

# QRP Audit Issues

## Learning Objectives

- ✔ Understand the differences between the IRS' and DOL's areas of focus
- ✔ Learn what may trigger the IRS or DOL to initiate an audit
- ✔ Examine the areas of compliance that an IRS or DOL auditor would investigate

# IRS and DOL: Areas of Focus

<b>Treasury Department (IRS)</b>	<b>DOL (EBSA)</b>
<b>Focus</b>	
<ul style="list-style-type: none"><li>• Taxation</li><li>• Reporting</li><li>• Plan qualification</li></ul>	<ul style="list-style-type: none"><li>• Participant protection</li><li>• Disclosures</li><li>• Fiduciary issues</li></ul>
<b>Sanctions</b>	
<ul style="list-style-type: none"><li>• Penalties</li><li>• Plan disqualification</li></ul>	<ul style="list-style-type: none"><li>• Penalties</li><li>• Civil and criminal liability</li></ul>

# IRS and DOL: Common Focus

Treasury Department (IRS)	DOL (EBSA)
<b>Common Focus</b>	
<ul style="list-style-type: none"><li>• Prohibited transactions</li><li>• Penalties</li><li>• Elections</li><li>• Form 5500</li></ul>	

# IRS Audits



# IRS – How Plans Are Chosen

Referrals from  
within IRS or  
other agencies



Answers on  
Form 5500, 1099-R,  
or business tax return



- Claims
- Minimum funding waivers
- Nonbank trustees
- Prohibited transactions



Plan provisions and  
other targeted areas

- Large plans
- Multi-employer plans
- Cash balance plans
- Hybrids
- ESOPs

# IRS – What Is Audited



Documents



Contributions



Distributions



Nondiscrimination  
testing



Investments



Benefit Accruals



Withholding



Reporting

# Audit CAP

- Used to correct failures found during IRS examination
- Failure to follow terms of plan
- Failure to satisfy qualification requirements
- May require changes to procedures





# Audit CAP

## Closing agreement

- Agreement to remedy plan failures
- Binding upon IRS and employer
- Payment of sanction generally required at time of signing





# DOL Audits

# DOL Audit Statistics

EBSA collected \$1.6 billion in 2018

Total recoveries	Plan assets restored/ participant benefits recovered	VFCP	Abandoned plan program	Informal complaint resolution
\$1.6 billion	\$807.7 million	\$10.8 million	\$33.4 million	\$443.2 million

Source: “EBSA Restores Over \$1.6 Billion to Employee Benefit Plans, Participants and Beneficiaries,” Department of Labor Fact Sheet, EBSA Monetary Recoveries, <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/ebsa-monetary-results.pdf>.

# DOL – How Plans Are Chosen

Informal complaints by workers



Answers on Form 5500



Fraud and fiduciary breaches



Plan sponsors who have filed for bankruptcy

Targeted areas

# DOL – What Is Audited



Late deposits of  
contributions



Administrative and  
settlor fees



Communications

# Contributions – Late Deposits

## Deferrals deposit deadlines



Large Plan  
(100+ participants)

- As soon as administratively feasible
- No later than 15th business day of following month



Small Plan  
(<100 participants)

- Safe harbor within 7 business days after receipt or withholding by employer

## Late deposits



- Breach of fiduciary responsibility
- Corrected through VFCP
- Plan should establish regular payroll procedures

## Late Deposit Example

Employer withholds 401(k) deferrals from participants' paychecks. Employer deposits amount in plan 3 weeks later. Employer made a prohibited transaction because employer is deemed to have taken a loan from the participants.



# Plan Fees

May be paid out of plan assets

## Administrative fees

- Annual recordkeeping fees
- Annual reporting fees
- Distribution fees
- Mandatory amendments

May not be paid out of plan assets

## Settlor fees

- Plan establishment
- Plan design
- Plan termination
- Amendment fees for changes to plan features



# Service Provider Fees



Know the responsibilities of each service provider



Assess whether fees are reasonable based on services provided



Compare fees and services between different providers

Notice	Timing of Delivery
<b>Summary Plan Description</b>	New participants: within 90 days after plan entry Beneficiaries: within 90 days after benefits commence If a participant requests, employer must provide a copy within 30 days Eligible employees of newly-established plans: within 120 days from later of plan's effective date or signature date on document
<b>402(f) Notice</b>	To participants no more than 180 days and no less than 30 days before eligible rollover distributions commence Participants may waive 30-day distribution waiting period
<b>Summary of Material Modifications</b>	To participants within 210 days after end of plan year in which plan amendment is adopted If participant or DOL requests SMM, employer must provide a copy within 30 days
<b>Sarbanes Oxley Blackout Notice</b>	To participants no less than 30 days and no more than 60 days before blackout period commences
<b>Participant Benefit Statements</b>	To participants within 45 days following end of quarter

Notice	Timing of Delivery
<b>Summary Annual Report</b>	To participants within 9 months after close of plan year
<b>Automatic Rollover Notice</b>	To participants who fail to make a distribution election and have a balance less than cashout level within a reasonable period of time before automatic rollover may occur
<b>Participant Level Fee Disclosure</b>	To participants on or before date on which they can first direct investments and at least annually thereafter
<b>Qualified Default Investment Alternative Notice</b>	To participants no less than 30 days and no more than 60 days before start of blackout period
<b>ERISA Sec. 404(c) Notice</b>	To participants before they give investment instructions and when any significant changes to investment options are made (may be given with Participant Level Fee Disclosure)

# Internal Controls

## Policies and procedures



### Establish

Establish policies based on prudent practices and due diligence.



### Follow

Follow each policy and document decisions made based on the policy.



### Monitor

Monitor individuals or service providers to ensure they are following set procedures.



### Review

Review procedures periodically and ensure they remain prudent.

# Internal Controls

Investment policy



Purpose

List of current investments



Roles and responsibilities

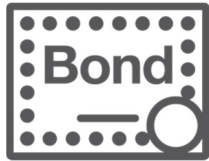
Performance standards, selection and monitoring



Investment objectives and philosophy

## Internal controls

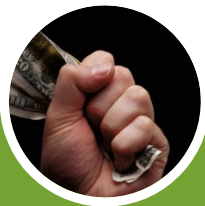
Fidelity bond



- Each person who handles plan assets must be adequately bonded
  - Minimum is 10% of assets handled or \$1,000
  - Maximum is \$500,000 (\$1 million if employer stock as an investment)
- Protects plan assets against fraud and dishonesty

# Internal Controls

## Uncashed checks



### Forced distributions

- Cash-out
- RMD
- Plan termination

Plan assets?



### Float Income

- Must be disclosed to plan
- Omnibus account vs. investment



### Missing Participants

- Regularly update participant addresses
- Monitor distributions
- Return assets to plan

# Preparing for an Audit

- Conduct mock investigation
- Share questions with agent
- Allow time for opening interview
- Have all relevant people available
- Have all required records available
- Be ready to explain internal procedures and controls
- Be ready to explain plan errors and corrections

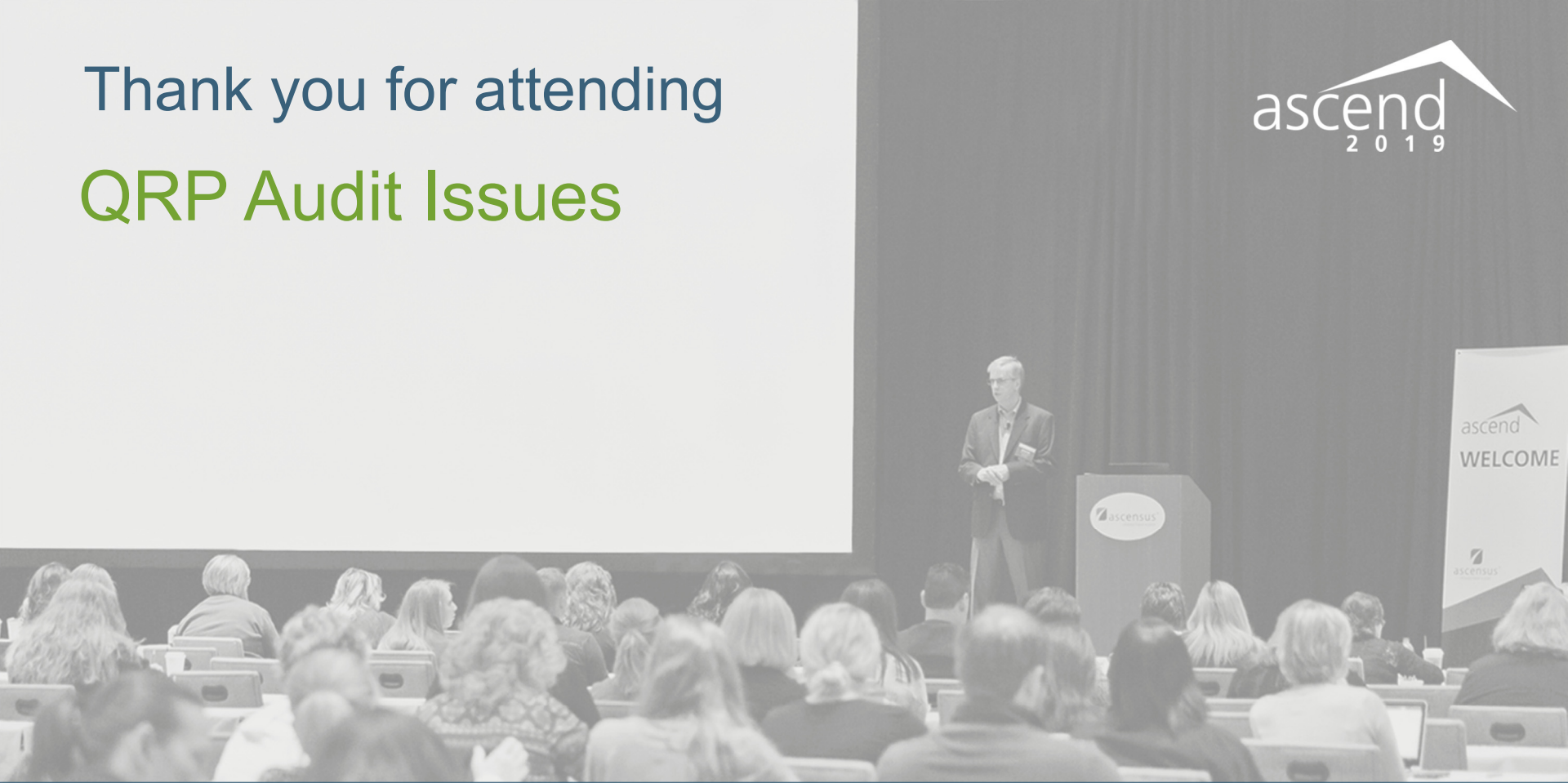




# Questions?

# Thank you for attending QRP Audit Issues

ascend  
2019



## **We Appreciate Your Opinion**

Please complete the electronic course survey for this course located on the Ascend 2019 mobile app.



We help over **9 million Americans**  
save for life's biggest moments.  
**Education. Healthcare. Retirement.**