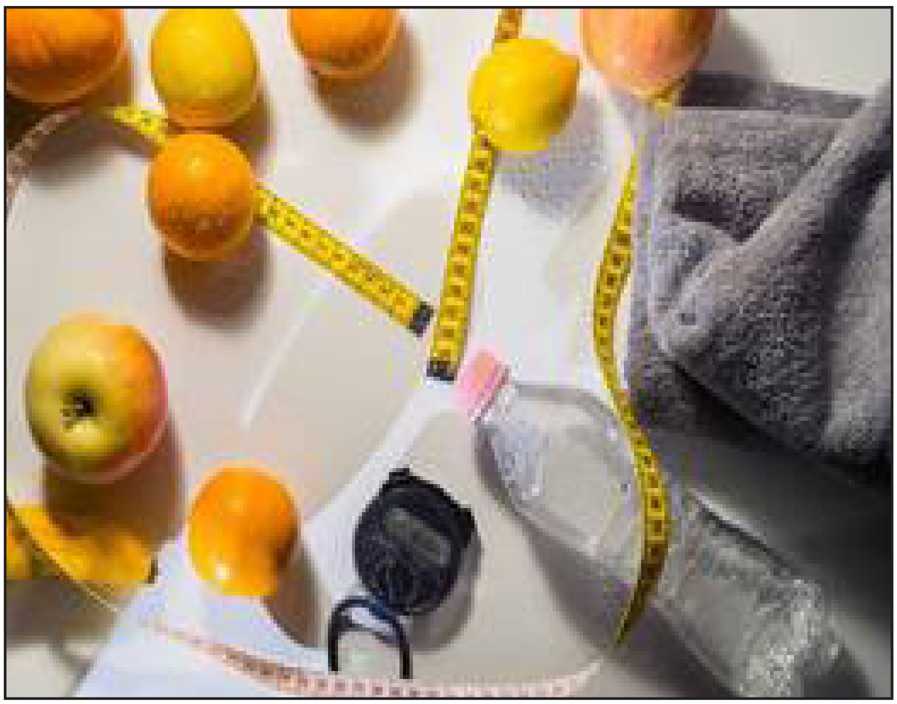
401(k) Tasks I Know You're Probably Not Doing As A Plan Sponsor

By Ary Rosenbaum, Esq.

A daily regimen of exercise and dieting requires a daily regimen of exercise and dieting. There are so many beneficial things we can do for our lives and we don't for so many reasons such as having no time or just being lazy. As a 401(k) plan sponsor, I'm betting there are so many menial things you should be doing and you're not. This is what this article is all about.

Keeping plan documents

The Internal Revenue Service (IRS) has this Sargent Schultz approach when it comes to plan documents. Similar to Schultz's "I hear nothing, I see nothing, I know nothing" approach to Colonel Hogan and his crew's antics, the IRS assumes that if you don't have a copy of your current or previous 401(k) plan documents and amendments, they were never done. That can be a problem with a plan audit or IRS plan submission if you have a plan in effect for many years and are missing a required amendment or restatement. While you can certainly throw out certain ERISA files pertaining to your plan after 7 years, that doesn't apply to your plan documents. It's important that you keep a copy of all your plan amendments and restatements in case you ever need them because of an audit or submission with the IRS or an audit by the Department of Labor (DOL). Aside from making sure you have a full plan document file for compliance end with the government, it's also a good thing to make sure that plan provisions that are supposed to be consistent over time, are actually are consistent. From plan restatement to restatement, errors may be made and a full plan document file is a great way to ensure that the provisions of your plan have been consistent over time, rather than a mistake that was made. One of the grueling aspects of a forgettable 9-month stint at a union law firm many years ago was trying to decipher when a certain pension plan changed his benefit and accrual requirements, I ended up having to fix the plan according to the plan's intent in the 1976 initial ERISA plan document.



Checking your valuation report

Every year, your third-party administrator (TPA) prepares a valuation report that is a full compliance summary of your 401(k) plan for your previous plan year. It's an excellent summary to show the nuts and bolts in the compliance end of your plan. It will show compliance testing, a full census report including salary and dates of hire, as well as terms of your plan document. It's a terrific resource to have all your compliance issues in a full summary report. While you should be reviewing your valuation report, I bet most of you aren't. The major reason to check out your valuation reports is to see if any information is wrong. If you assume that eligibility in your plan document is 6 months and the valuation report says it's a year, that's a problem. It's also a huge problem if highly compensated or key employees aren't identified or misidentified. It's also a big problem if the census or compensation information for your employees is incorrect too. It's also important that the definition of plan compensation used for purposes of the valuation report is consistent with your practice and consistent with the plan document. Compliance testing is an exact science meaning that its results are fully dependent on accurate data. Wrong data will lead to incorrect compliance testing results and there is nothing worse to discover years later on a plan audit that your compliance testing was wrong. So much of your plan errors could be detected with a thorough review of your valuation report. If your TPA doesn't provide an annual valuation, make sure you get one because not having one also brings up a whole host of problems.

Verifying hardship requests

If you're offering hardship distributions to participants from your 401(k) plan, you need to make sure that the reasons for the hardship can be verified. Unlike this COVID premature distribution that your plan may have adopted because of this pandemic, you simply can't take a participant's word that they're going through a hardship. The financial needs to be documented and verified and consistent with the rules of your 401(k) plan. While the money that is the hardship distribution belongs to the participant, you have a higher power to abide by your plan document and the Internal Revenue Code. As a plan fiduciary for several plans, I make sure that a participant's hardship requested can be documented and verified. While you should be doing that as well, most of you aren't. That could be a problem as the IRS provided guidance a few years back that they would be taking a closer look at hardship distributions and requests for these distributions, especially for participants who have made more than one request and received more than one hardship distribution. The purpose of the hardship distribution is to allow participants to access their accounts in times of financial need, the big thing is a need and that need has top follow the Internal Revenue Code and your plan document.

Reviewing your Form 5500 and/or audit report

Your TPA prepares your 401(k) plan's Form 5500. If your plan has more than 100-120 participants, you have an audit prepared by a Certified Public Accountant. I'm sure most 401(k) plan sponsors simply file their Form 5500 at that July 31st or October 15th (if on extension) deadline. The major problem of blindly filing your Form 5500 without signing it is that you're filing the form under penalties of perjury. You want to make sure that your 5500 has no mistakes because incorrect information or answering yes to certain questions on the form, may lead to an IRS or DOL audit. Reviewing the audit is important is because it might cite some issues with plan compliance that can also lead to an IRS or DOL audit. In addition, I've seen multiple errors made in plan audits, which can certainly lead to an IRS or DOL audit.

Not reviewing your fees

As a 401(k) plan sponsor, you have a fiduciary duty to only pay reasonable plan expenses for the services provided. While that means you don't have to have the lowest fees, it certainly does mean you have to make sure the fees you pay are reasonable. Most 401(k) plan sponsors don't bother with benchmarking their fees by shopping the plan around or using a service to determine whether the fees being charged are reasonable. You can't take the word from your plan providers that their fees are reasonable, you have to check it out yourself.

Not reviewing your plan providers

The running joke I have is that most errors in a plan aren't discovered until there is a change of plan provider, usually a change of the TPA. Most 401(k) plan sponsors never bother to review plan providers, they just take a chance based on price or the recommendation of another provider. In order to make sure that your plan providers are doing their job, you should review their work on an annual basis. Better to discover that a plan provider isn't working out now, than years later where fixing their errors is costlier.

Review trust statements

Your 401(k) plan has a trust account with the plan's custodians that are responsible for holding your plan's assets. I'm sure a huge majority of 401(k) plan sponsors never bother to review their trust statements. The reasons that you should check for inflows and outflows from your 401(k) plan. It's a great way to make sure that deposits are made to your plan and that unauthorized transfers aren't being made from your plan. While chances are that a plan fiduciary or plan providers will steal money from your plan, a review of your trusty statements will seriously cut down the chance it will either happen or that it will be ignored.

Getting input from the participants

Most 401(k) plan sponsors forget that their plan is an employee benefit. To really understand whether your 401(k) plan meets the needs of your employees, it makes sense to get their input. I worked for a handful of employers, many in the 401(k) business, and no one ever asked for the input of employees. A good 401(k) plan is supposed to recruit and retain employees, getting input from current participants goes a long way in making sure that the 401(k) plan does its job.

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