General Information for 401k Plan Participant

Welcome to our 401(k) Guide for the Plan Participant!

The information contained on this site was designed and developed by various governmental agencies, and compiled and organized by 401k Network as a general guide to basic information for 401(k) Plan Sponsors (typically the employers) and 401(k) Plan Participants (typically the company employees).

We hope you find this guide helpful in understanding and complying with the rules that apply to 401(k) plans. We want to hear all of your comments; what you like about this guide and items not contained in this guide you would like to see.

If you have any comments or suggestions, please e-mail us at: info@401k-network.com

401(k) Plan Overview--General information on 401(k) plans

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Limitation on Elective Deferrals--Detailed information on participant contributions

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The information contained in this site:

- Addresses federal 401(k) plans issues rather than issues related to state laws.
- The guide provides general information. It is not intended to be all-inclusive.

- Is not intended to replace the advice of your attorney or other plan professional

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401(k) Guide - Plan Participants - 401(k) Plan Overview

This 401(k) Participant Guide provides general information. You should contact your plan administrator for information specific to your plan.

A 401(k) plan is a qualified (i.e., meets the standards set forth in the Internal Revenue Code (IRC) for tax-favored status) profit-sharing, stock bonus, pre-ERISA money purchase pension, or a rural cooperative plan under which an employee can elect to have the employer contribute a portion of the employee's cash wages to the plan on a pre-tax basis. These deferred wages (elective deferrals) are not subject to federal income tax withholding at the time of deferral and they are not reflected as taxable income on your Form 1040, U.S. Individual Income Tax Return.

The amounts deferred under your 401(k) plan are reported on your Form W-2, Wage and Tax Statement. Although elective deferrals are not treated as current income for federal income tax purposes, they are included as wages subject to social security (FICA), Medicare, and federal unemployment taxes (FUTA). Refer to Publication 525, Taxable and Nontaxable Income, for more information about elective deferrals. Refer to the Form W-2 Instructions for more information on how amounts should be reported.

Beginning in 2006, 401(k) plans will be permitted to allow you to designate some or all of your elective deferrals as "Roth elective deferrals" that will generally be subject to taxation under the rules applicable to Roth IRAs. The information contained in this guide does not pertain to Roth 401(k)s unless specifically stated.

Two of the advantages of participating in a 401(k) plan are:

Elective deferrals to the plan and investment gains are not subject to federal income taxes until distributed from the plan.

Elective deferrals are always 100% vested.

To qualify for the tax benefits available to qualified plans, a plan must both contain language that meets certain requirements (qualification rules) of the tax law and be operated in accordance with the plan's provisions. The following is a brief overview of important qualification rules. It is not intended to be all-inclusive.

There are several types of 401(k) plans available to employers - traditional 401(k) plans, safe harbor 401(k) plans and SIMPLE 401(k) plans. Different rules apply to each. It is important that you become familiar with your plan so that you understand the special rules that apply to you. Information about the plan must be provided to eligible employees (i.e., employees eligible to participate in the plan) in the Summary Plan Description. An eligible employee may also submit a request in writing to the plan administrator for a copy of the plan document. The administrator may charge a reasonable fee for the copy.

Traditional 401(k) plans. A traditional 401(k) plan allows eligible employees (i.e., employees eligible to participate in the plan) to make pre-tax elective deferrals through payroll deductions. In addition, in a traditional 401(k) plan, employers have the option of making contributions on behalf of all participants, making matching contributions based on employees' elective deferrals, or both. These employer contributions can be subject to a vesting schedule which provides that an employee's right to employer contributions becomes nonforfeitable only after a period of time, or be immediately vested. Rules relating to traditional 401(k) plans require that contributions made under the plan meet specific nondiscrimination requirements. In order to ensure that the plan satisfies these requirements, the employer must perform annual tests, known as the Actual Deferral Percentage (ADP) and Actual Contribution Percentage (ACP) tests, to verify that deferred wages and employer matching contributions do not discriminate in favor of highly compensated employees.

Safe harbor 401(k) plans. A safe harbor 401(k) plan is similar to a traditional 401(k) plan, but, among other things, it must provide for employer contributions that are fully vested when made. These contributions may be employer matching contributions, limited to employees who defer, or employer contributions made on behalf of all eligible employees, regardless of whether they make elective deferrals. The safe harbor 401(k) plan is not subject to the complex annual nondiscrimination tests that apply to traditional 401(k) plans.

Employers sponsoring safe harbor 401(k) plans must satisfy certain employee notice requirements. The notice requirements are satisfied if the employer provides each eligible employee with written notice of the employee's rights and obligations under the plan and the notice satisfies content and timing requirements.

In order to satisfy the content requirement, the notice must describe the safe harbor method used, how eligible employees make elections, any other plans involved, etc.

The timing requirement requires that the employer must provide notice within a reasonable period before each plan year. This requirement is deemed to be satisfied if the notice is provided to each eligible employee at least 30 days and not more than 90 days before the beginning of each plan year. There are special rules for employees who become eligible after the 90th day.

Both the traditional and safe harbor plans are for employers of any size and can be combined with other retirement plans.

SIMPLE 401(k) plans. The SIMPLE 401(k) plan was created so that small businesses could have an effective, cost-efficient way to offer retirement benefits to their employees. A SIMPLE 401(k) plan is not subject to the annual nondiscrimination tests that apply to traditional 401(k) plans. As with a safe harbor 401(k) plan, the employer is required to make employer contributions that are fully vested. This type of 401(k) plan is available to employers with 100 or fewer employees who received at least $5,000 in compensation from the employer for the preceding calendar year. Employees who are eligible to participate in a SIMPLE 401(k) plan may not receive any contributions or benefit accruals under any other plans of the employer.

For more information on traditional, safe harbor and SIMPLE 401(k) plans, see Publication 4222, 401(k) Plans for Small Businesses.

Restriction on conditions of participation. Any 401(k) plan cannot require, as a condition of participation, that an employee complete more than 1 year of service.

Automatic enrollment in a 401(k) plan. A 401(k) plan can have an automatic enrollment feature. This feature permits the employer to automatically reduce your wages by a fixed percentage or amount and contribute that amount to the 401(k) plan unless you have affirmatively chosen not to have your wages reduced or have chosen to have your wages reduced by a different percentage. These contributions qualify as elective deferrals. This has been an effective way for many employers to increase participation in their 401(k) plans.

Elective deferral limits. The law, under IRC section 402(g), limits the amount that you can defer on a pre-tax basis each year. A discussion of those limitations is included.

Elective deferrals that exceed the section 402(g) dollar limit for a year or are recharacterized as after-tax contributions as part of a correction of the Actual Deferral Percentage (nondiscrimination) test are included in your taxable income.

Matching contributions. If the plan document permits, the employer can make matching contributions for an employee who contributes elective deferrals to the 401(k) plan. For example, a 401(k) plan might provide that the employer will contribute 50 cents for each dollar that participating employees choose to defer under the plan. As mentioned earlier, employer matching contributions may be subject to annual tests to determine if specific nondiscrimination requirements are met.

Other employer contributions. If the plan document permits, the employer can make additional contributions (other than matching contributions) for participants, including participants who choose not to contribute elective deferrals to the 401(k) plan. If the 401(k) plan is top-heavy, the employer may be required to make minimum contributions on behalf of certain employees. In general, a plan is top-heavy if the account balances of key employees exceed 60% of the account balances of all employees.

Employee compensation limit. In 2005, no more than $210,000 of an employee’s compensation can be taken into account when figuring contributions. This limit is $220,000 for 2006 and is indexed for inflation.

Plan investment fees. In some cases, plan participants may be liable for investment fees. You can find out more about these fees by visiting the U.S. Department of Labor - Employee Benefits Security Agency (EBSA) web site. EBSA was formerly known as the Pension Welfare Benefits Administration.

Vesting requirements. You must be fully (100%) vested in your elective deferrals. A plan may require completion of a specific number of years of service for vesting in other employer or matching contributions. For example, a plan may require that the employee complete 2 years of service for a 20% vested interest in employer contributions and additional years of service for increases in the vested percentage.

Distributions. General rules relating to distributions are available.

Review your Summary Plan Description or plan document to learn how to apply for a distribution from your 401(k) plan. Your employer or the plan administrator can assist you with the steps that are necessary for you to receive your distribution.

For more information about the treatment of retirement plan distributions, refer to Publication 575, Pension and Annuity Income.

401(k) Guide - Plan Participants - Summary Plan Description

The Employee Retirement Income Security Act (ERISA) requires plan administrators to give to participants and beneficiaries a Summary Plan Description (SPD) describing their rights, benefits, and responsibilities under the plan in understandable language. The SPD includes such information as:

Name and type of plan

Plan’s requirements regarding eligibility

Description of benefits and when participants have a right to those benefits

Statement that the plan is maintained pursuant to a collective bargaining agreement, if applicable

Statement about whether the plan is covered by termination insurance from the Pension Benefit Guaranty Corporation

Source of contributions to the plan and the methods used to calculate the amount of contributions

Provisions governing termination of the plan

Procedures regarding claims for benefits and remedies for disputing denied claims

Statement of rights available to plan participants under ERISA.

New employees must receive a copy of their plan sponsor's latest Summary Plan Description within 90 days after becoming covered by the plan. Plan sponsors are not required to file the Summary Plan Description with the Department of Labor (DOL), although they are required to provide it to DOL upon request.

For more information on the SPD and its importance, visit the Department of Labor web site.

In addition to the Summary Plan Description, plan participants are entitled to receive a Summary of Material Modifications when there is a material modification in the terms of the plan or any change to the information in the Summary Plan Description. The Summary of Material Modifications must be written in a manner that the average participant can understand. The material must be furnished within 210 days after the close of the plan year in which the modification was made.

401(k) Guide - Plan Participants - Interested Parties

An employer is required to give notice to interested parties that it is applying to the Internal Revenue Service Office of Employee Plans (EP) Determinations for a determination of the plan's qualified status. Notice must be given not less than 10 days or more than 24 days before the day that the application is submitted.

The notice must provide:

A brief description identifying the class or classes of interested parties to whom the notice is addressed;

The name of the plan, the plan identification number and the name of the plan administrator;

The name and the taxpayer identification number of the applicant for a determination;

That the application is being made to EP Determinations, the address to which the application is being sent and whether the application relates to an initial qualification, plan amendment, plan termination or partial termination;

A description of the class of employees eligible to participate under the plan;

Whether or not the Service has issued a previous determination as to the qualified status of the plan;

A statement that any person to whom the notice is addressed is entitled to submit, or request the Department of Labor (DOL) to submit, to EP Determinations a comment on whether the plan meets the qualification requirements of Internal Revenue Code section 401 or 403(a); that two or more persons may join in a single comment or request; and if the Department of Labor declines a request to submit a comment on their behalf, they may make the comment directly to EP Determinations;

The specific dates that the comments or request must be received;

The number of interested parties needed in order for the Department of Labor to comment; and

Except to the extent that additional information (described below) required to be made available is provided with the notice, a description of a reasonable procedure that the interested party can follow to obtain the additional information.

The following additional information is required to be available to interested parties:

An updated copy of the plan document and the related trust agreement (if any); and

A copy of the application for determination.

If there are fewer than 26 participants described in the application, instead of providing the additional information, the employer may provide interested parties who are not participants a document that contains:

A description of the plan's requirements with respect to eligibility for participation and benefits and the benefit formula;

A description of the plan's vesting provisions;

A description of the circumstances that may result in ineligibility, or loss or denial of benefits;

A description of the source of financing for the plan and the identity of any organization through which benefits are provided;

A description of any optional benefits that have been reduced or eliminated by plan amendment; and

Any coverage schedule or other demonstration submitted with the application to show that the plan meets the nondiscrimination and coverage requirements of Internal Revenue Code sections 401(a)(4) and 410(b).

However, once an interested party or designated representative receives a notice of final determination, the employer must, upon request, make available the additional information described above, regardless of the number of participants.

Interested parties generally include all:

Present employees of the employer who are eligible to participate in the plan, and

Other present employees of the employer whose principal place of employment is the same as that of the employees eligible to participate in the plan.

In cases involving plan terminations, interested parties also include:

All present employees of the employer with accrued benefits under the plan,

All former employees with vested benefits under the plan, and

All beneficiaries of deceased former employees currently receiving benefits under the plan.

Interested parties may submit their comments directly to EP Determinations or request that the Department of Labor submit comments on their behalf. If an interested party or group of interested parties submits their comments to the DOL, the interested parties may request the DOL to comment on the application to the IRS. The DOL then may forward the interested party comments to EP with comments of its own, if appropriate.

Interested party comments are associated with determination applications as soon as administratively possible and are considered by EP in the determination as to the qualified status of the plan. Interested party comments are not entitled to confidentiality. The Code of Federal Regulations (CFR) specifically provides that all interested party comments will be made available to the employer.

In general, the office of EP Determinations must receive interested party comments by the 45th day after the day on which EP receives the application for determination. However, if an interested party requests that DOL submit a comment to EP, and DOL declines to do so, the interested party may still submit a comment directly to EP, by the later of the 45th day after the day EP received the application or the 15th day after the day on which notification was given by the DOL that it declined to submit a comment. In no event may the comment be received later than the 60th day after the day EP received the application.

Part II of Rev. Proc. 2006-6 provides additional information on the notice requirements and required content of comments submitted by interested parties.

Interested party comments should be submitted to the DOL at the following address:

Deputy Assistant Secretary

Employee Benefits Security Administration

U.S. Department of Labor

200 Constitution Avenue, N.W.

Washington, D.C. 20210

Attention: 3001 Comment Request

Interested party comments are to be addressed to IRS (EP Determinations) at the following address:

Internal Revenue Service

P.O. Box 192

Covington, KY 41012-0192

Requests shipped by express mail or a delivery service should be sent to:

Internal Revenue Service

201 West Rivercenter Blvd.

Attn: Extracting Stop 312

Covington, KY 41011

401(k) Guide - Plan Participants - Limitation on Elective Deferrals

There is a limit on the amount of elective deferrals that you can contribute to your traditional or safe harbor 401(k) plan.

- The limit is $14,000 for 2005 and increases to $15,000 for 2006.
- The limit is subject to cost-of-living increases after 2006.

Generally, all elective deferrals that you make to all plans in which you participate must be considered to determine if the dollar limits are exceeded.

Limits on the amount of elective deferrals that you can contribute to a SIMPLE 401(k) plan are different from those in a traditional or safe harbor 401(k).

- The limit is $10,000 for 2005 and 2006.

The limit is subject to cost-of-living increases after 2006.

Although, general rules for 401(k) plans provide for the dollar limit described above, that does not mean that you are entitled to defer that amount. Other limitations may come into play that would limit your elective deferrals to a lesser amount. For example, your plan document may provide a lower limit or the plan may need to further limit your elective deferrals in order to meet nondiscrimination requirements.

Catch-up contributions. For tax years beginning after 2001, a plan may permit participants who are age 50 or over at the end of the calendar year to make additional elective deferral contributions. These additional contributions (commonly referred to as catch-up contributions) are not subject to the general limits that apply to 401(k) plans. An employer is not required to provide for catch-up contributions in any of its plans. However, if your plan does allow catch-up contributions, it must allow all eligible participants to make the same election with respect to catch-up contributions.

If you participate in a traditional or safe harbor 401(k) plan and you are age 50 or older:

The elective deferral limit increases by $4,000 for 2005 and $5,000 for 2006.

The limit is subject to cost-of-living increases after 2006.

If you participate in a SIMPLE 401(k) plan and you are age 50 or older:

The elective deferral limit increases by $2,000 for 2005 and $2,500 for 2006.

The limit is subject to cost-of-living increases after 2006.

The catch-up contribution you can make for a year cannot exceed the lesser of the following amounts:

The catch-up contribution limit, above, or

The excess of your compensation over the elective deferrals that are not catch-up contributions.

Participation in plans of unrelated employers. If you participate in plans of different employers, you can treat amounts as catch-up contributions regardless of whether the individual plans permit those contributions. In this case, it is up to you to monitor your deferrals to make sure that they do not exceed the applicable limits.

Example: If Joe Saver, who's over 50, has only one employer and participates in that employer's 401(k) plan, the plan would have to permit catch-up contributions before he could defer the maximum of $18,000 for 2005 (the $14,000 regular limit for 2005 plus the $4,000 catch-up limit for 2005). If the plan didn't permit catch-up contributions, the most Joe could defer would be $14,000. However, if Joe participates in two 401(k) plans, each maintained by an unrelated employer, he can defer a total of $18,000 even if neither plan has catch-up provisions. Of course, Joe couldn't defer more than $14,000 under either plan and he would be responsible for monitoring his own contributions.

The rules relating to catch-up contributions are complex and your limits may differ according to provisions in your specific plan. You should contact your plan administrator to find out whether your plan allows catch-up contributions and how the catch-up rules apply to you.

Treatment of excess deferrals. If the total of your elective deferrals is more than the limit, you can have the difference (called an excess deferral) returned to you from any of the plans that permit these distributions. You must notify the plan by April 15 of the following year of the amount to be paid from the plan. The plan must then pay you that amount plus allocable earnings by April 15 of the year following the year in which the excess occurred.

Excess withdrawn by April 15. If you withdraw the excess deferral for 2005 by April 15, 2006, it is includable in your gross income for 2005, but not for 2006. However, any income earned on the excess deferral taken out is taxable in the tax year in which it is taken out. The distribution is not subject to the additional 10% tax on early distributions.

Excess not withdrawn by April 15. If you do not take out the excess deferral by April 15, 2006, the excess, though taxable in 2005, is not included in your cost basis in figuring the taxable amount of any eventual distributions from the plan. In effect, an excess deferral left in the plan is taxed twice, once when contributed and again when distributed. Also, if the entire deferral is allowed to stay in the plan, the plan may not be a qualified plan.

Reporting corrective distributions on Form 1099-R. Corrective distributions of excess deferrals (including any earnings) are reported to you by the plan on Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

Refer to Publication 525, Taxable and Nontaxable Income, for more information about limits on your elective deferrals.

Additional limits. There are other limits that restrict contributions made on your behalf. In addition to the limit on elective deferrals, annual contributions to all of your accounts - this includes elective deferrals, employee contributions, employer matching and discretionary contributions and allocations of forfeitures to your accounts - may not exceed the lesser of 100% of your compensation or $42,000 (for 2005, $44,000 for 2006). In addition, the amount of your compensation that can be taken into account when determining employer and employee contributions is limited. In 2005, the compensation limitation is $210,000; for 2006, the limit is $220,000.

401(k) Guide - Plan Participants - General Distribution Rules

Generally, distributions of elective deferrals cannot be made until one of the following occurs:

You die, become disabled, or otherwise have a severance from employment.

The plan terminates and no successor defined contribution plan is established or maintained by the employer.

You reach age 59½ or incur a financial hardship.

Depending on the terms of the plan, distributions may be:

Nonperiodic, such as lump-sum distributions or

Periodic, such as annuity or installment payments.

In certain circumstances, the plan administrator must obtain your consent before making a distribution. Generally, if your account balance exceeds $5,000, the plan administrator must obtain your consent before making a distribution. Depending on the type of benefit distribution provided under your 401(k) plan, the plan may also require the consent of your spouse before making a distribution. Your plan may provide that rollovers from other plans are not included in determining whether your account balance exceeds the $5,000 amount.

If a distribution in excess of $1,000 is made, and you (or your designated beneficiary) do not elect to (i) receive the distribution directly or (ii) make an election to roll over the amount to an eligible retirement plan, the plan administrator is required to transfer the distribution to an individual retirement plan of a designated trustee or issuer and must notify you (or your beneficiary) in writing that the distribution may be transferred to another individual retirement plan.

Distributions from your 401(k) plan are taxable unless the amounts are rolled over as described below in the section titled, "Rollovers from your 401(k) plan." If you receive a lump-sum distribution from a 401(k) plan and you were born before 1936, you may be able to elect optional methods of figuring the tax on the distribution. More information on the optional methods can be found in Publication 575, Pension and Annuity Income, and in the Form 4972 Instructions, Tax on Lump-Sum Distributions.

Required distributions. A 401(k) plan must provide that you will either:

Receive your entire interest (benefits) in the plan by the required beginning date (defined below), or

Begin receiving regular periodic distributions by the required beginning date in annual amounts calculated to distribute your entire interest (benefits) over your life expectancy or over the joint life expectancy of you and your designated beneficiary (or over a shorter period).

These required distribution rules apply individually to each qualified plan. You cannot satisfy the requirement for one plan by taking a distribution from another plan. The plan document must provide that these rules override any inconsistent distribution options previously offered.

Minimum distribution. If your account balance is to be distributed, the plan administrator must determine the minimum amount required to be distributed to you each calendar year. Information to help you figure the minimum distribution amount is included in Publication 575.

The required beginning date is April 1 of the first year after the later of the following years:

Calendar year in which you reach age 70½.

Calendar year in which you retire.

However, a plan may require you to begin receiving distributions by April 1 of the year after you reach age 70½, even if you have not retired.

If you are a 5% owner of the employer maintaining the plan, then you must begin receiving distributions by April 1 of the first year after the calendar year in which you reach age 70½. Additional information to help you determine your required beginning date is included in Publication 575.

Distributions after the starting year. The distribution required to be made by April 1 is treated as a distribution for the starting year. (The starting year is the year in which you reach age 70 ½ or retire, whichever applies, to determine your required beginning date, above.) After the starting year, you must receive the required distribution for each year by December 31 of that year. If no distribution is made in the starting year, required distributions for 2 years must be made in the next year (one by April 1 and one by December 31).

Distributions after participant's death. Publication 575 includes information to help you understand the special rules covering distributions made after the death of a participant.

Hardship distributions. A 401(k) plan may allow you to receive a hardship distribution because of an immediate and heavy financial need. Hardship distributions from a 401(k) plan are limited to the amount of the employee’s elective deferrals and generally do not include any income earned on the deferred amounts. If the plan permits, certain employer matching contributions and employer discretionary contributions may also be included in hardship distributions. Hardship distributions cannot be rolled over to another plan or IRA.

A distribution is treated as a hardship distribution only if it is made on account of the hardship. For purposes of this rule, a distribution is made on account of hardship only if the distribution is made both on account of an immediate and heavy financial need of the employee and is necessary to satisfy that financial need. The determination of the existence of an immediate and heavy financial need and of the amount necessary to meet the need must be made in accordance with nondiscriminatory and objective standards set forth in the plan.

A distribution on account of hardship must be limited to the distributable amount. The distributable amount is equal to your total elective deferrals as of the date of distribution, reduced by the amount of previous distributions of elective contributions.

Immediate and heavy financial need. Whether an employee has an immediate and heavy financial need is to be determined based on all relevant facts and circumstances. A distribution made to an employee for the purchase of a boat or television would generally not constitute a distribution made on account of an immediate and heavy financial need. A financial need may be immediate and heavy even if it was reasonably foreseeable or voluntarily incurred by the employee.

A distribution is deemed to be on account of an immediate and heavy financial need of the employee if the distribution is for:

Expenses for medical care previously incurred by the employee, the employee's spouse, or any dependents of the employee or necessary for these persons to obtain medical care;

Costs directly related to the purchase of a principal residence for the employee (excluding mortgage payments);

Payment of tuition, related educational fees, and room and board expenses, for the next 12 months of postsecondary education for the employee, or the employee's spouse, children, or dependents; or

Payments necessary to prevent the eviction of the employee from the employee's principal residence or foreclosure on the mortgage on that residence.

Note: The final 401(k) regulations were published in December 2004 and apply for plan years beginning on or after January 1, 2006. However, plan sponsors are permitted to apply these final regulations in the current plan year. Check with your plan administrator to see if your plan has been amended to apply the new hardship rules provided for under the final regulations.

The final regulations add the following expenses to those deemed to be immediate and heavy financial needs:

Funeral expenses

Certain expenses relating to the repair of damage to the employee’s principal residence.

Distribution necessary to satisfy financial need. A distribution may not be treated as necessary to satisfy an immediate and heavy financial need of an employee to the extent the amount of the distribution is in excess of the amount required to relieve the financial need or to the extent the need may be satisfied from other resources that are reasonably available to the employee.

This determination generally is to be made on the basis of all relevant facts and circumstances. The employee’s resources are deemed to include those assets of the employee’s spouse and minor children that are reasonably available to the employee. Thus, for example, a vacation home owned by the employee and the employee’s spouse, whether as community property, joint tenants, tenants by the entirety, or tenants in common, generally will be deemed a resource of the employee. The amount of an immediate and heavy financial need may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution.

An immediate and heavy financial need generally may be treated as not capable of being relieved from other resources reasonably available to the employee if the employer relies upon the employee’s written representation, unless the employer has actual knowledge to the contrary, that the need cannot reasonably be relieved:

Through reimbursement or compensation by insurance or otherwise;

By liquidation of the employee’s assets;

By cessation of elective contributions or employee contributions under the plan; or

By other distributions or nontaxable (at the time of the loan) loans from plans maintained by the employer or by any other employer, or by borrowing from commercial sources on reasonable commercial terms in an amount sufficient to satisfy the need.

A need cannot reasonably be relieved by one of the actions listed above if the effect would be to increase the amount of the need. For example, the need for funds to purchase a principal residence cannot reasonably be relieved by a plan loan if the loan would disqualify the employee from obtaining other necessary financing.

A distribution is deemed necessary to satisfy an immediate and heavy financial need of an employee if all of the following requirements are satisfied:

The distribution is not in excess of the amount of the immediate and heavy financial need of the employee.

The employee has obtained all distributions, other than hardship distributions, and all nontaxable (at the time of the loan) loans currently available under all plans maintained by the employer.

The employee is prohibited, under the terms of the plan or an otherwise legally enforceable agreement, from making elective contributions and employee contributions to the plan and all other plans maintained by the employer for at least 6 months after receipt of the hardship distribution.

Rollovers from your 401(k) plan. A rollover occurs when you receive a distribution of cash or other assets from one qualified retirement plan and contribute all or part of the distribution within 60 days to another qualified retirement plan or traditional IRA. This transaction is not taxable but it is reportable on Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. and your federal tax return. You can roll over most distributions except for:

A distribution that is one of a series of payments based on life expectancy or paid over a period of ten years or more,

A required minimum distribution,

A corrective distribution,

A hardship distribution, or

Dividends on employer securities.

Any taxable amount that is not rolled over must be included in income in the year you receive it. If the distribution is paid to you, you have 60 days from the date you receive it to roll it over. Any taxable distribution paid to you is subject to mandatory withholding of 20%, even if you intend to roll the distribution over later. If the distribution is rolled over, and you want to defer tax on the entire taxable portion, you will have to add funds from other sources equal to the amount withheld. You can choose to have your 401(k) plan transfer a distribution directly to another eligible plan or to an IRA. Under this option, no taxes are withheld.

If you are under age 59 ½ at the time of the distribution, any taxable portion not rolled over may be subject to a 10% additional tax on early distributions (described below).

For further information about rollovers and transfers, refer to Publication 575, Pension and Annuity Income and Publication 560, Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans).

Tax on early distributions. If a distribution is made to you under the plan before you reach age 59½, you may have to pay a 10% additional tax on the distribution. This tax applies to the amount received that you must include in income.

Exceptions. The 10% tax will not apply if distributions before age 59 ½ are made in any of the following circumstances:

Made to a beneficiary (or to the estate of the participant) on or after the death of the participant,

Made because the participant has a qualifying disability,

Made as part of a series of substantially equal periodic payments beginning after separation from service and made at least annually for the life or life expectancy of the participant or the joint lives or life expectancies of the participant and his or her designated beneficiary. (The payments under this exception, except in the case of death or disability, must continue for at least 5 years or until the employee reaches age 59½, whichever is the longer period.),

Made to a participant after separation from service if the separation occurred during or after the calendar year in which the participant reached age 55, Made to an alternate payee under a qualified domestic relations order (QDRO),

Made to a participant for medical care up to the amount allowable as a medical expense deduction (determined without regard to whether the participant itemizes deductions),

Timely made to reduce excess contributions,

Timely made to reduce excess employee or matching employer contributions,

Timely made to reduce excess elective deferrals, or

Made because of an IRS levy on the plan.

Made on account of certain disasters for which IRS relief has been granted.

Reporting the tax. To report the tax on early distributions, you may have to file Form 5329, Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts. See the Form 5329 instructions for additional information about this tax.

Loans from 401(k) plans. Some 401(k) plans permit participants to borrow from the plan. The plan document must specify if loans are permitted. A loan from your employer's 401(k) plan is not taxable if it meets the criteria below.

Generally, if permitted by your plan, you may borrow up to 50% of your vested account balance up to a maximum of $50,000. The loan must be repaid within 5 years, unless the loan is used to buy your main home. The loan repayments must be made in substantially level payments, at least quarterly, over the life of the loan.

You must reduce the $50,000 amount, above, if you already had an outstanding loan from the plan (or any other plan of your employer or related employer) during the 1-year period ending the day before the loan. The amount of the reduction is your highest outstanding loan balance during that period minus the outstanding balance on the date of the new loan.

Certain participant loans may be treated as taxable distributions. For more information, refer to the section, "Loans Treated as Distributions," in Publication 575.

Before you borrow from your 401(k) plan!

Have you considered other loan sources? Borrowing from your plan may have a negative impact on the earnings of your account and reduce the money you will eventually have available for your retirement.

401(k) Guide - Plan Participants - Plan Termination

Although a 401(k) plan must be established with the intention of being continued indefinitely, an employer may (fully) terminate its 401(k) plan at its discretion. In certain cases, a partial plan termination is deemed to occur. Whether a partial termination occurs depends on the individual facts and circumstances of a given case. In general, a partial termination is deemed to occur when an employer-initiated action results in a significant decrease in plan participation. As an example, a partial termination may be deemed to occur when an employer reduces its workforce (and plan participation) by 20%.

For purposes of the Internal Revenue Code, a 401(k) plan is not fully terminated unless:

- The date of termination is established,
- The benefits and liabilities under the plan are determined as of the date of plan termination, and
- All assets are distributed as soon as administratively feasible.

"Administratively feasible" is determined under all the facts and circumstances of a given case, but generally the IRS views this to mean within one year after the date of plan termination.

The law requires that all affected participants be fully vested in their account balance upon the date of plan termination or partial plan termination. Under a 401(k) plan, a participant's elective deferrals are required to be fully vested at all times. Generally, matching contributions and any other employer contributions are not required to be fully vested but may be subject to a graduated vesting schedule. Upon full or partial plan termination, however, matching contributions and other employer contributions must be fully vested for all affected participants, regardless of the vesting schedule in the plan document.

As a participant, once you are notified that the plan is terminating, you should verify that you are properly vested in your account balance. If you terminated employment, but have not received a distribution as of the proposed plan termination date, you may be an “affected participant.” An “affected participant” in a plan termination, generally, is one who has an accrued benefit under the plan as of the date of the plan’s termination. Certain terminated employees are also treated as affected participants.

Unless the plan is qualified (i.e., meets the standards set forth in the Internal Revenue Code) upon plan termination, participants will not have tax-favored status of their benefits upon distribution. Plans must be amended for all qualification requirements in effect on the date of plan termination. An employer may wish to file an application with the IRS, requesting a determination letter as to whether the plan termination affects the qualified status of the plan. As part of the determination letter process and in accordance with Rev. Proc. 2006-6, notice that an application for a determination letter is to be made must be given to all Interested Parties. The notice must be given not less than 10 days or more than 24 days prior to the day the application for a determination is made. Refer to Rev. Proc. 2006-6 for a complete explanation of the required notice.

Interested parties in a plan termination generally include:

All present employees of the employer with accrued benefits under the plan,

All former employees with vested benefits under the plan, and

All beneficiaries of deceased former employees currently receiving benefits under the plan.

As an interested party, you have the right to submit comments to the IRS or to the Department of Labor. These comments will be considered by the IRS when reviewing the employer’s application on the plan’s termination. Interested party comments are not entitled to confidentiality. The law specifically provides that all interested party comments will be made available to the employer.

Part II of Rev. Proc. 2006-6 provides additional information on interested party comments, including the required content and addresses for submission.