

the current year testing method. The chart below shows the average employee contributions (as a percentage of

compensation) and matching contributions (as a percentage of compensation) for Plan U's highly compensated employees and

nonhighly compensated employees for the 2006 plan year:

	Employee contributions	Matching contributions	Actual contributions percentage
Highly compensated employees	4%	2%	6%
Nonhighly compensated employees	3%	1.5%	4.5%

(ii) The matching rate for all NHCEs is 50% and thus the matching contributions are not disproportionate under paragraph (a)(5)(ii) of this section. Accordingly, they are taken into account in determining the ACR of eligible employees, as shown in the following table.

(iii) Because the ACP for the HCEs (6.0%) exceeds 5.63% ($4.5\% \times 1.25$), Plan U does not satisfy the ACP test under paragraph (a)(1)(i)(A) of this section. However, because the ACP for the HCEs does not exceed the ACP for the NHCEs by more than 2

percentage points and the ACP for the HCEs does not exceed the ACP for the NHCEs multiplied by 2 ($4.5\% \times 2 = 9\%$), the plan satisfies the ACP test under paragraph (a)(1)(i)(B) of this section.

Example 2. (i) Employees A through F are eligible employees in Plan V, a profit-sharing plan of Employer M that includes a cash or deferred arrangement and permits employee contributions. Under Plan V, a \$.50 matching contribution is made for each dollar of elective contributions and employee

contributions. Plan V uses the current year testing method and does not provide for elective contributions to be taken into account in determining an eligible employee's ACR. For the 2006 plan year, Employees A and B are HCEs and the remaining employees are NHCEs. The compensation, elective contributions, employee contributions, and matching contributions for the 2006 plan year are shown in the following table:

Employee	Compensation	Elective contributions	Employee contributions	Matching contributions
A	\$190,000	\$15,000	\$3,500	\$9,250
B	100,000	5,000	10,000	7,500
C	85,000	12,000	0	6,000
D	70,000	9,500	0	4,750
E	40,000	10,000	0	5,000
F	10,000	0	0	0

(ii) The matching rate for all NHCEs is 50% and thus the matching contributions are not

disproportionate under paragraph (a)(5)(ii) of this section. Accordingly, they are taken into

account in determining the ACR of eligible employees, as shown in the following table:

Employee	Compensation	Elective contributions	Matching contributions	ACR
A	\$190,000	\$3,500	\$9,250	6.71%
B	100,000	10,000	7,500	17.50%
C	85,000	0	6,000	7.06%
D	70,000	0	4,750	6.79%
E	40,000	0	5,000	12.50%
F	10,000	0	0	0

(iii) The ACP for the HCEs is 12.11% ($(6.71\% + 17.50\%)/2$). The ACP for the NHCEs is 6.59% ($(7.06\% + 6.79\% + 12.50\% + 0\%)/4$). Plan V fails to satisfy the ACP test under paragraph (a)(1)(i)(A) of this section because the ACP of highly compensated employees is more than 125% of the ACP of the nonhighly compensated employees ($6.59\% \times 1.25 = 8.24\%$). In addition, Plan V fails to satisfy the ACP test under paragraph (a)(1)(i)(B) of this section because the ACP for the HCEs exceeds the ACP of the other employees by more than 2 percentage points ($6.59\% + 2\% = 8.59\%$). Therefore, the plan fails to satisfy the requirements of section 401(m)(2) and paragraph (a)(1) of this section unless the ACP failure is corrected under paragraph (b) of this section.

Example 3. (i) The facts are the same as Example 2, except that the plan provides that the nonhighly compensated employees' elective contributions may be used to meet

the requirements of section 401(m) to the extent needed under that section.

(ii) Pursuant to paragraph (a)(6)(ii) of this section, the \$10,000 of elective contributions for Employee E may be taken into account in determining the ACP rather than the ADP to the extent that the plan satisfies the requirements of § 1.401(k)-2(a)(1) excluding from the ADP this \$10,000. In this case, if the \$10,000 were excluded from the ADP for the NHCEs, the ADP for the highly compensated employees is 6.45% ($(7.89\% + 5.00\%)/2$) and the ADP for the nonhighly compensated employees would be 6.92% ($(14.12\% + 13.57\% + 0\% + 0\%)/4$) and the plan would satisfy the requirements of § 1.401(k)-2(a)(1) excluding from the ADP the elective contributions for NHCEs that are taken into account under section 401(m).

(iii) After taking into account the \$10,000 of elective contributions for Employee E in the ACP test, the ACP for the nonhighly

compensated employees is 12.84% ($(7.06\% + 6.79\% + 37.50\% + 0\%)/4$). Therefore the plan satisfies the ACP test because the ACP for the HCEs (12.11%) is less than 1.25 times the ACP for the nonhighly compensated employees.

Example 4. (i) The facts are the same as Example 2, except that Plan V provides for a higher than 50% match rate on the elective contributions and employee contributions for all NHCEs. The match rate is defined as the rate, rounded up to the next whole percent, necessary to allow the plan to satisfy the ACP test, but not in excess of 100%. In this case, an increase in the match rate from 50% to 74% will be sufficient to allow the plan to satisfy the ACP test. Thus, for the 2006 plan year, the compensation, elective contributions, employee contributions, matching contributions at a 74% match rate of the eligible NHCEs (employees C through F) are shown in the following table: