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BEFORE THE 2019 ADVISORY COUNCIL ON EMPLOYEE WELFARE AND PENSION BENEFIT PLANS

BEYOND PLAN AUDIT COMPLIANCE: IMPROVING THE FINANCIAL STATEMENT AUDIT PROCESS

JUNE 25, 2019

Most of my experience as a Financial Advisor, Third Party Administrator, and Record-keeper comes at the smaller end of the market. Generally, we provide services to Plan Sponsors with fewer than 1,000 employees. Over the years, we have helped many clients go through their first audit as they have grown past 100 employees. We have helped other clients as they changed auditing firms. We see a wide variance in the practices of the auditing firms and experience level of the people performing the Plan audits.

The Council is on a quest to find more value in the audit process. I am happy to make a few constructive suggestions.

Let me start by saying that Plan Sponsors love their 401(k) and other retirement plans. They view retirement plans as a strategic recruitment and retention tool. The Plan Sponsor employees are participants, too, so they have some "skin in the game". Even when their Plan has had problems, or they have changed record-keepers or advisors, they still love their Plans and will usually be interested in finding ways to improve their Plans.

However, in the smaller market, ERISA audits are often seen as a necessary evil. In general, the best outcome of a "good" audit is when there are no issues, and the time spent by the Sponsor is as short as possible. Generally, it is the overworked and very busy HR and Payroll departments that provide most of the time and energy to take care of the Plan, it is not the C-suite executives. For sponsors, an audit is a distraction, and the best outcome is that no criticism falls down upon them. While a qualified opinion can be a fear, it is not an incentive to feel any differently about the process or the outcome.

I have a few suggestions that may make this view change, over time. The first thing to do is to have the audit engagement process changed. We start off on the wrong foot right now. The first step in an audit is for the CPA audit team to plan out the audit process. There is a usually tunneled engagement with one member of the Plan Sponsor's staff, generally the HR department head, but sometimes the head of Finance. There is now a mismatch because the audit is performed for the benefit of the participants, yet it is the Plan Sponsor who generally signs on to a confidential engagement. Let's change that. I suggest that the expectation be set that the engagement is made with the Plan committee, which includes the whole group of fiduciaries and service providers. However, I am not suggesting that the management report be made public.

While the unqualified opinion may have no effect on anyone whatsoever, audits actually do have a valuable byproduct. The Plan Sponsor and the service providers are given a checklist of items to gather, or reconcile, or quantify. There is value in that checklist, because the recipient now has to think about each item on the checklist. Had it not been for that checklist, many problems would not have been uncovered. For example, this process can lead to the discovery of forgotten participants, unprocessed paperwork, un-reconciled transfers, or unsigned documents. So it gives pause to the person working on the request, and they just might take action to have that problem fixed. The value is in the process, not in the report.

Financial Advisors are eager to find new ways to add value to the Plan Committee. And often times, they are the most knowledgeable member of the Plan's steering committee, and are looked to for their expertise when decisions need to be made. They often view themselves as the Plan's "quarterback". But it is rare that they are asked to get involved in planning the audit, or participate in setting audit expectations, or be present when the Plan Sponsor is getting the results first hand from the audit team. We seem to be wasting this resource even though they would love to be involved. If the Department made it known to everyone that the audit partner should strive to have the audit team engage with a wider group, and it became a reality, we stand to gain value. Service providers would relish the opportunity to be of service and to add value.

Educating Plan Sponsors has always been one of the goals of the Department. But communicating information to Plan Sponsors is often difficult and unsuccessful. So where do Plan Committees get most of their information and guidance? From their Financial Advisor, from their pension administrator or bundled provider, and from the other service providers to the Plan. These are the same types of folks that write articles for the press or social media. Most committees rely on the financial advisor to digest the Department's guidance, and then relay that info to the Plan Committee to the best of the advisor's ability. While the Department has reached out to Plan Sponsors in a number of ways, I think that the most effective way has been devalued, and it is time address it.

Educating the Advisors is one of the best ways to educate the Plan Committees. One of the most effective ways to educate advisors is through a robust outreach program. In the past, the Department had many regional and national conferences where advisors could hear from and meet with regulators, face to face. For example, there were the DOL Speaks Conferences for retirement professionals co-sponsored with ASPPA. There were previously more DOL representatives featured as webcast speakers to reach out to the ERISA community. A greater number of DOL speakers were made available for industry conferences.

Sometimes this education takes a long time, but persistence pays off. I remember when the Department started educating the practitioner community about the proper timing for the deposit of employee deferrals and loan payments into Plans. It took a lot of outreach to change behaviors, but we are in a much better place today because of that outreach.

I know that it is difficult to obtain a budget that includes the amount of outreach that we had in the past. But I think it is money well spent, and if we are looking for ways to "get the word out", this path can be fruitful.

Lastly, I want to say something about audits and compliance that appears to be fraught with landmines and will take much time and effort to withstand the controversy. If the Department is serious about improving compliance, then the most effective way to bring focus to compliance issues is with the Form 5500 itself. The IRS has been trying for years to get those difficult and pesky questions about coverage, participation, testing, documents, and other compliance issues put back on the Form 5500, so that these issues can be identified and tracked. It makes sense that what gets measured, gets managed. I think auditors are very good about reviewing the answers on the Form 5500 and related schedules. Steering them toward the issues that are important can only result in better outcomes.