Keeping in Compliance

Offering an employer-sponsored retirement plan can be beneficial for employees and business owners alike. Not only can it attract talented, career-oriented employees, but studies show it can lead to higher employee productivity.[1] With this benefit comes a responsibility for plan sponsors and other fiduciaries to act solely in the best interest of their plan participants. Even with the best of intentions, operational errors can and do occur. The Department of Labor is keeping a keen eye out for any breach, making it more important than ever for Plan Sponsors to ensure compliance with the Employee Retirement Income Security Act, ERISA.

2013 Statistics & Common Errors

The Employee Benefits Security Administration (EBSA) of the Department of Labor is charged with enforcing ERISA and "ensuring the integrity of the private employee benefit plan system in the United States."[2] According to fiscal year agency results, EBSA protected $911.3 million in plan assets from prohibited transactions and restored $423.6 million in participant benefits last year. They closed 3,677 civil investigations, 72.8% of which resulted in a fine or method of corrective action and 320 criminal investigations of which 21.9% were closed with guilty pleas or convictions. 88 individuals were indicted on criminal charges in 2013.[2] The average fine assessed by EBSA last year was $600,000 - an increase of $150,000 in just four years.[1] CFO Daily News highlights a few of the more common plan errors found by the Department of Labor in investigative audits.[3]

- Excluding certain types of compensation when determining deferrals and employer match. Common examples include bonus, overtime and vacation pay.
- Giving an incorrect or incomplete asset valuation. Having an external auditor and obtaining clear documentation of the accurate valuation can assist in compliance.
- Prohibited transactions including conflict of interest and misuse of plan assets.

[1] Thornton, N. (2014, March 4). Consequences of the 401(k) compliance push. BenefitsPro. <http://www.benefitspro.com/2014/03/04/consequences-of-the-401k-compliance-push>

[2] U.S. Department of Labor, Employee Benefits Security Administration. EBSA achieves over $1.6 billion in total monetary results in fiscal year 2013. <http://www.dol.gov/ebsa/newsroom/fsFYagencyresults.html>

[3] Bilski, J. (2014, February 25). Warning: Dol found three-fourths of 401(k)s illegal. CFO Daily News. <http://www.cfodailynews.com/warning-dol-found-three-fourths-401ks-illegal/>

Call to Action

These numbers may be startling but should serve as a call to action for plan sponsors. Knowing the most common errors found in the DOL's investigative audits should motivate plan sponsors to double-check these operations in their own plans. A periodic fiduciary review can assist in confirming full compliance with ERISA regulations by reviewing the plan document and operations, analyzing the fund alternatives, and benchmarking expenses to assess reasonableness.

The DOL and EBSA are cracking down on plan sponsors that are not complying with ERISA in order to protect the hard-earned retirement savings of American workers. Employers should not be deterred from offering this valuable retirement benefit by fear of compliance. Offering an ERISA compliant, employer-sponsored retirement plan is attainable with the right service providers and ongoing operational reviews. The 2013 statistics above seem alarming, but taking into account that EBSA oversees nearly 684,000 retirement plans representing more than $7.6 trillion brings them into perspective.[4]

[4] U.S. Department of Labor, Employee Benefits Security Administration. EBSA achieves over $1.6 billion in total monetary results in fiscal year 2013. <http://www.dol.gov/ebsa/newsroom/fsFYagencyresults.html>