

# 401(k) plans: New interpretive bulletin on independent auditors

Technically, 401(k) plans are profit-sharing plans, not retirement plans. But they morphed into retirement plans long ago, so they're pretty important to employees. The U.S. Census Bureau has data providing insight on 401(k) plan participation, which may come in handy if you need to ramp up participation to satisfy nondiscrimination testing.

The Department of Labor's Employee Benefits Security Administration has released an Interpretive Bulletin updating one of the most basic responsibilities plan sponsors have—to engage the services of an independent auditor.

## Who has 401(k) accounts?

According to the results of a [2021 survey](#) conducted by the U.S. Census Bureau, 34.6% of employees participate in defined-contributions plans such as 401(k) plans. And 92.1% of those participants contribute to their accounts.

Baby boomers, men, and non-Hispanic White and Asian individuals are most likely to own retirement accounts, including 401(k) accounts, the survey further revealed. Gen Z, the youngest cohort in the workplace, is the least likely to participate in a 401(k) plan.

This lopsided participation by older employees may be because they're paid more, so they can afford to contribute more. This may be a problem if you don't use a safe-harbor plan and must, therefore, conduct full discrimination testing. Roughly speaking, the actual deferral percentage test requires you to split employees into highly compensated and non-highly compensated groups and test each group's deferrals.

Outreach to employees who aren't men, boomers, non-Hispanic White, and Asian is critical if plans are to pass the ADP test. As you communicate with employees, make these points:

- Social Security is a key part of everyone's retirement. But it's only one leg of a three-legged stool. The other two legs are employer-based retirement savings and personal savings.
- Contributions are pretax and, although some employees' paychecks may already be stressed, they can contribute the minimum percentage.
- Their contributions will be matched (if you, in fact, provide an employer match).

## How independent must your 401(k) plan auditor be?

Having your 401(k) plan's financial statements audited by an independent auditor serves many functions. At a minimum, it shows employees the plan is on sound financial footing and dispels concerns regarding supposed fiduciary shenanigans. But the key is the auditor's independence. Conflicts of interest, which could occur if the auditor gives you a clean bill of health but also has a financial interest in the company, need to be avoided.

EBSA established standards for auditors' independence way back in 1975. It has now updated these standards

in a new [Interpretive Bulletin](#).

**The new IB clarifies the following:**

- An accountant can accept a new audit engagement even if they and their firm hold a plan sponsor's publicly traded securities during the period covered by the financial statements, provided the accountant, accounting firm, partners, shareholder-employees and professional employees of the accountant's office and their immediate family divest their stock before the period of professional engagement.
- Auditors who must divest are provided with a window beginning the earlier of when they sign an initial engagement letter *or* they perform any audit, review, or attest procedure and ending by the later of when the audit report is issued *or* the professional relationship is terminated.
- For purposes of determining when an individual is located in an office of the firm participating in a significant portion of the audit, the word *office* is further clarified to mean a reasonably distinct subgroup within a firm that generally serves the same group of clients or work on the same categories of matters, and not someone's physical location.