Additional Comments on IRS Notice 99-44, Section 415 Limitations on Benefits and Contributions Under Qualified Plans

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Ms Carol D. Gold, Esq.
Director of Employee Plans Division
Internal Revenue Service
1111 Constitution Avenue, NW
Room 6526 (CP:E:EP)
Washington, D.C. 20224

RE: Additional Comments on IRS Notice 99-44, Section 415 Limitations on Benefits and Contributions Under Qualified Plans

Dear Ms. Gold:

ASPPA is a national organization of approximately 3,700 members who provide actuarial, consulting, administrative, legal and other professional services for about one third of the qualified retirement plans in the United States, the majority of which are maintained by small businesses. ASPPA's mission is to educate pension actuaries, consultants, administrators and other benefits professionals, as well as to preserve and enhance the private retirement system as part of the development of a cohesive and coherent national retirement income policy. Its large and broad based membership gives it an unusual insight into current practical problems with ERISA and qualified retirement plans, with particular focus on the issues faced by smaller employers.

It is ASPPA 's hope that, within the context of Notice 99-44, the IRS will be mindful of the following goals:

- Promote efficient plan operation
- Achieve consistency in plan design
- Simplify changes to Defined Benefit Pension Plans
- Accommodate phased retirement patterns for plan participants

As you know, code section 415(e) was repealed, effective for limitation years beginning after December 31, 1999. This action, in part, came in response to concerns raised by the complexity and uneven application of this ERISA rule as attested by scores of practitioners and plan administrators. While it is understood that recent guidance from the Service reflects a view that repeal was not intended to have retroactive effect, we believe that strictly applying this position (1) undercuts Congressional efforts to simplify retirement plan rules by perpetuating the need to retain data and perform 415(e) calculations, (2) results in inconsistent treatment for participants based on plan design, (3) inhibits reformation of defined benefit pension plans by small employers, and (4) potentially places participants who choose irregular employment patterns (i.e., phased retirement) at a disadvantage.

The repeal of section 415(e) was specifically included in the Small Business Job Protection Act in an effort to simplify employee benefit requirements. To the extent a current benefit calculation is required to take into account section 415(e) limits that applied at any earlier date, this objective is not achieved. It must be understood that many plan sponsors do not have records of the specific reductions imposed by 415(e) in a form that will allow adjustments to be made currently in a rational, organized fashion. This is particularly true in the case of plans maintained by companies that have been involved in mergers and acquisitions.

For example, in reviewing a list of benefits in pay status, it may not be immediately apparent whether a $20,000 benefit had been a $20,001 benefit limited to $20,000 by 415(e) or simply a $20,000 level of benefit that happened to satisfy 415(e) without further reduction. While an examination of individual benefit calculations may reveal the answer to such an inquiry, this would be a complex project.

It should be noted that this concern applies equally to the position that "frozen" accrued benefits under various transition rules must be restricted to the accrued benefit as limited by section 415(e) at the relevant transition date. These limits, likely as not, were not calculated at the transition date, but were calculated at such time as a benefit commencement was scheduled. Thus, current section 415(e) calculations will need to be performed, contrary to the clear expression of congressional intent. It should also be noted that the position that frozen accrued benefits must always be limited to reflect sections 415(b) and (e) at the freeze date is contrary to the 410 (b) definition of benefiting and the 1993 preamble's comment that the final regulation represented an "expansion" of the fresh start rules.

In the example noted above, one plan participant earned a benefit of $20,001, but was limited by section 415(e) to a benefit of $20,000. The second participant earned just $20,000 based on the plan's benefit formula. Thus, because of different plan designs, one participant is currently limited to less than the current section 415(b) limit, adjusted to reflect earlier $20,000 annual payments, while the other is limited to the current section 415(b) limit less the value of the payments *and* less the value of the previously earned benefit that could not be paid because of the 415(e) limit. We believe that this is an unreasonable result.

Now that the dual plan limits have been repealed, many employers who had terminated plans in the face of an inability to provide meaningful defined benefit accruals now have expressed interest in re-establishing plans. This interest is being undercut by the requirement to reflect previously applicable section 415(e) fractions. Many of these plans were terminated and would have allowed benefit commencement, thus invoking the rules of Q&A 4 of Notice 99-44, which would not have applied if benefits had not yet commenced. A more reasonable interpretation would allow these plans to proceed by taking into account just section 415(b) limits with offsets for prior payments, but without offsets to reflect section 415(e). Note that the appropriate method for reflecting previous payments in the context of the section 415(b) limit remains uncertain. Simplified approaches to this problem are needed as well.

By its terms, the Notice 99-44 requirement to reflect earlier 415(e) cutbacks applies to participants who have commenced benefits and not to those who have not. Thus, individuals who have left employment and returned, or who had commenced benefits at normal retirement or age 70 1/2 as permitted by specific plan provisions, for example, are subject to these limits and the associated perils of the calculations, while those who continue employment without interruption are not limited in this fashion. In light of employer efforts to accommodate phased retirement, such limits are counterproductive.

In closing, while ASPPA recognizes that re-issuing formal guidance may not be appropriate, we request that the Service review its position with respect to the application of these requirements. If you have any questions, please do not hesitate to contact the primary author of this letter, Ms. Marjorie R. Martin, at (732) 271-1544 or Mr. Kurt Piper, Actuarial Committee Chair, at (310) 823-9410.

Sincerely,

Kurt Piper, E.A., MSPA, Chair
Actuarial Committee

Theresa Lensander, CPC, QPA, Chair
Administration Relations Committee

Bruce Ashton, APM, Co-Chair
ASPPA Governmental Affairs Committee

R. Bradford Huss, APM, Co-Chair
ASPPA Governmental Affairs Committee

Brian H. Graff, Esq.
ASPPA Executive Director