Example 3. Employer Y has a single plan (Plan B) with a calendar plan year. With respect to the plan year beginning in 1990, employer Y elects to make the look-back year calculation for the 1990 determination year on the basis of the calendar year ending with or within the 1990 determination year. Because employer Y's determination year is the 1990 calendar year there is no lag period and employer Y determines the group of highly compensated employees for purposes of the 1990 calendar plan year on the basis of such plan year alone.

Q–15: Is there any transition rule in determining the group of highly compensated employees for 1987 and 1988?
A–15: (a) In general. Solely for purposes of section 401(k)(3) and (m)(2) and solely for twelve-month plan years beginning in 1987 and 1988, an eligible employer may elect to define the group of highly compensated employees as the group consisting of 5-percent owners of the employer at any time during the plan year and employees who receive compensation in excess of $50,000 during the plan year. This rule would apply in lieu of the look-back year calculation and determination year calculation otherwise applicable under A–3(a) of this §1.44(q)–1. In addition, an eligible employer may elect to make the determinations permitted under this transition rule on the basis of the calendar year ending in the plan year and the period by which such plan year extends beyond such calendar year, in accordance with the rules of A–14(b), in lieu of making the determinations under this transition rule on the basis of the plan year for which the determinations are being made.

(b) Eligible employers. An employer is an eligible employer under this A–15 if such employer satisfies both of the following requirements:
(1) The employer does not maintain any top-heavy plan within the meaning of section 416 at any time during 1987 and 1988; and
(2) Under each plan of the employer to which section 401(k)(3) or 401(m)(2) is applicable, the group of eligible employees that comprises the highest 25% of eligible employees ranked on the basis of compensation includes at least one employee whose compensation is $50,000 or below. This requirement must be met separately with respect to each such plan of the employer.

(c) Uniformity requirement. An eligible employer may not make the election under paragraph (a) of this A–15 unless the election applies to all of the plans maintained by the employer to which section 401(k)(3) or 401(m)(2) applies.

(d) Election requirements. This election is operational and does not require a plan provision.

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(i) General rule.
(ii) Special rule for employer-wide plans.
(3) Separate application of section 401(a)(26).
(i) General rule.
(ii) Special rule for employer-wide plans.
(iv) Separate application of section 129(d)(8).
(Reserved)
(v) Separate application of other Code requirements.
(d) Application of requirements.
(i) In general.
(ii) Interpretation.
(iii) Separate operating units.
(iv) Certain mergers and acquisitions.
(v) Governmental and tax-exempt employers.
(i) General rule.
(ii) Additional rules. [Reserved]
(6) Testing year basis of application.
(i) Section 414(r).
(ii) Sections 410(b), 401(a)(26), and 129(d)(8).
(7) Averaging rules.
(8) Definitions.
(9) Effective dates.
(i) General rule.
(ii) Reasonable compliance. 
(A) In general.
(B) Determination of reasonable compliance.
(C) Effect on other plans.
(e) Additional rules.

§ 1.414(r)–2 Line of business.

(a) General rule.
(b) Employer determination of its lines of business.
(i) In general.
(ii) Property and services provided to customers.
(iii) Timing of provision of property or services.
(iv) Employer designation.
(ii) In general.
(vi) Ability to combine unrelated types of property or services in a single line of business.
(vii) Ability to separate related types of property or services into two or more lines of business.
(iv) Affiliated service groups.
(c) Examples.
(i) In general.
(ii) Examples illustrating employer designation.
(iii) Examples illustrating property and services provided to customers.

§ 1.414(r)–3 Separate line of business.

(a) General rule.
(b) Separate organization and operation.
(i) In general.
(ii) Separate organizational unit.
(iii) Separate financial accountability.
(iv) Separate employee workforce.
(v) Separate management.
(c) Supplementary rules.
(ii) General rule.
(iii) Determination of separate employee workforce.
(iv) Determination of separate management.
(v) Employees taken into account.
(vi) Services taken into account.
(i) Provision of services to a separate line of business.
(ii) Period for which services are provided.
(iii) Optional rule for employees who change status.
(A) In general.
(B) Change in employee’s status.
(B) Examples of the separate employee workforce requirement.
(C) Examples of the separate management requirement.
(d) Optional rule for vertically integrated lines of business.
(i) In general.
(ii) Requirements.
(iii) Optional rule.
(i) Treatment of employees.
(ii) Purposes for which optional rule applies.
(iv) Examples.

§ 1.414(r)–4 Qualified separate line of business—fifty-employee and notice requirements. 

(a) In general.
(b) Fifty-employee requirement.
(c) Notice requirement.
(i) General rule.
(ii) Effect of notice.

§ 1.414(r)–5 Qualified separate line of business—administrative scrutiny requirement—safe harbors.

(a) In general.
(b) Statutory safe harbor.
(i) General rule.
(ii) Highly compensated employee percentage ratio.
(iii) Employees taken into account.
(iv) Ten-percent exception.
(v) Determination based on preceding testing year.
(vi) Examples.
(c) Safe harbor for separate lines of business in different industries.
(i) In general.
(ii) Optional rule for foreign operations.
(iii) Establishment of industry categories.
(iv) Examples.
(d) Safe harbor for separate lines of business that are acquired through certain mergers and acquisitions.
(i) General rule.
(ii) Employees taken into account.
(iii) Transition period.
(iv) Examples.
(e) Safe harbor for separate lines of business reported as industry segments.
§ 1.414(r)–0

Determination of the employees of an employer’s qualified separate lines of business.

(a) Introduction.
(1) In general.
(2) Purposes for which this section applies.

(b) Assignment procedure.
(1) In general.
(2) Assignment for the first testing day.
(3) Assignment of new employees for subsequent testing days.
(4) Special rule for employers using annual option under section 410(b).

(c) Assignment and allocation of residual shared employees.
(1) In general.
(2) Dominant line of business method of allocation.

§ 1.414(r)–7

Determination of the employees of an employer’s qualified separate lines of business.

(a) Introduction.
(1) In general.
(2) Purposes for which this section applies.

(b) Assignment procedure.
(1) In general.
(2) Assignment for the first testing day.
(3) Assignment of new employees for subsequent testing days.
(4) Special rule for employers using annual option under section 410(b).

(c) Assignment and allocation of residual shared employees.
(1) In general.
(2) Dominant line of business method of allocation.

§ 1.414(r)–8

Separate application of section 410(b).

(a) General rule.
(b) Rules of separate application.
(1) In general.
(2) Satisfaction of section 410(b)(5)(B) on an employer-wide basis.

(c) Coordination of section 401(a)(4) with section 410(b).
(1) General rule.
(2) Examples.

(d) Supplementary rules.
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(1) In general.
(2) Definition of plan.
(3) Employees of a qualified separate line of business.
(4) Consequences of failure.

§ 1.414(r)-9 Separate application of section 401(a)(26).

(a) General rule.
(b) Requirements applicable to a plan.
(c) Supplementary rules.

(1) In general.
(2) Definition of plan.
(3) Employees of a qualified separate line of business.
(4) Consequences of failure.

§ 1.414(r)-10 Separate application of section 129(d)(8). [Reserved]

§ 1.414(r)-11 Definitions and special rules.

(a) In general.
(b) Definitions.

(1) In general.
(2) Substantial-service employee.
(3) Top-paid employee.
(4) Residual shared employee.
(5) Testing year.
(6) Testing day.
(7) First testing day.
(8) Section 401(a)(26) testing day.

(c) Averaging rules.

(1) In general.
(2) Specified provisions.
(3) Averaging of large fluctuations not permitted.
(4) Consistency requirements.

(c) Flowchart. The following is a flowchart showing how the major provisions of §§1.414(r)-1 through 1.414(r)-6 are applied.
§ 1.414(r)-1 Requirements applicable to qualified separate lines of business.

(a) In general. Section 414(r) prescribes the conditions under which an employer is treated as operating qualified separate lines of business. If an employer is treated as operating qualified separate lines of business, it is treated as operating separate lines of business.

Determine All Property and Services Provided to Customers and Designate Portion Thereof Provided by Line of Business. This is not a QSLOB.

Return to Start and Redesignate Lines of Business. 

Qualified Separate Lines of Business (QSLOB)