

# Form 5500 Update 2016



**S. Derrin Watson, Esq., APM**

# Poll Question #1

Which of the following 2016 forms have you already completed and submitted this year:

- A. Form 5500
- B. Form 5500-SF
- C. Form 5500-EZ
- D. Form 8955-SSA

# 2016 Changes

- DOL late filing penalty up to \$2063/day
  - DFVC fees unchanged
- Plans covered by PBGC must enter My PAA confirmation number
- Schedule SB – CSEC changes



**5a** Has a resolution to terminate the plan been adopted during the plan year or any prior plan year?

If "Yes," enter the amount of any plan assets that reverted to the employer this year.....  Yes  No Amount:

**5b** If, during this plan year, any assets or liabilities were transferred from this plan to another plan(s), identify the plan(s) to which assets or liabilities were transferred. (See instructions.)

5b(1) Name of plan(s)	5b(2) EIN(s)	5b(3) PN(s)
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]

**5c** If the plan is a defined benefit plan, is it covered under the PBGC insurance program (See ERISA section 4021.)? .....  Yes  No  Not determined.

If "Yes" is checked, enter the My PAA confirmation number from the PBGC premium filing for this plan year, . (See instructions.)

# 5500-EZ Change

- New Box D for IRS late filer relief

Form <b>5500-EZ</b>  Department of the Treasury Internal Revenue Service	<b>Annual Return of One-Participant          (Owners and Their Spouses) Retirement Plan</b> <i>This form is required to be filed under section 6058(a) of the Internal Revenue Code.          Certain foreign retirement plans are also required to file this form (see instructions).</i> <b>► Complete all entries in accordance with the instructions to the Form 5500-EZ.</b> <b>► Information about Form 5500-EZ and its instructions is at <a href="http://www.irs.gov/form5500ez">www.irs.gov/form5500ez</a>.</b>	OMB No. 1545-0956  <div style="font-size: 2em; font-weight: bold;">2016</div>  This Form is Open to Public Inspection.
<b>Part I Annual Return Identification Information</b> For the calendar plan year 2016 or fiscal plan year beginning (MM/DD/YYYY) and ending		
<b>A</b> This return is: (1) <input type="checkbox"/> the first return filed for the plan; (3) <input type="checkbox"/> the final return filed for the plan; (2) <input type="checkbox"/> an amended return; (4) <input type="checkbox"/> a short plan year return (less than 12 months).		
<b>B</b> If filing under an extension of time, check this box (see instructions) . . . . . ► <input type="checkbox"/>		
<b>C</b> If this return is for a foreign plan, check this box (see instructions) . . . . . ► <input type="checkbox"/>		
<b>D</b> If this return is for the IRS Late Filer Penalty Relief Program, check this box (see instructions) . . . . . ► <input type="checkbox"/>		

# Don't Answer Compliance Questions

- [Form 5500](#)  
Preparer Information (page 1 bottom)
- [Schedule H](#)
  - 2015 plan year: Lines 4o-p, 6a-d
  - 2016 plan year: Lines 4o, 6a-d
- [Schedule I](#)
  - 2015 plan year: Lines 4o-p, 6a-d
  - 2016 plan year: Lines 4o, 6a-d
- [Schedule R](#)
  - 2015 plan year: New Part VII (Lines 20a-c, 21a-b, 22a-d, and 23)
  - 2016 plan year: Part VII (Lines 20a-b, 21a-b, and 22a-b)
- [Form 5500-SF](#)
  - 2015 plan year: Preparer Information (page 1 bottom), Lines 10j, 14a-d, and New Part IX (Lines 15a-c, 16a-b, 17a-d, 18, 19, and 20)
  - 2016 plan year: Preparer Information (page 1 bottom), Lines 14a-d, and Part IX (Lines 15a-b, 16a-b, 17a-b, 18, and 19)
- [Clarification](#)  
Clarifications to Instructions for Lines 4l of Schedules H and I of the Form 5500, Annual Return/Report of Employee Benefit Plan, and line 10f of Form 5500-SF, Short Form Annual Return/Report of Small Employee Benefit Plan.
- [Form 5500-EZ](#)
  - 2015 plan year: Preparer Information (page 2 bottom), Lines 4a-d, 13a-d, 14, 15, and 16
  - 2016 plan year: Preparer Information (page 2 bottom), Lines 4a-d, 13a-b, 14, and 15

# Have to Admit Things Are Getting Better 2015 (top) versus 2016 (bottom)

<b>15b</b> If “Yes,” how does the 401(k) plan satisfy the nondiscrimination requirements for employee deferrals and employer matching contributions (as applicable) under sections 401(k)(3) and 401(m)(2)?.....	<input type="checkbox"/> Design-based safe harbor method <input type="checkbox"/> ADP/ACP test
<b>15c</b> If the ADP/ACP test is used, did the 401(k) plan perform ADP/ACP testing for the plan year using the "current year testing method" for nonhighly compensated employees (Treas. Reg sections 1.401(k)-2(a)(2)(ii) and 1.401(m)-2(a)(2)(ii))? .....	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>16a</b> Check the box to indicate the method used by the plan to satisfy the coverage requirements under section 410(b): .....	<input type="checkbox"/> Ratio percentage test <input type="checkbox"/> Average benefit test
<b>15b</b> How did the plan satisfy the nondiscrimination requirements for employee deferrals under section 401(k)(3) for the plan year? Check all that apply: .....	<input type="checkbox"/> Design-based safe harbor <input type="checkbox"/> “Prior year” ADP test <input type="checkbox"/> “Current year” ADP test <input type="checkbox"/> N/A
<b>16a</b> What testing method was used to satisfy the coverage requirements under section 410(b) for the plan year? Check all that apply: .....	<input type="checkbox"/> Ratio percentage test <input type="checkbox"/> Average benefit test <input type="checkbox"/> N/A

## Poll Question #2

Which of the following do you prepare in the course of a year?

- A. 5500/SF for retirement plan
- B. 5500/SF for welfare plan
- C. 5500 for direct filing entity
- D. 5500-EZ

# **DOL/IRS/PBGC PROPOSAL FOR 2019 RETURNS**



# It's That Time Again

- 777 pages: Proposed revision of 5500
  - Shows the proposed questions, not the format
- 123 pages: Proposed regulations to implement changes
- Download from [www.dol.gov/ebsa](http://www.dol.gov/ebsa)
  - Look for Form 5500 Improvement and Modernization Proposal

First plan year	Year filed	Event
1999	2000	EFAST
2009	2010	EFAST 2
2019	2020	Next generation

# Former Assistant Secretary Phyllis Borzi

- The 5500 is in serious need of updates to continue to keep pace with changing conditions in the employee benefit plan and financial market sectors.



# Where They Hope They Are Going

- Modernize the financial statements and investment information filed about employee benefit plans
- Update the reporting requirements for service provider fee and expense information
- Enhance accessibility and usability of data filed on the forms
- Require reporting by all group health plans covered by Title I of ERISA (including new schedule J)
- Improve compliance under ERISA and the Internal Revenue Code through new questions regarding plan operations, service provider relationships, and financial management of the plan



# Big Changes for Small Plans

- 5500-SF will still be there
- But if you don't qualify for that, file Schedules C and H
  - Schedule I will vanish
- Small plan definition improves:
  - For DC plan, small plan status based on number of participants with account balances
- Still immune from Schedule G, schedule of reportable transactions

## Poll Question #3

Regarding plan size, if a 403(b) plan has 200 participants eligible to defer, and only 95 participants (current and former) have account balances, can the plan qualify for the small plan audit exemption and file form 5500-SF if the DOL goes ahead with their plans?

- A. Yes
- B. No

# Poll Question #4

Last year, how many Schedule I's did you prepare?

- A. None
- B. 1 – 5
- C. 6 – 20
- D. More than 20

# Changes to 5500-SF

- New identifying information
  - Controlled group with list
  - Legal Entity ID (LEI)
  - Named fiduciary
- Additional participant data
- Group health plans can't file
- Expanded information on terminations/transfers
- Plan benefit/funding arrangement

# Lots of Checkboxes

- Replace existing codes with checkboxes
- Add many new questions:
  - Safe harbor 401(k)
  - Roth
  - Financial education/advice
  - QDIAs
  - ROBS
  - Combined plan 414(x)





# New Participant Data Includes

- g. If you are filing for defined contribution pension plan, you must complete Line 7g(1)-(4). Welfare plans complete only Line 7g(3). Defined benefit pension plans skip to Line 7h.
- 1) Number of participants with account balances as of the beginning of the plan year
  - 2) Number of participants with account balances as of the end of the plan year
  - 3) Number of participants that made contributions during the plan year
  - 4) Number of participants that terminated employment during the plan year that had their entire account balance distributed as of the end of the plan year

# New Question 11 on Specific Assets

- a) Cash/cash equivalents
- b) Securities, except employer securities, traded on a public exchange (1) stocks (2) bonds (3) other
- c) Government securities issued by the United States or a state
- d) Interests in registered investment companies (mutual funds, unit investment trusts, closed end funds)
- e) Interests in insurance company pooled separate accounts (PSAs)
- f) Interests in insurance investment and annuity contracts (other than PSAs)
- g) Interests in bank common collective trusts (CCTs)
- h) Interests in bank investment contracts (other than CCTs)
- i) Participant loans

# New SF Compliance Questions

- i) Is this a participant-directed individual account plan (e.g., a 401(k)-type or 403(b) defined contribution pension plan), subject to the requirements in 29 CFR 2550.404a-5 to disclose plan and investment related information to participants and beneficiaries?  Yes  No
- j) If you answered “Yes” to Line 14i, did the plan provide participants and beneficiaries the plan and investment disclosures required under 29 CFR 2550.404a-5?  Yes  No  
If you answered “Yes,” you must attach the investment option comparative chart or charts that were used to satisfy the disclosure requirement in 29 CFR 2550.404a-5(d)(2).

# More Compliance Questions

- k) If you answered “Yes,” to Line 14i, enter the number of designated investment alternatives (DIAs) available under the plan and indicate the number of DIAs that are index funds. Also, check all that apply to indicate the types of DIAs available under the plan:
- Domestic Stock/Equity  Bond/income  Balanced/target allocation  Money Market
  - Target date/Lifecycle  International/Global Stock/Equity  Sector/economy segment
  - Other funds (Describe)
- l) If you answered “Yes,” to Line 14j, did the plan make available to participants and beneficiaries a designated investment manager (DIM)?  Yes  No If “Yes,” enter name of DIM.

# More Compliance Questions

- m) If you answered “Yes,” to Line 14j, did the plan make available to participants and beneficiaries any brokerage window, self-directed brokerage account or similar plan arrangements that enabled participants to select investments beyond those designated by the plan?
  - If you answered “Yes” to Line 14m, enter the number of participants that utilized the account or arrangement and the total amount held in such account(s):

# Other Compliance Questions

- Did the plan have UBTI?
- Did employer pay plan expenses?
- Did ERISA 411 disqualified person serve plan?
- Did sponsor serve plan for direct or indirect compensation?
- Have service providers been fired for failure to comply with ERISA?
- Does SPD comply with regulations?
- Were there uncashed checks?
- Amount of hardship distributions in 401(k) plan
- Is the plan frozen?

# Terminations and Transactions

- Perpetual questions on transfer in and out
- Information on transfers to federally insured bank accounts in participant names on DC plan termination

**PLEASE  
SIGN IN & OUT  
HERE**

# Major Revisions to Schedule H

- Complete overhaul of line 1 assets
  - Hasn't been truly updated since 1975
- Move assets out of “other” line
- Line 4(i) schedules will include assets in CCTs and PSAs that don't file
- Supporting schedules will be part of electronic form, searchable





# Bold Are New Questions

Receivables	Employer contributions			
	Participant contributions			
	Participant loans			
	Other			
General Investments	Total noninterest-bearing cash			
	Interest-bearing	<b>Interest-bearing cash</b>		
		<b>Certificates of deposit</b>		
		<b>Money market accounts</b>		
	Debt interests/obligations	US Govt securities		
		<b>Other Govt securities</b>		
		Corporate debt instruments	<b>Investment grade</b>	
			<b>High yield</b>	
		<b>Exchange Traded Notes</b>		
		<b>Asset backed securities (other than real estate)</b>		
	<b>Other debt interests</b>			
Corporate stocks	<b>Publicly traded</b>	Preferred		
		Common		
	<b>Non-publicly traded</b>	Preferred		
		Common		
	Mutual funds, etc.			

# Bold Are New Questions

	<b>Eligible pooled investment vehicles</b>	Pooled separate accounts	
		Common collective trusts	
		103-12 investment entities	
		Master trusts	
	Interest in funds in insurance general account	<b>Deposit Administration</b>	
		<b>Immediate participation guarantee</b>	
		<b>Guaranteed investment contracts</b>	
		<b>Other unallocated insurance</b>	
Partnerships	Partnerships/Joint ventures	<b>Ltd partnerships</b>	
		<b>Venture capital operating companies</b>	
		<b>Private equity</b>	
		<b>Hedge funds</b>	
		<b>Other partnerships/joint ventures</b>	

# Bold Are New Questions

	New ? Not part of sum	<b>Partnerships that don't hold plan assets</b>	
		<b>Partnerships that do hold plan assets</b>	
	Real estate investments	<b>Developed</b>	
		<b>Undeveloped</b>	
		<b>Publicly traded REITs</b>	
		<b>Non-publicly traded REITS</b>	
		<b>Mortgage backed securities</b>	
		<b>Real estate operating company</b>	
		<b>Other real estate investments</b>	
	<b>Commodities (direct investments)</b>	<b>Precious metals</b>	
		<b>Other (describe)</b>	
	<b>Derivatives</b>	<b>Futures</b>	
		<b>Forwards</b>	
		<b>Options</b>	
		<b>Swaps</b>	
		<b>Other</b>	
	<b>Tangible personal property (including collectibles)</b>		

	<b>Tangible personal property (including collectibles)</b>		
	<b>Foreign investments</b>	<b>Equities</b>	
		<b>Debt interests</b>	
		<b>Real estate</b>	
		<b>Currency</b>	
		<b>Other</b>	
	<b>Participant directed brokerage accounts</b>	<b>Tangible personal property</b>	
		<b>Loans</b>	
		<b>Partnership/joint venture</b>	
		<b>Real property</b>	
		<b>Employer securities</b>	
		<b>Investments that could result in a loss in excess of the account balance including derivatives</b>	
		<b>Other</b>	
<b>Employer-related investments</b>	<b>Employer securities</b>	<b>Publicly traded stock</b>	
		<b>Non-publicly traded stock</b>	
		<b>Publicly traded debt instruments</b>	
		<b>Non-publicly traded debt</b>	
	<b>Employer real property</b>		
<b>Buildings and property used in plan operations</b>			
<b>Other (describe)</b>			

# More Information on Income and Expense

- Income and expense items related to the new categories on line 1
- Direct rollovers
- Hardship distributions made from a section 401(k) plan
- Distributions to employees who have attained age 62 and who were not separated from service when the distributions were made for a defined benefit plan or a money purchase pension plan

# Administrative Expenses

- New categories
- Paid by plan or participant
- How participant charges allocated



# Audit Questions

- Where issued?
- Did you review it with auditor?
- Did auditor inform you of specific problems?
  - Including qualification defects
- Was it peer-reviewed?
- Opinion not attached because:
  - CCT, PSA, or MTIA
  - Short plan year
  - Not completed on time
  - Small plan audit exemption



# More New Questions

- Were all plan assets valued at least annually at fair market value?
- Does the plan have investment acquisitions that are leveraged, including assets subject to collateralized lending activities (e.g., securities lending arrangements, repurchase agreements (repos), etc.)?
- Question on termination of service providers moved from Schedule C

**NEW!**



# More on Schedule H

- More information on transfers out
- New questions on transfer in
- Identify trusts holding plan assets including name, EIN, trustee, and phone number
- Date and signature of trustee/custodian

# New Schedule R Questions (Besides 2015 compliance and SF)

- DB compliance with 401(a)(26)
- DC participation information
- Nonelective and matching contributions
  - Formulas
  - Number of participants getting maximum match
- Automatic enrollment
  - Default deferral
  - Auto escalation
- Participants defaulted into QDIAs
- Participants making catch-ups

# Revised Schedule C: Service Provider Information

- Harmonize better with service provider fee disclosure regulations
- Would be for small plans as well
- No reporting exemption for eligible indirect compensation
- Reporting indirect compensation limited to covered service providers
- Separate schedule C for each
  - Covered service provider with \$1,000 of indirect compensation
  - Other service provider with \$5,000 of direct compensation
- New question on related-party compensation

# New Yes/No and Recordkeeper Questions

- 3(21) fiduciary
- Listed on Schedule A as received insurance commissions
- ERISA recapture, ERISA budget, or similar account during the plan year
- Recordkeeping services without explicit compensation or with compensation offset or rebated in whole or in part based on other compensation
  - If you answered “Yes” to line 1g(1), using the same methodology used in the service provider’s estimate of the cost to the plan of recordkeeping services, enter as a dollar figure the amount of compensation the service provider received for recordkeeping services

# More on Schedules

- Schedule D limited to DFEs
- Schedule E returns for ESOPs

# New Electronic Forms

- 5500-EZ
  - Paper version will still be available
  - Only 15 percent of EZ eligible plans use SF
- 5558 extension request!!!!!!
  - Paper form will still be available
  - IRS will need new extension request for 5330

Form <b>5558</b> (Rev. August 2012)  Department of the Treasury Internal Revenue Service	<b>Application for Extension of Time                  To File Certain Employee Plan Returns</b>  ► For Privacy Act and Paperwork Reduction Act Notice, see instructions. ► Information about Form 5558 and its instructions is at <a href="http://www.irs.gov/form5558">www.irs.gov/form5558</a>	OMB No. 1545-0212  <b>File With IRS Only</b>
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## Part I Identification

<b>A</b> Name of filer, plan administrator, or plan sponsor (see instructions)  _____ Number, street, and room or suite no. (if a P.O. box, see instructions)  _____ City or town, state, and ZIP code  _____	<b>B</b> Filer's identifying number (see instructions) Employer identification number (EIN) (9 digits XX-XXXXXXX)  _____ Social security number (SSN) (9 digits XXX-XX-XXXX)  _____											
<b>C</b> Plan name  _____	<table border="1" style="width: 100%;"> <tr> <th rowspan="2">Plan number</th> <th colspan="3">Plan year ending—</th> </tr> <tr> <th>MM</th> <th>DD</th> <th>YYYY</th> </tr> <tr> <td style="text-align: center;">  . . . .  </td> <td style="text-align: center;">   </td> <td style="text-align: center;">   </td> <td style="text-align: center;">   </td> </tr> </table>	Plan number	Plan year ending—			MM	DD	YYYY	 . . . . 	     	     	         
Plan number	Plan year ending—											
	MM	DD	YYYY									
 . . . . 	     	     	         									

# Poll Question #5

Which do you look forward to the most?

- A. Change in determining small plan
- B. Electronic 5558
- C. Electronic 5500-EZ

# New Rules for Health Plans

- Beginning for 2019, health plans must always file 5500
  - No exemption for small plans
  - No 5500-EZ
- New Schedule J
- Small fully insured plans would be exempt from many 5500 questions
- Health plans, regardless of size, that are unfunded, fully insured or both would be exempt from filing Schedules:
  - C
  - G
  - H



# More Form 5500 Changes

- If an offset plan, identify plan being offset
- New welfare benefit: long-term care insurance
- Breakout on health benefits offered:
  - Medical/surgical benefits
  - Pharmacy or prescription drug benefits
  - Mental health/substance use disorder benefits
  - Wellness program                      Preventive care services
  - Emergency services                      Pregnancy benefits
  - Vision    Dental

# Questions?

# Thank You!

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Who's the Employer 7<sup>th</sup> available at [www.ERISA.com](http://www.ERISA.com)