

## Internal Revenue Code Section 414(v)(2)(B)(ii)

### Definitions and special rules

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

(1) In general.

An applicable employer plan shall not be treated as failing to meet any requirement of this title solely because the plan permits an eligible participant to make additional elective deferrals in any plan year.

(2) Limitation on amount of additional deferrals.

(A) In general. A plan shall not permit additional elective deferrals under paragraph (1) for any year in an amount greater than the lesser of-

(i) the applicable dollar amount, or

(ii) the excess (if any) of-

(I) the participant's compensation (as defined in section 415(c)(3)) for the year, over

(II) any other elective deferrals of the participant for such year which are made without regard to this subsection .

(B) Applicable dollar amount. For purposes of this paragraph -

(i) In the case of an applicable employer plan other than a plan described in section 401(k)(11) or 408(p) , the applicable dollar amount is \$5,000.

(ii) In the case of an applicable employer plan described in section 401(k)(11) or 408(p) , the applicable dollar amount is \$2,500.

(C) Cost-of-living adjustment. In the case of a year beginning after December 31, 2006, the Secretary shall adjust annually the \$5,000 amount in subparagraph (B)(i) and the \$2,500 amount in subparagraph (B)(ii) for increases in the cost-of-living at the same time and in the same manner as adjustments under section 415(d) ; except that the base period taken into account shall be the calendar quarter beginning July 1, 2005, and any increase under this subparagraph which is not a multiple of \$500 shall be rounded to the next lower multiple of \$500.

(D) Aggregation of plans. For purposes of this paragraph , plans described in clauses (i) , (ii) , and (iv) of paragraph (6)(A) that are maintained by the same employer (as determined under subsection (b) , (c) , (m) or (o) ) shall be treated as a single plan, and plans described in clause (iii) of paragraph (6)(A) that are maintained by the same employer shall be treated as a single plan.



(3) Treatment of contributions.

In the case of any contribution to a plan under paragraph (1) -

(A) such contribution shall not, with respect to the year in which the contribution is made-

(i) be subject to any otherwise applicable limitation contained in sections 401(a)(30) , 402(h) , 403(b) , 408 , 415(c) , and 457(b)(2) (determined without regard to section 457(b)(3) ), or

(ii) be taken into account in applying such limitations to other contributions or benefits under such plan or any other such plan, and

(B) except as provided in paragraph (4) , such plan shall not be treated as failing to meet the requirements of section 401(a)(4) , 401(k)(3) , 401(k)(11) , 403(b)(12) , 408(k) , 410(b) , or 416 by reason of the making of (or the right to make) such contribution.

(4) Application of nondiscrimination rules.

(A) In general. An applicable employer plan shall be treated as failing to meet the nondiscrimination requirements under section 401(a)(4) with respect to benefits, rights, and features unless the plan allows all eligible participants to make the same election with respect to the additional elective deferrals under this subsection .

(B) Aggregation. For purposes of subparagraph (A) , all plans maintained by employers who are treated as a single employer under subsection (b) , (c) , (m) , or (o) of section 414 shall be treated as 1 plan, except that a plan described in clause (i) of section 410(b)(6)(C) shall not be treated as a plan of the employer until the expiration of the transition period with respect to such plan (as determined under clause (ii) of such section ) .

(5) Eligible participant.

For purposes of this subsection , the term "eligible participant" means a participant in a plan-

(A) who would attain age 50 by the end of the taxable year,

(B) with respect to whom no other elective deferrals may (without regard to this subsection ) be made to the plan for the plan (or other applicable) year by reason of the application of any limitation or other restriction described in paragraph (3) or comparable limitation or restriction contained in the terms of the plan.

(6) Other definitions and rules.

For purposes of this subsection -

(A) Applicable employer plan. The term "applicable employer plan" means-

(i) an employees' trust described in section 401(a) which is exempt from tax under section 501(a) ,

(ii) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b) ,

(iii) an eligible deferred compensation plan under section 457 of an eligible employer described in section 457(e)(1)(A) , and

(iv) an arrangement meeting the requirements of section 408(k) or (p) .

(B) Elective deferral. The term "elective deferral" has the meaning given such term by subsection (u)(2)(C) .

(C) Exception for section 457 plans. This subsection shall not apply to a participant for any year for which a higher limitation applies to the participant under section 457(b)(3) .

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