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New Form 5500 Rules May Remove the Annual Audit Requirement

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Session CPE Requirements

- You need to attend 50 minutes to receive the full 1 CPE credit.
- There will be 4 knowledge check questions throughout the presentation. You must respond to a minimum of 3 to receive the full 1 CPE credit.

****Both requirements must be met to receive CPE credit****



Introductions



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Learning Objectives

- Recall the new Form 5500 rules governing the counting of participants and the annual audit requirement
- Recall leading practices for plan housekeeping, specifically distribution of accounts related to separated participants
- Identify how to develop a more robust self-review process for plan operations to prevent and/or detect areas of potential noncompliance to avoid costly corrections
- Recognize what options are available to have a second pair of eyes reviewing the plan, without the cost and burden of an annual audit





Part I

Understanding the New Rules



Understanding The New Rules

Background

- Why and when does an employee benefit plan need an audit?

2023 Form 5500 Changes

- Announced in February 2023 by the 3 regulatory bodies that oversee Form 5500
 - DOL, IRS and PBGC

Impact of Changes to Form 5500

- Will result in a significant number of plans being able to file Form 5500-SF instead of Form 5500, which includes a waiver of the audit requirement.





Understanding The New Rules

Form 5500 Rules

What **Didn't** Change?

The audit requirement is still based on participant counts as of the first day of the Plan year

What **Did** Change?

The methodology for determining who counts as a participant for purposes of Form 5500 Reporting



Understanding The New Rules

Old Rule

- Employees and former employees with a balance in the Plan
- Active, eligible employees, regardless of whether they have a balance

Who Counts as
a Participant?

New Rule

ONLY those with a
balance in the Plan





Understanding The New Rules

Other Important Reminders

New Rules Only
Impact Defined
Contribution Plans

Sponsors Still Required
to Report Those Active
and Eligible on Form
5500

The “**80/120**” Rule
Still Applies





Understanding The New Rules

80/120 Rule Refresher

Plans can continue to file the same form as prior year if participant count is between 80 and 120

80 Rule

Previously filed a **Form 5500** as a large filer can continue to file as a large filer until a participant count drops below 80.

120 Rule

Previously filed a **Form 5500-SF** as a small filer can continue to file as a small filer until participant count reaches over 120.



Plan filed Form 5500-SF with 90 Participants in Year 1. There are now 105 participants in Year 2.
80/120 Rule Applies!

Same Plan filed Form 5500-SF under 80/120 Rule in Year 2. There are now 118 participants in Year 3.
80/120 Rule Applies!

80/120 Rule

Same Plan filed Form 5500-SF under 80/120 Rule in Year 3. There are now 125 Participants in Year 4.
**80/120 Rule Does Not Apply!
Must file Form 5500!**

Same Plan filed form 5500 in Year 4, participant count drops to 110 in year 5.
Form 5500 filed until count drops below 100



Curious, Collaborative, Transparent, Inclusive, Reliable



Rules For Newly Established Plans

Determination of what form to use is based on headcount as of the LAST DAY of the first plan year

In Year 2 and beyond – reverts back to the FIRST DAY of the plan year



Understanding The New Rules

Who is most likely to be affected?

- Smaller employers just over the threshold
- Organizations that do not offer a matching contribution or other incentives to participate are less likely to have eligible employees contributing



Understanding The New Rules

The DOL estimates that over **18,000** plans could be impacted by this change which represents approximately **20%** of defined contribution plans that previously required an audit.

The number above does not factor plans that were set to go over the audit threshold within a year or two that will no longer need one.



Understanding The New Rules

Why Make This Change?

- Financial costs to smaller employers
- Administrative burden

SECURE 2.0 Act

- Mandatory auto-enrollment for new plans
- Long-term, part-time requirement

Fiduciary Responsibility Remains!



Knowledge Check #1

Effective January 1, 2023,
what is the “trigger” for a
Plan to require an annual
audit?

- A. 100 eligible participants as of the beginning of the Plan year
- B. 100 active participants as of the beginning of the Plan year
- C. 100 participants with account balances as of the beginning of the Plan year
- D. 100 employees on payroll as of the beginning of the Plan year





Part II

Plan Sponsor's Responsibilities and the Risk of Non-Compliance



Plan Sponsor's Responsibilities and the Risk of Non-Compliance

Who is most at risk?

- Smaller employers often more likely to have compliance issues

Cost of non-compliance

- Expensive
- Time-consuming



Plan Sponsor's Responsibilities and the Risk of Non-Compliance

**Corrective
Contributions**



Regulatory Costs



Other Costs



Plan Sponsor's Responsibilities and the Risk of Non-Compliance

Situations Requiring Corrective Contributions

Untimely or missed
contribution
remittances

Failure to
implement auto
enrollment or
auto increase

Incorrect definition
of eligible
compensation

Failure to
enroll participants
when they
become eligible

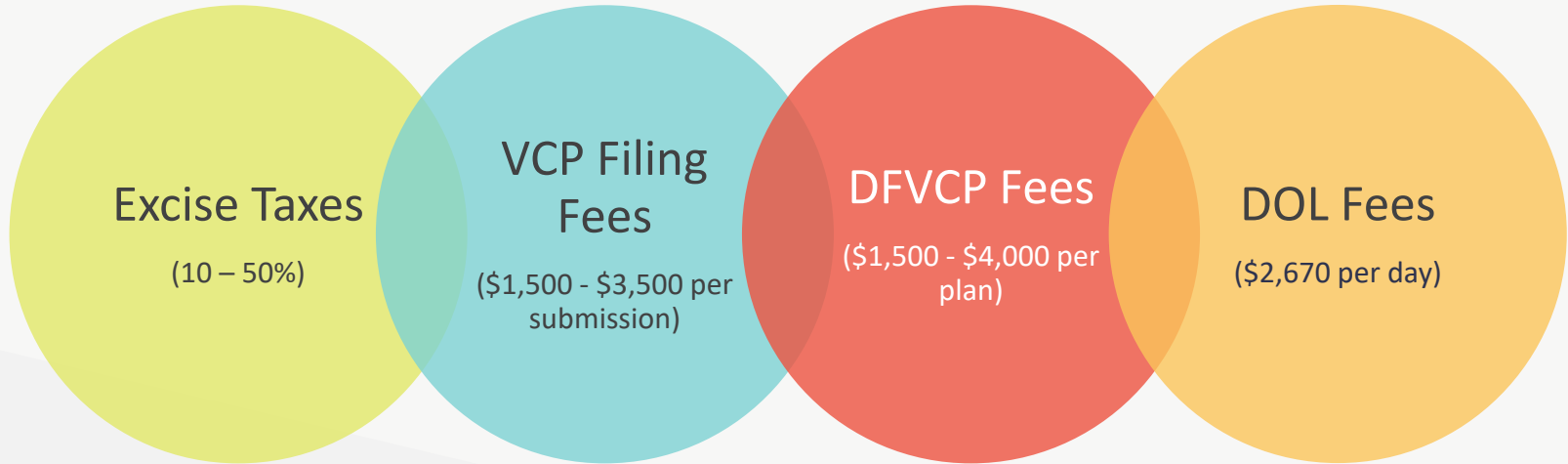
Excluding eligible
classes of
employees entirely

Failure to update
deferral elections
in payroll



Plan Sponsor's Responsibilities and the Risk of Non-Compliance

Common Regulatory Fees



Plan Sponsor's Responsibilities and the Risk of Non-Compliance

Common Other Costs



ERISA
Attorneys



Recordkeeper
and Third-
Party Fees



Added Audit
Risk



Unhappy
Employees



Your
TIME!



Recommended Practices to Self-Monitor Your Retirement Plan



Census Data



Payroll



Auto-Enrollment



Contributions



Loan Repayments

Recommended Practices

Census Data

- Review DOB/DOH/DOT for eligibility
- Different classes of employees?

Payroll

- Review how pay codes are set up in payroll
- Any new pay codes during the year?

Auto-Enrollment

- Is this feature working properly?
- Self-audit
- Failure to administer auto-enrollment correctly could lead to plan operational failures



Recommended Practices

Reconcile Plan Contributions

- Compare to custodian/recordkeeper reports
- Could catch missed deposits
- Spot check a selection of participants
- Reconcile quarterly

Timely Remittance of Contributions

- Use deduction report from payroll
- 7-day safe harbor for small plans

Loan Repayments

- Use deduction report from payroll
- The client ensures loan repayments are starting timely
- The client ensures loans are being repaid according to terms of loan promissory note

Additional Recommended Practices

Confirm all eligible employees are given the chance to enroll in plan



Verify the definition of plan compensation is being followed



Don't solely rely on the service provider.
Self-review is crucial



Knowledge Check #2

What is the Department of Labor “safe harbor” for timely remittance of employee elective deferral contributions (and loan payments) to the Plan’s custodian for small employers?

- A. At the same time payroll taxes are remitted to the taxing authorities
- B. 7 business days
- C. No later than 15 business days in the month following the month in which the contributions were withheld from payroll checks
- D. 7 calendar days





How to Monitor Terminated Participants

Annual Plan Housekeeping

- Cash-out small balances
- Outreach for larger balances
- Process defaulted loans

Tracking Lost Participants

- PBGC Missing Participants Program
- DOL Missing Participants – Recommended Practices for Pension Plans



How to Monitor Terminated Participants

SECURE 2.0 Act

Lost and Found Database

- Directs DOL to create a national online searchable lost and found database

New Automatic Rollover Limit

- Increases cash-out limit from \$5,000 to \$7,000
- Effective for distributions made after December 31, 2023



Knowledge Check #3

Under the Secure Act 2.0, what is the new automatic rollover limit (whereby the Plan administrator may automatically roll over participant balances into an outside IRA account)?

- A. \$5,000
- B. \$7,000
- C. \$1,000
- D. \$7,500





Part V

Options for Third-Party Review



Options for Third-Party Review

Audit



**Agreed-Upon
Procedures**



**Consulting
Agreement**



Options for Third-Party Review

Audit

- Audit standards allow CPA firms to perform a 103(a)(3)(C) audit, even if not required
- Can be attached to Form 5500 if >80 participants

Agreed-Upon Procedures

- Type of an attest engagement
- Financial or non-financial
- Services can be scoped out
- No opinion issued

Consulting Agreement

- Not an attest engagement
- Least formal of the 3 options





Options For Third-Party Review

Audit

Pros

- Opinion is issued
- Subject to audit standards
- Highest level of assurance

Cons

- Least flexible
- Bound by regulatory deadlines
- Generally the most costly option

Agreed-Upon Procedures

Pros

- Work can be scoped out
- A report is issued
- Subject to attestation standards
- No regulatory deadlines

Cons

- No opinion is issued
- No work performed beyond scope

Consulting Agreement

Pros

- Work can be scoped out
- No regulatory deadlines
- Generally the least costly option

Cons

- Not subject to audit or attestation standards
- Generally no report is issued

Options For Third-Party Review

*Which option is
right for you?*

Factors to Consider

Historical
compliance
issues

New regulatory
requirements

Significant
changes / plan
amendments

Personnel
turnover

New mergers,
acquisitions,
divisions, etc.

Participant
counts

Involvement by
other service
providers

Your budget



Knowledge Check #4

How would you assess the current state of your compliance with Department of Labor regulations?

- A. We are in great shape and up to date on all regulatory and compliance matters with respect to our qualified Plan
- B. We think we are doing well, but would appreciate a second set of eyes to guide us on how to improve
- C. We are not sure we are currently operating our Plan in accordance with the Plan document, but don't know where to begin to self-assess
- D. N/A – Just here to listen and learn



Thank you!

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