



2018

Annual Plan Compliance Review



**EMPLOYEE
FIDUCIARY**

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Offering a 401(k) plan can be one of the most challenging, yet rewarding, decisions an employer can make.

The employees participating in the plan, their beneficiaries, and the employer benefit when a retirement plan is in place. Administering a plan and managing its assets, however, require certain actions and involve specific fiduciary responsibilities. These responsibilities can seem complex and overwhelming without professional guidance.

Employee Fiduciary, LLC (“EF”) created this Annual Plan Compliance Review form to help summarize many of the most important fiduciary responsibilities related to 401(k) plan administration. This review will focus on two key areas:

- **Document Retention** – the process of maintaining critical plan documentation in order to prove plan’s compliance with the law
- **Major Plan Administration Tasks** – tasks that must be performed annually to keep plan in compliance with the law

It is suggested that you keep this form with other permanent plan records once it’s complete.

Background

The Employee Retirement Income Security Act of 1974 (“ERISA”) governs the operation and investment of 401(k) plans.

ERISA states that a person is a plan fiduciary “to the extent that he exercises discretionary control or authority over plan management or authority or control over management or disposition of plan assets, renders investment advice regarding plan assets for a fee, or has discretionary authority or responsibility in plan administration.”

ERISA requires a retirement plan to have one or more “named” fiduciaries that have the authority to control and manage the operation and administration of the plan, including its investments. The sponsoring employer (“plan sponsor”) is always a named fiduciary.

Failure to comply with ERISA can result in significant personal liabilities and penalties being imposed on a fiduciary.

I. Documentation Retention

ERISA requires 401(k) plan administrators to maintain all records necessary to document the accuracy of information contained in any ERISA-required report, such as IRS Form 5500. The records must be sufficient to permit plan information to be “verified, explained, or clarified, and checked for accuracy and completeness.” These records can include fee invoices, trust statements, service contracts, claim records, payrolls, plan documents (including amendments), trust agreements, board resolutions, insurance contracts, and investment policies.

In general, 401k plan records must be kept for a period of not less than six years after the filing date of the IRS Form 5500 created from those records. However, records necessary to a participant’s claim for plan benefits must be kept longer. These records must be kept “as long as a possibility exists that they might be relevant to a determination of the benefit entitlements of a participant or beneficiary.” This can mean indefinitely.

EF recommends that you create one file to house the plan documents that govern the operation of your plan (“Plan Document File”) and a file for each plan year that contains important plan records related to the plan year (“Plan Year File”).

All filed documents and amendments should be fully-executed (signed and dated).

A. Plan Records File

This file should contain the governing terms of the plan. As items in this file are replaced, it is recommended you archive each replaced item in a safe spot for historical reference.

Below is a list of items you should keep in your Plan Document File. Enter your initials to the right of each item you have reviewed for sufficiency. Enter “N/A” if not applicable.

File Item	Initials
1. Plan Documents – Includes the following:	
a. Adoption Agreement (AA) and Base Plan Document (BPD) – Together, these items represent the plan document. Adoption Agreement should be timely executed (i.e. signed and dated)	
b. IRS Advisory Letter – Contains opinion of the IRS that Plan is acceptable under the sections of IRS Code applicable to tax-qualified plans with respect to its form	
c. Amendments – Required and discretionary changes to plan document. Amendments should be timely executed (i.e. signed and dated)	
2. Participant Disclosures – Includes the following:	
a. Summary Plan Description (SPD) – Summary of Plan provisions. Most recent version should be in file. To be provided to Plan participants	
b. Summary of Material Modification (SMM) – Updates the Summary Plan Description (SPD) for changes made by Plan amendment.	

File Item	Initials
3. Administrative Policies – Includes the following:	
a. Loan Policy – Contains terms of Plan loan provisions (if applicable)	
b. QDRO Policy – Contains Plan QDRO provisions in the event Plan receives a Domestic Relations Order (DRO)	
4. Corporate Actions – Includes resolutions, agendas, minutes, and documents distributed at meetings	
5. Plan Trust/Custodial Agreement – Describes trustee/custodian services and responsibilities	
6. Service Agreements – Includes all contracts with plan service providers	
7. Fidelity Bond – ERISA Section 412(a) requires every fiduciary of an employee benefit plan and every person who handles funds or other plan property be bonded.	

B. Participant Records File

This file should contain important participant records. As items in this file are replaced, it is recommended you archive each replaced item in a safe spot for historical reference.

Below is a list of items you should keep in your Participant Records File. Enter your initials to the right of each item you have reviewed for sufficiency. Enter “N/A” if not applicable.

File Item	Initials
1. Deferral Election Forms – Used by participants to elect the amount of salary they want to defer by making contributions to their 401(k) account.	
2. Investment Election Forms – Used by participants to make investment choices within their 401(k) account.	
3. Beneficiary Designation Forms – Used by participants to choose a beneficiary for their 401(k) account in the event of their death.	
4. Distribution Request Forms – Used by participants to request a distribution from their 401(k) account.	

5. **Loan Request Forms** – Used by participants to request a loan from their 401(k) account.
6. **Rollover Request Forms** – Used by participants to make a rollover contribution to their 401(k) account.
7. **QDRO Split Request Forms** – Used by participants to request a portion of their 401(k) account be paid to a beneficiary subject to a Qualified Domestic Relations Order (QDRO). A copy of the QDRO itself should also be filed.

C. Plan Year Records File

This file should contain important records related to the 2017 plan year. Once this file is complete, it is recommended you keep this file in a safe spot for reference purposes. A new Plan Year file should be completed for each new plan year.

Below is a list of items you should keep in your Plan Year File. Enter your initials to the right of each item you have reviewed for sufficiency. Enter “N/A” if not applicable.

File Item	Initials
1. Annual Valuation – Contains plan transaction information for the plan year, including contribution, distribution and fee activity. If received quarterly, file all four quarters.	
2. Annual Trustee/Custodian report – Contains trust-level transaction information for the plan year, including all purchases and sales that occurred in trust. If received quarterly, file all four quarters.	
3. Annual Nondiscrimination Testing – 401(k) plans have various testing requirements. Most common tests include:	
a. Coverage (IRC Section 410(b)) testing	
b. Actual Deferral Percentage (ADP) and Actual Contribution Percentage (ACP) testing (non-safe harbor 401(k) plans only)	
c. Excess Deferral (IRC Section 402(g)) testing	
d. . Annual Additions (IRC Section 415(c)) testing	

e.	Top Heavy (IRC Section 416) testing	
f.	Rate Group (IRC Section 401(a)(4)) testing (“new comparability” plans only)	
4.	Annual Participant Notices – Any notices provided to participants, including (as applicable):	
a.	Participant fee disclosure (ERISA 404a-5) notice	
b.	Safe harbor 401(k) plan notice	
c.	Qualified Default Investment Alternative (QDIA) notice	
d.	Automatic (negative) enrollment notice	
5.	Form 5500 – Copy of Form 5500 with related schedules as filed with Department of Labor (DOL)	
6.	Independent Audit Report – If required to be filed with Form 5500	
7.	Summary Annual Report – Summary of Form 5500 provided to participants	

II. Annual Administration Tasks

It is becoming increasingly difficult for plan sponsors to complete the myriad of tasks that must be completed in order for a 401(k) plan to remain compliant with the law on an annual basis. These tasks include nondiscrimination testing, governmental reporting, participant disclosure and updating plan documents to comply with current law.

As your 401(k) provider, EF is always looking for ways to make keeping your plan in compliance with the law easier.

With that in mind, we are pleased to provide you with the following two checklists meant to summarize notable plan administration tasks that must be completed during the plan year:

- **Deadline Checklist** – Summarizes the tasks that must be completed by a specific deadline
- **Ongoing Task Checklist** – Summarizes the tasks that must be completed throughout the year

These checklists are designed for plans with calendar-year plan years. These checklists are not a substitute for consultation with ERISA counsel.

A. Deadline Checklist

The below checklist is meant to summarize notable deadlines by which certain key 401(k) plan compliance requirements must be met. Enter the date each task is completed in the field to the right of task. Enter “N/A” if not applicable.

Prior to Start of Plan Year	Deadline	Date Complete	Initials
Provide any applicable 2017 notices to participants. These include:			
<ul style="list-style-type: none"> • Safe harbor 401(k) plan notice • Qualified Default Investment Alternative (QDIA) notice • Automatic (negative) enrollment notice 	12/1/17		
1st Quarter			
Provide 4th quarter benefit statements to participants (due 45 days after quarter-end)	2/14/18		
Distribute any 2017 ADP/ACP test failures in order to avoid 10% IRS excise tax (non-safe harbor 401(k) plans only)	3/15/18		
2nd Quarter			
Distribute “first year” Required Minimum Distributions (RMDs) to participants that attained age 70 ½ in 2017	4/1/18		
Make 2017 employer contributions to take tax deduction in 2017 fiscal year (assuming no corporate tax extension)	4/16/18		

Distribute amount deferred in excess of IRC Section 402(g) limit (\$18,000 for 2017)	4/16/18		
Provide 1st quarter benefit statements to participants (due 45 days after quarter-end)	5/15/18		
3rd Quarter			
File 2017 Form 5500 or 2 ½ month extension (Form 5558)	7/31/18		
Provide 2nd quarter benefit statements to participants (due 45 days after quarter-end)	8/14/18		
Make 2017 employer contributions to take tax deduction in 2017 fiscal year (assuming corporate tax extension was filed)	9/14/18		
Distribute Summary of Material Modification (SMM) or new Summary Plan Description (SPD) to participants if SPD modified during 2017	9/30/18		
Distribute 2017 Summary Annual Report (SAR) to participants (if Form 5500 not extended)	9/30/18		
4th Quarter			
File Form 5500 (if extension filed by 7/31)	10/15/18		
Provide 3rd quarter benefit statements to participants (due 45 days after quarter-end)	11/14/18		
Provide any applicable 2018 notices to participants. These include:			
<ul style="list-style-type: none"> • Safe harbor 401(k) plan notice • Qualified Default Investment Alternative (QDIA) notice • Automatic (negative) enrollment notice 	12/1/18		
Distribute 2017 Summary Annual Report (SAR) to participants (if Form 5500 extended)	12/15/18		
Correct any 2017 ADP/ACP test failures with 10% excise tax (nonsafe harbor 401(k) plans only)	12/31/18		

Make any 2017 safe harbor or QNEC contributions	12/31/18		
Execute (sign and date) any 2018 discretionary amendments	12/31/18		
Distribute “post-first year” Required Minimum Distributions (RMDs) to participants	12/31/18		

B. Ongoing Tasks Checklist

Below is a list of notable tasks which generally must be completed throughout the year. Enter your initials to the right of each item you have reviewed for sufficiency. Enter “N/A” if not applicable.

Item	Initials
Review plan operation to ensure compliance with plan document. Failure to follow the terms of the plan document is a common problem found during a plan audit	
Ensure all eligible employees are given the opportunity to enroll in plan. By supplying EF with information regarding all employees who receive a Form W-2, you may reduce the risk of omitting eligible employees	
<p>Ensure each newly eligible employee receives the following items before they are eligible to participate:</p> <ul style="list-style-type: none"> • Forms or website instructions necessary to enroll • Beneficiary designation form • Summary Plan Description (SPD) • Applicable participant notice(s) (safe harbor, automatic enrollment, QDIA) • Annual participant fee disclosure notice 	

Item	Initials
<p>Ensure plan definition of compensation is being used to calculate participant deferrals and employer contribution allocations. If plan specifies a different definition of compensation for a particular contribution type, be sure that different definition is being correctly applied</p>	
<p>If the plan allows participant loans, ensure all loans are repaid according to the terms of the plan's loan policy and each loan's promissory note.</p>	
<p>Ensure employee 401(k) deferrals and loan payments are timely deposited. Employers must deposit deferrals as soon as they can be segregated from employer assets. Most employers deposit salary deferrals when making payroll tax deposits</p>	
<p>Periodically complete plan "housekeeping" (recommended quarterly), including:</p>	
<ul style="list-style-type: none"> • Cash-out small account balances related to terminated participants • Process any defaulted loans • Use any unallocated forfeitures 	
<p>Limit 401(k) deferrals to IRC 402(g) limit (\$18,000 for 2017). Pre-tax and Roth 401(k) deferrals (if applicable) are combined for purposes of the IRC 402(g) limit</p>	
<p>Notify EF of any plan sponsor changes, including changes to company name, EIN, address, ownership or contact information.</p>	
<p>Distribute the annual participant fee disclosure required under ERISA 404a-5 to any plan-eligible employee as well as terminated employees or beneficiaries with an account balance. This notice must be provided every 12 months. Provide an amended notice if a plan change will change the information contained in the notice 30-90 days before the effective date of the plan change.</p>	

We know, it's hard to believe our 401(k) pricing is so low! Please request a proposal today to see how much you'll save with us.

Request a Proposal