

employer subject to federal income tax withholding (as described in section 6051(a)(3)) and the employee's elective contributions made under any other plan, and if applicable, elective deferrals under a section 408(p) SIMPLE IRA plan, a section 408(k)(6) SARSEP, or a plan or contract that satisfies the requirements of section 403(b), and compensation deferred under a section 457 plan, required to be reported by the employer on Form W-2 (as described in section 6051(a)(8)). For self-employed individuals, SIMPLE compensation means net earnings from self-employment determined under section 1402(a) prior to subtracting any contributions made under the SIMPLE 401(k) plan on behalf of the individual.

(f) *Vesting.* All benefits attributable to contributions described in paragraph (e) of this section must be nonforfeitable at all times.

(g) *Plan year.* The plan year of a SIMPLE 401(k) plan must be the whole calendar year. Thus, in general, a SIMPLE 401(k) plan can be established only on January 1 and can be terminated only on December 31. However, in the case of an employer that did not previously maintain a SIMPLE 401(k) plan, the establishment date can be as late as October 1 (or later in the case of an employer that comes into existence after October 1 and establishes the SIMPLE 401(k) plan as soon as administratively feasible after the employer comes into existence).

(h) *Other rules.* A SIMPLE 401(k) plan is not treated as a top-heavy plan under section 416. See section 416(g)(4)(G).

[T.D. 9169, 69 FR 78154, Dec. 29, 2004]

§ 1.401(k)-5 Special rules for mergers, acquisitions and similar events. [Reserved]

[T.D. 9169, 69 FR 78154, Dec. 29, 2004]

§ 1.401(k)-6 Definitions.

Unless otherwise provided, the definitions of this section govern for purposes of section 401(k) and the regulations thereunder.

Actual contribution percentage (ACP) test. *Actual contribution percentage test* or *ACP test* means the test described in § 1.401(m)-2(a)(1).

Actual deferral percentage (ADP). *Actual deferral percentage* or *ADP* means the ADP of the group of eligible employees as defined in § 1.401(k)-2(a)(2).

Actual deferral percentage (ADP) test. *Actual deferral percentage test* or *ADP test* means the test described in § 1.401(k)-2(a)(1).

Actual deferral ratio (ADR). *Actual deferral ratio* or *ADR* means the ADR of an eligible employee as defined in § 1.401(k)-2(a)(3).

Cash or deferred arrangement. *Cash or deferred arrangement* is defined in § 1.401(k)-1(a)(2).

Cash or deferred election. *Cash or deferred election* is defined in § 1.401(k)-1(a)(3).

Compensation. *Compensation* means compensation as defined in section 414(s) and § 1.414(s)-1. The period used to determine an employee's compensation for a plan year must be either the plan year or the calendar year ending within the plan year. Whichever period is selected must be applied uniformly to determine the compensation of every eligible employee under the plan for that plan year. A plan may, however, limit the period taken into account under either method to that portion of the plan year or calendar year in which the employee was an eligible employee, provided that this limit is applied uniformly to all eligible employees under the plan for the plan year. In the case of an HCE whose ADR is determined under § 1.401(k)-2(a)(3)(ii), period of participation includes periods under another plan for which elective contributions are aggregated under § 1.401(k)-2(a)(3)(ii). See also section 401(a)(17) and § 1.401(a)(17)-1(c)(1).

Current year testing method. *Current year testing method* means the testing method described in § 1.401(k)-2(a)(2)(ii) or 1.401(m)-2(a)(2)(ii) under which the applicable year is the current plan year.

Designated Roth account. *Designated Roth account* means a separate account maintained by a plan to which only designated Roth contributions (including income, expenses, gains and losses attributable thereto) are made.

Designated Roth contributions. *Designated Roth contributions* means designated Roth contributions as defined in § 1.401(k)-1(f)(1).