even if, after taking the amendment into account, the plan would satisfy sections 410(b) and 401(a)(4) for the 1998 plan year.

Example 5. Employer X maintains two plan years. Plan A satisfies the ratio percentage test of §1.410(b)-2(b)(2), but Plan B does not. Thus, in order to satisfy section 410(b), Plan B must satisfy the average benefit percentage of $1.410(b)-2(b)(3). The average benefit percentage of Plan B is 60 percent. Employer X may take into account a corrective amendment that increases the accruals under either Plan A or Plan B so that the average benefit percentage meets the 70 percent requirement of the average benefit test, if the amendment satisfies paragraph (g)(3)(v) of this section.

Example 6. Employer Y maintains Plan C, which does not satisfy section 401(a)(4) in a plan year. Under the terms of paragraph (g)(2) of this section, Employer Y amends Plan C to increase the benefits of certain employees retroactively. In designing the amendment, Employer Y identifies those employees who have terminated without vested benefits during the period after the end of the prior plan year and before the adoption date of the amendment, and the amendment provides increases in benefits primarily to those employees. It would be inconsistent with the purpose of preventing discrimination in favor of HCEs for Plan C to treat the amendment as retroactively effective under this paragraph (g). See §1.401(a)(4)-1(c)(2).

Example 7. Employer Z maintains both a section 401(k) plan and a section 401(m) plan that provides matching contributions at a rate of 50 percent with respect to elective contributions under the section 401(k) plan. In plan year 1995, the section 401(k) plan fails to satisfy the actual deferral percentage test of section 401(k)(3). In order to satisfy section 401(k)(3), Employer Z makes corrective distributions to HCEs H1 through H10 of their excess contributions as provided under §1.401(k)-2(b). The matching contributions that H1 through H10 had received on account of their excess contributions are not forfeited, however. Thus, the effective rate of matching contributions provided to H1 through H10 is increased as a result of the corrective distributions. See §1.401(a)(4)-4(e)(3)(ii)(G). Since no NHCE in the section 401(m) plan is provided with an equivalent rate of matching contributions, the rate of matching contributions provided to H1 through H10 does not satisfy the nondiscriminatory availability requirement of §1.401(a)(4)-4 in plan year 1995. Employer Z makes a corrective amendment by October 15, 1996, that grants allocations to NHCEs who made contributions for the 1995 plan year eligible for a matching contribution. Employer Z may treat the allocations granted under the corrective amendment to those NHCEs as matching contributions for the 1995 plan year and, as a result, take them into account in determining whether the availability of the rate of matching contributions provided to H1 through H10 satisfies the current availability requirement of §1.401(a)(4)-4(b) for the 1995 plan year.


§1.401(a)(4)-12 Definitions.

Unless otherwise provided, the definitions in this section govern in applying the provisions of §§1.401(a)(4)-1 through 1.401(a)(4)-13.

Accumulation plan. Accumulation plan means a defined benefit plan under which the benefit of every employee for each plan year is separately determined, using plan year compensation (if benefits are determined as a percentage of compensation rather than a dollar amount) separately calculated for the plan year, and each employee’s total accrued benefit as of the end of a plan year is the sum of the separately determined benefit for that plan year and the total accrued benefit as of the end of the preceding plan year.

Acquired group of employees. Acquired group of employees means employees of a prior employer who become employed by the employer in a transaction between the employer and the prior employer that is a stock or asset acquisition, merger, or other similar transaction involving a change in the employer of the employees of a trade or business, plus employees hired by or transferred into the acquired trade or business on or before a date selected by the employer that is within the transition period defined in section 410(b)(6)(C)(II). In addition, in the case of a transaction prior to the effective date of these regulations, the date by which employees must be hired by or transferred into the acquired trade or business in order to be included in the acquired group of employees may be any date prior to February 11, 1993, without regard to whether it is later than the end of the transition period defined in section 410(b)(6)(C)(II).

Actuarial equivalent. An amount or benefit is the actuarial equivalent of, or is actuarially equivalent to, another amount or benefit at a given time if the actuarial present value of the two amounts or benefits (calculated using
the same actuarial assumptions) at that time is the same.

_Actuarial present value._ Actuarial present value means the value as of a specified date of an amount or series of amounts due thereafter, where each amount is—

1. Multiplied by the probability that the condition or conditions on which payment of the amount is contingent will be satisfied; and
2. Discounted according to an assumed rate of interest to reflect the time value of money.

_Ancillary benefit._ Ancillary benefit is defined in §1.401(a)(4)–4(e)(2).

_Average annual compensation._ Average annual compensation is defined in §1.401(a)(4)–3(e)(2).

_Base benefit percentage._ Base benefit percentage is defined in §1.401(l)–1(c)(3).

_Benefit formula._ Benefit formula means the formula a defined benefit plan applies to determine the accrued benefit (within the meaning of section 411(a)(7)(A)(i)) in the form of an annual benefit commencing at normal retirement age of an employee who continues in service until normal retirement age. Thus, for example, the benefit formula does not include the accrual method the plan applies (in conjunction with the benefit formula) to determine the accrued benefit of an employee who terminates employment before normal retirement age. For purposes of this definition, a change in plan provisions that applies only to certain employees who terminate within a limited period of time (e.g., an early retirement window benefit) is treated as a change in the plan’s benefit formula for the employees to whom the change is potentially applicable during the period that the change is potentially applicable to them. The preceding sentence applies only to the extent that the change in plan provisions would result in a change in the benefit formula if it were permanent and applied without regard to when the employees’ employment was terminated.

_Benefit, right, or feature._ Benefit, right, or feature means an optional form of benefit, an ancillary benefit, or an other right or feature within the meaning of §1.401(a)(4)–4(e).

_Contributory DB plan._ Contributory DB plan means a defined benefit plan that includes employee contributions not allocated to separate accounts.

_Defined benefit excess plan._ Defined benefit excess plan is defined in §1.401(l)–1(c)(16)(i).

_Defined benefit plan._ Defined benefit plan is defined in §1.410(b)–9.

_Defined contribution plan._ Defined contribution plan is defined in §1.410(b)–9.

_Determination date._ Determination date is defined in §1.401(a)(4)–3(d)(1)(iv)(A).

_Employee._ With respect to a plan for a given plan year, employee means an employee (within the meaning of §1.410(b)–9) who benefits as an employee under the plan for the plan year (within the meaning of §1.410(b)–3).

_Employer._ Employer is defined in §1.410(b)–9.

_ESOP._ ESOP is defined in §1.410(b)–9.

_Excess benefit percentage._ Excess benefit percentage is defined in §1.401(l)–1(c)(14).

_Former employee._ With respect to a plan for a given plan year, former employee means a former employee (within the meaning of §1.410(b)–9).

_Former HCE._ Former HCE means a highly compensated former employee as defined in §1.410(b)–9.

_Former NHCE._ Former NHCE means a former employee who is not a former HCE.

_Fresh-start date._ Fresh-start date is defined in §1.401(a)(4)–13(c)(5)(iii).

_Fresh-start group._ Fresh-start group is defined in §1.401(a)(4)–13(c)(5)(ii).

_Gross benefit percentage._ Gross benefit percentage is defined in §1.401(l)–1(c)(18).

_HCE._ HCE means a highly compensated employee as defined in §1.410(b)–9 who benefits under the plan for the plan year (within the meaning of §1.410(b)–3).

_Integration level._ Integration level is defined in §1.401(l)–1(c)(20).

_Measurement period._ Measurement period is defined in §1.401(a)(4)–3(d)(1)(ii).

_Multiemployer plan._ Multiemployer plan is defined in §1.410(b)–9.

_NHCE._ NHCE means an employee who is not an HCE.

_Nonexcludable employee._ Nonexcludable employee means an employee
within the meaning of §1.410(b)–9, other
than an excludable employee with re-
spect to the plan as determined under
§1.410(b)–6. A nonexcludable employee
may be either a highly or nonhighly
compensated nonexcludable employee,
depending on the nonexcludable em-
ployee’s status under section 414(q).

Normalize. With respect to a benefit
payable to an employee in a particular
form, normalize means to convert the
benefit to an actuarially equivalent
straight life annuity commencing at
the employee’s testing age. The actu-
arial assumptions used in normalizing
a benefit must be reasonable and must
be applied on a gender-neutral basis. A
standard interest rate and a standard
mortality table are among the assump-
tions considered reasonable for this
purpose.

Offset plan. Offset plan is defined in
§1.401(l)–1(c)(24).

Optional form of benefit. Optional form
of benefit is defined in §1.401(a)(4)–
4(e)(1).

Other right or feature. Other right or
feature is defined in §1.401(a)(4)–
4(e)(3).

Plan. Plan means a plan within the
meaning of §1.410(b)–7 (a) and (b), after
application of the mandatory
disaggregation rules of §1.410(b)–7(c)
and the permissive aggregation rules of
§1.410(b)–7(d).

Plan year. Plan year is defined in
§1.410(b)–9.

Plan year compensation—(1) In general.
Plan year compensation means section
414(s) compensation for the plan year
determined by measuring section 414(s)
compensation during one of the periods
described in paragraphs (2) through (4)
of this definition. Whichever period is
selected must be applied uniformly to
determine the plan year compensation
of every employee.

(2) Plan year. This period consists of
the plan year.

(3) Twelve-month period ending in the
plan year. This period consists of a
specified 12-month period ending with
or within the plan year, such as the
calendar year or the period for deter-
mining benefit accruals described in
§1.401(a)(4)–3(f)(6).

(4) Period of plan participation during
the plan year. This period consists of
the portion of the plan year during
which the employee is a participant in
the plan. This period may be used to
determine plan year compensation for
the plan year in which participation
begins, the plan year in which partici-
pation ends, or both. This period may
be used to determine plan year com-
pensation when substituted for average
annual compensation in §1.401(a)(4)–
3(e)(2)(ii)(A) only if the plan year is
also the period for determining benefit
accruals under the plan rather than an-
other period as permitted under
§1.401(a)(4)–3(f)(6). Further, selection of
this period must be made on a reason-
ably consistent basis from plan year to
plan year in a manner that does not
discriminate in favor of HCEs.

(5) Special rule for new employees. Not-
withstanding the uniformity require-
ment of paragraph (1) of this definition,
if employees’ plan year compensation
for a plan year is determined based on
a 12-month period ending within the
plan year under paragraph (3) of this
definition, then the plan year com-
pensation of any employees whose date
of hire was less than 12 months before
the end of that 12-month period must
be determined uniformly based either
on the plan year or on the employees’
periods of participation during the plan
year, as provided in paragraphs (2) and
(4), respectively, of this definition.

QJSA. QJSA means a qualified joint
and survivor annuity as defined in sec-
tion 417(b).

QSUPP—(1) In general. QSUPP or
qualified social security supplement
means a social security supplement
that meets each of the requirements in
paragraphs (2) through (6) of this defi-
nition.

(2) Accrual—(i) General rule. The
amount of the social security supple-
ment payable at any age for which the
employee is eligible for the social secu-
ritry supplement must be equal to the
lesser of—

(A) The employee’s old-age insurance
benefit, unreduced on account of age,
under title II of the Social Security
Act; and

(B) The accrued social security sup-
plement, determined under one of the
methods in paragraph (2) (ii) through
(iv) of this definition.

(ii) Section 401(l) plans. In the case of
a section 401(l) plan that is a defined
benefit excess plan, each employee’s
accrued social security supplement equals the employee’s average annual compensation up to the integration level, multiplied by the disparity provided by the plan for the employee’s years of service used in determining the employee’s accrued benefit under the plan. In the case of a section 401(l) plan that is an offset plan, each employee’s accrued social security supplement equals the dollar amount of the offset accrued for the employee under the plan.

(ii) PIA offset plan. In the case of a PIA offset plan, each employee’s accrued social security supplement equals the dollar amount of the offset accrued for the employee under the plan. For this purpose, a PIA offset plan is a plan that reduces an employee’s benefit by an offset based on a stated percentage of the employee’s primary insurance amount under the Social Security Act.

(iii) Other plans. In the case of any other plan, each employee’s social security supplement accrues ratably over the period beginning with the later of the employee’s commencement of participation in the plan or the effective date of the social security supplement and ending with the earliest age at which the social security supplement is payable to the employee. The effective date of the social security supplement is the later of the effective date of the amendment adding the social security supplement or the effective date of the amendment modifying an existing social security supplement to comply with the requirements of this definition. If, by the end of the first plan year to which these regulations apply, as set forth in §1.401(a)(4)-13 (a) and (b), an amendment is made to a social security supplement in existence on September 19, 1991, the employer may treat the accrued portion of the social security supplement, as determined under the plan without regard to amendments made after September 19, 1991, as included in the employee’s accrued social security supplement, provided that the remainder of the social security supplement is accrued under the otherwise-applicable method.

(3) Vesting. The plan must provide that an employee’s right to the accrued social security supplement becomes nonforfeitable within the meaning of section 411 as if it were an early retirement benefit.

(4) Eligibility. The plan must impose the same eligibility conditions on receipt of the social security supplement as on receipt of the early retirement benefit in conjunction with which the social security supplement is payable. Furthermore, if the service required for an employee to become eligible for the social security supplement exceeds 15 years, then the ratio percentage of the group of employees who actually satisfy the eligibility conditions on receipt of the QSUPP in the current plan year must equal or exceed the unsafe harbor percentage applicable to the plan under §1.410(b)-4(c)(4)(ii).

(5) QJSA. At each age, the most valuable QSUPP commencing at that age must be payable in conjunction with the QJSA commencing at that age. In addition, the plan must provide that, in the case of a social security supplement payable in conjunction with a QJSA, the social security supplement will be paid after the employee’s death on the same terms as the QJSA, but in no event for a period longer than the period for which the social security supplement would have been paid to the employee had the employee not died. For example, if the QJSA is in the form of a joint annuity with a 50-percent survivor’s benefit, the social security supplement must provide a 50-percent survivor’s benefit. When section 417(c) requires the determination of a QJSA for purposes of determining a qualified pre-retirement survivor’s annuity as defined in section 417(c) (QPSA), the social security supplement payable in conjunction with that QJSA must be paid in conjunction with the QPSA.

(6) Protection. The plan must specifically provide that the social security supplement is treated as an early retirement benefit that is protected under section 411(d)(6) (other than for purposes of sections 401(a)(11) and 417). Thus, the accrued social security supplement must continue to be payable notwithstanding subsequent amendment of the plan (including the plan’s termination), and an employee may meet the eligibility requirements for
the social security supplement after plan termination.

Qualified plan. Qualified plan means a plan that satisfies section 401(a). For this purpose, a qualified plan includes an annuity plan described in section 403(a).

Rate group. Rate group is defined in §1.401(a)(4)–2(c)(1) or is defined in §1.401(a)(4)–3(c)(1).

Ratio percentage. Ratio percentage is defined in §1.410(b)–9.

Section 401(a)(17) employee. Section 401(a)(17) employee is defined in §1.401(a)(17)–1(e)(2)(ii).

Section 401(k) plan. Section 401(k) plan is defined in §1.410(b)–9.

Section 401(l) plan. Section 401(l) plan is defined in §1.410(b)–9.

Section 414(s) compensation—(1) General rule. When used with reference to compensation for a plan year, 12-month period, or other specified period, section 414(s) compensation means compensation measured using an underlying definition that satisfies section 414(s) for the applicable plan year. Whether an underlying definition of compensation satisfies section 414(s) is determined on a year-by-year basis, based on the provisions of section 414(s) in effect for the applicable plan year and, if relevant, the employer’s HCEs and NHCEs for that plan year. See §1.414(s)–1(i) for transition rules for that plan year. For a plan year or 12-month period beginning before January 1, 1988, any underlying definition of compensation may be used to measure the amount of employees’ compensation for purposes of this definition, provided that the definition was nondiscriminatory based on the facts and circumstances in existence for that plan year or for the plan year in which that 12-month period ends.

(2) Determination period for section 414(s) nondiscrimination requirement—(i) General rule. If an underlying definition of compensation must satisfy the nondiscrimination requirement in §1.414(s)–1(d)(3) in order to satisfy section 414(s) for a plan year, any one of the following determination periods may be used to satisfy the nondiscrimination requirement—

(A) The plan year;
(B) The calendar year ending in the plan year; or
(C) The 12-month period ending in the plan year that is used to determine the underlying definition of compensation.

(ii) Exception for partial plan year compensation. Notwithstanding the general rule in paragraph (2)(i) of this definition, if the period for measuring the underlying compensation is the portion of the plan year during which each employee is a participant in the plan (as provided in paragraph (4) of the definition of plan year compensation in this section), that period must be used as the determination period.

(3) Plans using permitted disparity. In the case of a section 401(l) plan or a plan that imputes permitted disparity in accordance with §1.401(a)(4)–7, an underlying definition of compensation is not section 414(s) compensation if the definition results in significant under-inclusion of compensation for employees.

(4) Double proration of service and compensation. If a defined benefit plan prorates benefit accruals as permitted under section 411(b)(4)(B) by crediting less than full years of participation, then compensation for a plan year, 12-month period, or other specified period that is used to determine the amount of an employee’s benefits under the plan will not fail to be section 414(s) compensation, merely because the amount of compensation for that period is adjusted to reflect the equivalent of full-time compensation to the extent necessary to satisfy the requirements of 29 CFR 2530.204–2(d) (regarding double proration of service and compensation). This adjustment is disregarded in determining whether the underlying definition of compensation used satisfies the requirements of section 414(s). Thus, for example, if the underlying definition of compensation is an alternative definition that must satisfy the nondiscrimination requirement of §1.414(s)–1(d)(3), in determining whether that requirement is satisfied with regard to the underlying definition, the compensation included for any employee is determined without
any adjustment to reflect the equivalent of full-time compensation required by 29 CFR 2530.204–2(d).

Social security supplement. Social security supplement is defined in §1.411(a)–7(c)(4)(ii).

Standard interest rate. Standard interest rate means an interest rate that is neither less than 7.5 percent nor greater than 8.5 percent, compounded annually. The Commissioner may, in revenue rulings, notices, and other guidance of general applicability, change the definition of standard interest rate.

Standard mortality table. Standard mortality table means one of the following tables: the UP–1984 Mortality Table (Unisex); the 1983 Group Annuity Mortality Table (1983 GAM) (Female); the 1983 Group Annuity Mortality Table (1983 GAM) (Male); the 1983 Individual Annuity Mortality Table (1983 IAM) (Female); the 1983 Individual Annuity Mortality Table (1983 IAM) (Male); the 1971 Group Annuity Mortality Table (1971 GAM) (Female); the 1971 Group Annuity Mortality Table (1971 GAM) (Male); the 1971 Individual Annuity Mortality Table (1971 IAM) (Female); or the 1971 Individual Annuity Mortality Table (1971 IAM) (Male).

These standard mortality tables are available from the Society of Actuaries, 475 N. Martingale Road, Suite 800, Schaumberg, Illinois 60173. The Commissioner may, in revenue rulings, notices, and other guidance of general applicability, change the definition of standard mortality table. See §601.601(d)(2)(ii) of this Chapter. The applicable mortality table under section 417(e)(3)(A)(ii)(I) is also a standard mortality table.

Uniform normal retirement age—(1) General rule. Uniform normal retirement age means a single normal retirement age under the plan that does not exceed the maximum age in paragraph (2) of this definition and that is the same for all of the employees in a given group. A group of employees does not fail to have a uniform normal retirement age merely because the plan contains provisions described in paragraphs (3) and (4) of this definition.

(2) Maximum age. The maximum age is generally 65. However, if all employees have the same social security retirement age (within the meaning of section 415(b)(8)), the maximum age is the employees’ social security retirement age. Thus, for example, a component plan has a uniform normal retirement age of 67 if it defines normal retirement age as social security retirement age and all employees in the component plan have a social security retirement age of 67.

(3) Stated anniversary date—(i) General rule. A group of employees does not fail to have a uniform normal retirement age merely because the plan provides that the normal retirement age of all employees in the group is the later of a stated age (not exceeding the maximum age in paragraph (2) of this definition) or a stated anniversary no later
than the fifth anniversary of the time each employee commenced participation in the plan. For employees who commenced participation in the plan before the first plan year beginning on or after January 1, 1988, the stated anniversary date may be later than the anniversary described in the preceding sentence if it is no later than the earlier of the tenth anniversary of the date the employee commenced participation in the plan (or such earlier anniversary selected by the employer, if less than 10) or the fifth anniversary of the first day of the first plan year beginning on or after January 1, 1988.

(ii) Use of service other than anniversary of commencement of participation. In lieu of using a stated anniversary date as permitted under paragraph (3)(i) of this definition, a plan may use a stated number of years of service measured on another basis, provided that the determination is made on a basis that satisfies section 411(a)(8) and that the stated number of years of service does not exceed the number of anniversaries permitted under paragraph (3)(i) of this definition. For example, a uniform normal retirement age could be based on the earlier of the fifth anniversary of the commencement of participation and the completion of five years of vesting service.

(4) Conversion of normal retirement age to normal retirement date. A group of employees does not fail to have a uniform normal retirement age merely because a defined benefit plan provides for the commencement of normal retirement benefits on different retirement dates for different employees if each employee’s normal retirement date is determined on a reasonable basis with reference to an otherwise uniform normal retirement age and the difference between the normal retirement date and the uniform normal retirement age cannot exceed six months for any employee. Thus, for example, benefits under a plan do not fail to commence at a uniform normal retirement age of age 62 for purposes of § 1.401(a)(4)–3(b)(2)(i), merely because the plan’s normal retirement date is defined as the last day of the plan year nearest attainment of age 62.

Year of service. Year of service means a year of service as defined in the plan for a specific purpose, including the method of crediting service for that purpose under the plan.


§ 1.401(a)(4)–13 Effective dates and fresh-start rules.

(a) General effective dates—(1) In general. Except as otherwise provided in this section, §§ 1.401(a)(4)–1 through 1.401(a)(4)–13 apply to plan years beginning on or after January 1, 1994.

(2) Plans of tax-exempt organizations. In the case of plans maintained by organizations exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), §§ 1.401(a)(4)–1 through 1.401(a)(4)–13 apply to plan years beginning on or after January 1, 1996.

(3) Compliance during transition period. For plan years beginning before the effective date of these regulations, as set forth in paragraph (a)(1) and (2) of this section, and on or after the first day of the first plan year to which the amendments made to section 410(b) by section 1112(a) of the Tax Reform Act of 1986 (TRA '86) apply, a plan must be operated in accordance with a reasonable, good faith interpretation of section 401(a)(4), taking into account pre-existing guidance and the amendments made by TRA '86 to related provisions of the Code (including, for example, sections 401(l), 401(a)(17), and 410(b)). Whether a plan is operated in accordance with a reasonable, good faith interpretation of section 401(a)(4) will generally be determined on the basis of all the relevant facts and circumstances, including the extent to which an employer has resolved unclear issues in its favor. A plan will be deemed to be operated in accordance with a reasonable, good faith interpretation of section 401(a)(4) if it is operated in accordance with the terms of §§ 1.401(a)(4)–1 through 1.401(a)(4)–13.

(b) Effective date for governmental plans. In the case of governmental plans described in section 414(d), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), §§ 1.401(a)(4)–1 through 1.401(a)(4)–13 apply to plan years beginning on or