

and compensation that would otherwise be included in compensation under this section.

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**§ 1.415(d)-1 Cost-of-living adjustments.**

(a) *Defined benefit plans*—(1) *Dollar limitation*—(i) *Determination of adjusted limit.* Under section 415(d)(1)(A), the dollar limitation described in section 415(b)(1)(A) applicable to defined benefit plans is adjusted annually to take into account increases in the cost of living. The adjustment of the dollar limitation is made by multiplying the adjustment factor for the year, as described in paragraph (a)(1)(ii)(A) of this section, by \$160,000, and rounding the result in accordance with paragraph (a)(1)(iii) of this section. The adjusted dollar limitation is prescribed by the Commissioner and published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter.

(ii) *Determination of adjustment factor*—(A) *Adjustment factor.* The adjustment factor for a calendar year is equal to a fraction, the numerator of which is the value of the applicable index for the calendar quarter ending September 30 of the preceding calendar year, and the denominator of which is the value of such index for the base period. The applicable index is determined consistent with the procedures used to adjust benefit amounts under section 215(i)(2)(A) of the Social Security Act, Public Law 92-336 (86 Stat. 406), as amended. If, however, the value of that fraction is less than one for a calendar year, then the adjustment factor for the calendar year is equal to one.

(B) *Base period.* For the purpose of adjusting the dollar limitation pursuant to paragraph (a)(1)(ii)(A) of this section, the base period is the calendar quarter beginning July 1, 2001.

(iii) *Rounding.* Any increase in the \$160,000 amount specified in section 415(b)(1)(A) which is not a multiple of \$5,000 is rounded to the next lowest multiple of \$5,000.

(2) *Average compensation for high-3 years of service limitation*—(i) *Determination of adjusted limit.* Under section 415(d)(1)(B), with regard to participants who have had a severance from employment with the employer maintaining the plan, the compensation limitation

described in section 415(b)(1)(B) is permitted to be adjusted annually to take into account increases in the cost of living. For any limitation year beginning after the severance occurs, the adjustment of the compensation limitation is made by multiplying the annual adjustment factor (as defined in paragraph (a)(2)(ii) of this section) by the compensation limitation applicable to the participant in the prior limitation year. The annual adjustment factor is prescribed by the Commissioner and published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter.

(ii) *Annual adjustment factor.* The annual adjustment factor for a calendar year is equal to a fraction, the numerator of which is the value of the applicable index for the calendar quarter ending September 30 of the preceding calendar year, and the denominator of which is the value of such index for the calendar quarter ending September 30 of the calendar year prior to that preceding calendar year. The applicable index is determined consistent with the procedures used to adjust benefit amounts under section 215(i)(2)(A) of the Social Security Act. If the value of the fraction described in the first sentence of this paragraph (a)(2)(ii) is less than one for a calendar year, then the adjustment factor for the calendar year is equal to one. In such a case, the annual adjustment factor for future calendar years will be determined in accordance with revenue rulings, notices, or other published guidance prescribed by the Commissioner and published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter.

(iii) *Special rule for rehired employees.* If, after having a severance from employment with the employer maintaining the plan, an employee is rehired by the employer maintaining the plan, the employee's compensation limit under section 415(b)(1)(B) is the greater of—

(A) 100 percent of the participant's average compensation for the period of the participant's high-3 years of service, as determined prior to the employee's severance from employment with the employer maintaining the plan, as adjusted pursuant to paragraph (a)(2)(i) of this section (if the plan so provides); or

(B) 100 percent of the participant's average compensation for the period of the participant's high-3 years of service, with the period of the participant's high-3 years of service determined pursuant to § 1.415(b)-1(a)(5)(iii).

(3) *Effective date of adjustment.* The adjusted dollar limitation applicable to defined benefit plans and the adjusted compensation limit applicable to a participant are effective as of January 1 of each calendar year and apply with respect to limitation years ending with or within that calendar year. However, benefit payments (and, in the case of plans that are subject to the requirements of section 411, accrued benefits for a limitation year) cannot exceed the currently applicable dollar limitation or compensation limitation (as in effect before the January 1 adjustment) prior to January 1. Thus, where there is an increase in the limitation under section 415(b)(1), any increase in a participant's benefits associated with the limitation increase is permitted to occur as of a date no earlier than January 1 of the calendar year for which the increase in the limitation is effective, and can only be applied for payments due on or after January 1 of such calendar year. For example, assume that a participant in a defined benefit plan is currently receiving a benefit in the form of a straight life annuity, payable monthly, in an amount equal to the section 415(b)(1)(A) dollar limit, and the defined benefit plan has a limitation year that runs from July 1 to June 30. If the plan is amended to reflect the section 415(d) increase to the section 415(b)(1)(A) dollar limit that is effective as of January 1, 2009, the associated increase in the participant's monthly benefit payments is only effective for payments due on or after January 1, 2009, and the participant's benefit cannot be increased to reflect the section 415(d) increase that is effective January 1, 2009, with respect to any monthly payment due prior to January 1, 2009.

(4) *Application of adjusted figure—(i) In general.* If the dollar limitation of section 415(b)(1)(A) or the compensation limitation of section 415(b)(1)(B) is adjusted pursuant to section 415(d) for a limitation year, the adjustment is

applied as provided in this paragraph (a)(4).

(ii) *Application of adjusted limitations to benefits that have not commenced.* An adjustment to the dollar limitation of section 415(b)(1)(A) is permitted to be applied to a participant who has not commenced benefits before the date on which the adjustment is effective. Annual adjustments to the compensation limit of section 415(b)(1)(B) as described in paragraph (a)(2) of this section are permitted to be made for all limitation years that begin after the participant's severance from employment, and apply to distributions that commence after the effective dates of such adjustments. However, no adjustment to the compensation limit of section 415(b)(1)(B) is made for any limitation year that begins on or before the date of the participant's severance from employment with the employer maintaining the plan.

(iii) *Application of adjusted dollar limitation to remaining payments under benefits that have commenced.* With respect to a distribution of accrued benefits that commenced before the date on which an adjustment to the section 415(b)(1)(A) dollar limitation is effective, a plan is permitted to apply the adjusted limitations to that distribution, but only to the extent that benefits have not been paid. Thus, for example, a plan cannot provide that the adjusted dollar limitation applies to a participant who has previously received the entire plan benefit in a single-sum distribution. However, a plan can provide for an increase in benefits to a participant who accrues additional benefits under the plan that could have been accrued without regard to the adjustment of the dollar limitation (including benefits that accrue as a result of a plan amendment) on or after the effective date of the adjusted limitation.

(iv) *Manner of adjustment for benefits that have commenced.* If a plan is amended to increase benefits payable under the plan in accordance with paragraphs (a)(5) or (a)(6) of this section (or the plan is treated as applying paragraph (a)(5) of this section because the plan incorporates the section 415(d) cost-of-living adjustments automatically by reference pursuant to

§ 1.415(a)-1(d)(3)(v)), or if benefits payable under the plan are increased pursuant to a form of benefit that is described in § 1.415(b)-1(c)(5), then the distribution as increased will be treated as continuing to satisfy the requirements of section 415(b). If benefits payable under a plan are increased in a manner other than as described in the preceding sentence, the plan must satisfy the requirements of § 1.415(b)-1(b)(1)(iii), treating the commencement of the additional benefit as the commencement of a new distribution that gives rise to a new annuity starting date.

(5) *Safe harbor for annual adjustments to distributions.* An amendment to a plan to incorporate adjustments to the section 415(b) limits that increases a distribution that has previously commenced is described in this paragraph (a)(5) if—

(i) The employee has received one or more distributions that satisfy the requirements of section 415(b) before the date the adjustment to the applicable limits is effective (as determined under paragraph (a)(3) of this section);

(ii) The increased distribution is solely as a result of the amendment of the plan to reflect the adjustment to the applicable limits pursuant to section 415(d); and

(iii) The amounts payable to the employee on and after the effective date of the adjustment (as determined under paragraph (a)(3) of this section) are not greater than the amounts that would otherwise be payable without regard to the adjustment, multiplied by a fraction determined for the limitation year, the numerator of which is the limitation under section 415(b) (which is the lesser of the applicable dollar limitation under section 415(b)(1)(A), as adjusted for age at commencement, and the applicable compensation-based limitation under section 415(b)(1)(B)) in effect with respect to the distribution taking into account the section 415(d) adjustment, and the denominator of which is the limitation under section 415(b) in effect for the distribution immediately before the adjustment.

(6) *Safe harbor for periodic adjustments to distributions—(i) General rule.* An amendment to a plan that increases a distribution that has previously com-

menced is made using the safe harbor methodology of this paragraph (a)(6) if—

(A) The employee has received one or more distributions that satisfy the requirements of section 415(b) before the date on which the increase is effective; and

(B) The amounts payable to the employee on and after the effective date of the increase are not greater than the amounts that would otherwise be payable without regard to the increase, multiplied by the cumulative adjustment fraction.

(ii) *Cumulative adjustment fraction.* The cumulative adjustment fraction for purposes of this paragraph (a)(6) is equal to the product of all of the fractions described in paragraph (a)(5)(iii) of this section that would have applied after benefits commence if the plan had been amended each year to incorporate the section 415(d) adjustments to the applicable section 415(b) limits and had otherwise satisfied the safe harbor methodology described in paragraph (a)(5) of this section. For purposes of the preceding sentence, if for the limitation year for which the increase to the section 415(b)(1)(A) dollar limitation pursuant to section 611(a)(1)(A) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (115 Stat. 38), Public Law 107-16 (EGTRRA), is first effective (generally, the first limitation year beginning after December 31, 2001), the section 415(b)(1)(A) dollar limit applicable to a participant is less than the section 415(b)(1)(B) compensation limit for the participant, then the fraction described in paragraph (a)(5)(iii) of this section for that limitation year is 1.0.

(7) *Examples.* The following examples illustrate the application of this paragraph (a):

*Example 1.* (i) X is a participant in a qualified defined benefit plan maintained by X's employer. The plan has a calendar year limitation year. Under the terms of the plan, X is entitled to a benefit consisting of a straight life annuity equal to 100 percent of X's average compensation for the period of X's high-3 years of service. X's average compensation for the period of X's high-3 years of service is \$50,000. X incurs a severance from employment with the employer maintaining the plan on October 3, 2007, at age 65 with a nonforfeitable right to the accrued

benefit after more than 10 years of participation in the plan. X begins to receive annual benefit payments (payable monthly) of \$50,000, commencing on November 1, 2007. The dollar limitation for the 2007 limitation year (as adjusted pursuant to section 415(d)) is \$180,000. Assume that the dollar limitation for the 2008 limitation year (as adjusted pursuant to section 415(d)) is \$185,000 and the annual adjustment factor for adjusting the compensation limitation of section 415(b)(1)(B) for the 2008 limitation year is 1.0334. Effective January 1, 2008, the plan is amended to incorporate these adjustments to the dollar and compensation limitations, and accordingly, X's annual benefit payment is increased, effective for payments due on or after January 1, 2008. Prior to the plan amendment incorporating the application of the adjusted dollar and compensation limitations, X has received one or more distributions that satisfy the requirements of section 415(b). In addition, the adjustment to X's annual benefit payments is solely on account of the plan amendment incorporating the adjusted limitations.

(i) For the limitation year beginning January 1, 2008, the dollar limit applicable to X under section 415(b)(1)(A) is \$185,000, and the compensation limit applicable to X under section 415(b)(1)(B) is \$51,670 (\$50,000 multiplied by the annual adjustment factor of 1.0334). Accordingly, the adjustment to X's benefit satisfies the safe harbor for cost-of-living adjustments under paragraph (a)(5) of this section if, after the adjustment, X's benefit payable in the 2008 limitation year is no greater than \$50,000 multiplied by \$51,670 (X's section 415(b) limitation for 2008)/\$50,000 (X's section 415(b) limitation for 2007).

*Example 2.* (i) The facts are the same as in *Example 1*, except that X's average compensation for the period of X's high-3 consecutive years of service is \$200,000. Consequently, X's annual benefit payments commencing on November 1, 2007, are limited to \$180,000.

(ii) For the limitation year beginning January 1, 2008, the dollar limit applicable to X under section 415(b)(1)(A) is \$185,000, and the compensation limit applicable to X under section 415(b)(1)(B) is \$206,680 (\$200,000 multiplied by the annual adjustment factor of 1.0334). Accordingly, the adjustment to X's benefit satisfies the safe harbor for cost-of-living adjustments under paragraph (a)(5) of this section if, after the adjustment, X's benefit payable in 2008 is no greater than \$180,000 multiplied by \$185,000 (X's section 415(b) limitation for 2008)/\$180,000 (X's section 415(b) limitation for 2007).

*Example 3.* (i) X is a participant in Plan T, a qualified defined benefit plan maintained by X's employer. In the year 2008, X receives a single-sum distribution of X's entire accrued benefit under the plan. At the time that X receives the single-sum distribution, X's accrued benefit under Plan T is limited

by the section 415(b)(1)(A) age-adjusted dollar limit. X accrues no further benefits under Plan T after X receives the single-sum distribution. In the 2009 limitation year, pursuant to section 415(d) and § 1.415(d)-1, the section 415(b)(1)(A) dollar limit is increased.

(ii) In the 2009 limitation year, Plan T may not provide additional benefits to X on account of the increase in the section 415(b)(1)(A) dollar limit pursuant to section 415(d) and § 1.415(d)-1.

*Example 4.* (i) X is a participant in Plan T, a qualified defined benefit plan maintained by X's employer, Employer S. Plan T has a calendar limitation year. In 2008, X incurs a severance from employment with Employer S and X commences receiving distributions from Plan T in the form of a single life annuity in an annual amount of \$30,000. At the time that X commences receiving distributions from Plan T, X's accrued benefit under Plan T is limited by the section 415(b)(1)(B) compensation limit. In 2009, the annual adjustment factor described in paragraph (a)(2) of this section (which is the factor for adjusting the compensation limit described in section 415(b)(1)(B)) is 1.03. Employer S amends Plan T, effective as of January 1, 2009, to increase the annual benefit of all participants who, prior to January 1, 2009, incurred a severance from employment with Employer S and who have commenced receiving benefits from Plan T by a factor of 1.015. Assume that for limitation years prior to 2009, X's distributions from Plan T satisfy the requirements of section 415(b).

(ii) The increase in X's annual benefit pursuant to the amendment effective January 1, 2009, is within the safe harbor described in paragraph (a)(6) of this section. This is because the amount payable to X under Plan T for the 2009 limitation year and limitation years thereafter (as increased by the amendment effective January 1, 2009) is not greater than the product of the amount payable to X under Plan T for such limitation years (as determined without regard to the amendment increasing X's benefit effective January 1, 2009) and the cumulative adjustment fraction (which, in X's case, is 1.03). Thus, X's annual benefit, as increased by the amendment, is not determined pursuant to the rules of § 1.415(b)-1(b)(1)(iii).

*Example 5.* (i) Participant P participated in Plan A, maintained by Employer M, for more than 10 years. Plan A uses a calendar year limitation year and Plan A automatically adjusts a participant's section 415(b)(1)(B) compensation limit for limitation years after the limitation year in which the participant incurs a severance from employment as described in § 1.415(a)-1(d)(3)(v). Prior to separating from employment with M in 2010, P's average compensation for P's period of high-3 years while a participant in Plan A is \$50,000, based on P's compensation for 2007, 2008, and 2009, which was \$50,000 for each

year. P's compensation for year 2010 was \$45,000. In year 2012, P is rehired by M and resumes participation in Plan A. P's compensation in year 2012 is \$45,000, and is \$70,000 in year 2013. Assume that the annual adjustment factor described in § 1.415(d)-1(a)(2)(ii) for the limitation years 2011 through 2013 is 1.03 for each year. Thus, disregarding P's rehire by M, P's average compensation for P's period of high-3 years while a participant in Plan A for the 2013 limitation year would be equal to \$54,636 (or  $1.03 * 1.03 * 1.03 * \$50,000$ ). See § 1.415(b)-1(a)(5)(iii).

(i) Under § 1.415(d)-1(a)(2)(iii), P's average compensation for P's period of high-3 years while a participant in Plan A for the 2013 limitation year is \$54,636.

(b) *Defined contribution plans*—(1) *In general*. Under section 415(d)(1)(C), the dollar limitation described in section 415(c)(1)(A) is adjusted annually to take into account increases in the cost of living. The adjusted dollar limitation is prescribed by the Commissioner and published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter.

(2) *Determination of adjusted limit*—(i) *Base period*. The base period taken into account for purposes of adjusting the dollar limitation pursuant to paragraph (b)(2)(ii) of this section is the calendar quarter beginning July 1, 2001.

(ii) *Method of adjustment*—(A) *In general*. The dollar limitation is adjusted with respect to a calendar year based on the increase in the applicable index for the calendar quarter ending September 30 of the preceding calendar year over such index for the base period. Adjustment procedures similar to the procedures used to adjust benefit amounts under section 215(i)(2)(A) of the Social Security Act will be used.

(B) *Rounding*. Any increase in the \$40,000 amount specified in section 415(c)(1)(A) which is not a multiple of \$1,000 shall be rounded to the next lowest multiple of \$1,000.

(iii) *Effective date of adjustment*. The adjusted dollar limitation applicable to defined contribution plans is effective as of January 1 of each calendar year and applies with respect to limitation years ending with or within that calendar year. Annual additions for a limitation year cannot exceed the currently applicable dollar limitation (as in effect before the January 1 adjustment) prior to January 1. However, after a January 1 adjustment is made, annual additions for the entire limita-

tion year are permitted to reflect the dollar limitation as adjusted on January 1.

(c) *Application of rounding rules to other cost-of-living adjustments*. Pursuant to section 415(d)(4)(A), the \$5,000 rounding methodology of paragraph (a)(1)(iii) of this section is used for purposes of any provision of chapter 1 of subtitle A of the Internal Revenue Code that provides for adjustments in accordance with section 415(d), except to the extent provided by that provision. Thus, the \$5,000 rounding methodology of paragraph (a)(1)(iii) of this section is used for purposes of—

(1) Determining the level of compensation specified in section 414(q)(1)(B) that is used to determine whether an employee is a highly compensated employee;

(2) Calculating the amounts used pursuant to section 409(o)(1)(C) to determine the maximum period over which distributions from an employee stock ownership plan may be made without participant consent; and

(3) Determining the levels of compensation specified in § 1.61-21(f)(5)(i) and (iii) used in determining whether an employee is a control employee of a nongovernmental employer for purposes of the commuting valuation rule of § 1.61-21(f).

(d) *Implementation of cost-of-living adjustments*. A plan is permitted to be amended to reflect any of the adjustments described in this section at any time after those limitations become applicable. Alternatively, a plan is permitted to incorporate by reference any of the adjustments described in this section in accordance with the rules of § 1.415(a)-1(d)(3)(v). Because the accrued benefit of a participant can reflect increases in the applicable limitations only after those increases become effective, a pattern of repeated plan amendments increasing annual benefits to reflect the increases in the section 415(b) limitations pursuant to section 415(d) does not result in any protection under section 411(d)(6) for future increases to reflect increases in the section 415(b) limitations pursuant to § 1.411(d)-4, Q&A-1(c)(1). Thus, a plan does not violate the requirements of section 411(d)(6) merely because the plan has been amended annually for a

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

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**§ 1.415(f)-1 Aggregating plans.**

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

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

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

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

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

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

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

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

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