

Pension Plan Fix-It

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Federal Agencies Monitoring Retirement Plans Try to Work Smarter with Less

By Mary B. Andersen, CEBS, ERPA, QPA



Budgetary constraints affect governmental agencies as well as corporations. As a result, both the U.S. Department of Labor and IRS are using data and lessons learned from completed compliance projects to allocate resources dedicated to monitoring employer-sponsored retirement plans effectively. DOL has said it will focus its investigations on issues with the greatest impact, and the IRS will zero in on compliance issues with a “multiplier effect,” issues that will affect many plans.

Despite money and manpower constraints, both agencies have been very busy addressing new and existing issues, as agency representatives at a recent regional conference of retirement plan professionals explained.

What Can We Expect From DOL?

The impending revision of the fiduciary rule (see November 2011 column) is foremost for DOL and practitioners. DOL is modifying the rule because it is concerned, among other things, with advice provided to plan participants who roll their plan benefits to individual retirement account plans (see January 2015 column). The agency has a web page called “Are Your Retirement Savings at Risk?” (<http://www.dol.gov/featured/protectyoursavings/>) that provides information regarding potential conflicts of interest that can arise when an adviser recommends an investment that results in increased costs to the participant as well as more fees for the adviser. The revised fiduciary regulation reportedly has been sent to the Office of Management and Budget for review. Expect a great debate over this regulation when it’s released for public comment later this year. In fact, a bill already has been introduced in Congress to delay the proposed DOL rule until the Securities and Exchange Commission finalizes its related guidance.

We can expect to see more on the subject of lifetime income (see April 2012 column). With the shift to

defined contribution plans and the appeal of lump-sum distributions, DOL worries that participants may outlive their retirement income. Most participants do not select an annuity option if it is offered. The reality is that plan participants are hesitant to turn over all or a portion of their life savings to an insurance company in exchange for a monthly benefit. Plan sponsors are concerned with the fiduciary implications of selecting an insurance company to provide an annuity. DOL received a number of comments on its proposed regulations in this area, and is working with focus groups on this issue.

The fidelity bonding requirement has been in existence for some time to protect plan assets from misdeeds by their fiduciaries. But both IRS and DOL have concerns about it. Using the Form 5500 as their data source, the agencies have found that some plans do not have a fidelity bond, or if they do have one, the bond does not cover the right people or the right amount of financial risk. ERISA Section 412 generally requires plans to have a bond in the amount of 10 percent of the “funds” handled, with a minimum value of \$1,000 and a maximum of \$500,000 (\$1 million in the case of plans holding employer securities). Some investigations have found that the fidelity bond may even contain ERISA plan exclusions, the very types of plans they are supposed to cover!

The Delinquent Filer Voluntary Compliance Program is one of the most successful DOL programs. But it does result in errors at times. For example, DOL is examining plans that checked the DFVC box on their Forms 5500 to make sure that such plans actually entered the DFVC program and filed their Forms 5500.

It’s likely that we’ll see more on participant benefit statements. DOL issued an advanced notice of proposed rulemaking (see July 2013 column) regarding the inclusion of lifetime illustrations in participant benefit

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statements. DOL has been reviewing public comments, and revised proposed regulations should be issued soon.

Target date funds are another area of DOL focus (see November 2012 column). The agency is working with the SEC to ensure that contradictory requirements for TDFs are not issued. Revised guidance from the agencies is expected before year-end.

In addition, DOL has increased significantly its focus on health and welfare plans as a result of the Affordable Care Act reforms and other recent, wide-ranging regulatory guidance. It is important to keep in mind that many health and welfare plan investigations result from a retirement plan investigation.

Priorities at IRS

Many, if not all, of the IRS projects use data from the Form 5500. Be very careful in answering Form 5500 questions, or you may find yourself part of an Employee Plans Compliance Unit project!

Examples of the IRS' data-driven approach can be found in the IRS EPCU website ([http://www.irs.gov/Retirement-Plans/Employee-Plans-Compliance-Unit-\(EPCU\)](http://www.irs.gov/Retirement-Plans/Employee-Plans-Compliance-Unit-(EPCU))). The website contains completed projects, those with summary reports in process and approved projects.

IRS has a Top 10 list of items found in Employee Plan Team Audits — and they frequently turn out to be the same Top 10 issues year after year! (<http://www.irs.gov/Retirement-Plans/EP-Team-Audit-%28EPTA%29-Program---Top-Ten-Issues-Found-In-EPTA-Audits>).

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In addition to the Top 10 issues, IRS is examining internal controls. For example, in the case of distributions, IRS will look for controls related to:

- how the distribution request was made;
- who reviews and approves it;
- how the distribution amount gets from the trust to the participant; and
- who prepared the Form 1099-R to document the distribution for tax purposes.

In other words, IRS is looking for demonstration of the plan sponsor's understanding of the nitty-gritty details of plan operations.

Attention to detail is critical. Operating the plan in accordance with its terms should keep you out of the IRS' crosshairs, but you must be able to supply proof. Documented procedures and controls are essential to proper plan administration. The rules are complex and mistakes happen. But the Employee Plans Compliance Resolution System program can go a long way toward helping plan sponsors with operational issues. IRS emphasizes the importance of reading and understanding the program, while following program requirements.

What Should Plan Sponsors Do?

The world of ERISA is complex, and multiple government agencies regulate and enforce various aspects of the law. The rules change constantly; it is hard to keep up with all the rules. At a minimum, plan sponsors should:

- be aware of the issues affecting their particular plan;
- create compliance calendars for annual recurring items; and
- keep current on issues by meeting frequently with advisers.

Finally, it is important to acknowledge what you don't know and get help. ❖

Mary B. Andersen is president and founder of ERISA diagnostics Inc., an employee benefits consulting firm that provides services related to Forms 5500, plan documents, summary plan descriptions and compliance/operational reviews. Andersen has more than 25 years of benefits consulting and administration experience. She is the contributing editor of the Pension Plan Fix-It Handbook.



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