

SECTION 401(a)

SECTION 414(q)

SECTION 414(s)

# Overview to Non-discrimination

# **INTERNAL REVENUE CODE §401(a)**

---

**§401(a) has a “laundry list” of items that are required for a plan to be qualified:**

- §401(a)(3) §410 minimum participation**
- §401(a)(4) Nondiscrimination**
- §401(a)(5) Special rules - Nondiscrimination**
- §401(a)(6) Quarterly test for §401(a)(3)**
- §401(a)(7) §411 minimum vesting**
- §401(a)(9) Required distributions**
- §401(a)(10) Owner ees / Top Heavy**
- §401(a)(11) Joint and Survivor annuity**
- §401(a)(12) Merger / consolidation / transfer**
- §401(a)(13) Assignment and alienation**
- §401(a)(14) Benefit commencement**
- §401(a)(15) Social Security increase can not decrease benefit**
- §401(a)(16) §415 limits**
- §401(a)(17) Compensation limit**

# **INTERNAL REVENUE CODE §401(a) WRERA 08**

---

- §401(a)(25) Actuarial assumptions for benefits preclude employer discretion**
- §401(a)(26) Minimum participation reqts**
- §401(a)(27) Profit sharing plans**
- §401(a)(28) ESOP requirements**
- §401(a)(29) Benefit limitations**
- §401(a)(30) Elective deferrals - limitations**
- §401(a)(31) Direct transfer of rollover**
- §401(a)(32) Liquidity shortfall – No effect if certain payments not made**
- §401(a)(33) No benefit increase in bankruptcy**
- §401(a)(34) Benefits of missing participants at Plan termination**
- §401(a)(35) Diversification requirements for certain DC plans**
- §401(a)(36) Distributions during working retirement**

## **INTERNAL REVENUE CODE §401(b) ++**

---

- §401(b) Retroactive changes in plan**
- §401(c) Self-employed + owner-employees**
- §401(d) Contribution limit: owner-employees**
- §401(h) Medical benefits for retirees**
- §401(k) Cash or deferred arrangements**
- §401(l) Permitted disparity**

# **OLDER LAW CHANGES – IRC §401**

---

## **§401(a)(5)(F)**

**Can treat SSRA as uniform retirement age for nondiscrimination testing**

## **§401(a)(9)(C)**

**Required beginning date for distributions is April 1 of calendar year following later of calendar year of (i) attain age 70 ½, or (ii) retirement. Note: 5% owners: old 70 ½ reqt**

## **§401(a)(13)(C)**

**Exception to assignment and alienation reqt for offset against benefit due to certain judgment or settlement**

# **RECENT LAW CHANGES – IRC §401**

---

## **§401(a)(26)(A)**

**Defined benefit plan must benefit at least lesser of 50, or greater of (40%, or 2 employees [or 1])**

## **§401(a)(36)**

**PPA 06**

**Plans may provide distributions to employees at age 62 even though not separated from service**

**MANY more minor changes in PPA 06**

# **EXCISE TAXES**

---

## **§4974 Minimum Required Distributions**

- ) Tax is 50% of the difference between required and actual distribution**
- ) Tax is paid by the participant**

# EXCISE TAXES

---

## §4975 Prohibited Transactions

- ) Tax is 15%
- ) IRS can increase to 100% if not corrected
- ) Usually entire amount is subject to tax

## Revenue Ruling 2002-43

- ) If PT spans multiple years, new PT occurs at start of each taxable year
- ) Loans have special rules
  - Amount subject to tax is loan interest
  - Produces increasing excise taxes

Year	Loan int	Excise tax
200X	A	.15(A)
200Y	B	.15(A+B)
200Z	C	.15(A+B+C)



## **§401(a)(17) COMPENSATION LIMIT**

---

**§401(a)(17) defines includable compensation. DB plan benefits (or DC allocations) can't use pay over this amount:**

<b>2016</b>	<b>265,000</b>
<b>2017</b>	<b>270,000</b>
<b>2018</b>	<b>275,000</b>

**For non-calendar year plan year, use value for calendar year in which plan year begins**

## **§414(q) HIGHLY COMPENSATED EES (HCE)**

---

**Can be HCE solely based on stock ownership,  
or based on pay**

<b>§414(q)(1)(A)</b>	<b>"5% owner" during current or prior year, <u>OR</u></b>
<b>§414(q)(1)(B)(i)</b>	<b>Employee with prior year compensation in excess of 120,000, AND</b>
<b>§414(q)(1)(B)(ii)</b>	<b>If the employer elected this clause in prior year, was in top-paid group in prior year</b>

## **§414(q) HIGHLY COMPENSATED EES (HCE)**

---

### **§414(q)(1)(A)**

- ) IRC §318 Constructive ownership rules apply - see page 14**
- ) IRC §416 defines this as "greater than 5%"**

### **§414(q)(1)(B)(i)**

#### **HISTORICAL VALUES**

<b>2016</b>	<b>120,000</b>
<b>2017</b>	<b>120,000</b>
<b>2018</b>	<b>120,000</b>

- ) For non-calendar year plan year, use value for calendar year in which plan year starts**

### **§414(q)(1)(B)(ii)**

- ) The top-paid group is the highest 20% of employees, ranked by compensation**

## **§414(q)(1)(B)(ii) HIGHLY COMPENSATED EES TOP-PAID GROUP EXCLUSIONS**

---

**Election to use top-paid group can reduce number of employees considered HCEs**

**414(q)(5) defines exclusions that apply to the total employee head count.  $20\% \times (\text{head count})$  gives maximum employees included in paid group.**

- A. Ees with less than 6 months of service**
- B. Ees who work less than 17 ½ hours per week**
- C. Ees who work less than 6 months during a year**
- D. Ees who are less than age 21**
- E. Ees covered by a collective bargaining agreement (CBA)**

**Calculate age and service at end of prior plan year**

**Employer may elect to use shorter service, smaller hours / months, or lower age**

## **1.414(q)-1T HIGHLY COMPENSATED EES TOP-PAID GROUP EXCLUSIONS**

---

**E. Employees covered by a collective bargaining agreement (CBA):**

- i. 90 percent or more of all employees are covered under a CBA, AND**
- ii. Plan being tested only covers employees who are not covered under a CBA**

**These details are in the regulation, not in IRC §414**

**Tested numerous times on the exam!**

## **§318 - CONSTRUCTIVE OWNERSHIP**

---

**Individuals are considered as owning the stock owned directly by their:**

- ) Children**
- ) Grandchildren**
- ) Parents**
- ) Spouse**

**“Spouse” does not include a legally separated spouse**

**“Children” does include a legally adopted child**

**More complex rules for attribution to / from partnerships, estates, trusts, corporations**

## **§414(s) COMPENSATION**

---

**401(k) and other deferrals are included by default**

**) Plan definition of compensation for testing purposes can override 414(s) defaults**

**) Compensation for testing purposes can be different than that used for plan benefits**

**) An alternative definition is NOT allowed if it discriminates in favor of the HCEs**

## **§414(s) COMPENSATION – DISCRIMINATORY?**

---

**1.414(s)-1(d)(3)(i) defines the test for an alternative 414(s) compensation definition:**

- 1. Calculate ratio of 414(s) comp to total comp for each employee.**
- 2. 1.414(s)-1(d)(3)(ii) states that the total compensation must be limited by 401(a)(17)**
- 3. Compare average of ratios for HCEs versus non-HCEs**
- 4. 414(s) comp definition is nondiscriminatory if difference does not exceed de minimis amount**
- 5. The de minimis amount is based on facts and circumstances**