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Changes to Forms 5500 and 5500-SUP Ring in the New, but Bring Back Some Old

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Preparing employer benefit plans' annual filings to federal agencies can be detailed and time-consuming. A review of recent changes to the 2014 Form 5500 series indicates this process could become even more laborious for some plans, as the government seeks more data disclosure.

The Form 5500 is used by multiple government agencies (the U.S. Department of Labor's Employee Benefits Security Administration, IRS and the U.S. Pension Benefit Guaranty Corp.) to obtain information about employee benefit plans. The information is then used by the agencies to monitor compliance and to develop targeted audit programs that ensure rules are followed and potential areas of abuse are uncovered.

Information submitted in these annual filings lets the agencies develop educational initiatives to help plan sponsors better understand their fiduciary responsibilities. In addition, the data will be used by IRS to more appropriately structure its data request letters for plans the agency wishes to audit.

The Form 5500 is due seven months after the end of the plan year. An extension can be obtained by filing a Form 5558.

2014 Form 5500 and Proposed Form 5500-SUP

DOL released the draft 2014 Form 5500 and IRS released a draft of the "Form 5500-SUP — Annual Return of Employee Benefit Plan Supplemental Information," followed by a draft Form 5500-SUP instruction. There weren't many changes in the 2014 Form 5500. One noticeable change to it, though, is the requirement that Multiple Employer Plan filings include an attachment listing each participating employer, as well as each employer's percentage of contributions for the year.

See box at right for some of the changes. A copy of the new Form 5500 can be found on the Employee Benefits Security Administration [website](#).

Proposed Form 5500-SUP and Instructions

Form 5500-SUP is a paper-only form containing information that will supplement the Form 5500 and the Form 5500-SF. Employers not subject to IRS electronic filing requirements (those with fewer than 250 tax returns of any type during the calendar year, which includes the first day of the plan year) may use the paper Form 5500-SUP instead of answering the questions on the Form 5500 filed electronically with DOL.

Form 5500-SUP will be used for the 2015 plan year.

On Page 3 is also a summary of new items appearing on the proposed Form 5500-SUP, to help you prepare for 2015's filing, when the changes are expected to be approved and be integrated into the Form 5500.

The proposed Form [5500-SUP](#) brings back some of the questions removed starting with the 2009 Form 5500, when the filing process was transitioning to electronic filing via EFast2 (see box on Page 4 for more history), and adds some new questions. The instructions can be found online [here](#). It is interesting to note that the instructions issued after the Form 5500-SUP do not all correspond to the items on the Form 5500-SUP itself!

What Does It Mean to Plan Sponsors?

For some plan sponsors, the Form 5500-SUP will induce a bit of déjà vu; for others, it will be a learning opportunity or a refresher on ERISA compliance issues. However, if the proposed changes to the 2015 Form 5500 are accepted, the annual reporting process will require more concentrated effort for gathering data to answer the form's questions. Plan sponsors should reach out to their various service providers and begin identifying who will

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provide what information, if the proposed changes are incorporated into the 2015 Forms 5500 series.

The proposed Form 5500-SUP is a draft. Given the disparity between the draft form and related instructions, we can expect to see revised drafts of one or both documents. For example, while not included among changes listed below, Line 9 of the Form 5500-SUP requests the amount of contributions deducted and whether the contributions exceeded the deductible limit. The instructions for Line 9, however, relate to the amount of distributions made under certain circumstances.

Form 5500-SUP and IRS Request for Comment

IRS expects that the questions on the Form 5500-SUP will be added to the 2015 Form 5500 and Form 5500-SF and related schedules. IRS issued a [request](#) for comments on the new Form 5500, including the agency's rationale for each of the changes. (See box on Page 3 for a list of changes to the Form 5500 that would appear for 2014 filings.) The public comments are due on or before Feb. 23.

Following is a summary of some of the proposed changes to the 2015 Form 5500:

- **Trust information** — the Form 5500-SUP requests the trust name, Employer Identification Number, name of trustee or custodian and telephone number. This information was previously requested on the Schedule P.

Comment: Obtaining the correct trust EIN was often a challenge for plan sponsors and a source of consternation for IRS as wrong trust EINs were a common error.

- **401(k) plans** — questions relating to federal tax Code sections 401(k) and 401(m) nondiscrimination testing requirements.

Comment: The proposed question includes a yes/no check box related to whether the plan used the current-year testing method, rather than asking if the plan used

either the current-year method or prior-year method. The instructions note that the plan document must specify whether the current-year or prior-year method is used, as well as when a change can be made.

- **Nondiscrimination and coverage** — questions relating to satisfying the Code 410(b) coverage requirements.

Comment: Schedule T — Qualified Pension Plan Coverage Information, which was removed in 2005, asked for information about coverage and nondiscrimination. In addition, the determination letter process removed the option to request a coverage and nondiscrimination determination. Again including this information will enable IRS to monitor compliance. Plan sponsors and their service providers often routinely include these tests in their annual testing process.

- **Employee stock ownership plan** — the draft contains questions related to dividends, including the total amount, dividend rate and whether the dividends were payments in redemption in stock. IRS notes that this information is buried in the taxpayer's Form 1120 — U.S. Corporation Income Tax Return. IRS said it believes this information will help the Employee Plans Compliance Unit target potential abusers.

Comment: Schedule E — Employee Stock Ownership Plan Annual Information (removed in 2009) required even more information! The proposed new instructions do not include any information about ESOPs.

- **Plan document and qualification** — the questions added relate to whether the plan has been amended on a timely basis, the date of adoption of the last plan amendment/restatement, whether the plan is an individually designed plan or an approved master-and-prototype plan and whether it requires a code relating to the tax law for which the plan was amended. IRS says that knowing how many plans are using a pre-approved plan will help the agency's future targeted compliance projects. In addition, such information will assist IRS when planning for the remedial amendment cycle.

Comment: The 1998 Form 5500 asked questions regarding plan amendments and whether the amendment changed any information in the summary plan description. This question and others were removed from the 1999 Form 5500 and the Form 5500 itself was restructured in anticipation of the DOL's planned switch from paper to electronic filing under the EFAST2 system. The proposed instructions include an applicable code that relates to major tax law changes (the Pension Protection Act of 2006, the Economic Growth and Tax Relief Reconciliation Act of 2001 and

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“GUST,” which comprises the Small Business Job Protection Act of 1996, the Uruguay Round Agreements Act, the Taxpayer Relief Act of 1997 and the Uniformed Services Employment and Reemployment Rights Act of 1994).

The proposed changes seen on the Form 5500-SUP that bring some new content to the filing are:

- **Preparer information** — noting that optional preparer information was removed in 2009 and added back in 2012, IRS is now proposing mandatory preparer information. Such information will enable the IRS Employee Plans exam unit to question the preparer for issues related to the Form 5500. It also will assist IRS and DOL with targeted compliance and fiduciary exam initiatives.

Comment: This mandatory requirement may draw comments. If the preparer information is made public, it could be viewed as allowing competitors to know each other’s “book of business.” It will be interesting to understand how DOL will use such information

for fiduciary purposes. Generally, the plan sponsor provides the necessary information to the Form 5500 preparer, and he or she will question anything unclear. It will be interesting to see if the DOL’s revised regulations regarding the definition of a fiduciary mention whether DOL believes the Form 5500 preparer has fiduciary responsibility regarding the Form 5500.

- **Unrelated business taxable income** — this question simply asks if the plan trust incurred unrelated business taxable income, and asks the preparer to include the amount if the answer is yes. IRS believes that this will let IRS monitor any income earned from activity not related to the trust.

Comment: Company staff charged with filing the Form 5500 may not know the answer to this question, and will look to their auditors and finance departments for the answer. Plan sponsor investment committees, investment advisers and auditors should be familiar with investments that could generate UBIT. This will be another item to add to any Form 5500 data collection process.

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2014 Form 5500, Schedule, Instruction Changes

A brief summary of some of the most important changes to Form 5500, its schedules and instructions:

Form 5500 — Participant counts. A new question on the total number of active participants at the beginning of the plan year has been added to Line 6a(1). (Note: 2014 Form 5500-SF added new questions to Line 5 regarding number of participants at the beginning and end of the plan year, as well as terminated participants who are less than 100-percent vested.)

Schedule MB. A new Line 4f has been added, which requires plans to provide information regarding the plan year in which distressed plans will either emerge from critical status or face expected insolvency.

Schedule SB. There are a few modifications to the Schedule SB:

- Line 3 — the funding target must be reported for each type of participant (active, retired, terminated vested)
- Line 11b — it has been split in two parts, requiring calculations based on the prior year’s effective interest rate and actual return
- Line 15 — instructions are expanded to address situations in which the adjusted funding target attainment percentage was not certified for the plan year
- Line 27 — is altered to reflect changes under the Cooperative and Small Employer Charity Pension Flexibility Act of 2014.

Schedule H. Instructions have been enhanced for Item 1c(13) to explain what a registered investment company means.

Form 5500 signature and date. Instructions have been updated to remind filers to check their filing status. A “processing stopped” or “unprocessable” status could mean that the signature was not a valid electronic signature.

Multiple employer plans. The questions on the MEWA attachment to the 2013 Form 5500 have been included in the 2014 Form 5500 and Form 5500-SF. In addition, the check box for a multiple employer pension plan contains a parenthetical reminder for employers to include an attachment with the following information. It must:

- list each participating employer in the plan during the plan year (name, Employer Identification Number); and
- include a good-faith estimate of each employer’s percentage of the total contributions (employer and employee) made by all participating employers. ❖

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- **International plans** — this is a question about whether the plan is maintained in a U.S. territory.

We will keep you updated on any final changes to the proposed Form 5500-SUP as the filing date for the 2015 plan year approaches. ❖

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A Brief History Of Form 5500 Changes

The Form 5500 has undergone many changes over the years, including the removal of:

- Schedule E — ESOP Annual Information (2009);
- Schedule F — Fringe Benefit Plan Annual Information Return (2002);
- Schedule P — Annual Return of Fiduciary of Employee Benefit Trust (2006); and
- Schedule T — Qualified Pension Plan Coverage Information (2005).

The “Schedule B — Actuarial Information” was replaced in 2008 by “Schedule MB — Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information” and “Schedule SB — Single-Employer Defined Benefit Plan Actuarial Information.” The Schedule SSA was replaced in 2009 by the Form 8955-SSA as a standalone form filed with IRS. ❖



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