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Torrillo & Associates

Benefit Plan Audit Specialists

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What is the Audit Requirement for Benefit Plans?

We get this question a lot. The [instructions to the Form 5500](#) give the technical answer. However, below is a quick summary of those requirements. Every situation is unique and for 2023 Form 5500s, the DOL just updated the rules. If you have specific questions, please feel free to give us a call or [contact us](#) to see if we can be of assistance. The Department of Labor ("DOL") has more information available at www.dol.gov/ebsa or you can call the EFAST2 Help Line at



The audit requirement generally depends upon whether a plan is a large plan or a small plan. Large plans must file Schedule H. Schedule H requires an audit. Therefore, **large plans must have an audit.**

A plan is a large plan if at the beginning of the Plan year (unless the Plan is a new Plan for which end of year counts will be used) the plan had 100 or more participants with account balances (see "Who is a participant" below).

However, if the Plan has between 80 and 120 participants with account balances (the **80-120 Participant Rule**), it may continue to file as it had the year before. So, assuming a calendar year, if a Plan has 85 participants on 1/1/22 and filed as a small plan and then has 110 participants on 1/1/23 it could continue to file as a small plan (and therefore not require an audit).

Once a Plan has over 120 participants on 1/1 (again assuming a calendar year), it must file as a large plan at the end of that calendar year (i.e. a plan with 121 participants on 1/1/23 must file as a large plan for the 12/31/23 year end and therefore will require an audit for the 12/31/23 year end during 2024). Once a plan files as a large plan, it cannot file as a small plan again (and therefore avoid the audit requirement) until it falls below 100 participants.

Who is a participant?

A big change for 2023 Form 5500s and going forward is that the Department of Labor revised their methodology for counting the

number of participants used to determine when a defined contribution pension plan may file as a small plan. **Beginning with 2023 Form 5500 plan year filings, except for new plans which will use end of year balances, a defined contribution plan counts participants with account balances at the beginning of the plan year.** Revisions are effective for both Form 5500 and Form 5500-SF and their instructions. Prior to 2023 and for Form 5500s for 2022 and prior, 401(k) qualified cash or deferred arrangements, were generally required to include as a participant any individual who was eligible to participate in the plan whether or not the individual elected to contribute or had an account under the plan.

Let's Be Clear: Even Small Plans Require an Audit if They Do Not Meet the Exemption Requirements

Technically, even small plans (plans with less than 100 participants with account balances) must have an audit. However, under 29 CFR2520.104-46, the DOL grants a waiver exempting small plans from an audit provided the Plan meets certain conditions. Most small plans are designed to meet these requirements to be exempt from the audit requirement but you need to make sure your plans meet these three conditions below.

- At least 95 percent of plan assets are “qualifying plan assets” as of the end of the preceding plan year, or any person who handles assets of the plan that do not constitute qualifying plan assets is bonded in accordance with the requirements of ERISA. The amount of the bond shall not be less than the value of such non-qualifying assets
- The Plan administrator must disclose certain information in the summary annual report (SAR) furnished to participants and beneficiaries, including
 1. The name of each regulated financial institution holding or issuing qualifying plan assets and the amount of such assets reported by the institution

as of the end of the plan year

2. The name of the surety company issuing the fidelity bond, if the plan has more than 5% of its assets in non-qualifying plan assets;
 3. A notice that participants and beneficiaries may, upon request and without charge, examine or receive from the plan evidence of the required bond and copies of statements from the regulated financial institutions describing the qualifying plan assets; and
 4. A notice that participants and beneficiaries should contact the EBSA Regional Office if they are unable to examine or obtain copies of the regulated financial institution statements or evidence of the required bond, if applicable
- In response to a request from any participant or beneficiary, the administrator, without charge to the participant or beneficiary, must make available for examination, or upon request furnish copies of, each regulated financial institution statement and evidence of any required bond.

What is a qualifying plan asset?

The term “qualifying plan assets,” means:

1. Any assets held by any of the following regulated financial institutions:
2. A bank or similar financial institution as defined in 29 CFR 2550.408b-4(c);
3. An insurance company qualified to do business under the laws of a state;
4. An organization registered as a broker-dealer under the Securities Exchange Act of 1934; or
5. Any other organization authorized to act as a trustee for individual retirement accounts under Code section 408.
6. Shares issued by an investment company registered under

- the Investment Company Act of 1940 (e.g., mutual funds);
7. Investment and annuity contracts issued by any insurance company qualified to do business under the laws of a state;
 8. In the case of an individual account plan, any assets in the individual account of a participant or beneficiary over which the participant or beneficiary has the opportunity to exercise control and with respect to which the participant or beneficiary is furnished, at least annually, a statement from a regulated financial institution referred to above describing the assets held or issued by the institution and the amount of such assets;
 9. Qualifying employer securities, as defined in ERISA section 407(d)(5); and
 10. Participant loans meeting the requirements of ERISA section 408(b)(1).

Terminated or Just Started your Plan and You Need Some More Time? – Maybe You Qualify for the Short-Plan Year Deferral



If the plan had a short plan year of seven (7) months or less for either the prior plan year or the plan year being reported on the 2023 Form 5500, an election can be made to defer filing the accountant's report in accordance with 29 CFR 2520.104-50. If such an election was made for the prior plan year, the 2023 Form 5500 must be completed following the requirements for a large plan, including the attachment of the Schedule H and the accountant's reports, regardless of the number of participants.



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Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in 10 states including Pennsylvania, New Jersey, Delaware, New York and Florida. We are also able to practice in additional states that have passed firm mobility.

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