

ADP & ACP TESTING

Items for Consideration

COMPENSATION, DEFERRALS, MATCHING AND AFTER-TAX CONTRIBUTIONS

Someone on your service provider team will assume the responsibility for performing any needed ADP and / or ACP testing. In order to perform these tests, the service provider will need to obtain testing compensation, which may be different than plan compensation, and deferral, catchup contributions, Roth contributions, matching contributions and after-tax contributions. If the data provided isn't accurate, the test(s) performed will not be correct.

- Which service provider is responsible for performing any required ADP and / or ACP testing?
- What data is required specifically for your plan?
- Will the service provider obtain the needed data from you or will the data be provided by your payroll system or another member of the service provider team?
- Who is responsible for ensuring the accuracy of the data transmitted?

OWNERS AND ATTRIBUTED STOCK

One of the requirements of performing the ADP and ACP tests is to determine who is considered a Highly Compensated Employee for the year. To correctly make this determination, information about ownership is needed. Ownership is attributed to family members. It passes through trusts in some cases to get attributed to the named beneficiaries or the grantor of the trust. Ownership also attributes through businesses and other entities.

- Which member of your service provider team will make the determination of who is a highly compensated employee or are you required to make this determination?
- Where will information about ownership during the year be obtained from and how will it get to the right party?
- Who will determine how stock is attributed and who will provide the needed information?

LIABILITY OF SERVICE PROVIDERS

Most service providers will include language in their service agreements stating the testing is only as good as the data provided. Some service providers will allow you to code the needed information into their website, run the testing yourself, and obtain the results.

- What does your service provider require to you do to perform the testing?
- Will the service provider perform any review of the data provided?
- Is the service provider liable if the data provided is inaccurate?
- Is the service provider liable if the data is accurate but the resulting test is still incorrect?

Please see the final page of this document for important information about suggested use.



TIMING

In plans that do not utilize automatic enrollment, the ADP and ACP testing must be completed within 2½ months of the plan year end in order to avoid a 10% penalty on any amounts returned, should returns be necessary. In most automatic enrollment plans, the 2½ month deadline gets extended to 6 months. In order to meet these deadlines, your service provider should notify you of the amount of time in advance of the deadline that you must provide the data to them.

- What is your service provider's deadline for providing data to them in order to avoid the 10% excise tax?
- How will they communicate the deadline each year?
- What is their process to remind you of the impending deadline, if any?
- Who is liable if you provide the data in time but they don't get the testing completed by the deadline?

CORRECTING

If the ADP or ACP test fails, the test is corrected by either returning money to highly compensated employees or making additional contributions for non-highly compensated employees.

- Who calculates the amount of return or additional contribution due?
- How will that be communicated to you?
- Are you required to do anything in the event money is required to be returned? If so, what?
- Either correction must be done within specified periods of time to be performed correctly. Who is responsible for ensuring the correction is timely completed?

Please see the final page of this document for important information about suggested use.

IMPORTANT INFORMATION ABOUT USING THIS DOCUMENT

The answers to the questions in this questionnaire could, and very well might be, used against you in a DOL audit or a lawsuit. **We do NOT recommend that you complete and retain this questionnaire without first reviewing the answers with ERISA legal counsel.** The intention is to provide you with questions to discuss internally rather than to create a paper trail that can be used against you.

Depending on your particular situation, there may be other items you should consider. Larger entities will have plan document issues with regard to mergers and acquisitions which are not covered by this questionnaire. There may be administrative policies that exist outside of the plan documents that help govern how the plan works that are not addressed here. This questionnaire is not intended to be exhaustive.