



## 401(k) FACT SHEET

### Highly Compensated Employee

Used in coverage and nondiscrimination testing

5% owner

Compensation, in prior plan year, in excess of \$120,000 in 2018; \$125,000 in 2019; \$130,000 in 2020 & 2021; \$135,000 in 2022; \$150,000 in 2023.

\*If the employer elects, an individual described above will be treated as an HCE only if the individual is in the top paid group (top 20% of employees based on payroll) for the preceding year.

### Key Employee

Used in top-heavy determination

Any employee who, at any time during the plan year was:

5% owner

1% owner with compensation in excess of \$180,000 for 2019; \$185,000 for 2020 & 2021; \$200,000 for 2022; \$215,000 for 2023.

An officer having annual compensation greater than \$180,000 for 2019; \$185,000 for 2020 & 2021; \$200,000 for 2022; \$215,000 for 2023.

An officer having annual compensation in excess of 50% of the annual dollar limitation for defined benefit plans (\$220,000 for 2018; \$225,000 for 2019; \$230,000 for 2020 & 2021; \$245,000 for 2022; \$265,000 for 2023)

A spouse or child (18 or under) of any of the above

### 401(k) Nondiscrimination Test

- 1) The group of "eligible employees" must satisfy the minimum coverage requirements, as determined by Code Section 410(b)
- 2) It passes one of two "actual deferral percentage" ("ADP") tests

A plan is considered to satisfy the nondiscrimination requirements of Code Section 401(a)(4) if it satisfies the ADP test.

### Minimum Coverage Requirements (Code Section 410(b))

One of the following must be met:

- 1) The plan benefits at least 70% of employees who are not highly compensated.
- 2) The plan benefits -
  - (a) a percentage of employees who are not highly compensated employees which is at least 70%, or
  - (b) the percentage of highly compensated employees benefiting under the plan.
- 3) The plan meets the requirements of the Average Benefit Percentage test

### Average Benefits Percentage (Code Section 410(b)(2))

Both of the following must be met for this test to pass:

- 1) The plan benefits such employees as qualify under a classification that does not discriminate in favor of highly compensated employees.
- 2) The average benefit percentage for non-highly compensated employees is at least 70% of the average benefit percentage for highly compensated employees.

Those employees excluded from participating in the plan due to age and service requirements are also excluded from consideration for the Average Benefits Percentage test.

### **Actual Deferral Percentage (ADP) (Code Section 401(k))**

This test is met if either of the following is satisfied:

- 1) **1.25 Test** - The average of the actual deferral ratios for the group of eligible highly compensated employees is not more than the average of the actual deferral ratios for the group of all other eligible employees multiplied by 1.25; or
- 2) **2.0 Test** - (a) The excess of (i) the ADP for the group of eligible highly compensated employees, over (ii) the ADP for the group of all other eligible employees, is not more than two percentage points, and (b) the ADP for the group of eligible highly compensated employees is not more than the ADP for the group of all other eligible employees, multiplied by two.

### **Actual Contribution Percentage (ACP) (Code Section 401(m))**

This test applies to employee contributions and matching employer contributions. This test is met if the contribution percentage for eligible highly compensated employees does not exceed the greater of:

- 1) 1.25% of the percentage for all other eligible employees
- 2) the lesser or 2.00% of the percentage for all other eligible employees, or the percentage for all other eligible employees plus 2 percentage points.

#### **ADP Test:**

**Must Include:** Elective Deferrals  
**May Include:** 100% Vested Match  
 100% Vested Profit Sharing

#### **ACP Test:**

**Must Include:** Elective after tax  
 Matching subject to vesting  
**May Include:** 100% vested matching if not used in ADP test  
 100% vested profit sharing if not used in ADP test