

Notice 99-44 - Guidance Regarding the Repeal of IRC Section 415(e)

October 25, 1999

Ms. Carol Gold
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

RE: Notice 99-44 - Guidance Regarding the Repeal of IRC Section 415(e)

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 and to preserve and enhance the private retirement system as part of the development of a cohesive and coherent national retirement income policy.

ASPPA is quite pleased with the guidance provided in the notice, although we do have concerns with certain areas as noted below.

1. Nondiscrimination rules - impact of 401(a)(4) regulations

ASPPA is especially pleased that there is essentially no problem with the 401(a)(4) non-discrimination regulations if a benefit increase is given to either everyone with an accrued benefit as of the day before the effective date of the repeal of Section 415(e) or to everyone who has an hour of service after such date. We believe that plans will generally comply with this requirement except in the case of certain highly compensated employees. The Notice makes it clear that it is possible to continue to limit the benefits and contributions of highly compensated employees by the pre-SBJPA 415(e) rules and still have a plan which satisfies the safe harbor created in the Notice.

2. Avoiding 411(d)(6) Violations

ASPPA thanks the Service for providing sample language for an amendment which allows plan sponsors to delay the automatic pop-up in benefits as a result of the repeal. This will allow plan sponsors time to decide their post-SBJPA plan design without violating 411(d)(6).

3. Increases in benefits

The notice indicates that an employee or former employee whose benefits have **commenced** can have his or her benefits increased **only if** he or she has an accrued benefit (other than one resulting from the repeal of 415(e)) on or after the effective date of the repeal and, even then, cannot have retroactive increases. We disagree with this portion of the guidance.

The Service distinguishes between two groups of employees and former employees whose benefits have commenced: those whose benefits are fully distributed and those whose benefits are not fully distributed. Thus, the Service seems to be saying that timing matters.

One of the examples given was for a participant receiving a ten year certain payment. In the example, the participant can have an increase because he had not been completely paid off by the year 2000. However, if he had commenced distributions in 1989 he would have been completely paid off and would not be entitled to an increase due to 415(e) repeal. This appears to be arbitrary. It is also not in keeping with the regulations under code Section 410(b) which make it clear that an active employee is considered as benefitting under the Plan if the only reason he did not get an accrual for the year in a defined benefit pension plan is due to the limitations under Code Section 415.

ASPPA requests that the Service reconsider its rationale regarding this requirement.

If you have any further questions, please do not hesitate to contact us.

Sincerely,

Kurt F. Piper, MSPA, Chair
Regulations Committee

Brian H. Graff, Esq.
Executive Director

Bruce Ashton, APM, Co-Chair
Government Affairs Committee

Craig Hoffman, APM, Co-Chair
Government Affairs Committee

R. Bradford Huss, APM, Co-Chair
Government Affairs Committee