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View From McDermott: Top IRS and DOL Audit Issues for Retirement Plans

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Every year the Internal Revenue Service (IRS) and Department of Labor (DOL) conduct thousands of audits of employee benefit retirement plans. While IRS audits focus on compliance with the Internal Revenue Code, and DOL audits focus on violations of the Employee Retirement Income Security Act of 1974, as amended (ERISA), a review of these audits over the last five years reveals that auditors at both agencies are increasingly focused on the internal controls employers maintain for their employee benefit plans.

At the same time, due to the myriad IRS and DOL compliance requirements for retirement plans, we have found that employers need help prioritizing their efforts in establishing and maintaining these internal controls.

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With this in mind, we decided to assemble the IRS and DOL data requests in audit letters sent during the past five years. We then catalogued each request by topic and frequency of recurrence. We also reviewed issues the agencies have identified as areas of recent focus. Finally, we compiled the results to create the following checklist of retirement plan compliance issues that were the most often cited by the IRS and DOL.

I. IRS Audit Issues

As indicated above, the IRS is increasing its focus on ensuring that retirement plan sponsors maintain internal controls to ensure their plans comply with the Code. Agents will look for documented practices and procedures that prevent errors, or that quickly flag errors before they result in large financial consequences. Agents want to see evidence of actual checks and balances, specific and tangible internal controls, and retention of records or proof that internal controls have been implemented. Based on our review, and keeping in mind how readily employers can correct any mistakes, the following are the top 12 issues retirement plan sponsors should focus on when establishing and maintaining their internal controls.

A. Definition of Compensation One of the key issues that the IRS focuses on during the audit process is whether the definition of compensation as described in the plan document and/or summary plan description is accurately reflected in actual plan administration. The plan's definition of compensation is used for a variety of important purposes, including the calculation of an employee's allocation in a defined contribution plan or benefit accrual in a defined benefit plan, adherence to limitations on allowable compensation under Code Section 415, performing nondiscrimination testing, and determining whether a plan is top-heavy under Section

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416 of the Code. The plan's definition of compensation may be the same for each purpose, or it may differ. The IRS will focus on these issues because it is relatively easy for an auditor to check whether a plan has payroll codes that match a plan's definition of compensation.

Common administrative errors related to a plan's definition of compensation include: (1) failure to coordinate different payroll systems with the plan's definition of compensation (particularly for large corporations with different payroll systems), (2) failure to monitor when an employee's pay reaches the 401(a)(17) limit ($260,000 in 2014), and (3) confusion regarding whether to include certain pay codes in eligible plan compensation, such as compensation related to the exercise of stock options, or income from early sales in a Code Section 423 stock purchase plan.

To avoid such issues, the IRS suggests an annual self-audit of payroll codes and an annual check-in with service providers to make sure the different definitions of compensation are being applied correctly. Employers may conduct these self-audits by reviewing payroll codes and comparing them to the plan document definitions of eligible compensation.

B. Updating the Plan Document An out-of-date plan document is relatively easy for the IRS to spot. Employers must update their plan document regularly to comply with tax law changes, but there are different timeframes for different types of amendments. ''Discretionary'' amendments, which must be adopted by the end of the plan year in which they are effective, generally include amendments that a plan sponsor makes by choice. A discretionary amendment is a change to the plan that is not required, such as adding a hardship withdrawal feature or a new benefit multiplier. In contrast, ''interim'' amendments are made to comply with a change in tax law requirements for qualified plans. These tax laws often have specific required amendment dates. Interim amendments typically must be adopted by the employer's due date for filing its tax return (including extensions).

Employers who use plan documents provided to them by their third-party administrator or investment fund provider (often referred to as ''prototype'' or ''volume submitter'' plans) must be mindful of interim amendments. If a tax law changes, requiring interim amendments, a vendor should send updated plan documents or an updated adoption agreement or boilerplate plan amendment. In some cases the documents simply need to be retained by the plan sponsor, but in other cases they must be signed and dated by a particular deadline. Unfortunately, these important, time-sensitive documents may get lost in the shuffle of the numerous notifications and communications that occur between a plan sponsor and its third-party administrator. Employers should make sure to pay attention to these important plan documents when received, and determine whether they need to be signed and dated, as well as the deadlines for doing so. It is vitally important for employers to retain these documents with the plan's permanent records, even if they do not need to be signed. If a plan is audited, the IRS will ask for such documents.

If an employer wishes to make a discretionary change to the plan, the employer usually also needs to update the plan document. If the plan document is a prototype plan, the document must be updated by signing a new adoption agreement or completing a form document from the prototype plan sponsor. Employers should make sure to communicate with the prototype plan vendor if they decide to make any changes so that their documents reflect discretionary amendments before the end of the plan year.

In addition, if employers merge one plan into an existing plan, they must make sure that the merging-in plan is updated for all requirements before the merger, to avoid tainting the surviving plan. The employer should keep copies of all the old merged-in plan documents, as the IRS is likely to ask to review those documents if either the old or surviving plan is audited.

Finally, the plan document and summary plan document (SPD) must match. If the plan is amended, employers should remember to update the SPD or issue a summary of material modifications (SMM) describing plan updates.

C. Employee Eligibility The IRS will look for examples of an employer's failure to follow the plan's eligibility or enrollment rules, including: (1) improper exclusion of part-time employees or a merged-in group of employees, (2) misclassification of independent contractors, (3) controlled group employee errors (for example, standardized prototype plans may need to cover all employees of all controlled group members), (4) failure to adhere to hours-of-service counting rules, or the elapsed time alternative, (5) rehire failures, including failure to re-enroll rehired participants without delay, (6) for automatic enrollment plans, failure to automatically enroll all eligible employees on a timely basis, and (7) failure to provide complete enrollment package materials.

Employers should periodically pull a representative sampling of employees (new hires, transfers, rehires, and part-time employees) and review eligibility procedures (this is what the IRS will do during a plan audit). Employers should also keep examples of enrollment packets in case the IRS wishes to review them.

D. Plan Loans Failures on plan loans are one of the top 5 problem areas identified in IRS audits, in addition to being a top issue with the DOL. One of the simplest things that many employers fail to keep track of is their plan loan procedures.

The plan's loan procedures are typically described in a separate document from the plan document, which details the plan's requirements relating to taking out and paying back a plan loan. For example, the loan document will typically lay out what happens if a loan goes into default, how long the participant has to pay the loan back, and which funds or accounts the loan will be drawn from. Some third-party administrators may provide the loan procedures as a separate policy, or they may be contained in the overall plan administration manual (which the plan sponsor also should have in their permanent plan files). Employers should review the plan loan policy to make sure they are doing what it says they will do. Both the IRS and the DOL will ask to see plan loan procedures during an audit.

In addition, employers may fail to give complete loan paperwork to the participant, including the loan agreement and promissory note. These forms must follow specific legal guidelines, and they must be given to participants before they take a loan. If this is done on the internet, employers should take a look at what people see when they take a plan loan, and make sure the participants are getting the loan agreement and promissory note. Employers will be required to provide examples of both of these documents during a plan audit.

Another very common loan problem is the failure to obtain required documentation from participants relating to loans. For general purpose loans (which are usually five years or less), employers may not need any documentation. But if an employer allows residential loans, which may be longer than five years (such as 10- or 15-year loans), the employer must obtain specific proof from participants that they are going to use the loan proceeds for a home purchase. In some cases third-party administrators require the plan sponsor to obtain and certify that it has received this proof, much to the surprise of the employer. If the vendor reviews and keeps the documentation, employers should make sure that they are indeed requiring employees to give them appropriate proof, and that they are reviewing the paperwork and keeping it. If an employer changes vendors, the employer must ensure all document files were moved over to the new recordkeeper. We have heard of instances where IRS auditors have insisted on reviewing documentation on residential loans issued as many as 13 or 14 years ago.

In general, we recommend that employers make sure they receive a copy of their plan's loan procedures, and check to make sure that it properly reflects how the plan is actually administered. The employer can check for compliance by picking a representative sampling of employees with loans, including defaulted loans, and reviewing the paperwork that relates to those loans to make sure everything is in order, making sure they can locate and access files on loan applications that substantiate the need for loans, keeping those files until the expiration of each loan, and making sure those files belong to the employer, not the recordkeeper, in case of a vendor change.

E. In-Service Distribution Rules The IRS also looks for errors related to the plan's in-service distribution rules, for payments made to plan participants while they are still employed by the plan sponsor. These errors include distributions made for impermissible reasons under the plan or distributions made too early. In-service distribution failures may also include the failure to follow hardship withdrawal procedures. For example, common hardship withdrawal administration failures include the failure to apply the 6-month suspension of future deferrals, failure to follow established procedures relating to proof and documentation of a hardship, and failure to look for signs that hardship procedures are being abused. Examples of signs that hardship procedures are being abused include too many requests from one group or division, and requests from multiple employees that look identical.

Employers should periodically check a representative sampling of employees receiving in-service distributions or hardship withdrawals, review the reasons for withdrawals and proof of hardship, and compare requests for hardship withdrawals. Employers should also maintain a file of hardship withdrawal paperwork for a minimum of four plan years (some practitioners even recommend maintaining this paperwork until the participant's account balance is fully distributed).

F. Distribution Paperwork Another significant area of noncompliance relates to the paperwork that the plan administrator gives to employees when employees request distributions after termination of employment. This paperwork includes election and rollover forms that the employee must complete, as well as descriptions of optional forms of benefit and other required disclosures.

Distribution paperwork is particularly challenging for defined benefit pension plans, because there are so many disclosures and rules that must be followed when providing a distribution from a defined benefit plan, and new requirements continue to be added. But distribution paperwork also can be a challenge for 401(k) and other defined contribution plans. Over time, if election forms are not periodically reviewed and updated, plans may fail to provide all the correct options (for example, installments, annuities, and lump sums, where available).

Also problematic is the failure to require spousal consent for distributions where it is required under plan rules. This can often happen when special distribution rights get carried over from merged-in plans. During a plan audit, the IRS will ask to see samples of benefit election forms and related paperwork, and will compare the forms with plan documents and SPDs.

The plan administrator might also fail to properly handle small benefit cash-outs under $5,000. For example, plans that have adopted an auto-rollover feature for amounts between $1,001 and $5,000 must negotiate contracts with auto-IRA vendors which contain specific legal requirements. Also, if an employer is not regularly sweeping out amounts subject to the small benefit cash-out rules, the IRS may claim that the employer is not following the terms of the plan document, resulting in a plan qualification defect.

In general, we recommend that employers periodically review their distribution paperwork and compare it to the plan document rules. Employers also should review their auto-rollover IRA vendor contracts for legally mandated requirements, and make sure they have a regular cash-out sweep procedure in place if the plan document calls for that-ideally, an annual sweep.

G. Suspension of Benefits Suspension of benefits issues often arise in defined benefit pension plans. Plan sponsors are allowed, although not required, to permanently withhold the payment of benefits to participants who continue to work past normal retirement age (up to age 70-1/2) without providing an actuarial increase in the benefit upon distribution to account for the value of the benefits withheld prior to retirement. In contrast, participants who continue to work past age 70-1/2 must receive actuarial increases to account for the withheld benefits. However, participants must be notified in advance of the plan's rules on benefit suspensions.

During defined benefit plan audits, the IRS will look for examples of failure to follow the suspension of benefits rules upon a participant's attainment of normal retirement age, including the failure to give the suspension of benefits notice to post-normal retirement age active employees and the failure to appropriately calculate actuarial increases. Many employers with defined benefit pension plans may not know that they must provide notices when they suspend benefits. Defined benefit plan sponsors should determine whether their plan documents contain suspension of benefits rules. If so, employers should identify actively employed employees who are close to retirement age and ensure that suspension of benefits letters were sent. Employers should also check with the plan's actuaries to ensure appropriate actuarial increases were made for all participants regardless of the suspension of benefits notices.

H. ADP/ACP Nondiscrimination Testing The IRS believes that one of the areas of greatest failures for 401(k) plans is the failure to properly apply the annual nondiscrimination testing required under the ADP and ACP tests. The recordkeeper should provide employers with detailed information about how their plan passed or failed the ADP/ACP test. Employers should examine these tests for anomalies, such as employees listed with zero compensation or employees on the list who have deferral percentages greater than plan limits. Employers should keep copies of those test results, because the IRS will want to examine the results on audit to make sure 401(k) plans pass.

If an employer has a safe harbor 401(k) plan, the employer must provide an annual notice to employees describing the safe harbor status. Employers should keep a copy of the annual notice so they can produce it if the IRS asks for it on audit. Employers should have one for every year, and it is helpful if there is a date on the notice so that it is clear what year the notice relates to. It is also helpful for employers to prove to the IRS that the notice was actually provided to employees, such as through a postmarked envelope for a sample notice or a dated screenshot if the notice is provided electronically.

I. Vesting Vesting failures can include a number of different errors, including the (1) failure to provide for 100 percent vesting at normal retirement age, (2) the failure to properly account for vesting for employees with breaks in service, inter-company transfers, and acquisitions, (3) the failure to timely sweep forfeitures from terminated participant accounts, and (4) the failure to calculate and vest employees affected by partial terminations.

Employers should periodically review their compliance with these issues by checking a representative sampling of employees, especially those with breaks-in-service, inter-company transfers, or acquired employees, and ensure vesting was calculated appropriately. The IRS frequently will perform a similar sample review on audit, and will ask to see dates of hire and dates of termination in order to determine whether vesting service has been properly applied. Employers should also review the plan document rules on when forfeitures are removed from participant accounts. IRS audits recently have focused on whether forfeitures have been timely reallocated to other participants, applied to reduce employer contributions, or used to defray reasonable plan expenses. Proper accounting for forfeitures is an important compliance responsibility for plan sponsors in avoiding IRS audit penalties.

J. Minimum Required Distributions The IRS also has identified age 70-1/2 minimum required distributions, or ''MRDs,'' as an area of focus on plan audits. The MRD rules are commonly misapplied because they are very tricky to administer. Plan participants who have terminated employment and who reach age 70-1/2 must begin receiving a required amount of funds out of their plan accounts, or must begin receiving their accrued benefit under a defined benefit plan. If those distributions are not made properly, it is a plan qualification error. This is one reason why it is so important for an employer to keep in good contact with the participant population, to find these people and start paying them out on time.

MRD errors can also occur due to the failure to properly and timely make distributions to beneficiaries following a participant's death. Those rules can be complicated, so employers should make sure they are keeping track of accounts or accrued benefits of deceased participants who would have been age 70-1/2, and making sure those accounts or benefits are being distributed to beneficiaries in accordance with the requirements. Finally, employers must demonstrate proof on audit that the plan administrator has searched for missing participants.

Another area of confusion may occur if five-percent owners of the company participate in the plan. The MRD rules for five-percent owners require that they start receiving MRDs even if they are still working. Employers should make sure that distributions are timely made to any five-percent owners participating in the plan.

K. Top-Heavy and Section 410(b) Testing Top-heavy rules apply if 60 percent of the aggregate total account balances in a defined contribution plan, or 60 percent of the total accrued benefits in a defined benefit plan, belong to ''key employees.'' ''Key employees'' are officers and top paid participants in the plan. This is a test that large plans with many participants usually pass easily, because it is very unlikely in a large plan that 60 percent of the value of the plan will be held solely by key employees.

However, even big plans must perform this test every year, and often plan administrators forget to do it because it so rarely is a problem. But in the audit process the IRS will ask for proof that a plan, even a large plan, has passed top-heavy testing. Thus, employers should make sure that their plan administrator is getting this testing done every year, and make sure that they have proof in their plan files that the plan passed.

In addition, the IRS will check for compliance with Section 410(b) testing to ensure that the plan passes coverage requirements. This is especially important for partially-frozen plans or employers with multiple plans excluding certain employee groups, where passing coverage testing could be a significant concern.

L. QDRO Procedures A qualified domestic relations order (''QDRO'') is a court order that is used to divide up a participant's benefits in the event of divorce or legal separation. Just like a loan policy, a plan should have a separate document detailing QDRO procedures. Those procedures should detail what the plan administrator will require in determining whether a domestic relations order it receives is ''qualified.'' Even if a plan never receives a QDRO, employers should have QDRO procedures in their plan records and be able to produce them in case of a plan audit. If a plan receives QDROs periodically, employers should make sure that their employee who receives anything relating to a divorce order is required to route those documents to the appropriate person, either at the company or at the recordkeeper, in order to respond in a timely way to the parties. The IRS frequently asks to see a plan's QDRO procedures during plan audits.

II. DOL Audit Issues

Even more than the IRS, the DOL is concerned with proper process and procedure. In some cases the end result may not seem as important as the procedures that the plan sponsor followed on the way. Like the IRS, the DOL looks for documented practices and procedures that prevent errors or that quickly flag errors before they result in large financial consequences.

The following are the top 10 issues from DOL audits we believe employers should focus on with respect to qualified retirement plans.

A. Target Date Funds Target date funds (TDFs) or ''life cycle funds'' in defined contribution plans are becoming a hot-button issue with the DOL. A target date fund is an investment fund designed to provide in a single investment fund a blend of different types of investments (such as stocks, bonds, etc.). The fund is designed to change over time so that, as a participant gets older, the fund mix changes to be invested in more and more conservative investments (which usually means that the amount of fixed income, bond-type investments will increase and the equity, stock-type investments will decrease). This change is referred to as the fund's ''glide path.'' The ''target date'' means the date that the participant is expecting to retire. If participants think they are going to retire in 2025, they might invest in the appropriate 2025 fund. However, many employees and plan sponsors have been confused about how conservative the investments in a TDF will become upon attainment of the stated age.

The DOL has released detailed guidance on what plan fiduciaries should understand about their plan's target date funds. The DOL has stated that plan fiduciaries must obtain information adequate to evaluate their TDF. Fiduciaries must understand the differences between TDFs and must document how they selected their TDF. Fiduciaries must be aware that the DOL is focused on this issue. We recommend plan fiduciaries walk through a checklist of the DOL guidance, fully understand how their plan's TDF operates, and make sure they are complying with DOL requirements.

B. Revenue Sharing and 12b-1 Fees The DOL has indicated that it will increase focus on a plan's use of Revenue Sharing and 12b-1 fees. In general, revenue sharing payments include SEC rule 12b-1 fees, shareholder and administrative services fees, or similar payments from investment fund companies received by service providers for defined contribution plans. Depending upon its agreement with the plan, a service provider may either retain such payments to be used as an offset to the administrative fees charged to the plan or enter into an agreement in which it agrees to share all or a portion of the payments with the plan.

The DOL recently released an advisory opinion in which it made clear, with respect to revenue sharing arrangements, that the plan fiduciary must understand the formula, methodology and assumptions used to determine the plan's and service provider's respective shares of any revenue generated from plan investments. The fiduciary must monitor the arrangement and the service provider's performance to ensure that the revenue owed to the plan is calculated correctly and that the amounts are applied properly (for example, for payment of proper plan expenses or for reallocation to participants' plan accounts).

Plan fiduciaries should carefully review any revenue-sharing arrangements to determine whether the revenue constitutes an ERISA plan asset and to ensure compliance with the relevant fiduciary obligations. Among other things, plan fiduciaries should determine whether: (1) the compensation paid to the service provider, including fee offsets from revenue sharing, is reasonable given the services provided to the plan, (2) the plan is being credited with the correct revenue sharing amounts, and (3) the revenue sharing payments are being applied as agreed with the recordkeeper and as provided in the plan documents.

C. Float The DOL is also focusing more on a plan's use of ''float.'' ''Float'' means the earnings that a service provider, trustee or third-party administrator retains as a result of holding funds in an account for a short-term period. Recent case law has raised questions about whether these earnings belong to the plan and the plan participants, or the plan's service provider. The DOL takes the position that float should be regarded as part of the service provider's compensation for services to a plan, and they will ask about float compensation during plan audits.

As a best practice, employers should make sure that their agreements with service providers specifically spell out who gets the float. Plan fiduciaries should understand how the service provider will earn float, and how it contributes to the service provider's compensation. That information must be spelled out clearly in the service agreement, and employers should be aware of the amount of float received annually.

The service provider should make transparent disclosures sufficient to permit the fiduciary to make an informed decision regarding the proposed float arrangement. In addition, float must be reasonable, and it should be considered when weighing alternative third-party administrators and other service providers. Thus, if employers have not looked at this issue recently, they should consider reviewing trustee or service agreements to understand how ''float'' is being used and whether any changes are needed.

D. Consultants and Investment Managers Another hot-button issue for the DOL is how plan fiduciaries select and monitor consultants and investment managers. Plan fiduciaries should adhere to DOL recommendations regarding hiring plan consultants or investment managers, focusing on whether the consultant or advisor has a conflict of interest. Does the advisor get a bonus based on business placed with a particular firm? Does the advisor have preferred vendors because they receive additional compensation? And does the advisor have a policy on receiving gifts from vendors doing business with? Another issue to focus on is to confirm whether the consultant or advisor is a fiduciary. If so, will the advisor say so in writing? In addition, will the advisor submit to a background check? Does the advisor maintain adequate insurance coverage? And are the advisor's fees reasonable?

If plan fiduciaries have not done so recently, they should review agreements with plan consultants and investment advisors to ensure that they adhere to DOL recommendations. Recent DOL audit letters require plan sponsors to produce signed and dated agreements with their plan service providers, so employers who have not updated these agreements should do so as soon as possible. Copies of the signed agreements should be retained with the plan's permanent records.

E. Late Payroll Deposits Late payroll deposits involve the timing of when participant contributions can reasonably be segregated from employer assets as part of weekly, bi-weekly or regular payroll, and then turned over to the plan trustee. Late payroll deposits are one of the most common DOL audit issues. In general, the DOL will examine all of an employer's payrolls to determine the date that contributions can reasonably be segregated from the employer's assets, and the fastest date that the employer was able to get those funds into trust. Then, the DOL will dictate that the plan sponsor must use that date as the maximum deadline for making contributions.

In recent years, the DOL has informally indicated that it thinks three days should be the maximum, although it maintains a seven-day safe harbor for small plans with fewer than 100 participants. Depending on the payroll information the employer provides, the DOL may conclude that a specific plan's maximum may even be fewer than three days.

F. ERISA Fidelity Bonds Another of the most common plan failures noted by the DOL in recent audits is a plan's maintenance of an ERISA fidelity bond. ERISA section 412 generally requires that every fiduciary of an employee benefit plan and every person who handles funds or other property of such a plan be bonded. ERISA's bonding requirements are intended to protect employee benefit plans from risk of loss due to fraud or dishonesty on the part of persons who ''handle'' plan funds or other property. A plan official must be bonded for at least 10 percent of the amount of funds he or she handles, subject to a $500,000 maximum amount per plan with respect to any one plan official. The maximum required bond amount is increased to $1,000,000 for plan officials of plans that hold employer securities.

During the audit process the DOL inevitably will look for missing or inadequate ERISA fidelity bond coverage, as well as fiduciary insurance coverage, which is often confused with the bond requirement. Errors may arise due to the failure to keep a copy of the certificate or the failure to comply with the ERISA bonding requirement. These errors include failure to maintain the required amount, requiring a deductible, failure to name the plan as the insured, and failure to cover all individuals who handle plan assets. Plan fiduciaries should obtain a copy of their ERISA fidelity bond and fiduciary insurance policy and review to ensure compliance with ERISA requirements.

G. Blackout Notices The DOL consistently requests copies of any ''blackout notices'' during audits of plans with participant-directed investments. If an investment fund is changed in a plan's investment line-up, and if during the changeover period the participants cannot take a distribution, hardship withdrawal or loan out of that fund, or they cannot move their money into a different fund during that period, then that period is referred to as a ''blackout.'' If a blackout period lasts for more than three business days, then the plan administrator must provide a notice to the plan participants at least 30 days before the blackout period that meets specific requirements.

Employers should consider whether their plan will have a blackout period, and, if so, make sure that the blackout notices are properly distributed and contain the right information. Employers also should make sure they keep a copy of the blackout notice in their plan records, since they will be required to demonstrate to the DOL that the notice was provided if the plan gets audited.

H. Investment Policy/Guidelines The DOL will also review a plan's investment policy or guidelines to ensure that the plan adheres to the policy or guidelines it has adopted. Plan fiduciaries should ensure that they comply with their plan's investment policy or guidelines, and should update the guidelines as needed.

The investment policy should be reviewed regularly with plan investment committee members. Plan committee members should always refer to the investment policy when meeting to discuss any changes to plan investments, and it is helpful to note that reference in the minutes of those meetings.

I. Plan Committee Meetings In connection with a plan audit, the DOL always asks for copies of plan committee minutes, sometimes spanning several years. The plan committee should meet at least twice a year, and many committees meet four times a year. At each of those meetings, someone should take notes and write committee minutes.

Employers should ensure that those minutes say enough about what went on at the meeting to be a helpful reminder of what happened, but they should be careful that the minutes do not contain red flags for the DOL. Red flags include incomplete minutes that raise unanswered questions. For instance, minutes may note that the committee reviewed XYZ investment fund and noticed that the performance of the fund was below all plan benchmarks, but the minutes fail to note what the committee will do about the problem.

Another problem is if the minutes reflect conflicts of interest. Employers should keep regular minutes of all plan administration or investment committee meetings and retain them in permanent files, have committee members review minutes to avoid unanswered questions and conflicts of interest, and have committee members review prior meeting minutes before each meeting to complete or address any tasks documented in prior minutes.

J. Changing Recordkeepers Finally, it is important to note that when changing plan recordkeepers, administrators should make sure the underlying documents and information get transferred from the old recordkeeper to the new recordkeeper. This allows all required plan information to be available in case of a DOL plan audit. The DOL often requests information related to previous years, and will not accept as an excuse the fact that the records were destroyed or can no longer be obtained from the previous recordkeeper.

III. Conclusion

There are numerous steps employers should be taking to make sure they keep their qualified retirement plans in compliance with IRS and DOL requirements. The IRS and DOL have a consistent pattern of issues they look for when they audit a plan. As described in this checklist, regular review of these issues and focus on internal controls can help prevent costly fines and fees when the IRS and DOL do audit an employer's plan.