EMPLOYEE BENEFIT PLAN AUDITS—FAQ

What types of plans require audits?
Any type of *funded* benefit plan with more than 100 eligible participants requires the Form 5500 along with audited financial statements. Plans include:

- 401(k) plans
- 403(b) plans (starting with 2009 plan years)
- Pension plans
- Profit-sharing plans
- Health and welfare plans

How do I know if my business needs an audit?
The U.S. Department of Labor requires all employers with more than 100 *eligible* participants to conduct an annual employee benefit plan audit. The number of participants is based upon the number of people eligible to participate in the plan, not the number of actual participants.

What is the significance of 100 employees?
Plans with 100 or more eligible participants are considered "large plans." They are required to file a Form 5500 along with audited financial statements. Plans with fewer than 100 eligible participants are considered “small plans”. They may be able to use abbreviated reporting forms and generally don’t require an audit.

What is the purpose of an employee benefit plan audit?
The Form 5500, which is required of all employee benefit plans, is unique in that it is subject to review by both the U.S. Department of Labor (DOL) and the IRS. The DOL makes sure participants receive the benefits they are entitled to under the provisions of the plan, while the IRS reviews the tax-exempt status of the plan. An independent audit is required as proof that benefits are being properly distributed in accordance with the plan.

What specifically is involved?
Audits are performed on the financial statements of the plan and typically include verification of plan assets and liabilities, as well as testing activity during the plan year. Testing includes investment results, contributions of employers and employees, distribution of benefits, and payment of expenses. In addition, the auditor is required to test the compliance of the administration of the plan with the provisions of the plan document as it relates to individual participant accounts. Simply put, they will check to make sure benefits are being distributed as designated by the plan. Eligibility of employees participating in the plan will also be reviewed as well as the distributions they receive.

What are the penalties for not having an audit performed?
Failure to file, late filings, or deficient filings, may result in penalties up to $50,000 for each plan year until an appropriate filing is made and accepted. Improper administration could also jeopardize the tax-exempt status of the plan.

Typical problems that may arise in plan administration include:

- Misuse of plan assets
- Improperly excluding a class of employees from participating in the plan
- Preferential benefits for highly compensated employees
- Inappropriate investments in the plan
- Improper charging of expenses to the plan