

Proposed Overhaul of Form 5500 Slated for 2019 Plan Years

Joint IRS, DOL and PBGC proposed changes to Form 5500 would significantly increase reporting obligations for employee benefit plans. The changes report on existing compliance requirements, but gathering the information in the manner requested will add some time and effort to this annual chore.

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Background

IRS, DOL and PBGC (the Agencies) use Form 5500, Annual Return/Report of Employee Benefit Plan and its schedules, to collect information on employee pension and welfare benefit plans governed by ERISA and the Internal Revenue Code. The form serves as the principal source of information on the operations, funding and investments of approximately 806,000 pension and welfare benefit plans. The last major revision to the form was implemented for 2009 plan year forms.

Objectives for Current Update

Last month, the Agencies [proposed a revised Form 5500](#) for plan years beginning on or after January 1, 2019. It would include the revived IRS questions initially added back to the 2015 form, but subsequently delayed (see our [November 21, 2014 For Your Information](#) and [December 8, 2015 FYI Alert](#)). It would also include targeted revisions, highlighted below, designed to improve the data collected by the form — as suggested in reports from entities like the Government Accountability Office (GAO) and the ERISA Advisory Council.

In addition to the proposed form revisions, the DOL also [proposed regulatory revisions](#) and issued a [fact sheet](#) that sets forth five broad goals underlying the changes:



Modernize Financial Reporting. The proposal aims to “improve the reliability and transparency” of information about plan investments and other financial transactions — specifically, on alternative investments, hard-to-value assets, and investments through collective investment vehicles. It also looks to foster ongoing stakeholder monitoring.

Provide More Information on Group Health Plans – Including Small Plans. Seeking critical data and information for oversight efforts and congressionally mandated reports on group health plans, the revised Form 5500 would collect more compliance information on health plans via a new Schedule J (“Group Health Plan Information”). Small welfare plans covering fewer than 100 participants that are unfunded, fully insured, or a combination of insured and unfunded would no longer be exempt from reporting. Compliance with the new reporting requirements would satisfy certain ACA transparency and health outcomes reporting requirements for non-grandfathered plans.

Enhance Data Mineability. The revised Form 5500 would restructure questions, including assets investment schedules, to make them computer-processable and identifiable for data mining and analytic purposes.

Improve Service Provider Fee Information. The revised Form 5500 would better harmonize reporting on Schedule C with the DOL’s service provider disclosure requirements in efforts to improve evaluation of investment, recordkeeping and other administrative services arrangements, and more closely track service provider disclosure information.

Enhance ERISA and Tax Compliance. The revisions would enhance plan compliance reporting to “improve plan operations, protect participants and beneficiaries and their retirement benefits, and educate and provide annual discipline for plan fiduciaries.” New questions on plan operations, service provider relationships, and financial management of plans aim to compel fiduciaries to assess ERISA and tax compliance and provide the Agencies with improved tools for enforcement.

Highlights of Proposed Changes

The proposed changes revise the way certain questions are asked and call for more details on a variety of plan operations.

Clearer Instructions and Better Answers

Because many plan administrators select incorrect plan characteristic codes from the numerical and letter lists currently offered in the instructions, the revised form would replace the codes with yes/no questions. The revisions also call for entering more information in text boxes on the form itself in an effort to limit the use of attachments — which do not lend themselves to data mining.

Updated Fee and Expense Information

Consistent with DOL’s longstanding focus on plan fees and expenses, see our [June 5, 2012 For Your Information](#), for example, the proposals include new questions probing the level of fees paid by plans as well as information on how plans make disclosures to participants — including a copy of the comparison chart that certain DC plans must furnish. The proposal would require disclosure of how many designated investment alternatives a 401(k)-type plan offers, and how many of those are index funds, as well as details on the compensation disclosures provided to

fiduciaries. DOL expects that comparing fee estimates against compensation received will reveal any disparities between anticipated and actual compensation, and help to better target enforcement activity.



Plans would have to file more Schedule C's (Service Provider Information) — one for each covered provider who received \$1,000 or more in total direct and indirect compensation for services to the plan, including payments from participants' accounts, and one for each person other than a covered service provider who received \$5,000 or more in direct compensation for plan services, also including payments from participants' accounts. In addition, the proposal would require Schedule C filing by small retirement plans not eligible to file the Form 5500-SF (predominantly pension plans invested in alternative or hard-to-value assets) and small welfare plans funded using a trust.

Fee reporting would also affect Schedule H (Financial Information). New sub-categories of administrative expenses would break out salaries, audit, trustee, recordkeeping, actuarial, legal and valuation fees. Other additions would request information about the allocation of fees to participants (for example, pro rata versus per capita).

Other Financial Reporting

Plans invested in derivatives, limited partnerships, hedge funds, private equity, real estate and other alternative investments would be required to identify such investments on Schedule H. This requirement is designed to allow the Agencies to more easily identify problems with investments or investment managers without having to open investigations on a plan-by-plan basis. In addition, ESOPs would once again be required to file Schedule E (ESOP Annual Information).

The proposed regulations would revise the limited scope audit exemption to require more information about how assets are held by financial institutions and any relevant cautions about using current value information not covered by the certification.

Health Plan Information

The Agencies proposed expanded health plan data requirements to help in allocating enforcement resources and streamlining efforts to assure compliance. According to the Agencies, the additional data will also support reports to Congress, flag outstanding claim payment delays to allow early intervention, and enhance the Agencies' ability to identify service provider deficiencies. And, as noted above, the revisions would satisfy certain ACA reporting obligations.

Specifically, Schedule J would cover new ground for health plans by collecting information on the following topics:

- The number of participants and beneficiaries the plan covers
- The groups to which the plan offers coverage (employees, spouses, children, retirees)
- Plan design and benefit characteristics (e.g., medical/surgical, vision, dental)
- Health funding or benefit arrangements
- ACA grandfathered status

- Status as a high deductible health plan (HDHP), health reimbursement arrangement (HRA), or flexible spending account (FSA)
- Offers and elections for COBRA coverage
- Service provider rebates, reimbursement or refunds
- Third party administrators/claims processors, mental health benefits managers, pharmacy benefits managers, independent review organizations, and wellness program managers
- Stop loss policies
- Employer and participant contributions
- Claims information, including number of approved, denied and pending claims; timing for claims and appeals adjudication and payment; and total dollar amount of claims benefits paid
- The plan's summary plan description (SPD) and summary of benefits and coverage (SBC)
- Compliance with federal laws and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the ACA

Preparer Information

As proposed for 2015 and expected to be included on the 2016 form, preparer information is part of the 2019 revisions as well. The 2019 form, as proposed, requires the "Preparer's name (including firm's name, if applicable), address, and telephone number" — but does not require a signature. If the form is completed by several people, the filer should name the person who is primarily responsible for the preparation.

A Tool for Compliance and Oversight

Many new questions are designed to make fiduciaries evaluate plan compliance with tax and ERISA requirements, as well as to provide the Agencies with improved tools for enforcement. For example, Schedule H, as proposed, asks if any disqualified person (under ERISA 411) was permitted to serve the plan. This question appears rhetorical in nature (obviously, the response must be "no,") — but DOL appears to have designed it to encourage plan fiduciaries to double-check before signing under penalty of perjury.

The idea of the Form 5500 as a compliance tool is not a new one. Some may see the form as a tedious reporting exercise, but others recognize it as a checklist offering the opportunity to identify flaws that need to be addressed to assure compliance, rather than waiting for the Agencies — or litigators — to impose penalties or raise legal claims. Particularly in light of the recent IRS curtailment of determination letter requests as reported in our [July 8, 2016 For Your Information](#), the Agencies may see the Form 5500 as a way to support compliance reviews — whether performed by the Plan Administrator or the Agencies via audit.

Comment. Keep in mind the recent increases in DOL penalties. Though it is not clear whether DOL will change its administrative policy of not typically assessing the maximum penalty available, the legal maximum values have grown significantly larger. See our [July 18, 2016 For Your Information](#) for details on the new penalty maximums.

Comments Requested

The Agencies request comments on the proposed changes to the forms and regulations by October 4, 2016.

In Closing

This overview covers some of the ways the Agencies are looking to expand Form 5500, the annual reporting obligation for employee benefit plans. It will be 2020 before any plan files using the new form — and in the meantime, the Agencies are expected to refine the proposed requirements in response to comments. For now, plan sponsors may wish to review operations against the refreshed list to check plan compliance and learn what new information they must collect and identify efficient ways to handle that task.

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