

§ 1.401(l)-2

26 CFR Ch. I (4-1-14 Edition)

amount of each employee's final average compensation taken into account in determining the offset under an offset plan.

(24) *Offset percentage.* *Offset percentage* means the rate at which an employee's employer-provided benefit is reduced or offset under an offset plan (expressed as a percentage of the employee's final average compensation up to the offset level).

(25) *Offset plan.* *Offset plan* means a defined benefit plan that is not a defined benefit excess plan and that provides that each employee's employer-provided benefit is reduced or offset by a specified percentage of the employee's final average compensation up to the offset level under the plan.

(26) *PIA.* *PIA* or *primary insurance amount* means the old-age insurance benefit under section 202 of the Social Security Act (42 U.S.C. 402) payable to each employee at a single age that is not earlier than age 62 and not later than age 65. *PIA* must be determined under the Social Security Act as in effect at the time the employee's offset is determined. Thus, it is determined without assuming any future increases in compensation, any future increases in the taxable wage base, any changes in the formulas used under the Social Security Act to determine *PIA* (for example, changes in the breakpoints), or any future increases in the consumer price index. However, it may be assumed that the employee will continue to receive compensation at the same rate as that received at the time the offset is being determined, until reaching the single age described in the first sentence of this paragraph (c)(26). *PIA* must be determined in a consistent manner for all employees and in accordance with revenue rulings or other guidance provided by the Commissioner.

(27) *Plan.* *Plan* means a plan within the meaning of § 1.401(a)(4)-12 or a component plan treated as a plan under § 1.401(a)(4)-9(c).

(28) *Plan year compensation.* *Plan year compensation* means plan year compensation within the meaning of § 1.401(a)(4)-12.

(29) *Qualified plan.* *Qualified plan* means a qualified plan within the meaning of § 1.401(a)(4)-12.

(30) *Section 401(l) plan.* *Section 401(l) plan* means a section 401(l) plan within the meaning of § 1.401(a)(4)-12.

(31) *Section 414(s) compensation.* *Section 414(s) compensation* means section 414(s) compensation within the meaning of § 1.401(a)(4)-12.

(32) *Social security retirement age.* *Social security retirement age* for an employee means the social security retirement age of the employee as determined under section 415(b)(8).

(33) *Straight life annuity.* *Straight life annuity* means a straight life annuity within the meaning of § 1.401(a)(4)-12.

(34) *Taxable wage base.* *Taxable wage base* means the contribution and benefit base under section 230 of the Social Security Act (42 U.S.C. 430).

(35) *Year of service.* *Year of service* means a year of service as defined in the plan for purposes of the benefit formula and the accrual method under the plan, unless the context clearly indicates otherwise. See § 1.401(a)(4)-11(d)(3) for rules on years of service that may be taken into account for purposes of nondiscrimination testing, including satisfying section 401(l).

[T.D. 8359, 56 FR 47618, Sept. 19, 1991; 57 FR 10818, 10951, Mar. 31, 1992, as amended by T.D. 8486, 58 FR 46831, Sept. 3, 1993; T.D. 9169, 69 FR 78153, Dec. 29, 2004]

§ 1.401(l)-2 Permitted disparity for defined contribution plans.

(a) *Requirements*—(1) *In general.* Disparity in the rates of employer contributions allocated to employees' accounts under a defined contribution plan is permitted under section 401(l) and this section for a plan year only if the plan satisfies paragraphs (a)(2) through (a)(5) of this section. A plan that otherwise satisfies this paragraph (a) will not be considered to fail section 401(l) merely because it contains one or more provisions described in § 1.401(a)(4)-2(b)(4). See § 1.401(a)(4)-8(b)(3)(i)(C) for special rules applicable to target benefit plans.

(2) *Excess plan requirement.* The plan must be a defined contribution excess plan.

(3) *Maximum disparity.* The disparity for all employees under the plan must not exceed the maximum permitted disparity prescribed in paragraph (b) of this section.

(4) *Uniform disparity.* The disparity for all employees under the plan must be uniform within the meaning of paragraph (c) of this section.

(5) *Integration level.* The integration level specified in the plan must satisfy paragraph (d) of this section.

(b) *Maximum permitted disparity—(1) In general.* The disparity provided for the plan year must not exceed the maximum excess allowance as defined in paragraph (b)(2) of this section. In addition, the plan must satisfy the overall permitted disparity limits of §1.401(i)-5.

(2) *Maximum excess allowance.* The maximum excess allowance for a plan year is the lesser of—

(i) The base contribution percentage, or

(ii) The greater of—

(A) 5.7 percent, reduced as required under paragraph (d) of this section, or

(B) The percentage rate of tax under section 3111(a), in effect as of the beginning of the plan year, that is attributable to the old age insurance portion of the Old Age, Survivors and Disability Insurance provisions of the Social Security Act, reduced as required under paragraph (d) of this section. For a year in which the percentage rate of tax described in this paragraph (b)(2)(ii)(B) exceeds 5.7 percent, the Commissioner will publish the rate of such tax and a revised table under paragraph (d)(4) of this section.

(c) *Uniform disparity—(1) In general.* The disparity provided under a plan is uniform only if the plan uses the same base contribution percentage and the same excess contribution percentage for all employees in the plan.

(2) *Deemed uniformity—(i) In general.* The disparity under a plan does not fail to be uniform for purposes of this paragraph (c) merely because the plan contains one or more of the provisions described in paragraphs (c)(2) (ii) and (iii) of this section.

(ii) *Overall permitted disparity.* The plan provides that, in the case of each employee who has reached the cumulative permitted disparity limit applicable to the employee under §1.401(i)-5(c), employer contributions are allocated to the account of the employee with respect to the employee's total

plan year compensation at the excess contribution percentage.

(iii) *Non-FICA employees.* The plan provides that, in the case of each employee under the plan with respect to whom none of the taxes under section 3111(a), section 3221, or section 1401 is required to be paid, employer contributions are allocated to the account of the employee with respect to the employee's total plan year compensation at the excess contribution percentage.

(d) *Integration level—(1) In general.* The integration level under the plan must satisfy paragraph (d)(2), (d)(3), or (d)(4) of this section, as modified by paragraph (d)(5) of this section in the case of a short plan year. If a reduction applies to the disparity factor under this paragraph (d), the reduced factor is used for all purposes in determining whether the permitted disparity rules for defined contribution plans are satisfied.

(2) *Taxable wage base.* The requirement of this paragraph (d)(2) is satisfied only if the integration level under the plan for each employee is the taxable wage base in effect as of the beginning of the plan year.

(3) *Single dollar amount.* The requirement of this paragraph (d)(3) is satisfied only if the integration level under the plan for all employees is a single dollar amount (either specified in the plan or determined under a formula specified in the plan) that does not exceed the greater of \$10,000 or 20 percent of the taxable wage base in effect as of the beginning of the plan year.

(4) *Intermediate amount.* The requirement of this paragraph (d)(4) is satisfied only if—

(i) The integration level under the plan for all employees is a single dollar amount (either specified in the plan or determined under a formula specified in the plan) that is greater than the highest amount determined under paragraph (d)(3) of this section and less than the taxable wage base, and

(ii) The plan adjusts the factor determined under paragraph (b)(2)(ii) of this section in accordance with the table below.

TABLE

If the integration level		The 5.7 percent factor in the maximum excess allowance is reduced to—
Is more than	But not more than	
Greater of \$10,000 or 20% of taxable wage base.	80% of taxable wage base.	4.3%
80% of taxable wage base.	Amount less than taxable wage base.	5.4%

(5) *Prorated integration level for short plan year.* If a plan uses paragraph (2) or (4) of the definition of plan year compensation under § 1.401(a)(4)-12 (i.e., section 414(s) compensation for the plan year or the period of plan participation) and has a plan year that comprises fewer than 12 months, the integration level under the plan for each employee must be an amount equal to the otherwise applicable integration level described in paragraph (d)(2), (d)(3), or (d)(4) of this section, multiplied by a fraction, the numerator of which is the number of months in the plan year, and the denominator of which is 12. No adjustment to the maximum excess allowance is required as a result of the application of this paragraph (d)(5), other than any adjustment already required under paragraph (d)(4) of this section.

(e) *Examples.* The following examples illustrate this section. In each example, 5.7 percent exceeds the percentage rate of tax described in paragraph (b)(2)(ii)(B) of this section.

Example 1. Employer X maintains a profit-sharing plan with the calendar year as its plan year. For the 1989 plan year, the plan provides that the account of each employee who has plan year compensation in excess of the taxable wage base in effect at the beginning of the plan year will receive an allocation for the plan year of 5.7 percent of plan year compensation in excess of the taxable wage base. The plan provides that no allocation will be made to the account of any employee for the plan year with respect to plan year compensation not in excess of the taxable wage base. The maximum excess allowance is exceeded for the 1989 plan year because the excess contribution percentage (5.7 percent) for the plan year exceeds the base contribution percentage (0 percent) for the plan year by more than the lesser of the base contribution percentage (0 percent) or the percentage determined under paragraph (b)(2)(ii) of this section (5.7 percent) for the plan year.

Example 2. Employer Y maintains a money purchase pension plan with the calendar year as its plan year. For the 1990 plan year, the plan provides that the account of each employee will receive an allocation of 5 percent of the employee's plan year compensation up to the taxable wage base in effect at the beginning of the plan year plus an allocation of 10 percent of the employee's plan year compensation in excess of the taxable wage base. The maximum excess allowance is not exceeded for the plan year because the excess contribution percentage (10 percent) for the plan year does not exceed the base contribution percentage (5 percent) for the plan year by more than the lesser of the base contribution percentage (5 percent) or the percentage determined under paragraph (b)(2)(ii) of this section (5.7 percent) for the plan year.

Example 3. Assume the same facts as in *Example 2*, except that the plan provides that, with respect to plan year compensation in excess of the taxable wage base, the account of each employee will receive an allocation for the plan year of 12 percent of such compensation. The maximum excess allowance is exceeded for the plan year because the excess contribution percentage (12 percent) for the plan year exceeds the base contribution percentage (5 percent) for the plan year by more than the lesser of the base contribution percentage (5 percent) or the percentage determined under paragraph (b)(2)(ii) of this section (5.7 percent) for the plan year.

Example 4. Employer Z maintains a money purchase pension plan with a plan year beginning July 1 and ending June 30. The taxable wage base for the 1990 calendar year is \$51,300 and the taxable wage base for the 1991 calendar year is \$53,400. For the plan year beginning July 1, 1990, and ending June 30, 1991, the plan provides that the account of each employee will receive an allocation of 4 percent of the employee's plan year compensation up to \$53,400 plus an allocation of 6 percent of the employee's plan year compensation in excess of \$53,400. Although the excess contribution percentage (6 percent) for the plan year does not exceed the base contribution percentage (4 percent) for the plan year by more than the lesser of the base contribution percentage (4 percent) or the percentage determined under paragraph (b)(2)(ii) of this section (5.7 percent), the plan does not satisfy paragraph (a)(5) of this section because the integration level of \$53,400 exceeds the maximum permitted integration level of \$51,300 (the taxable wage base in effect as of the beginning of the plan year).

Example 5. Assume the same facts as in *Example 4*, except that for the plan year beginning July 1, 1990, and ending June 30, 1991, the plan provides that the account of each

employee will receive an allocation of 5 percent of the employee's plan year compensation up to \$30,000 plus an allocation of 9 percent of the employee's plan year compensation in excess of \$30,000. The integration level of \$30,000 is 58 percent of the taxable wage base of \$51,300 for the 1990 calendar year. The maximum excess allowance is not exceeded for the plan year because the excess contribution percentage (9 percent) for the plan year does not exceed the base contribution percentage (5 percent) for the plan year by more than the lesser of the base contribution percentage (5 percent) or the percentage determined under paragraphs (b)(2)(ii) and (d) of this section (4.3 percent) for the plan year.

[T.D. 8359, 56 FR 47621, Sept. 19, 1991; 57 FR 10818, 10951, Mar. 31, 1992, as amended by T.D. 8486, 58 FR 46832, Sept. 3, 1993]

§ 1.401(l)-3 Permitted disparity for defined benefit plans.

(a) *Requirements*—(1) *In general.* Disparity in the rates of employer-provided benefits under a defined benefit plan is permitted under section 401(l) and this section for a plan year only if the plan satisfies paragraphs (a)(2) through (a)(6) of this section. A plan that otherwise satisfies this paragraph (a) will not be considered to fail section 401(l) merely because it contains one or more provisions described in § 1.401(a)(4)-3(b)(6) (such as multiple formulas). Section 401(a)(5)(D) and § 1.401(a)(5)-1(d) provide other rules under which benefits provided under a defined benefit plan (including defined benefit excess and offset plans) may be limited. See § 1.401(a)(4)-3(b)(5)(viii) for special rules under which an insurance contract plan may satisfy § 1.401(a)(4)-1(b)(2) and section 401(l). See § 1.401(a)(4)-8(c)(3)(iii)(B) for special rules applicable to cash balance plans.

(2) *Excess or offset plan requirement.* The plan must be a defined benefit excess plan or an offset plan.

(3) *Maximum disparity.* The disparity for all employees under the plan must not exceed the maximum permitted disparity prescribed in paragraph (b) of this section.

(4) *Uniform disparity.* The disparity for all employees under the plan must be uniform within the meaning of paragraph (c) of this section.

(5) *Integration or offset level.* The integration or offset level specified in the

plan must satisfy paragraph (d) of this section.

(6) *Benefits, rights, and features.* The benefits, rights, and features provided under the plan must satisfy paragraph (f)(1) of this section.

(b) *Maximum permitted disparity*—(1) *In general.* In the case of a defined benefit excess plan, the disparity provided for the plan year may not exceed the maximum excess allowance as defined in paragraph (b)(2) of this section. In the case of an offset plan, the disparity provided for the plan year may not exceed the maximum offset allowance as defined in paragraph (b)(3) of this section. In addition, either type of plan must satisfy the overall permitted disparity limits of § 1.401(l)-5.

(2) *Maximum excess allowance.* The maximum excess allowance for a plan year is the lesser of—

(i) 0.75 percent, reduced as required under paragraphs (d) and (e) of this section, or

(ii) The base benefit percentage for the plan year.

(3) *Maximum offset allowance.* The maximum offset allowance for a plan year is the lesser of—

(i) 0.75 percent, reduced as required under paragraphs (d) and (e) of this section, or

(ii) One-half of the gross benefit percentage, multiplied by a fraction (not to exceed one), the numerator of which is the employee's average annual compensation, and the denominator of which is the employee's final average compensation up to the offset level.

(4) *Rules of application*—(i) *Disparity provided for the plan year.* Disparity provided for the plan year generally means the disparity provided under the plan's benefit formula for the employee's year of service with respect to the plan year. However, if a plan determines each employee's accrued benefit under the fractional accrual method of section 411(b)(1)(C), disparity provided under the plan also means the disparity in the benefit accrued for the employee for the plan year. Thus, a plan using the fractional accrual method must satisfy this paragraph (b) with respect to the plan's benefit formula and with respect to the benefits accrued for the plan year.