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IMPORTANT INFORMATION FOR PROFIT SHARING PLANS

PARTICIPANT BENEFIT STATEMENTS

Defined contribution plans (profit sharing, 401(k), and money purchase) are required to provide benefit information to participants. Beneficiaries must receive the benefit information if they are entitled to receive benefits from the plan due to the death of the participant or a separation or divorce that has issued a qualified domestic relations order.

Delivery Timing:

- Trustee Directed Investments: Statements must be provided annually on or before the date Form 5500 is filed.
- Participant Directed Investments: Statements must be provided quarterly within 45 days after the end of each calendar quarter.
- Trustee and Participant Directed Investments: Statements must be provided upon written request by the participant or beneficiary.

Required Content for All Statements:

- The total benefits accrued and the vested benefits accrued, if any.
- The value of each investment to which assets in a participant's account have been allocated.
- Vested percentage of benefits. Vesting must be provided at least annually.

Additional Required Content for Participant Directed Investments:

- An explanation of limitations or restrictions on the right to direct investments.
- An explanation of the importance of a diversified investment portfolio for long term retirement security.
- A statement of risk, that holding more than 20% of a portfolio in the securities of one entity may not be adequately diversified.
- Directions that guide the participant to the Internet website of the Department of Labor for information on individual investing and diversification.

Until the Department of Labor issues further guidance, plans must meet the standards of *good faith compliance*. It is up to the plan sponsor to determine if the benefit statements provided to participants meet the standards of good faith compliance. For further information search for "Field Assistance Bulletin 2006-03" at www.dol.gov

Please contact us if you have any questions regarding the benefit statement requirements for your plan.

401(k) SALARY DEFERRALS

All employees, including owners, who are eligible to make 401(k) salary deferrals must complete a Salary Reduction Agreement before any 401(k) is deducted from their paychecks.

Plan sponsors must deposit employee 401(k) salary deferrals as soon as possible after processing each payroll. Department of Labor (DOL) regulations require the deposit of employee 401(k) on the earliest date the deferrals can be segregated from the general assets of the plan sponsor. For plans with less than 100 participants, the regulations establish a safe harbor period. Deposits made no later than the 7th business day following the day the 401(k) was withheld are considered to meet the earliest date standard. The DOL has established a safe harbor period but expects the 401(k) to be transmitted sooner than the 7th business day if possible. Participants' loan repayments have the same deposit timing rules if deducted from payroll.

Pension Advisory Group, Ltd.

You must make sure your operation of the plan complies with the regulations. Late deposits are reported on the annual Form 5500. The DOL will enforce penalties and pursue legal action against plan sponsors who hold 401(k) and loan repayments too long before depositing them. All late deposits should be corrected in accordance with compliance programs offered by the DOL and IRS. Contact our office for assistance with late deposit corrections.

AUTOMATIC DEFERRAL ARRANGEMENTS: Effective in 2025

401(k) plans that were established after December 28, 2022 and sponsored by an employer that has existed for at least three years and normally has more than ten employees are required to automatically enroll participants that have not completed a salary reduction agreement. Non-electing participants must be enrolled at a deferral rate of at least 3% of compensation and the deferral rate will increase 1% each year.

Regardless of whether your 401(k) plan is subject to these rules, we strongly recommend having every employee complete a salary reduction agreement even if they do not wish to defer. Participants that actively elect to defer nothing are not subject to automatic deferrals. Automatic enrollment only applies to participants that do not complete an election.

Editorial comment: Congress likes automatic deferral arrangements. We would not be surprised to see this mandate expanded beyond the plans it now covers. Our concern is that payroll systems won't keep up with automatic increases. We cannot stress this enough: have your participants complete a salary reduction agreement especially if they wish not to defer.

LONG-TERM, PART-TIME (LTPT) EMPLOYEES: Effective Now

LTPT employees are at least age 21 with 500 hours worked in two consecutive years. Employees regularly working 500 hours a year, around 10 hours per week, will enter your 401(k) plan. Employees that enter due to LTPT rules will be eligible to defer 401(k) but not entitled to employer contributions. Let us know if you have questions regarding an employee's eligibility.

2025 PLAN LIMITS: Dollar Amounts Can Change Annually

The maximum compensation that can be considered for qualified retirement plans is \$350,000. Generally, this is your W-2 compensation or, for self-employed individuals, this is your net profit less contributions and your Schedule SE deduction. Compensation does not include S-corp profit distributions to shareholders (S-corp dividends).

The maximum allocation a participant can receive in a defined contribution plan without regard to catch-up deferrals is the lesser of (1) 25% of pay and (2) \$70,000. The maximum 401(k) a participant could defer without regard to catch-up deferrals is \$23,500. An employee that defers the maximum 401(k) could receive an employer contribution of \$46,500 to increase their allocation to the \$70,000 maximum.

Participants eligible for the age 50 catch-up deferrals can increase their 401(k) deferrals to \$31,000 and their total allocation to \$77,500. Participants eligible for the new age 60-63 catch-up (see next item) can increase their 401(k) to \$34,750 and their total allocation to \$81,250.

NEW ADDITIONAL CATCH-UP (AGE 60-63) LIMITS: Effective in 2025

Participants in 401(k) plans may defer up to \$23,500 out of their compensation during 2025. Participants that attain at least age 50 during the year may defer an additional \$7,500 (\$31,000 in total). Further, participants that attain age 60 but have not attained age 64 before the close of the year may defer an additional \$3,750 (\$34,750 in total). Be careful, unlike most limits you can age out of this new additional catch-up. For 2025, participants born on or after January 1, 1962 but not later than December 31, 1965 are eligible.

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MOST CATCH-UP MUST BE ROTH: Effective in 2026

The SECURE Act said catch-up for employees with prior year W-2 compensation exceeding \$145,000 must be Roth deferrals beginning in 2024. IRS understood the difficulties with implementation and postponed the effective date until 2026. Self-employed individuals (sole proprietors and owners in a partnership) are not subject to this rule because they do not have W-2 compensation. W-2 compensation for 2025 will determine if your 2026 catch-up needs to be Roth.

Editorial comment: We believe Congress prefers Roth deferrals increasing current tax revenue rather than pre-tax deferrals with tax revenue at some unknown time in the future. This makes the budget look more balanced. We would not be surprised to see more Rothification of contributions in the future.

CYBERSECURITY: Important for Everyone

The Employee Benefits Security Administration (EBSA) provides information regarding cybersecurity for people working with retirement plans. Best practices are necessary at all points: your office, our office, your investment advisor's office, etc. The EBSA documentation can be found at the [dol.gov](https://www.dol.gov) website. Search for "EBSA cybersecurity."

We use a secure system for electronically transferring files with sensitive information. You may receive an e-mail from admin@plansponsorlink.com with information and links for signing up and downloading files. Contact Pam Protus at 847-984-0412 or pam@pagltd.com if you have questions or want to securely transfer files to us.

WHO ARE THESE PEOPLE? ME? Know Your Role

In a small plan, the plan administrator, plan sponsor, employer, and trustee are often one person – one person with many responsibilities.

The PLAN ADMINISTRATOR is identified in the plan document as having responsibility for the administration and operation of the plan. The plan administrator is most often an employee of the plan sponsor authorized to make decisions on behalf of the company and not an outside service provider. The plan administrator must sign Form 5500 each year.

The PLAN SPONSOR is the employer if only one entity sponsors the plan. The plan sponsor is responsible for complying with the requirements in the Internal Revenue Code.

The EMPLOYER is the entity that employs the participants in the plan. The employer contributes to the plan.

The TRUSTEE is the person named in the trust document with the authority to manage and control the plan assets.

FIDUCIARY RESPONSIBILITIES

A fiduciary meets at least one of these criteria: (1) exercises any discretionary authority or discretionary control respecting management of the plan, or exercises any authority or control respecting management or disposition of assets; (2) renders investment advice for a fee or other compensation, direct or indirect, with respect to any assets of the plan, or has any authority or responsibility to render such advice even if not actually rendered; (3) has any discretionary authority or discretionary responsibility in the administration of the plan

The basic responsibilities of a fiduciary include (1) acting solely in the interest of the participants and beneficiaries; (2) acting for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of the plan; (3) carrying out duties with the care, skill, prudence, and diligence of a prudent person familiar with such matters; (4) following the plan documents; and (5) diversifying plan investments.

Pension Advisory Group, Ltd.

Further information is at the dol.gov website. Search for "DOL fiduciary responsibilities." DOL gives this guidance on fiduciary duties specific to 401(k) plans: *"In addition, for some functions, there are specific rules that help guide the fiduciary. For example, the deductions from employees' paychecks for contribution to the plan must be deposited with the plan as soon as reasonably possible..."*

"For plans with fewer than 100 participants, salary reduction contributions deposited with the plan no later than the 7th business day following withholding by the employer will be considered contributed in compliance with the law." DOL is very concerned with this issue. If your 401(k) does not comply, contact our office before DOL contacts you.

AREAS FOR REVIEW/KEEP YOUR PLAN IN COMPLIANCE: IRS Checklist

IRS annually publishes a 401(k) Plan Checklist for business owners that covers some of the major compliance issues plan sponsors should review each year. Even if your plan is not a 401(k) plan, some questions are still relevant. We have reprinted some of the questions and answers below.

- Has your plan document been updated within the past few years? If your plan hasn't been updated to reflect recent law changes, the plan needs to be revised.
- Are the plan operations based on the plan document terms? Failure to follow the terms of the plan is a common problem found in an audit.
- Is the plan definition of compensation for all deferrals and allocations used correctly? Your plan may use different definitions of compensation for different purposes. It's important that you apply the proper definition found in your plan document.
- Were all eligible employees identified and given the opportunity to make an elective deferral? By supplying your tax advisor with information regarding all employees who receive a Form W-2, you may reduce the risk of omitting eligible employees. (Emphasis added.)
- Have you timely deposited employee elective deferrals? You should deposit deferrals as soon as they can be segregated from the employer's assets. (Emphasis added.)

Further information is at the irs.gov website. Search for "IRS 401(k) plan checklist."

PARTICIPANT DIRECTED INVESTMENTS

Regulations issued by the Department of Labor's Employee Benefits Security Administration (EBSA) require plan sponsors in their role as plan administrator to provide fee and expense information to participants when a plan allocates the investment responsibility to the participants. The regulations apply only to defined contribution plans such as 401(k) or profit sharing plans where the participants make some or all the investment decisions in their accounts.

If your plan document allows participants to direct the investment of any of their plan accounts, you must comply with the fee and expense disclosure regulations.

General Timing Requirements: Disclosures must be provided on or before the date participants can first direct their investments, and at least annually thereafter. Participants must be informed of changes to the investments at least 30 days but not more than 90 days before the change is effective if possible. Participants must also receive statements at least quarterly showing the dollar amount of plan-related fees and expenses actually deducted from their accounts with a description of the services for which the charge was made.

Disclosure of Plan-Related Information: Participants must receive general plan information about the structure and mechanics of the plan such as an explanation of how to give investment instructions under the plan, a current list of the plan's investment options, and a description of any "brokerage windows" or similar arrangement that enables the selection of investments beyond those designated by the plan. The information must also include an explanation of

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administrative and individual expenses that may be charged to or deducted from all individual accounts. Examples of administrative expenses include fees and expenses for legal, accounting, and recordkeeping services. Individual expenses are based on the actions taken by that person. Examples of individual expenses include fees for plan loans and processing qualified domestic relations orders.

Disclosure of Investment-Related Information: Participants must receive several categories of investment-related information including:

- **Performance Data:** Investment options that do not have a fixed rate of return must disclose specific information about historical investment performance for 1, 5 and 10-year returns. Investment options that have a fixed rate of return must disclose the annual rate of return and the term of the investment.
- **Benchmark Information:** Investment options that do not have a fixed rate of return must provide the name and returns of an appropriate broad-based securities market index over 1, 5 and 10-year periods. Investment options with fixed rates of return are not subject to this requirement.
- **Fee and Expense Information:** Investment options that do not have a fixed rate of return must disclose the total annual operating expenses expressed as both a percentage of assets and as a dollar amount for each \$1,000 invested and any shareholder-type fees or restrictions on the ability to purchase or withdraw from the investment. Investment options that have a fixed rate of return must disclose any shareholder-type fees or restrictions on the ability to purchase or withdraw from the investment.
- **Internet Website Address:** An internet website address that is sufficiently specific to provide participants access to additional information about the investment options for more or more current information must be given for all investment options.
- **Glossary:** A general glossary of terms to assist participants in understanding the plan's investment options, or an internet website address that is sufficiently specific to provide access to such a glossary must be provided.

Comparative Format Requirement: Investment-related information must be furnished in a chart or similar format designed to facilitate a comparison of each investment option available under the plan. The final regulations include a model comparative chart, which may be used by the plan administrator to satisfy the comparative format requirement.

Miscellaneous: Participants must be provided any materials the plan receives regarding voting, tender or similar rights in the option after investing in that option. Upon request, the plan administrator must also furnish prospectuses, financial reports, and statements of valuation and of assets held by an investment option. Plan administrators have some protection from liability for the completeness and accuracy of information provided to participants if the plan administrator reasonably and in good faith relied upon information supplied by a service provider.

Conclusion: Most plan sponsors will not have the information required by the fee disclosure regulations. The broker-dealer in most instances will need to provide the required information to the plan sponsor. However, the legal obligation to comply with the regulations is imposed on the plan sponsor.

The information provided here covers the general requirements of the regulations and is not exhaustive in details. For further information search for "retirement plans" at www.dol.gov and review the items under *Regulations & Guidance*.

BONDING REQUIREMENTS

An ERISA fidelity bond is required to protect the plan against losses due to acts of fraud or dishonesty from plan officials.

- **Plan Official:** A person who handles funds or other property of the plan is a plan official. Plan officials include the plan administrator and officers or employees of the plan sponsor who have duties relating to the receipt, safekeeping, and disbursement of plan funds.
- **Bond Amount:** The bond must be at least 10% of the funds handled. The bond amount is not required to exceed \$500,000 unless the plan does not meet the small plan audit requirements.
- **Form 5500 Reporting:** The bond coverage must be disclosed on the annual Form 5500.

Pension Advisory Group, Ltd.

- **Exemption from Bonding Requirements:** Plans covering only a sole-proprietor, the sole shareholder of a corporation, or a sole-proprietor or shareholder and their spouse do not need bonding.
- **Additional Information:** Search for "ERISA fidelity bond" at www.dol.gov.

Small Plan Audit Requirements: DOL issued regulations requiring audits by independent qualified public accountants. Most small plans can avoid the audit requirement by complying with the following rules:

At least 95% of the plan assets must be qualifying plan assets. Qualifying plan assets include:

- Assets held by a bank or similar financial institution.
- Assets held by an insurance company.
- Assets held by broker-dealers.
- Shares issued by an investment company.
- Assets in individual accounts over which the participants can exercise control and receive statements from the regulated financial institution.
- Participant loans.

If less than 95% of the plan assets are qualifying plan assets, the non-qualifying assets must be 100% bonded and the Summary Annual Report must disclose the name of the surety company.

Copies of statements from the regulated financial institutions holding the plan assets must be provided free of charge upon the request of any participant.

Please contact us if you have any questions regarding bonding or the audit requirements.

MISSING PARTICIPANTS

Missing participants are terminated employees that the plan administrator is unable to locate. Since terminated participants are still required to receive benefit statements, summary annual reports and other notifications if they have vested benefits, the plan administrator cannot meet their duties if participants are missing.

This can usually be avoided if participants are reminded that they have a benefit when they terminate employment and should keep your office apprised of any change of address. They should also be informed that distributions most often cannot occur until their final contribution is made, which usually happens in the year following the year of termination.

When mail to a former employee is returned as undeliverable, the internet and social media can be used to try to locate them. If that fails, a commercial locator service may be necessary. These are firms specializing in finding contact information.

Making timely distributions goes a long way to avoid this problem and may have other beneficial consequences such as a reduction in notification requirements and forfeiture of nonvested balances.

LIFETIME INCOME DISCLOSURE

Profit sharing and 401(k) plans need to provide participants a lifetime income disclosure illustrating account balances as a stream of estimated lifetime payments at age 67. Our disclosure uses the model language and calculation method provided by the Department of Labor (DOL). The disclosure is intended to give participants an idea of what their account balance might provide as monthly retirement income from their IRA.