

401(k) Plans



THOMSON REUTERS

The Guidebook for Employers, Administrators, and Advisors

EBIA

John W. Haine, Esq., Contributing Author and Editor

Stuart C. Harris, Esq., Contributing Author

Peggy D. Lin, Esq., Contributing Author

Printed: May 24, 2021

What's New and Filing Instructions

Enclosed is the 2nd Qtr. 2021 update package for our *401(k) Plans* manual—the authoritative guidebook for employers, administrators, and advisors.

This quarterly update package includes replacement pages for the Outline and Appendix. Please see the filing instructions at the end of this letter for a detailed explanation of what pages to remove and replace in your manual.

Subscription Information

EBIA's *401(k) Plans* manual is updated quarterly.

Before you file this update, please be sure that your book is current. The box at the top of the title page in your binder should say "1st Qtr. 2021 Edition." Once you have determined that the 1st Qtr. 2021 update is in your manual, begin filing the 2nd Qtr. 2021 update, following the instructions in the table below.

Questions? If your title page is from any other quarter, or if you have other questions about your subscription, please contact Thomson Reuters Product Usage Support at (800) 431-9025 or send an email to Checkpoint.productusage@thomsonreuters.com.

We have made numerous changes to the Outline and Appendix. Here are some highlights:

- **Fiduciary Matters**
 - We have updated our discussion in Section XXIV of Prohibited Transaction Exemption (PTE) 2020-02 to reflect DOL guidance explaining the PTE's conditions and the DOL's accompanying "final" interpretation of the five-part test for fiduciary status as it applies to rollover advice. In Section XXV we discuss the DOL's decision not to enforce its recently adopted rules regarding proxy voting and financial factors in investment selection. We also note in Section XXIV some recent cases addressing when service providers may be acting as plan fiduciaries, including a case regarding the use of participant data by a service provider's affiliates, and a case claiming that an investment platform provider was acting as a fiduciary when it charged mutual funds a fee to be included on the provider's platform.
- **Cybersecurity Guidance**
 - Section XII on account theft and cybersecurity has been updated to cover DOL guidance identifying best practices to mitigate cybersecurity risks in plan administration, and offering advice on hiring retirement plan service providers with strong cybersecurity practices.
- **IRS Developments**
 - We have updated Section XI to reflect IRS guidance regarding the temporary partial termination relief included in the Consolidated Appropriations Act, 2021. Section XXVII has been revised to add highlights of the latest Operational Compliance List for 401(k) plans. We cover the IRS's latest list of common VCP submission mistakes in Section XXXV. And we have supplemented our discussions of coronavirus-related distributions and other disaster-related distributions in Section XII (and elsewhere) to note the reporting of those distributions and related recontributions using Form 8915 series forms.

(over, please)

- **ERISA Preemption**
 - We examine the first decision by a federal circuit court considering claims that a state-run automatic-enrollment IRA program is preempted by ERISA (Section II).
- **Appendix Tabs**
 - We have updated and reissued our convenient list of significant DOL subregulatory guidance to add recent items and respond to the reorganization of materials on the DOL’s website.

Filing Instructions for Outline (Volume I):

Take Out & Toss	Insert These Pages	Take Out & Toss	Insert These Pages
Volume I Title Page , dated 1st Qtr. 2021	Volume I Title Page, dated 2nd Qtr. 2021	Outline: pages 1419-1424	pages 1419-1424
Intro Pages/ Table of Contents: pages iii-xiv	pages iii-xiv	Outline: pages 2307-2314	pages 2307-2314
Outline: pages 116A-116B	pages 116A-116B	Outline: pages 2319-2320	pages 2319-2320
Outline: pages 603-604	pages 603-604	Outline: pages 2322A-2322D	pages 2322A-2322D
Outline: pages 731-732	pages 731-732	Outline: pages 2331-2332	pages 2331-2332
Outline: pages 735-736B	pages 735-736B	Outline: pages 2334A-2334D	pages 2334A-2334D
Outline: pages 747-748	pages 747-748	Outline: pages 2407-2412	pages 2407-2412
Outline: pages 1027-1030	pages 1027-1030	Outline: pages 2419-2420	pages 2419-2420
Outline: pages 1122A-1126	pages 1122A-1126	Outline: pages 2445-2448	pages 2445-2448
Outline: pages 1139-1140	pages 1139-1142	Outline: pages 2535-2538	pages 2535-2538
Outline: pages 1326A-1332	pages 1326A-1332	Outline: pages 2618C-2620	pages 2618C-2620
Outline: pages 1335-1338	pages 1335-1338	Outline: pages 2819-2820	pages 2819-2820
Outline: pages 1413-1414	pages 1413-1414	Outline: pages 3539-3540	pages 3539-3540
		Outline: pages 3731-3732	pages 3731-3732
		Index & Glossary Tab: pages 1-20	New Index & Glossary pages 1-20

Filing Instructions for Appendix (Volume II):

Take Out & Toss	Insert These Pages
Volume II Title Page , dated 1st Qtr. 2021	Volume II Title Page, dated 2nd Qtr. 2021
Tab 9: pages 1-6	pages 1-6 [Updated TOC]

EBIA Weekly. Keep up with new legal developments as they occur: Sign up now for the EBIA Weekly, a free email newsletter, at <https://tax.thomsonreuters.com/checkpoint/EBIA>.

EBIA Seminars. EBIA's seminars and webinars cover a variety of employee benefits subjects, including health care reform, cafeteria plans, 401(k) plans, consumer-driven health care, COBRA, HIPAA, ERISA for health and welfare plans, and domestic partners. For more information, please visit Checkpoint Learning at cl.tr.com/CPEbrands/ebia.

Thank you for subscribing to 401(k) Plans!

Vol. XXVII, Issue No. 2 ♦ 2nd Qtr. 2021

401(k) Plans

401(k) Plans (ISSN 15229300) is published quarterly by Thomson Reuters/Tax & Accounting, 121 River Street, Hoboken, NJ 07030. The annual subscription rate is \$795. For subscription information, address changes, or editorial questions, please visit us at <http://support.checkpoint.thomsonreuters.com/ebia>, or call us at (800) 431-9025.

Copyright law prohibits the reproduction or transmission in any form or by any means, whether mechanical, photographic, or electronic, of any portion of this copyrighted publication without the express written permission of Thomson Reuters/Tax & Accounting.

POSTMASTER: send address changes to *401(k) Plans*, Thomson Reuters/Tax & Accounting, P.O. Box 115008, Carrollton, TX 75011-5008.

Periodicals postage paid at Hoboken, NJ, and at additional mailing offices.