

Year-End Compliance Review

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Agenda

- Fiduciary Responsibility
- Key Data Requirements
- Compliance Tests and Deadlines
- USI Consulting Group (USICG) Compliance Services
- Questions



Fiduciary Responsibility

- A plan's fiduciary is responsible for operating a plan in accordance with plan document terms
- Annual compliance testing provisions are included in plan documents
- Failure to provide accurate information required for annual compliance testing can cause a plan to lose its tax-qualified status
- Taxable benefits, excise taxes, and penalties may result

Definitions

Annual Compliance Tests

- To perform tests, determine:
 - Highly Compensated Employee (HCE)
 - More than 5% owner of business, or
 - Compensation more than \$110,000 in 2010
 - Key Employee
 - More than 5% owner of business, or
 - More than 1% owner of business, with compensation at least \$150,000, or
 - Officer with compensation at least \$160,000
 - Officer

Ownership

Who is an Owner?

- Based on type of entity
 - Corporation – stock ownership
 - Partnership – capital (or profits) interest
 - Limited Liability Partnership (LLP) or Limited Liability Company (LLC) – membership interest
- Certain family members of owners are deemed “owners”, based on their relationship, through attribution
 - From owner to spouse, children, parents, grandparents

Data Requirements

- **Key Data Elements**

- Dates of Birth, Hire, Participation and Termination
- Participant employment status including rehire, death, disability, military leave, family medical leave or other leave of absence
- Compensation – plan definition and gross
- Plan year contributions – deferral, employer match, profit sharing, employer discretionary
- Hours of service, if applicable
- Leased employees

Controlled Group

What is a Controlled Group?

- Business structure determines controlled group status
- There are 3 categories of controlled groups:
 - Parent-Subsidiary/Holding Company
 - Brother-Sister
 - Combination
- Controlled group status affects employee benefit plans

Controlled Group

Impact on Plans

- All employees of the controlled group are deemed to be employed by a single employer for testing purposes
- Each plan must satisfy requirements individually
- Controlled group status often creates difficulty for individually-maintained plans within the group to satisfy coverage and nondiscrimination requirements on a controlled group basis

Timing of Deposits

DOL Regulations

- Contributions and loan repayments must be deposited into a plan's trust as soon as the contributions can be reasonably segregated from the employer's general assets
 - "but in no event later than the 15th business day of the month following the month during which the amounts would have been otherwise received by the employee"

Timing of Deposits

Late Contributions

- Target of DOL enforcement activity
 - Possible fiduciary breach
- Small plans – DOL Safe Harbor regulations
 - 7 business days
- Large plan – no DOL standard
 - No timing safe harbor
 - Plan Sponsor determines appropriate standard for the plan
 - Deposit of other payroll withholding (e.g., FICA) may set precedent and determine standard

Fidelity Bond

Fidelity Bond

- ERISA Mandate – 412(a)
 - Every person who “handles funds or other property” must be bonded
 - Minimum bond – 10% of plan assets, not less than \$1,000 (should be reviewed annually)
 - Maximum bond – \$500,000 (\$1,000,000 if plan holds employer securities)
- Insures plan against losses due to fraud or dishonesty, such as theft
- Not Fiduciary Insurance
 - Insures plan against losses from breach of fiduciary responsibility

Business Entity Activity

Mergers & Acquisitions

- Changes in structure of business entity affect the plan
- During the plan year, has the company –
 - Been acquired?
 - Acquired another entity?
 - Spun off a group?
 - Closed a division?

Large Plan Audit Requirement

Certain plans must be audited

- Plans with more than 100 participants subject to annual audit by independent financial accountant
- Audit report must be attached and filed electronically with Form 5500 under EFAST2
- Limited scope audit may be available
 - USI Consulting Group provides an annual SSAE 16 report
 - Plans receiving a certified trust report from a bank (or similar) are eligible
 - Eliminates need for audit of information prepared that is contained in the certified report
 - Can significantly reduce auditing costs

Annual Compliance Tests

Tests on an individual level

- 402(g) – Deferral limits
- 415(c) – Annual additions

Tests on a plan level

- 401(k)/(m) – ADP/ACP
- 410(b) – Coverage
- 416 – Top Heavy
- Plan limits testing – specified in plan document

Individual Participant Tests

402(g) – Employee Deferral Limit

- Maximum contributions
 - 2011 - \$16,500
 - 2012 - \$17,000
- Catch-up contributions
 - Participants age 50 or older by end of year
 - 2011 - \$5,500
 - 2012 - \$5,500

Individual Participant Tests

415(c) – Annual Addition Limitation

- Lesser of:
 - 100% of compensation
 - \$49,000 (2011 limit, increasing to \$50,000 in 2012)
- Sum of:
 - All employee contributions
 - All employer contributions
 - Forfeiture reallocations

Plan Level Tests

401(k)/401(m) – ADP/ACP Test

- Actual Deferral Percentage (ADP)
 - Ensures deferral rates do not discriminate in favor of HCEs
- Actual Contribution Percentage (ACP)
 - Ensures employer match rates do not discriminate in favor of HCEs
- Safe Harbor plans deemed to satisfy test

Plan Level Tests

410(b) – Coverage Test

- Ratio Percentage Test - Plan must benefit either:
 - at least 70% of employees who are not highly compensated employees
 - at least 70% of the percentage of HCEs benefiting
- If plan cannot satisfy either, then plan must meet a “nondiscriminatory classification” test and an “average benefits” test
- All employees of a controlled group are treated as a single employer

Plan Level Tests

416 – Top Heavy Test

- Plan is top heavy if 60% of account balances are for “key employees”
- If top heavy, plan must satisfy
 - Minimum vesting standards
 - Minimum benefit requirements

Plan Level Tests

Plan limits

- Deferral percentage cap
 - For plans restricting deferral to less than 100% of pay
- Match formula
 - Review against maximum percentage and dollar amount
- Match true-up
 - Allocation on annual compensation, deposited each pay period

Testing Deadlines

Time to correct test failures

- 402(g) – Deferral Limit
 - By April 15 of the following calendar year
- 415(c) – Annual Addition Limit
 - As soon as possible, no later than 12 months after plan year end
- 401(k)/401(m) - ADP/ACP
 - Within 2½ months after end of plan year, to avoid payment of excise tax on any corrections
 - No later than 12 months after plan year end

Testing Deadlines

Time to correct test failures

- 410(b) – Coverage
 - Plan must be modified to pass by 8½ months following end of plan year
- 416 – Top Heavy
 - Additional requirements in effect immediately

USI Consulting Group's Compliance Services

Annual testing services

- Perform the appropriate compliance tests
- Prepare an annual audit package to assist the plan's independent financial accountant
- Update participant records
- Prepare a signature-ready Form 5500 for DOL
- Prepare Form 8955-SSA for IRS
 - Electronic filing coming soon
- USI Consulting Group helps you understand compliance requirements and maintain your plan in accordance with the complex laws and regulations governing the operation of the plan

USI Consulting Group's Compliance Services

Additional consulting services

- Available to assist Plan Sponsors in determining:
 - Controlled group status
 - Ownership through attribution
 - Average Benefits test
 - Complex contribution allocation formulas

USI Consulting Group's Compliance Services

Additional consulting services

- Assist Plan Sponsors with:
 - Obtaining Fidelity Bond and/or Fiduciary Liability Insurance
 - Merger and Acquisition consulting
 - Correction of test failures or plan operational failures
 - Fiduciary issues
 - Plan design consulting
 - Periodic legislative updates on laws and regulations

Key Dates in 2012

- **January 16** – Completed annual Compliance Questionnaire returned to USICG
- **January 17** – Form 8955-SSA due to IRS
- **March 15** – ADP/ACP Test corrective distributions due to avoid 10% excise tax
- **April 15** – Deadline to refund excess deferrals (over 402(g) limit)
- **July 31** – Form 5500 due
- **October 15** – Form 5500 on approved extension due
- **December 31** – Deadline to refund excess annual additions over 415(c) limit

Summary

- Complex laws and regulations govern plan compliance
- Complete and accurate data is essential to maintaining plan compliance
- USI Consulting Group has the expertise to help you understand the requirements for your plan and to perform all necessary compliance work
- Compliance is critical to a plan's tax-qualified status