Retirement Times

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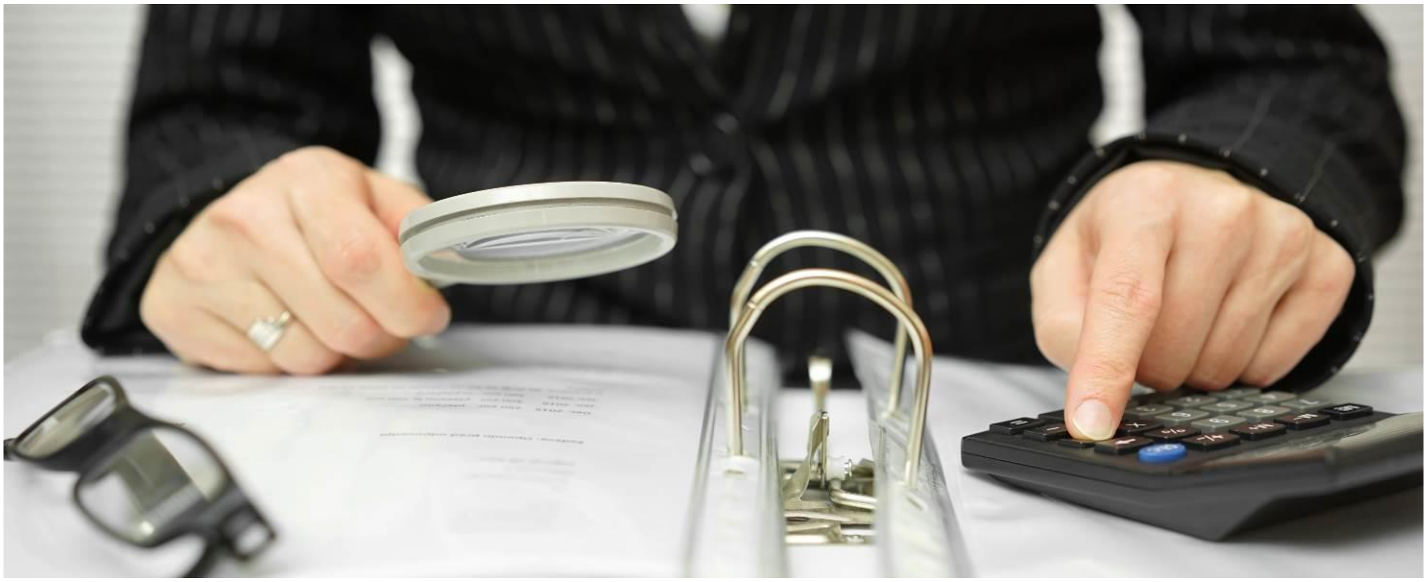

Are You Prepared for an IRS Audit?

Michael Viljak, Manager of Advisor Development

The Internal Revenue Service's (IRS's) Employee Benefit Audit Program is used to audit and enforce. The IRS's emphasis, with respect to defined contribution plans is on compliance with the requirements of the Internal Revenue Code (the Code), the plan's tax qualification and administration of all plan documents. In the event of noncompliance with regulations, the IRS can impose taxes, penalties and interest.

Most IRS audits are selected at random, but certain audit triggers exist that plan sponsors should be aware of. If the IRS suspects noncompliance, the chances of an audit will increase substantially. Answers to certain questions on the Form 5500 may also trigger an audit.

The IRS audit process is initiated with an Information Request Letter to the plan sponsor. The Information Request Letter identifies the date the auditor plans to visit, the documents they plan to review and possibly will list individuals they intend to speak with who handle plan administration. The letter requests specific information to have available for the auditor to review. If you receive one and have questions regarding items requested, or require additional time to collect the requested data, it is best to be proactive and explain your concerns and circumstances.

It is essential to be prepared for audit by having all requested documents readily available and being familiar with these documents. Preparation should begin upon receipt of the audit letter. Being prepared, informed and helpful to the auditor should reflect positively on the audit experience. Be sure to be available during the audit in the event you are asked to respond to follow-up questions or produce additional documents.

The auditor may want to speak with other plan fiduciaries, your ERISA attorney, plan advisor, administrator, investment advisor and trustee. If you anticipate more potentially concerning issues may be discussed, you may want to consider having your legal counsel assist during the audit process.

While it is important to be prepared, understand that auditors are looking for specific information, so provide only information that is requested. It is not a good idea to lead an auditor to your plan files and let them search. Allowing access to more information than is requested can often be counterproductive. Be patient with the audit process and project confidence.

The IRS will focus on compliance with the plan document, regulations and tax-related issues. Compliance with all plan documents in terms of operation and administration are the most frequent cause of compliance deficiencies. Also, compliance with newer regulations is likely to be reviewed.

The most common issues the IRS finds in its audits of retirement plans are:

- Plan document is not up to date
- Untimely participant deferral deposits
- Plan operation doesn't follow the plan document
- Plan definition of compensation not followed
- Matching contributions not made to all eligible employees
- Plan definition of eligibility to participate or for employer match not followed
- Improper administration of participant loans (including defaults), hardships, QDROs, etc.
- Delinquent filing of Form 5500
- ADP/ACP test errors
- Deferral limits exceeded
- Top-heavy requirements ignored

Once the audit is complete, the auditor will follow up with a phone call to verbally convey the audit findings; the phone call is followed by a written audit findings letter. The letter may show no further actions are necessary and that the audit file is closed. If errors are found, then certain corrective actions may be necessary through the IRS's Audit Closing Agreement Program, the main intent of which is to make the plan and its participants whole. This may include a corrective contribution plus interest to plan participant accounts, excise taxes required and potentially other fees and penalties payable to the IRS. If you disagree with the audit conclusions in some way, there is an appeals program that enables another review of the audit findings and your position.

Plan administration is complex and plan documents are not always simple to interpret, as a result it is not uncommon for plan sponsors to have correction issues at some point. Many errors that occur and corrections that need to be made arise out of a triggering event, such as payroll staff turnover, system changes, one-off processing events, annual limits or business reorganizations. If you've had or have this type of event, you may want to conduct a self-audit to ensure your plan's operation continues to be consistent with plan documents and all laws. Performing regular self-audits will give you greater protection against compliance breaches. If you identify a problem during the self-audit of plan operations, you can voluntarily correct these problems. Depending upon the nature and extent of the issue, you may be able to self-correct your plan, document the corrections for the file and move forward without a formal filing with the IRS or the DOL. More significant issues, such as failing to amend the plan timely or not depositing employee deferrals timely, generally require filing for and obtaining approval of the self-correction methodology.

<u>About the Author, Michael Viljak</u>
Michael has over 30 years of experience in the pension field, on both the wholesale and retail levels, focusing on 401(k) plans ever since their inception in 1981. Michael was part of the team that created RPAG's proprietary Fiduciary Fitness Program™. He authors many of RPAG's newsletter articles, communication pieces and training modules. Prior to RPAG, Michael worked for Great-West Retirement Services for more than 25 years in various sales and management positions.

Hey Joel! – *Answers from a recovering former practicing ERISA attorney*

Welcome to *Hey Joel*! This forum answers plan sponsor questions from all over the country by our in-house former practicing ERISA attorney.

Hey Joel,

I am a fiduciary/committee member to a retirement plan. Am I required to receive ongoing fiduciary training?

\- *Curious in California*

Dear Curious,

The DOL has provided various commentaries on the topic of fiduciary education. The most recent manifestation of this is that DOL auditors have been directed to ask plan sponsors to evidence the fiduciary training they have received over the past 12 months. If none, this is a potential audit flag.

From the most elementary standpoint, the DOL believes that if fiduciaries do not receive training on their roles and responsibilities, they cannot be in position to practice their duties prudently. The DOL believes that the uninformed fiduciary may act with good intentions, but they "don't know what they don't know." This is particularly concerning when it comes to issues of investment management and determination of plan fee reasonableness, but it really impacts all aspects of fiduciary activities which require practicing "procedural prudence" for all decisions.

If a plan sponsor or committee question this, I would show them our Fiduciary Fitness Program's diagnostic report identifies the major fiduciary duties and education/documentation modules evidence fiduciary knowledge and prudent practices. If you are not fully confident with you responsibilities in each of the areas listed, you should obtain training.

A Committee charter allows for the plan sponsor and board of directors (the "named fiduciary" in their plan document) to delegate specified fiduciary responsibilities to a committee, or other co-fiduciaries. In the absence of the charter document, the named fiduciary retains all the day-to-day management responsibilities and liabilities, most of which can be delegated except the selection and monitoring of the co-fiduciaries so delegated. Most plan documents indicate that the "named fiduciary" is "the Company", which is interpreted under ERISA law to be the BoD for a "c" corp, or the primary decision-making entity for other structures (e.g. managing partners if LLC, etc.).

Quenching curiosity,

Joel Shapiro

<u>About Joel Shapiro, JD, LLM</u>

As a former practicing ERISA attorney Joel works to ensure that plan sponsors stay fully informed on all legislative and regulatory matters. Joel earned his Bachelor of Arts from Tufts University and his Juris Doctor from Washington College of Law at the American University.

If you have a question for Joel, please send it to your plan advisor. Maybe it will be featured in a future issue!

Participant Corner: Save Early, Reach Your Goal

This month's employee memo encourages employees to enter the plan and begin saving early. Please see an excerpt below.

Contributing to your employer's retirement plan as soon as you're eligible is crucial to meeting your retirement goals. The earlier you start saving, the more time compounding interest has to work on your behalf. Putting off contributions today means increased contributions to reach the same goals tomorrow.

For example:

Shane, Maria and Nadia are each beginning their retirement savings journey today and each wish to accumulate $300,000. How much do they need to contribute to meet their goal?

**Assumes an average rate of return of 8%. These examples are hypothetical in nature, do not represent any specific investment, and do not account for any fees or expenses associated with an actual investment.*

To remove yourself from this list, or to add a colleague, please email us at jr@premierretirementadvisors.com or call (515) 221-1020.

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