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## The “80 – 120” Rule

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Administrators of a 401(k) plan subject to ERISA must file an annual return for each plan every year (Form 5500 series). If the plan has between 80 and 120 participants at the beginning of the plan year, the administrator of the plan will elect to file as a “small” plan or as a “large” plan. Both large and small plans file Form 5500.

A small plan, if it meets certain requirements, may be able to file Form 5500-SF instead. An important difference is that a large plan will file Form 5500 with a Schedule H attached and requires an audit of the plan’s financial statements by an independent public accountant. A small plan will file Form 5500 with a schedule I attached or a 5500-SF and there is no audit requirement. The election is largely based upon how the plan filed in the previous year on its annual return.

Plans that have 100 or more participants at the beginning of the plan year and filed as a large plan (Form 5500 with schedule H and independent accountant’s report) in the previous year are subject to the audit requirement and must have an annual audit of their financial statements. Plans with fewer than 100 participants at the beginning of the plan year and filed as a small plan (Form 5500 with schedule I or Form 5500-SF) in the prior year are not subject to the audit requirements.

Plans with fewer than 100 participants that elect to file as a large plan are subject to the audit requirement as well. Also, plans with less than 100 participants that do not hold “qualifying plan assets” under DOL regulations are also subject to the audit requirement.

If the plan filed as a small plan in the previous year and the plan has between 100-120 participants at the beginning of the plan year, the administrator of the plan can elect to file as a small plan or as a large plan.

In most cases, the choice will be fairly clear cut with the exception of having 100-120 participants at the beginning of the year. The “80-120” rule is found under DOL Regulation 2520.103-1(d).

For more information on the “80–120 Rule”, please contact Paul McGovern at [PMcGovern@DowneyCoCPA.com](mailto:PMcGovern@DowneyCoCPA.com).