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THE ERISA LAW GROUP, P.A.

ERISA Newsletter

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Important Legal Compliance Considerations and Questions for 2014 John C. Hughes, Esq.



The beginning of the new year marks a time to reflect on many issues and consider the future, including your retirement plan's legal compliance (past, present, and future). The following is a short list of issues and questions that should be considered to limit exposure and best achieve your goals as we enter 2014.

- **Determination Letter Applications.** Does your plan need to be submitted to the Internal Revenue Service ("IRS") for a determination letter during Cycle D? Cycle D opens on February 1, 2014 and ends on January 31, 2015. Generally, a plan will be in Cycle D if it is an individually designed plan and the plan sponsor's employer identification number ends with a "4" or a "9." There are many important considerations associated with submitting an application for determination letter to the IRS, including ensuring that the plan document restatement and application are accurate and complete. It is also compelling to "scrub" the plan so that any problems may be identified and appropriately remedied before the IRS identifies them on examination (and forces correction and/or imposes monetary penalties). Cycle C ends on January 31, 2014. If your EIN ends with a "3" or an "8" (or if you maintain a governmental plan), your deadline may be very fast approaching.
- **Implementation of "Internal Controls."** The IRS continues its focus on internal controls. Internal controls are generally processes and reviews aimed at identifying (and preventing) errors relative to your plans' operations and document updates. What internal controls do you have in place to ensure operational and documentary compliance (and/or to identify where compliance has not been achieved so that the matter may be appropriately remedied)?
- **Fiduciary Processes.** Fulfillment of fiduciary duties requires engaging in "process," and documenting that process. What processes do you have in place to ensure fulfillment of your fiduciary duties, and how are those processes documented?

- **New Fee Disclosure Rules.** In 2012, two new sets of Department of Labor (“DOL”) regulations became effective. The “408(b)(2)” regulations require certain plan service providers to make disclosures to plan fiduciaries regarding their scope of work and compensation. The 408(b)(2) regulations further require that plan fiduciaries assess those disclosures to ensure the plan’s arrangement with the service provider is reasonable. The “404a-5” regulations require *employers* to furnish participants with notices, annually and quarterly, containing detailed specified information. What efforts have you undertaken to ensure your compliance with these two new sets of regulations? Did you obtain 408(b)(2) disclosures from all service providers who were required to provide them? Were the disclosures understandable? How did you assess (and document) reasonableness? Are the 404a-5 notices you are sending to your participants compliant? What actions are being taken to document compliance with 404a-5? The DOL is keenly interested in enforcing these requirements, as is evident from recent plan investigations.
- **Late Deposits.** This issue continues to be a challenge for employers (and remains an issue of focus for the DOL). Identifying instances of late deposits and appropriately correcting (and reporting) the issue will prevent headaches and save costs.
- **Impact of DOMA.** How does your plan define “spouse?” Are operational and/or documentary changes necessary in light of DOMA? This issue will be addressed in more detail in a subsequent *ERISA Newsletter*.
- **ERISA Budget Accounts.** Are you utilizing an ERISA budget account? If so, is the arrangement legally compliant? Are changes to the plan document necessary?
- **Plan Design Changes.** Are you considering design changes for 2014? For some changes, it may be too late now that the year has begun; not so for others.
- **Form 5500s.** Have Form 5500s been accurately completed and timely filed (and appropriate proof maintained)? The DOL and IRS continue to state that they use Form 5500 as a tool to identify problem issues.
- **Default Funds/QDIA Compliance.** How much money is defaulted under your plan? Are you attaining the protections afforded by the “QDIA” regulations? Compliance with the QDIA regulations is not simply a matter of sending out a notice (in fact, the notice requirement itself is multifaceted).
- **M&A.** Is there any merger and acquisition activity on the horizon? If so, there are numerous plan related considerations (pre- and post-acquisition).
- **SPD.** Has your SPD been timely updated? Is the current SPD accurate and compliant with ERISA’s style and content regulations?

- **Annual Testing.** Are you properly performing (and documenting) required IRS nondiscrimination testing?
- **Controlled Groups (and Affiliated Service Groups).** Are you properly recognizing controlled group status? For example, have the appropriate employers adopted the plan (or have their employees been properly excluded if that is the desire)? If an employer is part of a controlled group or affiliated service group, it has wide ranging impacts on a plan.

Appropriately addressing the foregoing questions will not only allow you to avoid (or decrease) potential liabilities, but will assist you in providing participants with a plan that is workable, understandable, and achieves your goals. Many of these issues are not limited to qualified retirement plans and also apply to other types of plans, such as welfare and nonqualified plans.

For additional information, or if you have questions, please contact Jeffery Mandell (jeff@erisalawgroup.com) or John C. Hughes (john@erisalawgroup.com) at 208-342-5522 or 866-ERISALAW.

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