

***HOW TO PREPARE FOR A DOL OR IRS QUALIFIED
PLAN AUDIT***

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***DOL or IRS INVESTIGATION or AUDIT:
Two Sides of the Same Unpleasant Coin***

- **WHAT IS THE DIFFERENCE BETWEEN A DOL AND IRS AUDIT/INVESTIGATION OF QUALIFIED RETIREMENT PLANS?**
 - **DOL's Responsibility:**
 - **Enforcement of ERISA: fiduciaries must act prudently in the best interest of plan participants and beneficiaries:**
 - **Investigations of breaches of fiduciary duty and of instances of prohibited transaction by focusing on:**

***DOL or IRS INVESTIGATION or AUDIT
Two Sides of the Same Unpleasant Coin (Cont'd)***

- **Investigation of breach of fiduciary duty and prohibited transaction--focus is on: (cont'd)**
 - **1) Form 5500 filings;**
 - **2) Plan documents (SPDs and SMMs provided to participants);**
 - **3) Fee disclosures;**
 - **4) Timeliness of deposits of employee deferrals;**
 - **5) Monitoring of employee loan repayments;**
 - **6) QDRO Processing**
 - **7) Investment valuations.**

DOL or IRS INVESTIGATION or AUDIT
Two Sides of the Same Unpleasant Coin
(Cont'd)

- **IRS Responsibility:**

- **Ascertain plan qualification by insuring compliance with tax laws:**

- **Focus investigation on:**

- **1) Plan and Plan amendments drafting;**
- **2) Coverage and nondiscrimination tests;**
- **3) Compensation definition;**

DOL or IRS INVESTIGATION or AUDIT
Two Sides of the Same Unpleasant Coin (Cont'd)

- Plan qualification – focus investigation on: (Cont.)
 - 4) Plan eligibility requirements;
 - 5) Minimum distribution requirements;
 - 6) Vesting;
 - 7) Loan repayments and defaults;
 - 8) Identification of highly compensated and key employees.

*WHY ARE YOU A TARGET:
Bad Luck or Something Else?*

- **Increase in audits of retirement plans (one in every three plan sponsors experienced an audit in the past two years according to Wills Towers Watson survey)**
- **Imperative for plan sponsors to consistently monitor plan compliance with ERISA and IRC requirements**

*WHY ARE YOU A TARGET:
Bad Luck or Something Else?
(Cont'd)*

- **Although selection for audit might be random (bad luck) there are certain triggers:**
 - **1) complaints from plan participants (25% of audits);**
 - **2) EBSA audit initiatives;**
 - **3) plan sponsor responses to IRS questionnaires;**
 - **4) intra-agency referrals**

AUDIT PROCESS

How It Begins

- **It may begin with a phone call followed by a letter or simply with a letter – “Information Request Letter”**
- **What is in the letter?**
 - **Date of on-site auditor’s visit to review documents and possibly interview personnel responsible for the administration of the plan**

AUDIT PROCESS

How It Begins (Cont'd)

- **Documents/records sought by the administrative agencies:**
 - **Plan/trust documents;**
 - **Corporate/meeting minutes;**
 - **TPA/service provider agreements;**
 - **Investment documentation;**
 - **Fiduciary liability insurance and fidelity bond;**
 - **Documentation regarding fees and expenses;**

AUDIT PROCESS

How It Begins (Cont'd)

- **Documents sought by the administrative agencies: (cont.)**
 - **IRS determination letter;**
 - **Payroll records;**
 - **Participant benefit statements;**
 - **Form 5500 and attachments;**
 - **Missing participants;**
 - **Unclaimed benefits.**

AUDIT PROCESS

How It Begins (Cont'd)

- **What do you do now?**
 - **Don't ignore the letter**
 - **Don't panic;**
 - **Call your TPA;**
 - **Call/hire ERISA counsel;**
 - **Contact fiduciary insurance carrier**

AUDIT PROCESS

Preparation

- **Goal: smooth and productive on-site auditor's visit**
- **Consider whether ERISA counsel should manage audit response;**
- **Start collecting, reviewing and organizing the documents/records requested by the administrative agency (bound and labeled book);**

AUDIT PROCESS

Preparation (Cont'd)

- **Organize your audit response team:**
 - **1) Personnel responsible for plan administration;**
 - **2) ERISA counsel;**
 - **3) Consultants;**
 - **4) Investment advisor;**
 - **5) Administrator; and**
 - **6) Trustees**
- **If necessary ask for an extension of time**

AUDIT PROCESS

Audit

- **Interview:**
 - **DOL auditors may conduct voluntary interviews with individuals who might have information relevant to the investigation;**
 - **Provide only the information requested (do not volunteer any information not specifically asked for);**
 - **Make sure your ERISA counsel is present**
- **Generally:**
 - **Be responsive, courteous and cooperative (but exercise caution) – do not be adversarial or antagonistic**

AUDIT PROCESS

Most Common Deficiencies

- **Most common deficiencies identified by the DOL and IRS:**
 - **Not updating plan documents to keep up with new legislation;**
 - **Not administering the plan consistent with its terms;**
 - **Using an incorrect definition of compensation to calculate deferrals;**
 - **Depositing participants' deferrals in an untimely manner;**

AUDIT PROCESS

Most Common Deficiencies (Cont'd)

- **Most common deficiencies identified by the DOL and IRS:
(Cont.)**
 - **Failure to follow plan eligibility requirements;**
 - **Improper participant loans and failure to monitor and pursue repayment;**
 - **Improper hardship withdrawals;**
 - **Failure to perform ADP/ACP nondiscrimination testing;**
 - **Failure to make minimum required distributions**

AUDIT AFTERMATH

What Should You Expect?

- **Do Not Expect a Quick Response (Now is the time for patience)**
- **DOL:**
 - **Best case result: “No Action” letter: no further action is necessary**

AUDIT AFTERMATH

What Should You Expect? (Cont'd)

- **Most common result: “Voluntary Compliance Letter”**
 - **Detailing certain deficiencies such as: untimely deferrals; issues related to employee loans**
 - **Describing corrective actions that need to be undertaken under the Voluntary Fiduciary Compliance Program (VCP)**
- **Worst result: DOL threatens/files litigation on behalf of plan participants**

AUDIT AFTERMATH

What Should You Expect? (Cont'd)

- **IRS:**

- **Best case result: Letter stating that the IRS will not pursue any further actions;**
- **If violations are found corrective actions need to be pursued under the IRS's Audit Closing Agreement Program: make plan and participants whole through corrective contributions plus interest to participants accounts, excise taxes (IRC 4975), other fees and penalties.**
- **If plan sponsor disagrees, appeal process is available**

AN OUNCE OF PREVENTION . . .

- **WARNING: YOU CANNOT ESCAPE AN AUDIT BUT YOU CAN ALWAYS BE PREPARED:**
 - **Have internal controls (processes and procedures) in place;**
 - **Conduct an audit “selfie” by periodically (year-end) reviewing:**

AN OUNCE OF PREVENTION . . . (Cont'd)

- **Conduct an audit “selfie” by periodically (year-end) reviewing: (Cont.):**
 - 1) plan, plan amendments, SPDs, SMMs against plan operation;
 - 2) investment policy statement, loan procedures, QDRO procedures documents;
 - 3) IRS determination letters;
 - 4) fee related documentation;
 - 5) signed plan documents, amendments, board resolutions;
 - 6) compliance testing, participant allocations;
 - 7) Form 5500s
- **If you ascertain deficiencies or errors in plan operation or administration avail yourself of the agencies’ self correction programs**

IN CONCLUSION

- **YES, YOU TOO CAN AND WILL SURVIVE A PLAN AUDIT!**
- **ANY QUESTIONS?**