**Sample documents**

**Principal® Deferred Comp – Select Reward (Tax Exempt)**

**(A lump-sum bonus paid upon cliff vesting)**

*[****Forward to Counsel:*** *These sample documents have been prepared as a guide to assist attorneys. They cannot be used as final documents. Clients must seek legal counsel to review the documents for the client’s particular circumstances. The client’s attorney is ultimately responsible for creation of the agreements necessary to implement the arrangement. The use of these documents does not create an attorney-client relationship between the client and Principal Financial Group or any Principal employee]*

Enclosed are two documents for review by Client’s counsel: (1) a **Sample Board Resolution** establishing the Principal Deferred Comp – Select Reward (Tax Exempt) arrangement (a 457(f) plan); and (2) a **Sample Principal Deferred Comp – Select Reward (Tax Exempt) Agreement**. Requirements concerning the filing of a “top hat” letter are explained below.

The proper context for use of this sample agreement is a fact pattern where a nonprofit or tax-exempt employer desires to offer a single payment financial reward to a key executive for remaining with the employer as a full-time employee for a specific period of time. This time frame might, but most often does not, extend until the planned retirement of the key executive. The options for measuring the amount of the lump-sum bonus are discussed in Section 5 of the sample document.

Although the plan is a deferred compensation arrangement in a general sense, it’s designed to fit within the short-term deferral exception to the definition of deferred compensation under IRC Section 409A guidance. **The arrangement should also be structured to require payment in the same tax year as vesting of the benefit. This will allow the lump-sum benefit to be considered taxable income in the same tax year as receipt of the benefit under IRC Section 457(f).** **For these reasons**, **no vesting prior to the Service Date can be part of the arrangement.** In addition, there should be **no option** for the executive **to defer** the lump-sum bonus to a later date**, to accelerate** the payment, or **to change the form of payment**.

Some, but not all, deferred compensation plans are considered pension plans for ERISA purposes. ERISA defines a pension plan to be any plan, fund, or program established or maintained by an employer which (1) provides retirement income to employees or (2) results in a deferral of income for periods extending to the termination of covered employment or beyond.

If the plan falls within the ERISA definition of a pension plan, the plan should operate as a “top hat” plan with the eligible group of executives not extending beyond “a select group of management or highly compensated employees.” (If the eligible group of employees of an ERISA pension plan extends beyond that group, a broader range of ERISA requirements that apply to qualified plans would be triggered.) Such a plan should also be considered unfunded (meaning that the promised benefits are not secured by employer assets away from employer’s general creditors). Such plans also require a one-page “top hat” plan statement to be electronically filed through the U.S. Department of Labor website (easily found through an online search for Top Hat Statement/U.S. Department of Labor). The one-page DOL form must be completed and electronically filed by the employer within 120 days of the plan’s effective date. Filing details are provided at the end of the sample agreement.

**Resolution establishing**

**A Principal® Select Reward Plan – Tax Exempt**

I, (Name) , Secretary of , an organization duly organized and existing under and by virtue of the laws of the State [Commonwealth] of (hereafter called the “Organization”), do hereby certify;

That on the day of , 20 , a meeting of the Board of Directors of said Organization was duly called and held at (address) , at which a quorum was present, and the following resolution was unanimously adopted by said Board of Directors, to wit:

**Whereas**, the Organization now desires to establish a Principal Select Reward Plan – Tax Exempt (a 457(f) plan) (hereafter, the “Plan”) for certain key managerial employee(s) [and board members] (hereafter called “Executives”) and to maintain such Plan in compliance with the Internal Revenue Code and further guidance published by the Internal Revenue Service;

**Therefore, be it resolved**, that this Organization hereby establishes a Principal Select Reward Plan – Tax Exempt as an executive benefit for certain key managerial employees, in accordance with the following:

1. **Purpose**. To establish a Principal Select Reward Plan – Tax Exempt (a 457(f) plan), which complies with IRS rules for such plans, for the Organization's eligible Executives, and that provides a lump-sum bonus upon completion of a service requirement or upon becoming disabled.

2. **Eligibility**. The Plan is available for certain key managerial Executives of the Organization, as determined by its Board of Directors.

3. **Agreement**. The Organization shall enter into a written agreement with each eligible Executive.

4. **Amendment and Termination**. The Plan shall be subject to any future amendment or termination at any time by the Board of Directors.

5. **Financing**. The Board of Directors hereby authorizes the Organization’s officers to take whatever action may be appropriate to make informal preparations to pay benefits under this plan, including the purchase of an employer-owned life insurance policy.

**In witness whereof,** I have hereunto set my hand and the seal of the Organization in the City of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, State [Commonwealth] of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, on the day of
 , 20 .

(Formalities of execution will

be governed by \_\_\_\_\_\_\_\_\_ law and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

should be in accordance therewith.) (Signature of Secretary)

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Name of Secretary - print)

**Sample agreement**

**Principal® Deferred Comp – Select Reward Plan – Tax Exempt
(A lump-sum bonus paid upon cliff vesting)**

This Agreement entered into this day of , 20 , by and between
 , an organization having its principal office in (City) ,
 (State) , hereafter called the "Organization”, and (Name) , a resident of (County of Residence) County, (State) , hereafter called the "Executive".

**Witnesseth:**

**Whereas,** the Executive has been employed by the Organization for \_\_\_ years and is now employed by the Organization in the capacity of (Title of Position);

**Whereas**, the Organization desires to retain the services of the Executive in an executive capacity and is aware that it would suffer financial loss should the Executive enter the employment of another company or organization; and,

**Whereas**, the Organization wishes to offer an inducement to the Executive to remain an employee of the Organization; and,

**Whereas,** the Organization agrees to pay the Executive a lump-sum bonus upon fulfillment of certain conditions as stated herein.

**Now, therefore,** in consideration of the services heretofore rendered and to be rendered by the Executive and the mutual covenants contained herein, the parties hereto agree as follows:

**1. Reward bonus.** If the Executive remains continuously employed by the Organization on a full-time basis until (date) , the “Service Date”, then the Organization shall pay to the Executive, **no later than** 31 days after reaching the Service Date, a Reward Bonus, payable in the form of a lump sum, in an amount determined in the manner described in Paragraph 5 of this Agreement, as of the Service Date. The Executive shall have no right at any time to accelerate payment or elect an alternate payment date or to otherwise defer receipt of the lump-sum payment.

 *[****Note to Counsel****: This arrangement is designed to qualify as an exception to the definition of deferred compensation under IRC Section 409A and Reg. §1.409A-1(b)(4). In order to meet the exception qualification criteria, benefits that might otherwise be considered ‘deferred compensation’ will not be treated as deferred compensation under IRC Section 409A if the benefit is paid no later than two and one-half months after the close of the tax year in which the participant becomes eligible to receive the benefit. This sample agreement employs a shorter time frame for payment than is required by the final regulations. This approach is incorporated here for both the employee and employer’s mutual convenience. An employer may want to consider using an 11/30 or earlier end date for the service period. This should permit the necessary time for payment of the benefit, payment of payroll tax, and income-tax withholding to be completed in the same calendar tax year as vesting. Failure to pay the bonus on a timely* basis *may generate significant tax penalties for the participant. In addition, to facilitate compliance with IRC Section 409A, no opportunity is provided for further deferral or acceleration of benefit payments, and the participant is not provided the opportunity to change the form of payment.]*

**2. Preretirement disability benefit.** If the Executive becomes disabled prior to the Service Date specified above in Paragraph 1, and while in the full‑time employment of the Organization, the Organization shall pay to the Executive, within 31 days of the determination of disability, a lump-sum bonus

[equal to a prorated percentage share of the lump-sum bonus promised to the Executive in Paragraph 5 upon the Executive reaching the Service Date stated in Paragraph 1. The pro rata percentage shall be calculated by dividing the number of completed years of work performed by the Executive from the date of this Agreement to the determination of disability date, by the number of years from the date of this Agreement to the Service Date stated in Paragraph 1.]

OR

[equal to the balance in the Deferred Compensation Account as of the determination of disability date determined in the manner described in Paragraph 5.]

*[****Note to Counsel****: If the employer chooses a benefit based on a specified future lump-sum bonus (Alternative One of Paragraph 5), the first parenthetical above should be used. If the employer chooses a benefit based on a Deferred Compensation Account value (Alternative Two of Paragraph 5), the second parenthetical above should be used.]*

The Executive shall have no right at any time to elect an alternate payment date or to otherwise defer receipt of the lump-sum payment.

Disability, for purposes of this Agreement, shall mean the Executive has qualified for long-term disability benefits under any insured long-term disability plan sponsored by the Organization. If the Executive is not participating in a Company long-term disability plan, disability shall mean that the Executive has qualified for Social Security Disability Income benefits.

**3. Bonus upon termination without proper cause.** If the Executive is terminated by the Organization without proper cause prior to the Service Date, the Organization shall pay to the Executive, within 31 days of the termination date, a lump-sum bonus

 [equal to a prorated percentage share of the lump sum bonus promised to the Executive in Paragraph 5 upon the Executive reaching the Service Date stated in Paragraph 1. The pro rata percentage shall be calculated by dividing the number of completed years of work performed by the Executive from the date of this Agreement to the termination of employment date, by the number of years from the date of this Agreement to the Service Date.]

 OR

 [equal to the balance in the Deferred Compensation Account as of the termination of employment date determined in the manner described in Paragraph 5.]

*[****Note to Counsel****: If the employer chooses a benefit based on a specified future lump-sum bonus (Alternative One of Paragraph 5), the first parenthetical above should be used. If the employer chooses a benefit based on a Deferred Compensation Account value (Alternative Two of Paragraph 5), the second parenthetical above should be used.]*

 The Executive shall have no right at any time to elect an alternate payment date or to otherwise defer receipt of the lump-sum payment.

 Termination without proper cause includes loss of employment due to:

1. Reduction in the work force or elimination of position;
2. Layoff; or
3. Organization’s decision to terminate Executive for any other reason, except a termination for proper cause as provided in Paragraph 4 below.

**4. Forfeiture of rights to bonus.** If the Executive voluntarily terminates full‑time employment with the Organization, or if the Executive is terminated for proper cause by the Organization, prior to the Service Date as stated in Paragraph 1, he or she shall forfeit any and all right to the bonus described in Paragraph 1. In addition, no benefit shall be payable under this agreement upon the death of the participant. Benefits payable due to the Executive’s disability shall be governed under Paragraph 2 (above). Benefits payable due to termination without proper cause shall be governed under Paragraph 3 (above).

 Termination for proper cause shall mean termination as a result of:

1. Conviction of any felony;
2. Failure to perform assigned duties with reasonable skill and diligence;
3. Gross misconduct;
4. Failure to comply with the Organization’s policies and procedures.

*[****Note to Counsel:*** *As stated above, this sample agreement* ***does not provide a death benefit upon the death of the Executive****. In lieu of a death benefit under this agreement, an employer and Executive will often enter into a separate split dollar agreement whereby the employer will permit the Executive to name a beneficiary(ies) for a designated portion of the death benefit of a specified life policy owned by the employer on the life of the Executive. A sample split dollar agreement and benefit instructions are available through Principal.* *Alternatively, the employer and Executive may enter into a Death Benefit Only agreement. A sample Death Benefit Only agreement is also available through Principal.]*

**5.** **Determination of bonus.**

*[****Note to Counsel:*** *This sample agreement allows for the employer to choose between a future lump-sum bonus specified when the agreement is entered into or a future lump-sum bonus equal to a deferred compensation account balance tracked by the employer. The choice is important. A promise of a specified lump sum offers simplicity, and certainty to the Executive. However, if the employer states a specific lump sum, and the asset used to informally fund the promised payment does not grow to that value, the employer will need to make up any shortfall. In the alternative, a Deferred Compensation Account, as described below, promises the amount to which the assets in that account grow with contributions to the account by the employer subject to employer discretion. The distinction also has accounting implications for the employer, because the employer may be able to treat the asset informally funding the promise as equal in value to the amount of the promise.]*

**Determination of bonus alternative one: Specified Lump-Sum Bonus**

Upon vesting under this Agreement, the lump-sum bonus shall be $\_\_\_\_\_\_\_\_. If the Organization chooses to purchase, own, and be the beneficiary of life insurance on the life of the Executive to informally fund its obligation under this Agreement, the Executive agrees to provide consent to be insured and cooperate in all manner to obtain the agreed upon life coverage.

**Determination of bonus alternative two: Deferred Compensation Account**

The Organization shall maintain a special account on its books hereafter referred to as the Deferred Compensation Account. The Organization may credit annual contribution amounts to the Deferred Compensation Account at its discretion. The benefit payable to the Executive upon vesting under this Agreement will be measured by the value of the Deferred Compensation Account.

*[****Note to Counsel****: If Alternative Two is selected, the parties to the Agreement should select one of the three optional paragraphs below. If Alternative One is selected, an optional paragraph is not necessary or appropriate.]*

[The Deferred Compensation Account shall be an amount equal to the cash value of a hypothetical Principal VUL Income policy on the life of the Executive assuming the amounts credited into the Deferred Compensation Account have been contributed as premium into such a policy. The premium amounts so credited shall deemed to be allocated into available Divisions, the Fixed Account, and/or the Fixed Dollar Cost Averaging (DCA) Account as defined in the Principal VUL Income policy as agreed upon by the Organization and Executive. The life insurance face amount and death benefit option shall also be as agreed upon by the Organization and Executive.]

[The Deferred Compensation Account shall be an amount equal to the cash value of a hypothetical Principal Index Universal Life Accumulation policy on the life of the Executive assuming the amounts credited into the Deferred Compensation Account have been contributed as premium into such a policy. The premium amounts so credited shall deemed to be allocated into one or more of the indexed-linked accounts and/or to the fixed account as agreed upon by the Organization and Executive. Life insurance face amount, death benefit option, and other policy feature choices shall also be as agreed upon by the Organization and Executive.]

[The Deferred Compensation Account shall be an amount equal to the cash value of a hypothetical Principal Index Universal Life Flex policy on the life of the Executive assuming the amounts credited into the Deferred Compensation Account have been contributed as premium into such a policy. The premium amounts so credited shall deemed to be allocated into one or more of the indexed-linked accounts and/or to the fixed account as agreed upon by the Organization and Executive. Life insurance face amount, death benefit option, and other policy feature choices shall also be as agreed upon by the Organization and Executive.]

*[****Note to Counsel****: If Alternative Two is selected, the Agreement should include the following three paragraphs. If Alternative One is selected, the following three paragraphs are not necessary or appropriate.]*

The Organization may, but is not required under this Agreement to, purchase and fund a Principal life policy. If such policy as described above is purchased and funded, the Deferred Compensation Account shall be an amount equal to the cash value of the issued policy. The policy shall be owned by the Organization and shall be subject to the general creditors of the Organization. The Executive shall not have a secured or preferred interest in such policy for any amounts owed to the Executive under this Agreement. The cash value of the policy shall simply be a measure of the value of the Deferred Compensation Account.

If the Organization chooses to purchase, own, and be the beneficiary of life insurance on the life of an Executive, the Executive agrees to provide consent to be insured and to cooperate in all manner to obtain the agreed upon life coverage.

If such policy is not purchased and funded by the Organization, the Organization is responsible for determining the hypothetical cash value of such hypothetical policy based on the factors described above, the resulting value of which shall equal the Deferred Compensation Account.

**6. Claims procedure.** The following claims procedure shall apply to the Plan.

**A.** **Filing of a claim for benefits.** The Executive shall make a claim for benefits by delivering a written request to the Plan Administrator.

**B.** **Claim approval or denial.** With respect to a claim for benefits, the Plan Administrator shall review and make decisions on claims for benefits. The Plan Administrator shall have complete and sole discretionary authority to determine eligibility for benefits and to construe the terms of the Plan.

**C.** **Notification to claimant of decision.** If a claim is wholly or partially denied, notice of the decision, meeting the requirements of Paragraph D following, shall be furnished to the claimant within a reasonable period of time after the claim has been filed.

**D.** **Content of notice.** The Plan Administrator shall provide to any claimant whose claim is denied in whole or in part a written notice setting forth, in a manner calculated to be understood by the claimant, the following:

**(1)** The specific reason or reasons for the denial or partial denial;

**(2)** Specific reference to pertinent Plan provisions on which the denial is based;

**(3)** A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and

**(4)** An explanation of the Plan's claim review procedure, as set forth in Paragraphs E and F following.

**E. Review procedure.** The purpose of the review procedure set forth in this paragraph and in Paragraph F following is to provide a procedure by which a claimant under the Plan may have a reasonable opportunity to appeal a denial of a claim and request a full and fair review. To accomplish that purpose, the claimant or a duly authorized representative:

**(1)** May request a review by written application to the Plan Administrator;

**(2)** May review pertinent plan documents or agreements; and

**(3)** May submit issues and comments in writing.

 A claimant (or duly authorized representative) shall request a review at any time within sixty (60) days by filing a written application after receipt by the claimant of written notice of denial of his or her claim.

**F. Decision on review.** A decision on review of a denial of a claim shall be made in the following manner:

**(1)** The decision on review shall be made by the Plan Administrator, who may in its discretion hold a hearing on the denied claim. The Plan Administrator shall make its decision promptly, unless special circumstances (such as the need to hold a hearing) require an extension of time for processing, in which case a decision shall be rendered as soon as possible, but no later than one hundred twenty (120) days after receipt of the request for review.

**(2)** The decision on review shall be in writing and shall include specific reasons for the decision, written in a manner calculated to be understood by the claimant, and specific references to the pertinent Plan provisions on which the decision is based.

**G.** For purposes of implementing this claim procedure (but not for any other purpose)
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is hereby designated as the Named Fiduciary and Plan Administrator of this Plan and Agreement.

**7. Other benefits.** Nothing contained herein shall in any way limit the Executive's right to participate in or benefit from any pension, profit‑sharing, or other retirement plan for which said Executive is or may become eligible by reason of his or her employment with the Organization. Nor shall this Agreement replace any contract of employment, whether oral or written, between the Organization and the Executive, but shall be considered a supplement thereto. Further, nothing contained in this agreement shall preclude the Executive from participating in a Split Dollar or other Welfare Benefit program made available by the Organization, which provides a life insurance death benefit.

**8. Unfunded agreement.** Nothing contained in this Agreement and no action taken pursuant to the provisions of this Agreement shall create or be construed to create a trust of any kind or a fiduciary relationship between the Organization and the Executive, his or her designated beneficiary or any other person, except as provided herein with regard to the claims procedure. Any Organization funds which may be invested by the Employer to assist in financing the contractual obligations under the provisions of this Agreement shall continue, for all purposes, to be a part of the general funds of the Organization and no person other than the Organization shall, by virtue of the provisions of this Agreement, have any interest in such funds. To the extent that the Executive acquires a right to receive payment from the Organization under this Agreement, such right shall be no greater than the right of any unsecured general creditor of the Organization.

**9. Payment of benefits.** All payments provided for by this Agreement shall be made in conformity with the regular payroll procedures in use by the Organization at the time of payment.

**10. Leave of absence.** The Organization may, in its sole discretion, permit the Executive to take a leave of absence for a period not to exceed one year. During this time, the Executive will still be considered an employee of the Organization for purposes of this Agreement.

**11. Withholding.** Notwithstanding any of the foregoing provisions hereof, the Organization may withhold from any payment to be made hereunder such amount as it may be required to withhold under any applicable federal, state or other law, and transmit such withheld amounts to the applicable taxing authority. Executive agrees to cooperate with the Organization in any manner necessary, which will enable the Organization to fulfill its lawful withholding responsibilities.

*[****Note to Counsel:*** *If a life insurance policy is purchased on the life of the plan participant to informally support payment of the employer obligation under the plan, the employer and plan participant may reach agreement at the time of benefit distribution to have the life insurance policy distributed to the plan participant in lieu of a cash payment. In such cases, the fair market value of the policy is taxable income to the employee and the employer may need to withdraw funds from the life policy to cover the employee’s portion of payroll (FICA) tax and employee income tax withholding requirements prior to the transfer of the life policy. Fair market value of a life policy may be determined under Revenue Procedure 2005-25 and other IRS guidance.]*

**12. Governing law.** This Agreement shall be governed and construed in accordance with the laws of the State [Commonwealth] of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**13. Binding effect of agreement.** This Agreement shall be binding upon the parties hereto, their heirs, assigns, successors, executors, and administrators. In the event the Organization becomes a party to any merger, consolidation, or reorganization, this Agreement shall remain in full force and effect as an obligation of the Organization or its successors in interest.

**14. Counterparts.** This Agreement may be executed in an original and any number of counterparts, each of which shall constitute an original of one and the same instrument.

**15. No trust.** Nothing contained in this Agreement and no action taken pursuant to the provisions of this Agreement shall create or be construed to create a trust of any kind, or a fiduciary relationship between the Organization and the Executive, his or her designated beneficiary, or any other person, except as provided in Paragraph 8 hereof in regard to claims procedures.

**16. Nonassignable.** None of the payments provided for by this Agreement shall be subject to seizure for payment of any debts or judgments against the Executive or any beneficiary; nor shall the Executive or any beneficiary have any right to transfer, modify, anticipate or encumber any rights or benefits hereunder; provided, however, that the undistributed portion of any benefit payable hereunder shall at all times be subject to set‑off for debts owed by the Executive to the Organization.

**17. Incapacity of beneficiary.** If the Plan Administrator shall find that any person to whom any payment is payable under this Agreement is unable to care for his or her affairs because of illness or accident, or is a minor, any payment due (unless a prior claim therefore shall have been made by a duly appointed guardian, committee, or other legal representative) may be paid to the spouse, a child, parent, or brother or sister, or to any person deemed by the Organization to have incurred expense for such person otherwise entitled to payment, in accordance with the applicable provisions of this Agreement. Any such payment shall be a complete discharge of the Organization’s liabilities under this Agreement.

**18. Entire agreement.** This Agreement supersedes all other agreements previously made between the parties relating to its subject matter, if any. There are no other understandings or agreements.

**19. Notice.** Any notice to be delivered under this Agreement shall be given in writing and delivered, personally or by certified mail, postage prepaid, addressed to the Organization at its last known address.

**20. Non-waiver.** No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right.

**21. Headings.** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

**22. Amendment.** This Agreement may be amended or revoked at any time in whole or in part by the mutual consent of the Organization and the Executive. Any amendment shall comply with Internal Revenue Code (IRC) Section 409A.

**23. IRC Section 409A compliance.** The plan administrator shall administer and operate this plan in a manner consistent with IRC Section 409A, and any subsequent guidance issued thereunder, and in a manner which avoids taxation to the Executive prior to attainment of the Service Date, and further, in a manner which avoids IRC Section 409A penalties for the Executive once the Service Date has been reached. Specifically, in order to achieve IRC Section 409A compliance, the Organization agrees that any lump-sum benefit, due and payable under any of the terms of this agreement, shall be paid **no later than** the first day of the month next following occurrence of the triggering event (attainment of the Service Date, Termination Without Proper Cause, or Disability), or 31 days after a triggering event occurs.

**In witness whereof,** the parties hereto have set their names, the Organization through its duly authorized officer, the day and year first above written.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Name of Organization

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature of Authorized Officer) (Signature of Executive)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Name of Authorized Officer – print) (Name of Executive – print)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Date signed) (Date signed)

**Nonqualified deferred compensation plans**

**DOL “top hat” statement electronic filing instructions**

As a permitted alternative to meeting the reporting and disclosure requirements under Part I of Title I of the Employee Retirement Income Security Act of 1974, the Department of Labor (DOL) permits plan administrators of “top hat” pension plans to file a “top hat” statement. A “top hat” plan, for this purpose, is an unfunded ERISA pension plan maintained for **a select group of management or highly compensated employees**, specified in Department of Labor Regulations, 29 CFR §2520.104‑23.

The DOL requires a “top hat” plan statement to be filed electronically. “Top hat” plan statements filed via U.S. Mail are no longer accepted. The “top hat” statement must be filed within 120 days of the plan’s inception.

1. Go to: https://www.dol.gov/agencies/ebsa/employers-and-advsers/plan-administration-and-compliance/reporting-and-filing/tophat-plan-filing-instructions.

***Comment****: A Google Search of “DOL website for top hat filing” will also get you to the proper DOL website.*
2. Read the instructions provided, then click “File Your Top Hat Plan Statement.”
3. Provide requested information.
4. In the plan information section, enter the number of plans for which you are filing statements and click submit. You will then see the appropriate number of boxes for you to enter each plan’s information on eligible participants.

***Comment****: Generally, a single plan is being established with one or more eligible participants.*
5. Review information.
6. Submit (file) information.
7. Save and print a copy of the DOL Confirmation Statement for your file.