

# 401(k) Rescue

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## Our 401(k) Fix-It Series

*401(k) Rescue, the Ekon Benefits 401(k) Fix-It Series, describes the most common 401(k) mistakes as determined by the IRS. We provide explanations of common mistakes, suggested prevention techniques and recommendations on correction methods.*

*Does your 401(k) Plan need to be rescued?*

### Common Mistake #8— Participant Loans

Participant loans may be allowed in 401(k) Plans, as stated in the Plan document, but must follow a specific set of rules as dictated by IRC Section 72(p). These rules are as follows:

The loan agreement must be a legally binding contract stating the date and amount of the loan as well as a repayment schedule.

The loan amount cannot exceed the lesser of 50% of the participant's vested balance or \$50,000. However, an exception to this rule allows participants to borrow a minimum of \$10,000, if needed.

The participant is required to make level amortized payments at a minimum of every quarter and pay the total of the loan and accrued interest within five years unless the loan was used to purchase the participant's primary residence.

- There is an exception if the participant takes a leave of absence. Repayment may be deferred for up to one year, however the length of the loan cannot be extended.

If any of these rules are not followed, the loan will be treated as a taxable distribution to the participant. Once the loan is considered a taxable distribution, the participant typically cannot correct the error. If a payment was missed, the plan administrator may allow a "cure period" that cannot surpass the last day of the second quarter following the quarter in which the payment was missed. If the loan was in violation of the Plan document or any of the rules under IRC Section 72(p), the IRS Voluntary Correction Program (VCP) may be available.

In order to avoid errors regarding participant loans, ensure that the Plan document contains clear loan procedures if loans are allowed. Include a system for determining the terms of the loan and repayment schedule as well as documentation of exceptions to the general IRC Section 72(p) rules.

For a complete listing of the most common 401(k) mistakes, please visit the IRS 401(k) Plan Fix-It Guide at [http://www.irs.gov/Retirement-Plans/401\(k\)-Plan-Fix-It-Guide](http://www.irs.gov/Retirement-Plans/401(k)-Plan-Fix-It-Guide)

For assistance in correcting a plan error, please contact Ekon Benefits at (314)367.6555 or [info@ekonbenefits.com](mailto:info@ekonbenefits.com)