

requirements of section 410(a)(1)(A) unless the plan satisfies the requirements of this section with respect to such eligible employees.

(4) *Satisfying safe harbor contribution requirement under another defined contribution plan.* Safe harbor matching or nonelective contributions may be made to another defined contribution plan under the same rules as § 1.401(k)–3(h)(4). Consequently, each NHCE under the plan providing for matching contributions must be eligible under the same conditions under the other defined contribution plan and the plan to which the contributions are made must have the same plan year as the plan providing for matching contributions.

(5) *Contributions used only once.* Safe harbor matching or nonelective contributions cannot be used to satisfy the requirements of this section with respect to more than one plan.

(6) *Plan must satisfy ACP with respect to employee contributions.* If the plan provides for employee contributions, in addition to satisfying the requirements of this section, it must also satisfy the ACP test of § 1.401(m)–2. See § 1.401(m)–2(a)(5)(iii) for special rules under which the ACP test is permitted to be run taking into account only employee contributions when this section is satisfied with respect to the matching contributions.

**§ 1.401(m)–4 Special rules for mergers, acquisitions and similar events. [Reserved]**

**§ 1.401(m)–5 Definitions.**

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

*Actual contribution percentage (ACP).* *Actual contribution percentage* or *ACP* means the ACP of the group of eligible employees as defined in § 1.401(m)–2(a)(2)(i).

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

*Actual contribution ratio (ACR).* *Actual contribution ratio* or *ACR* means the ACR of an eligible employee as defined in § 1.401(m)–2(a)(3).

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

*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. *See also* section 401(a)(17) and § 1.401(a)(17)–1(c)(1). For this purpose, in case of an HCE whose ACR is determined under § 1.401(m)–2(a)(3)(ii), period of participation includes periods under another plan for which matching contributions or employee contributions are aggregated under § 1.401(m)–2(a)(3)(ii).

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

*Elective contributions.* *Elective contributions* means elective contributions as defined in § 1.401(k)–6.

*Elective deferrals.* *Elective deferrals* means elective deferrals described in section 402(g)(3).

*Eligible employee—(1) General rule.* *Eligible employee* means an employee who is directly or indirectly eligible to make an employee contribution or to receive an allocation of matching contributions (including matching contributions derived from forfeitures) 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 an employee contribution for a plan year, the employee is an eligible employee for the plan year without regard to whether the employee performs these acts.

(2) *Conditions on eligibility.* An employee who is unable to make employee contributions or to receive an allocation of matching contributions 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 an employee contribution or to receive an allocation of matching contributions for a plan year, the employee is not an eligible employee for the plan year unless the service is actually performed. An employee who would be eligible to make employee 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(m) for a plan year even though the employee may not make employee contributions or receive an allocation of matching contributions 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, upon commencing employment with the employer or upon the employee's first becoming eligible under any plan of the employer providing for employee or matching contributions, is given a one-time opportunity to elect, and the employee in fact does elect, not to be eligible to make employee contributions or to receive allocations of matching contributions under the plan or any other plan maintained by the employer (including plans not yet established) for the duration of the employee's employment with the employer. In no event is an election made after December 23, 1994, treated as one-time irrevocable election under this paragraph if the election is made by an employee who previously became eligible under another plan (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 contributions.* *Employee contributions* means employee contributions as defined in 1.401(m)–1(a)(3).

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

*Excess contributions.* *Excess contribution* means with respect to a plan year, the amount of excess contribution 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).