CONSTRUCTION FINANCIAL MANAGEMENT ASSOCIATION

Top Ten 401(k) Compliance Pitfalls

Preserve your plan's tax status through tips about VCP

By John J. Higgins

Retirement plan sponsors are tasked with complex fiduciary and administrative responsibilities, with pitfalls around every corner. When compliance tasks fall through the cracks, the IRS, through the Voluntary Correction Program (VCP), provides a way for plan sponsors to correct mistakes and preserve their plans' tax-favored status.

Let's take a look at the Top 10 Failures discovered via the VCP, along with tips to help you avoid these mistakes and tighten up your company's compliance practices in 2017.

1. **Failure to amend the plan based on tax law changes by the end of the period required by the law.**

   Legislative changes sometimes require a plan document amendment; check with your TPA or service provider to ensure your plan document reflects recent changes in the law.

2. **Failure to follow the plan's definition of compensation for determining contributions.**

   The integrity of nondiscrimination tests relies on accurate compensation reporting. Be sure your testing census corresponds to your plan document's definition of compensation and that it incorporates any excluded elements of compensation, such as bonuses and overtime.

3. **Failure to include eligible employees in the plan (or to exclude ineligible employees).**

   When eligible employees are excluded from the plan, they may not receive contributions to which they are entitled. Conversely, when ineligible employees are included in the plan, they may receive contributions that they shouldn't receive. Double-check that new employees meet eligibility requirements and that hire dates are accurate.

4. **Failure to satisfy plan loan provisions.**

   Coordinate your payroll remittances with your TPA or service provider, and periodically audit loan payment history to ensure accuracy.

5. **Impermissible in-service withdrawals.**

   If your plan offers an in-service withdrawal or hardship provision, be sure to verify hardship claims through proper documentation.

6. **Employer eligibility failure.**

   This failure occurs when an employer adopts a plan that it legally is not permitted to adopt. Ask your TPA or service provider to verify that your plan has been established under proper guidelines.

7. **Failure to satisfy IRC 401(a)(9) minimum distribution rules.**

   Required minimum distributions (RMDs) come into play when an employee attains age 70½. Run periodic reports to put upcoming RMDs on your administrative radar.

8. **Failure to pass the ADP/ACP nondiscrimination tests under IRC 401(k) and 401(m).**

   Some nondiscrimination test failures occur because of inaccurate census data. Do a thorough review of census data, and ask your TPA to perform a midyear test to help uncover any inaccuracies that may affect the test results.

9. **Failure to properly provide the minimum top-heavy benefit or contribution under IRC 416 to non-key employees.**

   Failed top-heavy tests require corrective contributions in the form of minimum contributions.

10. **Failure to satisfy the limits of IRC 415.**

    Exceeding the aggregate contribution limit ($54,000 in 2017, or $60,000 for employees age 50 and older) is a compliance violation. Ask your payroll provider if it has safeguards in place to cease contributions once the limit is reached. Review contribution reports periodically to ensure that employees do not exceed the limit.

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