

Employee Benefit Plan Audits Frequently Asked Questions

Q: Who is a fiduciary?

A: ERISA defines a fiduciary as anyone who exercises discretionary control or authority over plan management or plan assets, anyone with discretionary authority or responsibility for the administration of a plan, or anyone who provides investment advice to a plan for compensation or has any authority or responsibility to do so. Plan fiduciaries include, for example, plan trustees, plan administrators, and members of a plan's investment committee.

The primary responsibility of fiduciaries is to run the plan solely in the interest of participants and beneficiaries and for the exclusive purpose of providing benefits and paying plan expenses. Fiduciaries must act with the care, skill, prudence, and diligence of a prudent man and must diversify the plan's investments in order to minimize the risk of large losses. In addition, they must follow the terms of plan documents to the extent that the plan terms are consistent with ERISA. They also must avoid conflicts on behalf of the plan that benefit parties related to the plan, such as other fiduciaries, service providers, or the plan sponsor.

Q: What is ERISA bonding requirement?

A: ERISA generally require that every fiduciary of an employee benefit plan and every person who handles funds or other property of such a plan be bonded. Such "persons" may include any director, officer, or employee of the fiduciary. ERISA's bonding requirements are intended to protect employee benefit plans from risk of loss due to fraud or dishonesty on the part of persons required to be bonded. Bond amount should be at least 10% of the amount of funds handled, subject to a minimum bond amount of \$1,000 per plan. In most instances, the maximum bond amount that can be required with respect to any one plan official is \$500,000 per plan (\$1,000,000 for plan officials of plans that hold employer securities).

Q: Who is required to have an audit?

A: Generally, Federal law requires employee benefit plans with 100 or more participants to have an audit as part of their obligation to file an annual return/report. A Plan with over 100 participants at the beginning of the Plan year is considered a large plan and as a large plan, it must file Schedule H to form 5500 and have the Plan audited.

If the number of participants reported at the beginning of the Plan year is between 80 and 120, the Plan may elect to complete the current year's Form 5500 in the same category as was filed in the previous year. If the Plan elects to file as a small plan under the "80 to

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120 Participant Rule”, no audit is required. However, if the participant count is 121, then regardless of what category of plan was filed in the previous year, the current year’s Form 5500 must include Schedule H and the Plan must be audited.

The DOL’s Small Pension Plan Audit Waiver Regulation requires all pension plans, including small plans (generally those with fewer than 100 participants), to be audited unless certain requirements are met. For a small plan to be exempt from the audit requirement, at least 95% of a small plan’s assets must be “qualifying plan assets” or, if less than 95% are qualifying plan assets, then any person who handles assets of a plan that do not constitute “qualifying plan assets” must be bonded in an amount that at least equal to the value of the “non-qualifying plan assets” he or she handles. The Plan must also include certain information in the Summary Annual Report furnished to participants and beneficiaries in addition to the information ordinarily required. Lastly, in response to a request from any participant or beneficiary, the plan administrator must furnish without charge copies of statements the plan receives from the regulated financial institutions holding or issuing the plan’s “qualifying plan assets” and evidence of any required fidelity bond.

Q: What plans are covered and not covered by ERISA?

A: The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for pension plans in private industry. ERISA covers employee benefit plans established or maintained by an employer, an employee organization, or both.

In general, ERISA does not cover retirement plans established or maintained by government entities, churches not electing IRC Sec. 410(d), or plans maintained solely to comply with workers’ compensation, unemployment compensation, or disability insurance laws. ERISA also does not cover plans maintained outside the United States for nonresident aliens, excess benefit unfunded plans (plans maintained to provide benefits in excess of the IRC limitations on contributions and benefits), or plans deemed as IRAs under a pension plan for plan years beginning after December 31, 2002. A qualified employer plan may set up separate accounts or annuities as deemed IRAs, which will be treated as IRAs rather than a part of a qualified retirement plan.

The 403(b) plans for 501(c)(3) tax-exempt organizations funded solely through salary reduction agreements or agreements to forego an increase in salary are not covered by ERISA, Title I, provided that (1) participation of employees is completely voluntary, (2) all rights under the annuity contract or custodial accounts are enforceable solely by the employee or beneficiary of such employee, or by an authorized representative of such employee or beneficiary, (3) the involvement of the employer is limited to certain optional specified activities, and (4) the employer receive no direct or indirect consideration or compensation in cash or otherwise other than reasonable reimbursement to cover expenses properly and actually incurred in performing the employer’s duties pursuant to the salary reduction agreement.

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Q: What is a limited scope audit?

A: ERISA allows plan administrators to request a limited-scope audit of plans with assets held by a bank, similar financial institution (for example, a regulated savings and loan association or credit union), or insurance company that is regulated and supervised and subject to periodic examination by a state or federal agency. The limited-scope audit exemption does not apply to investments held by a broker or dealer or an investment company. Certain trust company established by brokers, dealers, or investment companies must be established pursuant to state or federal laws that subject the trust company to regulation, supervision, and periodic examination by a state or federal agency for the limited-scope audit to apply.

In a limited scope audit, no audit procedures are applied to information on plan investment assets and related transactions that is prepared and certified as both complete and accurate by the financial institution. The exemption applies only to the investment information certified by the qualified trustee or custodian, and does not extend to participant data, contributions, benefit payments or other information whether or not it is certified by the trustee or custodian.

In a limited scope audit, the auditor's responsibilities for the investments covered by the certification include (1) reading the certification, (2) considering whether the certifying entity is a qualifying institution under DOL regulations, (3) comparing the certified investment information to the financial information in the plan's financial statements and disclosures, (4) performing procedures to determine that contribution received and benefit payments made, as reported by the trustee or custodian, comply with the provisions of the plan, and (5) assessing the form and content of the financial statement disclosures related to the certified investment information for conformity with GAAP and compliance with DOL rules and regulations.

The auditor's report for a limited scope audit typically is a disclaimer of opinion on the financial statements and supplemental schedule because of the significant of the portion of the financial statements to which no audit procedures are applied.

Q: What is the Form 5500?

A. The Form 5500 series of forms comprise the annual return/report of an employee benefit plan imposed by the Employee Retirement Income Security Act (ERISA). The Form 5500 series of forms was developed by the three federal agencies that administer the ERISA rules: Department of Labor, Pension Guaranty Benefit Corporation and the Internal Revenue Service. The Form 5500 provides the agencies with information about the qualification, financial condition and operations of the plan.

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Q: Who is required to file the Form 5500?

A: The annual return/ report is required of certain retirement plans and employee welfare benefits plans. Retirement plans that are required to file the Form 5500 series of forms include retirement plans with at least one employee participant who is not an owner of the plan sponsor. Shorter versions of the Form 5500 (the Form 5500 Series) may be filed by retirement plans with less than 100 participants and retirement plans whose only participants are the owners and their spouses. If the qualified plan has 120 participants as of the beginning of the year or reported as a “large plan” in the prior year, an audited financial statement of the plan is a required attachment to the Form 5500. In certain circumstances, the audited financial statement may be required if the plan has 80 participants as of the beginning of the year. See FAQ “Who is required to have an audit”. The Form 5500 filing is not required by employee welfare benefit plans with less than 100 participants as of the beginning of the year and is a fully insured plan, an unfunded plan or a combination of fully insured and unfunded.

Q: What is the electronic filing requirement for the Form 5500?

A. For plan years beginning in 2009 and thereafter, the Form 5500 must be electronically filed. Paper filings are not accepted. The electronic filing must be done through the web-based system developed by the Department of Labor, EFAST2, or an approved vendor. RINA accountancy corporation is an approved electronic filer of Forms 5500.

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