Notice **99-44**
Internal Revenue Service
1999-35 I.R.B. 326

Section 415 Limitations on Benefits and Contributions Under Qualified Plans

Notice 99–44

I. PURPOSE

This notice provides guidance relating to the repeal of the combined limitation on defined benefit and defined contribution plans under § 415(e) of the Internal Revenue Code (the Code) made by the Small Business Job Protection Act of 1996 (SBJPA), Pub. L. 104-88. In addition, this notice provides guidance on the amendment to the definition of compensation under § 415(c)(3) made by the same act. Specifically, this notice provides questions and answers on

- Benefit increases that may be provided upon the repeal of § 415(e).
- Plan amendments that may be adopted to take into account the repeal of § 415(e).
- The treatment of the repeal of § 415(e) for purposes of applying the minimum funding standards under § 412.
- The effect of the repeal of § 415(e) and the modification of § 415(c)(3) on other qualification requirements.
- Relief under § 7805(b)(8) for certain plans that continue to use a definition of compensation under § 415(c)(3) as it existed prior to SBJPA.

II. BACKGROUND

Section 415 of the Code imposes limitations on contributions and benefits under qualified plans. Section 415(e) imposes limitations that apply to an individual who participates in both a defined benefit plan and a defined contribution plan maintained by the same employer. Section 1452(a) of SBJPA repealed § 415(e) of the Code, effective for limitation years beginning on or after January 1, 2000. The limitations of § 415(e) as in effect immediately prior to this effective date are referred to in this notice as the "pre-SBJPA § 415(e) limitations."

Section 415(c)(3) of the Code and the regulations thereunder provide a definition of compensation for purposes of computing the limitations on contributions and benefits for a participant in a qualified plan. Section 1434 of SBJPA amended § 415(c)(3) to include elective deferrals described in § 402(g)(3), and elective contributions to a § 125 cafeteria plan or a § 457(b) eligible deferred compensation plan, in a participant's compensation, effective for limitation years beginning on or after January 1, 1998.

Section 411(a) prescribes rules as to when an employee's right to his or her normal retirement benefit must become nonforfeitable under a qualified plan. Section 411(d)(6) generally prohibits

a plan amendment, except for an amendment described in § 412(c)(8), that has the effect of decreasing a participant's accrued benefits under the plan.

Section 1106(h) of the Taxpayer Re-form Act of 1986, Pub. L. 99–514, provides that notwithstanding any other provision of law, except as provided in regulations prescribed by the Secretary of the Treasury, a plan may incorporate by reference the limitations under § 415 of the Code. In Notice 87–21, 1987–1 C.B. 458, Q&A-11, the Service provided guidance for plans to incorporate by reference the limitations of § 415, for limitation years beginning on or after January 1, 1987.

Section 401(a)(4) prescribes nondiscrimination rules for qualified plans. Section 1.401(a)(4)–2 of the Income Tax Regulations imposes requirements relating to nondiscrimination in amount of employer contributions under a defined contribution plan. For this purpose, § 1.401(a)(4)–2(b) provides two safe harbor tests, and § 1.401(a)(4)–2(c) provides a general test. Plans that satisfy one of these safe harbors must provide for either a uniform allocation formula or a uniform points allocation formula as described in the regulation. Under § 1.401(a)(4)– 2(b)(4)(iv), a safe-harbor plan does not fail to satisfy these uniformity requirements merely because the plan limits allocations otherwise provided under the allocation formula in accordance with the limitations of § 415.

Section 1.401(a)(4)–3 imposes requirements relating to nondiscrimination in amount of benefits under a defined benefit plan. For this purpose, § 1.401(a)(4)– 3(b) provides for several safe harbor tests, and § 1.401(a)(4)–3(c) provides a general test. To satisfy one of these safe harbors, a plan must provide for a uniform normal retirement benefit, uniform post-normal retirement benefit, and uniform subsidies. Under § 1.401(a)(4)–3(b)(6)(v), a safe-harbor plan does not fail to satisfy these uniformity requirements merely because the plan limits benefits otherwise provided under the benefit formula or accrual method in accordance with the limitations of § 415. Plans that satisfy the general test may do so by testing benefits with or without the application of the § 415 limitations.

Section 401(b) specifies a remedial amendment period during which a plan may be amended retroactively, under certain circumstances, to comply with the Code's qualification requirements. Pursuant to Rev. Proc. 99–23, 1999–16 I.R.B. 5, the remedial amendment period for plan amendments relating to recent legislation for most plans has been extended until the last day of the first plan year beginning on or after January 1, 2000. Section 4 of Rev. Proc. 99–23 provides that this remedial amendment period applies to plan amendments made to implement the repeal of § 415(e).

III. QUESTIONS AND ANSWERS

Q-1: What is the effective date of the repeal of § 415(e) of the Code by § 1452(a) of SBJPA?

A-1: In accordance with § 1452(d)(1) of SBJPA, § 415(e) of the Code is repealed effective as of the first day of the first limitation year beginning on or after January 1, 2000. With respect to limitation years beginning on or after January 1, 2000, a defined contribution plan will not fail to satisfy § 415 solely because the annual additions for any participant for such years exceed the

pre-SBJPA § 415(e) limitations. With respect to limitation years beginning on or after January 1, 2000, a defined benefit plan will not fail to satisfy § 415 solely because the plan provides that the benefit of any participant exceeds the pre-SBJPA § 415(e) limitations. Accordingly, the pre-SBJPA § 415(e) limitations will not limit the benefit of a participant in a defined benefit plan whose benefit has not commenced as of the first day of the first limitation year beginning on or after January 1, 2000. For rules regarding the application of the pre-SBJPA § 415(e) limitations to a participant in a defined benefit plan whose benefit has commenced as of that date, see Q&A-3 and 4.

Q-2: If a plan is not amended to take into account the repeal of § 415(e), how may the benefits of plan participants be affected?

A-2: If a plan is not amended to take into account the repeal of § 415(e), the effect on the benefits of plan participants will depend on the plan's existing provisions for applying the limitations of § 415(e) and any other relevant plan provisions. In some circumstances, a plan's existing provisions could result in automatic benefit increases for participants as of the effective date of the repeal of § 415(e) for the plan. For example, the repeal of § 415(e) could result in automatic benefit increases for participants in defined benefit plans that incorporate by reference the limitations under § 415. Similarly, the repeal of § 415(e) could result in automatic changes to annual additions for participants in defined contribution plans.

Q-3: May a defined benefit plan provide for benefit increases to reflect the repeal of § 415(e) for a current or former employee who has commenced benefits under the plan prior to the effective date of the repeal?

A-3: A defined benefit plan may provide for benefit increases to reflect the repeal of § 415(e) for a current or former employee who has commenced benefits under the plan prior to the effective date of the repeal of § 415(e) for the plan, but only if the employee or former employee is a participant in the plan on or after that effective date. For this purpose, an employee or former employee is a participant in the plan on a date if the employee or former employee has an accrued benefit (other than an accrued benefit resulting from a benefit increase that arises solely as a result of the repeal of § 415(e)) on that date. Thus, benefit increases to reflect the repeal of § 415(e) cannot be provided to current or former employees who do not have accrued benefits under the plan on or after the effective date of the repeal of § 415(e) for the plan. However, if a current or former employee accrues additional benefits under the plan that could have been accrued without regard to the repeal of § 415(e) (including benefits that accrue as a result of a plan amendment) on or after the effective date of the repeal of § 415(e) for the plan, then the current or former employee may receive a benefit arising from the repeal of § 415(e).

Q-4: How is the maximum permissible benefit increase calculated for a current or former employee who has commenced benefits under a defined benefit plan prior to the effective date of the repeal of § 415(e) for the plan?

A-4: For any limitation year beginning on or after the effective date of the repeal of § 415(e) for the plan, the benefit payable to any current or former employee who has commenced benefits under the plan prior to that date in a form not subject to § 417(e)(3) may be increased to a benefit

that is no greater than the benefit that would have been permitted for that year under § 415(b) for the employee had § 415(e) not limited the benefit at the time of commencement. Thus, the annual benefit for limitation years beginning on or after the effective date of the repeal of § 415(e) for the plan is limited to the § 415(b) limitation for the employee (increased for cost-of-living-adjustments, if the plan provided for such adjustments) based on the employee's age at the time of commencement. In the case of a form of benefit that is subject to § 417(e)(3), the benefit payable for any limitation year beginning on or after the effective date of the repeal of § 415(e) for the plan may be increased by an amount that is actuarially equivalent to the amount of increase that could have been provided had the benefit been paid in the form of a straight life annuity. Whether or not the form of benefit is subject to § 417(e)(3), benefits attributable to limitation years beginning before January 1, 2000, cannot reflect benefit increases that could not be paid for those years because of § 415(e). In addition, any plan amendment to provide an increase as a result of the repeal of § 415(e) can be effective no earlier than the effective date of the repeal of § 415(e) for the plan. The following examples illustrate these principles:

Example 1: Plan *M* , a defined benefit plan, has a calendar plan year and limitation year. Plan *M* is not a top-heavy plan during any relevant period. Under Plan *M* , participants may elect to receive benefit distributions either in the form of an annuity or a single sum. Plan *M* provides that benefits for retirees are increased as the dollar limitation is indexed under § 415(d) of the Code. Plan *M* also provides that benefits will be limited to the extent necessary to satisfy the requirements of § 415(e). In order to reflect the § 417(e)(3) change made by GATT, Plan *M* was amended on January 1, 1995, 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. Additionally, Plan *M* was amended on July 1, 1998, effective as of January 1, 1995, to apply the § 415(b)-(2)(E) changes made by GATT and SBJPA to all benefits under the plan on or after the RPA '94 § 415 effective date, as defined in Rev. Rul. 98–1, 1998–2 I.R.B. 5. Under Plan *M* , early retirement benefits and other optional forms of benefit are determined as the actuarial equivalents of a straight life annuity at normal retirement age using the applicable interest rate and applicable mortality table. For purposes of this example, the applicable interest rate for all relevant periods is assumed to be 6 percent.

P was a participant both in Plan *M* , and in Plan *N* , a defined contribution plan, before retiring at the end of 1995. *P* is unmarried and has a date of birth of January 1, 1940. *P* 's social security retirement age is 66. *P* commenced receiving distributions from Plan *M* in the form of a single life annuity on January 1, 1996, at age 56. The dollar limitation of § 415(b)(1)(A) for 1996 was $120,000. *P* 's compensation-based limit under § 415(b)(1)(B) was $150,000 for all relevant periods. Accordingly, the § 415(b) limitation for *P* 's benefit in 1996 was $54,753 ($120,000 reduced for early retirement at age 56).

P 's defined contribution fraction for 1996 was 0.36. Therefore, in order to comply with § 415(e) in the manner provided under the plan, *P* 's benefit in Plan *M* was limited so that *P* 's defined benefit fraction was equal to 0.64 (1 minus 0.36). Thus, *P* 's benefit in 1996 was limited to $43,802 (0.64 multiplied by the lesser of (A) 1.25 multiplied by $54,753 or (B) 1.4 multiplied by $150,000).

The dollar limitation under § 415(b)(1)(A) increased to $125,000 in 1997, and to $130,000 in 1998 and 1999. In 1997, because of the indexing of the dollar limitation under Plan *M* , *P* 's benefit was increased to $45,628. Similarly, in 1998, *P* 's benefit was increased to $47,453. In 1999, because the dollar limitation was unchanged from 1998, *P* 's benefit continued to be limited to $47,453. For purposes of this example, it is assumed that the § 415(b)(1)(A) dollar limitation will be $135,000 in 2000.

Effective January 1, 2000, *P* 's annuity payments under Plan *M* are permitted to be increased to a maximum annuity benefit of $61,597 ($135,000 reduced for early retirement at age 56). However, no increase in *P* 's benefit is permitted to reflect the difference between the limitation of § 415(b) and the limitation of § 415(e) in prior limitation years.

Alternatively, if Plan *M* had not provided that benefits for retirees are increased as the dollar limitation is indexed under § 415(d) of the Code, but was amended to provide for such increases effective for the limitation year beginning January 1, 2000, *P* 's benefit could be increased from $43,802 (the benefit without adjustment for increases in the § 415(b)(1)(A) dollar limitation) to $61,597, plus the annual amount that is actuarially equivalent to the $9,128 that could have been paid in the prior limitation years ($1,826 for 1997, and $3,651 each for 1998 and 1999) had the plan provided for benefit increases to reflect the cost-of-living increases under § 415(d).

Example 2: Assume the same facts as in *Example 1,* except that Plan *M* does not provide that benefits for retirees are increased as the dollar limitation is indexed under § 415(d) of the Code, and *P* commenced distributions from Plan *M* in the form of ten equal annual installments commencing on January 1, 1996. Accordingly, the § 415(b) limitation for *P* 's benefit in 1996 was $89,635 ($120,000 reduced for early retirement at age 56 and adjusted for the installment option). In order to comply with § 415(e), *P* 's installment payment in 1996 was limited to $71,707. Similarly, for the years 1997 through 1999, *P* received installment payments of $71,707. As of January 1, 2000, *P* has six installment payments remaining. Because Plan *M* does not provide for cost-of-living adjustments under § 415(d), *P* 's six remaining installment payments under Plan *M* are permitted to be increased, effective January 1, 2000, by the actuarial equivalent (spread over a period of six years) of the value of the increases in the single life annuity that would have been payable beginning on January 1, 2000 (i.e., the increase from $43,802 to $54,753) if *P* had elected a single life annuity rather than the installment payment option.

If Plan *M* , however, was amended to provide for cost-of-living adjustments under § 415(d), effective January 1, 2000, then *P* 's six remaining installment payments would be permitted to be increased by the actuarial equivalent (spread over a period of six years) of the value of the increases in the single life annuity that would have been payable beginning on January 1, 2000 (i.e., the increase from $43,802 to $61,597) if *P* had elected a single life annuity rather than the installment payment option. Furthermore, Plan *M* could provide that each of *P* 's six remaining installment payments under Plan *M* are increased by the actuarial equivalent (spread over six years) of the value of the increases in the prior installment payment that would have been paid in the prior limitation years had the plan provided for increases in the installment payments to reflect the increases under § 415(d).

Q-5: How will a plan that takes into account the repeal of § 415(e) as of the first day of the first limitation year beginning on or after January 1, 2000, satisfy the nondiscrimination in amount of benefits requirement?

A-5: A plan that uses the safe harbor and takes into account the repeal of § 415(e) as of the first day of the first limitation year beginning on or after January 1, 2000, will not fail to satisfy the uniformity requirements of §§ 1.401(a)(4)–2(b) or 1.401(a)(4)–3(b)(2) merely because the repeal of § 415(e) is taken into account under the plan.

For purposes of the general test for nondiscrimination in amount of contributions, increased contributions allocated under the terms of a defined contribution plan due to the repeal of § 415(e) must be taken into account in accordance with the rules of § 1.401(a)(4)–2(c)(2)(ii) for the plan year for which the increased allocations are made. For purposes of the general test for nondiscrimination in amount of benefits, increased benefits provided to an employee under the terms of a defined benefit plan due to the repeal of § 415(e) must be included as increases in the employee's accrued benefit (within the meaning of § 411(a)(7)(A)(i)) and the employee's most valuable optional form of payment of the accrued benefit (within the meaning of § 1.401(a)(4)–3(d)(1)(ii)) in accordance with the rules of § 1.401(a)(4)–3(d), and must be included in the computation of both the normal and most valuable accrual rates for any measurement period that

includes the plan year for which the increase occurs. If the limitations of § 415 are taken into account in testing the plan for limitation years beginning on or after January 1, 2000, those limitations must reflect the repeal of § 415(e).

Q-6: If benefit increases are provided to employees and former employees under a plan as a result of the repeal of § 415(e), how are the requirements of §§ 1.401(a)-(4)–5 and 1.401(a)(4)–10 of the regulations satisfied?

A-6: If benefit increases resulting from the repeal of § 415(e) are provided, as of the effective date of the repeal of § 415(e) for the plan, to either (1) all current and former employees who have an accrued benefit under the plan immediately before the effective date of the repeal of § 415(e) for the plan, or (2) all employees participating in the plan that have one hour of service after the effective date of the repeal of § 415(e) for the plan, through the adoption of a plan amendment, then the timing of such an amendment satisfies the requirements of § 1.401(a)(4)–5 of the regulations, and the requirements of § 1.401(a)(4)-10(b) of the regulations are satisfied. In addition, if benefit increases are provided, as of the effective date of the repeal of § 415(e) for the plan, to either of the two groups described in the preceding sentence through the operation of the plan's existing provisions, then the requirements of §§ 1.401(a)(4)–5 and 1.401(a)(4)-10(b) of the regulations are satisfied.

If benefit increases due to the repeal of § 415(e) are provided only to a certain group of current or former employees not described in the preceding paragraph through the adoption of a plan amendment, or if a plan amendment to reflect the repeal of § 415(e) is effective as of a later date than the effective date of the repeal of § 415(e) for the plan, then the timing of such an amendment (considered in conjunction with the effect of the repeal of § 415(e)) must satisfy a facts-andcircumstances determination under § 1.401(a)(4)–5(a)(2) of the regulations, and the requirements of § 1.401(a)(4)–10 must be applied.

Q-7: May a plan be amended to limit the extent to which a participant's benefit would otherwise automatically increase under the terms of the plan as a result of the repeal of § 415(e)?

A-7: Yes, a plan may be amended to limit the extent to which a participant's benefit would otherwise automatically increase under the terms of the plan as a result of the repeal of § 415(e). However, see Q&A-8 for certain qualification requirements that may be affected by such an amendment. A plan sponsor may wish to make a plan amendment to preclude a benefit increase that would otherwise occur as a result of the repeal of § 415(e) in order to provide time for the plan sponsor to consider the extent to which a benefit increase relating to the repeal of § 415(e) should or should not be provided at some later date consistent with all relevant qualification requirements. A plan amendment to limit the extent to which such a benefit increase would otherwise occur that is not both adopted prior to, and effective as of, the first day of the first limitation year beginning on or after January 1, 2000, may fail to satisfy § 411(d)(6). Therefore, a plan amendment that is intended to limit such a benefit increase should be both adopted prior to, and effective as of, the first day of the first limitation year beginning on or after January 1, 2000 (even though the plan could be later amended during the plan's remedial amendment, at the option of the plan sponsor, to retroactively provide for the benefit increase). The following is an example of language that could be used by a plan sponsor, on an interim or permanent basis, in

amending a defined benefit plan that would otherwise provide for a benefit increase due to the repeal of § 415(e), to retain the effect of the pre-SBJPA § 415(e) limitations in determining a participant's accrued benefit under the plan (without failing to satisfy § 411(d)(6)):

> *Effective as of the first day of the first limitation year beginning on or after January 1, 2000 (the "Effective Date"), and notwithstanding any other provision of the Plan, the accrued benefit for any participant shall be determined by applying the terms of the Plan implementing the limitations of § 415 as if the limitations of § 415 continued to include the limitations of § 415(e) as in effect on the day immediately prior to the Effective Date. For this purpose, the defined contribution fraction is set equal to the defined contribution fraction as of the day immediately prior to the Effective Date.*

Q-8: Are there qualification requirements that may not be satisfied if a plan continues to limit benefits after the first day of the first limitation year beginning on or after January 1, 2000, using the pre-SBJPA § 415(e) limitations?

A-8: There are some qualification requirements that may not be satisfied for a plan if the plan continues to limit benefits after the first day of the first limitation year beginning on or after January 1, 2000, using the pre-SBJPA § 415(e) limitations. Any exception from the otherwise applicable qualification rules that is permitted solely in order to satisfy the maximum limitations on contributions or benefits under § 415 with respect to a participant does not apply if the participant's contributions or benefits are below the limitations of § 415. Thus, such an exception is not permitted where a plan limits benefits in a manner that is more restrictive than required under § 415. For example, at any time on or after the first day of the first limitation year beginning on or after January 1, 2000, a qualified defined contribution plan could not provide that the provisions of § 1.415-6(b)(6) would be applied to place an amount that does not exceed the limitations under § 415, but that does exceed the pre-SBJPA § 415(e) limitations, in an unallocated suspense account as an excess annual addition. Similarly, a qualified cash or deferred arrangement could not provide that the provisions of § 1.415– 6(b)(6)(iv) would be applied to permit the distribution of elective deferrals that do not exceed the limitations under § 415, but that exceed the pre-SBJPA § 415(e) limitations. See Q&A-10 for a description of the effects that the continued application of the pre-SBJPA § 415(e) limitations may have on the requirements for nondiscrimination testing. Additionally, if a participant's annual additions to a defined contribution plan result in a decrease in the participant's accrued benefit under a defined benefit plan (under the terms of both plans), the relief previously provided under Q&A G-10 of Notice 83– 10, 1983–1 C.B. 536 no longer applies, and such a reduction would violate § 411.

The qualification issues described in this Q&A-8 may arise whenever a lower limitation is applied under a plan in lieu of a statutory § 415 limitation that applies for the limitation year. For example, the issues described in this Q&A-8 may arise if a lower limitation is applied under a plan as a result of using a definition of compensation that is not within the meaning of § 415(c)(3), as amended by SBJPA. Q&A-9 provides § 7805(b)(8) relief that applies where a plan uses the pre-SBJPA § 415(c)(3) definition of compensation instead of the current § 415(c)(3) definition.

Q-9: To the extent that a qualified defined contribution plan applies the rules in § 1.415–6(b)(6) with respect to excess annual additions, must the plan apply the rules in § 1.415–6(b)(6) using a definition of compensation within the meaning of § 415(c)(3) as amended by SBJPA?

A-9: For limitation years ending on or after December 1, 1999, to the extent that a plan applies the rules in § 1.415– 6(b)(6), a defined contribution plan will not satisfy the requirements of § 401(a) unless the rules of § 1.415–6(b)(6) are applied using a definition of compensation within the meaning of § 415(c)(3) as amended by SBJPA. However, for limitation years ending on or before November 30, 1999, pursuant to § 7805(b)(8), the Service will not treat a defined contribution plan as failing to satisfy the requirements of § 401(a) merely because the rules in § 1.415-6(b)(6) are applied using a definition of compensation within the meaning of § 415(c)(3) prior to its amendment by SBJPA.

Q-10: How may a plan that continues to limit benefits after the first day of the first limitation year beginning on or after January 1, 2000, using the pre-SBJPA § 415(e) limitations, satisfy the nondiscrimination in amount of benefits requirement?

A-10: A plan does not fail to satisfy the uniformity requirements of §§ 1.401(a)-(4)–2(b) or 1.401(a)(4)–3(b)(2) merely because the limitations under § 415 are taken into account under the safe harbor requirements. The continued application of the pre-SBJPA § 415(e) limitations for a plan year after the effective date of the repeal of § 415(e) for a plan would cause the plan to fail to satisfy the uniformity requirements for the otherwise applicable nondiscrimination in amount safe harbor. However, if a plan limits benefits at any time on or after the first day of the first limitation year beginning on or after January 1, 2000, using the pre-SBJPA § 415(e) limitations for highly compensated employees (but not for nonhighly compensated employees), the plan will not fail to satisfy the uniformity requirements and thus will not fail to satisfy a nondiscrimi-nation in amount safe harbor merely because of this limited application of the pre-SBJPA § 415(e) limitations. See §§ 1.401(a)(4)–2(b)(4)(v) and 1.401(a)-(4)–3(b)(6)(x) of the regulations.

If a plan continues to limit benefits on or after the first day of the first limitation year beginning on or after January 1, 2000, using the pre-SBJPA § 415(e) limitations, the annual additions or accrued benefits that are taken into account in performing the general tests for nondiscrimi-nation in amount of contributions or benefits must reflect the plan provisions that limit benefits in this manner.

Q-11: How is the repeal of § 415(e) treated under the plan for purposes of § 412?

A-11: For purposes of § 412, any increase in the liabilities of a plan as a result of the repeal of § 415(e) must be treated as occurring pursuant to a plan amendment effective no earlier than the first day of the first limitation year beginning on or after January 1, 2000 (whether the increase in liabilities under the terms of the plan arises pursuant to a plan amendment, or pursuant to existing plan provisions, e.g., where benefits automatically increase as of the effective date of the repeal of § 415(e) for the plan). Accordingly, any amortization base that is established under § 412 for an increase in liabilities under a plan resulting from the repeal of § 415(e) must have an amortization period of 30 years. A plan amendment that makes the repeal of § 415(e) effective

for a plan cannot be taken into account for purposes of § 412 prior to the effective date of the repeal of § 415(e) for the plan.

Q-12: What is the effect of the repeal of § 415(e) on an "old-law benefit" defined in Q&A-12 of Rev. Rul. 98–1, 1998–2 I.R.B. 5?

A-12: Under Q&A-13 of Rev. Rul. 98–1, a participant's old-law benefit under a plan is determined as of a specified freeze date that precedes the final implementation date for the plan. Under Q&A-15 of Rev. Rul. 98–1, a participant's old-law benefit cannot increase after the participant's freeze date. Under Q&A-12 of Rev. Rul. 98–1, the final implementation date for the plan cannot be later than the first day of the first limitation year beginning after December 31, 1999. Because the freeze date must precede the final implementation date, the latest possible freeze date under a plan is the day before the first day of the first limitation year beginning after December 31, 1999. Thus, the latest possible freeze date for a plan is the day before the effective date of the repeal of § 415(e) for the plan. As a result, the repeal of § 415(e) generally will have no effect on the amount of a participant's old-law benefit, as the old-law benefit would be determined prior to the effective date of the repeal of § 415(e) for the plan. Nevertheless, if the old-law benefit for a participant in a defined benefit plan was reduced during the period between the freeze date and the effective date of the repeal of § 415(e) for the plan because of annual additions credited to a participant's account in an existing defined contribution plan, the old-law benefit may increase to the freeze-date level as of the effective date of the repeal of § 415(e) for the plan.

Q-13: Are the requirements of § 415(b)(4)(B) affected by the repeal of § 415(e)?

A-13: No. Section 415(b)(4)(B) generally provides that the limitation on benefits under a defined benefit plan under § 415(b) with respect to a participant cannot be less than $10,000, but only if the employer has not at any time maintained a defined contribution plan in which the participant participated. The statutory provision repealing § 415(e) did not modify § 415(b)(4)(B). Accordingly, the requirements of § 415(b)(4)(B) are unaffected by the repeal of § 415(e).

Q-14: How will the repeal of § 415(e) affect the regulations relating to § 403(b)?

A-14: Under § 415(c)(4)(D) and the regulations regarding the exclusion allowance under § 403(b)(2), an employee may elect to have the provisions of § 415(c)(4)(C) apply for a taxable year. If the employee so elects, the employee's exclusion allowance is the maximum amount under § 415 that could be contributed by the employer for the benefit of the employee if the annuity contract for the benefit of the employee were treated as a defined contribution plan maintained by the employer. The fourth sentence of § 1.403(b)–1(d)(5) provides that the rules under § 415(e) apply where such an election is made. Section 1504(b) of the Taxpayer Relief Act of 1997, Pub. L. 105-34, provides that regulations regarding the exclusion allowance under § 403(b)(2) of the Code shall be modified to reflect the repeal of § 415(e). Accordingly, the Commissioner intends to modify the regulations such that the fourth sentence of § 1.403(b)–1(d)(5) does not apply after the effective date of the repeal of § 415(e).

IV. EFFECT ON OTHER DOCUMENTS

Notice 83–10 is modified.

DRAFTING INFORMATION

The principal author of this notice is Martin Pippins of the Employee Plans Division. For further information regarding this notice, 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. Pippins' telephone number is (202) 622-7863 (also not a toll-free number).