SECTION 416

TOP HEAVY PLANS

KEY EMPLOYEES

§416
TOP HEAVY PLANS DEFINITION

Top Heavy rules apply if

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

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

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

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

- **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

(i) Officer with compensation > 170,000 (assumes plan year = calendar year), or
(ii) 5% owner, or
(iii) 1% owner with compensation > 150,000

Historical values – item (i)

2014	170,000
2015	170,000
2016	170,000

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

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

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

Year	2012	2013	2014	2015	2016
T-H?	YES	NO	NO	YES	NO

Assume §416 compensation averaging period is default (5 yr). Plan not Top Heavy pre-2012.

12/31 Determ Date	Top Heavy minimum - end of next year
2011	2%*1*(HI-5 pay – years thru 12/31/12)
2012	(no change)
2013	(no change)
2014	2%*2*(HI-5 pay – years thru 12/31/15)
2015	(no change)

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**

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

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**

<u>Most non-actives excluded</u>
If employee has not provided “services” to the employer in year prior to determination date

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

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

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**

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**

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**