

Employee Benefits Plan Newsletter

Summary of IRS Examinations of Retirement Plans

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During 2017, the Employee Benefit Service Practice of PKF O'Connor Davies, LLP represented a number of plans that had been selected for examination by the Internal Revenue Service (IRS). Our practice includes a former IRS agent and other professionals with experience in representing retirement plans before regulatory agencies. The plan year selected for review by the IRS was generally the 2015 plan year. According to the governmental agents, these plans were selected based on one of the following reasons:

- type of organization (e.g., not-for-profit),
- large percentage of assets reported as distributions on the plan's Form 5500,
- plan repeatedly reported corrective distributions [this occurs when participants have contributed in excess of the IRS dollar limit, or distributions were made from the plan to satisfy a nondiscrimination test, e.g., actual deferral percentage (ADP) test], or
- random selection.

Through the process of gathering the data requested for the IRS review, or during the review itself, certain of the plans that we represented were determined to require corrective actions or further processing in some of the areas outlined below:

- A plan that experienced a change of record keeper during the plan year failed to aggregate all employee contributions and subsequently the plan failed the nondiscrimination tests —ADP/ACP — requiring significant correction amounts to be contributed to the plan by the employer and distributions of excess employee contributions were required to be made to Highly Compensated Employees (HCEs).
- Service providers to the plan failed to complete annual compliance and nondiscrimination testing for the plan.
- Allocation of the employer contribution was not performed accurately.
- An amendment needed to be prepared for the plan.
- Improper use of compensation (as defined by the plan) when making allocations of the employer contribution to the plan.
- Inability to produce documentation to support the timely issuance of required notices and other disclosures to the plan participants and beneficiaries.

Through the efforts of the plan's employer and our professionals, many of the plans ultimately received "no-change" closing letters from the IRS. A few plans were required to perform corrective actions, which included the making of employer contributions and earnings to the plan. In another instance, the plan's required corrective actions involved a revised procedure for the processing of employee contributions made to the plan, and included the calculation of lost earnings which required an employer contribution to the plan.

We are providing this information — based on the actual experiences of clients we serviced — so that the plan sponsors and administrators can identify the operational areas of a regulatory examination and evaluate whether a proactive review should be considered to avoid the corrections which included monetary and human capital resources.

Department of Labor Activity

Although we were not requested to assist any client on a DOL investigation of these plans, we are aware that the Chief Accountant's office of the DOL has sent inquiry letters to filers of large (over 100 participants) retirement plan sponsors asking if they have filed the appropriate Form 5500 for their welfare plans. Apparently, the DOL has become aware of situations where plan sponsors have not filed the Form 5500 for their welfare plans. There are significant penalties for the non-filing of the Form 5500. Plan sponsors should review their enrollment numbers in the welfare plans (e.g., life, health, disability, severance, dental, vision, etc.) and, when the number of participants is greater than 99, they should ensure that the proper filings are being performed.

In addition, our practice is in the process of performing reviews of certain health and welfare plans to determine how prepared a plan administrator needs to be in order to respond to the inquiries the DOL has included in its investigation letter regarding health and welfare plans. Plan administrators may not be aware of all the statutory requirements for maintaining a health or welfare plan, since they are usually funded with insurance or general assets of the employer or a combination of both. This is due in part because there is generally no ERISA or IRS audit requirement of these types of plans.

We have determined that on several occasions employers were not filing all the required Form 5500s for their welfare plans or, conversely, filing too many. On other occasions, the applicable plan documents and summary plan descriptions were determined not to meet all the required ERISA disclosures and/or protective language (e.g., the right to amend or terminate the plan).

Contact Us

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About PKF O'Connor Davies

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