



## 2015 Payroll Fact Sheet

---

### Retirement Plans Paid \$820M after Failing Nondiscrimination Testing

By Danielle Andrus, Executive Managing Editor, Investment Advisor Magazine

**May 22, 2015** - Over 54,000 401(k) plans were required to issue corrective distributions to highly compensated participants. Corrective distributions have tax consequences for the highly compensated participants who receive them.

More than 54,000 401(k)s failed their nondiscrimination testing and were required to return \$820 million to participants, according to an annual study released Tuesday by Judy Diamond Associates.

Judy Diamond studied 2013 plan data from 54,493 401(k) plans for the report.

Corrective distributions are issued when highly compensated participants are found to have contributed to a 401(k) plan at higher rates than other workers during the year. The IRS requires that highly compensated plan participants contribute at a similar rate to less well-compensated workers.

"The issuance of corrective distributions should serve as a red flag to financial advisors who are looking for opportunities to increase their 401(k) business," Eric Ryles, managing director of ALM Financial Intelligence, said in a statement. "It means that the plan has highly compensated employees who were unable to save as much for their retirements with pretax income as they would like."

Those workers will also have to pay more in income taxes than they may have planned on.

Ryles added that there may be consequences for other participants, too. "It may also mean that the plan is not designed to encourage workers to contribute sufficiently," he suggested. "Plan advisors can utilize this information in their prospecting efforts by introducing retirement education programs and suggesting better 401(k) savings incentives as a part of their proposal."

They may be deeper design issues, as well. According to an IRS Learn, Educate, Self-Correct and Enforce (LESE) project, which examines a random selection of approximately 50 returns to study common compliance issues, in about 10% of the plans examined, corrective distributions were not properly made.

Among the issues discovered by the IRS were failure to follow plan terms, improper vesting of distributions to terminated participants, failure to amend plans as laws changed and failure to deposit elective deferrals on time.

Judy Diamond found Enterprise Holdings, the car rental company, had the largest amount of corrective distributions issued: \$7.7 million. Conoco Philips was required to pay \$6.7 million, while staffer Allegis Group was required to pay \$5.2 million. Corrective distributions for Chevron and Safeway were \$4.8 million and \$4.4 million, respectively.