

(C) *Special rule where no annual deferrals under the eligible plan.* A participant who, although eligible, did not defer any compensation under the eligible plan in any year before 2002 is not subject to the coordinated deferral limit, even though the participant may have deferred compensation under one of the other pre-2002 coordination plans. An individual is treated as not having deferred compensation under an eligible plan for a prior taxable year if all annual deferrals under the plan are distributed in accordance with paragraph (e) of this section. Thus, to the extent that a participant participated solely in one or more of the other pre-2002 coordination plans during a prior taxable year (and not the eligible plan), the participant is not subject to the coordinated limitation for that prior taxable year. However, the participant is treated as having deferred an amount in a prior taxable year, for purposes of determining the underutilized limitation for that prior taxable year under this paragraph (c)(3)(iv)(C), to the extent of the participant's aggregate salary reduction contributions and elective deferrals under all pre-2002 coordination plans up to the maximum deferral limitations in effect under section 457(b) for that prior taxable year. To the extent an employer did not offer an eligible plan to an individual in a prior given year, no underutilized limitation is available to the individual for that prior year, even if the employee subsequently becomes eligible to participate in an eligible plan of the employer.

(D) *Examples.* The provisions of this paragraph (c)(3)(iv) are illustrated by the following examples:

Example 1. (i) Facts. In 2001 and in years prior to 2001, Participant D earned \$50,000 a year and was eligible to participate in both an eligible plan and a section 401(k) plan. However, D had always participated only in the section 401(k) plan and had always deferred the maximum amount possible. For each year before 2002, the maximum amount permitted under section 401(k) exceeded the limitation of paragraph (c)(3)(i) of this section. In 2002, D is in the 3-year period prior to D's attainment of the eligible plan's normal retirement age of 65, and D now wants to participate in the eligible plan and make annual deferrals of up to \$30,000 under the plan's special section 457 catch-up provisions.

(ii) *Conclusion.* Participant D is treated as having no underutilized amount under paragraph (c)(3)(ii)(B) of this section for 2002 for purposes of the catch-up limitation under section 457(b)(3) and paragraph (c)(3) of this section because, in each of the years before 2002, D has deferred an amount equal to or in excess of the limitation of paragraph (c)(3)(i) of this section under all of D's coordinated plans.

Example 2. (i) Facts. Assume the same facts as in *Example 1*, except that D only deferred \$2,500 per year under the section 401(k) plan for one year before 2002.

(ii) *Conclusion.* D is treated as having an underutilized amount under paragraph (c)(3)(ii)(B) of this section for 2002 for purposes of the special section 457 catch-up limitation. This is because D has deferred an amount for prior years that is less than the limitation of paragraph (c)(1)(i) of this section under all of D's coordinated plans.

Example 3. (i) Facts. Participant E, who earned \$15,000 for 2000, entered into a salary reduction agreement in 2000 with E's eligible employer and elected to defer \$3,000 for that year under E's eligible plan. For 2000, E's eligible employer provided an immediately vested, matching employer contribution under the plan for participants who make salary reduction deferrals under E's eligible plan. The matching contribution was equal to 67 percent of elective contributions, but not in excess of 10 percent of compensation before salary reduction deferrals (in E's case, \$1,000). For 2000, E was not eligible for any catch-up contribution, participated in no other retirement plan, and had no other income exclusions taken into account in computing taxable compensation.

(ii) *Conclusion.* Participant E's annual deferral equaled the maximum limitation of section 457(b) for 2000. E's maximum deferral limitation in 2000 was \$4,000 because E's includible compensation was \$12,000 (\$15,000 minus the deferral of \$3,000) and the applicable limitation for 2000 was one third of the individual's includible compensation (one-third of \$12,000 equals \$4,000). E's salary reduction deferral of \$3,000 combined with E's eligible employer's matching contribution of \$1,000 equals the limitation of section 457(b) for 2000 because E's annual deferrals totaled \$4,000. E's underutilized amount for 2000 is zero.

(v) *Normal retirement age—(A)*

General rule. For purposes of the special section 457 catch-up in this paragraph (c)(3), a plan must specify the normal retirement age under the plan. A plan may define normal retirement age as any age that is on or after the earlier of age 65 or the age at which participants have the right to retire and receive, under the basic defined benefit pension plan of the State or tax-exempt entity (or a money purchase pension plan in which the participant also participates if the participant is not eligible to participate in a defined benefit plan), immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age, and that is not later than age 70½. Alternatively, a plan may provide that a participant is allowed to designate a normal retirement age within these ages. For purposes of the special section 457 catch-up in this paragraph (c)(3), an entity sponsoring more than one eligible plan may not permit a participant to

have more than one normal retirement age under the eligible plans it sponsors.

(B) *Special rule for eligible plans of qualified police or firefighters.* An eligible plan with participants that include qualified police or firefighters as defined under section 415(b)(2)(H)(ii)(I) may designate a normal retirement age for such qualified police or firefighters that is earlier than the earliest normal retirement age designated under the general rule of paragraph (c)(3)(i)(A) of this section, but in no event may the normal retirement age be earlier than age 40. Alternatively, a plan may allow a qualified police or firefighter participant to designate a normal retirement age that is between age 40 and age 70½.

(vi) *Examples.* The provisions of this paragraph (c)(3) are illustrated by the following examples:

Example 1. (i) Facts. Participant F, who will turn 61 on April 1, 2006, becomes eligible to participate in an eligible plan on January 1, 2006. The plan provides a normal retirement age of 65. The plan provides limitations on annual deferrals up to the maximum permitted under paragraphs (c)(1) through (3) of this section. For 2006, F will receive compensation of \$40,000 from the eligible employer. F desires to defer the maximum amount possible in 2006. The applicable basic dollar limit of paragraph (c)(1)(i)(A) of this section is \$15,000 for 2006 and the additional dollar amount permitted under the age 50 catch-up in paragraph (c)(2) of this section for an individual who is at least age 50 is \$5,000 for 2006.

(ii) *Conclusion.* F is not eligible for the special section 457 catch-up under paragraph (c)(3) of this section in 2006 because 2006 is not one of the last three taxable years ending before F attains normal retirement age. Accordingly, the maximum that F may defer for 2006 is \$20,000. See also paragraph (c)(2)(iii) *Example 1* of this section.

Example 2. (i) Facts. The facts are the same as in *Example 1* except that, in 2006, F elects to defer only \$2,000 under the plan (rather than the maximum permitted amount of \$20,000). In addition, assume that the applicable basic dollar limit of paragraph (c)(1)(i)(A) of this section continues to be \$15,000 for 2007 and the additional dollar amount permitted under the age 50 catch-up in paragraph (c)(2) of this section for an individual who is at least age 50 continues to be \$5,000 for 2007. In F's taxable year 2007, which is one of the last three taxable years ending before F attains the plan's normal retirement age of 65, F again receives a salary of \$40,000 and elects to defer the maximum amount permissible under the plan's catch-up provisions prescribed under paragraph (c) of this section.

(ii) *Conclusion.* For 2007, which is one of the last three taxable years ending before F attains the plan's normal retirement age of 65, the applicable limit on deferrals for F is the larger of the amount under the special section 457 catch-up or \$20,000, which is the basic annual limitation (\$15,000) and the age