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ALERT! ARE YOU PREPARED IF THE DOL COMES KNOCKING?

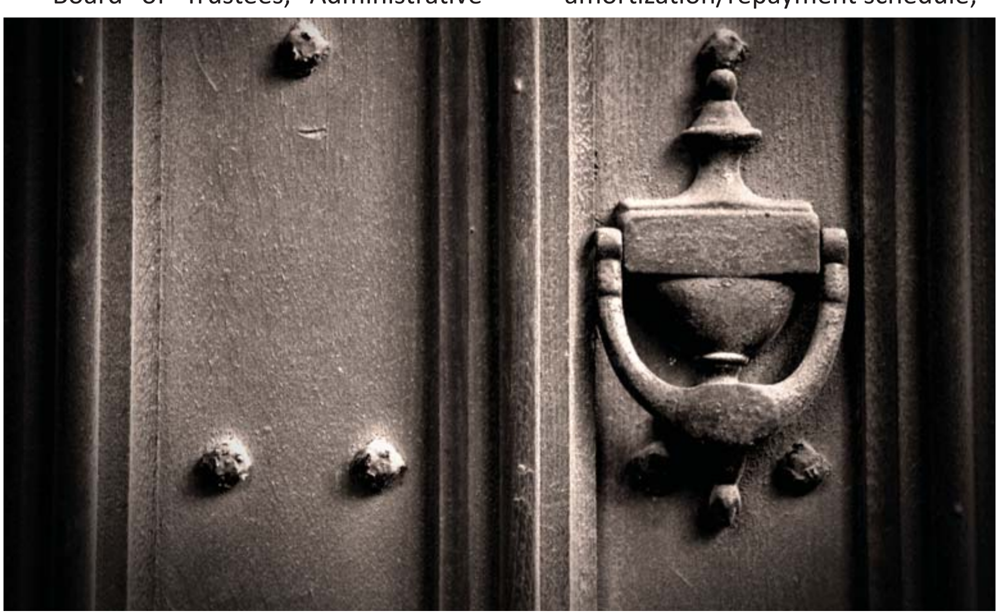
By Jeanette Roatch, CPA, CGMA Senior Manager

The DOL audits ERISA plans of all sizes. Ever wondered what a DOL audit might look like? How invasive it could be? Below we have provided an actual excerpt from a recent DOL audit inquiry letter. This is the list of items the inspector is asking for in order to review BEFORE they even step foot into your office.

1. Plan document and adoption agreement, with all amendments;
2. Trust agreement, with any amendments;
3. Summary Plan Description;
4. All Summary Annual Reports;
5. Most recent quarterly individual benefit statements issued to a sample of five plan participants;
6. Fidelity bond (i.e. declaration page and loss pay over rider, identifying the plan as a named insured and specifying the amount of employee dishonesty coverage);
7. Fiduciary Liability Insurance policy, if any;
8. All Plan account statements;
9. Minutes of any meetings related to the Plan, including meetings by the Board of Trustees, Administrative Committee, Investment Committee, or other Plan committee, if any;
10. Most recent service provider agreement with the third-party administrator and the investment company;
11. All summary pages of payroll registers showing the total amount of employee contributions and loan repayments withheld for each pay date since 1/1/2012;
12. All bank account and investment statements showing the dates of deposit of each employee contribution check and loan repayment check since 1/1/2012;
13. Documents regarding ERISA section 408(b)(2) disclosures between the Plan and direct and indirect service providers (Registered Investment Advisor, Investment Manager, Third-Party Administrators, etc.);
14. For all loans (including those secured by mortgages) made, held, or acquired by the plan during any portion of the period from 1/1/2012 to the present:

- promissory note, loan application, mortgage, etc.;
- amortization/repayment schedule;
- identification of collateral, if any, together with all applicable recorded documents (UCC-1 filings, trust deeds, etc.); and
- document(s) showing date of acquisition by plan (for any loans/ mortgages not originated by plan); from whom acquired and identity of originator, if different; value at acquisition; and cost paid by plan. (Note: If loan/mortgage was contributed to the plan by sponsor, so specify and indicate date and value of contribution).

After seeing the list, how do you think you'd do? The DOL has the authority to leverage large fines and penalties if you are not following the rules. If you're not sure you are ready, we can help! Our experienced Employee Benefit Plan experts can work with you to get your compliance and documentation in order to help you avoid any potential problems that can cost you big time. Don't wait until the DOL comes knocking on your door!



IN THIS ISSUE

ARE YOU SENDING THE REQUIRED NOTICES TO PARTICIPANTS?

Numerous laws and regulations require plan sponsors to provide retirement plan participants notice of various plan documents or occurrences. Even though each plan is different, the following will help to identify some general plan-related notices and specific notices for defined contribution (DC) and defined benefit (DB) plans.

General retirement plan notices

Some notices must be sent to all participants regardless of the plan type:

Summary plan description (SPD). Even though plan participants don't typically receive a copy of the actual plan document, each participant should receive an SPD. This summary must be written in such a manner that it's easy to understand and must address:

- When employees become eligible to participate in the plan,
- What types of benefits the plan offers to participants, and
- When the plan can distribute benefits.

Plan sponsors must provide an SPD within 90 days of an employee becoming a participant in the plan and periodically thereafter. For example, you should provide an SPD whenever the plan is amended or restated in its entirety.

Summary of material modifications (SMM). Plan sponsors may change a certain feature of the plan or the government might pass legislation that requires a particular change to the document. In these instances, instead of providing a complete SPD, you can give participants a summary of the changes. Participants should receive the SMM within seven months following the end of the plan year when the amendment occurred.

Notice of significant reduction in future benefit accruals. If a plan amendment relates to a significant reduction, or even elimination, of plan benefits, the plan sponsor must distribute a notice of significant reduction in future benefit accruals at least 15 days prior to the effective date of the amendment (45 days for plans with 100 or more participants). This type of amendment applies only to plans with specific funding requirements, such as DB plans and certain DC plans, such as money purchase plans.

Individual benefit statement. With some frequency, participants in all types of plans should receive an individual benefit statement. Participant-directed investment plans — typically 401(k) plans — must issue statements at least quarterly. In contrast, DB plans must distribute statements to participants every three years.

DC plan notices

The following notices are applicable to DC plans:

Summary annual report (SAR). Annually, participants in all DC plans must receive an SAR outlining the financial information reported on the plan's annual return.

Blackout notice. If an individual account plan restricts a participant's ability to access his or her account, and the period exceeds three business days, the participant must receive a "blackout notice." For example, you need to provide a blackout notice if the plan changes investment platforms to allow time for the funds to transfer. You must distribute this notice to participants at least 30 days before the blackout period begins and must define the period during which participants cannot access their accounts.

Automatic enrollment notice. If your plan has an automatic enrollment feature, you must provide notice at least 30 days

before a participant's eligibility date and before the start of each subsequent plan year of the right to opt out. The notice must define the percentage of salary that will be withheld and the manner in which it will be invested, as well as guidance on opting out or making changes to the deferral percentage and the investment selection.

DB plan notices

The following notices apply to DB plans:

Annual funding notice. A DB plan administrator must distribute a funding notice annually. For large plans (100 or more participants), the administrator must distribute the notice within 120 days of the plan year's end. For small plans, the notice should be distributed by the earlier of the deadline for filing the Annual Return Form 5500, or the date the return is actually filed.

Notice to participants of underfunded plan. If the DB plan isn't at least 80% funded according to calculated funding requirements, you must distribute a notice of an underfunded plan. In addition to defining the plan funding level, this notice also provides information regarding the guaranteed benefits. You must distribute this notice within two months after the plan's annual return due date (nine months after the end of the plan year).

Notice matters

The previously discussed notices are the most common, although you may need to distribute other plan-related notices from time to time. Check with your benefits specialist or plan administrator named in the SPD if you have questions about any of the notices relevant to your retirement plan.

DEALING WITH TERMINATED EMPLOYEES' PLAN BALANCES

When a participant terminates employment with a company and leaves a vested account balance in the plan, several options are available. The terms of your plan document will control the participant's decision.

Force-outs

Generally, when a participant's vested account balance is $5,000 or less, the plan can require the participant to take a distribution. The payout may be in the form of a cash distribution or by rolling the balance into an IRA or a new employer's plan. If the participant's balance is less than $1,000, you can cash out the balance and withhold the appropriate taxes.

You must give the participant at least 30 days' notice of the right to request a distribution. If the participant doesn't respond to the advance notice, the plan sponsor must establish a rollover IRA for former participants with balances between $1,000 and $5,000.

Balance of more than $5,000

You can't require terminated employees to take a distribution from account balances larger than $5,000. But, when determining the $5,000 limit, you can disregard any portion of a participant's account that was rolled into the plan from an IRA. And you can provide participants with the same distribution notices and forms.

If the vested account is more than $5,000, participants can leave the money in the plan and the account will continue to grow tax-free. Participants don't have to pay taxes on the money. Plans generally charge a fee for keeping a terminated employee's account balance open, and may restrict a participants' ability to transfer money among the plan's investment options. Your distribution notice should indicate that plan fees and investing flexibility may differ if the participant chooses to roll the account into an IRA or another employer's plan.

Plans generally allow terminated employees to take a lump sum distribution, but the participant will owe at least 20% automatic withholding tax on the distribution. Generally, participants should consider this option only if there is a financial emergency.

Employers' options

Deciding what to do with terminated employees' account balances can be complex. When drafting or revising your plan document, consider the following:

Plan provider costs. Plan providers can base fees on total plan assets, the number of participants, the average account balance or a combination of these. If fees decrease as plan assets increase, design the plan to minimize distributions to terminated participants. But if fees increase as average account balances decrease, and many of the terminated participants have smaller account balances, then consider designing the plan to expedite distributions as soon as possible.

Participant disclosure requirements. Government regulations, such as ERISA and Sarbanes-Oxley, require plan sponsors to annually provide several disclosures to participants — including former employees with account balances. These disclosures include participant statements, changes in providers or investments offered, the summary plan description (SPD), the summary annual report, blackout notices, and notice of submission to the IRS. By drafting your plan document to allow for immediate distributions, you can minimize the burden of providing these disclosures to former employees with account balances.

IRS disclosure requirement. Plans that retain former employees' account balances must annually file Form 8955-SSA directly with the IRS. The form lists the name, Social Security number and vested account balance for terminated employees.

The IRS gives the information to the Social Security Administration so it can notify Social Security recipients that they may also be entitled to additional benefits from a former employer's retirement plan. In addition to reporting participants when they terminate, plans must report when terminated participants receive a distribution.

Timing the distribution. When drafting or reviewing your plan document to meet your specific needs, consider timing forced distributions to coordinate with the record keeper's processing deadlines. For example, many plans provide that participants are eligible to take distributions as soon as possible following termination of employment, but some record keepers are set up to process the distributions only quarterly, semiannually or annually.

Getting it right

Be sure to check your plan document for the rules pertinent to your plan. Getting the payout right can avoid extra costs for the plan.

PLAN FEES - YOU HAVE THE REQUIRED DISCLOSURES, SO NOW WHAT?

By Jeanette Roatch, CPA, CGMA Senior Manager

The 408(b)(2) rules have now been in place and plan administrators and providers alike are well familiar with the idea that expenses need to be disclosed. This has been critical in allowing for more transparency to the plan sponsor. But what is your responsibility as a plan sponsor regarding this fee information?

As a fiduciary, the plan sponsor must address if the fees charged and paid are "reasonable." This can be difficult considering fees can be direct and indirect, revenue sharing arrangements can be involved, etc. Also the fees are numerous - such as for administrative expenses, investment expenses, participant education and communication, trustee and custodial services, legal, etc. How do you sort it all out?

Determining what is "reasonable" encompasses several factors. Cost alone cannot dictate reasonableness. The quality and value of services provided in relation to the plan's and participants' needs must also be addressed. Also a quality provider can help serve to limit risk to the plan and keep you as the sponsor in line with your fiduciary responsibility.

A method to consider all these challenging elements in determining "reasonableness" is to develop a written, practical process for analyzing plan expenses. A written process should include establishing objective criteria for reviewing service providers. This will help in assessing the "quality" portion of the analysis. You should consider the specific services you would like to receive from the service providers in developing your objective criteria. For example, what are the types and frequency of reports you want to receive from your record keeper? Do you want an "on call" third-party administrator to be able to answer calls as often as you like for support? Do you want a broker/financial advisor that serves only 401(k) and other pension plans, and how much experience is sufficient for them to be chosen as a vendor for your plan? These are just an idea of some of the things to take into account in your analysis. You should understand the features, extent and quality of the services received or that you want to receive.

Also, adding benchmarking of the total cost of various fees of not only current providers and options but also of potential providers against data from benchmarking surveys should be a critical step in your process. Be sure to use data other than that provided by the service providers being considered to ensure objectivity in the analysis. There are various benchmarking resources available to plan sponsors in the marketplace.

Once you have all the information and data, make the determination and document the decision in plan committee minutes to retain/hire the service provider of your choice.

But your duty doesn't stop there. Monitoring these expenses on an ongoing basis needs to become a regular part of your overall plan monitoring controls. This will go a long way to meeting your fiduciary obligation under ERISA and help protect you, the sponsor, and your plan participants.

For more information or for help developing a process, contact us at 253-852-8500 or jroatch@shannon-cpas.com. Also for information directly from the D.O.L., see the publication *Understanding Retirement Plan Fees and Expenses* available at http://www.dol.gov/ebsa/publications/undrstndgrtrmnt.html.

Julie Courtney, CPA, Partner, our Director of Accounting and Auditing for Shannon & Associates, is in charge of the firm's employee benefit plan audit practice. Julie is involved in all aspects of the audits we perform as well as plan consulting and advisory services.

Julie has over 20 years of public accounting experience. Her areas of expertise include benefit plan and financial audits and financial reporting. Her responsibilities include advising closely-held businesses, internal control review, and various tax engagements. She also assists in quality control and staff training for the firm. Julie attends the AICPA National Conference on Benefit Plans annually. She has served clients in many industries including the following: manufacturing, non-profit organizations, real estate development, wholesale distributors, restaurants, construction (home builders), and professional services. Julie holds a Bachelor of Arts degree in Accounting from Western Washington University.

Bethany Hulbert, CPC, our Employee Benefits Consultant, has over 9 years experience specializing in defined contribution plan administration and holds the Certified Pension Consultant (CPC) credential from the American Society of Pension Professionals and Actuaries (ASPPA). This experience, along with her educational background in accounting and attendance at numerous seminars and courses, has resulted in an up-to-date mastery in profit sharing, 401(k), and money purchase pension plans. We encourage you to contact Bethany regarding any questions you may have with your defined contribution plans.

Bethany provides expert and timely services in the areas of plan document design, implementation and submission to the IRS; employee communications; all aspects of plan administration; evaluation of controlled groups and related businesses; discrimination/coverage testing and solutions; compliance with all reporting required by the IRS and DOL; and minimum required distributions.

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