AUTOMATIC ENROLLMENT 401(K) PLANS

FOR SMALL BUSINESSES

Automatic Enrollment 401(k) Plans for Small Businesses is a joint project of the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) and the Internal Revenue Service.

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This booklet constitutes a small entity compliance guide for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

Why An Automatic Enrollment 401(k) Plan?

Do you want a retirement plan that provides a high level of participation and makes it easy for you to withhold employee contributions and select the investments for those contributions? Then you may want to consider an automatic enrollment 401(k) plan.

Approximately 30 percent of eligible workers do not participate in their employer's 401(k)-type plan. Studies suggest that automatic enrollment plans could reduce this rate to less than 15 percent, significantly increasing retirement savings. Whether you already have a 401(k) plan or are considering starting one, automatic enrollment 401(k) plans offer many advantages.

An automatic enrollment 401(k) plan:

- Helps attract and keep talented employees.
- Increases plan participation among both rank-and-file employees and owners/managers.
- Allows for salary deferrals into certain plan investments if employees do not select their own investments.
- Simplifies selection of investments appropriate for long-term retirement savings for participants.
- Helps employees begin saving for their future.
- Offers significant tax advantages (including deduction of employer contributions and deferred taxation on contributions and earnings until distribution).

This publication provides an overview of automatic enrollment 401(k) plans. For more information, resources for both you and your employees are listed at the end of this booklet.

Establishing An Automatic Enrollment 401(k) Plan

When you establish an automatic enrollment 401(k) plan you must take certain basic actions. One of your first decisions will be whether to set up the plan yourself or to consult a professional or financial institution – such as a bank, mutual fund provider, or insurance company – to help with establishing and maintaining the plan. In addition, there are four initial steps for setting up an automatic enrollment 401(k) plan:

- Adopt a written plan document,
- Arrange a trust for the plan's assets,
- Develop a recordkeeping system, and
- Provide plan information to employees eligible to participate.

Adopt a written plan document – Plans begin with a written document that serves as the foundation for day-to-day plan operations. If you have hired someone to help with your plan, that person likely will provide the document. If not, consider obtaining assistance from a financial institution or retirement plan professional. In either case, you will be bound by the terms of the plan document. Before adopting a plan document, you will need to decide on the type of automatic enrollment 401(k) plan that is best for you.

A ***basic automatic enrollment 401(k) plan*** must state that employees will be automatically enrolled in the plan unless they elect otherwise and must specify the percentage of an employee's wages that will be automatically deducted from each paycheck for contribution to the plan. The document must also explain that employees have the right to elect not to have salary deferrals withheld or to elect a different percentage to be withheld.

An ***eligible automatic contribution arrangement (EACA)*** is similar to the basic automatic enrollment plan but has specific notice requirements. An EACA can allow automatically enrolled participants to withdraw their contributions within 30 to 90 days of the first contribution.

A ***qualified automatic contribution arrangement (QACA)*** is a type of automatic enrollment 401(k) plan that automatically passes certain kinds of annual required testing. The plan must include certain features, such as a fixed schedule of automatic employee contributions, employer contributions, a special vesting schedule, and specific notice requirements.

While this booklet focuses on automatic enrollment 401(k) plans, the automatic enrollment feature also can be used in 403(b), governmental 457(b), and SIMPLE IRA plans.

Arrange a trust for the plan's assets – An automatic enrollment 401(k) plan's assets must be held in trust to assure that the assets are used solely to benefit the participants and their beneficiaries. The trust must have at least one trustee to handle contributions, plan investments, and distributions. Since the financial integrity of the plan depends on the trustee, selecting a trustee is one of the most important decisions you will make in establishing an automatic enrollment 401(k) plan. If you set up your plan through insurance contracts, the contracts do not need to be held in trust.

Develop a recordkeeping system – An accurate recordkeeping system will track and properly attribute contributions, earnings and losses, plan investments, expenses, and benefit distributions. It will also provide a record of employees who elect not to participate as well as participant contribution and investment decisions. If a contract administrator or financial institution assists in managing the plan, that entity typically will help keep the required records. In addition, a recordkeeping system will help you, your plan administrator, or financial provider prepare the plan's annual return/report that must be filed with the Federal Government.

Provide plan information to employees eligible to participate – You must notify employees who are eligible to participate in the plan about certain benefits, rights, and features. Employees must receive an initial notice prior to automatic enrollment in the plan and receive a similar notice each year.

In addition, a summary plan description (SPD) must be provided to all participants. The SPD is the primary vehicle to inform participants and beneficiaries about the plan and how it operates. The SPD typically is created with the plan document. (For more information on the required contents of the SPD, see **Disclosing Plan Information to Participants**.) You also may want to provide your employees with information that discusses the advantages of your automatic enrollment 401(k) plan. The benefits to employees — such as pre-tax contributions to a 401(k) plan (or tax-free distributions in the case of Roth contributions), employer contributions and compounded tax-deferred earnings — help highlight the advantages of participating in the plan.

Operating An Automatic Enrollment 401(k) Plan

Once you have established an automatic enrollment 401(k) plan, you assume certain responsibilities in operating it. If you hired someone to help in setting up your plan, that arrangement also may have included help in operating the plan. If not, another important decision will be whether to manage the plan yourself or to hire a professional or financial institution – such as a bank, mutual fund provider, or insurance company – to take care of some or most aspects of operating the plan.

Elements of operating automatic enrollment 401(k) plans include:

- Participation
- Contributions
- Vesting
- Nondiscrimination
- Investing the contributions

- Fiduciary responsibilities
- Disclosing plan information to participants
- Reporting to government agencies
- Distributing plan benefits

Participation

Employees are automatically enrolled in the plan and a specific percentage will be deducted from each participant's salary unless the participant opts out or chooses a different percentage.

However, as with any 401(k) plan, an automatic enrollment 401(k) plan may exclude some employees if they:

- Have not attained age 21;
- Have not completed one year of service;
- Are covered by a collective bargaining agreement that does not provide for participation in the plan, if retirement benefits were the subject of good faith bargaining; or
- Are certain nonresident aliens.

Employees cannot be excluded from a plan merely because they are older workers.

Contributions

Basic Automatic Enrollment 401(k) Plans and EACAs

As with any 401(k) plan, in addition to employee contributions (made through salary deductions), you decide on your business' contribution (if any) to participants' accounts in your plan. If you decide to make contributions to your automatic enrollment 401(k) plan for your employees, you have additional options. You can match the amount your employees decide to contribute (within the limits of the law) or you can contribute a percentage of each employee's compensation (called a nonelective contribution) or you can do both. You have the flexibility of changing the amount of matching and nonelective contributions each year, according to business conditions.

QACAs

With a QACA, the initial automatic employee contribution must be at least 3 percent of the employee's compensation. Contributions must automatically increase 1 percent per year so that, by the fourth year, the automatic employee contribution is 6 percent of compensation.

The automatic employee contributions cannot exceed 10 percent of compensation in any year. The employee is permitted to change the amount of his or her employee contributions or choose not to contribute, but must do so by making an affirmative election.

You must make at least either:

- A matching contribution of 100 percent for salary deferrals up to 1 percent of compensation and a 50 percent match for all salary deferrals above 1 percent but no more than 6 percent of compensation; or
- A nonelective contribution of 3 percent of compensation to all participants.

In a QACA, you may make additional contributions to employees' accounts. You have the flexibility of changing the amounts of these additional contributions each year, according to business conditions.

Contribution Limits

Employer and employee contributions and forfeitures (nonvested employer contributions of terminated participants) are subject to a per-employee overall annual limitation. This limit is the lesser of:

- 100 percent of the employee's compensation, or
- $53,000 for 2016 and $54,000 for 2017.

In addition, the amount employees can contribute under any automatic enrollment 401(k) plan is limited to $18,000 for 2016 and for 2017. This includes both pre-tax employee salary deferrals and after-tax designated Roth contributions (if permitted under the plan).

Like any other 401(k) plan, an automatic enrollment 401(k) plan may allow catch-up contributions of $6,000 for 2016 and for 2017 for employees age 50 and over.

Vesting

Employee contributions are immediately 100 percent vested — that is, the money that an employee has contributed to the plan cannot be forfeited. When an employee leaves employment, he or she is entitled to those deferrals, plus any investment gains (or minus losses) on the deferrals.

Employer contributions are vested according to the plan's vesting schedule. However, the required employer contributions under a QACA must be fully vested by the time an employee has completed two years of service.

Nondiscrimination

To preserve the tax benefits of a 401(k) plan, the plan must provide substantive benefits for rank-and-file employees, not just business owners and managers. These requirements are called nondiscrimination rules and compare both plan participation and contributions of rank-and-file employees to owners/managers.

Basic automatic enrollment 401(k) plans and most EACAs are subject to annual testing to ensure that the amount of contributions made for rank-and-file employees is proportional to contributions made for owners and managers. Keep in mind, automatic enrollment increases participation, thereby making it more likely that a plan will pass the test. Automatic enrollment 401(k) plans set up as QACAs are not subject to this annual testing.

Investing the Contributions

Federal law makes automatic enrollment 401(k) plans an attractive option by addressing employers' concerns about potential liability for their investment choices when participants do not provide direction and deducting employees' contributions from their paychecks without prior approval.

You can automatically invest employee contributions in certain default investments that generally offer high rates of return over the long term and provide a greater opportunity for employees to save enough money to take them through retirement. If carried out properly, you can limit your liability as plan fiduciary for any automatic enrollment 401(k) plan losses that are a result of investing participants' contributions in these default investments. Note that you still are responsible for prudently selecting and closely monitoring these default investments. (See **Fiduciary Responsibilities** for more information.)

There are conditions to obtain this relief from liability:

- Plan sponsors place the participant's contributions in certain types of investments (discussed below).
- Before his or her first contribution is deposited, the participant receives a notice describing the automatic enrollment process (discussed below); a similar notice is sent annually thereafter.
- The participant does not provide investment direction.
- The plan passes along to the participant material related to the investment, such as prospectuses.
- The participant is given the opportunity periodically to direct his or her investments from the default investment to a broad range of other options.

Qualified Default Investment Alternatives

As noted in the first condition listed above, there are certain criteria for the default investments. You can choose from four types of investment alternatives for employees' automatic contributions, called qualified default investment alternatives, or QDIAs. Three alternatives are diversified to minimize the risk of large losses and provide long-term growth. They are:

- A product with an investment mix that changes asset allocation and risk based on the employee's age, projected retirement date, or life expectancy (for example, a lifecycle fund);
- A product with an investment mix that takes into account a group of employees *as a whole* (for example, a balanced fund); and
- An investment management service that spreads contributions among plan options to provide an asset mix that takes into account the individual's age, projected retirement date, or life expectancy (for example, a professionally managed account).

These alternatives can include products offered through variable annuity contracts and other pooled investment funds.

There is an alternative that allows plans to invest in capital preservation products, such as money market or stable value funds, but *only for the first 120 days after the participant's first automatic contribution*. This option can be used only in EACAs that permit employees to withdraw their automatic contributions and earnings between 30 and 90 days (as specified in the plan) after the participant's first automatic contribution. Before the end of the 120-day period, if you receive no direction, you must redirect the participant's contributions in the capital preservation product to one of the long-term investments mentioned above.

When selecting products to use as default investments, remember that they generally cannot hold employer securities (such as employer stock).

Note that you do not have to select a QDIA for your plan. You may find that other default investment alternatives would be more appropriate for your employees.

Notifying Employees

Under another condition for the liability relief, you must provide employees notice in advance of the first investment of automatic employee contributions and annually thereafter, so they can make informed decisions regarding participating and investing in the plan. For information on the timeframes for providing the notices, see **Disclosing Plan Information to Participants.**

The notice should include information about the automatic contribution process, including the opportunity to elect out of the plan. In addition, the notice must describe the default investment the plan is using, the participants' right to change investments, and where to obtain information about other investments offered by the plan. To help in preparing your notice, a sample notice is available at **www.dol.gov/agencies/ebsa/laws-and-regulations/laws/pension-protection-act.**

If the participant, after receiving the initial or annual notice, does not provide investment direction, the participant is considered to have decided to remain in a default investment.

Transferring or Withdrawing Investments from a Default Investment

Employees may not want to participate in the company retirement plan, or they may decide to direct their plan investments themselves rather than have their contributions invested on their behalf. Participants whose contributions are automatically deposited in the default investment must be allowed to change their investments to other available plan options as frequently as participants who actively chose the default investment, and at least once every quarter. If you want to allow participants to withdraw their contributions within 30 to 90 days of their first contribution, your plan document must provide for this and be set up as an EACA.

If an employee decides to withdraw investments within 30 to 90 days of the first contribution or to change investments, the plan cannot impose restrictions, fees, or expenses beyond standard fees for services such as investment management and account maintenance. Further, participants should not be subject to penalties such as surrender charges, liquidation fees, or market value adjustments.

All participants in the plan must be offered an opportunity to diversify their portfolios with a broad range of other options in addition to the default investments. You can limit your liability for the participants' investment decisions if you set up your plan properly. (See **Limiting Liability** for more information.)

Fiduciary Responsibilities

In addition to selecting and monitoring the default investments for automatic employee contributions, many of the other actions needed to operate an automatic enrollment 401(k) plan involve fiduciary decisions. This is true whether you hire someone to manage the plan for you or do some or all of the plan management yourself. Controlling the assets of the plan or using discretion in administering and managing the plan makes you and the entity you hire a plan fiduciary to the extent of that discretion or control. Hiring someone to perform fiduciary functions is itself a fiduciary act. Thus, fiduciary status is based on the functions performed for the plan, not a title.

Some decisions for a plan are business decisions, rather than fiduciary decisions. For instance, the decisions to establish a plan, to include certain features in a plan, to amend a plan and to terminate a plan are business decisions. When making these decisions, you are acting on behalf of your business, not the plan, and therefore, you would not be a fiduciary. However, when you take steps to implement these decisions, you (or those you hire) are acting on behalf of the plan and thus, in making decisions, are acting as fiduciaries.

Basic Responsibilities

Those persons or entities that are fiduciaries are in a position of trust with respect to the participants and beneficiaries in the plan. The fiduciary's responsibilities include:

- Acting solely in the interest of the participants and their beneficiaries;
- Acting for the exclusive purpose of providing benefits to workers participating in the plan and their beneficiaries, and defraying reasonable expenses of the plan;
- Carrying out duties with the care, skill, prudence, and diligence of a prudent person familiar with such matters;
- Following the plan documents; and
- Diversifying plan investments.

These are the responsibilities that fiduciaries need to keep in mind as they carry out their duties. The responsibility to be prudent covers a wide range of functions needed to operate a plan. Since all these functions must be carried out in the same manner as a prudent person would, it may be in your best interest to consult experts in various fields, such as investments and accounting.

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, but no later than the 15th business day of the month following the payday. If you can reasonably make the deposits in a shorter timeframe, you need to make the deposits at that time.

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.

For all contributions, employee and employer (if any), the plan must designate a fiduciary, typically the trustee, to make sure that contributions due to the plan are transmitted. If the plan and other documents are silent or ambiguous, the trustee generally has this responsibility. As part of following the plan documents in operating your plan, the plan document will need to be updated from time to time for changes in the law.

Limiting Liability

With these responsibilities, there is also some potential liability. However, there are actions you can take to demonstrate that you carried out your responsibilities properly as well as ways to limit your liability.

The fiduciary responsibilities cover the process used to carry out the plan functions rather than simply the results. For example, if you or someone you hire makes the investment decisions for the plan, an investment does not have to be a "winner" if it was part of a prudent overall diversified investment portfolio for the plan. Since a fiduciary needs to carry out activities through a prudent process, you should document the decisionmaking process to demonstrate the rationale behind the decision at the time it was made.

In addition to the steps above, there are other ways to limit potential liability. The plan can be set up to limit your liability for participants' investment decisions when they exercise control of the investments in their accounts. For participants to have control, they must have sufficient information on the specifics of their investment options. You can also hire a service provider or providers to handle some or most of the fiduciary functions, setting up the agreement so that the person or entity then assumes liability.

Hiring a Service Provider

Even if you do hire a financial institution or retirement plan professional to manage the whole plan, you retain some fiduciary responsibility for the decision to select and keep that person or entity as the plan's service provider. Thus, you should document your selection process and monitor the services provided to determine if you need to make a change.

For a service contract or arrangement to be reasonable, service providers must provide certain information to you about the services they will provide to your plan and all of the compensation they will receive. This information will assist you in understanding the services, assessing the reasonableness of the compensation (direct and indirect) and determining any conflicts of interest that may impact the service provider's performance.

Some additional items to consider in selecting a plan service provider:

- Information about the firm itself: affiliations, financial condition, experience with 401(k) plans, and assets under its control;
- A description of business practices: how plan assets will be invested if the firm will manage plan investments or how participant investment directions will be handled;
- Information about the quality of prospective providers: the identity, experience, and qualifications of the professionals who will be handling the plan's account; any recent litigation or enforcement action that has been taken against the firm; the firm's experience or performance record; if the firm plans to work with any of its affiliates in handling the plan's account; and whether the firm has fiduciary liability insurance.

Once hired, these are additional actions to take when monitoring a service provider:

- Evaluate any notices received from the service provider about possible changes to their compensation and the other information they provided when hired (or when the contract or arrangement was renewed);
- Review the service provider's performance;
- Read any reports they provide;
- Check actual fees charged;
- Ask about policies and practices (such as trading, investment turnover, and proxy voting); and
- Follow up on participant complaints.

(For more information, see *Understanding Retirement Plan Fees and Expenses* at **dol.gov/agencies/ebsa.** Click on the "Small Business" section under "Employers & Advisers" to access the publication.)

Providing Information in Participant-Directed Plans

When plans allow participants to direct their investments, fiduciaries need to take steps to regularly make participants aware of their rights and responsibilities under the plan related to directing their investments. This includes providing plan and investment-related information, including information about fees and expenses that participants need to make informed decisions about the management of their individual accounts. Participants must receive the information before they can first direct their investment in the plan and annually thereafter. The investment-related information needs to be presented in a format, such as a chart, that allows for a comparison among the plan's investment options. A model chart is available at **dol.gov/agencies/ebsa/employers-and-advisers/small-business/tools**. If you use information provided by a service provider that you rely on reasonably and in good faith, you will be protected from liability for the completeness and accuracy of the information.

Prohibited Transactions and Exemptions

There are certain transactions that are prohibited under the law to prevent dealings with parties that have certain connections to the plan, self-dealing, or conflicts of interest that could harm the plan. However, there are a number of exceptions under the law, and additional exemptions may be granted by the U.S. Department of Labor, where protections for the plan are in place in conducting the transactions.

One exemption allows the provision of investment advice to participants who direct the investments in their accounts. This applies to the buying, selling, or holding of an investment related to the advice as well as to the receipt of related fees and other compensation by a fiduciary adviser. Please check **dol.gov/agencies/ebsa/laws-and-regulations/laws/pension-protection-act** for more information.

Another exemption in the law permits you to offer loans to participants through your plan. If you do, the loan program must be carried out in such a way that the plan and all other participants are protected. Thus, the decision with respect to each loan request is treated as a plan investment and considered accordingly.

Bonding

Persons handling plan funds or other plan property generally must be covered by a fidelity bond to protect the plan against losses resulting from fraud and dishonesty by those covered by the bond.

Disclosing Plan Information to Participants

Plan disclosure documents keep participants informed about the basics of plan operation, alert them to changes in the plan's structure and operations, and provide them a chance to make decisions and take timely action about their accounts.

The ***automatic enrollment notice*** details the plan's automatic enrollment process and participant rights. The notice must specify the deferral percentage, the participant's right to change that percentage or not to make automatic contributions, and the default investment.

The notice for EACAs and QACAs is similar to that discussed under **Notifying Employees** but does contain some additional required information.

The participant generally must receive the initial notice at least 30 days, but not more than 90 days, before eligibility to participate in the plan or the first investment. Subject to certain conditions, the notice may be provided, and an employee may be enrolled in the plan, on the first day of work.

An annual notice must be provided to participants and all eligible employees at least 30 days, but not more than 90 days, prior to the beginning of each subsequent plan year.

The ***summary plan description (SPD)*** — the basic descriptive document — is a plain-language explanation of the plan and must be comprehensive enough to apprise participants of their rights and responsibilities under the plan. It also informs participants about the plan features and what to expect of the plan.

Among other things, the SPD must include information about:

- When and how employees become eligible to participate in the automatic enrollment 401(k) plan;
- The contributions to the plan;
- How long it takes to become vested;
- When employees are eligible to receive their benefits;
- How to file a claim for those benefits; and
- Basic rights and responsibilities participants have under the Federal retirement law, the Employee Retirement Income Security Act (ERISA).

The SPD should include an explanation about the administrative expenses that will be paid by the plan. This document must be given to participants when they join the plan and to beneficiaries when they first receive benefits. SPDs must also be redistributed periodically during the life of the plan.

A ***summary of material modification (SMM)*** apprises participants of changes made to the plan or to the information required to be in the SPD. The SMM or an updated SPD must be automatically furnished to participants within a specified number of days after the change.

An ***individual benefit statement (IBS)*** shows the total plan benefits earned by a participant, vested benefits, the value of each investment in the account, information describing the ability to direct investments, and (for plans with participant direction) an explanation of the importance of a diversified portfolio. Plans that provide for participant-directed accounts must furnish quarterly individual benefit statements. Plans that do not provide for participant direction must furnish statements annually.

As noted above, for plans that allow participants to direct the investments in their accounts, plan and investment information, including information about fees and expenses, must be provided to participants before they can first direct investments and generally annually thereafter — with information on the fees and expenses actually paid provided at least quarterly. The initial plan-related information may be distributed as part of the SPD provided when a participant joins the plan as long as it is provided before the participant can first direct investments. The information provided quarterly may be included with the IBS.

A ***summary annual report (SAR)*** is a narrative of the plan's annual return/report, the Form 5500, filed with the Federal Government (see **Reporting to Government Agencies** for more information). It must be furnished annually to participants.

Reporting to Government Agencies

In addition to the disclosure documents that provide information to participants, plans must also report certain information to Government entities.

Form 5500 Annual Return/Report of Employee Benefit Plans

Plans are required to file an annual return/report with the Federal Government, in which information about the plan and its operation is disclosed to the IRS and the U.S. Department of Labor. Plans that are required to file the Form 5500 or Form 5500-SF must do so electronically. These returns/reports are made available to the public.

Depending on the number and type of participants covered, most automatic enrollment 401(k) plans must file one of the following forms:

- **Form 5500**, *Annual Return/Report of Employee Benefit Plan,*
- **Form 5500-SF**, *Short Form Annual Return/Report of Small Employee Benefit Plan*, or
- **Form 5500-EZ**, *Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan*

One-participant plans (sole proprietor and partnership plans) with total assets of $250,000 or less at the end of the plan year are exempt from the annual filing requirement. However, regardless of the value of the plan's assets, a final return/report must be filed when a plan is terminated.

Form 1099-R

Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc*., is used to report distributions (including rollovers) from a retirement plan. It is given to both the IRS and recipients of distributions from the plan during the year.

Form 8955-SSA

Form 8955-SSA, *Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits,* is used to report separated participants with deferred vested benefits under the plan. It is filed with the IRS. The information reported is generally given to the Social Security Administration who provides the reported information to the participants when they file for Social Security benefits.

Permissible Withdrawals of Automatic Contributions

If an EACA allows employees to withdraw their automatic contributions within 90 days of the first contribution, then those amounts, distributed with earnings, are treated as taxable income (unless Roth contributions) in the year distributed. They are reported on Form 1099-R and are not subject to the 10 percent early withdrawal tax.

Distributing Plan Benefits

The amount of benefits in an automatic enrollment 401(k) plan is dependent on a participant's account balance at the time of distribution.

When participants are eligible to receive a distribution, automatic enrollment 401(k) plans typically provide that participants can elect to:

- Take a lump sum distribution of their account;
- Roll over their account to an IRA or another employer's retirement plan; or
- Take periodic distributions.

More employers are offering annuity or other lifetime income distribution options in their defined contribution plans for employees who want to ensure that they do not outlive their retirement savings. You may want to look into what other employers are doing.

Terminating An Automatic Enrollment 401(k) Plan

Automatic enrollment 401(k) plans must be established with the intention of being continued indefinitely. However, business needs may require that employers terminate their plans. For example, you may want to establish another type of retirement plan instead of the automatic enrollment 401(k) plan.

Typically, the process of terminating an automatic enrollment 401(k) plan includes amending the plan document, distributing all assets, and filing a final Form 5500. You must also notify your employees that the plan will be discontinued. Check with your plan's financial institution or a retirement plan professional to see what further action is necessary to terminate your automatic enrollment 401(k) plan.

Compliance

Even with the best intentions, mistakes in plan operation can still happen. The U.S. Department of Labor and IRS have correction programs to help automatic enrollment 401(k) plan sponsors correct plan errors, protect participants' interests, and keep the plan's tax benefits. These programs are structured to encourage early correction of the errors. Having an ongoing review program makes it easier to spot and correct mistakes in plan operations. See the **Resources** section for further information.

An Automatic Enrollment 401(k) Plan Checklist

Now that you are ready to get started, here are some tips:

- ☐ 1. Have you adopted a written 401(k) plan that provides for automatic enrollment?
- ☐ 2. Have you decided to hire a financial institution or retirement plan professional to help with setting up and running the plan?
- ☐ 3. Have you decided upon the percentage of compensation for the automatic employee contributions? Have you considered the level of employer contributions, whether optional or required?
- ☐ 4. Have you decided to set up your plan as an EACA or a QACA?
- ☐ 5. In selecting a default investment, have you decided to meet the conditions for fiduciary liability relief for this investment?
- ☐ 6. Have you developed a recordkeeping system that includes tracking employee elections for those opting out of the plan and for those employees who elect a different percentage?
- ☐ 7. Have you provided or are you prepared to provide the initial notice to employees in advance of their first automatic contributions? Are you prepared to satisfy the annual notice requirements?
- ☐ 8. Are you familiar with the fiduciary responsibilities?
- ☐ 9. Are you prepared to monitor the plan's service providers and investments?
- ☐ 10. Are you familiar with the reporting and disclosure requirements of an automatic enrollment 401(k) plan?

For help in establishing and operating an automatic enrollment 401(k) plan, you may want to talk to a retirement plan professional or a representative of a financial institution offering retirement plans – and take advantage of the help available in the following **Resources** section.

Resources

The U.S. Department of Labor's (DOL's) Employee Benefits Security Administration and the IRS feature this booklet and additional information on retirement plans on their websites:

dol.gov/agencies/ebsa – Go to the Saving Matters website at **savingmatters.dol.gov** or the "Small Business" section under "Employers & Advisers" for additional information to help you understand and operate your automatic enrollment 401(k) plan. This website also has information to help your employees understand the importance of saving for retirement through an employer-sponsored plan.

irs.gov/retirement – Go to "Choosing a retirement plan" to view plain-language information that will help you properly maintain your automatic enrollment 401(k) plan. All the IRS forms and publications mentioned in this booklet are available here.

In addition, the following jointly developed publications are available on the DOL and IRS websites or can be ordered through the DOL toll-free number listed below:

- *Choosing a Retirement Solution for Your Small Business,* Publication 3998, provides an overview of retirement plans available to small businesses.
- *401(k) Plans for Small Businesses*, Publication 4222, provides detailed information about the establishment and operation of a 401(k) plan.
- *Adding Automatic Enrollment to Your 401(k) Plan*, Publication 4721, explains how to add automatic enrollment to your existing 401(k) plan.
- *Payroll Deduction IRAs for Small Businesses*, Publication 4587, describes an arrangement that is an easy way for businesses to give employees an opportunity to save for retirement.
- *Profit Sharing Plans for Small Businesses*, Publication 4806, describes a flexible way for businesses to help employees save for retirement.
- *SEP Retirement Plans for Small Businesses*, Publication 4333, describes a low-cost retirement savings option for small businesses.
- *SIMPLE IRA Plans for Small Businesses*, Publication 4334, describes a type of retirement plan designed especially for small businesses.

For business owners with a plan

- *Retirement Plan Correction Programs*, Publication 4224, briefly describes the IRS and DOL voluntary correction programs.

Order electronically at askebsa.dol.gov or by calling 866–444–3272.

Related materials available from DOL

For more information on automatic enrollment:

- Field Assistance Bulletin 2008-03 addressing frequently asked questions on QDIAs

For small businesses

- *Understanding Retirement Plan Fees and Expenses*
- *Meeting Your Fiduciary Responsibilities*
- *Selecting an Auditor for Your Employee Benefit Plan*
- *Reporting and Disclosure Guide for Employee Benefit Plans*
- *Tips for Selecting and Monitoring Service Providers for Your Employee Benefit Plan*

In addition, DOL sponsors a website – the Small Business Retirement Savings Advisor, available at **webapps.dol.gov/elaws/ebsaplan.htm** – that encourages small business owners to choose the appropriate retirement plan for their businesses and provides resources on maintaining plans.

For employees

- *A Look at 401(k) Plan Fees*
- *What You Should Know about Your Retirement Plan* (also in Spanish)
- *Savings Fitness: A Guide To Your Money and Your Financial Future* (also in Spanish)
- *Taking the Mystery Out of Retirement Planning* (also in Spanish)
- *Top 10 Ways to Prepare for Retirement* (also in Spanish)
- *Women and Retirement Savings* (also in Spanish)

To view these publications, go to **dol.gov/agencies/ebsa** and click on the "Small Business" section under "Employers & Advisers." To order publications or request assistance from a benefits advisor, contact EBSA electronically at **askebsa.dol.gov** or call toll free 866-444-3272.

Related materials available from the IRS

- *The IRS Retirement Plan Products Guide*, Publication 4460, lists resources to help you choose and maintain the right retirement plan for your business and organization.
- *Lots of Benefits*, Publication 4118, discusses the benefits of sponsoring and participating in a retirement plan (also in Spanish, Korean, Vietnamese, Chinese, and Russian).
- *Have you had your Check-up this year? for Retirement Plans*, Publication 3066, encourages employers to perform a periodic "check-up" of their retirement plans through the use of a checklist, and how to initiate any necessary corrective action.
- *401(k) Plan Checklist*, Publication 4531, a tool to help you keep your plan in compliance with many of the important tax rules.
- *Designated Roth Accounts under 401(k), 403(b), or governmental 457(b) plans*, Publication 4530, discusses this popular feature found in many 401(k), 403(b), and governmental 457(b) plans.
- *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*, Publication 560, describes types of plans, qualification rules, setting up a qualified plan, the minimum funding requirement, contributions, employer deduction, elective deferrals, the qualified Roth contribution program, distributions, prohibited transactions, and reporting requirements.

To view these related publications, go to **irs.gov/retirement** and click on "Retirement Plans A-Z" and then "Forms & Publications."

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