

Running a Successful Retirement Plan: Part two — Handling Disbursements

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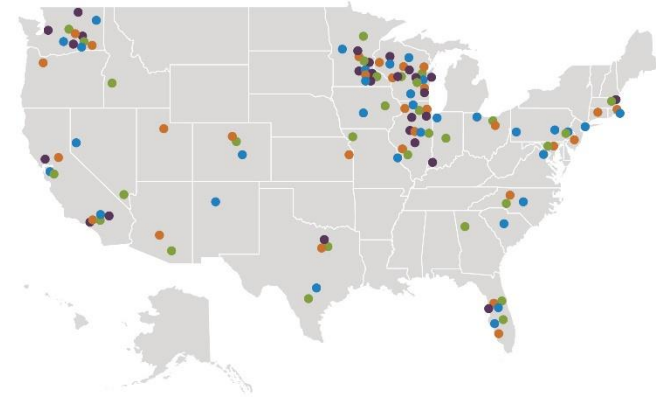
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- CLA is ***a leading provider*** of employee benefit plan audits in the country*



*According to 2017 data from the Department of Labor
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Speaker Introductions

Crystal Coleman, CPA, CEBS



- Principal, Employee Benefit Plans
 - Focuses on auditing employee benefit plans, including defined contribution (401(k), profit sharing, money purchase pension, employee stock ownership plans), defined benefit and health and welfare plans
- EBP practice leader for Southwest Region of CLA
- Recent/frequent speaker at the International Society of Certified Employee Benefit Specialists Annual Symposium

Speaker Introductions

Maria E. Morales, CPA



- Principal, Employee Benefit Plans
 - Focuses on auditing employee benefit plans, including defined contribution, defined benefit and health and welfare plans
- EBP practice leader for Florida for CLA
- Participates and/or hosts various panel discussions, roundtables, and speaking engagements on benefit plan related topics in Florida.

Learning Objectives

At the end of this session, you will be able to:

- Manage retirement plan withdrawals, including different types of distributions and loans
- Review plan withdrawals; and monitor the calculations and reporting completed by the service providers



Today's Session – Overview

- Distribution considerations
 - General
 - Hardship
 - QDRO
 - Death
- Loan considerations
- Fraud examples
- Best practices

Distributions – General

- Identify responsible parties (TPA, custodian, sponsor)
 - Obtain an understanding of who is doing what?
 - Review your service agreements with all vendors
 - Obtain SOC reports for all vendors
 - ◇ Understand your responsibility within vendor relationships – “user control considerations”

Distributions – General (continued)

- Review and approval of distribution paperwork
- Spousal consent
- Calculation of federal and state tax withholding



Distributions – General (continued)

- Calculation of years of service and vesting percentage
 - Ensure you understand the vesting requirements of the plan (i.e. 3 year cliff or 6 year graded vesting schedule)
 - Verify definition of year of service
 - The plan sponsor is required to maintain all service records for all employees to comply with vesting rules.
 - You can file under SCP or VCP to correct errors



Distributions – Hardships

- Review the plan document to verify and obtain understanding of:
 - If hardships are allowable under the plan
 - Plan's definition of a hardship
 - Any specific procedures required by the plan to be followed
 - Limitations on what funds can be utilized for hardships



Distributions – Hardships (continued)

- Must be made for “immediate and heavy financial need”
- Documentation should be retained
- Elective deferrals must cease for 6 months after hardship withdrawal
- Distributions cannot be greater than the amount to satisfy the need plus applicable income taxes
- IRS disaster relief (hardship and loans)



Distributions – QDROs

- Must contain written order from the court
- Often confusing as to formula (not always a dollar amount or percentage of balance)
- Typically new account created for spouse, then distribution made from account
- Recommend consulting ERISA counsel on QDROs

Distributions – Death

- Verifying proper beneficiary is key step
- Must collect death certificate for documentation purposes
- If beneficiary designations are not updated or transferred, unintended consequences may occur

Participant Loans

- Burden of proof with plan sponsor, not the participant
- Maximum loan amounts (Lessor of \$50k or 50% of vested account balance, generally)
- Watch loan terms carefully (5 Year limit on repayment period, generally)



Participant Loans (continued)

- Spousal consent – some plans require above \$5,000
- Defaulted loans – when does default occur?
 - Exceed the maximum amount
 - Do not follow the required repayment schedule (at least quarterly)



Participant Loans (continued)

- EPCRS Rev. Proc. 2019-19 Changes for Loans
 - Allows now for correction of a deemed distribution in the year of the correction instead of the year of failure
 - Allows for combined correction methods for defaulted loans
 - Failure of spousal consent can be resolved via obtaining consent when identified
 - Allows retroactive amendment to conform with written plan document to the plan's operation for exceeding number of plan loans outstanding



Fraud – AICPA Distribution Examples

- Collusion among related employees falsified doctor's records for hardships
- HR manager requested distributions from employees that had termed for over 2 years
- A bookkeeper made checks payable to herself and modified the bank statements to exclude cancelled checks. The fake pensioner check was found by the plan while reconciling the account.



Fraud – AICPA Distribution Examples (continued)

- A defined contribution severance plan's employee was created fictitious participants in the system and cut benefit checks. Fraud was caught at the check cashing facility
- A payroll supervisor requested distribution checks for former employees who had been laid off and requested the checks be sent to her to distribute with final payroll checks to the employees. The payroll supervisor then deposited these funds in her own savings account



Fraud – AICPA Loan Examples

- An HR employee figured out how to process loans against participant's accounts. To cover it up, she manually prepared annual participant statements to hide the loans. There were no controls to ensure the statements were private and on approving loans.
- A secretary in the plan sponsor's payroll department was able to convince the outside payroll service that she was allowed to suspend her 401(k) loan payments. This was unknown to her employer and the plan administrator.



Fraud – AICPA Loan Examples (continued)

- A controller wrote false loan checks on behalf of employees; completed falsified promissory notes and cashed them and used the dollars for his own personal account. The controller was in charge of the benefit plan, which included the approval and check writing process. The company also did all of the recordkeeping duties and the loans were not reported on participant statements

Fraud – Recent Cases

- US vs. Felix R. Ginorio: March 2018 – \$82k stolen funds via failure to remit contributions and payroll taxes.
- US vs. Pamela S. Priddy: November 2018 - \$377k stolen funds via misappropriation of assets on TPA side, including failure to notify clients of remaining funds in the claims accounts.
- US vs. Florida-based First Farmers Financial LLC (FFF) executives: April 2018 – \$179M loan scam and money laundering from 42 plans (fictitious business names, false loan #s, forged signatures).



Best Practices

- Look for warning signs and red flags:
 - Participant statements are late or do not appear accurate
 - Participants are complaining about inaccurate account balances
 - Investments listed on the custodian statements are not authorized by the plan sponsor
 - The fluctuations in plan investment income activity do not correspond to overall market fluctuations

Best Practices (continued)

- Look for warning signs and red flags:
 - Employees eligible for a distribution are having a hard time obtaining the distribution or the amount paid out is improper
 - Contributions reported on the custodial and recordkeeping system do not appear reasonable when compared to payroll
 - Unusual transactions or one-time transactions are noted in the custodian or recordkeeping statements



Best Practices (continued)

- Look for warning signs and red flags:
 - Employees of the plan sponsor demonstrate a change in lifestyle, by purchasing a sports car or buying a vacation home in Florida
 - Expenses paid from the plan vary significantly or are paid to unknown vendors

Best Practices (continued)

- Distributions: Review and recalculate distributions and vesting calculations for a sample.
 - Did the vesting percentage used in the distribution calculation consider the appropriate years of vested service?
 - Was the distribution processed in accordance with the plan document and the participant's election?
 - Is the reason for the distribution appropriate based on your knowledge of the employee's employment situation?



Best Practices (continued)

- Distributions: Review and recalculate distributions and vesting calculations for a sample.
 - Are hardship distributions proper and in accordance with plan provisions? Consider asking participant directly?
 - Review of distributions throughout the year is extremely important, especially when the distributions are handled directly between the participants and service provider.
 - For health plans, are employees and dependents eligible to receive benefits?



Best Practices (continued)

- Expenses: Review and understand expenses paid by the plan in relation to the service agreements.
 - Are there significant fluctuations in expenses throughout the year?
 - Are amounts paid out of the trust reviewed to ensure they are paid to the appropriate parties and are allowable plan expenses?
 - Do the service agreements state the fee arrangement, and does management understand how fees are assessed and who pays (ER vs. plan forfeitures, paid thru revenue sharing, or allocated amongst participants)?

Best Practices (continued)

- General:
 - Review and reconcile reports provided by the record keeper and the custodian for plans with participant account balances
 - Review census reports for accuracy vs. trust reports
 - Spot check and recalculate payroll items
 - Monitor access rights to payroll and recordkeeping.

Best Practices (continued)

- General:
 - Conduct meeting with all service providers
 - Review reports for small balances (< \$5k)
 - Request Listing of uncashed distribution checks from Custodian



Additional Resource

For more information on disbursement types, read our article series, **Best Practices for Benefit Plan Distributions** at:

<https://www.claconnect.com/resources/tools/2017/best-practices-for-benefit-plan-distributions>





Questions?

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