# RETIREMENT PLAN PERSPECTIVES

Insights for Your Plan and Employees

Q3 2019

## Top 10 Retirement Plan Failures

We all know that mistakes are an inevitable part of life. But some errors, including those involving the administration of workplace retirement plans, have more costly repercussions than others. Fortunately, for those charged with administering a 401(k) plan for their company, avoiding common retirement plan failures is an attainable goal. A good place to start? Learning from the mistakes of others.

The IRS's Voluntary Correction Program (VCP) allows plan fiduciaries to voluntarily correct specific operational errors that they discover in their retirement plans. Using these errors, the IRS has compiled the top 10 retirement failures in the VCP. Here, we've summarized this IRS list, plus included some valuable tips for steering clear of these frequently cited administrative errors.

**1) "Failure to amend the plan for tax law changes by the end of the period required by the law."** When a plan document has not been amended to reflect such changes in the period required, the plan will fail to operate in accordance with the current law.

**Tip:** Generally speaking, your plan's recordkeeper or third-party administrator (TPA) is responsible for drafting and maintaining required amendments to your plan document. So, to help avoid this common mistake, give your recordkeeper or TPA a call to ensure that all amendments to your plan document are up to date.

**2) "Failure to follow the plan's definition of compensation for determining contributions."** Here, the IRS has found two common scenarios: certain types of compensation are excluded (e.g., bonuses, commissions, and overtime), or certain types of compensation are included when they actually should have been excluded. The result? Participants receive allocations to their accounts that are either greater than or less than the amount they should have received.

**Tip:** To gain a solid understanding of what elements of an employee's compensation are included (or excluded) for purposes of 401(k) plan calculations, be sure to review your plan's document. Then, before calculating contributions or nondiscrimination test results, verify that compensation figures align with your plan's definition of compensation.

**3) "Failure to include eligible employees in the plan or the failure to exclude ineligible employees from the plan."** When eligible employees are excluded from the plan, they will not receive an allocation of contributions that they are entitled to. On the other hand, when ineligible employees are included, the employer will make additional contributions that are not required.

**Tip:** At least annually (or more frequently, if you prefer), review the list of your plan's eligible and ineligible employees. Be sure to determine your plan's entry dates and if employees are categorized properly, based on their date of hire, job status, or other factors. Keep in mind that most recordkeepers or TPAs can provide on-demand reports that can help you determine employees' eligibility status.

## Top 10 Retirement Plan Failures *(continued)*

**4) "Plan loans that don't comply with IRC 72(p)."** Internal Revenue Code (IRC) 72(p) puts limits on loans from qualified retirement plans. Often, a plan's failure to comply with IRC 72(p) occurs because the plan sponsor does not withhold loan payments. If a plan does not collect loan repayments from participants, the loan will go into default. Consequently, the participant should be taxed on the loan in the year of default.

**Tip:** To ensure that any participant who has an outstanding loan is making payments according to the predetermined repayment schedule, coordinate with your company's payroll provider and/or recordkeeper or TPA.

**5) "Impermissible in-service withdrawals."** Under the law, in-service withdrawals are allowed when certain events occur or when participants reach a specific age. Mistakes result when a distribution is made to a participant when the law or plan terms do not permit such a distribution.

**Tip:** Always adhere to the terms of your plan document by verifying that any participant who requests an in-service withdrawal is eligible to do so under your plan's rules.

**6) "Failure to satisfy IRC 401(a)(9) minimum distribution rules."** IRC 401(a)(9) pertains to regulations regarding required minimum distributions (RMDs). If the plan does not make distributions to participants when they have reached age 70½, it has failed to satisfy RMD rules. Here, it's important to keep in mind that the law requires that the participant pay an excise tax of 50 percent on the amount of the required distribution if it is not made in a timely manner. (**Please note:** In appropriate cases, the excise tax can be waived.)

**Tip:** Stay on top of any impending RMDs by regularly reviewing your employee records. Frequently, your recordkeeper or TPA can provide reports indicating which employees will be required to take RMDs.

**7) "Employer eligibility failure."** This failure occurs when an employer adopts a plan that it is not legally permitted to adopt. Common situations include a government adopting a 401(k) plan or a tax-exempt entity (other than a 501(c)(3) entity or a public educational organization) adopting a 403(b) plan.

**Tip:** Here, again, your TPA or recordkeeper will likely be of service. As your plan's provider of plan document services, the TPA or recordkeeper will have the expertise necessary to ensure that your company has adopted the appropriate plan type.

**8) "Failed ADP/ACP nondiscrimination tests under IRC 401(k) and 401(m) not corrected in a timely manner."** As you're likely aware, IRC 401(k) pertains to elective deferral contributions, while 401(m) involves matching contributions. Failure here involves 401(k) plans or plans with matching contributions whose average deferral percentage (ADP) or average contribution percentage (ACP) tests did not pass nondiscrimination tests, and corrective actions were not taken by the end of the following plan year.

**Tip:** Work with your plan's recordkeeper or TPA throughout the annual nondiscrimination testing process to ensure that tests are completed in a timely manner and that any refunds for failed tests are processed before the deadline.

**9) "Failure to properly provide the minimum top-heavy benefit or contribution under IRC 416 to non-key employees."** Under IRC 416, if the account balances or accrued benefits of key employees (e.g., owners) include a substantial portion of plan assets (i.e., 60 percent of plan assets), non-key employees are entitled to receive a minimum benefit or contribution.

**Tip:** In tandem with your plan's recordkeeper or TPA, confirm that failed top-heavy tests are resolved in an appropriate and timely manner.

### Top 10 Retirement Plan Failures *(continued)*

**10) "Failure to satisfy the limits of IRC 415."** IRC 415 limits the contribution amount a participant can receive in a defined contribution plan (i.e., a 401(k) or profit-sharing plan). For 2019, the IRC 415 limit is $56,000 ($62,000 for employees age 50 and older).

**Tip:** Regularly monitor the contributions of each eligible employee, particularly those who are contributing at a high rate, to ensure that the total amount of an employee's contributions does not exceed IRC 415 limits.

As you can see by the failures cited here, retirement plan administration requires precise attention to detail. It also depends upon outstanding communication and coordination with your plan's recordkeeper and/or TPA, as they will play a key role in several administrative functions. But remember: plan fiduciaries bear the ultimate responsibility to carry out administrative tasks in accordance with the terms and rules of the plan document. As such, it's a good idea to schedule periodic check-ins (at least annually) with your plan's service providers (recordkeeper, TPA, and plan advisor) to help ensure that your plan stays clear of these top 10 mistakes.

## What Does Financial Wellness Mean to Employees?

In the world of employee benefits, financial well-being continues to be a hot topic. Indeed, 64 percent of employers indicate that financial well-being has gained more importance in their organizations over the past two years. So, it's critical that employers deliver a program that connects with the financial ambitions of their employee base. To gain some insight into those ambitions, PwC's 2019 Employee Financial Wellness Survey asked employees what financial wellness meant to them. Here's what they said:

- Not being stressed about finances (34 percent)
- Being debt free (18 percent)
- Having enough savings that I'm not worried about unexpected expenses (16 percent)
- Having financial freedom to make choices to enjoy life (16 percent)
- Being able to meet day-to-day/monthly expenses (12 percent)
- Being able to retire when they want to (4 percent)

As you think about your employees' financial wellness and how to best meet their goals, it may help to keep these insights in mind.

## We Can Help

Contact us to learn more about steering clear of 401(k) plan administrative mistakes and offering financial well-being benefits to your employees. We're ready and willing to help.

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