MARTIN, MARTIN, RANDALL & ASSOCIATES, INC.

Common Retirement Plan Terminology 2017

SUMMARY PLAN DESCRIPTION (SPD)

The Plan Administrator (employer / sponsor) must provide a copy of the SPD to each plan participant. **New participants must be furnished an SPD within 90 days of their entry date.** An updated SPD must be furnished to all participants every five years if material changes have occurred and every ten years regardless. In addition, a Summary of Material Modification of changes made to the plan must be furnished to all participants within 210 days after the close of the plan year in which the employer adopts the modification.

REPORTING AND DISCLOSURE

Qualified plans must file an annual report (Form 5500 series) with the Internal Revenue Service. Plans with over 100 participants generally require the attachment of an independent Auditor's report. Applicable schedules and/or attachments must be filed along with the annual report. **The filing deadline is the last day of the 7th month following the close of the plan year.** The law imposes penalties including, but not limited to, $25 per day with a $15,000 maximum for late filings. The DOL may also impose a civil penalty not to exceed $1,100 per day, no maximum. The law also requires a Summary Annual Report (SAR) be provided to each participant or beneficiary receiving benefits under the plan **9 months** after the close of the plan year. If the annual report is on extension, distribution of the SAR or Disclosure Statement may be delayed until two months after the extension due date. **Only one 2-month extension will be granted per year.**

TRUST IDENTIFICATION NUMBER

The plan **must** be assigned a trust identification number (TIN) for reporting certain otherwise taxable items such as Form 1099R and Form 945 (Plan Distributions), as well as on Schedule P of the 5500 Forms. This number must be used, instead of the employer's ID Number, on all Plan asset accounts. The application for this number is made with the Internal Revenue Service on Form SS-4. We can perform this service for you if desired

FIDELITY BONDING

ERISA section 412 and related regulations (29 C.F.R. § 2550.412-1 and 29 C.F.R. Part 2580) generally require that every fiduciary of an employee benefit plan and every person who handles funds or other property of such a plan shall be bonded. ERISA's bonding requirements are intended to protect employee benefit plans from risk of loss due to fraud or dishonesty on the part of persons who "handle" plan funds or other property. The law requires every plan fiduciary and every person who handles plan funds to be bonded. **The minimum bond amount is the greater of $1,000 or 10% of the plan assets with a maximum of $500,000.** Effective for plan years beginning on or after January 1, 2008, however, the maximum required bond amount is $1,000,000 for plan officials of plans that hold employer securities. Since the Advisory Committee has discretionary authority over the plan's administration, the bonding regulations do require that members of the Advisory Committee, as well as the trustee and employer, be bonded. If the plan has an institutional trustee, that trustee may be exempt from the bonding requirements. Any bonding exemption applicable to a financial institution does not relieve the plan of the bonding requirements. The employer's insurance carrier can assist in obtaining bond coverage.

DESIGNATION OF BENEFICIARY

Each participant, and new participants upon entering the plan, should execute a Designation of Beneficiary form. Each participant should designate a primary and a secondary beneficiary. **If a married participant names a primary beneficiary other than their spouse, such spouse must consent to the designation by executing a spousal consent form.** A Plan representative or a Notary Public must witness the spouse's signature on the spousal consent form. If the witness is a Plan representative, such Plan representative must not be the participant whose spouse is consenting to the election. Participants may, at any time, make changes to their designations by submitting a newly executed beneficiary form to the Advisory Committee.

PLAN ALLOCATIONS

Improper plan allocations may result in disqualification of the employer's plan; therefore, **it is very important** that the employer provide the recordkeeper complete and accurate data in order for them to perform the allocations correctly. The necessary data will be requested in our worksheet packages, which are mailed prior to the end of each Allocation Period. **Accurate financial accounting/investment statements must be provided to the recordkeeper for the applicable period to ensure the allocation of the correct value of all plan assets and to control time and expense in financial reconciliation of all accounts.**

TOP HEAVY PLAN

A plan is Top Heavy if on the determination date, which is the last day of the preceding plan year, the aggregated account balances of the key employees exceed 60% of the account balances of all employees. Distributions made from the plan during the current plan year are added to these account balances for the Top Heavy test for plan years beginning after December 31, 2001. The prior four-year "look back" rule would continue to apply only to distributions made for any reason other than separation from service, death or disability. Aggregation groups and/or top-heavy groups may apply for employers maintaining multiple defined contribution and/or defined benefit plans in determining the top heavy status.

If a plan is top heavy with respect to any plan year, the Plan must meet minimum vesting and minimum contribution requirements in such year. A top-heavy plan satisfies minimum vesting if it provides either **3-year cliff vesting** (an employee who has completed at least 3 years of service has a non-forfeitable right to 100% of his account derived from employer contributions) or **6-year graded vesting** (20% each year beginning at 2 years of service until 100% vested in his employer account). The minimum contribution requirement is satisfied if the employer contribution for the plan year allocated to each participant who is a non-key employee is not less than 3 percent of such participant's compensation **OR** each non-key receives the same percent of the employer contribution as the key employee receiving the highest percentage, if less than 3 percent.

For 401(k) plans, even if no profit sharing contribution is made for a plan year in which the plan is top heavy, a minimum contribution to non-key employees will still be mandatory since deferrals cannot be utilized to satisfy this minimum, but are utilized in calculating which key employees receive the highest contribution. For plan years beginning after December 31, 2001, the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) matching contributions will be counted toward satisfying the minimum top heavy required contribution. All plans must provide the minimum unless the employer sponsors another type of defined contribution plan, i.e. Money Purchase Pension Plan, or a Defined Benefit Plan in which top-heavy minimum contribution requirements are satisfied.

LIMITATIONS

The law limits the total "annual additions" to a participant's account(s) for any limitation year, generally the plan year, to the lesser of $54,000 or 100% of compensation beginning 01/01/2017.* The term "annual additions" includes both employee and employer contributions and reallocated forfeitures which are allocated to a participant's account(s) in a plan year. A single "annual additions" limit applies for participants in more than one plan maintained by the same employer. Limitations are also placed on compensation and employee deferrals. The compensation limit in effect for each calendar year will constitute the compensation limit for the plan year beginning in such calendar year. These limits, as well as the "annual additions" limits, are subject to annual cost-of-living adjustments. **The annual salary limit for 2017 is $270,000** and will be increased for cost-of-living in different increments for future years. **The annual deferral limit for 2017 is $18,000**. **This dollar limit will be increased for cost-of-living adjustments on an annual basis.**

New "catch up" provisions were introduced with the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001. The Plan may allow participants aged 50 or older to make catch up contributions during a plan year over and above the allowable maximum deferral limit for that plan year. Catch up contributions are not subject to other contribution limits or to non-discrimination testing but must be available on a nondiscriminatory basis. Catch up contributions may not exceed the participants compensation reduced by other elective contributions for the year. **The catch up contribution limit to 401(k), 403(b) and 457(a) plans for 2017 is $6,000**.

DISCRIMINATION TESTING

The law requires that every qualified plan pass certain non-discrimination and/or anti-discrimination tests to ensure that the Plan does not discriminate in favor of highly compensated employees. These tests are generally performed annually. Following is a brief description of these discrimination tests:

a) Coverage Test - Generally, the percentage of the non-highly compensated employees who benefit must equal at least 70% of the percentage of highly compensated employees who are benefiting.

b) General Test - Contributions and/or benefits provided under the plan must not discriminate in favor of highly compensated employees.

c) Average Deferral Percentage Test (ADP) - A plan with a 401(k) feature (employee deferrals) must not allow the average deferral percentage of highly compensated employees to exceed the average deferral percentage of the non-highly compensated employees by 1.25 times (x) or the lesser of 2 plus (+) or 2 times (x) such percentage.

d) Average Contribution Percentage Test (ACP) - A plan with a 401(m) feature (an employer matching contribution) must not allow the average matching contribution percentage of highly compensated employees to exceed the average matching contribution percentage of the non-highly compensated employees by 1.25 times (x) or the lesser of 2 plus (+) or 2 times (x) such percentage.

   THE EMPLOYER WILL BE SUBJECT TO A 10% PENALTY ON THE TOTAL AMOUNT OF REFUNDS OF CONTRIBUTIONS (A CORRECTIVE MEASURE TO FIX FAILED ADP AND/OR ACP TESTS) THAT ARE NOT DISTRIBUTED FROM THE PLAN WITHIN 2 1/2 MONTHS AFTER THE CLOSE OF THE PLAN YEAR. CORRECTIVE DISTRIBUTIONS NOT MADE WITHIN 12 MONTHS AFTER THE PLAN YEAR END SUBJECTS THE EMPLOYER TO COSTLY PENALTIES.

e) Compensation Test - If the definition of compensation under a plan provides exclusions from earned income, other than employee elective contributions, the average of the highly compensated employees cannot exceed the average of the non-highly compensated employees by more than a *de minimis* amount when compared to averages using a definition of compensation without such exclusions.

   CORRECTIVE MEASURES FOR THE FAILURE OF ANY OF THE AFOREMENTIONED TESTS MAY VARY. OPTIONS WILL BE DISCUSSED ON AN "AS-NEEDED" BASIS.

PLAN DISTRIBUTIONS

Participant withdrawals from the plan are very limited prior to a distributable event, such as termination of employment, death, disability or retirement. The plan document, at the employer's discretion, can allow participant withdrawals due to financial hardships.

There are six safe harbor reasons for a hardship distribution:

1) Medical Expenses
2) College Tuition Expenses including Room and Board
3) To Prevent Eviction from Principal Residence
4) Purchase of a Principal Residence
5) Funeral Expenses
6) Catastrophic Damage Repairs to your principal residence in a Federal Disaster Area

Participant loans along with a designated Loan Policy and in-service distributions after age 59 1/2 are also allowed if elected by the employer in the plan document.

The law provides for **required minimum distributions (RMD)** to participants who have reached age 70 1/2 and who have separated from service and to active participants who are 5% owners. The first distribution can be made by the last day of the calendar year in which the participant reaches age 70 1/2, but must be made no later than April 1st following the calendar year in which the participant reached age 70 1/2. Subsequent distributions are required annually and must be made by the last day of each calendar year.

The law does require mandatory federal tax withholding of 20% on all eligible rollover distributions that exceed $200. Certain distributions, such as required minimum distributions and hardship withdrawals are not eligible rollover distributions. If you have a question regarding this, please call our office.

It is the employers' responsibility to see that these taxes are deposited to the Treasury in a timely manner and that the taxes are reported properly. There are two methods of depositing these taxes. They are electronic deposits using EFTPS (the Electronic Federal Tax Payment System) or by physically depositing them at any authorized financial institution or Federal Bank using federal tax deposit coupons (Form 8109). The deposit due dates are calculated based upon a four-quarter look back year and are much too complicated to go into detail in this summary. In some instances the deadline is within three (3) days so, to avoid any penalties, you should obtain a copy of Publication 15, Circular E, or the Employer's Tax Guide from the International Revenue Service. Also, please remember that **ALL** distributions made from a Qualified Retirement must be reported on Form 1099R to the participant and copies along with Form 1096 to the Internal Revenue Service and your state tax department.

IF YOU HAVE QUESTIONS REGARDING PROPER DISTRIBUTION NOTICES TO PARTICIPANTS, PARTICIPANT OR SPOUSAL CONSENTS, TIMING OF DISTRIBUTIONS OR FORMS OF PAYMENT. YOU SHOULD FIRST CONSULT WITH OUR FIRM OR OTHER KNOWLEDGEABLE PROFESSIONAL BEFORE MAKING ANY DISTRIBUTIONS FROM THE PLAN.

TIMING OF CONTRIBUTIONS

In order to receive a deduction for a contribution made to a qualified plan, the employer must deposit the contribution to the trust (for each plan maintained) by the due date (including extensions) of the employer's Federal tax return for the stated plan year, but no later than the end of the next plan year. It is permissible for the employer to make contributions during the plan year; however, by limiting the employer contributions until after the close of the plan year, the employer may avoid a 10% excise tax imposed on excess nondeductible contributions. Deductible contributions to profit sharing plans are limited to 25% of total eligible compensation. Effective for plan years beginning after 12/31/01, the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) has changed the profit sharing plan limit to 25%. Effective for plan years beginning after 12/31/01, compensation for this purpose includes 401(k) deferral contributions. Deferral contributions are deductible without regard to any limits beginning in 2002.

EMPLOYEE DEFERRAL CONTRIBUTIONS MUST BE DEPOSITED TO THE TRUST AS SOON AS ADMINISTRATIVELY FEASIBLE FOLLOWING THE DAY THE CONTRIBUTIONS WERE WITHHELD FROM THE EMPLOYEES' PAYROLL(S). ANY PERIOD OVER 7 DAYS IS SUBJECT TO AUDIT! FAILURE TO TIMELY DEPOSIT MAY RESULT IN PLAN DISQUALIFICATION AND/OR SUBSTANTIAL PENALTIES IMPOSED BY THE IRS AND DOL.

INVESTMENTS

The law requires all fiduciaries to administer the plan for the exclusive benefit of the participants. The trustee should make all plan investments in a prudent manner. The trustee should diversify investments to avoid large losses. The trustee should not borrow funds in order to make plan investments. Income from debt-financed investments may constitute unrelated business income and may be taxable income rather than income exempt from taxation. The most typical examples of debt-financed investments in a qualified plan are margin account trading and borrowing on life insurance policies held by the trust. The plan also may incur unrelated business income if it invests directly in an active trade or business. This issue most often arises with respect to investments in general or limited partnerships.

The trustee may invest in real estate if the investment is prudent. However, in certain instances, the trustee's acquisition of real estate subject to debt can result in unrelated business taxable income. A determination of whether the acquisition

of debt-financed real estate results in unrelated business taxable income is complex. Before acquiring debt-financed real estate, directly or indirectly through a partnership, you should consult an investment broker or agent. **The trust, at all times, must have sufficient liquidity of assets to meet the distribution needs of the plan. Please note that the plan should maintain a written Investment Policy Statement provided by your investment broker or agent.** Whenever possible, duplicates of all investment statements should be sent directly to the recordkeeper as an accurate and time saving measure.

PARTICIPANT-DIRECTED INVESTMENTS

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PLAN AUDITS

Generally plans with more than 100 participants must be audited by an independent qualified public accountant. The accountant's opinion must be attached to the annual Form 5500. Plans with less than 100 participants are exempt from the audit requirements if at least **95%** of plan assets are **"Qualifying Plan Assets,"** or any person handling the assets that are not qualified is bonded in an amount equal to or greater than the non-qualified assets.

"Qualifying Plan Assets" are:

- Assets held by a regulated financial institution (bank, domestic building and loan association, credit union, insurance company, registered broker-dealer, or any other organization that is authorized to act as a Trustee of IRAs);
- Mutual Fund shares issued by a company registered under the 1940 Investment Company Act;
- Investments or annuities issued by an insurance company qualified to do business under state law;
- Any asset in an individually directed account over which the participant maintains control **and,** at least annually, a financial institution referred to above issues a statement describing the assets held or issued;
- Qualifying Employer Securities as defined in ERISA; and
- Participant loans which meet the prohibited transaction exemption.

DIRECT COMPENSATION

Direct compensation is a payment the plan equal to or greater than $1,000 (including ERISA recapture account or forfeiture account) makes to a service provider for services rendered to the plan, or because of a person's position with the plan. The term also includes an expense the employer pays but the plan reimburses.

INDIRECT COMPENSATION

Indirect compensation is any payment a service provider receives from sources other than direct compensation from the plan or from the plan sponsor, if the compensation was received in connection with services rendered to the plan or the

person's position with the plan. It does not include compensation that would have been received if the provider had not rendered services or the transactions had not taken place, or that cannot be reasonably allocated to transactions or services involving the plan.

This particular type of compensation is normally in the format of a revenue sharing agreement between certain investment fund platforms and a Service provider, marketing events and client gifts between two parties as well as any other type of gifts that are exchanged between two service providers and/or the service provider and the client.

PLAN FIDUCIARY

A Fiduciary is a person who exercises any discretionary authority or control over the management of the plan or its assets, or who is paid to give investment advice regarding plan assets. The definition depends on the functions a person performs and not on the person's title. Plan service providers such as actuaries, attorneys, accountants, brokers, and recordkeepers are not fiduciaries unless they exercise discretion or are responsible for the management of the plan or its assets. A named fiduciary is one who has the ultimate authority to control and manage the operation and administration of the plan. This fiduciary must be specifically named or clearly identifiable in the plan document so that participants or other interested parties such as the Internal Revenue Service (IRS) or the DOL will be able to identify who is responsible for the plan and will be able to address issues to that person.

Every plan document must clearly identify one or more persons to be the named fiduciary for the plan. If there is only one named fiduciary, that person or entity will be considered a fiduciary for all purposes under the plan. If there is more than one named fiduciary, the named fiduciaries can allocate responsibilities among themselves. The purpose of the named fiduciary designation is to clearly identify to participants and government agencies that are primarily responsible for the plan. Fiduciaries have important responsibilities and are subject to standards of conduct because they act on behalf of participants in a retirement plan and their beneficiaries. These responsibilities include:

- Acting solely in the interest of plan participants and their beneficiaries and with the exclusive purpose of providing benefits to them;
- Carrying out their duties prudently;
- Following the plan documents (unless inconsistent with ERISA);
- Diversifying plan investments; and
- Paying only reasonable plan expenses.

The duty to act prudently is one of a fiduciary's central responsibilities under ERISA. It requires expertise in a variety of areas, such as investments. Lacking that expertise, a fiduciary will want to hire someone with that professional knowledge to carry out the investment and other functions. Prudence focuses on the *process* for making fiduciary decisions. Therefore, it is wise to document decisions and the basis for those decisions. For instance, in hiring any plan service provider, a fiduciary may want to survey a number of potential providers, asking for the same information and providing the same requirements. By doing so, a fiduciary can document the process and make a meaningful comparison and selection. Following the terms of the plan document is also an important responsibility.

The document serves as the foundation for plan operations. Employers will want to be familiar with their plan document, especially when it is drawn up by a third-party service provider, and periodically review the document to make sure it remains current. For example, if a plan official named in the document changes, the plan document must be updated to reflect that change. Diversification – another key fiduciary duty – helps to minimize the risk of large investment losses to the plan. Fiduciaries should consider each plan investment as part of the plan's entire portfolio. Once again, fiduciaries will want to document their evaluation and investment decisions.

With these fiduciary responsibilities, there is also potential liability. Fiduciaries that do not follow the basic standards of conduct may be personally liable to restore any losses to the plan, or to restore any profits made through improper use of the plan's assets resulting from their actions. However, fiduciaries can limit their liability in certain situations. One way fiduciaries can demonstrate that they have carried out their responsibilities properly is by documenting the processes used to carry out their fiduciary responsibilities. There are other ways to reduce possible liability. Some plans, such as

most 401(k) and profit sharing plans, can be set up to give participants control over the investments in their accounts and limit a fiduciary's liability for the investment decisions made by the participants. For participants to have control, they must be given the opportunity to choose from a broad range of investment alternatives.

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. Participants also must be allowed to give investment instructions at least once a quarter, and perhaps more often if the investment option is volatile. Plans that automatically enroll employees can be set up to limit a fiduciary's liability for any plan losses that are a result of automatically investing participant contributions in certain default investments. There are four types of investment alternatives for default investments as described in Labor Department regulations and an initial notice and annual notice must be provided to participants. Also, participants must have the opportunity to direct their investments to a broad range of other options, and be provided materials on these options to help them do so.

However, while a fiduciary may have relief from liability for the specific investment allocations made by participants or automatic investments, the fiduciary retains the responsibility for selecting and monitoring the investment alternatives that are made available under the plan. A fiduciary can also hire a service provider or providers to handle fiduciary functions, setting up the agreement so that the person or entity then assumes liability for those functions selected. If an employer appoints an investment manager that is a bank, insurance company, or registered investment adviser, the employer is responsible for the selection of the manager, but is not liable for the individual investment decisions of that manager. However, an employer is required to monitor the manager periodically to assure that it is handling the plan's investments prudently and in accordance with the appointment

PLAN ADMINISTRATOR

A plan administrator is responsible for determining who is eligible to participate in the plan, determining what benefits are due under the plan, and responding to benefit claims and appeals. Plan administrators also have responsibilities dictated under the Internal Revenue Code (Code) and Employment Retirement Income Security Act of 1974 (ERISA) as follows:

1. Distribution of summary plan description, summary annual reports, and statement of vested benefits to participants and beneficiaries
2. Generally for plans with over 100 participants, engaging an independent qualified public accountant to audit the financial records of the plan
3. Maintenance of plan records for at least six years
4. Determination of whether a domestic relations order is qualified and
5. Providing a written explanation of rollover and tax withholding election options, as well as an explanation of tax options with respect to distributions to recipients.

PLAN TRUSTEE

A trustee's job is to accept funds, manage them prudently and distribute them to beneficiaries. A plan sponsor can either choose individual trustees - usually the owners or officers of the business - or a single institutional trustee, such as an affiliate of a bank, insurance company or other financial institution.

The trustee collects and holds plan assets in trust for the participants. The trustee will also be responsible for managing the plan investments unless the plan expressly provides that the trustee is subject to direction from a named fiduciary or an investment manager. All plan assets must be held in a trust, and a plan trustee must be named. The trustee holds plan assets and is usually responsible for managing the plan's investments, although this function can be subject to the direction of another fiduciary, an investment manager, or plan participants. The plan trustee is usually responsible for processing contributions and investment transactions, preparing financial statements, and disbursing funds to participants or to pay fees and expenses of the trust

** Please Refer to our Contribution Benefit Limits for updated limits.