

**QUALIFIED RETIREMENT PLAN COMPLIANCE
AND PLANNING ISSUES**

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The review of a qualified retirement plan to ensure satisfaction of all compliance issues is not a new topic. The Internal Revenue Service (“IRS”), Department of Labor (“DOL”) and the Pension Benefit Guarantee Corporation (“PBGC”) have been empowered to ensure compliance with qualified retirement plan rules, and view their jobs very seriously. In recent years, the IRS has changed its Employee Plans Compliance Resolution System (“EPCRS”) Program to encourage employers to voluntarily review compliance issues and pay sanctions for any errors they correct. The DOL has similarly introduced the Voluntary Fiduciary Correction Program (“VFCP”) to also encourage compliance. Large employers have been conducting internal compliance audits for years, in order to detect errors before they are raised on audit. The purpose of this program is to briefly review the qualified retirement plan issues where compliance errors most frequently occur. The intent is to provide a practical overview of the actions employers should be undertaking, as part of an internal compliance review.

1. **Plan Documents.**

- Prototype Plans.
- Volume Submitter Plans.
- Individually Designed Plans.
- Amendments to Prototype Plans and/or re-execution of Adoption Agreements.

2. **IRS Determination Letter Process.**

- Individually Designed Plans
- Prototype Plans.
- See **Exhibit A**, Determination Letter Process for Qualified Retirement Plans.

3. **Eligibility.**

- Years of Service.
- Age requirements.

4. **Years of Service.**

- 1,000 hours.
- Elapsed Time.
- Date of hire and switching to Plan Year.

- Plan Year. Plan design is often dictated by service providers for their own convenience, and not the objectives of an employer.
5. **Excluded Employees.**
- Union Employees.
 - Foreign Employees.
 - Specific Categories, part-time, temporary, Puerto Rico and seasonal.
6. **Important Issues on Eligibility.**
- Part-Time vs. Temporary and IRS scrutiny.
 - Employees in the Territory of Puerto Rico. See **Exhibit B**, Qualified Retirement Plan Issues with Employees in Puerto Rico.
7. **Entry Dates**
- Monthly, quarterly, semi-annually
 - Date of Hire
8. **Compensation.** After entry into the Plan, the next most important issue is determining proper compensation for various contributions.
- W-2.
 - Section 415 for contribution limitations.
 - Section 414(s) for the Section 401(k) nondiscrimination rules (*i.e.*, the Actual Deferral Percentage (“ADP”) and Actual Contribution Percentage (“ACP”) Tests).
 - Treatment of Overtime.
 - Bonuses.
 - Shift Differentials.
 - Stock Options.
 - Imputed income from fringe benefits.
 - Imputed income from domestic partner benefits.
9. **Errors and Corrections**
- Failure to include a participant (**50%** of ADP for NHCEs)
 - Failure to use correct compensation.
 - Corrective contributions, plus earnings.
10. **Safe Harbor Plans.**
- Less flexibility in defining compensation.
 - Must imputed income be included for domestic partners.

11. **Contributions.**

- Matching.
- Profit Sharing.
- Basic and/or Discretionary.

12. **Rollover Contributions.**

- Before satisfy eligibility.
- After satisfy eligibility.
- Permitted vs. Non-Permitted.

13. **Vesting.**

- Elapsed time vs. **1,000** hours.
- Plan Year vs. anniversary date of date of hire.
- **100%** vs. Graduated Schedule.
- Treatment of death, disability and retirement.
- Normal retirement age **65** vs. the **later of age 65 and 5** years of service.

14. **Distributions.**

- Lump Sum.
- Installments.
- Annuities (and Notices).
- Prediction of reintroduction of installment and/or annuity payments.

15. **EPCRS Program.** Employee Benefit Compliance Resolution System (“EPCRS”) Program.

- Self-Correction of minor issues at **any time**.
- Self-Correction of significant errors by the end of the second Plan Year after the error occurred (*i.e.*, December 31, 2008 for errors occurring 2006).
- Penalties for compliance errors if filed under VCP:

20 or fewer	\$750
21 to 50	\$1,000
51 to 100	\$2,500
101 to 500	\$5,000
501 to 1,000	\$8,000
1,001 to 5,000	\$15,000
5,001 to 10,000	\$20,000
Over 10,000	\$25,000

16. **Typical Errors and Correction.**

- Failure to include a participant in a timely manner make up **50%** of ADP for NHCEs, plus Matching Contributions, plus earnings.
- Failure to make employee deferral contributions: **50%** of ADP for NHCEs, plus Matching Contributions, plus earnings.

17. **Earnings.**

- Fund with the highest return during the correction period.
- Employee's individual investment elections (usually the less expensive alternative).
- Determination of the period of correction.

18. **DOL Corrections.**

19. **Conclusion.** We hope this Summary is helpful to all attendees in commencing their own internal compliance reviews. If anyone has any questions, please do not hesitate to forward them to Frank Palmieri at fpalmieri@p-ebenefitslaw.com

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