



The 401(a)4 Test Passed - but now it Fails ?

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Where to Begin?

- Review Plan Document and Coding details in the System
- Enter Census Information (compensation, hours, status changes, etc.)
- Enter Investment Information (or not, if only estimate)
- Review Results of Plan – Passes? Fails? What to do next?



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Safe Harbor 401(k) Plan with Non-Elective and Cross Tested Allocation

- Age 21 with 1 year of service and dual entry
- Requirement to receive ER allocation is 1000 hours and last day of employment
- Cross Tested allocation provides the owner with a large allocation and the employees with 2% additional when added to the 3% Safe Harbor Non-Elective




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Discrimination Testing

- Passed - 410(b) Participation Test–Ratio Percentage Test
- Passed - 410(b) Participation Test–Average Benefit Test – Nondiscriminatory Classification Test
- Passed – 410(b) Participation Test – Average Benefit Test – Average Benefit Percentage Test
- Failed – Minimum Allocation Gateway
- Failed – 401(a) (4) Discrimination Test

NOTE: Plan Fails!



Passed – 410(b) Participation Test – Ratio Percentage Test

410(b) PARTICIPATION TEST - MINIMUM COVERAGE

Test Company for Webinar
For the plan year 1/1/2009 through 12/31/2009


PASSED 410(b) Minimum Coverage Test

I. Ratio Percentage Test - Passed

	Number of Employees		
	NHCE's	HCE's	Total
A. Benefiting	3	1	4
B. Not Benefiting	0	0	0
C. Total	3	1	4
D. Percentage (A/C)	100.00%	100.00%	
E. Ratio Percentage (NHCE's/HCE's)			d

(a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (l) (m) (n) (o) (p) (q) (r) (s) (t) (u) (v) (w) (x) (y) (z) (aa) (ab) (ac) (ad) (ae) (af) (ag) (ah) (ai) (aj) (ak) (al) (am) (an) (ao) (ap) (aq) (ar) (as) (at) (au) (av) (aw) (ax) (ay) (az) (ba) (bb) (bc) (bd) (be) (bf) (bg) (bh) (bi) (bj) (bk) (bl) (bm) (bn) (bo) (bp) (bq) (br) (bs) (bt) (bu) (bv) (bw) (bx) (by) (bz) (ca) (cb) (cc) (cd) (ce) (cf) (cg) (ch) (ci) (cj) (ck) (cl) (cm) (cn) (co) (cp) (cq) (cr) (cs) (ct) (cu) (cv) (cw) (cx) (cy) (cz) (da) (db) (dc) (dd) (de) (df) (dg) (dh) (di) (dj) (dk) (dl) (dm) (dn) (do) (dp) (dq) (dr) (ds) (dt) (du) (dv) (dw) (dx) (dy) (dz) (ea) (eb) (ec) (ed) (ee) (ef) (eg) (eh) (ei) (ej) (ek) (el) (em) (en) (eo) (ep) (eq) (er) (es) (et) (eu) (ev) (ew) (ex) (ey) (ez) (fa) (fb) (fc) (fd) (fe) (ff) (fg) (fh) (fi) (fj) (fk) (fl) (fm) (fn) (fo) (fp) (fq) (fr) (fs) (ft) (fu) (fv) (fw) (fx) (fy) (fz) (ga) (gb) (gc) (gd) (ge) (gf) (gg) (gh) (gi) (gj) (gk) (gl) (gm) (gn) (go) (gp) (gq) (gr) (gs) (gt) (gu) (gv) (gw) (gx) (gy) (gz) (ha) (hb) (hc) (hd) (he) (hf) (hg) (hh) (hi) (hj) (hk) (hl) (hm) (hn) (ho) (hp) (hq) (hr) (hs) (ht) (hu) (hv) (hw) (hx) (hy) (hz) (ia) (ib) (ic) (id) (ie) (if) (ig) (ih) (ii) (ij) (ik) (il) (im) (in) (io) (ip) (iq) (ir) (is) (it) (iu) (iv) (iw) (ix) (iy) (iz) (ja) (jb) (jc) (jd) (je) (jf) (jg) (jh) (ji) (jj) (jk) (jl) (jm) (jn) (jo) (jp) (jq) (jr) (js) (jt) (ju) (jv) (jw) (jx) (jy) (jz) (ka) (kb) (kc) (kd) (ke) (kf) (kg) (kh) (ki) (kj) (kk) (kl) (km) (kn) (ko) (kp) (kq) (kr) (ks) (kt) (ku) (kv) (kw) (kx) (ky) (kz) (la) (lb) (lc) (ld) (le) (lf) (lg) (lh) (li) (lj) (lk) (ll) (lm) (ln) (lo) (lp) (lq) (lr) (ls) (lt) (lu) (lv) (lw) (lx) (ly) (lz) (ma) (mb) (mc) (md) (me) (mf) (mg) (mh) (mi) (mj) (mk) (ml) (mm) (mn) (mo) (mp) (mq) (mr) (ms) (mt) (mu) (mv) (mw) (mx) (my) (mz) (na) (nb) (nc) (nd) (ne) (nf) (ng) (nh) (ni) (nj) (nk) (nl) (nm) (nn) (no) (np) (nq) (nr) (ns) (nt) (nu) (nv) (nw) (nx) (ny) (nz) (oa) (ob) (oc) (od) (oe) (of) (og) (oh) (oi) (oj) (ok) (ol) (om) (on) (oo) (op) (oq) (or) (os) (ot) (ou) (ov) (ow) (ox) (oy) (oz) (pa) (pb) (pc) (pd) (pe) (pf) (pg) (ph) (pi) (pj) (pk) (pl) (pm) (pn) (po) (pp) (pq) (pr) (ps) (pt) (pu) (pv) (pw) (px) (py) (pz) (qa) (qb) (qc) (qd) (qe) (qf) (qg) (qh) (qi) (qj) (qk) (ql) (qm) (qn) (qo) (qp) (qq) (qr) (qs) (qt) (qu) (qv) (qw) (qx) (qy) (qz) (ra) (rb) (rc) (rd) (re) (rf) (rg) (rh) (ri) (rj) (rk) (rl) (rm) (rn) (ro) (rp) (rq) (rr) (rs) (rt) (ru) (rv) (rw) (rx) (ry) (rz) (sa) (sb) (sc) (sd) (se) (sf) (sg) (sh) (si) (sj) (sk) (sl) (sm) (sn) (so) (sp) (sq) (sr) (ss) (st) (su) (sv) (sw) (sx) (sy) (sz) (ta) (tb) (tc) (td) (te) (tf) (tg) (th) (ti) (tj) (tk) (tl) (tm) (tn) (to) (tp) (tq) (tr) (ts) (tt) (tu) (tv) (tw) (tx) (ty) (tz) (ua) (ub) (uc) (ud) (ue) (uf) (ug) (uh) (ui) (uj) (uk) (ul) (um) (un) (uo) (up) (uq) (ur) (us) (ut) (uu) (uv) (uw) (ux) (uy) (uz) (va) (vb) (vc) (vd) (ve) (vf) (vg) (vh) (vi) (vj) (vk) (vl) (vm) (vn) (vo) (vp) (vq) (vr) (vs) (vt) (vu) (vv) (vw) (vx) (vy) (vz) (wa) (wb) (wc) (wd) (we) (wf) (wg) (wh) (wi) (wj) (wk) (wl) (wm) (wn) (wo) (wp) (wq) (wr) (ws) (wt) (wu) (wv) (ww) (wx) (wy) (wz) (xa) (xb) (xc) (xd) (xe) (xf) (xg) (xh) (xi) (xj) (xk) (xl) (xm) (xn) (xo) (xp) (xq) (xr) (xs) (xt) (xu) (xv) (xw) (xx) (xy) (xz) (ya) (yb) (yc) (yd) (ye) (yf) (yg) (yh) (yi) (yj) (yk) (yl) (ym) (yn) (yo) (yp) (yq) (yr) (ys) (yt) (yu) (yv) (yw) (yx) (yy) (yz) (za) (zb) (zc) (zd) (ze) (zf) (zg) (zh) (zi) (zj) (zk) (zl) (zm) (zn) (zo) (zp) (zq) (zr) (zs) (zt) (zu) (zv) (zw) (zx) (zy) (zz)

Ratio percentage exception codes: a=Only HCEs, b=No HCEs benefiting, d=All NHCEs benefiting



Passed – 410(b) Participation Test – Average Benefit Test – Nondiscriminatory Classification Test

410(b) PARTICIPATION TEST - MINIMUM COVERAGE


Test Company for Webinar
For the plan year 1/1/2009 through 12/31/2009

PASSED 410(b) Minimum Coverage Test

II. Average Benefit Test - Passed

A. Nondiscriminatory Classification Test	
	PASS
1. NHCE's Concentration Percentage	75.00
2. Safe Harbor Percentage	38.75
3. Unsafe Harbor Percentage	28.75
4. Ratio Percentage	d

Passes if ratio percentage is 1) greater than or equal to Safe Harbor percentage or 2) greater than or equal to Unsafe Harbor percentage subject to facts and circumstances



Passed – 410(b) Participation Test – Average Benefit Test – Average Benefits Test

410(b) PARTICIPATION TEST - MINIMUM COVERAGE

Test Company for Webinar
For the plan year 1/1/2009 through 12/31/2009


PASSED 410(b) Minimum Coverage Test

II. Average Benefit Test - Passed

B. Average Benefit Percentage Test

	Contribution Basis Annual		Equivalent Benefit Basis Annual		Accrued-to-Date	
	w/o PD	with PD	w/o PD	with PD	w/o PD	with PD
	1. Average Benefit Percentage of NHCE's	7.67	9.00	2.37	2.70	5.06
2. Average Benefit Percentage of HCE's	58.07	63.77	8.09	8.65	5.52	6.05
3. Average Benefit Percentage (B1/B2) <small>(at the 70% or more)</small>	13.21%	14.11%	29.30%	31.21%	91.67%	94.71%
	FAIL	FAIL	FAIL	FAIL	PASS	PASS

Ratio percentage exception codes: a=Only HCEs, b=No HCEs benefiting, d=All NHCEs benefiting




Failed – Minimum Allocation Gateway

401(a)(4) GENERAL TEST

Test Company for Webinar
For the plan year 1/1/2009 through 12/31/2009

Minimum Allocation Gateway -- Failed

A. Highest HCE Allocation Rate	40.98 %	Times 1/3=	13.66 %
B. Lowest NHCE Allocation Rate	3.00 %		
C. Lowest NHCE Rate (415(c) Comp)	3.00 %	Bosley, J	




Failed - 401(a)(4) Discrimination Test

401(a)(4) GENERAL TEST
 Test Company for Webinar
 For the plan year 1/1/2009 through 12/31/2009

FAILED 401(a)(4) Discrimination Test

The plan as a whole must pass the 401(a)(4) Minimum Allocation Gateway in order to pass the general test. A Rate Group passes if the Ratio Percent is 70% or more, or if the plan passes the average benefit percentage test and the Rate Group's Ratio Percent is greater than or equal to the mid-point between the Safe and Unsafe Harbor Percentages.

Minimum Allocation Gateway	- Failed
Average Benefit Percentage Test	- Passed
NHCE's Concentration Percent	- 75.00%
Safe Harbor Percent	- 38.75%
Mid-Point	- 33.75%
Unsafe Harbor Percent	- 28.75%



What to do when the Plan Fails?

What does your document say?

- Fail Safe Allocation election
- Corrective Amendment



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Fail Safe Allocation provisions

Selected in the adoption agreement for

- Section 2.3.8 of the Base Plan Document
- Prototype
 - Options D7.j and D10.i
- Volume Submitter AA
 - Options D7.m and D10.i
- Volume Submitter IDP format
 - Option A9 and Section 2.3.7



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Document Section - item D7

- **D7. Requirement to Share in Non-Elective Contribution Allocation** - In order to share in the allocation of the Employer's Non-Elective Contribution for the Plan Year, a Participant: (Select all applicable. Does not apply to CODA Safe Harbor Contribution. See *Part II.D.17.*)
- j. To satisfy the minimum coverage requirements of Code section 410(b), the Employer elects to apply the Fail Safe Allocation provisions of *Section 2.3.8.*



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Corrective Amendment

- Treas. Reg Section 1.401(a)(4)-11(g)
- Retroactively increase accruals or allocations for employees who benefitted under the plan during the plan year being corrected.
- May grant accruals or allocations to individuals who did not benefit under the plan during for plan year being corrected.
- May not result in the reduction of an employee's benefit.
- Must have substance.
- 9 ½ months after the close of the plan year.



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Plans | Provisions | Eligibility Last Day Date

2 Provisions | 3 Assumptions | 4 Misc

Age Nearest Birthday for Eligibility
 Age Nearest Birthday for Other Ages
 Mo Eq Yr of Elig Svc: Break in Service Hrs:
 Use 410(a)(4) for Otherwise Excludable

Last Day Date:

Exclude HCE's

Eligibility Computation Period:
 YOS While Participant
 Mo Eq Yr of Cr Svc: Exclude Svc Prior To:

1 Type/Name | **2 Eligibility** | 3 Vesting | 4 Allocation

Eligibility Requirements for Source: **Employer Profit Sharing**

Minimum Hours to Receive Contribution
1000

HCE Does Not Get Contribution Key HCE Does Not Get Contribution
 NHCE Does Not Get Contribution


	Contribution Allocation		Forfeiture Allocation	
	Check to Receive	Minimum Hours	Check to Receive	Minimum Hours
Terminated this Year	<input type="checkbox"/>	1000	<input type="checkbox"/>	1000
Retired this Year	<input checked="" type="checkbox"/>	1000	<input checked="" type="checkbox"/>	1000
Disabled this Year	<input checked="" type="checkbox"/>	1000	<input checked="" type="checkbox"/>	1000
Died this Year	<input checked="" type="checkbox"/>	1000	<input checked="" type="checkbox"/>	1000

Participation
Contribution

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Provide Client with Estimate or Allocation for Plan Year


- Client provides you with Census information – including new entrants and compensation
- Enter Data – Review Plan Results
- Provide Client with Estimate for Allocation based on Plan Results
- Nothing changed – but a few months later – the plan now fails! HELP! What happened?



Discrimination Testing

- Passed - 410(b) Participation Test–Ratio Percentage Test
- Passed - 410(b) Participation Test–Average Benefit Test – Nondiscriminatory Classification Test
- Passed – 410(b) Participation Test – Average Benefit Test – Average Benefit Percentage Test
- Passed – Minimum Allocation Gateway
- Passed – 401(a) (4) Discrimination Test

NOTE: ALL TESTS PASS!



Passed – 410(b) Participation Test – Ratio Percentage Test

410(b) PARTICIPATION TEST - MINIMUM COVERAGE

Test Company for Webinar
For the plan year 1/1/2009 through 12/31/2009


PASSED 410(b) Minimum Coverage Test

I. Ratio Percentage Test - Passed

	Number of Employees		
	NHCE's	HCE's	Total
A. Benefiting	3	1	4
B. Not Benefiting	0	0	0
C. Total	3	1	4
D. Percentage (A/C)	100.00%	100.00%	
E. Ratio Percentage (NHCE's/HCE's)			d

(NHCE's 70% or more)

Ratio percentage exception codes: a=Only HCEs, b=No HCEs benefiting, d=All NHCEs benefiting



Passed – 410(b) Participation Test – Average Benefit Test – Nondiscriminatory Classification Test

410(b) PARTICIPATION TEST - MINIMUM COVERAGE

Test Company for Webinar
For the plan year 1/1/2009 through 12/31/2009

PASSED 410(b) Minimum Coverage Test

II. Average Benefit Test - Passed


A. Nondiscriminatory Classification Test

	PASS
1. NHCE's Concentration Percentage	75.00
2. Safe Harbor Percentage	38.75
3. Unsafe Harbor Percentage	28.75
4. Ratio Percentage	d

Passes if ratio percentage is 1) greater than or equal to Safe Harbor percentage or 2) greater than or equal to Unsafe Harbor percentage subject to facts and circumstances

E. Ratio Percentage (NHCE's:HCE's) d
(title 70% or more)

Ratio percentage exception codes: a=Only HCEs, b=No HCEs benefiting, d=All NHCEs benefiting



Passed – 410(b) Participation Test – Average Benefit Test – Average Benefits Test

410(b) PARTICIPATION TEST - MINIMUM COVERAGE


Test Company for Webinar
For the plan year 1/1/2009 through 12/31/2009

PASSED 410(b) Minimum Coverage Test

II. Average Benefit Test - Passed

B. Average Benefit Percentage Test

	Contribution Basis		Equivalent Benefit Basis			
	Annual		Annual		Accrued-to-Date	
	w/o PD	with PD	w/o PD	with PD	w/o PD	with PD
1. Average Benefit Percentage of NHCE's	11.00	16.00	3.42	4.09	5.52	6.19
2. Average Benefit Percentage of HCE's	56.71	62.41	7.90	8.45	5.29	5.82
3. Average Benefit Percentage (B1/B2) <small>(title 70% or more)</small>	19.40%	25.64%	43.29%	48.40%	104.35%	106.36%
	FAIL	FAIL	FAIL	FAIL	PASS	PASS



Passed – Minimum Allocation Gateway


401(a)(4) GENERAL TEST

Test Company for Webinar
For the plan year 1/1/2009 through 12/31/2009

Minimum Allocation Gateway -- Passed

Lowest NHCE Allocation Rate using 415(c) Comp is 5% or Greater

A. Highest HCE Allocation Rate	37.03 %	Times 1/3= 12.34 %
B. Lowest NHCE Allocation Rate	5.00 %	
C. Lowest NHCE Rate (415(c) Comp)	5.00 %	Bosley, J



Passed - 401(a)(4) Discrimination Test

401(a)(4) GENERAL TEST

Test Company for Webinar
For the plan year 1/1/2009 through 12/31/2009

PASSED 401(a)(4) Discrimination Test

The plan as a whole must pass the 401(a)(4) Minimum Allocation Gateway in order to pass the general test. A Rate Group passes if the Ratio Percent is 70% or more, or if the plan passes the average benefit percentage test and the Rate Group's Ratio Percent is greater than or equal to the mid-point between the Safe and Unsafe Harbor Percentages.

Minimum Allocation Gateway	- Passed
Average Benefit Percentage Test	- Passed
NHCE's Concentration Percent	- 75.00%
Safe Harbor Percent	- 38.75%
Mid-Point	- 33.75%
Unsafe Harbor Percent	- 28.75%



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Months later...enter gains/losses

- All tests passed before. I provided client with allocation amount and deposits were made to the participants' accounts.
- Now today...enter gains/losses for the plan to finalize and.
- TESTS NO LONGER PASS! What happened? My allocations are the same? My participants are the same?




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Discrimination Test Results – after entering Gains/Losses

- Passed - 410(b) Participation Test–Ratio Percentage Test
- Passed - 410(b) Participation Test–Average Benefit Test – Nondiscriminatory Classification Test
- Passed – 410(b) Participation Test – Average Benefit Test – Average Benefit Percentage Test
- Passed – Minimum Allocation Gateway
- FAILED – 401(a) (4) Discrimination Test

NOTE: PLAN NOW FAILS!




FAILED – 401(a) (4) Discrimination Test

401(a)(4) GENERAL TEST


Test Company for Webinar
For the plan year 1/1/2009 through 12/31/2009

FAILED 401(a)(4) Discrimination Test



The plan as a whole must pass the 401(a)(4) Minimum Allocation Gateway in order to pass the general test. A Rate Group passes if the Ratio Percent is 70% or more, or if the plan passes the average benefit percentage test and the Rate Group's Ratio Percent is greater than or equal to the mid-point between the Safe and Unsafe Harbor Percentages.

Minimum Allocation Gateway	- Passed
Average Benefit Percentage Test	- Passed
NHCE's Concentration Percent	- 66.67%
Safe Harbor Percent	- 45.50%
Mid-Point	- 40.50%
Unsafe Harbor Percent	- 35.50%



What to do next?

- Now a solution is needed.
- Did client deduct the contribution already?
- Can more money be contributed?
- Can allocations be revised?
- Facts and circumstances based on the needs of your client will determine the best way to proceed.

The slide features the DATAIR logo in the top right corner, which includes a stylized sunburst icon and the text "DATAIR EMPLOYEE BENEFIT SYSTEMS, INC.". Below the logo, the word "Resources" is written in a bold, dark blue font. A thick grey horizontal bar is positioned below the title. Underneath the bar, there is a bulleted list of resources. The slide has a dark red L-shaped border on the left and top.

Resources

- Release Notes
- DATAIR Employee Benefit Systems, Inc.
 - Customer Support
Email: support@datair.com
Telephone: (630)325-2600
 - DATAIR Discussion Forums <http://www.datair.com/>
- Internal Revenue Service (IRS)
 - Retirement Plans Community:
<http://www.irs.gov/retirement/index.html>