Employee Benefit Plan Update & Red Flags for Administrators to Know

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Gelman, Rosenberg & Freedman CPAs is now GRF CPAs & Advisors

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- This presentation will be recorded and made available to download at www.grfcpa.com/webinars.
- Technical questions about the survey can be addressed to Nathan McElveen at nmcelveen@grfcpa.com.

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Additional Information

Learning Objective To provide attendees with a better understanding of the changes retirement plan managers should expect with SAS No. 136 and the top risks to anticipate in 2020.	**Instructional Delivery Methods** Group Internet-based
Recommended CPE 1.0 CPE Credit	**Recommended Fields of Study** Auditing – Technical
Prerequisites None required	**Advance Preparation** None
Program Level Basic	**Course Registration Requirements** None
Refund Policy No fee is required to participate in this session.	**Cancellation Policy** In the event that the presentation is cancelled or rescheduled, participants will be contacted immediately with details.
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Presenters

Meet the instructors

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Agenda

Requirements for an audit

Employee benefit plan update

Top 4 red flags for plan administrators

Employee Benefit Plan Audits

Requirements for an Audit

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Polling Question #1

Are you currently subject to a retirement plan audit?

A. Yes

B. No

C. Unsure

Understand Employee Benefit Plan Audits

When do we need an audit of our retirement plan?

One of the most common questions arises from the basic determination of whether **your plan is subject to Title 1 of ERISA** (inclusive of the audit requirements)

The general rule is that an audit is required for a plan **when it reaches 100 participants or more,** which is measured as of the beginning of the plan year

Understand Employee Benefit Plan Audits

What is the definition of participant?

If we are measuring the audit requirement based on a 100-participant threshold, it is important to understand what "qualifies" as a participant under the IRS definition. A participant is defined to include all of the following:

- Active employees who are participating in the plan
- Terminated employees with account balances that remain in the plan
- Active employees who are eligible to participate in the plan (even if they elect not to participate)

Understand Employee Benefit Plan Audits

What is the 80/120 rule?

This rule offers reprieve for plans that frequently fluctuate between slightly more or less than 100 participants. Each year, a plan that has between 80 – 120 participants can elect to file the Form 5500 in the same category (large plan or small plan) as the prior year.

Small plans file a short version of the 5500, in which an audit is not required

Large plans file the full 5500 form with Schedule H, and audits are required

Understand Employee Benefit Plan Audits

What are the situations in which plans are exempt from the audit requirements?

Government Plans

Established and maintained by a government agency of the U.S.

Church Plans

Established and maintained by a church or by a convention

Safe Harbor Plans

Funded solely through salary reduction agreements and are not "maintained"

Polling Question #2

If your plan is subject to audit, does your plan qualify for a DOL Limited scope audit?

A. Yes

B. No

C. Unsure

Employee Benefit Plan Update

Changes For 2020 Plan Audits

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Changes as a Result of CARE Act

Options for Individuals

- Early withdrawal from an Eligible Retirement Plan (including IRAs)
  - Up to $100,000 can be taken between 1/1/20 – 12/31/20
  - No 10% early withdrawal penalty is assessed
  - Income is ratably spread over 3 tax years beginning in 2020 (can elect out of spread)
  - Can repay the distribution within 3 years of receipt and avoid reporting the income.
  - Taxpayer, spouse or dependent must have been diagnosed with SARs-CoV-2 or COVID-19 or have experienced financial hardship because of quarantine (layoff, reduced hours).
- Loans from a Qualified Employer Plan
  - Loans up to 100,000 (old limit was 50,000) permitted in the 180 days following enactment of the law. (3/27/20)
  - Repayment dates on existing loans are delayed for one year.

Changes as a Result of CARE Act

Options for Employers

- Non-safe harbor plan
  - If matching, discretionary and/or profit sharing contributions is subject to annual determination, it's a bit easier to reduce or possibly eliminate contributions this year.
  - Still need to ensure that you would pass your discrimination compliance testing

- Safe harbor plan
  - Can be a little more complicated – look to see if your plan document states you have the risk to suspend your contributions (for any reason) in middle of plan year
  - If no provision in plan document, the IRS allows you to drop or reduce contribution if your business is losing money
  - Still need to ensure that you would pass your discrimination compliance testing

Employee Benefit Plan Update

SAS No. 136

"Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA"

- Created and proposed by the AICPA in response to the DOL's criticizing the results and findings of their 2015 study on Employee Benefit Plan Audits
- ASB has voted to issue the standard which was finalized in July 2019
- Would be effective for Plan years ending on or after December 15, 2020

Understand Employee Benefit Plan Audits

SAS No. 136 Highlights

Limited Scope Audit (ERISA Section 103(a)(3)(c) Audit)

Create a different audit opinion (language) when plan management/sponsor engages a firm to perform a "limited scope" audit

Additional Work on Certifications

Additional audit procedures will have to be applied to investment certifications

Audit Opinion on Compliance

The auditor will have to report on specific plan provisions and whether or not the Plan has complied

Understand Employee Benefit Plan Audits

Changes Under SAS No. 136

Clarify and expand on Plan Sponsor responsibilities	- Assess whether the certifying institution is qualified - Certified investment information is appropriately measured, presented and disclosed in accordance with the applicable financial reporting framework. - Maintaining a current plan document and amendments, etc. - Maintain sufficient participant records
Clarify and expand on the Auditor's responsibilities	- Communicate "reportable findings" - Review draft of Form 5500 prior to finalization

Understand Employee Benefit Plan Audits

Management's Responsibilities

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error. Management's election of the ERISA Section 103(a)(3)(C) audit does not affect management's responsibility for the financial statements.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about ABC 401(k) Plan's ability to continue as a going concern for [insert the time period set by the applicable financial reporting framework].

Management is also responsible for maintaining a current plan instrument, including all plan amendments, administering the plan, and determining that the plan's transactions that are presented and disclosed in the financial statements are in conformity with the plan's provisions, including maintaining sufficient records with respect to each of the participants, to determine the benefits due or which may become due to such participants.

Understand Employee Benefit Plan Audits

Proposed Changes to the 5500

- ERISA, the IRS and the Pension Benefit Guaranty Corporation are proposing revisions to modernize the form 5500, which is the primary source of information about employment-based pension and welfare plans in the U.S.
- **Proposed date of implementation:** Originally beginning with calendar Plan Year 2019 but has been postponed

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Polling Question #3

Do you plan to reduce employer contributions to your plan for 2020?

A. Yes

B. No

C. Unsure

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Top Red Flags for Administrators to Know

Avoid These Common Mistakes

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Top Red Flags for Administrators to Know

(1) Fiduciary Coverage

- What/Who is a Fiduciary?
- What should their role be in your plan?
- 3(21) vs. 3(38)

Top Red Flags for Administrators to Know

(1) Fiduciary Coverage

- Fiduciary (adjective): of, relating to, or involving a confidence or trust: such as
  - a: held or founded in trust or confidence; a fiduciary relationship; a bank's fiduciary obligations
  - b: holding in trust
  - c: depending on public confidence for value or currency
- Fiduciary relationships often concern money, but the word fiduciary does not, in and of itself, suggest financial matters. Rather, **fiduciary** applies to any situation in which one person justifiably places confidence and trust in someone else and seeks that person's help or advice in some matter. The attorney-client relationship is a fiduciary one, for example, because the client trusts the attorney to act in the best interest of the client at all times.

Top Red Flags for Administrators to Know

(1) Fiduciary Coverage

- 3(21) vs. 3(38) Fiduciary:
  - Any individual is a fiduciary under Section 3(21) if he or she exercises any authority or control over the management of the plan or the management or disposition of its assets; if he or she renders investment advice for a fee (or has any authority or responsibility to do so); or if he or she has any discretionary responsibility in the administration of the retirement plan.
  - Both 3(21) and 3(38) advisers accept fiduciary responsibility and adhere to ERISA §404(a)'s duty to serve solely in the interest of plan participants and both have to meet the "prudent man" standard of care. Plan sponsors retain the responsibility to select and monitor the adviser, regardless of their adviser's fiduciary status.

3(21) Fiduciary	**3(38)** Fiduciary
State in writing co-fiduciary status	State in writing co-fiduciary status
Assists in drafting IPS	Drafts IPS
Helps design initial fund menu	Builds initial fund menu
Provides monitoring	Monitors menu
Recommends changes	Makes changes
Recommends mapping strategies	Determines mapping strategies
Provides documentation	Provides documentation

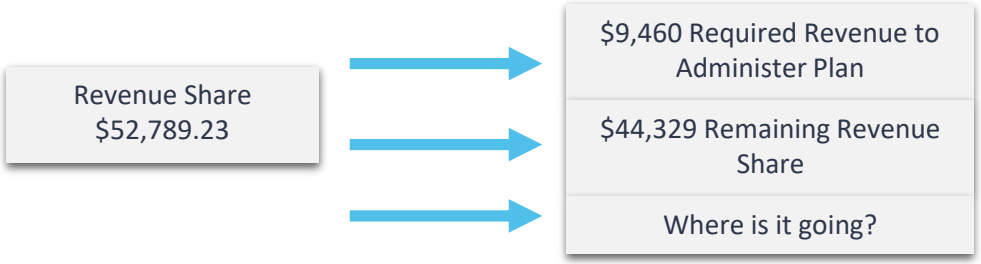
Top Red Flags for Administrators to Know

(2) Mutual Fund Share Class

- Share Class drives pricing for plans
- Risk of proprietary funds
- Understanding revenue sharing
- Example:

Company A – Total Plan Assets $15 million
(R4 Share Class)

Revenue Share Breakdown



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Top Red Flags for Administrators to Know

(3) Fee Transparency

- Provider's obligation
- Understand all types of fees
  - Provider
  - Mutual funds
  - Third party administrator
  - Advisor

Top Red Flags for Administrators to Know

(4) Policies and Procedures

- Investment Policy Statement
- Plan Benchmarking
  - How often to review?
- Employee Education
  - Managing Volatility
  - Understanding Individual Goals
  - Managing Risk
  - "What are you prepared to do for your employees when you go back to work?"
- Investment Reviews
  - Fi360 Fiduciary Score

Top Red Flags for Administrators to Know

(4) Policies and Procedures

fi360 Fiduciary Score® Criteria Breakdown (Mutual Funds/ETFs/GRPAs Only)

fi360 Fiduciary Score Criteria

1	Inception Date: The investment must have at least a 3 year track history.
2	Manager Tenure: The investment manager must have at least a 2 year track history. (Most senior manager's tenure)
3	Assets: The investment must have at least 75 million under management. (Total across all share classes for funds/etfs)
4	Composition: The investment's allocation to its primary asset class should be >= 80%. (Not applied to all peer groups)
5	Style: The investment's current style box should match the peer group. (Not applied to all peer groups)
6	Prospectus Net Exp Ratio: The investment must place in the top 75% of its peer group.
7	Alpha: The investment must place in the top 50% of its peer group.
8	Sharpe: The investment must place in the top 50% of its peer group.
9	1 Year Return: The investment must place in the top 50% of its peer group.
10	3 Year Return: The investment must place in the top 50% of its peer group.
11	5 Year Return: The investment must place in the top 50% of its peer group.

Questions?

Contact Us

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