Proposed Form 5500 Changes

Implications for Retirement Plans

Thursday, October 20, 2016
Form 5500 Series Overview

- Satisfies annual pension and welfare plan reporting obligations
  - 800,000 plans
  - 143 million workers, retirees, and dependents
  - $8.7 trillion in plan assets

- Information about the plan’s financial condition and operations

- Primary source of employee benefit plan information

- Publicly available online through a searchable database

- ERISA and Code reporting penalties
Last Major Revision of Form 5500

- EFAST2 mandated for most plans starting with PY 2009
- Final rules published in 2007 revised Schedule C to report more detail on service provider compensation
- “Eligible indirect compensation” concept created
- Part 1 of 3-part DOL fee disclosure initiative
Proposed Form 5500 Changes, Goals

- Modernize financial reporting (Schedule H)
- Improve service provider fee reporting (Schedule C)
- Improve compliance with ERISA and the Code
- Enhance accessibility and usability of data filed
- Require reporting by all group health plans covered by Title I of ERISA
Proposed Form 5500 Changes, Timeline

- **2007**
  - Last major overhaul of the Form 5500 series
  - Effective for reporting on 2009 plan years

- **July 11, 2016**
  - Proposed changes released
  - Published in Federal Register on July 21, 2016

- **December 5, 2016**
  - Comment deadline extended from October 4, 2016

- **January 1, 2019**
  - Plan operations subject to reporting

- **October 15, 2020**
  - First Form 5500 series filing with proposed changes

* Assumes calendar year plan filing with two and one-half month extension
Proposed Form 5500 Changes, IRS-Only Compliance Questions

Compliance Question Update

- IRS added new compliance questions to the 2015 Form 5500 series
  - Trust information,* preparer information,* 401(k) nondiscrimination rules, minimum coverage rules, in-service distributions, determination letter date, 5% owner RMDs

- IRS instructed filers not to answer the new compliance questions for 2015 reporting

- Proposed regulations published on March 31, 2016
  - Sent to OMB and approved with changes on October 3, 2016

- IRS website updated October 5; instructs filers not to answer new compliance questions on the 2016 Form 5500 series

* Included on 2014 Form 5500 series
Proposed Form 5500 Changes, Significant Changes

General Changes

- Reorganizes the Form 5500 series to make reported information more “data-mineable”
  - Adds structure and standardization to various schedules and attachments, e.g., Line 4i Schedules of Assets
  - New “yes/no” questions replace plan characteristic codes
  - Information currently provided in PDF attachments moved to open text fields on the forms and schedules

- Group health plan reporting exception eliminated

- Form 5500-SF eligibility for DC plans based on number of participants with account balances

- Schedule I eliminated

- Schedule E returns for ESOPs
Proposed Form 5500 Changes, Significant Changes

Schedule H, Schedule C, Compliance Questions

Schedule H (Financial Information)
- More granular reporting on the Schedule H balance sheets
- Pooled investment funds, hard-to-value assets, alternative investments, participant-directed brokerage windows
- Line 4i Schedules of Assets

Schedule C (Service Provider)
- Harmonize Schedule C with 408b-2
- Total indirect compensation reported as a dollar amount (no formulas)
- Multiple Schedule Cs

Compliance Questions
- DC plan operations
- Terminated service providers
- Missing participants
- Terminated plans
- 404a-5 comparison chart
- Affiliated party compensation
Proposed Form 5500 Changes, Significant Changes

Schedule H – Plan Financial Reporting

- Significantly more breakouts on the Schedule H balance sheet, especially for alternative and hard-to-value assets
  - Participant-directed brokerage accounts

- New breakouts for plan expenses, including a requirement to indicate whether expenses were charged to individual participant accounts

- CCTs and PSAs reported as single line item, regardless of whether the CCT or PSA files as a DFE

- Revised Line 4i Schedules of Assets
  - Flag hard-to-value assets
  - Reporting gaps eliminated

- Trustee signature added to Schedule H and Form 5500-SF
Proposed Form 5500 Changes, Significant Changes

Schedule H & DFE Reporting

- Eliminates concept of Master Trust Investment Accounts
- DFEs must file Line 4i Schedule of Assets Held at End of Year in order for plans to be eligible for new plan reporting relief
- Plans no longer required to file Schedule D
  - DFEs still required to file Schedule D
  - DFEs must provide the dollar value of each investing plan’s interest
Proposed Form 5500 Changes

Significant Changes

Schedule C

- Each service provider reported on a different Schedule C
- Reporting concept of “eligible indirect compensation” eliminated
- Indirect compensation only reported for “covered service providers”

- New checkbox to indicate whether transaction involved “related party compensation”
- Total indirect compensation reported as a dollar amount
- New checkbox to indicate whether a service provider is a fiduciary within the meaning of ERISA § 3(21)
Proposed Form 5500 Changes, Significant Changes

New Compliance Questions – Schedule H

- Whether the plan terminated any service providers for a “material failure” (other than accountants and actuaries)?
  - Terminated service provider questions moved from Schedule C to H

- Whether there were any uncashed checks?
  - If yes, the filer would be required to provide the total dollar value

- Whether terminated plans transferred plan assets to a federally insured bank account?

- Whether the plan sponsor (or an affiliate) provides services to the plan for direct or indirect compensation?

- Whether the plan has any investments that are leveraged?
New Compliance Questions – DC Plans

- How many participants?
  - maintained account balances as of the beginning of the year
  - made contribution during the year
  - terminated employment during the year and distributed their entire account
  - made catchup contributions
  - maximized the employer match
  - invested in default investment options

- Is the plan required to provide participant-level fee disclosures?
  - If yes, filers would be required to answer additional questions and attach the 404a-5 comparison chart.
Proposed changes to Form 5500 – a preparer’s perspective
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Good News and Bad News:

• Form 5558
• Form 5500/5500-SF
• Schedule A
• Schedule D
• Schedule G
• Schedule R
Modernize Financial Reporting – Schedule H

Key Changes:

• More detail on the Schedule H balance sheets
• Pooled investments, hard-to-value assets, alternative investments
• Participant-directed brokerage windows
• New Compliance Matters
Modernize Financial Reporting – Schedule H

• More detail in the Schedule H balance sheets
  – New categories and subcategories of investments:
    • Value of disclosure versus burden of gathering information
    • Annual valuations of hard to value assets at fair market value?
  – Line 4i, Schedules of Assets

• Pooled investments, hard-to-value assets, alternative investments
  – Cost or benefit of having a “hard-to-value” or alternative assets valued?
    • How easily done?
    • Is there a more reasonable interval?
  – Other considerations: Disclosures, responsibility to make the valuation?
Modernize Financial Reporting – Schedule H

• Participant directed brokerage account
  – Substantial burden imposed by breaking out investments?

• New Compliance Matters
  – New attestations regarding whether Plan Administrator discussed the report from the Independent Qualified Public Accountant with the auditors
  – Compliance questions
    • Triggers for audits
    • Answer for 2019 won’t limit an audit to 2019
    • Planning now is critical
  – Transfer to other plans
    • Covers terminated plans, what about de-risking?
Improve Service Provider Fee Reporting - Schedule C

• Harmonize Schedule C with IRC 408(b)(2)
  – Service provider information – standardize disclosures as much as the Form 5500 is standardizing reporting
• Total indirect compensation reported as a dollar amount (no formulas)
  – Who will be responsible to determine?
  – Disclosure of who paid the indirect compensation
• Multiple Schedule Cs
• No more eligible indirect compensation
• Disclosure of fiduciary status
• Disclosure of certain compensation arrangements
Back to the Future: Schedule E’s back

- ESOP Annual Information is back!
  - Questions were still on Schedule R, now moved back onto Schedule E
  - Questions relating to whether ESOP stock:
    - was acquired by a securities acquisition loan,
    - readily tradable on an established securities market,
    - any outstanding securities acquisition loans, and some “miscellaneous questions”