

# The Annual Retirement Plan Checkup: An Exercise in Preventive Medicine

The primary reason that medical professionals recommend an annual checkup is that problems found early, especially when they are minor, generally are easier to fix. Similarly, a comprehensive retirement plan checkup can help plan sponsors identify existing or potential issues that, if neglected, may result in significant compliance problems or negatively impact plan participants.

Performing an annual review helps confirm that a plan is meeting applicable requirements under the Employee Retirement Income Security Act of 1974 (“ERISA”) and related Internal Revenue Service (IRS) and Department of Labor (DOL) regulations and guidance, which is one of the essential responsibilities of a plan fiduciary.

An annual review may be performed by internal resources, by engaging an independent third party, with the help of your current vendor(s), or by some combination of the three. However, if you choose to undertake a review, a thorough plan checkup should include several components:

- Plan design
- Plan documentation and operations
- Fiduciary appointments and procedures
- Investment menu
- Participant services
- Plan fees

## Components of an Annual Retirement Plan Checkup

### Plan Design

Consider whether changes to plan design can help employees improve their retirement readiness.

#### Questions to Ask...

- Can features be added to the plan to improve participation and contribution outcomes? A few examples are shown below:
  - Adding auto enrollment to raise participation levels
  - Adding auto escalation to increase contribution levels
  - Adding a Roth contribution option to appeal to younger employees

### Plan Documentation and Operations

Your retirement plan must meet plan document and operational requirements in order to retain its qualified status. Failure to comply with any one or more of these requirements may result in expensive remediation steps and penalties, or even plan disqualification.

#### Questions to Ask...

- Has the plan document been amended to comply with changes in applicable law or to reflect changes implemented at the discretion of the plan sponsor?

- Are plan operations being executed consistently and in accordance with the plan document?
  - Plan sponsors or record keepers may do something in a particular way because *that's how it's always been done*. Unfortunately, this can sometimes be contrary to the plan's provisions and may put the plan's qualification at risk.
- Were all eligible employees identified and given the opportunity to participate?
  - Be sure to pay particular attention to part-time, seasonal and hourly employees, who are occasionally overlooked by employers during this process.
- Are contributions being deposited on a timely basis?
  - Employee deferrals generally must be deposited in the plan as soon as they can be segregated from the employer's general assets. For small plans (less than 100 participants), the DOL has provided a safe harbor for deferrals remitted no later than seven days after they are withheld from employees' pay. Larger plans generally are expected to remit contributions more quickly.
- Were matching contributions made to all qualifying employees?
- Were hardship distributions and participant loans made properly?
  - Confirm that whomever is qualifying the hardship withdrawal uses the same set of standards for each request.
  - Confirm that maximum loan amounts are properly calculated and loans are repaid in accordance with amortization schedules.
- Is vesting in compliance with the plan provisions?
- Is the plan meeting statutory requirements, such as nondiscrimination rules?

Of course, the above is not a comprehensive summary of the questions that an operational review may address. Plan sponsors looking for guidance on conducting a thorough and efficient operational checkup may want to begin by reviewing IRS Publication 4531 ([www.irs.gov/pub/irs-pdf/p4531.pdf](http://www.irs.gov/pub/irs-pdf/p4531.pdf)), which provides a detailed list of review questions and remediation approaches.

## Fiduciary Appointments and Procedures

The fiduciary component of an annual review should confirm the existence of written documentation articulating who is a plan fiduciary. It is not unusual to find that an individual may

be unknowingly functioning as a plan fiduciary or be a named fiduciary unbeknownst to them. It is also not unusual for plan sponsors to incorrectly assume that their third-party vendors are acting as plan fiduciaries. Consequently, it is not only important that fiduciaries be formally named, but that the fiduciary appointment is communicated to, and accepted and acknowledged by, each party having such responsibility. In addition, a review should confirm that plan fiduciaries are employing and documenting a prudent decision-making process.

### Questions to Ask...

- Is it clear who is a fiduciary with respect to the plan?
- Is there an investment fiduciary in place to advise the plan sponsor regarding the selection and monitoring of plan investments? If so, do you have written confirmation that the investment fiduciary is serving in an ERISA section 3(21) or 3(38) investment fiduciary capacity?
- Are meetings held regularly to discuss plan issues, and are meeting minutes recorded and preserved?

## Investments

An Investment Policy Statement (IPS) should exist from the plan's outset. If a plan does not have one, creating one should be a priority. The IPS serves an important role in guiding the decision-making process that leads to the selection of plan investment options.

Because investments are the means by which participants generate earnings to fund their future retirement income needs, it is critical to evaluate the continuing appropriateness of your plan's investment offerings.

### Questions to Ask...

- Does the current investment lineup include options covering a wide span of the risk-reward continuum?
- Does the plan offer options that may appeal to participants who are not inclined to actively manage their retirement investments, such as target date funds?
- Does the plan offer options that may appeal to more sophisticated investors, such as a self-directed brokerage window?
- Does the plan offer a Qualified Default Investment Alternative?
- Has your plan conducted a formal, documented investment review in the last year?
- What expenses are specifically associated with the plan's investments?

## Participant Services

It is crucial that employees are armed with the knowledge to help them make appropriate decisions about their retirement, not only so that plans can meet minimum regulatory requirements, but also because it helps employees fully recognize the benefit being offered, which can assist plan sponsors with attracting and retaining employees.

Employee education and access to planning tools are the cornerstones of empowering employees to succeed in their retirement investing. Make sure that the educational material the plan provides to employees is comprehensive, germane and accessible in a central location. Critical education topics, ideally covered both in person and in written and/or online materials, may include:

- Why planning for retirement is important
- Tax benefits of investing through an employer-sponsored plan
- How to calculate an appropriate retirement income goal
- The basics of investments and asset allocation
- Budgeting and cash flow planning (which may help employees contribute more)

### Questions to Ask...

- Are you taking a comprehensive approach to employee education to help employees meet their retirement goals?
- Are you conducting reviews of employee census information to determine changes in the mix of active vs. inactive and eligible vs. ineligible employees, average participant balances, and number of loans? Is census data leveraged to customize the annual education campaign?
- Have you set goals for what employee education will help to accomplish (i.e., increase participation, reduce loans, improve asset allocation, etc.)?

## Plan Fees

Fee transparency has been a focus of the DOL and other regulators in recent years. It is incumbent on plan sponsors to document that they are meeting the requirements for fee evaluation and disclosure.

### Questions to Ask...

- Have you received the most current 408(b)(2) fee disclosure from all of your covered service providers?
- Have you or your vendor(s) provided a 404(a)(5) fee disclosure to all employees who are eligible to participate in the plan?
- Are expenses reasonable and competitive in relation to the quality of service received?
- When was the plan's last formal review of fees?
- Have you maintained records of the plan fee review(s)?

The benefits of conducting an annual retirement plan checkup are numerous. A checkup allows you to confirm that your plan is in compliance, identify risks, and consider whether improvements may benefit the plan, those who administer the plan, the participants, or some combination thereof. The IRS checklist referenced above is an excellent place to begin.

Ongoing plan maintenance will help your plan stay current on plan operations, evolving retirement plan regulation requirements, and investment performance monitoring. It will also help ease the annual checkup process for the future.

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