

# SECTION 416

## TOP HEAVY PLANS

### KEY EMPLOYEES

## **§416**

### **TOP HEAVY PLANS DEFINITION**

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**Top Heavy rules apply if**

**$\frac{\Sigma \text{ PV of AB for KEY employees}}{\Sigma \text{ PV of AB for ALL employees}}$  exceeds 60%**

### **EXCEPTION**

**Collectively bargained plans do not have to provide minimum vesting or minimum benefits**

### **EXAM CONDITION 37:**

**Plan has not been top heavy in any year**

## **§416(c)**

### **EFFECTS OF TOP HEAVINESS**

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#### **Minimum benefits for Non-key employees**

##### **1. DB plans**

- a) 2%(T-H pay)(T-H service), max. of 10 T-H years = max. 20%**
- b) Adjust amount if plan benefit normal form is not life annuity**
- c) No T-H min accruals if plan no longer benefits any key (or former key) ees**

##### **2. DC plans**

- a) 3% pay allocation, or highest KEY % if less**
- b) 401(m) ER matching contributions count towards 3%**

**Plan may provide minimum benefits to key ees**

## **§416(b)**

### **EFFECTS OF TOP HEAVINESS**

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#### **Accelerated vesting**

- 1. 100% vesting after 3 years**
- 2. 20% after 2 years, increasing 20% per year to 100% after 6 years**

## **1.416-1 V-7**

### **CHANGE IN TOP HEAVY VESTING**

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- **Assume plan was Top Heavy (T-H), but now is NO longer T-H**
- **Plan can change back to normal (non T-H) vesting schedule**
- **Can not reduce any employee's vesting percent**
- **Employees with 3+ years of service can elect to remain on T-H vesting schedule**

## **§416(i)(1)(A) and §1.414(q)**

### **KEY EMPLOYEE DEFINITIONS**

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- (i) Officer with compensation > 175,000  
(assumes plan year = calendar year), or**
- (ii) 5% owner, or**
- (iii) 1% owner with compensation > 150,000**

#### **Historical values – item (i)**

<b>2016</b>	<b>170,000</b>
<b>2017</b>	<b>175,000</b>
<b>2018</b>	<b>175,000</b>

**Compensation is based on §415(c)(3), which uses “total” compensation (see page 415-8)**

**For clause (i), no more than 50 employees  
(or, if less, the greater of 3 or 10 percent of the  
employees) shall be treated as officers**

**Code defines (ii) and (iii) as > 5% and > 1% owners**

# TOP HEAVY DETERMINATION

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## Determination date

- Use last day of prior plan year
- For first plan year, use last day of first year

## Most non-actives excluded

If employee has not provided “services” to the employer in year ending on determination date

# TOP HEAVY DETERMINATION

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## Key employees

- **Meet key employee definition during plan year that ends on determination date**
- **Includes beneficiaries of key employees**
- **“Former key” employees are excluded from calculation – previously met key employee definition, but not now**



# TOP HEAVY MINIMUM CALCULATION

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Year	2014	2015	2016	2017	2018
T-H?	YES	NO	NO	YES	NO

**Assume §416 compensation averaging period is default (5 yr). Plan not Top Heavy pre-2014.**

<b>12/31 Determ Date</b>	<b>Top Heavy minimum for the next year uses this Top Heavy pay calculation</b>
<b>2013</b>	<b><math>2\% * 1 * (\text{HI-5 pay} - \text{years thru 12/31/14})</math></b>
<b>2014</b>	<b>(no change)</b>
<b>2015</b>	<b>(no change)</b>
<b>2016</b>	<b><math>2\% * 2 * (\text{HI-5 pay} - \text{years thru 12/31/17})</math></b>
<b>2017</b>	<b>(no change)</b>

**Compare plan benefit to T-H minimum each year. Each time plan is Top Heavy**

- Update Top Heavy pay calculation**
- Add one year of Top Heavy service**

# TOP HEAVY DETERMINATION

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## Calculation of PV of AB

- **Value PV of AB at any valuation date in the 12 months ending on determination date**
- **Use accrued benefit as of valuation date.**
- **Exception: when end of first plan year is determination date, use accrued benefit at the determination date (1.416-1 T-25)**

# **TOP HEAVY DETERMINATION**

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## **Calculation of PV of AB**

- **Include in-service distributions for 5 years prior to the determination date**
- **Include other distributions for 1 year prior to the determination date**
- **Benefit payments considered distributions**

## **Most non-actives excluded**

**If employee has not provided “services” to the employer in year prior to determination date**

## **1.416-1 REGULATION**

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- T-6 Required Aggregation Group**
- **All plans with any key employee**
  - **Other plans that must be aggregated for "key ee plans" to pass 401(a)(4), 410(b)**
- T-7 Permissive Aggregation Group**  
**Must satisfy non-discrimination requirements of 401(a)(4) and 410(b)**
- T-23 For multiple plans, use T-H determination dates in same calendar yr**

## **1.416-1 REGULATION**

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- T-26 Assumptions S/B reasonable, with interest and post-ret mortality. No W/D decrements or salary scale. No ancillary benefits.**
- T-30 Distributions after valuation date (before determination date) don't have to be included for T-H if they are in the PVAB at valuation date**
- T-31 Amount of distribution due to death included for T-H can be limited to PVAB**

# **1.416-1 REGULATION**

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## **T-32 Rollovers and Transfers**

- **Unrelated rollover / transfer**
  - **Initiated by employee from one employer's plan to another employer's plan**
  - **Plan making distribution / transfer counts it under 416(g)(3)**
  - **Plan receiving rollover / transfer does NOT count it under 416(g)(3)**
- **Employers in same controlled group are treated as same employer**

# **1.416-1 REGULATION**

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## **T-32 Rollovers and Transfers**

- **Related rollover / transfer**
  - **Not initiated by employee, or between two plans of same employer**
  - **Plan making distribution / transfer does NOT count it under 416(g)(3)**
  - **Plan receiving rollover / transfer does count it under 416(g)(3)**
- **Employers in same controlled group are treated as same employer**

## **1.416-1 REGULATION**

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**M-16 If participant is covered under both DB and DC plans, do not have to give T-H minimum in BOTH:**

- **Provide T-H minimum only in DB plan**
- **Provide T-H minimum in DB plan, but offset the DB minimum by equivalent level benefit in the DC plan**
- **Provide T-H minimum of 5% of compensation only in DC plan**
- **Prove through analysis of comparability of benefits (see RR 81-202) that the plans provide benefits > DB minimums**