



## **DEPARTMENT OF LABOR ISSUES FINAL FORM 5500 REGULATIONS**

*The DOL, IRS and PBGC have released final annual reporting and disclosure regulations which, among other things, postpone the mandatory electronic filing requirement for Form 5500 for an additional year. They have also revised the 2009 forms to accommodate e-filing by ERISA covered pension and welfare benefit plans.*

### **Background**

As required by the Pension Protection Act of 2006 (PPA), the DOL finalized regulations last year requiring electronic filing of all Form 5500 Annual Return/Reports, beginning with the 2008 plan year. To that end, the DOL, IRS and PBGC proposed certain revisions to Form 5500. (See our August 1, 2006 *For Your Information*.)

The DOL has now issued final regulations explaining how Form 5500 information must be provided and deferring the electronic filing requirement for an additional year, or until the 2009 plan year. The DOL, IRS and PBGC concurrently adopted revisions to the Annual Return/Report forms and introduced a new short Form 5500-SF for use by certain small pension and welfare plans.

### **Final Regulations and Form Changes**

The changes to the final Form 5500 and instructions are intended to facilitate the move to a wholly electronic filing system, reduce annual reporting burdens and reflect PPA mandates. Except for form changes required by PPA, the revisions are effective for all annual report filings for plan years beginning on or after January 1, 2009. Thus, most filers will have until July 2010 or later to accommodate needed changes.

The final regulations and final Form 5500 revisions largely follow the prior proposed regulations and form revisions. There are, however, some changes and clarifications, as highlighted below.

### **Separate Actuarial Schedules**

As required by PPA, Form 5500 Schedule B (Defined Benefit Plan Actuarial Information) will be replaced by two separate actuarial schedules for defined benefit plans subject to the minimum funding standards. Schedule SB (Single-Employer Defined Benefit Plan Actuarial Information) must be filed for single-employer plans, including multiple-employer defined benefit pension plans. Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information) must be filed for money purchase plans (including target benefit plans) that are currently amortizing waivers and all multiemployer defined benefit plans. To

meet PPA requirements, these schedules must be filed as “non-standard” attachments for the 2008 plan year.

### **Increased Insurance and Service Provider Information**

The final Schedule A (Insurance Information), which ERISA-covered plans must attach to the Form 5500 if the plan holds any investment contracts with, or provides benefits through, an insurance company, remains largely unchanged. To facilitate the disclosure of insurance fees and commissions, it contains certain technical changes and provides a space for plan administrators to report an insurance carrier’s failure to provide necessary information. Compensation paid by an insurer to third parties for recordkeeping, claims processing, and other similar types of administrative services will not have to be reported as fees and commissions on Schedule A, as long as certain detailed conditions are met. Similarly, “occasional and insubstantial non-monetary compensation” paid by insurers to brokers and others need not be included.

Under the final regulations, Schedule C (Service Provider Information) reporting requirements continue to be limited to large plan filers and apply only when compensation to service providers of \$5,000 or more during the plan year is paid from plan assets. The instructions for Schedule C will be modified to clarify that certain plans that are otherwise exempt from the Schedule H and accountant’s opinion requirements will also be exempt from Schedule C reporting requirements.

The final Schedule C revisions seek to increase transparency of plan-related fees and expenses, adding fee codes for the type of services provided and types of fees received by the service provider. Like Schedule A, Schedule C will require plans to identify insurers, fiduciaries, or service providers that fail to supply requested information and the type of information not supplied. Direct compensation paid by the plan is reported separately from indirect compensation received from sources other than the plan or plan sponsor (generally excluding ordinary business gifts under \$50), and reporting requirements for certain indirect compensation information (e.g., “float” revenue, brokerage commissions, affiliate revenue sharing) are less complex.

### **Increased Retirement Plan Information**

Under the final regulations, three questions on employee stock ownership plan information required by PPA are added to Schedule R (Retirement Plan Information). This information was previously required on Schedule E (ESOP Annual Information), which will be eliminated when the new electronic filing system is in place.

Schedule R requires increased reporting for multiemployer defined benefit pension plans regarding contributing employers, multiemployer plan mergers, withdrawing employers and liabilities, and participants for whom no contributions are made. To provide the PBGC with improved information on plan funding and compliance with minimum funding requirements for the 2008 plan year, large single-employer and multiemployer defined benefit plans will also have to report their plans’ asset allocations, and the duration of debt portfolios. Schedule R will be filed as an attachment for the 2008 plan year and in standard schedule format for the 2009 plan year.

## **Additional Section 403(b) Plan Information**

Under the final regulations, the reporting rules for Sections 401(k) and 403(b) plans subject to ERISA are being synchronized. Thus, the special limited financial reporting rules for Section 403(b) plans are being eliminated and an accountant's opinion will now be required for Section 403(b) plans with 100 or more participants, unless the plans qualify for a waiver under the DOL's 80-120 rule.

## **Elimination of IRS-Only Schedules**

The final regulations eliminate IRS-only schedules from the Form 5500 Annual Return/Report, including Form 5500-EZ, Schedule E (ESOP Annual Information) and Schedule SSA (Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits). The removal of IRS-only forms and schedules will be delayed until the new electronic filing system is in place. Thus, for the 2007 and 2008 plan years, Form 5500-EZ, Schedule E and Schedule SSA must still be filed under the current EFAST system.

## **Simplified Reporting for Small Plans**

PPA required reporting for plans with less than 25 participants to be simplified for plan years after 2006. Although a new two-page short form (Form 5500-SF) has been finalized for use by these and other eligible small pension and welfare plans (generally single-employer plans with less than 100 participants that meet certain investment criteria), it cannot be used prior to the switch to the fully electronic filing system for the 2009 plan year. For the 2007 and 2008 plan years, a simplified reporting option using existing annual report forms is available. The regulations also include a Model Summary Annual Report Notice for use by certain small plans.

## **Effective Date**

The final regulations are effective January 15, 2008. Some of the form revisions will apply on a transitional basis for the 2008 reporting year. All of the form revisions will be fully implemented for the 2009 reporting year as part of the switch to a wholly electronic filing system.

If you have questions or need additional information on this topic, visit our website at [EBHRI.com](http://EBHRI.com); call EBHRI at 877-587-6361 (toll free) or 301-825-9617 (main office) or email us at [rdowski@ebhri.com](mailto:rdowski@ebhri.com) or [kostrominski@ebhri.com](mailto:kostrominski@ebhri.com)