

Risk Management

Reviewing Qualified Plan Administration

Undertaken with the guidance of legal counsel and employee benefit consultant compliance specialists, a plan administrative self-audit holds as its objectives the following:

- √ confirm that plan procedures correspond to what your plans provide and what the law requires,
- √ reduce risk of significant IRS or DOL penalties,
- √ reduce expenses by identifying ways to streamline fund administration,
- √ train benefit office staff in proper procedures, and
- √ provide a template for future self-audit guidelines for ongoing compliance efforts or other locations.

Important information: Legal Counsel Involvement

Since a review of this nature often raises legal concerns, your lawyer (either in-house or outside counsel) should be a participant in performing this type of examination. There are several practical reasons for this. Reviewing plan operation and administration at the request of legal counsel may protect the work-product from Internal Revenue Service and Department of Labor subpoena and inquiry via the attorney-client privilege. In addition, since benefit consultants do not offer legal advice, the findings and recommendations are offered from a consulting perspective and cannot be construed as legal advice to the plan sponsor or plan administrator.

The Process

Generally, a benefits plan self-audit encompasses a four-stage process. Ideally, it should include a familiarity analysis of plan documentation, interviews with the individuals responsible for the day-to-day operations of the plans, and a detailed report containing findings and recommendations.

The Timeline

The process of auditing and analyzing a qualified plan usually takes approximately two to three months, depending on the complexity of the plan. The stage process is described in more detail on the following pages.

QUALIFIED PLAN ADMINISTRATION AUDIT: FOUR STAGES

DEVELOP SCOPE OF PROJECT	
1	<p>The process is initiated by holding discussions with benefits staff professionals (and others as you deem appropriate) in order to obtain a more detailed picture of your plans' administration and the operation. This discussion enables the reviewer to identify areas where operational problems might exist and propose the most cost efficient manner of addressing possible shortcomings.</p>

PREPARE BENCHMARK DOCUMENTATION	
2	<p>Following the initial discussions, an outside benefits consultant or preferably, a benefits consultant and the plan's attorney, should conduct a familiarity review of plan documents, summary plan description and all related administrative materials such as letters and notices to participants. Included in this type of review is the plans' written procedures for complying with the various reporting requirements under federal law, including the annual report (5500) and other documents such as participant disclosure materials such as Summary Annual Reports, Summaries of Material Modifications and special notices called for in special circumstances, such as Qualified Domestic Relations Orders ("QDROs").</p> <p>For a defined contribution (e.g., 401(k) plan), the notes, observations and comments are then organized into a draft "workbook", including approximately 600 customized questions that were used as a guide in reviewing the plans' documentation and written administrative materials. This document is referred to as the workbook and serves as the benchmark and reference tool for the interviews (the conference) with the individuals responsible for the day-to-day administration of the plans. The workbook is also used in conjunction with onsite review of documentation not available to benefit consultants prior to the interviews. Copies of the draft workbook are provided to participants in the conference, prior to the date of the conference.</p>

ONSITE REVIEW AND CONFERENCE

3

In the next stage of the process the attorney and benefit consultant interviews individuals who are responsible for the day-to-day operation of the plans on-site. In most cases, the interview requires at least several days, generally no less than 14 hours. Follow-up matters usually can be addressed via a conference call. The interview should be conducted by senior compliance consultants who initially reviewed the documentation and have extensive experience in plan operational and compliance matters. The conference should be structured as comfortably conversational and “free form” in nature, using a set of customized questions based on the document analysis described above. The questions are provided in advance to all participants in the conference. Frequently, these questions lead to others as the inquiry proceeds to different levels. The onsite visits also include file and additional information gathering as required.

THE REPORT

4

At the conclusion of the review, benefit consultants meet with interested parties (including, preferably, legal counsel for the plan) to discuss preliminary findings and conclusions. The purpose of this meeting is to confirm that the interpretation of the plans’ operations are accurate and not merely the result of isolated or misunderstood information. This process will provide the opportunity to review the contents of the report and consider alternatives.

Following the preliminary discussion, the benefits expert will present the findings and analysis to interested parties. This will include a summary of the Conference, including notes and answers relating to each question asked. A detailed discussion of what the plan provides and how that compares to plan operation is also included. A separate Executive Summary contains a discussion of areas of administration that deserve further attention and presents options for resolving potential problems or inefficiencies. With concurrence of legal counsel, we will furnish material that suggests models for potential solutions. If indicated, the plan sponsor should be prepared to participate negotiations relating to IRS and DOL self-correction programs.

Since the Report contains a great deal of information and detail about the plan and its administration, it may form the basis as a reference or training tool for benefits professionals and administrative staff.

Specific topics covered by an audit review might include:

- √ Fiduciary Identification, Responsibilities and Duties
- √ Delegation of duties; reporting
- √ Claims and Appeals Procedures
- √ Federal and state Reporting Requirements
- √ Disclosure to Participants and Beneficiaries
- √ Minimum Coverage Requirements
- √ Rules Governing Eligibility; process of determining eligibility
- √ Minimum Vesting Requirements
- √ Minimum Distributions
- √ Determining Service and Breaks in Service
- √ Employer Contributions; Benefit Formula or Allocation Formula
- √ Maximum Benefits and Contributions under IRC Section 415
- √ Qualified Joint and Survivor Annuities; Spousal Consent, if applicable
- √ Cash Out Rules
- √ Distributions from Plan
- √ Tax Withholding Requirements
- √ Direct Transfer (Rollover) Requirement
- √ Hardship Withdrawals
- √ Plan Loans
- √ Participant-Directed Investments; Execution of Transfer
- √ Family and Medical Leave Act Tie-in to Plan
- √ Veterans Rights (USERRA) Tie-in to Plan
- √ Claims and appeals procedures (compliance with ERISA)
- √ Participant notices (compliance with ERISA)
- √ Applicable state law

In addition, the review compares the plans' administrative design as set forth in the plan document and other documents (if relevant), and determines whether the written procedure matches with what actually takes place in the fund office.

As noted above, since a review of this nature often raises legal concerns, your lawyer (either in-house or outside counsel) should be a participant in performing this type of examination. There are several practical reasons for this. Reviewing plan operation and administration at the request of legal counsel may protect the work-product from Internal Revenue Service and Department of Labor subpoena and inquiry via the attorney-client privilege. In addition, since benefit consultants do not offer legal advice, the findings and recommendations are offered from a consulting perspective and cannot be construed as legal advice to the plan sponsor or plan administrator.

For more information, please see Mr. Koss's articles:

***Potential Areas of Conflict in the Qualified Plan Environment and
Reviewing Benefit Plan Administration***