



Financial Adviser

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Reap the Benefits of a Quality Retirement Plan Audit

One of the more undervalued compliance requirements in business today is the federal government's-mandated audit for employee benefit plans with more than 100 participants. Many sponsors of these plans view this process as a "necessary evil" and yet another cost of doing business. While it is true the audit is required and adds to the cost of providing benefits to employees, there are significant benefits to be gained from the process, including cost savings.

A quality audit will reduce the likelihood that a plan's Form 5500 filing will be rejected, saving headaches and penalties. In addition, audit procedures testing participant eligibility, eligible compensation and contributions can uncover small operational errors where early detection minimizes or prevents further cost or penalty to the plan.

Rejected Form 5500 from Deficient Audit

In recent years, the Employee Benefits Security Administration, U.S. Department of Labor (EBSA/DOL) has increased its oversight of retirement plan operations and plan audits. EBSA wants to see the plan and its sponsors acting in the best interests of the plan participants and beneficiaries. Included in the EBSA enforcement program is a review of audit working papers to verify the audit was properly conducted. If EBSA determines the audit was not properly performed, the Form 5500 filing could be considered incomplete and therefore not timely filed. The penalties can be as high as \$1,100 per day.

Incorrect Participant Inclusion/Exclusion

A common error is the failure to timely include eligible participants. However, plans occasionally include employees prior to the time they are eligible. Both of these situations can be costly. Failing to include an eligible participant can lead to additional contributions (including participant contributions to be paid by the employer) and the employer paying for lost earnings on such contributions. Including a participant before he or she is eligible not only adds costs from unnecessary employer contributions, but also subjects the plan to additional contributions if it is deemed to be discriminatory.

Ineligible Compensation

Eligible compensation is another area where auditors often uncover errors. The retirement plan document will indicate how eligible compensation is determined. If incorrect

compensation is used to compute employee and/or employer contributions, excess or deficient contributions can result. Again, this can lead to many unpleasant issues for the plan sponsor.

Untimely Remittance

Typically, most problems are with timely remittance of participant contributions, including loan payments, into the plan. The DOL regulations indicate that employers must remit participant contributions "as soon as they can be reasonably segregated from the employer's general assets, but in no event later than the 15th business day of the month following the month in which participant contributions are withheld or received by the employer." Many employers view the 15th business day as a safe harbor. This is incorrect.

The DOL maintains that, if an employer can segregate other withholdings such as taxes and deposit those funds within a few days, the employer can do the same for the retirement plan. The DOL views untimely remittance as a prohibited use of plan assets and has awarded penalties and lost earnings allocations to participants. Early auditor detection and correction of late remittances of contributions will not relieve the sponsor of the duty to restore lost earnings to the plan on behalf of the participants, but it can help avoid Internal Revenue Service penalties and future occurrences.

The DOL recently issued a safe harbor regulation for "small plan" sponsors – those plans with fewer than 100 eligible participants. Under this new regulation, the small plan sponsor must remit participant contributions within seven days of the pay date. There still is no safe harbor for large plans, but the tone of the small plan regulation clearly reflects the DOL's push towards faster remittance. All plan sponsors should remit participant contributions in the same number of days as payroll taxes are deposited.

The best way to benefit from a benefit plan audit is to know the independent auditor is performing a quality audit. Plan sponsors should communicate with the auditor throughout the audit, from planning through completion, in order to receive the most value from the process. ★

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