Section 401.—Qualified Pension, Profit Sharing and Stock Bonus Plans

26 CFR 1.401(a)(4)–8: Cross-testing.

This revenue ruling describes specific conditions in order for defined benefit replacement allocations under a defined contribution plan to meet section 1.401(a)(4)–8(b) of the Income Tax Regulations.

Rev. Rul. 2001–30

I. PURPOSE

This revenue ruling provides guidance with respect to the application of § 1.401(a)(4)–8(b) of the Income Tax Regulations relating to compliance of certain new comparability and similar defined contribution plans with the nondiscrimination requirements of § 401(a)(4) of the Internal Revenue Code.

Under those regulations, a qualified defined contribution plan that has broadly available allocation rates can be tested for nondiscrimination based on plan benefits (rather than contributions) whether or not it meets the minimum allocation gateway. In determining whether a plan has broadly available allocation rates, the regulations permit an allocation to be disregarded to the extent that it is a defined benefit replacement allocation or other transition allocation. Allocations are defined benefit replacement allocations if they satisfy the basic conditions in the regulations and the specific conditions prescribed in this revenue ruling.

II. BACKGROUND

Under final regulations (T.D. 8954, 2001–29 I.R.B. 47) amending §1.401(a)(4)–8(b), published in the Federal Register on June 29, 2001, a defined contribution plan must satisfy a minimum allocation gateway in order to be eligible to meet the nondiscrimination requirements of § 401(a)(4) on the basis of plan benefits rather than contributions, unless, for the plan year, the plan has broadly available allocation rates (as defined in the regulations) or certain age-based allocations.

Section 1.401(a)(4)–8(b)(1)(iii)(A) provides that a plan has broadly available allocation rates for a plan year if each allocation rate under the plan is currently available during the plan year (within the meaning of § 1.401(a)(4)–4(b)(2)) to a group of employees that satisfies § 410(b) (without regard to the average benefit percentage test of § 1.410(b)–5). In determining whether a plan has broadly available allocation rates for the plan year, an employee's allocation may be disregarded to the extent that it is a transition allocation. In order to be treated as a transition allocation, the allocation must be either a defined benefit replacement allocation (DBRA) described in § 1.401(a)(4)–8(b)(1)(iii)(D), or a pre-existing replacement allocation or pre-existing merger and acquisition allocation described in § 1.401(a)(4)–8(b)(1)(iii)(E). Plan provisions relating to transition allocations must meet the requirements of § 1.401(a)(4)–8(b)(1)(iii)(C).

Under § 1.401(a)(4)–8(b)(1)(iii)(D), in order for an allocation to be a DBRA it must be provided in accordance with guidance prescribed by the Commissioner in the Internal Revenue Bulletin (see "III. Specific Conditions" below) and the basic conditions set forth in § 1.401(a)(4)–8(b)(1)(iii)(D)(*1*)–(*4*).

III. SPECIFIC CONDITIONS

(1) This revenue ruling sets forth the specific conditions that an allocation must satisfy to be treated as a DBRA under § 1.401(a)(4)–8(b)(1)(iii)(D). These specific conditions are designed to permit employers to provide, in a nondiscriminatory manner, allocations replacing the retirement benefits that would have been provided under a defined benefit plan, without having to satisfy the minimum allocation gateway. At the same time, the specific conditions are designed to prevent the inappropriate avoidance of the gateway in the case of plans that provide special allocations for employees who formerly benefited under a defined benefit plan.

(2) Pursuant to this revenue ruling, to be treated as a DBRA, an allocation must meet the following conditions for a plan year:

(a) To satisfy the basic condition in § 1.401(a)(4)–8(b)(1)(iii)(D)(*1*) that the allocations are provided to a group of employees who formerly benefitted under an established nondiscriminatory defined benefit plan of the employer or of a prior employer that provided age-based equivalent allocation rates, the allocations must be based on a defined benefit plan that satisfies the following specific conditions:

(i) The defined benefit plan's benefit formula applicable to the group of employees generated equivalent normal allocation rates (determined without regard to changes in accrual rates attributable to changes in an employee's years of service) that increased from year to year as employees attained higher ages.

(ii) The defined benefit plan satisfied §§ 410(b) and 401(a)(4), without regard to § 410(b)(6)(C) and without aggregating with any other plan, for the plan year immediately preceding the first plan year for which the allocation is provided to the employees. If the defined benefit plan was sponsored by a prior employer, but not by the employer, this condition does not apply.

(iii) The defined benefit plan was in effect for at least the 5-year period ending on the date benefit accruals for the employees under the defined benefit plan cease (with one year substituted for 5 years in the case of a defined benefit plan of a former employer), and neither the plan formula nor the coverage of the plan has been substantially changed during such period.

(b) To satisfy the basic condition in § 1.401(a)(4)–8(b)(1)(iii)(D)(*2*) that the allocations for each employee in the group were reasonably calculated, in a consistent manner, to replace the retirement benefits that the employee would have been provided under a defined benefit plan of the employer or of the

prior employer, the allocation must be reasonably calculated to replace the employee's retirement benefits under the defined benefit plan based on the terms of the defined benefit plan (including the § 415(b)(1)(A) limit) as in effect immediately prior to the date benefit accruals under the defined benefit plan ceased.

(c) To satisfy the basic condition in § 1.401(a)(4)–8(b)(1)(iii)(D)(*4*) that the composition of the group of employees who receive the allocations for the plan year is nondiscriminatory, the group of employees who receive the allocations must satisfy § 410(b) (determined without regard to the average benefit percentage test of § 1.410(b)–5) for the plan year.

DRAFTING INFORMATION

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