

401(K) RETIREMENT PLAN FORM 5500 AND AUDIT

Why does my 401(k) retirement plan need an audit?

The 401(k) plan audit is mandated by the Employee Retirement Income Security Act (ERISA) and is intended to make sure a plan is being run correctly. The audit seeks to; (1) review 401(k) plan documents and (2) verify the 401(k) plan is compliant with the IRS and DOL rules. An independent accounting firm that specializes in these types of audits will perform the audit. An audit performed by an independent accountant is different than a DOL/IRS audit.

When is an audit required on a 401(k) retirement plan?

When a 401(K) plan has 100 or more eligible participants on the first day of the plan year, it's considered a "large plan" for DOL and IRS reporting purposes. A large plan is required to complete a Form 5500 with more Schedules and attach an audit report when filing the 5500. While 100 eligible participants is the general threshold for large-plan status, there is what is commonly referred to as the 80-120 rule. Plans that have between 80 and 120 eligible participants at the beginning of the plan year are permitted to file their Form 5500 in the same way they did the year prior. For example, a plan that had 70 participants on January 1, 2023 and filed as a small plan for 2023, and then grew to 115 participants by January 1, 2024, may elect to file as a small plan again—and avoid an audit—for the 2024 plan year. An audit would not be required in this example until the eligible participant count exceeded 120 as of the first day of a plan year.

Prior to plan years beginning in 2023, the eligible participant count included active employees even if they have never elected to participate and don't have an account balance. Former employees who have left their 401(k) funds in the plan are also included in the participant count. Therefore, it was possible for you to meet the audit requirement if you have, for example, 121 eligible participants as of January 1st, but only 50 with an account balance.

For plan years beginning on or after January 1, 2023, only participants with an account balance at the beginning of the year (or the end of the year in the case of the first plan year) are counted for purposes of requiring an audit. Using the example above, if you have 121 eligible participants but only 50 with an account balance, you can now file a short form 5500 (5500-SF) and no audit will be required. This will begin with 2023 tax forms filed in 2024.

If you are still close to the participant count threshold, consider looking at your terminated participants with account balances and make efforts to force out small account balances as your plan may allow.

What deadlines apply to my Audit and Form 5500 filing?

For the Form 5500 filing, the audit will need to be completed and submitted with the Form 5500 to the IRS within seven months from the end of the plan year. If an extension is filed (Form 5558), the due date can be extended an additional two and a half months. For example, if your 401(k) plan year ends December 31st, the filing would need to be completed by July 31st of the following year. If an extension is filed, the deadline would then be October 15th of the following year.

What do Auditors review during an audit:

The first things an auditor will review as part of a 401(k) plan audit are the company's documentation and compliance. An analysis will be conducted to make sure the plan is operating within the guidelines of the plan-related documents. The plan will also be reviewed to ensure it follows specific Department of Labor and IRS regulations. After this, the plan's financial statements, any disclosures, and Form 5500 will be reviewed to make sure the financial information is reported correctly.

What to expect with your audit:

To ensure a smooth process, plan sponsors should keep comprehensive records and plan ahead by reviewing the auditor-requested items in advance of the audit start date. Here is a listing of some of the items the auditor will be asking to review:

- Plan documents, adoption agreements and amendments
- IRS opinion letter on the plan document
- Summary Plan Description (SPD) and any modifications (SMM)
- Agreements with service providers
- SOC-1 report covering service providers internal control processes
- Payroll records and employee census (list of all paid employees for the year including key demographic data)
- Enrollment forms completed by participants
- A listing of contributions remitted to the plan, by pay period
- Trust and recordkeeping reports
- Distributions, loans or other plan activity; including forms completed by participants
- Proof of insurance coverage for ERISA Bond
- Prior Form 5500 filings and draft of current year Form 5500
- Independent appraisal for company stock or other non-traditional investments held by the 401(k), if applicable
- Participant Communications and Notices
- Corporate Minutes

It is always recommended that you reach out to your TPA when you receive your audit letter to review items they can assist you with, and identify the timeframe for your needs. Audits can take several months to complete, so starting your audit early is advised. The costs associated with the audit can be paid from plan assets.