WINSTON & STRAWN LLP

BLOG

Best Practices for ERISA Plan Revenue-Sharing Account Arrangements

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The DOL has closely examined ERISA plan revenue-sharing account arrangements (“RS arrangements”) in recent years, and issued authority that relates to such arrangements (e.g., the rules promulgated under ERISA Sections 404(a) and 408(b)(2) in 2010 and 2012, respectively; and DOL Advisory Opinion 2013-03A). In light of the DOL’s continued focus on RS arrangements, if your plan is contemplating or renewing such an arrangement, consider implementing the below best practices in 2014. If the DOL audits your plan, it WILL look to see whether these practices are in effect.

- Confirm that the compensation proposed for the recordkeeper or other service provider (“provider”) under the RS arrangement is reasonable, taking into account the other direct and indirect compensation the provider proposes to receive and the totality of the services to be provided. Ask the provider to provide a chart showing each form of direct and indirect compensation and the corresponding fees/rates expected to be received in connection with each and a schedule of the services expected to be provided – reviewing the information in this format may provide for a more comprehensive review.
- Ask your consultant (or other provider) to confirm that the revenue-sharing formula and the methodology and assumptions used to determine amounts credited to the plan and paid back to the provider and the plan under the formula are consistent with (or more favorable than) market trends.
- Ask your consultant (or other provider) to provide specific recommendations on the type of reporting needed to confirm that amounts paid back to the plan are correctly calculated and applied for the benefit of the plan; require that this reporting be provided for under the contract with the provider; and designate a person or entity to periodically review the reporting and confirm that payments received by the plan are correct.
- Allocate/track revenue-sharing payments in a trust or bookkeeping account (there are pros and cons to having either type of account), and establish a policy addressing how and when revenue-sharing payments paid back to the plan will be allocated among participants or used to pay plan expenses in accordance with ERISA.

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