



# Get your Ducks in a Row

## 58 Questions from the Department of Labor

WHITE PAPER | JANUARY 2014

Erik Daley, CFA  
MANAGING PRINCIPAL

### INTRODUCTION

The Department of Labor has the difficult job of administering and enforcing Title I of the Employee Retirement Income Security Act (ERISA). Title I establishes the standards for governing the operation of employee benefit plans. One of the mechanisms they use in meeting their objectives are audits of retirement plan sponsors. These audits provide the Department a wide variety of data to analyze, but also provide plan sponsors insight into the issues that the Department is most interested in evaluating.

Audits typically arise as a result of one of three ways.

- Response to a participant complaint – The Department is responsible for helping ensure the rights of retirement plan participants and beneficiaries. In instances where participants may issue a complaint, the Department may elect to initiate an audit to review the facts and circumstances surrounding the complaint.
- Wrong answer on the 5500 – In the new EFAST environment, the Form 5500 is coded with a number of automated compliance checks. Specific answers or series of answers to the Form 5500 questions may initiate a more detailed review of the form, which may lead to an audit by the Department of a plan.
- Dumb “luck” – To help review compliance, the Department has to review a cross-sample (albeit small) of all retirement plans, not just those where there have been complaints, or where the Form 5500 generates questions or concerns. If you work with plans long enough, chances are you will get a visit from the Department.

Frequently, plan sponsors want a satisfactory answer to the question, “why me?” However, the “why” is less important than ensuring the sponsor’s responses to the Department’s inquiries are addressed completely and accurately. And while each audit may generate questions specific to the audit being conducted, there are a number of questions that come up on a recurring basis providing a good opportunity for plans to “self-audit” their compliance and record retention practices.

## 58 POINT COMPLIANCE PLAN

In a recent Department compliance audit, the process was initiated with a letter and request for responses to 58 questions from topics covering:

- Plan Documents
- Plan Administration
- Plan Financials
- Plan Investments
- Joint Ventures & Limited Partnerships
- Real Property
- Loans
- Service Providers & Expenses
- Revenue Sharing
- Plan Termination
- Bankruptcy

Many plan sponsors find it useful or essential to retain assistance in managing a Department audit. But whether you solicit assistance or go it alone, reviewing some of the questions asked by the Department and evaluating your ability to answer them completely, is a good preparatory step. Attached is a list of the 58 questions referenced above.

## CONCLUSION

If terminology is outside of your area of expertise, or finding answers to technical questions is difficult, conducting additional training and establishing control processes will prove useful. For more information on fiduciary duties under the Employee Retirement Income Security Act, please see Multnomah Group's [Fiduciary Responsibility Guide](#).

Multnomah Group, Inc.

Phone: (888) 559-0159

Fax: (800) 997-3010

[www.multnomahgroup.com](http://www.multnomahgroup.com)

## ATTACHMENT A: DOCUMENTS REQUESTED

### Plan Documents

1. Plan Document, including all amendments.
2. Adoption Agreement, including all amendments.
3. Trust Agreement, including all amendments.
4. Insurance contracts relating to the Plan and the investment of its assets, such as a group annuity contract, including all amendments.
5. The most recent Summary Plan Description (SPD), including documents sufficient to show the effective date of the SPD and the way the SPD is distributed to participants.
6. Annual Report Form 5500 (signed copies), including all schedules, attachments, financial statements, notes to the financial statements, independent qualified public accountant reports, management representation letters, and audit work papers with all attachments. Please also include any SAS 70, SAS 112, SAS 115, SFAS 157, and any reports or analyses from investment or management consultants.
7. Internal Revenue Service (IRS) determination letters.
8. Summary Annual Report (SAR), including documents sufficient to show the way the SAR is distributed to participants.
9. Sample of the most recent Individual Benefit Statement, including documents sufficient to show the way the Individual Benefit Statements are distributed to participants.
10. Fidelity Bond, including the declaration page and loss pay over rider identifying the Plan as a named insured, and specifying the amount of coverage, the policy period, and the name of the surety company. Additionally, if there was a claim filed on the bond, please provide the reason and date the claim was filed.

### Plan Administration

11. Documents sufficient to identify all Plan Trustees, and any other persons with discretionary authority or control over the Plan and the disposition of its assets, including their dates of service and their respective responsibilities or duties. Please also include all current contact information for these individuals, including Social Security numbers, home addresses, work addresses, home telephone numbers and work telephone phone numbers.
12. Documents sufficient to identify all members of the Administrative Committee, Investment Committee or other Plan committee, or any other persons with discretionary authority or control over the Plan and the disposition of its assets, including their dates of service, their respective responsibilities or duties, and their compensation.
13. Documents sufficient to identify the Plan Administrator(s), or any other persons or entities with direct involvement in the administration and management of the Plan, including their dates of service, and the respective responsibilities or duties.
14. Documents sufficient to identify all "parties in interest" to the Plan, as defined by ERISA § 3(14). Please provide the name, title, and job description of these individuals, including their relationship to the Plan and any responsibilities or duties pursuant thereto.

15. Documents relating to and including, the minutes of all meetings related to the Plan, including, but not limited to, meetings by the Board of Directors, Plan Trustees, Administrative Committee, Investment Committee, or other Plan committee.
16. Documents sufficient to identify all directors, officers and shareholders of the Plan Sponsor, including any predecessors, successors, affiliates or parent companies, its officers and directors.
17. Documents relating to and including, all corporate resolutions relating to the Plan.
18. Documents relating to and including, the Plan's Investment Policy.
19. Documents relating to and including, all Plan correspondence.

#### **Plan Financials**

20. Documents relating to and including, all Plan accounting records, or such records relating to the value of assets, liabilities, income, and expenses of the Plan, including but not limited to, the most recent balance sheet, income statement, general ledger, and statement of assets and liabilities, as well as all audited and unaudited financial statements.
21. Documents relating to and including, all Plan valuation reports showing the account balances if individual participants
22. Documents relating to and including, all Plan participant census reports showing participants' names, addresses, Social Security numbers, account balances, and if applicable, dates of termination of employment.
23. Documents relating to Employee Contributions and Loan Repayments, including but not limited to, all summary pages of payroll registers showing the total amount of Employee Contributions and Loan Repayments withheld for each payroll period.
24. Documents relating to and including, all Trust Statement or other documents sufficient to show the receipt of Employee Contributions and Loan Repayments by the Plan for each payroll period.
25. Documents relating to Mandatory Employer Contributions, including but not limited to, all summary pages of payroll registers showing the total amount of Mandatory Employer Contributions forwarded to the Plan for each payroll period.
26. Documents relating to and including, all Trust Statement or other document sufficient to show the receipt of Mandatory Employer Contributions by the Plan for each payroll period.
27. Documents relating to the Plan's policies and procedures (including timing) for the collection of Mandatory Employer Contributions and the remittance of such contributions to the Plan's trust and/or investment vehicles.
28. Documents relating to Delinquent Mandatory Employer Contributions, including, but not limited to, the amount owed and the length of time delinquent.
29. Documents sufficient to identify where all Plan assets are held on deposit, including but not limited to, the name and address of the institutions, the Plan's account number, and the names of all individuals, with respect to each account, who have the authority to authorize distributions or withdrawals therefrom.
30. Documents relating to all bank accounts maintained by, or in the name of the Plan, such as checking accounts, savings accounts, certificates of deposit, and money market accounts, including but not limited to, all account statements or other documents sufficient to show the value of Plan assets held in any bank account, and any transactions pursuant thereto.
31. Documents relating to all trust or custodial accounts maintained by, or in the name of the Plan, including, but not limited to, all account statements or other documents sufficient to show the value of Plan assets held in any trust or custodial account, and any transactions pursuant thereto.

32. Documents relating to all monies paid, submitted, or transferred to the possession of any third party by, for, on behalf of, or in the name of the Plan, including but not limited to, the amount of such monies, the source of such monies, the means through which such monies were paid, submitted or transferred to the possession of any such third party, the reason such monies were paid, submitted or transferred to the possession of any such third party, and the disposition of such monies once they were paid, submitted or transferred to the possession of any such third party.
33. Documents relating to the use, handling, payment, or investment of all monies paid, submitted or transferred to the possession of any third party by, for, on behalf of, or in the name of the Plan, including, but not limited to, the amount of such monies, the source of such monies, and the disposition of such monies once they were paid submitted or transferred to the possession of any such third party.
34. Documents relating to the forfeiture of participants' accounts and the reasons for such forfeitures.
35. Documents relating to any funds still existing in the Plan, rolled over to an IRA, or removed from the Plan in some other manner because the Plan participant is unable to be located or where mailings sent to the Plan participant have been returned as undeliverable.
36. Documents relating to and including, any uncashed distribution checks, including but not limited to, the amount, date, and number of such distribution checks, and the name, address, and Social Security number of the Plan participants to whom they were issued.
37. Documents relating to the Plan's procedures for locating missing participants. The term "missing participant" refers to a Plan participant whose employment has been terminated, but maintains an active account balance in the Plan, and whose address or whereabouts are currently unknown.

#### **Plan Investments**

38. Documents sufficient to show all Plan investments and the value of such investments, including, but not limited to, the Plan's investment portfolio and all statements or reports of assets.
39. Documents relating to all Plan assets paid, submitted or transferred to any investment vehicle, such as a mutual fund, a common or collective trust, stocks, corporate notes, bonds, or any other security, including but not limited to, the amount of such monies, the source of such monies, the means through which such monies were paid, submitted or transferred, the reason such monies were paid, submitted or transferred, and the disposition of such monies once they were paid, submitted or transferred.
40. Documents relating to and including, all account statements or other documents sufficient to show the value of Plan assets held in any investment vehicle identified in response to Numbers 38 and 39.
41. Documents relating to and including all reports describing the performance of Plan investments, including but not limited to, end-of-year statements and prospectuses for mutual funds, stocks, and other securities, and documents relating to corporate notes, bonds, and any other investments held by the Plan.

#### **Joint Ventures & Limited Partnerships**

42. Documents relating to joint venture and/or limited partnership interests held or acquired by the Plan, including offering memoranda, subscription agreements, investment holdings, the value of the Plan's interests (including all documents, reports or analyses related thereto) and all

correspondence with the persons or entities managing or controlling such joint ventures and/or limited partnerships.

### **Real Property**

43. Documents relating to real property held or acquired by the Plan, including a description of the property, such as location of street address, the acquisition date and from whom the property was acquired, the value at acquisition, the current value, information on debt financing (including the amount financed, the current balance or date paid in full, the identity of the lender, the interest rate(s), the payment terms and the due date), the use made of the property and by whom, the sources and amounts of income on any income-producing property, the disposition date, if applicable, and the details of the disposition, including the identity of the purchaser, their relationship to the Plan, the terms of the sale, the value received, and the financing involved.

### **Loans**

44. Documents relating to loans (including participant loans and those secured by mortgages) made, held, or acquired by the Plan, including the promissory note, the loan application, the mortgage documents, the amortization or repayment schedule, identification of the collateral along with all applicable recorded documents (such as UCC-1 filings, deeds of trust, etc.) Please also include documents sufficient to show the date of the acquisition by the Plan (for any loans/mortgages not originated by the Plan), from whom the loan/mortgage was acquired, the identity of the originator, if different, the value at acquisition and the cost paid by the Plan. (Note: If the loan/mortgage was contributed to the Plan by the Plan Sponsor, please specify to that effect and indicate the date and value of the contribution).

### **Service Providers & Expenses**

45. Documents sufficient to show all service providers to the Plan, including but not limited to, the name, address, and telephone number of any such service provider, as well as the name, telephone number, and email address of the Plan's point-of-contact or representative at any such service provider. The service providers referred to herein include but are not limited to: (i) accountants; (ii) actuaries; (iii) administrators; (iv) attorneys, (v) brokers, (vi) consultants, (vii) contract administrators, (viii) insurance companies, (ix) investment advisers, (x) investment managers, (xi) recordkeepers, (xii) third party administrators, and (xiii) valuation appraisers.
46. Documents relating to and including, all service provider agreements, or other such agreements relating to the provision of services to the Plan, executed between the Plan, the Plan Sponsors or the Plan Trustees, and any service provider identified in response to Number 45, including but not limited to, the services to be provided, the duties, responsibilities and obligations of all contracting parties, and the fee or compensation schedules.
47. Documents relating to and including, all contractual agreements executed between any service provider identified in response to Number 45 and any other third party (not previously referred to herein) providing service to, or with the assets of, the Plan, such as, but not limited to, any fee sharing agreement between such parties, including but not limited to, the services to be provided, the duties, responsibilities and obligations of all contracting parties, the fee or compensation schedules, as well as all documents relating to any fees, commissions or other compensation received directly or indirectly by any such service provider.

48. Documents relating to and including, all reports prepared by any service provider identified in response to Number 45, including but not limited to, actuarial reports, consultant reports, contract administrator reports, investment advisory reports, and investment management reports.
49. Documents relating to all Plan expenses, fees, and liabilities, including but not limited to, all invoices or other such billing records sufficient to show the expenses, fees, and liabilities assessed against the Plan, and all documents relating to the payment of such expenses, fees, and liabilities.
50. Documents relating to the selection of all Plan service providers, including but not limited to, bid specification letters, requests for proposals, responses to requests for proposals, marketing and sales literature, presentations of services, evaluations, and reviews of responses to bid specification letters and requests for proposals, and all communications related to the negotiations with any such service provider referred to herein.
51. Documents relating the review and evaluation of all Plan service providers, including but not limited to, an assessment of the fees and of the quality of service.

### **Revenue Sharing**

“Revenue sharing” shall mean payments received from a product or fund sponsor, including 12b-1 fees, finder fees, sub-transfer fees, and mutual fund support fees, in exchange for providing a benefit, including market access, marketing efforts, recordkeeping or brokerage services.

52. Documents sufficient to show all service revenue sharing payments relating to the Plan including:
  - a. The amount of the revenue sharing paid;
  - b. The date of the revenue sharing was paid;
  - c. The payee of the revenue sharing payment;
  - d. The date that the revenue sharing payment was cashed, negotiated, or if not by draft, otherwise processed; and
  - e. The name of the bank or financial institution and the account number into which the revenue sharing payment was deposited.
53. Documents relating to the class or type of investment held by the Plan for which revenue sharing was paid, including:
  - a. The amount of the revenue sharing paid;
  - b. The date the revenue sharing was paid;
  - c. They payee of the revenue sharing payment;
  - d. The date that the revenue sharing payment was cashed, negotiated, or if not by draft, otherwise processed; and
  - e. The name of the bank or financial institution and the account number into which the revenue sharing payment was deposited
54. Documents sufficient to identify the share class of the Plan’s investment in mutual funds as either retail or institutional.
55. Documents sufficient to identify the Plan’s investment in stable value funds, including whether any participant has paid a redemption fee (if so, then please provide the name of the participant, the amount paid, the date of the payment, and the name of the fund involved) and whether the fund was illiquid at any time.
56. Documents sufficient to identify all rebates paid to the Plan, the Plan Sponsor, and all parties in interest to the Plan, for Plan administrative expenses, including all 12b-1 fees, finder’s fees, sub-transfer account fees, mutual fund support fees, and other such payments received from a product

or fund sponsor in exchange for providing a benefit, including market access, marketing efforts, recordkeeping or brokerage services.

### **Service Providers & Expenses**

57. Documents relating to the termination of the Plan, including all correspondence with the IRS, Plan participants, and any other third party related to the Plan termination, distribution election letters, benefit payments to Plan participants, including copies of cancelled checks and bank statements reflecting debits of such benefit payments, and all correspondence and minutes of any meetings, such as those of the Board of Directors, shareholders, Plan Trustees or Administrative Committee, Investment Committee, or other Plan committee related thereto.

### **Bankruptcy**

58. Document relating to XYZ (the Company), including any predecessors, successors, affiliates or parent companies, and/or any or its officers, directors or shareholder filing for Chapter 11 or Chapter 7 bankruptcy, including a copy of the docket, petition, schedules, statement of financial affairs, a list of all creditors and any proofs of claim filed on behalf of the Plan or Plan participants. (Should the Company and/or any of its officers, directors, or shareholders file for bankruptcy in the future, these documents should be provided to the Department immediately upon filing for bankruptcy.)

In addition to the above documents, we may request additional materials as necessary at a later date.