

ratio and the amount of excess contributions, if any, of each eligible employee under each component plan must be determined as if the component plan were a separate plan. This method applies solely for purposes of section 401(k). Thus, for example, the requirements of section 410(b) must still be satisfied by the entire plan.

(B) *Identification of component plans—*
(1) *Minimum coverage requirement.* The group of eligible employees described in § 1.401(k)-1(g)(4) under each component plan must separately satisfy the requirements of section 410(b) as if the component plan were a separate plan. Component plans may not be aggregated to satisfy this requirement.

(2) *Commonality requirement.* The group of employees used to identify a component plan must share some common attribute or attributes, other than similar actual deferral ratios. Permissible common attributes include, for example, employment at the same work site, in the same job category, for the same division or subsidiary, or for a unit acquired in a specific merger or acquisition, employment for the same number of years, compensation under the same method, e.g., salaried or hourly, coverage under the same contribution formula, and attributes that could be used as the basis of a classification that would be treated as reasonable under § 1.410(b)-4(b). Employees whose only common attribute is the same or similar actual deferral ratios, or another attribute having substantially the same effect as the same or similar actual deferral ratios, are not considered as sharing a common attribute for this purpose. This rule applies regardless of whether the component plan or the plan of which it is a part satisfies the ratio or percentage test of section 410(b).

(4) *State and local government plans—*
(i) *Plans adopted before May 6, 1986.* A plan adopted by a state or local government prior to May 6, 1986, is subject to the transitional rules of paragraph (h)(4) (ii) or (iii) of this section.

(ii) *Plan years beginning before January 1, 1996.* (A) The plan does not fail to satisfy the requirements of section 401(a) merely because of the non-qualified cash or deferred arrangement.

(B) Employer contributions under the nonqualified cash or deferred arrangement are considered to satisfy the requirements of section 401(a)(4).

(C) Except as provided in paragraphs (a)(7) and (f) of this section, elective contributions under the arrangement are treated as employer contributions under the Internal Revenue Code of 1986, as if the arrangement were a qualified cash or deferred arrangement. See § 1.401(k)-1(a)(4)(ii). See § 1.402(a)-1(d) for rules governing when elective contributions under the arrangement are includible in an employee's gross income.

(iii) *Collectively bargained plans.* The transition rules in paragraph (h)(4)(ii) of this section apply to a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers and adopted by a state or local government before May 6, 1986, effective on the date the provisions of section 401(k) and this section would be effective under paragraph (h)(2) of this section.

[T.D. 8357, 56 FR 40517, Aug. 15, 1991, as amended by T.D. 8376, 56 FR 63432, Dec. 4, 1991; T.D. 8357, 57 FR 10289, 10290, Mar. 25, 1992; 58 FR 14151, Mar. 16, 1993; T.D. 8581, 59 FR 66169, Dec. 23, 1994; T.D. 8581, 60 FR 12416, Mar. 7, 1995; T.D. 8581, 60 FR 15874, Mar. 28, 1995; T.D. 8581, 60 FR 25140, May 11, 1995]

§ 1.401(l)-0 Table of contents.

This section contains a listing of the headings of §§ 1.401(l)-1 through 1.401(l)-6.

§ 1.401(l)-1 Permitted disparity with respect to employer-provided contributions or benefits.

- (a) Permitted disparity.
 - (1) In general.
 - (2) Overview.
 - (3) Exclusive rules.
 - (4) Exceptions.
 - (5) Additional rules.
- (b) Relationship to other requirements.
- (c) Definitions.
 - (1) Accumulation plan.
 - (2) Average annual compensation.
 - (3) Base benefit percentage.
 - (4) Base contribution percentage.
 - (5) Benefit formula.
 - (6) Benefit, right, or feature.
 - (7) Covered compensation.
 - (i) In general.
 - (ii) Special rules.
 - (A) Rounded table.
 - (B) Proposed regulation definition.

- (iii) Period for using covered compensation amount.
 - (8) Defined benefit plan.
 - (9) Defined contribution plan.
 - (10) Disparity.
 - (11) Employee.
 - (12) Employer.
 - (13) Employer contributions.
 - (14) Excess benefit percentage.
 - (15) Excess contribution percentage.
 - (16) Excess plan.
 - (i) Defined benefit excess plan.
 - (ii) Defined contribution excess plan.
 - (17) Final average compensation.
 - (i) In general.
 - (ii) Limitations.
 - (iii) Determination of section 414(s) compensation.
 - (18) Gross benefit percentage.
 - (19) Highly compensated employee.
 - (20) Integration level.
 - (21) Nonexcludable employee.
 - (22) Nonhighly compensated employee.
 - (23) Offset level.
 - (24) Offset percentage.
 - (25) Offset plan.
 - (26) PIA.
 - (27) Plan.
 - (28) Plan year compensation.
 - (29) Qualified plan.
 - (30) Section 401(l) plan.
 - (31) Section 414(s) compensation.
 - (32) Social security retirement age.
 - (33) Straight life annuity.
 - (34) Taxable wage base.
 - (35) Year of service.
- § 1.401(l)-2 Permitted disparity for defined contribution plans.*
- (a) Requirements.
 - (1) In general.
 - (2) Excess plan requirement.
 - (3) Maximum disparity.
 - (4) Uniform disparity.
 - (5) Integration level.
 - (b) Maximum permitted disparity.
 - (1) In general.
 - (2) Maximum excess allowance.
 - (c) Uniform disparity.
 - (1) In general.
 - (2) Deemed uniformity.
 - (i) In general.
 - (ii) Overall permitted disparity.
 - (iii) Non-FICA employees.
 - (d) Integration level.
 - (1) In general.
 - (2) Taxable wage base.
 - (3) Single dollar amount.
 - (4) Intermediate amount.
 - (5) Prorated integration level for short plan year.
 - (e) Examples.
- § 1.401(l)-3 Permitted disparity for defined benefit plans.*
- (a) Requirements.
 - (1) In general.
 - (2) Excess or offset plan requirement.
 - (3) Maximum disparity.
 - (4) Uniform disparity.
 - (5) Integration or offset level.
 - (6) Benefits, rights, and features.
 - (b) Maximum permitted disparity.
 - (1) In general.
 - (2) Maximum excess allowance.
 - (3) Maximum offset allowance.
 - (4) Rules of application.
 - (i) Disparity provided for the plan year.
 - (ii) Reductions in disparity rate.
 - (iii) Normal and optional forms of benefit.
 - (A) In general.
 - (B) Level annuity forms.
 - (C) Other forms.
 - (D) Post-retirement cost-of-living adjustments.
 - (5) Examples.
 - (c) Uniform disparity.
 - (1) In general.
 - (2) Deemed uniformity.
 - (i) In general.
 - (ii) Use of fractional accrual and disparity for 35 years.
 - (iii) Use of fractional accrual and disparity for fewer than 35 years.
 - (iv) Different social security retirement ages.
 - (v) Reduction for integration level.
 - (vi) Overall permitted disparity.
 - (A) In general.
 - (B) Unit credit plans.
 - (C) Fractional accrual plans.
 - (vii) Non-FICA employees.
 - (viii) Average annual compensation adjustment for offset plan.
 - (ix) PIA offsets.
 - (3) Examples.
 - (d) Requirements for integration level or offset compensation.
 - (1) In general.
 - (2) Covered compensation.
 - (3) Uniform percentage of covered compensation.
 - (4) Single dollar amount.
 - (5) Intermediate amount.
 - (6) Intermediate amount safe harbor.
 - (7) Prorated integration level for short plan year.
 - (8) Demographic requirements.
 - (i) In general.
 - (ii) Attained age requirement.
 - (iii) Nondiscrimination requirement.
 - (A) Minimum percentage test.
 - (B) Ratio test.
 - (C) High dollar amount test.
 - (D) Individual disparity reductions.
 - (9) Reduction in the 0.75-percent factor if integration or offset level exceeds covered compensation.
 - (i) In general.

§ 1.401(l)-0

26 CFR Ch. I (4-1-04 Edition)

- (ii) Uniform percentage of covered compensation.
- (iii) Single dollar amount.
 - (A) Plan-wide reduction.
 - (B) Individual reductions.
- (iv) Reductions.
 - (A) Table.
 - (B) Interpolation.
 - (10) Examples.
- (e) Adjustments to the 0.75-percent factor for benefits commencing at ages other than social security retirement age.
 - (1) In general.
 - (2) Adjustments.
 - (i) Benefits commencing on or after age 55 and before social security retirement age.
 - (ii) Benefits commencing after social security retirement age and on or before age 70.
 - (iii) Benefits commencing before age 55.
 - (iv) Benefits commencing after age 70.
 - (3) Tables.
 - (4) Benefit commencement date.
 - (i) In general.
 - (ii) Qualified social security supplement.
 - (5) Examples.
- (f) Benefits, rights, and features.
 - (1) Defined benefit excess plan.
 - (2) Offset plan.
 - (3) Examples.
- (g) No reductions in 0.75-percent factor for ancillary benefits.
- (h) Benefits attributable to employee contributions not taken into account.
- (i) Multiple integration levels. [Reserved]
- (j) Additional rules.
 - § 1.401(l)-4 Special rules for railroad plans.*
 - (a) In general.
 - (b) Defined contribution plans.
 - (1) In general.
 - (2) Single integration level method.
 - (i) In general.
 - (ii) Definitions.
 - (3) Two integration level method.
 - (i) In general.
 - (ii) Total disparity requirement.
 - (iii) Intermediate disparity requirement.
 - (iv) Definitions.
 - (c) Defined benefit excess plans.
 - (1) In general.
 - (2) Single integration level method.
 - (i) In general.
 - (ii) Definitions.
 - (3) Two integration level method.
 - (i) In general.
 - (ii) Employee with lower covered compensation.
 - (iii) Employee with lower railroad retirement covered compensation.
 - (iv) Definitions.
 - (4) Offset plans.
 - (1) In general.
 - (2) Maximum tier 2 and supplementary annuity offset allowance.
 - (e) Additional rules.

- (1) Definitions.
- (2) Adjustments to 0.75-percent factor.
- (3) Adjustments to 0.56-percent factor.
- (4) Overall permitted disparity.

§ 1.401(l)-5 Overall permitted disparity limits.

- (a) Introduction.
 - (1) In general.
 - (2) Plan requirements.
 - (3) Plans taken into account.
- (b) Annual overall permitted disparity limit.
 - (1) In general.
 - (2) Total annual disparity fraction.
 - (3) Annual defined contribution plan disparity fraction.
 - (4) Annual defined benefit excess plan disparity fraction.
 - (5) Annual offset plan disparity fraction.
 - (i) In general.
 - (ii) PIA offset plans.
 - (6) Annual imputed disparity fraction.
 - (7) Annual nondisparate fraction.
 - (8) Determination of fraction.
 - (i) General rule.
 - (ii) Multiple formulas.
 - (iii) Offset arrangements.
 - (A) In general.
 - (B) Defined benefit plans.
 - (C) Defined contribution plans.
 - (iv) Applicable percentages.
 - (v) Fractional accrual plans.
 - (9) Examples.
- (c) Cumulative permitted disparity limit.
 - (1) In general.
 - (i) Employees who benefit under defined benefit plans.
 - (ii) Employees who do not benefit under defined benefit plans.
 - (iii) Certain plan years disregarded.
 - (iv) Determination of type of plan.
 - (v) Applicable plan years.
 - (vi) Transition rule for defined contribution plans.
 - (2) Cumulative disparity fraction.
 - (3) Determination of total annual disparity fractions for prior years.
 - (4) Special rules for greater of formulas and offset arrangements.
 - (i) Greater of formulas.
 - (A) In general.
 - (B) Separate satisfaction by formulas.
 - (C) Single plan.
 - (ii) Offset arrangements.
 - (A) In general.
 - (B) Separate satisfaction by plans.
 - (C) No other plan.
 - (5) Examples.
 - (d) Additional rules.

§ 1.401(l)-6 Effective dates and transition rules.

- (a) Statutory effective date.
 - (1) In general.
 - (2) Collectively bargained plans.
- (b) Regulatory effective date.
 - (1) In general.
 - (2) Plans of tax-exempt organizations.

Internal Revenue Service, Treasury

§ 1.401(l)-1

- (3) Defined contribution plans.
- (4) Defined benefit plans.
- (c) Compliance during transition period.

[T.D. 8359, 56 FR 47617, Sept. 19, 1991; 57 FR 10818, Mar. 31, 1992, as amended by T.D. 8486, 58 FR 46830, Sept. 3, 1993]

§ 1.401(l)-1 Permitted disparity in employer-provided contributions or benefits.

(a) *Permitted disparity*—(1) *In general.* Section 401(a)(4) provides that a plan is a qualified plan only if the amount of contributions or benefits provided under the plan does not discriminate in favor of highly compensated employees. See § 1.401(a)(4)-1(b)(2). Section 401(a)(5)(C) provides that a plan does not discriminate in favor of highly compensated employees merely because of disparities in employer-provided contributions or benefits provided to, or on behalf of, employees under the plan that are permitted under section 401(l). Thus, if a plan satisfies section 401(l), permitted disparities in employer-provided contributions or benefits under a plan are disregarded, by reason of section 401(a)(5)(C), in determining whether the plan satisfies any of the safe harbors under §§ 1.401(a)(4)-2(b)(2) and 1.401(a)(4)-3(b). However, even if disparities in employer-provided contributions or benefits under a plan are permitted under section 401(l) and thus do not cause the plan to fail to satisfy § 1.401(a)(4)-1(b)(2), the plan may still fail to satisfy section 401(a)(4) for other reasons. Similarly, even if disparities in employer-provided contributions or benefits under a plan are not permitted under section 401(l) and thus may not be disregarded under section 401(a)(4) by reason of section 401(l), the plan may still be found to be nondiscriminatory under the tests of section 401(a)(4), including the rules for imputing permitted disparity under § 1.401(a)(4)-7.

(2) *Overview.* Rules relating to disparities in employer-provided contributions under a defined contribution plan are provided in § 1.401(l)-2. For rules relating to disparities in employer-provided benefits under a defined benefit plan, see § 401(l)-3. For rules relating to the application of section 401(l) to a plan maintained by a railroad employer, see § 1.401(l)-4. For rules relat-

ing to the overall permitted disparity limits, see § 1.401(l)-5. For rules relating to the effective date of section 401(l), see § 1.401(l)-6.

(3) *Exclusive rules.* The rules provided in §§ 1.401(l)-1 through 1.401(l)-6 are the exclusive means for a plan to satisfy sections 401(l) and 401(a)(5)(C). Accordingly, a plan that provides disparities in employer-provided contributions or benefits that are not permitted under §§ 1.401(l)-1 through 1.401(l)-6 does not satisfy section 401(l) or 401(a)(5)(C).

(4) *Exceptions.* Sections 401(a)(5)(C) and 401(l) are not available in the following arrangements—

(i) A plan maintained by an employer, determined for purposes of the Federal Insurance Contributions Act or the Railroad Retirement Tax Act, as applicable, that does not pay any wages within the meaning of section 3121(a) or compensation within the meaning of section 3231(e). For this purpose, a plan maintained for a self-employed individual within the meaning of section 401(c)(1), who is also subject to the tax under section 1401, is deemed to be a plan maintained by an employer that pays wages within the meaning of section 3121(a).

(ii) A plan, or the portion of a plan, that is an employee stock ownership plan described in section 4975(e)(7) (an ESOP) or a tax credit employee stock ownership plan described in section 409(a) (a TRASOP), except as provided in § 54.4975-11(a)(7)(ii) of this chapter, which contains a limited exception to this rule for certain ESOPs in existence on November 1, 1977.

(iii) With respect to elective contributions as defined in § 1.401(k)-1(g)(3) under a qualified cash or deferred arrangement as defined in § 1.401(k)-1(a)(4)(i) or with respect to employee or matching contributions defined in § 1.401(m)-1(f)(6) or (f)(12), respectively.

(iv) With respect to contributions to a simplified employee pension made under a salary reduction arrangement described in section 408(k)(6) (a SARSEP).

(5) *Additional rules.* The Commissioner may, in revenue rulings, notices, or other documents of general applicability, prescribe additional rules that may be necessary or appropriate to carry out the purposes of section 401(l),