Internal Revenue Service, Treasury

§ 1.401(k)–0 Table of contents.

This section contains first a list of section headings and then a list of the paragraphs in each section in §§1.401(k)–1 through 1.401(k)–6.

List of Sections

§ 1.401(k)–1 Certain cash or deferred arrangements.
§ 1.401(k)–2 ADP test.
§ 1.401(k)–3 Safe harbor requirements.
§ 1.401(k)–4 SIMPLE 401(k) plan requirements.
§ 1.401(k)–5 Special rules for mergers, acquisitions and similar events. [Reserved]
§ 1.401(k)–6 Definitions.

List of Paragraphs

§ 1.401(k)–1 Certain cash or deferred arrangements.
(a) General rules.
(1) Certain plans permitted to include cash or deferred arrangements.
(2) Rules applicable to cash or deferred arrangements generally.
(1) Definition of cash or deferred arrangement.
(i) Treatment of after-tax employee contributions.
(ii) Treatment of ESOP dividend election.
(2) Rules applicable to cash or deferred elections generally.
(i) Definition of cash or deferred election.
(ii) Automatic enrollment.
(iii) Rules related to timing.
(A) Requirement that amounts not be currently available.
(B) Contribution may not precede election.
(C) Contribution may not precede services.
(iv) Current availability defined.
(v) Certain one-time elections not treated as cash or deferred elections.
(vi) Tax treatment of employees.
(vii) Examples.
(4) Rules applicable to qualified cash or deferred arrangements.
(i) Definition of qualified cash or deferred arrangement.
(ii) Treatment of elective contributions as employer contributions.
(iii) Tax treatment of employer contributions.
(iv) Application of nondiscrimination requirements to plan that includes a qualified cash or deferred arrangement.
(A) Exclusive means of amounts testing.
(B) Testing benefits, rights and features.
(C) Minimum coverage requirement.
(5) Rules applicable to nonqualified cash or deferred arrangements.
(i) Definition of nonqualified cash or deferred arrangement.
(ii) Treatment of elective contributions as nonelective contributions.
§ 1.401(k)–0

(C) Employer reliance on employee representation.
(D) Employee need not take counterproductive actions.
(E) Distribution deemed necessary to satisfy immediate and heavy financial need.
(F) Definition of other plans.
(v) Commissioner may expand standards.
(4) Rules applicable to distributions upon plan termination.
(i) No alternative defined contribution plan.
(ii) Lump sum requirement for certain distributions.
(iii) Rules applicable to all distributions.
(i) Exclusive distribution rules.
(ii) Deemed distributions.
(iii) ESOP dividend distributions.
(iv) Limitations apply after transfer.
(6) Examples.
(e) Additional requirements for qualified cash or deferred arrangements.
(1) Qualified plan requirement.
(2) Election requirements.
(i) Cash must be available.
(ii) Frequency of elections.
(iii) Separate accounting requirement.
(i) General rule.
(ii) Satisfactory of separate accounting requirement.
(i) General rule.
(2) Determination of ADP.
(i) General rule.
(ii) ADR of HCEs eligible under more than one arrangement.
(A) General rule.
(B) Plans not permitted to be aggregated.
(iii) Examples.
(4) Elective contributions taken into account under the ADP test.
(i) General rule.
(ii) Elective contributions for partners and self-employed individuals.
(iii) Elective contributions not taken into account under the ADP test.
(i) General rule.
(ii) Elective contributions for NHCEs.
(iii) Elective contributions treated as catch-up contributions.
(iv) Elective contributions used to satisfy the ACP test.
(v) Additional elective contributions pursuant to section 414(u).
(vi) Default elective contributions pursuant to section 414(w).
(6) Qualified nonelective contributions and qualified matching contributions that may be taken into account under the ADP test.
(i) Timing of allocation.
(ii) Requirement that amount satisfy section 401(a)(4).
(iii) Aggregation must be permitted.
(iv) 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.
(v) Qualified matching contributions.
(vi) Contributions only used once.
(7) Examples.
(b) Correction of excess contributions.
(i) Permissible correction methods.
(i) In general.
(A) Qualified nonelective contributions or qualified matching contributions.
(B) Excess contributions distributed.
(C) Excess contributions recharacterized.
(i) Combination of correction methods.
(ii) Exclusive means of correction.
(2) Corrections through distribution.

§ 1.401(k)–2 ADP Test

(a) Actual deferral percentage (ADP) Test.
(1) In general.
(1) ADP test formula.
(ii) HCEs as sole eligible employees.
(iii) Special rule for early participation.
(2) Determination of ADP.
(i) General rule.
(ii) Determination of applicable year under current year and prior year testing method.
(3) Determination of ADR.
(i) General rule.
(ii) ADR of HCEs eligible under more than one arrangement.
(A) General rule.
(B) Plans not permitted to be aggregated.
(iii) Examples.
(4) Elective contributions taken into account under the ADP test.
(i) General rule.
(ii) Elective contributions for partners and self-employed individuals.
(iii) Elective contributions not taken into account under the ADP test.
(i) General rule.
(ii) Elective contributions for NHCEs.
(iii) Elective contributions treated as catch-up contributions.
(iv) Elective contributions used to satisfy the ACP test.
(v) Additional elective contributions pursuant to section 414(u).
(vi) Default elective contributions pursuant to section 414(w).
(6) Qualified nonelective contributions and qualified matching contributions that may be taken into account under the ADP test.
(i) Timing of allocation.
(ii) Requirement that amount satisfy section 401(a)(4).
(iii) Aggregation must be permitted.
(iv) 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.
(v) Qualified matching contributions.
(vi) Contributions only used once.
(7) Examples.
(b) Correction of excess contributions.
(i) Permissible correction methods.
(i) In general.
(A) Qualified nonelective contributions or qualified matching contributions.
(B) Excess contributions distributed.
(C) Excess contributions recharacterized.
(i) Combination of correction methods.
(ii) Exclusive means of correction.
(2) Corrections through distribution.

306
§ 1.401(k)–0

(i) General rule.
(ii) Calculation of total amount to be distributed.
(A) Calculate the dollar amount of excess contributions for each HCE.
(B) Determine the total amount of excess contributions.
(C) Satisfaction of ADP.
(iii) Apportionment of total amount of excess contributions among the HCEs.
(A) Calculate the dollar amount of excess contributions for each HCE.
(B) Limit on amount apportioned to any individual.
(C) Apportionment to additional HCEs.
(iv) Income allocable to excess contributions.
(A) General rule.
(B) Method of allocating income.
(C) Alternative method of allocating plan year income.
(D) Plan years before 2008.
(E) Alternative method for allocating plan year and gap period income.
(v) Distribution.
(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.
(vii) Other rules.
(A) No employee or spousal consent required.
(B) Treatment of corrective distributions as elective contributions.
(C) No reduction of required minimum distribution.
(D) Partial distributions.
(viii) Examples.
(3) Recharacterization of excess contributions.
(i) General rule.
(ii) Treatment of recharacterized excess contributions.
(iii) Additional rules.
(A) Time of recharacterization.
(B) Employee contributions must be permitted under plan.
(C) Treatment of recharacterized excess contributions.
(4) Rules applicable to all corrections.
(i) Coordination with distribution of excess deferrals.
(A) Treatment of excess deferrals that reduce excess contributions.
(B) Treatment of excess contributions that reduce excess deferrals.
(ii) Forfeiture of match on distributed excess contributions.
(iii) Permitted forfeiture of QMAC.
(iv) No requirement for recalculation.
(v) Treatment of excess contributions that are catch-up contributions.
(5) 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.
(c) Additional rules for prior year testing method.
(1) Rules for change in testing method.
(i) General rule.
(ii) Situations permitting a change to the prior year testing method.
(2) Calculation of ADP under the prior year testing method for the first plan year.
(i) Plans that are not successor plans.
(ii) First plan year defined.
(iii) Successor plans.
(3) Plans using different testing methods for the ADP and ACP test.
(4) Rules for plan coverage changes.
(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 ADPs for the prior year subgroups.
(iv) Examples.

§ 1.401(k)–3 Safe harbor requirements

(a) ADP test safe harbor.
(1) Section 401(k)(12) safe harbor.
(2) Section 401(k)(13) safe harbor.
(3) Requirements applicable to safe harbor contributions.
(b) Safe harbor nonelective contribution requirement.
(1) General rule.
(2) Safe harbor compensation defined.
(c) Safe harbor matching contribution requirement.
(1) In general.
(2) Basic matching formula.
(3) Enhanced matching formula.
(4) Limitation on HCE matching contributions.
(5) Use of safe harbor match not precluded by certain plan provisions.
(i) Safe harbor matching contributions on employee contributions.
(ii) Periodic matching contributions.
(6) Permissible restrictions on elective contributions by NHCEs.
(i) General rule.
(ii) Restrictions on election periods.
(iii) Restrictions on amount of elective contributions.
(iv) Restrictions on types of compensation that may be deferred.
(v) Restrictions due to limitations under the Internal Revenue Code.
(7) Examples.
(8) Notice requirement.
(i) General rule.
(2) Content requirement.
(i) General rule.
(ii) Minimum content requirement.
§ 1.401(k)–1 Certain cash or deferred arrangements.

(1) General rule.
(2) Special rule.
(3) Timing requirement.
(4) Deemed satisfaction of timing requirement.
(5) References to SPD.
(6) Plan year requirement.
(7) Plan amendments adopting safe harbor nonelective contributions.
(8) Permissible reduction or suspension of safe harbor contributions.
(9) Plan amendments adopting safe harbor nonelective contributions.
(10) Initial plan year.
(11) Deemed satisfaction of timing requirement.
(12) Change of plan year.
(13) Final plan year.
(14) Contingent notice provided.
(15) Follow-up notice requirement.

§ 1.401(k)–2 Special Rules for Mergers, Acquisitions and Similar Events. [Reserved]

§ 1.401(k)–3 Definitions.