

GROOM LAW GROUP, CHARTERED

2004 Employee Benefits Seminar

Focus on Compliance Reviews

**FOCUS ON COMPLIANCE –
SCOPE OF COMPLIANCE REVIEW**

I. Sample Qualified Plan Review Topics

A. Tax Issues

- Documentation (e.g., plan document, election forms, notices and explanations).
- Participant Eligibility and Enrollment (e.g., procedures for eligibility, timely enrollment, establishment of accounts, etc., including "special status" employees).
- Contribution and Benefit Limits (e.g., procedures for imposing various IRS contribution and benefit limits, including section 415 limits, section 401(k) deferral limits, and section 401(a)(17) compensation limits, 404 deduction limits, and funding limitations).
- Service Crediting (e.g., procedures for crediting service for vesting, retirement eligibility and other purposes, breaks in service, and forfeitures).
- Benefit Accruals; Actuarial Equivalence (e.g., plan formulas and options for compliance with actuarial equivalence, anti-cutback, anti-backloading, and suspension of benefits requirements).
- Rollovers (e.g., handling incoming and outgoing rollovers, including notices and related requirements).
- Distributions (e.g., timing of distributions, spousal consent (including recently-issued relative value and financial effect disclosure rules), cashout rates, minimum distributions, plan loans, administration of payout options).
- QDROS (e.g., qualification, interim procedures, and maintenance and distribution of benefits to alternate payees).
- Nondiscrimination Requirements.
- Withholding and Reporting Procedures.

B. Fiduciary Issues

- Plan and Trust Establishment and Amendment.
- Plan Governance and Fiduciary Decision-Making.
- Handling Money (e.g., timeliness of participant contributions, the correction of errors and the allocation of gains and losses, the provision of overdraft protection by providers, the payment of plan expenses from plan assets, the payment of fees and expenses to the plan sponsor, loyalty in service provider contracting ("relationship pricing"), and plan sponsor advances to the Plans).
- Defined Benefit Plan Investments (e.g., process for selecting investment managers, the process for identifying and resolving potential prohibited transactions in investments, directed brokerage practices and commission recapture programs, proxy voting policies, investment manager performance fees, and investment management agreements).
- Defined Contribution Plan Investments (e.g., process for selecting and terminating investment funds, including compliance with prohibited transaction exemptions, and the process and authority for restricting investment fund investments due to excessive trading activity, 404(c) compliance, participant education and advice, and loans).
- Employer Securities and Real Property.
- Benefits Administration (e.g., claims procedures, missing participants, and providing information to participants regarding plan benefits and procedures).
- Reporting and Disclosure (e.g., Form 5500s, summary annual reports, SPDs, and deferred vested notices).
- Fiduciary Risk Assessment (e.g., indemnity of fiduciaries, fiduciary liability insurance, and fidelity bonds).

II. Sample Health Plan Review Topics**A. DOL Issues**

- Plan Documentation And Governance.

- Use of required and recommended provisions in current Plan and Trust.
- Signed and current TPA and insurance contracts consistent with plan document.
- Current IRS documents, such as determination letters.
- Allocation of fiduciary responsibilities/procedures.
- Plan Assets And The Trust Requirement.
 - Identification of plan assets. Plan assets include participant contributions (and COBRA premiums) and assets set aside by Sponsor to pay benefits; insurance dividends, rebates, demutualization proceeds and other items.
 - Compliance with the trust requirement or exceptions.
 - Selection and oversight of trustee(s).
 - Application of rules to Health Care Reimbursement Account.
- Selection And Monitoring Of Providers/Insurers.
 - Selection of funding arrangements (e.g., insured or self-insured).
 - Fiduciary process for selecting and monitoring insurers and service providers, and related compensation.
 - Use of brokers and consultants; commission issues.
 - Fiduciary due diligence documentation.
 - Insurance reserves.
 - Service provider rebates and discounts.
- Administrative Issues.
 - Record retention policy consistent with ERISA.
 - Plan's disaster recovery policy, including compliance with HIPAA security regulations.

- Procedures for maintaining participant privacy (HIPAA).
- Handling Money.
 - Timely collection and handling of participant contributions, including retiree and COBRA payments.
 - Claims payments/banking arrangements.
 - Co-insurance calculations.
 - Lost participants/state escheat laws.
- Plan Expenses.
 - Fees paid from Plan Assets.
 - Direct Expenses.
 - Conflicts in fee arrangements.
- Investments.
 - Investment Policy Statement (compare to portfolio).
 - Process for selection and monitoring of investment vehicle or manager.
 - Indicia of ownership rules (foreign assets).
- Claims Processing
 - QMSCOs.
 - Beneficiary designations.
 - Claims procedures and DOL claims regulations and guidance.
- Reporting And Disclosure.
 - Form 5500 and financial audit.
 - Summary Plan Description and SMMs.
 - Electronic disclosure procedures.

- Participant requests for information and documents.
- Liability Issues.
 - Bonding.
 - Fiduciary liability insurance.
 - Company indemnification of fiduciaries.
- ERISA Part 7 Mandates.
 - HIPAA Pre-existing Condition Rules.
 - HIPAA Creditable Coverage Provisions.
 - HIPAA Special Enrollment Provisions.
 - HIPAA Non-Discrimination Provisions.
 - Mental Health Parity Act.
 - Newborns' and Mothers' Health Protection Act (hospital stay in connection with childbirth).
 - Women's Health and Cancer Rights Act (mastectomy-related benefits).

B. IRS Issues

- Non-Discrimination Rules For Self-Insured Medical Plans.
 - Identification of HCIs.
 - Eligibility testing.
 - Benefits testing.
 - Retiree tests.
 - Claims substantiation.
- Health Flexible Spending Account.
 - Eligibility testing.

- Benefits testing.
- "Concentration" test.
- Participant election process.
- Mid-year elections.
- FMLA interaction.
- COBRA interaction.
- Use-or-lose implementation.
- Claims substantiation.
- COBRA.
 - Plan documentation/procedures.
 - Initial and subsequent COBRA notices.
 - COBRA election process.
 - COBRA eligibility determinations.
- VEBA's.
 - IRS determination letters.
 - Forms 990/990T.
 - IRC 419 account limits on contributions.
 - IRC 419 reserve limits.

III. Sample Nonqualified Plan Review Topics

A. Federal Tax Law

- Deferral and distribution elections.
- Funding vehicles, participant investment control.
- Impact of pending federal legislation.

- FICA tax treatment.
- Matching the timing of employees' income inclusion and the company's deduction.
- Federal tax reporting and withholding, and state tax treatment.

B. Federal Securities Law

- Need for registration of plan.
- Adequacy of employee disclosures.
- Section 16 issues.
- Adequacy of SEC filings on plans.
- Compliance with SEC and NYSE rules for plan amendments.

C. ERISA

- Eligibility limited to select group.
- Unfunded status of plan.
- DOL notice.
- Claims procedures.
- Verifying calculation of benefit amounts.
- Service provider agreements (e.g., trustee and recordkeeper agreements).
- Change in control provisions and relation to individual change in control or employment agreements.