these regulations. A defined benefit excess plan or offset plan that does not satisfy section 401(l) with respect to all plan years beginning on or after the effective date of these regulations may, under the rules of §1.401(a)(4)-13(c) (and §1.401(a)(4)-13(d), if applicable), satisfy section 401(l) for plan years beginning after a fresh-start date by satisfying the applicable requirements of §§1.401(l)-1 through 1.401(l)-5 after the fresh-start date.

(c) Compliance during transition period.
For plan years beginning on or after January 1, 1989, and before the effective date of these regulations, as set forth in paragraph (b) of this section, a plan must be operated in accordance with a reasonable, good faith interpretation of section 401(l). Whether a plan is operated in accordance with a reasonable, good faith interpretation of section 401(l) will generally be determined based on all of the relevant facts and circumstances, including the extent to which an employer has resolved unclear issues in its favor. A plan will be deemed to be operated in accordance with a reasonable, good faith interpretation of section 401(l) if it is operated in accordance with the terms of §§1.401(l)-1 through 1.401(l)-5.

[T.D. 8486, 58 FR 46835, Sept. 3, 1993]
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(i) Employee contributions.
(ii) Recharacterized elective contributions.
(iii) Matching contributions.

(5) Employee contributions and matching contributions not taken into account under the ACP test.

(i) General rule.
(ii) Disproportionate matching contributions.
(A) Matching contributions in excess of 100%.
(B) Representative matching rate.
(C) Definition of matching rate.
(iii) Qualified matching contributions used to satisfy the ADP test.
(iv) Matching contributions taken into account under safe harbor provisions.
(v) Treatment of forfeited matching contributions.
(vi) Additional employee contributions or matching contributions pursuant to section 414(u).

(6) Qualified nonelective contributions and elective contributions that may be taken into account under the ACP test.

(i) Timing of allocation.
(ii) Elective contributions taken into account under the ACP test.
(iii) Requirement that amount satisfy section 401(a)(4).
(iv) Aggregation must be permitted.
(v) Disproportionate contributions not taken into account.
(A) General rule.
(B) Definition of representative contribution rate.
(C) Definition of applicable contribution rate.
(D) Special rule for prevailing wage contributions.
(vi) Contribution only used once.

(7) Examples.

(b) Correction of excess aggregate contributions.

(1) Permissible correction methods.
(i) In general.
(A) Additional contributions.
(B) Excess aggregate contributions distributed or forfeited.
(ii) Combination of correction methods.
(iii) Exclusive means of correction.
(2) Correction through distribution.

(i) General rule.
(ii) Calculation of total amount to be distributed.
(A) Calculate the dollar amount of excess aggregate contributions for each HCE.
(B) Determination of the total amount of excess aggregate contributions.
(C) Satisfaction of ACP.
(iii) Apportionment of total amount of excess aggregate contributions among the HCEs.
(A) Calculate the dollar amount of excess aggregate contributions for each HCE.
(B) Limit on amount apportioned to any HCE.
(C) Apportionment to additional HCEs.
(iv) Income allocable to excess aggregate contributions.
(A) General rule.
(B) Method of allocating income.
(C) Alternative method of allocating income for the plan year.
(D) Plan years before 2008.
(E) Alternative method of allocating plan year and gap period income.
(F) Allocable income for recharacterized elective contributions.
(v) Distribution and forfeiture.
(vi) Tax treatment of corrective distributions.
(A) Corrective distributions for plan years beginning on or after January 1, 2008.
(B) Corrective distributions for plan years beginning before January 1, 2008.
(C) Corrective distributions attributable to designated Roth contributions.

(3) Other rules.

(i) No employee or spousal consent required.
(ii) Treatment of corrective distributions and forfeited contributions as employer contributions.
(iii) No reduction of required minimum distribution.
(iv) Partial correction.
(v) Matching contributions on excess contributions, excess deferrals and excess aggregate contributions.
(A) Corrective distributions not permitted.
(B) Coordination with section 401(a)(4).
(vi) No requirement for recalculation.

(4) Failure to timely correct.

(i) Failure to correct within 2½ months after end of plan year.
(ii) Failure to correct within 12 months after end of plan year.
(iii) Special rule for eligible automatic contribution arrangements.

(5) Examples.

(c) Additional rules for prior year testing method.

(1) Rules for change in testing method.
(2) Calculation of ACP under the prior year testing method for the first plan year.

(i) Plans that are not successor plans.
(ii) First plan year defined.
(iii) Plans that are successor plans.

(3) Plans using different testing methods for the ACP and ADP test.

(4) Rules for plan coverage change.

(i) In general.
(ii) Optional rule for minor plan coverage changes.

(iii) Definitions.
(A) Plan coverage change.
(B) Prior year subgroup.
(C) Weighted average of the ACPs for the prior year subgroups.

(iv) Examples.

§ 1.401(m)–3 Safe harbor requirements.

(a) ACP test safe harbor.

(1) Section 401(m)(11) safe harbor.
(2) Section 401(m)(12) safe harbor.
(3) Requirements applicable to safe harbor contributions.

(b) Safe harbor nonelective contribution requirement.

(c) Safe harbor matching contribution requirement.

(d) Limitation on contributions.

(1) General rule.

(2) Matching rate must not increase.

(3) Limit on matching contributions.

(4) Limitation on rate of match.

(5) HCEs participating in multiple plans.

(6) Permissible restrictions on elective deferrals by NHCEs.

(i) General rule.

(ii) Restrictions on election periods.

(iii) Restrictions on amount of contributions.

(iv) Restrictions on types of compensation that may be deferred.

(v) Restrictions due to limitations under the Internal Revenue Code.

(e) Notice requirement.

(f) Plan year requirement.

(1) General rule.

(2) Initial plan year.

(3) Change of plan year.

(4) Final plan year.

(g) Plan amendments adopting nonelective contributions.

(h) Permissible reduction or suspension of safe harbor matching contributions.

(1) General rule.

(2) Notice of suspension requirement.

(i) Reserved.

(j) Other rules.

(1) Contributions taken into account.

(2) Use of safe harbor nonelective contributions to satisfy other nondiscrimination tests.

(3) Early participation rules.

(4) Satisfying safe harbor contribution requirement under another defined contribution plan.

(5) Contributions used only once.

(6) Plan must satisfy ACP with respect to employee contributions.

§ 1.401(m)—1 Employee contributions and matching contributions.

(a) General nondiscrimination rules—(1) Nondiscriminatory amount of contributions—(i) Exclusive means of amounts testing. A defined contribution plan does not satisfy section 401(a) for a plan year unless the amount of employee contributions and matching contributions to the plan for the plan year satisfies section 401(a)(4). The amount of employee contributions and matching contributions under a plan satisfies the requirements of section 401(a)(4) with respect to amounts if and only if the amount of employee contributions and matching contributions satisfies the nondiscrimination test of section 401(m) under paragraph (b) of this section and the plan satisfies the additional requirements of paragraph (c) of this section. See §1.401(a)(4)–1(b)(2)(i)(B).

(1) Testing benefits, rights and features. A plan that provides for employee contributions or matching contributions must satisfy the requirements of section 401(a)(4) relating to benefits, rights and features in addition to the requirement regarding amounts described in paragraph (a)(1)(i) of this section. For example, the right to make each level of employee contributions and the right to each level of matching contributions under the plan are benefits, rights or features subject to the requirements of section 401(a)(4). See §1.401(a)(4)–4(e)(3)(i) and (iii)(F) through (G).

(2) Matching contributions—(1) In general. For purposes of section 401(m), this section and §§1.401(m)–2 through 1.401(m)–5, matching contributions are—

(A) Any employer contribution (including a contribution made at the employer’s discretion) to a defined contribution plan on account of an employee contribution to a plan maintained by the employer;

(B) Any employer contribution (including a contribution made at the employer’s discretion) to a defined contribution plan on account of an elective deferral; and

(C) Any forfeiture allocated on the basis of employee contributions, matching contributions, or elective deferrals.

(ii) Employer contributions made on account of an employee contribution or elective deferral. Whether an employer contribution is made on account of an employee contribution or an elective deferral is determined on the basis of all the relevant facts and circumstances, including the relationship between the employer contribution and employee actions outside the plan. An employer