New Form 5500 Audit Requirements

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When the government does something to reduce costs by simplifying paperwork *and* lowering audit requirements for retirement plans, it should be a good thing for everyone. This was the case on February 23, 2023 when the Department of Labor ("DOL") (along with the IRS and PBGC) finalized changes to the Form 5500 financial statement audit requirement for retirement plans for plan years beginning on or after January 1, 2023. The key change is a revision to the threshold for determining which plans will require an independent audit of its financial statements to be attached to the Form 5500 filing, which is intended to lower expenses for small plans *and* encourage employers to start offering retirement savings plans to their employees.

According to the DOL, they expect this change to reduce the number of plans that must file as a large plan (that will be required to include an audit) by nearly 20,000 filings. Even assuming an audit only costs $7,500, that is about $150 million in cost savings for small plan sponsors and their participants!

Currently, the DOL requires sponsors of employee benefit plans with 100 or more eligible participants to include an audit report from an independent qualified public accountant with their annual Form 5500 series of returns and schedules. The current rule counts individuals who are eligible to participate in the headcounts, even if they have not elected to participate and do not have a balance in the plan. There is an exception to this requirement for "small plans" (i.e., those with fewer than 100 participants at the beginning of the plan year) and a plan may also qualify for an audit waiver even if there are more than 100 participants at the beginning of a plan year as long as they don't have 120 or more participants. Under the "80 to 120 Participant Rule", if the number of participants covered under the plan as of the beginning of the plan year is between 80 and 120 <u>and a small plan annual report was filed for the prior year</u>, the plan administrator may elect to continue to file as a small plan and, therefore, qualify for the audit waiver.

For plan years beginning January 1, 2023 or later, the rules on how you count participants for determining whether an audit is required is changing. The participant count will only be based upon the number of participants who have account balances. As a result of this change, many plans that were previously subject to an audit may be able to qualify as a small plan (less than 100 participants), thereby, no longer needing a Form 5500 audit. The change is intended to achieve a balance between providing retirement savings plans for employees and minimizing the cost and administrative burden on smaller employers who offer plans.

The DOL has been evaluating the old counting rule in light of the increasing costs of plan audits and the change in eligibility rules related to long-term, part-time employees that goes into effect in 2024 that would increase the number of plans subject to audit. In balancing the costs and benefits of an audit, the final rule reflects the DOL's belief that the cost of audits is more appropriate for plans with at least 100 account balances.

This is fantastic news for the plan sponsors that will be a part of the over 20,000 plans that no longer need to bear the cost of an audit. It will also pave the way for larger employers to offer plans and for existing plan sponsors to expand eligibility with less risk of triggering an audit. Of course, compliance still remains vital for all plans and the need to work with knowledgeable auditors, TPAs and attorneys to provide compliance oversight is as important as ever. Regardless of the new rule, a plan sponsor who is no longer required to complete a plan audit may choose to continue to have one prepared if they believe that they may shift in and out of audit status so we definitely recommend discussing the new rules with your auditor before proceeding with any changes.

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