

Part I

Section 401.— Qualified pension, profit-sharing, and stock bonus plans.
(Aso: 26 CFR § 1.401-14)

Rev. Rul. 2026-22

ISSUE

Does the use of a pension plan's section 401(h) account assets to pay for medical benefits described in section 401(h) of plan participants who, in accordance with section 401(a)(36) of the Internal Revenue Code (Code), have not separated from employment but are eligible to take in-service distributions upon attainment of age 59½, violate section 401(h) or § 1.401-14, or adversely affect the plan's tax-qualified status under section 401(a)?

FACTS

Company A sponsors Plan Z, a pension plan that is a qualified plan under section 401(a). Plan Z includes a section 401(h) retiree medical account (401(h) Account).

Company A maintains a retiree medical benefit plan covering eligible retired employees who have separated from employment and those retirees' spouses and dependents (Retiree Medical Plan). The 401(h) Account provides payment of retiree

health benefits under the Retiree Medical Plan for eligible Plan Z participants (and their spouses and dependents). Although the Retiree Medical Plan provides health benefits to eligible participants who were key employees, as defined in section 416(i), the 401(h) Account does not fund benefits for participants who were key employees.

Plan Z, in accordance with section 401(a)(36), permits plan participants who have attained age 59½ and have not separated from employment with Company A (401(a)(36)-Eligible Participants) to elect to receive in-service distributions. All forms of benefit payment, including a lump-sum option, are available to 401(a)(36)-Eligible Participants.

Company A also maintains a medical benefit plan covering eligible active employees and their spouses and dependents (Active Medical Plan). The 401(a)(36)-Eligible Participants are covered by the Active Medical Plan.

No section 420 transfers have ever been made to the 401(h) Account.

Company A does not have a contractual obligation to fund medical benefits for retired employees receiving benefits under the Retiree Medical Plan or for active employees receiving medical benefits under the Active Medical Plan.

The 401(h) Account is substantially overfunded. In addition to using funds in the 401(h) Account to fund medical benefits under the Retiree Medical Plan, Company A wishes to use surplus funds in the 401(h) Account to fund medical benefits under the Active Medical Plan for 401(a)(36)-Eligible Participants (who are not key employees) and their spouses and dependents.

Company A amends Plan Z to allow the 401(h) Account to fund medical benefits for the 401(a)(36)-Eligible Participants, and their spouses and dependents, under the Active Medical Plan.

LAW

Section 401(a) describes the requirements for a qualified trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of the employer's employees or their beneficiaries.

Section 501(a) provides that an organization described in section 401(a) is generally exempt from federal income tax.

Section 401(a)(36) provides that a trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under section 401 solely because the plan provides that a distribution may be made from the trust to an employee who has attained age 59½ and who is not separated from employment at the time of the distribution.

Section 401(h) provides that, under regulations prescribed by the Secretary, and subject to the provisions of section 420, a pension or annuity plan may provide for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses, and their dependents, but only if—

- (1) such benefits are subordinate to the retirement benefits provided by the plan;
- (2) a separate account is established and maintained for such benefits;

- (3) the employer's contributions to such separate account are reasonable and ascertainable;
- (4) it is impossible, at any time prior to the satisfaction of all liabilities under the plan to provide such benefits, for any part of the corpus or income of such separate account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits;
- (5) notwithstanding the provisions of section 401(a)(2), upon the satisfaction of all liabilities under the plan to provide such benefits, any amount remaining in such separate account must, under the terms of the plan, be returned to the employer; and
- (6) in the case of an employee who is a key employee, a separate account is established and maintained for such benefits payable to such employee (and the employee's spouse and dependents) and such benefits (to the extent attributable to plan years beginning after March 31, 1984, for which the employee is a key employee) are only payable to such employee (and the employee's spouse and dependents) from such separate account.

For the purposes of section 401(h)(6), the term "key employee" means any employee, who at any time during the plan year or any preceding plan year during which contributions were made on behalf of the employee, is or was a key employee as defined in section 416(i).

Section 1.401-14(a) provides that, under section 401(h), a qualified pension or annuity plan may make provision for the payment of sickness, accident, hospitalization, and medical expenses for retired employees, their spouses, and their dependents. The term “medical benefits described in section 401(h)” is used in § 1.401-14 to describe such payments.

Section 1.401-14(b)(1) provides that, under section 401(h), a qualified pension or annuity plan may provide for the payment of medical benefits described in section 401(h) only for retired employees, their spouses, or their dependents. To be “retired” for purposes of eligibility to receive medical benefits described in section 401(h), an employee must be eligible to receive retirement benefits provided under the pension plan, or else be retired by an employer providing such medical benefits by reason of permanent disability. For purposes of the preceding sentence, an employee is not considered to be eligible to receive retirement benefits provided under the plan if the employee is still employed by the employer and a separation from employment is a condition to receiving the retirement benefits.

Section 1.401-14(c) sets forth requirements that must be met for a qualified pension or annuity plan to provide medical benefits described in section 401(h):

- (1) The plan must specify the medical benefits described in section 401(h) that will be available and must contain provisions for determining the amount which will be paid. Such benefits, when added to any life insurance protection

- provided for under the plan, must be subordinate to the retirement benefits provided by such plan.
- (2) A separate account must be maintained for recordkeeping purposes with respect to contributions to fund medical benefits described in section 401(h).
 - (3) Amounts contributed to fund medical benefits, as described in section 401(h), must be reasonable and ascertainable.
 - (4) It must be impossible, at any time prior to the satisfaction of all liabilities under the plan to provide for the payment of medical benefits described in section 401(h), for any part of the corpus or income of the medical benefits account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits.
 - (5) The plan must provide that any amounts which are contributed to fund medical benefits described in section 401(h) and which remain in the medical benefits account upon the satisfaction of all liabilities arising out of the operation of the medical benefits portion of the plan are to be returned to the employer.
 - (6) The plan must expressly provide that in the event an individual's interest in the medical benefits account is forfeited prior to termination of the plan an amount equal to the amount of the forfeiture must be applied as soon as possible to reduce employer contributions to fund the medical benefits described in section 401(h).

ANALYSIS

Section 401(h) provides for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses, and their dependents if certain conditions are met. The second sentence of § 1.401-14(b)(1) provides that, to be “retired” for purposes of eligibility to receive medical benefits described in section 401(h), an employee must be eligible to receive retirement benefits under the pension plan. The third sentence of § 1.401-14(b)(1) provides that an employee is not considered to be eligible to receive retirement benefits under the plan if the employee is still employed by the employer and a separation from employment is a condition to receiving the retirement benefits.

Plan Z allows 401(a)(36)-Eligible Participants to elect to commence receipt of payment of retirement benefits from Plan Z. Because a separation from employment is not a condition to receiving the retirement benefits, the 401(a)(36)-Eligible Participants are eligible to receive retirement benefits under Plan Z, even though they are still current employees of Company A. Accordingly, the 401(a)(36)-Eligible Participants who are still active employees satisfy the definition of “retired” as described in the second sentence of § 1.401-14(b)(1) and are not excluded from being considered eligible to receive retirement benefits under § 1.401-14(b)(1). However, no implications are intended regarding whether the 401(a)(36)-Eligible Participants are treated as retired for any other purpose under the Code.

HOLDING

The use of assets from Plan Z's 401(h) Account to pay for medical benefits described in section 401(h) of 401(a)(36)-Eligible Participants who have not separated from employment but are eligible to take in-service distributions upon attainment of age 59½, does not violate section 401(h) or § 1.401-14, or adversely affect the plan's tax-qualified status under section 401(a).

DRAFTING INFORMATION

The principal author of this revenue ruling is the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this revenue ruling, contact the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) at (202) 317-4102 (not a toll-free call).