



Form 5500s and the Proposal to Publicly Disclose Operational Noncompliance

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For most plan sponsors, October 15 is the extended deadline for filing the Form 5500 with the U.S. Department of Labor (DOL). As the deadline approaches, plan sponsors often spend considerable time working with the auditor to obtain the final audit report. The audit report's primary role is to disclose whether the financial information attached to the Form 5500 fairly presents the plan's financial position, in all material aspects, in accordance with generally accepted accounting principles.

On April 20, 2017, the American Institute of CPAs (AICPA) issued a proposal to change the auditing standards applicable to employee benefit plans. The Proposed Statement on Auditing Standards (Proposed SAS) was in response to a 2015 DOL study assessing the quality of benefit plan audits. The study reported that 39% of plan audits contain major deficiencies with respect to one or more relevant audit standards.

The Proposed SAS would mandate substantive operational compliance reviews of specific plan document provisions irrespective of the assessed risk of material misstatement. The review would include most aspects of plan administration, including eligibility, vesting, contributions, benefit payments, compensation, forfeiture usage, nondiscrimination testing, loans and hardship withdrawals. The Proposed SAS would require auditors to disclose findings of noncompliance in the *Report on Specific Plan Provisions Relating to the Financial Statements* unless the findings are clearly inconsequential. This *Report* would form part of the official audit report that is attached to the Form 5500 and publicly available on the DOL's EFAST2 website.

Public disclosure of operational noncompliance would present many issues for employers. These issues include losing the retirement plan's tax-qualified status and exposing fiduciaries to personal liability. Plan sponsors should contact legal counsel for guidance on best practices to modify internal controls so that a laundry list of noncompliance findings will not be available to federal government agencies, the general public, and plaintiff's attorneys. The Proposed SAS suggested that the final audit standards would become effective December 15, 2018.

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