

## Employee Benefit Plans Alert

# Retirement Plan Nondiscrimination and Other Compliance Tests

By Matthew J. Corona, CPA, Partner and Louis F. LiBrandi, EA, CEBS, ChFC, TGPC, Principal

As the 2020 plan year audit season approaches, it is important for plan sponsors to remember their responsibility for conducting required nondiscrimination and other compliance tests relating to a retirement plan in a timely manner. The tests applicable to a plan vary based on the type of plan [e.g., 401(k), 403(b) or defined benefit] and several other factors.

Unless the plan contains a safe-harbor formula, or a uniform/fixed rate or percentage of the employer contribution, a nondiscrimination test would generally be required to test the employer contribution made to the plan. A plan may also avail itself of other exceptions to the nondiscrimination testing if an exception is provided in the Internal Revenue Code. Other compliance testing (e.g., ensuring dollar limits of contributions made by the participant, employer, or on a combined basis) are required to be performed on an annual basis.

The performance of these various tests is often performed by the record keeper of the plan, or outsourced to a third-party administrator, or other professional organization who needs access to the plan's records and the knowledge to properly perform these tests. Failure of any of these tests requires the plan administrator to take corrective action(s), which could include making additional contributions to the plan, notifying participants of the matter, additional reporting or possibly filing a voluntary application to the IRS or Department of Labor when the errors are significant or untimely processed.

For additional information on the various types of nondiscrimination and compliance tests required for retirement plans, please refer to our previously-issued article entitled [Non-Discrimination Testing for Qualified Defined Contribution Retirement Plans](#).

### Auditor's Responsibilities

An auditor's responsibilities include reviewing a plan's tax status, determining whether management has performed and complied with the applicable tests, and whether failures, if any, were corrected in a proper manner. Auditors typically request copies of the testing for proof of completion (i.e., test results) and to verify the accuracy of the tests performed. Auditors will also review the financial statement disclosures regarding tax status to determine if any additional disclosures are warranted.

Failure to comply with these testing requirements could jeopardize a plan's tax status, which would have an effect on participants, employers and the plan's trust.

For the reasons provided above, it would be responsible and beneficial for plans to have their testing and results prepared sooner rather than later and before the audit firm commences the audit of the plan.

### Contact Us

The Employee Benefit Services Group at PKF O'Connor Davies is available to assist plan sponsors in meeting the various compliance requirements applicable to their plan. We also provide a full spectrum of compliance services for qualified retirement plans, nonqualified deferred compensation plans, and welfare plans. For more information, please contact your client services partner or either of the following:

Matthew J. Corona, CPA, Partner  
Employee Benefit Services Group  
[mcorona@pkfod.com](mailto:mcorona@pkfod.com) | 914.341.7032

Louis F. LiBrandi, EA, CEBS, ChFC, TGPC, Principal  
Employee Benefit Services Group  
[lbrandi@pkfod.com](mailto:lbrandi@pkfod.com) | 646.449.6327

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