



RESEARCH MEMO

IRS Employee Plans Team Audit Program Releases Compliance Trends for Pension Plans, Including Multiemployer Plans

DOL Investment Regulations Delayed Again

The Internal Revenue Service's (IRS') Employee Plans News Spring 2009 newsletter (Newsletter) highlighted information on "trends" that the Employee Plans Team Audit (EPTA) Program is uncovering while auditing pension plans. "Trends" are plan mistakes that the EPTA sees on a recurring basis in audits, voluntary compliance submissions, determination letter applications and annual return filings. These trends are categorized on the IRS website by [plan type](#), [issue](#), [compliance activities](#), and [processing of applications/returns](#).

In addition to the information on "trends", the IRS has also listed tips on how to find, fix, and avoid common mistakes for many of the trends, as well as how to prepare for an [efficient audit](#). According to the IRS, it is important to note that the earlier a plan mistake is detected and corrected, the cheaper it is to fix. It also precludes the mistake from affecting other areas of the plan. For instance, improperly excluding an employee from the plan for many years could lead to this mistake affecting not only the plan participant, but discrimination testing, top-heavy testing, and other plan operations completed in the years in question.

The Newsletter discussed three of the "Top Ten" [multiemployer plan](#) audit trends in detail. The full "Top Ten" list is available by "[clicking here](#)" or on the IRS website at: <http://www.irs.gov/retirement/article/0,,id=135263,00.html>. See also [Benefit News Briefs 2007-41](#), discussing IRS audit results.

IRS "Top Ten" lists for [defined benefit](#), [401\(k\)](#) and [other plans](#) are available at: <http://www.irs.gov/retirement/article/0,,id=148117,00.html>.

Three Multiemployer Audit Trends in Detail

Now we'll take a look at what the IRS said about three of the Top Ten audit trends. Plan professionals would do well to review the other seven multiemployer audit trends. After reviewing what the IRS said on these three trends, we will look at another issue the IRS discussed that concerns multiemployer pension plans.

Third Highest Failure Found in All Multiemployer Plans

"Failure to actuarially adjust monthly benefits for years when benefits were suspended."

The required actuarial adjustments or interest adjusted back payments are not being paid to participants whose retirement benefits first commence after the Normal Retirement Date as stipulated in the plan. This issue tends to be more prevalent when plans have normal retirement ages that are less than 65 because many participants are unaware of their eligibility to receive these benefits at this earlier age and thus fail to apply for their benefits.

Administrators should ensure that all missed payments due to the delayed commencement of benefits are restored and that these payments are increased by the appropriate interest factor.

Sixth Highest Failure Found in all Multiemployer Plans

"Plan fails to follow or does not have a participation agreement for each participating employer and procedures in place to properly monitor eligibility."

- Involves non-collectively bargained employees where the collective bargaining agreement ("CBA") is not followed. Similarly, involves certain CBA employees who are not participating yet CBA requires their participation.
- These agreements can be in the form of a side agreement, contained within the CBA or provided for within the plan document itself. The failure to properly define or follow the plan's eligibility and participation requirements causes qualification issues.
- Administrators and Plan Sponsors should ensure that eligibility requirements of the plan document and CBA are consistent and followed.
- Trust fund's advisors have been auditing contribution records back a decade or more and finding inconsistencies.

Ninth Highest Failure Found in all Multiemployer Plans

"Conflict between Plan Document and Other Agreements (Collective Bargaining Agreement, Joinder Agreement, Participation Agreements, Plan documents and Trust documents)."

- Involves failure by plan sponsor to review documents for inconsistency between the documents.
- Examples of plan sponsor failures are:
 1. The benefit formula in the plan is different from the CBA;

2. The plan eligibility provisions in the plan are inconsistent with participation agreement; or
 3. The CBA promises benefits that are not incorporated into the plan (or vice versa).
- Plan sponsors and administrators should coordinate changes to CBA with plan document.
 - Plan sponsors must be vigilant to eliminate errors caused by disconnection between the union, employers and the trustees as to which employees should be covered in the plan.
 - Plan sponsors and administrators should determine that correct information has been sent to the trust fund relating to compensation and other matters, such as dates of hire, participation in the CBA and other important data.

The EPTA also released information on “*Issues Relating to Participation by Non-Collectively Bargained Employees in Multiemployer Plans.*”

According to the IRS, this issue involves CBA multiemployer plans covering a limited number of non-CBA employees employed by various employers.

- Eligibility between CBA employees and non-CBA employees not always administered consistently.
- Satisfying the coverage and discrimination rules of IRC sections 401(a)(4) and 410(b) may be difficult given the small number of non-CBA employees and that they tend to be higher paid.
- Government contracts routinely require certain mandated benefits for CBA and non-CBA employees under the same plan. (discussion omitted)

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NewsFlash!!!

The Department of Labor (DOL) has recently delayed the effective and applicability dates of Final Rules under ERISA and the Code, relating to the provision of investment advice to participants and beneficiaries in individual account plans, such as 401(k) plans, and beneficiaries of individual retirement accounts (and certain similar plans). The Final Rules were published in the *Federal Register* on January 21, 2009, and were to have become effective and applicable on March 23, 2009, but were delayed until May 22, 2009, by a final rule published on March 20, 2009 (74 FR 11847). See [Benefit News Briefs 2009-8](#) for information on this hold.

The DOL has further delayed the effective and applicability date of the Final Rules from May 22, 2009 until November 18, 2009, to allow additional time for the DOL to evaluate questions of law and policy concerning the rules.

A copy of the rule delaying the investment advice rule is available by “[clicking here](#)” or at <http://edocket.access.gpo.gov/2009/pdf/E9-12065.pdf>.

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