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## Why Do You Need Plan Risk Profile?

Our research has determined that hundreds of thousands of retirement plans have significant operational flaws. Many people assume that because their plan is with a reputable provider that it's without fault. The fact is, over a third of all plans have significant defects that will potentially enable millions of individuals to recover billions of dollars in investment losses.

### 404(c)

The most urgent issue facing the retirement plan market today is ERISA section 404(c) and "participant directed accounts". ERISA is the "Employee Retirement Income Security Act of 1974". It is the body of law that controls 401k's and other employee retirement plans. Section 404(c) allows plan officers (fiduciaries) to transfer their liability for investment decisions to plan members.

### Participant Directed Accounts

Many of today's retirement plans, 401k and others, have features that enable individual participants to choose where they can invest their money. The choice can be limited to a handful of mutual funds; self-directed brokerage accounts; or in some instances it can be broad enough to include nearly any publicly traded security. These features are referred to as "participant directed accounts".

The key is a combination of these two issues: do plan members have participant directed accounts and does the employer/sponsor have a 404(c) election in place?

The wrong combination of these two issues can spell financial disaster for retirement plan fiduciaries. If plan members have participant directed accounts and the plan sponsor doesn't have a 404(c) election in place, a rude awakening awaits the plan fiduciaries.

In the Enron case an \$85 million settlement was reached because among other things, Enron's plan didn't have a 404(c) election in place and the plan members had participant directed accounts.

### 25 Million Potential Claimants

It may be surprising, but our research has uncovered over 300,000 plans (large and small), covering 25 million individuals that have the same major flaw that was involved in the Enron case. If you were ever a plan member or sponsor, you may want to invest \$12.95 to see if your plan is missing the 404(c) election or has any other problem not known to you.

PlanRiskProfile has analyzed every plan filing going back to 1999; close to 4 million filings. A 6-year statute of limitations applies to ERISA law. Therefore 1999 and subsequent years are still open. Our intent is to help both participants and plan sponsors evaluate their plan's compliance with ERISA.

A customized easy-to-read report ([Sample Report](#)) is created for each annual plan filing. Each report details a plan's compliance, or lack thereof, with ERISA regulations using a proprietary rating system based on the degree of significance each factor might have on the plan or a participant's account. Our reports point out plans that have:

- 404(c) issues
- engaged in transactions with plan insiders
- failed to file complete documents
- failed to make 401k payments when required by law
- failed compliance issues such as the proper valuation of real estate, partnerships, joint ventures and employer securities.
- [Complete list of Risk Factors](#)

### Recover "Dot Com" Losses

If you or a family member had investment losses in your retirement account in 2000, 2001 or 2002 when the dot-com bubble burst, you may be able to recover some or all of those losses in your company's 401(k) or other retirement plan. Our analysis indicates that this opportunity is still available to over 25 million individuals. However, the statute of limitations eventually will expire.

Over \$45 billion in investment losses were reported in government filings for 2000 and 2001 alone. These losses were reported in 400,000 plan filings.

By entering a few simple pieces of information individuals can locate any retirement plan in which they were ever a member and determine if they can potentially recover losses. Plan sponsors can enter the same information to review their plans and determine their exposure.

We can also assist you in finding professionals who can advise you regarding an appropriate course of action for problems identified within your plan.

Despite the efforts of experienced professionals over one third of all retirement plans have significant operational flaws. Some of these flaws will entitle millions of plan members to recover investment losses in their accounts.

Do not presume that because your plan is with a reputable provider, or that yours is with a large employer, that the plan is without fault. The Enron case disproves both of these assumptions.

We analyzed plan filings using over 90 different risk factors that could affect a plan's status or a participant's account value. These include various compliance and asset valuation issues.

### **Lawsuits: 12,000 and Climbing**

Since 2001, US government agencies have initiated over 12,000 lawsuits against plan sponsors who've failed to adhere to ERISA guidelines. Plan participants have also initiated thousands of suits claiming damages for failure to comply with ERISA regulations. Sponsors and participants need to pay close attention to those factors that could affect their plans.

Plan Risk Profile was created to help individual retirement plan members and plan sponsors evaluate their retirement plans' compliance with the complex set of rules and regulations known as ERISA (The Employee Retirement Income Security Act of 1974).

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## **About PlanRiskProfile.com**

[Send e-mail to PlanRiskProfile.com](#)

PLEASE BE ADVISED, THAT PLAN RISK PROFILE IS NOT INTENDED TO PROVIDE AND DOES NOT PROVIDE ANY LEGAL ADVICE TO ANY SPECIFIC USER OF THE PRODUCT.

The product is intended to assist plan participants, sponsors and professionals in consultation with their legal representatives in the design, development and management of "qualified plans".

The underlying data found in PlanRiskProfile.com comes directly from filings of IRS Form 5500. All of the Form 5500 data is publicly available and obtained under the "Freedom of Information Act". We have not manipulated or changed the Form 5500 data in any way. Additional information in the PlanRiskProfile reports is also derived from the IRS Form 5500 data.

PlanRiskProfile.com is a division of Larkspur Data Resources, Inc. Larkspur Data Resources has been in the business of providing retirement plan and employee benefit plan information to the financial services industry for the past 12 years.

"Plan Risk Profile" is intended to assist employees, employers and professionals who work with retirement plans in their efforts to remain compliant with ERISA rules and regulations.

PlanRiskProfile reports are a proprietary compilation of data derived from annual filings of retirement plan reports on IRS Form 5500.

Plan participants should be the primary beneficiary of the Plan Risk Profile product as ERISA regulations clearly state that the formation of all Employee Retirement Plans are for the exclusive benefit of employees and their beneficiaries.

Employees (plan participants) have the right to know that their retirement assets are working for their exclusive benefit and are being properly managed.

PlanRiskProfile.Com is a risk evaluation tool that can also help plan sponsors evaluate their retirement plan's compliance with ERISA regulations.

It's in your best interest to know where you stand, either as employer, plan participant or professional advisor. The costs and risks associated with faulty plan design and failure to adhere to ERISA regulations can be substantial.

Go to [SEARCH](#) and quickly locate any employer or group of employer plans.

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Plan name: **SAMPLE PLAN DATA**

<b>Sponsor Name</b>	SAMPLE PLAN DATA	<b>Sponsor Signator</b>	GEORGE JETSON CFO
<b>Mail Address</b>	ONE PARKWAY WEST	<b>Admin Signator</b>	GEORGE JETSON CFO
<b>City-State-Zip</b>	WESTVILLE TX 75063	<b>Administrator</b>	SAME
<b>Sponsor Phone</b>	(999) 999-9999		
<b>Plan Year End</b>	December 2002	<b>Active Participants</b>	391
<b>Assets at Year End</b>	\$4,917,077	<b>Total Participants</b>	450

### Plan Features

Profit Sharing Plan  
Total Participant-Directed Account Plan  
401(k) Feature Plan  
401(m) Arrangement  
Member of a Controlled Group

### Schedules

Schedule R  
Schedule T indicated  
Schedule SSA indicated  
Schedule H indicated  
Schedule D indicated  
Schedule P indicated

### Risk Factors

**10** Per plan filing the plan did not have a 404(c) election in place and plan members had participant directed accounts. Plan members may seek reimbursement for investment losses. Plan sponsor and fiduciaries may be held personally liable for losses incurred by plan members. Plan members and plan sponsors should seek professional counsel where these circumstances exist.

**3** Per plan filing the plan's CPA issued a "Disclaimer" opinion. This may indicate there is a problem with the plan. The reason could be anything from poor plan management to missing plan assets. Plan participants should inquire as to the reason behind the Disclaimer Opinion.

**2** Per plan filing the plan has a "Total Participant-Directed Account" feature. Per an amicus brief filed in the Enron case by the DOL, plan fiduciaries are responsible for participant-directed investments unless the plan has a properly executed 404(c) election in place. Absent the 404(c) election, plan fiduciaries retain full responsibility for all investment losses including those directed by a plan participant. Plan members should seek professional counsel where appropriate.

**2** Per plan filing the plan has a 401(k) feature. 401(k)'s come with a multitude of regulations and administrative burdens. Numerous features, benefits and responsibilities can be transferred to plan participants or retained by the plan sponsor. The management of a company 401(k) plan should be delegated to knowledgeable professionals. These plans should be evaluated in conjunction with other risk factors such as 404(c) and participant direction of plan investments.

**2** Per plan filing the plan has participants who are separated from service with deferred vested benefits and/or account balances. Plan sponsors should consider the cost and liability associated with retaining former employee accounts. Plan members who are no longer employed or separated from the plan sponsor should ensure that Schedule SSA was included with the annual filing. The information reported on Schedule SSA is given to the Social Security Administration, which in turn provides it to plan participants when they file for Social Security benefits.

**2** Plan filed Schedule SSA indicating there are former employees with deferred vested benefits. Plan sponsors should consider the cost and liability associated with retaining former employee accounts. The information reported on Schedule SSA is given to the Social Security Administration, which in turn provides it to plan participants when they file for Social Security benefits.

**1** Per plan filing this is a Profit Sharing Plan subject to the regulations of IRS code section 401(a). Code section 401(a) is the primary body of law that enables an employer to establish a trust for the benefit of its employees, which is exempt from taxation on its income, and entitles the employer to take income tax deductions for

contributions to the trust. Section 401(a) consists of a complex set of rules and regulations that must be complied with on an ongoing basis. Compliance with code section 401(a) rules and regulations is imperative to a plan maintaining its tax-exempt status.

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**Trustee/Custodian**

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