

PROFIT SHARING PLANS

FOR SMALL BUSINESSES



Profit Sharing 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.

To view this and other publications, visit the agency's **website**.

To order publications, or to speak with a benefits advisor, contact EBSA **electronically**.

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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 Profit Sharing Plans?

For small businesses considering a retirement plan, profit sharing plans can be a powerful tool to promote financial security in retirement, as they provide benefits to both employees and their employers.

A profit sharing plan is a type of plan that gives employers flexibility in designing key features. It allows you to choose how much to contribute to the plan (out of profits or otherwise) each year, including making no contribution for a year. Profit sharing plans have additional advantages:

- Can help attract and keep talented employees
- Benefit rank-and-file employees *and* owners/managers
- The Federal Government and most state governments generally don't tax contributions and earnings until they are distributed
- May allow participants to take their benefits with them when they leave the company, easing administrative responsibilities

This booklet highlights some of a profit sharing plan's advantages and some of your options and responsibilities as an employer operating a profit sharing plan. For more information, a list of resources for you and for your prospective plan participants is included at the end of this booklet.

Establishing a Profit Sharing Plan

When you establish a profit sharing 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 a profit sharing plan:

- Adopt a written plan document,
- Arrange a trust for the plan’s assets,
- Develop a recordkeeping system, and
- Provide plan information to eligible employees.

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, they will likely 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.

A **profit sharing plan** allows you to decide (within limits) each year whether to contribute for participants. The plan document will need a set formula to determine how any contributions are allocated to participants’ accounts. Your contributions to the plan can be subject to a vesting schedule, which means an employee only has a right to employer contributions after a specified period of time. You may need to run annual testing to ensure that contributions for rank-and-file employees are proportional to contributions for owners and managers.

Once you decide on a profit sharing plan for your company, you will have flexibility in choosing some of the plan’s features, such as when and which employees can participate. Other plan features are required by law. For instance, the plan document must describe certain key processes, such as how contributions are deposited in the plan.

Unless it includes a 401(k) cash or deferred feature, a profit sharing plan does not usually allow employees to contribute. If you want to include employee contributions, see *401(k) Plans for Small Businesses* (Publication 4222).

A profit sharing plan is for employers of any size.

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. Because 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 a profit sharing 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, losses, plan investments, expenses, and benefit distributions. This will also help to track participants to provide their benefits. 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.

In addition, a Summary Plan Description (SPD) must be provided to all participants. The SPD is the primary way 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**.)

A profit sharing plan may be established as late as the due date (including extensions) of the company's income tax return for the year you want to establish the plan. For example, if your business's fiscal year (a corporate entity) ends on December 31, 2022, and you filed for the automatic 6-month extension, the company's tax return would be due on October 15, 2023. You could adopt a plan in 2023 as late as October 15 and make it effective on December 31, 2022. This would allow you to make an initial profit sharing contribution for 2022, no later than October 15, 2023. If your plan has a 401(k) feature, you're not allowed to have 401(k) salary deferrals prior to the date you adopt the plan.



Operating a Profit Sharing Plan

Once you establish a profit sharing 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 to take care of some or most aspects of operating the plan.

Elements of operating profit sharing plans include:

- Participation
- Contributions
- Vesting
- Nondiscrimination
- Investing profit sharing plan money
- Fiduciary responsibilities
- Disclosing plan information to participants
- Reporting to government agencies
- Distributing plan benefits

Participation

Typically, a plan includes a mix of rank-and-file employees and owners/managers. However, a profit sharing plan may exclude some employees if they:

- Are younger than 21,
- Have completed less than 1 year of service (2 years in certain plans),
- Are covered by a collective bargaining agreement, if retirement benefits were the subject of good faith bargaining, or
- Are certain nonresident aliens.

Contributions

In a profit sharing plan, you can decide how much your business will contribute to participants' accounts in the plan. You can change the amount of contributions each year, according to business conditions, and can even contribute nothing.

The plan document will need a set formula to determine how any contributions you make are allocated to participants' accounts. The simplest and most common allocation formula specifies that the employer contribution is allocated so that each participant receives an amount that is the same percentage of their compensation.

Contribution Limits

Contributions and forfeitures (nonvested employer contributions of terminated participants) are subject to a per-participant annual limit. This limit is the lesser of:

- 100 percent of the participant's compensation, or
- \$61,000 for 2022 and \$66,000 for 2023.

If you, the employer, make contributions to a profit sharing plan, you can deduct up to 25 percent of the compensation paid during the taxable year to all participants.

Vesting

Your contributions to the plan can either be fully vested (nonforfeitable) when made, or they can vest over time according to a vesting schedule.

If you require 2 years of service to participate, all contributions are immediately vested. All participants must be vested according to plan terms.

Nondiscrimination

To preserve the tax benefits of a profit sharing 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.

Traditional profit sharing plans are subject to annual testing to ensure that the contributions made for rank-and-file employees are proportional to contributions made for owners and managers. If you allocate a uniform percentage of compensation to each participant, then no testing is required because your plan automatically satisfies the nondiscrimination requirement.

Investing Profit Sharing Plan Money

After you decide on a profit sharing plan, you can consider the variety of investment options. In designing a plan, you will need to decide whether you will permit your employees to direct the investment of their accounts or if you will manage the monies on their behalf.

If you choose to allow participants to direct their investments, you must decide what investment options to make available. Depending on the plan design you choose, you may want to hire someone either to determine the investment options or to manage the plan's investments. Continually monitoring the investment options ensures that your selections remain in the best interests of your plan and its participants.

Fiduciary Responsibilities

Many of the actions needed to operate a profit sharing 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. Providing investment advice for a fee also makes someone a fiduciary. Hiring someone to perform fiduciary functions is itself a fiduciary act. 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;
- Paying only 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. The responsibility to be prudent covers a wide range of functions needed to operate a plan. Because all these functions must be carried out in the same way a prudent person would, you may want to consult experts in investments, accounting, and other fields, as appropriate.

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 not clear on this, 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 limit your liability and demonstrate that you carried out your responsibilities properly.

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. Because a fiduciary needs to carry out activities through a prudent process, you should document the decision-making process to demonstrate the rationale at the time a decision 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 the investments in their accounts. For participants to have control, they must have sufficient information on the specifics of their investment options. If properly executed, this type of plan limits your liability for participants' investment decisions. 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. So, 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 profit sharing 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

If your service provider is responsible for maintaining plan records and keeping participant data confidential and plan accounts secure, use a service provider who follows strong cybersecurity practices. To prudently select and monitor such a service provider, ask for:

- **Information about a firm's business practices:** its information security standards, practices, policies, and annual audit results available to plan clients; how it validates its practices; and whether it has insurance policies that cover losses caused by cybersecurity and identity theft breaches (whether caused by internal or external threats)
- **Information about the quality of the firm's services:** its track record in the industry, including security incidents, other litigation, and legal proceedings related to its services; and for prior security breaches, what happened and how it responded

For more tips for hiring a service provider with strong cybersecurity practices, including terms and provisions recommended for inclusion in service provider contracts, visit [DOL's cybersecurity website](#). For information on cybersecurity best practices that service providers should follow, see the [website](#).



Once hired, you should continue to monitor your service provider:

- 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 related rights and responsibilities. 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 comparison of 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 how a plan operates, alert them to changes in the plan's structure and operations, and give them a chance to make decisions and take timely action on their accounts.

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. It also informs participants about the plan's 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 profit sharing 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. The plan administrator must give this document 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*** informs participants of changes made to the plan or to the information in the SPD. When such changes occur, all participants must automatically receive either an SMM or an updated SPD 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 annually thereafter. At least quarterly, they must also 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 to participants annually.

A **blackout period notice** gives employees advance notice when a blackout period occurs, typically when plans change recordkeepers or investment options, or when plans add participants due to corporate mergers or acquisitions. During a blackout period, participants' rights to direct investments, take loans, or obtain distributions are suspended.

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 profit sharing 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. These returns/reports are made available to the public. One-participant plans or foreign plans may file Form 5500-EZ electronically on EFAST2 or on paper with the IRS. Form 5500-EZ returns are not 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 the plan’s assets.

Form 1099-R

Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*, is generally 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 is generally given to the Social Security Administration and to each deferred vested participant in an individual statement by the plan administrator.

Distributing Plan Benefits

The amount of benefits in a profit sharing plan is dependent on a participant’s account balance at the time of distribution.

When participants are eligible to receive a distribution, profit sharing plans typically allow participants 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 a Profit Sharing Plan

Profit sharing 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 profit sharing plan.

Typically, the process of terminating a profit sharing 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 profit sharing plan.

Compliance

Even with the best intentions, those operating the plan can still make mistakes. The Department of Labor and IRS have correction programs to help profit sharing 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.

A Profit Sharing Plan Checklist

- Will you hire a financial institution or retirement plan professional to help with setting up and running the plan?
- Have you adopted a written plan that includes the features you want to offer, such as whether contributions will be discretionary, how contributions will be allocated, and when they will be vested?
- Have you notified eligible employees and provided them with information to help in their decision-making?
- Have you arranged a trust for the plan assets or will you set up the plan solely with insurance contracts?
- Have you developed a recordkeeping system?
- How much will you contribute to the plan this year?
- Do you understand your fiduciary responsibilities?
- How will you monitor the plan's service providers?
- Do you understand the reporting and disclosure requirements of a profit sharing plan?

For help in establishing and operating a profit sharing plan, you may want to talk to a retirement plan professional or a representative of a financial institution offering retirement plans. You should also speak to a qualified tax professional about your particular situation 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 profit sharing plan](#)
- [Retirement Plans Startup Costs Tax Credit](#)

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.
- *Automatic Enrollment 401(k) Plans for Small Businesses*, Publication 4674, explains a type of retirement plan that allows small businesses to increase plan participation.
- *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.
- *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 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's **Small Business Retirement Savings Advisor** helps small business owners choose the most 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, Arabic, Simplified Chinese, Traditional Chinese, French, Haitian Creole, Korean, Polish, Portuguese, Russian, Tagalog, and Vietnamese)
- *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, Arabic, Simplified Chinese, Traditional Chinese, French, Haitian Creole, Korean, Polish, Portuguese, Russian, Tagalog, and Vietnamese)
- *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 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 using 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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