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Torrillo & Associates

Benefit Plan Audit Specialists

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

As detailed in the [press release](#) from the DOL on July 11, 2016, the long awaited Proposed Forms Revisions to the Form 5500 Annual Return/Report Series. They can be found on the [DOL's website](#) and are summarized below based on the DOL's Fact

Sheet.

Proposed Changes to the Form 5500 Released for Public Comment

Form 5500
Department of the Treasury
Internal Revenue Service
Department of Labor
Pension Benefit Guaranty Corporation

Annual Return/Report of Employee Benefit Plan
This form is required to be filed for employee benefit plans under sections 101 and 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) and sections 6031(a), 6032(a), and 6033(a) of the Internal Revenue Code (the Code).
Complete all entries in accordance with the instructions to the Form 5500.

OMB No. 1545-0047
12-10-2009
2015
This Form is Open to Public Inspection

Part I: Annual Report Identification Information
For calendar year, fiscal year, or fiscal year ending on:

A This return/report is for:
 a multiemployer plan;
 a single-employer plan;
 a multi-employer plan (filers checking this box must attach a list of participating employer information in accordance with the form instructions); or
 a DFC (specify): _____
 the first return/report;
 the first return/report;
 a short plan year return/report (less than 12 months);

B This return/report is:
 an amended return/report;
 a short plan year return/report (less than 12 months);

C If the plan is a collectively bargained plan, check here: _____

D Check one if filing under:
 Form 5500;
 special instructions (order description);
 automatic extension;
 the DFC program;

Part II: Basic Plan Information. enter all requested information

1a Name of plan _____

1b Three-digit plan number (DPC) _____

1c Effective date of plan _____

2a Plan sponsor's name (employer, if for a single-employer plan)
Mailing address (include room, apt., suite no., and street, or P.O. Box)
City or town, state or province, country, and ZIP or foreign postal code (if foreign. See instructions.)

2b Employer Identification Number (EIN) _____

2c Plan sponsor's telephone number _____

2d Business code (see instructions) _____

Caution: A penalty for the late or incomplete filing of this return/report will be assessed unless reasonable cause is established.

Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this return/report, including accompanying schedules, statements and attachments, as well as for electronic copies of this return/report, and to the best of my knowledge and belief, it is true, correct, and complete.

3025 HERE
Signature of plan administrator _____ Date _____ Other name of individual signing as plan administrator _____

3025 HERE
Signature of employer/plan sponsor _____ Date _____ Other name of individual signing as employer or plan sponsor _____

3025 HERE
Signature of DFC _____ Date _____ Other name of individual signing as DFC _____

Preparer's name (including firm name, if applicable) and address (include room or suite number) _____ Preparer's telephone number _____

For Paperwork Reduction Act Notice and OMB Control Numbers, see the instructions for Form 5500. Form 5500 (2015) v. 100120

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 Rule-making 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:

- **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.

- **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.
- **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.
- **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.

- **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.[\[1\]](#)

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.

[\[1\]](#) Section 2520.103-8 implements the **limited-scope audit exemption** described in *ERISA section 103(a)(3)(c)*. Specifically, this exemption 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 GAO and the DOL's Inspector General (DOL-OIG) have recommended that the Department revise section 2520.103-8 to improve the information being reported by plan administrators electing a limited scope audit. The DOL agrees that **better information is needed** by plan administrators in connection with limited scope audits. To address concerns it has observed, as well as to respond to the GAO and the DOL-OIG recommendations the DOL proposes amending section 2520.103-8.

Currently, section 2520.103-8 requires the bank or insurance company to certify the accuracy and completeness of the information being provided by a written declaration which is signed by a person authorized to represent the bank or insurance carrier.

The DOL proposes to amend the requirements under section 2520.103-8 to require that the certification:

1.) Appear on a **separate document** from the list of plan assets covered by the certification;
2.) **Identify** the bank or insurance company holding those plan assets that are the subject of the certification;
3.) **Describe** the manner in which the bank or insurance company is holding the assets covered by the certification;
4.) State whether the bank or insurance company is providing **current value information** regarding the assets covered by the certification, and if so, state that the assets for which current value is being certified are separately identified in the list of assets covered by the certification;
5.) If current value is *not* being certified for all of the assets covered by the certification, include a caution that the certification is not certifying current value information and the asset values provided by the bank or insurance company **may not be suitable** for use in satisfying the plan's obligation to report current value information on the Form 5500 Annual Return/Report;
and
6.) If the certification is being provided by **an agent on behalf of the bank or insurance company**, a statement certifying that the person providing the certification is an *authorized agent* acting on behalf of the bank or insurance company and *affirming* that the bank or insurance company is taking responsibility for the accuracy and completeness of the certification and the

underlying records used as a basis for the information being certified.



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Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in 10 states including Pennsylvania, New Jersey, Delaware, New York and Florida. We are also able to practice in additional states that have passed firm mobility.

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