

contributions. However, a plan may require eligible employees to make contribution elections in whole percentages of compensation or whole dollar amounts.

(iv) *Restrictions on types of compensation that may be deferred.* A plan may limit the types of compensation that may be deferred or contributed by an eligible employee under a plan, provided that each eligible NHCE is permitted to make contributions under a definition of compensation that would be a reasonable definition of compensation within the meaning of § 1.414(s)–1(d)(2). Thus, the definition of compensation from which contributions may be made is not required to satisfy the nondiscrimination requirement of § 1.414(s)–1(d)(3).

(v) *Restrictions due to limitations under the Internal Revenue Code.* A plan may limit the amount of contributions made by an eligible employee under a plan—

(A) Because of the limitations of section 402(g) or section 415; or

(B) Because, on account of a hardship distribution, an employee's ability to make contributions has been suspended for 6 months in accordance with § 1.401(k)–1(d)(3)(iv)(E).

(e) *Notice requirement.* A plan satisfies the notice requirement of this paragraph (e) if it satisfies the notice requirement of § 1.401(k)–3(d).

(f) *Plan year requirement—(1) General rule.* Except as provided in this paragraph (f) or in paragraph (g) of this section, a plan will fail to satisfy the requirements of section 401(m)(11) and this section unless plan provisions that satisfy the rules of this section are adopted before the first day of that plan year and remain in effect for an entire 12-month plan year. Moreover, if, as described in paragraph (j)(4) of this section, safe harbor matching or nonelective contributions will be made to another plan for a plan year, provisions specifying that the safe harbor contributions will be made in the other plan and providing that the contributions will be QNECs or QMACs must be also be adopted before the first day of that plan year.

(2) *Initial plan year.* A newly established plan (other than a successor plan within the meaning of § 1.401(m)–2(c)(2)(iii)) will not be treated as violating the requirements of this paragraph (f) merely because the plan year is less than 12 months, provided that the plan year is at least 3 months long (or, in the case of a newly established employer that establishes the plan as soon as administratively feasible after the employer comes into

existence, a shorter period). Similarly, a plan will not fail to satisfy the requirements of this paragraph (f) for the first plan year in which matching contributions are provided under the plan provided that—

(i) The plan is not a successor plan; and

(ii) The amendment providing for matching contributions is made effective at the same time as the adoption of a cash or deferred arrangement that satisfies the requirements of § 1.401(k)–3, taking into account the rules of § 1.401(k)–3(e)(2).

(3) *Change of plan year.* A plan that has a short plan year as a result of changing its plan year will not fail to satisfy the requirements of paragraph (f)(1) of this section merely because the plan year has less than 12 months, provided that—

(i) The plan satisfied the requirements of this section for the immediately preceding plan year; and

(ii) The plan satisfies the requirements of this section for the immediately following plan year.

(4) *Final plan year.* A plan that terminates during a plan year will not fail to satisfy the requirements of paragraph (f)(1) of this section merely because the final plan year is less than 12 months, provided that—

(i) The plan would satisfy the requirements of paragraph (h) of this section, treating the termination of the plan as a reduction or suspension of safe harbor matching contributions, other than the requirement that employees have a reasonable opportunity to change their cash or deferred elections and, if applicable, employee contribution elections; or

(ii) The plan termination is in connection with a transaction described in section 410(b)(6)(C) or the employer incurs a substantial business hardship, comparable to a substantial business hardship described in section 412(d).

(g) *Plan amendments adopting nonelective safe harbor contributions.* Notwithstanding paragraph (f)(1) of this section, a plan that provides for the use of the current year testing method may be amended after the first day of the plan year and no later than 30 days before the last day of the plan year to adopt the safe harbor method of this section using nonelective contributions under paragraph (b) of this section if the plan satisfies the requirements of § 1.401(k)–3(f).

(h) *Permissible reduction or suspension of safe harbor matching contributions—(1) General rule.* A plan that provides for safe harbor matching contributions will not fail to satisfy the requirements of section 401(m)(2) for a

plan year merely because the plan is amended during a plan year to reduce or suspend safe harbor matching contributions on future elective deferrals and, if applicable, employee contributions provided—

(i) All eligible employees are provided the supplemental notice in accordance with paragraph (h)(2) of this section;

(ii) The reduction or suspension of safe harbor matching contributions is effective no earlier than the later of 30 days after eligible employees are provided the notice described in paragraph (h)(2) of this section and the date the amendment is adopted;

(iii) Eligible employees are given a reasonable opportunity (including a reasonable period after receipt of the supplemental notice) prior to the reduction or suspension of safe harbor matching contributions to change their cash or deferred elections and, if applicable, their employee contribution elections;

(iv) The plan is amended to provide that the ACP test will be satisfied for the entire plan year in which the reduction or suspension occurs using the current year testing method described in § 1.401(m)–2(a)(1)(ii); and

(v) The plan satisfies the requirements of this section (other than this paragraph (h)) with respect to amounts deferred through the effective date of the amendment.

(2) *Notice of suspension requirement.* The notice of suspension requirement of this paragraph (h)(2) is satisfied if each eligible employee is given a written notice that satisfies the content requirements of § 1.401(k)–3(e)(3).

(i) [Reserved]

(j) *Other rules—(1) Contributions taken into account.* A contribution is taken into account for purposes of this section for a plan year under the same rules as § 1.401(k)–3(h)(1).

(2) *Use of safe harbor nonelective contributions to satisfy other nondiscrimination tests.* A safe harbor nonelective contribution used to satisfy the nonelective contribution requirement under paragraph (b) of this section may also be taken into account for purposes of determining whether a plan satisfies section 401(a)(4) under the same rules as § 1.401(k)–3(h)(2).

(3) *Early participation rules.* Section 401(m)(5)(C) and § 1.401(m)–2(a)(1)(iii)(A) which provide an alternative nondiscrimination rule for certain plans that provide for early participation, does not apply for purposes of section 401(m)(11) and this section. Thus, a plan is not treated as satisfying this section with respect to the eligible employees who have not completed the minimum age and service