

401(k) Regulators Knocking?

What to do if officials make a 'visit.'

By Deborah Castellani

While 401(k) plans continue to grow in popularity, so has the immense scope of complexity surrounding compliance. Lately, there's more attention and scrutiny from regulators and lawyers, making it imperative for plan sponsors to understand their fiduciary roles, the overall process, and how to safeguard themselves before an examination.

Who are the regulators? Under the Employee Retirement Income Security Act (ERISA), Congress tasked its interpretation and enforcement to three distinct regulators: the Internal Revenue Service (IRS), Department of Labor (DOL), and the Pension Benefit Guarantee Corporation (PBGC). The PBGC is primarily focused on defined benefit plan funding and insurance requirements, whereas, the IRS and DOL, have major roles in the ongoing oversight and examination of 401(k) plans. Their jurisdictions are separate and distinct, yet their examinations have similarities.

Both the DOL and IRS examination processes consists of four stages, which include fact finding, review, findings, and response/negotiations. The IRS may request information prior to interviews by phone, and in some cases, the entire examination may be done via telephone and mail. The DOL, however, will generally send a letter and conduct the interview and review at a company's office.

More and more we live in a regulatory world and many plan sponsors and employers may not be fully aware of the complexity and scope of their fiduciary responsibilities under the law.

According to the DOL, almost 73 percent of the plans audited/ investigated were required to restore losses to the plan or take another type of corrective action to correct plan deficiencies.

So what happens if contacted by a regulator? The first piece of advice is: Don't panic. Whether contacted by the IRS or the DOL, immediately contact ERISA counsel. Next, keep in mind that there are actions to take to make the best of an examination:

- If there is an on site exam, provide a suitable and designated working area for the regulators, such as a conference room.
- Designate one person to work with the regulators who is knowledgeable about the plan.
- Inform staff of the examination, but refer any questions from an examiner to that person.
- Be honest, but do not volunteer information beyond the scope of the question.
- All plan documents and requested records should be organized and readily available.
- Establish reasonable turnaround times on requests for further information.
- Have your committee minutes, policies, practices, and procedures (internal controls) up to date.
- If errors are discovered in advance, begin correcting them, but let them know errors were found and are being corrected.

Suggestions for being better prepared: There are steps to take before it's too late. It starts with being proactive. Plan sponsors and fiduciaries need to be diligent with documentation, corporate governance, and fiduciary practices. Identify issues or potential issues and reduce risk by using internal auditors or independent qualified plan consultants to review a plan or take advantage of self assessment tools, such as www.thefiresystem.com. Obtain solutions to correct issues and institute them immediately, then implement internal controls to prevent future problems.

Remember: Regulators really do want you to find issues, correct them, and prevent future problems. Knowing, understanding, and implementing controls and solutions are the best methods for being prepared for and possibly avoid an examination or lawsuit.

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