

# HReport



GRIZZAFFI DARBY  
BEYOND BENEFITS



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## 401(k) COMPLIANCE

The IRS has increased their number of audits of 401(k) plans because of concerns about plan compliance. Your 401(k) plan may NOT be in compliance! Because of the recent changes in the law, the IRS has released a checklist to assist business owners in monitoring 401(k) compliance. You can find the checklist along with links to additional resources at <http://www.irs.gov/pub/irs-tege/pub4531.pdf>. Although 401(k) compliance may seem overwhelming at times, this one-page, ten-question checklist is a great place to start. Grizzaffi Darby, one of the area's largest employee benefit consulting firms, can assist you by ensuring that your plan is in compliance.

### Some areas of IRS concern:

1. Has your plan document been amended to reflect changes in the law? Failure to amend documents is the number one issue found during audits. Make sure you have signed and dated copies of your plan document and any amendments readily available; don't rely only on a third party to maintain these documents.
2. Have eligible employees been identified and given the opportunity to make deferral elections? The IRS recommends providing your third party administrator (TPA) with information regarding all employees who receive a W-2. Generally, each employee who receives a Form W-2 should be treated as an eligible employee unless they can be properly excluded by the plan's terms.
3. Have the nondiscrimination tests been performed counting all eligible employees? A safe-harbor 401(k) plan may allow you to avoid these tests, but if you rely on a safe-harbor plan to avoid testing then additional steps need to be taken to confirm that your plan satisfies all the safe-harbor requirements. Again, these responsibilities may be performed by a TPA, but the plan sponsor/employer still holds ultimate responsibility for compliance.

What are the most common mistakes in 401(k) compliance? The IRS provides a detailed list of common compliance issues at <http://www.irs.gov/retirement/article/0,,id=135260,00.html>. If you



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discover errors, don't ignore them. Take action to bring the plan into compliance immediately. You may also choose to correct past errors using one of the IRS' voluntary correction programs.

Make the most of your 401(k) plan for you and your employees. Keep your plan in compliance and consider using features such as automatic enrollment. Auto enrollment was expressly approved by the recent Pension Reform Act and may be particularly helpful for employers concerned about passing discrimination testing.

Additional resources regarding retirement plan options can be found  
<http://www.dol.gov/ebsa/publications/401kplans.html>.

For assistance regarding plan compliance, or to answer any questions you may have about your 401(k), please contact Grizzaffi Darby at (866) 380-1245 and ask for one of our 401(k) Specialists.

