

Form 9417 (March 2010)	Department of Treasury – Internal Revenue Service Employee Plans Deficiency Checksheet Attachment #12 Section 401(k) Requirements	Date
<i>For IRS Use</i>	Please furnish the amendment(s) requested in the section(s) checked	
1201, 1202 I.a.	A plan that is not a profit-sharing, stock bonus, pre-ERISA money purchase pension, or rural cooperative plan will fail to satisfy the requirements of section 401(a) of the Code if the plan includes a cash or deferred arrangement (CODA).-A cash or deferred arrangement is an arrangement under which an employee may elect, with respect to amounts not currently available to the employee and not designated or treated as after tax contributions employee contributions, to have the employer contribute such amounts to the trust or provide such amounts to the employee. Since your plan is not one described in this section, it may not include a cash or deferred arrangement and should be amended accordingly. IRC section 401(k)(1) and Regs. section 1.401(k)-1(a).	
1203 II.a.	Section _____ of the plan should be amended to provide that an employee's election to defer may be made only with respect to an amount which the employee could otherwise elect to receive in cash and which is not currently available to the employee, i.e., an amount which the employee is not eligible to receive at the time of the election to defer. IRC section 401(k)(2)(A) and Regs. sections 1.401(k)-1(a)(3) and 1.401(k)-1(e)(2).	
1204 II.b.	Section _____ of the plan should be amended to provide for a separate accounting for the portion of each employee's benefit under the plan that is attributable to elective contributions (and any other amounts treated as elective contributions). If applicable, each employee's Roth elective contributions and properly attributable earnings must be kept in an account separate from all other accounts under the plan. Regs. section 1.401(k)-1(e)(3) and (f)(2).	
1206 II.c.	Section _____ of the plan should be amended to provide that a participant's elective contributions for a calendar year under the plan and all other plans, contracts and arrangements of the employer will not exceed the limit imposed by section 402(g) of the Code for the calendar year. IRC section 401(a)(30).	
1207 III.a.	It must be demonstrated that the employees eligible under the cash or deferred arrangement satisfy the coverage requirements of section 410(b). IRC section 401(k)(3)(A)(i) and Regs. section 1.401(k)-1(b)(1).	
1208 III.b.	Section _____ of the plan should be amended to allow elective contributions after no more than one year of service. The plan may impose a minimum age requirement not greater than 21. IRC section 401(k)(2)(D).	
1209 IV.a.	Section _____ of the plan should be amended to provide that each employee's right to the amount attributable to elective contributions is immediately nonforfeitable regardless of the participant's age and service. IRC section 401(k)(2)(C) and Regs. section 1.401(k)-1(c).	

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<p>1211, 1212, 1213 V.a.(i),(ii)</p>	<p>Section _____ of the plan should be amended to provide that the plan will meet the nondiscrimination test set forth in section 401(k)(3)(A)(ii) of the Code that applies to elective contributions. Under this test, the actual deferral percentage (ADP) for the group of eligible highly compensated employees for the current plan year may not exceed the greater of (a) 125% of the ADP for all other eligible employees for the prior plan year or (b) the lesser of twice the ADP for all other eligible employees for the prior plan year, or such ADP for all other eligible employees for the prior plan year plus 2%. If the plan is using the current year testing method, then “the current plan year” should be substituted for “the prior plan year” in the previous sentence. The ADP for a group of eligible employees is the average of the ratios (calculated separately for each employee) of the amount of elective contributions (and other contributions treated as elective contributions) made on behalf of each employee for the relevant plan year, divided by the employee’s compensation for that plan year. Elective contributions are any employer contributions to a plan that were subject to a cash or deferred election under a cash or deferred arrangement. For the purpose of this requirement, the plan may incorporate by reference the provisions of section 401(k)(3) of the Code and section 1.401(k)-2 of the regulations. IRC section 401(k), Regs. sections 1.401(k)-1(e)(7) and 1.401(k)-2(a)(1)(i).</p>
<p>1215, 1216 V.b.(i)</p>	<p>Section _____ of the plan should be amended to provide that the plan will take into account the actual deferral ratios of all eligible employees for purposes of the actual deferral percentage (ADP) test in section 401(k). For this purpose, an eligible employee is any employee who is directly or indirectly eligible to make a cash or deferred election under the plan for all or a portion of a plan year and includes: an employee who would be a plan participant but for the failure to make required contributions; an employee whose eligibility to make elective contributions has been suspended because of an election (other than certain one-time elections) not to participate, a distribution, or a loan; and, an employee who cannot defer because of the section 415 limits on annual additions. In the case of an eligible employee who makes no elective contributions the deferral ratio that is to be included in determining the ADP is zero. IRC section 401(k)(3)(B) and Regs. sections 1.401(k)-6. If an election has been made to apply section 410(b)(4)(B), the plan may provide that eligible non-highly compensated employees who have not met the minimum age and service requirements under section 410(a)(1)(A) are excluded from the ADP test. Section 401(k)(3)(F).</p>
<p>1218 V.b.(ii)</p>	<p>Section _____ of the plan should be amended to provide that an elective contribution will be taken into account under the actual deferral percentage test of section 401(k)(3)(A) of the Code for a plan year only if it relates to compensation that either would have been received by the employee in the plan year (but for the deferral election) or is attributable to services performed by the employee in the plan year and would have been received by the employee within 2-1/2 months after the close of the plan year (but for the deferral election). Regs. section 1.401(k)-2(a)(4)</p>
<p>1220 V.b.(iii)</p>	<p>Section _____ of the plan should be amended to provide that an elective contribution will be taken into account under the actual deferral percentage test of section 401(k)(3)(A) of the Code for a plan year only if it is allocated to the employee as of a date within that plan year. For this purpose, an elective contribution is considered allocated as of a date within a plan year if the allocation is not contingent on participation or performance of services after such date and the elective contribution is actually paid to the trust no later than 12 months after the plan year to which the contribution relates. Regs. section 1.401(k)-2(a)(4).</p>
<p>1221 V.b.(iv)</p>	<p>Section _____ of the plan should be amended to provide that for purposes of determining whether a plan satisfies the actual deferral percentage test of section 401(k), all elective contributions that are made under two or more plans that are aggregated for purposes of section 401(a)(4) or 410(b) (other than section 410(b)(2)(A)(ii)) are to be treated as made under a single plan and that if two or more plans are permissively aggregated for purposes of section 401(k), the aggregated plans must also satisfy sections 401(a)(4) and 410(b) as though they were a single plan. IRC section 401(k)(3) and Regs. section 1.401(k)-1(b)(4).</p>
<p>1223 V.d.(v)</p>	<p>Section _____ of the plan should be amended to provide that in calculating the actual deferral percentage for purposes of section 401(k), the actual deferral ratio of a highly compensated employee will be determined by treating all cash or deferred arrangements under which the highly compensated employee is eligible (other than those that may not be permissively aggregated) as a single arrangement. IRC section 401(k)(3) and Regs. section 1.401(k)-2(a)(3)(ii).</p>

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1225 V.b.(vi)	Section _____ of the plan should be amended to provide that the actual deferral percentage (ADP) of highly compensated employees (HCEs) and non-highly compensated employees (NHCEs) are determined for the relevant plan years. If the plan is using the prior year testing method, the ADP of HCEs is determined for the current plan year (the “testing year”) and the ADP of NHCEs is determined for the prior plan year. If, on the other hand, the plan is using the current year testing method, the ADPs of both HCEs and NHCEs are determined for the current year. IRC sections 401(k)(3)(A) and (B).
1229 V.c.	Section _____ of the plan should be amended so that the availability of elective contributions (including catch-up contributions under section 414(v) of the Code, if applicable) does not discriminate in favor of highly compensated employees. IRC section 401(a)(4) and 414(v) and Regs. sections 1.401(k)-1(a)(4)(iv) and 1.414(v)-1(e).
1274 VI.a.(i), (ii)	Nonelective contributions and matching contributions may be treated as elective contributions for purposes of the actual deferral percentage test of section 401(k) only if such contributions are nonforfeitable when made to the plan and subject to the same distribution restrictions (other than hardship) that apply to elective contributions. Nonelective contributions and matching contributions which may be treated as elective contributions must satisfy these requirements without regard to whether they are actually taken into account as elective contributions. Section _____ of the plan should be amended accordingly. Regs. section 1.401(k)-6.
1276 VI.b.	Section _____ of the plan should be amended to provide that nonelective contributions and/or matching contributions may be treated as elective contributions only if the conditions described in section 1.401(k)-2(a)(6) of the regulations are satisfied. Regs. section 1.401(k)-2(a)(6).
1231,1232, 1233,1234 VII.a.	Section _____ of the plan should be amended to provide that amounts attributable to elective contributions may not be distributed earlier than upon one of the following events: 1. The employee’s retirement, death, disability or severance from employment; 2. The termination of the plan without establishment or maintenance of another defined contribution plan (other than an ESOP, a SEP, a SIMPLE IRA plan, a section 403(b) plan or a section 457 plan); 3. In the case of a profit-sharing, stock bonus or rural cooperative plan, the employee’s attainment of age 59-1/2 or the employee’s hardship; or 4. in the case of a qualified reservist distribution described in section 72(t)(2)(G), the date the employee is ordered or called to active duty. Paragraph 2 above applies only if the distribution is in the form of a lump sum and earnings on elective contributions (except certain grandfathered amounts) may not be distributed on account of hardship. In addition, distributions may be made to participants affected by certain natural disasters, as described in the particular disaster legislation. IRC sections 401(k)(2)(B), (7)(C) and (10) and Regs. section 1.401(k)-1(d)(1).
1235 VII.b.(i)	Section _____ of the plan should be amended to set forth nondiscriminatory and objective standards for determining whether an employee, for purposes of entitlement to a hardship distribution, has an immediate and heavy financial need. See section 1.401(k)-1(d)(3)(iii)(B) of the regulations regarding certain deemed immediate and heavy financial needs.
1237 VII.b.(ii)	Section _____ of the plan should be amended to provide that a hardship distribution may be made only if it is necessary to satisfy an immediate and heavy financial need. For this purpose, a distribution is not necessary to the extent it exceeds the amount necessary (including taxes) to relieve the need or to the extent the need may be satisfied from other resources reasonably available to the employee. See section 1.401(k)-1(d)(3)(iv)(E) of the regulations regarding distributions that are deemed necessary to satisfy financial need.
1238 VII.c.	Section _____ of the plan should be amended to provide that an employee’s excess deferrals arising under this plan and any related employer’s plan will be distributed, along with allocable earnings and losses by the first April 15 following the year in which the excess arose. A plan may provide that an employee is deemed to notify the employer of excess deferrals in this situation. For 2007 only, allocable income or loss must include income or loss for the participant’s taxable year and income or loss for the period between the end of the taxable year and the date of distribution (the “gap period”). For taxable years beginning before January 1, 2006, income or loss allocable to the gap period could be disregarded in determining income or loss on excess deferrals for such years. For years after 2007, allocable income or loss is determined only through the end of the taxable year of the excess. The plan may use any reasonable method for calculating the income or loss, provided the method is used consistently and is the normal method used by the plan for allocating income or loss to

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	participants' accounts. IRC section 401(a)(30) and Regs. sections 1.401(a)-30(a) and 1.402(g)-1(e).
1239,1240 VII.f.(i),g.(ii)	Section _____ of the plan should be amended to provide that the amount of excess contributions for a highly compensated employee will be determined in the following manner. First, determine how much the actual deferral ratio (ADR) of the highly compensated employee with the highest ADR would have to be reduced to satisfy the actual deferral percentage (ADP) test or cause such ratio to equal the ADR of the highly compensated employee with the next highest ratio. Second, this process is repeated until the ADP test would be satisfied. The amount of excess contributions is equal to the sum of these hypothetical reductions multiplied, in each case, by the highly compensated employee's compensation. IRC section 401(k)(8)(B) and Regs. section 1.401(k)-2(b)(2)(ii).
1241 VII.f.(ii),g.(iii)	Section _____ of the plan should be amended to provide that the identity of the highly compensated employees subject to distribution (or recharacterization) of excess contributions will be determined using the "dollar leveling method" starting with the highly compensated employee with the greatest dollar amount of elective and other contributions treated as elective contributions for the plan year until the amount of excess contributions has been accounted for. IRC section 401(k)(8)(C) and Regs. section 1.401(k)-2(b)(2)(iii).
1247 VII.f.(iii),g.(iv)	Section _____ of the plan should be amended to provide that the amount of excess contributions to be distributed or recharacterized shall be reduced by excess deferrals previously distributed for the taxable year ending in the same plan year excess deferrals to be distributed for a taxable year will be reduced by excess contributions previously distributed or recharacterized for the plan year beginning in such taxable year. Regs. section 1.401(k)-2(b)(4).
1249 VII.f.(iv)	Section _____ of the plan should be amended to provide that the distribution of excess contributions will include the income or loss allocable thereto. The income or loss allocable to excess contributions includes income or loss for the plan year for which the excess contributions were made and, in certain years before 2008, gap-period income or loss. For plan years beginning before 2006, income or loss allocable to the "gap period" (the period between the end of the plan year in which the ADP was exceeded and the date of the distribution of excess contributions) could be disregarded in determining income or loss on excess contributions for such years. For plan years beginning after 2005 and before 2008, allocable income or loss included allocable income or loss for the gap period. For plan years beginning on or after January 1, 2008, allocable income or loss does not include allocable income or loss for the gap period. See section 1.401(k)-2(b)(2)(iv) of the regulations for a description of the manner in which income or loss allocable to excess contributions is to be calculated. IRC section 401(k)(8)(A) and Regs. section 1.401(k)-2(b)(2)(iv).
1251 VII.f.(v),g.(v)	Failure to correct excess contributions by 12 months following the end of the plan year for which they were made will cause the cash or deferred arrangement to fail to satisfy the requirements of section 401(k)(3) for the plan year for which the excess contributions were made and for all subsequent years they remain in the trust. Also, the employer will be liable for a 10% excise tax on the amount of excess contributions unless they are distributed within 2-1/2 months (6 months in the case of certain plans that include an eligible automatic contribution arrangement within the meaning of section 414(w)) after the close of the plan year for which they were made. Section _____ of the plan should be amended accordingly. IRC sections 401(k)(8)(A) and 4979 and Regs. section 1.401(k)-2(b)(5).
1253 VII.g.(i)	Section _____ of the plan should be amended to provide that excess contributions will not be recharacterized with respect to a highly compensated employee to the extent that the recharacterized amounts, in combination with employee contributions actually made by the employee, exceed the maximum amount of employee contributions (determined prior to applying section 401(m)(2)(A) of the Code) that the employee is permitted to make under the plan in the absence of recharacterization. Regs. section 1.401(k)-2(b)(3)(iii)(B).
1257,1258 VIII.a.	Section _____ of the plan should be amended to define highly compensated employee as an employee who: 1. was a 5-percent owner, as defined in section 416(i)(1)(A)(ii), at any time during the determination year or the look-back year, or 2. had compensation from the employer for the look-back year in excess of \$80,000 (as adjusted) and, if the employer so elects in the plan, was in the top-paid group for the look-back year. IRC section 414(q), Regs. section 1.414(q)-1T and Notice 97-45, 1997-2 C.B. 296.

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<p>1261,1262, 1263 VIII.b.</p>	<p>For purposes of the definition of highly compensated employee, section _____ of the plan should be amended to provide that: 1. The determination year is the plan year for which the determination of who is highly compensated is being made. 2. The look-back year is the 12-month period immediately preceding the determination year, or if the employer so elects in the plan, the calendar year beginning with or within such 12-month period. 3. Compensation is compensation within the meaning of section 415(c)(3). 4. Employers aggregated under section 414(b), (c), (m), or (o) are treated as a single employer. 5. If the employer has made a top-paid group election, the top paid group consists of the top 20% of employees ranked on the basis of compensation received during the look-back year. For purposes of determining the number of employees in the top-paid group, employees described in section 414(q)(5) and Q&A 9(b) of section 1.414(q)-1T of the regulations are excluded IRC section 414(q), Regs. section 1.414(q)-1T and Notice 97-45, 1997-2 C.B. 296.</p>
<p>1271,1272 VIII.c.</p>	<p>Section _____ of the plan should be amended to define compensation, for purposes of the actual deferral percentage test of section 401(k) and the determination of excess contributions, in a manner that satisfies section 414(s) and over a period specified in section 1.401(k)-6 of the regulations. A definition will satisfy section 414(s) if it conforms to one of the definitions described in Regs. sections 1.414(s)-1(c)(2) and 1.414(s)-1(c)(3). Alternatively, submit a demonstration that the definition is nondiscriminatory. IRC sections 401(k)(9) and 414(s) and Regs. sections 1.401(k)-6 and 1.414(s)-1.</p>
<p>1273 VIII.d.</p>	<p>Section _____ of the plan should be amended to provide that cash or deferred elections can only be made with respect to amounts that are compensation within the meaning of section 415(c)(3). Regs. section 1.401(k)-1(e)(8).</p>
<p>1278 IX.a.</p>	<p>Section _____ of the plan should be amended to provide that no contributions can be made, or benefits accrued for services during the year, on behalf of any eligible employee under any other plan, contract, pension, or trust described in section 219(g)(5)(A) or (B), maintained by the employer. IRC section 401(k)(11)(C).</p>
<p>1279 IX.b.</p>	<p>Section _____ of the plan should be amended to provide that the plan year is the calendar year. IRC sections 401(k)(11)(D) and 408(p)(6)(C).</p>
<p>1280 IX.c.</p>	<p>Section _____ of the plan should be amended to provide that for purposes of applying the 401(k) SIMPLE provisions, compensation has the meaning in section 408(p)(6)(A) as limited to the section 401(a)(17) amount. IRC sections 401(a)(17), 401(k)(11)(D) and 408(p)(6)(A).</p>
<p>1281 IX.d.(i)</p>	<p>Section _____ of the plan should be amended to provide that no employee may defer more than the applicable dollar amount under Code section 408(p)(2)(E) (plus catch-up contributions, if applicable) annually to the plan. IRC sections 401(k)(11)(B), 408(p)(2)(E) and 414(v).</p>
<p>1282 IX.d.(ii)</p>	<p>Section _____ of the plan should be amended to provide that, each year, the employer will contribute either a matching contribution (limited to 3 percent of the employee's compensation) to each employee who made elective contributions or a 2 percent nonelective contribution to each employee who earned at least \$5,000 (or a lesser amount) for the year. IRC section 401(k)(11)(B).</p>
<p>1283 IX.d.(iii)</p>	<p>Section _____ of the plan should be amended to provide that no other contribution may be made to the plan. IRC section 401(k)(11)(B).</p>
<p>1284 IX.d.(iv)</p>	<p>Section _____ of the plan should be amended to provide that all benefits attributable to contributions made under the plan are nonforfeitable at all times. IRC section 401(k)(11)(A)(iii).</p>
<p>1285 IX.e.</p>	

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	Section _____ of the plan should be amended to provide that employees can make deferral elections during the applicable 60-day periods described in section 401(k)(11)(B)(iii) and Regs. section 1.401(k)-4(d). Employees must be permitted to terminate an election any time during the year. IRC section 401(k)(11)(B)(iii) and Regs. section 1.401(k)-4(d).
1286 IX.f.	Section _____ of the plan should be amended to provide that the employer will notify each eligible employee, prior to the 60-day election period described in section 401(k)(11)(B)(iii) and Regs. section 1.401(k)-4(d), of the employee's eligibility under the plan and the specific employer contributions that will be made for the year. IRC section 401(k)(11)(B)(iii) and Regs. section 1.401(k)-4(d).

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1287	
X.a.(i)	Section _____ of the plan should be amended to provide that a safe harbor matching contribution will be made to the plan on behalf of each eligible non-highly compensated employee (NHCE) equal to: 100% of the amount of the employee's elective contributions that do not exceed 3% of the employee's compensation for the plan year, plus 50% of the amount of the employee's elective contributions that exceed 3% of the employee's compensation but that do not exceed 5% of the employee's compensation. IRC section 401(k)(12)(B)(i).
1288	
X.a.(ii)	Section _____ of the plan should be amended to provide that an enhanced matching contribution will be made to the plan under a formula that at any rate of elective contributions provides an aggregate amount of matching contributions at least equal to the aggregate amount of matching contributions that would have been provided under the basic matching formula, and the formula provides that the rate of matching contributions does not increase as an employee's rate of elective contributions increases. IRC section 401(k)(12)(B)(iii).
1289	
X.a.(iii)	Section _____ of the plan should be amended to provide that a safe harbor nonelective contribution will be made to the plan on behalf of each non-highly compensated employee (NHCE) who is an eligible employee in an amount equal to at least 3% of the employee's compensation. IRC section 401(k)(12)(C).
1290	
X.a.(iv)	Section _____ of the plan should be amended to provide that a change from the current year actual deferral percentage (ADP) (and, if applicable, actual contribution percentage (ACP)) testing method to a safe harbor nonelective contribution method will be made. Regs. section 1.401(k)-3(f).
1291	
X.a.(v)	Section _____ of the plan should be amended to provide that a change from a safe harbor matching contribution method to the current year actual deferral percentage (ADP) (and, if applicable, actual contribution percentage (ACP)) testing method will be made. Regs. section 1.401(k)-3(g).
1292	
X.b.(i)	Section _____ of the plan should be amended to contain only appropriate restrictions on elective contributions by non-highly compensated employees (NHCEs) including that restrictions on election periods must give the employee a reasonable opportunity, including a reasonable period, to make or change a cash or deferred election. Regs. section 1.401(k)-3(c)(6).
1293	
X.b.(ii)	Section _____ of the plan should be amended to provide that the restrictions on the amount of elective contributions are permissible only if each non-highly compensated employee (NHCE) who is an eligible employee is permitted to make elective contributions in an amount sufficient to receive the maximum amount of matching contributions available under the plan for the plan year or is allowed to elect a lesser amount of elective contributions. Regs. section 1.401(k)-3(c)(6).
1294	
X.b.(iii)	Section _____ of the plan should be amended to contain a reasonable definition of compensation under section 1.414(s)-(d)(2) in limiting the types of compensation that may be deferred for non-highly compensated employees (NHCEs). Regs. section 1.401(k)-3(c)(6).
1295	
X.c.	Section _____ of the plan should be amended to provide that safe harbor matching and nonelective contributions are nonforfeitable when made to the plan. IRC section 401(k)(12)(E).
1296	
X.d.	Section _____ of the plan should be amended to provide that safe harbor matching and nonelective contributions, and earnings thereon, are subject to the same distribution restrictions as elective contributions, except that safe harbor matching and nonelective contributions cannot be distributed on account of hardship. IRC section 401(k)(12)(E).
1297	
X.e	Section _____ of the plan should be amended to provide that the plan year is 12 months long (unless it is the first plan year of a newly established plan). If a CODA is added to an existing plan, the plan should be amended to provide that the CODA (and the addition of matching contributions, if applicable) is effective not later than 3 months prior to the end of the plan year. Regs. section 1.401(k)-3(e).

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1298	
X.f.	Section _____ of the plan should be amended to define compensation in accordance with section 1.401(k)-6 of the regulations, and to provide that compensation in excess of a certain amount may not be excluded in this definition, except that the limit of section 401(a)(17) applies.
1299	
X.g.	Section of the plan should be amended to contain the proper definition of eligible employee.
1300,1301	
X.h.	Section _____ of the plan should be amended to provide that the employer must distribute a notice to each eligible employee that comprehensively describes the types of safe harbor contributions made, the plan to which they are made, the type and amount of compensation that may be deferred, how to make elections and the period for making elections, and withdrawal and vesting provisions. If applicable, the plan should be amended to provide for a supplemental notice to be given if a plan changes from a current year actual deferral percentage (ADP) (or actual contribution percentage (ACP)) testing method to the safe harbor nonelective contribution method, or if a plan suspends safe harbor matching contributions and changes to the current year ADP (and ACP) testing method. Regs. section 1.401(k)-3(d), (f) and (g).
1302	
X.i.	Section _____ of the plan should be amended to specify the name of the other plan to which safe harbor contributions will be made. Regs. section 1.401(k)-3(h)(4).
1303	
X.j.	Section _____ of the plan should be amended to provide that the other requirements of section 401(k) (other than the nondiscrimination test of section 401(k)(3)(A)(ii)) apply to a CODA that satisfies the actual deferral percentage (ADP) test safe harbor. A safe harbor CODA cannot "default" into ADP testing; the plan must specify whether it is or is not subject to ADP (and ACP) testing and must follow its terms. For example, plan language stating that the plan is a safe harbor plan only if the employer decides to hand out a safe harbor notice to employees, otherwise the plan will perform the ADP test, is not permitted.
1304	
XI.a.	Section _____ of the plan should be amended to provide that the QACA will cover all eligible employees other than those with affirmative elections in effect to have a certain amount (or no amount) contributed to the plan as elective contributions. The auto-enrollment feature can be applied to all employees eligible to make deferrals but it cannot be limited to just certain groups of employees, such as new hires. All employees subject to auto-enrollment must be given a reasonable opportunity to affirmatively elect a different amount of elective contributions or to have no amount contributed. IRC section 401(k)(13) and Regs. section 1.401(k)-3(j)(1).
1305	
XI.b.	Section _____ of the plan should be amended to provide that the auto-enrollment feature in a QACA will satisfy the statutory minimum and maximum requirement for the percentage of compensation ("default percentage") that, in the absence of an affirmative election, will automatically deducted from employees' wages and contributed to the plan as elective contributions. The default percentage can not exceed 10 percent of compensation. The minimum default percentage for the initial period (the date an employee is first covered by the QACA through the end of the following plan year) is 3 percent. The minimum for the plan year following the end of the initial period is 4 percent, 5 percent for the next plan year and, for all following plan years, the minimum is 6 percent of compensation. IRC section 401(k)(13) and Regs. section 1.401(k)-3(j)(2).
1306	
XI.c.	Section _____ of the plan should be amended to provide that the default percentage under the QACA is "uniform." Generally, this means that the default percentage must be the same for every employee with the same number of years or portions of years since the beginning of the employee's initial period. Also, the percentage can vary to accommodate certain statutory restrictions. IRC section 401(k)(13) and Regs. section 1.401(k)-3(j)(2).
1307	
XI.d.(i)	Section _____ of the plan should be amended to provide that a matching contribution will be made to each nonhighly compensated employee equal to 100 percent of the employee's elective contributions that do not exceed 1 percent of the employee's compensation plus 50 percent of the employee's elective contributions that exceed 1 percent but not 6 percent of the employee's compensation. IRC section 401(k)(13)(D) and Regs section 1.401(k)-3(k).
1308	
XI.d.(ii)	Section _____ of the plan should be amended to provide that an enhanced matching contribution will be made to the plan under a formula that at any rate of elective contributions provides an aggregate amount of matching contributions at least equal to the aggregate amount of matching contributions that would have been provided under the basic matching formula, and the formula provides that the rate of matching contributions does not increase as an employee's rate of elective contributions increases. IRC section 401(k)(13)(D) and Regs section 1.401(k)-3(k)
1309	
	Section _____ of the plan should be amended to provide that a nonelective contribution will be made to each nonhighly compensated employee who is eligible under the plan in an amount equal to at least 3 percent of the employee's compensation, whether or not the employee made any elective contributions. IRC section 401(k)(13)(D) and

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XI.d.(iii)	Regs section 1.401(k)-3(k).
1310 XI.e.	Section _____ of the plan should be amended to provide that the required employer contributions under the QACA, either matching or nonelective contributions, must be nonforfeitable after an employee has completed no more than 2 years of service. IRC section 401(k)(13)(D)(iii) and Regs. section 1.401(k)-3(k)(3).
1311 XI.f.	Section _____ of the plan should be amended to provide that QACA required matching and nonelective contributions, and earnings thereon, are subject to the same distribution restrictions as elective contributions, except that QACA required matching and nonelective contributions cannot be distributed on account of hardship.. IRC section 401(k)(13)(D)(iii).
1312 XI.g.	Section _____ of the plan should be amended to provide that the plan year is 12 months long (unless it is the first plan year of a newly established plan). If a CODA is added to an existing plan, the plan should be amended to provide that the CODA (and the addition of matching contributions, if applicable) is effective not later than 3 months prior to the end of the plan year. Regs. section 1.401(k)-3(e).
1313 XI.h.	Section _____ of the plan should be amended to provide that compensation used for determining the required employer contributions under the QACA, either matching or nonelective contributions, is "safe harbor compensation" as defined under Regs section 1.401(k)-3(b)(2), and the same definition of compensation will be used for plan years beginning on or after January 1, 2010, for purposes of determining default contributions. Regs. <i>section 1.401(k)-3(b), (c), (j)(1), (k)(2)</i> .
1314 XI.i.	Under a QACA, the employer must distribute a notice to each eligible employee that comprehensively describes the auto-enrollment feature, the employee's right to elect a different amount (or no amount) and how default contributions will be invested in the absence of an investment directive from the employee, the types of QACA required employer contributions that will be made, the plan to which they will be made, the type and amount of compensation that may be deferred, how to make elections and the period for making elections, and withdrawal and vesting provisions. In addition, the notice must be provided sufficiently early so that the employee has a reasonable period of time after receipt to make his or her own election and, if the plan so provides, to make investment choices. Default contributions must commence with the pay date for the second pay period that begins after the notice is provided or, if earlier, the first pay date that occurs 30 or more days after the notice is provided, assuming the employee has no affirmative election in effect. If applicable, the plan should be amended to provide for a supplemental notice to be given if a plan changes from a current year actual deferral percentage (ADP) (or actual contribution percentage (ACP)) testing method to the QACA nonelective contribution method, or if a plan suspends QACA matching contributions and changes to the current year ADP (and ACP) testing method. Section _____ of the plan should be amended accordingly. IRC section 401(k)(13)(E) and Regs. section 1.401(k)-3(d), (f), (g) and (k)(4).
1320 XII.a.	Section _____ of the plan should be amended to specify the employees who are covered under the EACA and the plan document must state whether an employee who makes an affirmative election remains covered under the EACA. The employees who must be subject to the automatic enrollment provisions under an EACA are only those employees who are specified in the plan as being covered employees under the EACA. Regs. section 1.414(w)-1(e)(3).
1321 XII.b.	The default elective contribution under an EACA must be a uniform percentage of compensation. However, the percentage can vary to accommodate certain statutory limits or according to the number of years or portions of years since the employee was first covered by the EACA. All automatic contribution arrangements that are intended to be EACAs within a plan (or within the disaggregated plan under regs section 1.410(b)-7, in the case of a plan subject to section 410(b)) are aggregated. Section _____ of the plan should be amended accordingly. IRC section 414(w)(3)(B) and Regs. section 1.414(w)-1(b)(2).
1322 XII.c.	Each covered employee must be given a written notice of the employee's rights and obligations under the arrangement within a reasonable period before each plan year. The notice must accurately describe the default percentage under the plan, the employee's ability to elect a different amount or no amount, how contributions will be invested in the absence of an investment direction from the employee, and, if applicable, the employee's right to make a permissible withdrawal and the procedures for making such a withdrawal. The timing requirement is deemed satisfied if the notice is provided at the time specified in regs section 1.401(k)3(d)(3). However, the notice must afford the employee a reasonable period of time after receipt of the notice to make his -or her own election regarding elective contributions and to choose investments. Section _____ of the plan should be amended accordingly. IRC section 414(w)(4) and Regs. section 1.414(w)-1(b)(3).

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1323 XII.d.	A covered employee's election to withdraw default elective contributions must be made no later than 90 days after the date of the first default elective contributions under the EACA. A plan may specify an earlier deadline, but not earlier than 30 days. The effective date of the election cannot be later than the pay date for the second pay period beginning after the election or, if earlier, the first pay date that occurs at least 30 days after the election. Section _____ of the plan should be amended accordingly. IRC section 414(w)(2)(B) and Res. section 1.414(w)-1(c)(2).
1324 XII.e.	Section _____ of the plan should be amended to provide that the amount of the permissible withdrawal is equal to the amount of default contributions made through the effective date of the employee's withdrawal election adjusted for allocable gains and losses to the date of distribution. If default elective contributions are not separately accounted for under the plan, allocable gains and losses are determined under rules similar to those provided in regs section 1.401(k)-2(b)(2)(iv) for the distribution of excess contributions. IRC section 414(w)(2) and Regs section 1.414(w)-1(c)(3).
1325 XII.f.	Section _____ of the plan should be amended to provide that the fee for a permissible withdrawal is no higher than would apply to any other cash distribution. Regs. section 1.414(w)-1(c)(3)(ii).