From the FuturePlan ERISA Desk

Are you ready for new plan auditing standards?

New Audit Guidance from the AICPA

In 2019 the American Institute of Certified Public Accountants (AICPA) issued new formal guidance for those who audit financial statements that are included with Form 5500, *Annual Return/Report of Employee Benefit Plan*, filings.

The AICPA published this new Standard, SAS 136, to improve the quality of employee benefit plan audits. As amended, this guidance applies to audits for reporting periods ending on or after December 15, 2021. They may also be applied early for reporting periods ending on or after December 15, 2020.

So, when is an ERISA plan audit required?

Plan sponsors whose plans are not subject to the Employee Retirement Income Security Act (ERISA) don't need to provide audit results to the Department of Labor (DOL). This includes most church plans and owner-only plans. Smaller plans that meet certain waiver requirements are not subject to the Form 5500 audit requirements either. But, employee benefit plans are subject to an independent audit if:

- The plan had 100 or more eligible participants as of the first day of the plan year and didn't file as a small plan filer for Form 5500 reporting in the prior year, or
- filed as a small plan filer for Form 5500 reporting in prior years, but now has 121 or more eligible participants as of the first day of the current plan year.

*An "eligible participant" is an employee who's eligible to participate in the plan (even if they aren't deferring), or is no longer employed — but still has a plan balance.

What's so "new" about the new auditing standard?

SAS 136 is helpful because it both clarifies and formalizes best practices for auditors working with employee benefit plans. It also provides detailed requirements unique to employee benefit plans, which help auditors meet their obligations.

Here are a few highlights:

- SAS 136 replaces a modified opinion (typically a disclaimer) used with ERISA Section 103(a)(3)(C) audits, previously known as "limited scope audits", with a two-pronged opinion. This opinion should indicate whether the:
  - information in the financial statements not covered by certification is presented fairly, and
  - investment information contained in the financial statements reconciles with, or is derived from, the information contained in the certification.

- And, as the plan sponsor, you must provide the auditor with an acknowledgement that you are responsible for:
    - determining whether a 103(a)(3)(C) audit is permissible and whether the certification meets ERISA requirements,
    - maintaining and providing a current plan document,
    - preparing and fairly presenting financial statements, and
    - providing a substantially completed (draft) Form 5500.
- The auditor must read your current plan document and consider relevant plan provisions when designing and performing audit procedures.
- The auditor must identify which investment information is certified.
- SAS 136 requires the auditor to follow detailed requirements for providing written communication to you about the results of the audit.
- SAS 136 reformats and changes certain content requirements within the auditor's report.

Is it possible to avoid an audit?

There are certain steps you can take now that could help avoid an audit. One way is when the plan audit is predicated on participant count, you can help keep the number of participants down on your Form 5500 by having procedures that ensure:

- participants are notified of their distribution options in a timely way
- cash-out provisions of the plan are followed regularly, and
- appropriate attempts are made to locate missing participants.

Not only may these practices be helpful in avoiding an audit requirement as your plan teeters around the audit threshold, but in the event that an audit is performed, a review of these procedures for compliance by the auditor is likely.

Another way to possibly avoid an audit is to maintain more than one plan, as the audit requirement is based on the number of participants in that plan.

How does this impact me?

If you are part of management at your company, it's crucial that you understand your responsibilities. Making sure that proper documentation and administration of your plan is maintained is key to avoiding excessive audit costs should one occur. Since you'll need to retain an outside CPA for the process, having as much of your documentation buttoned up could potentially cut down on costs incurred.

At FuturePlan, we have one of the most highly credentialed team of consultants in the country, including an experienced 3(16) fiduciary team. We can help smooth the process and reduce the executive time and attention needed for this crucial process.

To this end, you should discuss the effect of the new requirements with your CPA and your FuturePlan Sales Consultant. While the new SAS 136 primarily affects audit practices, if you haven't taken an active role in past plan audits, you should anticipate more involvement under this new standard.

For more information, the DOL has also made available a helpful resource *Selecting an Auditor for your Employee Benefit Plan*.