

(3) *Matching contributions.* Each plan year, the eligible employer must contribute a matching contribution to the account of each eligible employee on whose behalf elective contributions were made for the plan year. The amount of the matching contribution must equal the lesser of the eligible employee's elective contributions for the plan year or 3% of the eligible employee's SIMPLE compensation for the entire plan year.

(4) *Nonelective contributions.* For any plan year, in lieu of contributing matching contributions described in paragraph (e)(3) of this section, an eligible employer may, in accordance with plan terms, contribute a nonelective contribution to the account of each eligible employee in an amount equal to 2% of the eligible employee's SIMPLE compensation for the entire plan year. The eligible employer may limit the nonelective contributions to those eligible employees who received at least \$5,000 of SIMPLE compensation from the employer for the entire plan year.

(5) *SIMPLE compensation.* Except as otherwise provided, the term *SIMPLE compensation* for purposes of this section means the sum of wages, tips, and other compensation from the eligible 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 SIM-

PLE 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).

Elective contributions. *Elective contributions* means employer contributions made to a plan pursuant to a cash or deferred election under a cash or deferred arrangement (whether or not the arrangement is a qualified cash or deferred arrangement under § 1.401(k)-1(a)(4)).

Eligible employee—(1) General rule. *Eligible employee* means an employee who is directly or indirectly eligible to make a cash or deferred election under the plan for all or a portion of the plan year. For example, if an employee must perform purely ministerial or mechanical acts (e.g., formal application for participation or consent to payroll withholding) in order to be eligible to make a cash or deferred election for a plan year, the employee is an eligible employee for the plan year without regard to whether the employee performs the acts.

(2) *Conditions on eligibility.* An employee who is unable to make a cash or deferred election because the employee

has not contributed to another plan is also an eligible employee. By contrast, if an employee must perform additional service (e.g., satisfy a minimum period of service requirement) in order to be eligible to make a cash or deferred election for a plan year, the employee is not an eligible employee for the plan year unless the service is actually performed. See § 1.401(k)-1(e)(5), however, for certain limits on the use of minimum service requirements. An employee who would be eligible to make elective contributions but for a suspension due to a distribution, a loan, or an election not to participate in the plan, is treated as an eligible employee for purposes of section 401(k)(3) for a plan year even though the employee may not make a cash or deferred election by reason of the suspension. Finally, an employee does not fail to be treated as an eligible employee merely because the employee may receive no additional annual additions because of section 415(c)(1).

(3) *Certain one-time elections.* An employee is not an eligible employee merely because the employee, no later than the employee's first becoming eligible to make a cash or deferred election under any plan or arrangement of the employer (described in section 219(g)(5)(A)), is given the one-time opportunity to elect, and the employee does in fact elect, not to be eligible to make a cash or deferred election under the plan or any other plan or arrangement maintained by the employer (including plans not yet established) for the duration of the employee's employment with the employer. This rule applies in addition to the rules in § 1.401(k)-1(a)(3)(v) relating to the definition of a cash or deferred election. In no event is an election made after December 23, 1994, treated as a one-time irrevocable election under this paragraph if the election is made by an employee who previously became eligible under another plan or arrangement (whether or not terminated) of the employer.

Eligible HCE. *Eligible HCE* means an eligible employee who is an HCE.

Eligible NHCE. *Eligible NHCE* means an eligible employee who is not an HCE.

Employee. *Employee* means an employee within the meaning of § 1.410(b)-9.

Employee stock ownership plan (ESOP). *Employee stock ownership plan* or *ESOP* means the portion of a plan that is an ESOP within the meaning of § 1.410(b)-7(c)(2).

Employer. *Employer* means an employer within the meaning of § 1.410(b)-9.

Excess contributions. *Excess contributions* means, with respect to a plan year, the amount of total excess contributions apportioned to an HCE under § 1.401(k)-2(b)(2)(iii).

Excess deferrals. *Excess deferrals* means excess deferrals as defined in § 1.402(g)-1(e)(3).

Highly compensated employee (HCE). *Highly compensated employee* or *HCE* has the meaning provided in section 414(q).

Matching contributions. *Matching contributions* means matching contributions as defined in § 1.401(m)-1(a)(2).

Nonelective contributions. *Nonelective contributions* means employer contributions (other than matching contributions) with respect to which the employee may not elect to have the contributions paid to the employee in cash or other benefits instead of being contributed to the plan.

Non-employee stock ownership plan (non-ESOP). *Non-employee stock ownership plan* or *non-ESOP* means the portion of a plan that is not an ESOP within the meaning of § 1.410(b)-7(c)(2).

Non-highly compensated employee (NHCE). *Non-highly compensated employee* or *NHCE* means an employee who is not an HCE.

Plan. *Plan* is defined in § 1.401(k)-1(b)(4).

Pre-ERISA money purchase pension plan. (1) *Pre-ERISA money purchase pension plan* is a pension plan—

(i) That is a defined contribution plan (as defined in section 414(i));

(ii) That was in existence on June 27, 1974, and as in effect on that date, included a salary reduction agreement; and

(iii) Under which neither the employee contributions nor the employer contributions, including elective contributions, may exceed the levels (as a percentage of compensation) provided

for by the contribution formula in effect on June 27, 1974.

(2) A plan was in existence on June 27, 1974, if it was a written plan adopted on or before that date, even if no funds had yet been paid to the trust associated with the plan.

Pre-tax elective contributions. *Pre-tax elective contributions* means elective contributions under a qualified cash or deferred arrangement that are not designated Roth contributions.

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

Qualified matching contributions (QMACs). *Qualified matching contributions* or *QMACs* means matching contributions that, except as provided otherwise in § 1.401(k)-1(c) and (d), satisfy the requirements of § 1.401(k)-1(c) and (d) as though the contributions were elective contributions, without regard to whether the contributions are actually taken into account under the ADP test under § 1.401(k)-2(a)(6) or the ACP test under § 1.401(m)-2(a)(6). Thus, the matching contributions must satisfy the vesting requirements of § 1.401(k)-1(c) and be subject to the distribution requirements of § 1.401(k)-1(d) when they are contributed to the plan. See also § 1.401(k)-2(b)(4)(iii) for a rule providing that a matching contribution does not fail to qualify as a QMAC solely because it is forfeitable under section 411(a)(3)(G) as a result of being a matching contribution with respect to an excess deferral, excess contribution, or excess aggregate contribution, or it is forfeitable under § 1.414(w)-1(d)(2).

Qualified nonelective contributions (QNECs). *Qualified nonelective contributions* or *QNECs* means employer contributions, other than elective contributions or matching contributions, that, except as provided otherwise in § 1.401(k)-1(c) and (d), satisfy the requirements of § 1.401(k)-1(c) and (d) as though the contributions were elective contributions, without regard to whether the contributions are actually taken into account under the ADP test under § 1.401(k)-2(a)(6) or the ACP test under § 1.401(m)-2(a)(6). Thus, the nonelective contributions must satisfy the

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vesting requirements of § 1.401(k)-1(c) and be subject to the distribution requirements of § 1.401(k)-1(d) when they are contributed to the plan.

Rural cooperative plans. *Rural cooperative plan* means a plan described in section 401(k)(7).

[T.D. 9169, 69 FR 78154, Dec. 29, 2004, as amended by T.D. 9237, 71 FR 10, Jan. 3, 2006; T.D. 9447, 74 FR 8210, Feb. 24, 2009]

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