

**TESTIMONY of SERENA G. SIMONS,
SENIOR VICE PRESIDENT and NATIONAL DIRECTOR of RETIREMENT COMPLIANCE
THE SEGAL GROUP**

Before the ERISA Advisory Council

**Beyond Plan Audit Compliance: Improving the Financial Statement Audit
Process**

August 27, 2019

Good afternoon. It is a pleasure to appear before you today. I am Serena Simons, Senior Vice President and National Director of Retirement Compliance for Segal Consulting and Sibson Consulting, both members of The Segal Group (Segal). In this position, which I have held for more than ten years, I advise Segal consultants and their clients with respect to retirement plan compliance issues under the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (IRC). Before joining Segal, I was engaged in the private practice of law with several different law firms, and represented employee benefit plan sponsors with respect to both retirement and health plan issues under ERISA and the IRC.

Segal is a major provider of actuarial, employee benefits and human capital consulting services to employers and employee benefit plans throughout the United States and Canada. Segal provides compliance consulting services to plan sponsors in three markets – single employer plans, multiemployer plans, and public sector plans, which, while not covered by ERISA, often follow state or local rules based on ERISA – and on a wide variety of employee benefit plans: defined benefit plans (including traditional final average pay plans, cash balance plans, and variable annuity plans); defined contribution plans (including §401(k), §403(b), and money purchase plans) and health and welfare benefit plans (including group health plans, individual account plans such as Health Reimbursement Arrangements and Flexible Spending Accounts, Health Savings Accounts, wellness benefits, paid leave rules, and other fringe benefits).

INTRODUCTION

Thank you for the opportunity to speak with you concerning the issue “Beyond Plan Audit Compliance: Improving the Financial Statement Audit Process,” raised by the Employee Benefits Security Administration of the Department of Labor (DOL), and in particular about employee plan compliance reviews performed by lawyers and consultants who are compliance experts.

Segal understands and appreciates the key role the plan’s accountant plays in helping to ensure that plan assets are available to pay plan benefits, which is the fundamental purpose of ERISA. We also commend the DOL for exploring new and different approaches that might further enhance plan asset safety, for example, possibly expanding the scope of plan financial audits under ERISA to cover more general ERISA compliance issues.

Segal is not an accounting firm, and while some of our consultants may have been trained as accountants, we do not hold ourselves out as having or offering expertise in that area, nor do we do plan financial statement audits. For these reasons, we are not in a position to judge the quality (or lack thereof) of an accountant’s financial statement audit of an employee plan. We do, however, have significant experience with employee plan compliance reviews. We are pleased to have this opportunity to share what we have learned and to make some general observations.

SUMMARY OF MAIN POINTS

- A voluntary compliance review conducted by compliance experts acting in an advisory capacity works very well to effect the positive changes sought by the DOL in the knowledge and understanding of plan personnel regarding the plan and its procedures.
- Such a review also helps to lay the groundwork for implementation of longer-term improvements and to facilitate follow-up support.
- The factors leading to these results appear to include the voluntary nature of the review, the fact that it is conducted by a compliance expert, the fact that the expert is acting in the capacity of a trusted advisor, and the fact that the review schedule allows sufficient time for discussions with and questions from plan personnel.

- No further changes should be made to the auditor’s role until there is experience under the new auditing standard for ERISA plans, which goes into effect next year.
- Compliance reviews that achieve the outcomes that the DOL wants to achieve are already being provided by compliance experts and should be supported by DOL in its educational programs and materials, which also should explain the difference between a review made as part of a financial statement audit and a compliance review.

DISCUSSION

As I will discuss in more detail below, based on 20+ years of experience with our comprehensive compliance review service, **Crosscheck**, we have found that a compliance review conducted by compliance experts acting in an advisory capacity works very well to effect the positive changes that the DOL is seeking in the knowledge and understanding of plan personnel with respect to the plan and its procedures, and also to lay the groundwork for implementation of longer term improvements and to facilitate follow-up support.

My testimony will focus on **Crosscheck**, Segal’s comprehensive compliance review, beginning with some background information and then a description of the review and why we have found it to be a valuable service.¹

I’ll close my testimony with a few general observations regarding comprehensive compliance reviews.

CROSSCHECK – SEGAL’S COMPREHENSIVE COMPLIANCE REVIEW

History and General Information

Segal introduced the **Crosscheck** service in the mid-1990s. In the 20+ years since then, Segal has performed more than 200 compliance and administration reviews for our clients’ benefit plans of all types and varying in size from less than 1,000 participants to over 50,000 participants.

¹ Law firms and other consulting firms with employee plan compliance experts also perform compliance reviews. Segal is not in a position to offer a description of these other services and therefore my testimony addresses only the service provided by Segal.

Generally, plans that are undergoing some kind of transition such as a merger or a change in plan administrators, are the most likely to request a **Crosscheck** review.

We perform **Crosscheck** reviews on defined benefit (DB) and defined contribution (DC) pension plans and health plans for multiemployer plans, single-employer (corporate and tax-exempt) plans and public sector plans.

Segal's compliance consultants who perform **Crosscheck** reviews all have at least 15 years of employee plan compliance experience, and some have 30 or more years of experience.

Overview

Crosscheck is a comprehensive review of a plan's operating procedures that provides an analysis of a plan's daily operations and administrative practices. The review, generally conducted under the oversight of legal counsel, is intended to:

- Determine if plan procedures correspond to what the plan document provides and what the law requires,
- Identify the potential risks and possible penalties associated with noncompliance; and
- Identify ways to streamline plan administration that may increase efficiency and/or reduce expenses.

The review focuses on whether the plan has appropriate administrative procedures in place, and whether they are understood and followed by the staff. As a result, the review can also serve as a training vehicle for administrative staff who are new to the plan or as a "refresher course" for current staff, and can be used as a template for self-audits as part of ongoing compliance efforts.

SCOPE

The details of a **Crosscheck** review will vary with the type of plan – single employer or multiemployer, retirement or health, DB or DC, and so on – and its particular features, but the basic approach and the list of issues covered is very much the same: the review provides an analysis of the plan's operations and administrative practices.

Segal compliance experts interview staff and compare the plan's administrative design as set forth in the plan document with other documents (including

administrative procedures and administrative forms) and determine whether the written documentation and procedures match actual practice and regulatory requirements. Segal also evaluates whether technical definitions are consistently applied in performing administrative functions.

The scope of the review will generally include the following, as applicable:

- Fiduciary responsibilities and duties, including oversight
- Delegation of duties by the plan's governing body (e.g., administrative committee, board of trustees, etc.)
- Claims and appeals procedures and documentation
- Required reporting (filings to the applicable governing agencies, e.g., DOL, Internal Revenue Service (IRS), Pension Benefit Guaranty Corporation, Health and Human Services)
- Required disclosures to participants, beneficiaries, alternate payees, employers
- Participation and minimum coverage requirements (pension)
- Vesting (pension)
- Determination of service credit
- Benefit processing, including:
 - Eligibility for benefits
 - Death benefits
 - Application for payment (pension)/claims (health)
 - Timing of notices to participants (e.g., QJSA notices (pension), COBRA notices (health))
 - Qualified Joint and Survivor Annuity information; spousal consent (pension)
 - Benefit calculation procedures (pension)
 - Distributions, including lump sum payments and rollovers (pension); claims payments (health)
 - Tax withholding requirements
 - Delayed retirement procedures (pension)
 - Required minimum distributions, including identification and search for participants
- Qualified Domestic Relations Orders (QDROs)(pension); Qualified Medical Child Support Orders (QMCSOs)(health)
- Nondiscrimination testing (pension) (cafeteria plans and certain welfare benefits)

- Health plan administration under the Affordable Care Act (ACA) and Health Insurance Portability and Accountability Act (HIPAA) and related rules (health)

Process

The ***Crosscheck*** review process has three parts:

1. Analysis of Plan Documentation

In order to become familiar with the plan documents, and assuming we do not have them in-house, we request documents including the current plan restatement, SPD, amendments, participant notifications, forms, letters and written procedures. We perform a high-level review of this documentation for content and consistency.

2. On-Site Review

The on-site visit to the plan administrative office consists of interviews with the individuals who are responsible for the day-to-day operation of the plan. This process generally takes one to two days. Our on-site interview conference is structured to be conversational and “free form” in nature. Follow-up questions frequently lead to other questions as the inquiry proceeds to different levels, and often lead to additional reviews. The interviews are intended to determine what administrative procedures exist for the operation of the plan, and whether they are in use in the day-to-day administration of the plan.

3. Written Report

At the conclusion of our review, we prepare a Summary Report of our findings, identify and outline action items, including identification of areas where further inquiry may be recommended (or suggested), and recommendations on corrective action, if indicated. The Summary Report is generally issued to legal counsel. Subject to concurrence by legal counsel, the Report is provided to the plan’s governing body, and/or the plan administrator.

Legal Counsel’s Involvement

Because a review of this nature can raise legal issues, we prefer to work with the plan’s legal counsel in performing our ***Crosscheck*** review. We have worked with

legal counsel in many different situations and in various roles, particularly with respect to IRS and DOL inquiries and audits, including the Voluntary Compliance Resolution Program (VCP) and the Closing Agreement Program (CAP), and have helped to successfully resolve plan administration difficulties in these forums.

Post-Review Follow-up

After the ***Crosscheck*** is completed, we can assist the plan in acting on any findings by developing options and solutions, and working with legal counsel as requested. We propose innovative solutions to assist our clients in meeting any operational challenges on a forward-looking basis.

WHAT WE HAVE LEARNED

Through the years, we have consistently heard from our ***Crosscheck*** review clients and their administrative staffs that:

- The review has helped the client enhance the quality of administration it provides and/or receives from a vendor.
- The review has provided staff with increased knowledge about the plan and the impact of legislation and regulatory guidance on plan administration.
- The on-site meetings allowed the opportunity to ask plan-specific questions and discuss issues with an expert that further enhanced staff understanding of required processes.

While these outcomes are due to many factors, key factors appear to include:

- The fact that the ***Crosscheck*** review is voluntary on the part of the plan.
- The fact that the review is conducted by compliance experts who have extensive experience with plans and plan administration.
- The fact that we work with the plan in the role of a trusted advisor, which encourages plan personnel to be more open with us, making it easier to find and solve problems.
- The fact that we perform ***Crosscheck*** review interviews in a conversational manner, allowing time and opportunity for questions and discussions about plan issues.

GENERAL OBSERVATIONS

AICPA spent a number of years developing an improved standard for ERISA plan audits, which goes into effect next year (periods ending on or after December 15, 2020), and go into actual use in 2021. Whether or not the DOL is satisfied with the new standards, it would seem to make sense to wait and see how the new rules work once they are implemented before making further changes to the auditor's role and responsibilities.

The type of work that the DOL appears to want auditors to take on is already being done by lawyers and consultants who are compliance experts. These reviews are getting the outcomes in terms of improved understanding, knowledge and administration that the DOL says it wants to achieve. While we recognize that the DOL does not have direct control over these reviews, it could nonetheless continue to support these outcomes by explaining the difference between the review performed as part of a financial statement audit and a compliance review, and encouraging plans to obtain compliance reviews as part of the agency's educational efforts.

* * * * *

It was a pleasure to be able to address the Advisory Council today. I'd be happy to answer any questions.