

Frequently Asked Questions

Edward Jones Owner K[®] Plans

Below are eight common mistakes to avoid in setting-up an Owner K[®] and some Frequently Asked Questions

Eight Common Mistakes to Avoid

1. Be sure owner – and spouse, if an employee – meet the plan's eligibility and entry requirements.

If the plan requires one year of service to be eligible, be sure that the owner – and spouse, if applicable – have a date of hire that allows them to enter the plan during the first plan year on a plan entry date (otherwise, no one would be in the plan the first year).

Examples:

- A new company is established during the current year, and adopts a new Owner K that requires one year of service for plan eligibility. In this case, the owner would not be eligible for the plan in the first plan year. For the owner to enter the plan in the first year, you must make a special request to use the plan document's "dual eligibility" provision. Be sure to use a special entry date that is after the owner's date of hire.
- A company has been in place for a number of years and starts a new Owner K[®] that requires one year of service. The owner's spouse is "hired" during the first plan year so the spouse can participate in the plan. Unfortunately, the spouse is not eligible unless the plan document's "dual eligibility" provision is used (you must make a special request for this). Be sure to use a date for "dual eligibility" that is after the spouse's date of hire.

Please note that the "dual eligibility" provision lets all employees into the plan who are employed on that date, including part-time employees.

2. If a new 401(k) Plan is using the "dual eligibility" provision to allow the owner of a new business (or spouse) to participate immediately, be sure there are no part-time or other employees employed on that date.

If the proper document provision is selected, a new Owner K[®] can waive eligibility requirements on a particular date (**note:** an existing 401(k) cannot elect this waiver). Employees hired after this date would be subject to the plan's normal service requirements.

However, it is important to remember that this provision waives all service requirements on that date. Therefore, anyone employed on that date would be a participant in the plan immediately, even if they work less than 1,000 hours or are younger than the plan's age requirement.

3. If plan's service requirement for eligibility is less than 12 months/1,000 hours, make sure there are no part-time employees that may enter the plan.

Using less than 12 months of service generally would let part-time employees into the plan, no matter how few hours they work (if less than 12 months of service is used, then there cannot be an "hours" requirement for eligibility).

If there are currently no part-time employees, it is generally better for a new Owner K[®] to use one year of service, and to use the "dual eligibility" provision to get the owner or spouse into the plan immediately.

4. If the plan uses "equivalency method" to calculate hours worked in a year, be sure there are no "less than 1,000 hour" part-time employees that may enter the plan.

It is recommended that a plan use the "actual method" for calculating hours worked when 12 months of service is used. This means that the company retains actual hours worked for hourly employees (for example, employees who work less than 1,000 hours a year).

The "equivalency method" may also be used. This method credits 190 hours for any month in which the employee performs at least one hour of service. This method is sometimes used to allow salary deferral participation in a plan by a spouse who performs services for the company each month but works less than 1,000 hours a year.

However, this also applies to any other part-time employee. So, if this provision is elected, it is important that the company (i) does not currently employ any part-time employees, and (ii) does not hire part-time employees in the future.

5. If the owner and spouse are both participants, be sure to set-up separate investment accounts for each participant.

The basic Owner K[®] program assumes separate investment accounts. Comingling contributions for the owner and spouse in one investment account would require a plan amendment. Additional trust accounting would be needed each year, so additional fees would apply (see Benetech's fee schedule).

6. If Roth deferrals are to be made: (i) be sure that the Owner K[®] document allows Roth deferrals; and (ii) the after-tax Roth deferrals should be deposited in a separate account from pre-tax contributions (e.g., traditional deferrals, profit sharing, or rollover contributions).

When a distribution is taken, gain on Roth deferrals is treated differently than gain for other types of contributions. If Roth deferrals are comingled with other types of contributions, additional trust accounting will be needed each year to track the gain/loss, which will result in additional fees (see Benetech's fee schedule).

7. If the owner needs to apply plan contribution deductions to two (or more) separate businesses that he or she wholly owns (or otherwise constitutes an affiliated group of companies), then the other company must sign the "Participating Employer" page of the plan document.

The Edward Jones 401(k) document is a "Standardized" document, so it automatically includes employees of any related employer (that is, related under the Controlled and Affiliated Service Group rules). This means that, if there is a related company with non-owner employees, then the 401(k) Plan cannot be an "owner only" plan.

However, according to the plan document, for the related company to be able to take the deduction for contributions to the 401(k) Plan, the company must sign onto the plan as a "Participating Employer."

So, if the owner receives compensation for plan purposes from two separate but related companies, be sure to note this in your request for plan documents from Edward Jones Retirement Services.

8. If the owner's spouse owns a separate and apparently unrelated business, the spouse's company – and its employees – are covered by the Edward Jones Owner K document (in almost all cases).

With very limited exceptions, an owner is attributed his/her spouse's ownership in a separate company (that is, it is as if the owner owns 100% of his/her company, and 100% of the spouse's interest in the other company). For this reason, the spouse's company should be taken into account when an owner makes the decision to start an Owner K®. Please contact a Benetech representative for more information on this topic.

Frequently Asked Questions

Must a sole proprietorship have a Federal Employer Tax Identification Number (EIN)?

Yes. Department of Labor rules require that a company must have an EIN to sponsor a qualified plan (see DOL Revenue Ruling 2000-20). A Social Security Number **may not** be used for a sole proprietorship.

The client (or the client's accountant) can easily obtain an EIN on the IRS web site (<http://www.irs.gov>). For more information on this process you may contact the IRS directly at 800-829-4933.

What type of Jones investment account should be used for an Owner K®?

An "90,000" account should be used. Please refer to JonesLink or contact RS for more information on account setup.

Are Roth deferrals available in an Owner K®?

Yes, in principal. However, always check the Owner K® document for the plan to make sure the document allows Roth deferrals. If not, the Owner K® document must be amended **prior to** depositing Roth deferrals.

What are the requirements for using Form 5500-EZ?

The requirements are listed in the instructions to Form 5500-EZ, which may be found on the IRS web site (<http://www.irs.gov>). They include the following:

- The plan must be a "one participant" plan, which means:
 - The plan covers only the owner, or owner & spouse; or
 - The plan covers one or more partners (or partners and their spouses).
 - **Note:** the instructions **do not** allow for multiple unmarried owners of a corporation who are plan participants, even if there are no other employees.
- No non-owner employees can be eligible for the plan (with the exception of the owner's spouse).
- The company cannot be a member of a Controlled Group or Affiliated Service Group of companies (as defined in IRS regulations).
- The company does not use leased employees.

What happens if the company does not meet the Form 5500-EZ requirements?

A full Form 5500 must be filed **beginning with the first year of the plan** (there is no asset-based grace period for filing Form 5500 if the EZ requirements are not met). Additional fees apply in such cases (see Benetech's fee schedule).

What happens if non-owner employees enter the plan?

A number of changes take effect once a non-owner participant enters the plan. These changes require additional services, so Benetech's standard 401(k) fee schedule would apply.

Please note that the participant does **not** need to defer salary for these changes to take effect.

- Discrimination testing applies. This testing will most likely limit the owner's deferrals, and may require a return of deferrals to the owner.
- A full Form 5500 would need to be filed. Additional administrative fees would apply for preparing a full Form 5500.
- The company would need to make a 3% Top Heavy minimum contribution for the non-owner participants in most cases.

In such a case, the FA should immediately submit a request to Retirement Services to amend the Owner K® to a Jones Self-Directed Safe Harbor 401(k) Plan to be effective in the **next** plan year (this must be done at least 30 days **prior to** the first day of the next plan year, which is the deadline for distributing the required Safe Harbor notice for the next plan year).

Please note that newly eligible participants must be notified of their eligibility **prior to** entering the plan. Not giving the participant an opportunity to defer is a plan qualification defect. The correction of this defect generally requires company contributions for the erroneously excluded participant.

What investment information must the client provide in order for Benetech to prepare the Form 5500-EZ?

Each year the client will need to report total plan assets as of December 31, and the dates and amounts of deposits for each contribution type (e.g., deferral, loan repayment, profit sharing, and rollover). If this information is not provided, full trust accounting would be required, and additional fees would apply (see Benetech's fee schedule).

Are rollovers into an Owner K® from other retirement plans and traditional (pre-tax) IRAs allowed?

Yes, but check the Owner K® document to make sure this provision is elected.

Are rollovers into an Owner K® from a Roth IRA allowed?

No. Roth IRA rollovers into an Owner K® are not allowed.

Who produces client-requested amendments to an Owner K®?

RS produces all plan documents, including amendments, enrollment forms, distribution forms, legislative compliance amendments, and IRS-required document restatements.

What is involved in plan termination?

When an owner-only 401(k) Plan is terminated, the document must be updated for all current legislation, distributions must be properly processed, and a final Form 5500-EZ must be produced. Benetech prepares the final Form 5500-EZ. RS will provide distribution notices and assist in document-related areas, as needed.

See JonesLink for your internal distribution instructions, or call #83.