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10 Things You Can Do to Keep Your 401(k) Plan on Track

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At the start of every new year, many of us take time to reflect on the past year and make resolutions for the upcoming year. We are always looking to improve our eating habits and overall health; we look for new ways to save money and improve our finances, and we often set personal or professional goals for the coming year. In other words, we give our lives an annual review and look for ways to improve our health, enhance our financial standing, and set and achieve goals in the new year.

As a plan sponsor, are you doing a similar annual review of your retirement plan? It's not so different, after all. A "healthy" plan must meet the nondiscrimination and regulatory standards in order to retain its tax-qualified status. The plan's finances, in terms of investments and plan expenses, need to be monitored regularly; and as a plan sponsor, it is important to remember why you have a retirement plan, and make sure the plan is meeting your needs and the needs of the participants. An annual checkup can help you proactively monitor the plan's health, finances, and overall goals by identifying things that are going well and potential areas for improvement. It also can help you (the plan sponsor), your 401(k) service provider, and your legal counsel set and manage expectations throughout the year. In addition, your 401(k) service provider can offer plan statistics, such as contribution and participation rates, which you can use to help analyze how the well plan works and whether changes in focus or design would be beneficial.

Here, we have outlined 10 items to review to make sure your 401(k) plan remains on track throughout the year.

KEEP YOUR 401(k) PLAN ON TRACK

- ☐ Revisit the reasons the plan was established
- ☐ Review service provider fee disclosure requirements including expense monitoring
- ☐ Review required participant fee disclosure regulations
- ☐ Review plan administrative procedures and implement best practices
- ☐ Conduct plan document review to assess compliance with current regulations
- ☐ Review required plan communications to meet fiduciary obligations
- ☐ Consider targeted employee communications to improve areas like plan participation or saving rates
- ☐ Ensure fiduciaries understand their duties
- ☐ Conduct a compliance review to uncover potential issues
- ☐ Evaluate the ways in which you keep abreast of legislative changes

1. Revisit the reasons the plan was established

Today, most organizations find themselves having to do more with fewer resources. Given the myriad of rules to follow in order to maintain your plan's qualified status, it is easy to become lost in the daily maintenance of the plan and lose sight of the fact that your 401(k) plan was established to satisfy the needs of both the sponsor and the employees. As part of the annual checkup, revisit the reasons the plan was established. Are those reasons relevant today? You may find that priorities have shifted over the years, and a plan design feature that was once important may not be meaningful today. Once you have identified the purpose or goals of the plan, identify ways to meet those goals at the sponsor and participant level. Your 401(k) provider should be knowledgeable about trends with other retirement plans, and may be able to suggest features, such as auto-enrollment, auto-escalation, or lifetime income options that provide an added benefit for a relatively small additional cost.

As part of the process, take some time to think about ways you can measure how successfully the plan is meeting those goals. Do you want to see participation or contribution levels increase? Lower expense ratios? Improve certain internal processes? At your next annual review, use available metrics to help determine how successfully you have met the goals, and what areas still need work.

Another important aspect is how you determine the level of satisfaction of the plan participants. If you are currently relying on word of mouth feedback from your co-workers or a few vocal participants, consider seeking broader based employee feedback through surveys or focus groups.

2. Review service provider fee disclosure requirements including expense monitoring

In 2012, the DOL implemented enhanced fee disclosure regulations. As part of the requirements, each covered service provider must disclose detailed information to plan sponsors about fees charged and the services provided for those fees. Part of a plan sponsor's fiduciary duty is to monitor expenses, and these disclosures are a great tool for this. So, if you have not done so already, dust off those disclosures you received and read them!

In the last few years, excessive fee lawsuits filed against 401(k) plans have been on the rise. To help make sure your plan is not the next target, monitor your plan's expenses on a regular basis throughout the plan year. Many consultants can provide fee-benchmarking studies to help you get an idea of how your plan's expenses compare with similar plans. Keep in mind that more complex plan designs often equate to higher administrative fees, and consider whether such designs or plan features are worth the additional expense and administrative burden. As part of your fiduciary duty, you must be able to explain the expenses paid and why they are reasonable and suitable options for your plan participants. Discuss any questions or concerns about fees with your service provider, and remember that the lowest cost provider is not necessarily the best choice for your plan.

3. Review required participant fee disclosure regulations

The second part of the fee disclosure regulations requires plan administrators to provide participants and beneficiaries with a statement disclosing the fees that are paid through the retirement plan. Although 401(k) providers generally prepare the statements, the Department of Labor (DOL) holds the plan sponsor responsible for the disclosures. As a plan sponsor, you bear the responsibility of reading the materials provided to your plan participants and evaluating the information by asking questions such as:

- Are the fees reasonable?
- Does the disclosure contain all of the required information?
- Is the information presented in a way that the average plan participant can understand?
- Would changes in format or wording make the statements more useful?

4. Review plan administrative procedures and implement best practices

The plan document is the central piece of your retirement plan. It provides written guidelines for eligibility requirements, contribution formulas, withdrawal requirements, and much more; however, many administrative processes and procedures are not spelled out in the plan document. Creating and maintaining an administrative procedures manual provides a concise and organized way to record the "who, what, when, where, how, and why" of the administrative processes.

The administrative procedures manual can include anything and everything, such as procedures for reconciling plan contributions, the process for funding contributions, and information on calculating employer contributions. Other items to consider including are: detailed information on services furnished by the plan's various providers, such as nondiscrimination testing, Form 5500 preparation, or plan document maintenance. It is also beneficial to validate the individuals or entities that are considered plan fiduciaries and to record decisions made regarding the interpretation of your plan document.

Once you have an administrative manual in place, it is important to remember to review and update it regularly.

5. Conduct plan document review to assess compliance with current regulations

As stated previously, the plan document is a crucial component of all qualified plans. If the document does not comply with current regulations, the tax-qualified status of the plan is at risk. Plan document failures often can be corrected through the Employee Plans Compliance Resolution System (EPCRS) Voluntary Correction Program (VCP), but this can be time consuming and costly. Plan sponsors can work proactively with their legal counsel and 401(k) service provider each year to complete a document review. This will help confirm that restatement cycles are not missed, that any required amendments have been adopted on time, and that the administrative procedures for things like eligibility and payroll deductions are in line with the provisions outlined in the plan document.

If your 401(k) plan is a safe harbor design (does not require ADP and/or ACP testing), it is also important to make sure that the plan meets all safe harbor requirements for the plan year.

Finally, when was the summary plan description last updated? It must be updated once every five years if the plan has been amended within the five-year period and every 10 years if no changes have been made to the plan.

6. Review required plan communications to meet fiduciary obligations

There are a number of required communications that plan sponsors must distribute to participants in order to meet fiduciary obligations. These include safe harbor notices, automatic enrollment notices, fee disclosures, summary annual reports, and the summary plan description, to name a few. Each year, make sure you know which notices are required, the acceptable delivery options, and the deadline for providing them to participants. Since it is possible that multiple parties are preparing the notices, make sure you know who is responsible for the preparation and distribution of each. You should also confirm the content is accurate and that the notices are written in language the average plan participant will understand.

7. Consider targeted employee communications to improve areas like plan participation or savings rates

In addition to the required plan communications, plans are increasingly using communications targeted at specific employee demographics to improve participant engagement and understanding. Your 401(k) provider should be able to provide you with data to help you analyze how participants are using the plan. With this information, you can target groups by age, contribution rate, employment classification, compensation level, location, or other factors that may influence participant behavior. Keep in mind that an important goal for your plan is to help employees prepare for retirement by making them aware of their retirement needs. Specialized communications can be sent to differing employee factions based on whether you want to encourage them to start saving, to examine whether they are saving enough, or, if they are already saving adequately, to make sure they are making appropriate investment choices.

Another important consideration for specialized communications is the method of delivery. Plan sponsors now have a variety of media to reach participants, from the Internet and smart phone applications, to more traditional printed materials and in-person meetings. Most 401(k) service providers have communication specialists that can work with you to design targeted communication programs that will help you reach your plan participants in a more personalized way.

8. Ensure fiduciaries understand their duties

As we touched on in the discussion about administrative procedures, it is crucial for every plan sponsor to know (and document) who is considered a fiduciary for its plan. Remember that the functions a person performs for the plan determine his or her fiduciary status and not necessarily the person's title. Since all fiduciaries are potentially responsible for the actions of their co-fiduciaries, it is imperative that they receive the training necessary to understand their fiduciary duties and to document how they carried out those duties.

Earlier in 2016, the DOL finalized new fiduciary regulations. The new regulations do not change the fiduciary duties, but expand the definition of who is a fiduciary with respect to providing investment advice. The original rules had been around in more or less the same form since 1975, before retirement plans shifted away from traditional defined benefit plans and toward 401(k) plans and IRAs. The new rules require anyone providing retirement investment advice to plans, plan fiduciaries, or IRAs to abide by a fiduciary standard, with the goal of better protecting employers and workers from conflicts of interest when dealing with investment advisors in the age of the 401(k) plan. For more information on the new fiduciary regulations, see our Legislative & Regulatory Update on the topic. Talk to your legal counsel or plan advisors about how this new legislation will affect your dealings with service providers, participants, and anyone else involved in the administration of your plan. With the first phase slated to be implemented in April 2017, start the conversations now to avoid surprise pitfalls next spring.

9. Conduct a compliance review to uncover potential issues

Make compliance part of your annual review process with your legal counsel and 401(k) service provider by answering a series of questions about how the plan is administered and comparing your answers to technical requirements and administrative best practices. A compliance review can help you identify issues and administrative gaps, including services that should be performed for the plan but are not currently provided; changes in ownership or mergers and acquisitions; changes to the plan's controlled group status; the nondiscrimination tests required for your plan and identifying who performs them.

A compliance review may also look at internal processes to make sure they are in alignment with the plan document and current regulations. As part of the review, you might ask:

- Is the plan's definition of compensation being used for calculating plan contributions?
- Are compensation and other participant data reported accurately to service providers?
- Are you meeting the DOL regulations for timely deposit of participant contributions?

Reviewing administrative processes periodically can help identify potential problems, correct existing problems, and avoid unpleasant surprises during an audit.

10. Evaluate the ways in which you keep abreast of legislative changes

Legislative changes, new regulations, and revised guidance on existing regulations are common in the retirement industry. As a plan sponsor, how do you stay informed about these changes and the impact they might have on your plan? Do you rely on your 401(k) provider for this information? Do you have an internal team or committee that is charged with keeping track of new legislation and guidance? Have you discussed action plans for implementing any changes required because of new legislation with your legal counsel and your 401(k) service provider? Are you taking advantage of publications offered by professional organizations such as Findley? Subscribe now to receive information on current topics affecting retirement plans. Staying up-to-date on regulatory changes will help keep your plan healthy in the eyes of the DOL and IRS.

In perspective

Just as we personally take time each year to reflect on our health, finances, and personal or professional goals, as a plan sponsor, take time each year to evaluate your retirement plan. Address compliance, governance, and fiduciary issues proactively so that your retirement plan maintains peak condition for the coming years. This will help ensure that your 401(k) plan remains a valuable benefit for your company and its employees.