

Cheats Sheets And Hacks For 401(k) Plan Sponsors

By Ary Rosenbaum, Esq.

One of the greatest advancements in my lifetime has been the proliferation of the Internet. While the web has been the greatest distracting tool in my life, it's full of information. Anything I've ever wanted to know about any subject is at my fingertips with a simple Google search. One of the greatest finds in terms of information is the how-to section on how to fix certain things. I'm convinced that baking soda and distilled vinegar are gifts from above. These small hacks have saved me time and money. For a 401(k) plan sponsor, some small hacks can make your lives a little easier. This article is about a few that you haven't heard about.

Get or make a plan index

I have been drafting retirement plan documents since 1998. I have not raised my prices since 1998. Why? It's so much easier with technology to draft them. Through Relius, I have a web interface that easily emails me documents. When I started my practice in 2010, I would print the plan document, make copies at Staples, have them bind the document, and mail it to the client. Those days are long gone. Plan sponsors get a PDF version and quite a few trees have been saved over the past 10 years. One of the benefits of the Relius plan document is that it produces an index of the plan terms with the provisions the plan has, and the page number. When that index came out with Relius plans over 20 years ago, the

boss at a Third Party Administration (TPA) didn't want it to be used. Of course, I ignored him since the plan administrators at my firm needed all the help they could get since many would never read a plan document. When getting your plan document and Summary Plan Description (SPD) from your plan document provider (whether it's the TPA, recordkeeper, custodian, or ERISA attorney), ask them if it comes with a plan index. If they don't come with one,

20 years of assuming one thing about their plan and a plan provider finally discovering the plan operation didn't conform to the plan document. That discovery led to fixing the error and massive amounts of corrective employer contributions. A plan index is a smart "cheat sheet" for avoiding plan operational mistakes that will cost you substantive amounts of money to fix.

Identify sources of income and what should be used for the plan

Speaking of plan document errors, the most prevalent error these days is plan document errors in the definition of plan compensation. This occurs a lot when the 401(k) plan sponsors don't want to make employer contributions on one source of W-2 income. That would be bonuses, overtime, commissions, or even car allowances. The problem arises when the plan document never excludes these forms of compensation. The plan document never excludes these forms of compensation, which binds the plan sponsor to make up corrective employer contributions for missed deferral opportunities for participants on this source of income, as well as any missed employer contributions. This corrective action would also include earnings, which could be substantive if discovered after several years. To avoid this kind of error on your own, you need to identify the sources of income that you pay out because W-2 includes many sources of income you have forgot-



ask if they can draft you one (they most likely will). In the unlikely event that they won't produce one for you, you can probably take your SPD and create an index for yourself. Why do you need an index? Outside of the late deposit of salary deferrals, many errors come from the fact that the terms of the plan don't correctly mirror the plan operation. I've seen plans go through

opportunities for participants on this source of income, as well as any missed employer contributions. This corrective action would also include earnings, which could be substantive if discovered after several years. To avoid this kind of error on your own, you need to identify the sources of income that you pay out because W-2 includes many sources of income you have forgot-

ten about. Bonuses, commissions, overtime, car allowances, and taxable fringe benefits, are just some of the forms of compensation you may not want to allow deferrals and make employer contributions on. Make sure your intent on forms of compensation agrees with what your plan document says, and if it doesn't, fix your plan document or make allowances to allow participants to defer on this income and to make employer contributions on this income. Whatever you do, make sure your plan document and operation are consistent with your aims and goals.



Develop salary deferral procedures

As previously discussed, the most prevalent 401(k) plan error these days is the late deposit of salary deferrals. For years, plan providers and 401(k) plan sponsors relied on regulations that gave plan sponsors a safe harbor as long as they deposited the deferrals no later than the 15th day of the following month. The regulations were drafted at a time when all type of 401(k) deposits made by a plan sponsor into the plan's trust account was done by a mailed check. With email, web transactions, and Automated Clearing House transactions, salary deferral deposits can be done a lot quicker. That is why the Department of Labor (DOL) published guidance that salary deferral contributions must be made as soon as possible. The DOL has scaled up its enforcement of timely salary deferral deposits by creating a question on Form 5500 to ask a plan sponsor if there are any late deposits. They have also instituted a voluntary compliance program that allows plan sponsors to fix late deposits with no penalty. That means the DOL is concentrated on cracking down on plan sponsors making late deposits of salary deferrals through audits and they use that Form 5500 question as fodder for which plan sponsors to target. Depositing salary deferrals into a 401(k) plan is a tedious task, but depositing defer-

als late is one of the most avoidable plan errors, yet it's the most frequent. I understand the DOL's insistence that deferrals be deposited as soon as possible, to avoid the idea that a plan sponsor can use salary deferral deposits as some kind of checkbook "float" to pay off other bills. The problem I see with late deposits is that no plan sponsors only make the mistake once, it's a consistent problem. That is why I suggest you develop a salary deferral procedure that identifies the process to make sure salary deferrals are deposited timely. These salary deferrals need to be deposited in the plan's trust account as soon as possible. If there is one person you identify as being responsible for depositing salary deferrals at your place, make sure there is a backup if that person is out. Late deposits will require you to fork over an additional contribution from you for lost earnings. I've seen these lost earnings contributions be five digits long. Creating a procedure and a process to timely submit 401(k) salary deferrals will go a long way in avoiding late deposits later on.

Track eligibility

Every 401(k) plan has eligibility requirements that an employee must complete to be a plan participant. Some 401(k) plans have immediate eligibility, some require 1,000 hours within a year of employment. Regardless of the eligibility, you need to make sure that eligibility requirements are tracked to make sure that employees

become participants when the plan documents say they can become a participants. You must make sure that plan administration is done according to the plan document terms. In addition, if you fail to include eligible employees as plan participants that may require you to make corrective employer contributions (plus earnings) whether they're for employer contributions or a missed deferral opportunity. For the time these employees didn't have the opportunity to make deferral contributions.

The problem is you would have to make these corrective contributions to all affected employees whether they were planning to make salary deferral contributions or not. While it's a major responsibility of a third-party administrator (TPA) to track eligibility, tracking it on your side, eliminates the potential for errors that may cost them money in terms of corrective contributions. More entry dates for employees to become participants create more dates for you to track, so I would recommend never using an entry more than monthly, especially avoiding immediate entry.

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