

Contribution Limits to 401(k) Plans

No less than three separate sections of the Internal Revenue Code (Code) limit contributions made to 401(k) plans. And, of course, *each of these code sections is different*. Section 402(g) limits 401(k) salary deferral contributions. Section 415 limits an individual's contributions from all sources within a 401(k) plan. Section 404 limits the overall tax-deductible contribution for the company sponsoring the plan. In addition to these statutory limits, companies that sponsor plans often impose their own contribution limits. Please read on for further information on each of these limitations.

Section 402(g) - Limitation on 401(k) Salary Deferral Contributions

The Code distinguishes 401(k) salary deferral contributions (deferrals) from other company retirement plan contributions. Deferral contributions are made to the plan *at the direction of employees*. The employees could have chosen to receive these contributions as additional pay in their paychecks, but instead elected to have their company deposit these contributions, on a pre-tax basis, to the plan. Section 402(g) of the Code limits these deferrals. The 2008 limit is \$15,500. The 2009 limit is \$16,500. (The limitation is adjusted for inflation.) This limitation is a *personal* one for a *calendar* year. No matter if an employee changes jobs or works at more than one job and is covered by more than one 401(k) plan in a calendar year, the total deferral contributions allowed for that employee for the calendar year cannot exceed this 402(g) limitation. In addition to the regular 402(g) contribution limit, the law permits additional "catch-up" 401(k) deferral contributions by participants who are at least age 50 during a calendar year. For 2008 the catch-up contribution limit is \$5,000. The catch-up contribution limit for 2009 is \$5,500. For example, a participant born on or before 12/31/58 will be able to contribute up to \$20,500 to a 401(k) plan for 2008, \$15,500 of "regular" 401(k) deferral and \$5,000 of catch-up contribution. A 401(k) plan must permit catch-up contributions for a participant to be able to make them. Not all 401(k) plans permit catch-up contributions.

The 402(g) limit does not apply to married couples combined, but to each plan participant individually. One spouse contributing up to the 402(g) limit does not affect the other spouse.

Each may contribute to their respective plan independently of the other.

While not part of the 402(g) limit itself for Highly Compensated Employees the maximum deferral contribution they may make in any year may be further limited by the "Average Deferral Percentage" (ADP) test. See our "Practical Information Regarding 401(k) Plan ADP/ACP Testing" for more information.

Section 415 - Limitation on all Contributions in a 401(k) Plan

Code Section 415 limits the total contributions in a 401(k) plan for any one individual to the lesser of to \$46,000 for plan years ending in 2008 and \$49,000 for plan years ending in 2009 (indexed for inflation) or 100% of compensation. This limit includes deferral contributions, company matching contributions, company profit sharing contributions and even, if the plan permits, employee after-tax "voluntary". It does, however, include catch-up contributions described above.

The 100% of compensation limit is calculated on *total* compensation, *unreduced* for 401(k) and Cafeteria plan deferrals.

Section 404 - Limitation on Company Deductions for Plan Contributions

The 402(g) and 415 limits described above limit contributions an individual participant may receive in a plan. The Section 404 limit, on the other hand, limits the overall deductible contributions a company may make to a 401(k) Profit Sharing plan to 25% of eligible employees' compensation. Under Section 404, there may be individual participants whose contributions exceed 25% and others whose contributions are less than 25%. This is permissible, subject to

other IRS tests, as long the total employer contributions do not exceed this 404 limitation. All contributions made by the company, *excluding* employee 401(k) salary deferral contributions, come under this 25% limit.

Like the 415 limitation above, the 404 limit is calculated using participants' total compensation paid for the year.