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Internal Revenue Code Section 401(k)(12)

Qualified pension, profit-sharing, and stock bonus plans

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(k)CASH OR DEFERRED ARRANGEMENTS

(1)GENERAL RULE

A profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan shall not be considered as not satisfying the requirements of subsection (a) merely because the plan includes a qualified cash or deferred arrangement.

(2)QUALIFIED CASH OR DEFERRED ARRANGEMENT A qualified cash or deferred arrangement is any arrangement which is part of a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan which meets the requirements of subsection (a)—

(A)under which a covered employee may elect to have the employer make payments as contributions to a trust under the plan on behalf of the employee, or to the employee directly in cash;

(B)under which amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election—

(i)may not be distributable to participants or other beneficiaries earlier than—

(I)severance from employment, death, or disability,

(II)an event described in paragraph (10),

(III)in the case of a profit-sharing or stock bonus plan, the attainment of age 59½,

(IV)subject to the provisions of paragraph (14), upon hardship of the employee,

(V)in the case of a qualified reservist distribution (as defined in section 72(t)(2)(G)(iii)), the date on which a period referred to in subclause (III) of such section begins,

(VI)except as may be otherwise provided by regulations, with respect to amounts invested in a lifetime income investment (as defined in subsection (a)(38)(B)(ii)), the date that is 90 days prior to the date that such lifetime income investment may no longer be held as an investment option under the arrangement, or

(VII)as provided in section 401(a)(39),

(ii)will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years, and

(iii)except as may be otherwise provided by regulations, in the case of amounts described in clause (i)(VI), will be distributed only in the form of a qualified distribution (as defined in subsection (a)(38)(B)(i)) or a

qualified plan distribution annuity contract (as defined in subsection (a)(38)(B)(iv)),

(C)which provides that an employee's right to his accrued benefit derived from employer contributions made to the trust pursuant to his election is nonforfeitable, and

(D)which does not require, as a condition of participation in the arrangement, that an employee complete a period of service with the employer (or employers) maintaining the plan extending beyond the close of the earlier of—

(i)the period permitted under section 410(a)(1) (determined without regard to subparagraph (B)(i) thereof), or

(ii)subject to the provisions of paragraph (15), the first period of 2 consecutive 12-month periods during each of which the employee has at least 500 hours of service.

(3)APPLICATION OF PARTICIPATION AND DISCRIMINATION STANDARDS

(A)A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement unless—

(i)those employees eligible to benefit under the arrangement satisfy the provisions of section 410(b)(1), and

(ii)the actual deferral percentage for eligible highly compensated employees (as defined in paragraph (5)) for the plan year bears a relationship to the actual deferral percentage for all other eligible employees for the preceding plan year which meets either of the following tests:

(I)The actual deferral percentage for the group of eligible highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 1.25.

(II)The excess of the actual deferral percentage for the group of eligible highly compensated employees over that of all other eligible employees is not more than 2 percentage points, and the actual deferral percentage for the group of eligible highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 2.

If 2 or more plans which include cash or deferred arrangements are considered as 1 plan for purposes of section 401(a)(4) or 410(b), the cash or deferred arrangements included in such plans shall be treated as 1 arrangement for purposes of this subparagraph.

If any highly compensated employee is a participant under 2 or more cash or deferred arrangements of the employer, for purposes of determining the deferral percentage with respect to such employee, all such cash or deferred arrangements shall be treated as 1 cash or deferred arrangement. An arrangement may apply clause (ii) by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary.

(B)For purposes of subparagraph (A), the actual deferral percentage for a specified group of employees for a plan year shall be the average of the ratios (calculated separately for each employee in such group) of—

(i)the amount of employer contributions actually paid over to the trust on behalf of each such employee for such plan year, to

(ii) the employee's compensation for such plan year.

(C) A cash or deferred arrangement shall be treated as meeting the requirements of subsection (a)(4) with respect to contributions if the requirements of subparagraph (A)(ii) are met.

(D) For purposes of subparagraph (B), the employer contributions on behalf of any employee—

(i) shall include any employer contributions made pursuant to the employee's election under paragraph (2), and

(ii) under such rules as the Secretary may prescribe, may, at the election of the employer, include—

(I) matching contributions (as defined in 401(m)(4)(A)) which meet the requirements of paragraph (2)(B) and (C), and

(II) qualified nonelective contributions (within the meaning of section 401(m)(4)(C)).

(E) For purposes of this paragraph, in the case of the first plan year of any plan (other than a successor plan), the amount taken into account as the actual deferral percentage of nonhighly compensated employees for the preceding plan year shall be—

(i) 3 percent, or

(ii) if the employer makes an election under this subclause, the actual deferral percentage of nonhighly compensated employees determined for such first plan year.

(F) Special rule for early participation.—

If an employer elects to apply section 410(b)(4)(B) in determining whether a cash or deferred arrangement meets the requirements of subparagraph (A)(i), the employer may, in determining whether the arrangement meets the requirements of subparagraph (A)(ii), exclude from consideration all eligible employees (other than highly compensated employees) who have not met the minimum age and service requirements of section 410(a)(1)(A).

(G) Governmental plan.—

A governmental plan (within the meaning of section 414(d)) shall be treated as meeting the requirements of this paragraph.

(4) OTHER REQUIREMENTS

(A) Benefits (other than matching contributions) must not be contingent on election to defer

A cash or deferred arrangement of any employer shall not be treated as a qualified cash or deferred arrangement if any other benefit (other than a de minimis financial incentive (not paid for with plan assets) provided to employees who elect to have the employer make contributions under the arrangement in lieu of receiving cash) is conditioned (directly or indirectly) on the employee electing to have the employer make or not make contributions under the arrangement in lieu of receiving cash. The preceding sentence shall not apply to any matching contribution (as defined in section 401(m)) made by reason of such an election.

(B) Eligibility of State and local governments and tax-exempt organizations

(i) Tax-exempts eligible

Except as provided in clause (ii), any organization exempt from tax under this subtitle may include a qualified cash or deferred arrangement as part of a plan maintained by it.

(ii) Governments ineligible

A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained by a State or local government or political subdivision thereof, or any agency or instrumentality thereof. This clause shall not apply to a rural cooperative plan or to a plan of an employer described in clause (iii).

(iii) Treatment of Indian tribal governments

An employer which is an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), an agency or instrumentality of an Indian tribal government or subdivision thereof, or a corporation chartered under Federal, State, or tribal law which is owned in whole or in part by any of the foregoing may include a qualified cash or deferred arrangement as part of a plan maintained by the employer.

(C) Coordination with other plans

Except as provided in section 401(m), any employer contribution made pursuant to an employee's election under a qualified cash or deferred arrangement shall not be taken into account for purposes of determining whether any other plan meets the requirements of section 401(a) or 410(b). This subparagraph shall not apply for purposes of determining whether a plan meets the average benefit requirement of section 410(b)(2)(A)(ii).

(5) HIGHLY COMPENSATED EMPLOYEE

For purposes of this subsection, the term "highly compensated employee" has the meaning given such term by section 414(q).

(6) PRE-ERISA MONEY PURCHASE PLAN For purposes of this subsection, the term "pre-ERISA money purchase plan" means a pension plan—

- (A) which is a defined contribution plan (as defined in section 414(i)),
- (B) which was in existence on June 27, 1974, and which, on such date, included a salary reduction arrangement, and
- (C) under which neither the employee contributions nor the employer contributions may exceed the levels provided for by the contribution formula in effect under the plan on such date.

(7) RURAL COOPERATIVE PLAN For purposes of this subsection—

(A) In general The term "rural cooperative plan" means any pension plan—

- (i) which is a defined contribution plan (as defined in section 414(i)), and
- (ii) which is established and maintained by a rural cooperative.

(B) Rural cooperative defined For purposes of subparagraph (A), the term "rural cooperative" means—

(i) any organization which—

(I) is engaged primarily in providing electric service on a mutual or cooperative basis, or

(II) is engaged primarily in providing electric service to the public in its area of service and which is exempt from tax under this subtitle or which is a State or local government (or an agency or instrumentality thereof), other than a municipality (or an agency or instrumentality thereof),

(ii) any organization described in paragraph (4) or (6) of section 501(c) and at least 80 percent of the members of which are organizations described in clause (i),

(iii) a cooperative telephone company described in section 501(c)(12),

(iv) any organization which—

(I) is a mutual irrigation or ditch company described in section 501(c)(12) (without regard to the 85 percent requirement thereof), or

(II) is a district organized under the laws of a State as a municipal corporation for the purpose of irrigation, water conservation, or drainage, and

(v) an organization which is a national association of organizations described in clause (i), (ii), [2] (iii), or (iv).

(C) Special rule for certain distributions

A rural cooperative plan which includes a qualified cash or deferred arrangement shall not be treated as violating the requirements of section 401(a) or of paragraph (2) merely by reason of a hardship distribution or a distribution to a participant after attainment of age 59½. For purposes of this section, the term “hardship distribution” means a distribution described in paragraph (2)(B)(i)(IV) (without regard to the limitation of its application to profit-sharing or stock bonus plans).

(8) ARRANGEMENT NOT DISQUALIFIED IF EXCESS CONTRIBUTIONS DISTRIBUTED

(A) In general A cash or deferred arrangement shall not be treated as failing to meet the requirements of clause (ii) of paragraph (3)(A) for any plan year if, before the close of the following plan year—

(i) the amount of the excess contributions for such plan year (and any income allocable to such contributions through the end of such year) is distributed, or

(ii) to the extent provided in regulations, the employee elects to treat the amount of the excess contributions as an amount distributed to the employee and then contributed by the employee to the plan.

Any distribution of excess contributions (and income) may be made without regard to any other provision of law.

(B) Excess contributions For purposes of subparagraph (A), the term “excess contributions” means, with respect to any plan year, the excess of—

(i) the aggregate amount of employer contributions actually paid over to the trust on behalf of highly compensated employees for such plan year, over

(ii) the maximum amount of such contributions permitted under the limitations of clause (ii) of paragraph (3)(A) (determined by reducing contributions made on behalf of highly compensated employees in order of the actual deferral percentages beginning with the highest of such percentages).

(C) Method of distributing excess contributions

Any distribution of the excess contributions for any plan year shall be made to highly compensated employees on the basis of the amount of contributions by, or on behalf of, each of such employees.

(D) Additional tax under section 72(t) not to apply

No tax shall be imposed under section 72(t) on any amount required to be distributed under this paragraph.

(E) Treatment of matching contributions forfeited by reason of excess deferral or contribution or permissible withdrawal

For purposes of paragraph (2)(C), a matching contribution (within the meaning of subsection (m)) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under subparagraph (B), an excess deferral under section 402(g)(2)(A), a permissible withdrawal under section 414(w), or an excess aggregate contribution under section 401(m)(6)(B).

(F)Cross reference

For excise tax on certain excess contributions, see section 4979.

(9)COMPENSATION

For purposes of this subsection, the term “compensation” has the meaning given such term by section 414(s).

(10)DISTRIBUTIONS UPON TERMINATION OF PLAN

(A)In general

An event described in this subparagraph is the termination of the plan without establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).

(B)Distributions must be lump sum distributions

(i)In general

A termination shall not be treated as described in subparagraph (A) with respect to any employee unless the employee receives a lump sum distribution by reason of the termination.

(ii)Lump-sum distributionFor purposes of this subparagraph, the term “lump-sum distribution” has the meaning given such term by section 402(e)(4)(D) (without regard to subclauses (I), (II), (III), and (IV) of clause (i) thereof). Such term includes a distribution of an annuity contract from—

(I)a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501(a), or

(II)an annuity plan described in section 403(a).

(11)ADOPTION OF SIMPLE PLAN TO MEET NONDISCRIMINATION TESTS

(A)In generalA cash or deferred arrangement maintained by an eligible employer shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement meets—

(i)the contribution requirements of subparagraph (B),

(ii)the exclusive plan requirements of subparagraph (C), and

(iii)the vesting requirements of section 408(p)(3).

(B)Contribution requirements

(i)In generalThe requirements of this subparagraph are met if, under the arrangement—

(I)an employee may elect to have the employer make elective contributions for the year on behalf of the employee to a trust under the plan in an amount which is expressed as a percentage of compensation of the employee but which in no event exceeds the amount in effect under section 408(p)(2)(A)(ii) (after the application of any election under section 408(p)(2)(E)(i)(II)),
(II)the employer is required to make a matching contribution to the trust for the year in an amount equal to so much of the amount the employee elects under subclause (I) as does not exceed 3 percent of compensation for the year,

(III)the employer may make nonelective contributions of a uniform percentage (up to 10 percent) of compensation, but not to exceed the amount in effect under section 408(p)(2)(A)(iv) in any year, for each employee who is eligible to participate in the arrangement and who has at least \$5,000 of compensation from the employer for the year, and

(IV)no other contributions may be made other than contributions described in subclause (I), (II), or (III).

(ii)Employer may elect 2-percent nonelective contribution

An employer shall be treated as meeting the requirements of clause (i)(II) for any year if, in lieu of the contributions described in such clause, the employer elects (pursuant to the terms of the arrangement) to make nonelective contributions of 2 percent of compensation for each employee who is eligible to participate in the arrangement and who has at least \$5,000 of compensation from the employer for the year. If an employer makes an election under this subparagraph for any year, the employer shall notify employees of such election within a reasonable period of time before the 60th day before the beginning of such year.

(iii)Administrative requirements

(I)In general

Rules similar to the rules of subparagraphs (B) and (C) of section 408(p)(5) shall apply for purposes of this subparagraph.

(II)Notice of election period

The requirements of this subparagraph shall not be treated as met with respect to any year unless the employer notifies each employee eligible to participate, within a reasonable period of time before the 60th day before the beginning of such year (and, for the first year the employee is so eligible, the 60th day before the first day such employee is so eligible), of the rules similar to the rules of section 408(p)(5)(C) which apply by reason of subclause (I).

(C)Exclusive plan requirement

The requirements of this subparagraph are met for any year to which this paragraph applies if no contributions were made, or benefits were accrued, for services during such year under any qualified plan of the employer on behalf of any employee eligible to participate in the cash or deferred arrangement, other than contributions described in subparagraph (B).

(D)Definitions and special rule

(i)Definitions

For purposes of this paragraph, any term used in this paragraph which is also used in section 408(p) shall have the meaning given such term by such section.

(ii)Coordination with top-heavy rules

A plan meeting the requirements of this paragraph for any year shall not be treated as a top-heavy plan under section 416 for such year if such plan allows only contributions required under this paragraph.

(E)Employers electing increased contributions

In the case of an employer which applies an election under section 408(p)(2)(E)(i)(II) for purposes of the contribution requirements of this paragraph under subparagraph (B)(i)(I), rules similar to the rules of subparagraphs (B)(iii),

(C)(ii)(IV), and (G) of section 408(p)(2) shall apply for purposes of subparagraphs (B)(i)(II) and (B)(ii) of this paragraph.



(12) ALTERNATIVE METHODS OF MEETING NONDISCRIMINATION REQUIREMENTS

(A) In general A cash or deferred arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement—

- (i) meets the contribution requirements of subparagraph (B) and the notice requirements of subparagraph (D), or
- (ii) meets the contribution requirements of subparagraph (C).

(B) Matching contributions

(i) In general The requirements of this subparagraph are met if, under the arrangement, the employer makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to—

- (I) 100 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 3 percent of the employee's compensation, and
- (II) 50 percent of the elective contributions of the employee to the extent that such elective contributions exceed 3 percent but do not exceed 5 percent of the employee's compensation.

(ii) Rate for highly compensated employees

The requirements of this subparagraph are not met if, under the arrangement, the rate of matching contribution with respect to any elective contribution of a highly compensated employee at any rate of elective contribution is greater than that with respect to an employee who is not a highly compensated employee.

(iii) Alternative plan designs If the rate of any matching contribution with respect to any rate of elective contribution is not equal to the percentage required under clause (i), an arrangement shall not be treated as failing to meet the requirements of clause (i) if—

- (I) the rate of an employer's matching contribution does not increase as an employee's rate of elective contributions increase, and
- (II) the aggregate amount of matching contributions at such rate of elective contribution is at least equal to the aggregate amount of matching contributions which would be made if matching contributions were made on the basis of the percentages described in clause (i).

(C) Nonelective contributions

The requirements of this subparagraph are met if, under the arrangement, the employer is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated

employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation.

(D) Notice requirement—An arrangement meets the requirements of this paragraph if, under the arrangement, each employee eligible to participate is, within a reasonable period before any year, given written notice of the employee's rights and obligations under the arrangement which—

- (i) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and
- (ii) is written in a manner calculated to be understood by the average employee eligible to participate.

(E) Other requirements

(i) Withdrawal and vesting restrictions

An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) of this paragraph unless the requirements of subparagraphs (B) and (C) of paragraph (2) are met with respect to all employer contributions (including matching contributions) taken into account in determining whether the requirements of subparagraphs (B) and (C) of this paragraph are met.

(ii) Social security and similar contributions not taken into account

An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) unless such requirements are met without regard to subsection (I), and, for purposes of subsection (I), employer contributions under subparagraph (B) or (C) shall not be taken into account.

(F) Timing of plan amendment for employer making nonelective contributions

(i) In general—Except as provided in clause (ii), a plan may be amended after the beginning of a plan year to provide that the requirements of subparagraph (C) shall apply to the arrangement for the plan year, but only if the amendment is adopted—

- (I) at any time before the 30th day before the close of the plan year, or
- (II) at any time before the last day under paragraph (8)(A) for distributing excess contributions for the plan year.

(ii) Exception where plan provided for matching contributions

Clause (i) shall not apply to any plan year if the plan provided at any time during the plan year that the requirements of subparagraph (B) or paragraph (13)(D)(i)(I) applied to the plan year.

(iii) 4-percent contribution requirement

Clause (i)(II) shall not apply to an arrangement unless the amount of the contributions described in subparagraph (C) which the employer is required to make under the arrangement for the plan year with respect to any employee is an amount equal to at least 4 percent of the employee's compensation.

(G) Other plans

An arrangement shall be treated as meeting the contribution requirements under subparagraph (B) or (C) if any other plan maintained by the employer meets such requirements with respect to employees eligible under the arrangement.

(13)ALTERNATIVE METHOD FOR AUTOMATIC CONTRIBUTION
ARRANGEMENTS TO MEET NONDISCRIMINATION REQUIREMENTS

(A)In general

A qualified automatic contribution arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii).

(B)Qualified automatic contribution arrangementFor purposes of this paragraph, the term “qualified automatic contribution arrangement” means a cash or deferred arrangement—

(i)

which is described in subparagraph (D)(i)(I) and meets the applicable requirements of subparagraphs (C) through (E), or

(ii)

which is described in subparagraph (D)(i)(II) and meets the applicable requirements of subparagraphs (C) and (D).

(C)Automatic deferral

(i)In general

The requirements of this subparagraph are met if, under the arrangement, each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to a qualified percentage of compensation.

(ii)Election outThe election treated as having been made under clause (i) shall cease to apply with respect to any employee if such employee makes an affirmative election—

(I)

to not have such contributions made, or

(II)

to make elective contributions at a level specified in such affirmative election.

(iii)Qualified percentageFor purposes of this subparagraph, the term “qualified percentage” means, with respect to any employee, any percentage determined under the arrangement if such percentage is applied uniformly, does not exceed 15 percent (10 percent during the period described in subclause (I)), and is at least—

(I)

3 percent during the period ending on the last day of the first plan year which begins after the date on which the first elective contribution described in clause (i) is made with respect to such employee,

(II)

4 percent during the first plan year following the plan year described in subclause (I),

(III)

5 percent during the second plan year following the plan year described in subclause (I), and

(IV)

6 percent during any subsequent plan year.

(iv) Automatic deferral for current employees not required Clause (i) may be applied without taking into account any employee who—

(I)

was eligible to participate in the arrangement (or a predecessor arrangement) immediately before the date on which such arrangement becomes a qualified automatic contribution arrangement (determined after application of this clause), and

(II)

had an election in effect on such date either to participate in the arrangement or to not participate in the arrangement.

(D) Matching or nonelective contributions

(i) In general The requirements of this subparagraph are met if, under the arrangement, the employer—

(I)

makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to the sum of 100 percent of the elective contributions of the employee to the extent that such contributions do not exceed 1 percent of compensation plus 50 percent of so much of such contributions as exceed 1 percent but do not exceed 6 percent of compensation, or

(II)

is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation.

(ii) Application of rules for matching contributions

The rules of clauses (ii) and (iii) of paragraph (12)(B) shall apply for purposes of clause (i)(I).

(iii) Withdrawal and vesting restrictions An arrangement shall not be treated as meeting the requirements of clause (i) unless, with respect to employer contributions (including matching contributions) taken into account in determining whether the requirements of clause (i) are met—

(I)

any employee who has completed at least 2 years of service (within the meaning of section 411(a)) has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from such employer contributions, and

(II)

the requirements of subparagraph (B) of paragraph (2) are met with respect to all such employer contributions.

(iv) Application of certain other rules

The rules of subparagraphs (E)(ii) and (G) of paragraph (12) shall apply for purposes of subclauses (I) and (II) of clause (i).

(E) Notice requirements

(i) In general The requirements of this subparagraph are met if, within a reasonable period before each plan year, each employee eligible to

participate in the arrangement for such year receives written notice of the employee's rights and obligations under the arrangement which—

(I)

is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

(II)

is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

(ii) Timing and content requirements A notice shall not be treated as meeting the requirements of clause (i) with respect to an employee unless—

(I)

the notice explains the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have such contributions made at a different percentage),

(II)

in the case of an arrangement under which the employee may elect among 2 or more investment options, the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee, and

(III)

the employee has a reasonable period of time after receipt of the notice described in subclauses (I) and (II) and before the first elective contribution is made to make either such election.

(F) Timing of plan amendment for employer making nonelective contributions

(i) In general Except as provided in clause (ii), a plan may be amended after the beginning of a plan year to provide that the requirements of subparagraph (D)(i)(II) shall apply to the arrangement for the plan year, but only if the amendment is adopted—

(I)

at any time before the 30th day before the close of the plan year, or

(II)

at any time before the last day under paragraph (8)(A) for distributing excess contributions for the plan year.

(ii) Exception where plan provided for matching contributions

Clause (i) shall not apply to any plan year if the plan provided at any time during the plan year that the requirements of subparagraph (D)(i)(I) or paragraph (12)(B) applied to the plan year.

(iii) 4-percent contribution requirement

Clause (i)(II) shall not apply to an arrangement unless the amount of the contributions described in subparagraph (D)(i)(II) which the employer is required to make under the arrangement for the plan year with respect to any employee is an amount equal to at least 4 percent of the employee's compensation.

(14) SPECIAL RULES RELATING TO HARDSHIP WITHDRAWALS For purposes of paragraph (2)(B)(i)(IV)—

(A) Amounts which may be withdrawn The following amounts may be distributed upon hardship of the employee:

- (i) Contributions to a profit-sharing or stock bonus plan to which section 402(e)(3) applies.
- (ii) Qualified nonelective contributions (as defined in subsection (m)(4)(C)).
- (iii) Qualified matching contributions described in paragraph (3)(D)(ii)(I).
- (iv) Earnings on any contributions described in clause (i), (ii), or (iii).

(B) No requirement to take available loan

A distribution shall not be treated as failing to be made upon the hardship of an employee solely because the employee does not take any available loan under the plan.

(C) Employee certification In determining whether a distribution is upon the hardship of an employee, the administrator of the plan may rely on a written certification by the employee that the distribution is—

- (i) on account of a financial need of a type which is deemed in regulations prescribed by the Secretary to be an immediate and heavy financial need, and
- (ii) not in excess of the amount required to satisfy such financial need, and that the employee has no alternative means reasonably available to satisfy such financial need. The Secretary may provide by regulations for exceptions to the rule of the preceding sentence in cases where the plan administrator has actual knowledge to the contrary of the employee's certification, and for procedures for addressing cases of employee misrepresentation.

(15) SPECIAL RULES FOR PARTICIPATION REQUIREMENT FOR LONG-TERM, PART-TIME WORKERS For purposes of paragraph (2)(D)(ii)—

(A) Age requirement must be met

Paragraph (2)(D)(ii) shall not apply to an employee unless the employee has met the requirement of section 410(a)(1)(A)(i) by the close of the last of the 12-month periods described in such paragraph.

(B) Nondiscrimination and top-heavy rules not to apply

(i) Nondiscrimination rules In the case of employees who are eligible to participate in the arrangement solely by reason of paragraph (2)(D)(ii), or by reason of such paragraph and section 202(c)(1)(B) of the Employee Retirement Income Security Act of 1974—

(I) notwithstanding subsection (a)(4), an employer shall not be required to make nonelective or matching contributions on behalf of such employees even if such contributions are made on behalf of other employees eligible to participate in the arrangement, and

(II) an employer may elect to exclude such employees from the application of subsection (a)(4), paragraphs (3), (12), and (13),

paragraphs (2), (11), and (12) of subsection (m), and section 410(b).

(ii) Top-heavy rules

An employer may elect to exclude all employees who are eligible to participate in a plan maintained by the employer solely by reason of paragraph (2)(D)(ii) from the application of the vesting and benefit requirements under subsections (b) and (c) of section 416.

(iii) Vesting

For purposes of determining whether an employee described in clause (i) has a nonforfeitable right to employer contributions (other than contributions described in paragraph (3)(D)(i)) under the plan, each 12-month period for which the employee has at least 500 hours of service shall be treated as a year of service, and section 411(a)(6) shall be applied by substituting “at least 500 hours of service” for “more than 500 hours of service” in subparagraph (A) thereof.

(iv) Employees who become full-time employees

This subparagraph (other than clause (iii)) shall cease to apply to any employee as of the first plan year beginning after the plan year in which the employee meets the requirements of paragraph (2)(D) without regard to paragraph (2)(D)(ii).

(C) Exception for employees under collectively bargained plans, etc.

Paragraph (2)(D)(ii) shall not apply to employees described in section 410(b)(3).

(D) Special rules

(i) Time of participation

The rules of section 410(a)(4) shall apply to an employee eligible to participate in an arrangement solely by reason of paragraph (2)(D)(ii).

(ii) 12-month periods

12-month periods shall be determined in the same manner as under the last sentence of section 410(a)(3)(A).

(16) STARTER 401(K) DEFERRAL-ONLY PLANS FOR EMPLOYERS WITH NO RETIREMENT PLAN

(A) In general

A starter 401(k) deferral-only arrangement maintained by an eligible employer shall be treated as meeting the requirements of paragraph (3)(A)(ii).

(B) Starter 401(k) deferral-only arrangement For purposes of this paragraph, the term “starter 401(k) deferral-only arrangement” means any cash or deferred arrangement which meets—

(i)

the automatic deferral requirements of subparagraph (C),

(ii)

the contribution limitations of subparagraph (D), and

(iii)

the requirements of subparagraph (E) of paragraph (13).

(C) Automatic deferral

(i) In general

The requirements of this subparagraph are met if, under the arrangement, each eligible employee is treated as having elected to have the employer make elective contributions in an amount equal to a qualified percentage of compensation.

(ii) Election out—The election treated as having been made under clause (i) shall cease to apply with respect to any employee if such employee makes an affirmative election—

(I)

to not have such contributions made, or

(II)

to make elective contributions at a level specified in such affirmative election.

(iii) Qualified percentage

For purposes of this subparagraph, the term “qualified percentage” means, with respect to any employee, any percentage determined under the arrangement if such percentage is applied uniformly and is not less than 3 or more than 15 percent.

(D) Contribution limitations

(i) In general—The requirements of this subparagraph are met if, under the arrangement—

(I)

the only contributions which may be made are elective contributions of employees described in subparagraph (C), and

(II)

the aggregate amount of such elective contributions which may be made with respect to any employee for any calendar year shall not exceed \$6,000.

(ii) Cost-of-living adjustment

In the case of any calendar year beginning after December 31, 2024, the \$6,000 amount under clause (i) shall be adjusted in the same manner as under section 402(g)(4), except that “2023” shall be substituted for “2005”.

(iii) Catch-up contributions for individuals age 50 or over

In the case of an individual who has attained the age of 50 before the close of the taxable year, the limitation under clause (i)(II) shall be increased by the applicable amount determined under section 219(b)(5)(B)(ii) (after the application of section 219(b)(5)(C)(iii)).

(E) Eligible employer—For purposes of this paragraph—

(i) In general

The term “eligible employer” means any employer if the employer does not maintain a qualified plan with respect to which contributions are made, or benefits are accrued, for service in the year for which the determination is being made. If only individuals other than employees described in subparagraph (A) of section 410(b)(3) are eligible to participate in such arrangement, then the preceding sentence shall be applied without regard to any qualified plan in which only employees described in such subparagraph are eligible to participate.

(ii) Relief for acquisitions, etc.

Rules similar to the rules of section 408(p)(10) shall apply for purposes of clause (i).

(iii) Qualified plan

The term “qualified plan” means a plan, contract, pension, account, or trust described in subparagraph (A) or (B) of paragraph (5) of section

219(g) (determined without regard to the last sentence of such paragraph (5)).

(F)Eligible employeeFor purposes of this paragraph—

(i)In general

The term “eligible employee” means any employee of the employer who meets the minimum age and service conditions described in section

410(a)(1).

(ii)Exclusions

The employer may elect to exclude from such definition any employee described in paragraph (3) or (4) of section 410(b).

. . .