Pension Advisory Group, Ltd.

IMPORTANT INFORMATION FOR PROFIT SHARING AND 401(k) PLANS

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 website. Search "EBSA cybersecurity" or send us an email to request the web address.

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.

LONG-TERM, PART-TIME (LTPT) EMPLOYEES: Effective in 2024 But Needs Consideration Now

LTPT employees are at least age 21 with 500 hours worked in three consecutive years starting after 2020. Beginning in 2024, LTPT employees will be eligible to defer in 401(k) plans. We are still waiting for IRS guidance on many issues, but employees regularly working 500 hours a year, around 10 hours per week, may enter your 401(k) plan. Employees that enter solely due to LTPT rules will be eligible to defer 401(k) but <u>not eligible for employer contributions.</u>

Based upon data we receive for 2021 and 2022, we should be able to provide you with a reasonable expectation of who will meet the LTPT requirements and may enter the plan in 2024. <u>LTPT rules only apply to 401(k) plans.</u> Please accurately record hours on the census form returned to us, and always include all employees on the census form.

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.

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.

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ELECTRONIC DISCLOSURES

Some documents can be electronically delivered to participants if IRS and DOL requirements are followed. Website posting or email delivery can be used. Participants must be notified of the electronic method and the right to receive paper documents. The participant's receipt of the document must be confirmed. Documents that can be electronically delivered include the Summary Plan Description, Summary of Material Modifications, Summary Annual Report, fee disclosures, and QDIA notices. The IRS and DOL websites have additional information about the requirements for electronic disclosures.

STATEMENTS FOR PARTICIPANTS

Profit sharing, 401(k), and money purchase plans are required to provide plan account information to participants. Annual statements must be provided on or before the date Form 5500 is filed if the trustee makes the investment decisions. Quarterly statements must be provided within 45 days after the end of each calendar quarter if participants make some or all the investment decisions.

Statements for participant directed investments must contain restrictions on the right to direct investments, an explanation of the importance of a diversified investment portfolio, and directions that guide the participant to the DOL website for information on individual investing.

All statements must contain the total and vested benefits accrued in addition to the vested percentage for accounts. Vesting must be provided at least annually. Statements must be provided upon the participant's written request.

Until the DOL 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.

FEE DISCLOSURES FOR PARTICIPANT DIRECTED INVESTMENTS

DOL regulations require plan sponsors to provide fee and expense information to participants when participants make some or all the investment decisions for their accounts. <u>If your plan allows participants to direct investments, you must comply with the fee and expense disclosure regulations.</u>

Disclosures must be provided on or before the date participants can first direct their investments and at least annually thereafter. Most disclosures are provided continuously on the investment institution's website.

The disclosures must include (1) information on giving investment instructions, (2) changes to the investments, (3) the dollar amount of plan-related fees and expenses deducted from their accounts, (4) a list of the investment options, (5) investment-related information including performance data, expenses, a website address for information about the investment options, and a glossary of terms.

Most plan sponsors do not directly have the information required by the fee disclosure regulations. The financial institution needs to provide the information, but the legal obligation to comply is imposed on the plan sponsor.

DEFAULT INVESTMENT FOR PARTICIPANT DIRECTED INVESTMENTS

It is the trustee's responsibility to select a reasonable default investment for participants not actively making investment choices. We strongly recommend reviewing the default investment with your investment provider and, if necessary, changing the default to something more appropriate. Money markets and other cash investments with little income potential may not be reasonable default investments under standards set by the Department of Labor (DOL).

ERISA/FIDELITY BOND REQUIREMENTS

Plans are required to have an ERISA bond to protect against losses due to acts of fraud or dishonesty from plan officials, who handle funds or other property of the plan. However, plans covering only a sole-proprietor, the sole shareholder of a corporation, or a sole-proprietor or shareholder and their spouse do not need an ERISA bond.

Bond coverage is disclosed on the Form 5500. The bond must be at least 10% of the funds handled and is not required to exceed $500,000 unless additional coverage is necessary to avoid small plan audit requirements.

DOL regulations require audits by independent qualified public accountants for small plans unless at least 95% of the plan assets are qualifying assets. Qualifying assets include assets held by a bank or similar institution or an insurance company, shares issued by a registered investment company, participant loans, and participant directed accounts if participants receive statements from the regulated financial institution.

If less than 95% of the plan assets are qualifying assets, the small plan audit requirements can still be avoided by bonding the non-qualifying assets for 100% of their value.

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.

Further information is at the dol.gov website. Search "DOL fiduciary responsibilities" or send us an email to request the web address.

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 or persons named in the trust document with the authority to manage and control the assets of the plan.

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 could 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 be informed that distributions most often do not occur until their final contribution is made, which usually happens in the year following the year of termination.

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

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.

ADDITIONAL INFORMATION

The information provided covers general requirements of the regulations and is not exhaustive in details. Additional information for retirement plans can be found on the DOL and IRS websites:

www.dol.gov/ebsa
www.irs.gov/ep