

Form 5500 Goes High-Tech

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So all nonprofits have at least one “New 990” under their belt and now deserve a break from revised filing requirements for a couple of years at least, right? Sorry to say it, but **WRONG!** A new set of requirements are here courtesy of our friends at DOL, IRS and PBGC. The new requirements relate to employee benefit plans. Employee benefit plans have been required to file a Form 5500 for many years but there are some new administrative requirements that you’ll need to be concerned with.

It should be old news by now that most “Large” 403(b) plans (over 100 participants) will need to be audited – we wrote about it in our July 2008 column. If you haven’t yet explored that issue with your plan service providers and your plan is anywhere close to the 100 participant threshold, you are **WAY** behind and need to get caught up quickly. We suggest you speak with your service provider now (literally - stop reading this now, pick up the phone and call them or call us – you potentially have a major problem). Everyone else can keep reading – the large plan audit requirement is only one of the changes to be aware of.

Electronic Filing Requirements

Effective January 1, 2010, the Department of Labor, stopped accepting paper filings for its Form 5500 series, for all employee benefit plans with plan years beginning in 2009. Types of plans affected by this include, but are not limited to 401(k) and 403(b) plans, defined benefit plans, cafeteria plans, etc. The returns must now be filed through the DOL’s EFAST2 web-based filing system at www.efast.dol.gov, or through an approved third-party tax preparation software vendor. Sounds deceptively simple so far.

In order to electronically file your return, however, your organization must register with the DOL, on their website, for electronic credentials, regardless of whether you plan to use the DOL’s online filing system or if you use a third-party to file the 5500 (if you previously e-filed under EFAST, this is now EFAST2 – your password and PIN from EFAST won’t work and you need to re-register). There are five different types of electronic credentials and depending on what you do and what is outsourced to a vendor, you may need multiple credential types to file the 5500. At a minimum, a responsible person at the organization will need the “Filing Signer” credential. The DOL will issue that person a specific ID and PIN to use when filing Form 5500. This ID and PIN will act as the signature of the authorized representative of the organization to file Form 5500 and that person takes full responsibility for the accuracy of the form.

There may also be some logistical problems to submitting with the electronic signature. The DOL website specifically prohibits the sharing of PINs with service providers so if you were thinking of giving that info to your accounting firm to make this easier – don’t do it. Seems a bit silly that you would share most of your



highly confidential information with your CPA firm and then not be allowed to give them your 5500 filing PIN but don't do it, DOL says no!

Form 5500-SF

In addition to the new electronic filing requirements, the DOL has developed an additional form for small retirement plans that can be filed instead of Form 5500. Specifically, plan administrators may file Form 5500-SF, beginning with the 2009 plan year if the plan, with some exceptions, does not have more than 100 participants in the plan at the beginning of the plan year. Compared to the regular Form 5500, Form 5500-SF is shorter and does not include some of the additional schedules that are required to accompany Form 5500. In the past, organizations with 403(b) plans were not required to disclose any financial data about their plan but that has changed. On the 2009 Form 5500-SF, financial data about the plan is now required to be disclosed on the Form and Form 5500-SF also asks additional compliance questions that were previously not required to be answered on Form 5500. Small 401(k) plans may also file Form 5500-SF if they qualify.

As late as March of this year, DOL issued guidance which impacted whether certain types of 403(b) plan assets are required to be included on the 2009 5500 (TIAA CREF thought they didn't need to but DOL said they did). The regulatory and compliance environment continues to be dynamic in the area of employee benefit plans as the Department of Labor, IRS and AICPA continue to issue new regulations and guidance, even as the first 5500s for 403(b) plans are due July 31, 2010 (at the date of this writing 82 days away).

Cover & Rossiter, P.A. is a member of the AICPA's Employee Benefit Plan Quality Center and can provide guidance for you related to employee benefit plans and your other accounting needs. Please contact Eric Williams, Peter Kennedy, or Vickie Young Beam at (302) 656-6632 with any questions you may have.

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