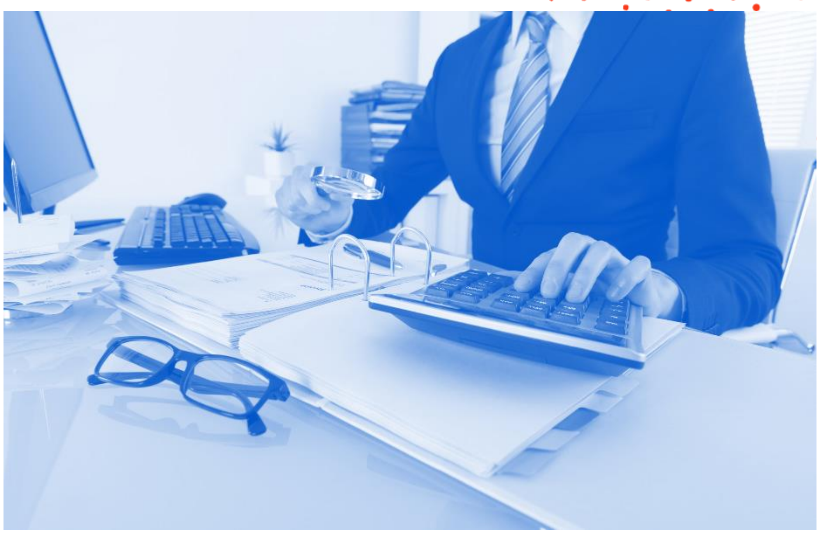
IRS Audit Tips

Are you prepared for an IRS audit?

The Internal Revenue Service's (IRS's) Employee Benefit Audit Program is used to audit and enforce. The IRS's emphasis, with respect to defined contribution plans is on compliance with the requirements of the Internal Revenue Code (the Code), the plan's tax qualification and administration of all plan documents. In the event of noncompliance with regulations, the IRS can impose taxes, penalties and interest.



Most IRS audits are selected at random, but certain audit triggers exist that plan sponsors should be aware of. If the IRS suspects noncompliance, the chances of an audit will increase substantially. Answers to certain questions on the Form 5500 may also trigger an audit.

The IRS audit process is initiated with an Information Request Letter to the plan sponsor. The Information Request Letter identifies the date the auditor plans to visit, the documents they plan to review and possibly will list individuals they intend to speak with who handle plan administration. The letter requests specific information to have available for the auditor to review. If you receive one and have questions regarding items requested, or require additional time to collect the requested data, it is best to be proactive and explain your concerns and circumstances.

It is essential to be prepared for audit by having all requested documents readily available and being familiar with these documents. Preparation should begin upon receipt of the audit letter. Being prepared, informed and helpful to the auditor should reflect positively on the audit experience. Be sure to be available during the audit in the event you are asked to respond to follow-up questions or produce additional documents.

The auditor may want to speak with other plan fiduciaries, your ERISA attorney, plan advisor, administrator, investment advisor and trustee. If you anticipate more potentially concerning issues may be discussed, you may want to consider having your legal counsel assist during the audit process.

While it is important to be prepared, understand that auditors are looking for specific information, so provide only information that is requested. It is not a good idea to lead an auditor to your plan files and let them search. Allowing access to more information than is requested can often be counterproductive. Be patient with the audit process and project confidence.

The IRS will focus on compliance with the plan document, regulations and tax-related issues. Compliance with all plan documents in terms of operation and administration are the most frequent cause of compliance deficiencies. Also, compliance with newer regulations is likely to be reviewed.

The most common issues the IRS finds in its audits of retirement plans are:

- Plan document is not up to date
- Untimely participant deferral deposits
- Plan operation doesn't follow the plan document
- Plan definition of compensation not followed
- Matching contributions not made to all eligible employees
- Plan definition of eligibility to participate or for employer match not followed
- Improper administration of participant loans (including defaults), hardships, QDROs, etc.
- Delinquent filing of Form 5500
- ADP/ACP test errors
- Deferral limits exceeded
- Top-heavy requirements ignored

Once the audit is complete, the auditor will follow up with a phone call to verbally convey the audit findings; the phone call is followed by a written audit findings letter. The letter may show no further actions are necessary and that the audit file is closed. If errors are found, then certain corrective actions may be necessary through the IRS's Audit Closing Agreement Program, the main intent of which is to make the plan and its participants whole. This may include a corrective contribution plus interest to plan participant accounts, excise taxes required and potentially other fees and penalties payable to the IRS. If you disagree with the audit conclusions in some way, there is an appeals program that enables another review of the audit findings and your position.

Plan administration is complex and plan documents are not always simple to interpret, as a result it is not uncommon for plan sponsors to have correction issues at some point. Many errors that occur and corrections that need to be made arise out of a triggering event, such as payroll staff turnover, system changes, one-off processing events, annual limits or business reorganizations. If you've had or have this type of event, you may want to conduct a self-audit to ensure your plan's operation continues to be consistent with plan documents and all laws.

Performing regular self-audits will give you greater protection against compliance breaches. If you identify a problem during the self-audit of plan operations, you can voluntarily correct these problems. Depending upon the nature and extent of the issue, you may be able to self-correct your plan, document the corrections for the file and move forward without a formal filing with the IRS or the DOL. More significant issues, such as failing to amend the plan timely or not depositing employee deferrals timely, generally require filing for and obtaining approval of the self-correction methodology.

For more information, contact us at [PHONE] or [EMAIL ADDRESS].

[ADDRESS] | [PHONE NUMBER] | [WEBSITE]
[YOUR SECURITIES DISCLOSURE HERE]
ACR# 4804711 06/22