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Law & Business

Form 5500 Update

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New DOL Initiative – Form 5500

- For large retirement plan filers, matching them to welfare plan filings for same business

RE: REQUEST FOR CLARIFICATION OF YOUR EMPLOYEE BENEFIT PLAN ANNUAL REPORTING REQUIREMENTS

→ However, we have no record of a Form 5500 for a health benefit plan filed in 2010 or 2011 using this EIN. We are therefore asking you for information to determine whether you were required to file Form 5500 for a health benefit plan for 2011.

- Such missing/late filings may be filed under DFVC.

New GAO Study

•The U.S. Government Accountability Office (GAO), a non-partisan agency serving the Congress, has been asked by the Congress to conduct a study *on the clarity and usefulness of Form 5500 data* related to plan investment and service provider and fee information. As part of our study, we will soon convene a web-based panel of individuals with a variety of experiences with the form to help us identify concerns and modification options to improve the clarity and usefulness of information reported on the form. [emphasis added]

Reporting ERISA §408(b)(2) Failures: DOL

- Fee Disclosure Failure Notice
- This web page allows plan fiduciaries to electronically notify the Department of Labor of a service provider's failure to disclose fee information required by the Department's 408(b)(2) regulation. To go directly to the Fee Disclosure Failure Notice, click on the link on the bottom of this page.
- <http://www.dol.gov/ebsa/regs/feedisclosurefailurenotice.html>

Reporting ERISA §408(b)(2) Failures: IRS

- Form 5330
 - If responsible plan fiduciary qualified for exemption, nothing to report.
 - **Covered Service Provider** that failed ERISA §408(b)(2) disclosure rule must file (as disqualified person). Complete Form 5330, Schedule C.
 - Not clear what the “amount involved” is in these cases.
 - CSP files based on its fiscal year.

Reporting ERISA §408(b)(2) Failures: Form 5500

- Prohibited transaction:
 - Form 5500-SF, line 10b
 - Schedule H / I, line 4d
- Schedule C?
 - Item reported on Schedule C relates to **failure to provide information to complete Schedule C** rather than the ERISA §408(b)(2) disclosures.

Form 5500-EZ Changes

- No “Same as sponsor” boxes
- Addition of space to provide *optional paid preparer* information just below signature box (page 2)
- *Optional trust information* may be inserted at lines 4a-b
- New line 11a
 - Applies only to defined benefit plans
 - Enter amount from line 39 of Schedule SB

Issues with Form 5500-EZ

- The PPA 2006 modified the term “partner” to include an individual who owns more than two percent of an S corporation.
 - See IRC Section 1372(b); also PPA 2006 Section 1103(a)(2)(E).
- One-participant plans covering 100 or more participants must file Form 5500-EZ on paper
 - No benefit plan audit

Filing Search for One-Participant Plans

- Starting January 1 2011, *all* Short Form filing records submitted with One-Participant Plan Box checked are blocked from public access
- Consider filing Form 5500-SF instead of Form 5500-EZ!

Electronic Filing

- Form 5500-EZ – 30% e-filing, using Form 5500-SF
- Form 8955-SSA – 25% e-filing
 - Data transcription errors
 - Processing concerns
 - Higher chance to receive IRS contact
- Issues/Concerns/Reasons for not e-filing?

Form 8955-SSA

- How to file
 - e-file using FIRE or
 - paper submission
- No attachments accepted – must use official page 2
- Instruction change for Line 6(a) and (b) and line 7
 - Code A entries are counted for lines line 6 (a) and (b)
 - Line 7 should equal 6 (a) plus (b)
 - Line 7 does not equal the total of separate participant listed on page 2 of the form if Codes B, C, or D are shown.

Form 8955-SSA Line 6, 7 and 8 and Part III Line 9

6 a. Participants who separated with a deferred vested benefit required to be reported on this Form 8955-SSA	6a	
b. Participants who separated with a deferred vested benefit voluntarily reported on this Form 8955-SSA in the same year as the separation occurred	6b	
7 Total number of participants reported on lines 6a and 6b	7	
8 Did the plan administrator provide an individual statement to each participant required to receive a statement?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

PART III Participant Information - enter all requested information

9 Enter one of the following Entry Codes in column (a) for each separated participant with deferred vested benefits who:

Code A – has not previously been reported.
Code B – has previously been reported under the above plan number, but whose previously reported information requires revisions.
Code C – has previously been reported under another plan, but who will be receiving benefits from the plan listed above instead.
Code D – has previously been reported under the above plan number, but whose benefits have been paid out or who is no longer entitled to those deferred vested benefits.

E-Filing of Form 8955-SSA

- Does the Plan Administrator have to sign an electronic filing of Form 8955-SSA?
- **NO!** See [IRS] FAQ #12. On the **FIRE** system, it is optional to insert the name(s) of the signer(s).
 - It may be “best practice” to ask the plan administrator to sign a paper copy to keep in its files, but not required.

Signature Requirements

- For **paper** filings, both plan sponsor and plan administrator must sign and date.
- If same person, then only plan administrator must sign and date.

Under penalties of perjury, I declare that I have examined this statement, and to the best of my knowledge and belief, it is true, correct, and complete.				
Sign Here	Signature of plan sponsor	Date signed	Signature of plan administrator	Date signed

FIRE Your Clients!

- Electronic filing of Form 8955-SSA may prove a viable solution for many of your clients
 - No signature requirements!
 - You can resolve any issues
 - Third party software options may include either
 - Creation of a file suitable for you to initiate filing on **FIRE**, or
 - A service that automatically initiates the **FIRE** filing upon your request

Form 5558

- Changes to Form 5558 (Rev. August 2012)
 - One plan per Form (manual processing – Ogden Service Campus)
 - Check box added to identify first time Form 5500 series filer
- Will we ever be able to file this form electronically?

Form-5558 Part II

Part II Extension of Time To File Form 5500 Series, and/or Form 8955-SSA

1 Check this box if you are a first-time filer of the Form 5500 series return/report for the plan listed in Part I, C above.

2 I request an extension of time until ____ / ____ / ____ to file Form 5500 series (see instructions).
 Note. A signature IS NOT required if you are requesting an extension to file Form 5500 series.

3 I request an extension of time until ____ / ____ / ____ to file Form 8955-SSA (see instructions).
 Note. A signature IS NOT required if you are requesting an extension to file Form 8955-SSA.

The application is automatically approved to the date shown on line 2 and/or line 3 (above) if: (a) the Form 5558 is filed on or before the normal due date of Form 5500 series, and/or Form 8955-SSA for which this extension is requested, and (b) the date on line 2 and/or line 3 (above) is not later than the 15th day of the third month after the normal due date.

Form 5558 Processing Questions

- Write or fax the EP Entity Unit in Ogden using the following contact information:
 - Internal Revenue Service
 Ogden, UT 84201-0018
 Attention: EP Entity Unit, Mail Stop 6273
 - Fax Number: (801) 620-6900

Other Filing Help

- Form 5500 Corner
 - <http://www.irs.gov/Retirement-Plans/Form-5500-Corner>
- Customer Account Services [1-877-829-5500]
 - RetirementPlanQuestions@irs.gov
 - Critical to include

EIN	Dates
Plan number	Issues
Plan name	Contact information

Annual Funding Notice Updated

- March 8, 2013 – DOL issued Field Assistance Bulletin (FAB) 2013-01 to include MAP-21 supplemental information
- Affects notices due April 30, 2013 and later
 - Applies only to single-employer defined benefit plans subject to both titles I and IV of ERISA.
 - Sample language / format provided with FAB.
- See <http://www.dol.gov/ebsa/regs/fab2013-1.html>

DFVC Update

- Technical updates reflect use of EFAST2 system, correct mailing address for penalty checks, etc.
- May use online calculator to pay fine
 - www.dol.gov/ebsa - under Compliance Assistance
- What about Form 5500-EZ?

DFVC Tips

- Penalty stops when the filer submits Form 5500 electronically (EFAST2)
 - If paying by check, calculate amount based on original due date of filing up to EFAST2 acceptance date.
 - Address for the DFVCP lockbox:
DFVC DOL, PO Box 71361, Philadelphia, PA 19176-1361.
There is no overnight delivery address. Note that payments to the DFVCP also can be made electronically.
- No attachment to Form 5500 required; just check the DFVC box at Line D

New FAQ - Signatures

- Q33c: Can I sign the Form 5500/5500-SF using my company's name rather than my own name?
 - No. The signature on the Form 5500 and/or 5500-SF must reflect an individual's name and not a company name.
- This is true when signing as a practitioner, too!

E-Signature Option

- FAQ #33a. Also separate FAQ series on efast.dol.gov
- Allows practitioners with proper written *annual* authorization to electronically sign and file on behalf of their clients.
- NO filing can be processed through EFAST2 if not properly electronically signed.

IRS Correspondence

- Fax vs. Mail
 - If the Notice or Letter provides an option of faxing the response for the specific case, faxing the response to the IRS eliminates mailing time only
 - There is no special treatment if response is mailed or faxed
 - The processing of request remains the same
 - Faxing will not expedite resolution

Closed or Resolved Notification

- Consider request processed if no correspondence requiring additional information is received
- If response is regarding a penalty assessment, abatement of penalty, or a consolidation of two accounts, IRS will issue an acknowledgement letter or notice of the actions taken on the account

Closed or Resolved Notification

- No closed or resolved notification are sent by IRS on requests for name changes, address changes, response to a Taxpayer Delinquency Notice (TDI) CP 403/406, and/or an IRS generated letter regarding TDI.
- Beginning January 1, 2013, Notice 283 will assess penalty – no longer issuing “proposed” penalty notices.

Correction of EIN and Plan # Errors

- If a Form 5500 is filed using the wrong EIN or plan number
 - File an amended return (preferred) or
 - Contact the Service Call Site at 1-877-829-5500 and explain
- If a CP 403 and 406 notice is received requesting information regarding Form 5500 or Form 5500-SF, respond to the notice providing the correct EIN and/or plan number; the account will be updated accordingly

Google Information Removal

- The DOL does not have jurisdiction over Form 5500/5500-SF information that has been posted to Google, Bing, or any other internet site.
- If a filer wishes to have their information removed from an internet site, they must contact that internet site directly.

Thank you!

Have more questions?
questions@form5500help.com
