



**EMPLOYEE  
FIDUCIARY**

## **2021 ANNUAL PLAN COMPLIANCE REVIEW**

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**Introduction**

401(k) plans are popular today because they offer [generous tax benefits](#) to employers and employees. However, to qualify for these benefits, 401(k) plans must complete a myriad of plan administration tasks each year. It’s ultimately up to employers to ensure each task is completed timely. Meeting this important [fiduciary responsibility](#) can seem overwhelming, but it doesn’t need to be. The key is hiring a 401(k) provider that’s willing and able to do three things - 1) summarize all required tasks, 2) complete the more difficult and time-consuming ones, and 3) provide straightforward direction for completing the rest.

Annual 401(k) administration tasks generally fall into one of four categories – [nondiscrimination testing](#), [Form 5500 reporting](#), [participant disclosure](#), and plan document maintenance. If you’re an employer, you can use this Annual Plan Compliance Review to help ensure these tasks are completed timely for 2021. It includes 3 sections:

- *Deadline Tasks* – Summarizes the tasks that must be completed by a specific deadline
- *Periodic Tasks* – Summarizes the tasks that may need completed periodically throughout the year
- *Document Retention* – Summarizes the plan records to file for documentation purposes

Once you’ve completed this checklist, you can file it with other 2021 plan records.

**I. Deadline Tasks**

Many 401(k) administration tasks must be completed by a certain date each year. Below are 2021 deadlines for a calendar-based plan. Enter the date each task is completed in the field to the right of task. Enter “N/A” if not applicable.

<b>Prior to Start of Plan Year</b>	<b>Deadline</b>	<b>Date Complete</b>	<b>Initials</b>
Provide any applicable 2021 notices to participants. These include:			
<ul style="list-style-type: none"> <li>• Safe harbor 401(k) plan notice</li> <li>• Qualified Default Investment Alternative (QDIA) notice</li> <li>• Automatic (negative) enrollment notice</li> </ul>	12/1/20	_____	_____
<b>1<sup>st</sup> Quarter</b>			
Provide 4 <sup>th</sup> quarter benefit statements to participants (due 45 days after quarter-end)	2/14/21	_____	_____
Distribute any 2020 ADP/ACP test failures in order to avoid 10% IRS excise tax (non-safe harbor 401(k) plans only)	3/15/21	_____	_____
Fund 2020 employer contributions to take tax deduction in 2020 fiscal year for the following entity types: S-corporation, LLC taxed as S-corporation, LLC taxed as partnership, and partnership tax filers (Form 1120-S and Form 1065 – K-1 filers) with <u>no</u> company tax return extension	3/15/21	_____	_____

## 2<sup>nd</sup> Quarter

Distribute “first year” Required Minimum Distributions (RMDs) to participants that attained age 70 ½ in 2020

4/1/21

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Fund 2020 employer contributions to take tax deduction in 2020 fiscal year for the following entity types: C-corporation, LLC taxed as sole proprietor, and sole proprietor tax filers (Form 1120 and Schedule C filers) with no company tax return extension

4/15/21

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Distribute amount deferred in excess of IRC Section 402(g) limit (\$19,500 for 2020)

4/15/21

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Provide 1<sup>st</sup> quarter benefit statements to participants (due 45 days after quarter-end)

5/15/21

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## 3<sup>rd</sup> Quarter

File 2020 Form 5500 or 2 ½ month extension (Form 5558)

8/2/21

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Provide 2<sup>nd</sup> quarter benefit statements to participants (due 45 days after quarter-end)

8/14/21

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Fund 2020 employer contributions to take tax deduction in 2020 fiscal year for the following entity types: S-corporation, LLC taxed as S-corporation, LLC taxed as partnership, and partnership tax filers (Form 1120-S and Form 1065 – K-1 filers) with company tax return extension

9/15/21

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Distribute 2020 Summary Annual Report (SAR) to participants (if Form 5500 not extended)

9/30/21

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## 4<sup>th</sup> Quarter

Fund 2020 employer contributions to take tax deduction in 2020 fiscal year for the following entity types: C-corporation, LLC taxed as sole proprietor, and sole proprietor tax filers (Form 1120 and Schedule C filers) with company tax return extension

10/15/21

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File Form 5500 (if extension filed by 7/31)

10/15/21

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Provide 3<sup>rd</sup> quarter benefit statements to participants (due 45 days after quarter-end)

11/14/21

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	Deadline	Date Complete	Initials
Provide any applicable 2022 notices to participants. These include:			
<ul style="list-style-type: none"> <li>• Safe harbor 401(k) plan notice</li> <li>• Qualified Default Investment Alternative (QDIA) notice</li> <li>• Automatic (negative) enrollment notice</li> <li>• Annual participant fee disclosure notice (see Ongoing Tasks Checklist below)</li> </ul>	12/1/21	_____	_____
Distribute 2020 Summary Annual Report (SAR) to participants (if Form 5500 extended)	12/15/21	_____	_____
Correct any 2020 ADP/ACP test failures with 10% excise tax (non-safe harbor 401(k) plans only)	12/31/21	_____	_____
Fund any 2020 safe harbor or QNEC contributions	12/31/21	_____	_____
Execute (sign and date) any 2021 discretionary amendments	12/31/21	_____	_____
Distribute “post-first year” Required Minimum Distributions (RMDs) to participants	12/31/21	_____	_____

**II. Periodic Tasks**

Below is a list of notable tasks you may need to complete throughout the 2021 plan year. Enter your initials to the right of each item you have reviewed. 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	_____
Ensure each newly eligible employee receives the following items before they are eligible to participate:	
<ul style="list-style-type: none"> <li>• Forms or website instructions necessary to enroll</li> <li>• Beneficiary designation form</li> <li>• Summary Plan Description (SPD)</li> <li>• Applicable participant notice(s) (safe harbor, automatic enrollment, QDIA)</li> <li>• Annual participant fee disclosure notice</li> </ul>	_____

Item	Initials
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.	_____
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	_____
Periodically complete plan “housekeeping” (recommended quarterly), including:	
<ul style="list-style-type: none"> <li>• Cash-out small account balances related to terminated participants</li> <li>• Process any defaulted loans</li> <li>• Use any unallocated forfeitures</li> </ul>	_____
Limit 401(k) deferrals to IRC 402(g) limit (\$19,500 for 2021 plus \$6,500 for those who turn age 50 on or before December 31, 2021). Pre-tax and Roth 401(k) deferrals (if applicable) are combined for purposes of the IRC 402(g) limit.	_____
Notify EF of any plan sponsor changes, including changes to company name, EIN, address, ownership or contact information.	_____
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.	_____

**II. Documentation Retention**

ERISA requires employers to maintain all plan 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, 401(k) 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.

I recommend you create three files for your plan. One for the documents that govern the operation of your plan (“Plan Records File”), one for participant records (“Participant Records File”) and one for each plan year (“Plan Year File”).

All of the plan documents and amendments filed 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. <b>Plan Documents</b> – 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. <b>Participant Disclosures</b> – 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.	_____
3. <b>Administrative Policies</b> – 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. <b>Corporate Actions</b> – Includes resolutions, agendas, minutes, and documents distributed at meetings	_____
5. <b>Plan Trust/Custodial Agreement</b> – Describes trustee/custodian services and responsibilities	_____
6. <b>Service Agreements</b> – Includes all contracts with plan service providers	_____
7. <b>Fidelity Bond</b> – 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.

<b>File Item</b>	<b>Initials</b>
1. <b>Deferral Election Forms</b> – Used by participants to elect the amount of salary they want to defer by making contributions to their 401(k) account.	_____
2. <b>Investment Election Forms</b> – Used by participants to make investment choices within their 401(k) account.	_____
3. <b>Beneficiary Designation Forms</b> – Used by participants to choose a beneficiary for their 401(k) account in the event of their death.	_____
4. <b>Distribution Request Forms</b> – Used by participants to request a distribution from their 401(k) account.	_____
5. <b>Loan Request Forms</b> – Used by participants to request a loan from their 401(k) account.	_____
6. <b>Rollover Request Forms</b> – Used by participants to make a rollover contribution to their 401(k) account.	_____
7. <b>QDRO Split Request Forms</b> - 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 2021 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.

<b>File Item</b>	<b>Initials</b>
1. <b>Annual Valuation</b> – Contains plan transaction information for the plan year, including contribution, distribution and fee activity. If received quarterly, file all four quarters.	_____
2. <b>Annual Trustee/Custodian report</b> – 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.	_____

**File Item**

**Initials**

3. **Annual Nondiscrimination Testing** – 401(k) plans have various testing requirements. Most common tests include:

a. Coverage (IRC Section 410(b)) testing

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b. Actual Deferral Percentage (ADP) and Actual Contribution Percentage (ACP) testing (non-safe harbor 401(k) plans only)

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c. Excess Deferral (IRC Section 402(g)) testing

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d. Annual Additions (IRC Section 415(c)) testing

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e. Top Heavy (IRC Section 416) testing

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f. Rate Group (IRC Section 401(a)(4)) testing (“new comparability” plans only)

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4. **Annual Participant Notices** – Any notices provided to participants, including (as applicable):

a. Participant fee disclosure (ERISA 404a-5) notice

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b. Safe harbor 401(k) plan notice

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c. Qualified Default Investment Alternative (QDIA) notice

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d. Automatic (negative) enrollment notice

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5. **Form 5500** – Copy of Form 5500 with related schedules as filed with Department of Labor (DOL)

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6. **Independent Audit Report** – If required to be filed with Form 5500

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7. **Summary Annual Report** – Summary of Form 5500 provided to participants

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