Talking Points Joint Council Meeting, February 26, 2021
Director, Employee Plans Examinations Session

FY 2021 Compliance Strategies

- **Required Mandatory Distributions in One Participant Plans** – determine if owner-employees are taking the required minimum distribution.
- **IRC 403(b) Plans/IRC 457(b) Plans** - examine 403(b) plans for universal availability, excessive contributions and proper use of the age 50 and 15-year catch-up contributions under IRC Section 414(v); examine 457(b) plans for excessive contributions and proper use of the special three-year catch-up contribution rule.
- **Participant Loans** – determine if plans are complying with the requirements for participant loans.
- **Exam Closing Agreement - Follow-Up** – Examine plans that have previously executed a closing agreement with EP to determine if the same or similar issue have reoccurred.
- **Fully Insured Defined Benefit Plans** – determine whether fully insured plans are complying with IRC 412(e)(3).
- **IRC 404(a)(7) Deduction Violations** – determine if plans are not exceeding the deduction limit where there is a combination of a defined contribution and defined benefit plan.
- **ESOPs** - determine whether the employee stock has been properly valued.
- **Required Minimum Distributions** – determine if plans are complying with IRC section 401(a)(9).

Compliance Contacts

Compliance Contacts are used to address potential noncompliance, primarily using correspondence contacts known as “compliance checks” and “soft letters.”

Compliance check: A compliance check is correspondence with a plan sponsor to inquire about an item on a filed return. We just need additional information help clarify the return filed and determine if specific reporting requirements have been met.

It is not considered an examination; however, there may be situations when a compliance check is referred for examination. A response is required. You can still make corrections using SCP or VCP after you receive a compliance check letter.

Soft letter: A soft letter is correspondence with a plan sponsor that provides notification of changes in retirement plan law or possible compliance issues. A response to these letters is not expected. However, responses may be received and converted into a compliance check. These contacts allow TE/GE to establish a presence in the taxpayer community in a manner that reduces the cost to the IRS while also limiting taxpayer burden.

FY 2021 Compliance Contacts

- Final Return with Assets
- Deduction Exceeds 25% of Participant Compensation
- SIMPLE IRA Plans - Eligible Sponsors
- Indirect Service Requirements
- EOY/BOY Assets Mismatch
- DB Plans Missing Required Actuarial Information
- SEP IRA RMD
- IRC 457(b) Plan Excess Deferrals
- Form 5500-EZ First Return Filer

Below are some of the issues from the - Compliance Strategies that agents would like to share with the stakeholders.

Terminated Cash Balance Plans	This project addresses terminated Cash Balance Plans that have high asset to participant ratios which could lead to IRC 415 violations or asset reversions. **This project was initiated in Fiscal 2020 and these examinations identified the following non-compliance issues:** • Discrimination of contribution or benefits • Deduction Issues • IRC 415 Issues • Eligible NHCE employees not timely entering the plan
IRC Section 403(b)/457 Plans	This strategy will focus on examinations of various tax-exempt organization that sponsor 403(b) or 457(b) plans. **This project was initiated in Fiscal 2020 and these examinations identified the following non-compliance issues:** • 403(b) and 415 Limitations where participants are contributing more than the maximum limit across multiple 403(b) and other plans.

	• All employees of the employer must be eligible to make elective deferrals if any employee has the right to do so, with certain limited exceptions (aka Universal Availability) due to improper eligible employee classifications or not following the terms of the written plan. • For 403(b) plans, the deferral and contribution limits, the improper use of the age 50 catch-up and the 15-year special catch-up contribution. We look at the proper ordering of the catch-up contributions (the 15-year is applied first, then the age 50 catch-up is applied). Additionally, we verify that the 15 years is measured with the same employer. • 457(b) plans, deferral and contribution limits, the improper use of the age 50 limit in 457(b) Plans (not eligible) • The special catch-up contribution limit (available the last three years before the Normal Retirement Age) not adhered to.
Employee Stock Ownership Plans (ESOPs)	Determine whether the employee stock has been properly valued, the annual allocation of employee stock meets the nondiscrimination requirements and the employer loans follow the conditions and terms of the plan document. **Project started in Fiscal Year 2020 and the strategy consists of 300 examinations and looks at three populations:** • Terminating ESOP plans with Non-Publicly Traded Stock (NPTS) for proper valuation issues on termination; • Leveraged ESOP plans with NPTS for ongoing valuation issues; and, • Non-leveraged ESOP plans. **Issues Uncovered:** Plan Qualification relating to: 1) Regs. 1.401-1(b)(3) – violation of the exclusive benefit rule 2) IRC 401(a)(28)(C) – Diversification requirement for ppts who had reached age 55 and had 10 YOS 3) Regs. 1.401-2 – Not following the plan regarding: a) Annual appraisals not done b) Annual appraisal not done by certified appraiser c) Allocations done incorrectly 4) Prohibited Transactions – Stock overvalued and the trust more than FMV resulting in a P>T. under IRC 4975

Participant Loans	Determine if the loans were properly reported (participant loans) and they were reported at FMV. In these cases, the Total participant loans represented 20% or more of plan assets. Total participant loans reported were approximately $80,000 or greater. **New Strategy for Fiscal Year 2021** **Potential Issues:** • IRC 72(p) violations and 1099's being filed • Are loan document being adhered to • Prohibited transactions under IRC 4975 • Fiduciary violations, we can make referral to DOL • Violation of the exclusive benefit rule if assets were not invested for the participants primary benefit
IRC 404(a)(7) Deduction Violations	This strategy concentrated on sponsors who maintained at least 1 DB and 1 DC plan. The DB was not covered by PBGC and the DC contribution was more than six percent of the total participant compensation. **New Strategy for Fiscal Year 2021** **Potential Issues:** • Allocations were not done properly • Exceeding deduction under IRC 404(a)(7) • Excise tax under IRC 4972
Fully Insured Defined Benefit Plan – IRC 412(e)	We are looking at smaller 412(e)(3) plans where the owners seek to maximize their contributions shortly before retirement or are sold on the benefits of a plan by a salesperson relying on software. The problem is created because the fully insured. defined benefit plans do not require an actuary to sign off on a schedule SB or AFTAP certification, but still require the same level of calculations. **New Strategy for Fiscal Year 2021** **Potential Issues:** • Violation of IRC 415(b) • Improperly excluded NHCE from plan participation • Excise taxes under IRC 4972 for contributions in excess of IRC 415 • Excise taxes under IRC 4971 for contributions in excess of IRC 412

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Required Minimum Distributions	This will be a new Strategy for fiscal year 2021. We are going to look at Large Plans that have numerous terminated vested participants and we are reviewing Small Plans with 1 participant. **New Strategy for Fiscal Year 2021** **Potential Issues** • IRC 401(a)(9) and excise tax under IRC 4974 • Plan sponsors and administrators are doing due diligence to locate missing participants

TEGE Examination and Information Document Processes

TEGE Examinations Process:

There are three phases to the TEGE Examinations Process, and the taxpayer and their representatives and/or plan administrators play an important part in each one.

First Phase: Planning phase of the examinations process

- Determines the scope of the exam.
- Initial interview discussions establish the groundwork of the audit – practices and procedures in place.
- Working together with our examiners in a transparent environment will lead to resource savings for both TE/GE and the taxpayer.

Second Phase: The execution phase of the examination process involves reviewing records and developing issues.

- Stages of issue development include determining the facts, applying the law to those facts, and understanding the various tax or compliance implications of the issue.
    - This should be interactive discussions, using the Information Document Request (IDR) process to develop the facts.
    - Every effort should be made with the taxpayers and their representatives/plan administrators to resolve any factual differences.

Third Phase: The goal in the resolution phase is to reach agreement, if possible, on the tax or compliance treatment of each issue examined and, if necessary, issue a Revenue Agent Report (RAR) or Closing Agreement to the taxpayer.

- Starting with the development of the issue and continuing through resolution, early and frequent discussions are crucial with all parties for a complete understanding of the respective merits of an issue.
    - Goal of the resolution phase is to reach agreement

1) EPCRS (Employee Plans Compliance Resolution System)
2) Issue a Revenue Agent Report (RAR) to the plan sponsor or appropriate taxpayer
3) If no agreement, move to an unagreed closing

- During this resolution phase, examiners should consider Alternative Dispute Resolutions such as Fast Track Settlement where appropriate.

TEGE Information Document Request (IDR) Process (Implemented in 2017)

- IDRs are an important part of the information gathering process during any examination.
- The main purpose of an IDR is to gather the necessary information to determine the correct status and tax treatment of the issue under consideration.
- Another purpose of the IDR is to set, in writing, a mutual agreeable timeframe for when the needed information is to be provided to the examiners.
- IDRs are an important tool for gathering information, but it's needed to conduct the examination in an efficient manner.
- The examiners should not delay in issuing the IDR once it's been discussed with the taxpayer. Once the examiners discussed the drafted IDR with the taxpayer, the taxpayer may request a period to get back to the examiners regarding the availability of the information and how long it may take to secure.
- It is important for the taxpayer to respond by the due date committed to on the IDR.
- Our examiners should not allow long periods of time to pass before discussing the responses with the taxpayer, normally within two weeks. After a long period of time, the taxpayers may presume that the issue is resolved and then be surprised to receive another IDR with additional questions on the issue. If we are going to hold the taxpayer to timelines, then we should provide the same courtesy in return.
- If a taxpayer is unable to respond by the due date (or the examiner does not receive a full response by the due date or shortly thereafter), the examiners must determine within 5 business days if an extension will be granted. Two extensions may ultimately be granted.
- The first extension may be granted by the examiner. The examiner must discuss the missing or incomplete items with the taxpayer to determine if an extension is warranted. If the extension is warranted, the examiner may provide the taxpayer

up to 15 business days to provide the incomplete information. The examiner must send an extension approval letter - Letter 5798.

- If the taxpayer does not respond by the due date of the first extension or if the response is incomplete, the examiner will need to consult with the group manager to determine whether a second extension is warranted.
  - The examiner will need managerial approval to issue a second extension, which is generally for another 15 business days.
- The examiner should make their best efforts to review the response provided by the taxpayer – even if some items are incomplete – within 10 business days and notify the taxpayer. If, for some reason, the review will be delayed, the examiner should notate the delay in the Case Chronology Record.
- If the taxpayer does not respond to the second extension, the examiner will begin the enforcement process.

Taxpayer Digital Communication (TDC) Talking Points

- The IRS has an easier method of communicating with taxpayers, IRS Secure Messaging. With this service, you and your authorized representative can quickly and easily send and receive messages and documents related to your IRS audit.
- TDC provides a secure mailbox capability allowing 1-way and 2-way exchange of messages and attached documents between the IRS, taxpayers and their representatives.
- TDC Secure Mail utilizes eGain technology; No software is required for the IRS employee or taxpayer, just permission to access the URL.
- External customers, including a business taxpayer's third-party designated representatives and Power of Attorneys (POAs), will be invited by standard mail (a flyer accompanying an IRS letter or notice) to participate in the pilot. Their participation is voluntary.

WebEx

- Use for meetings with external parties to share sensitive documents/PII.
- Use for up to 100 participants per meeting.
- Here are good reasons to try WebEx:
  - Safe and secure
  - Free and convenient
  - Avoid time on the phone
  - Eliminate paper and postage

New Webpage for Small Employers

Web page up and running Our new small employer webpage went live on January 26, 2021. You can get to it from the EP landing page under the Choosing Your Plan heading. Our distressed plan webpage, now called Small Employer Retirement Plans During Economic Downturns, is also live. It links from the new small employer's webpage under Additional Information. This isn't a static webpage. As we identify other issues, we can add that information.