

IT'S NOT JUST ABOUT FEES

by Teresa J. Leonard, QPA, QKA, ERPA, Vice President, Retirement Plan Services

With the passing of the Department of Labor Fee Disclosure Regulations in 2012, Plan Fiduciaries have focused much of their attention on examining the cost of their Retirement Plans. Understanding the fee structure of their plan, including the amount of the fees being paid, how those fees are paid and to whom they are paid, has been no small undertaking.

The resulting analysis has likely left many of those fiduciaries surprised, and not in a good way. While managing costs is one of the core responsibilities of the retirement plan fiduciaries, it is not the only responsibility. A recent DOL announcement is a poignant reminder that sound plan management is not just about fees. In that announcement, the DOL stated that 75% of the plans audited last year resulted in Plan Sponsors being fined, penalized or forced to make reimbursements for plan errors. The fines assessed were not cheap. The average fine last year was \$600,000 compared to \$150,000 four years ago. In addition, approximately 88 individuals, including Plan Officers, CEOs, CFOs and Service Providers, were criminally indicted for 401(k) offenses.

The lack of compliance is not a new phenomenon. With the addition of 1,000 DOL enforcement officers, that lack of compliance is now coming to the forefront. Also, more complicated Plan Designs often result in more frequent operational errors. The most common error discovered during the DOL audit was the use of incorrect compensation for deferrals and employer contribution. The Plan document provides the definition of compensation for purposes of contributions and compliance testing. If the Plan's definition of compensation differs from W-2 compensation, the opportunity for errors increases. If the Plan Sponsor provides incorrect compensation information to the Plan's TPA and/or record keeper, the Plan may have a compliance issue.

The failure of a Plan Sponsor to transmit deferrals and loan payments to the Participant's account on a timely basis continues to be a main focus of DOL enforcement. Failure to remit these deferrals is a prohibited transaction that can have significant consequences for the Plan and the Fiduciaries. The DOL has been aggressive in their enforcement of this area and, in instances where the untimely transmittals are chronic and/or intentional, the DOL has pursued criminal charges.

What should you do to be sure your Plan does not fall victim to fines and penalties?

1. Take the time to conduct a complete review of your Plan.
2. Start an Administrative Manual documenting all policies and procedures.
3. Ask your Record keeper or TPA to provide specific highlights of your Plan.
4. Request your record keeper or TPA meet with you and your staff to review the specifics of the Plan. This is especially important if there has been any turnover with the staff responsible for handling the day-to-day operation of the Plan at your office.

For many Plan Sponsors, there are several individuals and departments whose day to day activities impact the Plan. It is crucial that each member of your team understand the workings of the Plan.

The IRS, in an attempt to help Plan Sponsors identify potential problems, has published the IRS 401(k) checklist (<http://www.irs.gov/pub/irs-tege/pub4531.pdf>). Answering “no” any of the 10 questions indicates you have a potential qualification issue that requires your immediate attention.

With the 6-year document restatement process fast approaching, this is the opportune time to meet with the members of our team and review the Plan provisions. Education for your staff may be the difference between a Qualified Plan or a Plan subject to substantial DOL fines and penalties. ■

For more information contact:

Lauren Bloom, Director of Business Development
lbloom@lamcogroup.com or call 407.585.1171

LAMCO Advisory Services, Inc.
1525 International Pkwy, Ste. 2071 ■ Lake Mary, FL 32746
www.lamcoadvisory.com

This update is provided as a general informational service to clients and friends of LAMCO Advisory Services, Inc. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an advisor-client relationship. Please note that the prior results discussed in the material do not guarantee similar outcomes. Nothing in this material is intended to be, or should be construed as, a guarantee of future performance. This is a partial disclaimer. For the complete disclaimer, please go to www.lamcogroup.com/disclaimers.asp or contact our office at 407.585.1160 to request a hard copy.