

REVIEWING BENEFIT PLAN ADMINISTRATION

Process for Conducting a Review of Plan Administration

Introduction

Since a review of this nature often raises legal concerns, legal counsel should guide the inquiry, notwithstanding the process (e.g., third party benefit consulting firms conducting interviews and onsite document reviews). 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. This might be of paramount importance if the self-correction programs of the IRS and DOL are utilized.

Objectives of a Self Audit

- √ 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,
- √ can serve as a training vehicle or “refresher course” for your fund office staff, and
- √ can be used as a template for self-audit guidelines for ongoing compliance efforts.

The Process

Generally, a self audit encompasses a four-stage process. 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 report .

Stage One:

Develop scope of project in order to determine plan(s) to be reviewed, timeline, project participants and leader, stakeholders and functional managers that might be asked to provide information and be available for interviews

Stage Two

Prepare benchmark documentation, including plan document, summary plan descriptions and administrative forms.

Stage Three

Onsite review and conference, which should include questions concerning documentation, interviews with all those responsible for plan administration and random review of participant data.

Stage Four

Drafting and presentation of findings

Scope of the Self Audit

Plan administration review should include at a minimum, the following areas of administration, depending on the type of plan being reviewed.

- √ Fiduciary Responsibilities and Duties
- √ Delegation of duties; reporting
- √ Claims and Appeals Procedures
- √ Reporting Requirements
- √ Disclosure to Participants and Beneficiaries
- √ Minimum Coverage Requirements
- √ Rules Governing 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)
- √ Qualified Medical Child Support Orders ("QMCSOs") Procedures
- √ VEBA and other IRC rules and constraints (§§105, 106)
- √ COBRA (including coordination with self-pay programs)
- √ Medicare Secondary Payer (MSP)

- √ HIPAA - portability
- √ Mental Health Parity, Newborns' and Mothers' Health Protection Act
- √ Accounting requirements - SOP 92-6, FAS 106

Additional discussion and details can be found in Mr. Koss's articles: *Risk Management: Reviewing Qualified Plan Administration* and *Potential Areas of Conflict in the Qualified Plan Environment*.