# Avoiding the Pitfalls

## *Follow This Advice to Sidestep Errors in Retirement-plan Administration*

BY JAMES T. KRUPIENSKI, CPA

Most medical practices have some form of employee retirement plan. Unfortunately, many of the administrators and doctors who are fiduciaries of these plans are not fully aware of the specific provisions of their plan, as well as all of the rules and regulations regarding the administration of these plans. As a result, there are many errors that occur in these plans, some of which could lead to serious consequences regarding the continuation and qualified status of the plan, as well as for the plan administrator and other fiduciaries.

Many of these errors can be avoided by understanding the provisions of your plan and by implementing policies and procedures to ensure compliance with these provisions. This article is intended to highlight some of the more common errors, such as the timing and remittance of employee deferral contributions, the improper application of the definitions of eligibility and compensation, the improper use and review of hardship distributions, and a general overreliance on the plan's third-party administrator.


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### Timing of Employee Deferrals

Employee deferral contributions are required to be remitted to the plan as soon as they can be segregated from the company's general assets, but in no event later than the 15th business day of the month following the month they were withheld.

In many instances, plan administrators will cite the 15 day-rule when discussing their remittance policies. It should be noted that the 15-day rule is not a safe harbor, but rather the last day before contributions are automatically considered late. More often than not, upon examination by the Department of Labor, examiners will look at when all other payroll taxes were remitted by the company.

In addition, they will look at consistency, adherence to the established policy and past history. With technology today, most plans should be able to remit these funds within three to seven business days. Any remittances that fall out of the established guidelines, even if by only one day, are considered prohibited transactions and may be subject to corrective procedures and excise-tax reporting.

### Eligibility and Compensation

Within the plan document, many items are defined. Two of the most-overlooked definitions are those for plan eligibility and compensation. In terms of plan eligibility, many times eligible employees are delayed from entering the plan, and other employees are allowed to enter the plan too soon. Many administrators misinterpret the differences between when an employee meets the eligibility requirements versus when the employee is allowed to enter the plan.

As an example, if an employee meets the eligibility requirements on June 1 and there is a quarterly entrance date, the employee may not be able to enter the plan until July 1. If for any reason you feel that this is not being performed properly, please check with your third-party administrator or CPA, as the penalties for failure to comply with these provisions of the plan can be severe.

Compensation is another area to which plan administrators need to pay particular attention. First, every plan does not use the same definition of compensation. Second, the plan may use different definitions of compensation for different purposes, such as for deferrals, employer contributions, and discrimination testing. Additionally, often overlooked is the treatment of bonus compensation in relation to the plan definition of 'eligible compensation.' For example, if the plan elects to use W-2 wages as its definition of compensation, all bonuses, whether through payroll or manual check, must be included when calculating the employee deferrals. If not, a written election from the employee must be on file.

### Hardship Distributions

With the economy faltering and unemployment soaring, hardship distributions may become more common for those plans that allow them. In order to maintain the qualified status of your plan, take note of the rules and regulations for these distributions, which must be adhered to.

First, before a hardship distribution can be requested, the employee must provide evidence to the employer that all other sources of financing, including loans from the retirement plan, have been exhausted. Second, the amount requested can not exceed the amount needed to satisfy the event at hand, such as the amount necessary to block foreclosure proceedings of a home.

Additionally, the request can only be made to satisfy certain predetermined obligations. Purchasing a new car is not a qualifying event. In order to evidence that these provisions have been met, it is strongly recommended that the request be made in writing and that the employee provide documentation that should be kept on file with the application. Finally, once the distribution has been made, it is imperative to understand that employee deferrals to the plan must be suspended for a period of six months.

## Third-party Administrators

When errors are detected, the response most often heard is, 'why didn't our third-party administrator catch this?' Unfortunately, while this may be a valid argument in some cases, at the end of the day there is a fiduciary responsibility that has been placed on the trustees and administrators who oversee the plan in-house. The trustees are most often the doctors themselves. Adequate time and attention are often not devoted to administering these plans, but when something goes wrong, there is the potential for personal liability, up to and including fines and jail time.

It is recommended that, at a minimum, those assigned to oversee the plan obtain and review the reports that are available from the third-party administrator on a quarterly basis. When reviewing these reports, don't focus solely on investment performance. Take the review further. Tie out contributions posted to the account to your general ledger and payroll records. Review loan activity and balances, questioning new loans that aren't recognized or outstanding loans with balances that have not changed over the quarter. Also, review benefit payments to ensure that you have properly executed withdrawal request forms on file for each.

Retirement plans, depending on how they are designed, can be very complex. Additionally, there are many rules and regulations that need to be followed, which are not always spelled out explicitly in the plan document. Penalties and ramifications for not following the plan document or governing rules can be extremely severe. It is strongly recommended that your plan, no matter how large or small, have a few basic controls and procedures in place, which are being followed.

Your third-party administrator can assist you with this process, but you can't outsource your fiduciary responsibility to your employees. In the event of an unwanted knock on the door from the Internal Revenue Service or Department of Labor, this will help to ensure that those penalties and ramifications will not need to be enforced. ❖

*James T. Krupienski, CPA is manager of the Health Care Services Division of Meyers Brothers Kalicka, P.C., in Holyoke, certified public accountants and business consultants; (413) 536-8510.*