

New Annual Filing Requirements for Retirement Plans – and Some for Welfare Plans Too

New filing requirements for multiple employer retirement and welfare plans go into effect for 2014 Form 5500s, according to guidance issued by the DOL. These plans will be required to attach a list of participating employers along with an indication of the contribution percentage made by each. IRS plans to expand Form 5500 reporting as well with a new supplement beginning with 2015 forms. The 5500-SUP will call for disclosure of coverage and nondiscrimination information, and more.

Background

In 2009, items that had only been of interest to the IRS were stripped from the Form 5500 schedule R in connection with the implementation of the DOL's EFAST system. For example, plans were no longer required to explain the plan's basis for addressing coverage and nondiscrimination tests.

Earlier this year, IRS finalized updates to their electronic filing requirements as we reported in our [October 17, 2014 For Your Information](#). IRS noted their expectation of resurrecting the collection of the foregone information once their electronic filing requirement would support it.

On the DOL front, a small legislative nugget tucked in the law passed in April to change minimum funding rules for certain charity plans called for a new attachment to annual reports filed by multiple employer plans (MEPs) that would disclose the participating employers and their contribution rates.



Revival of IRS Reporting Requirement

As promised, the IRS is bringing back the reporting information that had been stripped out when the Form 5500 EFAST system was inaugurated. Plans that are required to file IRS information electronically under the final regulations from September will file this information electronically. Plans that fall below the threshold for mandatory filing will be permitted to file electronically, or they can file the new Form 5500-SUP, Annual Return of Employee

Benefit Plan Supplemental Information, in paper form. IRS posted a draft version of Form 5500–SUP and expects to implement the filing requirements for plan year 2015.

The [draft Form 5500-SUP](#) resurrects questions such as:

- Whether the ratio percentage test or the average benefit test was the method used by the plan to satisfy the coverage requirements under section 410(b)
- Whether the plan is a section 401(k) plan and, if so, whether it uses a safe harbor or applies the ADP and ACP tests
- Whether the plan has been timely amended for all tax law changes and information on the plan's favorable determination letter, or opinion/advisory letter
- The amount of contributions deducted
- Whether the plan trust incurred unrelated business taxable income
- Whether in-service distributions were made during the plan year

IRS anticipates that the Form 5500-SUP will contain the same IRS compliance questions that are added to the Form 5500 and Form 5500-SF to be filed in electronic form and vice-versa.

2014 Multiple Employer Plan Filing

An [interim final regulation](#) from DOL implements the change enacted on April 7, 2014 in the Cooperative and Small Employer Charity Pension Flexibility Act. The regulation provides that the annual return/report (Form 5500) of a MEP must include a list of participating employers and a good faith estimate of the percentage of total contributions (employer and employee) made by each participating employer during the plan year. The interim final rule is effective for returns for plan years beginning after December 31, 2013; a final rule is anticipated to be in place for plan years beginning after December 31, 2014.

The new listing is required to be attached to Form 5500 or Form 5500-SF, as applicable. It is required of all MEPs including defined benefit, defined contribution, and welfare benefit plans. Affected welfare plans are not required to provide the contribution information if they are exempt from filing financial statements with their annual report.

DOL's interim final rule specifies that the employers to be listed on the attachment (with an EIN) include all employers (determined on a controlled group basis) that are obligated to make contributions to the plan, that make contributions to the plan, or whose employees are covered under the plan. The contribution percentages reported can be developed using the same method (cash, modified cash, or accrual) for calculating the good faith estimate that is used for recognizing other financial transactions on the Form 5500.

Comment. After the DOL's [Advisory Opinions 2012-4A](#) and [2012-3A](#) set out the position that a MEP could only be maintained by groups that shared a common business purpose other than adopting the same retirement plan, many so-called "open MEPs" began filing separate Form 5500s for participating employers in line with the DOL's conclusion that the arrangement was an aggregation of single plans. As single plan filers, this new MEP Form 5500 attachment will not apply to their filings.

In Closing

Plan administrators of MEPs are now on notice to collect new information that had not previously been required when filing Form 5500 or Form 5500-SF for the 2014 plan year. Plan administrators have a bit more time for the revived IRS information to be provided for retirement plans, but generally will recognize that the information required is nothing new. A review of the draft Form 5500-SUP affords an opportunity for a mini self-audit.

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