QUALIFIED RETIREMENT PLAN AUDITS FOR TPAS

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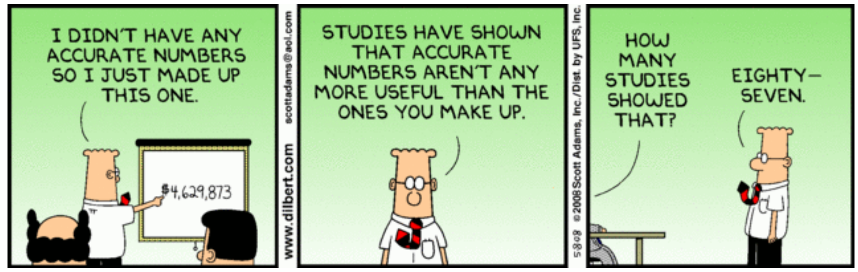

It's audit time. You've just received a call from the auditor of one of your plans telling you he'll soon be sending you an email with the items he'll need for the annual audit. You've been through Employee Benefit Plan (EBP) audits before. So why are you still concerned?

Is it because it's not just that one auditor, but because you administer a large number of large plans that all need auditing – some perhaps for the first time? Which means that soon you'll have a flood of requests from auditors from different CPA firms, all with slightly different forms, all with slightly different ways of doing things? And they'll all want a ton of documents.

Or is it the timing? Forms 5500, and therefore financial statements for large plans, are generally due the last day of the month seven months after the end of the plan year; a 2½ month extension is available. For calendar year plans, that's July 31st and October 15th. Not all plans end on December 31st, however, so you need to monitor your calendar closely for these.

You think you're prepared because you and your staff have been diligent in keeping records of the work they've done, but it seems there's always something to "upset the apple cart." Here are five ways to help avoid upsetting that apple cart.

Five Ways to Help You Sleep at Night During Audits

1. **Understand the audit process.** Audits, and long form 5500s, are required for large plans, generally those with 100 or more participants. Plans with fewer than 100 participants don't need an audit, or a long form 5500, until they exceed the transition number of 120 participants. Auditors don't come to your office to conduct fieldwork, but they do visit your plan sponsor client. The auditor and plan sponsor determine the date for fieldwork, and also agree on the due date for all documentation to be received. The plan sponsor is responsible for the preparation of the financial statements (however,

they're commonly prepared by the CPA firm as part of the audit); you prepare the Form 5500.

2. **Be an asset for your plan sponsor client.** You may understand the audit process, but does your plan sponsor client? Be sure to let your client know well in advance that an audit will be needed when a plan moves from small plan to large plan status. Don't wait until the last minute. "Fire drills are no fun for anybody," said Bradley Bartells, partner at Mann, Urrutia, Nelson, CPAs & Associates, LLP. Your client will need a lot of hand-holding the first year. Also, many small to mid-sized companies don't have the staff for a dedicated benefits department. They rely on you to help them prepare for EBP audits even after the first year, explains Bartells in his presentation, "Your Plan Needs an Audit…Now What? What Plan Sponsors and TPAs Need to Know."
3. **Know the plan.** It's essential you know the plans you administer. Of course, you say, we know what the plan documents say. But do you? Do your staff actually read the documents? The three most common errors found in EBP audits according to CariAnn J. Todd in her article, "Common Operational Errors in Large-Plan Audits," (*Journal of Pension Benefits* by WOLTERS KLUWER LAW & BUSINESS, reprinted with permission in the ISCEBS Retirement Plan Fellowship Exam 2019 study guide) are compensation errors, hardship withdrawals, and timely remittance of elective deferrals and participant loan repayments. You have a lot to do with keeping the operation of the plans in compliance with their plan documents, especially if you're in charge of updating the adoption agreements at plan amendment time, so these areas are important.
    - **Compensation errors.** Compensation is one of the more complicated areas of qualified plans, and one of the areas in which the most errors occur. The biggest offenders? Bonuses, fringe benefits and manual or off-cycle payroll checks, said Todd – excluded or included? You are the first line of defense in catching errors since you perform the

testing. That makes it easy to spot discrepancies between what the plan sponsor is reporting as compensation and what the *plan document* and adoption agreement say it is. Be sure to ask your client questions about how they actually handle compensation, said Bartells, in order to see if there could be a problem. And it's a good idea, said Todd, to include a representative from the payroll department in the discussion to ensure everybody's on the same page when it comes to the plan's definition of compensation.

- **Hardship withdrawals.** Errors occur when hardship withdrawals are taken with little or no documentation, or for reasons not allowed by IRS safe harbor provisions as outlined in their 2017 Memorandum. Participants are not allowed to self-certify that they have a hardship; Clicking on a button online doesn't do it. They must also provide proper documentation. Has the plan sponsor outsourced hardship withdrawals to you? Then you need to ensure they're approved and processed correctly, even if your staff doesn't "want to get involved" with participants' personal matters, and even though the plan sponsor has the ultimate responsibility to ensure they're OK. It's a matter of following IRS regulations and the plan document.
- **Deferral and loan repayment remittances.** You aren't typically involved with payroll remittances, said Bartells, but as part of your year-end compliance testing look at them carefully and identify whether they could potentially be late. What's late? Generally more than something in the range of three-to-five days over the course of the plan year, but the DOL looks at the *earliest* deferrals have been segregated from company assets. Consistency is important. If you see something, bring it to your client's attention before the audit begins. Late remittances

must be disclosed on the financial statements and Form 5500.

4. **Be prepared.** Perform non-discrimination testing according to deadlines and allow plenty of time for failure corrections, if any are needed. Ensure you have all trust reports for the year. Have copies, or files for, participant statements, hardship withdrawal requests and loan applications.
5. **Complete your audit package accurately and in a timely manner**. The auditors will be looking to you to provide at least some of the following in your audit package:
    - **Plan documents**. Are plan documents, adoption agreements, amendments, SPDs, SARs and service agreements current and on file? Do you have the minutes from plan oversight committee meetings?
    - **Internal controls.** Have you completed the internal controls checklist telling how you do what you do and that it's done timely?
    - **SOC-1 report (formerly SAS-70).** Have you reminded your plan sponsor that it's their responsibility to review these reports for the plan's service providers and document that they've reviewed them?
    - **Eligibility testing.** What are the eligibility requirements for plan entry, and are all employees properly accounted for?
    - **Participant testing.** Do participant deferrals match their compensation based on the plan document's definition of compensation?
    - **Contribution testing.** Do deferrals withheld according to payroll reports match participant requests/changes? Were matching contributions, if any, properly calculated?
    - **Non-discrimination testing.** Were all non-discrimination tests performed? If any test failed, was the failure corrected?

Historically, all these documents were provided via hard-copy forms. In today's electronic world, however, it's a lot easier to upload the files (encrypted, of course) to a flash drive and give them to the auditor, or send them via secure email to the auditor's office email address.

That's the good news. The not-so-good news is that quite a few participant transactions are also electronic – plan enrollment and deferral changes, investment election changes and frequently loan and hardship applications. Auditing these can be challenging as several interfaces may exist – HR, benefits department, payroll department/company, trustee/custodian, and recordkeeper. But all of this information flows to you at some point in the process for you to either act on or report about. The ultimate fiduciary responsibility rests with the plan sponsor, but you are a fiduciary as well, and as such have a lot of responsibility.

The annual EBP audit is to confirm to you, your plan sponsor client, and the IRS and DOL that you and your client are doing your jobs correctly, that the plans have adequate safeguards to ensure they are being operated prudently according to the plan documents and in the best interest of plan participants and beneficiaries. A clean audit report is a happy report.

Do this, and you'll be able to sleep at night, even through audit season.