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## The 401(k) Audit

How To Stay Out Of The DOL Spotlight

# How to stay out of the DOL spotlight



News Release

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## Texas business owner sued by U.S. Department of Labor over misuse of 401(k) contributions and loan repayments

**Dallas** — The U.S. Department of Labor has sued the owner of defunct TMPR Inc. of Dallas for improperly using employee contributions and loan repayments owed to the Cliff Management 401(k) Plan for the benefit of the company. February 2010 a Dallas business owner was sued by the DOL over misuse of 401(k) contributions and loan repayments by improperly using employee contributions and loan repayments owed to the company's 401(k) Plan for the benefit of the company.

The lawsuit alleges that the company's owner violated the Employee Retirement Income Security Act (ERISA) by failing to forward employee contributions and loan repayments owed to the 401(k) plan during the period January 2004 through September 2009. The suit also alleges that the defendant used the assets for his own benefit and interests, and did not properly administer the plan.

# How to stay out of the DOL spotlight

## It's the law!

- ERISA requires audits of 401(k) plans over 100 participants and other retirement plans.
- Failure to comply may result in penalties being assessed by the Department of Labor against you as the plan's sponsor. Fines could be as much as \$50,000 per plan, per year.

# How to stay out of the DOL spotlight

## Why is the audit so important?

- Protects the assets and the financial integrity of your employee benefit plan.
- Helps you carry out your legal responsibility to file a complete and accurate annual return/report for your plan year.

# How to stay out of the DOL spotlight

## Auditor's Role

### Verify

Compliance with some provisions of the plan document

### Test

Eligibility to participate  
Contributions to the plan  
Disbursements from the plan  
The payroll process

### Report

To satisfy DOL 5500 filing requirements

# How to stay out of the DOL spotlight

## Scope of Testing

**Test:** One of the most common reasons for deficient audit reports is failure of the auditor to perform tests in areas unique to employee benefit plans, for example participant detail. Special, unique audit standards and rules apply to plan audits.

### Limited

- Investments are, generally, not tested

### Full Scope

- Investment prices, purchases, sales, etc. are tested

# How to stay out of the DOL spotlight

## Auditor Selection

When you have the right auditor, the engagement will be done correctly with minimal interruption. This is why the choice of auditor is so important.

### Criteria:

- Membership in the AICPA Employee Benefit Plan Audit Quality Center
- A dedicated employee benefit plan practice
- The firm's latest peer review report with a "pass" rating

# How to stay out of the DOL spotlight

## Best practices to reduce risks

### Validate the payroll process

- Verify the payroll department: Understands the definition of compensation
- Use forfeitures balances and bring the balance to zero at least once a year
- Verify employee contributions are remitted ASAP (i.e. on the withholding date)



# How to stay out of the DOL spotlight

## Best practices to reduce risks

### Have a simple plan document

- Use fixed entry dates: Every month, quarter, or year
- Let employer contributions vest immediately

# How to stay out of the DOL spotlight

Avoid steep penalties and fines

Save time. Reduce costs.

Trust the right people to perform the audit.

[Salmon Sims Thomas](#)

is uniquely positioned to help you.

For more tips, please visit our web site at

[www.the401Kcpa.com](http://www.the401Kcpa.com)