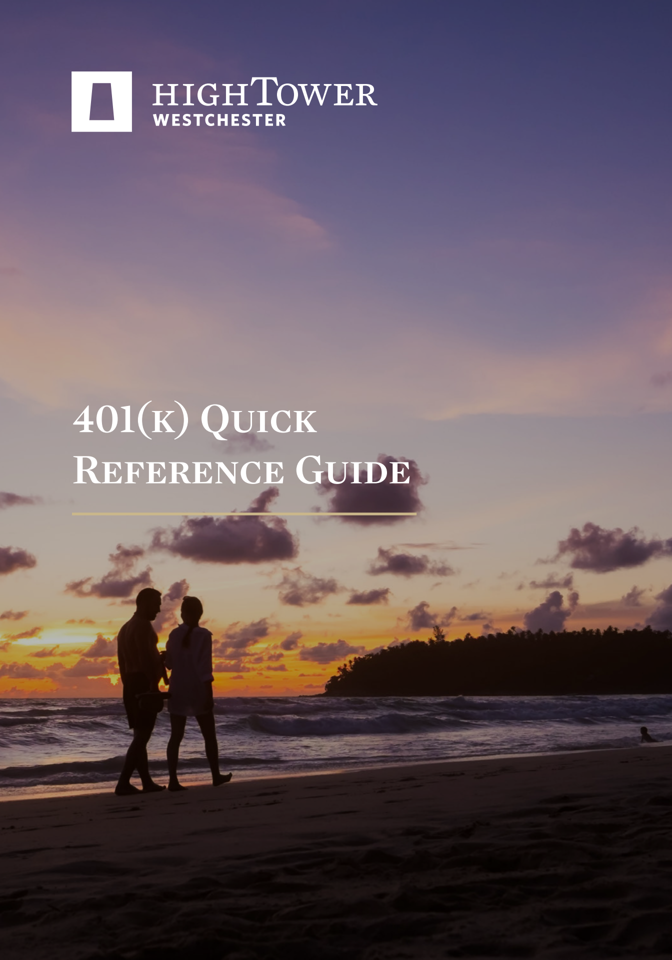

HighTower
WESTCHESTER

# 401(k) Quick Reference Guide

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# Who's Involved

### 3(21) Fiduciary

"Co-Fiduciary" – Under this type of arrangement, the plan sponsor retains the ultimate decision-making authority for the plan's investments and may accept or reject any recommendations. Both the plan sponsor and the 3(21) fiduciary share the fiduciary responsibility.

### 3(38) Fiduciary

Investment Manager Fiduciary - Under such an arrangement, the plan sponsor is relieved of all fiduciary responsibility for the investment decisions made by the investment professional.

### Advisor

An outside person or entity hired by plan trustees who provides guidance and advice on managing the plan.

### Custodian

A plan service provider, typically a bank or other financial institution that holds plan assets.

### Directed Trustee

A person or entity who has custody of the plan assets but is not charged with discretionary authority over the management or disposition of those assets.

### Fiduciary

Under ERISA, any person who (1) exercises any discretionary authority or control over the management of a plan or the management of disposition of assets, (2) renders investment advice for a fee, or other compensation with respect to the funds or property of a plan, or has authority to do so, or (3) has discretionary authority or responsibility in the administration of a plan.

## Highly Compensated Employees (HCE)

An employee who (1) owned more than 5% of the interest in the business at any time during the year or the preceding year, regardless of how much compensation that person earned or received, (2) for the preceding year, received compensation from the business of more than $120,000 (if the preceding year is 2015, 2016, 2017 or 2018; $125,000 if the preceding year is 2019), or (3) if the employer so chooses, was in the top 20% of employees when ranked by compensation.

## Key Employees

An employee who, at any time during the plan year, is (1) an officer of the employer having an annual compensation greater than $175,000 for 2018 ($180,000 for 2019), (2) a 5% owner of the employer, or (3) a 1% owner of the employer having an annual compensation from the employer of more than $150,000 for the plan year.

### Plan Sponsor

The party that establishes and maintains the plan; typically the employer, or employee organization.

### Record-keeper

A plan service provider that provides recordkeeping services to the plan. These services typically include maintaining records of the plan's contributions, providing calculations, and dispersing enrollment and educational materials.

### Third-Party Administrator (TPA)

An outside entity hired by the plan sponsor that administers the plan. TPAs are involved in many aspects of the plan and typically provide a variety of services, including non-discrimination testing, determining contribution limits, and preparing annual returns and reports.

### Trustee

A person or entity entrusted with investing the plan assets. Depending on the type, the trustee may also be designated a plan fiduciary.

# Plan Basics

## 12b – 1 Fee

An annual marketing or distribution fee on a mutual fund. The 12b-1 fee is considered an operational expense and, as such, is included in a fund's expense ratio. It is generally between 0.25% and 1% (the maximum allowed) of a fund's net assets. These payments are made to non-fiduciary plan advisors.

## Automatic Enrollment

A plan feature that allows an employer to automatically deduct elective deferrals from an employee's wages unless the employee makes an election not to contribute or to contribute a different amount. Any plan that allows elective salary deferrals (such as a 401(k) or SIMPLE IRA plan) can have this feature.

## Benchmarking

A process in which the plan sponsor reviews the plan's investments and fees to determine whether they are in line with current market conditions. Plan sponsors should benchmark as part of their continued fiduciary responsibility.

## Distributions

A withdrawal of monies from the plan. Depending on the timing and type of distribution, the amounts withdrawn may or may not be subject to an excise tax penalty. Generally, distributions of elective deferrals cannot be made until one of the following occurs: (1) death, disability, or otherwise have a severance from employment, (2) the plan terminates and no successor defined contribution plan is established or maintained by the employer, or (3) participant reaches age 59.5 or incurs a financial hardship.

## Eligibility

Requirements that determine when an employee is eligible to participate in an employer plan.

## Investment Policy Statement

A statement that defines a plan's general investment goals and objectives. The purpose of the statement is to be used as a guide to the plan's investment strategy. An investment policy statement is not required under ERISA, but failure to follow the policy can lead to a breach in fiduciary duty.

## Keogh (Self Employed 401(k) Plan)

A tax-deferred pension plan available to self-employed individuals or unincorporated businesses for retirement purposes.

### Loans

Where provided in the plan documents, a plan may allow plan participants to take a loan from his or her vested account balance. Participants may borrow no more than 50%, or $50,000, of their vested account balance, whichever is less. Loans must be repaid within five years, except for loans to purchase a primary residence.

### Profit Sharing Plan

A plan established and maintained by the employer to provide for a deferral of income by the entity normally payable to employees upon termination of employment or retirement.

### Qualified Default Investment Alternative (QDIA)

A default investment used by plan fiduciaries to invest assets in the absence of investment direction from the participant.

Per 404(c) regulations, a QDIA provides a safe harbor for plan fiduciaries to the "control over plan assets" requirement.

### Request for Proposal (RFP)

A process where a plan sponsor reviews plan service providers, whereby the employer undergoes a bidding and interviewing process in order to hire or replace a provider. The DOL typically requests information about a plan's RFP process when under investigation.

### Rollover

Occurs when a participant directs the transfer of the money in his or her retirement account to a new plan or IRA.

# REGULATIONS

## §404(c) / Participant-Directed

ERISA section 404(c) permits employees to direct investment in their own retirement accounts, commonly referred to participant-directed plan design. A plan meets 404(c) where it provides for individual accounts, permits a participant or beneficiary to exercise control over assets in his account, and if the participant or beneficiary in fact exercises control over assets. While compliance with the section 404(c) rules may relieve plan fiduciaries of certain liabilities for losses resulting from investment decisions made by participants and beneficiaries, it does not exempt them from all fiduciary responsibilities concerning plan investments.

### Affiliated Service Group

A type of group of related employers that refers to two or more organizations that have a service relationship and, in some cases, an ownership relationship, described the Internal Revenue Code section 414(m).

### Controlled Group

A combination of two or more corporations that are under common control within the meaning of the Internal Revenue Code section 1563(a).

### ERISA

The Employee Retirement Income Security Act of 1974. The Act governs all private sector retirement and health and welfare plans.

### Non-Discrimination Testing

Various IRS-required tests that plan sponsors must perform each year to ensure that 401(k) plans are not discriminating in favor of business owners or other high-paid employees. Two of the required tests are the Actual Deferral Percentage (ADP) and Actual Contribution Percentage (ACP) tests.

### Retirement Age

The age at which a participant may begin to receive distributions from the plan. Distributions prior to age 59.5 (early retirement age) are subject to an excise tax penalty. Under the Internal Revenue Code's provisions, normal retirement age is age 65. A participant may leave money in the plan past this age. However, a participant must begin receiving a "required minimum distribution" no later than age 70.5.

# CONTRIBUTIONS

## Discretionary Contributions / Non-Elective Contributions

Employer contributions made on behalf of all employees who are plan participants, including participants who choose not to contribute elective deferrals.

## Elective Deferrals

Amounts contributed to a plan by the employer at the employee's election that are excludable from the employee's gross income. Elective deferrals include deferrals under a 401(k), 403(b), SARSEP and SIMPLE IRA plan.

## Forfeitures

The part of an employee's account balance (employer contributions) that is lost because it is not vested when the employee terminates employment.

### Matching Contributions

A matching dollar amount contributed by an employer to the retirement savings account of an employee.

### Roth Contribution

An after-tax contribution made by the participant to the plan. Because income tax on the amounts is paid prior to entering the plan, the initial contribution and associated earnings are tax-free at retirement so long as the participant properly withdrawals the amounts from the plan at retirement.

### Tax-Deferred

Investments on which applicable taxes (typically income taxes and capital gains taxes) are paid at a future date instead of in the period in which they are received. Monies deferred (other than Roth contributions) are tax-deferred until the participant receives a distribution at retirement.

## Vesting

Employees vest, or own, a certain percentage of their account in the plan each year. An employee who is 100% vested in his or her account balance owns 100% of it and the employer cannot forfeit, or take it back, for any reason. Amounts that are not vested may be forfeited by employees when they are paid their account balance (for example, when the employee terminates employment).

# 401(k) Plan Limits for 2019

| Category | Limit |
|---|---|
| Maximum Annual Elective Deferral (Individual) | $19,000 |
| Catch-up Contribution (Individual, age 50+) | $6,000 |
| Defined Contribution Plan Annual | $56,000 |
| Annual Allowable Compensation Limit | $280,000 |

*Source: IRS/DOL Websites*

# Questions about your fiduciary responsibilities? Contact us today.

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