

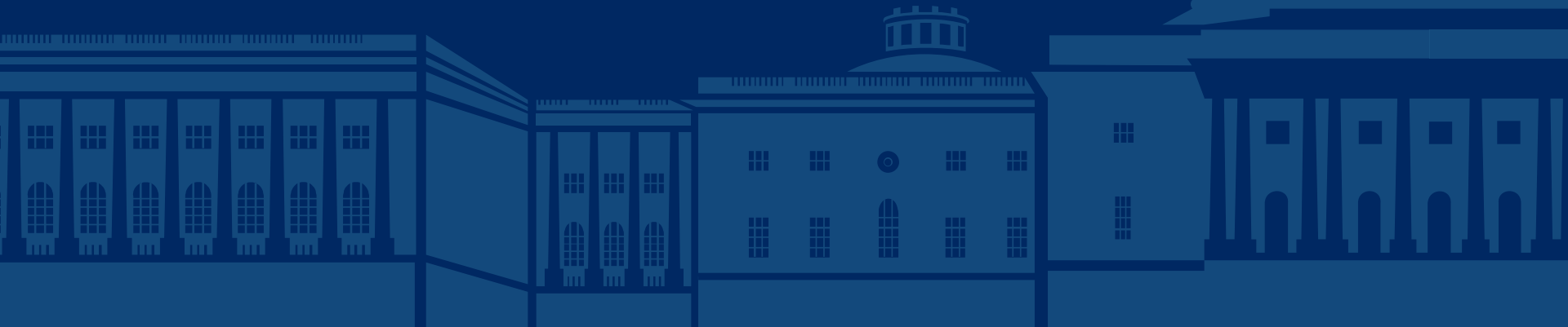


DAVIS &  
HARMAN<sub>LLP</sub>

# Proposed Form 5500 Changes

Implications for Retirement Plans

Thursday, October 20, 2016



# Form 5500 Series Overview

- ▶ Satisfies annual pension and welfare plan reporting obligations
  - 800,000 plans
  - 143 million workers, retirees, and dependents
  - \$8.7 trillion in plan assets
- ▶ Information about the plan's financial condition and operations
- ▶ Primary source of employee benefit plan information
- ▶ Publicly available online through a searchable database
- ▶ ERISA and Code reporting penalties

# Last Major Revision of Form 5500

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

<b>SCHEDULE C</b> <b>(Form 5500)</b> <small>Department of the Treasury Internal Revenue Service</small> <small>Department of Labor Employee Benefits Security Administration</small> <small>Pension Benefits Guaranty Corporation</small>	<b>Service Provider Information</b> <small>This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA).</small> <b>▶ File as an attachment to Form 5500.</b>	<small>OMB No. 1510-0110</small> <b>2015</b> <small>This Form Is Open to Public Inspection.</small>
	<small>For calendar plan year 2015 or fiscal plan year beginning</small> and ending	
<b>A</b> Name of plan		<b>B</b> Three-digit plan number (PN)
<b>C</b> Plan sponsor's name as shown on line 2a of Form 5500		<b>D</b> Employer Identification Number (EIN)
<b>Part I Service Provider Information (see instructions)</b>		
<small>You must complete this Part, in accordance with the instructions, to report the information required for each person who received, directly or indirectly, \$5,000 or more in total compensation (i.e., money or anything else of monetary value) in connection with services rendered to the plan or the person's position with the plan during the plan year. If a person received only eligible indirect compensation for which the plan received the required disclosures, you are required to answer line 1 but are not required to include that person when completing the remainder of this Part.</small>		
<b>1 Information on Persons Receiving Only Eligible Indirect Compensation</b>		
<b>a</b> Check "Yes" or "No" to indicate whether you are excluding a person from the remainder of this Part because they received only eligible indirect compensation for which the plan received the required disclosures (see instructions for definitions and conditions). . . . . <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>b</b> If you answered line 1a "Yes," enter the name and EIN or address of each person providing the required disclosures for the service providers who received only eligible indirect compensation. Complete as many entries as needed (see instructions).		
(b) Enter name and EIN or address of person who provided you disclosures on eligible indirect compensation		
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<small>For Paperwork Reduction Act Notice and OMB Control Numbers, see the instructions for Form 5500</small>		
<small>Schedule C (Form 5500) 2015 v.150123</small>		

# Proposed Form 5500 Changes, Goals



Modernize financial reporting  
(Schedule H)

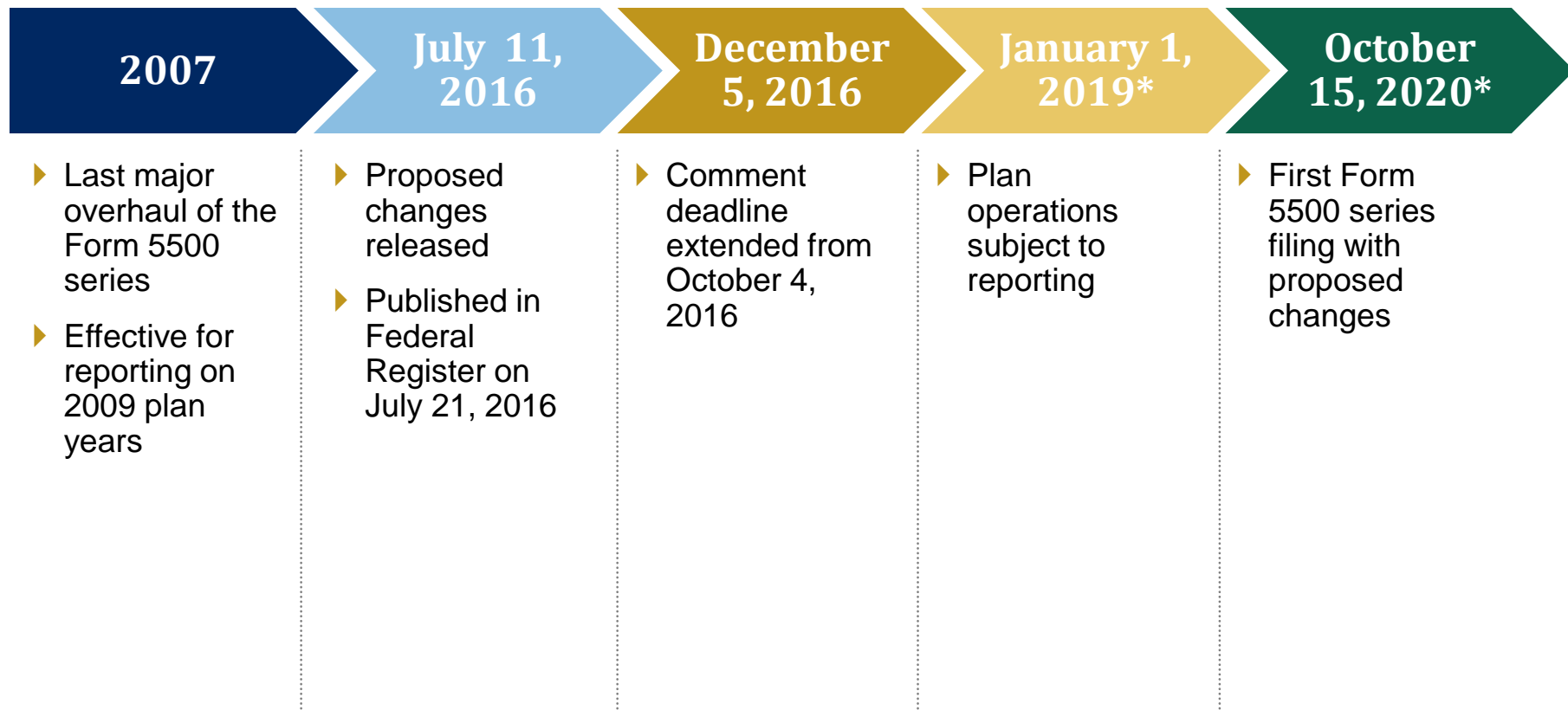
Improve service provider fee  
reporting (Schedule C)

Improve compliance with ERISA and  
the Code

Enhance accessibility and usability  
of data filed

Require reporting by all group health  
plans covered by Title I of ERISA

# Proposed Form 5500 Changes, Timeline



\* Assumes calendar year plan filing with two and one-half month extension

# Proposed Form 5500 Changes, IRS-Only Compliance Questions

## Compliance Question Update

- ▶ IRS added new compliance questions to the 2015 Form 5500 series
  - Trust information,\* preparer information,\* 401(k) nondiscrimination rules, minimum coverage rules, in-service distributions, determination letter date, 5% owner RMDs
- ▶ IRS instructed filers not to answer the new compliance questions for 2015 reporting
- ▶ Proposed regulations published on March 31, 2016
  - Sent to OMB and approved with changes on October 3, 2016
- ▶ IRS website updated October 5; instructs filers not to answer new compliance questions on the 2016 Form 5500 series

\* Included on 2014 Form 5500 series

# Proposed Form 5500 Changes, Significant Changes

## General Changes

- ▶ Reorganizes the Form 5500 series to make reported information more “data-mineable”
  - Adds structure and standardization to various schedules and attachments, e.g., Line 4i Schedules of Assets
  - New “yes/no” questions replace plan characteristic codes
  - Information currently provided in PDF attachments moved to open text fields on the forms and schedules
- ▶ Group health plan reporting exception eliminated
- ▶ Form 5500-SF eligibility for DC plans based on number of participants with account balances
- ▶ Schedule I eliminated
- ▶ Schedule E returns for ESOPs

# Proposed Form 5500 Changes, Significant Changes

## Schedule H, Schedule C, Compliance Questions



### Schedule H (Financial Information)

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



### Schedule C (Service Provider)

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



### Compliance Questions

- ▶ DC plan operations
- ▶ Terminated service providers
- ▶ Missing participants
- ▶ Terminated plans
- ▶ 404a-5 comparison chart
- ▶ Affiliated party compensation



# Proposed Form 5500 Changes, Significant Changes

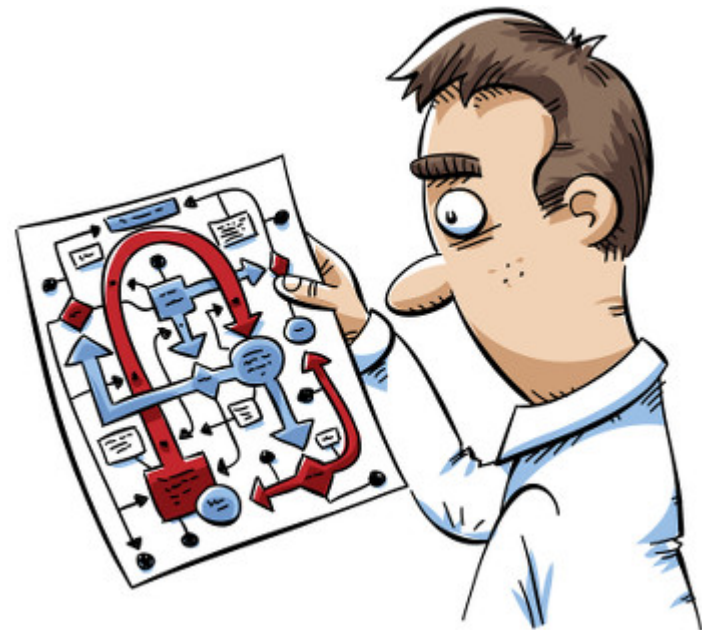
## Schedule H – Plan Financial Reporting

- ▶ Significantly more breakouts on the Schedule H balance sheet, especially for alternative and hard-to-value assets
    - Participant-directed brokerage accounts
  - ▶ New breakouts for plan expenses, including a requirement to indicate whether expenses were charged to individual participant accounts
  - ▶ CCTs and PSAs reported as single line item, regardless of whether the CCT or PSA files as a DFE
  - ▶ Revised Line 4i Schedules of Assets
    - Flag hard-to-value assets
    - Reporting gaps eliminated
- ▶ Trustee signature added to Schedule H and Form 5500-SF

# Proposed Form 5500 Changes, Significant Changes

## Schedule H & DFE Reporting

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



# Proposed Form 5500 Changes

## Significant Changes

### Schedule C

- ▶ Each service provider reported on a different Schedule C
- ▶ Reporting concept of “eligible indirect compensation” eliminated
- ▶ Indirect compensation only reported for “covered service providers”
- ▶ New checkbox to indicate whether transaction involved “related party compensation”
- ▶ Total indirect compensation reported as a dollar amount
- ▶ New checkbox to indicate whether a service provider is a fiduciary within the meaning of ERISA § 3(21)

# Proposed Form 5500 Changes, Significant Changes

## New Compliance Questions – Schedule H

- ▶ Whether the plan terminated any service providers for a “material failure” (other than accountants and actuaries)?
  - Terminated service provider questions moved from Schedule C to H
- ▶ Whether there were any uncashed checks?
  - If yes, the filer would be required to provide the total dollar value
- ▶ Whether terminated plans transferred plan assets to a federally insured bank account?
- ▶ Whether the plan sponsor (or an affiliate) provides services to the plan for direct or indirect compensation?
- ▶ Whether the plan has any investments that are leveraged?

# Proposed Form 5500 Changes, Significant Changes

## New Compliance Questions – DC Plans

- ▶ How many participants?
  - maintained account balances as of the beginning of the year
  - made contribution during the year
  - terminated employment during the year and distributed their entire account
  - made catchup contributions
  - maximized the employer match
  - invested in default investment options
  
- ▶ Is the plan required to provide participant-level fee disclosures?
  - If yes, filers would be required to answer additional questions and attach the 404a-5 comparison chart.

# Proposed changes to Form 5500 – a preparer's perspective

# Proposed changes to Form 5500 – a preparer's perspective

## Good News and Bad News:

- Form 5558
- Form 5500/5500-SF
- Schedule A
- Schedule D
- Schedule G
- Schedule R

# Modernize Financial Reporting – Schedule H

## Key Changes:

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



# Modernize Financial Reporting – Schedule H

- More detail in the Schedule H balance sheets
  - New categories and subcategories of investments:
    - Value of disclosure versus burden of gathering information
    - Annual valuations of hard to value assets at fair market value?
  - Line 4i, Schedules of Assets
- Pooled investments, hard-to-value assets, alternative investments
  - Cost or **benefit** of having a “hard-to-value” or alternative assets valued?
    - How easily done?
    - **Is there a more reasonable interval?**
  - Other considerations: Disclosures, responsibility to make the valuation?

# Modernize Financial Reporting – Schedule H

- Participant directed brokerage account
  - Substantial burden imposed by breaking out investments?
- New Compliance Matters
  - New attestations regarding whether Plan Administrator discussed the report from the Independent Qualified Public Accountant with the auditors
  - Compliance questions
    - Triggers for audits
    - Answer for 2019 won't limit an audit to 2019
    - Planning now is critical
  - Transfer to other plans
    - Covers terminated plans, what about de-risking?

# Improve Service Provider Fee Reporting- Schedule C

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

# Back to the Future: Schedule E's back

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

