

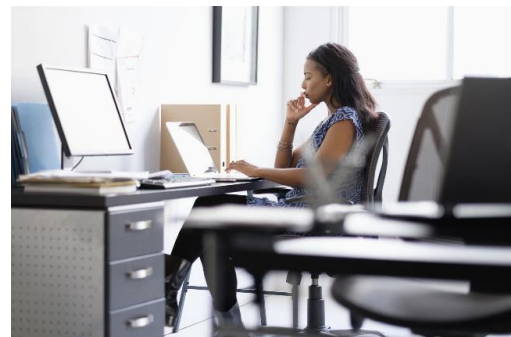
Audits and Other Form 5500 Developments

Changes are afoot for ERISA-mandated Form 5500 filing requirements, though it is unclear at this time when and which changes will actually be implemented. In response to DOL's 2015 review of plan audits, AICPA has proposed changes to audit standards that would significantly increase reporting obligations for employee benefit plans. In conjunction with bidding a new contract for processing Form 5500 and its schedules, DOL, IRS and PBGC have proposed vastly expanded filing requirements to modernize and improve the Form 5500, *Annual Return/Report for Employee Benefit Plans*, effective for plan year 2019 filings. However, the new administration's efforts to push back regulatory burdens may significantly curtail that effort. IRS has once again allowed a pass on their compliance questions by omitting them from the 2017 draft forms.

Background

Although audits and reporting requirements in general tend to draw groans of disdain and weariness, these obligations play an important role in protecting plan participants as well as plan fiduciaries. Significant sums of money are a natural draw for mischief, if not simple mistakes. Collecting compliance information for various required plan reports, such as Form 5500, and setting and examining controls for necessary data elements are key tasks for ensuring accurate plan operations.

ERISA requires these activities and mandates that the plan's fiduciary hire a competent independent auditor to examine and affirm that all is well. In 2015, the DOL reviewed 400 (mostly DC) plans and found 39% had major deficiencies in one or more generally accepted auditing standards. (See our [June 11, 2015 For Your Information.](#)) This led to a series of recommendations including the repeal of the limited scope audit exemption, additional qualifications and education for auditors, and the ability to levy penalties on auditors rather than plans.



The limited scope audit exemption is a specific ERISA option that allows the plan fiduciary to rely on certain certified information from financial institutions and instruct the plan auditor to limit the scope of their audit by excluding the certified material. Under current practice, an auditor reporting on a limited scope audit uses a

disclaimer of opinion on the financial statements and provides a discussion on whether the form and content of the information in the financial statements and supplemental schedules, other than that derived from the certified information, are presented in compliance with the DOL's rules and regulations for ERISA reporting and disclosure.

Changes Proposed for Audit Reports

To address DOL's concerns about audit quality, in addition to educational efforts, the American Institute of CPAs (AICPA) has presented a proposed [Statement on Auditing Standards \(SAS\)](#), *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA*. The proposed SAS would create a new reporting model for audits of ERISA plans that, among other things, changes the form and content of the auditor's report when auditing under an ERISA-permitted scope limitation. In addition, the proposed SAS would require the auditor to report findings from procedures performed on specific plan provisions.

Under the proposed reporting model, auditors and fiduciaries would have expanded responsibilities and would not be permitted to simply disclaim their opinion of the plan financial statements. The opinion would cover the audit procedures performed on the information not covered by the fiduciary's limitation on scope, affirm the certifications obtained by the fiduciary, and perform verifications of the certification. The discussion section would provide an opinion on supplemental schedules, including an opinion that the form and content of the schedules is in accord with DOL requirements.

The proposed SAS would apply to audits of single employer, multiple employer and multiemployer plans subject to ERISA and would be effective for audits of financial statements for periods ending on or after December 15, 2018.

Plan Provisions Audit

In addition to procedural changes the auditor would follow for their engagement, the proposal focuses on a number of specific plan features to be examined. Plan fiduciaries should expect the auditor to ask for the most recent plan documents, including amendments, for this review. Specific areas the auditor is instructed to review for administration consistent with the plan documents and legal requirements include:

- Eligibility
- Benefit or claim payments
- Vesting
- Employee and employer contributions
- Compensation
- Use of forfeitures
- Tax compliance tests such as nondiscrimination, 415 limits
- Reconciliation of all participants' accounts to assets
- Recording of transactions such as loans, withdrawals and other transfers

The auditor also looks at whether prohibited transactions have been identified and reported and whether expenses have been appropriately allocated.

After examining plan features and their administration, the auditor will document the audit procedures and findings, and will consider whether the findings are material to the audit or are indicative of deficiencies in internal controls. Communications to the fiduciary of control deficiencies would be outside the audit report.

Form 5500 Review

The auditor is tasked with reviewing the Form 5500 against the plan's financial statements to identify material inconsistencies, if any. Information contained in the Form 5500 that conflicts with information contained in the audited financial statements is considered an inconsistency. A material inconsistency may raise doubt about the audit conclusions drawn from audit evidence and possibly about the basis for the auditor's opinion. The proposal states that the auditor should make appropriate arrangements with management to obtain the Form 5500 prior to the report release date.

Comment. Some auditors do not obtain the Form 5500 in advance. Obtaining the Form 5500 prior to the audit report release date will enable the auditor to resolve possible material inconsistencies and misstatements of facts with management on a timely basis.

The auditor must communicate with the plan fiduciary and, in some situations, modify either the audited plan financial statements or the Form 5500, if any material inconsistency is identified.

DOL, IRS, PBGC Proposed Form 5500 Changes

In July 2016, the agencies responsible for ERISA enforcement proposed major changes to the information collected annually on Form 5500. The rationale for the changes included:

- Modernizing financial reporting
- Obtaining more information on group health plans – including plans with fewer than 100 participants that are currently exempt from filing
- Enhancing data mineability
- Improving service provider fee information on Schedule C
- Enhancing ERISA and tax compliance

Details on the 2016 proposal are discussed in our [August 4, 2016](#) *For Your Information*.

[Comments on the proposed changes](#) expressed concern that the agencies had underestimated the cost and burden presented by the expanded reporting requirements and failed to consider sufficient time for technological and procedural changes that would be needed to comply with the 2019 proposed implementation date. In addition, some cautioned that the increased burden may lead small employers in particular to simply drop coverage.

Comment. The Trump administration is keen on reducing administrative burdens, so there is a strong possibility that many of the expanded form requirements will be rolled back.

IRS Questions – Out Again for 2017

The proposed overhaul of the Form 5500 would include a number of IRS compliance questions that had been on older forms, but were removed when processing was shifted to DOL at the time of the last major reporting process

overhaul. Recently, compliance questions were added back to the form for 2015 plan years. Drawing great criticism, [IRS announced](#) that plan fiduciaries need not complete the new compliance questions for 2015, and later, 2016. The [draft forms issued for 2017](#) omit these questions as well.

Comment. The underlying issues addressed by the IRS questions remain. For example, plans must still meet coverage and nondiscrimination requirements – plan fiduciaries just aren't required to report results on the Form 5500.

New Extended Due Date

For plans required to file Form 5500 and 8955-SSA that have plan years coinciding with the sponsor's tax year, additional time for filing the corporate return may skirt the need to file Form 5558. The [Surface Transportation and Veterans Health Care Choice Improvement Act of 2015](#) changed the tax return filing deadlines for corporations, partnerships and tax-exempt entities. IRS has confirmed that the six-month extension on the new April 15 filing deadline is indeed available for calendar year C-Corporation filers. Thus, the extended corporate deadline is now the same as the extended due date obtained with a Form 5558. For details, see our [April 4, 2017 For Your Information](#).

In Closing

In spite of the potential additional cost for audits and Form 5500 completion, some aspects of these changes may help to assure proper plan operation and catch financial fraud. In addition to meeting fiduciary obligations, tight internal controls and clean and accurate data should improve plan operations and demonstrate to the auditors and agencies – quickly and efficiently – that all is well.

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