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# CYPEN & CYPEN NEWSLETTER SPECIAL SUPPLEMENT for JANUARY 8, 2015

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Stephen H. Cypen, Esq., Editor

Never Forget September 11, 2001

and

Always Remember May 2, 2011

## **APPLYING SECTION 415 LIMITS TO GOVERNMENTAL DROPS**

On December 8, 2014, Robert S. Choi, Director, Employee Plans, issued a Memorandum for all Employee Plan employees, subject "Applying Section 415 Limits to Governmental Defined Benefit Plans with Deferred Retirement Option Plan Features."

The memorandum provides direction to Employee Plans employees reviewing governmental defined benefit plans with deferred retirement option plan features, setting forth administrative guidelines for applying the benefit and contribution limits of §415 of the Internal Revenue Code to such plans.

The directive is not a pronouncement of law and is not subject to use, citation, or reliance as such. Nothing in this directive shall affect the operation of any other provision of the Code, regulations, or guidance

thereunder.

Under typical DROP design, a DB plan participant who is eligible to retire and immediately receive retirement payments under the DB plan continues to work and makes an election under which the participant's benefit accruals under the DB plan are frozen (that is, no additional service or compensation credits accrue). Pursuant to the election, the amounts that the participant would have received as a DB retirement payment had the participant in fact retired are credited to a DROP (for purposes of the directive, these amounts are referred to as DB Benefit Amounts). The DROP may also provide for employee or employer contributions to be made to the DROP in addition to the DB Benefit Amounts credited to the DROP (Additional Contributions).

EP employees reviewing governmental DB should not treat DB Benefit Amounts credited to a DROP as annual additions subject to the §415(c) limitation applicable to defined contribution plans.

Accordingly, if an EP employee is reviewing a governmental DB plan that does not allow Additional Contributions to be made to the DROP, the plan will not be required to include §415(c) limitation provisions for the DROP, and no further analysis with regard to the §415(c) limitation for the DROP is required.

This Special Supplement does not deal with the review of a governmental DB plan that allows Additional Contributions to be made to the DROP.

When we have additional time to study the Memorandum, we will supplement this article.

A link to the IRS Memorandum can be found at [http://www.irs.gov/pub/foia/ig/spder/TEGE-07-1114-0029\[1\].pdf](http://www.irs.gov/pub/foia/ig/spder/TEGE-07-1114-0029[1].pdf).

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