

**EP DETERMINATIONS
QUALITY ASSURANCE
BULLETIN**

FY-2010 No. 2

Date: December 7, 2009

Code sections which may be incorporated by reference

Incorporation by reference of the Code and Regulations is not permitted unless specifically authorized by the Code, Regulations or other authority. See Announcement 75-110, 1975-43 IRB 20.

If there is a choice to be made, (for example, a plan can use either the current or prior year testing method under IRC § 401(k)) that portion of the section may not be incorporated by reference, as it would lead either to a non-determinable accrual or benefit, or to an impermissible use of discretion.

This Quality Assurance Bulletin is an update of Quality Assurance Bulletin FY 2004 No. 5. The updates are underlined.

PERMITTED SECTIONS (some or all incorporation by reference allowed)	AUTHORITY
<p>401(a)(9) -Notwithstanding any other provision of law, except as provided in the Regulations, a plan may incorporate by reference the requirements of § 401(a)(9).</p> <p>However, Regulation § 1.401(a)(9)-1, A-3, states that, “In order to satisfy § 401(a)(9), the plan must include the provisions described in this paragraph reflecting § 401(a)(9). First, the plan must generally set forth the statutory rules of section 401(a)(9), including the incidental death benefit requirement in § 401(a)(9)(G). Second, the plan must provide that distributions will be made in accordance with this section and §§1.401(a)(9)-2 through 1.401(a)(9)-9. The plan document must also provide that the provisions reflecting § 401(a)(9) override any distribution options in the plan inconsistent with § 401(a)(9). The plan also must include any other provisions reflecting § 401(a)(9) that are prescribed by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin.”</p>	<p>P.L. 99-514, § 1121(d)(3)-(5), as amended by P.L. 100-647, § 1011A(a)(3)-(4), and Regulation § 1.401(a)(9)-1, A-3</p>

<p align="center">PERMITTED SECTIONS (some or all incorporation by reference allowed)</p>	<p align="center">AUTHORITY</p>
<p>401(a)(17)- Governmental Plans – annual compensation limits</p>	<p>Regulation § 1.401(a)(17)-1(d)(4)(ii)(C).</p>
<p>401(a)(17)(B) – Cost of Living Increases</p>	<p>Regulation § 1.401(a)(17)-1(a)(3)</p>
<p>401(a)(30) – Limit on Elective Deferrals – A plan may incorporate the applicable limits by reference.</p>	<p><u>Regulation § 1.401(a)-30(a)</u></p>
<p>401(k)(3), 1.401(k)-2 ADP test generally may be incorporated by reference, except as provided under § 1.401(k)-1(e)(7).</p>	<p><u>§1.401(k)-1(e)(7)</u></p>
<p>401(m)(2), 1.401(m)-2 - ACP test may be incorporated by reference, except as provided under § 1.401(m)-1(c)(2).</p>	<p>Regulation § 1.401(m)-1(c)(2)</p>
<p>402(g) – Annual Limit - The dollar limitation under § 402(g) may be incorporated by reference.</p>	<p>Regulation §1.401(a)-30(a) <u>and P.L. 100-647, §1011(c)(10).</u></p>
<p>410(a)(3), 411(a)(5), DOL Regulation § 2530.200b-2(b) & (c) - The definition of hours of service must be in the plan document, but the rules for determining hours of service for reasons other than the performance of duties and crediting hours of service to computation periods may be incorporated by reference.</p>	<p>DOL Regulation § 2530.200b-2(f).</p>
<p>414(u) - USERRA</p>	<p>P.L. 103-353 (USERRA), P.L. 104-188 (SBJPA), sec. 1704(n) Revenue Procedure 96-49, 1996-43 I.R.B. 74, (Oct. 21, 1996)</p>
<p>415 – Limitations may be incorporated. Plan provisions must preclude the possibility that the limit under 415 will be exceeded. <u>If a requirement can be applied in more than one manner, the plan must specify the manner in which the requirement will be met unless the Code or the regulations provide a default rule which the plan will follow.</u> For example, the plan must include the following:</p>	<p>Notice 87-21, Q&A 11, 1987-6 I.R.B. 20, 1987-1 C.B. 458, (Feb. 9, 1987) and Regulation § 1.415(a)-1(d)(3).</p>
<p>415(b) – how adjustments are made if there are two or more DB plans.</p> <p>415(c) – how adjustments are made if there are two or more DC plans.</p> <p>415(c)(3)—<u>Section 415 compensation may be incorporated by reference either to the general definition of 415(c)(3) compensation in 1.415(c)-2(a) or to one of the safe harbor definitions in § 1.415(c)-2(d)(2), (3), or (4).</u></p> <p>415(d) – <u>A plan may incorporate by reference the annual adjustments to the limitations of § 415 that are made pursuant to § 415(d).</u></p>	<p><u>Regulation § 1.415(a)-1(d)(3)(v)</u></p>

<p align="center">PERMITTED SECTIONS (some or all incorporation by reference allowed)</p>	<p align="center">AUTHORITY</p>
<p>416 - If the employer has only one plan, a single benefit structure that will always satisfy § 416, and the vesting schedule will always satisfy 416, then NO 416 language is required.</p>	<p>Regulation § 1.416-1 Q&A T-36(a) & (c)</p>
<p>416(i) - Criteria for determining key employees and non-key employees, but the definition of compensation must be specified in the plan.</p>	<p>Regulation § 1.416-1, Q&A T-36(b)</p>
<p>416(g) –description of how the top-heavy ratio is computed may be incorporated by reference.</p>	<p>Regulation § 1.416-1, Q&A T-36(b)</p>
<p>Applicable Mortality for Purposes of 417(e) and 415(b) <u>A plan amendment may incorporate by reference the applicable mortality table under § 417(e)(3).</u></p>	<p><u>Revenue Ruling 2007-67, IRB 2007-48 (November 6, 2007) and Section 1107 of PPA 2006.</u> <u>Effective for plan years that begin after December 31, 2007.</u></p>