

ADDITIONAL IMPORTANT INFORMATION ABOUT OPERATING YOUR RETIREMENT PLAN

You have used your retirement plan and plan/participant monies, to engage in a non-traditional investment. It is important that you maintain the qualified status of your retirement plan by following IRS & DOL regulations. We have provided information that will be helpful to you with the goal of keeping your retirement plan in compliance each year.

DEFINING WHO ARE EMPLOYEES IN YOUR COMPANY

In order to participate in a 401(k) or 403(b) Plan (hereinafter referred to as Plan or Retirement Plan), including rolling over existing retirement monies to the Retirement Plan for purposes of engaging in investments you must be an eligible employee who can include a rank-and-file employee, company owner and/or company manager/officer. If an individual wishes to rollover or contribute monies to the Plan they can only do so if they are an eligible employee of the company sponsoring the Plan and meet all other eligibility requirements as detailed in the plan Adoption Agreement.

Independent Contractors: Independent contractors cannot participate in a company sponsored retirement plan with the rare exception of full-time life insurance salespersons. In fact, offering the retirement plan to an independent contractor could disqualify the retirement plan. The IRS has generally defined an independent contractor as follows: An individual shall only be treated as an employee (rather than an independent contractor) if he/she is reported on the payroll records of an affiliated company as a common law employee. The term does not include a leased employee. Additionally, a worker is treated as an independent contractor if the employer memorializes payment for the worker's services on a Form 1099 and not on a Form W-2 or if the worker has a signed agreement with the employer stating that with respect to particular services the worker is an independent contractor. As an important note, you should not treat a worker as an independent contract simply for the purpose of excluding such worker from receiving employee benefits, including the opportunity to participate in the plan. The worker should meet the state and federal business/entity requirements related to classifying workers as an independent contractor vs. a common law employee.

Corporate Directors: Is a corporate director an employee? No, an individual whose only association with a company is that of a corporate director is not an employee for purposes of the retirement plan (see IRS Revenue Ruling 58-505).

Corporate Officers: Is a corporate officer/manager an employee? In contrast a corporate officer is almost always treated as an employee for retirement plan purposes.

It is important that you understand; the guidelines above are simply guidelines. The regulations governing company sponsored retirement plans have many exceptions to the bright line rules detailed above. As these types of situations may arise within your organization, seek out assistance from Leading Retirement Solutions so that we can assist you with determining who is qualified to participate in the retirement plan.

CONTROLLED GROUP & AFFILIATED SERVICE GROUP

Under retirement plan rules concerning testing for discrimination and coverage, it is critical that employees of any entities you control be accounted for so as to ensure that you are in compliance with these rules. Failure to comply with these rules may result in revocation of the tax qualified status of your retirement plan and taxation of your account. Therefore, any change in plans to activate inactive entities and/or hire employees and/or obtain an ownership interest in other business ventures or entities should be communicated to Leading Retirement Solutions prior to activation. The IRS Controlled Group & Affiliated Service Group regulations may require that you offer the retirement plan.

Controlled Group: is generally defined as a group of trades or businesses (employers) that are related through ownership. If any owner of the company sponsoring the Retirement Plan contemplates acquiring an ownership interest in another business venture or entity, it is important that you seek assistance to determine if the Retirement Plan would have to be offered to the employees of another business venture or entity.

Affiliated Service Group: is generally defined as a group of service organizations that are related through employee or service sharing. This definition includes one or more other organizations for which employees, officers, directors, etc. are shared or services are shared or on behalf of and between organizations. If you believe the Company sponsoring the Retirement Plan is part of an Affiliated Service Group it is important that you seek assistance to determine if the Retirement Plan would have to be offered to the employees of another business venture or entity.

OFFERING THE RETIREMENT PLAN TO EMPLOYEES: IT IS A REQUIREMENT

If your organization employs individuals who are eligible or will soon become eligible to participate in the plan and the only investment currently available via the plan is privately held stock (qualified employer securities), pursuant to DOL regulations you are not offering a sufficiently diverse range of investment options.

“Under Labor Department regulations, there must be at least three different investment options so that employees can diversify investments within an investment category, such as through a mutual fund, and diversify among the investment alternatives offered. In addition, participants must be given sufficient information to make informed decisions about the options offered under the plan.” <http://www.dol.gov/ebsa/publications/fiduciaryresponsibility.html>

Leading Retirement Solutions can help you complete this important DOL requirement by assisting you with adding investment options to your plan including mutual funds and money market accounts and preparing and providing the required employee notices. Please contact a Leading Retirement Solutions team member and we can assist you with fulfilling this requirement.

COMMON PLAN MISTAKES

A retirement plan needs regular care to keep it operating properly and your business practices should include a regular review of your plan’s basic operations, each year. For example, are contributions being made timely, have

enrollment forms been set up with your payroll team, have plan document amendments been executed. These checklists and fix it guides are intended to provide you with an overview of the most common plan mistakes made by companies so that you can avoid them.

If you make a mistake, call us! We are here to help and can take you through the applicable IRS or DOL correction program, thereby limited penalties, taxes and other fees.

401(k) Plan Fix-It Guide: <http://www.irs.gov/pub/irs-tege/pub4531.pdf>

403(b) Plan Fix-It Guide: <http://www.irs.gov/pub/irs-tege/pub4546.pdf>

VALUATION OF NON-TRADITIONAL INVESTMENTS AND/OR OUTSIDE SELF-DIRECTED BROKERAGE ACCOUNTS

Ownership of Non-Traditional Assets and/or self-directed brokerage accounts: All plan investments must ALWAYS be titled in the name of the plan trust. Stated another way, any asset purchased utilizing retirement monies must be owned by and titled in the name of your retirement plan. This means that anytime you utilize retirement monies to invest in (purchase) any type of asset, including but not limited to: real estate, promissory notes, other hard money lending, private stock, agricultural or maritime rights, precious metals, mutual funds, publicly traded stock, bonds, money market, etc.

Initial Valuation of Non-Traditional Assets and/or self-directed brokerage accounts: Traditional investments made by a company retirement plan and its participants, such as mutual funds, stocks, bonds, and ETF's are generally publicly traded resulting in a readily available, end of day value/valuation of such asset. Other investment types, particularly non-traditional investments, such as qualified employer securities (privately held company stock), qualified real estate, gold, horses, promissory notes and other hard money lending don't offer a readily attainable value from day to day. It is generally acceptable to value these types of assets on an annual basis and/or under special circumstances (e.g. sale of such asset).

1. A participant, via his/her Retirement Plan account can direct the investment of participant monies into certain investments. For most participants, they invest their monies in Mutual Funds, Publicly Traded Stock, and Bonds, investments that are publicly traded and have a readily attainable value.
2. When an investment is made by a plan participant, it is imperative we know the following regarding that investment:
 - a. Amount of Retirement Plan monies invested;
 - b. Number of shares or interest provided in exchange for monies; and
 - c. Share/Investment Price on the day of investment

Ongoing/Updated Valuation of Non-Traditional Assets and/or self-directed brokerage accounts: Thereafter, we need to receive an updated value for each investment, on a frequency basis in accordance with the investment. For example, a publicly traded fund is valued on a daily basis and we receive updated pricing for each mutual fund on a daily basis so that when we get to the end of the plan year, a plan participant has a clear picture of the starting value of the investment, the ending value and the change in value, throughout the year. Property or privately held stock will be valued less frequently but no less than 1x a year. It may be necessary to obtain additional valuations throughout the year especially if there is a major event that affects the value of the asset, such as a purchase and/or sale of the asset.