

With Requirements

Keeping Up To Date Form 5500

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An annual report, Form 5500, is required to be filed with the Department of Labor (DOL) for almost all retirement plans. The report provides basic information about the plan, the plan sponsor, participation and financial information, in addition to certain plan activities.

This newsletter will explore the annual report requirements for the 2006 plan year as well as some significant changes that have been proposed for future years.

Who Must File

All pension and welfare benefit plans covered by ERISA, whether or not qualified, must file an annual report unless they meet one of the exceptions described below. Pension benefit plans include pension, profit sharing, 401(k) and 403(b) plans. Welfare benefit plans include medical, dental, severance pay plans, etc. SIMPLE 401(k) plans and employer-sponsored IRA plans must also file.

The following plans do not have to file annual reports: SIMPLE IRA plans, simplified employee pension (SEP) plans, certain church-sponsored plans, government plans, certain unfunded plans and certain fully insured welfare plans.

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 Form 5500-EZ, a shorter version of Form 5500. Such employers are exempt from filing until total plan

assets, when combined with all other plans of the employer, exceed \$100,000 (increasing to \$250,000 for 2007 plan years).

Due Date for Filing

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 5500. Special filing extensions may be announced in the event of declared natural disasters.

Significant penalties may be assessed for the failure to file or the late filing of an annual report, unless reasonable cause can be shown. Reduced penalties may be available for late reports filed under the Delinquent Filer Voluntary Compliance Program.

Form 5500 Schedules

There are a number of schedules which may have to be attached to the annual report. The determination of which schedules need to be attached is dependent in part on the size of the plan.

Small Plan versus Large Plan

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." However, 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. Conversely, a large plan can continue to file with that status as long as participation does not fall below 80.

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. 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 important for the employer and the trustee to provide complete and accurate information to the Form 5500 preparer so that all of the necessary schedules can be properly completed and the report can be filed timely.

Schedules for All Plans

The following schedules may be required for both small and large plans:

Schedule A: Reporting information about insurance/annuity policies including commissions, fees and financial activity.

Schedule B: Actuarial information required for defined benefit plans (other than fully insured plans).

Schedule D: Listing the value of plan investments in pooled or collective funds.

Schedule E: Annual information required of ESOPs (Employee Stock Ownership Plans).

Schedule R: Reporting distribution, funding, amendment and coverage information. Profit sharing plans with no distributions need not file.

Schedule SSA: Reporting deferred benefits of terminated participants to the Social Security Administration (SSA), which contacts them when they reach retirement age. It also notifies the SSA when reported terminees have been paid out and no longer have benefits under the plan.

Schedules for Large and Small Plans

The following schedules are required for large plans only:

Schedule C: Listing service providers paid \$5,000 or more and the termination of a plan accountant or actuary.

Schedule G: Reporting loans, fixed income obligations or leases in default and prohibited transactions.

Schedule H: Reporting financial information.

Small plan filers report financial information on Schedule I, a shortened version of Schedule H. Both schedules disclose the late transmittal of salary deferrals and participant loan repayments to the plan. Transmittal is required as soon as administratively feasible but no later than the 15th business day of the month following withholding. The 15th business day rule is not a safe harbor but an outside limit. Depending on the employer's payroll system, the deadline could be as soon as a few days following withholding.

Schedules H and I also report the amount of the trustees fidelity bond in force during the year as required by ERISA. Most plans must carry at least 10% of the value of plan assets. Small plans with certain types of non-qualifying investments may need additional bonding to avoid being subject to the audit requirement for large plans discussed below. The maximum required bond will increase from \$500,000 to \$1,000,000 as of 2008 for plans that hold employer securities.

Accountant's Audit Requirement

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 report must be attached to the 5500. The audit verifies the accuracy of financial data, employee participation and other compliance matters.

Special Rules

Fully insured plans are not required to attach Schedule H or Schedule I and are not subject to the accountant's audit requirement. Section 403(b) tax deferred annuity arrangements and IRA plans need only complete portions of Form 5500 without attaching any schedules. Section 403(b) plans are also exempt from the accountant's audit requirements (but see proposed changes below).

Summary Annual Report

Every plan that files an annual report must provide a summary annual report (SAR) to participants, which is a brief explanation of the information contained in the annual report. 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 annual report.

The Pension Protection Act of 2006 (PPA) made a number of changes to the annual report and SAR requirements for defined benefit (DB) plans, effective in 2008. DB plans will no longer have to prepare SARs. Instead, all DB plans will have to provide a detailed annual funding notice, expanding a requirement that previously applied only to multiemployer DB plans. Multiemployer DB plans will be subject to additional disclosure requirements in their summary reports to participating employers, unions and the Pension Benefit Guaranty Corporation.

Expanded information will be required for all DB plans on the annual reports. In addition, employers with intranet websites for communicating with employees will have to display basic and actuarial information from the annual report on their intranet sites. Such information will also be posted on the DOL's website.

Electronic Filing of Annual Reports

For plan years beginning in 2008, annual reports will have to be filed electronically. Until then, electronic filing is optional. The DOL is expected to issue guidance in this area. Original signed copies of the reports will have to be kept on file by the plan administrator. Form 5500-EZ filers may have the option of continuing to file paper copies. Once the electronic filing requirement becomes effective, amended reports and prior year reports filed late will have to be filed electronically.

Proposed Changes to Form 5500

In anticipation of the impending electronic filing requirement, the DOL proposed significant changes to the annual report in July of 2006. A supplemental proposal was issued in December of 2006 to incorporate changes mandated by PPA. The proposed changes are as follows:

- Establishment of Form 5500-SF, a new two-page short form for plans with less than 100 participants that meet certain investment requirements. All schedules, except Schedule B, would be eliminated although much of the same information would be included on the condensed form.
- For plans still filing Form 5500, Schedules E and SSA would be eliminated.
- Section 403(b) plans would become subject to the full financial reporting rules.
- Schedule C, reporting service provider information, would be revised.

- Schedule B would be replaced with two new schedules: Schedule SB for single employer DB plans and Schedule MB for multiemployer DB plans, which would accommodate the new disclosure requirements under PPA. Schedule MB would be required for all money purchase pension plans.
- Additional questions would be added to Schedule R to meet PPA requirements.
- For 2007, most plans with less than 25 participants will be able to file an abbreviated version of the current Form 5500, pursuant to a provision under PPA. Some schedules and certain items will be excluded. As of 2008, these plans will be able to file the new 5500-SF form.

Conclusion

Retirement plans must file an annual report, Form 5500, with the DOL each year or be subject to hefty fines. Complete and accurate information will enable the report preparer to complete the proper schedules on a timely basis.

The 2008 electronic filing requirement and new disclosure rules under PPA are expected to result in major revisions to Form 5500. The same basic information will need to be collected each year in order for the report to be prepared. But the proposed format changes will save a lot of paper, and the additional disclosure requirements should provide added protection for plan participants.

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