with the manner in which such amounts were actually deferred under Plan S and Plan T.

Example 8. (i) Employer X sponsors Plan P, which provides for matching contributions equal to 50% of elective deferrals that do not exceed 10% of compensation. Elective deferrals for highly compensated employees are limited, on a payroll-by-payroll basis, to 10% of compensation. Employer X pays employees on a monthly basis. Plan P also provides that elective contributions are limited in accordance with section 401(a)(30) and other applicable statutory limits. Plan P also provides for catch-up contributions. Under Plan P, for purposes of calculating the amount to be treated as catch-up contributions (and to be excluded from the ADP test), amounts in excess of the 10% limit for highly compensated employees are determined at the end of the plan year based on compensation used for purposes of ADP testing (testing compensation), a definition of compensation that is different from the definition used under the plan for purposes of calculating elective deferrals and matching contributions during the plan year (deferral compensation).

(ii) Participant A, a highly compensated employee, is a catch-up eligible participant under Plan P with deferral compensation of $10,000 per monthly payroll period. Participant A defers 10% per payroll period for the first 10 months of the year, and is allocated a matching contribution each payroll period of $500. In addition, Participant A defers an additional $4,000 during the first 10 months of the year. Participant A then reduces deferrals during the last 2 months of the year to 5% of compensation. Participant A is allocated a matching contribution of $250 for each of the last 2 months of the plan year. For the plan year, Participant A has $15,000 in elective deferrals and $5,500 in matching contributions.

(iii) A's testing compensation is $118,000. At the end of the plan year, based on 10% of testing compensation, or $11,800, Plan P determines that A has $3,200 in deferrals that exceed the 10% employer provided limit. Plan P excludes $3,200 from ADP testing and calculates A's ADR as $11,800 divided by $118,000, or 10%. Although A has not been allocated a matching contribution equal to 50% of $11,800, because Plan P provides that matching contributions are calculated based on elective deferrals during a payroll period as a percentage of deferral compensation, Plan P is not required to allocate an additional $400 of matching contributions to A.

(i) *Effective date*—(1) *Statutory effective date.* Section 414(v) applies to contributions in taxable years beginning on or after January 1, 2002.

(2) *Regulatory effective date.* Paragraphs (a) through (h) of this section apply to contributions in taxable years beginning on or after January 1, 2004.

[T.D. 9072, 68 FR 40515, July 8, 2003]

§ 1.415–1 General rules with respect to limitations on benefits and contributions under qualified plans.

(a) *Trusts.* Under sections 415 and 401(a)(16), a trust which forms part of a pension, profit-sharing or stock bonus plan will not be qualified under section 401(a) if any one of the following conditions exists:

(1) The annual benefits under a defined benefit plan with respect to any participant for any limitation year exceed the limitations of section 415(b) and §1.415–3.

(2) The contributions and other additions credited under a defined contribution plan with respect to any participant for any limitation year exceed the limitations of section 415(c) and §1.415–6.

(3) Where an individual has at any time participated in a defined benefit plan and also has at any time participated in a defined contribution plan maintained by the same employer, the trust has been disqualifed under section 415(g) and §1.415–9.

(b) *Certain annuities and accounts*—(1) *In general.* Except as provided in paragraph (c) of this section, an annuity, account, etc., listed in section 415(a)(2) will not be considered to be described in the otherwise applicable section unless—

(i) It satisfies the requirements of §1.415–3 (relating to limitations on benefits), §1.415–6 (relating to limitations on contributions and other additions) or §1.415–7 (relating to limitations where an individual has at any time participated in a defined contribution plan and also has at any time participated in a defined benefit plan maintained by the same employer), whichever is applicable, and

(ii) It has not been disqualifed under §1.415–9 (relating to disqualification of plans and trusts).

(2) *Special rule for section 403(b) annuity contracts.* (i) With respect to an annuity contract described in section 403(b), the provisions of subparagraph (1) of this paragraph apply only to that portion of the contract which exceeds

the limitations of §1.415–3, §1.415–6 and §1.415–7, whichever is applicable.

(ii) In addition, where the amount of the contribution under the section 403(b) annuity contract exceeds the applicable limitation, the exclusion allowance described in section 403(b)(2)(A) is reduced in the manner described in §1.415–6(e)(1)(ii).

(3) *Cross references to additional rules for section 403(b) annuity contracts.* For additional rules relating to section 403(b) annuity contracts, see—

(i) Section 1.415–1(f)(2) (relating to the plan year for such annuity contracts),

(ii) Section 1.415–2(b)(7) (relating to the limitation year for such annuity contracts),

(iii) Section 1.415–6(e) (relating to the applicability of the alternative limitations described in section 415(c)(4) to such annuity contracts),

(iv) Sections 1.415–7(c)(2) and 1.415–7(h) (relating to rules for such annuity contracts for purposes of computing the defined contribution plan fraction),

(v) Section 1.415–8(d) (relating to rules for such annuity contracts for purposes of combining plans), and

(vi) Section 1.415–9(c) (relating to rules for such annuity contracts for purposes of determining the amount of a disqualified contribution to the annuity contract).

(c) *Certain accounts, annuities and bonds established for non-employed spouse.* Paragraph (b) of this section is not applicable to an account, annuity or bond as described in section 408(a), 408(b) or 409, respectively established for the benefit of the spouse of the individual who contributes to it for any year for which a deduction is allowable for the individual under section 220. For a special effective date with respect to this paragraph, see paragraph (f)(3) of this section.

(d) *Plan provisions*—(1) *In general.* Although no specific plan provision is required under section 415 in order for a plan to establish or maintain its qualification, the plan provisions must preclude the possibility that the limitations imposed by section 415 will be exceeded. For example, a plan may include provisions which automatically freeze or reduce the rate of benefit accrual (in the case of a defined benefit plan) or the annual addition (in the case of a defined contribution plan) to a level necessary to prevent the limitations from being exceeded with respect to any participant. For rules relating to this type of plan provision and the definitely determinable benefit requirement for pension plans, see §1.401(a)–1(b)(1).

(2) *Special rule for profit-sharing and stock bonus plans.* The use of a plan provision by a profit-sharing or stock bonus plan which automatically freezes or reduces the amount of annual additions to insure that the limitations of section 415 will not be exceeded must comply with the requirement set forth in §1.401–1(b)(1) (ii) and (iii) that such plans provide a definite predetermined formula for allocating the contributions made to the plan among the participants. Thus, if the operation of this provision involves discretionary action on the part of the employer, the definite predetermined allocation formula requirement will be violated. For example, if two defined contribution plans of one employer otherwise provide for aggregate contributions which may exceed the limits of section 415(c), the plan provisions must specify (without involving employer discretion) which plan will reduce contributions and allocations to prevent an excess annual addition and how the reduction will occur.

(e) *Rules for plans maintained by more than one employer*—(1) *Plans described in section 413(b) or section 413(c).* This subparagraph provides for participants of a plan described in section 413(c) or section 413(b) (other than a plan described in section 414(f)). For purposes of applying the limitations of section 415 with respect to a participant of an employer maintaining the plan, benefits or contributions attributable to such participant from all of the employers maintaining the plan must be taken into account. Furthermore, in applying the limitations of section 415 with respect to such a participant, the total compensation received by the participant from all of the employers maintaining the plan may be taken into account.

(2) *Plans described in section 414(f).* (i) This subparagraph provides rules for participants of a multiemployer plan

described in section 414(f). For purposes of applying the limitations of section 415 with respect to a participant of an employer maintaining the plan, only the benefits or contributions provided by the employer of such participant shall be taken into account. The benefits provided by an employer under such a plan shall equal the excess of the plan benefit over the plan benefit computed as if the participant had no covered service with that employer.

(ii) As an alternative to applying the limitations of section 415 with respect to a participant of an employer maintaining the multiemployer plan in the manner described in subdivision (i) of this subparagaph, the rules described in subparagraph (1) of this paragraph may be used for purposes of applying the section 415 limitations in connection with that participant.

(iii) For rules relating to the limitation year for a multiemployer plan, see §1.415–2(b)(6). See also §1.415–8(e) for a special rule relating to the aggregation of multiemployer plans.

(f) *Rules relating to the effective date of section 415*—(1) *In general.* Except as otherwise provided in this paragraph, §§1.415–1 through 1.415–10 are applicable for plan years beginning after 1975 and for limitation years ending with or within plan years beginning after 1975. However, for all such plan years and limitation years through the plan year beginning before January 7, 1981, a reasonable interpretation of the rules set forth in section 415 of the Code and in Rev. Rul. 75–481, 1975–2 C.B. 188, may be relied upon.

(2) *Plan year for certain annuity contracts and individual retirement plans.* For purposes of section 415 and §§1.415–1 through 1.415–10—

(i) An annuity contract described in section 403(b) shall be considered to have a plan year coinciding with the taxable year of the individual on whose behalf the contract has been purchased, and

(ii) An individual retirement plan (as described in section 7701(a)(37)) shall be considered to have a plan year coinciding with the taxable year of the individual on whose behalf the plan is maintained,

unless the individual demonstrates to the satisfaction of the Commissioner that a different 12 month period should be considered to be the plan year.

(3) *Special effective date for certain accounts, annuities and bonds established for non-employed spouse.* Nothwithstanding subparagraph (1) of this paragraph, the provisions of section 415(a)(3) and paragraph (c) of this section are not applicable until taxable years beginning after December 31, 1976.

(4) *Special rules for certain defined contribution plans with respect to the first limitation year to which section 415 applies.* In the case of a defined contribution plan whose plan year does not coincide with the limitation year, the rules of this subparagraph shall be effective with respect to applying the limitations described in section 415(c) and §1.415–6 for the first limitation year to which section 415 and §§1.415–1 through 1.415–10 apply.

(i) Annual additions (as defined in section 415(c)(2) and §1.415–6(b)) which are allocated under the plan prior to the first day of the first plan year to which section 415 and §§1.415–1 through 1.415–10 are effective do not have to be taken into account.

(ii) The amount of compensation (as defined in §1.415–2(d)) taken into account in applying the limitations may include compensation for the entire limitation year.

(5) *Special effective date for special benefit limitation with respect to certain collectively bargained plans.* Notwithstanding subparagraph (1) of this paragraph, section 415(b)(7) is not applicable until limitation years beginning after December 31, 1978.

(6) *Special effective date for excess contributions to section 403(b) annuity contracts.* (i) Notwithstanding subparagraph (1) of this paragraph, the provisions of §1.415–6(e)(1)(ii) (relating to the manner in which contributions to a section 403(b) annuity contract which exceed the limitations of section 415(c)(1) are treated) are only applicable to taxable years beginning after January 24, 1980.

(ii) For all prior taxable years for which the limitations of section 415 are applicable to section 403(b) annuity contracts, any contribution to the account of an individual under a section 403(b) annuity contract for a taxable

year which exceeds the limitations of section 415(c)(1), instead of being treated in the manner described in §1.415–6(e)(1)(ii), shall reduce the exclusion allowance under section 403(b)(2) for such taxable year to the extent of the excess.

(7) *Special effective date for rules relating to change of limitation year.* Notwithstanding subparagraph (1) of this paragraph, the provisions of §1.415–2(b)(4) (relating to the effect of a change of the limitation year) are required to be applied only for changes in limitation years which occur after January 7, 1981. These provisions may also be used for all prior changes in limitation years. However, if the provisions of §1.415–2(b)(4) are not used for changes in limitation years which occur prior to January 7, 1981, the requirements of §2.01(4) of Rev. Rul. 75–481, 1975–2 C.B. 188, shall be applicable with respect to such changes.

(8) *Special effective date for TRASOP's.* The limitations of section 415 apply to an Employee Stock Ownership Plan under section 301(d) of the Tax Reduction Act of 1975 (''TRASOP''). The earliest date on which the first plan year of a TRASOP may begin is January 22, 1974. Therefore, notwithstanding subparagraph (1) of this paragraph, the limitations of section 415 are applicable for TRASOP plan years beginning before 1975 and for limitation years ending with or within plan years beginning before 1975. However, the aggregation rules of §1.415–8 do not apply to a limitation year of a TRASOP ending with or within a plan year beginning before 1975.

(9) *Transitional rules.* For special transitional rules, see—

(i) Section 1.415–4 (relating to a transitional rule for defined benefit plans),

(ii) Section 1.415–7(b)(2) (relating to the defined benefit plan fraction applicable to certain participants),

(iii) Section 1.415–7(d) (relating to transitional rules for the defined contribution plan fraction), and

(iv) Section 1.415–7(g) (relating to a special rule for certain plans in effect on September 2, 1974).

(g) *Supersession.* Section 11.415(c)(4)–1 (relating to special elections for section 403(b) annuity contracts purchased by educational organizations, hospitals and home health service agencies) of the Temporary Income Tax Regulations under the Employee Retirement Income Security Act of 1974 is superseded by this section and §§1.415–2 through 1.415–10.

[T.D. 7748, 46 FR 1697, Jan. 7, 1981]

§1.415–2 Definitions and special rules.

(a) *General application.* Unless otherwise provided in the appropriate section, for purposes of §§1.415–1 through 1.415–10, the following definitions and special rules shall apply.

(b) *Limitation year*—(1) *In general.* (i) Unless the election described in subdivision (ii) of this subparagraph is made, the limitation year, with respect to any qualified plan maintained by the employer, is the calendar year.

(ii) Instead of using the calendar year, an employer may elect to use any other consecutive twelve month period as the limitation year. This includes a fiscal year with an annual period varying from 52 to 53 weeks, so long as the fiscal year satisfies the requirements of section 441(f). If the case of a group of employers which constitute either a controlled group of corporations (within the meaning of section 414(b) as modified by section 415(h)) or trades or businesses (whether or not incorporated) which are under common control (within the meaning of section 414(c) as modified by section 45(h)), the election to use a consecutive twelve month period other than the calendar year as the limitation year must be made by all members of the group that maintain a qualified plan.

(2) *Method of election to use a limitation year other than the calendar year or to change limitation year.* (i) The election described in subparagraph (1)(ii) of this paragraph shall be made by the adoption of a written resolution by the employer. This requirement is satisfied if the election is made in connection with the adoption, by the employer, of the plan or any amendments to such plan.

(ii) This resolution will not be considered a change of the limitation year, if it is adopted or modified on or before the later of the adoption date of the first amendment conforming an existing plan to the Employee Retirement