

# 401(k) Compliance Check Questionnaire

## Glossary

The glossary below provides definitions of terms in the questionnaire. In general, the definitions are intended to track those under the Internal Revenue Code.

401(k) plan	A defined contribution plan that includes a feature that allows a participant to choose between receiving compensation in cash or deferring it into the plan.
§402(g)	The Internal Revenue Code section that sets a dollar limit on the amount of elective deferrals that a participant may contribute during a calendar year. For 401(k) plans other than SIMPLE 401(k) plans, the limit is \$15,000 for 2006 and \$15,500 for 2007 and 2008. For SIMPLE 401(k) plans, the limit is \$10,000 for 2006 and \$10,500 for 2007 and 2008. The foregoing amounts are increased for participants age 50 and over by permitting additional catch-up contributions described in §414(v).
§414(v)	The Internal Revenue Code section that sets a dollar limit on catch-up contributions that participants may make to a plan during a calendar year. For 401(k) plans other than SIMPLE 401(k) plans, the limit is \$5,000 for 2006, 2007 and 2008. For SIMPLE 401(k) plans, the limit is \$2,500 for 2006, 2007 and 2008.
§415	The Internal Revenue Code section that sets a limit on a participant's annual additions. The limit is equal to the lesser of 100 percent of compensation and a certain dollar amount. The dollar amount is \$44,000 for 2006, \$45,000 for 2007 and \$46,000 for 2008.
Actual contribution percentage test (ACP Test)	A test to determine whether matching contributions and employee after-tax contributions made on behalf of employees discriminate in favor of highly compensated employees. To perform the test, the average contribution percentage for highly compensated employees for a plan year is compared to the average contribution percentage for nonhighly compensated employees for the same plan year or for the prior plan year, depending on whether the plan is using the current year testing method or the prior year testing method.
Actual deferral percentage test (ADP Test)	A test to determine whether elective deferrals made on behalf of employees discriminate in favor of highly compensated employees. To perform the test, the average deferral percentage for highly compensated employees for a plan year is compared to the average deferral percentage for nonhighly compensated employees for the same plan year or for the prior plan year, depending on whether the plan is using the current year testing method or the prior year testing method.
Advisory letter	A written statement issued by the Internal Revenue Service to a volume submitter practitioner or volume submitter mass practitioner as to the acceptability of the form of a specimen plan and any related trust or custodial account under §401(a).
Affiliated service group	Any group consisting of a service organization ("first organization") and one or more of the following: (1) any service organization (an organization whose principal business is the performance of services) which is a shareholder or partner in the first organization and regularly performs services for the first organization or is regularly associated with the first organization in performing services for third persons; and (2) any other organization if it is performing a significant part of its services for either the first organization or for any service organization described in (1) which are of a type historically performed by employees and 10 percent or more of the interests in such organization are held by persons who are highly compensated employees of the first organization or of the organization described in (1).
Annual additions	The sum of all contributions and forfeitures, including elective deferrals and employee after-tax contributions, made to a participant's account(s) for a year. The term does not include investment earnings, loan repayments, rollovers and trustee to trustee transfers.
Audit CAP	A program under the Employee Plans Compliance Resolution System. The program is available to plans under examination, allowing them to correct an error by making correction and paying a sanction.
Automatic contribution arrangement	A feature in a plan whereby a covered employee's compensation is reduced by an amount specified in the plan and contributed to the plan on the employee's behalf unless the employee

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	<p>makes an affirmative election to have a different amount or no amount contributed to the plan. In the case of a 401(k) plan with an automatic contribution arrangement, the amounts withheld from employees' compensation are contributed to the plan as elective deferrals and the percentage of compensation contributed is called the default deferral rate.</p>
Average contribution percentage	<p>The average contribution percentage is the average, expressed as a percentage, of the contribution ratios for a group of employees, either highly compensated employees or nonhighly compensated employees. An employee's contribution ratio is the sum of matching contributions and employee after-tax contributions made for the employee for a plan year divided by the employee's compensation for the year.</p>
Average deferral percentage	<p>The average deferral percentage is the average, expressed as a percentage, of the deferral ratios for a group of employees, either highly compensated employees or nonhighly compensated employees. An employee's deferral ratio is the elective deferrals made for the employee for a plan year divided by the employee's compensation for the year.</p>
Basic matching contribution	<p>A type of safe harbor 401(k) plan contribution. It is a qualified matching contribution equal to the sum of 100% of the participant's elective deferrals that do not exceed 3% of compensation and 50% of the participant's elective deferrals that exceed 3% of compensation but not 5% of compensation.</p>
Cash balance plan	<p>A type of defined benefit plan that describes a participant's accrued benefit as a hypothetical account balance or a single-sum amount.</p>
Catch-up contribution	<p>An elective deferral that exceeds a statutory or plan limit (such as the §402(g) limit) but which is permitted under §414(v) by participants aged 50 or over, provided they have sufficient compensation for the year to make the additional deferral. This additional deferral is limited to \$5,000 for 2006, 2007 and 2008.</p>
Company	<p>The business that sponsors the 401(k) plan.</p>
Compensation	<p>Pay received by employees of the plan sponsor for personal services. Types of pay includible in compensation are described in the plan document. A plan may have several different definitions of compensation.</p>
Controlled group	<p>A group of trades or businesses (employers) that are related through ownership. A controlled group of employers is either (1) one or more chains of employers connected through ownership with a common parent employer where at least 80% of each employer, other than the common parent, is owned by one or more of the other employers and the common parent owns at least 80% of one or more of the other employers ("parent-subsidiary controlled group"); (2) two or more employers where five or fewer common owners satisfy an 80% common ownership test and a 50% identical ownership test ("brother-sister controlled group"); or (3) three or more employers where each employer is in either a parent-subsidiary controlled group or a brother-sister controlled group and at least one of the employers is the common parent employer in a parent-subsidiary controlled group and is also in a brother-sister controlled group ("combined group").</p>
Corrective distribution	<p>A distribution of funds from the plan to correct a nondiscrimination test or to correct a contribution in excess of a statutory limitation.</p>
Current year testing method	<p>Method of performing the ADP test and ACP test where the highly compensated employees' average deferral percentage and average contribution percentage for a plan year are compared to the nonhighly compensated employees' average deferral percentage and average contribution percentage for the same plan year.</p>
Default	<p>A failure to repay a plan loan in accordance with the provisions specified in the plan document. The document must identify the events that constitute the failure and the parameters for any grace period.</p>
Default deferral rate	<p>In the case of an automatic contribution arrangement in a 401(k) plan, the percentage of compensation, specified in the plan, withheld automatically from a covered participant's compensation (unless the participant elects otherwise) and contributed to the plan as an elective deferral.</p>
Defined benefit plan	<p>A plan under which each participant's benefits are not held in separate accounts, but instead, a formula stated in the plan provides for definitely determinable accrued benefits.</p>

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Defined contribution plan	A plan which provides for an individual account for each participant. Benefits are based on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.
Designated Roth contribution	An elective deferral designated as a Roth contribution when contributed to the plan and which is not excludable from gross income.
Determination letter	A written statement issued by the Internal Revenue Service to an employer as to the acceptability of the form of a specific plan and any related trust or custodial account satisfying the tax-qualification requirements under §401(a) and related sections.
Direct foreign investment	An investment made directly in a foreign country. The term includes bank accounts, investment accounts, foreign securities, and other foreign investments. The term includes only direct investments (e.g., foreign investments through a U.S. mutual fund are not included).
Direct rollover	A rollover made from one plan to another plan without being distributed to the participant.
Discretionary match	A matching contribution permitted under the terms of the plan but not required. The plan sponsor can choose whether or not to make a discretionary match on a year-by-year basis. The plan sponsor can also choose the amount of the match that will be made.
Diversification notice	A written notice provided to plan participants that informs them of their right to sell the employer stock in their accounts.
Elective deferral	An amount elected by a participant to be contributed to a plan, thereby deferring the receipt of the cash as income. Elective deferrals can be either pre-tax elective deferrals or designated Roth contributions.
Eligible automatic contribution arrangement (EACA)	A type of automatic contribution arrangement that may be included in a 401(k) plan. Under the feature, a participant may elect to receive a one-time distribution of elective deferrals withheld under the automatic contribution arrangement. The arrangement must satisfy a uniformity requirement and a notice requirement. This arrangement is described in Internal Revenue Code section §414(w).
Employee	A common-law employee of the company that sponsors the 401(k) plan responding to this questionnaire. An employee also includes certain leased employees.
Employee after-tax contribution	A contribution made by an employee that is designated or treated as an after-tax contribution (other than a designated Roth contribution) when made to the plan and that is allocated to an individual account to which attributable earnings and losses are allocated.
Employee Plans Compliance Resolution System (EPCRS)	The program used by the Internal Revenue Service to correct plan errors. The program consists of the voluntary correction program, the self-correction program and audit CAP.
Employee stock ownership plan	A defined contribution plan comprised either of a stock bonus plan or of a combined stock bonus and money purchase pension plan which is designed to invest primarily in employer stock.
Employer	The company that the employees covered by a plan work for. Note that this definition does not include employees of members of the controlled group if not covered by the Plan.
Employer stock	Stock of the company that sponsors the plan, its subsidiary or other member of its controlled group or affiliated service group.
Enhanced matching contribution	A matching contribution under a safe harbor 401(k) plan that provides each participant with a matching contribution that is greater than the basic matching contribution.
EPCRS Revenue Procedure	Revenue Procedure 2008-50, which describes the EPCRS program and provides the rules and procedures for using the program.
Excess benefit plan	A nonqualified deferred compensation arrangement designed solely to provide benefits in excess of the Internal Revenue Code §415 limits.
Fixed match	A matching contribution that is specifically provided for in the plan document and that must be contributed each year unless and until the plan is amended.
Frozen	A plan under which accruals and/or contributions have ceased but assets are still held for participants and beneficiaries.

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Hardship distribution	An in-service distribution from the plan which is made because the participant has suffered severe financial difficulty or an extraordinary event as defined by the plan document. In order to make hardship distributions from a plan, the plan must provide for such distributions.
Highly compensated employee	An employee who (1) owned more than 5% of the employer at any time during the year or the preceding year; or (2) in the preceding year, had compensation from the employer in excess of \$95,000 (if the preceding year is 2005, \$100,000 if the preceding year is 2006 or 2007) and, if the employer so chooses, was in the top 20% of employees when ranked by compensation as defined by Internal Revenue Code §415(c)(3).
In-kind distribution	A distribution from the plan that distributes a plan asset instead of cash to the participant. For example, if a participant requests a distribution and receives Company ABC stock instead of cash, this would be an in-kind distribution.
In-service distribution	A distribution that is paid to a participant while he or she is still employed by the plan sponsor.
Installment payments	A series of equal payments from the plan made to a participant or beneficiary until exhaustion of the account balance
Involuntary cash-out	An amount that may automatically be distributed from the plan in a lump sum upon the participant's termination or retirement if it does not exceed a certain dollar amount.
Key employee	An employee who at any time during the plan year is one of the following: (1) an officer of the employer having an annual compensation greater than \$140,000 in the case of the 2006 plan year; \$145,000 in the case of the 2007 plan year; and \$150,000 in the case of the 2008 plan year; (2) a 5% owner; or (3) a 1% owner having an annual compensation from the employer in excess of \$150,000.
Leased employee	An individual who is not a common-law employee of the business for which he or she performs services and who (1) provides services to the business pursuant to an agreement between the business and a leasing organization; (2) has performed services for the business or any related entity on a substantially full-time basis for a period of at least 1 year; and (3) performs such services under the primary direction or control of the business.
Life annuity	A series of payments, payable at least annually, for the life of the participant, with no benefits payable after the participant's death.
Lump sum	The distribution, in a single payment, of a participant's entire vested accrued benefit under the plan (or what remains of the participant's vested benefit at the time of the single-sum distribution).
Master/prototype plan	A master plan is a plan that is made available by a sponsor for adoption by employers and for which a single funding medium is established for use by all adopting employers. A prototype plan is a plan that is made available by a sponsor for adoption by employers and under which a separate funding medium is established for each adopting employer.
Matching contribution	Employer contributions that are made on account of elective deferrals or employee after-tax contributions.
Minimum contribution	A contribution required to be made to a plan in any year in which it is determined to be top-heavy.
Money purchase pension plan	A money purchase pension plan is a defined contribution plan that is also a type of pension plan. A pension plan must provide for the payment of definitely determinable benefits over a period of years (usually life) after retirement. To satisfy the "definitely determinable benefits" requirement, a money purchase pension plan must provide a fixed contribution formula that is not subject to the employer's discretion and is not geared to the profits of the company.
Multiemployer plan	A plan (1) to which more than one employer is required to contribute, (2) which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and (3) which satisfies other requirements imposed by the Secretary of Labor.
Multiple employer plan	A plan sponsored by two or more employers where at least two of the sponsoring employers are not members of the same controlled group.
Nonelective contribution	An employer contribution to a qualified plan that is neither an elective deferral nor a matching contribution (e.g., a discretionary profit-sharing contribution).

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Nonhighly compensated employee	An employee who is not a highly compensated employee.
Non-key employee	An employee who is not a key employee.
Nonqualified deferred compensation arrangement	An arrangement, other than a tax qualified plan, under which compensation of an employee is deferred to a later taxable year. The term is not intended to include arrangements that are excepted from Internal Revenue Code section § 409A.
Nonresident alien	An employee who is not a citizen of the United States and has not met either the green card test or the residency test under Internal Revenue Code section §7701(b); and who receives no U.S. source income from the employer.
Nonstandardized master/prototype	A master/prototype plan that is not a standardized plan. See the definition of standardized master/prototype plan.
Opinion letter	A written statement issued by the Internal Revenue Service to a sponsor or master and prototype mass submitter as to the acceptability of the form of a master/prototype plan under §401(a) and, in the case of a master plan, the acceptability of the master trust under §501(a).
Participant	An employee who is eligible to either make contributions to the Plan or to share in employer contributions to the Plan.
Plan trustee	The person who has exclusive authority and discretion to manage and control the assets of the plan; named as such either in the trust document or appointed to the position.
Pre-approved plan	A master, prototype or volume submitter document.
Primary residence loan	Loan used to acquire any dwelling unit which, within a reasonable time, is to be used as the principal residence of the participant.
Prior year testing method	Method of performing the ADP test and ACP test in which the highly compensated employees' average deferral percentage and average contribution percentage for a plan year are compared to the nonhighly compensated employees' average deferral percentage and average contribution percentage for the prior plan year.
Profit-sharing plan	A defined contribution plan that provides a definite predetermined formula for allocating the contributions made to the plan among the participants and for distributing the funds after a fixed number of years, the attainment of a stated age, or upon the prior occurrence of some event such as layoff, illness, disability, retirement, death, or severance from employment.
Qualified automatic contribution arrangement (QACA)	A safe harbor 401(k) plan that is exempt from the ADP test and the ACP test and not subject to the top-heavy rules. It must provide for automatic contributions at a specified level and meet certain employer contribution, notice and uniformity requirements. The default deferral rate must be at least 3% initially, increasing by 1% each plan year until the rate is at least 6%. The default deferral rate cannot exceed 10% and it must be applied uniformly to all covered participants. The employer must make either a nonelective contribution of 3% of compensation to all participants or a matching contribution equal to the sum of 100% of the participant's elective deferrals that do not exceed 1% of compensation and 50% of the participant's elective deferrals that exceed 1% of compensation but not 6% of compensation.
Qualified joint and survivor annuity	An annuity for the life of the participant with a survivor annuity for the life of the spouse that is between 50% and 100% of the amount of the annuity payable for the joint lives of the participant and spouse. If a participant is not married, the annuity is payable for that participant's life.
Qualified matching contributions	Matching contributions that are fully vested when made to the plan and that are subject to the same distribution restrictions as elective deferrals (except for hardship).
Qualified nonelective contributions	Nonelective contributions that are fully vested when made to the plan and that are subject to the same distribution restrictions as elective deferrals (except for hardship).
Recharacterized	A means of correcting a failed ADP test. Excess elective deferrals are treated as distributed from the plan and contributed as employee after-tax contributions subject to the ACP test.
Rollover	The transfer of a qualified plan distribution from one qualified plan or individual retirement arrangement to another qualified plan or individual retirement arrangement.

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Safe harbor 401(k)	A type of 401(k) plan that is exempt from the ADP test and the ACP test and not subject to the top-heavy rules. The plan must meet certain notice and employer contribution requirements. The employer must make either a safe harbor nonelective contribution or a qualified matching contribution that is either a basic matching contribution or an enhanced matching contribution. For purposes of this questionnaire, a safe harbor 401(k) plan does not include a QACA or a SIMPLE 401(k) plan.
Safe harbor nonelective contribution	A type of safe harbor 401(k) plan contribution. It is a qualified nonelective contribution equal to 3% of a participant's compensation.
Self-correction program	One of the programs under the Employee Plans Compliance Resolution System that allows plans to correct insignificant errors without approval from the IRS.
SIMPLE 401(k) plan	A type of 401(k) plan that provides for a lower limit on elective deferrals and certain mandatory employer matching or nonelective contributions. A SIMPLE 401(k) plan is deemed to satisfy the ADP and ACP tests.
Standardized master/prototype	A standardized master/ prototype plan is a master/prototype plan that provides an adopting employer with limited choices regarding coverage and benefit options. Following the plan's terms, including any options provided under the plan document, will guarantee that the qualification requirements of the Internal Revenue Code are satisfied.
Stock bonus plan	A defined contribution plan established to provide benefits similar to those in a profit-sharing plan, except that benefits under the plan may be distributable in the stock of the employer.
Target benefit plan	A type of money purchase pension plan providing a benefit formula known as the target benefit. The target benefit, used as the basis for determining the employer's annual contribution, is expressed in the same manner as a benefit formula under a defined benefit plan. The employer's contribution for a participant is determined using the target benefit formula and actuarial assumptions stated in the plan.
Term certain annuity	A benefit payout option that provides for a series of payments, payable at least annually, for a specified period of time.
Terminate/Termination	Cessation of the plan and distribution of its assets to participants. A facts and circumstances test is used to ascertain whether a plan has been terminated. For example, a plan is terminated when, in connection with the winding up of the employer's trade or business, the employer begins to discharge his employees. A plan is not terminated merely because an employer sells or otherwise disposes of his trade or business if the acquiring employer continues the plan as a separate and distinct plan of its own, or consolidates or replaces that plan with a comparable plan.
Third-party administrator	A party hired by a plan or its fiduciaries to aid in performing management and/or recordkeeping functions on behalf of the plan.
Unrelated business income	Gross income derived by an organization from: 1) any unrelated trade or business regularly carried on by it, or 2) debt financed property. An unrelated trade or business is any trade or business which is not substantially related to the purpose for which the organization is exempt from tax. Debt financed property is property purchased with borrowed money. If a plan has unrelated business income it may be required to file Form 990-T, <i>Exempt Organization Business Income Tax Return</i> .
Vesting	The degree to which a participant is entitled to a portion of his or her account balance.
Volume submitter plan	A sample plan of a volume submitter practitioner.
Voluntary correction program	A program under the Employee Plans Compliance Resolution System that allows plans to submit an application and fee to the Internal Revenue Service in order to correct a plan error. This program is not available to plans under examination.