



# **Retirement Plan Specialists, Inc.**

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## **Letter from the President**

Ok, I am listening to the IRS bosses going over the IRS findings on the initial mailing of the “lucky” 1200, as they call it, that got the first wave of 401(k) Plan Compliance Questionnaire. They plan to post the findings on the Retirement plans community web page of the IRS by first quarter next year. Basically they found the TOP 401(k) ERRORS to be:

- Plan Document failure – A very big issue and can cause the disqualification of the plan. Timeliness and working copies that have not been signed or executed has been a problem which means it is not adopted. Amending a prototype is another.
- Keep all original documents, even if amended. Board Resolutions are critical as well.
- Failure to follow the terms of the Plan Document, this is a qualification issue and even if you are doing something MORE advantageous for the plan participants you are still in FAILURE and a candidate for disqualification.
- Failure to use the Plan’s definition of Compensation another big area of failure. 50% of the plans examined have failures in this area!!! (WOW!!!) Especially since the definition of compensation can vary in one document which causes problems.
- IRS recommends an annual review of your plan in operation and internal controls on the employer level.
- Failure to follow the Plan’s matching contribution provisions, generally a violation of the terms of the plan and another area for disqualification.
- Failure to satisfy the ADP/ACP nondiscrimination testing, safe harbor failures are an issue in this area...attribution rules are violated, information to TPAs incomplete when dealing with family members. Electronic data lending to failures as well (less oversight).
- Failure to include all eligible employees, this is seen a lot by the IRS usually due to a misunderstanding on the employer level of what constitutes an eligible employee, i.e. those who work part-time, those who do not contribute, are often missed.
- Failure to limit elective deferrals to the IRC 402(g) limits for the calendar year, needs to be withdrawn timely and/or taxed appropriately ( not been done properly by many plans.)
- Failure to timely deposit elective deferrals, another area of failure...need to follow DOL guidelines more carefully.
- Failure to follow the Plan’s loan provisions and violation of IRC 72(p), IRS seems to find a lot of problems with loans for those plans with them. Exceeding \$50,000, documents

limiting loans but participants have more, loans with longer terms of five years with no purchase of primary residence.

- Failure to follow the Plan's terms regarding hardship distributions. A lot of errors in the application for a hardship loans. This is especially true where loans can be requested and processed electronically. Find a lot of plans where the hardship is granted where loans are also provided and the hardship was given without the request for a loan being processed first.

Two additional failures were also found:

- 415 FAILURES ARE INCREASING WHEN LOOKING AT CONTROLLED GROUPS OR ARE IN TWO OR MORE PLANS. **EXCEEDING 402(G) LIMITS WHEN IN MORE THAN ONE PLAN.** (one person works for two companies one with a K and the other with a K or SIMPLE plan and contributes deferrals to both, big NO-NO) (SALARY DEFERRAL LIMITS ARE A TAXPAYER LIMIT AND ARE REPORTED ON Form W-2s, when the two employers report the deferrals to the IRS and it is over the limit there will be significant penalties and interest for that taxpayer.)
- 100% VESTING UPON PARTIAL OR FULL TERMINATION IS ALSO BEING VIOLATED

THE IRS RECOMMENDS THE USE OF INTERNAL CONTROLS ... IT RECOMMENDS THE USE OF THE 401(K) COMPLIANCE CHECK QUESTIONNAIRE AS A SELF AUDIT TOOL.

The IRS has determined that the 401(k) Plan is the fastest growing market that has a huge impact on the health of the private retirement system in America. It has also found a huge disconnect between the 401(k)s in practice and their adherence to compliance. Considering their importance to American's financial health and the number of employees that are NOT covered or are being incorrectly excluded etc. the IRS is ramping up its oversight.

ALSO AS AN FYI...ALL THE IRS EP AUDITORS SPENT THREE WEEKS TRAINING IN ALTANTA. I ASKED ONE I AM WORKING WITH WHAT THEY LEARNED DURING THAT TIME: SHE SAID:::::DEFINED BENEFIT AND CASH BALANCE PLANS.