b) revisions into account.

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

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

redetermined.

Example 3: Employer Z maintains Plan G, a qualified defined benefit plan that was adopted and effective on January 1, 1982. The plan year and limitation year are the calendar year. Plan G is amended on March 1, 1998, effective on January 1, 1995, to apply the § 415(b)(2)(E) changes. The amendment provides that in the case of participants who terminate before February 1, 1998, the § 415(b)(2)(E) changes do not apply to benefits accrued before January 1, 1995, in accordance with Method 2 of Q&A-14. The amendment further provides that in the case of participants who have an hour of service on or after February 1, 1998, the § 415(b)(2)(E) changes do not apply to benefits accrued before January 1, 1999, in accordance with Method 1 of Q&A-14. In making distributions since January 1, 1995, Employer Z applied the § 415(b)(2)(E) changes, but did not reduce the participant's benefit below the participant's accrued benefit as of December 31, 1994.

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

(4) Plan Funding

Q-19. May the § 415(b)(2)(E) changes be taken into account

for purposes of the minimum funding standards under § 412 before the plan is amended to reflect these changes?

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

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

amendment, if any, that was used in applying § 412 for that year cannot be changed (for purposes of applying § 412 for that year).

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

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

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

However, for taxable years relating to plan years beginning prior to January 1, 1997, the Service will not assert a violation of § 404(j) merely because contributions are made in amounts necessary to satisfy minimum funding standards calculated based

on the terms of the plan, provided that the terms of the plan satisfy old-law limitations. The preceding sentence will not apply with respect to a plan year if a Schedule B of Form 5500 has been filed for that plan year prior to January 12, 1998, for which the minimum funding standards have been calculated by anticipating an amendment applying the § 415(b)(2)(E) changes.

(5) Miscellaneous

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

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

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

A-22. No. A plan may provide different participant freeze dates under Q&A-13 or different methods under Q&A-14 for different participants in the plan. In addition, a plan may provide no freeze date for some participants (that is, the § 415(b)(2)(E) changes apply to the entire accrued benefit of those participants), while providing a freeze date for other participants. However, the availability of a specific participant freeze date under Q&A-13 or method described in Q&A-14 is a benefit, right, or feature, which must satisfy the nondiscriminatory availability requirement of § 1.401(a)(4)-4.

Furthermore, in accordance with Q&A-11 of Notice 87-21, if a limitation under § 415 may be applied in more than one manner, the plan must specify the manner in which the limitation is to be applied.

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

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

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

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

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

PAPERWORK REDUCTION ACT

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

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

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

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

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

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

Effect On Other Documents

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

Drafting Information

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