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DEPARTMENT OF LABOR

Employee Benefits Security Administration

DEPARTMENT OF THE TREASURY

Internal Revenue Service

PENSION BENEFIT GUARANTY CORPORATION

RIN 1210-AB06

Revision of Annual Information Return/Reports

AGENCIES: Employee Benefits Security Administration, Labor, Internal Revenue Service, Treasury, Pension Benefit Guaranty Corporation.

ACTION: Notice of adoption of revisions to annual return/report forms.

SUMMARY: This document contains revisions to the Form 5500 Annual Return/Report forms, including the Form 5500 Annual Return/Report of Employee Benefit Plan and a new Form 5500-SF, Short Form Annual Return/Report of Small Employee Benefit Plan (Short Form 5500 or Form 5500-SF), filed for employee pension and welfare benefit plans under the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the Internal Revenue Code of 1986, as amended (Code). The Form 5500 Annual Return/Report forms, including the schedules and attachments, are an important source of financial, funding, and other information about employee benefit plans for the Department of Labor, the Pension Benefit Guaranty Corporation, and the Internal Revenue Service (the Agencies), as well as for plan sponsors, participants and beneficiaries, and the general public. The revisions to the Form 5500 Annual Return/Report forms contained in this document, including the new Short Form 5500, are intended to streamline the annual reporting process, reduce annual reporting burdens, especially for small businesses, update the annual reporting forms to reflect current issues and agency priorities, incorporate new reporting requirements contained in the Pension Protection Act of 2006, and facilitate electronic filing. Some of the forms revisions will apply on a transitional basis for the 2008 reporting year before all of the forms revisions are fully

implemented for the 2009 reporting year as part of the switch under the ERISA Filing Acceptance System (EFAST) to a wholly electronic filing system (EFAST2). The forms revisions affect employee pension and welfare benefit plans, plan sponsors, administrators, and service providers to plans subject to annual reporting requirements under ERISA and the Code.

DATES: Effective January 15, 2008.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Goodman or Michael I. Baird, Employee Benefits Security Administration (EBSA), U.S. Department of Labor, (202) 693-8523, for questions relating to the Form 5500, and its Schedules A, C, D, G, H, and I, and lines 1 through 11 of the Form 5500-SF (Short Form 5500), as well as the general reporting requirements under Title I of ERISA; Lisa Mojiri-Azad, Internal Revenue Service (IRS), Office of Chief Counsel, (202) 622-6060, or Ann Junkins, IRS, (202) 283-0722, for questions relating to Schedules SB, MB, and R of the Form 5500, lines 12 and 13 of the Short Form 5500, and the filing of Short Form 5500 instead of the Form 5500-EZ for plans that are not subject to Title I of ERISA, as well as questions relating to the general reporting requirements under the Internal Revenue Code; and Michael Packard, Pension Benefit Guaranty Corporation (PBGC), (202) 326-4080, ext. 3429, for questions relating to Schedules SB and MB of the Form 5500, and lines 13 through 19 of Schedule R, as well as questions relating to the general reporting requirements under Title IV of ERISA. For further information on an item not mentioned above, contact Mr. Baird. The telephone numbers referenced above are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

A. Background

Sections 101 and 104 of Title I and section 4065 of Title IV of the Employee Retirement Income Security Act of 1974, as amended (ERISA), sections 6058(a) and 6059(a) of the Internal Revenue Code of 1986, as amended (Code), and the regulations issued under those sections, impose certain annual reporting and filing obligations on pension and welfare benefit plans, as well as on certain other entities.\1\ Plan administrators, employers, and others generally satisfy these annual reporting obligations by the filing of the Form 5500 Annual Return/Report of Employee Benefit Plan, including its schedules and attachments (Form 5500 Annual Return/Report), in accordance with the instructions and related regulations.

\1\ Other filing requirements may apply to certain employee benefit plans and to multiple-employer welfare arrangements under ERISA or to other benefit arrangements under the Code, and such other filing requirements are not within the scope of this Notice. For example, Code sec. 6033(a) imposes an additional reporting and filing obligation on organizations exempt from tax under Code sec. 501(a), which may be related to retirement trusts that are qualified under sec. 401(a) of the Code.

The Form 5500 Annual Return/Report is the principal source of information and data available to the Department of Labor (Department or Labor), the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC) (collectively, Agencies) concerning the operations, funding, and investments of about 800,000 pension and welfare benefit plans. These plans cover an estimated 150 million participants and hold an estimated $4.3 trillion in assets. Accordingly, the Form 5500 Annual Return/Report constitutes an integral part of each Agency's enforcement, research, and policy formulation programs, and is a source of information and data for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies. The Form 5500 Annual Return/Report also serves as a primary means by which plan operations can be monitored by participants and beneficiaries and by the general public.

On July 21, 2006, the Department published a final rule requiring electronic filing of the Form 5500 Annual Return/Report for reporting years beginning on or after January 1, 2008 (Electronic Filing Rule). 71 FR 41359. Simultaneously with the publication of the Electronic Filing Rule, the Agencies published a notice of proposed forms revisions (July 2006 Proposal) proposing changes to the Form 5500 Annual Return/Report for the 2008 reporting year. 71 FR 41615. On December 11, 2006, the Agencies published a Notice of Supplemental Proposed Forms Revisions (Supplemental Notice). 71 FR 71562. The Supplemental Notice was necessary to make changes to the Form 5500 Annual Return/Report required by the Pension Protection Act of 2006, Pub. L. 109-280, 120 Stat. 780 (2006), enacted on August 17, 2006 (PPA).

The Agencies received 38 comment letters on the July 2006 Proposal,\2\ and seven comments on the Supplemental Notice. Comments were submitted by various members of the regulated community, including representatives of employers, plans, and plan service providers. Copies of the comments are

posted on the Department's Web site at http://www.dol.gov/ebsa/regs.

\2\ The Agencies also received a comment letter from the United States Department of Commerce, Economic and Statistics Administration, Bureau of Economic Analysis (BEA), that indicated that the BEA relies on the information collected in the Form 5500 to prepare certain statistics.

After careful consideration of the issues raised by the written public comments, the Agencies decided to adopt the forms largely as proposed, but, in an attempt to strike a balance between ensuring adequate reporting and disclosure to participants, beneficiaries, and the Agencies, on the one hand, and the costs and administrative burdens attendant to the administration and maintenance of employee benefit plans on the other, the Agencies revised some of the annual reporting requirements in response to public comments. The Agencies now are publishing in this Notice the final forms revisions for the Form 5500 Annual Return/Report (including the Short Form 5500), generally effective for the 2009 reporting year (with certain transition changes effective for the 2008 reporting year). Set forth below is a general summary of the public comments received in response to the proposals, changes made in response to those comments, and an overview of the final forms revisions being adopted in this Notice.

The Agencies are printing in this Notice information copies of the 2009 Form 5500, 2009 Form 5500-SF, and 2009 Schedules A, SB, MB, C, D, G, H, I, and R. This Notice also includes information copies of the related instructions, except for the instructions to the Schedule SB and MB and certain new questions on the Schedule R, which the Agencies will publish after the Treasury/IRS develop the underlying substantive guidance under the PPA, and certain instructions relating to electronic filing procedures under the EFAST2 system. Information copies of the forms and the instruction package will also be posted on the Department's Web page at http://www.dol.gov/ebsa. Because of the switch

to EFAST2 and a wholly electronic filing requirement, the information copies of the 2009 annual return/report forms printed in this Notice are not acceptable for and cannot be used for filing an annual return/report under the EFAST2 system. Once the EFAST2 contract is awarded to a firm to develop the new wholly electronic filing system for the 2009 Form 5500 Annual Return/Report forms, including the Form 5500-SF, the contractor may as part of its development of the new system need to make technical reformatting changes to the forms that may affect the appearance of the forms. Details on any changes to the appearance of the forms and on the wholly electronic filing and processing system, including details on electronic signature requirements, will be available as the contract is awarded and the system development is finalized. Although the paper forms will not be used for filing under the EFAST2 system, the final format of the forms and schedules will be the required format for satisfying disclosure obligations under ERISA, including the plan administrator's obligation to furnish copies of the annual report to participants and beneficiaries on request pursuant to section 104(b) of ERISA.

B. Discussion of the Public Comments

1. Deferral of Forms Revisions and Electronic Filing Mandate to the 2009 Plan Year

A significant number of the commenters, including several large industry groups representing plan sponsors and service providers, asked for a delay in the effective date of the forms changes. A number of the commenters asked for additional time to comment due to work being done to implement new statutory requirements enacted as part of the PPA. Some commenters also suggested that the comment period should be extended to allow more time to address the Schedule C (Service Provider Information) changes due to the significance of the changes in plan fee and expense reporting, the attendant compliance costs, and a desire to evaluate the Schedule C changes in conjunction with proposed regulations the Department has announced it will be publishing under ERISA section 408(b)(2).\3\ Three different commenters suggested that the effective date for the new reporting requirements for Code section 403(b) plans be delayed until after the IRS publishes its final regulation on Code section 403(b) plans. Some commenters urged that the effective date be extended for the Form 5500 Annual Return/Report changes until 2009 or 2010 at the earliest to allow sufficient time to make necessary changes to comply with the new requirements. One commenter, who requested a delayed implementation date generally for the new forms and electronic filing requirement, suggested an earlier implementation date for the Short Form 5500 as a way of satisfying the PPA requirement of a simplified report for plans with fewer than 25 participants.

\3\ As set forth in the Department's semi-annual regulatory agenda, 72 FR 22845, the rulemaking would amend the regulation at 29 CFR section 2550.408b-2 setting forth the standards applicable to the exemption under ERISA section 408(b)(2) for contracting or making reasonable arrangements with a party in interest for office spaces or services. The proposed amendment is intended to ensure that plan fiduciaries are provided or have access to the information necessary to determine whether an arrangement for services is ``reasonable'' within the meaning of the statutory exemption, as well as within the meaning of the prudence requirements of ERISA section 404(a)(1)(B).

The proposed revisions to the Form 5500 Annual Return/Report, which include both those set forth in the Agencies' July 2006 Proposal and those in the Supplemental Notice to address changes required by the PPA, are part of the switch under the ERISA Filing Acceptance System (EFAST) to a wholly electronic filing and processing system (EFAST2) that would replace the existing largely paper-based filing system. As part of that e-filing initiative, and as noted above, the Department published the Electronic Filing Rule, establishing an electronic filing requirement for annual reports filed for plan years beginning on or after January 1, 2008. In adopting the final Electronic Filing Rule, the Department responded to public comments seeking a delay in the wholly electronic filing system by agreeing to a one year deferral of the electronic filing mandate from the 2007 plan year to the 2008 plan year. The Department agreed to the deferral in order to facilitate an orderly and cost-effective migration to an electronic filing system by both the Department and the regulated community. Under the final Electronic Filing Rule published in July 2006, the vast majority of filers would have had until at least July 2009 to make any necessary adjustments to accommodate the electronic filing of their annual report because annual reports generally are not required to be filed until the end of the 7th month following the end of the plan year. The timing also provided service providers, software developers, and the Department additional time to work through electronic filing and processing issues.

In evaluating the public comments seeking a further deferral of the implementation of the revised forms and, as a consequence, the electronic filing requirement, the Agencies evaluated the benefits of giving the regulated community more time to transition to the new EFAST2 electronic filing system, keeping in mind the effective dates mandated by the PPA for certain of the annual reporting changes. The Agencies continue to believe it is important for plans, service providers, and the Agencies to have an orderly and cost-effective migration to the EFAST2 electronic filing system. In light of the substantial number of comments expressing concern about needing more time to adjust recordkeeping and other annual reporting systems, the Agencies have decided to defer for an additional year the implementation of annual reporting forms changes not mandated by the PPA,\4\ except for a few Schedule R items that the PBGC had determined that it needs to enable it to properly monitor the plans it insures. Thus, the current EFAST filing system will be continued for the 2007 and 2008 plan year filings. This includes the requirements to file the Schedule E, the Schedule SSA, and the IRS Form 5500-EZ, ``Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan'' (Form 5500-EZ), under the current EFAST system with the Department for the 2007 and 2008 reporting years. Also, as provided in the Electronic Filing Rule, delinquent or amended filings for prior plan years for which paper filing options were available also will be subject to the electronic filing requirement. The deferral of the electronic filing requirement applies to delinquent and amended filings. The Department will provide instructions prior to the inauguration of the system on how those filings are to be made under the electronic filing system.

\4\ It is significant to note that the implementation of the annual reporting form changes not mandated by the PPA has been deferred until after the publication of the IRS final regulations on Code section 403(b) plans.

Under the final regulations, the electronic filing requirement and all of the forms changes, except for those mandated by the PPA and the PBGC's new Schedule R items discussed below, will become effective for all annual report filings made under Part 1 of Subtitle B of Title I of ERISA for plan years (or reporting years for non-plan filings) beginning on or after January 1, 2009.\5\

\5\ The Supplemental Notice explained that the Department believed that the EFAST2 system would satisfy the PPA requirement that the Department make available electronically on its Web site certain actuarial information filed as part of the Form 5500 Annual Return/Report. See PPA Sec. 504, 29 U.S.C. Sec. 104(b). The Department believes that the related provision in the PPA calling for actuarial information to be filed electronically was intended to facilitate the Department's ability to meet its obligation to post the actuarial information on its Web site within 90 days after the information is filed as part of the plan's annual report. The Department believes it can still satisfy the web posting requirement under the current EFAST system without imposing a special electronic filing requirement on defined benefit pension plans for the transition 2008 plan year.

To effectuate the postponement of the electronic filing requirement, the Department, in the final rule being published contemporaneously with this Notice amending its annual reporting regulations, is including an amendment to the Electronic Filing Rule. Specifically, that final rule amends the Department's regulation at 29 CFR 2520.104a-2 to provide that the electronic filing requirement is applicable for plan years beginning on or after January 1, 2009. The vast majority of filers will now have until at least July 2010 to make any necessary adjustments to accommodate the non-PPA required changes (other than the PBGC Schedule R changes) to the form and those required for electronic filing of their annual report because, as noted above, annual reports generally are not required to be filed until the end of the 7th month following the end of the plan year.

Short plan year filings for 2009 plan years and filings for DFEs for 2009 reporting years will be subject to a special transition rule. The instructions to the Form 5500 Annual Return/Report advise filers that the due date for their Form 5500 for a plan year of less than 12 months (short plan year) is the last day of the 7th month after the short plan year ends. For purposes of determining the filing deadline, the instructions state that a short plan year ends on the date of the change in accounting period or upon the complete distribution of assets of the plan in the case of terminated or merged plans. For DFE filings, the instructions provide that DFEs (other than GIAs) must file 2009 return/reports no later than nine and one half months after the end of the DFE year that ended in 2009, and the 2009 Form 5500 must report information for the DFE year (not to exceed 12 months in length). The Agencies historically have permitted short plan year filers and DFEs to use the prior year's forms if the current year forms are not available by the plan's or DFE's filing due date. The Agencies expect that, in some cases, filings for 2009 short plan years and DFE filings for 2009 reporting years (e.g., if the DFE year differs from the 2009 calendar year) may be due during 2009 and before the January 1, 2010, date on which the new EFAST2 wholly electronic filing system is expected to become operational for return/report filing purposes. Plans filing for 2009 short plan years and DFEs filing for 2009 reporting years will have the option of using the 2008 Form 5500 Annual Return/Report forms and filing for 2009 under the current EFAST filing system if they file before the date the new EFAST2 electronic filing system becomes operational. Alternatively, plans whose due date for their 2009 short plan year filing and DFEs whose due date for their 2009 reporting year filing falls before the new EFAST2 system becomes operational but who want to file electronically under the new EFAST2 system will be granted an automatic extension until after the EFAST2 system becomes operational in which to file. The Agencies intend to describe the terms and conditions for the automatic extension in the instructions for the 2008 Form 5500 Return/Report.

a. PPA-Required Actuarial Schedules, Multiemployer Plan Reporting, and Asset Allocation Information

The PPA-required changes in the Form 5500 Annual Return/Report (other than the simplified reporting requirement) are the new actuarial information schedules (Schedules SB and MB), lines 13a and 13b of the Schedule R (identifying information on significant contributors to multiemployer defined benefit plans), lines 14-17 of the Schedule R (additional information related to multiemployer defined benefit pension plans), line 18 of the Schedule R (certain liabilities to participants and beneficiaries under two or more pension plans), and, for multiemployer defined benefit plans only, the new line 7 of the Form 5500 (number of employers with an obligation to contribute to the multiemployer plan).\6\ To comply with the PPA, these reporting changes are being implemented under the current EFAST system for 2008 plan year annual reports.

\6\ The text of the question on the new line 7 has been revised from that in the July 2006 proposal to exactly match the language in the annual reporting requirement in the PPA.

The Agencies concluded that it would not be cost-effective or practical to create computer scannable versions of the Form 5500 and these schedules to be compatible with the outdated EFAST computer scannable form technology because these forms would have a limited one year useful life under the EFAST system during the transition period before implementation of the EFAST2 electronic filing system. Effective for the 2008 transition year, plans required to file actuarial information must check the box on the Form 5500 to indicate that they are filing a Schedule B, but instead of filing the current Schedule B, they will file Schedule SB or MB (whichever is applicable). The Schedule B will no longer be a valid schedule for 2008 plan year filings. Plan year 2008 Form 5500 Annual Return/Reports filed by pension plans subject to the minimum funding rules must include a Schedule SB or MB and not a Schedule B for 2008 plan years. Filings that include a Schedule B instead of a Schedule SB or MB will be rejected. As to the other PPA-required items (lines 13a, 13b, and 14-18 of Schedule R and line 7 of Form 5500), for

the transition year, filers will be directed in the instructions to include answers to those questions as an attachment to the current Schedule R. Similarly, lines 13c-e (for multiemployer defined benefit plans) and line 19 (asset allocation questions for large defined benefit plans) of the Schedule R also are being implemented on a transition basis for 2008 plan year annual reports. Filers will also be directed in the instructions to include answers to these lines as an attachment to the Schedule R.

The Agencies also changed the 2007 Form 5500 Annual Return/Report instructions for short plan year filings (filings for years of less than 12 months) to accommodate these PPA changes. Specifically, the instructions to the Form 5500 Annual Return/Report historically have advised filers that the due date for their Form 5500 for a plan year of less than 12 months (short plan year) is the last day of the 7th month after the short plan year ends. For purposes of determining the filing deadline, the instructions state that a short plan year ends on the date of the change in accounting period or upon the complete distribution of assets of the plan in the case of terminated or merged plans. The Agencies have permitted short plan year filers to use the prior year's forms if the current year forms for the short plan year are not available by the plan's filing due date. The Agencies expect that, in some cases, filings for 2008 short plan years may be due during 2008 and before the final regulations and instructions for the Schedule SB or MB are available. Since the Schedule B will not be a valid schedule for plan year 2008 filings, filers will not have the option of using the 2007 Schedule B with a 2008 short plan year filing, but will be required to wait until the 2008 Forms are available for filing. The Agencies have indicated in the instructions for the 2007 Form 5500 Annual Return/Report that an automatic extension that will be available for 2008 short plan year filings required to include a Schedule SB or Schedule MB and/or a supplemental attachment to Schedule R.

b. PPA-Required Simplified Reporting for Plans With Fewer Than 25

Participants

As noted in the Supplemental Notice, section 1103(b) of the PPA requires a simplified report for plans with fewer than 25 participants at the beginning of the plan year to be available for 2007 plan year filings, i.e., filings for plan years beginning after December 31, 2006. The Supplemental Notice proposed to satisfy the simplified report requirement for 2008 plan years, i.e., those beginning after December 31, 2007, by implementing the Short Form for 2008 plan year reports under the new EFAST2 system. The Supplemental Notice explained the Agencies' intention for the interim 2007 reporting year to give plans covering fewer than 25 participants that met the conditions for being eligible to file the Short Form 5500 the option of filing an abbreviated version of the current Form 5500 Annual Return/Report for small plan filers. The Supplemental Notice explained that the abbreviated version would largely replicate, within the context of the existing Form 5500 Annual Return/Report structure, the information that would be required to be reported on the proposed Short Form 5500 by allowing certain schedules to be excluded from the filing and requiring only certain line items to be completed on some of the required schedules. With the additional deferral of the electronic filing requirement, this simplified reporting option for plans with fewer than 25 participants will be available for both the 2007 and 2008 plan year filings.

For the 2007 and 2008 plan years, plans with fewer than 25 participants at the beginning of the plan year that meet the eligibility requirements for the Short Form 5500, treating those conditions as if they applied for 2007 and 2008 plan year filings, may file the following as their annual return/report: (1) The entire Form 5500; (2) a Schedule A for any insurance contract for which a Schedule A is required under current rules, completing lines A, B, C, D and the insurance fee and commission information in Part I; (3) if the reporting of actuarial information is required, the entire Schedule B for the 2007 plan year, and the entire Schedule SB or MB (whichever is applicable) for the 2008 plan year; (4) the entire Schedule I; (5) Schedule R identifying information and Part II; and (6) the entire Schedule SSA. The instructions to the 2007 Form 5500 Annual Return/Report explain and 2008 Form 5500 Annual Return/Report will explain, respectively, this simplified reporting option.

Some eligible small plan filers may want to wait until the implementation of the Short Form 5500 for the 2009 plan year in order to avoid having to make changes to their annual reporting systems and procedures for 2007 and 2008 plan year filings and then having to adjust them again to start filing the Short Form 5500 electronically for the 2009 plan year. The above simplified reporting alternative, accordingly, is available for plans that voluntarily choose to take advantage of the option. Plans with fewer than 25 participants may continue to file in accordance with the otherwise applicable small plan filing rules for the 2007 and 2008 plan years. Small plans with 25 or more participants that meet the eligibility requirements must wait until the 2009 plan year to take advantage of the Short Form's simplified reporting.

2. Short Form 5500

The Short Form 5500 was proposed as a new two-page form for small plans (generally, plans with fewer than 100 participants) with secure and easy to value investment portfolios. As set forth in greater detail in the July 2006 Proposal, a plan would be eligible to file the Short Form if the plan: (1) Covers fewer than 100 participants or would be eligible to file as a small plan under the rule in 29 CFR 2520.103-1(d); (2) is eligible for the small plan audit waiver under 29 CFR 2520.104-46 (but not by virtue of enhanced bonding); (3) holds no employer securities; (4) has 100% of its assets in investments that have a readily determinable fair market value; and (5) is not a multiemployer plan.

Commenters on the July 2006 Proposal generally supported the proposed Short Form 5500 as a way to simplify the annual reporting requirements and reduce annual reporting burdens for small plans. The Agencies, accordingly, have decided to adopt the Short Form 5500 largely as proposed with only minor technical revisions to the form and the accompanying instructions.

Two commenters suggested that the Agencies relax the conditions for plans to be eligible to file the Short Form 5500. The commenters noted the requirement in the PPA (enacted after the July 2006 Proposal was published) that Labor and the Department of the Treasury (Treasury) jointly develop a simplified report for plans that cover fewer than 25 employees. One of the commenters suggested that Labor and Treasury use the Short Form 5500 to meet this requirement by eliminating any other eligibility conditions for plans covering fewer than 25 participants. That commenter also suggested that the Short Form 5500 eligibility requirement--that the plan hold 100% of its assets in secure, easy to value investments--be modified so that it tracked the 95% ``qualifying plan asset'' threshold that currently applies under the Department's regulation at 29 CFR 2520.104-46 for small pension plans to be eligible for the waiver of the general Title I requirement for employee benefit plans to be audited annually by an independent qualified public accountant (IQPA). Two other

commenters objected to the Short Form 5500 and reduced annual reporting for small plans, asserting that small plans, especially those with fewer than 25 participants, are more likely than plans of larger companies to suffer from mismanagement of funds and improper administration. Notwithstanding the PPA mandate to develop a simplified annual report, the commenters urged requiring more detailed reporting for small plans as a way of protecting against such abuses.

The Department of Labor and the Department of Treasury continue to believe, as set forth in the Supplemental Notice, that the requirement in the PPA to provide ``simplified'' reporting for plans with fewer than 25 participants is satisfied by the simplified reporting scheme in the July 2006 Proposal. In addition, the Department of Labor does not view the PPA provision as a direction from Congress that was intended to preclude the Department from determining that plans with fewer than 25 participants should meet conditions consistent with the purposes of Title I and the PPA to be eligible to file the new simplified report. To the contrary, the Department believes the PPA provision should be read consistently with the authority granted the Department in ERISA section 104(a)(2) and 104(a)(3) to create simplified reports for pension and welfare plans, both of which provisions acknowledge that the Department has such discretion. The Short Form 5500, as proposed, was targeted to provide a simplified report for plans with fewer than 25 participants. Approximately 75% of all plans eligible to file the Short Form 5500 cover fewer than 25 participants and approximately 95%

of plans with fewer than 25 participants are estimated to be eligible to file the Short Form 5500. The decision to prohibit multiemployer plans and plans that invest in employer securities from being eligible to use the Short Form 5500 is consistent with the PPA's emphasis on expanding the annual reporting requirements for multiemployer plans and increasing transparency and participant control over employer securities in individual account plans. As under the July 2006 Proposal, even those small plans not eligible to use the Short Form 5500 still would be able to avail themselves of the other simplified reporting options available to small plans under the Form 5500 Annual Return/Report. The commenter's suggestion to eliminate all of the Short Form 5500 eligibility conditions for plans covering fewer than 25 employees therefore has not been adopted.

The suggestion to modify the condition that 100% of the plan's assets are held in investments that have a readily determinable fair market value also is not being adopted. As noted above, the Short Form 5500 conditions already require plans to satisfy the audit waiver conditions in 29 CFR 2520.104-46 to be eligible to file the Short Form. The condition in the audit waiver regulation that 95% of the plans assets be ``qualifying plan assets,'' focuses on whether the assets are held by a regulated financial institution, The Short Form 5500 condition regarding types of plan investments, in contrast, is based on a premise that certain small plans, by virtue of all of their assets being held by regulated financial institutions and having a readily determinable fair market value, present reduced risks for their participants and beneficiaries. Using any percentage measure for assets with a readily determinable fair market value would create a risk that hard to value assets would be materially undervalued in order to meet the percentage threshold and result in plans with substantial holdings in hard to value assets being eligible to file the Short Form 5500. The Agencies continue to believe that the separate financial information regarding hard to value investments on the Schedule I is important for regulatory, enforcement, and disclosure purposes. The Agencies are not changing this provision because of their concerns that allowing plans with any hard to value assets to use abbreviated annual report filing (i.e., the Short Form 5500) could compromise enforcement and research needs of the Agencies and disclosure needs of participants and beneficiaries in such plans.

3. Code Section 403(b) Plan Reporting

Under the July 2006 Proposal, the limited annual reporting options currently available to Code section 403(b) plans would have been eliminated so that Code section 403(b) plans would be subject to the same annual reporting rules that apply to other ERISA-covered pension plans. Two commenters representing employee benefit plan auditors and administrative service providers were supportive of the Department's proposal and agreed that requiring Code section 403(b) plans to comply with the same annual reporting rules that applied to other ERISA covered pension plans would improve transparency and accountability. Other commenters representing 403(b) plan sponsors and insurance and investment companies opposed the proposal. Those opposing the expanded reporting requirement argued that compliance with the reporting requirement would be both burdensome and costly given the fact that most 403(b) plans are a composite of individual contracts issued to employees by different 403(b) vendors without a central point for administration and recordkeeping. The commenters claimed that there is no record of abuse in the 403(b) plan area that supported the proposed changes. Certain commenters also suggested that different annual reporting rules for Code section 403(b) plans are justified by the fact that the tax exempt employers that sponsor Code section 403(b) plans do not have a tax incentive for sponsoring pension plans for their employees and might be more likely to terminate plans or refuse to sponsor plans based on concerns about administrative costs and burdens.

After evaluating the comments, the Department continues to believe that subjecting Code section 403(b) plans to the same annual reporting rules that apply to other ERISA covered pension plans is consistent with the purposes of Title I of ERISA and the interests of covered participants and beneficiaries. The approach to annual reporting by tax sheltered annuity programs was premised historically on the conclusion that they differed from ordinary pension or deferred compensation plans. Code section 403(b) plans, which date back to 1958, were originally less in the nature of a plan than of an arrangement under which an employer purchased from an insurance company on behalf of an employee an individual annuity contract that could be tailored to the desires and financial means of the individual employee. Because contributions were required to be invested only in annuity contracts or in certain mutual fund custodial accounts, the Department had believed that the regulatory supervision of insured annuity contracts and of regulated investment companies provided much of the disclosure, fiduciary and funding protection afforded by Title I of the Act. The Department also had concluded that because section 403(b) programs may be individually tailored, the reporting and disclosure provisions of Title I could present substantial administrative difficulties for the employer and for the Department. Finally, the Department viewed section 403(b) programs as similar to individual retirement account (IRA) based plans that were granted an exemption from the annual reporting requirements under Title I provided they met certain conditions.

As the IRS indicated in the preamble to the recently published final regulations on Code section 403(b) plans (72 FR 41128, Jul. 26, 2007), various amendments to section 403(b) over the past 40 years have diminished the extent to which the rules governing Code section 403(b) plans differ from the rules governing other employer-based plans, such as arrangements that include salary reduction contributions, i.e., Code section 401(k) plans. The IRS's final Code section 403(b) regulations would impose requirements involving the establishment of a more centralized system of recordkeeping for all Code section 403(b) plans. The establishment and growth since 1978 of 401(k) plans has made the ``individually tailored'' character of Code section 403(b) plans less distinctive. Section 401(k) plans are often structured as participant directed with multiple investment options offered by separate investment providers, and many plans include brokerage accounts as a way of allowing employees to further tailor the plan to their individual investment objectives and financial means. Developments in the Code section 403(b) plan market have also raised questions about whether regulatory supervision of Code section 403(b) plan vendors under insurance and securities laws provides much of the disclosure, fiduciary, and funding protections afforded by Title I of the Act. In the fiscal years 2002 through 2006, the Department found violations in 78 percent of its investigations of Code section 403(b) plans. Although the predominant issue in these investigations was delinquent employee salary contributions, investigations of Code section 403(b) plans also revealed delinquent employer contributions, imprudence, prohibited uses of assets, and reporting and disclosure violations. The high incidence of improper handling of employee contributions suggests a potentially broader laxity in fiduciary oversight. There are also reports that governmental entities that sponsor Code section 403(b) plans (which generally would be excluded from ERISA as governmental plans) are concerned about undisclosed fees, penalties, and restrictions in their Code section 403(b) plans and are making demands for additional disclosures. See, e.g., California Assembly Bill 2506, signed Sept. 29, 2002 (codified at Cal. Education Code secs. 25100-25115).

The Department believes that the annual report requirements, including an audit by an IQPA, provide important oversight of the Code section 403(b) plan's internal control structure and overall operations. The Department believes that preparing the financial statements and schedules as part of the annual report in compliance with the Department's requirements for reporting and disclosure under ERISA provides participants with greater assurance that the plan administrator or other authorized parties have properly monitored the financial condition and operation of the plan. The impact of having to meet the same annual reporting requirements applicable to other ERISA-covered plans would be substantially less burdensome for small tax-exempt employers, which generally should be eligible for the small plan audit waiver and for filing the Short Form 5500.

While the new annual report requirements may result in additional costs to a Code section 403(b) plan, these reporting requirements would only apply to Code section 403(b) plans that are subject to Title I of ERISA and would subject those plans only to the same annual reporting requirements that apply to other ERISA-covered pension plans. In such cases, the administration and management of the Code section 403(b) plan have already been subject to ERISA's general fiduciary obligations. Such plans should, therefore, already have an administrative structure in place to ensure compliance with various Title I requirements, such as having a written plan document, furnishing summary plan descriptions and other ERISA required disclosures to participants and beneficiaries, and maintaining an adequate recordkeeping system so that the plan fiduciaries can prudently manage the plan and monitor plan service providers. In the Department's view, the process of preparing an annual report reinforces a recordkeeping and monitoring discipline on plan officials that facilitates better fiduciary compliance. In that regard, the Department does not believe that it would be helpful to adopt the suggestion by one commenter to have Code section 403(b) plans answer only a single or limited number of questions focused just on timely transmission of employee salary reduction contributions to the plan. The Department does not believe that continuing a general exemption from the audit requirement for Code section 403(b) plans subject to Title I annual reporting requirements is appropriate.

As noted in the preamble to the July 2006 Proposal, small Code section 403(b) plans (generally covering fewer than 100 participants) should be able to meet the conditions for being exempt from the audit requirement and be eligible to file the proposed Short Form 5500.\7\ Thus, relative to the current requirements, the final rule provides significant annual reporting and audit relief for small tax exempt employers. In that regard, in the Department's view, Code section 403(b) plans that were eligible to file as a small plan under 29 CFR 2520.103-1(d) in the previous year and that have participant counts of less than 121 at the beginning of the 2009 plan year can file as small plans under the new filing rules.

\7\ One commenter expressed concern that some Code section 403(b) investments might not meet the Short Form 5500 eligibility requirement that 100% of the plan's assets be held in investments that have a readily determinable fair market value. The instructions published with the July 2006 Proposal specifically provided that investments in mutual fund shares and insurance contracts for which valuation information is provided by the insurer at least annually were assets that had a ``readily determinable fair market value'' for purposes of the Short Form 5500 eligibility conditions. Those instructions are carried over into the instructions to the final Short Form 5500.

One commenter that supported the proposal to apply generally applicable annual reporting rules to Code section 403(b) plans suggested that interim relief may be needed because auditors may refuse to take on initial engagements because records from prior years may not be adequate for current year audit purposes. Although Code section 403(b) plans have not yet been subject to an audit requirement as part of the annual reporting process, as noted above, fiduciaries of such plans must keep records under ERISA section 107 to verify that they are in fact eligible to file as Code section 403(b) plans and have a general fiduciary obligation to keep adequate records to monitor the plan and ensure compliance with the fiduciary and other substantive requirements of Title I of ERISA.\8\

Further, Code section 403(b) plans are required to maintain various records in order to comply with Code requirements including, for example, discrimination testing, required distributions and compliance with maximum contribution limitations. Despite the existing recordkeeping requirements, the Department recognizes that auditors may face difficulties in providing an unqualified opinion in their initial audits of Code section 403(b) plans. In that regard, the final forms changes defer the reporting year to which this requirement applies for an additional year from that in the proposal. This Notice is thus being published over a year before the first plan year for which plan audits would be required, and over two years before the plan audits themselves would likely be commenced. In light of the extended lead time the publication date gives plans to make changes to their recordkeeping practices and make certain they have access to the necessary records in anticipation of the audit for the 2009 plan year, in the Department's view, it would be premature at this point to announce general transitional relief from the audit requirement. The Department will, however, remain open to reconsidering the issue to the extent developments suggest that a transitional enforcement policy or other transitional relief would be appropriate to address problems caused by lack of familiarity with the audit process or is needed to facilitate a smoother transition to the new annual reporting regime by Code section 403(b) plans.

\8\ One commenter argued that Code section 403(b) plans covered by ERISA have no ERISA section 107 recordkeeping obligations under Title I because they file under an alternative method of compliance under section 110 of ERISA, not under a simplified report or exemption under section 104 of ERISA, and ERISA section 107 only requires administrators to keep records necessary to verify the information actually filed on the Form 5500 when it is filed as an alternative method of compliance. ERISA section 107 provides that ``[e]very person subject to a simplified requirement to file any report or to certify any information therefor under this title or who would be subject to such a requirement but for an exemption or simplified reporting requirement under section 104(a)(2) or (3) of this title, shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained, or clarified, and checked for accuracy and completeness. . . .'' Accepting the commenter's argument would lead to the anomalous result that large Code section 403(b) plans would have very limited recordkeeping obligations under ERISA section 107, but plans exempt from any Form 5500 filing requirement would be required to keep records necessary to verify the information that would be required to be filed under section 103 of ERISA. In any event, all Code section 403(b) plans filing a Form 5500 under the limited reporting provisions available to Code section 403(b) plans would have to keep records under ERISA section 107 to verify that they are in fact a pension plan or arrangement using a tax deferred annuity arrangement under Code section 403(b)(1) and/or a custodial account for regulated investment company stock under Code section 403(b)(7) as the sole funding vehicle for providing pension benefits and would have a general fiduciary obligation to keep records adequate to ensure compliance with the fiduciary and other substantive requirements in Title I of ERISA.

A few commenters contended that the ``universal availability'' requirement applicable to Code section 403(b) plans under the Internal Revenue Code and Treasury Department regulations will unfairly result in Code section 403(b) plans with only a small number of active participants being subject to the large plan audit requirement because all eligible employees are counted as covered participants. The Department notes that Code section 401(k) plans are currently subject to a similar rule where all employees who are eligible to make salary reduction contributions are required to be counted as participants regardless of whether they in fact make any contributions. The Department also expects that, like Code section 401(k) plans, a substantial percentage of large Code section 403(b) plans should be eligible for limited relief from the full audit requirement by taking advantage of the limited scope audit option available under the Department's regulation at 29 CFR 2520.103-8.

Some additional technical changes were made to the final forms to make it clear that certain annual reporting options available to Code section 401(k) plans are also available to Code section 403(b) plans. Specifically, the Schedule H instructions have been modified to provide for aggregate reporting on Lines 4i (Schedule of Assets Held for Investment Purposes) and Line 4j (Schedule of Reportable Transactions) for individual annuity contracts and custodial accounts in Code section

403(b) plans as is currently permitted for participant-directed accounts in Code section 401(k) plans. In addition, the Schedule A instructions have been expanded to make clear that the current rule allowing filers to report a group of individual policies issued by the same insurer on a single Schedule A would apply for Code section 403(b) individual annuity contracts. At the request of one commenter, Line 9 of the Form 5500 has been changed to make clear that Code section 403(b) plans that are funded with and pay benefits through Code section 403(b)(7) ``custodial accounts'' should check ``trust'' for both funding and benefit arrangement.

Finally, in light of the additional annual reporting obligations associated with maintaining a Code section 403(b) plan that is covered by Title I, several commenters stated that more guidance was necessary on the Department's safe harbor regulation at 29 CFR 2510.3-2(f) to assist plans in determining whether they were covered by Title I of ERISA. The commenters stated that this guidance was especially important in light of Treasury's then anticipated issuance of final regulations at 72 FR 41128, TD 9340 reflecting legislative changes made to Code section 403(b) since the existing regulations were adopted in 1964 and incorporating interpretive positions that Treasury has taken in other guidance on Code section 403(b). The Department's safe harbor at 29 CFR 2510.3-2(f) states that a program for the purchase of an annuity contract or the establishment of a custodial account in accordance with provisions set forth in Code section 403(b) and funded solely through salary reduction agreements or agreements to forego an increase in salary, are not ``established or maintained'' by an employer under section 3(2) of ERISA, and, therefore, are not employee pension benefit plans subject to Title I, provided that certain factors are present. The Department agrees that it is important for Code section 403(b) plans to be able to determine whether they are covered by Title I for annual reporting and other ERISA compliance purposes. Thus, the Department issued guidance contemporaneously with Treasury's issuance of its revised regulations under Code section 403(b) on the continued availability of the safe harbor at 29 CFR 2510.3-2(f) and the interaction of the Department's safe harbor and the provisions of the Treasury regulations addressing employer tax compliance obligations in the ongoing operation of a Code section 403(b) arrangement. See FAB 2007-02 (July 24, 2007) (available on the Internet at http://www.dol.gov/ebsa/regs/fabmain.html
).

4. Schedules SB and MB (Pension Plan Actuarial Information)

Draft Schedules SB and MB were posted on the Department's Web site in conjunction with the Supplemental Notice. Instructions for these draft Schedules were not posted nor are they included in this Notice because their development hinges on guidance to be issued by the IRS and/or the PBGC implementing the PPA requirements underlying the Form 5500 Annual Return/Report data elements. Specific guidance regarding the details required in Schedule SB and Schedule MB will be provided in future guidance and will be included in the instructions.

The Agencies received no comments related to the new Schedule MB and multiple comments from one commenter on Schedule SB. That commenter suggested that Line 4a be eliminated because it is identical to the entry in the second column of Line 3d. The Agencies note that the amount reported on Line 4a will not be the same as the amount reported in Line 3d and that this will be made clear in the instructions.

This commenter also suggested that item 6 be expanded to have one line for reporting regular target normal cost and another line for reporting at-risk target normal cost. The Agencies acknowledge that some plans will need to calculate both amounts in order to determine target normal cost, but conclude that it is not necessary to require that these interim calculations be reported. Guidance regarding the details of this calculation will be included in the instructions.

This commenter suggested that the words ``not less than zero'' be added to

the end of the parenthetical definition for Line 30 on the Schedule SB. The Agencies concluded that this change is not necessary. Guidance regarding Line 30 will be included in the instructions.

This commenter noted that the definitions for Lines 7 and 8 refer to Lines 13 and 35 from the prior year, but that these definitions will not be valid for 2008 unless the 2007 Schedule B is changed to include Lines 13 and 35 as defined in the 2008 Schedule SB. The Agencies note that Lines 13 and 35 will not be included on the 2007 Schedule B. The Schedule SB was designed to reflect various PPA reporting and disclosure provisions (generally effective for 2008 and subsequent years). Information on ``look back'' rules applicable for completing the questions on the Schedule SB will be included in the instructions.

5. Schedule C (Service Provider Information)

The Department believes that an annual review of plan fees and expenses as part of the annual reporting process is part of a plan fiduciary's on-going obligation to monitor service provider arrangements with the plan. Commenters generally supported the goals of the proposed changes to the Schedule C, as stated in the proposal, of increasing transparency regarding fees and expenses paid by employee benefit plans and ensuring that plan officials obtain the information they need to assess the compensation paid for services rendered to the plan, taking into account revenue-sharing arrangements among plan service providers and potential conflicts of interests.

Commenters representing insurance companies, banks, and other financial institutions, however, while generally supporting fee transparency and applauding the Department's initiatives in this area, raised concerns that the proposed Schedule C reporting scheme for indirect compensation was more extensive than necessary. They asserted that the proposed changes could result in duplicative, misleading, and confusing reporting. The commenters also argued that the proposed changes, if not narrowed, would impose significant administrative costs on service providers to track and disclose information on indirect compensation, which costs they likely would pass on to their employee benefit plan clients. These commenters suggested that reporting of indirect compensation, as proposed, should be narrowed in various ways: (1) Eliminate or narrow reporting of ``float'' income; (2) postpone any requirement to report ``soft dollars'' until after the Securities and Exchange Commission (SEC), as the primary regulator of soft dollar compensation, addresses the subject as it applies to investors generally; (3) except from reporting revenue sharing payments among affiliates and by other bundled service providers to entities that the bundled provider engages to provide services; (4) retain the current rules under which brokerage commissions are not required to be reported unless the broker is granted some discretion; (5) define ``service providers'' required to be listed in the Schedule C as limited to persons with direct service relationships with the plan and exclude from Schedule C reporting payments to ``subcontractors'' based on the premise that subcontractors are merely assisting the direct service provider in fulfilling its contractual obligations and are not providing services to the plan; (6) confirm that insurers and investment providers are not required to be listed as service providers on Schedule C solely as a result of the plan's purchase of the insurance contract or investment with the investment provider; and (7) integrate the annual reporting requirement into other regulatory disclosure requirements regarding fee and expense disclosure to avoid duplicative and confusing disclosure requirements.

Two individual commenters suggested that the Schedule C should be completed by small plans as well as large plans and that the $5,000 reporting threshold for listing a service provider on the Schedule C should be lowered or eliminated. Another commenter suggested that, if full Schedule C reporting was not expanded to small plans, investment-related fees and expenses should be reported separately in a similar manner as administrative service provider expenses under the July 2006 Proposal which called for administrative service provider expenses paid by the plan to be reported as an aggregate line item on Schedule I and the Short Form.

As noted in the July 2006 Proposal, issues relating to the appropriate manner and scope of the reporting of service provider compensation on the Schedule C have been raised by the ERISA Advisory Council and the Government Accountability Office, as well as by Form 5500 Annual Return/Report filers and plan service providers. The Department is working on a separate regulation setting forth the standards applicable to the exemption under ERISA section 408(b)(2) for contracting or making reasonable arrangements with a party in interest for services. See 72 FR 22845. That regulation is intended to eliminate the current uncertainty as to the information relating to services and fees that plan fiduciaries must obtain and service providers must furnish for purposes of determining whether a contract for services to be rendered to a plan is reasonable. Another rulemaking initiative on the Department's regulatory agenda involves review of participant-level disclosure, including the regulation governing ERISA section 404(c) plans (29 CFR 2550.404c-1), to ensure that participants and beneficiaries in individual account plans are provided the information they need, including information about fees and expenses, to make informed investment decisions. Id. Other federal agencies, for example the SEC, are also focusing on efforts to give investors, including employee benefit plans, better information about the actual amount they have paid investment fund managers during a given period.

Against this backdrop, and inasmuch as plan administrative costs are being passed on to plan participants with increasing frequency, it is critical to ensure that the benefits of any new annual reporting requirement outweigh the attendant compliance costs--costs that may ultimately reduce retirement savings. The Schedule C requirements historically have been limited to large plans that are required to file the Form 5500 Annual Return/Report and have not covered the broader class of plans covered by the Department's other fee transparency initiatives. Considered in context with other fee disclosure initiatives at the Department and elsewhere that are more tailored to the concerns expressed by GAO and the ERISA Advisory Council on changes needed to provide 401(k) plan participants better information on fees, particularly investment fees indirectly incurred by participants directing the investment of assets in their individual 401(k) plan accounts, the Department does not believe expanding the Schedule C annual reporting requirements to small pension plans would be consistent with the direction from Congress in the PPA for the Department to simplify the annual report for plans sponsored by small businesses.

The Department continues to believe that it is appropriate to modify the Schedule C reporting requirements for large plans in an effort both to clarify the reporting requirements and to ensure that the Form 5500 Annual Return/Report serves a role in helping plan officials obtain the information they need to assess the reasonableness

of the compensation paid for services rendered to the plan, taking into account revenue sharing and other financial relationships or arrangements and potential conflicts of interest that might affect the quality of those services. After having carefully reviewed the public comments on the Schedule C proposal, the Schedule C is being adopted largely as proposed, but some revisions are being made to the proposed requirements. The changes are intended to reduce the administrative burdens on plans and plan service providers and clarify the reporting requirements without compromising the proposal's overall objectives.

a. Indirect Compensation Reporting on Schedule C

Reportable compensation under the final Schedule C revisions continues to be defined to include money and any other thing of value (for example, gifts, awards, trips) received directly or indirectly from the plan (including fees charged as a percentage of assets and deducted from investment returns) for services rendered to the plan. The Department does not agree with the commenters who argued that only those persons with ``direct service relationships'' with the plan should be treated as providing services to the plan for Schedule C reporting purposes. The Department believes that such a conclusion would be inconsistent even with the current reporting requirements in the Schedule C. Under current reporting rules, reportable indirect compensation expressly includes ``among other things, payment of `finder's fees' or other fees and commissions by a service provider to an independent agent or employee for a transaction or service involving the plan.'' Nothing in the proposal was intended to restrict or diminish the existing requirement to report such finders' fees or commissions. Rather, the proposal was designed to expand indirect compensation reporting requirements. The Department also believes that adopting the commenters' suggestion would undermine the objective of improving disclosure of fee and compensation information because it is not consistent with the reality of the employee benefit plan marketplace where the nature and complexity of the business and investment environment in which plans operate has changed the ways in which plans obtain and pay for administrative, investment, and other services. Although the Department agrees that an investment of plan assets or the purchase of insurance is not, in and of itself, reportable service provider compensation for purposes of the Schedule C, in the Department's view, persons that provide investment management, recordkeeping, participant communication, and other services to the plan as part of a transaction with the plan should be treated as providing services to the plan or its participants for purposes of Schedule C reporting. Thus, under the final Schedule C revisions, and subject to the alternative reporting option described below, such persons would be required to be identified in Part I if they received, directly or indirectly, $5000 or more in reportable compensation for a transaction or service involving the plan.

Several commenters suggested that a payment be reportable on Schedule C only if either the service provider's eligibility for the payment or the amount of the payment is based on a transaction directly involving assets of the plan. The commenters argued that such a test would be consistent with conflict of interest rule in ERISA section 406(b)(3), which prohibits receipts by plan fiduciaries of consideration for their own personal account from any party dealing with a plan ``in connection with'' transactions involving plan assets. The Department does not agree that the standard for Schedule C reporting should be narrowed to parallel the prohibited transaction standard in ERISA section 406(b)(3). Unlike the prohibited transaction provision in 406(b)(3), the Schedule C revisions were not intended to be limited to receipts by plan fiduciaries or to identifying impermissible conflicts of interest. The Schedule C reporting of indirect compensation also is not limited to only those circumstances where a plan fiduciary affirmatively chooses the indirect service providers. Rather, one of the goals of the Schedule C changes is to improve fee disclosure to plan fiduciaries, especially where they do not have a role in determining the compensation paid to parties that are receiving fees for a transaction or service involving the plan. Schedule C reporting arises in part from ERISA section 103(c)(3), which requires information in the annual report regarding ``each person'' (not limited to just fiduciaries) who rendered services to the plan or who had transactions with the plan who received, directly or indirectly, compensation from the plan during the year for services rendered to the plan or its participants. Further, ERISA section 103(c)(5) expressly provides that the administrator shall furnish as part of the annual report ``[s]uch financial and actuarial information'' as the ``Secretary may find necessary or appropriate.'' In the Department's view, the prohibited transaction standard in ERISA section 406(a)(1)(C)--transactions that constitute a ``direct or indirect'' furnishing of goods, services, or facilities to the plan--is generally a more suitable analog for Schedule C reporting. Thus, in the Department's view, the Schedule C reporting requirement should generally capture both persons who receive direct or indirect compensation and persons who provide services directly or indirectly to the plan.

The Department nonetheless agrees that additional guidance on certain areas of concern raised by commenters would establish useful compliance guides for plan administrators and plan service providers.

As was noted in the July 2006 Proposal, Schedule C was intended to capture information on compensation received by persons providing services, and not information on benefit payments to participants and beneficiaries. Where fully insured group health benefits, or similarly fully insured benefits under a plan, are purchased from and guaranteed by a licensed insurance company, insurance service, or other similar organization, and where information regarding that contract is reported on the Schedule A, compensation paid by the insurance company from its general assets to affiliates or third parties for administrative activities necessary for the insurer to satisfy its contractual obligation to provide benefits is not required to be treated as reportable service provider compensation for purposes of the Schedule

C. Insurance investment contracts are not eligible for this exception. As described below in the discussion of the Schedule A (Insurance Information), a similar exclusion is being adopted in defining the scope of insurance fees and commissions that must be separately reported on the Schedule A. In determining whether such compensation is excludable from the Schedule C, the Department would look to whether the administrative services are necessary for the insurer to satisfy its contractual obligation to provide benefits under the plan and are not services incidental to the sale or renewal of a policy, whether payments by the insurer are out of its general assets to third parties without any other direct or indirect charge to the plan other than the policy premium, are made pursuant to a contract or written understanding to provide the services, and whether the amount of the compensation paid by the insurer is

reasonable in light of the value of the services provided.

Under the proposal, Schedule C reportable compensation included brokerage commissions and fees directly or indirectly charged to the plan on purchase, sale, and exchange transactions regardless of whether the broker is granted discretion. Commenters urged retaining the current limitation under which such compensation is reported on the Schedule C only for brokers granted discretion. The Department continues to believe that brokerage fees and commissions may constitute a significant part of a plan's annual expenses and that continuing the current exemption from the Schedule C reporting for such expenses is not appropriate. A review of expenses as part of the annual reporting process is part of a plan fiduciary's on-going obligation to monitor service provider arrangements with the plan. Requiring the reporting of such brokerage commissions and fees should emphasize and reinforce that monitoring obligation. The Department understands that information on brokerage fees and commissions may be provided to the plan by parties other than the broker receiving the fee or commission. For example, a number of commenters indicated that in many cases the broker will not know the party on whose behalf a brokerage transaction is being executed because the instructions to execute trades are often provided by investment managers who control investment portfolios for multiple ERISA plans, non-ERISA plans, and non-plan clients. The commenters asserted that it may be very difficult for the broker to identify fees and commissions it receives from ERISA plan transactions, much less identify fees and commissions it receives on transactions involving a particular ERISA plan. The Department notes that the plan administrator is the party with the obligation to complete the Schedule C. Further, the Schedule C does not require that information on reportable fees and commissions necessarily be furnished to the administrator by the party receiving the fee or commission. Rather, in the situation described by the commenters, the investment manager should have information on which transactions are being executed for which clients and should have information on the fees and commissions it is being charged for those transactions. In such a case, the investment manager, rather than the broker, may be the appropriate party to provide the plan administrator with information on those service provider fees and commissions.

Many of the comments raising concerns about the difficulties and burdens of reporting indirect compensation focused on ``float'' revenue; \9\ securities brokerage commissions (including soft dollar commissions\10\); and service fees charged against plan investments and reflected in the net value of the plan's investment in mutual funds, bank investment funds, and insurance company investment contracts. According to the GAO, see, e.g., ``Private Pensions: Changes Needed To Provide 401(k) Plan Participants and the Department of Labor Better Information on Fees'' (GAO 07-21, Nov. 2006), these investment-related fees indirectly paid by plans and plan participants account for the largest portion of total plan fees regardless of plan size. Services provided for these fees can include investment management (e.g., selecting and managing the securities included in a mutual fund); consulting and providing financial advice (recommending vendors for investment options or other services); custodial or trustee services for plan assets; and shareholder services (such as telephone or web-based customer services for participants). Record-keeping fees were identified as generally constituting the second-largest portion of these indirect fees. Record-keeping fees are usually paid to a service provider to set up and maintain the plan. These fees cover activities such as enrolling plan participants, processing participant investment selections, preparing and mailing account statements, and other related administrative activities.

\9\ Financial service providers (e.g., banks and trust companies) sometimes place ERISA plan assets in a general account for short periods of time in order to facilitate certain transactions, such as while waiting for investment instructions from the plan's fiduciaries or in order to make a distribution or other disbursement. The period that begins when the plan money is deposited in the general account, and ends when the investment instructions are executed or the disbursement check clears, is known as the ``float.'' During this float period, the money often is invested in conservative, short-term investments. In some cases, the ERISA plan is credited with the earnings on these investments. In others, the financial service provider keeps the earnings as part of its compensation.

\10\ Soft dollars include research or other products or services, other than execution, received from a broker-dealer or other third party in connection with securities transactions.

The commenters indicated that the burden and complexity of reporting investment-related fees is due in large part to the fact that a substantial majority of retirement plan service providers maintain plan records and investment information at an omnibus account level. Certain commenters described omnibus accounting as ``best practice'' in the industry. They suggested that efficiencies in data exchanges and settlement transactions between funds and retirement plan record keepers generated by omnibus accounting are used to reduce plan service costs. These savings were described as based in part upon the service provider maintaining omnibus trading accounts with investment-related service compensation based upon a percentage of the total assets in an investment fund. A commenter representing the mutual fund industry asserted that it would be extremely difficult to parse out by plan (in dollars) specific components of a fund's expenses for purposes of Form 5500 reporting. The commenter suggested that the data systems overhaul that would be needed to track this information would be prohibitively expensive. Other commenters suggested that, although it may be possible with current data systems to generate an estimate of the amount of investment-related fees reflected in the periodic net asset valuation of a plan's investment on a case-by-case basis, systematically performing such a task each year for each investing plan would be difficult given the variation in omnibus account investment fees and the pervasiveness of their use as a means of compensating service providers for an array of investment-related services.

In a similar vein, several commenters expressed concern about the Schedule C reporting requirements in the case of revenue sharing among members of a bundled service arrangement (including, in particular, revenue sharing among affiliates from investment-related fees charged at the omnibus account level). The commenters explained that bundled service arrangements include arrangements where the plan hires one company to provide, either directly or through affiliated entities or unaffiliated subcontractors, an array of services rather than purchasing the services on an individual basis. In some typical arrangements, a bundle of services is included as part of an investment transaction and the service providers are paid out of investment management and other charges levied on an investment fund comprised of many ERISA plans, other plans, and, in some cases, non-plan investors. Several commenters asked that the final Schedule C revisions confirm that payments received in such a bundled arrangement by a service provider from an affiliate not be separately reportable on Schedule C. The commenters argued

that separate reporting was not necessary to identify possible conflicts of interest because the self-interest such a service provider has in its affiliate should be readily apparent to the plan fiduciary evaluating an investment in the bundled arrangement or any advice or recommendation by that service provider relating to its affiliate. The commenters also argued that separate disclosures on revenue sharing among affiliates are not necessary where the total compensation received by the affiliated group is to be reported. The commenters argued that allocation of revenues among affiliates may not be based on the value of services provided by the respective affiliates to investing plans, but instead may be driven by tax accounting, cash flow or other internal business purposes of the affiliate group. They also argued that, although they could attempt to allocate a cost to each service in the bundled, the annual report does not in other cases require service providers to report their cost, as opposed to the charges paid by the plan. The commenters also argued that reporting revenue sharing among affiliates would create a confusing distinction between entities that provide services using employees in multiple divisions of one company and entities that use several separate subsidiaries to provide the services. One of the commenters suggested that if multiple affiliates within an organizational group provided services to a plan, it should be sufficient to identify in Part I of Schedule C the organization together with its participating affiliates and report compensation on an aggregate basis.

Other commenters representing ``unbundled'' or ``open architecture'' investment providers asserted that allowing aggregate reporting for bundled/affiliated providers, without having a parallel rule for unbundled providers would generate misleading information for plan administrators. The commenters represented that unbundled investment service arrangements use the same basic omnibus accounting and omnibus account fee arrangements as bundled providers. In the unbundled context, revenue sharing is used to compensate unaffiliated entities providing the same recordkeeping and shareholder services provided by affiliates in a bundled provider arrangement. They pointed out that technological improvements in information management systems and data exchange between investment funds and retirement plan record keepers have given unbundled providers the ability to offer cost and fee structures competitive to those of bundled providers. They also argue that unbundled arrangements give plans access to a wider range of unaffiliated investment vehicles than is typically offered by bundled providers.

Representatives of the ``unbundled'' service providers claim that, just like the bundled providers, the parties providing sales, recordkeeping, participant communication, and other services are often paid indirectly from charges levied against the investment funds in which the plan accounts are invested. They read the Schedule C proposal as requiring, in the case of bundled providers, reporting of a single sum equal to the total compensation, including investment management and other asset-based fees, paid by the plan without reporting the allocation of those charges to affiliated service providers in the bundle. In comparison, they read the proposal to require that the plan report, in the ``unbundled'' structure, both the total investment management and other asset-based fees as well as report allocations from those fees to the unaffiliated service providers. The commenters suggested, therefore, that, although an unbundled arrangement may provide the same services as a bundled arrangement and the various service providers may be paid out of the same investment management and omnibus asset-based charges as in a bundled arrangement, the Schedule C reporting could make it appear as if the unbundled arrangement included more fees.

The Department has decided to revise the Schedule C reporting requirement in an effort to address both the concerns regarding the burden and expense of reporting plan specific components of omnibus asset-based charges and concerns over disparate reporting treatment of affiliated service provider groups and unaffiliated providers using essentially the same indirect compensation arrangements. In that regard, the Department notes that even commenters generally supporting the Schedule C proposal urged the Department to provide flexibility, consistent with the spirit of the proposed Schedule C changes, in defining acceptable methods of reporting fee and expense information and allocating the fees and expenses for specific service provider compensation to individual plans.

Thus, the final Schedule C revisions include a new definition of what would constitute a bundled arrangement for Schedule C reporting purposes. In the case of such bundled arrangements, although revenue sharing within the bundled group generally does not need to be separately reported, the person or persons in the bundle receiving separate fees charged against the plan's investment (e.g., investment management fees, float revenue, and other asset-based fees such as shareholder servicing fees, 12b-1 fees, and wrap fees if charged in addition to the investment management fee) must, subject to the alternative reporting option described below, be treated as receiving separate reportable compensation for Schedule C purposes. Also, and subject to the alternative reporting option described below, any person in the bundle who is a fiduciary to the plan or provides one or more of the following services to the plan contract administrator, consulting, investment advisory (plan or participants), investment management, securities brokerage, or recordkeeping--receiving amounts as commissions (including finders' fees), soft dollars or other nonmonetary compensation, float revenue, or transaction-based charges (e.g., brokerage commissions) must be separately reported on the Schedule C if their total reportable compensation equals or exceeds $5,000. The Department believes that having to disclose the receipt of separate fees actually charged against the plan's investment would not require service providers to disclose information legitimately classified as proprietary or confidential. Further, in the case of commissions, soft dollars, finders' fees, float revenue, and transaction-based charges paid to affiliates, the Department believes such charges are just as likely for both affiliate groups and unaffiliated providers to be relevant to the plan fiduciary in evaluating possible conflicts of interest.

Except as described above, the Department continues to believe that it is generally sufficient for Schedule C reporting purposes to treat an affiliate group as a single person and identify that affiliate group in Part I of the Schedule C as the party receiving compensation from the plan for rendering services to the plan. The Department emphasizes, however, that if one or more of the affiliates or a member of a bundled arrangement received compensation from sources outside the affiliate group or bundled arrangement in connection with the investment transaction with the plan or services provided to the plan, that compensation also would have to be included as part of the reportable compensation received in determining Schedule C reporting requirements.

For purposes of this Schedule C reporting rule, an ``affiliate'' of a person includes any person, directly or

indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person. The instructions for the Schedule C have been revised to provide that ``control,'' with respect to a person other than an individual, means the ability to exercise a controlling influence over the management or policies of such person.

In attempting to strike a balance between the costs and benefits of improved disclosure of investment-related fees and expenses, the Department believes some of the concerns regarding the burden and complexity of allocating fees charged in an omnibus account structure can be addressed by further modifying the Schedule C requirements so they rely on disclosures regarding those fees resulting from other regulations or business practices to the extent those disclosures meet the objectives underlying the Department's Schedule C proposal. The final Schedule C revisions thus include an alternative reporting option for ``eligible indirect compensation.'' To constitute eligible indirect compensation for this purpose, the compensation has to be of a certain type and the plan must have received certain disclosures. The eligible compensation types are compensation not paid directly by the plan or plan sponsor but received by plan service providers from omnibus level fees charged to investment funds in which the plan invests where the charges are reflected in the value of the investment or return on investment of the participating plan or its participants and for: distribution, investment management, recordkeeping or shareholder services; commissions and finder's fees paid to persons providing direct or indirect services to the participating plans; float revenue; securities brokerage commissions and other transaction-based fees (whether or not they are capitalized as investment costs); and ``soft dollar'' revenue. For the alternative reporting option to be available, in addition to being within that class of investment fees, the plan administrator must also be furnished written materials, including in electronic form, that disclose the existence of the indirect compensation; the services provided for the indirect compensation or the purpose or purposes for the payment of the indirect compensation; the amount (or estimate) of the compensation or a description of the formula used to calculate or determine the compensation; and the identity of the party or parties paying and receiving the compensation. The Department believes that any written disclosure, whether regulatory, contractual, or voluntary, could be relied upon so long as all of the elements of the disclosure were provided to the plan administrator. Further, the necessary information could be provided to the plan administrator in separate disclosures from multiple parties.

In the case of service providers who received only eligible indirect compensation, the plan administrator would be able to check a box on the Schedule C to indicate that there were such service providers and that the plan had received the appropriate disclosures, and then identify on the Schedule C each person from whom the plan administrator received the necessary disclosures regarding the eligible indirect compensation. For example, 12b-1 fees received by a party providing recordkeeping services to a plan would not have to be separately reported on the Schedule C if the disclosures in the mutual fund prospectus together with disclosures in the service contract advised the plan administrator of the fact that the 12b-1 fees were being received, what the fees were paid for, the amount or estimate of the fees received or the formula used to calculate the amount of the fees received, and the party from whom the recordkeeper was receiving the fees. Similarly, ``soft dollars'' received by an investment manager in the form of research or other permissible services in connection with securities trades on behalf of plan clients need not be separately reported on the Schedule C if disclosures in the SEC Form ADV, together with disclosures in the investment management contract, advised the plan administrator that the manager is receiving ``soft dollars,'' the reason the person was receiving the ``soft dollar'' payment, the amount of ``soft dollars'' or the formula used to determine the amount of ``soft dollars'' that the manager receives in connection with each securities transaction, and the party or parties from whom the investment manager is receiving the ``soft dollars.'' The Department recognizes that it may not be practicable to provide a formula or estimate to calculate the value of certain types of ``soft dollar'' non-monetary compensation at the plan level, particularly so-called ``proprietary'' soft dollar arrangements, such as access to information from certain research specialists. In such circumstances, a description of the eligibility conditions sufficient to allow a plan fiduciary to evaluate them for reasonableness and potential conflicts of interests would satisfy the ``amount of compensation'' prong of the disclosure alternative for Schedule C reporting. When reporting service providers who received eligible indirect compensation and other compensation, the service provider would be required to be separately listed on the Schedule C if the total compensation equaled or exceeded the $5,000 threshold. The plan administrator would check a box to indicate that some of the compensation was eligible indirect compensation and complete the other elements of the Schedule C to report information on the balance of the direct and indirect compensation received by the service provider. Since the identity of the service provider would be included on the Schedule C in such cases, separately listing the person from whom the plan received the required disclosures regarding the eligible indirect compensation would not be necessary.

The Department has previously expressed its opinion that in hiring and retaining service providers plan fiduciaries must engage in an objective process designed to elicit information necessary to assess the qualifications of the provider, the quality of services offered, and the reasonableness of the fees charged in light of the services provided. In addition, the process should be designed to avoid self-dealing, conflicts of interest, or other improper influence. The alternative reporting option being adopted as part of the Schedule C revisions for eligible indirect compensation is intended to emphasize and reinforce the obligation to review of plan expenses as part of a plan fiduciary's on-going obligation to monitor service provider arrangements. It also provides the Department with adequate reporting to engage in effective oversight activities while addressing concerns about annual reporting burdens and costs, which are increasingly being passed on to plan participants and beneficiaries. A party seeking to avail itself of the alternative reporting option would also bear the burden of maintaining records sufficient to demonstrate compliance with the conditions of the alternative reporting option.

Several commenters asked that the Department modify the proposed Schedule C requirement applicable to plan fiduciaries and certain enumerated service providers who received, directly or indirectly, $5,000 or more in total compensation, and also received more than $1,000 in reportable compensation from a person other than the plan or plan sponsor. Under the proposal, the Schedule C would have had to provide

information identifying the payor of such indirect compensation, the payor's relationship with the plan or services provided to the plan by the payor, the amount paid, and the nature of the compensation. The enumerated service providers were contract administrator, securities brokerage (stock, bonds, commodities), insurance brokerage or agent, custodial, consulting, investment advisory (plan or participants), investment or money management, recordkeeping, trustee, appraisal, or investment evaluation. The commenters expressed concern that the list of enumerated service providers was overbroad because it included most types of plan service providers, including those where compensation arrangements did not present any real conflict of interest concerns. The commenters also objected because the reporting requirement substantially reduced the costs savings and burden reductions of the aggregate reporting of compensation by affiliates and bundled service providers. In light of the other revisions being made to the reporting requirements for bundled service arrangements described above, the Department is revising the Schedule C instructions to limit the enumerated service provider list to types of providers where compensation arrangements presenting conflict of interest concerns are most likely to exist.

Modifications were also suggested to the aspect of the Schedule C proposal that required reporting business meals, gifts, promotional items, and other similar non-monetary forms of compensation. Commenters complained that the proposal would require costly tracking and reporting by plan service providers of typical business expenses only remotely connected to the plans. One commenter cited, as an example, the need to track and report when an employee of a plan service provider is treated to a business lunch by another service vendor to discuss the services the vendor provides to the service provider's plan clients. The commenter questioned whether the cost of such tracking and potential reporting, which ultimately could be passed on to the plan or the plan sponsor, is justified based on value to plan fiduciaries evaluating the reasonableness of service provider fees. The Department recognizes that providing meals, entertainment, free travel, or other gratuities may serve an ordinary business purpose, such as cultivating goodwill or securing or maintaining a commercial relationship, but continues to believe that non-monetary compensation should be subject to Schedule C reporting rules. Access to this information should help plan fiduciaries gauge whether the service provider's business decisions with regard to the plan may be influenced by any such personal benefits. At the same time, excepting from reporting occasional and insubstantial free meals, gifts, and promotional items will help to ensure that service providers are not burdened with reporting routine business gratuities that should be of little interest to plan fiduciaries.

The Department thus has modified the Schedule C reporting requirements to exclude ordinary business gifts that are both occasional and of insubstantial value, for example, widely distributed items such as pens with a company name permanently imprinted or ordinary business lunches, where the cost of the gift or meal would be tax deductible for federal income tax purposes for the person providing the gift or meal and the gift or meal would not be taxable income to the recipient. For this exemption to apply, the gift must be valued at less than $50, and the aggregate value of gifts from one source in a calendar year must be less than $100, but gifts with a value of less than $10 do not need to be counted toward the $100 annual limit. If the $100 aggregate value limit is exceeded, the aggregate value of all the gifts will be reportable. Gifts from multiple employees of one service provider should be treated as originating from a single source when calculating whether the $100 threshold applies. On the other hand, in applying the threshold to an occasional gift received from one source by multiple employees of a single service provider, the amount received by each employee should be separately determined in applying the $50 and $100 thresholds. For example, if six employees of a company providing administrative services to employee benefit plans attend a business conference put on by a broker designed to educate and explain the broker's employee benefit business services, where refreshments valued at $20 per individual are provided at no cost to the employees, the gratuities would not be reportable on the Schedule C even though the total cost of the refreshments would be $120. The Schedule C instructions have also been revised to emphasize that these thresholds are for purposes of Schedule C reporting only and to caution filers that the payment or receipt of gifts and gratuities of any amount by plan fiduciaries may violate ERISA and give rise to civil liabilities and criminal penalties.

Commenters also expressed concern that the Schedule C reporting rule allowing any reasonable method of allocating indirect compensation among multiple plans as long as the method is disclosed to the plan administrator would result in confusion for plan officials because service providers will not necessarily be using consistent methods in allocating indirect compensation. The diversity in the form and manner of payment of indirect compensation described in the comments, however, defied applying a single allocation method for such compensation among multiple plans. Thus, in circumstances where the amount of indirect compensation received by a person is attributable to more than one plan, allowing any reasonable allocation method but also requiring the method of allocation to be disclosed to the plan administrator provides the parties with appropriate flexibility in meeting the annual reporting requirement while ensuring the plan administrator is properly informed.

Several commenters raised concerns about the proposed indirect compensation reporting requirements as possibly leading to confusion among plan officials over ``double reporting'' of service provider compensation. They cited as an example of such ``double reporting'' situations where an investment advisor is paid an investment management fee from a mutual fund, and the investment advisor uses some of that revenue to pay fees to brokers, pension consultants, and others for marketing and distribution expenses. The commenters were concerned that if the investment management fee received by the investment manager and the fee received by a broker, for example, are both required to be reported as indirect compensation on the Schedule C, plan officials could incorrectly conclude that the plan paid the broker's fee in addition to the investment management fee. The Department believes that the modifications to the form and instructions described above, including the alternative reporting option for eligible indirect compensation, should address this concern by giving service providers flexibility that will allow them to provide plans with disclosures that can be used to satisfy the Schedule C reporting requirements while also clearly explaining the indirect compensation in a way that will enable the service providers to avoid creating confusion about the indirect fees and compensation they receive.

The Schedule C is also being modified so that service providers required to be

listed would separately report direct compensation paid by the plan and indirect compensation received from sources other than the plan or the plan sponsor, for example, compensation charged against investment assets. In addition, in light of the fact that particular service providers may receive direct and indirect compensation of various types from various sources, in order to provide more informative disclosures about the types of fees being paid to or received by plan service providers, the final forms revisions expand the service codes currently required on the Schedule C, which identify the types of services provided, to include fee codes designed to better identify the types of direct and indirect compensation received. For example, codes were added for direct payments by the plan out of a plan account, including charges to plan forfeiture accounts and fee recapture accounts, charges to a plan's trust account before allocations are made to individual participant accounts, and direct charges to plan participant individual accounts (e.g., loan charges, brokerage account service fee, distribution service charge). Codes for types of indirect compensation include common investment fees indirectly paid by plans and participants, such as sales loads (including charges on purchases and deferred sales charge); redemption fees; purchase fees paid to the fund (not to a broker); exchange fees charged to an investor when they exchange (transfer) to another fund within the same fund group; account maintenance fees; investment management fees paid out of fund assets to the fund's investment adviser for investment portfolio management; distribution and service (12b-1) fees; shareholder service fees; custodial fees; legal expenses; accounting fees; and transfer agent expenses. The fee codes should provide plan sponsors, participants and beneficiaries, and the Department with better information on the types of compensation being paid directly or indirectly by the plan.

The Department believes that this revised framework for the Schedule C continues to accomplish the objectives of improving Schedule C reporting of fee and compensation information, while addressing many of the concerns of the commenters relating to annual reporting burdens, costs, and potentially duplicative and confusing disclosures to plan officials. It also provides sufficient flexibility so that plans and service providers can use other current or future regulatory disclosure regimes, such as soft dollar disclosure requirements developed by the SEC, as part of satisfying ERISA's annual reporting requirements.

b. Miscellaneous Schedule C Issues

One commenter asked the Department to confirm that revenue sharing payments, such as sales loads and 12b-1 fees received from the mutual funds and other revenue sharing payments from distributors and/or advisors of the mutual fund for sub-transfer agency services and shareholder services, are not necessarily ``plan assets'' for purposes of the fiduciary responsibility provisions of Title I of ERISA solely by virtue of being required to be listed on the Schedule C. The commenter pointed out that some revenue sharing payments to plan service providers are calculated based on the amount of assets a plan or a group of plans have invested in a particular investment vehicle or family of vehicles at a given time. Other revenue sharing payments are not asset-based, but may involve a flat fee. In the Department's view, the Schedule C reporting requirements are not restricted to plan asset payments. In general, in evaluating plan investments, identification of plan assets is governed either by the ``plan asset'' regulation (29 CFR 2510.3-101), or, in situations beyond the regulations, the assets of an employee benefit plan are identified on the basis of ordinary notions of property rights. See, e.g., Advisory Opinion 2005-22A. In the context of a plan's investment in a mutual fund or other investment vehicle, the plan's beneficial interest generally is its ownership of shares, units, or an undivided interest in the underlying assets of the vehicle. The fact that revenue sharing payments charged against the assets in an investment vehicle are required to be reported on Schedule C or disclosed under the alternative reporting option would not, by virtue of the reporting requirement alone, make those revenue sharing payments plan assets under the plan asset regulation or under ordinary notions of property rights.

One commenter suggested that revising the instructions to Schedule C to clarify that health and welfare plans exempt from the financial reporting and audit requirements by reason of meeting the conditions in the Department's limited exemption in 29 CFR 2520.104-44, including plans that rely on the enforcement policy guidance in the Department's Technical Release 92-01, are not required to file a Schedule C. The Department has modified the instructions for the Schedule C to make it clear that, although neither the limited exemption at 2520.104-44 nor Technical Release 92-01 expressly address Schedule C reporting requirements, plans that meet the conditions of the exemption or the enforcement policy guidance are not required to complete and file a Schedule C to report information on service provider compensation. Another commenter requested confirmation that where the plan sponsor pays expenses of the plan, the amounts paid by the plan sponsor, and not reimbursed by the plan, would not have to be reported on Schedule C. The Schedule C and its instructions continue to provide that reporting is only required for amounts directly or indirectly paid by or received from the plan.

Several commenters expressed concern with the statement in the July 2006 Proposal that if reportable compensation is due to a person's position with or services rendered to more than one plan, the total amount of compensation received should be reported on the Schedule C of each plan if the compensation could not reasonably be allocated among the various separate plans. The commenters' concern focused on an example in the preamble to the July 2006 Proposal involving a $1,000 gift from a securities broker to an investment adviser given because of the investment adviser's relationship with ERISA plans as potential clients for the securities broker. The preamble assumed the $1,000 gift could not be reasonably allocated among the ERISA plans and indicated that in such a case the $1,000 should be reported on the Schedule C of all plans for which the investment advisor performed services. The commenters urged clarifying in the instructions that, as long as a reasonable allocation can be made in such circumstances, the total value of the gift or other consideration is not required to be reported on the Schedule C of each plan. The Department agrees that in the case of gifts or other consideration attributable to multiple plans, only an allocable share of value of the gift or other consideration needs to be included on each plan's Schedule C as long as the value of the gift or other consideration can be reasonably allocated among the multiple plans.

Commenters also expressed concerns, similar to those submitted by insurers on the Schedule A described below, regarding the requirement to identify service providers that fail or refuse to provide the administrator with the information needed to complete the Schedule C. The Department continues to believe that identifying service providers that fail to provide information needed to complete the

Schedule C is important information that will allow the Department to better carry out its responsibilities to administer and enforce the provisions of Title I of ERISA. As noted below in connection with the similar question being added to the Schedule A, the instructions for the Schedule C have been changed to remind plan administrators that they have an obligation to take reasonable and prudent steps to secure the necessary Schedule C information and that administrators generally should contact the service providers and make a request for Schedule C information before identifying a service provider on the Schedule C as having failed or refused to provide necessary information.

One commenter requested confirmation that the proposed changes regarding reporting of indirect compensation did not require service provider compensation reported on a Schedule C filed for a master trust investment account (MTIA) or 29 CFR 2520.103-12 investment entity (103-12IE) also to be reported on the participating plans' Schedule Cs. The indirect compensation reporting requirements were not intended to change the rule in the current instructions to the Schedule C, which emphasizes that compensation to a service provider should not be reported both on the Schedule C for the plan and on the Schedule C for the MTIA or 103-12IE in which the plan participates. Rather, plan filers must include the plan's share of compensation paid during the year to an MTIA trustee or other person providing services to the MTIA or 103-12IE only if such compensation is not subtracted from the total income of the MTIA or 103-12IE in determining the net income (loss) reported on the MTIA or 103-12IE's Schedule H, Line 2k, or is not reported on the MTIA's or 103-12IE's Schedule C.

Two commenters urged the Department not to eliminate the provision in the current Schedule C under which only the ``top 40'' highest compensated service providers are required to be listed on the Schedule C reporting, as proposed. The commenters suggested that the ``top 40'' limit be retained or replaced with some other limit based on a larger number of service providers or requiring service providers to be listed when their compensation exceeded a specified percentage of total plan expenses. The commenters suggested that, for a very large plan, requiring all service providers that received $5,000 or more in direct or indirect compensation could require the plan to list hundreds of service providers and substantially complicate their Form 5500 Annual Return/Reports. A review of Form 5500 Annual Return/Report data for reports filed before the ``top 40'' limit was adopted in the 1999 Form 5500 Annual Return/Report indicates that only a few very large plans reported 40 or more service providers on the Schedule C. A review of more recent Schedule C data also reflects that the 40th highest paid service provider generally was paid as much or nearly as much as the 15th or 20th highest paid service provider even though the Schedule C requires service providers to be reported in descending order of amount of compensation. Based on these data, the Department does not believe continuing the ``top 40'' limit is appropriate.

One commenter suggested that clarifying the reporting year in which termination of an accountant or an enrolled actuary must be reported on Schedule C. Although not expressing a preference for either result, the commenter indicated that it was not clear whether the termination should be reported on the form filed for the year in which the accountant was terminated or on the form filed for the year in which a new accountant performed the plan audit. The instructions have been revised in response to the comment to state more explicitly the existing rule that the termination of an accountant or an enrolled actuary must be reported in the Form 5500 Annual Return/Report for the plan year in which the accountant or enrolled actuary was terminated.

6. Schedule A (Insurance Information)

The Agencies received a number of comments in response to the proposed addition of a new section to the Schedule A to identify insurance providers that fail to give plan administrators the information necessary to complete the Schedule A. A commenter representing plan auditors, which supported the change based on the auditors' experience of having difficulty getting information needed to complete plan audits, also requested an expansion of the requirement to cover insurance carriers that did not provide the requisite information in a timely fashion. In contrast, insurance industry commenters expressed concern that the reporting requirement may create unnecessary administrative burdens when plan administrators wrongly identify insurers as having failed to provide required information. One insurance industry commenter, describing testimony before the ERISA Advisory Council on this issue as ``unsubstantiated anecdotal reports,'' objected to the Department's reliance on a report of the ERISA Advisory Council (see 71 FR at 41620), as support for adding the new section. Two insurance industry commenters suggested that, if the reporting requirement was retained, plan administrators should be required to advise insurers before identifying the insurer on the Schedule A as having failed to provide required information.

Section 103(a)(2) of ERISA provides that, if some or all of the information necessary to enable the administrator to comply with the requirements of Title I of ERISA is maintained by an insurance carrier or other organization that provides some or all of the benefits under a plan or holds assets of the plan in a separate account, such carrier or other organization is required to transmit and certify the accuracy of such information to the administrator within 120 days after the end of the plan year. Given the importance of plan administrators receiving timely information necessary to complete Schedule A, especially fee and commission information, the recurring reports of difficulties in this area, and the recommendation by the ERISA Advisory Council that such a question be included on the Schedule A to assist plan administrators and the Department in enforcing the insurance carriers' obligations in this regard, the Department continues to believe that insurance providers that fail to provide the necessary information should be identified on Schedule A.

The Department nonetheless agrees that, in addition to the insurer's obligation to provide information, plan administrators have an obligation to take reasonable and prudent steps to secure the necessary Schedule A information. The Department also accepts that there may be instances where plan administrators and insurers disagree over what information is required and other instances where administrators may identify an insurer on the Schedule A based the administrator's erroneous conclusion that the insurer failed to provide required information. The current instructions for the Schedule A that remind filers of the insurer's obligation to provide information needed to complete the Schedule A, accordingly, are being expanded to remind plan administrators that they have an obligation to take reasonable and prudent steps to secure the necessary Schedule A information and that they generally should contact the insurer and make a request for any missing

information before identifying an insurance provider on the Schedule A.

Another commenter requested confirmation that electronic transmission of the required Schedule A information would satisfy the insurer's obligation under ERISA section 103(a)(2). The commenter noted that some plan administrators may believe that insurers are required under ERISA to provide plan administrators with a completed copy of the Schedule A that the administrator could file as part of the plan's annual report. The commenter noted that some insurers had developed such a practice as part of the services they provided to policyholders, but indicated that such practices could be difficult to continue in a wholly electronic filing environment. In the Department's view, nothing in ERISA precludes insurers and plan administrators from agreeing to the insurer's electronic transmission of Schedule A information to the administrator. The Department also anticipates that some software providers will have EFAST2 compatible systems that will enable multiple parties, including insurers, to include information as part of the development of the plan's annual report. The Department also agrees that while insurers are required to provide the information necessary for the plan administrator to complete the Schedule A, insurers are not required by ERISA to provide the information on a completed Schedule A itself.

One commenter suggested that the requirement to report fees, commissions, and other compensation paid to agents, brokers, and other persons in connection with an insurance contract placed with or retained by the plan should be reported on Schedule C instead of on Schedule A. The commenter suggested that such a change would facilitate a ``level playing field'' in the annual reporting area between insurers and banks, investment companies, and other investment product providers. Another commenter suggested that there should be a de minimis reporting exception on the Schedule A under which persons receiving monetary or non-monetary commissions and fees totaling less than $500 would not be required to be listed on the Schedule A. One insurance company commenter complained that the Schedule A approach to the reporting of fees and commissions was unduly burdensome on insurers and service providers and lacked a clearly articulated purpose. The commenter asked that the Agencies limit or clarify Schedule A reporting in several ways: Limit Schedule A fee and commission reporting to ``sales-related'' compensation; exempt from Schedule A reporting payments to a ``general agent or manager'' even if the amounts are paid in connection with a policy placed with or retained by an employee benefit plan; address whether compensation can be reported on a Schedule A for the year in which the compensation was paid rather than for the year in which the right to the payment accrued; confirm that payments are not required to be reported if they are made after the year in which an insurance contract or policy is terminated; and establish safe harbor methods for allocation of compensation attributable to multiple policies.

The July 2006 Proposal did not include any proposed changes to the fee and commission reporting requirements on the Schedule A.\11\ The Department issued Advisory Opinion 2005-02A in February 2005 to address a reported pattern and practice among some in the insurance industry of underreporting commission and fee payments to brokers, agents, and other persons. This pattern and practice was reported to be based on incorrect interpretations of the Schedule A, the Schedule A instructions, and other guidance issued by the Department regarding the Schedule A reporting requirements. The Advisory Opinion was intended to explain clearly the Department's views regarding the current Schedule A reporting requirements. After carefully considering the public comments on the Schedule A, the Department does not believe that the comments provide a basis for making major substantive changes to the Schedule A reporting requirements at this time. The Department, however, agrees that two changes adopted as part of the final Schedule C reporting requirements should also be adopted as part of the Schedule A reporting requirements on insurance fees and commissions.

\11\ Although the proposal eliminated the Schedule A filing requirement for plans eligible to file the Short Form 5500, the Short Form 5500, consistent with the overall objective of improving fee transparency, the Short Form 5500 adopted from the Schedule A requirement to report aggregate insurance fees and commissions, in the form of a compliance question.

Specifically, the Department previously clarified, as part of an update of the instructions following the publication of Advisory Opinion 2005-02A, that compensation paid by the insurer to third parties for recordkeeping and claims processing services provided to the insurer as part of the insurer's administration of the insurance policy is not required to be reported as fees and commissions on Line 2 of the Schedule A.\12\ One commenter complained that the instructions should have been expanded to include other similar types of administrative functions. One insurance organization gave as an example its national accounts programs under which its regional group health insurance programs are able to offer ERISA plans access to medical providers in all fifty states pursuant to agreements with its other regional programs that operate in those states. The Department agrees that where benefits have been purchased from and guaranteed by a licensed insurance company, insurance service, or other similar organization, payments by the insurer from its general assets to affiliates or third parties for performing administrative activities as part of the insurer satisfying its contractual obligation to provide the fully insured benefits under the plan (such as recordkeeping and claims processing services) and where there is no direct or indirect charge to the plan for the administrative services other than the insurance premium, the payments by the insurer to the affiliates or third parties do not need to be reported on Line 2 of Schedule A as ``fees and other commissions.'' In determining whether such compensation is excludable from fee and commission reporting on the Schedule A, the Department would look to whether the services is necessary for the insurer to satisfy its contractual obligation to provide benefits, not services for the insurer incidental to the sale, placement, retention or renewal of a policy, whether payments to third parties are made pursuant to a contract or written understanding to provide the services, and whether the amount of the compensation paid by the insurer is reasonable in light of the value of the services provided. The instructions for the Schedule A have been revised accordingly.

\12\ If commissions and finders' fees are imbedded in insurance company payments to agents, brokers or others for services that are part of the insurer satisfying its contractual obligation to provide benefits under the plan, such as payments for claims processing or recordkeeping, such commission and finders' fees would still be reportable on the Schedule A.

The other Schedule C change that the Department is also adopting as part of the Schedule A fee and commission reporting requirements is the provision excluding occasional and insubstantial non-monetary compensation paid by an insurance company to agents, brokers and other persons from the fees and commissions that would otherwise be required to be reported on the Schedule A. The same restrictions governing this

exception under the Schedule C will apply to the Schedule A. The instructions for the Schedule A have been revised accordingly.

7. Removal of IRS-Only Schedules

Generally commenters were supportive of the removal of IRS-only schedules. One commenter suggested, however, that the IRS should provide guidance on the method and format of reporting information formerly on the Schedule SSA. The IRS is reviewing alternatives for simplifying the filing of the data formerly on the Schedule SSA and working with stakeholders in exploring and evaluating simplification and other changes while ensuring that this data remains a source of information for the Social Security Administration. The Agencies note that due to the additional one-year deferral in implementing the annual reporting form changes not mandated by the PPA (except for a few Schedule R items), the removal of IRS-only forms and schedules as a result of the electronic filing mandate will also be delayed until the electronic filing system is in place. Therefore, Form 5500-EZ, Schedule E, and Schedule SSA will continue to be filed under the current EFAST processing system for the 2007 and 2008 plan years.

8. Compliance Questions (Schedule H, Schedule I, Short Form 5500)

a. Delinquent Participant Contributions and Loan Repayments on Schedule H, Line 4a

The comments submitted on this issue generally supported the Department's inclusion in the instructions of a format for a supplemental schedule to be used by the plan's accountant for purposes of rendering an opinion on whether delinquent participant contributions information on Line 4a of Schedule H is presented fairly, and is in all material respects the information required to be reported. Commenters also supported the proposal to revise the instructions to expressly confirm that delinquent participant loan payments can be included on Line 4a as opposed to being reported in response to the general prohibited transaction question on Line 4d. Accordingly, the revised instructions for line 4a are being adopted as proposed.

One commenter thought that it would be easier to report delinquent contribution information if the items on the proposed standardized schedule were incorporated into Line 4a itself and the requirement to attach a supplemental schedule were eliminated. A commenter representing accountants stated that including a standard schedule for reporting delinquent contributions in the Form 5500 Annual Return/Report instructions was helpful, but suggested that it be revised to be identical to the prohibited transaction schedule included in Schedule G.

The revisions to the 2002 Form 5500 Annual Return/Report eliminated the need for plan administrators to double report delinquent participant contributions on Line 4a (which specifically asked about delinquent transmittal of participant contributions) and Line 4d (which asked about prohibited transactions with parties in interest). Rather, the instructions for Line 4a expressly state that the amounts paid by a participant or beneficiary to an employer and/or withheld by an employer for contribution to the plan become plan assets as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets (see 29 CFR 2510.3-102) and caution that an employer holding these assets after that date commingled with its general assets will have engaged in a prohibited use of plan assets (see ERISA section 406). A delinquent participant contribution reported on Line 4a is, by definition, a prohibited transaction. Reporting that transaction again on Line 4d was unnecessary and made it difficult for the Agencies to use effectively the information reported on Line 4d in cases where the plan was reporting other prohibited transactions on Line 4d.

Likewise, having the Line 4a supplemental schedule format match the prohibited transaction format on Schedule G also would result in unnecessary reporting. By definition the party-in-interest involved is the employer and the prohibited transaction is the delinquent transmittal of participant contribution or delinquent transmittal of participant loan repayments. The Schedule G requirements to identify the parties involved and describe the nature of the prohibited transaction are therefore unnecessary. Further, the Schedule G is structured so that it can be used to report a diverse variety of prohibited transactions, whereas the additional elements on the proposed format for the Line 4a supplemental schedule are tailored for the specific prohibited transaction involved. Finally, line 4a requires reporting delinquent contributions regardless of whether the prohibited transaction has been fully corrected under the Department's Voluntary Fiduciary Correction Program (VFCP) and the conditions of Prohibited Transaction Class Exemption 2002-51 have been satisfied, but Schedule G only requires reporting if an exemption does not apply.

The Department had posted a series of frequently asked questions (FAQs) on its Web site at http://www.dol.gov to provide guidance to plan administrators and accountants on complying with the requirements of the Form 5500 Annual Return/Report for reporting delinquent participant contributions. The format of the supplemental schedule included in the July 2006 Proposal was taken in large part from similar formats included in those FAQs. The July 2006 Proposal was intended to incorporate the guidance in those FAQs into the instructions to the Form 5500 in order to make that guidance more generally available to plan administrators and to assist accountants in satisfying their obligations under ERISA section 103 to treat the information on Line 4a as subject to the audit requirement and as part of the supplemental schedules for purposes of the IQPA report and opinion.

b. Reporting Blackouts and Blackout Notices

One commenter expressed concern about the structure of the compliance questions proposed for Schedule H, Schedule I, and the Short Form 5500 on whether there was a ``blackout period'' subject to the notice requirements in section 101(i) of ERISA and the Department's regulation at 29 CFR 2520.101-3. Specifically, the commenter noted that the proposal would require a plan administrator whose plan had experienced a ``blackout period'' during the reporting year to answer that a blackout notice was not provided even in cases where an exception from the notice requirement applied. Although the proposed instructions expressly directed filers to indicate that they had not provided a notice even in cases where an exception from the notice requirement applied, the blackout notice questions have been modified to address the commenter's concern. The first question asking whether there was a blackout remains unchanged. The second question has been modified to have filers check ``yes'' if they either provided the required notice or one of the exceptions to providing the notice applied or ``no'' if they did not provide notice and no exception applied.

c. Reporting ``Deemed'' Distributions

One commenter suggested moving line items regarding defaulted participant loans as ``deemed'' distributions on the Short Form 5500,

Schedule H, and Schedule I from the financial section to the compliance section. The commenter argued that loans that are deemed distributed for tax purposes generally continue to be plan assets for plan qualification and financial reporting such that traditional recordkeeping and financial reporting systems do not ``write off'' the deemed distribution amount from the books. The Agencies established the current regime for reporting deemed distributions during the last major revision of the forms in connection with the 1999 Form 5500 Annual Return/Report. The Agencies considered off-balance sheet reporting for deemed distributions, but that approach failed to address various reporting questions such as: what is the appropriate value for carrying loans that have been deemed distributed where there is no reasonable expectation that the loan would be repaid until offset against an account value at the time of an actual distribution; should the value include continued accrual of interest payments as they become due even after the loan is deemed distributed and, if so, would that practice inappropriately inflate the apparent value of plan assets; and if the loan is required to be carried as a plan asset, with or without interest accruals, should an offsetting increase in a reserve for bad debts be included in the financial statements to avoid an inflated figure for total plan assets. The treatment of deemed distributions currently set forth in the instructions dealt with these questions as a financial reporting matter within the context of treating the loans as deemed, not actual, distributions. While the requirements relating to participant loans (including defaulted participant loans) are a compliance matter and information relating to these loans must be maintained as part of the plan's records, the Agencies have determined not to make the change suggested by the commenter. The IRS, however, is considering whether to further clarify the reporting of defaulted participant loans in the instructions.

d. Reporting ``Incurred But Not Reported''

Funded health and welfare plans may be exposed to a financial obligation for claims that have been incurred, for example, by a participant who obtained covered health care treatment from a doctor or hospital, but that have not yet been reported to the plan in the form of a claim for benefits. Many funded plans thus establish an ``Incurred But Not Reported'' (IBNR) accounting reserve for such claims that have been incurred but not yet been submitted for payment. The financial accounting for these obligations is required under the American Institute of Certified Public Accountant's Statement of Position 01-2, but that accounting treatment is not consistent with Form 5500 Annual Return/Report reporting requirements, which allow funded welfare plans to report IBNR on the Schedule H financial statements as a plan liability. A commenter representing the accounting industry suggested modifying the instructions for Schedule H to shift reporting of IBNR for welfare plans from the financial statements on the Schedule H to the general compliance questions on the Schedule H, presumably in order to avoid the need for the accountant's report to include a reconciling note reflecting the difference between the Schedule H financial statements and any separate financial statements prepared by the accountant for purposes of rendering the required accountant's opinion under section 103 of ERISA. The reason that IBNR was permitted to be included in the Schedule H financial statements was due to comments from representatives of large funded welfare benefit plans that maintained their financial records on a cash basis and claimed that their IBNR reserve can often amount to a fairly significant liability for plans such that failing to include the liability on the Schedule H for a cash basis filer created the false impression that the plan was substantially overfunded at the end of the plan year. There was nothing in the accounting industry comment that suggested the above described problem was no longer a concern for large funded welfare plans or that explained how the proposed change would substantially benefit employee benefit plans, their participants and beneficiaries, or the Agencies, and, accordingly the option to include IBNR as part of the plan's liabilities is not being converted into a mandatory compliance question for all welfare plans that file the Schedule H at this time.

e. Assets Without Readily Determinable Current Value

Line 4g of the Schedule H is a compliance question that asks whether the plan held any assets whose current value was neither readily determinable on an established market nor set by an independent third party appraiser. If the answer to Line 4g is ``yes,'' the filer is required to report the value of those assets. Line 4g currently gives examples of assets that may not have a readily determinable value on an established market (e.g., NYSE, AMEX, over the counter, etc.) including real estate, nonpublicly traded securities, shares in a limited partnership, and collectibles. An accounting industry commenter suggested that the instructions be revised to include expressly ``hedge funds, certain [common and collective trusts], and stable value funds'' as examples of assets required to be reported on Line 4g. The Agencies did not adopt this suggestion. Rather than there being a generally accepted definition of what constitutes a ``hedge fund'' or ``stable value fund,'' the class of investments that might fit within those terms is quite diverse. More importantly, regardless of the label used to describe an investment, the standard for Line 4g remains the same--assets should be listed if they do not have a readily determinable value on an established market and were not valued by an independent third-party appraiser during the plan year.

The comment did, however, lead the Agencies to evaluate the instructions and conclude that a strict reading of Line 4g might lead filers to conclude that certain types of common plan investments are required to be reported on Line 4g, such as insurance investment contracts and mutual fund shares. The Agencies, therefore, are modifying the instructions to Line 4g to make clear that insurance investment contracts for which the plan received valuation information at least annually and mutual fund shares are not reportable on Line 4g.

f. Reporting Mutual Fund Dividends

A commenter suggested that Line 2b of Schedule H (dividends) should be expanded to add an entry for dividend payments on mutual fund shares. The Schedule H currently has entries for dividend payments on common and preferred stock and for income gain/loss for mutual fund (Investment Company) shares, but no entry for dividend payments on mutual fund shares. The Agencies believe separately identifying mutual fund share dividends would provide useful information and would eliminate possible confusion on where to report such income. Accordingly, the Agencies are adding a new Line 2b(2)(C) to report mutual fund dividend payments.

g. Reporting ``Total Fees Paid''

A commenter asked for clarification as to whether the lines on Schedule H and Schedule I for ``total fees paid'' include indirect compensation. The commenter correctly noted that the proposed instructions for these Schedules did not expressly include indirect compensation and that the balance sheet structure of the financial statements on these Schedules was

consistent with a conclusion that only compensation paid directly by the plan would be reported. The Department agrees that indirect compensation received from parties other than the plan, although it may be a reportable fee or expense on the Schedule C or Schedule A, is not reportable on the balance sheet structured asset/liability and income/expense statements in the Schedule H, the Schedule I, or the Short Form 5500.

9. Schedule R (Retirement Plan Information)

a. Minimum Funding

One commenter suggested simplifying line items on the Short Form 5500 and the Schedule R concerning minimum funding. The Agencies have determined that the minimum funding reporting requirements are necessary and consistent with the PPA's additional reporting requirements relating to plan funding and to ensuring transparency and accountability. The Agencies, however, have determined to make certain revisions to the minimum funding information on Schedule R and the Short Form 5500 to avoid any discrepancies in the data being reported. Therefore, the Short Form 5500 and Schedule R minimum funding questions are being revised to provide adequate information on minimum funding to the Agencies, participants, and other interested persons.

b. Asset Allocation Information for Very Large Defined Benefit Pension Plans

Twelve commenters addressed the PBGC's efforts to gather information on the allocation of assets by large defined benefit pension plans. (Two of these commenters reiterated their concerns when commenting on the Supplemental Notice.) Four commenters asserted that most of the information is already included as a part of the Schedule H and that collecting this data is unnecessary. Six commenters said it would be difficult or costly to obtain the requested asset allocation breakdowns for assets invested in commingled funds. Two asked that the effective date of the additional information be delayed. The commenters acknowledged that such information is required on the SEC Form 10-K. Two pointed out that the 10-K data are aggregated from all of the sponsor's defined benefit plans and do not include the detailed debt breakout requested in the proposal. Four noted that the data on the SEC Form 10-K may be as of a date that is different from the plan reporting date for the Form 5500 Annual Return/Report. Three also noted that non-publicly traded companies are not required to file the SEC Form 10-K and, therefore, do not necessarily collect this information. One suggested that the new funding requirements of the recently enacted PPA diminish the value of this information. One commenter supported the proposal to move the asset allocation information from Schedule B to Schedule R (as noted in the Supplemental Notice).

Two commenters noted that providing the Macaulay duration would be time consuming and costly. Four suggested that the Macaulay duration is not a good measure of risk and does not address the callability of some bonds. Others suggested that the effective duration is a more commonly used measure than the Macaulay duration. Three commented that the debt holdings of some plans are split among several different bond managers and providing a single duration measure for all of the plan's debt holdings could be difficult.

In an effort to address the comments citing the burden of complying with the data collection, the questions were modified to reduce the number of calculations. Specifically, instead of asking for the distribution by four categories (stocks, debt, real estate, and other) and then asking for a separate breakdown of the debt, the questions have been restructured to ask for data on five categories of assets (stocks, investment-grade debt, high-yield debt, real estate, and other) that should sum to 100 percent. Holdings of government bonds would be included in the appropriate debt group which should generally be investment-grade debt.

In response to comments on the appropriateness of reporting the average duration determined using the Macaulay measure, two changes have been made. First, ranges are provided so that, in most cases, an estimate will suffice (0-3 years, 3-6 years, 6-9 years, 9-12 years, 12-15 years, etc.). Guidance regarding how to determine the average duration when there are multiple bond portfolios will be included in the instructions to the 2008 Form 5500 Annual Return/Report. It is anticipated that the instructions will provide that the weighted average of the individual portfolio average durations (where the weights are the values of the bond portfolios) be reported for plans with several bond portfolios.

Second, any generally accepted measure of duration may be used (effective duration, modified duration, Macaulay duration, etc.). An item has been added to report the measurement basis that was used to determine the average duration.

As redesigned, the allocation of assets questions will provide the PBGC with important data necessary to enable it to monitor properly the plans it insures. The data will be particularly useful for the PBGC's Early Warning program, which is designed to identify plans whose risk to the PBGC is increasing. For many plans the PBGC is unable to derive this information from the current Schedule H data. Knowing not only the level of plan assets relative to its liabilities but also how well a plan's assets match these liabilities is integral information the PBGC needs to properly assess the risks and exposures the Agency faces.

The difficulty in obtaining asset allocation information for assets invested in commingled funds is appreciated, and, in fact, is the reason the PBGC needs to collect these data on the Form 5500 Annual Return/Report. For publicly traded companies, the allocation of these assets is reported on companies' Form 10-K. Even in cases where aggregated data are reported on the Form 10-K or where data are determined as of a different date, the disaggregated information should be accessible without undue burden. Also, most financial information is available on a daily basis and the incremental costs for obtaining this data for the valuation date should not be significant. The cost of obtaining the data may be somewhat higher for non-publicly traded companies that may need to institute new procedures to obtain this information; however, the PBGC's need for this data for plans of non-publicly traded companies is also great. The PBGC believes ample notice has been given to allow companies to make whatever data gathering arrangements are necessary because notification of these questions was given at least three years prior to the first date they would be due (July 31, 2009 for calendar year plans) and because similar information is already required to be provided on the Form 10-K.

The bond portfolio duration information will help the PBGC properly monitor the plans it insures in several ways. First, as an insurer, the PBGC needs to know not only what proportion of a plan's liabilities is covered by its assets, but also how well those assets immunize the liabilities. Second, it will assist the PBGC in its monitoring activities and indicate which plans are moving to more risky asset investments that could increase the PBGC's exposure or the likelihood that the PBGC will receive a claim from that plan. Third, it will inform the PBGC of how to negotiate better protections for the plan's participants should such negotiations become necessary. Finally, it would assist the PBGC's modeling efforts for informing policy makers if additional legislative or regulatory changes are needed to protect plan participants and the insurance programs.

One commenter suggested that the strengthened funding rules under the PPA negate the need for the additional asset allocation information. The new funding rules do not guarantee that the plans that the PBGC insures will become and remain fully funded in the future. Even if they do become fully funded, the PBGC's risk is highly dependent on how well plans' assets immunize their liabilities. A decrease in the price of stocks generally or a decrease in interest rates can quickly move a plan from being fully-funded to being only 80 percent funded, or worse.

c. Information on Major Contributors to Multiemployer Defined Benefit Pension Plans

One comment was submitted about the PBGC's efforts to obtain data on major contributors to multiemployer pension plans. The commenter questioned how information should be reported in situations where a contributing employer has multiple contribution rates, contribution base units, or bargaining agreement expiration dates with respect to different groups of participants under the plan. In response to this comment, question 13 has been slightly modified. In this situation, in lieu of reporting this information directly on the form, plan administrators will check a box to indicate that the employer contributes under two or more collective bargaining agreements or at different rates for different classes of participants and include, as an attachment, a summary of the date each collective bargaining agreement expires and/or information about each contribution rate.

d. Number of Participants on Whose Behalf No Contributions Were Made by an Employer and Ratio of Participants on Whose Behalf No Employer Had an Obligation To Make Contributions

One commenter suggested that the definition of ``participant'' for this purpose needs to be clearly defined. Although no comments were submitted with respect to the question on the ratio of participants on whose behalf no employer had an obligation to make contributions, the wording on the Schedule R has been revised to conform more closely to the wording in section 503(a) of the PPA. Terms will be defined in the instructions for the Schedule R.

e. Information on the Number of Employers Who Withdrew From the Plan During the Preceding Year and the Amount of Their Withdrawal Liability

One commenter questioned whether the definition of ``withdrew'' is the definition contained in the Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96-364, 94 Stat. 1208, which includes special rules for plans in the construction, entertainment, and other industries. See ERISA section 4203. Guidance regarding the definition of ``withdrew'' for this purpose will be included in the instructions to the 2008 Form 5500 Annual Return/Report.

10. Streamlining Form

a. Reducing the Number of Supplemental Attachments

A commenter who was focused particularly on the Short Form 5500 suggested that it would further streamline the filing process for small plans if the Agencies eliminated supplemental attachments for Line D of the Form 5500 Annual Return/Report and Line C of the Short Form 5500 regarding filing under extension or under the Delinquent Filer Voluntary Correction Program (DFVC Program). The Agencies agree that eliminating those supplemental attachments would facilitate electronic filing, especially for small plans. Accordingly, for those filing on extension or under the DFVC Program, filers would now simply check a box as to the type of extension (IRS Form 5558, Corporate tax extension, special extension) or the DFVC Program. A new space is being added to this line for filers using a special extension, i.e. disaster relief or combat extension, to provide a brief description of the extension. Filers would no longer have to attach a copy of the request for extension filed with the IRS or create a special supplemental attachment to describe the filing under a special extension or the DFVC Program, although they would continue to be required to maintain a copy of any request for an extension filed with the IRS as part of their records.

That commenter also suggested that the supplemental schedules should not be required to be attached if information on Schedule H, Line 4i (assets held for investment) and Line 4j (5% reportable transactions), are in the IQPA report. Past experience with the supplemental schedule for Line 4a strongly suggests that making this change could give rise to confusion among accountants regarding their obligations to render opinions on the supplemental schedules required to be part of the annual report. See ERISA section 103(a)(3)(A). Accordingly, and although acknowledging that many IQPA reports include information on Schedule H, Line 4i (assets held for investment) and Line 4j (5% reportable transactions), the change is not being made at this time.

b. Welfare Plan Reporting

Two commenters suggested that welfare plans have separate reporting forms and instructions. This comment appears to be based on the premise that the Form 5500 Annual Return/Report is primarily designed to collect information about the activity of retirement plans and that creating a separate form for welfare plans would be more appropriate than having the welfare plan fit itself into a retirement plan-oriented filing. As noted in the preamble to the proposal, the Department believes that generally retaining the current reporting requirements is important for disclosure purposes for both the Department and for participants and beneficiaries in the welfare plans that currently report. Rather than being designed for pension plans versus welfare plans, the Form 5500 Annual Return/Report is primarily focused on collecting financial information about funded plans and plans that use insurance products to provide benefits. The Department already exempts most small welfare plans from the requirement to file a Form 5500 Annual Return/Report and exempts most large welfare plans from the financial reporting and audit requirements in its regulations at 29 CFR 2520.104-20 and 2520.104-44. The structure of the Form 5500 Annual Return/Report was modified in 1999 further to remove pension related information from the welfare plan annual report by structuring the Form 5500 Annual Return/Report as a main Form 5500, which includes basic identifying information, and separate schedules that focus on particular subject matter or filing requirements. The Department also believes that considerations for having a separate form for welfare plans will be less significant in a system where all filing is electronic. Under any type of electronic system, we anticipate that filers would need to access the instructions relevant only to their type of plan, eliminating any potential confusion from determining in a unified form package which instructions are relevant to the filer.

The commenters also suggested that the Department reconsider the ERISA Advisory Council Working Group's recommendation to eliminate the audit requirement for large, funded welfare plans that do not accumulate assets, but maintain it for multiemployer welfare plans and for single-employer welfare plans that accumulate assets. As noted in the preamble to the July 2006 Proposal, the Department believes that retaining the current requirements as they relate to funded welfare plans (i.e., those with assets held in trust) and large fully insured plans, without imposing new reporting burdens on all welfare plans best serves to balance the needs of the Department and participants and beneficiaries and the burden associated with the reporting requirements.

11. Electronic Filing and Manual Signature Requirements

A commenter noted that instructions to Forms 5500 and 5500-SF under the section entitled ``How to File--Electronic Filing Requirement'' contain the following statement: ``Even though the Forms 5500 and 5500-SF must be filed electronically, the administrator must keep a copy of the Forms 5500 and 5500-SF, including schedules and attachments, with all required manual signatures on file as part of the plan's records * * *.'' The commenter asked for confirmation that plan sponsors may satisfy the Department's record retention rule by maintaining an electronic version (as permitted under ERISA section 107) and, therefore, are not required to keep a paper signature copy of the filing. The Department notes that its electronic filing regulations require that plan administrators and direct filing entities maintain an original copy of the Form 5500 Annual Return/Report, with all required signatures, as part of their records. See 29 CFR 2520.103-1, 2520.103-2, 2520.103-9, 2520.103-12. The Department's regulations under ERISA section 107 permit filers to use electronic media for record maintenance and retention, so long as they meet the requirements of 29 CFR 2520.107-1.

Commenters also asked how manual signatures on schedules filed with the Form 5500 will be handled under the EFAST2 electronic filing system. Enrolled actuaries will continue to have the obligation to sign a copy of the plan's Schedule SB or MB (whichever is applicable) and an electronic copy of the manually signed schedule must be filed as part of the plan's electronic filing under the EFAST2 system. To meet this obligation, the plan or the enrolled actuary must use EFAST-approved software capable of generating a printed version of the Schedule SB or MB (whichever is applicable). The completed version of the schedule must be printed, manually signed by the enrolled actuary, and converted into an electronic image (such as a pdf document) of the schedule showing the manual signature, and that electronic image file must be attached to the Form 5500 Annual Return/Report e-filing. A signed copy of the schedule must also be kept on file as part of the plan's records pursuant to the above noted requirements in the Department's annual reporting regulations. It is expected that the Form 5500 Annual Returns/Reports filed by plans subject to the IQPA audit requirement will follow a similar procedure in attaching a copy of the signed IQPA report to the plan's electronically filed annual report.

One commenter noted that the Form 5500 signature section contains a declaration that the signatories have ``examined this return/report, including accompanying schedules, statements and attachments, as well as the electronic version of this return/report,'' and noted that it is unclear what action must be taken by the plan sponsor and plan administrator to satisfy the requirement to examine the electronic version. The declaration on the Form 5500, as well as on the Short Form 5500, continues to provide that the person signing the Form must examine a copy of the electronic version of the annual return/report. The Agencies expect that EFAST2 will be designed in a manner so that all required signatures will satisfy the applicable statutory and regulatory provisions.

C. Overview of the Forms Revisions

The revisions to the annual return/report forms involve the following major categories of changes, along with other technical revisions and updates, to the current structure and content of the Form 5500 Annual Return/Report:

Establishment of the Short Form 5500 as a new simplified report for certain small plans effective for 2009 plan year;

Removal of the IRS-only schedules from the Form 5500 Annual Return/Report as a result of the move to a wholly electronic filing system effective for 2009 plan year;

Elimination of the special limited financial reporting rules for Code section 403(b) plans effective for 2009 plan year;

Revision of the Schedule C (Service Provider Information) to clarify the reporting requirements and improve the information plan officials receive regarding amounts being received by plan service providers effective for 2009 plan year;

Replacement of Schedule B with Schedule SB and Schedule MB to reflect the changes in reporting and funding requirements for single and multiemployer defined benefit pension plans under the PPA effective for 2008 plan year;

Modification of the Schedule R to add questions required by the PPA to gather information on pension plan funding and compliance with minimum funding requirements effective for 2008 plan year but filed as an attachment rather than as actual schedules. These modifications will be effective in standard format for 2009 plan year;

Modification of the Schedule R to collect data PBGC needs to properly monitor the plans it insures effective for 2008 plan year but filed as an attachment rather than as an actual schedule. These modifications will be effective in standard format for 2009 plan year; and

Miscellaneous changes to the schedules and instructions to improve and clarify reporting effective for 2009 plan year.

In addition to the description of the form changes contained in this Notice, the Agencies have included the following appendices: (1) Appendix A--a facsimile of the Short Form 5500; (2) Appendix B--Instructions to the Short Form 5500; (3) Appendix C--facsimiles of the Form 5500 Annual Return/Report, Schedule A, Schedule SB, Schedule MB, Schedule C, Schedule D, Schedule G, Schedule H, Schedule I, and Schedule R; and (4) Appendix D--the instructions for the 2009 Form 5500 Annual Return/Report.\13\

\13\ The instruction language published here is based on that for the 2007 plan year. The Agencies may make changes for the 2008 and/or 2009 plan years not requiring notice and comment that will be made publicly available in time for filing, which will be incorporated into the final 2009 Instructions to the extent appropriate. In addition, the Agencies have eliminated the Schedule

B (Actuarial Information) and replaced it with the Schedule SB (Single-Employer Defined Benefit Plan Actuarial Information) and Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information) for plan years beginning after December 31, 2007. Instructions for those Schedules are dependent on substantive rulemaking under the PPA and will be published separately in advance of the time for filing the Form 5500 Annual Return/Report for plan years beginning after December 31, 2007.

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1. Short Form 5500 as New Simplified Report for Certain Small Plans

The Agencies are adopting the new two page form--the Short Form 5500--to be filed by certain small plans (generally, plans with fewer than 100 participants) with secure and easy to value investment portfolios--as proposed, except that the instructions for the line item for ``administrative expenses'' has been modified slightly to make it consistent with parallel line items on Schedules H and I.

A pension or welfare plan will be eligible to file the Short Form 5500 if the plan: (1) Covers fewer than 100 participants or would be eligible to file as a small plan under the 80 to 120 rule in 29 CFR 2520.103-1(d); (2) is eligible for the small plan audit waiver under 29 CFR 2520.104-46 (but not by virtue of enhanced bonding); (3) holds no employer securities at any time during the plan year; (4) at all times during the plan year, has 100% of its assets in investments that have a readily determinable fair market value; and (5) is not a multiemployer plan. For this purpose, participant loans meeting the requirements of ERISA section 408(b)(1), whether or not they have been deemed distributed, and investment products issued by banks and licensed insurance companies that provide valuation information at least annually to the plan administrator will be treated as having a readily determinable fair market value.

Most Short Form 5500 filers will not be required to file any schedules, although defined benefit pension plans and money purchase plans currently amortizing funding waivers will be required to file Schedule SB or MB.\14\

\14\ Short Form 5500 filers will not be required to file Schedule D, but DFEs in which such plans invest will still be required to list the plan name and Employer Identification Number (EIN) on Part II of the DFE's Schedule D.

Small plans that are not eligible to file the Short Form 5500 will continue to be able to file simplified reports as under the current system. Specifically, small plan Form 5500 Annual Return/Report filers will file the Form 5500 and Schedules A, SB or MB, D, I, and R, where applicable. The conditions for the small pension plan audit waiver in 29 CFR 2520.104-46 remain unchanged. Small pension plans will still be able to claim the audit waiver even if they are not eligible to file the Short Form 5500. Conversely, small pension plans filing the Short Form 5500 will continue to be required to meet all applicable requirements for the audit waiver, including the enhanced Summary

Annual Report (SAR) and other disclosure requirements of that regulation.\15\ Similarly, all welfare plans that file the Form 5500 Annual Return/Report and have fewer than 100 participants are currently exempt from the audit requirement without regard to how their assets are invested. See 29 CFR 2520.104-46(b)(2). The Short Form 5500 will not change the welfare plan audit waiver conditions. For a funded welfare plan to be eligible to file the Short Form 5500, however, the plan will have to meet that form's requirements regarding investment assets.

\15\ Small defined benefit plans to which the SAR no longer applies under the PPA for plan years after December 31, 2007, will have to provide the enhanced information in the new Defined Benefit Plan Funding Notice. The Department anticipates publishing a model notice, along with revisions to 29 CFR 2520.104-46, with regard to this change.

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2. Removal of IRS-Only Components From the Form 5500 Annual Return/ Report

As described in detail in the July 2006 Proposal, in order to effectuate the electronic filing requirement that will be effective for the 2009 Form 5500 Annual Return/Report, the portions of the Form 5500 Annual Return/Report required to satisfy filing obligations imposed by the Code, but not required under ERISA, had to be removed because the Code and regulations thereunder do not permit the IRS to mandate electronic filing of the Form 5500 Annual Return/Report. Therefore, effective for the 2009 plan year (when mandatory electronic filing is implemented), the following form and schedules will not be filed with the Form 5500 Annual Return/Report to the Department, but will be filed to the IRS: Form 5500-EZ Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan and the Schedule SSA (Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits).\16\ In addition, the Schedule E (ESOP Annual Information) will no longer be required to be part of the Form 5500 Annual Return/Report. \17\ Three questions on employee stock ownership plan (ESOP) information on the Schedule E will be moved to the Schedule R effective for the 2009 Form 5500 Annual Return/Report. The IRS, however, has advised the Department that it intends that plan administrators, employers, and certain other entities that are subject to filing and reporting requirements under the Code must continue to satisfy any applicable requirements in accordance with IRS revenue procedures, regulations, publications, forms, and instructions and that the IRS will advise filers of how to provide the information on the Form 5500-EZ and the information formerly required on the Schedule SSA in advance of the time for filing of the 2009 Form 5500 Annual Return/ Report. In addition, as described in detail in the July 2006 proposal and to ease the burdens on these filers, the IRS has also advised the Department that certain Form 5500-EZ filers will be permitted to satisfy the requirement to file the Form 5500-EZ with the IRS by filing the proposed Short Form 5500 electronically through the EFAST processing system. Information regarding the Form 5500-EZ filers who would be eligible for this proposed electronic filing option is included in the proposed instruction for the Short Form 5500 under ``Specific Instructions for One-Participant Plans.''

\16\ Schedule P (Annual Return of Fiduciary of Employee Benefit Trust) was removed from Form 5500 filings beginning with the 2006 plan year (2005 plan year for Form 5500-EZ), in anticipation of the move to electronic filing. See, Announcement 2007-63, 2007-30 I.R.B. 65. In addition, Schedule T (Qualified Pension Plan Coverage Information) was removed from Form 5500 filings beginning with the 2005 plan year. The IRS notes that this change was not intended to effect the applicable required or optional non-discrimination testing (including the testing options described in Revenue Procedure 93-42), 1993-2 C.B. 540.

\17\ The Schedule E is being removed effective for the 2009 Form 5500 in anticipation of the move to electronic filing.

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3. Elimination of Limited Reporting Option for Code Section 403(b) Pension Plans

Code section 403(b) plans that are subject to Title I of ERISA now will be subject to the annual reporting rules that apply to other ERISA-covered pension plans, including eligibility for the Short Form 5500.

4. Addition of New Questions to Schedules on Title I Compliance, Service Provider Compensation, and Pension Plan Funding

a. Schedule A: Identify Insurers That Fail To Supply Information

As proposed, a new check box is being adopted on the Schedule A to permit plans to identify situations in which the insurance company or other organization that provides some or all of the benefits under a plan has failed to provide Schedule A information. Space also is provided for the administrator to indicate the type of information that was not provided. As a separate Schedule A is required for each insurance contract, the identity of the insurance company or organization will be self-evident. This would give the Department more usable data on insurers that fail to satisfy their disclosure obligations under section 103(a)(2) of ERISA and the Department's regulations. A reminder is being added to the Schedule A instructions to advise plan administrators that they should contact the insurer to request the required information and to advise the insurer that the plan administrator intends to identify the insurer on the Schedule A as not having provided the information needed.

b. Actuarial Schedules--New Schedules SB and MB

The Agencies have adopted their proposal to eliminate the existing

Schedule B and create two new Schedules--the Schedule SB, ``Single-employer Defined Benefit Plan Actuarial Information,'' and the Schedule MB, ``Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information.'' This is necessary because the PPA significantly changed the funding requirements applicable to defined benefit pension plans. These changes render the existing Schedule B largely obsolete, especially for single-employer defined benefit pension plans. While the PPA changes for multiemployer defined benefit pension plans allow for continued use of a reporting scheme similar to the existing Schedule B, a number of Schedule B changes are needed for multiemployer plans.

i. New Schedule SB ``Single-employer Defined Benefit Plan Actuarial Information''

The Schedule SB is to be filed for all single-employer defined benefit plans (including multiple-employer defined benefit plans).\18\ The Schedule SB will capture identifying information about the plan and plan sponsor, the type of plan, and prior year plan size. It includes basic information about plan assets, number of participants, funding target information, and a statement by an enrolled actuary. It consists of basic actuarial worksheets designed to allow the Agencies to evaluate the plan's compliance with the funding requirements as amended by sections 101, 102, 111, and 112 of the PPA, and to ensure that the reporting requirements under ERISA, as amended by section 503 of the PPA, are included on the schedule. The material is divided into sections consisting of ``Basic information,'' ``Beginning of year carryover and prefunding balances,'' ``Funding percentages,'' ``Contributions and liquidity shortfalls,'' ``Assumptions used to determine funding target and target normal cost,'' ``Miscellaneous items,'' ``Reconciliation of unpaid minimum required contributions for prior years,'' and ``Minimum required contribution for current year.'' Airlines that have frozen pension plans electing the alternate funding schedule and plans for which the effective date of the new PPA funding rules is delayed (PBGC settlement plans, certain defense contractors, certain rural electrical cooperatives, etc.) will not be required to fill out all of these sections. Instead, additional information related to the applicable funding rules for such plans will be provided as an attachment.

\18\ Unike multiemployer plans within the meaning of ERISA sections 3(37) and 4001(a)(3) to which more than one employer is required to contribute, which must be maintained pursuant to one or more collective barganing agreements between one or more employee organization and more than one employer, and which must satisfy other requirements prescribed in regulations issued by the Department at 29 CFR 2510.3-37, multiple-employer plans are plans that cover the employees of two or more employers but are treated as single-employer plans for various purposes under ERISA.

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ii. New Schedule MB, ``Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information''

Schedule MB is to be filed for multiemployer defined benefit plans and for money purchase plans (including target benefit plans) that are currently amortizing funding waivers. Schedule MB is very similar to the existing Schedule B.

New items that have been added include (1) accrued liability determined using the unit credit cost method, (2) information about whether the plan is in endangered, seriously endangered, or critical status, and, if so, whether the plan is complying with the applicable requirements for its funding improvement or rehabilitation plan, and (3) information required by PPA section 503. Information that was applicable solely to single-employer plans has been eliminated.

5. Schedule C: Compensation Received by Plan Service Providers

As in the proposal, the Schedule C will consist of three parts. Part I of the Schedule C will require the identification of each person who received, directly or indirectly, $5,000 or more in total compensation (i.e., money or anything else of value) in connection with services rendered to the plan or their position with the plan during the plan year. Direct compensation would be reported on a separate line item from compensation received from sources other than the plan or plan sponsor in connection with the service provider's position with the plan or services provided to the plan. The final revisions also provide an alternative disclosure option for reporting certain eligible indirect compensation provided that certain disclosures are made to the plan administrator regarding the compensation and the party or parties paying and receiving the indirect compensation. With respect to such compensation for which those disclosures were not provided, and other indirect compensation received from sources other than the plan or plan sponsor, filer would report a total amount. They would also provide identifying information regarding the payor and the nature of compensation received by certain key service providers where the amount was $1,000 or more and where the amount was an estimate rather than an actual amount.

A new Part II for Schedule C provides a place for plan administrators to identify each fiduciary or service provider that failed or refused to provide the information necessary to complete Part I of the Schedule C.

The third part of the Schedule C (Part III) will be the current Part II of the Schedule C, used for reporting termination information on accountants and enrolled actuaries. The proposal would not alter these current requirements.

6. Schedules H and I: Compliance With Blackout Notice Requirements

Plan administrators now will report on Schedule H or I, or the Short Form 5500, as appropriate, whether there has been a temporary suspension, limitation, or restriction lasting more than three consecutive business days of any ability of participants or beneficiaries to direct or diversify assets credited to their accounts, to obtain loans from the plan, or to obtain plan distributions. If there was a blackout, plan administrators will have to state if participants either were provided the required notice of this suspension period or one of the exceptions to providing the blackout notice applies.

7. Schedules H and I: Failure To Pay Benefits When Due

As in the July 2006 Proposal, a compliance question that would require plan administrators to answer whether the plan has failed to pay any benefits when due during the plan year is added to the Schedule H and Schedule I, and is also included on the new Short Form 5500.

8. Schedule I: Separate Disclosure of Fees Paid to Administrative Service Providers

The disclosure requirements for direct compensation paid by small plans for administrative expenses, i.e., professional and administrative salary, fee, and commission payments, were expanded in the proposal and are modified here in response to comments suggesting that the requirements for Short Form 5500, Schedule I, and Schedule H filers be more uniform. As with the proposal, the Short Form 5500 and Schedule I have a separate line item for direct payments to professional and administrative service providers, which will promote better awareness among plan fiduciaries regarding these fee payments and will provide participants, beneficiaries, and government regulatory agencies with improved

disclosure of these plan expenses. The instructions have been modified, however, to make more explicit that the information included in the administrative expense line on the Short Form 5500 and Schedule I more directly correlates to those line items on the Schedule H that ask for a more detailed breakout of such information.

9. Schedule R

As proposed, Schedule R has been modified for 2009 to include additional questions required by section 503 of the PPA and to collect information on how assets are invested. Certain ESOP questions previously on the Schedule E also have been moved to the Schedule R.

The new Part V collects PPA-required information on multiemployer defined benefit plans and additional information related to major contributing employers. Asset allocation questions for large defined benefit plans (1,000 or more participants) are included in Part VI. Such plans must provide a breakdown of plan assets by type of investment (stock, investment-grade debt, high-yield debt, real estate, and other). Information on the average duration of combined investment-grade and high-yield debt is also required. For this purpose, duration may be determined using any generally accepted methodology.

Schedule R has been modified, as proposed, to ask the following questions regarding the operations and investments of the ESOP: (1) Whether any unallocated employer securities or proceeds from the sale of unallocated securities were used to repay any exempt loan; (2) whether the ESOP holds any preferred stock, and if so, whether the ESOP has an exempt loan with the employer as lender that is part of a ``back-to-back'' loan--the repayment terms of the employer loan to the ESOP are substantially similar to the repayment terms of a loan to the employer from a commercial lender; and (3) whether the ESOP holds any stock that is not readily tradable on an established securities market.

The new PPA-related questions and the asset allocation questions on the 2009 Schedule R, but not the ESOP questions, will be required to be submitted as a non-standard attachment to the 2008 Schedule R under the original EFAST system.

10. Other Improvements and Clarifications of Form 5500 Reporting Requirements

The last category of revisions involves technical amendments to the Form 5500, individual schedules, and instructions to clarify and improve existing reporting requirements that either were set forth in the proposal or are being made in response to public comments.

a. Form 5500

A question asking for the number of contributing employers in a multiemployer plan is added to the Form 5500. The instructions for the funding and benefit checklists have been expanded to clarify that Code section 403(b) plans invested in annuity contracts should check ``insurance'' and plans using Code section 403(b)(7) custodial accounts should check ``trust.'' The Form 5500 includes a checklist of the various schedules that may be required to be attached. In addition to revising the checklist to eliminate the IRS-only Schedules, and replacing the Schedule B with the Schedules SB and MB, the Agencies have also kept the other proposed cosmetic changes to the presentation of the schedule checklist. Under the current filing requirements, plans must include on the Form 5500 all of the plan characteristics that apply to the plan from a list of codes included in the instructions. These ``feature'' codes allow the Agencies to identify and classify the universe of filers by their major characteristics. New plan feature codes for defined contribution pension plans with automatic enrollment features and default investment provisions have been added. The Agencies also have eliminated the feature codes for certain types of plans that are not subject to Title I of ERISA because they will not be filing the Form 5500 with EFAST under the proposed electronic filing system. The optional line for identifying the principal preparer of the Form 5500 is deleted.

b. Schedules H and I: New Supplemental Schedule for Line 4a of the Schedule H for Reporting Delinquent Participant Contributions

The instructions continue to state that delinquent participant contributions reported on Schedule H, Line 4a, should be treated as part of the supplemental schedules for purposes of the required IQPA audit and opinion. The instructions separately also provide that, if the information contained on Schedule H, Line 4a, is not presented in accordance with the Department's regulatory requirements, the IQPA report must make the appropriate disclosures in accordance with Generally Accepted Auditing Standards (GAAS). The instructions to Schedule H, Line 4a, are modified to require delinquent participant contributions to be presented on a standardized supplemental schedule where delinquent participant contributions are identified on Line 4a and are expanded to include the guidance contained in the previously released ``FAQs on Reporting Delinquent Participant Contributions on the Form 5500,'' available on the Department's Web site at http://www.dol.gov, that make explicit the IQPA's separate opinion obligations under ERISA and GAAS.\19\ The new Schedule H, ``Line 4a ``Schedule of Delinquent Participant Contributions'' will identify the total participant contributions transferred late to the plan, the total that are nonexempt prohibited transactions, and the total contributions fully corrected under the VFCP. See 71 FR 20262 (Apr. 19, 2006). Those that constitute nonexempt prohibited transactions would be broken down into contributions not corrected, contributions corrected outside of the VFCP, and contributions pending correction in the VFCP.\20\

\19\ The addition of the supplemental schedule to provide a format for describing the delinquent participant contributions does not alter the IQPA's duty to treat Line 4a itself as one of the supplemental schedules for purposes of its audit duties both under ERISA and under GAAS.

\20\ A similar addition would be made to the instructions for Line 4a of the Schedule I applicable to small plans filers who are not eligible for the audit waiver.

In addition, as proposed, the Schedule H and I instructions for Line 4a now permit inclusion of delinquent forwarding of participant loan repayments on Line 4a of the Schedule H or Schedule I, and Line 10a of the Short Form 5500, provided that filers that choose to include such participant loan repayments on Line 4a use the same supplemental schedule and IQPA disclosure requirements for the loan repayments as for delinquent transmittals of participant contributions. At the suggestion of one commenter, a checkbox has been added to the new line 4a Schedule to identify whether loan repayments are included.

c. Schedule R: New Minimum Funding Question

Schedule R currently contains questions regarding minimum required contributions for certain defined contribution plans. An additional question now asks whether the minimum funding amount reported will be met by the funding deadline and the minimum funding questions have been revised to avoid any discrepancies in the date being reported.

d. Miscellaneous Technical Adjustments

Various commenters submitted technical suggestions on how to further improve and clarify various portions of the proposals which focused principally on technical corrections and improvements in the instructions as opposed to changes on the forms. The Agencies have reviewed the comments and made various technical corrections/ clarifications in response to those comments.

D. Regulations Relating to the Proposed Form

As noted above, certain amendments to the annual reporting regulations under ERISA are necessary to accommodate some of the revisions to the forms. The Department is publishing separately today in the Federal Register amendments to the Department's annual reporting regulations. That document includes a discussion of the findings required under sections 104 and 110 of ERISA that are necessary for the Department to adopt the Form 5500 Annual Return/Report, as revised herein, and the new Short Form 5500, as an alternative method of compliance, limited exemption, and/or simplified report under the reporting and disclosure requirements of Part 1 of Subtitle B of Title I of ERISA.

Paperwork Reduction Act Statement

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)), the July 2006 Proposal solicited comments on the information collections included in the proposed revision of the Form 5500 Annual Return/Report pursuant to Part 1 of Subtitle B of Title I and Title IV of ERISA and the Internal Revenue Code. The Department also submitted an information collection request (ICR) to OMB in accordance with 44 U.S.C. 3507(d), contemporaneously with publication of the July 2006 Proposal, for OMB's review of the Department's information collections previously approved under OMB Control No. 1210-0110.\21\ Public comment on the information collections contained in the Supplemental Notice was also solicited in connection with its publication in December, 2006. Although no public comments were received that specifically addressed to the paperwork burden analysis of the information collections, the comments that were submitted in response to the July 2006 Proposal and the Supplemental Notice, which are described earlier in this preamble, contained information relevant to the costs and administrative burdens attendant to the proposals. The Agencies took into account such public comments in connection with making changes to the proposals, analyzing the economic impact of the proposals, and developing the revised paperwork burden analysis summarized below.

\21\ On August 29, 2006, OMB issued a notice indicating that it would continue its approval of the information collections approved under Control No. 1210-0110 as currently in effect, but would not approve the Department's request for approval of revisions to the ICR until after consideration of public comment on the July 2006 Proposal and promulgation of a final rule, describing any changes.

In connection with the publication of this Notice, the Department and the PBGC submitted ICRs to OMB for its review and approval of the information collections contained in the Form 5500 Annual Return/Report, as herein revised, and the new Short Form 5500. OMB has approved these ICRs. The IRS has not submitted an ICR to OMB, but will do so in advance of release of the Form 5500 Annual Return/Report and the Short Form 5500 for public use as agreed with OMB. The public is advised that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The Department intends to publish a notice announcing OMB's decision upon review of the Department's ICR.

A copy of the ICR for an Agency may be obtained by contacting the appropriate PRA addressee shown below or at http://www.RegInfo.gov. PRA

Addressees: Department of Labor: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N-5718, Washington, DC 20210. Telephone: (202) 693-8410; Fax: (202) 219-4745. Pension Benefit Guaranty Corporation: Disclosure Division of the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., 11th Floor, Washington, DC 20005-4026. Telephone: (202) 326-4040 (TTY and TDD users may call the Federal relay service toll-free at 1-800-877-8339 and asked to be connected to (202) 326-4040). Fax: (202) 326-4042. Except as otherwise indicated, these are not toll-free numbers.

The following is a summary of the information collection and the Agencies' estimates of the burden it imposes for plan year 2007:

Type of Review: Revision of a currently approved collection.

Agencies: Employee Benefits Security Administration (OMB No. 1210-0110); Internal Revenue Service (OMB No. 1545-0710); Pension Benefit Guaranty Corporation (OMB No. 1212-0057).

Title: Form 5500 Series.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Form Number: DOL/IRS/PBGC Form 5500, DOL/IRS/PBGC Form 5500-SF, and Schedules.

Total Respondents: 780,000.

Total Annual Responses: 780,000.

Frequency of Response: Annually.

Estimated Total Annual Burden Hours: 1.13 million (see below for break-out of annual burden hours by Agency).

Total Annual Burden Cost (Operating and Maintenance): $333 million (see below for break-out of total annual burden cost by Agency).

The Agencies' burden estimation methodology excludes certain activities from the calculation of ``burden.'' If the activity is performed for any reason other than compliance with the applicable federal tax administration system or the Title I annual reporting requirements, it is not counted as part of the paperwork burden. For example, most businesses or financial entities maintain, in the ordinary course of business, detailed accounts of assets and liabilities, and income and expenses for the purposes of operating the business or entity. These recordkeeping activities were not included in the calculation of burden because prudent business or financial entities collect and maintain such information for ordinary and customary business reasons unrelated to annual return/reporting under ERISA. This analysis accounts only for time necessary for gathering and processing information associated with the annual return reporting, including learning about changes in the reporting requirements.\22\ In addition, an activity is counted as a burden only once if performed for both Code and Title I annual return/reporting purposes. The Agencies, therefore, have included in their PRA calculations a burden for reading the instructions, but no additional recordkeeping burden attributable to the Form 5500 Annual Return/Report or the Short Form 5500.

\22\ The Agencies have designed the instruction package for the 5500 Forms so that filers generally will be able to complete the Form 5500 Annual Return/Report or the Short Form 5500 by reading the instructions without needing to refer to the statutes or regulations themselves.

Paperwork and Respondent Burden

Estimated time needed to complete the forms listed below reflects the combined requirements of the IRS, the Department, and the PBGC. The time needed by a particular plan will vary depending on individual circumstances.

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The estimated average times are shown in Table 1 below.

Table 1.--Burden by Schedule and Year \23\

	Pension		Welfare	
	Large	Small	Large	Small
Plan Year 2007 Burden				

Form 5500	1 hr., 43 min.	1 hr., 17 min.	1 hr., 45 min.	1 hr., 14 min.
Sch A	2 hr., 41 min.	2 hr., 44 min.	3 hr., 30 min.	2 hr., 36 min.
Sch B	7 hr., 56 min.	7 hr., 55 min.		
Sch C	2 hr., 22 min.		3 hr., 8 min.	
Sch D	1 hr., 39 min.	20 min.	1 hr., 52 min.	20 min.
Sch E	3 hr., 18 min.	3 hr., 18 min.		
Sch G	11 hr., 29 min.		11 hr.	
Sch H	7 hr., 12 min.		8 hr.	
Sch I		1 hr., 57 min.		1 hr., 48 min.
Sch R	1 hr., 36 min.	1 hr., 3 min.		
Sch SSA	6 hr., 25 min.	1 hr., 42 min.		
Plan Year 2008 Burden				
Form 5500	1 hr., 43 min.	1 hr., 17 min.	1 hr., 45 min.	1 hr. 14 min.
Sch A	2 hr., 41 min.	2 hr., 44 min.	3 hr., 30 min.	2 hr., 36 min.
Sch MB	9 hr., 12 min.	4 hr., 29 min.		
Sch SB	9 hr., 8 min.	9 hr., 19 min.		
Sch C	2 hr., 22 min.		3 hr., 8 min.	
Sch D	1 hr., 39 min.	20 min.	1 hr., 52 min.	20 min.
Sch E	3 hr., 18 min.	3 hr., 18 min.		
Sch G	11 hr., 29 min.		11 hr.	
Sch H	7 hr., 12 min.		8 hr.	
Sch I		1 hr., 57 min.		1 hr., 48 min.
Sch R	1 hr., 55 min.	1 hr., 10 min.		
Sch SSA	6 hr., 25 min.	1 hr., 42 min.		

Simplified Filing Option for Certain Small Plans.	....	2 hr., 34 min.	....	2 hr., 32 min.
Plan Year 2009 Burden				
Form 5500	1 hr., 54 min.	1 hr., 19 min.	1 hr. 45 min.	1 hr., 14 min.
Sch A	2 hr., 52 min.	2 hr., 51 min.	3 hr., 39 hr.,	2 hr., 43 min.
Sch MB	7 hr., 52 min.	4 hr., 14 min.	....	....
Sch SB	6 hr., 38 min.	6 hr., 49 min.	....	....
Sch C	3 hr., 4 min.	....	3 hr., 38 min.	....
Sch D	1 hr., 39 min.	20 min.	1 hr. , 52 min.	20 min.
Sch G	11 hr., 29 min.	....	11 hr.	....
Sch H	7 hr., 42 min.	....	8 hr., 35 min.	....
Sch I	....	2 hr., 5 min.	....	1 hr., 55 min.
Sch R	1 hr., 43 min.	1 hr., 5 min.	....	....
Short Form 5500	....	2 hr., 32 min.	....	2 hr., 32 min.

The aggregate hour burden for the Form 5500 Annual Return/Report (including schedules and Short Form 5500) is estimated to be 1.13 million for plan year 2007, 1.12 million for plan year 2008, and 854,000 hours for plan year 2009. The hour burden reflects annual filing activities carried out directly by filers. The cost burden is estimated to be $333 million for plan year 2007, $329 million for plan year 2008, and $278 million for plan year 2009. The cost burden reflects filing services purchased annually by filers. Presented below is a chart showing the total hour and cost burden of the revised Form 5500 Annual Return/Report and the new Short Form 5500, separately allocated across the Department and the IRS. There is no separate PBGC entry on the chart because, as explained below, its share of the paperwork burden is very small relative to that of the IRS and the Department.

\23\ In 2007 and 2008, certain eligible small plans have a simplified reporting alternative, as described above, which allows eligible filers to complete fewer schedules and line items on certain schedules. For eligible filers that choose to use the simplified reporting option, the burden of filing will be smaller than the tables indicate, because this option allows eligible plans to fill out fewer line items and schedules.

Table 2.--Agency Burdens By Year

Agency		Pension plans Large	Pension plans Small	Welfare plans Large	Welfare plans Small	Total Large	Total Small	Total
Agency Plan Year 2007								
DOL	Hours	219,000	213,000	102,000	3,000	321,000	216,000	536,000
	$MM	$42	$87	$65	$1.3	$107	$88	$195
IRS/SSA	Hours	250,000	327,000	13,000	2,000	264,000	329,000	592,000
	$MM	$33	$100	$1.7	$0.7	$35	$101	$136
Agency Plan Year 2008								
DOL	Hours	219,000	197,000	102,000	3,000	321,000	200,000	521,000
	$MM	$42	$81	$65	$1.3	$107	$83	$190
IRS/SSA	Hours	257,000	321,000	13,000	2,000	270,000	323,000	593,000
	$MM	$36	$99	$1.7	$0.6	$38	$100	$138
Agency Plan Year 2009 \24								
DOL	Hours	258,000	164,000	105,000	2,000	363,000	166,000	529,000

	$MM	$49	$61	$67	$0.8	$117	$62	$178
IRS	Hours	143,000	164,000	14,000	2,000	158,000	166,000	323,000
	$MM	$26	$69	$2	$0.6	$28	$70	$98

The paperwork burden allocated to the PBGC includes a portion of the general instructions, basic plan identification information, a portion of Schedules MB and SB, and a portion of Schedule R. The PBGC's Estimated Share of Total Annual Burden is:

\24\ Due to the removal of Schedules E and Schedule SSA, no burden is associated with SSA for plan year 2009.

1,800 hours and $1.6 million for plan year 2007,
2,000 hours and $1.8 million for plan year 2008, and
1,200 hours and $1.3 million for plan year 2009.

Appendix A

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[[Page 64758]]

[GRAPHIC] [TIFF OMITTED] TN16NO07.000

[[Page 64759]]

[GRAPHIC] [TIFF OMITTED] TN16NO07.001

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Appendix B

2009 Instructions for Form 5500-SF

Short Form Annual Return/Report of Small Employee Benefit Plan

ERISA refers to the Employee Retirement Income Security Act of 1974, and Code references are to the Internal Revenue Code, unless otherwise noted.

EFAST Processing System

Under the computerized ERISA Filing Acceptance System (EFAST), you must electronically file your 2009 Form 5500-SF. You may file your 2009

Form 5500-SF on-line, using EFAST's web-based filing system or you may file through an EFAST-approved vendor. For more information, see the instructions for Electronic Filing Requirement.

General Instructions

The Form 5500-SF, Short Form Annual Return/Report of Small Employee Benefit Plan (Form 5500-SF), is a simplified annual reporting form for use by certain small pension and welfare benefit plans. To be eligible, the plan generally must have fewer than 100 participants at the beginning of the plan year; it must be exempt from the requirement that the plan's books and records be audited by an independent qualified public accountant; it must have 100% of its assets invested in certain secure investments with a readily determinable fair value; it must hold no employer securities; and it must not be a multiemployer plan. See Who May File Form 5500-SF for more detailed instructions on who may file the Form 5500-SF. Plans required to file an annual return/report that are not eligible to file the Form 5500-SF must file a Form 5500, Annual Return/Report of Employee Benefit Plan or Form 5500-EZ Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan (to the extent applicable), with all required schedules and attachments (Form 5500).

To reduce the possibility of correspondence and penalties, we remind filers that the Internal Revenue Service (IRS), Department of Labor (DOL), and Pension Benefit Guaranty Corporation (PBGC) have consolidated their return/report forms to minimize the filing burden for employee benefit plans. Administrators and sponsors of employee benefit plans generally will satisfy their IRS and DOL annual reporting requirements for the plan under ERISA sections 104 and 4065 and Code section 6058 by filing either the Form 5500, Form 5500-SF, or Form 5500-EZ, Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan (Form 5500-EZ),. Defined contribution and defined benefit pension plans may be required to file additional information with the IRS regarding their compliance with tax laws. See http://www.irs.gov for more information. Defined benefit pension plans covered by the PBGC may have special additional requirements, including filing the PBGC Form 1, Premium Package, and reporting certain transactions directly with that agency. See the PBGC's Premium Payment Package (Form 1 Package), available at http://www.pbgc.gov.

The Form 5500-SF must be filed electronically. See How to File--Electronic Filing Requirement instructions. Your entries will be initially screened. Your entries must satisfy this screening in order to be filed. Once filed, your form may be subject to further detailed review, and your filing may be rejected based upon this further review.

ERISA and the Code provide for the assessment or imposition of penalties for not submitting the required information when due. See Penalties.

Annual reports filed under Title I of ERISA must be made available by plan administrators to plan participants and by the DOL to the public pursuant to ERISA sections 104 and 106.

Note: The IRS Form 5500-EZ generally is used by one-participant plans (as defined below) that are not subject to the requirements of section 104(a) of ERISA to satisfy the annual reporting and filing obligations imposed by the Code. Certain one-participant plans who are eligible to file a Form 5500-EZ may file the Form 5500-SF to satisfy the filing obligations under the Code. One-participant plans that are eligible to file the Form 5500-SF electronically complete only certain questions on the Form 5500-SF. (See Specific Instructions for One-Participant Plans). Therefore, a plan that is required to file Form 5500-EZ may file the paper Form 5500-EZ with the IRS or the Form 5500-SF electronically. For more information on filing with the IRS go to http://www.irs.gov/ep or call 1-877-829-

5500.

How To Get Assistance

If you need help completing this form or have related questions, call the EFAST Help Line at [number to be provided] (toll free). The EFAST Help Line is available Monday through Friday from 8 a.m. to 8 p.m., Eastern Time.

You can access the EFAST Web Site 24 hours a day, 7 days a week at http://www.efast.dol.gov to:

View forms and related instructions.
Get information regarding EFAST, including approved software vendors.
See answers to frequently asked questions about the Form 5500-SF, the Form 5500 and its Schedules, and EFAST.
Access the main EBSA and DOL Web Sites for news, regulations, and publications.

You can access the IRS Web Site 24 hours a day, 7 days a week at http://www.irs.gov to:

View forms, instructions, and publications.
See answers to frequently asked tax questions.
Search publications on-line by topic or keyword.
Send comments or request help by e-mail.
Sign up to receive local and national tax news by e-mail.

You can order related forms and IRS publications by calling 1-800-TAX-FORM (1-800-829-3676). You can order EBSA publications by calling 1-866-444-3272. In addition, most IRS forms and publications are available at your local IRS office.

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Pension and Welfare Plans Required To File Annual Return/Report

All pension benefit plans and welfare benefit plans covered by ERISA must annually file a Form 5500 or Form 5500-SF unless they are eligible for a filing exemption. (Code section 6058 and ERISA sections 104 and 4065). An annual return/report must be filed even if the plan is not ``tax qualified,'' benefits no longer accrue, contributions were not made during this plan year, or contributions are no longer made. Pension benefit plans required to file include both defined benefit plans and defined contribution plans. Profit

sharing, stock bonus, money purchase, 401(k) plans, Code section 403(b) plans and IRA plans established by an employer are among the pension benefit plans for which an annual return/report must be filed. Welfare benefit plans provide benefits such as medical, dental, life insurance, apprenticeship and training, scholarship funds, severance pay, disability, etc.

Plans Exempt From Filing

The DOL has issued regulations under which some pension plans and many welfare plans with fewer than 100 participants are exempt from filing an annual return/report. Do not file a Form 5500-SF for an employee benefit plan that is any of the following:

1. A welfare plan that covers fewer than 100 participants as of the beginning of the plan year and is unfunded, fully insured, or a combination of insured and unfunded. For this purpose:

a. An unfunded welfare benefit plan has its benefits paid as needed directly from the general assets of the employer or the employee organization that sponsors the plan.

Note: Plans which are NOT unfunded include those plans that received employee (or former employee) contributions during the plan year and/or used a trust or separately maintained fund (including a Code section 501(c)(9) trust) to hold plan assets or act as a conduit for the transfer of plan assets during the plan year.

b. A fully insured welfare benefit plan has its benefits provided exclusively through insurance contracts or policies, the premiums of which must be paid directly to the insurance carrier by the employer or employee organization from its general assets or partly from its general assets and partly from contributions by its employees or members (which the employer or organization forwards within 3 months of receipt). The insurance contracts or policies discussed above must be issued by an insurance company or similar organization (such as Blue Cross, Blue Shield or a health maintenance organization) that is qualified to do business in any state.

c. A combination unfunded/insured welfare plan has its benefits provided partially as an unfunded plan and partially as a fully insured plan. An example of such a plan is a welfare plan that provides medical benefits as in a above and life insurance benefits as in b above. See 29 CFR 2520.104-20 and the DOL Technical Release 92-01.

Note: A ``voluntary employees' beneficiary association'' as used in Code section 501(c)(9) (``VEBA'') should not be confused with the employee organization or employer that establishes and/or maintains (i.e., sponsors) the welfare benefit plan.

2. An unfunded pension benefit plan or an unfunded or insured welfare benefit plan: (a) whose benefits go only to a select group of management or highly compensated employees, and (b) which meets the terms of 29 CFR 2520.104-23 (including the requirement that a registration statement be timely filed with DOL) or 29 CFR 2520.104-24.

3. Plans maintained only to comply with workers' compensation, unemployment compensation, or disability insurance laws.

4. An unfunded excess benefit plan.

5. A welfare benefit plan maintained outside the United States primarily for persons substantially all of whom are nonresident aliens.

6. A pension benefit plan maintained outside the United States primarily for the benefit of persons substantially all of whom are non-resident aliens.

7. An annuity or custodial account arrangement under Code section 403(b)(1) or (7) not established or maintained by an employer as described in DOL Regulation 29 CFR 2510.3-2(f).

8. A simplified employee pension (SEP) described in Code section 408(k) that conforms to the alternative method of compliance described in 29 CFR 2520.104-48 or 29 CFR 104-49. A SEP is a pension plan that meets certain minimum qualifications regarding eligibility and employer contributions.

9. A Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) that involves SIMPLE IRAs under Code section 408(p).

10. A church welfare plan under ERISA section 3(33).

11. A church pension plan if the pension plan did not elect coverage under Code section 410(d).

12. An unfunded dues financed pension benefit plan that meets the alternative method of compliance provided by 29 CFR 2520.104-27.

13. An individual retirement account or annuity not considered a pension plan under 29 CFR 2510.3-2(d).

14. A governmental plan.

15. A welfare benefit plan that participates in a group insurance arrangement that files a return/report Form 5500 on its behalf. A group insurance arrangement generally is an arrangement that provides benefits to the employees of two or more unaffiliated employers (not in connection with a multiemployer plan or a collectively bargained multiple-employer plan), fully insures one or more welfare plans of each participating employer, uses a trust (or other entity such as a trade association) as the holder of the insurance contracts and uses a trust as the conduit for payment of premiums to the insurance company. For further details, see 29 CFR 2520.104-43.

16. An apprenticeship or training plan meeting all of the conditions specified in 29 CFR 2520.104-22.

17. A One-Participant (Owners and Their Spouses) Retirement Plan (generally referred to as a One-Participant Plan) that has elected to file a Form 5500-EZ or is exempt from filing the Form 5500-EZ. A one-participant plan is: (1) A plan that covers only an individual or an individual and his or her spouse who wholly own a trade or business,

whether incorporated or unincorporated; or (2) a plan for a partnership that covers only the partners or the partners and the partners' spouses. See Specific Instructions for One-Participant Plans. One-participant plans may be eligible to file the Form 5500-SF electronically (See How to File--Electronic Filing Requirement instructions) or the paper Form 5500-EZ with the IRS. See http://www.irs.gov/ep
or call 1-877-829-5500.

18. An unfunded dues financed pension benefit plan that meets the alternative method of compliance provided by 29 CFR 2520.104-27.

For more information on plans that are exempt from filing an annual return/report, see the Instructions for Form 5500 Annual Return/Report of Employee Benefit Plan or call the EFAST Help Line at [number to be provided].

Who May File Form 5500-SF

If your plan is required to file an annual return/report, you may file the Form 5500-SF instead of the Form 5500 only if you meet all of the eligibility conditions listed below.

1. The plan (a) covered fewer than 100 participants at the beginning of plan year 2009, or (b) under 29 CFR 2520.103-1(d) was eligible to and filed as a small plan for plan year 2008 and did not cover more than 120 participants at the beginning of plan year 2009 (see instructions for line 5);

TIP: If a Code section 403(b) plan would have been eligible to file as a small plan under 29 CFR 2520.103-1(d) in 2008 (i.e., the plan was eligible to file in the previous year under the small plans requirements and has a participant count of less than 121 at the beginning of the 2009 plan year), then it can rely on 29 CFR 2520.103-1(d) to file as a small plan in 2009.

2. The plan does not hold any employer securities at any time during the plan year;

3. At all times during the plan year, the plan is 100% invested in certain secure, easy to value assets such as mutual fund shares, investment contracts with insurance companies and banks valued at least annually, publicly traded securities held by a registered broker dealer, cash and cash equivalents, and plan loans to participants (see the instructions for line 6a);

4. The plan is eligible for the waiver of the annual examination and report of an independent qualified public accountant (IQPA) under 29 CFR 2520.104-46 (but not by reason of enhanced bonding), which requirement includes, among others, giving certain disclosures and supporting documents to participants and beneficiaries regarding the plan's investments (see instructions for line 6b); and

5. The plan is not a multiemployer plan.

Note: Employee stock ownership plans (ESOPs) and Direct Filing Entities (DFEs) may not file the Form 5500-SF.

TIP: Section III of Schedule D must be completed by DFEs for all participating plans even those filing the Form 5500-SF.

Note: One-participant plans should follow the ``Specific Instructions for One-Participant Plans'' in lieu of the instructions 1-5 above.

CAUTION: One-participant plans that are ESOPs cannot file the Form 5500-SF electronically. These plans must file the paper Form 5500-EZ with the IRS.

What To File

Plans required to file an annual return/report that meet all of the conditions for filing the Form 5500-SF may complete and file the Form 5500-SF in accordance with its instructions. Single-employer Defined Benefit pension plans using the Form 5500-SF must also file the Schedule SB (Form 5500), Single-Employer Defined Benefit Plan Actuarial Information (Schedule SB). Money Purchase plans amortizing a waiver using the Form 5500-SF must also file the Schedule MB (Form 5500), Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information (Schedule MB). See the instructions for Schedules SB and MB. One-participant plans see Specific Instructions for One-Participant Plans. Plans filing under an extension of time or the DOL's Delinquent Filer Voluntary Compliance Program must retain the required supporting documentation with their records (see instructions for box C). No other schedules or attachments have to be filed with the Form 5500-SF.

When To File

File the 2009 Form 5500-SF for plan years that began in 2009. The form, and any required schedules and attachments, must be filed by the last day of the 7th calendar month after the end of the plan year (not to exceed 12 months in length) that began in 2009.

Note: If the filing due date falls on a Saturday, Sunday, or Federal holiday, the return may be filed on the next day that is not a Saturday, Sunday, or Federal holiday.

Extension of Time To File

Using Form 5558

If filing under an extension of time based on the filing of an IRS Form 5558, Application For Extension Of Time To File Certain Employee Plan Returns (Form 5558), check the appropriate box on the Form 5500-SF, Part I, item C. A one-time extension of time to file the Form 5500-SF (up to 2\1/2\ months) may be obtained by filing IRS Form 5558 on or before the normal due date (not including any extensions) of the annual return/report. You must file the Form 5558 with the Department of the Treasury, Internal Revenue Service Center, Ogden, UT 84201-0027. A copy of the completed extension request must be retained with the filer's records.

Using Extension of Time To File Federal Income Tax Return

An automatic extension of time to file Form 5500 until the due date of the Federal income tax return of the employer will be granted if all of the following conditions are met: (1) The plan year and the employer's tax year are the same; (2) the employer has been granted an extension of time to file its Federal tax return to a date later than the normal due date for filing the Form 5500; and (3) a copy of the application for extension of time to file the Federal income tax return is maintained with the filer's records. An extension of time granted by using this automatic extension procedure CANNOT be extended further by filing a Form 5558, nor can it be extended beyond a total of 9\1/2\ months beyond the close of the plan year.

Note: An extension of time to file the Form 5500-SF Return/ Report described in this section does not operate as an extension of time to file the PBGC Form 1.

Other Extensions of Time

The IRS, DOL, and PBGC may announce special extensions of time under certain circumstances, such as extensions for presidentially declared disasters or for service in, or in support of, the Armed Forces of the United States in a combat zone. See http://www.irs.gov and http://www.efast.dol.gov for announcements regarding such special

extensions. If you are relying on one of these announced special extensions, check the appropriate box on the Form 5500-SF, Part I, Line C and enter a brief citation to the announcement for the extension in the space provided. For example, indicate ``Disaster Relief Extension'' or ``Combat Zone Extension.''

Delinquent Filer Voluntary Compliance (DFVC) Program

The DFVC Program facilitates voluntary compliance by plan administrators who are delinquent in filing annual return/report forms under Title I of ERISA by permitting administrators to pay reduced civil penalties for voluntarily complying with their DOL annual reporting obligations. If the Form 5500-SF is being filed under the DFVC Program, check the appropriate box on Form 5500-SF. See http://www.efast.dol.gov
for information concerning the DFVC Program. Do not

submit penalty payments to EFAST.

Change in Plan Year

Generally, only defined benefit pension plans need to get approval for a change in plan year. (See Code section 412(c)(5)). However, under Rev. Proc. 87-27, 1987-1 C.B. 769, these pension plans may be eligible for automatic approval of a change in plan year.

If a change in plan year for a pension or a welfare plan creates a short plan year, file the form and applicable schedules by the last day of the 7th month after the short plan year ends. Fill in the short plan year beginning and ending dates in the space provided and check the appropriate box in Part I, Line B of the Form 5500-SF. For purposes of this return/report, the short plan year ends on the date of the change in accounting period or upon the complete distribution of assets of the plan. Also see the instructions for Final Return/Report to determine if ``the final return/report'' in Line B should be checked.

Penalties

Plan administrators and plan sponsors must provide complete and accurate information and must otherwise comply fully with the filing requirements. ERISA and the Code provide for the DOL and the IRS, respectively, to assess or impose penalties for not giving complete information and for not filing statements and returns/reports. Certain penalties are administrative (i.e., they may be imposed or assessed in an administrative proceeding by one of the governmental agencies delegated to

administer the collection of the Form 5500-SF data). Others require a legal conviction.

Administrative Penalties

Listed below are various penalties under ERISA and the Code that may be assessed or imposed for not meeting the annual return/report filing requirements. Generally, whether the penalty is assessed under ERISA or the Code, or both, depends upon the agency for which the information is required to be filed. One or more of the following administrative penalties may be assessed or imposed in the event of incomplete filings or filings received after the due date unless it is determined that your explanation for failure to file properly is for reasonable cause:

1. A penalty of up to $1,100 a day for each day a plan administrator fails or refuses to file a complete report. See ERISA section 502(c)(2) and 29 CFR 2560.502c-2.
2. A penalty of $25 a day (up to $15,000) for not filing returns for certain plans of deferred compensation, trusts, and annuities, and bond purchase plans by the due date(s). See Code section 6652(e).
3. A penalty of $1,000 for not filing an actuarial statement. See Code section 6692.

Other Penalties

1. Any individual who willfully violates any provision of Part 1 of Title I of ERISA shall be fined not more than $100,000 or imprisoned not more than 10 years, or both. See ERISA section 501.
2. A penalty up to $10,000, five (5) years imprisonment, or both, may be imposed for making any false statement or representation of fact, knowing it to be false, or for knowingly concealing or not disclosing any fact required by ERISA. See section 1027, Title 18, U.S. Code, as amended by section 111 of ERISA.

How To File--Electornic Filing Requirement

Under the computerized ERISA Filing Acceptance System (EFAST), you must file your 2009 Form 5500-SF electronically. You may file your 2009 Form 5500-SF on-line, using EFAST's web-based filing system, or you may file through an EFAST-approved vendor. Detailed information on electronic filing is available at (insert web address). For telephone assistance, call the EFAST Help Line at [number to be provided]. The EFAST Help Line is available Monday through Friday from 8 a.m. to 8 p.m., Eastern Time.

CAUTION: Annual reports filed under Title I of ERISA must be made available by plan administrators to plan participants and by the DOL to the public pursuant to ERISA sections 104 and 106. Even though the Form 5500-SF must be filed electronically, the administrator must keep a copy of the Form 5500-SF, including schedules and attachments, with all required manual signatures on file as part of the plan's records and must make a paper copy available on request to participants, beneficiaries, and the DOL as required by section 104 of ERISA and 29 CFR 2520.103-1.

Answer all questions with respect to the plan year unless otherwise explicitly stated in the instructions or on the form itself. Therefore, responses usually apply to the year entered at the top of the first page of the form.

Your entries will be screened. Your entries must satisfy this screening in order to be filed. Once filed, your form may be subject to further detailed review, and your filing may be rejected based upon this further review. To reduce the possibility of correspondence and penalties:

Complete all lines on the Form 5500-SF unless otherwise specified. Also complete or electronically attach, as required, any applicable schedules and attachments.

Do not enter ``N/A'' or ``Not Applicable'' on the Form 5500-SF or Schedules SB/MB unless specifically permitted. ``Yes'' or ``No'' questions on the forms and schedules cannot be left blank, but must be answered either ``Yes'' or ``No,'' and not both.

The Form 5500-SF, Schedules SB/ MB, and any attachments are open to public inspection, and the contents are public information subject to publication on the Internet. Do not enter social security numbers in response to questions asking for an employer identification number (EIN). Because of privacy concerns, the inclusion of a social security number on the Form 5500-SF or on a schedule or attachment that is open to public inspection may result in the rejection of the filing.

EINs may be obtained by applying for one on Form SS-4, Application for Employer Identification Number. You can obtain Form SS-4 by calling 1-800-TAX-FORM (1-800-829-3676) or at the IRS Web site at http://www.irs.gov. The EBSA does not issue EINs.

Signature and Date

The Form 5500-SF Annual Return/Report and any applicable schedules must be signed and dated. The administrator is required under ERISA to maintain a copy of the annual report with all required signatures, as part of the plan's records, even though the return/report is filed electronically. See 29 CFR 2520.103-1.

Electronic signatures on annual returns/reports filed under EFAST2 are affected by the applicable statutory and regulatory requirements. Information on those requirements will be made available for electronic filing under EFAST2.

Specific Instructions for One-Participant Plans

A one-participant plan is: (1) A pension benefit plan that covers only an individual or an individual and his or her spouse who wholly own a trade or business, whether incorporated or unincorporated; or (2) a pension benefit plan for a partnership that covers only the partners or the partners and the partners' spouses. One-participant plans may be eligible to file an abbreviated version of the Form 5500-SF electronically or the paper Form 5500-EZ with the IRS.

One-participant plan filers that meet the following conditions are eligible to file an abbreviated Form 5500-SF electronically:

1. The plan is a one-participant plan.
2. The plan meets the minimum coverage requirements of section 410(b) without being combined with any other plan you may have that covers other employees of your business.
3. The plan does not provide benefits for anyone except you, or you and your spouse, or one or more partners and their spouses.
4. The plan does not hold any employer securities.

If you do not meet all the conditions listed above, you must file either the complete Form 5500-SF or the Form 5500-EZ. If you do not meet the fourth condition, you are not eligible to file the Form 5500-SF and must file the complete Form 5500-EZ.

One-participant plans complete only the following questions on the Form 5500-SF: Part I items A, B and C, Part II lines 1a-5a, Part III lines 7a-c, 8a, Part IV line 9a, Part V line 10g, Part VI lines 11-12e.

Note: A Form 5500-SF may be filed for one-participant plans that are either defined contribution plans (which include profit-sharing and money purchase pension plans, but not an ESOP or stock bonus plan) or defined benefit plans.

Note: Actuaries of one-participant plans that are defined benefit plans subject to the minimum funding standards for this plan year must complete Schedule SB and forward the completed Schedule SB to the person responsible for filing the Form 5500-SF. The completed Schedule SB is subject to the

records retention provisions of these instructions. See the instruction for Schedule SB.

Note: If you are filing a paper form, you must file the Form 5500-EZ with the IRS (address to be added). You may order the paper Form 5500-EZ by calling 1-800-TAX-FORM (1-800-829-3676).

Note: If you are filing an amendment for a one-participant plan that filed a Form 5500-SF electronically, you must submit the amendment using the Form 5500-SF electronically as well. Similarly, if you are filing an amendment for a one-participant plan that previously filed on a paper Form 5500-EZ, you must submit the amendment using the paper Form 5500-EZ with the IRS.

Specific Line by Line Instructions

Part I--Annual Report Identification Information

Box A--Single-Employer Plan. Check this box if the Form 5500-SF is filed for a single-employer plan. A single-employer plan for purposes of the Form 5500-SF is an employee benefit plan maintained by one employer or one employee organization.

Box A--Multiple-Employer Plan. Check this box if the Form 5500-SF is being filed for a multiple-employer plan. A multiple-employer plan is a plan that is maintained by more than one employer and is not a multiemployer plan. Multiple-employer plans can be collectively bargained and collectively funded, but if covered by PBGC termination insurance, must have properly elected before September 27, 1981, not to be treated as a multiemployer plan under Code section 414(f)(5) or ERISA sections 3(37)(E) and 4001(a)(3), and have not revoked that election, or made an election to be treated as a multiemployer plan under Code section 414(f)(6) or ERISA section 3(37)(G). Participating employers do not file individually for multiple-employer plans. Do not check this box if the employers maintaining the plan are members of the same controlled group.

CAUTION: Multiemployer plans cannot use the Form 5500-SF to satisfy their annual reporting obligations. They must file the Form 5500. For these purposes, a plan is a multiemployer plan if: (a) More than one employer is required to contribute; (b) the plan is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer; and (c) an election under Code section 414(f)(5) and ERISA section 3(37)(E) has not been made. A plan that made a proper election under ERISA section 3(37)(G) and Code section 414(f)(6) on or before Aug. 17, 2007, is also a multiemployer plan.

Box A--One-Participant Plan. Check this box if the Form 5500-SF is being filed for a plan that is: (1) A pension benefit plan that covers only an individual or an individual and his or her spouse who wholly own a trade or business, whether incorporated or unincorporated; or (2) a pension benefit plan for a partnership that covers only the partners, or the partners and the partners' spouses. See Specific Instructions for One-Participant Plans.

Box B--First Annual Return/Report. Check this box if an annual return/report has not been previously filed for this plan. For the purpose of completing box B, the Form 5500-EZ is not considered an annual return/report.

Box B--Amended Return/Report. Check this box if you have already filed for the 2009 plan year and are now filing an amended return to correct errors and/or omissions on the previously filed return/report.

Note: File an amended return/report to correct errors and/or omissions in a previously filed annual return/report for the 2009 plan year. The amended Form 5500-SF and any amended schedules must conform to the requirements in these instructions. If you need to file an amended return/report to correct errors and or omissions in a previously filed annual return/report for the 2009 plan year AND you are eligible to file the Form 5500-SF, you may use the Form 5500-SF even if the original filing was a Form 5500. If you determine that you were not eligible to file the Form 5500-SF, your amended return/report must be the Form 5500.

Box B--Final Return/Report. Check this box if this is the final report for the plan. Only check this box if all assets under the plan (including insurance/annuity contracts) have been distributed to the participants and beneficiaries or legally transferred to the control of another plan, and when all liabilities for which benefits may be paid under a welfare benefit plan have been satisfied. Do not mark final return/report if you are reporting participants and/or assets at the end of the plan year. If a trustee is appointed for a terminated defined benefit plan pursuant to ERISA section 4042, the last plan year for which a return/report must be filed is the year in which the trustee is appointed.

Examples

Mergers/Consolidations

A final return/report should be filed for the plan year (12 months or less) that ends when all plan assets were legally transferred to the control of another plan.

Pension and Welfare Plans That Terminated Without Distributing All Assets

If the plan was terminated but all plan assets were not distributed, a return/report must be filed for each year the plan has assets. The return/report must be filed by the plan administrator, if designated, or by the person or persons who actually control the plan's assets/property.

Welfare Plans Still Liable To Pay Benefits

A welfare plan cannot file a final return/report if the plan is still liable to pay benefits for claims that were incurred prior to the termination date, but not yet paid. See 29 CFR 2520.104b-2(g)(2)(ii).

Box B--Short Plan Year. Check this box if this form is filed for a period of less than 12 months. Show the dates in the space provided.

Box C. Check the appropriate entry here if:

You filed for an extension of time to file this form with the IRS using a completed Form 5558, Application for Extension of Time To File Certain Employee Plan Returns (maintain a copy of the Form 5558 with the filer's records).

You are filing using the automatic extension of time to file the Form 5500 Return/Report until the due date of the Federal income tax return of the employer (maintain a copy of the employer's extension of time to file the income tax return with the filer's records).

You are filing using a special extension of time to file the Form 5500 Return/Report that has been announced by the IRS, DOL, and PBGC. If you checked that you are using a special extension of time, enter a description of the extension of time in the space provided.

Part II--Basic Plan Information

Line 1a. Enter the formal name of the plan or enough information to identify the plan. Abbreviate if necessary. If an annual return/report has previously been filed on behalf of the plan, regardless of the type of Form that was filed (Form 5500, Form 5500-EZ, Form 5500-SF) use the same abbreviation as was used on the prior filings. Once you use an abbreviation, continue to use it for that plan on all future annual return/report filings with the IRS, DOL, and PBGC. Do not use the same name or abbreviation for any other plan, even if the first plan is terminated.

Line 1b. Enter the three-digit plan or entity number (PN) that the employer or

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plan administrator assigned to the plan. This three-digit number, in conjunction with the employer identification number (EIN) entered on line 2b, is used by the IRS, DOL, and PBGC as a unique 12-digit number to identify the plan.

Start at 001 for plans providing pension benefits. Start at 501 for welfare plans. Do not use 888 or 999.

Once you use a plan number, continue to use it for that plan on all future filings with the IRS, DOL, and PBGC. Do not use it for any other plan, even if the first plan is terminated.

For each Form 5500-SF with same EIN (line 2b), when	Assign PN
Codes are entered in line 9a.............	001 to the first plan. Consecutively number others as 002, 003 . . .
Codes are entered in line 9b, and not in line 9a. Consecutively number others at 502, 503 . . .	501 to the first plan.

Line 1c. Enter the date the plan first became effective.

Line 2a. Enter the plan sponsor's (employer, if for a single-employer plan) name, postal address (only use a P.O. Box number if the Post Office does not deliver mail to the employer's street address), foreign routing code where applicable, and D/B/A (doing business as) or trade name of the employer if different from the employer's name.

Note: In the case of a multiple-employer plan, if an association or similar entity is not the sponsor, enter the name of a participating employer as sponsor. A plan of a controlled group of corporations should enter the name of one of the sponsoring members. In either case, the same name must be used in all subsequent filings of the Form 5500 Return/Report for the multiple-employer plan or controlled group (see instructions to line 4 concerning change in sponsorship).

Line 2b. Enter the employer's nine-digit employer identification number (EIN). Do not use a Social Security Number. The Form 5500-SF is open to public inspection, and the contents are public information and are subject to publication on the Internet. Because of privacy concerns, the inclusion of a Social Security Number on this line may result in the rejection of the filing.

Employers who do not have an EIN must apply for one on Form SS-4, Application for Employer Identification Number, as soon as possible. You can obtain Form SS-4 by calling 1-800-TAX-FORM (1-800-829-3676) or at the IRS Web Site at http://www.irs.gov. The EBSA does not issue EINs.

A multiple-employer plan or plan of a controlled group of corporations should use the EIN of the sponsor identified in line 2a. The EIN must be used in all subsequent filings of the Form 5500-SF (or any subsequent Form 5500 in a year where the plan is not eligible to file the Form 5500-SF) for these plans. (See instructions to line 4 concerning change in EIN).

Note: EINs for funds (trusts or custodial accounts) associated with plans are generally not required to be furnished on the Form 5500-SF. The IRS, however, will issue EINs for such funds for other reporting purposes. EINs may be obtained by filing Form SS-4 as explained above. Plan sponsors should use the trust EIN when opening a bank account or conducting other transactions for a trust.

Line 2c. Enter the telephone number for the plan sponsor.

Line 2d. Enter the six-digit business code that best describes the nature of the plan sponsor's business from the list of business codes. If more than one employer or employee organization is involved, enter the business code for the main business activity of the employers and/or employee organizations.

Line 3a. Enter the plan administrator's name, postal address (only use a P.O. Box number if the Post Office does not deliver mail to the employer's street address), and foreign routing code where applicable. Enter ``Same'' if the plan administrator identified on line 3 is the same as the plan sponsor identified on line 2.

Plan administrator for this purpose means:

The person or group of persons specified as the administrator by the instrument under which the plan is operated;

The plan sponsor/employer if an administrator is not so designated; or

Any other person prescribed by regulations if an administrator is not designated and a plan sponsor cannot be identified.

Line 3b. Enter the plan administrator's nine-digit EIN. A plan administrator must have an EIN for Form 5500-SF reporting. If the plan administrator does not have an EIN, it must apply for one as explained in the instructions for line 2b. One EIN should be entered for a group of individuals who are, collectively, the plan administrator.

Note: Employees of the plan sponsor who perform administrative functions for the plan are generally not the plan administrator unless specifically designated in the plan document. If an employee of the plan sponsor is designated as the plan administrator, that employee must obtain an EIN.

Line 3c. Enter the telephone number for the plan administrator.

Line 4. If the plan sponsor's name and/or EIN have changed since the last annual return/report was filed for this plan, enter the plan sponsor's name, EIN, and the plan number as it appeared on the last annual return/report filed.

CAUTION: Failure to indicate on line 4 that a plan was previously identified by a different EIN or PN could result in correspondence from the DOL and the IRS.

Line 5. Enter in element (a) the total number of participants at the beginning of the plan year. Enter in element (b) the total number of participants at the end of the plan year. Enter in element (c) the total number of participants with account balances as of the end of the plan year. Welfare plans and defined benefit plans do not complete element (c).

The description of ``participant'' in the instructions below is only for purposes of these lines.

An individual becomes a participant covered under an employee welfare benefit plan on the earliest of: the date designated by the plan as the date on which the individual begins participation in the plan; the date on which the individual becomes eligible under the plan for a benefit subject only to occurrence of the contingency for which the benefit is provided; or the date on which the individual makes a contribution to the plan, whether voluntary or mandatory. See 29 CFR 2510.3-3(d)(1). This includes former employees who are receiving group health continuation coverage benefits pursuant to Part 6 of ERISA and who are covered by the employee welfare benefit plan. Covered dependents are not counted as participants. A child who is an ``alternate recipient'' entitled to health benefits under a qualified medical child support order (QMCSO) should not be counted as a participant for line 5. An individual is not a participant covered under an employee welfare plan on the earliest date on which the individual is ineligible to receive any benefit under the plan even if the contingency for which such benefit is provided should occur, and is not designated by the plan as a participant. See 29 CFR 2510.3-3(d)(2).

TIP: Before counting the number of participants, especially in a welfare plan, it is important to determine whether the plan sponsor has established one or more plans for Form 5500/Form 5500-SF reporting purposes. As a matter of plan design, plan sponsors can offer benefits through various structures and combinations. For example a plan sponsor could create (i) one plan providing major medical benefits, dental benefits, and vision

benefits, (ii) two plans with one providing major medical benefits and the other providing self-insured dental and vision benefits, or (iii) three separate plans. You must review the governing documents and actual operations to determine whether welfare benefits are being provided under a single plan or separate plans.

The fact that you have separate insurance policies for each different welfare benefit does not necessarily mean that you have separate plans. Some plan sponsors use a ``wrap'' document to incorporate various benefits and insurance policies into one comprehensive plan. In addition, whether a benefit arrangement is deemed to be a single plan may be different for purposes other than Form 5500-SF reporting. For example, special rules may apply for purposes of HIPAA, COBRA, and Internal Revenue Code compliance. If you need help determining whether you have a single welfare benefit plan for Form 5500-SF reporting purposes, you should consult a qualified benefits consultant or legal counsel.

For pension benefit plans, ``alternate payees'' entitled to benefits under a qualified domestic relations order (QDRO) are not to be counted as participants for this line.

For pension benefit plans, ``participant'' for this line means any individual who is included in one of the categories below:

1. Active participants, i.e., any individuals who are currently in employment covered by a plan and who are earning or retaining credited service under a plan. This includes any individuals who are eligible to elect to have the employer make payments into a Code section 401(k) qualified cash or deferred arrangement. Active participants also include any nonvested individuals who are earning or retaining credited service under a plan. This does not include (a) nonvested former employees who have incurred the break in service period specified in the plan or (b) former employees who have received a ``cash-out'' distribution or deemed distribution of their entire nonforfeitable accrued benefit.

2. Retired or separated participants receiving benefits, i.e., individuals who are retired or separated from employment covered by the plan and who are receiving benefits under the plan. This does not include any individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

3. Other retired or separated participants entitled to future benefits, i.e., any individuals who are retired or separated from employment covered by the plan and who are entitled to begin receiving benefits under the plan in the future. This does not include any individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

4. Deceased individuals who had one or more beneficiaries who are receiving or are entitled to receive benefits under the plan. This does not include any individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the beneficiaries of that individual are entitled under the plan.

Note: One-participant plans skip to Part III.

Line 6. Except for one-participant plans filing the Form 5500-SF in accordance with the instructions, to be eligible to file the Form 5500-SF, a pension or welfare plan must: (1) Cover fewer than 100 participants or be a pension plan eligible to file as a small plan under the 80 to 120 rule in 29 CFR 2520.103-1(d); (2) be eligible for the small plan audit waiver under 29 CFR 2520.104-46 (but not by virtue of enhanced bonding); (3) hold no employer securities; (4) have 100% of its assets in investments that have a readily determinable fair market value for purposes of this annual reporting requirement as described in 29 CFR 2520.103-1(c)(2)(ii)(C); and (5) must not be a multiemployer plan.

Line 6a. To be eligible to file the Form 5500-SF, all of the plan's assets must be ``eligible plan assets.'' Answer line 6a ``Yes'' or ``No.'' Do not leave this question blank. If the answer to line 6a is ``No'' you CANNOT file the Form 5500-SF and must file the Form 5500. See discussion under Who May File Form 5500-SF.

For purposes of this line, ``eligible plan assets'' are assets that have a readily determinable fair market value for purposes of this annual reporting requirement as described in 29 CFR 2520.103-1(c)(2)(ii)(C), are not employer securities, and are held or issued by one of the following regulated financial institutions: a bank or similar financial institution as defined in 29 CFR 2550.408b-4(c) (for example, banks, trust companies, savings and loan associations, domestic building and loan associations, and credit unions); an insurance company qualified to do business under the laws of a state; organizations registered as broker-dealers under the Securities Exchange Act of 1934; investment companies registered under the Investment Company Act of 1940; or any other organization authorized to act as a trustee for individual retirement accounts under Code section 408. Examples of assets that would qualify as eligible plan assets for this annual reporting purpose are: mutual fund shares; investment contracts with insurance companies or banks that provide the plan with valuation information at least annually; publicly traded stock held by a registered broker dealer; and cash and cash equivalents held by a bank. Participant loans meeting the requirements of ERISA section 408(b)(1) are also ``eligible plan assets'' for this purpose whether or not they have been deemed distributed.

Line 6b. In addition to all of the plan's assets being eligible plan assets as defined in line 6a, to be able to file the Form 5500-SF the plan also must be exempt from the requirement to be audited annually by an IQPA.

Welfare plans that cover fewer than 100 participants at the beginning of the plan year are exempt from the annual audit requirement. A pension plan is exempt from the annual audit requirement if it covered fewer than 100 participants at the beginning of the plan year or is eligible to file as a small plan under the 80 to 120 rule (described above) and meets the following three requirements for the audit waiver under 29 CFR 2520.104-46: (1) As of the end of the preceding plan year at least 95% of a small pension plan's assets were ``qualifying plan assets;'' (2) the plan includes the required audit waiver disclosure in the Summary Annual Report (SAR), or, in the case of plans subject to section 101(f) of the Act, the annual funding notice (described in Sec. 2520.101-5), furnished to participants and beneficiaries (see 29 CFR 2520.104-46 and 2520.104b-10(d)(3) for a model audit waiver disclosure); and (3) in response to a request from any participant or beneficiary, the plan administrator must furnish without charge copies of statements from the regulated financial institutions holding or issuing the plan's ``qualifying plan assets.''

``Qualifying plan assets'' for the purpose of determining whether the plan is exempt from the requirement to be audited annually by an IQPA include: shares issued by an investment company registered under the Investment Company Act of 1940 (e.g., mutual fund shares); investment and annuity contracts issued by any insurance company qualified to do business under the laws of a state; participant loans meeting the

requirements of ERISA section 408(b)(1), whether or not they have been deemed distributed, and any eligible assets, e.g., publicly traded stocks and bonds, held by banks or similar financial institutions, including trust companies, savings and loan associations, domestic building and loan associations, and credit unions; insurance companies qualified to do business under the laws of a state; organizations registered as broker-dealers under the Securities Exchange Act of 1934; investment companies registered under the Investment Company Act of 1940; or any other organization authorized to act as a trustee for individual retirement accounts under Code section 408. In the case of an individual account plan, ``qualifying plan assets'' also include any assets in the individual account of a participant or beneficiary over which the participant or beneficiary had the opportunity to exercise control and with respect to which the participant or beneficiary has been furnished, at least annually, a statement from one of the above regulated financial institutions describing the plan assets held or issued by the institution and the amount of such assets.

CAUTION: In order to be able to file the Form 5500-SF, a small plan must meet the audit waiver conditions by virtue of having 95% or more of its assets as qualifying plan assets in accordance with 29 CFR 2520.104-46(b)(1)(i)(A)(1). If the small plan satisfies the conditions of the audit waiver by virtue of having enhanced fidelity bond under 29 CFR 2520.104-46(b)(1)(i)(A)(2), the plan does not satisfy the conditions for filing the Form 5500-SF and must file the Form 5500, along with the appropriate schedules and attachments. Also, many ``qualifying plan assets'' for audit waiver purposes will also be ``eligible plan assets'' as described in the instructions for line 6a, but the definitions are not the same. For example, real estate held by a bank as trustee for a plan could be a qualifying plan asset for purposes of the small pension plan audit waiver conditions but it would not be a ``eligible plan asset'' for purposes of the plan being eligible to file the Form 5500-SF because real estate would not have a readily determinable fair market value as described in described in 29 CFR 2520.103-1(c)(2)(ii)(C).

Part III--Financial Information

Note: The cash, modified cash, or accrual basis may be used for recognition of transactions in Parts I and II, as long as you use one method consistently. Round off all amounts reported on the Form 5500-SF to the nearest dollar. Any other amounts are subject to rejection. Check all subtotals and totals carefully.

Current value means fair market value where available. Otherwise, it means the fair value as determined in good faith under the terms of the plan by a trustee or a named fiduciary, assuming an orderly liquidation at the time of the determination. See ERISA section 3(26).

Line 7--Plan Assets and Liabilities.

Amounts reported on line 7a, 7b, and 7c for the beginning of the plan year must be the same as reported for the end of the plan year for the corresponding lines on the return/report for the preceding plan year. That means that if the Form 5500 was filed for plan year 2008, the amounts reported on the Form 5500-SF line 7a, column (a), 7b, column (a), and 7c, column (a) should correspond to the amounts entered in line 1a, column (b), 1b, column (b), and 1c, column (b) of the 2008 Schedule I (Form 5500) or the amounts entered in line 1f, column (b), 1k, column (b), and 1l, column (b) of the 2008 Schedule H (Form 5500), whichever schedule was filed.

Line 7a. Enter the total amount of plan assets at the beginning of the plan year in column (a). Do not include contributions designated for the 2009 plan year in column (a).

Enter the total amount of plan assets at the end of the plan year in column (b). Do not include in column (b) a participant loan that has been deemed distributed during the plan year under the provisions of Code section 72(p) and Treasury Regulation section 1.72(p)-1, if both the following circumstances apply: (1) Under the plan, the participant loan is treated as a direct investment solely of the participant's individual account; and (2) as of the end of the plan year, the participant is not continuing repayment under the loan.

If the deemed distributed participant loan is included in column (a) and both of these circumstances apply, include the value of the loan as a deemed distribution on line 8e. However, if either of these two circumstances does not apply, the current value of the participant loan (including interest accruing thereon after the deemed distribution) should be included in column (b) without regard to the occurrence of a deemed distribution.

After a participant loan that has been deemed distributed is included in the amount reported on line 8e, it is no longer to be reported as an asset on line 7a unless, in a later year, the participant resumes repayment under the loan. However, such a loan (including interest accruing thereon after the deemed distribution) that has not been repaid is still considered outstanding for purposes of applying Code section 72(p)(2)(A) to determine the maximum amount of subsequent loans. Also, the deemed distribution is not treated as an actual distribution for other purposes, such as the qualification requirements of Code section 401, including, for example, the determination of top-heavy status under Code section 416 and the vesting requirements of Treasury Regulation section 1.411(a)-7(d)(5). See Q&As 12 and 19 of Treasury Regulation section 1.72(p)-1.

The entry on line 7a, column (b) (plan assets at end of year) must include the current value of any participant loan included as a deemed distribution in the amount reported for any earlier year if, during the plan year, the participant resumes repayment under the loan. In addition, the amount to be entered on line 8e must be reduced by the amount of the participant loan reported as a deemed distribution for the earlier year.

Line 7b. Enter the total liabilities at the beginning and end of the plan year. Liabilities to be entered here do not include the value of future pension payments to participants. The amount to be entered in line 7b for accrual basis filers includes, among other things:

1. Benefit claims that have been processed and approved for payment by the plan but have not been paid (including all incurred but not reported welfare benefit claims);
2. Accounts payable obligations owed by the plan that were incurred in the normal operations of the plan but have not been paid; and
3. Other liabilities such as acquisition indebtedness and any other amount owed by the plan.

Line 7c. Enter the net assets as of the beginning and end of the plan year. (Subtract line 7b from 7a). Line 7c, column (b) must equal the sum of line 7c, column (a), plus lines 8i (net income (loss)) and 8j (transfers to (from) the plan).

Line 8--Income, Expenses, and Transfers for this Plan Year

Line 8a. Include the total cash contributions received and/or (for accrual basis plans) due to be received.

Line 8a(1). Plans using the accrual basis of accounting must not include contributions designated for years before the 2009 plan year on line 8a(1).

Line 8a(2). For welfare plans, report all employee contributions, including all elective contributions under a cafeteria plan (Code section 125). For pension plans, participant contributions, for purposes of this item, also include elective contributions under a qualified cash or deferred arrangement (Code section 401(k)).

Line 8a(3). Enter the current value, at date contributed, of all other contributions, including rollovers from other plans.

Line 8b. Enter all other plan income for the plan year. Do not include transfers from other plans that are reported on line 8j. Examples of other income received and/or receivable include:

1. Interest on investments (including money market accounts, sweep accounts, etc.)
2. Dividends. (Accrual basis plans should include dividends declared for all stock held by the plan even if the dividends have not been received as of the end of the plan year.)
3. Net gain or loss from the sale of assets.
4. Other income such as unrealized appreciation (depreciation) in plan assets.

Line 8c. Enter the total of all cash contributions (line 8a(1) through 8a(3)) and other plan income (line 8b) during the plan year. If entering a negative number, enter a minus sign ``-'' to the left of the number.

Line 8d. Include (1) payments made (and for accrual basis filers payments due) to or on behalf of participants or beneficiaries in cash, securities, or other property (including rollovers of an individual's accrued benefit or account balance). Include all eligible rollover distributions as defined in Code section 401(a)(31)(D) paid at the participant's election to an eligible retirement plan (including an IRA within the meaning of section 401(a)(31)(E)); (2) payments to insurance companies and similar organizations such as Blue Cross, Blue Shield, and health maintenance organizations for the provision of plan benefits (e.g., paid-up annuities, accident insurance, health insurance, vision care, dental coverage, etc.); and (3) payments made to other organizations or individuals providing benefits. Generally, these payments discussed in (3) are made to individual providers of welfare benefits such as legal services, day care services, and training and apprenticeship services. If securities or other property are distributed to plan participants or beneficiaries, include the current value of the date of distribution.

Line 8e. Include on this line all distributions paid during the plan year of excess deferrals under Code section 402(g)(2)(A)(ii), excess contributions under Code section 401(k)(8), and excess aggregate contributions under Code section 401(m)(6). Include allocable income distributed. Also include on this line any elective deferrals and employee contributions distributed or returned to employees during the plan year in accordance with Treasury Regulation section 1.415-6(b)(6)(iv), as well as any attributable gains that were also distributed.

For line 8e, also include in the total amount a participant loan included in line 7a, column (a) that has been deemed distributed during the plan year under the provisions of Code section 72(p) and Treasury Regulation section 1.72(p)-1 only if both of the following circumstances apply:

1. Under the plan, the participant loan is treated as a directed investment solely of the participant's individual account; and
2. As of the end of the plan year, the participant is not continuing repayment under the loan.

If either of these circumstances does not apply, a deemed distribution of a participant loan should not be included in the total on line 8e. Instead, the current value of the participant loan (including interest accruing thereon after the deemed distribution) should be included on lines 7a, column (b) (plan assets--end of year), and 10j (participant loans--end of year), without regard to the occurrence of a deemed distribution.

Note: The amount to be reported on line 8e must be reduced if, during the plan year, a participant resumes repayment under a participant loan reported as a deemed distribution on line 2g of Schedule H or Schedule I of a prior Form 5500 or line 8e of a prior Form 5500-SF for any earlier year. The amount of the required reduction is the amount of the participant loan that was reported as a deemed distribution on such line for any earlier year. If entering a negative number, enter a minus sign ``-'' to the left of the number. The current value of the participant loan must then be included in line 7a, column (b) (plan assets--end of year).

Although certain participant loans deemed distributed are to be reported on line 8e, and are not to be reported on the Form 5500-SF or on the Schedule H or Schedule I of the Form 5500 as an asset thereafter (unless the participant resumes repayment under the loan in a later year), they are still considered outstanding loans and are not treated as actual distributions for certain purposes. See Q&As 12 and 19 of Treasury Regulation section 1.72(p)-1.

Line 8f. The amount to be reported for expenses involving administrative service providers (salaries, fees, and commissions) include the total fees paid (or in the case of accrual basis plans, costs incurred during the plan year but not paid as of the end of the plan year) by the plan for, among others:

1. Salaries to employees of the plan;
2. Fees and expenses for accounting, actuarial, legal, investment management, investment advice, and securities brokerage services;
3. Contract administrator fees; and
4. Fees and expenses for individual plan trustees, including reimbursement for travel, seminars, and meeting expenses.

Line 8g. Other expenses (paid and/or payable) include other administrative and miscellaneous expenses paid by or charged to the plan, including among others office supplies and equipment, telephone, and postage.

Line 8h. Enter the total of all benefits paid or due reported on lines 8d and 8e and all other plan expenses reported on lines 8f and 8g during the year.

Line 8i. Subtract line 8h from line 8c.

Line 8j. Enter the net value of all assets transferred to and from the plan during the plan year including those resulting from mergers and spin-offs. A transfer of assets or liabilities occurs when there is a reduction of assets or liabilities with respect to one plan and the receipt of these assets or the assumption of these liabilities by another plan. Transfers out at the end of the year should be reported as occurring during the plan year.

Note: A distribution of all or part of an individual participant's account balance that is reportable on Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., should not be included on line 8j but must be included in benefit payments reported on Line 8d. Do not submit IRS Form 1099-R with the Form 5500-SF.

Part IV--Plan Characteristics

Line 9. Enter in lines 9a and 9b, as appropriate, in the boxes provided all applicable plan characteristic codes that describe the characteristics of the plan being reported.

List of Plan Characteristic Codes for Form 550-SF Lines 9a and 9b

Code
Defined Benefit Pension Features

1A..........................	Benefits are primarily pay related.
1B..........................	Benefits are primarily flat dollar (includes dollars per year of service).
1C..........................	Cash balance or similar plan `` Plan has a ``cash balance'' formula. For this purpose, a ``cash balance'' formula is a benefit formula in a defined benefit plan by whatever name (e.g., personal account plan, pension equity plan, life cycle plan, cash account plan, etc.) that rather than, or in addition to, expressing the accrued benefit as a life annuity commencing at normal retirement age, defines benefits for each employee in terms more common to a defined contribution plan such as a single sum distribution amount (e.g., 10 percent of final average pay times years of service, or the amount of the employee's hypothetical account balance).
1D..........................	Floor offset plan `` Plan benefits are subject to offset for retirement benefits provided by an employer-sponsored defined contribution plan.
1E..........................	Code section 401(h) arrangement `` Plan contains separate accounts under Code section 401(h) to provide employee health benefits.
1F..........................	Code section 414(k) arrangement `` Benefits are based partly on the balance of the separate account of the participant (also include appropriate defined contribution pension feature codes).
1G..........................	Covered by PBGC `` Plan is covered under the PBGC insurance program (see ERISA section 4021).
1H..........................	Plan covered by PBGC that was terminated and closed out for PBGC purposes--Before the end of the plan year (or a prior plan year), (1) the plan terminated in a standard (or distress) termination and completed the distribution of plan assets in satisfaction of all benefit liabilities (or all ERISA Title IV benefits for distress termination); or (2) a trustee was appointed for a terminated plan pursuant to ERISA section 4042.
1I..........................	Frozen Plan--As of the last day of the plan year, the plan provides that no participant will get any new benefit accrual (whether because of service or compensation).

Defined Contribution Pension Features

2A	Age/Service Weighted or New Comparability or Similar Plan--Age/Service Weighted Plan: Allocations are based on age, service, or age and service. New Comparability or Similar Plan: Allocations are based on participant classifications and a classification(s) consists entirely or predominantly of highly compensated employees; or the plan provides an additional allocation rate on compensation above a specified threshold, and the threshold or additional rate exceeds the maximum threshold or rate allowed under the permitted disparity rules of Code section 401(l).
2B	Target benefit plan.
2C	Money purchase (other than target benefit).
2D	Offset plan `` Plan benefits are subject to offset for retirement benefits provided in another plan or arrangement of the employer.
2E	Profit-sharing.
2F	ERISA section 404(c) plan--This plan, or any part of it, is intended to meet the conditions of 29 CFR 2550.404c-1.
2G	Total participant-directed account plan--Participants have the opportunity to direct the investment of all the assets allocated to their individual accounts, regardless of whether 29 CFR 2550.404c-1 is intended to be met.
2H	Partial participant directed account plan--Participants have the opportunity to direct the investment of a portion of the assets allocated to their individual accounts, regardless of whether 29 CFR 2550.404c-1 is intended to be met.
2I	Stock bonus.
2J	Code section 401(k) feature--A cash or deferred arrangement described in Code section 401(k) that is part of a qualified defined contribution plan that provides for an election by employees to defer part of their compensation or receive these amounts in cash.
2K	Code section 401(m) arrangement--Employee contributions are allocated to separate accounts under the plan or employer contributions are based, in whole or in part, on employee deferrals or contributions to the plan. Not applicable if plan is 401(k) plan with only QNECs and/or QMACs. Also not applicable if Code section 403(b)(1), 403(b)(7), or 408 arrangements/accounts

annuities.

2L..........................	Code section 403(b)(1) arrangement.
2M..........................	Code section 403(b)(7) accounts.
2N..........................	Code section 408 accounts and annuities.
2R..........................	Participant-directed brokerage accounts provided as an investment option under the plan.
2S..........................	Plan provides for automatic enrollment in plan that has employee contributions deducted from payroll.
2T..........................	Total or partial participant-directed account plan--plan uses default investment account for participants who fail to direct assets in their account.

Other Pension Benefit Features

3B..........................	Plan covering Self-Employed Individuals.
3C..........................	Plan not intended to be qualified--A plan not intended to be qualified under Code sections 401, 403, or 408.
3D..........................	Master plan--A pension plan that is made available by a sponsor for adoption by employers; that is the subject of a favorable opinion letter; and for which a single funding medium (for example, a trust or custodial account) is established for the joint use of all adopting employers.
3E..........................	Prototype plan--A pension plan that is made available by a sponsor for adoption by employers; that is the subject of a favorable opinion or notification letter; and under which a separate funding medium (for example, a separate trust or custodial account) is established for each participating employer.
3F..........................	Plan sponsor(s) received services of leased employees, as defined in Code section 414(n), during the plan year.
3H..........................	Plan sponsor(s) is (are) a member(s) of a controlled group (Code sections 414(b), (c), or (m)).
3J..........................	U.S.-based plan that covers residents of Puerto Rico and is qualified under both Code section 401 and section 8565 of Puerto Rico Code.

Welfare Benefit Features

4A..........................	Health (other than vision or dental).
4B..........................	Life Insurance.

4C	Supplemental unemployment.
4D	Dental.
4E	Vision.
4F	Temporary disability (accident and sickness).
4G	Prepaid legal.
4H	Long-term disability.
4I	Severance pay.
4J	Apprenticeship and training.
4K	Scholarship (funded).
4L	Death benefits (include travel accident but not life insurance).
4P	Taft-Hartley Financial Assistance for Employee Housing Expenses.
4Q	Other.
4R	Unfunded, fully insured, or combination unfunded/fully insured welfare plan that will not file an annual report for next plan year pursuant to 29 CFR 2520.104-20.
4S	Unfunded, fully insured, or combination unfunded/fully insured welfare plan that stopped filing annual reports in an earlier plan year pursuant to 29 CFR 2520.104-20.
4T	10 or more employer plan under Code section 419A(f)(6).

Part V--Compliance Questions

Line 10. Answer all lines either ``Yes'' or ``No.'' Do not leave any answer blank. For items 10a, b, c, d, e, f, and g, if the answer is ``Yes,'' an amount must be entered.

Note: One-participant plans should only complete question 10g.

Line 10a. Amounts paid by a participant or beneficiary to an employer and/or withheld by an employer for contribution to the plan are participant contributions that become plan assets as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets. See 29 CFR 2510.3-102. Plans that check ``Yes'' must enter the aggregate amount of all late contributions for the year. The total amount of the delinquent contributions should be included on line 10a for the year in which the contributions were delinquent and should be carried over and reported again on line 10a for each subsequent year (or on line 4a of Schedule H or I of the Form 5500 if not eligible to file the Form 5500-SF in the subsequent year) until the year after the violation has been fully corrected by payment of the late contributions and reimbursement of the plan for lost earnings or profits. If no participant contributions were received or withheld by the employer during the plan year, answer ``No.''

An employer holding participant contributions commingled with its general assets after the earliest date on which such contributions can reasonably be segregated from the employer's general assets will have engaged in a prohibited use of plan assets (see ERISA section 406). If such a nonexempt prohibited transaction occurred with respect to a disqualified person (see Code section 4975(e)(2)), file IRS Form 5330, Return of Excise Taxes Related to Employee Benefit Plans, with the IRS to pay any applicable excise tax on the transaction.

Participant loan repayments paid to and/or withheld by an employer for purposes of transmittal to the plan that were not transmitted to the plan in a timely fashion must be reported either on line 4a in accordance with the reporting requirements that apply to delinquent participant contributions or on line 4d. See Advisory Opinion 2002-02A, available at http://www.dol.gov/ebsa.

Applicants that satisfy both the DOL Voluntary Fiduciary Correction Program (VFCP) and the conditions of Prohibited Transaction Exemption (PTE) 2002-51 are eligible for immediate relief from payment of certain prohibited transaction excise taxes for certain corrected transactions, and are also relieved from the requirement to file the IRS Form 5330 with the IRS. For more information on how to apply under the VFCP, the specific transactions covered (which transactions include delinquent participant contributions to pension and welfare plans), and acceptable methods for correcting violations, see 71 FR 20261 (Apr. 19, 2006), and 71 FR 20135 (Apr. 19, 2006). All delinquent participant contributions must be reported on line 10a at least for the year in which they were delinquent even if violations have been fully corrected by the close of the plan year. Information about the VFCP is also available on the Internet at http://www.dol.gov/ebsa.

Line 10b. Plans that check ``Yes'' must enter the amount. Check ``Yes'' if any nonexempt transaction with a party-in-interest occurred. Do not check ``Yes'' with respect to transactions that are: (1) Statutorily exempt under Part 4 of Title I of ERISA; (2) administratively exempt under ERISA section 408(a); (3) exempt under Code sections 4975(c) or 4975(d); (4) the holding of participant contributions in the employer's general assets for a welfare plan that meets the conditions of ERISA Technical Release 92-01; or (5) delinquent participant contributions reported on line 10a. You may indicate that an application for an administrative exemption is pending. If you are unsure whether a transaction is exempt or not, you should consult either with a qualified public accountant, legal counsel, or both. If the plan is a qualified pension plan and a nonexempt prohibited transaction occurred with respect to a disqualified person, an IRS Form 5330 is required to be filed with the IRS to pay the excise tax on the transaction.

Non-exempt transactions with a party-in-interest include any direct or indirect:

A. Sale or exchange, or lease, of any property between the plan and a party-in-interest.

B. Lending of money or other extension of credit between the plan and a party-in-interest.

C. Furnishing of goods, services, or facilities between the plan and a party-in-interest.

D. Transfer to, or use by or for the benefit of, a party-in-interest, of any income or assets of the plan.

E. Acquisition, on behalf of the plan, of any employer security or employer real property in violation of ERISA section 407(a).

F. Dealing with the assets of the plan for a fiduciary's own interest or own account.

G. Acting in a fiduciary's individual or any other capacity in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries.

H. Receipt of any consideration for his or her own personal account by a party-in-interest who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

Party-in-Interest. For purposes of this form, party-in-interest is deemed to include a disqualified person. See Code section 4975(e)(2). The term ``party-in-interest'' means, as to an employee benefit plan:

A. Any fiduciary (including, but not limited to, any administrator, officer, trustee or custodian), counsel, or employee of the plan;

B. A person providing services to the plan;

C. An employer, any of whose employees are covered by the plan;

D. An employee organization, any of whose members are covered by the plan;

E. An owner, direct or indirect, of 50% or more of: (1) The combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation; (2) the capital interest or the profits interest of a partnership; or (3) the beneficial interest of a trust or unincorporated enterprise which is an employer or an employee organization described in C or D;

F. A relative of any individual described in A, B, C, or E;

G. A corporation, partnership, or trust or estate of which (or in which) 50% or more of: (1) The combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation, (2) the capital interest or profits interest of such partnership, or (3) the beneficial interest of such trust or estate, is owned directly or indirectly, or held by persons described in A, B, C, D, or E;

H. An employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10% or more shareholder directly or indirectly, of a person described in B, C, D, E, or G, or of the employee benefit plan; or

I. A 10% or more (directly or indirectly in capital or profits) partner or joint venturer of a person described in B, C, D, E, or G.

TIP: Applicants that satisfy the VFCP requirements and the conditions of PTE 2002-51 (see the instructions for line 10a) are eligible for immediate relief from payment of certain prohibited transaction excise taxes for certain corrected transactions and from the requirement to file the Form 5330 with the IRS. For more information, see 71 FR 20261 (Apr. 19, 2006), and 71 FR 20135 (Apr. 19, 2006). When the conditions of PTE 2002-51 have been satisfied, the corrected transactions should be treated as exempt under Code section 4975(c) for the purposes of answering line 10b.

Line 10c. Plans that check ``Yes'' must enter the aggregate amount of fidelity bond coverage for all claims. Check ``Yes'' only if the plan itself (as opposed to the plan sponsor or administrator) is a named insured under a fidelity bond that is from an approved surety covering plan officials and that protects the plan from losses due to fraud or dishonesty as described in 29 CFR Part 2580. Generally, every plan official of an employee benefit plan who ``handles'' funds or other property of such plan must be bonded. Generally, a person shall be deemed to be ``handling'' funds or other property of a plan, so as to require bonding, whenever his or her other duties or activities with respect to given funds are such that there is a risk that such funds could be lost in the event of fraud or dishonesty on the part of such person, acting either alone or in collusion with others. Section 412 of ERISA and 29 CFR Part 2580 describe the bonding requirements, including the definition of ``handling'' (29 CFR 2580.412-6), the permissible forms of bonds (29 CFR 2580.412-10), the amount of the bond (29 CFR Part 2580, subpart C), and certain exemptions such as the exemption for certain banks and insurance companies and the exemption allowing plan officials to purchase bonds from surety companies authorized by the Secretary of the Treasury as acceptable reinsurers on Federal bonds (29 CFR 2580.412-23). Information concerning the list of approved sureties and reinsurers is available on the Internet at http://www.fms.treas.gov/c570 .

Note: Plans are permitted under certain conditions to purchase fiduciary liability insurance with plan assets. These fiduciary liability insurance policies are not written specifically to protect the plan from losses due to dishonest acts and are not fidelity bonds reported in line 10c.

Line 10d. Check ``Yes'' if the plan suffered or discovered any loss as a result of any dishonest or fraudulent act(s) even if the loss was reimbursed by the plan's fidelity bond or from any other source. If ``Yes'' is checked enter the full amount of the loss. If the full amount of the loss has not yet been determined, provide an estimate as determined in good faith by a plan fiduciary. You must keep, in accordance with ERISA section 107, records showing how the estimate was determined.

CAUTION: Willful failure to report is a criminal offense. See ERISA section 501.

Line 10e. If any benefits under the plan are provided by an insurance company, insurance service, or other similar organization (such as Blue Cross, Blue Shield, or a health maintenance organization) or if the plan has investments with insurance companies such as guaranteed investment contracts (GICs), report the total of all insurance fees and commissions paid to agents, brokers and/or other persons directly or indirectly attributable to the contract(s) placed with or retained by the plan.

For purposes of line 10e, commissions and fees include sales or base commissions and all other monetary and non-monetary forms of compensation where the broker's, agent's, or other person's eligibility for the payment or the amount of the payment is based, in whole or in part, on the value (e.g., policy amounts, premiums) of contracts or policies (or classes thereof) placed with or retained by an ERISA plan, including, for example, persistency and profitability bonuses. The amount (or pro rata share of the total) of such commissions or fees attributable to the contract or policy placed with or retained by the plan must be reported. Insurers must provide plan administrators with a proportionate allocation of commissions and fees attributable to each contract. Any reasonable method of allocating commissions and fees to policies or contracts is acceptable, provided the method is disclosed to the plan administrator. A reasonable allocation method could allocate fees and commissions based on a calendar year calculation even if the plan year or policy year was not a calendar year. For additional information on these reporting requirements, see ERISA Advisory Opinion 2005-02A, available on the Internet at http://www.dol.gov/ebsa.

Where (1) benefits under a plan have been purchased from and guaranteed by a licensed insurance company, insurance service, or other similar organization, (2) the payments by the insurer to affiliates or third parties for performing administrative activities

were part of the insurer satisfying its contractual obligation to provide benefits under the plan, and (3) there is no direct or indirect charge to the plan for the administrative services other than the insurance premium, the payments by the insurer to the affiliates or third parties do not need to be reported as ``fees and other commissions.''

Reporting is not required for compensation paid by the insurer to third parties for record keeping and claims processing services provided to the insurer as part of the insurer's administration of the insurance policy. Reporting also is not required for compensation paid by the insurer to a ``general agent'' or ``manager'' for that general agent's or manager's management of an agency or performance of administrative functions for the insurer. For this purpose, (1) a ``general agent'' or ``manager'' does not include brokers representing insureds, and (2) payments would not be treated as paid for managing an agency or performance of administrative functions where the recipient's eligibility for the payment or the amount of the payment is dependent or based on the value (e.g., policy amounts, premiums) of contracts or policies (or classes thereof) placed with or retained by ERISA plan(s).

Reporting is not required for occasional gifts or meals of insubstantial value which are tax deductible for federal income tax purposes by the person providing the gift or meal and would not be taxable income to the recipient. For this exemption to be available, the gift or gratuity must be both occasional and insubstantial. For this exemption to apply, the gift must be valued at less than $50, the aggregate value of gifts from one source in a calendar year must be less than $100, but gifts with a value of less than $10 do not need to be counted toward the $100 annual limit. If the $100 aggregate value limit is exceeded, then the aggregate value of all the gifts will be reportable. Gifts from multiple employees of one service provider should be treated as originating from a single source when calculating whether the $100 threshold applies. On the other hand, in applying the threshold to an occasional gift received from one source by multiple employees of a single service provider, the amount received by each employee should be separately determined in applying the $50 and $100 thresholds. For example, if six employees of a broker attend an business conference put on by an insurer designed to educate and explain the insurer's products for employee benefit plans, and the insurer provides, at no cost to the attendees, refreshments valued at $20 per individual, the gratuities would not be reportable on this line even though the total cost of the refreshments for all the employees would be $120. These thresholds are for purposes of line 10a reporting. Filers are cautioned that the payment or receipt of gifts and gratuities of any amount by plan fiduciaries may violate ERISA and give rise to civil liabilities and criminal penalties.

Important Reminder. The insurance company, insurance service, or other similar organization is required under ERISA section 103(a)(2) to provide the plan administrator with the information needed to complete this return/report. Your insurance company must provide you with the information you need to answer this question. If your insurance company, insurance service, or other similar organization does not automatically send you this information, you should make a written request for the information. If you have difficulty getting the information from your insurance company, contact the nearest office of the DOL's Employee Benefits Security Administration.

Line 10f. You must check ``Yes'' if any benefits due under the plan were not timely paid or not paid in full. Include in this amount the total of any outstanding amounts that were not paid when due in previous years that have continued to remain unpaid.

Line 10g. You must check ``Yes'' if the plan had any participant loans outstanding at any time during the plan year and enter the amount outstanding as of the end of the plan year. If no participant loans are outstanding as of the end of the plan year, enter ``0''.

Line 10h. Check ``Yes'' if there was a ``blackout period.'' A blackout period is a temporary suspension of more than three consecutive business days during which participants or beneficiaries of a 401(k) or other individual account pension plan were unable to, or were limited or restricted in their ability to, direct or diversify assets credited to their accounts, obtain loans from the plan, or obtain distributions from the plan. A ``blackout period'' generally does not include a temporary suspension of the right of participants and beneficiaries to direct or diversify assets credited to their accounts, obtain loans from the plan, or obtain distributions from the plan if the temporary suspension is: (1) Part of the regularly scheduled operations of the plan that has been disclosed to participants and beneficiaries; (2) due to a qualified domestic relations order (QDRO) or because of a pending determination as to whether a domestic relations order is a QDRO; (3) due to an action or a failure to take action by an individual participant or because of an action or claim by someone other than the plan regarding a participant's individual account; or (4) by application of federal securities laws. For more information, see the DOL's regulation at 29 CFR 2520.101-3 (available at http://www.dol.gov/ebsa).

Line 10i. If there was a blackout period, did you provide the required notice not less than 30 days nor more than 60 days in advance of restricting the rights of participants and beneficiaries to change their plan investments, obtain loans from the plan, or obtain distributions from the plan? If so, check ``Yes.'' See 29 CFR 2520.101-3 for specific notice requirements and for exceptions from the notice requirement. Also, answer ``Yes'' if one of the exceptions to the notice requirement under 29 CFR 2520.101-3 applies.

Part VI--Pension Funding Compliance

Complete Part VI only if the plan is subject to the minimum funding requirements of Code section 412 or ERISA section 302.

All qualified defined benefit and defined contribution plans are subject to the minimum funding requirements of Code section 412 unless they are described in the exceptions listed under section 412(e)(2). These exceptions include profit-sharing or stock bonus plans, insurance contract plans described in section 412(e)(3), and certain plans to which no employer contributions are made.

Nonqualified employee pension benefit plans are subject to the minimum funding requirements of ERISA section 302 unless specifically exempted under ERISA sections 4(a) or 301(a).

The employer or plan administrator of a single-employer or multiple-employer defined benefit plan that is subject to the minimum funding requirements must file the Schedule SB as an attachment to the Form 5500-SF. Schedule MB is filed for multiemployer defined benefit plans and certain money purchase defined contribution plans (whether they are single or multiemployer plans). However, Schedule MB is not required to be filed for a money purchase defined contribution plan that is subject to the minimum funding requirements unless the plan is currently amortizing a waiver of the minimum funding requirements.

Line 11. If ``Yes'' is checked, you must attach Schedule SB (Form 5500). If this is a defined contribution pension plan,

leave the box blank . One-participant plans, however, do not attach Schedule SB to the Form 5500-SF. Instead one-participant plans keep the Schedule SB in accordance with the applicable records retention requirements.

Line 12. The ``Yes'' box should be checked if the plan is a defined contribution plan subject to the minimum funding requirements of Code section 412 and ERISA section 302. Those money purchase plans (including target benefit plans) that are amortizing a waiver of the minimum funding standard for a prior year should fill out line 12a and then skip to line 13. Those defined contribution plans answering ``Yes'' to the line 12 question that do not fill out line 12a should fill out lines 12b-12e.

Line 12a. If a money purchase defined contribution plan (including a target benefit plan) has received a waiver of the minimum funding standard, and the waiver is currently being amortized, complete lines 3, 9, and 10 of Schedule MB. See instructions for Schedule MB. Attach Schedule MB to the Form 5500-SF.

Line 12b. The minimum required contribution for a money purchase defined contribution plan for a plan year is the amount required to be contributed for the year under the formula set forth in the plan document. If there is an accumulated funding deficiency for a prior year that has not been waived, that amount should also be included as part of the contribution required for the current year.

Line 12c. Include all contributions for the plan year made not later than 8\1/2\ months after the end of the plan year. Show only contributions actually made to the plan by the date the form is filed. For example, do not include receivable contributions for this purpose.

Line 12d. If the minimum required contribution exceeds the contributions for the plan year made not later than 8\1/2\ months after the end of the plan year, the excess is an accumulated funding deficiency for the plan year. File IRS Form 5330, Return of Excise Taxes Related to Employee Benefit Plans, with the IRS to pay the excise tax on the deficiency. There is a penalty for not filing IRS Form 5330 on time.

Line 12e. Will the minimum required contribution remaining in 12d be made no later than 8\1/2\ months after the end of the plan year? If ``Yes,'' and contributions are actually made by this date, then there will be no reportable deficiency and Form 5330 will not need to be filed.

Part VII--Plan Terminations and Transfers of Assets

Line 13a. Check ``Yes'' if a resolution to terminate the plan was adopted during this or any prior plan year, unless the termination was revoked and no assets reverted to the employer. If ``Yes'' is checked, enter the amount of plan assets that reverted to the employer during the plan year in connection with the implementation of such termination. Enter ``-0-'' if no reversion occurred during the current plan year.

CAUTION: A Form 5500 must be filed for each year the plan has assets, and, for a welfare benefit plan, if the plan is still liable to pay benefits for claims incurred before the termination date, but not yet paid. See 29 CFR 2520.104b-2(g)(2)(ii).

IRS Form 5310-A, Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business, must be filed at least 30 days before any plan merger or consolidation or any transfer of plan assets or liabilities to another plan. There is a penalty for not filing Form 5310-A on time. In addition, a transfer of benefit liabilities involving a plan covered by PBGC insurance may be reportable to the PBGC. See PBGC Form 10, Post-Event Notice of Reportable Events, and Form 10-Advance, Advance Notice of Reportable Events.

Line 13b. Check ``Yes'' if all of the plan assets (including insurance/annuity contracts) were distributed to the participants and beneficiaries, legally transferred to the control of another plan, or brought under the control of the PBGC.

Check ``No'' for a welfare benefit plan that is still liable to pay benefits for claims that were incurred before the termination date, but not yet paid. See 29 CFR 2520.104b-2(g)(2)(ii).

Line 13c. Enter information concerning assets and/or liabilities transferred from this plan to another plan(s) (including spin-offs) during the plan year. A transfer of assets or liabilities occurs when there is a reduction of assets or liabilities with respect to one plan and the receipt of these assets or the assumption of these liabilities by another plan. Enter the name, EIN, and PN of the transferee plan(s) involved on lines 13c(1), (2), and (3). If you need additional space, include an attachment with the information required for lines 13c(1), (2), and (3) for each additional plan and label the attachment ``Form 5500-SF, line 13c--Additional Plans.''

Do not use a social security number in lieu of an EIN or include an attachment that contains visible social security numbers. The Form 5500-SF is open to public inspection, and the contents are public information and are subject to publication on the Internet. Because of privacy concerns, the inclusion of a social security number on this Form 5500-SF may result in the rejection of the filing.

Note: A distribution of all or part of an individual participant's account balance that is reportable on Form 1099-R should not be included on line 13c. Do not submit Form 1099-R with the Form 5500.

CAUTION: IRS Form 5310-A, Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business, must be filed at least 30 days before any plan merger or consolidation or any transfer of plan assets or liabilities to another plan. There is a penalty for not filing Form 5310-A on time. In addition, a transfer of benefit liabilities involving a plan covered by PBGC insurance may be reportable to the PBGC. See PBGC Form 10, Post-Event Notice of Reportable Event, and Form 10--Advance, Advance Notice of Reportable Event.

ERISA Compliance Quick Checklist

Compliance with the Employee Retirement Income Security Act (ERISA) begins with knowing the rules. Plan administrators and other plan officials can use this checklist as a quick diagnostic tool for assessing a plan's compliance with certain important ERISA rules; it is not a complete description of all ERISA's rules and it is not a substitute for a comprehensive compliance review. Use of this checklist is voluntary, and it is not to be filed with your Form 5500-SF.

If you answer ``No'' to any of the questions below, you should review your plan's operations because you may not be in full compliance with ERISA's requirements.

1. Have you provided plan participants with a summary plan description, summaries of any material modifications of the plan, and annual summary financial reports?

2. Do you maintain copies of plan documents at the principal office of the plan administrator for examination by participants and beneficiaries?

3. Do you respond to written participant inquiries for copies of plan documents and information within 30 days?

4. Does your plan include written procedures for making benefit claims and appealing denied claims, and are you complying with those procedures?

5. Is your plan covered by a fidelity bond against losses due to fraud or dishonesty?

6. Are the plan's investments diversified so as to minimize the risk of large losses?

7. If the plan permits participants to select the investments in their plan accounts, has the plan provided them with enough information to make informed decisions?

8. Has a plan official determined that the investments are prudent and solely in the interest of the plan's participants and beneficiaries, and evaluated the risks associated with plan investments before making the investments?

9. Did the employer or other plan sponsor send participant contributions to the plan on a timely basis?

10. Did the plan pay participant benefits on time and in the correct amounts?

11. Did the plan give participants and beneficiaries 30 days advance notice before imposing a ``blackout period'' of at least three consecutive business days during which participants or beneficiaries of a 401(k) or other individual account pension plan were unable to change their plan investments, obtain loans from the plan, or obtain distributions from the plan?

If you answer ``Yes'' to any of the questions below, you should review your plan's operations because you may not be in full compliance with ERISA's requirements.

1. Has the plan engaged in any financial transactions with persons related to the plan or any plan official? (For example, has the plan made a loan to or participated in an investment with the employer?)

2. Has the plan official used the assets of the plan for his/her own interest?

3. Have plan assets been used to pay expenses that were not

authorized in the plan document, were not necessary to the proper administration of the plan, or were more than reasonable in amount?

If you need help answering these questions or want additional guidance about ERISA requirements, a plan official should contact the U.S. Department of Labor Employee Benefits Security Administration office in your region or consult with the plan's legal counsel or professional employee benefit advisor.

Forms 5500, 5500-SF, and 5500-EZ Codes for Principal Business Activity

Note: The list of business codes published with the Form 5500 instructions will be included in the Short Form instructions and will be updated to reflect the North American Industry Classification System Update for 2007. See 70 FR 12390 (Mar. 11, 2005)

OMB Control Numbers

Agency	OMB Number
Employee Benefits Security Administration.............	1210-0110
	1210-0089
Internal Revenue Service..............................	1545-1610
Pension Benefit Guaranty Corporation..................	1212-0057

Paperwork Reduction Act Notice

We ask for the information on this form to carry out the law as specified in ERISA and in Code sections 6058(a), and 6059(a). You are required to give us the information. We need it to determine whether the plan is operating according to the law.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books and records relating to a form or its instructions must be retained as long as their contents may become material in the administration of the Internal Revenue Code or are required to be maintained pursuant to Title I or IV of ERISA. The Form 5500-SF returns/reports are open to public inspection and are subject to publication on the Internet.

The time needed to complete and file the form 5500-SF and the Schedules SB/MB reflects the combined requirements of the Internal Revenue Service, Department of Labor, and Pension Benefit Guaranty Corporation. These times will vary depending on individual circumstances. The estimated average times are:

	Pension plans	Welfare plans
Form 5500-SF..................	2 hr., 32 min......	2 hr., 32 min.
Schedule SB...................	6 hr., 49 min......	N/A.
Schedule MB...................	3 hr., 20 min......	N/A.

If you have comments concerning the accuracy of these time estimates or suggestions for making these forms simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave., NW., IR-6526, Washington, DC 20224. DO NOT send any of these forms or schedules to this address. The forms and schedules must be filed electronically. See How to File--Electronic Filing Requirement.

Appendix C

[Insert photo pages of Form 5500 and Schedules A, SB, MB, C, D, G, H, I, and R, numbered on back of pages as 197-1 through 197-36]
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Appendix D

2009 Instructions for Form 5500 and Schedules

Annual Return/Report of Employee Benefit Plan

ERISA refers to the Employee Retirement Income Security Act of 1974, and Code references are to the Internal Revenue Code, unless otherwise noted.

EFAST Processing System

Under the computerized ERISA Filing Acceptance System (EFAST), you must electronically file your 2009 Form 5500. You may file your 2009 Form 5500 on-line, using EFAST's web-based filing system or you may file through an EFAST-approved vendor. For more information, see the instructions for Electronic Filing Requirement.

About the Form 5500

The Form 5500, Annual Return/Report of Employee Benefit Plan, including all required schedules and attachments (Form 5500 Return/Report) is used to report information concerning employee benefit plans and Direct Filing Entities (DFEs). Any administrator or sponsor of an employee benefit plan subject to ERISA must file information about each benefit plan every year (Code section 6058 and ERISA sections 104 and 4065). Some plans participate in certain trusts, accounts, and other investment arrangements that file a Form 5500 Return/Report as DFEs. See Who Must File and When to File.

The Internal Revenue Service (IRS), Department of Labor (DOL), and Pension Benefit Guarantee Corporation (PBGC) have consolidated certain returns and report forms to reduce the filing burden for plan administrators and employers. Employers and administrators who comply with the instructions for the Form 5500 Return/Report generally will satisfy the annual reporting requirements for the IRS and DOL.

Plans covered by the PBGC have special additional requirements, including filing Annual Premium Payment (PBGC Form 1) and reporting certain transactions directly with that agency. See PBGC's Premium Payment Instructions (Form 1 Package).

Each Form 5500 Return/Report must accurately reflect the characteristics and operations of the plan or arrangement being reported. The requirements for completing the Form 5500 Return/Report will vary according to the type of plan or arrangement. The section What to File summarizes what information must be reported for different types of plans and arrangements. The Quick Reference Chart for Form 5500, Schedules and Attachments gives a brief guide to the annual return/report requirements for the 2009 Form 5500.

The Form 5500 Return/Report must be filed electronically. Your entries will be initially screened. Your entries must satisfy this screening in order to be filed. Once filed, your form may be subject to further detailed review and your filing may be rejected based on this further review.

ERISA and the Code provide for the assessment or imposition of penalties for not submitting the required information when due. See Penalties.

Annual reports filed under Title I of ERISA must be made available by plan administrators to plan participants and by the DOL to the public pursuant to ERISA sections 104 and 106.

How To Get Assistance

If you need help completing this form or have related questions, call the EFAST Help Line at [number to be provided] (toll free). The EFAST Help

Line is available Monday through Friday from 8 a.m. to 8 p.m., Eastern Time.

You can access the EFAST Web site 24 hours a day, 7 days a week at http:// www.efast.dol.gov to:

View forms and related instructions.
Get information regarding EFAST, including approved software vendors.
See answers to frequently asked questions about the Form 5500-SF, the Form 5500 and its Schedules, and EFAST.
Access the main EBSA and DOL Web sites for news, regulations, and publications.

You can access the IRS Web site 24 hours a day, 7 days a week at http://www.irs.gov to:

View forms, instructions, and publications.
See answers to frequently asked tax questions.
Search publications online by topic or keyword.
Send comments or request help by e-mail.
Sign up to receive local and national tax news by e-mail.

You can order related forms and IRS publications by calling 1-800-TAX-FORM (1-800-829-3676). You can order EBSA publications by calling 1-866-444-3272. In addition, most IRS forms and publications are available at your local IRS office.

Table of Contents

Section 1: Who Must File

A return/report must be filed every year for every pension benefit plan, welfare benefit plan, and for every entity that files as a DFE as specified below (Code section 6058 and ERISA sections 104 and 4065).

TIP: Plans that have fewer than 100 participants at the beginning of the plan year, are exempt from the requirement that the plan's books and records be audited by an independent qualified public accountant (IQPA) (but not by reason of enhanced bonding), have 100% of their assets invested in certain secure investments with a readily determinable fair market value, hold no employer securities, and are not multiemployer plans, generally are eligible to file the Form 5500-SF, Short Form Annual Return/Report of Small Employer Benefit Plan (Form 5500-SF), in lieu of the Form 5500 Return/Report. For more information on who may file the Form 5500-SF, see http://www.dol.gov/ebsa.