



**EMPLOYEE  
FIDUCIARY**

*Plan Establishment Kit*



**EMPLOYEE FIDUCIARY, LLC**

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## INTRODUCTION

Thank you for choosing Employee Fiduciary as your retirement plan provider.

To help simplify the plan establishment process, we are providing you with this Plan Establishment Kit. This guide outlines the necessary steps to achieve an orderly and timely setup of records and investments.

If you have any questions regarding the completion of this guide, please contact your Employee Fiduciary plan installation specialist.

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## INSTALLATION CHECKLIST

While our job is to manage the installation process, we need help from you. A summary of your responsibilities is listed below.

| Task:   | Completed?               |
|---|--------------------------|
| Provide completed Plan Establishment Kit                        | <input type="checkbox"/> |
| The following sections require your completion (pages 4-17):    |                          |
| <input type="checkbox"/> <b>Company Profile</b>                 |                          |
| <input type="checkbox"/> <b>Plan Profile</b>                    |                          |
| <input type="checkbox"/> <b>Contact Information</b>             |                          |
| <input type="checkbox"/> <b>Plan Service Options</b>            |                          |
| <input type="checkbox"/> <b>Plan Investments</b>                |                          |
| <input type="checkbox"/> <b>Advisor Information</b>             |                          |
| <input type="checkbox"/> <b>Bank Debit Authorization</b>        |                          |
| <input type="checkbox"/> <b>Plan Specifications Form</b>        |                          |
| Provide employee census via Excel spreadsheet                   | <input type="checkbox"/> |
| Approve and execute new plan documents                          | <input type="checkbox"/> |
| Schedule and hold enrollment meetings                           | <input type="checkbox"/> |
| Distribute Summary Plan Description (SPD)                       | <input type="checkbox"/> |
| Schedule payroll training/Upload first payroll together with EF | <input type="checkbox"/> |

# INSTALLATION TIMETABLE

This table outlines the major tasks to be completed during the plan installation process: participant/trust account setup, document creation, investment selection, and participant enrollment. This table outlines responsible parties and offers an approximate timeline for completion. Startup plans take approximately 60 days to install.

|               | Account Setup   | Document Creation   | Investment Selection            | Participant Enrollment       |
|---------------|---|---|---------------------------------|------------------------------|
| <b>Step 1</b> | Establish plan custodial account with trust company         | Complete Plan Specifications Form                         | Select investment menu          |                              |
| <b>Step 2</b> |   | Complete new Plan Document                                | Confirm investment availability |                              |
| <b>Step 3</b> | Establish participant accounts on recordkeeping system      | Review & approve new Plan Document                        | Provide enrollment materials    | Schedule enrollment meetings |
| <b>Step 4</b> |   | Distribute Summary Plan Description (SPD) to participants |                                 | Hold enrollment meetings     |
| <b>Step 5</b> | Conduct payroll training and upload 1 <sup>st</sup> payroll |   |                                 |                              |

- = Responsibility of Plan Sponsor
- = Responsibility of Advisor
- = Responsibility of Employee Fiduciary

## COMPANY PROFILE

**COMPANY NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**CITY,STATE,ZIP:** \_\_\_\_\_

**PHONE:** \_\_\_\_\_ **FAX:** \_\_\_\_\_

**EMPLOYER EIN:** \_\_\_\_\_ **FISCAL YEAR END (E.G., 12/31):** \_\_\_\_\_

**PAYROLL SCHEDULE:**

- Weekly
  Bi-Weekly
  Semi-monthly
  Monthly

**BUSINESS ENTITY TYPE:**

- C-Corporation
  S-Corporation
  Partnership
  Sole Proprietorship  
 LLC
  Non-Profit
  Other \_\_\_\_\_

Please list owners and officers of Company - attach additional sheet if necessary (percentages should total 100%):

| Name | % Owned | Family members employed | Relationship |
|------|---------|-------------------------|--------------|
|      |         |                         |              |
|      |         |                         |              |
|      |         |                         |              |
|      |         |                         |              |
|      |         |                         |              |

Does any owner listed above (or any owner’s spouse) have an ownership interest in another company? If yes, please complete the following section. This information will be used to help determine your company’s Controlled Group status:\*

| Name | Company Name | % Owned |
|------|--------------|---------|
|      |              |         |
|      |              |         |
|      |              |         |
|      |              |         |
|      |              |         |

*\*A Controlled Group is a group of business entities that have certain forms of common ownership. This can include sole proprietorships, partnerships, LLCs or other corporations. When a Controlled Group exists, all employees of all entities are treated as employed by a single employer for plan qualification purposes.*

# PLAN PROFILE

**PLAN NAME:** \_\_\_\_\_

**FIDELITY BOND:**

Under ERISA, a fidelity bond must be obtained and maintained to protect plan assets from misuse or misappropriation by the plan fiduciaries. The fidelity bond must be at no less than 10% of plan assets with a minimum of \$1,000 and a maximum of \$500,000. If the plan does not yet have a bond, please obtain one. If the plan does have a bond, please provide the following information:

Bond carrier: \_\_\_\_\_ Bond amount: \_\_\_\_\_

**PLAN SPONSORSHIP:**

Will this plan be co-sponsored by another company? A co-sponsor is another employer whose employees are allowed to participate in your plan and who is not the plan sponsor listed in the Company Profile. If yes, please list any plan co-sponsor(s):

| Company Name | EIN |
|--------------|-----|
|              |     |
|              |     |
|              |     |

**OTHER RETIREMENT PLANS:**

Does your company sponsor another qualified retirement plan? If yes, please provide the following information:

| Plan Name | Plan Type |
|-----------|-----------|
|           |           |
|           |           |
|           |           |

## CONTACT INFORMATION

### DAILY CONTACT

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

Additional Role(s):  Primary Authorized Signer<sup>(1)</sup>  Secondary Authorized Signer<sup>(2)</sup>  
 Payroll Contact<sup>(3)</sup>

Sponsor Website & Secure Portal Access:  Full  Limited<sup>(4)</sup> – No Participant Level Access

### ADDITIONAL CONTACTS

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

Additional Role(s):  Primary Authorized Signer<sup>(1)</sup>  Secondary Authorized Signer<sup>(2)</sup>  
 Payroll Contact<sup>(3)</sup>

Sponsor Website & Secure Portal Access:  Full  Limited<sup>(4)</sup> – No Participant Level Access

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

Additional Role(s):  Primary Authorized Signer<sup>(1)</sup>  Secondary Authorized Signer<sup>(2)</sup>  
 Payroll Contact<sup>(3)</sup>

Sponsor Website & Secure Portal Access:  Full  Limited<sup>(4)</sup> – No Participant Level Access

<sup>(1)</sup>The Primary Authorized Signer is the person authorized to sign legal documents on behalf of the Plan Sponsor, including the Form 5500, and approve participant loan requests made online. The plan can only have one Primary Authorized Signer. The Primary Authorized Signer will automatically have full access to the secure portal.

<sup>(2)</sup>The Secondary Authorized Signer is an additional person authorized to sign legal documents on behalf of the Plan Sponsor. This person cannot approve loan requests.

<sup>(3)</sup>The Payroll Contact is the person Employee Fiduciary will contact for payroll related issues and will upload 401(k) plan contributions via our website.

<sup>(4)</sup>Secure Portal Users with limited access will be able to send and receive secure emails and download general plan documents but will not have access to files containing participant SSNs or salaries (e.g. annual compliance testing, census files).

## PLAN SERVICE OPTIONS

### **PARTICIPANT STATEMENT PREFERENCES** *(choose one)*

- Standard – Online with email reminders

*Quarterly statements are posted to participant's account on the web. Participants with valid email addresses also receive email notification that their quarterly statement has been posted to the web. Participants are responsible for maintaining valid email addresses.*

- Paper statements mailed to all participants.

*Mailed statements are \$1.50 each, subject to postal rates.*

### **INVOLUNTARY CASH-OUT THRESHOLD** *(for terminated participants)*

- \$1,000 or  \$5,000

*Involuntary cash-outs in excess of \$1,000 must be rolled into an IRA on behalf of the participant. If limit chosen is greater than \$1,000, plan sponsor must execute an "IRA rollover" services agreement.*

### **SELF-DIRECTED BROKERAGE ACCOUNTS**

Will plan investment options include self-directed brokerage accounts (SDBAs)?  Yes  No

*Participants with SDBAs will be charged \$100 per year by Employee Fiduciary, in addition to account maintenance fees and trading costs charged by the brokerage firm, TD Ameritrade. If recordkeeping or advisory fees are paid from plan assets, it will be the plan sponsor's responsibility to ensure all SDBAs maintain the cash balance necessary to pay these fees.*



# PLAN INVESTMENTS

## INVESTMENT LINEUP

Please list the Plan's investment lineup below. You may choose up to 40 investment funds. Please attach an additional page if necessary.

|     | Ticker | Fund Name |
|-----|--------|-----------|
| 1.  |        |           |
| 2.  |        |           |
| 3.  |        |           |
| 4.  |        |           |
| 5.  |        |           |
| 6.  |        |           |
| 7.  |        |           |
| 8.  |        |           |
| 9.  |        |           |
| 10. |        |           |
| 11. |        |           |
| 12. |        |           |
| 13. |        |           |
| 14. |        |           |
| 15. |        |           |

## DEFAULT FUND

Please indicate your plan's default investment selection. This section is required.

| Ticker | Default Fund Name |
|--------|-------------------|
|        |                   |

If there will be more than one default investment selection (such as target retirement lifecycle funds) based on employees' birth-dates, please provide instructions below to map each qualified default investment choice to a birth-date range.

| Ticker | Fund Name | Birth Date Range<br>(e.g., 01/01/20-12/31/50) |
|--------|-----------|---|
|        |           |   |
|        |           |   |
|        |           |   |
|        |           |   |
|        |           |   |

## FORFEITURE FUND

Please indicate your plan's forfeiture account investment selection. Forfeitures should be invested in a cash equivalent fund such as a money market or stable value fund.

| Ticker | Forfeiture Fund Name |
|--------|----------------------|
|        |                      |

# PLAN INVESTMENTS

**MODEL ALLOCATION INSTRUCTIONS** – (if applicable)

Please enter the composition of any model portfolios below. Use additional sheets if necessary.

Do these models meet the DIA exemption requirements of [FAB No. 2012-02](#)?     Yes     No

| Model Name: _____ |           |   |
|-------------------|-----------|---|
| Ticker            | Fund Name | % |
|                   |           |   |
|                   |           |   |
|                   |           |   |
|                   |           |   |
|                   |           |   |
|                   |           |   |
|                   |           |   |
|                   |           |   |
| Model Name: _____ |           |   |
| Ticker            | Fund Name | % |
|                   |           |   |
|                   |           |   |
|                   |           |   |
|                   |           |   |
|                   |           |   |
|                   |           |   |
|                   |           |   |
|                   |           |   |
| Model Name: _____ |           |   |
| Ticker            | Fund Name | % |
|                   |           |   |
|                   |           |   |
|                   |           |   |
|                   |           |   |
|                   |           |   |
|                   |           |   |
|                   |           |   |
|                   |           |   |

## ADVISOR/BROKER INFORMATION

### COMPANY INFORMATION

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax: \_\_\_\_\_

### DAILY CONTACT

Name: \_\_\_\_\_

Phone Number \_\_\_\_\_ Email: \_\_\_\_\_

Sponsor Website & Secure Portal Access:  Full\*  Limited\*\*

Designated Investment Manager\*\*\*  Yes  No

### ADDITIONAL CONTACTS

Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

Sponsor Website & Secure Portal Access:  Full\*  Limited\*\*

Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

Sponsor Website & Secure Portal Access:  Full\*  Limited\*\*

*\*Full –Includes the ability to make trades and asset-allocation changes on behalf of participants on the sponsor web. Includes access to all documents saved to the secure portal, including files containing participant data.*

*\*\*Limited – Allows contact view-only access to participant accounts and the ability to rebalance model portfolios on the sponsor web. Allows contact to view general files on the secure portal but not files with participant data.*

*\*\*\*Designated Investment Manager (DIM) is an ERISA section 3(38) investment manager that is designated by a plan fiduciary and made available to the plan's participants and beneficiaries to manage all or a portion of the assets held in, or contributed to, their individual accounts. The DIM will be disclosed on the annual 404(a)(5) participant fee disclosure notices.*

### FEE SCHEDULE

If you are a broker, please skip this section and contact your Installation Specialist at Employee Fiduciary to be set up as a broker of record on the Plan.

Will advisor fees be paid from plan assets?  Yes  No

If yes, please select one of the following options:

- An invoice will be sent to Employee Fiduciary for payment
- Fees will be automatically calculated and remitted by Employee Fiduciary

If Employee Fiduciary is to calculate fees, please provide fee schedule to permit the deduction of authorized advisory charges.

Asset Based Fee

Fixed percentage of plan assets at an annual rate of \_\_\_\_\_%

Tiered percentage

Tier 1: \$\_\_\_\_\_ to \$\_\_\_\_\_ @ \_\_\_\_\_% annualized rate

Tier 2: \$\_\_\_\_\_ to \$\_\_\_\_\_ @ \_\_\_\_\_% annualized rate

Tier 3: \$\_\_\_\_\_ to \$\_\_\_\_\_ @ \_\_\_\_\_% annualized rate

Flat annual rate of \$\_\_\_\_\_

Is there a minimum charge?  Yes  No If yes, annual minimum: \$\_\_\_\_\_

If Employee Fiduciary is to calculate fees, indicate timing of payment:

In arrears  In advance

Do you want your advisor fees disclosed on Employee Fiduciary's disclosure notice?  Yes  No

*\*If no, you will be responsible for providing this information in accordance with ERISA 404(a)(5).*

### PAYMENT INSTRUCTIONS

Payment payable to: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Check Attention: \_\_\_\_\_

or Special Instructions: \_\_\_\_\_

ACH Bank Name: \_\_\_\_\_

Name on Account: \_\_\_\_\_

ABA #: \_\_\_\_\_ Acct #: \_\_\_\_\_

Account type:  Checking  Savings

### COMPANY AUTHORIZATION

I authorize the reoccurring deduction and disbursement of plan advisory fees from plan assets as described above until revoked in writing.

\_\_\_\_\_  
Signature of Plan Trustee or Authorized Person Date

\_\_\_\_\_  
Printed Name Title



## PLAN SPECIFICATIONS FORM

Please refer to the PLAN DESIGN CONSIDERATIONS section of this form for more information about design options.

### A. GENERAL INFORMATION

**Plan Effective Date:** \_\_\_\_\_ **Plan Year-End:** \_\_\_\_\_

*Plan Effective Date will affect plan compensation for the 1st plan year. For example: if a calendar year plan selects a January 1, 2012 effective date, contributions will be calculated based on full 2012 compensation. If a mid-year date is elected, contributions will be based on pro-rated compensation*

**Type of Plan:**

- 401(k) Plan                       403(b) Plan                       457(b) Plan

**Plan Features:**

- Pre-tax Deferrals               Roth Deferrals               Safe Harbor               Match  
 Profit Sharing

### B. ELIGIBILITY

| Service Requirement: | 401(k)/ Safe Harbor | Match | Profit Sharing |
|----------------------|---------------------|-------|----------------|
|----------------------|---------------------|-------|----------------|

- |                     |                          |                          |                          |
|---------------------|--------------------------|--------------------------|--------------------------|
| One Year of Service | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| None                | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Other _____         | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**Age Requirement:**

- |             |                          |                          |                          |
|-------------|--------------------------|--------------------------|--------------------------|
| Age 21      | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| None        | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Other _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**Entry Dates:**

- |             |                          |                          |                          |
|-------------|--------------------------|--------------------------|--------------------------|
| Semi-annual | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Quarterly   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Monthly     | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Immediate   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Other _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Will plan waive above-selected eligibility provisions for ALL employees employed on a particular date?

- No     Yes    If Yes, enter special effective date: \_\_\_\_\_

Will an employee have to work 1,000 hours in order to be credited with one year of eligibility service?

- No     Yes

**Excluded Employees:**

- None                               Union Employees                       Nonresident Aliens  
 Leased Employees               Other \_\_\_\_\_

### C. COMPENSATION

Plan compensation shall mean wages and other payments for which the employer must file a Form W-2, except:

- Fringe Benefits                       Post-Severance<sup>(1)</sup>                       Other<sup>(2)</sup>

<sup>(1)</sup>"Post-severance" compensation is unused sick, vacation, or other leave paid within the 2½ months following date of termination.

<sup>(2)</sup>Safe harbor 401(k) plans and plans containing an "integrated" profit sharing formula cannot elect this option. Other plans may be subject to special "IRC 414(s)" testing annually to test plan compensation definition for nondiscrimination (additional fees apply).

For an employee's first year of participation, this compensation shall be recognized from:

- The first day of the plan year       The day the employee is eligible to enter the plan

### D. EMPLOYEE CONTRIBUTIONS

401(k) Deferral limit is \_\_\_\_\_% of included compensation. *If percentage is not indicated, 401(k) deferrals will be limited by the IRS limitations only. Limit also applies to Roth Deferrals (if applicable).*

An employee may start or modify a 401(k) deferral election on the following frequency:

- Per Payroll                       Monthly                       Quarterly                       Semi-annually

Will plan provide for automatic enrollment?       No, if no skip to section E       Yes

Automatic enrollment default percentage: \_\_\_\_\_% (minimum 3%)

Is feature to qualify as a QACA?                       No       Yes

What is default escalation schedule: \_\_\_\_\_

What is vesting schedule?                       100% immediate                       2-year cliff

### E. SAFE HARBOR CONTRIBUTIONS

Effective date of safe harbor feature:                       Plan Effective Date       Date \_\_\_\_\_

*Safe harbor effective date will affect plan compensation for the 1st plan year. For example: if a calendar year plan selects a January 1, 2012 effective date, safe harbor contributions will be calculated based on full 2012 compensation. If a mid-year date is elected, safe harbor contributions will be based on pro-rated compensation.*

Choose one of the two safe harbor contribution options below:

Safe Harbor Matching Contribution – choose only one of the three following options:

Basic formula: 100% of applicable contributions up to the first 3% of Compensation, plus 50% of applicable contributions up to the next 2% of Compensation

Enhanced Formula: \_\_\_\_\_% of applicable contributions up to \_\_\_\_\_% of Compensation

QACA formula: 100% of applicable contributions up to the first 1% of Compensation, plus 50% of applicable contributions up to the next 5% of Compensation (QACA plans only)

The Safe Harbor matching contribution formula elected above is applied separately for each:

- Per Payroll                       Monthly                       Quarterly                       Annually

Safe Harbor Non-Elective Contribution

\_\_\_\_\_ % (no less than 3%) of included compensation

**F. MATCHING CONTRIBUTIONS**

The employer match will be:  Discretionary  Fixed (i.e. Required)

If fixed, describe match formula: \_\_\_\_\_% of 401(k) up to \_\_\_\_\_% of Compensation

Matching Contributions will be allocated to participant accounts at the following time(s):

- Per Payroll  Monthly  Quarterly  Annually

Allocation restrictions (if applicable) – check either a or b and/or c:

- a. An employee must be employed with the employer on the last day of the plan year OR must have more than 500 hours of service for the plan year,

or

- b. An employee must be credited with at least \_\_\_\_\_ hours of service (may not exceed 1,000) during the plan year

- c. An employee must be employed with the employer on the last day of the plan year

*Note: If any of the above are checked, the employer match must be funded annually (not per payroll). If the plan is a safe harbor 401(k) plan any allocation restriction will subject ALL matching contributions to non-discrimination testing.*

**G. PROFIT SHARING CONTRIBUTIONS**

The Profit Sharing contribution will be:  Discretionary  Fixed (i.e. Required)

The Profit Sharing formula will be:

- Pro Rata  Integrated (integration level will be \_\_\_\_\_% of SSA Taxable Wage Base)

- New Comparability – one group per participant (additional fees apply)

Profit Sharing Contributions will be allocated to participant accounts at the following time(s):

- Per Payroll  Monthly  Quarterly  Annually

Allocation restrictions (if applicable) – check wither a or b and/or c:

- a. An employee must be employed with the employer on the last day of the plan year OR must have more than 500 hours of service for the plan year,

or

- b. An employee must be credited with at least \_\_\_\_\_ hours of service (may not exceed 1,000) during the plan year

- c. An employee must be employed with the employer on the last day of the plan year

*Note: If any of the above are checked, the Profit Sharing must be funded annually (not per payroll). If the plan is a safe harbor 401(k) plan, no restrictions on discretionary match should apply.*

**H. RETIREMENT AGE**

The plan’s Normal Retirement Age (NRA) will be:

- Age 65  Age \_\_\_\_\_  Age \_\_\_\_\_ and \_\_\_\_\_ years of participation



**I. VESTING**

| Employer contribution vesting schedule(s): | Match                    | Profit Sharing           |
|--|--------------------------|--------------------------|
| 100% Immediate                             | <input type="checkbox"/> | <input type="checkbox"/> |
| 3-Year Cliff (1-2 yrs = 0%, 3yrs = 100%)   | <input type="checkbox"/> | <input type="checkbox"/> |
| 6-Year Graded (20% each yr after 2 yrs)    | <input type="checkbox"/> | <input type="checkbox"/> |
| Other (note schedule below)                |                          |                          |
| 1 Year _____%    4 Years _____%            | <input type="checkbox"/> | <input type="checkbox"/> |
| 2 Years _____%    5 Years _____%           |                          |                          |
| 3 Years _____%    6 Years _____%           |                          |                          |

Will the following service be excluded for vesting purposes?

|  |                             |                              |
|--|-----------------------------|------------------------------|
| Service before the original effective date of this plan          | <input type="checkbox"/> No | <input type="checkbox"/> Yes |
| Years of service before the employee's 18 <sup>th</sup> birthday | <input type="checkbox"/> No | <input type="checkbox"/> Yes |

Special 100% vesting – an employee's vested percentage is increased to 100% if the employee:

Dies                       Becomes disabled

**J. DISTRIBUTIONS**

Will the lump sum form of distribution be the plan's sole form of distribution?

No     Yes

If no, optional forms available:     Partial payments     Installments

Are Hardship withdrawals permitted?     No     Yes

Sources Available:     All (*excludes safe harbor*)     Employee contributions only

Are In-Service withdrawals permitted?     No     Yes

Age:     59 ½     NRA     Age \_\_\_\_\_

Sources Available:     All     Employee contributions only

**K. LOANS**

Will Plan permit loans?     No     Yes

Maximum number of loans permitted?     One     Other \_\_\_\_\_

*Loan repayments are deducted by payroll deduction and remitted along with payroll contributions.*

## PLAN DESIGN CONSIDERATIONS

This form describes important considerations when choosing amongst the various options contained on the Plan Specifications Form.

### A. GENERAL INFORMATION

Plan type and plan features are elected in this section. A 401(k)/Profit Sharing plan can be sponsored by private or tax-exempt organizations. A 403(b) plan can be sponsored by tax-exempt or public education organizations. A 457(b) plan can be sponsored by tax-exempt or certain government organizations.

If a plan feature is selected here, the applicable section of the Plan Specifications Form must also be completed. For example, if safe harbor is elected, the safe harbor section of the Plan Specifications Form must also be completed.

### B. ELIGIBILITY

Employers may allow new employees to enter the plan immediately on hire or wait and set minimum age requirements. Employers may also limit plan entry dates to monthly, quarterly or semiannual windows. Generally, employers with transient work force favor more restrictive eligibility requirements.

The law permits you to exclude union and nonresident alien employees from your plan without issue. You can exclude other classes of employee, but only if these classes do not exceed 30% of your workforce.

### C. COMPENSATION

The law permits you to exclude certain types of compensation for plan purposes without issue, including compensation earned prior to plan entry and fringe benefits. You can exclude other types of compensation (bonuses, overtime, etc), but these exclusions will subject the compensation definition to special annual testing (additional fees apply).

### D. EMPLOYEE CONTRIBUTIONS

401(k) deferrals are pre-tax contributions made to a plan at the election of an employee, in lieu of receiving such amounts as cash compensation. Roth deferrals are similar to 401(k) deferrals, only they are contributed by employee on an after-tax basis.

An automatic enrollment feature allows an employer to enroll employees in a 401(k) plan without the employees' affirmative election, as long as the employees have the right to "opt out" of contributing or change the amount of automatic deferral. Adding an automatic enrollment feature to a 401(k) plan generally increases the level of employee participation in the plan.

A Qualified Automatic Contribution Arrangement (QACA) is special type of automatic enrollment feature that also satisfies safe harbor contribution requirements (see Safe Harbor Contributions).

### E. SAFE HARBOR CONTRIBUTIONS

A safe harbor 401(k) plan is a type of 401(k) that automatically satisfies ADP/ACP testing requirements. A safe harbor 401(k) plan will also automatically satisfy top heavy minimum contribution requirements for a year in which the only contributions made to the plan are elective deferrals (pre-tax or Roth) and safe harbor contributions (i.e., no profit sharing contributions).

Eligible safe harbor contributions include:

- 4% matching contribution
- 3.5% matching contribution (QACA safe harbor plans only – see Employee Contributions section)
- 3% non-elective contribution

These contributions are non-discretionary (required) contributions. They must be subject to 100% vesting and not be subject to any allocation conditions.

## **F. MATCHING CONTRIBUTIONS**

The plan may provide for a matching contribution based on the elective deferrals made by participants. The matching formula also may be discretionary, so that the employer will determine each year what the rate of match should be.

The following factors might be taken into consideration in designing a matching contribution formula: (1) whether the employer wants discretion in setting the amount each year, (2) whether the formula should be tiered (i.e., a different rate of match for different levels of elective deferrals), and (3) whether the amount of the match should be capped to a specific percentage of compensation or a specific dollar amount.

If the match is funded after the close of the year, the plan can require participants to satisfy certain allocation conditions in order to receive a contribution. For example, the plan can require participants to work a certain number of hours during the plan year (up to 1,000 hours) and/or be employed on the last day of the year.

## **G. PROFIT SHARING CONTRIBUTIONS**

A key advantage of a profit sharing contribution feature is that the employer can have flexibility in determining its annual contribution to the plan because of the ability to use a discretionary contribution formula. This way the employer is able to contribute more in years of high profitability, and to contribute less when business is not as good, without having to amend the plan's contribution formula.

There are three principle profit sharing allocation formulas:

- Pro rata – allocates a uniform contribution percentage amongst participants
- Integrated – provides a greater allocation on compensation earned in excess of the “integration level” (usually the Social Security taxable wage base)
- New Comparability – permits different allocation rates based on employee class assuming nondiscrimination testing is passed

If the profit sharing is funded after the close of the year, the plan can require participants to satisfy certain allocation conditions in order to receive a contribution. For example, the plan can require participants to work a certain number of hours during the plan year (up to 1,000 hours) and/or be employed on the last day of the year.

## **H. RETIREMENT AGE**

At normal retirement age, participant accounts become immediately 100% vested. The maximum retirement age allowed by law is the later of 1) age 65 or 2) 5<sup>th</sup> anniversary of plan participation. The most commonly used retirement age is 65.

## **I. VESTING**

401(k) and most safe harbor contributions must always be 100% immediately vested. Other contributions may be subject to a vesting schedule. When a participant terminates, they are only entitled to the vested portion of their account balance. Any unvested portion of their account must be forfeited to the plan. The plan can use these forfeitures to pay plan expenses or reduce future employer contributions. Generally, employers with transient work force favor lengthier vesting schedules in order to use forfeitures.

## **J. DISTRIBUTIONS**

Often, plans only will only permit the lump sum form of distribution when a participant separates from service and is entitled to a distribution. Under the lump sum option, a participant must take their entire vested account balance in a single distribution. Other distribution forms available include installment payments and partial payments.

The plan can permit a participant to take a distribution while still employed. These are called "in-service" distributions. These distributions can be available upon the attainment of a certain age (59 ½ or greater) or a "hardship" event. Eligible hardship events are defined by the law.

The plan may permit the involuntary cash-out of small account balances. Balances under \$1,000 may be distributed in cash to the participant. Balances under \$5,000 may be involuntarily rolled into an IRA for the benefit of the participant.

## **K. LOANS**

The employer can allow or disallow loans. Loans are often very popular with employees but add administrative complexity for the employer, who often must sign off on loan requests.