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The 2024 Guide to Accounting, Financial Reporting and Employee Benefit Plan Compliance

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Outline

1. Newly Issued and Effective Accounting Pronouncements
2. FASB Projects
3. The “Big 3” Post – Implementation Review
4. Pension/ERISA Update
5. Common Pension Pitfalls

Newly Issued and Effective Accounting Pronouncements

Newly Issued Accounting Standards Updates

ASU 2024-01 – Compensation-Stock Compensation (Topic 718): Scope Application of Profits Interest and Similar Awards

- Provides illustrative examples to determine whether a profits interest or similar award (for example, phantom shares) is within the scope of ASC 718
- The determination should be primarily be based on whether the grantee of the award will receive legal-form equity or proceeds based on legal-form equity
- Private company effective date: Years beginning after **December 15, 2025 (2026)**

Newly Issued Accounting Standards Updates

ASU 2024-03 – Income Statement – Disaggregation of Income Statement Expenses

- Applicable to **PUBLIC COMPANIES ONLY**
- Requires disclosure of the amounts of the following included in each relevant expense caption:
  - Purchases of inventory
  - Employee compensation
  - Depreciation
  - Intangible asset amortization
- Requires qualitative disclosure of "other" amounts included in relevant expense captions

Newly Issued Accounting Standards Updates

ASU 2024-03 – Income Statement – Disaggregation of Income Statement Expenses

- Requires disclosure of amount of selling expenses and qualitative disclosure of the entity's definition of selling expenses
- Requires inclusion of other legacy expense disclosure items within same disclosure disaggregation as new requirements
- Effective dates: Years beginning after **December 15, 2026 (2027)** and interim periods beginning after December 15, 2027 (2028)

New Accounting Standards Becoming Effective

ASU 2021-08 – Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers

- Effective date: Years beginning after **December 15, 2023 (2024)**
- Requires entities to **apply Topic 606** to recognize and measure contract assets and contract liabilities in a business combination
- Improves comparability after the business combination by providing consistent recognition and measurement guidance for revenue contracts with customers acquired in a business combination and revenue contracts with customers not acquired in a business combination

New Accounting Standards Becoming Effective

ASU 2023-07 – Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures

- PUBLIC COMPANIES ONLY – Those required to report segment information
- Effective date: Years beginning after **December 15, 2023 (2024)**
- Requires disclosure of more detailed information about a reportable segment's expenses

New Accounting Standards Becoming Effective

ASU 2023-05 - Business Combinations - Joint Venture Formations (Topic 805-60): Recognition and Initial Measurements

- Requires joint ventures to recognize and initially measure assets and liabilities at fair value as of the formation date
- Addresses historical diversity in practice due to lack of guidance
- Required for new joint ventures with formation date after **January 1, 2025**
- Early adoption is permitted for periods in which financial statements have not yet been issued or available to be issued

New Accounting Standards Becoming Effective

ASU 2023-02 - Investments (Topic 323): Equity Method and Joint Ventures - Accounting for Investments in Tax Credit Structures Using the Proportional Amortization Method

- Amendments allow reporting entities to elect to consistently account for qualifying equity investments made primarily for the purpose of receiving income tax credits and other income tax benefits
- Amortize the cost of the equity investment in proportion to the income tax benefit received, with amortization presented net of tax credits as a component of income tax expense (benefit)
- Private company effective date: Years beginning after **December 15, 2024 (2025)**

New Accounting Standards Becoming Effective

ASU 2023-08 – Intangibles – Goodwill and Other – Crypto Assets (Subtopic 350-60): Accounting for and Disclosure of Crypto Assets

- Effective date: Years beginning after **December 15, 2024 (2025)**
- Entities are required to account for crypto assets at fair value
- Changes in fair value are recognized in current period net income

New Accounting Standards Becoming Effective

ASU 2023-09 – Income Taxes (Topic 740): Improvements to Income Tax Disclosures

- Effective date: Public - Years beginning after **December 15, 2024 (2025)**
- Effective date: Private - Years beginning after **December 15, 2025 (2026)**
- All entities:
  - Required to disclose amount of income taxes paid (net of refunds received) and income tax expense (benefit), disaggregated between Federal, state and foreign.
  - Required to disclose income taxes paid (net of refunds) to individual jurisdictions that make up 5% or more of the total.
  - Required to disclose pre-tax income (loss) disaggregated between Federal, state and foreign.

FASB Projects

Exposure Drafts

Accounting for and Disclosure of Software Costs (Comments due 1/27/2025)

- Removes the “project phase” descriptions (discovery, feasibility, implementation, etc.…)
- Require internally developed software cost capitalization when the following occur:
    1. Management has authorized and committed to funding the software project; and
    2. It is probable that the project will be completed and the software will be used to perform the function intended (referred to as the “probable-to-complete recognition threshold”)
- Requires separate presentation of cash paid for internal use software in cash flow statement investing activities

Accounting for Environmental Credit Programs (Expected Exp. Draft in Q4 2024)

- Provides accounting recognition, measurement, presentation and disclosure guidance for both purchased and internally generated environmental credits (for example: carbon offsets)

Private Company Council (PCC) Projects

Credit Losses (CECL) – Topic 606 Receivables (Expected Exp. Draft in Q4 2024)

- **Practical expedient:** An entity that elects the practical expedient would not be required to adjust historical loss information to reflect changes related to economic data. Rather, an entity would assume that current economic conditions as of the balance sheet date will persist throughout the forecast period.
- **Accounting policy election:** An entity that elects the practical expedient would also be permitted to make an accounting policy election to consider subsequent cash collection after the balance sheet date but before the date the financial statements are available to be issued as part of the estimate of expected credit losses.

Private Company Council (PCC) Projects

Presentation of Contract Assets and Contract Liabilities for Construction Contractors (Expected Exp. Draft in Q4 2024)

- Addresses differing treatment of contract retention.
- **PCC Alternative:** Would allow presentation of contract assets and contract liabilities on a gross basis in the statement of financial position.

The “Big 3” Post - Implementation

CECL

ASU 2016-13 - Financial Instruments - Credit Losses (Topic 326) CECL

Introduces the current expected credit loss (CECL) model to provide more timely recognition of credit losses on financial instruments.

Previous incurred loss model	Expected loss model
Losses recorded when probable of being incurred	No threshold for recognition - all expected credit losses over the life of the instrument are recorded on day 1, leading to more timely identification and recognition of future losses
If no indicators of loss, no reserve required	Allowance for credit losses is required, even if the risk is remote
Based primarily on historical experience	Based on reasonable and supportable forecasts about total future credit losses, factoring in both historic and current data as well as forecasts of the future
Typically applied to past-due amounts for trade receivables	Must be applied to all balances, including those that are still current

CECL

ASU 2016-13 - Financial Instruments - Credit Losses (Topic 326) CECL

In scope	Out of scope
• Trade receivables (See example 1) • Loans receivable (See example 2) • Held-to-maturity debt securities • Loan commitments • Receivables from repurchase agreements • Net investments in sales-type and direct financing leases • Reinsurance receivables • Financial guarantees • Purchased credit deteriorated assets recorded at amortized cost	• Investments at fair value with changes in fair value reported through net income (or for non-healthcare NFPs, the change in net assets) • Available-for-sale debt securities (covered by ASC 326-30, see Section 5) • Loans receivable that are held for sale • Contributions receivable • Loans and receivables between entities under common control • Operating lease receivables • Equity method investments • Derivatives

CECL

ASU 2016-13 - Financial Instruments - Credit Losses (Topic 326) CECL

- 5 measurement approaches:
  1. Discounted cash flow method
  2. **Loss-rate method**
  3. Roll-rate method
  4. Probability of default method
  5. **Aging schedule**

AGING (PAST DUE)	AMORTIZED COST BASIS (MILLION)	EXISTING LOSS RATE	EXISTING ALLOWANCE (MILLION)	NEW ADJUSTED LOSS RATE	ALLOWANCE UNDER CECL
Current	$19,000,000	0%	$0	1.50%	$285,000
1-30 days	$11,000,000	6%	$660,000	6.09%	$669,900
31-60 days	$6,000,000	28%	$1,680,000	28.42%	$1,705,200
61-90 days	$3,000,000	54%	$1,620,000	54.81%	$1,644,300
>90 days	$1,000,000	87%	$870,000	88.31%	$883,050
Allowance			$4,830,000		$5,187,450

ASU 2016-13 - Financial Instruments - Credit Losses (Topic 326) CECL

Trade Receivables

Balances sharing similar characteristics should be grouped into risk pools for analysis of credit losses:

- Aging category
- Industry type
- Geographic location (Global, Domestic, Local)
- Customer type (Government, private company, individual, etc.…)
- Other factors impacting collectability, as applicable

No longer only based solely on historical data

Forward looking analysis is the big change:

- Start with historical data and adjust for current conditions, reasonable forecasts

Leases (ASC 842)

What were some observations from initial application?

1. Most private companies elected to adopt as of the beginning of the year of adoption (January 1, 2022)

    - Using this method, only future payments from January 1, 2022, and forward were utilized

2. The initial adjustment to bring operating leases onto the balance sheet was almost always balance sheet adjustment

    - ROU assets = Total lease liability = No change to equity

Leases (ASC 842)

What were some observations from initial application?

3. Specialized lease software was helpful, but not perfect
   a) Input data needs to be 100% correct
   b) Software reporting needed to be scrutinized
4. Leases with uneven payments created P&L adjustments
5. Ongoing accounting is not “set it and forget it”
6. *Every company* had to, and continues to have to, consider the impact
7. Financial statement disclosures were widely enhanced

Leases (ASC 842)

What are the biggest issues?

1. Unwritten leases
2. Uncertain lease terms:
   a) Month-to-month
   b) Optional renewal periods
3. Leasing activity with related parties
4. Leasehold improvements:
   a) Depreciation should be over the shorter of the useful life or the lease term

Leases (ASC 842)

Was there any guidance?

- Financial Accounting Standards Board (FASB) released a new accounting update ASU 2023-01 in March 2023
  - Allows the use of written terms and conditions of a common control arrangement to determine whether a lease exists and, if so, the classification of and accounting for that lease
  - In addition, the ASU requires all entities (i.e., including public companies) to amortize leasehold improvements associated with common control leases over the useful life to the common control group

Revenue Recognition (ASC 606)

Core Principle

An entity shall recognize revenue to depict the **<u>transfer</u>** of goods or services to the customer in an amount that reflects the consideration the entity receives, or expects to receive, in exchange for those goods or services provided.

Revenue Recognition (ASC 606)

Five steps to apply the core principle:

1. Identify the contract(s) with a customer.
2. Identify the performance obligations in the contract.
3. Determine the transaction price.
4. Allocate the transaction price to the performance obligations in the contract.
5. Recognize revenue when (or as) the entity satisfied a performance obligation.

Revenue Recognition (ASC 606) – Observations

- The standard does not apply only to construction contracts!
- Largely resulted in many new disclosures, very few adjustments.
  - But you can't assume there is no impact, you must document that the standard has no effect.

Considerations for non-construction companies:

- Do you have a contract with a customer?
  - Does not have to be a written contract!
- What are the performance obligations under the contract?
  - Are there multiple components within the contract that need to be segregated (i.e., manufacturing vs. installation)?
- Are goods or services provided over time, or at a point in time?
  - When is customer receiving the benefit of the good or service?
  - Method will drive timing of recognition to all at once, or split up over a longer period.
  - Timing of billing does not necessarily coincide with timing of revenue recognition.

ERISA/PENSION UPDATE

2025 Pension Update

- 2025 Pension Limits
- SECURE Act 2.0

2025 Pension Limits

	2025	2024	2023
401(k) Elective Deferrals (Section 402g)	$ 23,500	$ 23,000	$ 22,500
Catch-Up Contribution Limit (Section 414v): For all other employees	$ 7,500	$ 7,500	$ 7,500
Catch-Up Contribution Limit (Section 414v): For employees ages 60-63*	$ 11,250	$ 7,500	$ -
Annual Defined Contribution Limit (Section 415)	$ 70,000	$ 69,000	$ 66,000
Annual Compensation Limit (Sections 401, 404, 408)	$ 350,000	$ 345,000	$ 330,000
FICA Wage Limit	$ 176,100	$ 168,600	$ 160,200
SIMPLE Employee Deferrals	$ 16,500	$ 16,000	$ 15,500
SIMPLE Catch-Up Deferrals: For all other individuals	$ 3,500	$ 3,500	$ 3,500
SIMPLE Catch-Up Deferrals: For individuals ages 60-63*	$ 5,250	$ 3,500	$ -

* Updates for SECURE Act 2.0

SECURE ACT 2.0

- On December 29, 2022, Setting Every Community Up for Retirement Enhancement Act (SECURE Act 2.0) was enacted as part of the Consolidated Appropriations Act.
- The legislation combines provisions from the Securing a Strong Retirement Act of 2022, the Enhancing American Retirement Now (EARN) Act, and the Retirement Improvement and Savings Enhancement to Supplement Health Investments for the Nest Egg (RISE & SHINE) Act.

SECURE ACT 2.0

Provisions Effective January 1, 2024

- Required - Penalty-free withdrawals for certain emergency expenses. Provides an exception to the early withdrawal penalty for distributions up to $1,000 annually used for emergency expenses. A taxpayer has the option to repay the distribution within three years.
- Required - Updating dollar limit for mandatory distributions. Increases the amount that plans can require to be distributed without consent from $5,000 to $7,000.
- Required - Roth plan distribution rules. Eliminates pre-death RMDs from Roth accounts in employer plans.

SECURE ACT 2.0

Provisions Effective January 1, 2024

- Optional - Emergency savings accounts linked to individual account plans. Provides employers the option to offer to their non-highly compensated employees' pension-linked emergency savings accounts. Contributions are treated as Roth and are prohibited once the account balance meets or exceeds $2,500 (indexed). Auto-enrollment and match are permitted, subject to conditions.

- Optional - Penalty-free withdrawals for victims of domestic abuse. Allows retirement plans to permit participants that self-certify that they experienced domestic abuse to withdraw up to the lesser of $10,000 indexed (or 50% of the vested balance) within one year of incident without penalty.

SECURE ACT 2.0

Provisions Effective January 1, 2024

- Optional - Student loan matching. Permits an employer to make matching contributions under a 401(k) plan with respect to Qualified Student Loan Payments ("QSLP")
  - Several large companies have adopted this provision, i.e., Verizon, CVS, Walgreens, Disney, etc.

  - IRS issued Notice 2024-63 on August 19, 2024
    - Applies to plan years beginning AFTER 12/31/2024

  - QSLP is payments made on a Qualified Education Loan ("QEL")
    - QEL – Debt incurred solely for qualified higher education for:
      - Participant
      - Spouse
      - Dependents

SECURE ACT 2.0

Provisions Effective January 1, 2024

Optional - Student loan matching

QEL Excludes:

- Loans between relatives
- Loans taken from a retirement plan

Qualified Higher Education Expenses:

- Tuition
- Fees
- Books and supplies
- Room & board
- NOTE - Gets REDUCED by any scholarships received

SECURE ACT 2.0

Provisions Effective January 1, 2024

Optional - Student loan matching

- The maximum QSLP eligible for matching is the loan payment the participant actually made during the plan year, up to the maximum deferral limits
- The QSLP limit is then reduced by any elective deferrals actually made to the plan by the participants

Example:

- Employee has compensation of $50,000
- Employee makes $25,000 in QSLPs
- Employee makes $5,000 in deferral contributions
- 402(g) deferral limit for 2024 is $23,000
- Employee MAXIMUM QSLP for plan purposes is then $18,000

SECURE ACT 2.0

Provisions Effective January 1, 2024

Optional - Student loan matching

Rules for matching contributions must be uniform between QSLPs and elective deferrals

- QSLPs must be matched at the same rate as deferral contributions
- QSLP matching cannot have different vesting schedules
- All employees must have equal opportunity to get QSLP matches
- The plan cannot have different eligibility provisions for QSLP matches
- Cannot have different allocation restrictions (i.e., 1000 hours/last day) for QSLP matches

SECURE ACT 2.0

Provisions Effective January 1, 2024

Optional - Student loan matching

- The plan may not restrict the QSLP match to certain types of loans or educational programs (i.e., certain schools, etc.)
- The plan cannot limit QSLPs to loans for just the employee's education and exclude loans for spouse/dependent education
- QSLP match may be funded on a different frequency than for regular deferral match
  - Example: The plan may provide for a per payroll period match with regular deferrals, but an annual contribution for the QSLP match

SECURE ACT 2.0

Provisions Effective January 1, 2024

Optional - Student loan matching

Participants will need to notify plan sponsors of the intent to make a QSLP match claim

- i.e., - Timing must be no later 3 months following the end of the plan year
  - Further guidance expected on this timing, mainly related to certain nondiscrimination tests, (i.e., ADP/ACP refunds need to be refunded within 2 ½ months after plan year)

SECURE ACT 2.0

Provisions Effective January 1, 2024

Optional - Student loan matching

The employee will need to certify to the employer that the loan payment is a QSLP:

- Amount of the QSLP(s)
- Date on which the QSLP(s) were made
- Confirmation the payment was made by the participant
- Confirmation that the loan being repaid is a QEL that was used to pay for qualified higher education expenses of the participant or the participant’s spouse or dependent
- A statement that the loan was incurred by the participant

At a minimum, the employee must certify the first three items annually, but the employer can require a full certification of all five items annually.

SECURE ACT 2.0

Provisions Effective January 1, 2024

Optional - Student loan matching

Testing QSLPs:

- For most purposes, QSLP is not treated as a plan contribution
  - Not counted as deferral for ADP test
  - Not counted as deferral for 402(g) limit (but QSLPs limited by 402(g))
  - Not counted as annual addition for 415
- But QSLP is treated as though it were a deferral for:
  - Calculating the match

SECURE ACT 2.0

Provisions Effective January 1, 2024

Optional - Student loan matching.

Testing QSLPs:

- The plan may choose between testing options for performing the ADP test:
  - Apply a separate ADP test for employees who receive the QSLP match and a separate ADP test for employees who do not receive the QSLP match.
    - Two methods are available for this option.
  - Perform a single ADP test for all employees.
  - Provides testing flexibility.
  - How will you know unless you run them all????

SECURE ACT 2.0

Provisions Effective January 1, 2025

Required - Auto-enrollment and auto-escalation for all **<u>NEW</u>** 401(k) and 403(b) plans

- Certain exceptions for:
  - Collective bargaining plans
  - Church plans
  - Governmental plans
  - As well as plans established on or before December 29, 2022
- The initial automatic enrollment amount is at least 3% but not more than 10%
- Each year thereafter, that amount is increased by 1% until it reaches at least 10%, but not more than 15%

SECURE ACT 2.0

Provisions Effective January 1, 2025

- Required - Higher catch-up limit to apply at ages 60, 61, 62 and 63 (See previous table)
  - The increased amounts are indexed for inflation after 2025
  - Required - Improving coverage for part-time workers
  - Reduces to 2 years (from 3 years) the requirement to allow long-term, part-time workers to participate in employers' 401(k) plans
- Required - Retirement savings lost and found. Requires DOL to create and administer a national online searchable lost and found database for Americans' retirement plans; requires plan administrators to provide annual reporting of disposition of balances for vested terminated participants

SECURE ACT 2.0

Provisions Effective January 1, 2026

Required - All catch-up contributions for workers with wages over $145,000 during the previous year to be deposited into a Roth (i.e., after tax) account.

- The wage threshold will be adjusted annually for inflation beginning in 2027 (rounded down to the lowest multiple of $5,000)

Required - Requirement to provide paper statements in certain cases. Amends ERISA to generally provide that, with respect to defined contribution plans, unless a participant elects otherwise, the plan is required to provide a paper benefit statement at least once annually.

SECURE ACT 2.0

- The IRS issued Notice 2024-02, under which the IRS extended the deadline to at least the end of 2026 (from 2025) for required and discretionary amendments related to legislation that was passed under the SECURE 2.0 Act and other related guidance.
- However, this notice affirmed that plans must be in operational compliance with all mandatory provisions of SECURE 2.0 (as well as the SECURE Act and other recent legislation) from the effective date of the applicable provisions to maintain tax-qualified status.

SECURE ACT 2.0

- Employers will need to carefully coordinate with their recordkeepers and advisors to determine whether and when to implement the many optional provisions of SECURE 2.0.
- Practical constraints may come into play too, as some optional features may not be available on your plan provider's platform until a later date.

Common Pension Pitfalls

Common Pension Pitfalls

Four General Categories of Plan Failures:

1. Operational Failures:

   The most common category, the administration of the plan does not follow plan terms

2. Plan Document Failures:

   Plan doc does not reflect certain mandatory legal language

3. Employer Eligibility Failures:

   Company sponsors a plan it is not permitted to have

4. Demographic Failures:

   Failure to satisfy certain nondiscrimination tests

Common Pension Pitfalls

DISCLAIMER – VERY Important to have an experienced team of professional service providers:

- ERISA Attorney
- Qualified Third Party Administrators/Advisors (TPA)
- Qualified Independent CPA:
  – Ensure they are a member of the AICPA Audit Quality Center

Common Pension Pitfalls

Mistake	Find the mistake	Fix the mistake	Avoid the mistake
1. You haven't updated your plan document within the past few years to reflect recent law changes.	For older items, review the annual cumulative list to see if the plan has all required law changes. Starting in 2016 review the annual required amendments list.	Adopt amendments for missed law changes. If you missed the deadline to adopt an amendment you may need to use the IRS correction program.	Use a calendar that notes when you must complete amendments. Review your plan document annually. Maintain regular contact with the company that sold you the plan.

Common Pension Pitfalls

Ensure Plan Document is up to date

Prototype/Volume Submitter

- TPA maintains
- Updated IRS Determination letter within the last 4 – 5 years

Self-Written Plan

IRS Required Amendments List ("RA" List):

- Published by the IRS ever October
- Past two IRS Notices (Notice 2022-62 & Notice 2023-79 had no required amendments

Common Pension Pitfalls

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
2. You didn't base the plan operations on the terms of the plan document. Failure to follow plan terms is a very common mistake.	Conduct an independent review of the plan document provisions compared with its operation.	Apply reasonable correction method that would place affected participants in the position they would've been in if there were no operational plan defects.	Develop a communication mechanism to make all relevant parties aware of changes on a timely and accurate basis (best practices). Perform a review at least annually to ensure that you're following plan terms.

Common Pension Pitfalls

Mistake	Find the mistake	Fix the mistake	Avoid the mistake
3. You didn't use the plan definition of compensation correctly for all deferrals and allocations.	Review the plan document definition of compensation used for determining elective deferrals, employer nonelective and matching contributions, maximum annual additions and top-heavy minimum contributions. Review the plan election forms to determine if they're consistent with plan terms.	Corrective contribution, or reallocation or distribution.	Perform annual reviews of compensation definitions and ensure that the person in charge of determining compensation is properly trained to understand the plan document.

Common Pension Pitfalls

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
4. Employer matching contributions weren't made to all appropriate employees.	Review the plan document to determine the employee eligibility requirements and matching contribution formula and compare it to what's used in operation.	Apply reasonable correction method that would put affected participants in the same position they would've been in if matching contributions were made to eligible employees in accordance with plan terms.	Contact plan administrators to ensure that they have adequate employment and payroll records to make calculations.

Common Pension Pitfalls

Mistake	Find the mistake	Fix the mistake	Avoid the mistake
5. The plan failed the 401(k) ADP and ACP nondiscrimination tests.	Conduct an independent review to determine if highly compensated and nonhighly compensated employees are properly classified.	Make qualified nonelective contributions for the nonhighly compensated employees.	Consider a safe harbor plan design or using automatic enrollment. Communicate with plan administrators to ensure proper employee classification and compliance with the plan terms.

Common Pension Pitfalls

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
6. Eligible employees weren't given the opportunity to make an elective deferral election (exclusion of eligible employees).	Review the plan document sections on eligibility and participation. Check with plan administrators to determine when employees are entering the plan.	Make a qualified nonelective contribution for the employee that compensates for the missed deferral opportunity.	Monitor census information and apply participation requirements.

Common Pension Pitfalls

Mistake	Find the mistake	Fix the mistake	Avoid the mistake
7. Elective deferrals weren't limited to the amounts under IRC Section 402(g) for the calendar year and excess deferrals weren't distributed.	Inspect deferral amounts for plan participants to ensure that the employee hasn't exceeded the limits.	Distribute excess deferrals.	Work with plan administrators to ensure that they have sufficient payroll information to verify the deferral limitations of IRC Section 402(g) were satisfied.

Common Pension Pitfalls

Mistake	Find the mistake	Fix the mistake	Avoid the mistake
8. You haven't timely deposited employee elective deferrals.	Determine the earliest date you can segregate deferrals from general assets. Compare that date with the actual deposit dates and any plan document requirements.	Usually corrected through DOL's Voluntary Fiduciary Correction Program. You may need to correct through the IRS correction program. Deposit all elective deferrals withheld and earnings resulting from the late deposit into the plan's trust.	Coordinate with your payroll provider to determine the earliest date you can reasonably segregate the deferral deposits from general assets. Set up procedures to ensure that you make deposits by that date.

Common Pension Pitfalls

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
12. You haven't filed a Form 5500-series return this year.	Find your signed copy of the return and determine if you filed it timely.	File all delinquent returns.	Understand your filing requirement and know who filed and when. Don’t assume someone is taking care of it.

Correction Programs

IRS and DOL have their own separate correction programs

- **IRS** program is called Employee Plans Compliance Resolution System (EPCRS)
- EPCRS provides three ways to correct mistakes:
  - Self Correction Program (SCP)
  - Voluntary Correction Program (VCP)
  - Audit Closing Agreement Program (Audit CAP)

IRS Self Correction Program (SCP)

- Allows a plan to self correct without contacting the IRS or paying a fee; no application or reporting requirements
- **Significance** of error will determine remedy and depends on facts and circumstances including:
  - Other failures in the same period (not how many people are affected)
  - Percentage of plan assets and contributions involved
  - Number of years it occurred
  - Participants affected relative to the total number in the plan
  - Participants affected relative to how many could have been affected
  - Whether correction was made soon after discovery
  - Reason for the failure

Correction Programs

IRS Self Correction Program (SCP)

Availability and Timing of Retirement Plan Self Correction			
Type of failure	**Type of plan**	**Self-correction available?**	**When must self-correction be completed?**
Insignificant operational	Any	Yes	At any time
Significant operational	• 401(k), profit-sharing or other qualified plan • 403(b) plan	Yes	• before the end of the second plan year after the failure occurred, or • substantially corrected within a reasonable time
	• SIMPLE IRA plan • SEP plan	No	N/A – Use VCP

Correction Programs

IRS Voluntary Correction Program (VCP)

- VCP allows for all types of corrections at any time
- VCP process requires providing supporting documentation and submission of forms to the IRS:
  - Filing of Forms 8950 (app. & info.) and 8951 (user fee calculation)
  - Identify mistake
  - Propose corrections and changes to current administrative procedures to prevent further mistakes
  - IRS issues a Compliance Statement detailing mistake and providing correction method.
  - Plan Sponsor has 150 days from issuance of Compliance Statement to correct

Correction Programs

DOL Has Two Correction Programs

Delinquent Filer Voluntary Compliance Program (DFVC):

- Specifically related to Form 5500 filing requirements

Voluntary Fiduciary Correction Program (VFC):

- Allows plan sponsors and fiduciaries to correct fiduciary violations

DOL Delinquent Filer Voluntary Compliance Program (DFVC)

- DFVCP Not Available if DOL has already notified of failure
- Filing is two-part process:
  1. File Form 5500 and schedules, Check box on line D of Part I for DFVC
  2. Pay the penalty

DOL Voluntary Fiduciary Correction Program (VFC)

- Allows plan fiduciaries to correct certain violations before DOL investigates:
- Eligibility for program:
  - Neither plan nor applicant may be "under investigation"
  - No notice of pending investigation by DOL or any other Federal Agency
  - No evidence of criminal violations disclosed in submission

Correction Programs

DOL Voluntary Fiduciary Correction Program (VFC)

Example plan transactions covered by VFC:

- Delinquent contributions and loan repayments
- Improper loan interest rates to Parties-in-Interest
- Loan amounts in excess of plan limitations
- Loan duration in excess of plan limitations
- Duplicative, excessive or unnecessary compensation paid
- Purchases/sales of assets from/to party-in-Interest

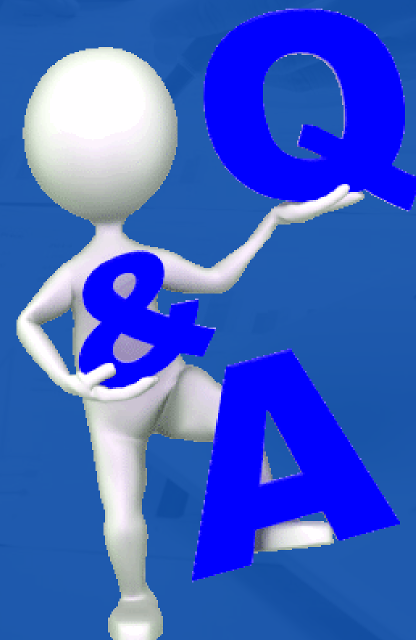
DOL Voluntary Fiduciary Correction Program (VFC)

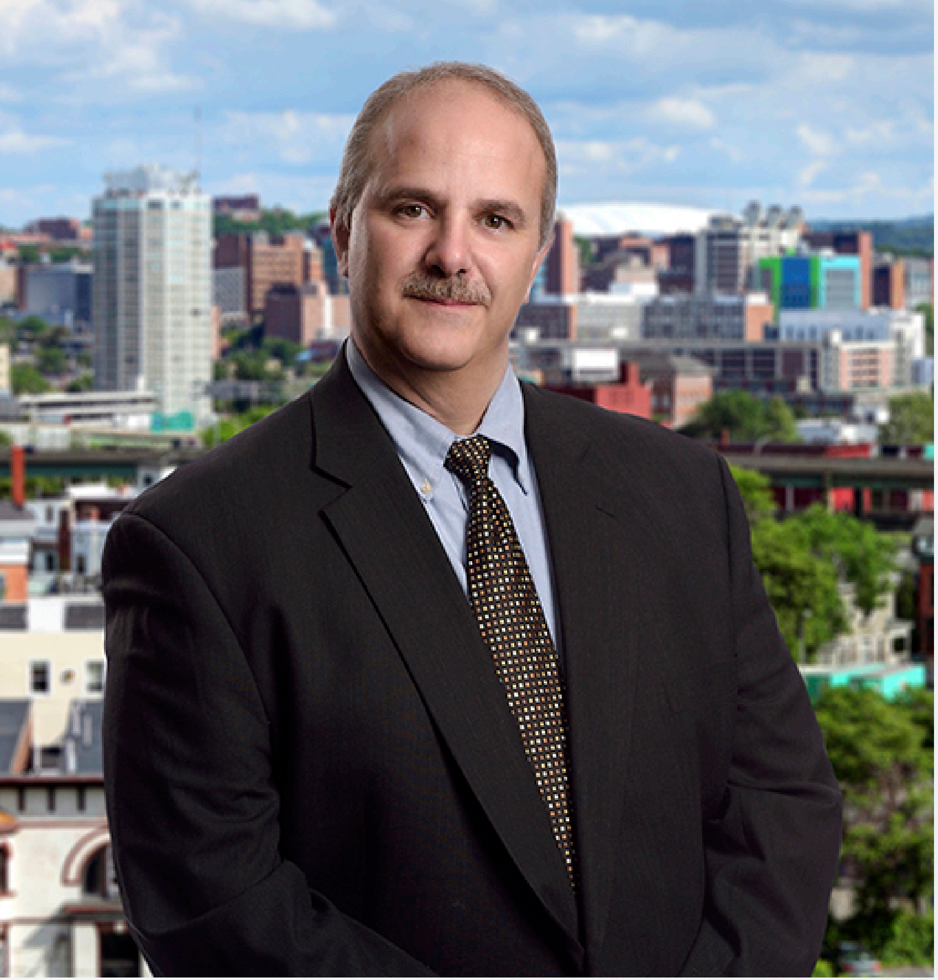
Must file application with DOL through EBSA including:

- Detailed narrative of error and correction
- Supporting documentation
- Penalty of Perjury Statement
- Signed and Completed Checklist

VFC provides specific correction methods including how to calculate earnings and losses.

Questions





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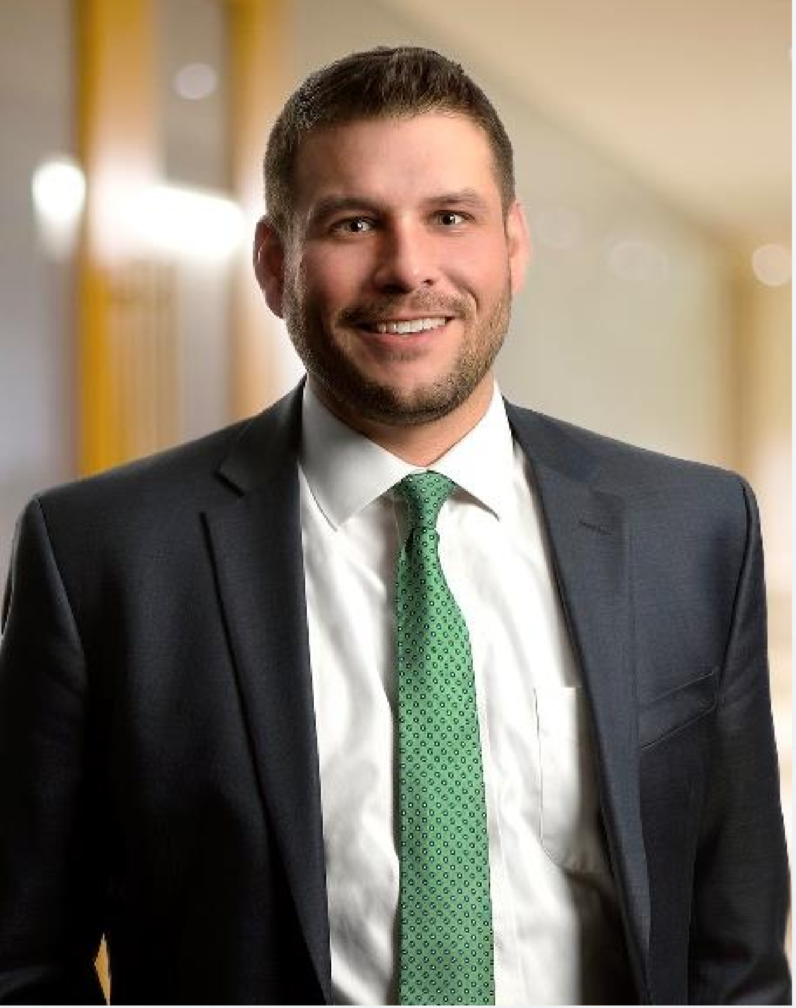

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