Spinoffs occurring in previous or subsequent plan years are ignored if they are not part of a single spinoff designed to occur in steps over more than one plan year.

(3) *Special temporary rule.* In the case of a defined benefit plan maintained for different groups of employees, which is a single plan (as defined in paragraph (b)(l) of this section) and under which there has been separate accounting of assets for each group, a spinoff of the plan on or before July 1, 1978, into a separate plan for each group will be deemed to satisfy section 414 (l) if—

(i) All the liabilities with respect to each group of employees are allocated to a separate plan for that group of employees, and

(ii) The assets that are separately accounted for with respect to each group of employees are allocated to the separate plan for that group of employees. For purposes of this subparagraph, a separate accounting of assets will not be considered to have occurred to the extent that the assets allocated to each single plan are determined by an historical re-creation of benefits, contributions, investment gains, etc.

(o) *Transfers of assets or liabilities.* Any transfer of assets or liabilities will for purposes of section 414 (l) be considered as a combination of separate mergers and spinoffs using the rules of paragraphs (d), (e) through (j), (l), (m), or (n) of this section, whichever is appropriate. Thus, for example, if in accordance with the transfer of one or more employees, a block of assets and liabilities are transferred from Plan A to Plan B, each of which is a defined benefit plan, the transaction will be considered as a spinoff from Plan A and a merger of one of the spinoff plans with Plan B. The spinoff and merger described in the previous sentence would be subject to the requirements of paragraphs (n) and (e) through (j) of this section respectively.

[T.D. 7638, 44 FR 48195, Aug. 17, 1979]

§ 1.414(q)–1 Highly compensated employee.

Q&A–1—Q&A–8: [Reserved]. See §1.414(q)–1T, Q&A–1 through Q&A–8 for further guidance.

Q–9: How is the top-paid group determined?

A–9: (a) [Reserved]. See §1.414(q)–1T, Q&A–9(a) for further guidance.

(b) *Number of employees in the top-paid group*—(1) *Exclusions.* The number of employees who are in the top-paid group for a year is equal to 20 percent of the total number of active employees of the employer for such year. However, solely for purposes of determining the total number of active employees in the top-paid group for a year, the employees described in §1.414(q)–1T, A–9(b)(1) (i), (ii) and (iii)(B) are disregarded. Paragraph (g) of this A–9 provides rules for determining those employees who are excluded for purposes of applying section 414(r)(2)(A), relating to the 50-employee requirement applicable to a qualified separate line of business.

(i)–(iii) [Reserved]. See §1.414(q)–1T, Q&A–9(b)(1) (i) through (iii) for further guidance.

(2) *Alternative exclusion provisions*—(i)–(ii) [Reserved]. See §1.414(q)–1T, Q&A–9(b)(2) (i) and (ii) for further guidance.

(iii) *Method of election.* The elections in this paragraph (b)(2) must be provided for in all plans of the employer and must be uniform and consistent with respect to all situations in which the section 414(q) definition is applicable to the employer. Thus, with respect to all plan years beginning in the same calendar year, the employer must apply the test uniformly for purposes of determining its top-paid group with respect to all its qualified plans and employee benefit plans. If either election is changed during the determination year, no recalculation of the look-back year based on the new election is required, provided the change in election does not result in discrimination in operation.

(c)–(f) [Reserved]. See §1.414(q)–1T, Q&A–9 (c) through (f) for further guidance.

(g) *Excluded employees under section 414(r)(2)(A)*—(1) *In general.* This paragraph (g) provides the rules for determining which employees are excluded employees for purposes of applying section 414(r)(2)(A), relating to the 50-employee requirement applicable to a qualified separate line of business.

(2) *Excluded employees*—(i) *Age and service exclusion.* All employees are excluded who are described in §1.414(q)–1T, A–9(b)(1)(i) (relating to exclusions based on age or service). For this purpose, the rules in §1.414(q)–1T, A–9 (e) and (f) (relating respectively to the 17½-hour rule and the 6-month rule) apply. However, the election in §1.414(q)–1T, A–9(b)(2)(i) (permitting the employer to elect reduced minimum age or service requirements) does not apply.

(ii) *Nonresident alien exclusion.* All employees are excluded who are described in §1.414(q)–1T, A–9(b)(1)(ii) (relating to the exclusion of nonresident aliens with no U.S.- source income from the employer).

(iii) *Inclusion of employees covered under a collective bargaining agreement.* All employees are included who are described in §1.414(q)–1T, A–9(b)(1)(iii)(A) (relating to employees covered under a collective bargaining agreement) and who are not otherwise described in paragraph (g)(2) (i) or (ii) of this A–9. For this purpose, the exclusion in §1.414(q)–1T, A– 9(b)(1)(iii)(B) and the related election in §1.414(q)–1T, A–9(b)(2)(ii) do not apply.

(3) *Applicable period.* The determination of which employees are excluded employees is made on the basis of the testing year specified in the regulations under section 414(r) and not on the basis of the determination year or the look-back year under section 414(q).

(h) *Effective date.* The provisions of this A–9 apply to plan years and testing years beginning on or after January 1, 1994.

Q&A–10 through Q&A–15: [Reserved]. See §1.414(q)–1T, Q&A–10 through Q&A–15 for further guidance.

[T.D. 8548, 59 FR 32915, June 27, 1994]

§1.414(q)–1T Highly compensated employee (temporary).

The following questions and answers relate to the definition of ''highly compensated employee'' provided in section 414(q). The definitions and rules provided in these questions and answers are provided solely for purposes of determining the group of highly compensated employees.

TABLE OF CONTENTS.

Q–1: To what employee benefit plans and statutory provisions is the definition of highly compensated employee contained in section 414(q) applicable?

A–1: (a) *In general.* This definition is applicable to statutory provisions that incorporate the definition by reference.

(b) *Qualified retirement plans*—(1) *In general.* Generally, this definition is incorporated in many of the nondiscrimination requirements applicable to pension, profit-sharing, and stock bonus plans qualified under section 401(a). *See, e.g.,* the nondiscrimination provisions of sections 401(a) (4) and (5), 401(k)(3), 401(l), 401(m), 406(b), 407(b), 408(k), 410(b) and 411(d)(1). The definition is also incorporated by certain other provisions with respect to such plans, including the aggregation rules of section 414(m) and section 4975 (tax on prohibited transactions).

(2) *Not applicable where not incorporated by reference.* This definition is not applicable to qualified plan provisions that do not incorporate it. *See, e.g.,* section 415 (limitations on contributions and benefits), with the exception of section 415(c)(3)(C) and 415(c)(6) (special rules for permanent and total disability and employee stock ownership plans respectively).