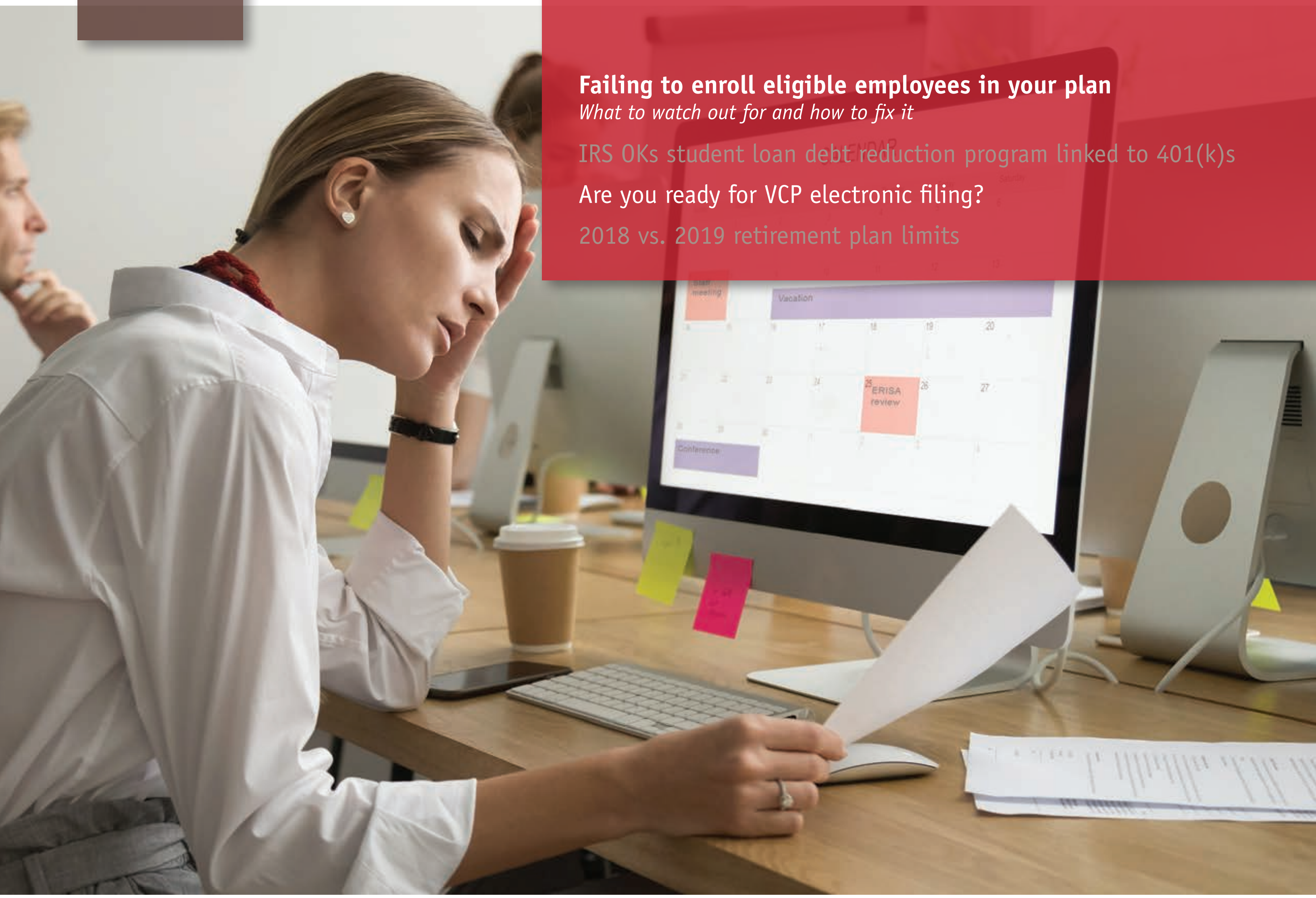
FEBRUARY
MARCH
2019

Employee Benefits Update



insero&co
Certified Public Accountants | Business Advisors

Failing to enroll eligible employees in your plan

What to watch out for and how to fix it

Administrative glitches are practically inevitable at some point when operating a retirement plan, given the myriad ways things can get off track. Case in point: inadvertently failing to add a newly eligible employee to your roster of 401(k) plan participants. While excluding an eligible employee isn't the worst mistake you could make, it's important to identify the error sooner rather than later and take prompt remedial action.

Common errors

According to the IRS, typical causes for such errors include:

- An employer's faulty assumption that the plan doesn't need to cover some part-time employees, or
- Considering employees ineligible to participate because they choose not to make elective deferrals.

What kind of remedial action is called for? You need to go beyond simply reclassifying the employee as a participant; the IRS has very specific instructions on what to do. But before you dive into that, it's often helpful to verify that you're clear on how your plan document defines eligibility.

The IRS considers inadvertently neglecting to enroll an employee in your plan when the eligibility period has begun an "operational error."

ERISA standards

Although ERISA sets some minimum standards for defining eligibility, sponsors are free to be more generous. Under ERISA, an employee is eligible if the employee has attained age 21 and has completed a year of service (defined as a consecutive 12-month period) in which the employee has logged at least 1,000 hours of work. This is referred to as the maximum statutory requirement for eligibility. When using these requirements, a plan must allow the employee to enter the plan no later than six months after meeting the requirements.

ERISA regulations elaborate on these minimum requirements. For example, they define the starting point for calculating service time, among other issues. Check with your benefits specialist or third-party administrator (TPA) to review the details.

So what do you need to do if you've failed to timely enroll a participant? If you fix the error in less than three months after the employee should have been added to the plan, you're off the hook. If not, the regulations require you to make a corrective qualified nonelective contribution (QNEC) to that participant's account.

Calculating a QNEC

The regulations create a basic two-step formula for determining the amount of the QNEC: First, take the actual deferral percentage (ADP) for the employee's category — such as nonhighly compensated employee (NHCE) or highly compensated — and multiply it by the employee's compensation during the period that he or she was eligible to participate but was mistakenly deemed ineligible. Second, multiply that number by 50%. The regulations reduce the 50% multiplier to 25% if you meet specific requirements and provide the affected employee with a notice within 45 days of being given the opportunity to make deferrals describing the failure and the correction being taken.

For example, suppose employee Mark was in the NHCE group and that group's ADP was 8%. Mark's annual compensation was $60,000, and he was wrongly excluded from participation for nine months. The math would be: $45,000 (earnings during that nine-month period) × 8% × 50% = $1,800.

QNEC contributions are automatically fully vested in the employee's 401(k) account. Different deadlines apply to errors made in plans that use auto-enrollment, and some "safe harbor" remediation alternatives are available. Again, check with your benefits specialist or TPA for the details. Don't forget that any missed employer contributions, such as matching or profit sharing contributions, must be made to the accounts of affected participants.

Notifying parties of the fix

The IRS considers inadvertently neglecting to enroll an employee in your plan when the eligibility period has begun an "operational error." That means you must remedy it using the IRS's "Self-Correction Program" without notifying the agency itself. If the operational error is "significant" (based on subjective criteria defined by the IRS), you may need to file with the IRS under its Voluntary Correction Program. In any event, you need to notify the affected employee/participant of what has happened. The required contents of the notice can be found in Rev. Proc. 2016-51.

Then you must actually make the fix by the end of the second plan year after the year the error occurred — or have it "substantially corrected within a reasonable period of time."

There's no specific deadline to fix "insignificant" operational errors.

Prevention is key

An ounce of prevention is worth a pound of cure. Following those procedures, along with reviewing this subject with your plan's employee benefits specialist, should help you avoid QNEC obligations and possibly straining your relationships with impacted employees. □

IRS recommendations for avoiding enrollment errors

The IRS urges plan sponsors to take the following steps to avoid making mistakes around employee eligibility for plan participation:

- Check how your plan document defines "employee" and plan participation eligibility requirements.
- Train (or retrain) any employees who determine eligibility to participate in your plan.
- Review payroll records for the total number of employees, birth dates, hire dates, hours worked and other pertinent information.
- Check W-2 forms and state unemployment tax returns and compare the employee data they contain with your payroll records for any discrepancies.

Most important, create protocols and have a corrective action plan that will be triggered when you identify errors.

IRS OKs student loan debt reduction program linked to 401(k)s

Student loan debt can be a significant deterrent to many of your employees' retirement savings efforts — not to mention an anxiety-inducing drag on their productivity. Combining student debt payment support with your 401(k) plan is a tricky business. But one employer managed to navigate ERISA restrictions to combine tuition repayment and 401(k) plan benefits in a way that passed muster with the IRS. In a recent private letter ruling (PLR), the IRS gave its approval to an employer (later identified as Abbott Laboratories) whose plan was subsequently rolled out to employees.

Harsh reality

Aggregate student loan debt, weighing in at about $1.5 trillion, exceeds that of credit cards and auto loans, according to a recent compilation of data by *Forbes*. Around 44 million Americans have outstanding student loans. Average student debt is in the $30,000 range, which can translate into monthly payments of around $333 over a 10-year period, according to Credible.com.

Those dollars might otherwise find their way into your 401(k) plan. And, chances are, the more highly educated — and valuable to you — your younger employees are, the higher their debt burdens.

What, if anything, can you do about it? One approach is educating employees about loan repayment strategies and debt forgiveness programs (or leading them to experts who can provide such guidance).

Another is student loan repayment benefit programs, which have been adopted by a few high-profile employers such as Fidelity Investments and PwC. But this strategy isn't likely to take the country by storm. For one, program benefits are taxable to employees. Second, the strategy requires a thoughtful communication campaign to avoid stirring resentment among employees without student debt who can't participate. Third, student loan repayment benefit programs aren't linked to employees' retirement plan contributions.

ERISA contingent benefit rule

The principal obstacle to combining student debt payment with a 401(k) plan is ERISA's "contingent benefit" rule. It states that employers can't make employees' receipt of "other benefits" contingent on their making contributions to a 401(k) plan.

"Other benefits" include health, dental, and life insurance. It also includes stock options and most other forms of compensation, including employer contributions to employees' 401(k) plan accounts.

"Freedom 2 Save" program

Strictly speaking, PLRs don't carry the weight of a Revenue Ruling. In fact, the PLR in question specifically states that the "ruling is directed only to the taxpayer requesting it," and that it can't be used or cited as precedent. But creating a plan that mimics one approved in a PLR should put you on safer regulatory ground than you otherwise would be.

Under Abbott's 401(k) plan, participants who contribute at least 2% of their compensation to their accounts receive a matching contribution equal to 5% of their compensation. However, there's a different value proposition for employees in the "Freedom 2 Save" program.

Instead of contributing at least 2% of their compensation to the 401(k) plan, they can make equally large student loan payments — without forfeiting the 5% employer match to their 401(k) plan accounts. But that 5% employer contribution isn't made until the end of the plan year. If the employee leaves the company before then (unless because of disability), the employer contribution is forfeited.

Abbott's "Freedom 2 Save" program is voluntary and all employees eligible to participate in the 401(k) plan are eligible to participate in it. Employees must elect to enroll and, once enrolled, may opt out of enrollment on a prospective basis. Participating employees can still make 401(k) plan elective contributions.

If an employee who was participating in the "Freedom 2 Save" program opts during the plan year to stop making student loan repayments and shifts those dollars (at least 2% of eligible compensation) to his or her 401(k) plan account, that employee remains eligible for the 5% employer matching contribution. Even so, that employer match for the year won't be made until after the end of the plan year, as opposed to every pay period, the way matches are done for employees who don't participate in "Freedom 2 Save."

According to the PLR, employer contributions to the 401(k) plan accounts of employees participating in the "Freedom 2 Save" program are subject to applicable plan qualification requirements, including "eligibility, vesting, and distribution rules, contribution limits, and coverage and nondiscrimination testing." What's more, an employer offering this benefit couldn't also offer student loans to employees who are eligible to participate in the program.

Is it right for your plan?

The PLR doesn't address every potential compliance issue an employer might face in offering such a program. Given all that's involved, research employee interest in any such program and consider the increased administrative costs before launching a 401(k)-linked student loan debt relief benefit. □

Compliance Alert

Upcoming compliance deadlines:

2/15 Quarterly benefit statements due for defined contribution plans with calendar year plans

2/28 Deadline for filing paper 2018 Form 1099 with IRS (electronic filing deadline is March 31)

3/15 Deadline for making corrective distribution for failed 2018 actual deferral percentage (ADP) / actual contribution percentage (ACP) tests without 10% excise tax penalty

3/15 Deadline for filing 2018 partnership tax return and making contributions eligible for deductibility without extension (or deadline for requesting extension to September 15)

4/1 Deadline for taking first required minimum distribution for participants attaining age 70½ or retiring after age 70½ in prior year

4/15 Deadline for corrective distribution of 2018 402(g) excess deferral failures

4/15 Deadline for filing 2018 individual and/or corporate tax returns and making contributions eligible for deductibility without extension (or deadline for requesting extension to October 15)

Are you ready for VCP electronic filing?

As of April 1, you'll no longer be able to file paper forms and use paper checks to pay fees under the IRS's Voluntary Correction Program (VCP). Instead, you'll have to submit forms and fees electronically via Pay.gov. The IRS announced the change in Revenue Procedure 2018-52; it's the most recent change to the Employee Plans Compliance Resolution System (EPCRS).

Using alternative compliance programs

The VCP is one of three related EPCRS programs. What are the other two and what's the difference?

1. Self-Correction Program (SCP). The SCP doesn't involve any fees and is generally suitable for more minor compliance breaches — insignificant operational failures, according to IRS Rev. Proc. 2018-52. Essentially you promptly (as defined in the Rev. Proc.) fix the problem. However, this type of correction won't bring a clean bill of health from the IRS after doing so. For example, if the IRS uncovers the errors at a later date and believes they were significant or that you applied the remedy incorrectly, they may assess penalties then.

2. Audit Closing Agreement Program (Audit CAP). The Audit CAP comes into play in addressing compliance issues revealed in a plan audit. Generally, you'll pay a penalty. The penalty amount "will bear a reasonable relationship to the nature, extent, and severity of the failure, taking into account the extent to which correction occurred before audit," according to Rev. Proc. 2018-52.

3. VCP. Broadly speaking, the VCP covers three categories of plan compliance failures: the failure to maintain a valid and current plan document, the failure to follow the terms of the plan document in operating the plan, and the failure to stay in compliance with federal laws and regulations. Needless to say, that covers a lot of territory.

If you haven't already, you'll need to set up an account at Pay.gov.

Understanding the VCP process

The basic steps involved in using the VCP as of April 1 are as follows:

Application submission. First, if you haven't already, you'll need to set up an account at Pay.gov. You'll then transmit your VCP submission in one PDF file through your account on the website. The submission includes the 2019 Form 8950, "Application for Voluntary Correction Program (VCP)," and any additional documentation listed in Rev. Proc. 2018-52, Section 11.04. Be sure to include a receipt for having paid your user fee (using IRS Form 8951, "User Fee for Application for Voluntary Correction Program (VCP)," to calculate the amount).

IRS review. The IRS will then review the failures and correction methods identified by plan sponsors. It will not look for failures not contained in the VCP submission. The IRS will contact you if it needs more information.

IRS approval. If the submission is complete and the IRS approves your proposed correction, it will send you a compliance statement stipulating that, if you complete the approved correction within 150 days, the IRS "generally" won't seek to disqualify the plan because of the disclosed failures.

IRS denial. If the IRS doesn't approve your proposed correction method, it will work with you to find an acceptable correction. If that doesn't happen, you won't get a compliance statement or refund of any user fees you have paid. This is to be avoided. The IRS says that only under "unusual circumstances" would it audit your plan while considering your VCP submission.

VCP user fees range from $1,500, for plans with up to $500,000 in net plan assets, up to $3,500, for plans with $10 million or more in net plan assets.

Fixing the failure

Generally, the plan and the participants must be placed in the same position they would have been in if the failure hadn't happened. You may want to correct errors before hearing from the IRS, but, if you do and the IRS disagrees with your remedies, you'll have to undo them and start over.

2018 vs. 2019 retirement plan limits

Type of limitation	2018 limit	2019 limit
Elective deferrals to 401(k), 403(b) and 457(b) plans	$18,500	$19,000
Annual benefit for defined benefit plans	$220,000	$225,000
Contributions to defined contribution plans	$55,000	$56,000
Contributions to SIMPLEs	$12,500	$13,000
Contributions to IRAs	$5,500	$6,000
Catch-up contributions to 401(k), 403(b) and 457(b) plans	$6,000	$6,000
Catch-up contributions to SIMPLEs	$3,000	$3,000
Catch-up contributions to IRAs	$1,000	$1,000
Compensation limit for benefit purposes for qualified plans and SEPs	$275,000	$280,000
Minimum compensation for SEP coverage	$600	$600
Highly compensated employee threshold	$120,000	$125,000
Minimum income for "key employee" status for top-heavy calculation	$175,000	$180,000
Income subject to Social Security tax	$128,400	$132,900

The solution for skyrocketing audit fees

Finding ways to cut costs while maintaining quality seems to be at the top of every executives to do list. As the person responsible for your organization's employee benefit plan audit, we can help you not only reduce your audit costs but also provide a higher level of service.

Pension auditors must sift through enormous amounts of financial data in accordance with the requirements of numerous laws, regulations and professional standards. If they don't know what they're doing, they can easily get lost in the numbers, run up large fees and fail to provide an accurate assessment of a plan's financial status.

Pension audit specialists

Insero & Co. specializes in pension plan audits. Our professionals have extensive experience in this area and to ensure that our audits meet the highest standards of quality, our firm is a member of the American Institute of Certified Public Accountants (AICPA) Employee Benefit Plan Audit Quality Center and is registered with the Public Company Accounting Oversight Board (PCAOB).

Insero & Co. is the independent registered public accounting firm for many companies that file a form 11-K with the Securities and Exchange Commission. We currently perform audits for more than 150 plans ranging in size from 100 to 60,000 participants, and from $1 million to more than $10 billion in assets.

Big firm capabilities, small firm attentiveness

As our many satisfied clients will testify, we offer the comprehensive benefit services of a large national firm, but at less cost and with a higher level of service. With more than 125 accountants, professional consultants and support staff, our firm is large enough to bring robust resources to bear on almost every client need, yet small enough to provide the personal attention and relationship-based service that is important to our clients.

The culture of Insero & Co. is hands-on and proactive, shaped by the old-fashioned notion of doing what is in the best interest of the client. In addition to pension and corporate audits, we provide a full range of tax, accounting and consulting services, including internal audit/Sarbanes-Oxley services, outsourced accounting and wealth management.

Go with the experts

We would welcome the opportunity to discuss your audit or other needs and put our expertise to work for you. Please contact Vince Leo at 585-697-9683 or Mike Giess at 585-697-9639 and let us know how we can be of service.

insero&co

Certified Public Accountants | Business Advisors

Rochester | Ithaca | Corning | Cortland | Watkins Glen | (800) 232-9547 | www.inserocpa.com