§§ 1.401(m)–1 through 1.401(m)–6 apply to plan years beginning on or after January 1, 1994.

(2) Plans of tax-exempt organizations. In the case of plans maintained by an organization exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), §§ 1.401(l)–1 through 1.401(l)–6 apply to plan years beginning on or after January 1, 1996.

(3) Defined contribution plans. A defined contribution plan satisfies section 401(l) with respect to a plan year beginning on or after the effective date of these regulations, as set forth in paragraphs (b)(1) and (b)(2) of this section, if it satisfies the applicable requirements of §§ 1.401(l)–1 through 1.401(l)–5 for the plan year.

(4) Defined benefit plans. A defined benefit excess plan or offset plan satisfies section 401(l) with respect to all plan years, and benefits attributable to all plan years, beginning on or after the effective date of these regulations, as set forth in paragraphs (b)(1) and (b)(2) of this section, by satisfying the applicable requirements of §§ 1.401(l)–1 through 1.401(l)–5 and the requirements of § 1.401(a)(4)–13(c) (and § 1.401(a)(4)–13(d), if applicable), using a fresh-start date that is on or after December 31, 1988, and before the effective date of 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]
§ 1.401(m)–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(m)–1 through 1.401(m)–5.

List of Sections
§ 1.401(m)–1 Employee contributions and matching contributions.
§ 1.401(m)–2 ACP test.
§ 1.401(m)–3 Safe harbor requirements.
§ 1.401(m)–4 Special rules for mergers, acquisitions and similar events. [Reserved]
§ 1.401(m)–5 Definitions.

List of Paragraphs
§ 1.401(m)–1 Employee contributions and matching contributions.
(a) General nondiscrimination rules.
(1) Nondiscriminatory amount of contributions.
(i) Exclusive means of amounts testing.
(ii) Testing benefits, rights and features.
(2) Matching contributions.
(i) In general.
(ii) Employer contributions made on account of an employee contribution or elective deferral.
(iii) Employer contributions not on account of an employee contribution or elective deferral.
(A) General rule.
(B) Special rule for forfeitures and released ESOP shares.
(C) Exception for bona fide administrative considerations.
(3) Employee contributions.
(i) In general.
(ii) Certain contributions not treated as employee contributions.
(iii) Qualified cost-of-living arrangements.
(b) Nondiscrimination requirements for amount of contributions.
(1) Matching contributions and employee contributions.
(2) Automatic satisfaction by certain plans.
(3) Anti-abuse provisions.
(4) Aggregation and restructuring.
(i) In general.
(ii) Aggregation of employee contributions and matching contributions within a plan.
(iii) Aggregation of plans.
(A) In general.
§ 1.401(m)-0

(A) Arrangements with inconsistent ACP testing methods.
(B) Disaggregation of plans and separate testing.
(iv) Inconsistent ACP testing methods.
(B) Restructuring prohibited.
(v) Certain disaggregation rules not applicable.
(c) Additional requirements.
(1) Separate testing for employee contributions and matching contributions.
(2) Plan provision requirement.
(d) Effective date.
(1) General rule.
(2) Early implementation permitted.
(3) Applicability of prior regulations.

§ 1.401(m)-2 ACP test.

(a) Actual contribution percentage (ACP) test.
(1) In general.
(i) ACP test formula.
(ii) HCEs as sole eligible employees.
(iii) Special rule for early participation.
(2) Determination of ACP.
(i) General rule.
(ii) Determination of applicable year under current year and prior year testing method.
(3) Determination of ACR.
(i) General rule.
(ii) ACR of HCEs eligible under more than one plan.
(A) General rule.
(B) Plans not permitted to be aggregated.
(iii) Example.
(4) Employee contributions and matching contributions taken into account under the ACP test.
(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) 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) Determine 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.
§ 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).

(ii) 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,