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A Fresh Look at Your Form 5500 Filing

If your firm has a profit sharing plan, a 401(k) plan or some other tax-qualified retirement plan, then you have been given a Form 5500 to sign and file every year since your business adopted the plan. While the form looks like most other IRS forms, the information reported on the filing is automatically provided to the Department of Labor (DOL), the IRS and the Pension Benefit Guaranty Corporation (PBGC) by the electronic system that captures the data. This system is known as the ERISA Filing Acceptance System (EFAST2) and is funded and managed by the DOL.

What this tells you is that three governmental agencies have their fingers in the mix and that each has its own agenda in determining what data is collected. Ultimately, though, all of the agencies want to make sure that your plan is being operated correctly and for the sole benefit of your employees.

How is the Form 5500 Data Utilized?

You may wonder how the government uses the data it collects about your plan on the Form 5500 you submit. Since each agency has its own mandate, we need to look at each one separately.

The **IRS** is all about tax compliance. It is responsible for the rules that allow tax benefits for both employees and employers, related to retirement plans, including vesting and distribution requirements.

The **DOL**, through its Employee Benefits Security Administration (EBSA), focuses on protecting the rights and benefits of participants and monitors the decisions and actions of fiduciaries associated with the operation of the plan.

The **PBGC** was created to protect pension benefits in private-sector defined benefit plans. It guarantees payment of certain pension benefits under plans that are terminated with insufficient money to pay all benefits.

The Form 5500 is an informational return and government agencies use it not only for enforcement but also for statistical analysis, e.g., how many workers are covered by workplace plans, how many small plans are there, how many large plans are there, what does that mean in terms of policy making, etc.

Which plans are considered "small"?

Generally, plans with less than 100 participants on the first day of the plan year are considered "small plans" and those with 100 or more participants are considered "large plans." Large plans generally complete a Form 5500 while small plans (if they meet certain conditions) may instead complete a simplified annual report called Form 5500-SF. Depending on the type and size of

the plan, various schedules may be required to be attached to the forms. The forms are filed electronically using EFAST2.

A plan that filed using small plan status in the previous year can continue to file as a small plan as long as the participant count does not exceed 120 at the beginning of the plan year. All participants, active as well as inactive, are considered, including those in salary deferral plans who choose not to defer and may have no account balance.

It is usually more convenient and less costly to file as a small plan. This provides an incentive for paying out terminated participants where possible when the participant count approaches 120.

Plans that cover only a single owner (and spouse, if applicable) of a wholly owned trade or business, or only partners of a partnership (and spouses, if applicable) can file a shorter Form 5500-EZ. Such plans with combined plan assets of $250,000 or less at the close of the plan year are exempt from filing. The Form 5500-EZ must be filed on paper.

Which plans need an accountant's audit?

The most significant difference between large plans and small plans is the requirement that large plans engage an independent qualified public accountant to audit the plan each year. The audit verifies the accuracy of financial data, employee participation and other compliance matters and must be attached to the Form 5500.

It is important to engage an auditor who has expertise in this particular area. The DOL is scrutinizing audit reports and, if one is found to be deficient, it will reject the filing outright and hold the plan sponsor responsible, e.g., assess penalties for late filing, if the rejection isn't remedied by the filing deadline.

What is the due date for filing the Form 5500?

Form 5500 must be filed by the last day of the seventh month after the close of the plan year. An automatic extension of time of up to 2½ months can be obtained by filing Form 5558 with the IRS by the original due date of the report.

Alternatively, an approved extension to file the employer's income tax return can be used to extend the due date of Form 5500 if the fiscal years are the same and the extended due date is beyond the original filing date of the Form 5500. Special filing extensions may be announced in the event of declared natural disasters.

What's new on the 2015 Form 5500?

A number of new compliance questions have been added to the 2015 Form 5500. The initial instructions for completing the 2015 form indicated these new questions were optional. However, in February 2016, the IRS updated the instructions to make clear that these questions should be skipped:

Form 5500:

- Preparer information (bottom page 1)
- Lines 4o-p, 6a-d of Schedules H and I
- Part VII of Schedule R

Form 5500-SF:

- Preparer information (bottom page 1)
- Line 10j
- Parts VIII and IX

Form 5500-EZ:

- Preparer information (bottom page 1)
- Lines 4a-d and 13-16

What information was the IRS attempting to collect?

The new lines on the Form 5500 focus on certain nondiscrimination testing that must be satisfied every year, solicit details about plan amendments that have been made and other benefit distribution and income details.

Is this information readily available?

In some cases, yes, but not always. For example, one of the new items expects the filer to isolate the amount of hardship and other pre-retirement distributions from amounts already reported elsewhere on the Form 5500 report. Recordkeeping systems generally capture total distributions and do not isolate amounts based on the reason for the payment; therefore, capturing this special detail would be a manual process until such time as all recordkeepers have updated their electronic systems.

Why wouldn't the preparer want to show his or her information on the filing?

This question is tricky because it may appear that the preparer is unwilling to stand by his or her work. However, the reason most preparers want to leave this line blank has to do with public disclosure of the information. As you may know, once submitted to EFAST2, Form 5500 filings are immediately available on the Internet.

What you may not know is that the DOL also makes available to the public a completely searchable database of all of the fields on the Form 5500 series. What a practitioner wants to avoid is the use of the preparer information to identify his or her entire client list. Some businesses would see this as a violation of client confidentiality.

What are some questions that are significant to filers?

Three items that should be on every filer's radar relate to employer contributions, benefit payments and timely deposit of participant contributions:

Employer Contributions

Employer contributions to the plan are reported at line 8a(1) of Form 5500-SF or at line 2a(1)(A) of Form 5500 Schedules H or I. Filers should take a moment to compare the information reported on this line with tax deduction figures shown on the business tax return for the same period. Any differences should be reconciled before the Form 5500 is submitted. If the IRS audits the plan, this reconciliation will be on the list of data the IRS wants to examine.

Making Benefit Payments When Due

The question "Has the plan failed to provide any benefit when due under the plan?" appears at line 10f on Form 5500-SF and on Form 5500 Schedules H or I at line 4l. In deciding whether the correct response is "yes" or "no," you should consider whether any participant (whether active or terminated) has received the required benefit payments because the individual has reached at least age 70½.

Another failure to make benefit payments in a timely fashion might occur if the company has not paid over all of its contributions by the time a participant should receive benefits. And don't forget those participants whose benefits may be automatically cashed out because the dollar amount falls below the threshold set in the plan document (commonly $5,000 or $1,000). It's important to establish—and follow—procedures that apply to all participants in such circumstances.

Timely Deposit of Participant Contributions

If you have a 401(k) plan, the DOL is very interested in whether your company deposited the employee withholding in a timely fashion. Before you sign off on that Form 5500, take a look at line 10a of Form 5500-SF or line 4a of Form 5500 Schedules H or I.

Generally, the DOL expects large plan filers to deposit within three business days of withholding funds from employee paychecks. Small plan filers should deposit such withholding, both 401(k) deferrals and loan repayments, within seven business days of the paycheck.

There are exceptions, of course, but any deposits outside the general guidelines may need to be reported on these lines. Speak with your plan consultant if you have late deposits reported on these lines to be sure you have fully corrected the situation by the time you file the Form 5500.

What information must be reported to the plan participants?

Plans that file a Form 5500 must automatically provide a summary of the Form 5500 to participants and beneficiaries, called a summary annual report (SAR). The deadline is 9 months after the close of the plan year or 11½ months if the plan obtained a 2½ month extension for filing the Form 5500. Participants may request a copy of the plan's Form 5500 in its entirety. The participant may be charged a reasonable fee to cover the cost of providing this information.

Conclusion

Retirement plans must file a Form 5500 with the DOL each year or be subject to hefty fines. The person signing the Form 5500 does so under penalties of perjury, so sponsors should really take an interest in ensuring the accuracy of the data reported on the form.

While the Form 5500 is not a typical tax return, the information collected on the filing is a significant source of data used by the IRS and the DOL for identifying plans for audit. The time you spend reviewing the information being submitted is undoubtedly time well spent. In the end, all parties want the same result: a correctly operated employee benefit plan.

This newsletter is intended to provide general information on matters of interest in the area of qualified retirement plans and is distributed with the understanding that the publisher and distributor are not rendering legal, tax or other professional advice. Readers should not act or rely on any information in this newsletter without first seeking the advice of an independent tax advisor such as an attorney or CPA.

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www.pinnacle-plan.com

1985 East River Road, Suite 111 ▲ Tucson, AZ 85718 ▲ P. 520.618.1305 ▲ F. 520.618.1306

2201 East Camelback Road, Suite 200 ▲ Phoenix, AZ 85016 ▲ P. 602.792.5982 ▲ F. 520.618.1306

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