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# 401(k) Audits: Best Practices and Updates

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# Presenters



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# Announcement



Nothing in this presentation is represented as legal, accounting or insurance coverage advice. Everyone's situation is different; therefore, it is incumbent upon everyone to seek the advice of their attorney, accountant and or insurance professional when making decisions regarding insurance coverages, investments and/or tax decisions. Nothing contained presented here is advice.

# What We Will Cover

- ❖ How to determine if my plan requires an audit
- ❖ ERISA Section 103(a)(3)(C )
- ❖ Common pitfalls found during the audit
- ❖ Tips and best practices for a successful audit



# What is a 401(k) Audit

A 401(k) audit is a review of your company's 401(k) plan by a third-party accounting firm to ensure that the plan is within the guidelines and regulations set by both the IRS and the Department of Labor.

During the audit, the accountant could identify any errors in the plan, which provides an opportunity for you to correct the issues right away.

Not all businesses need to undergo an annual 401(k) audit, though. The requirements for auditing are set by the Employee Retirement Income Security Act (ERISA).

# Audit Determination

If your business has 100 or more eligible participants at the beginning of the plan year, you must undergo a 401(k) audit. The “keyword” in this situation is “eligible,” so even if some of your employees choose not to participate, they still count toward the audit requirement. Additionally terminated participants that maintain a balance in the plan are also counted in this determination.

## **80 – 120 Rule Exception**

If the number of eligible employees is between 80 and 120, your audit requirement will stay the same as the previous year. For example, if you had 86 eligible participants in the first year and 114 in the second year, you will not need an audit for either year. This can continue indefinitely as long as the number of eligible participants stays under 120. When you have more than 120 eligible employees, you’ll always need an annual audit.

# ERISA Section 103(a)(3)(C)

## Audit Impacts:

- Limited Scope Audit now referred to as ERISA Section 103 (a)(3)(C ) Audit
- Full Scope Audit now referred to as ERISA Non-Section 103 (a)(3) (C ) Audit
- Increases the auditor's responsibilities (Disclaimer opinion went away)
- Increases reporting requirements of reportable findings to management

## Plan Sponsor Impacts:

- Determining whether a 103(a)(3)(C) audit is permissible and whether the certification meets ERISA requirements.
- Maintaining and providing a current plan document.
- Preparing and fairly presenting financial statements.
- Providing a substantially completed (draft) Form 5500.
- You also will be responsible for understanding which investments and disclosures are certified, and you will need to acknowledge, in writing, that all the conditions are met

# Common Mistakes Uncovered During an Audit



401(k) plan administration can be complex, and it is important to partner with experienced professionals to help you avoid them before they happen. With the increase in employee turnover and the reliance of multiple data systems to communicate changes across platforms, details can get lost in the shuffle. Almost all plans have errors over the course of their lifetime, but here are some of the most common areas to focus on.

# Inaccurate and Untimely Deferrals

Employers with 401(k) plans are responsible for depositing their employees' salary deferrals to the plan's trust on the earliest date that the deferrals can reasonably be segregated from the employer's general assets, with a 7 business day Safe Harbor for plans with fewer than 100 participants. In no event can the deposit be later than the 15th business day of the month following the payroll withholding.

- I. Keep a digital or paper record of the amount and dates for which you remitted the 401(k) contributions.
- II. Remit your contributions in accordance with your plan document and make separate deferrals for special contributions such as a correction or year-end true-up.
- III. Compare your remittance statement with your payroll records for accuracy.
- IV. When you identify a remittance error, document and notify your third-party administrator for prompt correction.

# Improper Identification of Compensation

Not all 401(k) plan documents utilize the same formula for determining which compensation should be utilized for match and deferral purposes. For example, some plans may exclude bonus pay from match calculations or have a separate deferral formula for match compensation.

## **Common Types of Compensation Utilized**

Section 415 Compensation

W-2 Compensation

Withholding Compensation

- I. Review your plan document to determine what type of compensation is identified or excluded from the plan
- II. If your payroll provider supports calculations make sure that they are aware of which types of pay to utilize
- III. Keep track of incentivizes provided to employees that flow through payroll but may not be available to defer on ie Gift Cards and other fringe benefits

# Non-Existent or Insufficient Documentation

Whether you are a fiduciary or not it is critical to document procedural changes and reviews of a qualified retirement plan. Plan Sponsors and designated fiduciaries need to have documentation of a prudent process to satisfy ERISA guidelines

## Examples of a Fiduciary Process

- I. Have meeting agendas and meeting minutes for all review meetings that outline topics of conversation and any agreed-upon actions
- II. Have documentation of investment reviews and corresponding materials
- III. Update and review necessary plan documents such as Adoption Agreement(s), Investment Policy Statements, Committee Charters, and service provider agreements
- IV. Distribute required notices when required i.e. Fee disclosures, Investment changes, Summary Annual Reports (SARS), Qualified Default Investment Alternative (QDIA) notices, and Summary Plan Descriptions (SPDS)

# Additional Highlights

I. Improper calculation of eligibility

II. Not following the plan document provisions- i.e. Letting employees into the plan at the wrong time, not letting eligible enrollees get in the plan, non-resident aliens, and other categories of workers

III. Stopping or starting loan payments at the wrong time

IV. Not following IRS guidelines for compensation and deferral limits

# Tips and Best Practices

Partner with experienced 401(k) professionals such as Fiduciary Advisors, Third Party Administrators, Trustees, Custodians, and Auditors

Have checks and balances during the plan year. Keep records of incidents or issues as they come up throughout the year. Correct them as they happen

Get your census information and discrimination testing done early in following year before the auditors show up

Strive to conduct administration online to avoid providing paper documentation



# Contact Information



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