Agencies propose significant changes to Form 5500

October 11, 2016

In brief

ERISA and the Code generally require pension and other employee benefit plans to file Form 5500, which is an annual return/report concerning the financial condition and operation of the plan (as well as providing general information about active and retired participants). Form 5500 is the primary source of information about the operation, funding, assets and investments of these plans. DOL, IRS and the PBGC (collectively, the 'Agencies') review the Form 5500s for compliance with applicable reporting requirements. Incomplete filings may be rejected and civil penalties may be imposed on the sponsors of these plans.

In July 2016, the Agencies issued proposed revisions to the Form 5500 to address changes in applicable law, the employee benefit plan and financial market sectors, as well as changes in the data needed for enforcement priorities, rulemaking and compliance assistance. The proposed changes are also intended to make the information more useful to plan participants and plan sponsors. The majority of the proposed Form 5500 revisions are currently targeted for implementation for the 2019 plan year, although certain changes may have an earlier or later effective date. The Agencies have extended the date for employers and service providers to provide comments on the proposed changes. That deadline is now December 5, 2016.

In detail

The Agencies issued a fact sheet that discussed the goals of the proposed changes. The proposed revisions fall under five broad categories:

- More group health plan information
- Modernized financial reporting
- Improved service provider fee information
- Plan compliance
- Data Mining

Greater information regarding group health plans

The most significant aspect of the proposal would expand reporting for ERISA group health plans. In particular, the proposal would eliminate the current reporting exclusion for small insured and self-funded welfare benefit plans. There will also be a new Schedule J (Group Health Plan Information).

All plans that provide group health benefits would be required to complete the Schedule J to report coverage, participation, claims, benefit, and other group health information. Small, fully insured plans would only need to provide limited information. Compliance with the new Form 5500 reporting requirements would satisfy certain reporting requirements under the Affordable Care Act (ACA).

Modernizing financial reporting

The proposal would require additional detail in the plan's financial information that is provided as part of the

Schedule H to the Form 5500. Many line items would require one or more subcategories of disclosure.

The proposed changes focus on improving reporting regarding alternative investments, hard-to-value assets, and investments through collective investment vehicles. Investments in corporate stock would be divided into investments in publicly traded companies and non-publicly traded companies. Reporting for investments in master trusts by plans and reporting by master trusts would be substantially revised. The current disclosure for Investments in Partnerships/Joint Ventures would be expanded to require a separate disclosure of limited partnerships, venture capital operating companies, private equity, hedge funds and other partnerships and joint venture investments.

The proposal would also require additional specificity for income and expense items. It would require separate disclosure of administrative expenses charged directly to participant accounts and those expenses that are charged to the plan in general. Further, the reporting would have to disclose how general administrative expenses were allocated, such as on a per capita basis.

More detailed financial reporting will be also be required on the Form 5500-SF – the form used for plans with fewer than 100 participants.

Improve service provider fee information

The proposal would attempt to coordinate reporting on Form 5500 Schedule C with the ERISA section 408(b)(2) fee disclosure requirements for plan service providers. The Schedule C reporting requirements for employee benefit plans would be more detailed and also more closely track the information that service providers are required to disclose to plan fiduciaries. The Schedule C would also have to be filed by small plans that are not eligible to file the Form 5500-SF.

Compliance

The proposal would also attempt to improve compliance with ERISA and IRC requirements through new questions regarding information about plan operations, especially defined contribution plans, service provider relationships, and financial management of the plan.

Enhance data mining capabilities

The proposal would convert more elements of the Form 5500 into data or information that is organized so that the information is computer-processable and identifiable for data-mining and analytic purposes. This would include schedules of assets held for investment purposes. These changes are intended to allow private sector data users to develop individualized tools for employers to evaluate their retirement plans and for employees to better manage retirement savings.

The Takeaway

The changes to the Form 5500 are significant and will require plan sponsor data, time and resources to complete. Given the new requests for compliance information added to the form, we also expect the Agencies will use the data collected as a tool in their enforcement efforts. Plan sponsors, trustees, actuaries and other service providers should start to consider how the proposed changes will be implemented, and may wish to provide comments to the Agencies. Plan sponsors may also want to assess current plan compliance. The original deadline for submitting comments on the proposed changes to the Form 5500 was October 4, 2016, but the deadline has been extended to December 5, 2016. Please contact your local PwC office if you would like assistance in preparing any comments or reviewing your plan(s) for compliance with federal requirements.

	Highlights of Significant Changes	PwC Observations
Form 5500—General	Key high-level changes: – All group health plans must file Form 5500, including the new Schedule J, regardless of size or funding – small group health plans may not file Form 5500-SF – defined contribution participant count will now be based on account balances, not eligibility – controlled group plans must attach a list of groups under common control or affiliated service groups – Forms will use checked descriptive boxes instead of using codes and letters for plan features and attributes – new breakouts for types of default investments and expansion of health care descriptors – an electronic Form 5558 will make on-line extensions possible	Will add to small business administrative tasks – the Agencies estimate that 2.15 million group health plans exist that are not currently required to file Form 5500 – Limited reporting for small, fully insured group health plans – lines 1-5 of Form 5500 and 1-8 of Schedule J – use of checked descriptive boxes will reduce filer errors The rule for determining the number of participants in a 401(k) plan for filing/audit purposes would be based on account balances, not eligibility – welcome change to participant count rule
Schedule A—Insurance Information	Must include: – Health plan identification number (HPID) if subject to HIPAA – whether policy issued by company affiliated with plan sponsor – identification of any premium payment delinquencies or lapses in coverage	Additional information regarding the insurance arrangement will be required.
Schedule C—Service Provider Information	Schedule C must be completed for (1) each covered service provider who receives more than $1,000 in direct or indirect compensation and (2) other persons who receive $5,000 or more in direct compensation – must also be filed by small retirement plans not eligible to file Form 5500-SF and small welfare plans funded with a trust Proposal would delete part of Form 5500 that identifies persons eligible to receive eligible indirect compensation (EIC) only and require: – Identification of ERISA accounts or ERISA budgets – Identification if recordkeeping services provided without explicit compensation or provided based on compensation received by service provider or subcontractor and amount of such compensation – Identification whether service arrangement involves any related party compensation and if so, the amount – New questions about participant fee disclosure compliance and attach a copy of the ERISA 404a-5 disclosure to the Form 5500	One Schedule C per covered service provider increases preparer burden, especially for smaller plans. – Aligns Form 5500 reporting to 408b-2 disclosure requirements Streamlined reporting of EIC would be eliminated. Total indirect compensation reported as a dollar amount, can be estimated, but formulas would not be allowed, and the dollar threshold is lower. Trustee and employee expense reimbursements would be required to be reported only if such amounts are taxable compensation – if provided by parties other than the plan is reportable indirect compensation. Threshold for reporting non-monetary compensation raised to $250. Plan fees charged to participants would now be available on the EBSA website.

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Schedule D—DFE/Participating Plan Information	Part I eliminated for plans (eliminates the need for plans to complete Schedule D). Part II (completed by DFEs) will have added items for the dollar amount of the investors' interests as of the end of the DFE reporting year, and an indicator if there are investors other than ERISA Title I plans. Separate Master Trust Investment Account (MTIA) reporting would be eliminated. – master trust expenses would be allocated proportionately to all plans Proposed regulations will require that master trust must operate on a calendar year or the master trust and all investing plans in the master trust must operate on the same fiscal year.	Plans are no longer required to complete Schedule D to disclose DFE investments. Note that the proposed master trust expense allocation rules may require some trustees and custodians to re-examine the applicable expense allocation procedures.
Schedule E—ESOP Information	Schedule E reintroduced, with questions including: – whether stock is acquired by a securities acquisition loan, including release of stock from suspense account and allocation – whether stock is readily tradeable on an established securities market – whether stock is preferred stock, include method by which it is convertible into common stock – whether ESOP has outstanding securities acquisition loan – questions related to issues where shares not readily tradeable on an established securities market – other compliance questions	Information required for completion of Schedule E could include information regarding unregistered company stock that might not otherwise be made available to the public.
Schedule G—Financial Transaction Schedules	More detailed information on loans, fixed income obligations and leases in default, including swaps and options. Identification of related parties/parties in interest.	Additional data gathering will be required.

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Schedule H—Financial Information	Trustee must sign Schedule H in order to satisfy the requirements of IRC Section 6033(a) (similar to the former Schedule P in prior versions of the Form 5500). Modification of asset breakouts on Schedule H, Asset and Liability Statement, including: – corporate debt detailed as investment grade debt or high-yield debt-other investments further detailed to include other loans, exchange traded notes, asset backed securities and real property – new categories for foreign equity and debt investments and tangible personal property – partnership interests detailed into sub-categories including limited partnership interests, venture capital operating companies, private equity and hedge funds – expanded real estate investment categories – CCT/PSA reported as single line item, regardless of whether the entity was a DFE or not, and the break-out of the underlying securities if they don't file as a DFE would now be at the 'Schedule of Assets' level of reporting for the plan – plans report holdings in master trusts on an aggregate basis with elimination of the master trust investment account concept – interest in funds held in insurance general accounts further detailed to include sub-categories such as deposit administration, immediate participation guarantees, guaranteed investment contracts, and 'other' unallocated insurance contracts – derivative sub-categories would be expanded to include futures, forwards, options, swaps and 'other' – Expense section would detail such expenses as accountant's fees, bank custodial fees, legal fees, etc. – administrative expenses would require a separate breakout of expense charged to participant accounts	The proposed changes to the asset and income/expense related items would allow DOL to capture and identify: – alternative investments and/or hard-to-value assets owned by plans and investments in collective investment funds – data about charges to participants for plan administrative expenses The income/expense statement changes will clarify the earnings and expenses associated with plan investments and operations. Form 5500 reporting of investments does not align with reporting of investments under generally accepted accounting principles (GAAP) used in preparing financial statements. Plans and providers will need to ensure that information provided by trustees/custodians meets needs of Form 5500 and GAAP reporting. Trustee/custodian systems will need to be reconfigured for new investment detail. Certain information may need to be provided by alternative sources (e.g. investment managers, plan sponsor treasury departments, etc.). It may be difficult for trustees/custodians to provide information regarding the underlying investment detail of the master trust/CCT/PSA, if investment details are required to be reported on the Schedule of Assets. The required allocation of the master trust information to the plan level for reporting on the Schedule of Assets may be challenging, as it would require additional work to allocate all relevant master trust investments. For limited scope audits, service providers should consider any challenges that may be faced to certify this information at the individual plan level.

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Schedule H, Line 4i – Schedule of Assets Held for Investment at End of Year	Add investment identifiers such as CUSIP for each asset. Filers required to check a box for hard-to-value assets.	Plans will no longer be permitted to attach pdf versions of trustee statements in lieu of completing the Schedule of Assets. Definition of hard to value, including the view of unit of account, is not consistent with existing fair value measurement concepts under generally accepted accounting principles.

Schedule H – Accountant's Opinion / Compliance Questions	Additional information required includes:
	– name of audit engagement partner
	– whether preparer reviewed and discussed IQPA report with the accountant
	– whether any of the following were disclosed or discussed with accountant:
	  – errors or irregularities
	  – illegal acts
	  – material internal control deficiencies
	  – a loss contingency indicating that assets are impaired or a liability incurred
	  – that the plan sponsor may not be a going concern
	  – existence of plan qualification issues pursuant to IRC
	  – existence of subsequent events that significantly affect the usefulness of the financial statements or future ability to pay benefits
	– whether the accountant had a peer review, and if so:
	  – name of peer reviewer
	  – year of last peer review
	  – rating received in their last peer review report
	  – number of years that the peer reviewer has been the firm's peer reviewer
	  – whether the peer review covered employee benefit plan audits
	  – if a limited-scope audit was performed, a copy of the certification will be attached to the Form 5500
	– questions about participant fee disclosure compliance and attach a copy of the ERISA 404a-5 disclosure to the Form 5500
	– questions about leverage and overall exposure
	– questions as to whether there any were uncashed checks as of the end of the plan year and the amount of the uncashed checks
		Proposed regulations would require that limited scope audit certifications include more detail on certified assets.
		
		Proposed question on uncashed checks indicates DOL continued focus on lost participants.
		
		For defined contribution plans, the definition of *eligible participant* will be revised to only include participants with account balances. As a result, the number of plan participants may decrease, impacting the need for plan audit.
		
		The DOL has proposed amendments to the requirements of Section 2520.103-8 of the regulations to require additional detail be included in the limited-scope certification that would provide the DOL information to assess the appropriateness of the use of the limited-scope audit for the plan.

	Highlights of Significant Changes	PwC Observations
Schedule J—Group Health Plan Information - NEW	Requires group health plan data in five different categories: **Group Health Plan Characteristics** (fully insured plans with less than 100 participants only complete this part) - number of persons covered at end of plan year - who is offered coverage - type of health benefits offered and funding arrangements - COBRA statistics - rebates received from insurance providers - premium payment delinquencies/lapses in coverage not reported on Schedule A **Service Provider and Stop Loss Information** Third party administrative/claims processors and stop loss information **Financial Information** Financial information if unfunded plan, including employer and employee contributions received and receivable, and information if a failure to timely transmit employee contributions **Health Benefits Claims Processing and Payments** Detailed health benefit claims processing questions, including the number of claims and claims denials and total dollar amount of claims **Compliance information** – whether plan assets are held in trust, by insurance company or as insurance contracts – attestation that Summary Plan Descriptions, Summary of Material Modifications and Summary of Benefits and Coverage are in compliance – attestation that coverage in compliance with HIPAA, GINA, Mental Health Parity Act, Newborn and Mother's Health Act, Women's Health and cancer Rights Act, Michelle's Law, ACA, Form M-1 requirements – indicate if plan is a MEWA subject to M-1 filing requirements	Schedule J involves significant additional reporting for group health plans. The proposal would require all ERISA plans that provide health benefits, regardless of size and funding mechanism, to file a Form 5500 including new Schedule J: – small group health plans may not file Form 5500-SF – significant expansion of information collection and reporting requirements for group health plans, including data many plan sponsors do not currently collect or are held by multiple vendors Small, fully insured group health plans have limited Schedule J reporting requirements.

	Highlights of Significant Changes	PwC Observations
Schedule R—Retirement Plan Information	New information required, including: – identification whether Required Minimum Distributions were made to 5% owners at age 70-1/2 – specific new questions regarding plan operations and how the plan satisfies IRC 401(k) non-discrimination tests – how the plan satisfies IRC 410(b) test – information regarding whether the plan is aggregated to satisfy IRC 410(b)/401(a)(4) – 401(a)(26) compliance – if employees who do not make 401(k) deferrals can receive employer contributions – how the employer contribution is calculated – if employer match contingent on employee deferrals – match formula – number of participants whose deferrals are sufficient for employer contribution/match – question on automatic enrolment and auto-escalation – number of participants making catch-up contributions	IRS questions designed to promote compliance; comments are requested as to whether a separate schedule should be created for these questions. Many of these questions will be required for the 2016 filing year.
Schedule SB—Single Employer Defined Benefit Pension Plan Actuarial Information	Several changes have been proposed for the Schedule SB: – Data moved from pdf attachment to text fields directly on SB – New schedules on the SB for retirees/beneficiaries and terminated vested participants – New schedule of projected of expected annual benefit payments for plans that have 500 or more participants – Reporting of plan-related expenses – Actuaries permitted to sign the Schedule SB electronically (must register for electronic signing credentials) – Plans in at-risk status – at risk status will have to be shown separately for each participant status	Proposed changes will require additional time and review to prepare actuarial charts in a standardized format. To the extent required, actuaries should be prepared to provide 10 years of projected benefit payments. Plan sponsors and actuaries will have to determine if they have adequate census information.

Let's talk

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