ERISA And Federal Income Tax Compliance Checklist
For Profit Sharing and 401(k) Plans

Below is a list of requirements that must be met in order to establish and maintain your plan's qualified status under the Internal Revenue Code. Part I lists items necessary to establish the plan. Part II lists recurring and annual obligations. Part III lists intermittent obligations. Sullivan will be pleased to help with any of these requirements.

PART I: START-UP OF PLAN

Item	Action	Due Date	Responsible Party
1.	Board of Directors vote to adopt plan	Prior to deferral of any elective contributions	Company
2.	Execution of plan and trust documents	Prior to deferral of any elective contributions	Company and Trustee
3.	Announcement of plan to employees (brief written summary)	Prior to deferral of any elective contributions	Company
4.	Obtain fiduciary bond for persons who handle plan assets	Before initial deposit of funds in trust	Plan Administrator
5.	Request Internal Revenue Service determination as to plan's tax qualification (if appropriate)	By due date (including extensions) of Company's tax return for first year for which plan is effective	Company
6.	Distribute to eligible participants a "Summary Plan Description" (comprehensive written summary of plan)	Within 120 days of adoption of plan or within 120 days of receipt of an Internal Revenue Service determination letter, if the plan is effective only after receipt of the determination letter	Plan Administrator
7.	Distribute to eligible employees a contribution election form and beneficiary designation form	Prior to deferral of any elective or after-tax contributions	Plan Administrator

Item	Action	Due Date	Responsible Party
8.	Distribute to eligible employees investment related materials including materials described in Part II, Items 4 and 5 below, where benefit of ERISA § 404(c) sought[1]	Prior to deferral of any elective or after-tax contributions	Plan Administrator
9.	Distribute to eligible employees safe harbor and/or auto enrollment notices described in Part II, Items 2 and 3 below)	As applicable	Plan Administrator

PART II: RECURRING AND ANNUAL OBLIGATIONS

1.	Distribute to eligible participants a Summary Plan Description	Within 90 days of eligibility	Plan Administrator
2.	Distribute to eligible employees and participants 401(k) safe harbor notice, if applicable	Generally within 30 to 90 days before the beginning of the plan year (or the employee's eligibility, if later)	Plan Administrator
3.	Distribute to eligible employees and participants auto enrollment notice (if applicable)[2]	Reasonable period of time in advance of first deduction and annually (generally interpreted as at least 30 days but not more than 90 days in advance)	Plan Administrator
4.	Distribute to eligible employees and participants QDIA notice (if applicable)	Generally at least 30 days before the beginning of the plan year (or the employee's eligibility, if later)	Plan Administrator
5.	Distribute to participants and beneficiaries disclosure for participant-directed individual account plans required under Department of Labor Regulation § 2550.404a-5 ("fee disclosure" regulations)	Once every 12 months (within 30-90 days in advance of the effective date of certain changes)	Plan Administrator
6.	Deposit elective and after-tax contributions, and loan repayments, in plan's related trust	As soon as amounts can reasonably be segregated from Company's general assets (7 business day safe harbor if "small" employer; never later than the 15th business day of month following month in which amounts withheld)	Company

Item	Action	Due Date	Responsible Party
7.	Deposit Company's profit sharing contribution, if any, and matching contribution, if any, in plan's related trust	By date required by plan document (and generally not later than the due date, including extensions, of Company's tax return for year to which contributions relate)	Company
8.	Annual compliance testing including – – Testing for and fulfilling any top-heavy (I.R.C. § 416) requirements – Testing for and applying Annual Addition Limitations (I.R.C. § 415) – Testing for compliance with annual compensation limit ($285,000 for 2020)	Generally, shortly after end of plan year	Plan Administrator
9.	Refund participant's elective contributions in excess of annual I.R.C. §§ 402(g) and 414(v) limits ($19,500 for 2020; $26,000 if catch-up contributions for participants at least age 50 are permitted)[3]	By April 15 of following calendar year	Plan Administrator
10.	Section 401(k) (ADP) testing (unless safe harbor plan)	Within 2½ months after end of plan year to avoid Company excise tax; in any event before end of following plan year	Plan Administrator
11.	Section 401(m) (ACP) testing, if plan permits after-tax contributions and/or matching contributions (unless safe harbor plan)	Within 2½ months after end of plan year to avoid Company excise tax; in any event before end of following plan year	Plan Administrator
12.	Refund elective, after-tax or matching contributions by highly compensated employees that cause plan to exceed test limits under Section 401(k) or 401(m)	Within 2½ months after end of plan year to avoid Company excise tax; in any event, before end of following plan year	Plan Administrator
13.	Determine whether any additional distributions are required by the minimum distribution rules	December 31 (April 1 for certain participants)	Plan Administrator
14.	Offer opportunity for participants to update contribution election forms	As specified in the plan document; at least annually	Plan Administrator
15.	Offer opportunity for participants to update beneficiary designations	At least annually	Plan Administrator
16.	Periodic statement of accrued benefits to participants and beneficiaries	Generally quarterly if participant-directed; otherwise annually	Plan Administrator

Item	Action	Due Date	Responsible Party
17.	On Form W-2, report whether employee was active participant in any qualified plan	January 31	Company
18.	Distribute Forms 1099-R to participants and beneficiaries who received a distribution and/or in certain other situations (deemed distribution of loans, corrective distributions, etc.)	January 31	Trustee
19.	File Forms 1096 and 1099-R (as applicable)	February 28 for paper filing; March 31 for electronic filing	Trustee
20.	File Form 5500 with Department of Labor (including independent audit of plan if at least 100 participants and beneficiaries or if ineligible for waiver of audit requirement)	By last day of 7th month after end of plan year (date may be extended)[4]	Plan Administrator
21.	File Form 8955-SSA	By last day of 7th month after end of plan year (date may be extended)[5]	Plan Administrator
22.	Distribute statement of vested benefits to terminated participants (same as information on Form 8955-SSA)	Generally delivered to the participant no later than the due date of the Form 8955-SSA for the plan year of termination	Plan Administrator
23.	Distribute to participants and beneficiaries Summary Annual Report	By last day of 9th month after end of plan year or within 2 months after close of extension period for filing the Form 5500, if applicable	Plan Administrator
24.	Furnish to participants and beneficiaries "Special Tax Notice Regarding Plan Payments" (written explanation of rollover provisions and other special tax treatments)	At least annually, if benefit distributed in the form of a series of periodic payments	Plan Administrator
25.	Determine whether any change to size of fiduciary bond for persons who handle plan assets is appropriate	No later than beginning of new plan year	Plan Administrator

PART III: INTERMITTENT OBLIGATIONS

1.	New participant (or beneficiary, as applicable) – furnish various materials provided above	See Part I, Items 6-9 above	Plan Administrator
2.	Update and redistribute Summary Plan Description to participants and beneficiaries	Every 5 years, incorporating any Summaries of Material Modifications, and every 10 years otherwise	Plan Administrator
3.	Distribute to participants and beneficiaries a "Summary of Material Modifications" (written description of plan amendments during prior plan year)	Within 210 days after close of plan year in which a material change was adopted	Plan Administrator
4.	Distribute to participants and beneficiaries special notices regarding investment related issues (as applicable) including – – Blackout notice – Mapping notice – Employer securities notice	Generally, at least 30 days in advance of applicable event	Plan Administrator
5.	Furnish to participants required statement of accrued benefits under ERISA Rights statement in Summary Plan Description	Within 30 days of participant's written request (not required more than once every 12 months)	Plan Administrator
6.	Furnish to participants and beneficiaries "Special Tax Notice Regarding Plan Payments" (written explanation of rollover provisions and other special tax treatments, where applicable)	Between 30 and 90 days before any distribution to a participant or beneficiary	Plan Administrator
7.	Income tax withholding compliance (advance notice to participants and beneficiaries, and withholding of taxes, subject to direct rollover exception)	Whenever benefits are paid	Trustee
8.	Furnish to participants written explanation of Joint and Survivor Annuity[6]	Between 30 and 90 days before any distribution to a participant	Plan Administrator
9.	Furnish copies of plan and trust documents	Within 30 days of written request (up to $0.25 per page copying charge is permissible)	Plan Administrator
10.	Amend plan to comply with new laws and regulations	By date required by the law or regulation	Company

11.	Obtain waiver of Preretirement survivor annuity[7]	Married participants must be notified when they are between the ages of 32-35 or upon eligibility if later, of their right to waive the preretirement survivor annuity with spousal consent	Plan Administrator
12.	Terminate plan	Resolution must be adopted in advance of desired termination date	Company

PART IV: FIDUCIARY OVERSIGHT RESPONSIBILITIES

- Periodic review of Investment Policy Statement
- Investment monitoring/selection/removal (ideally quarterly)
- Oversight of other fiduciaries (unless Company retains this responsibility)
- Fee monitoring (to the extent fees are paid by the plan)
- Periodic review of QDIA appropriateness
- Consider policies relating to –
  - Locating missing participants and beneficiaries
  - Uncashed checks
  - Small balance cashouts and auto rollovers

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1 ERISA § 404(c) protection may be sought for plans that permit participants to direct investments. For additional information concerning compliance with ERISA § 404(c), including information about what information must be provided to participants and what information must be available upon request, refer to our memorandum entitled “Protecting Fiduciaries From Liability For Participant-Directed Plan Investments: The ERISA Section 404(c) Regulations.” If you do not already have a copy, please contact a member of Sullivan’s Benefits Practice Group (www.sullivanlaw.com).

2 Requirement may vary depending on whether Plan is using an automatic contribution arrangement (ACA), a qualified automatic contribution arrangement (QACA) or an eligible automatic contribution arrangement (EACA).

3 Elective deferrals are always fully vested and, therefore, cannot be forfeited.

4 An automatic 2½ month extension to file may be obtained by filing Form 5558. If the Company has been granted an extension to file its federal income tax return, and certain other requirements are satisfied, the due date for filing is automatically extended to 8½ months after the close of the plan year.

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