

Form <b>9417</b> (November 2006)		Department of the Treasury — <b>Internal Revenue Service</b>	Date
		<b>Employee Plan Deficiency Checksheet</b> <b>Attachment #12 — Section 401(k) Requirements</b>	
<i>For IRS Use</i>	Please furnish the amendment(s) requested in the section(s) checked below.		
1201, 1202	<input type="checkbox"/>	A plan that is not a profit sharing, stock bonus, pre-ERISA money purchase pension, or rural cooperative plan will fail to satisfy the requirements of section 401(a) of the Code if the plan includes a cash or deferred arrangement (CODA). A cash or deferred arrangement is an arrangement under which an employee may elect, with respect to amounts not currently available to the employee and not designated or treated as after tax contributions, to have the employer contribute such amounts to the trust or provide such amounts to the employee. Since your plan is not one described in this section, it may not include a cash or deferred arrangement and should be amended accordingly. IRC section 401(k)(1) and Regs. section 1.401(k)-1(a).	
I.a.			
1203	<input type="checkbox"/>	Section _____ of the plan should be amended to provide that an employee's election to defer may be made only with respect to an amount which the employee could otherwise elect to receive in cash and which is not currently available to the employee, i.e., an amount which the employee is not eligible to receive at the time of the election to defer. IRC section 401(k)(2)(A) and Regs. sections 1.401(k)-1(a)(3) and 1.401(k)-1(e)(2).	
II.a.			
1204	<input type="checkbox"/>	Section _____ of the plan should be amended to provide for a separate accounting for the portion of each employee's benefit under the plan that is attributable to elective contributions (and any other amounts treated as elective contributions). Each employee's Roth elective contributions, if applicable, and properly attributable earnings must be kept in an account separate from all other accounts under the plan. Regs. section 1.401(k)-1(e)(3) and (f)(2).	
II.b.			
1206	<input type="checkbox"/>	Section _____ of the plan should be amended to provide that a participant's elective contributions for a calendar year under the plan and all other plans, contracts and arrangements of the employer will not exceed the limit imposed by section 402(g) of the Code for the calendar year. IRC section 401(a)(30).	
II.c.			
1207	<input type="checkbox"/>	It must be demonstrated that the employees eligible under the cash or deferred arrangement satisfy the coverage requirements of section 410(b). IRC section 401(k)(3)(A)(i) and Regs. section 1.401(k)-1(b)(1).	
III.a.			
1208	<input type="checkbox"/>	Section _____ of the plan should be amended to allow elective contributions after no more than one year of service. The plan may impose a minimum age requirement not greater than 21. IRC section 401(k)(2)(D).	
III.b.			
1209	<input type="checkbox"/>	Section _____ of the plan should be amended to provide that each employee's right to the amount attributable to elective contributions is immediately nonforfeitable regardless of the participant's age and service. IRC section 401(k)(2)(C) and Regs. section 1.401(k)-1(c).	
IV.a.			
1211, 1212, 1213	<input type="checkbox"/>	Section _____ of the plan should be amended to provide that the plan will meet the nondiscrimination test set forth in section 401(k)(3)(A)(ii) of the Code that applies to elective contributions. Under this test, the actual deferral percentage (ADP) for the group of eligible highly compensated employees for the current plan year may not exceed the greater of (a) 125% of the ADP for all other eligible employees for the prior plan year or (b) the lesser of twice the ADP for all other eligible employees for the prior plan year, or such ADP for all other eligible employees for the prior plan year plus 2%. If the plan is using the current year testing method, then "the current plan year" should be substituted for "the prior plan year" in the previous sentence. The ADP for a group of eligible employees is the average of the ratios (calculated separately for each employee) of the amount of elective contributions (and other contributions treated as elective contributions) made on behalf of each employee for the relevant plan year, divided by the employee's compensation for that plan year. Elective contributions are any employer contributions to a plan that were subject to a cash or deferred election under a cash or deferred arrangement. For the purpose of this requirement, the plan may incorporate by reference the provisions of section 401(k)(3) of the Code and section 1.401(k)-2 of the regulations. IRC section 401(k), Regs. sections 1.401(k)-1(e)(7) and 1.401(k)-2(a)(1)(i).	
V.a.(i), (ii)			
1215, 1216	<input type="checkbox"/>	Section _____ of the plan should be amended to provide that the plan will take into account the actual deferral ratios of all eligible employees for purposes of the actual deferral percentage (ADP) test in section 401(k). For this purpose, an eligible employee is any employee who is directly or indirectly eligible to make a cash or deferred election under the plan for all or a portion of a plan year and includes: an employee who would be a plan participant but for the failure to make required contributions; an employee whose eligibility to make elective	
V.b.(i)			

1215, 1216 (cont.)		contributions has been suspended because of an election (other than certain one-time elections) not to participate, a distribution, or a loan; and, an employee who cannot defer because of the section 415 limits on annual additions. In the case of an eligible employee who makes no elective contributions the deferral ratio that is to be included in determining the ADP is zero. IRC section 401(k)(3)(B) and Regs. sections 1.401(k)-6. If an election has been made to apply section 410(b)(4)(B), the plan may provide that eligible non-highly compensated employees who have not met the minimum age and service requirements under section 410(a)(1)(A) are excluded from the ADP test. Section 401(k)(3)(F).
V.b.(i)		
1218		Section _____ of the plan should be amended to provide that an elective contribution will be taken into account under the actual deferral percentage test of section 401(k)(3)(A) of the Code for a plan year only if it relates to compensation that either would have been received by the employee in the plan year (but for the deferral election) or is attributable to services performed by the employee in the plan year and would have been received by the employee within 2-1/2 months after the close of the plan year (but for the deferral election). Regs. section 1.401(k)-2(a)(4).
V.b.(ii)		
1220		Section _____ of the plan should be amended to provide that an elective contribution will be taken into account under the actual deferral percentage test of section 401(k)(3)(A) of the Code for a plan year only if it is allocated to the employee as of a date within that plan year. For this purpose, an elective contribution is considered allocated as of a date within a plan year if the allocation is not contingent on participation or performance of services after such date and the elective contribution is actually paid to the trust no later than 12 months after the plan year to which the contribution relates. Regs. section 1.401(k)-2(a)(4).
V.b.(iii)		
1221		Section _____ of the plan should be amended to provide that for purposes of determining whether a plan satisfies the actual deferral percentage test of section 401(k), all elective contributions that are made under two or more plans that are aggregated for purposes of section 401(a)(4) or 410(b) (other than section 410(b)(2)(A)(ii)) are to be treated as made under a single plan and that if two or more plans are permissively aggregated for purposes of section 401(k), the aggregated plans must also satisfy sections 401(a)(4) and 410(b) as though they were a single plan. IRC section 401(k)(3) and Regs. section 1.401(k)-1(b)(4).
V.b.(iv)		
1223		Section _____ of the plan should be amended to provide that in calculating the actual deferral percentage for purposes of section 401(k), the actual deferral ratio of a highly compensated employee will be determined by treating all cash or deferred arrangements under which the highly compensated employee is eligible (other than those that may not be permissively aggregated) as a single arrangement. IRC section 401(k)(3) and Regs. section 1.401(k)-2(a)(3)(ii).
V.b.(v)		
1225		Section _____ of the plan should be amended to provide that the actual deferral percentage (ADP) of highly compensated employees (HCEs) and non-highly compensated employees (NHCEs) are determined for the relevant plan years. If the plan is using the prior year testing method, the ADP of HCEs is determined for the current plan year (the "testing year") and the ADP of NHCEs is determined for the prior plan year. If, on the other hand, the plan is using the current year testing method, the ADPs of both HCEs and NHCEs are determined for the current year. IRC sections 401(k)(3)(A) and (B).
V.b.(vi)		
1229		Section _____ of the plan should be amended so that the availability of elective contributions (including catch-up contributions under section 414(v) of the Code, if applicable) does not discriminate in favor of highly compensated employees. IRC section 401(a)(4) and 414(v) and Regs. sections 1.401(k)-1(a)(4)(iv) and 1.414(v)-1(e).
V.c.		
1274		Nonelective contributions and matching contributions may be treated as elective contributions for purposes of the actual deferral percentage test of section 401(k) only if such contributions are nonforfeitable when made to the plan and subject to the same distribution restrictions (other than hardship) that apply to elective contributions. Nonelective contributions and matching contributions which may be treated as elective contributions must satisfy these requirements without regard to whether they are actually taken into account as elective contributions. Section _____ of the plan should be amended accordingly. Regs. section 1.401(k)-6.
VI.a.(i), (ii)		
1276		Section _____ of the plan should be amended to provide that nonelective contributions and/or matching contributions may be treated as elective contributions only if the conditions described in section 1.401(k)-2(a)(6) of the regulations are satisfied. Regs. section 1.401(k)-2(a)(6).
VI.b.		

1231, 1232, 1233, 1234		Section _____ of the plan should be amended to provide that amounts attributable to elective contributions may not be distributed earlier than upon one of the following events:
VII.a.		<ol style="list-style-type: none"> <li>1. The employee's retirement, death, disability or severance from employment;</li> <li>2. The termination of the plan without establishment or maintenance of another defined contribution plan (other than an ESOP, a SEP, a SIMPLE IRA plan, a section 403(b) plan or a section 457 plan);</li> <li>3. In the case of a profit sharing, stock bonus or rural cooperative plan, the employee's attainment of age 59-1/2, or the employee's hardship;</li> </ol> <p>Paragraph 2 above applies only if the distribution is in the form of a lump sum. IRC sections 401(k)(2)(B), (7)(C) and (10) and Regs. section 1.401(k)-1(d)(1).</p>
1235		Section _____ of the plan should be amended to set forth nondiscriminatory and objective standards for determining whether an employee, for purposes of entitlement to a hardship distribution, has an immediate and heavy financial need. See section 1.401(k)-1(d)(3)(iii)(B) of the regulations regarding certain deemed immediate and heavy financial needs.
VII.b.(i)		
1237		Section _____ of the plan should be amended to provide that a hardship distribution may be made only if it is necessary to satisfy an immediate and heavy financial need. For this purpose, a distribution is not necessary to the extent it exceeds the amount necessary (including taxes) to relieve the need or to the extent the need may be satisfied from other resources reasonably available to the employee. See section 1.401(k)-1(d)(3)(iv)(E) of the regulations regarding distributions that are deemed necessary to satisfy financial need.
VII.b.(ii)		
1239, 1240		Section _____ of the plan should be amended to provide that the amount of excess contributions for a highly compensated employee will be determined in the following manner. First, determine how much the actual deferral ratio (ADR) of the highly compensated employee with the highest ADR would have to be reduced to satisfy the actual deferral percentage (ADP) test or cause such ratio to equal the ADR of the highly compensated employee with the next highest ratio. Second, this process is repeated until the ADP test would be satisfied. The amount of excess contributions is equal to the sum of these hypothetical reductions multiplied, in each case, by the highly compensated employee's compensation. IRC section 401(k)(8)(B) and Regs. section 1.401(k)-2(b)(2)(ii).
VII.f.(i), g.(ii)		
1241		Section _____ of the plan should be amended to provide that the identity of the highly compensated employees subject to distribution (or recharacterization) of excess contributions will be determined using the "dollar leveling method" starting with the highly compensated employee with the greatest dollar amount of elective and other contributions treated as elective contributions for the plan year until the amount of excess contributions has been accounted for. IRC section 401(k)(8)(C) and Regs. section 1.401(k)-2(b)(2)(iii).
VII.f.(ii), g.(iii)		
1247		Section _____ of the plan should be amended to provide that the amount of excess contributions to be distributed or recharacterized shall be reduced by excess deferrals previously distributed for the taxable year ending in the same plan year and excess deferrals to be distributed for a taxable year will be reduced by excess contributions previously distributed or recharacterized for the plan year beginning in such taxable year. Regs. section 1.401(k)-2(b)(4).
VII.f.(iii), g.(iv)		
1249		Section _____ of the plan should be amended to provide that the distribution of excess contributions will include the income allocable thereto. The income allocable to excess contributions includes income for the plan year for which the excess contributions were made and for the period between the end of the plan year and the date of distribution. See section 1.401(k)-2(b)(2)(iv) of the regulations for a description of the manner in which income allocable to excess contributions is to be calculated. IRC section 401(k)(8)(A) and Regs. section 1.401(k)-2(b)(2)(iv).
VII.f.(iv)		
1251		Failure to correct excess contributions by 12 months following the end of the plan year for which they were made will cause the cash or deferred arrangement to fail to satisfy the requirements of section 401(k)(3) for the plan year for which the excess contributions were made and for all subsequent years they remain in the trust. Also, the employer will be liable for a 10% excise tax on the amount of excess contributions unless they are corrected within 2-1/2 months after the close of the plan year for which they were made. Section _____ of the plan should be amended accordingly. IRC sections 401(k)(8)(A) and 4979 and Regs. section 1.401(k)-2(b)(5).
VII.f.(v), g.(v)		
1253		Section _____ of the plan should be amended to provide that excess contributions will not be recharacterized with respect to a highly compensated employee to the extent that the recharacterized amounts, in combination with employee contributions actually made by the employee, exceed the maximum amount of employee contributions (determined prior to applying section 401(m)(2)(A) of the Code) that the employee is permitted to make under the plan in the absence of recharacterization. Regs. section 1.401(k)-2(b)(3)(iii)(B).
VII.g.(i)		

1257, 1258		Section _____ of the plan should be amended to define highly compensated employee as an employee who:
VIII.a.		<ol style="list-style-type: none"> <li>1. was a 5-percent owner, as defined in section 416(i)(1)(A)(ii), at any time during the determination year or the look-back year, or</li> <li>2. had compensation from the employer for the look-back year in excess of \$80,000 (as adjusted) and, if the employer so elects in the plan, was in the top-paid group for the look-back year.</li> </ol> <p>IRC section 414(q), Regs. section 1.414(q)-1T and Notice 97-45, 1997-2 C.B. 296.</p>
1261, 1262, 1263		For purposes of the definition of highly compensated employee, section _____ of the plan should be amended to provide that:
VIII.b.		<ol style="list-style-type: none"> <li>1. The determination year is the plan year for which the determination of who is highly compensated is being made.</li> <li>2. The look-back year is the 12-month period immediately preceding the determination year, or if the employer so elects in the plan, the calendar year beginning with or within such 12-month period.</li> <li>3. Compensation is compensation within the meaning of section 415(c)(3).</li> <li>4. Employers aggregated under section 414(b), (c), (m), or (o) are treated as a single employer.</li> <li>5. If the employer has made a top-paid group election, the top paid group consists of the top 20% of employees ranked on the basis of compensation received during the look-back year. For purposes of determining the number of employees in the top-paid group, employees described in section 414(q)(5) and Q&amp;A 9(b) of section 1.414(q)-1T of the regulations are excluded.</li> </ol> <p>IRC section 414(q), Regs. section 1.414(q)-1T and Notice 97-45, 1997-2 C.B. 296.</p>
1271, 1272		Section _____ of the plan should be amended to define compensation, for purposes of the actual deferral percentage test of section 401(k) and the determination of excess contributions, in a manner that satisfies section 414(s) and over a period specified in section 1.401(k)-6 of the regulations. A definition will satisfy section 414(s) if it conforms to one of the definitions described in Regs. sections 1.414(s)-1(c)(2) and 1.414(s)-1(c)(3).
VIII.c.		Alternatively, submit a demonstration that the definition is nondiscriminatory. IRC sections 401(k)(9) and 414(s) and Regs. sections 1.401(k)-6 and 1.414(s)-1.
1278		Section _____ of the plan should be amended to provide that no contributions can be made, or benefits accrued for services during the year, on behalf of any eligible employee under any other plan, contract, pension, or trust described in section 219(g)(5)(A) or (B), maintained by the employer. IRC section 401(k)(11)(C).
IX.a.		
1279		Section _____ of the plan should be amended to provide that the plan year is the calendar year. IRC sections 401(k)(11)(D) and 408(p)(6)(C).
IX.b.		
1280		Section _____ of the plan should be amended to provide that for purposes of applying the 401(k) SIMPLE provisions, compensation has the meaning in section 408(p)(6)(A) as limited to the section 401(a)(17) amount. IRC sections 401(a)(17), 401(k)(11)(D) and 408(p)(6)(A).
IX.c.		
1281		Section _____ of the plan should be amended to provide that no employee may defer more than the applicable dollar amount under Code section 408(p)(2)(E) (plus catch-up contributions, if applicable) annually to the plan. IRC sections 401(k)(11)(B), 408(p)(2)(E) and 414(v).
IX.d.(i)		
1282		Section _____ of the plan should be amended to provide that, each year, the employer will contribute either a matching contribution (limited to 3 percent of the employee's compensation) to each employee who made elective contributions or a 2 percent nonelective contribution to each employee who earned at least \$5,000 (or a lesser amount) for the year. IRC section 401(k)(11)(B).
IX.d.(ii)		
1283		Section _____ of the plan should be amended to provide that no other contribution may be made to the plan. IRC section 401(k)(11)(B).
IX.d.(iii)		
1284		Section _____ of the plan should be amended to provide that all benefits attributable to contributions made under the plan are nonforfeitable at all times. IRC section 401(k)(11)(A)(iii).
IX.d.(iv)		

1285		Section _____ of the plan should be amended to provide that employees can make deferral elections during the applicable 60-day periods described in section 401(k)(11)(B)(iii) and Regs. section 1.401(k)-4(d).
IX.e.		Employees must be permitted to terminate an election any time during the year. IRC section 401(k)(11)(B)(iii) and Regs. section 1.401(k)-4(d).
1286		Section _____ of the plan should be amended to provide that the employer will notify each eligible employee, prior to the 60-day election period described in section 401(k)(11)(B)(iii) and Regs. section 1.401(k)-4(d), of the employee's eligibility under the plan and the specific employer contributions that will be made for the year. IRC section 401(k)(11)(B)(iii) and Regs. section 1.401(k)-4(d).
IX.f.		
1287		Section _____ of the plan should be amended to provide that a safe harbor matching contribution will be made to the plan on behalf of each eligible non-highly compensated employee (NHCE) equal to: 100% of the amount of the employee's elective contributions that do not exceed 3% of the employee's compensation for the plan year, plus 50% of the amount of the employee's elective contributions that exceed 3% of the employee's compensation but that do not exceed 5% of the employee's compensation. IRC section 401(k)(12)(B)(i).
X.a.(i)		
1288		Section _____ of the plan should be amended to provide that an enhanced matching contribution will be made to the plan under a formula that at any rate of elective contributions provides an aggregate amount of matching contributions at least equal to the aggregate amount of matching contributions that would have been provided under the basic matching formula, and the formula provides that the rate of matching contributions does not increase as an employee's rate of elective contributions increases. IRC section 401(k)(12)(B)(iii).
X.a.(ii)		
1289		Section _____ of the plan should be amended to provide that a safe harbor nonelective contribution will be made to the plan on behalf of each non-highly compensated employee (NHCE) who is an eligible employee in an amount equal to at least 3% of the employee's compensation. IRC section 401(k)(12)(C).
X.a.(iii)		
1290		Section _____ of the plan should be amended to provide that a change from the current year actual deferral percentage (ADP) (and, if applicable, actual contribution percentage (ACP)) testing method to a safe harbor nonelective contribution method will be made. Regs. section 1.401(k)-3(f).
X.a.(iv)		
1291		Section _____ of the plan should be amended to provide that a change from a safe harbor matching contribution method to the current year actual deferral percentage (ADP) (and, if applicable, actual contribution percentage (ACP)) testing method will be made. Regs. section 1.401(k)-3(g).
X.a.(v)		
1292		Section _____ of the plan should be amended to contain only appropriate restrictions on elective contributions by non-highly compensated employees (NHCEs) including that restrictions on election periods must give the employee a reasonable opportunity, including a reasonable period, to make or change a cash or deferred election. Regs. section 1.401(k)-3(c)(6).
X.b.(i)		
1293		Section _____ of the plan should be amended to provide that the restrictions on the amount of elective contributions are permissible only if each non-highly compensated employee (NHCE) who is an eligible employee is permitted to make elective contributions in an amount sufficient to receive the maximum amount of matching contributions available under the plan for the plan year or is allowed to elect a lesser amount of elective contributions. Regs. section 1.401(k)-3(c)(6).
X.b.(ii)		
1294		Section _____ of the plan should be amended to contain a reasonable definition of compensation under section 1.414(s)-1(d)(2) in limiting the types of compensation that may be deferred for non-highly compensated employees (NHCEs). Regs. section 1.401(k)-3(c)(6).
X.b.(iii)		
1295		Section _____ of the plan should be amended to provide that safe harbor matching and nonelective contributions are nonforfeitable. IRC section 401(k)(12)(E).
X.c.		
1296		Section _____ of the plan should be amended to provide that safe harbor matching and nonelective contributions, and earnings thereon, must not be distributable earlier than severance from employment, death, disability, an event described in section 401(k)(10), or in the case of a profit-sharing, stock bonus or rural cooperative plan, age 59 1/2. IRC section 401(k)(12)(E).
X.d.		

1297		Section _____ of the plan should be amended to provide that the plan year is 12 months long (unless it is the first plan year of a newly established plan). If a CODA is added to an existing plan, the plan should be
X.e.		amended to provide that the CODA (and the addition of matching contributions, if applicable) is effective not later than 3 months prior to the end of the plan year.
1298		Section _____ of the plan should be amended to define compensation in accordance with section 1.401(k)-6 of the regulations, and to provide that compensation in excess of a certain amount may not be
X.f.		excluded in this definition, except that the limit of section 401(a)(17) applies.
1299		Section _____ of the plan should be amended to contain the proper definition of eligible employee.
X.g.		
1300, 1301		Section _____ of the plan should be amended to provide that the employer must distribute a notice to each eligible employee that comprehensively describes the types of safe harbor contributions made, the plan
X.h.		to which they are made, the type and amount of compensation that may be deferred, how to make elections and the period for making elections, and withdrawal and vesting provisions. If applicable, the plan should be amended to provide for a supplemental notice to be given if a plan changes from a current year actual deferral percentage (ADP) (or actual contribution percentage (ACP)) testing method to the safe harbor nonelective contribution method, or if a plan suspends safe harbor matching contributions and changes to the current year ADP (and ACP) testing method. Regs. section 1.401(k)-3(d), (f) and (g).
1302		Section _____ of the plan should be amended to specify the name of the other plan to which safe harbor contributions will be made. Regs. section 1.401(k)-3(h)(4).
X.i.		
1303		Section _____ of the plan should be amended to provide that the other requirements of section 401(k) (other than the nondiscrimination test of section 401(k)(3)(A)(ii)) apply to a CODA that satisfies the actual
X.j.		deferral percentage (ADP) test safe harbor.