

# Fact Sheet



U.S. Department of Labor  
Employee Benefits Security Administration  
July 11, 2016

## **Proposal to Modernize and Improve the Form 5500 Annual Return/Report Filed By Employee Benefit Plans**

*On July 21, 2016, the Department of Labor (DOL), the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC) (together called Agencies in this Fact Sheet) will publish in the Federal Register a Notice of Proposed Forms Revisions to the Form 5500 Annual Return/Report Series. A Notice of Proposed Rulemaking to propose updates to the DOL's reporting regulations to implement the proposed forms revisions will also be published on July 21, 2016.*

### **Background**

Titles I and IV of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the Internal Revenue Code, as amended (Code), generally require pension and other employee benefit plans to file annual returns/reports concerning, among other things, the financial condition and operations of the plan. Filing the Form 5500 Annual Return/Report of Employee Benefit Plan or a Form 5500-SF Annual Return/Report of Small Employee Benefit Plan, together with any required attachments and schedules (Form 5500 Annual Return/Report) through the ERISA Filing Acceptance System (currently EFAST2) generally satisfies these annual reporting requirements.

In the United States, private sector employers provide for an estimated 2.3 million health plans, a similar number of other welfare plans, and nearly 681,000 defined benefit and defined contribution retirement plans. These plans cover roughly 143 million private sector workers, retirees, and dependents, and have estimated assets of \$8.7 trillion.

The Form 5500 Annual Return/Report is the primary source of information about the operation, funding, assets, and investments of those pension and other employee benefit plans. In addition to disclosing important information to plan participants and beneficiaries, the Form 5500 Annual Return/Report is an essential compliance and research tool for the DOL, IRS, and PBGC. Other federal agencies, Congress, and the private sector also rely on the Form 5500 as an important source of information for assessing employee benefit, tax, and economic trends and policies. Accordingly, it is important that the Form 5500 keep pace with changes in the legal requirements governing employee benefit plans and market developments.

The Form 5500 and Form 5500-SF must be filed electronically with EBSA under EFAST2 – the wholly electronic system operated by a private sector contractor for the filing and processing of Form 5500 annual returns/reports. Depending on the type and size of the plan, the plan administrator may have to attach a report of an independent qualified public accountant (IQPA) to the plan's Form 5500. Filers must complete required schedules and attachments in accordance with the instructions as part of their electronic filing of the Form 5500 or Form 5500-SF.

The Agencies carefully review Form 5500 filings for compliance with applicable reporting requirements. Incomplete filings are subject to rejection and civil penalties may be assessed. The plan administrator must keep a copy of the Form 5500 and Form 5500-SF, including schedules and attachments, with all required manual signatures, as part of the plan's records. The plan administrator also must make a paper copy available on request to participants, beneficiaries, and the DOL (see section 104 of ERISA and 29 C.F.R. § 2520.104b-1). In addition, Section 504 of the Pension Protection Act of 2006 (PPA) requires defined benefit pension plans to post certain basic plan identifying information and actuarial information from the Form 5500 if the plan sponsor has an intranet web site (or web site maintained by the plan administrator on behalf of the plan sponsor) that is used for the purpose of communicating with employees.

Most of the information from Forms 5500 and Forms 5500-SF filed electronically through EFAST2 is available, free to the public, via the Internet on EBSA's web site. Copies of the annual reports, including those not available on EBSA's web site, are also generally available through EBSA's public disclosure room.

The Agencies have in the past implemented significant revisions of the Form 5500 coincident with changes to the EFAST filing system. These proposed revisions are also generally being coordinated with a procurement process related to EFAST2. The target for implementing the proposed forms revisions is the Plan Year 2019 Form 5500 series returns/reports. Some form changes may be made earlier or later, depending on the public comments and developments in the EFAST2 procurement process.

## Overview of the Proposals

The proposed form revisions and the DOL's implementing regulations together are intended to address changes in applicable law, the employee benefit plan and financial market sectors, as well as corresponding shifts in the data needed for the Agencies' enforcement priorities, policy analysis, rulemaking, compliance assistance, and educational activities. The proposed changes would also improve publicly available information about employee benefit plans and reinforce for plan fiduciaries the important duties they have under ERISA to operate plans prudently and monitor service providers. As Form 5500 information is open to public inspection, not only would expanded data collection assist in the Agencies' research and policymaking objectives, public access to this information would enable interested private sector and other governmental stakeholders to perform data-based research or help plan sponsors, fiduciaries, and participants and beneficiaries better understand their plans and plan investments.

The proposed revisions fall under the five broad goals to improve employee benefit plan reporting for filers, plan participants and beneficiaries, the public, and the Agencies:

- (1) Modernize financial reporting.** The proposal's first objective is to improve the reliability and transparency of information reported regarding employee benefit plan investments and other financial transactions. The financial information collected on the Form 5500 has remained largely unchanged despite the significant changes in plan structures, investment practices, and financial markets. The proposed updates especially focus on improving reporting regarding alternative investments, hard-to-value assets, and investments through collective investment vehicles. The proposed changes are designed to foster ongoing monitoring of employee benefit plans by employers, plan fiduciaries, and participants and beneficiaries, and improve the ability of the Agencies to fulfill their statutory oversight roles.

- (2) Provide Greater Information Regarding Group Health Plans.** The proposal would remedy the current failure to collect data about a large sector of the health plan market made up of ERISA group health plans. This includes eliminating for group health plans the current exemption from Form 5500 reporting for small insured and self-insured welfare benefit plans. The proposal would also add 29 CFR 2590.715-2715A and 29 CFR 2590.715-2717 to clarify that compliance with the new Form 5500 reporting requirements would satisfy certain reporting requirements under ERISA section 715(a)(1), which incorporates Public Health Service Act sections 2715A and 2717 that were added by the Affordable Care Act. These changes would provide critical data for Agency oversight and collect information needed for congressionally-mandated reports on group health plans.
- (3) Enhance Data Mineability.** The proposal would convert more elements of the Form 5500 into data or information that is organized in a structured manner to make them computer-processable and identifiable for data-mining and analytic purposes. This conversion would include the schedules of assets held for investment purposes. The proposed changes would enable private sector data users to develop more individualized tools for employers to evaluate their retirement plans and for employees to manage their retirement savings.
- (4) Improve Service Provider Fee Information.** The proposal would better harmonize reporting on Form 5500 Schedule C with the now final disclosure requirements in DOL's service provider disclosure regulation at 29 CFR 2550.408b-2. The proposed updates are intended to provide a powerful tool for improved evaluation of service arrangements involving investments, recordkeeping, and other administrative services. The Schedule C reporting requirements for employee benefit plans would also more closely track the information that plan service providers are required to disclose to plan fiduciaries.
- (5) Enhance Compliance with ERISA and the Code.** The proposal would also enhance reporting on plan compliance to improve plan operations, protect participants and beneficiaries and their retirement benefits, and educate and provide annual discipline for plan fiduciaries. The proposal would add selected new questions regarding plan operations, service provider relationships, and financial management of plans. These questions are intended to compel fiduciaries to evaluate plan compliance with important requirements under ERISA and the Code and to provide the Agencies with improved tools to focus oversight and enforcement resources.

The DOL's proposed regulations would update the requirements for certifications for limited scope audits under 29 CFR 2520.103-8. This regulation allows a plan to exclude from the examination and report of an independent qualified public accountant (IQPA) any statement or information regarding plan assets held by banks, similar institutions, or insurance carriers if the statement or information is prepared and certified by the bank, similar institution, or insurance carrier. The proposed changes would make the certifications more detailed and informative, and enhance the DOL's ability to review limited scope audits, which cover over \$3.4 trillion in plan assets.

Finally, in developing the proposals, the Agencies took into consideration previous Congressional requests for certain kinds of data, as well as recommendations in reports from the Government Accountability Office (GAO), the DOL's Office of Inspector General (DOL-OIG), the United States Treasury Inspector General for Tax Administration (TIGTA), and the ERISA Advisory Council that have been issued since the last major revision of the Form 5500 Annual Return/Report information collection requirements in connection with the 2009 return/report.

## Request for Public Comments

The proposal will be published on July 21, 2016 and will invite public comments from interested persons. Comments are due no later than October 4, 2016. Public comments can be submitted electronically or by paper to the addresses listed in the Notice of Proposed Rulemaking and Notice of Proposed Forms Revisions. Comments on the Notice of Proposed Forms Revisions will be treated as comments on the NPRM and vice versa; commenters do not need to submit comments on both documents.

## Contact Information

For comments and questions about either notice, including contact information for questions related to IRS, PBGC, or group health aspects of the proposal, please follow the special contact information in the notices.

For general questions about filing under EFAST2 or general Form 5500 Series not related to the proposed forms revisions or proposed rules call 1-866-GO-EFAST (1-866-463-3278), weekdays 8:00 a.m. to 8:00 p.m. (ET).

EBSA's website (at [www.dol.gov/ebsa/compliance\\_assistance.html#section5](http://www.dol.gov/ebsa/compliance_assistance.html#section5)) includes compliance assistance information, including information about the Form 5500 and annual reporting requirements, to assist employers and employee benefit plan officials in understanding and complying with the requirements of ERISA as it applies to the administration of employee retirement, health and other welfare benefit plans.

This fact sheet has been developed by the U.S. Department of Labor, Employee Benefits Security Administration, Washington, DC 20210. It will be made available in alternate formats upon request: Voice Telephone: 202-693-8664; Text Telephone: 202-501-3911.

The information in this fact sheet constitutes a small entity compliance guide for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.