



Small Plans Challenges, Compliance, and... Audits

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- A professional services firm with three distinct business lines
 - Wealth Advisory
 - Outsourcing
 - Audit, Tax, and Consulting
- More than 4,500 employees
- Offices coast to coast
- Providing employee benefit plan audit, tax compliance, and consulting services for more than 50 years.
- Our 30 principals and 300 professionals audit more than 2,000 plans across the country and provide compliance and consulting services for hundreds more.



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Speaker Introductions



- **Michele Chalmers**
Principal



- **Denise Falbo**
Director, TPA-Operations

Learning Objectives

- At the end of this session, you will be able to:
 - Determine what the DOL and IRS requirements are for small plans
 - Give examples of the most common compliance errors and how to correct
 - Explain why small plans may be audited and the criteria used to do so
 - Recognize why complying with the regulations is important
 - Create an action plan for planning and preparing for an audit



How important is it to keep your plan in compliance?

- How does “disqualification” sound?





SMALL PLAN COMPLIANCE

Defining Small Plans

- Generally, those with less than 100 participants at beginning of plan year
- 80-120 participants at beginning of plan year and filed as a small plan filer the previous year



Common Plan Compliance Errors

- Late remittance issues
- Failure to follow terms of document
- Compensation definition
- Early participation of ineligible employees or exclusion of eligible employees
- Failure to correct non-discrimination tests
- Top heavy issues
- Delinquent or late Form 5500 filings
- Failure to satisfy loan provisions
- Impermissible in-service withdrawals
- Required minimum distributions
- Exceeding limits
- Terminating a plan – assets remain in trust





IRS AND DOL AUDITS

What types of small plans are selected for examination/audit by the IRS or DOL?

What are the IRS and DOL looking for?

- IRS Focus:
 - Tax-favored preference of retirement plan benefits
 - Compliance with Internal Revenue Code
- DOL Focus:
 - Enforces ERISA to protect participant and beneficiary rights to their retirement plan benefits, and reporting and disclosure requirements of ERISA



How are plans selected for audit?

- Random
- IRS Compliance Checks
- Issues identified on Forms 5500
- Participant Inquiry (DOL)



I have been notified my plan was selected for examination (audit). What happens now?

- Information request
- Appointment scheduled
- Detailed review (on site or remote)
- Interview with plan sponsor and/or provider
- Additional information
- Corrections
- Final letter closing the file





COMMON COMPLIANCE ISSUES DISCOVERED DURING IRS OR DOL AUDITS

Timely Submission of Payroll Deposits

- Participant salary deferral contributions
 - Participant loan payments
-
- What is “Timely”?
 - “As soon as the amounts withheld from payroll can reasonably be segregated from the company’s general assets”



Safe Harbor

- Standard for Small Plans:
 - If the employer deposits the withheld amounts in the trust no later than the 7th business day following the date the employees would have received the contributions (pay day), the regulations deem that the employer has satisfied the requirement to pay the contributions as soon as reasonably practical.
- To Whom does the Safe Harbor Apply?
 - Plans with fewer than 100 participants at beginning of plan year (ignore 80/120 participant rules)



My employer has several pay dates per month

- May I hold the participant contributions and loan payments and deposit these once a month?
- May I make the deposit early?
- Does the 7-day deposit safe harbor apply to:
 - Sole proprietors and partners?
 - SIMPLE plans?



Late submission of participant contributions and loan payments – results

Other than market timing issues (significant in itself), what is the problem?

- A prohibited transaction
- Employer has use of the funds
- Constitutes a loan to employer



How to Correct Late Deposits

Different options:

- Calculate “lost” earnings
- DOL program - VFCP
- Form 5330 and excise tax
- Report delinquent contributions on Form 5500



Top Heavy Issues

- A plan is top heavy if account balances of key employees exceed 60% of total account balances.
- Minimum contribution required for non-key employees if plan is top heavy
- Salary deferrals of key employees “count” as plan contributions
- Is a top heavy test being prepared for your plan?
- Do you maintain more than one plan?
- If so, perform one annual top heavy test for all plans in aggregate
- Top heavy exemption for safe harbor plans - watch out in years profit sharing is funded



Compensation Issues

- Improper definition of compensation used
- Failure to follow the terms of the plan document
- Exclusion of bonuses or other compensation when allocating contributions, when plan document includes them





CORRECTION OPTIONS

Correction Programs

Internal Revenue Service

- Employee Plans Compliance Resolution System:
 - Self-Correction Program (SCP)
 - Voluntary Correction Program (VCP)
 - Audit Closing Agreement Program (Audit CAP)

Department of Labor

- Voluntary Fiduciary Correction Program (VFCP)
- Delinquent Filer Voluntary Compliance Program (DFVCP)



Plan May be Amended Retroactively to Correct an Operational Issue

Three reasons:

- Failure to pass coverage testing
- Hardship distribution
- Ineligible employee failure





KEY COMPLIANCE REQUIREMENTS

Key Requirements to Keep Your Plan in Compliance

- Review and know your plan document
- Restate and amend documents timely
- Establish good internal controls



Annual Requirements

- Top heavy test
- 410(b) coverage test
- ADP/ACP non-discrimination test
- Deductibility test
- Plan design review
- Fidelity bonding
- Loans
- Minimum required distributions
- Monitor contribution limits
- Monitor participant count to determine audit status
- Enroll/educate people when they are eligible
- Submit participant contributions and loan payments on time
- Calculate contributions based on the document's definition of plan compensation
- Submit Forms 5500
- Participant Statements

Hire a third party administrator to work with your plan





WHAT'S NEW?

What's New for Small Plans?

- Form 5500-SF – new compliance questions are optional
- Mid-year amendments to safe harbor plans are allowed - certain provisions
- Reduction in fees for IRS Voluntary Correction Program
- New revenue procedure for missed deferrals:
 - 401(k) plans – those with and without an automatic enrollment feature
- New penalty “relief” program for 5500-EZ filers



IRS Compliance Checklist

- <http://www.irs.gov/Retirement-Plans/Have-You-Had-Your-Retirement-Plan-Check-Up-This-Year>





When does a plan require an audit?

Small Plan Audit Waiver

- Plans with fewer than 100 participants
- 80 to 120 participants rule
- 95% of small plan assets must be “qualifying plan assets”
- Is required information disclosed in the Summary Annual Report?



Definition of Plan Participants

- People who contribute to the plan
- People who are eligible to participate in the plan
- People who are no longer eligible to participate but have account balances in the plan (retired, deceased, or separated)



Monitoring Participants and Strategies to Reduce

- Force out vested balances below \$1,000
- Forced out vested balances between \$1,000 and \$5,000
- Rollover exemption to \$5,000 forced distribution limit



80 to 120 Rule

# of eligible participants beginning of year	5500 filed in PY	5500 filed in CY	Audit Required
<80	Does not matter	Schedule I	No
80-99	Schedule I	Schedule I	No
80-99	Schedule H	Schedule H or I	Optional
100-120	Schedule I	Schedule H or I	Optional
100-120	Schedule H	Schedule H	Yes
>120	Does not matter	Schedule H	Yes



Qualifying Plan Assets

- Assets held by the following regulated financial institutions:
 - Banks, including trust companies, savings and loan associations, and credit unions
 - Insurance Companies
 - Registered Broker –dealers
 - Investment companies registered under Investment Company Act of 1940 (mutual funds)



Qualifying Plan Assets (Cont.)

- Self-directed individual account plans in which the participant gets a statement of assets at least once a year
- Qualifying employer securities, as defined in ERISA section 407(d)(5); and
- Participant loans meeting the requirements of ERISA section 408(b)(1), whether or not they have been deemed distributed.



Calculating “Qualified Plan Assets”

- Must include all plan assets reported on the Form 5500 Schedule I, line 1a
- Can rely on estimates in initial year
- Transferred assets



Non-Qualifying Assets

- Limited partnerships, artwork or collectibles, mortgages, real estate or securities of "closely-held" companies and are held outside of regulated institutions such as a bank; an insurance company; a registered broker-dealer or other organization authorized to act as trustee for individual retirement accounts under Internal Revenue Code Section 408



Fidelity Bonding for Non-Qualifying Assets

- Must be equal to 100% of the value
- Person handling non-qualifying assets can obtain his or her own bond
- Section 412 bond will satisfy the audit waiver



Summary Annual Report Disclosures

- Name of each regulated financial institution holding or issuing “qualifying plan assets” and the amount of such assets reported by the institution as of the end of the plan year;
- The name(s) of the surety company issuing enhanced fidelity bonding, if the plan has more than five percent of its assets in “non-qualifying plan assets;”
- A notice indicating that participants and beneficiaries may, upon request and without charge, examine or receive from the plan copies of evidence of the required bond and copies of statements from the regulated financial institutions describing the “qualifying plan assets;” and
- A disclosure stating that participants and beneficiaries should contact the Department of Labor’s Employee Benefits Security Administration (EBSA) Regional Office if they are unable to examine or obtain copies of the regulated financial institution statements or evidence of the required bond.



Six Tips For Preparing for an Annual Audit

- Gather all plan documents and amendments
- Obtain plan census and reconcile to total salary
- Determine that fiduciary bond is sufficient
- Understand Fiduciary Responsibilities
- Review operational compliance
- Prepare deposit schedule



Top Eight Compliance Issues Auditors Find

- Late Deferrals
- Oversights in calculating employee contributions
- Vesting calculation errors
- Forfeiture Issues
- Profit sharing contribution errors
- Mishandling employee requests
- Disconnect with service provider contracts
- Eligibility issues





HOW WE CAN HELP

Services CLA Provides to Small Plans

- Wealth advisory services
- Third Party Administration (TPA)
- Discrimination and compliance testing
- Plan design
- Form 5500 Preparation
- Compliance review



Additional Services CLA can Provide

- Plan document restatements for Pension Protection Act (PPA) of 2006 - Due April 30, 2016
- Plan Compliance Review
- IRS Programs for Correcting Plan Failures
- DOL Programs for Late Contribution Deposits and Late or Delinquent Form 5500 Filings
- [Plan Consulting](#) – effect of mergers and acquisitions on your plan, controlled group issues, plan design illustrations
- CLA Wealth Advisors – Plan Diagnostic Report



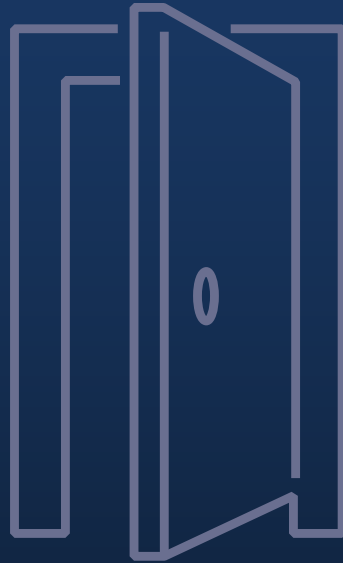
Thank you

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