



Small Plan Audit Guidelines

The U.S. Department of Labor (DOL) requires smaller plans to be audited unless they qualify for an exemption. Since this could impose significant plan administration and accounting fees on small retirement plans, it is important to keep smaller plans within this exemption.

The Bad News

The DOL regulations require sponsors of small pension plan (fewer than 100 participants on the first day of the plan year) to retain an independent qualified public accountant to perform an audit of the plan's trust activities each year and include this audit with the annual Form 5500 filing. Such audits can be expensive, typically running 2 to 3 times the cost of your annual plan administration.

The Good News

If the plan meets the following requirements, then it is exempt from the audit requirement:

1. At least 95% of the plan's assets must be "qualifying plan assets." Alternatively, persons who handle non-qualifying plan assets must be bonded for the full dollar value of the non-qualifying assets. This bonding requirement is in addition to the normal ERISA fidelity bonding requirement and may require a larger bond.
2. The Summary Annual Report (SAR) provided to participants must include additional information, which URPC will prepare to comply with the disclosure requirements.
3. Upon request from a participant or beneficiary, the plan administrator must provide statements from the regulated financial institution holding/issuing the plan's assets and evidence of any required fidelity bond.

Plans that file Form 5500-EZ are exempt from the audit requirement (e.g. plans that cover only the sole owner of a business or partners in a partnership). However, if there are any other employees who meet the plan's eligibility requirements, the plan is no longer eligible to file Form 5500-EZ and must fulfill the audit requirement or meet one of the other exemptions.

Qualifying Plan Assets

- Qualifying employer securities
- Participant loans meeting the requirements of ERISA section 408(b)(1)
- Shares issued by an investment company registered under the Investment Company Act of 1940 (e.g. mutual fund shares)
- In the case of an individual account plan, any assets in the individual account of a participant over which the participant has the opportunity to exercise control if the participant is furnished, at least annually, a statement from a regulated financial institution describing the assets held/issued by such institution and the asset amount.

Qualifying Plan Assets (cont'd)

- Assets held by any of the following institutions:
 - (1) Bank or similar financial institution
 - (2) Insurance company qualified to do business under the laws of a state
 - (3) Organization registered as a broker-dealer under the Securities Exchange Act of 1934
 - (4) Any other organization authorized to act as a trustee for individual retirement accounts

If your plan does not meet the audit exemption

As the regulations are drafted, there is no retroactive way to make your plan meet the audit exemption. The 95% threshold or the additional bonding requirement must be met as of the first day of the plan year. However, DOL representatives have acknowledged that there may be some reasonable administrative delay in obtaining a bond if the assets do not meet the 95% threshold. Most small plans are valued annually so as a practical matter if the bond amount is reviewed annually and increased as necessary, the DOL has been accepting this practice. However, if the exception is not met, plan sponsors must engage an independent qualified public accountant to perform this audit and must include it with the Form 5500 filing. URPC cannot prepare this audit, as we are not an accounting firm. Failure to include this audit with the filing can subject the plan sponsor to significant penalties. The DOL has the statutory authority to assess penalties of up to \$1,100 per day for willful failure to comply with reporting requirements.

How to Proceed

Both the 95% threshold and bonding requirement are measured as of the first day of the plan year. Keep in mind, annual administration is performed well after the end of the plan year, so URPC will not know the investment makeup of the plan, as of the first day of the plan year. Make sure to verify that at least 95% of the plan assets are "qualifying plan assets," or purchase a bond that is at least equal to the value of the non-qualifying plan assets as soon as possible. Since ERISA bonds are relatively inexpensive, URPC recommends that plan sponsors err on the side of too much bond coverage rather than too little.

Your goals for tomorrow drive choices today.

Contact URPC for plan design consultation, illustrations, fee quotes, or a proposal.

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