

§ 1.401(m)-0

26 CFR Ch. I (4-1-04 Edition)

these regulations. A defined benefit excess plan or offset plan that does not satisfy section 401(l) with respect to all plan years beginning on or after the effective date of these regulations may, under the rules of § 1.401(a)(4)-13(c) (and § 1.401(a)(4)-13(d), if applicable), satisfy section 401(l) for plan years beginning after a fresh-start date by satisfying the applicable requirements of §§ 1.401(l)-1 through 1.401(l)-5 after the fresh-start date.

(c) *Compliance during transition period.* For plan years beginning on or after January 1, 1989, and before the effective date of these regulations, as set forth in paragraph (b) of this section, a plan must be operated in accordance with a reasonable, good faith interpretation of section 401(l). Whether a plan is operated in accordance with a reasonable, good faith interpretation of section 401(l) will generally be determined based on all of the relevant facts and circumstances, including the extent to which an employer has resolved unclear issues in its favor. A plan will be deemed to be operated in accordance with a reasonable, good faith interpretation of section 401(l) if it is operated in accordance with the terms of §§ 1.401(l)-1 through 1.401(l)-5.

[T.D. 8486, 58 FR 46835, Sept. 3, 1993]

§ 1.401(m)-0 Employee and matching contributions, table of contents.

This section contains the captions that appear in §§ 1.401(m)-1 and 1.401(m)-2.

§ 1.401(m)-1 Employee and matching contributions.

- (a) General rules.
 - (1) Nondiscriminatory amount of contributions.
 - (2) Other nondiscrimination rules.
 - (3) Rules applicable to collectively bargained plans.
- (b) Actual contribution percentage test.
 - (1) General rule.
 - (2) Plan provision requirement.
 - (3) Aggregation of plans.
 - (i) General rule.
 - (ii) Restructuring and Permissive Disaggregation.
 - (4) Employee and matching contributions taken into account under the actual contribution percentage test.
 - (i) Employee contributions.
 - (A) General rule.
 - (B) Recharacterized elective contributions.
 - (ii) Matching contributions.
 - (A) General rule.
 - (B) Matching contributions and qualified nonelective contributions used to satisfy actual deferral percentage test.
 - (C) Treatment of forfeited matching contributions.
 - (5) Qualified nonelective contributions and elective contributions that may be taken into account under the actual contribution percentage test.
- (c) Additional requirements.
 - (1) Coordination with other plans.
 - (2) Recordkeeping requirement.
 - (3) Consistent application of separate line of business rules.
- (d) Examples.
- (e) Correction of excess aggregate contributions.
 - (1) General rule.
 - (i) Permissible correction methods.
 - (ii) Combination of correction methods.
 - (iii) Impermissible correction methods.
 - (iv) Partial correction.
 - (2) Amount of excess aggregate contributions.
 - (i) General rule.
 - (ii) Coordination with correction of excess contributions.
 - (iii) Correction of family members.
 - (3) Corrective distribution of excess aggregate contributions (and income).
 - (i) General rule.
 - (ii) Income allocable to excess aggregate contributions.
 - (A) General rule.
 - (B) Method of allocating income.
 - (C) Alternative method of allocating income.
 - (D) Safe harbor method of allocating gap period income.
 - (E) Allocable income for recharacterized elective contributions.
 - (iii) No employee or spousal consent required.
 - (iv) Treatment of corrective distributions and forfeited contributions as employer contributions.
 - (v) Tax treatment of corrective distributions.
 - (A) General rule.
 - (B) Rule for de minimis distributions.
 - (C) Rule for certain 1987 and 1988 excess aggregate contributions.
 - (vi) No reduction of required minimum distribution.
 - (vii) No corrective distribution of matching contributions other than excess aggregate contributions.
 - (4) Coordination with section 401(a)(4).
 - (5) Failure to correct.
 - (i) Failure to correct within 2½ months after end of plan year.
 - (ii) Failure to correct within 12 months after end of plan year.
 - (6) Examples.
- (f) Definitions.

- (1) Actual contribution percentage.
 - (i) General rule.
 - (ii) Actual contribution ratio.
 - (A) General rule.
 - (B) Highly compensated employee eligible under more than one plan.
 - (C) Employees subject to family aggregation rules.
 - (f) Aggregation of employee contributions and other amounts.
 - (2) Effect on actual contribution percentage of nonhighly compensated employees.
 - (3) Multiple family groups.
 - (2) Compensation.
 - (3) Elective contributions.
 - (4) Eligible employee.
 - (i) General.
 - (ii) Certain one-time elections.
 - (5) Employee.
 - (6) Employee contributions.
 - (7) Employer.
 - (8) Excess aggregate contributions.
 - (9) Excess contributions.
 - (10) Excess deferrals.
 - (11) Highly compensated employee.
 - (12) Matching contributions.
 - (i) In general.
 - (ii) Employer contributions made on account of employee or elective contributions.
 - (iii) Contributions used to meet the requirements of section 416.
 - (13) Nonelective contributions.
 - (14) Plan.
 - (15) Qualified nonelective contributions.
 - (16) Section 401(k) plan.
 - (17) Section 401(m) plan.
- (g) Effective dates.
 - (1) General rule.
 - (2) Collectively bargained plans.
 - (3) Certain annuity contracts.
 - (4) State and local government plans.
 - (5) Transition rule for plan years beginning before 1992.
 - (i) General rule.
 - (ii) Restructuring.
 - (A) General rule.
 - (B) Identification of component plans.
 - (f) Minimum coverage requirement.
 - (2) Commonality requirement.

§ 1.401(m)-2 Multiple Use of alternative limitation.

- (a) In general.
- (b) General rule for determination of multiple use.
 - (1) In general.
 - (2) Alternative limitation.
 - (3) Aggregate limit.
 - (i) In general.
 - (ii) Relevant actual deferral percentage and relevant actual contribution percentage defined.
 - (iii) Examples.
 - (c) Correction of multiple use.
 - (1) In general.

- (2) Treatment of required reduction.
 - (3) Required reduction.
 - (4) Examples.
- (d) Effective date.
 - (1) General rule.
 - (2) Transition rule.

[T.D. 8357, 56 FR 40534, Aug. 15, 1991, as amended by T.D. 8376, 56 FR 63432, Dec. 4, 1991; T.D. 8581, 59 FR 66175, Dec. 23, 1994]

§ 1.401(m)-1 Employee and matching contributions.

(a) General Rules—(1) *Nondiscriminatory amount of contributions.* A defined contribution plan does not satisfy section 401(a)(4) for a plan year unless the amount of employee and matching contributions to the plan for the plan year satisfies section 401(a)(4). See § 1.401(a)(4)-1(b)(2)(ii). Except as specifically provided otherwise, for plan years beginning after December 31, 1986 (or such later date provided in paragraph (g) of this section) the amount of employee and matching contributions under a plan satisfies the requirements of section 401(a)(4) only if the employee and matching contributions under the plan satisfy the actual contribution percentage test of section 401(m)(2) and paragraph (b) of this section. See § 1.401(a)(4)-1(b)(2)(ii)(B). Also, except as specifically provided otherwise, for plan years beginning after December 31, 1988 (or such later date provided in § 1.401(m)-2(d)), the amount of employee and matching contributions under a plan satisfies the requirements of sections 401(m) and 401(a)(4) only if any multiple use of the alternative methods of compliance with sections 401(k) and (m) (contained in sections 401(k)(3)(A)(ii)(II) and 401(m)(2)(A)(ii), respectively) is corrected under § 1.401(m)-2(c). See section 401(m)(9) and § 1.401(m)-2. For these purposes, the employee and matching contributions are combined with the elective and qualified nonelective contributions, if any, that are treated as matching contributions, and the recharacterized elective contributions, if any, that are treated as employee contributions for purposes of section 401(m).

(2) *Other nondiscrimination rules.* Nondiscrimination requirements in addition to those described in paragraph (a)(1) of this section apply to employee and matching contributions under sections 401(a)(4) and 410(b). For example,