

# 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 while making it easy to withhold employee contributions and select the investments for those contributions? Then you may want to consider an automatic enrollment 401(k) plan.

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.
- 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 you establish and maintain 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 hired someone to help with your plan, that person likely will provide the document. If not, consider getting 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 meet certain requirements, 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** – A 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 your 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. It 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 establish an automatic enrollment 401(k) plan, you assume certain responsibilities in operating it. If you hired someone to help set up your plan, that arrangement also may include help in operating the plan. If not, you’ll need to decide 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 they opt out or choose a different percentage.

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

- Are younger than 21,
- Have completed less than one year of service,
- Are covered by a collective bargaining agreement, if retirement benefits were the subject of good faith bargaining, or
- Are certain nonresident aliens.

## **Contributions**

### ***Basic Automatic Enrollment 401(k) Plans and EACAs***

In a 401(k) plan, participants can contribute a portion of their salary (elective deferral) to individual accounts. You decide whether your business will also contribute to participants' accounts in your plan. If you decide to make an employer contribution to your automatic enrollment 401(k) plan for your employees, you have options. You can match the amount your employees decide to contribute (within the legal limit), 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
- \$57,000 for 2020 and \$58,000 for 2021.

In addition, the amount employees can contribute under any automatic enrollment 401(k) plan is limited to \$19,500 for 2020 and for 2021. 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 \$6,500 for 2020 and for 2021 for employees age 50 and over.

## **Vesting**

Employee contributions are immediately 100 percent vested – that is, the money an employee has contributed to the plan cannot be forfeited. When an employee leaves employment, they are 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 the employer deducts 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. If carried out properly, you can limit your liability as plan fiduciary for any automatic enrollment 401(k) plan losses that result from 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 must place the participants' contributions in certain types of investments (discussed below).
- Before their first contribution is deposited, participants must receive a notice describing the automatic enrollment process (discussed below); a similar notice is sent annually thereafter.
- The participant has the opportunity but does not provide investment direction.
- The plan must provide material related to the investment, such as prospectuses, to the participants.
- The participants must have the opportunity periodically to direct their investments from the default investment to a broad range of other options under the plan.

### **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 another 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 before 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.

If, after receiving the initial or annual notice, the participant doesn't 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 your plan must be set up including 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 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 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, in carrying out these actions, may be a fiduciary.

### ***Basic Responsibilities***

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 plan expenses;
- 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 a prudent person would, you may want to consult experts in investments, accounting and other fields, as appropriate.

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 must do so.

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. In addition, you (or those you hire) will need to update the plan document for changes in the law.

### ***Limiting Liability***

With these responsibilities, there is also some potential liability. However, you can take actions to demonstrate that you carried out your responsibilities properly and 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 decision-making 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 give participants control of 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 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 give you certain information 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, you should continue to monitor your service provider by doing the following:

- Evaluate any notices the service provider furnishes 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\*](#).

### ***Providing Information in Participant-Directed Plans***

When plans allow participants to direct their investments, fiduciaries need to take steps regularly to make participants aware of their rights and responsibilities 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. You (or those you hire) must provide that information to participants 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. 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***

Some transactions 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 several exceptions under the law, and additional exemptions may be granted by the U.S. Department of Labor if protections for the plan are in place in conducting the transactions.

One exemption allows fiduciary investment advisers to provide investment advice to participants who direct the investments in their accounts. The exemption applies to buying, selling, or holding an investment related to the advice, as well as to receiving related fees and other compensation by a fiduciary adviser. Please see DOL's [website](#) 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 a way that protects the plan and all other participants. Each loan request decision is treated as a plan investment and considered accordingly.

## ***Bonding***

Anyone handling plan funds or other plan property generally must be covered by a fidelity bond to protect the plan against loss 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 give 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, you may provide the notice to an employee and enroll them 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, before the beginning of each subsequent plan year.

The ***summary plan description (SPD)*** is a plain-language explanation of the plan and must be comprehensive enough to inform 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
- Participants' basic rights and responsibilities under 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 modifications (SMM)** informs participants of changes made to the plan or to the information required to be in the SPD. When such changes occur, all participants must receive one of these two documents automatically within a specified number of days after the change.

An **individual benefit statement** 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, plans that allow participants to direct the investments in their accounts must provide participants with plan and investment information, including information about fees and expenses, before they can first direct investments and generally annually thereafter. At least quarterly, they also must provide participants with information on the fees and expenses actually paid. 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 individual benefit statement.

A **summary annual report** 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). The plan administrator must furnish it annually to participants.

You can furnish these disclosures in paper or electronically. To provide them electronically, you may either post them on a plan website or email them to plan participants, after notifying participants that disclosures will be furnished electronically. There are a number of protections for participants receiving electronic disclosures, including the right to request paper copies of disclosures or to opt out of electronic delivery. You also need to take reasonable steps to protect the confidentiality of participants' personal information online. For more information, see DOL's [website](#).

## 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 must 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.

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*

Plans file the Form 5500 or Form 5500-SF electronically through a web-based system called EFAST2. The Form 5500-EZ will also be available on EFAST2 for direct electronic filing, although one-participant plans will still be able to file the Form 5500-EZ on paper with the IRS. These returns/reports are made available to the public.

One-participant plans (which cover only sole proprietors – whether incorporated or not – partners, and spouses) with total assets of \$250,000 or less at the end of the plan year are exempt from the annual filing requirement. However, you must file a final return/report if you terminate the plan, regardless of the value of your plan's assets.

### **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 and to each deferred vested participant in an individual statement by the plan administrator.

### ***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 employers to 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 else you must do to terminate your automatic enrollment 401(k) plan.

### **Compliance**

Even with the best intentions, those operating the plan can still make mistakes. 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. 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, ask yourself these questions:

- Have you adopted a written 401(k) plan that provides for automatic enrollment?
- Have you decided whether to hire a financial institution or retirement plan professional to help with setting up and running the plan?
- Have you chosen a percentage of compensation for the automatic employee contributions? Have you considered the level of employer contributions, whether optional or required?
- Have you decided to set up your plan as an EACA or a QACA?
- In selecting a default investment, have you decided to meet the conditions for fiduciary liability relief for this investment?
- 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?
- Have you provided, or are you prepared to provide, the initial notice to employees before their first automatic contributions? Are you prepared to send the required annual notices?
- Do you understand your fiduciary responsibilities?
- How will you monitor the plan's service providers and investments?
- Do you understand the reporting and disclosure requirements of an automatic enrollment 401(k) plan?

For help 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 **Resources** section.

## Resources

To find this publication and more information on retirement plans, visit:

### ***The U.S. Department of Labor's Employee Benefits Security Administration***

- **Main site**
- **Information for small businesses**
- **Retirement saving information for employers and employees**

### ***Internal Revenue Service***

- **Main site**
- **Guidance for maintaining your automatic enrollment 401(k) plan**

**In addition, the following jointly developed publications are available on the DOL and IRS websites or can be ordered **electronically** or by calling toll-free **866-444-3272**.**

- *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.

## 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***

- *Meeting Your Fiduciary Responsibilities*
- *Understanding Retirement Plan Fees and Expenses*
- *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** – 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's **website**. To order publications or request assistance from a benefits advisor, contact EBSA **electronically** or call toll free 866-444-3272.

## Related materials available from the IRS

- *Lots of Benefits*, Publication 4118, discusses the benefits of sponsoring and participating in a retirement plan (also available 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 the IRS’s [website](#).



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