

## **IRS Announces Pilot Program for Large Companies and Their Retirement Plans**

By Jewell Lim Esposito on February 06, 2012



Last week, at a Joint Meeting of the IRS's top officials with ERISA/tax attorneys and accountants from across the country, the IRS announced a pilot program that targets companies with at least 2,500 participants. Colleen Patton, the IRS's Area Manager for the Pacific Coast, says the pilot program has rolled out in her region, and the IRS expects to expand the program across the nation's remaining four geographic areas (Northeast, Mid-Atlantic, Great Lakes, and Gulf Coast).

Under this program, the IRS hones in on a large plan sponsor (greater than 2,500 participants), *rather* than one specific qualified retirement plan. Thus, whereas a company usually worried about whether the IRS would audit a qualified retirement plan it sponsored, that same company, if targeted, will now have to worry that the IRS will audit *all* of the company's qualified retirement plans in *just one* examination. Indeed, it is not atypical for one company to sponsor *several* 401(k) plans and *several* defined benefit plans and perhaps an ESOP too . . . in this case and under this pilot program, the *IRS would examine all those plans together*.

**Large companies: brace for FULL IRS audit of *all* retirement plans *at once***

A targeted company should expect the IRS to conduct an extensive review of all of its qualified plans' procedures, processes, and systems (e.g., how various company payrolls feed data to plans; how the various TPAs coordinate testing across plans; how money moves from the employee paychecks to the plan trusts). The IRS hopes that after reviewing these procedures, etc., it can then use data-driven factors to surgically target a company's compliance weaknesses.

Based on recent exam and survey activities, it seems large companies confront these types of compliance weaknesses:

- control group issues,
- deficient plan amendments,
- employees who are not collectively bargained improperly participating in a plan,
- minimum distribution failures,
- improper loan provisions,
- failure to adjust actuarially if termination is after normal retirement age,
- misclassification of employees as higher- or lower-paid,
- misclassification of employees as part-time, temporary, foreign national, independent contractor, etc.

Large companies must brace for this super-enhanced IRS audit of retirement plans. It will be thorough and comprehensive; indeed, an IRS audit can easily last over two years. Consider the effect on in-house counsel, HR, and payroll personnel.

Employers should not rely on the annual TPA testing or annual accountant's audit to vet out these compliance issues. Many of the compliance problems identified above are outside the limited engagement of the TPA's end-of-year testing or the annual accountant's audit. Employers who sponsor retirement plans should consider performing a very compliance review to determine if tax qualification failures exist (plan document? operational? demographic?) with *each* of their qualified plans.

If failures are found, companies should consider applying under the [IRS compliance program](#) to voluntarily identify and correct them, with the hope that the plan would receive an IRS letter confirming continued tax qualification. Self-correcting and/or applying under the IRS program might postpone an IRS audit and certainly would help ameliorate any sanctions that the IRS would impose if it were the IRS instead who vetted out these compliance issues on audit.

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