

§ 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.
 - (i) Definition of cash or deferred arrangement.
 - (ii) Treatment of after-tax employee contributions.
 - (iii) Treatment of ESOP dividend election.
 - (iv) Treatment of elective contributions as plan assets.
 - (3) 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 employees.
 - (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.

- (iii) Tax treatment of employees.
- (iv) Qualification of plan that includes a nonqualified cash or deferred arrangement.
- (A) In general.
- (B) Application of section 401(a)(4) to certain plans.
- (v) Example.
- (6) Rules applicable to cash or deferred arrangements of self-employed individuals.
- (i) Application of general rules.
- (ii) Treatment of matching contributions made on behalf of self-employed individuals.
- (iii) Timing of self-employed individual's cash or deferred election.
- (iv) Special rule for certain payments to self-employed individuals.
- (b) Coverage and nondiscrimination requirements.
- (1) In general.
- (2) Automatic satisfaction by certain plans.
- (3) Anti-abuse provisions.
- (4) Aggregation and restructuring.
- (i) In general.
- (ii) Aggregation of cash or deferred arrangements within a plan.
- (iii) Aggregation of plans.
- (A) In general.
- (B) Plans with inconsistent ADP testing methods.
- (iv) Disaggregation of plans and separate testing.
- (A) In general.
- (B) Restructuring prohibited.
- (v) Modifications to section 410(b) rules.
- (A) Certain disaggregation rules not applicable.
- (B) Permissive aggregation of collective bargaining units.
- (C) Multiemployer plans.
- (vi) Examples.
- (c) Nonforfeitability requirements.
- (1) General rule.
- (2) Definition of immediately nonforfeitable.
- (3) Example.
- (d) Distribution limitation.
- (1) General rule.
- (2) Rules applicable to distributions upon severance from employment.
- (3) Rules applicable to hardship distributions.
- (i) Distribution must be on account of hardship.
- (ii) Limit on maximum distributable amount.
- (A) General rule.
- (B) Grandfathered amounts.
- (iii) Immediate and heavy financial need.
- (A) In general.
- (B) Deemed immediate and heavy financial need.
- (iv) Distribution necessary to satisfy financial need.
- (A) Distribution may not exceed amount of need.
- (B) No alternative means available.

§ 1.401(k)-0

- (C) Employer reliance on employee representation.
- (D) Employee need not take counter-productive 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.
- (5) 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.
 - (3) Separate accounting requirement.
 - (i) General rule.
 - (ii) Satisfaction of separate accounting requirement.
 - (4) Limitations on cash or deferred arrangements of state and local governments.
 - (i) General rule.
 - (ii) Rural cooperative plans and Indian tribal governments.
 - (iii) Adoption after May 6, 1986.
 - (iv) Adoption before May 7, 1986.
 - (5) One-year eligibility requirement.
 - (6) Other benefits not contingent upon elective contributions.
 - (i) General rule.
 - (ii) Definition of other benefits.
 - (iii) Effect of certain statutory limits.
 - (iv) Nonqualified deferred compensation.
 - (v) Plan loans and distributions.
 - (vi) Examples.
 - (7) Plan provision requirement.
 - (f) Special rules for designated Roth contributions.
 - (1) In general.
 - (2) Inclusion treatment.
 - (3) Separate accounting required.
 - (4) Designated Roth contributions must satisfy rules applicable to elective contributions.
 - (i) In general.
 - (ii) Special rules for direct rollovers.
 - (5) Rules regarding designated Roth contribution elections.
 - (i) Frequency of elections.
 - (ii) Default elections.
 - (6) Effective date.
 - (g) Effective dates.
 - (1) General rule.
 - (2) Early implementation permitted.
 - (3) Collectively bargained plans.
 - (4) Applicability of prior regulations.

26 CFR Ch. I (4-1-11 Edition)*§ 1.401(k)-2 ADP Test*

- (a) Actual deferral percentage (ADP) Test.
 - (1) In general.
 - (i) 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 for HCEs.
 - (5) 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.
 - (1) Permissible correction methods.
 - (i) In general.
 - (A) Qualified nonelective contributions or qualified matching contributions.
 - (B) Excess contributions distributed.
 - (C) Excess contributions recharacterized.
 - (ii) Combination of correction methods.
 - (iii) Exclusive means of correction.
 - (2) Corrections through distribution.

