

# WHO'S CHECKING THE PERSON WHO CHECKED THE BOXES?

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## *A Lesson In 401(k) Prototype Documents*

Most small to mid-size employers sponsoring a 401(k) plan maintain their plan on a pre-approved prototype document. If you're not familiar with the term *pre-approved prototype plan*, it consists of a "check the box" document called an *Adoption Agreement* that is about 25 pages long and a Basic Plan document that can be up to 100 pages long (small type). These two parts comprise the formal written plan document required under ERISA.

Prototypes are designed as a one-size-fits-all document that is free to an employer who agrees to use the bank or financial institution that sponsors the plan. Someone checks boxes and the result dictates the design and administration of the plan. If the employer changes the plan vendor, it almost always has to adopt the prototype document of the new vendor.

To understand how this might work, imagine the following scenario:

Mudd is the controller of Shortcuts, Inc. The Shortcuts 401(k) plan document is provided by House of Cards, Ltd., the brokerage company that administers the plan and offers the investment platform. House of Cards checked the boxes in the current plan document in 2008 and wants Mudd to sign an updated version recently approved by the IRS. House of Cards likewise filled out the new adoption agreement for Shortcuts. Mudd has three choices:

- 1. Sign his name and hope everything is okay.
- 2. Sit down with the old documents and the new documents – 250 pages – and try to figure out what they mean.

- 3. Hire an attorney or consultant to review the documents with him so that he is sure the terms of the new plan match the way the plan is actually being administered in the payroll department and HR.

Mudd – who is very busy and doesn't know a lot about 401(k) plans – chooses option 1. A year later, Mary walks into his office and says she thinks she's entitled to be in the plan because she worked more than 1000 hours last year. Then June calls him and requests that they sit down and review all of her contributions and the employer matching contributions because she thinks that the company has failed to consider all of her compensation.

Mudd delays answering June and she contacts the U.S. Labor Department because its address is on the Summary Plan Description.

For Shortcut, the time and money saved by relying on House of Cards to fill out their plan document without understanding its terms will be spent tenfold if the DOL decides to audit.

Nobody likes bad surprises. Every company – large or small – needs to make sure its document is reviewed by someone who understands the prototype document and that employees who handle the day-to-day aspects of the plan understand its terms.

In particular, if you are responsible for overseeing your company's 401(k) plan and approving the document, you need to make sure your supervisors review and understand its terms and push for legal review if something is unclear. Otherwise, your name could be Mudd.

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