

**Internal Revenue Service, Treasury**

**§ 1.401(a)(26)-0**

section is less than one (\$156,667 divided by \$250,000).

(4) Employee A's frozen accruals for the years 1989-93, as adjusted through December 31, 1998, remain \$22,897 because the adjustment fraction is less than one (\$156,667 divided by \$228,973).

(5) Employee A's adjusted accrued benefit as of December 31, 1998, equals \$47,897 (the sum of the \$25,000 and \$22,897 amounts from paragraphs (b)(3) and (b)(4), respectively, of this *Example*).

(c) Employee A's section 401(a)(17) frozen accrued benefit will not be adjusted for compensation increases until the numerator of the fraction used to adjust that frozen accrued benefit exceeds the denominator of \$250,000 used in determining those accruals.

Similarly, the portion of Employee A's OBRA '93 frozen accrued benefit attributable to the frozen accruals for the years 1989-1993 will not be adjusted for compensation increases until the numerator of the fraction used to adjust those frozen accruals exceeds the denominator of \$228,973 used in determining those accruals.

[T.D. 8547, 59 FR 32905, June 27, 1994]

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[T.D. 8375, 56 FR 63413, Dec. 4, 1991]

**§ 1.401(a)(26)-1 Minimum participation requirements.**

(a) *General rule.* A plan is a qualified plan for a plan year only if the plan satisfies section 401(a)(26) for the plan year. A plan that satisfies any of the exceptions described in paragraph (b) of this section passes section 401(a)(26) automatically for the plan year. A plan that does not satisfy one of the exceptions in paragraph (b) of this section must satisfy § 1.401(a)(26)-2(a). In addition, a defined benefit plan must satisfy § 1.401(a)(26)-3 with respect to its prior benefit structure. Finally, a defined benefit plan that benefits former employees (for example, a defined benefit plan that is amended to provide an ad hoc cost-of-living adjustment to former employees) must separately satisfy § 1.401(a)(26)-4 with respect to its former employees.

(b) *Exceptions to section 401(a)(26)*—(1) *Plans that do not benefit any highly compensated employees.* A plan, other than a frozen defined benefit plan as defined in § 1.401(a)(26)-2(b), satisfies section 401(a)(26) for a plan year if the plan is not a top-heavy plan under section 416 and the plan meets the following requirements:

(i) The plan benefits no highly compensated employee or highly compensated former employee of the employer; and

(ii) The plan is not aggregated with any other plan of the employer to enable the other plan to satisfy section 401(a)(4) or 410(b). The plan may, however, be aggregated with the employer's other plans for purposes of the average benefit percentage test in section 410(b)(2)(A)(ii).

(2) *Multiemployer plans*—(i) *In general.* The portion of a multiemployer plan that benefits only employees included in a unit of employees covered by a collective bargaining agreement may be treated as a separate plan that satisfies section 401(a)(26) for a plan year.

(ii) *Multiemployer plans covering non-collectively bargained employees*—(A) *In general.* The rule provided in paragraph