



Keep Your Plan Out of Trouble

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Potential Annual Compliance Requirements

- Form 5500 filing
 - Type of filing is determined by the size of the plan
- Form 990 filing
 - Required for most health and welfare plans
- Audited financial statements
 - Required as an attachment to the Form 5500 filing in certain circumstances

Form 5500

- General schedules
 - Schedule H (Financial Information – Large Plan)
 - Schedule I (Financial Information – Small Plan)
 - Schedule A (Insurance Information)
 - Schedule C (Service Provider Information)
 - Schedule D (DFE/Participating Plan Information)
 - Schedule G (Financial Transaction Schedules)

Form 5500

- Pension schedules
 - Schedule R (Retirement Plan Information)
 - Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information)
 - Schedule SB (Single-Employer Defined Benefit Plan Actuarial Information)
- Penalties for failing to file Form 5500
 - IRS penalty of \$250 per day, not to exceed \$150,000
 - DOL penalty of up to \$2,259 per day, with no cap

Form 990 Filing

- Gives the IRS an overview of the organization's activities, governance, and detailed financial information
- Ensures a VEBA trust's assets are efficiently managed for the purpose of providing benefits to the plan's participants
- Penalties
 - The organization is assessed a late penalty of \$20 per day, not to exceed the lesser of \$10,500 or 5% of gross receipts
 - Organizations with annual gross receipts exceeding \$1,084,000 are subject to a penalty of \$105 per day, with a maximum penalty for any one return of \$54,000

DOL Study on Assessing the Quality of Employee Benefit Plan Audits

- Updated May 2015
- Concluded that the quality of employee benefit plan audits has not improved since EBSA's previous studies given an overall deficiency rate for plan audits of 39%
 - The smaller the firm's employee benefit plan audit practice, the greater the incidence of audit deficiencies
 - Members of the AICPA's Employee Benefit Plan Audit Quality Center (EBPAQC) tend to have fewer audits containing multiple GAAS deficiencies
 - Non EBPAQC member firms tend to have a larger number of GAAS deficiencies, per audit engagement, than EBPAQC members

DOL Enforcement

- DOL fact sheet identifies EBSA restoring over \$3.1 billion to employee benefit plans, participants and beneficiaries in FY 2020
 - Closed 1,122 civil investigations with 754 (67%) resulting in monetary results
 - Non-monetary results in over 400 cases (removal or enjoinder of a plan fiduciary, appointment of independent fiduciary, and implementation of new plan procedures)
 - Referred 82 cases for litigation to the Solicitor of Labor
 - Closed 230 criminal investigations, leading to the indictment of 70 individuals – including plan officials, corporate officers, and service providers – for offenses related to employee benefit plans

Remedies

- EBSA's Voluntary Fiduciary Correction Program (VFCP) and Delinquent Filer Voluntary Compliance Program (DFVCP) encourages self correction for violations of ERISA
 - VFCP allows corrective action to be taken to remedy breaches and voluntarily report to EBSA, without becoming the subject of an enforcement action
 - DFVCP encourages plans to be brought into compliance with ERISA's filing requirements (inadequate Form 5500 filing or auditor's report)

Remedies

- IRS's Employee Plans Compliance Resolution System (EPCRS)
 - Self-Correction Program (SCP): correct certain plan failures without contacting the IRS or paying a fee
 - Voluntary Correction Program (VCP): prior to an IRS audit, pay a user fee and receive IRS approval for correction of plan failures
 - Audit Closing Agreement Program (Audit CAP): while under IRS audit, correct a plan failure and pay a negotiated sanction

Significant Changes Coming to the Auditor's Report

- Effective for periods ending on or after 12/15/21 (if not early implemented)
- Revamping the order of the paragraphs to showcase the Opinion section at the front of the report
- Adds a Basis for Opinion section that follows the Opinion section
- Limited-scope audits

DOL Guidance in Selecting an Auditor

- Why is the choice of an auditor important?
 - Helps protect the assets and the financial integrity of an EBP
 - Provides the plan administrator with information to help ensure funds will be available to pay benefits
 - Evaluates the strength of internal controls over financial reporting
 - Helps to carry out legal responsibilities such as a Form 5500 filing
 - Helps avoid civil penalties assessed against the plan administrator for an incomplete, inadequate, or untimely Form 5500 filing

What Makes a Quality CPA Firm?

- Experience
 - How long have they been performing benefit plan work and how many EBP clients do they serve?
- Dedicated team
 - How many professionals work on EBP clients and do they obtain the necessary training each year in the EBP area?
- A market leader
 - Are they a member of the AICPA's EBPAQC and do they make EBP work a priority service?

What Makes a Quality CPA Firm?

- Ability to audit complex plans
 - Do they provide quality work that will withstand the scrutiny of the DOL?
- ERISA compliance requirements are met
 - Do they provide value added services such as determining whether EBPs have met various compliance requirements?
- Superior client service delivery
 - Are they available throughout the year for assistance, and do they avoid pushing up against filing deadlines?
- Passes peer review and oversight
 - Are they subject to regular peer reviews?

Questions?

Contact

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