RETIREMENT PLAN UPDATE

Quarter 3, 2010

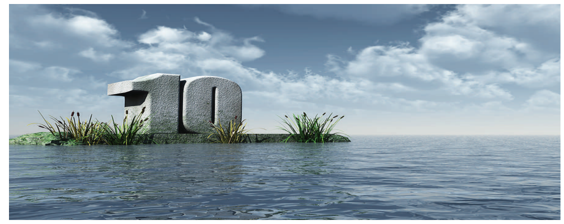
Top 10 Issue

Did you know?

We are the proud winner of the NorthCoast 99 award for the second year in a row. The North-Coast 99 award honors the 99 great work-places for top talent in north-east Ohio.

Inside this issue:

Welcome to our first ever top ten issue! We'll explore lots of different Top 10 lists that relate to retirement plans.



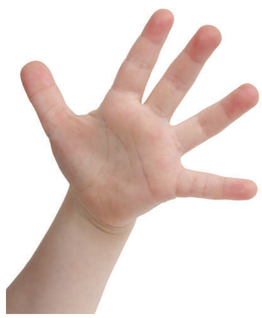
Top 10 Mistakes Made by Plan Sponsors

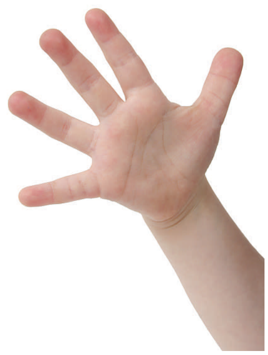
1. **Not Knowing You Are a Fiduciary** - Generally, a fiduciary is anyone with discretionary authority or control over a plan or the plan's investments. A Plan Sponsor can never delegate all fiduciary responsibility, but may be able to shift some by hiring a co-fiduciary.
2. **Not Knowing Your Responsibilities**- A Fiduciary must discharge its duties in accordance with the Exclusive Benefit Rule— the plan must be maintained "solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits...and defraying reasonable expenses of administering the plan."
3. **Not Monitoring Service Providers Regularly–** ERISA requires that a fiduciary discharge its duties "with the care, skill, prudence and diligence under the circumstances that a prudent man acting in a like capacity and familiar with such matters would use."
4. **Not Having an Investment Policy Statement** - The Investment Policy Statement will describe the intent of the plan and how the plan's money should be managed. It is a roadmap for making investment decisions.
5. **Setting Responsibilities on "Auto Pilot"** - Unfortunately, fiduciary duties aren't something you perform one time and forget about. All aspects of the plan must be monitored regularly.
6. **Not Establishing a Framework for Committees**—Hold regular meetings and provide documentation that employs sound decision making.
7. **Not Providing Education for Plan Participants**—This plan may be the only retirement vehicle for many employees. The sponsor should address each individual's retirement goals and pursue an "outcome based approach" to retirement.
8. **Not Knowing You're Legally and Personally Liable—**Fiduciaries are responsible for all of the above and can be held personally responsible for lapses in their duties.
9. **Not Insuring the Plan Fiduciaries**—Different from the required ERISA Bond, there is also optional Fiduciary liability insurance available to cover claims and losses arising out of claimed breaches of fiduciary duty
10. **Not Getting Outside Expertise When Needed**— In 2010, fiduciaries should benchmark plan administration/procedures, conduct a compliance review and evaluate plan assets including the associated investment fees. New rules regarding the complete transparency of all plan fees will enhance this process. Hire experts to help improve the process!

Top 10 Compliance Issues in 401(k) Plans

Recently, our own Jan Davis was asked to speak at a local Employee Benefits seminar regarding compliance issues in 401(k) plans. Here are the highlights of her presentation regarding the top 10 issues the IRS indicates are the most common errors in 401(k) plans:

1. **Has your plan document been updated within the past few years?** Every retirement plan must have a plan document and the document must be kept up to date for current law. Recent legislation requires that plan documents be completely restated every 5-6 years. Also, most years there is at least one required amendment that must be added to the plan document to keep it up to date. Work with a reputable document provider and make sure that you're "on the list" for document services.
2. **Have you deposited the employee 401(k) deferrals in a timely manner?** Small plans (under 100 participants) must segregate employee 401(k) deferrals and loan repayments within 7 business days. Large plans must deposit "as soon as possible." If the assets are not segregated in a timely, manner, then a prohibited transaction has occurred (which results in excise tax and extra reporting requirements).





3. **Does the plan have an ERISA/Fidelity bond?** A fidelity bond covers plan officials and protects the plan from losses due to fraud or dishonesty. Generally, a fidelity bond should be equal to 10% of the plan assets. Oddly, there is no penalty for not having a bond, but it is a requirement.
4. **Are the plan's operations based on the terms of the plan document?** As mentioned in #1, each plan must have an up to date plan document. Further, this plan document actually governs how the plan must be administrated. It explains most plan activities including eligibility, vesting, compensation definitions, contributions and forfeitures, distributions, loans, and much more. Not following the terms of the document can disqualify the plan, resulting in penalties or taxation of all plan accounts.
5. **Are top heavy contributions being made if needed?** If more than 60% of the plan assets belong to key employees (basically, owners and officers with high compensation), the plan may be top heavy and require at least a 3% contribution to all plan participants. The calculation has nuances and is not easy to prepare quickly, so make sure you know the top heavy status of your plan.
6. **Have all eligible employees been given the opportunity to defer?** The plan document will define who is eligible to defer 401(k) dollars into the plan. Each person who is eligible must be offered the opportunity to defer by completing an election form. It is important to have those employees who choose not to defer complete an election form so you can prove that they were made the offer.
7. **Were the proper spousal signatures obtained?** Some plans have Qualified Joint and Survivor Annuity language. This means that the spouse must approve any distributions from the plan when the account balance is over $5,000. If the spouse doesn't approve the distributions, then the plan is still liable to the spouse for the amounts distributed.
8. **Has the plan satisfied all non-discrimination testing?** Every year, the plan must pass a series of tests to prove that the plan is not discriminatory. Make sure the tests are being performed for your plan and always provide correct data to your TPA to make sure that the tests will be accurate.
9. **Were employer matching contributions computed and allocated correctly?** The plan document will define how the match should be allocated—what compensation to use, who is eligible for the match, the applicable formula and the eligible participants—and all of those questions must be answered correctly to ensure an accurate allocation.
10. **Was there a partial plan termination?** If there was an employer initiated action that resulted in a 20% decrease in plan participation, then a partial termination may have occurred. In a plan termination, all participants affected by the action will need to be 100% vested.

Top 10 Tips to Electronically File Form 5500

As we've reported many times, all 2009 Form 5500s must be filed electronically. Here are some tips:

1. Before a plan can file a Form 5500, the signer must register for credentials on the Department of Labor's (DOL) website (www.efast.dol.org)
2. It is important to choose "Filing Signer" as your role when signing up because this cannot be changed.
3. Make sure that you register for credentials early as the DOL system is unproven during busy periods.
4. The credentials assigned are personal and not linked to the company. The registration process assigns a unique User ID, PIN and password.
5. Only the User ID and PIN are used for electronically signing the Form 5500—the password is to access your account on the DOL website.
6. 5500 Forms that are electronically signed are posted to the DOL's website immediately after signing.
7. Plans are no longer required to attach a copy of the extension to the Form 5500 filing.
8. This year, a short form of the Form 5500 is available for most small plans (under 100 participants). This Form 5500-SF eliminated many of the schedules in previous filings and condenses the information onto just two pages.

9. Although the signing is electronic, all plan sponsors must retain a copy of the Form 5500 that is actually signed in their records.
10. In recent months, the DOL has provided that clients may avoid registering for credentials and instead sign a waiver that allows another person to file on their behalf. Please note that with this option, a copy of the client's signature will be posted on the DOL's website.

Top 10 Misconceptions about Retirement Plans

1. **We can handle this plan all by ourselves**—working with retirement plans is complex and requires expertise—do not try this at home!
2. **We don't need ERISA bond or fiduciary liability insurance**—An ERISA bond is a requirement and fiduciary liability insurance is the best way to protect yourself.
3. **That firm has to be good because Bob recommended them**—Good referrals are important, but it is still the sponsor's responsibility to make sure there are no conflicts of interest or problems.

4. **We don't have to worry about plan design**—Employers don't' have to be experts in retirement plans, but they should understand if the plan is fitting their needs.
5. **My broker/advisor picked those funds years ago—they're still good**.—Investment managers change, investing styles change and the needs of the plan change. The investment advisor should be constantly evaluating the plan's funds to ensure they are still sound.
6. **Expense ratios—I don't need to worry about that**.– The industry is riddled with hidden fees that Employers may be unaware of. An employer needs to be asking questions to find the total plan cost.
7. **I only want low cost funds**.— Although fees are important, they are not the entire picture. Poor fund performance can also have a huge impact on retirement savings. Make sure your investment advisor is benchmarking your funds over 1 year, 3 year or 5 year periods.
8. **That broker is good—he's my brother-in-law**.— While using a family member or friend may be fine, it doesn't excuse the sponsor from comparing the fees and work of that related investment advisor to others in the marketplace.
9. **The plan investments were directed by the employees—we've got no liability.** The Employer is still responsible for the education of the participants—employers who provide more education have less liability.
10. **We are paying nothing for administration—** There is no such thing as a free lunch or free administration. There are fees that are buried in the insurance contract or mutual funds. Often, there are high surrender charges buried in the contract too. New fee disclosure rules should help the sponsors understand these fees—but beware until then!

Quarter 3, 2010

celebrating 20 years

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Top 10 Excuses for Not Saving for Retirement

10. I'm too busy
9. It's too soon
8. It's too late
7. I don't need to
6. I don't have enough money to get started
5. My finances are a mess
4. The government will take care of me
3. Between my savings and my 401(k), I'll be fine
2. I don't want to think about it
1. I don't know how

Mail To:

Mark Your Calendar

Stay on top of your retirement plan's mandatory deadlines! Here are some important dates in the upcoming months. (Please note that filing dates are for calendar year plans. Non-calendar year plans must adjust these dates.)

September 30: Summary Annual Report due for plans that did not extend their Form 5500 filing.

October 15: Extended deadline for filing Plan's annual Form 5500 filing.

December 2: Deadline for 2011 safe harbor notice to be available for plan participants. Also the deadline for "maybe" safe harbor plans to announce a contribution decision.

Also, QDIA notice and ACA/EACA/QACA notices due for auto enrollment plans.

December 15: Deadline for distribution of Summary Annual Report if 12/31/09 Form 5500 was extended

December 31: Last day to self- correct significant qualification failures from the 2006 plan year

December 31: Last day to provide corrective distribution for failed ADP/ACP test for 2009 (or provide QNEC)

December 31: Time to gather year end information for non-discrimination testing and plan allocations for the 2010 plan year