

**CHART COMPARISON BETWEEN PLAN QUALIFICATION
REQUIREMENTS UNDER THE CODE AND THE PRIRC**

<i>Code § or Administrative Guidance</i>	<i>PRIRC § or Regulation Article</i>	<i>Subject Matter</i>	<i>Comments</i>
401(a)	1165(a)	Exclusive Benefit Rule, Types of Qualified Plans & Location of the Trust	<ul style="list-style-type: none"> • Similar rules on exclusive benefit rule. • Similar rules on types of qualified plans. • No equivalent requirement that trust be located in P.R.
401(a)(1)	1165(a)(1)	Exclusive Benefit Rule	<ul style="list-style-type: none"> • Similar rules on exclusive benefit rule. • No mention of contributions by charitable remainder trusts.
401(a)(2)	1165(a)(2)	Restrictions on Reversion of Assets to Employer	<ul style="list-style-type: none"> • Similar rules. • No reference to exceptions to exclusive benefit, but they are provided under ERISA § 403(c)(2).
401(a)(3)	1165(a)(3)	Minimum Coverage Test	<ul style="list-style-type: none"> • Similar requirement that plans pass minimum coverage test. • Technically, test is similar but not identical. • In practice, test results can be different.
401(a)(4)	1165(a)(4)	General Nondiscrimination Test on Benefits and Contributions	<ul style="list-style-type: none"> • Technically the same requirement. • Mechanics of the test completely different (objective testing in the U.S. vs. facts-and-circumstances testing in P.R.).
401(a)(5)	1165(a)(5)	Exceptions to General Nondiscrimination Requirement on Benefits and Contributions	<ul style="list-style-type: none"> • Similar requirements regarding (i) salaried and clerical employees and (ii) contributions or benefits as a uniform percentage of compensation. • Similar on permitted disparity, but “integration-out” is allowed. • No specific rules on integrated defined benefit plan. • No specific rules on plan aggregation.
401(a)(6)	1165(a)(6)	Quarterly Minimum Coverage Testing	<ul style="list-style-type: none"> • Same.

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401(a)(7)	None	Minimum Vesting Standards	<ul style="list-style-type: none"> • No PRIRC counterpart, but similar rules apply through ERISA § 203.
401(a)(8)	Article 1165-1(b)(1)(i)	Prohibition of Allocation of Forfeitures under Defined Benefit Plans	<ul style="list-style-type: none"> • Similar rules.
401(a)(9)	None	Minimum Required Distributions	<ul style="list-style-type: none"> • No PRIRC counterpart.
401(a)(10)	None	Top-Heavy Requirements	<ul style="list-style-type: none"> • No PRIRC counterpart.
401(a)(11)	None	Survivor Annuity Requirements	<ul style="list-style-type: none"> • No PRIRC counterpart, but similar rules apply through ERISA § 205.
401(a)(12)	None	Requirements on Plan Merger or Consolidations	<ul style="list-style-type: none"> • No PRIRC counterpart, but similar rules apply through ERISA § 208.
401(a)(13)	None	Anti-Alienation Rule	<ul style="list-style-type: none"> • No PRIRC counterpart, but similar rules apply through ERISA § 206(d).
401(a)(14)	None	Timeframe for Commencement of Distributions	<ul style="list-style-type: none"> • No PRIRC counterpart, but similar rules apply through ERISA § 206(a).
401(a)(15)	None	Prohibition of Pension Reduction upon Increase on Social Security Benefits	<ul style="list-style-type: none"> • No PRIRC counterpart, but similar rules apply through ERISA § 206(b).
401(a)(16)	None	Limitations on Annual Benefits and Annual Contributions	<ul style="list-style-type: none"> • No PRIRC counterpart.
401(a)(17)	None	Annual Compensation Limits	<ul style="list-style-type: none"> • No PRIRC counterpart.
401(a)(19)	None	Restrictions on Forfeitures upon Withdrawal of Employer Contributions	<ul style="list-style-type: none"> • No PRIRC counterpart, but similar rules apply through ERISA § 206(c).
401(a)(20)	None	Distributions upon Plan Termination	<ul style="list-style-type: none"> • No PRIRC counterpart.

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401(a)(22)	1165(h)(1)(B)(ix)	Participants' Voting Rights on Non-readily Tradable Employer Stock Held by ESOPs	<ul style="list-style-type: none"> • Different rules. • Participants have voting rights only if stock is registered in U.S. or P.R. • No voting rights on non-registered stock. • No special rules for newspaper publishers.
401(a)(23)	1165(h)(1)(B)(ii) and (iii)	Right to Demand Payment in Employer Securities, Put Option & Distribution Requirements under ESOPs	<ul style="list-style-type: none"> • Different rules. • No right to demand payment in employer securities and no put option. • Similar distribution requirements, but using the lower limits previously provided under the Code with not COLA.
401(a)(24)	None	Participation of Governmental Plans in Group Trusts	<ul style="list-style-type: none"> • No PRIRC counterpart. • No regulations on group trusts.
401(a)(25)	None	Required Disclosure of Actuarial Assumptions by Pension Plans	<ul style="list-style-type: none"> • No PRIRC counterpart. • Arguably, similar rules apply through ERISA § 302, which incorporates the principles of Code § 412.
401(a)(26)	None	Minimum Participation Requirements for Pension Plans	<ul style="list-style-type: none"> • No PRIRC counterpart.
401(a)(27)	Article 1165-1(b)(1)(ii) and (iii)	Profits for Establishment of Profit Sharing Plan & Plan Document Must Designate Type of Plan	<ul style="list-style-type: none"> • Opposite requirements; profits are needed for establishment of profit sharing plan. • No PRIRC counterpart on designation of specific type of plan.
401(a)(28)	1165(a)(10)	Diversification of Investments & Independent Valuation of Non-readily Tradable Stock by ESOPs	<ul style="list-style-type: none"> • Similar rules.
401(a)(29)	None	Security Required upon Adoption of Amendment to Pension Plan Resulting in Significant Underfunding	<ul style="list-style-type: none"> • No PRIRC counterpart. • Questionable whether similar rule applies under ERISA § 302.

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401(a)(30)	None	Plan Provisions Specifically Limit Elective Deferrals During Same Taxable Year to all Plans of the Same Employer	<ul style="list-style-type: none"> • No PRIRC Counterpart. • There are statutory annual limits on elective deferrals, but there is no rule requiring plans to incorporate specific limit on elective deferrals of plans of the same employer.
401(a)(31)	1165(b)(2)	Option of Direct Transfer of Eligible Rollover distributions	<ul style="list-style-type: none"> • There are rules on direct rollovers, but offering such rollovers is not a qualification requirement. • Different definition of “eligible rollover distribution.”
401(a)(32)	None	Treatment of Failure to Make Certain Payments if Pension Plan has Liquidity Shortfall	<ul style="list-style-type: none"> • No PRIRC counterpart, but similar rules apply through ERISA § 206(e).
401(a)(33)	None	Prohibition of Benefit Increases while Plan Sponsor is in Bankruptcy	<ul style="list-style-type: none"> • No PRIRC counterpart, but similar rules apply through ERISA § 204(i).
401(a)(34)	None	Benefits of Missing Participants at Plan Termination	<ul style="list-style-type: none"> • No PRIRC counterpart, but similar rules apply through ERISA § 206(f).
401(b)	None	Retroactive Plan Remedial Amendments	<ul style="list-style-type: none"> • No PRIRC counterpart.
401(f)	<i>C.f.</i> , 1023(n) and Article 1165-1(a)	Annuity Contracts Treated as Qualified Trusts	<ul style="list-style-type: none"> • Similar rules.
401(g)	None	Definition of “Annuity Contract”	<ul style="list-style-type: none"> • No PRIRC counterpart.
401(h)	Article 1165-1(b)(1)	Payment of Retiree Health Care Benefits by Qualified Plans	<ul style="list-style-type: none"> • Flush language indicates that defined contribution plans (but not pension plans) may provide incidental health, and accident benefits, but no specific mention of retirees. • Specific rules on what constitutes “incidental.”

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401(k)	1165(e)	Qualified Cash or Deferred Arrangements	<ul style="list-style-type: none"> • Different Rules. • Lower elective deferral limits IRA contributions offset of elective deferrals. • No COLA adjustment of limits. • No catch-up contributions. • Technically, ADP test is similar, but due to different “HCE” definition, in practice results are different. • No safe harbor plans.
401(l)	1165(a)(5) and Article 1165-3(c)	Permitted Disparity/Social Security Integration	<ul style="list-style-type: none"> • No specific safe harbors, only facts-and-circumstances testing. • Potentially much broader. • Allows for integrating-out employees.
401(m)	• None	Nondiscrimination Test for Matching and Employee Contributions/ACP Test	<ul style="list-style-type: none"> • No PRIRC counterpart. • Contributions other than elective deferrals are tested under the general nondiscrimination test of PRIRC § 1165(a)(4). • There is a limit on employee after-tax contributions, but it does not operate as a discrimination test.
402(a)	1065(b)(1) & 1022(b)(2)	Taxability of Benefits from Qualified Plans	<ul style="list-style-type: none"> • Different rules. • For annuities, Code uses the simplified table, whereas PRIRC uses 3% rule. • P.R. participants in P.R. plans not subject to U.S. taxes, but participants in U.S. plans are. • Unclear application of rule to pension plans.
402(b)	1165(c)	Taxability of Benefits from Nonqualified Plans	<ul style="list-style-type: none"> • Similar rules. • No special rules for taxation by HCEs upon plan’s failure to satisfy certain nondiscrimination tests.
402(c)	1165(b)(2)	Rules Applicable to Rollovers from Qualified Plans	<ul style="list-style-type: none"> • The concepts of direct and participant-completed rollovers exist, but rules and definitions are different.

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402(d)	None	Taxability of Benefits from Foreign Trust	<ul style="list-style-type: none"> • No PRIRC counterpart. • Since P.R. plans are exempt under Code § 501(a), this section favors treating P.R. plans as qualified plans for purposes of U.S. income taxation of benefits.
402(e)	1165(b)(2) and (e)(5)	Special Rules applicable to Qualified Plans, Distributions to Alternate Payees, Distributions to Nonresident Aliens, Tax Exemption on CODAs, Tax Deferral on Net Unrealized Appreciation, and Direct Trustee-to-Trustee Transfers	<ul style="list-style-type: none"> • No PRIRC counterpart, except for the tax exemption on amounts contributed to a qualified pursuant to a CODA and tax deferral upon direct transfers. • No tax deferral on net unrealized appreciation on lump-sum distributions of employer stock.
402(f)	None	Rollover/Tax Notice	<ul style="list-style-type: none"> • No PRIRC counterpart.
402(g)	1165(e)(7)	Annual Limit on Elective Deferrals	<ul style="list-style-type: none"> • PR limit of lesser of 10% of compensation or \$8,000. • \$8,000 prong is offset by contributions to P.R. tax-deferred IRAs. • No catch-up contributions nor COLA adjustments. • Similar procedures for correction of excess deferrals.
402(h)	None	Special Rules for Simplified Employee Pensions (SEPs)	<ul style="list-style-type: none"> • No PRIRC counterpart.
402(k)	None	Special Rules for Simple Retirement Accounts	<ul style="list-style-type: none"> • No PRIRC counterpart.
403(a)	None	Taxability of Beneficiary under a Qualified Annuity Plan	<ul style="list-style-type: none"> • No PRIRC counterpart.
403(b)	None	Taxability of Beneficiary under Annuity Purchased by Charitable Organization or Public School	<ul style="list-style-type: none"> • No PRIRC counterpart.
403(c)	None	Taxability of Beneficiary under Nonqualified Annuities or Annuities Purchased by Exempt Organization	<ul style="list-style-type: none"> • No PRIRC counterpart.

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404	1023(n)	Deduction for Contributions to Qualified and Nonqualified Plans	<ul style="list-style-type: none"> • Basic rules are mostly similar, although deduction limits for defined contribution plans are lower. • No mention of deductibility of contributions needed to satisfy minimum funding standards. • Similar rules on Keoghs and ESOPs, but no rules on retirement income accounts for ministers, negotiated plans, independent contractors, SEPs, or Code §§ 401(a)(17) or 415 limits. • Contributions to P.R. plans deductible under the Code.
404A	None	Deduction for Certain Foreign Deferred Compensation Plans	<ul style="list-style-type: none"> • No PRIRC counterpart.
408	1169	Tax-Deferred Individual Retirement Accounts (IRAs)	<ul style="list-style-type: none"> • Different Rules. • IRAs have to be established under P.R. law, which requires investment in P.R. assets.
408A	1169B	Taxable IRAs/Roth IRAs	<ul style="list-style-type: none"> • Different Rules. • IRAs have to be established under P.R. law, which requires investment in P.R. assets.
409	1165(a)(10) and (h)	Special Qualification Requirements for ESOPs	<ul style="list-style-type: none"> • Different Rules. • No benefit in qualifying plan as an ESOP.
410(a)	None	Minimum Participation Standards	<ul style="list-style-type: none"> • No PRIRC counterpart, but similar rules apply through ERISA § 202.
410(b)	1165(a)(3)	Minimum Coverage Test	<ul style="list-style-type: none"> • Mostly similar rules, but due to different HCE definition, in practice results may differ.
411	None	Minimum Vesting Standards	<ul style="list-style-type: none"> • No PRIRC counterpart, but similar rules apply through ERISA § 203. • No partial plan termination rule.
412	None	Minimum Funding Requirements	<ul style="list-style-type: none"> • No PRIRC counterpart, but similar rules apply through ERISA § 302.
413	None	Special Rules for Collective Bargained Plans	<ul style="list-style-type: none"> • No PRIRC counterpart.

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414(a)	None	Crediting of Service with Predecessor Employer	<ul style="list-style-type: none"> • No PRIRC counterpart.
414(b)	Article 1165-3(a)(1)	Aggregation of Members of Controlled Group of Corporations	<ul style="list-style-type: none"> • Employer aggregation is optional.
414(c)	Article 1165-3(a)(1)	Aggregation of Trades or Businesses under Common Control	<ul style="list-style-type: none"> • Employer aggregation is optional.
414(d)	None	Definition of “Governmental Plan”	<ul style="list-style-type: none"> • No PRIRC counterpart. • Similar definition in ERISA § 3(32).
414(e)	None	Definition of “Church Plans”	<ul style="list-style-type: none"> • No PRIRC counterpart. • Similar definition in ERISA § 3(33).
414(f)	None	Definition of “Multiemployer Plans”	<ul style="list-style-type: none"> • No PRIRC counterpart. • Similar definition in ERISA § 3(37).
414(g)	None	Definition of “Plan Administrator	<ul style="list-style-type: none"> • No PRIRC counterpart. • Similar definition in ERISA § 3(16).
414(h)	None	Tax Treatment of Employee Contributions	<ul style="list-style-type: none"> • No PRIRC counterpart.
414(i)	None	Definition of “Defined Contribution Plan”	<ul style="list-style-type: none"> • No PRIRC counterpart. • Similar definition in ERISA § 3(34).
414(j)	None	Definition of “Defined Benefit Plan”	<ul style="list-style-type: none"> • No PRIRC counterpart. • Similar definition in ERISA § 3(35).
414(k)	None	Classification of Certain Hybrid Plans for Testing Purposes	<ul style="list-style-type: none"> • No PRIRC counterpart.
414(l)	None	Rules for Merger and Consolidation of Plans or Transfers of Plan Assets	<ul style="list-style-type: none"> • No PRIRC counterpart, but similar rules apply through ERISA § 208.
414(m)	None	Aggregation of Members of Affiliated Service Group	<ul style="list-style-type: none"> • No PRIRC counterpart.
414(n)	None	Classification of Leased Employees	<ul style="list-style-type: none"> • No PRIRC counterpart.

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414(o)	None	Treasury's Authority to Enact Regulations to Avoid Noncompliance through Separate Organizations	<ul style="list-style-type: none"> • No PRIRC counterpart.
414(p)	None	Definition of "Qualified Domestic Relations Order"	<ul style="list-style-type: none"> • No PRIRC counterpart. • Similar definition in ERISA § 206(d).
414(q)	1165(e)(3)(E)(iii)	Definition of "Highly Compensated Employee"	<ul style="list-style-type: none"> • Different definition. • HCEs are Employees in the top 1/3 of the compensation scale.
414(r)	None	Special testing rules for Qualified Separate Lines of Business	<ul style="list-style-type: none"> • No PRIRC counterpart.
414(s)	Article 1165-8(h)(9)	Definition of "Compensation"	<ul style="list-style-type: none"> • Different definition. • Much broader.
414(u)	None	USERRA requirements for Qualified Plans	<ul style="list-style-type: none"> • No PRIRC counterpart.
414(v)	None	Catch-up Contributions	<ul style="list-style-type: none"> • No PRIRC counterpart.
415	None	Annual Limitations on Benefits and Contributions	<ul style="list-style-type: none"> • No PRIRC counterpart.
416	None	Special Rules for Top Heavy Plans	<ul style="list-style-type: none"> • No PRIRC counterpart.
417	None	Special Rules for Qualified Survivor Annuities	<ul style="list-style-type: none"> • No PRIRC counterpart, but similar rules apply through ERISA § 205.
418	None	Multiemployer Plan Reorganization	<ul style="list-style-type: none"> • No PRIRC counterpart.
420	None	Transfers of Excess Pension Assets to Retiree Health Accounts	<ul style="list-style-type: none"> • No PRIRC counterpart.
4971	None	Excise Tax on Failure to Meet Minimum Funding Standards	<ul style="list-style-type: none"> • No PRIRC counterpart.
4972	None	Excise Tax on Nondeductible Contributions to a Qualified Plan	<ul style="list-style-type: none"> • No PRIRC counterpart.
4973	None	Excise Tax on Excess Contributions to IRAs	<ul style="list-style-type: none"> • No PRIRC counterpart.

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4974	None	Excise Tax on Excess Accumulations in Qualified Plans	<ul style="list-style-type: none"> • No PRIRC counterpart.
4975	1409	Excise Tax on Prohibited Transactions	<ul style="list-style-type: none"> • No excise tax, but plan disqualification. • Different rules and definitions.
4978	None	Excise Tax on Certain Dispositions by ESOPs	<ul style="list-style-type: none"> • No PRIRC counterpart.
4979	None	Excise Tax on Excess Contributions	<ul style="list-style-type: none"> • No PRIRC counterpart.
4980	None	Excise Tax on Reversion of Plan Assets upon Plan Termination	<ul style="list-style-type: none"> • No PRIRC equivalent.
Rev. Proc.	1165-1(e)	Initial Determination Letter	<ul style="list-style-type: none"> • P.R. mandatory – U.S. Voluntary.
Rev. Proc.	1165(e)	Plan Amendment	<ul style="list-style-type: none"> • P.R. mandatory – U.S. Voluntary.
Rev. Proc.	1165-1(b)(2)	Plan Termination	<ul style="list-style-type: none"> • P.R. mandatory – U.S. Voluntary.
6057	1054(f)	Filing Annual Report	<ul style="list-style-type: none"> • Different local filing requirements, plus the same U.S. filing requirement applies through ERISA § 103.
512-514	1404 – 1408	Taxation of Unrelated Business Taxable Income	<ul style="list-style-type: none"> • Different Rules.