401(k) PROFIT SHARING PLAN CONTRIBUTIONS

What are they and their general rules

Retirement plans and the contribution options within those plans must meet multiple Internal Revenue Service (IRS) and Department of Labor (DOL) requirements. The following summary provides you with general guidelines applicable to most 401(k) profit sharing plans. For specific information regarding your plan, you should reach out to your Retirement Plan Consultant or pension attorney.

401(k) Profit sharing plans

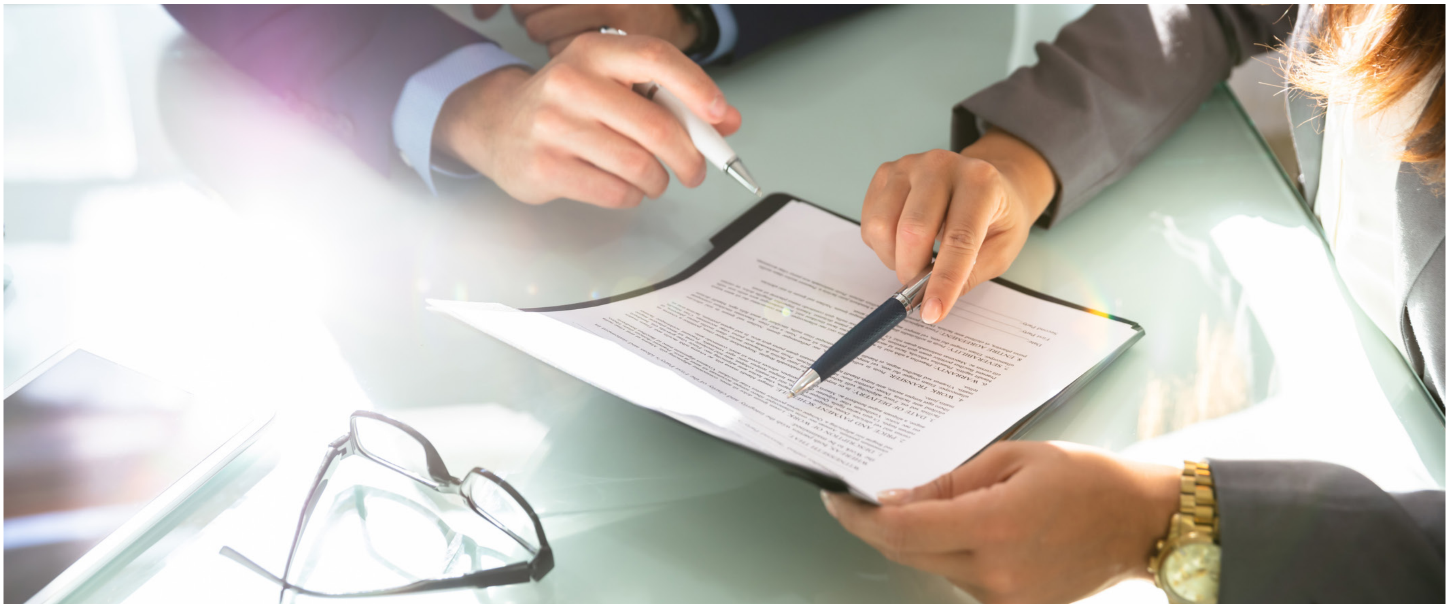
401(k) plans are profit sharing plans with the added feature of a 401(k) salary deferral contribution provision. A 401(k) plan will often provide matching contributions based on each employee's contributions. A 401(k) plan may also allow for discretionary profit-sharing contributions. Other types of contributions (such as top-heavy minimum contributions) may be required, depending on the specific plan.

What are salary deferral contributions?

- Money withheld from a participant's paycheck
- Participant determines the amount
- Belongs to participant at all times
- Company withholds for participant to take advantage of tax savings and accumulation
- Participant has a legal right to receive these funds in their paycheck

Timing of contributions, by law

The law states that the ***company must remit the withheld 401(k) salary deferral contributions to the plan as soon as administratively feasible***. In no case should these contributions be deposited any later than the 15th business day of the month following the month in which they were withheld. Please note that the ***as soon as administratively feasible*** standard still applies and the 15th business day deadline is just the latest possible date the government will accept.



2008 DOL guidance

In 2008, the DOL issued specific guidance for small plans (generally less than 100 employees). For these plans, 401(k) salary deferral contributions won't be considered late if deposited within 7 business days from when they are withheld from paychecks. For large plans (over 100 employees), the DOL requires a shorter time period - the monies should be deposited within 3 to 4 business days. Late deposits of money are prohibited by the DOL and IRS and the plan sponsor must make the participants whole for lost investment earnings , should they occur. Plan sponsors are also held liable for any penalties due to late deposits.

Matching contributions

Matching contributions are company or employer contributions made over and above the employees' 401(k) contributions. Their primary purpose is to encourage employees to make 401(k) contributions. Matching contributions are typically made according to a formula, (e.g. the company will "match" employees' 401(k) contributions at the rate of 50% on the first 4% of compensation deferred by each employee.). These contributions may have further conditions, such as requiring the employee to complete at least 1,000 hours of service during the year.

Contribution timing

Suppose the matching contribution requires participants to be employed at the end of the plan year. In this scenario, matching contributions should not be made until after the end of the plan year. However, many plans impose no additional conditions on matching contributions. In this case, matching contributions can be deposited during the year with the 401(k) contributions. This gives the company the ability to spread the cash flow out over the whole year. The ultimate deadline for making matching contributions is the tax-filing deadline for the company's tax return in which the plan year ends, including extensions.

Profit sharing contributions

Profit sharing contributions may be made at the discretion of the company. These are typically allocated by the employer based on salary and/or age. To be receive a profit sharing contribution, plans frequently require employees to complete 1,000 hours of service ***and*** be employed on the last day of the year. These contributions should generally not be made until after year-end, when each employee's eligibility and maximum allowable contribution can be calculated. As with matching contributions, profit sharing contributions must be made by the tax-filing deadline for the company's tax return for the fiscal year in which the plan year ends, including extensions.

Other contributions

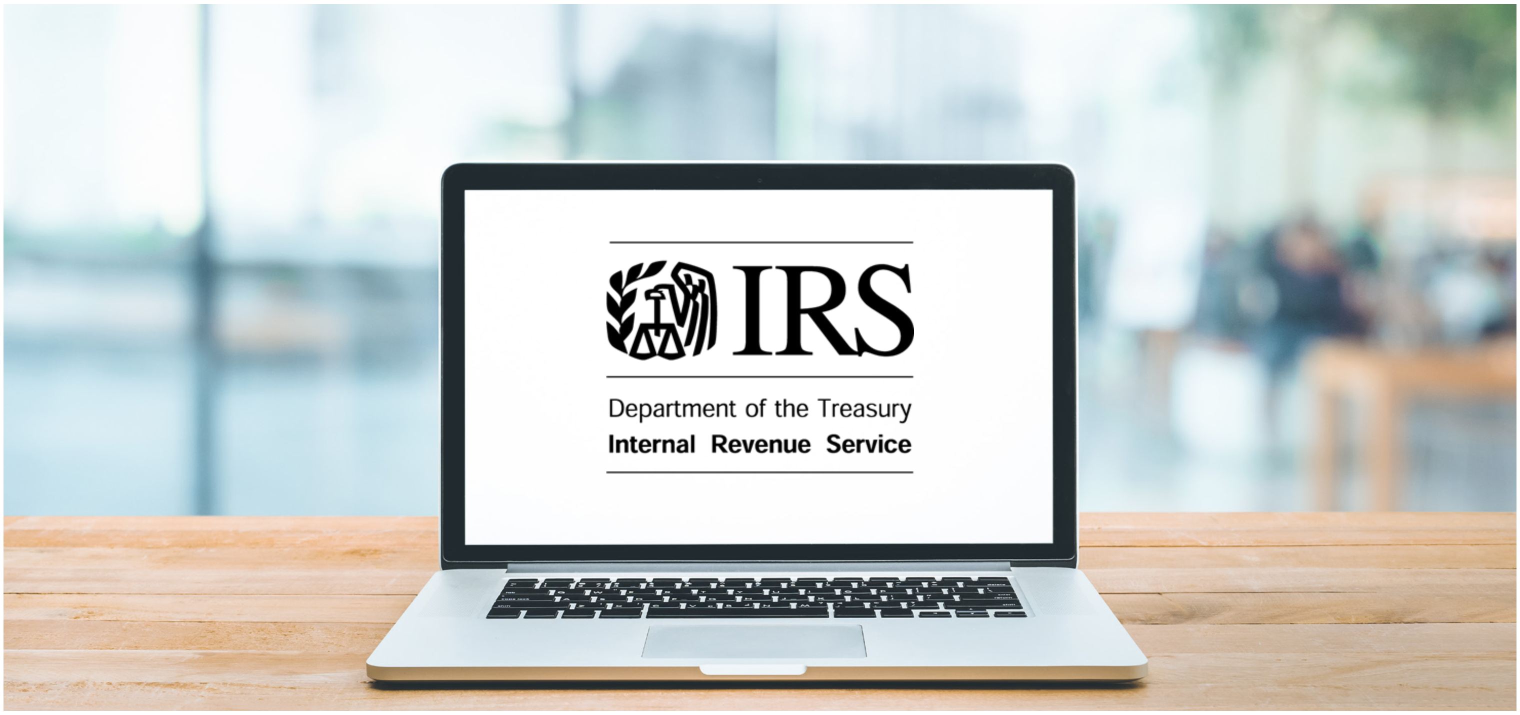
There are two other common types of contributions that may be made to a 401(k) plan: Qualified Non-Elective Contributions (QNECs) and top-heavy minimum contributions.

Qualified Non-Elective Contributions

- Known as "fail-safe" contributions, used for correcting an ADP/ACP test
- Typically allocated to all NHCEs who participate in the plan
- Must be made within one year of the plan year-end for which they are to be applied
- May be allocated as a percentage of compensation or flat dollar amount
- To be deducted from taxes, they should be contributed by the filing deadline, including extensions

Top-Heavy Minimum Contributions

- Made if plan is "top-heavy" (more than 60% of funds benefit "key" employees)
- Required employer contribution to be made to each "non-key" employee (typically 3% of compensation)
- Since profit sharing and match contributions count, this minimum requirement is often already met
- Due no later than the tax-filing deadline for the company's tax return for the applicable year, including extensions



GENERAL CONTRIBUTION RULES

All plan participants must be treated similarly

Example: if the company makes a profit sharing contribution, the IRS will consider it discriminatory if the contribution is made for the company owners first, while the other employees are made to wait. This could subject the company to significant IRS penalties.

Contributions should always be made in cash, not property

There have been several court cases regarding the contribution of property in lieu of cash to a plan, where the IRS and DOL have argued that such contributions are prohibited. The expense of fighting the government on this issue is simply not worth it.

Company must deposit contributions to the plan

Simply segregating the funds in the company accounts is not sufficient. Making contributions from personal funds to a plan sponsored by a corporation is not appropriate. To be safe, when contributions are due by a tax-filing deadline, make sure the check is cashed by that deadline. Under audit, the IRS will ask to examine canceled checks for plan contributions.

Don't put yourself at risk

There are a variety of penalties that the IRS and DOL can impose for improper plan contributions. These range from a simple loss of the tax deduction all the way up to significant fines and imprisonment for egregious cases of abuse. Follow these guidelines, review your plan document, and ask questions before taking action.