

# Would Your Plan Survive a DOL or IRS Audit?

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# IRS and DOL Responsibilities

- Internal Revenue Service
  - Jurisdiction over the tax qualified status of plans
  - Compliance with Internal Revenue Code, Regulations and Guidance
  - Plan document
  - Plan operations
  - Reporting/Disclosure
  - Prohibited Transaction Excise Tax

# IRS and DOL Responsibilities

(Cont.)

- U.S. Department of Labor
  - Administration and enforcement of ERISA Title I
  - DOL has authority to conduct civil and criminal investigations of employee benefit plans
  - Compliance with ERISA
  - Plan documentations
  - Fiduciary issues
  - Prohibited transactions
  - Reporting/Disclosure
  - ERISA Fidelity Bond

# Audit Triggers?

## *What Triggers an Audit?*

- Participant complaints
- Form 5500
- Referrals from the other agencies
- Audit initiatives
- Audit of plan auditors
- Information from the media
- SEC Filings
- Bankruptcy and other filings
- Private lawsuits

# Current Red Flags For Audit

- Internal Revenue Service (IRS)
  - Mistakes or certain information on Form 5500
    - Inconsistencies and blanks
    - Showing “Other Assets” in financial statement
    - Large Amount of distributions
    - Large number of participant terminations without full vesting
    - Top heavy plans
  - Non-or Late Amenders
  - Definition of Compensation
  - Excess Deferrals under IRC 402(g)

# Current Red Flags For Audit

(Cont.)

- Department of Labor
  - Mistakes or certain information on Form 5500
  - Real Property or “other assets” held in Plan
  - Non-readily tradable assets held by Plan
  - Late deposit of salary deferrals and/or loan repayments
  - Group Health Plans
    - Sufficiency of Explanation of Benefits under ERISA claims procedures
    - Operational Compliance with
      - ACA
      - Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA)
      - Proper claims resolution

# What Starts an Audit?

- The Plan is notified by phone or letter
- The examiner requests plan records and documents
- An on-site appointment is scheduled
- Examiner conducts on-site audit and interview
- Certain basic plan requirements always audited
- Additional documents requested; issues raised
- Not all audits are identical or comprehensive
- IRS exam limited to “open” tax years
- DOL may expand audit to six years

# What To Do When You Receive An Audit Letter

- Notify the plan's legal counsel, independent auditor, consultant, recordkeeper and employer's payroll processor
- Designate a point person
- Coordinate with vendors
- Determine what is being investigated
- Gather the requested documents and make them available before or during the on-site visit
- Do not make up answers to inquiries because you think you should know the answer



# What Do Auditors Look For?

## IRS Focus:

- Common problems include failure to:
  - Amend the plan document for law changes
  - Follow plan's definition of compensation
  - Follow plan's eligibility provisions
  - Satisfy minimum distribution rules
  - Satisfy nondiscrimination tests
  - Follow plan's vesting schedule
  - Follow participant loan procedures

# What Do Auditors Look For?

(Cont.)

## DOL Focus:

- Common problems include failure to:
  - Timely deposit participant salary deferrals
  - Secure an adequate fidelity bond
  - Document relationships with service providers
  - Document that fees paid for services are reasonable and prudent
  - Document that investment options are prudently selected and monitored
  - Provide required disclosures (SPD, SAR, Safe Harbor, QDIA, Benefit Statements, etc.)

# What Do Auditors Look For?

(Cont.)

- DOL Focus for Group Health Plans:
  - Plan documentation and insurance policies
  - Provide required disclosures (SPD, SBC, WHCRA, HIPAA, Children's Health Insurance Program Reauthorization Act, Medicare Part D Notice, Grandfathered Status)
  - For self-insured plans, contracts for claims processing, administrative services and reinsurance.
  - Documentation describing employer and employee responsibilities for payment of costs
  - COBRA notices and procedures
  - MHPAEA Compliance

# What Do Auditors Look For?

(Cont.)

- ACA Compliance
  - 90-day waiting period
  - No Lifetime or Annual Limits
  - Prohibition on rescissions
  - Extension of Dependent Care Coverage
  - No Pre-existing Condition Exclusions
  - Discrimination Rules
  - Use of Summary of Benefits and Coverage
  - Proper claims procedures (internal/external appeals)
  - Coverage of preventative care
  - Not an exhaustive list

# Best Practices to Minimize Audit Risks

- Get expert assistance
  - Schedule regular updates with record keepers, investment advisors and managers, and other service providers
  
- Conduct self-audits of plan operations
  - Establish procedures and allocate duties and responsibilities for proper plan operation and oversight
  - Know your plan fiduciaries and identify who is responsible for carrying out which fiduciary duties for the Plan
    - Focus internal governance to eliminate conflicts of interest and minimize risk of fiduciary errors

# Best Practices to Minimize Audit Risks *(Cont.)*

- Check plan documents at least annually
  - Make sure plans are compliant with new legislation
- Request reports on loan repayments, enrollments, contributions, distributions, terminations, vesting, forfeitures, cash outs, etc and monitor for compliance
- Keep annual timetable for reports and disclosures
- Properly track data and maintain records
- When errors are found, work with service providers to correct as soon as possible

# IRS Correction Programs

- IRS Employee Plans Compliance Resolution System (“EPCRS”)
- Goals
  - Restore the Plan and participants to the position they should have been in had the failure not occurred
  - Correction should be reasonable and appropriate for the failure
  - Preserve tax deferred benefits for participant
  - Income/excise tax relief
- Failure Categories
  - Plan document failure: form
  - Operational failure: failure to comply with plan terms
  - Demographic failure: failure to satisfy coverage, discrimination rules even though following plan terms
  - Employer Eligibility failure

# IRS Correction Programs *(Cont.)*

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- Self-Correction
- Voluntary Correction Program
- Audit CAP
- Form 5500EZ Penalty Relief Program



# DOL Correction Programs

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- Delinquent Flier Voluntary Compliance Program (DFVC)
- Voluntary Fiduciary Correction Program (VFCP)

# Contact Information



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