

# Form 5500 Update



ASPPA

Making Retirement Plans Work

*Part of the American Retirement Association*

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# Disclaimer

*The information and opinions presented today are those of the presenter and do not necessarily represent the opinions or positions of ASPPA.*

# Form 5500 Update

- Changes for 2014 reporting
- Mandatory e-filing of Form 8955-SSA
- Proposed Form 5500-SUP
- Bonus – if we have time –
  - Preparing Form 5330 to report late deposits

# [Scary] New Form

<b>Form 5500-SUP</b>	<b>Annual Return of Employee Benefit Plan Supplemental Information</b>	OMB No. 1545-1610
Department of the Treasury Internal Revenue Service	This form is required to be filed under section 6058(a) of the Internal Revenue Code. ► Complete all entries in accordance with the instructions to Form 5500-SUP.	<b>2015</b>
		This Form is Open to Public Inspection.

# Proposed Form 5500-SUP

- Which filers must provide the SUP-data electronically
  - Is there any reason for some plans to file on paper?
- The significance of the public disclosure of this data
- New data collection considerations

# Official Guidance

- To date, the IRS has posted the following
  - Draft Form 5500-**SUP** [10/21/2014; updated 03/27/2015]  
[www.irs.gov/pub/irs-dft/f5500sup--dft.pdf](http://www.irs.gov/pub/irs-dft/f5500sup--dft.pdf)
  - Draft **Instructions** for Form 5500-SUP [12/18/2014; updated 03/30/2015]  
[www.irs.gov/pub/irs-dft/i5500sup--dft.pdf](http://www.irs.gov/pub/irs-dft/i5500sup--dft.pdf)
  - Federal Register **Notice** and Request for Comment [12/23/2014]
    - Comment due date: February 23, 2015
- Submitted to OMB on May 8, 2015

# OMB Submission

- IRS stated that collection of the SUP-data created no additional “burden” for filers.
- Used IRC §6058 as the basis for its authority
- Dismissed public comments except those that took the “more is better” approach to data collection
- ASPPA letters push for delayed effective date

# Effective for 2015?

- The effective date is problematic for service providers
  - Sufficient time to adapt electronic systems
  - Data collection issues, both internal and external
  - Some issues (e.g., nondiscrimination testing) may not be finalized by filing due date
- Communicating new data needs to plan administrators/plan sponsors



# Focus on Why

- The **Notice** focused on telling us why the IRS wants this information
- Some data was collected prior to the implementation of EFAST2
- Doesn't consider the current business model for plan services

# Why – Preparer Information

- Notice says....

<p><u>Preparer Information:</u></p> <p>Preparer's name (including firm name, if applicable)</p> <p>Preparer address (include room or suite number)</p> <p>Preparer's telephone number</p>	<p>Forms 5500, 5500-SF, and 5500-Sup</p>	<p>IRC §§ 6058(a) 7701(a)(36), 6109, 6695, § 1.6109</p> <p>Similar questions were on 2008 and previous years Form 5500.</p>	<ul style="list-style-type: none"> <li>• Optional preparer information was eliminated from Form 5500 since 2009 and added back in the 2012 Form 5500s. Preparer information will be mandatory items for the plan year beginning in 2015.</li> <li>• EP Exam needs at least basic information of preparers, so that Exam can contact preparers for issues relating to Form 5500s and plan qualifications.</li> <li>• It will assist IRS and DOL for projects relating to tax compliance and fiduciary duties.</li> <li>•</li> </ul>
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- Form section...."optional" removed on all 2015 Form 5500 series.

Preparer's name (including firm name, if applicable) and address, including room or suite number	Preparer's telephone number
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# Paid Preparer - Issues

- Requires individual's name as well as business name, address, phone
- Is this subject to public disclosure?
- Last year, 831 individuals preparing more than 10 filings voluntarily supplied information on Form 5500 series

# Polling #1

- How concerned are you / your firm about the inclusion of a [mandatory] preparer's line on the Form 5500 series?
  - a. Very
  - b. Somewhat
  - c. Not at all (it's not me!)
  - d. Don't know

# Why – Trust Information

- Notice says....

<u>Trust information:</u>  Name of trust Trust's EIN Name of trustee or custodian Trustee or custodian's telephone number	Form 5500, Schedule H/I, Forms 5500-SF, and 5500-Sup	IRC § 6058(a), 401(a), 501(a) Similar questions were previously on Schedule P	<ul style="list-style-type: none"> <li>Trust information used to be in Schedule P, and was added to the 2012 Form 5500 as optional items. Trust information will be mandatory items for the plan year beginning in 2015. <b>Information will be used for EP Exam and EPCU programs.</b></li> <li>The trust and trustee are subject to a number of requirements for which the agencies have shared jurisdiction. Collecting Trust/Trustee information will enable the agencies to efficiently monitor compliance.</li> </ul>
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- 2015 Form section....lines 14c-d/SF; Schedules H/I

3a Name of trust	3b Trust's EIN
3c Name of trustee or custodian	3d Trustee or custodian's telephone number

# Trust Information - Issues

- Trust EIN may have been deactivated or reassigned by IRS without knowledge of trustee/service provider
- Trust may not have EIN because of omnibus reporting by institution
  - Draft instructions say to insert EIN shown on Forms 1099-R or 945 (which already appears on line 2 of Schedule R)
- Is there a link to new UBTI question?

# Why – Plan Document Items

- Notice says....

Compliance and Use For
<ul style="list-style-type: none"><li>• Used for pre-planning to determine Remedial amendment cycle (RAC) and remedial amendment period (RAP). The initial exam letter can be tailored to respective required adoption dates under Rev. Proc. 2007-44.</li><li>• Provide information on how many adopters of the pre-approved plans are in existence that is helpful for future EPCU projects or follow-ups we may want.</li></ul>

- Form section....

6a Has the plan been timely amended for all required tax law changes? Check box. ☐ Yes ☐ No ☐ N/A

6b Date the last plan amendment/restatement for the required tax law changes was adopted (MM/DD/YYYY) \_\_\_\_\_  
Enter the applicable code \_\_\_\_\_ (See instructions for tax law changes and codes).

6c If the plan sponsor is an adopter of a pre-approved master and prototype (M&P) or volume submitter plan that is subject to a favorable IRS opinion or advisory letter, enter the date of that favorable letter (MM/DD/YYYY) \_\_\_\_\_ and the letter's serial number \_\_\_\_\_.

6d If the plan is an individually designed plan and received a favorable determination letter from the IRS, please enter the date of the plan's last favorable determination letter (MM/DD/YYYY) \_\_\_\_\_.

# ASPPA Suggested Plan Document Items

- 6a. Enter the date of the most recent plan amendment  
\_\_\_\_/\_\_\_\_/\_\_\_\_.
- 6b. If Code 3E is inserted on line 8 of Form 5500 / line  
9 of Form 5500-SF, enter the serial number and date of  
the related IRS opinion or advisory letter.  
# \_\_\_\_\_ / \_\_\_\_/\_\_\_\_.
- 6c. If the plan is individually designed and received its  
own favorable determination letter from the IRS, enter  
the date of the most recent IRS letter \_\_\_\_/\_\_\_\_/\_\_\_\_.



# Plan Document - Issues

- 2015 Form 5500-SF - Lines 17a-d
- 2015 Schedule R - Lines 22a-d
- No explanation how to respond if late amendments cured through EPCRS
- Isn't clear how to respond to item asking for latest amendment/restatement date if PPA interim amendments adopted but not full restatement

# Why – 401(k) Testing

- Notice says....

- It will assist IRS agents in performing pre-audit analysis and request the appropriate information when preparing the initial IDR.
- Used for compliance reasons because of different rules applied for safe harbor plans. Failure to meet requirements results in disqualification of plan which may be corrected under Rev. Proc. 2013-12

- Form section....

**4a** Is the plan a section 401(k) plan? Check box. ☐ Yes ☐ No

**4b** If “Yes,” how does the plan satisfy the nondiscrimination requirements for employee deferrals and employer matching contributions (as applicable) under sections 401(k)(3) and 401(m)(2)?

Check box. ☐ Design-based safe harbor method ☐ ADP/ACP test

**4c** If the ADP/ACP test is used, did the plan perform ADP/ACP testing for the plan year using the “current year testing method” for nonhighly compensated employees (Regulations section 1.401(k)-2(a)(2)(ii))?

Check box. ☐ Yes ☐ No

- 2015 Form 5500-SF – lines 15a-c
- 2015 Schedule R – lines 20a-c

# ASPPA Recommended

- Use feature codes to collect data
  - 2U = 401(k)(3) safe harbor
  - 2V = 401(m)(2) safe harbor
  - 2W = ADP current year testing

# 401(k) Items - Issues

- ASPPA suggestion dismissed because *“TRS has found that the use of feature codes...produces less accurate responses”*
- Instruction for item c seems to indicate question is only about testing methodology for ADP but actual question shows both ADP/ACP
- EFAST2 not currently anticipating both boxes checked on items b and c

# Why – Coverage Testing

- Notice says....

Suggested Changes	Add to	Authorities	Compliance and Use For
<p>Check the box to indicate the method used by the plan to satisfy the coverage requirements under section 410(b):</p> <p><input type="checkbox"/> ratio percentage test</p> <p><input type="checkbox"/> average benefit test</p> <p>Does the plan satisfy the coverage and nondiscrimination tests of sections 410(b) and 401(a)(4) by combining this plan with any other plans under the permissive aggregation rules?</p> <p>Check box <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Schedule R, Forms 5500-SF, and 5500-Sup</p>	<p>IRC §§6058(a) 401(a)(4), 410(b)</p>	<ul style="list-style-type: none"> <li>• Because of changes on Determination letter program that eliminated the option to request a determination on coverage and nondiscrimination, proposal will assist IRS agents in performing pre-audit analysis and will enable agents to request the appropriate information when preparing the initial IDR.</li> <li>• Would provide criteria to enable Classification Specialists and EP Analysts to perform more precise return/issue selections</li> <li>• Compliance with respect to contributions/benefits and coverage</li> <li>• Encourages development/use of internal controls (for testing and aggregation rules)</li> <li>• VCP available under Rev. Proc. 2013-12 for failures which should be identified by sponsor earlier</li> </ul>

# ASPPA Suggestion

**Exceptions - check the box for each statement that describes the plan or the employer, then skip to line 6.**

- ☐ The employer employs only HCEs.
- ☐ No HCEs benefited under the plan at any time during the plan year.
- ☐ The plan benefits only collectively-bargained employees.
- ☐ The plan benefits all nonexcludable NHCEs, including leased employees and self-employed individuals.
- ☐ The plan is treated as satisfying the minimum coverage requirements of IRC Section 410(b)(6)(C).
- ☐ The plan uses the three-year testing cycle rule in Revenue Procedure 93-42.

**If no Exception above applies, check all that apply below:**

- ☐ The plan was permissively aggregated with another plan of the employer for coverage testing purposes.
- ☐ The plan was required to be disaggregated for coverage testing purposes.
- ☐ The plan was permissively disaggregated for coverage testing purposes.

**Coverage testing satisfied using:**

**Ratio Percentage Test**

- ☐ 401(k) feature
- ☐ 401(m) feature
- ☐ Nonelective feature
- ☐ ESOP feature
- ☐ Excludable
- ☐ Non-excludable

**Average Benefits Test**

- ☐ 401(k) feature
- ☐ 401(m) feature
- ☐ Nonelective feature
- ☐ ESOP feature
- ☐ Excludable
- ☐ Non-excludable

# Coverage Items - Issues

- 2015 Form 5500-SF – lines 16a-b
- 2015 Schedule R – lines 21a-b
- EFAST2 not currently anticipating both boxes checked on either item
- How useful is this sort of data collection?

# Tricky Data Collection Item

- Notice says.....

Suggested Changes	Add to	Authorities	Compliance and Use For
<u>UBIT</u>  Did the plan trust incur unrelated business taxable income? Check box <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If Yes, Amount _____	Schedule H/I, Forms 5500-SF and 5500-Sup	IRC §§6058(a), 511 and 512	It will assist IRS for purpose of tax compliance to identify 401(a) trust on unrelated business income, which comes from an activity not related to the tax-exempt purpose of that trust.

- 2015 Form 5500-SF – line 10j
- 2015 Schedules H/I – line 4o



# UBTI before UBIT

- UBTI = unrelated business taxable income
  - Income generated that is not related to the [typically, tax exempt] purpose of the entity. Debt-financing may also result in UBTI.
  - Example: for a fee, commuters use the parking facilities of a church during the week. That income to the church is unrelated to its tax-exempt purpose.
- UBIT = unrelated business income tax - the tax that may be due on account of UBTI
  - There is a \$1,000 exemption on Form 990-T

# UBTI - Issues

- Not well monitored in any size plan
- Not easy to monitor, especially in self directed brokerage
- Form 990-T due by April 15 for calendar year plans

# Polling #2

- Has your firm routinely monitored plan assets for UBTI?
  - a. Yes
  - b. No
  - c. Don't know

# Why - Distributions

- Form section....

Were in-service distributions made during the plan year?		
Check box.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	If "Yes," Amount _____	

- Notice says....nothing!
- 2015 Form 5500-SF – line 19
- 2015 Schedules H/I – line 4p

# Distributions - Issues

- Instructions indicate IRS wants a carve out of distributions to active participants (e.g., hardship withdrawals, any other payments in-service)
  - Systems must be adapted to automatically generate this figure
- ASPPA suggested - could easily be captured by simply further bifurcating the financial information sections of Schedules H/I and Form 5500-SF

# Polling #3

- What's your overall reaction to the SUP-data?
  - a. Hate it
  - b. It will create additional burden, especially in the first year or two
  - c. It shouldn't cause too much extra work
  - d. Love it

# Paper or E-file?

- Items worked onto Form 5500 and Form 5500-SF for those required (or opting) to provide the information electronically
  - Count all federal tax reports *of any kind* filed by **either** the plan sponsor **or** the plan administrator (includes Forms W-2, 1099-MISC, 1099-R, 940 series, etc.)
    - Similar to rule for mandatory e-filing of Form 8955-SSA that begins for 2014 plan years
  - If count is 250 or more, **must** electronically file the data.

# Consequences

- A plan required to file the data electronically that fails to do so will be “*deemed to have failed to file*” the Form 5500.
  - IRC §6652(e) imposes a penalty of \$25/day up to \$15,000
  - Presumably, SUP may be part of late filing cured under DFVC
  - Otherwise? Creates limbo reasonable cause opportunity similar to missed Form 8955-SSA



# Any Advantage to Paper?

- Although EFAST2 has the ability to mask data entry, there's been no indication that any SUP data filed electronically will be masked.
- Paper filings are subject to the same public disclosure, but it's unclear how quickly that will happen.
- Section of SUP that ties the paper filing to the EFAST2 filing:

B EFAST2 Acknowledgement ID (30 characters)

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# More Paper Filing Issues

- Due date appears to be same as Form 5500 series
  - Paper SUP filing requires insertion of RefAckId, which is only available after related EFAST2 filing is *Accepted*.
  - Paper SUP filing requires signature of plan administrator or plan sponsor (generally, not both)
  - Difficult to make this all happen on October 15, unless you like stress!

# Closing Thoughts on the SUP

- It will be very challenging to manage the SUP requirement if effective date not pushed back at least one year.
- IRS must improve instructions and consider using check box format or moving some items onto Form 5500 series (e.g., adding some items instead to plan feature codes lines; modifying financial information sections, etc.)
- This could turn into IRS's very own version of DOL's "Schedule C" debacle if refinements aren't made and the requirement rushed.

# Changes to 2014 Forms

# Active Participant Count – Line 6

[Lines 5d(1) and 5d(2) of Form 5500-SF]

- Active participant count at **beginning** of plan year now required
  - Should be  $\leq$  Line 5 entry
- Active participant count at end of plan year also must be reported

<b>6</b> Number of participants as of the end of the plan year unless otherwise stated (welfare plans complete only lines 6a(1), 6a(2), 6b, 6c, and 6d).		
<b>6a(1)</b> Total number of active participants at the beginning of the plan year.....	<b>6a(1)</b>	
<b>6a(2)</b> Total number of active participants at the end of the plan year .....	<b>6a(2)</b>	

# Vesting of Terminated Participants

[Line 5e (Form 5500-SF)]

- Mirrors information collected on line 5h, Form 5500
- Applies to any participant who terminated employment during the year, whether or not paid out

e Number of participants that terminated employment during the plan year with accrued benefits that were less than 100% vested.....	5e	
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# Polling #4:

	Beginning of Year	End of Year
Active participants		
Terminated, receiving benefits		
Terminated, with deferred vested benefits		
Deceased participants whose beneficiaries are receiving benefits		
Deceased participants whose beneficiaries with deferred vested benefits		
Total participants		
DC Plans only: total participants with account balances		
Number of participants who terminated during the year with less than full vesting		

Is this format:

- Better
- Worse
- No opinion

# Other 2014 Form 5500 Changes

Form 5500 (2014)		Page 3
<b>Part III</b>	<b>Form M-1 Compliance Information (to be completed by welfare benefit plans)</b>	
<b>11a</b> If the plan provides welfare benefits, was the plan subject to the Form M-1 filing requirements during the plan year? (See instructions and 29 CFR 2520.101-2.) ..... <input type="checkbox"/> Yes <input type="checkbox"/> No		
If "Yes" is checked, complete lines 11b and 11c.		
<b>11b</b> Is the plan currently in compliance with the Form M-1 filing requirements? (See instructions and 29 CFR 2520.101-2.) ..... <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>11c</b> Enter the Receipt Confirmation Code for the 2014 Form M-1 annual report. If the plan was not required to file the 2014 Form M-1 annual report, enter the Receipt Confirmation Code for the most recent Form M-1 that was required to be filed under the Form M-1 filing requirements. (Failure to enter a valid Receipt Confirmation Code will subject the Form 5500 filing to rejection as incomplete.)		
Receipt Confirmation Code _____		

- Form M-1 Compliance Information now appears as three new questions on the Form 5500.
- Applies to any  $PN \geq 501$



# 2014 Form 5500-SF Changes

<b>A</b> This return/report is for:	<input type="checkbox"/> a single-employer plan	<input type="checkbox"/> a multiple-employer plan (not multiemployer) (Filers checking this box must attach a list of participating employer information in accordance with the form instructions)
	<input type="checkbox"/> a one-participant plan	<input type="checkbox"/> a foreign plan

- Foreign plan filers now have option to file Form 5500-SF instead of EZ
- One participant plans covering > 100 participants may now file Form 5500-SF

# Multiple Employer Plan - Attachment

Part I Annual Report Identification Information		
For calendar plan year 2014 or fiscal plan year beginning _____ and ending _____		
A This return/report is for:	<input type="checkbox"/> a multiemployer plan;	<input type="checkbox"/> a multiple-employer plan (Filers checking this box must attach a list of participating employer information in accordance with the form instructions); or
	<input type="checkbox"/> a single-employer plan;	<input type="checkbox"/> a DFE (specify) _____

- Form 5500 / Form 5500-SF
- If multiple-employer box is checked, attachment must report the name, EIN, and a good faith estimate of each contributing employer's percentage of the total contributions made by participating employers (for that plan year).

# Multiple Employer Plan - Attachment

Multiple Employer Plan Participating Employer Information (Insert Name of Plan, and EIN/PN as shown on the Form 5500 or Form 5500-SF)		
(a) Name of participating employer	(a) EIN	(a) Percent of Total Contributions
(a) Name of participating employer	(a) EIN	(a) Percent of Total Contributions

- Instructions clarify that multiple employer welfare plans exempt from the requirement to file audited financial statements with Form 5500 (i.e., unfunded welfare plans) are required to include the attachment but include only a list of participating employers with the corresponding EIN/PN numbers.

# Schedule H Clarification

- “The instructions for line 1c(13) have been enhanced to explain that a registered investment company is an investment company registered under the Investment Company Act of 1940. These are mutual funds (legally known as open-end companies), closed-end funds (legally known as closed-end companies), and UITs (legally known as unit investment trusts).”

# Schedule MB Addition

- “New Line 4f has been added to Line 4 to require plans in critical status to provide information about the plan year in which a plan is projected to emerge from critical status or, if the rehabilitation plan is based on forestalling possible insolvency, the plan year in which insolvency is expected. The instructions for Line 4f have been updated to reflect this change.”

# Updates to Schedule SB

- Line 3 has been modified so that the funding target (vested and total) is reported separately for each type of participant (active, retired, terminated vested).
- Line 11b has been split into two parts;
  - First, providing the calculation based on the prior year's effective interest rate, and
  - second providing the calculation based on the prior year's actual return. See the instructions if the valuation date for the prior plan year was not the first day of the plan year.
- Line 15 instructions have been expanded to address situations in which the AFTAP was not certified for the plan year.

# EFAST2 Changes

- 2010 Form year is obsolete effective January 1, 2015
  - May no longer file 2010 Form 5500 even to amend a previously filed 2010 Form 5500 report
  - Will use the 2014 Form 5500 (or current year form) to submit 2010 (or earlier) plan year information
  - When using the 2014 form to submit 2010 (or earlier) data, information will not appear on the DOL's Public Disclosure website

# Common Question

- Who must sign the Form 5500?
  - Under ERISA, the plan administrator
  - Under IRC, either the plan administrator or employer/plan sponsor must sign and date
  - Exceptions:
    - Joint employer-union board of trustees or committee is the plan sponsor or plan administrator, at least one employer representative and one union representative must sign.
    - DFE filings



# Who Must Sign?

- For EFAST2 purposes, only the electronic signature of the plan administrator is necessary to process the filing.
- See FAQs 30-34 at <http://www.dol.gov/ebsa/faqs/faq-EFAST2.html>.

# Latest GAO Report

<http://www.gao.gov/products/GAO-14-441>



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United States Government Accountability Office

Report to the Ranking Member,  
Committee on Education and the  
Workforce, House of Representatives

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June 2014

## PRIVATE PENSIONS

### Targeted Revisions Could Improve Usefulness of Form 5500 Information

# GAO Report Highlights

- Focus on asset categories (Schedule H) and reporting fees and compensation (Schedule C)
- GAO recommendations to Agencies:
  - Modify formats
  - Look to conduct advance testing with stakeholders when making major revisions to the forms
- Congress should make electronic filing ok for IRS

# Future Changes

- DOL's current guidance plan calls for more changes to Form 5500
  - Unclear what effective date will be proposed
  - Reaction to some of the GAOs comments?
  - Scope?
  - Expect to see drafts by July 2015

# Polling #5

- How does your firm file Form 8955-SSA for its clients?
  - a. We file all or most reports electronically through FIRE
  - b. Clients file all or most reports on paper
  - c. Don't know

# Mandatory E-filing of Form 8955-SSA


- Beginning with 2014 plan year filings due on or after July 31, 2015
- Applies to plans the plan administrator (which is often synonymous with the plan sponsor) files 250 or more other federal forms.
- Do you really want to spend time figuring which client meets that threshold?

# E-filing of Form 8955-SSA

- Does the Plan Administrator have to sign an electronic filing of Form 8955-SSA?
- NO! See [IRS] FAQ #12. On the **FIRE** system, it is optional to insert the name(s) of the signer(s).
  - It may be “best practice” to ask the plan administrator to sign a paper copy to keep in its files, but not required.

# Signature Requirements

- For paper filings, both plan sponsor and plan administrator must sign and date.
- If same person, then only plan administrator must sign and date.

Under penalties of perjury, I declare that I have examined this statement, and to the best of my knowledge and belief, it is true, correct, and complete.					
Sign Here		Signature of plan sponsor	Date signed	Signature of plan administrator	Date signed



# **FIRE** Your Clients!

- Electronic filing of Form 8955-SSA may prove a viable solution for many of your clients
  - No signature requirements!
  - You can resolve any issues
  - Third party software options may include either
    - Creation of a file suitable for you to initiate filing on **FIRE**, or
    - A service that automatically initiates the **FIRE** filing upon your request

# Revenue Procedure 2015-32

- Form 5500-EZ late filer program
  - Made permanent effective June 3, 2015
  - \$500 penalty per filing/per plan – maximum \$1,500
  - Cannot use program if late filing already submitted
  - Filers may continue to request relief through reasonable cause

# Who is Eligible for Relief?

- Plan administrator or plan sponsor of
  - Certain one-participant plans
    - The PPA 2006 modified the term “partner” to include an individual who owns more than two percent of an S corporation. [See IRC Section 1372(b); also PPA 2006 Section 1103(a)(2)(E).]
    - One-participant plans covering 100 or more participants (e.g. large law firm with partner only plan) must file Form 5500-EZ on paper (years < 2014)
      - No benefit plan audit
  - Foreign plans

# What Must Be Filed?

- Only **paper** filings will be accepted.
- Actual **plan year** form, rather than current year form.
  - For years before 2005, Schedule B and Schedule E may have been required
  - Filings for years before 2006, remember that threshold was \$100,000
  - For years before 2009, certain one-participant plans were required to file Form 5500 rather than EZ
    - Permitted to use EZ for this purpose

# How/Where to File

- On paper only.
- Must mark in **red** on top of form

*DELINQUENT RETURN SUBMITTED UNDER  
REV. PROC. 2015-32, ELIGIBLE FOR PENALTY  
RELIEF*

- Each late filing package must include a Form 14704 attached to the oldest filing being submitted
- All late filers using this program submit to Ogden, UT

# Polling #6

- Did any of your clients use the pilot program giving Form 5500-EZ delinquent filer relief?
  - a. Yes
  - b. No
  - c. Don't know

# IRS Complicates DFVC

- Notice 2014-35 supercedes Notice 2002-23
- Applies to all DFVC filings after December 31, 2009
- Relief under DFVC from IRS penalties for late filings of Form 5500 is only applicable if the Form 8955-SSA is also filed, assuming one is required for the year.

# How to File

- Such late filings of Form 8955-SSA must be made on paper and may not be made electronically through FIRE.
- The filer should check the box on Line C, Part I (special extensions) and enter “DFVC” in the space provided.
- Special filing period ended December 1, 2014.



# Questions

- What if the person has already been paid out?
- What if the plan / plan sponsor no longer exists?
- What if the person has been reported on a more current Form 8955-SSA?
- How will the IRS know whether a filing is needed?

# Caution for DFVC Filers

- Going forward, be sure to submit Form 8955-SSA for any years for which Form 5500 is filed under DFVC.
  - Must be submitted within 30 days after Form 5500 is filed under DFVC.
- Filers who are only delinquent with regard to a Form 8955-SSA report (but not a Form 5500) may still seek relief for reasonable cause.

# EPCU Project – Final Returns

- 90% of returns contained errors
  - Final return showed assets at end of year
  - More than one final return submitted
  - Assets distributed after end of plan year but showed as \$0 at end of year on “final” return
  - Filed for a SEP or an IRA (Form 5498 is filed instead)
  - Short plan year box not checked, if applicable
- Form 1099-R not properly filed

# Other EPCU Projects

- Looking at filers who responded “Yes” to line 4e (line 10f on Form 5500-SF) *“Has the plan failed to provide any benefits when due under the plan?”*
- Also, first time EZ filers with lots of assets

# Dealing with IRS Notices

- CP220 notices issued whenever IRS makes an adjustment on an account
  - Is issued by collections department, not employee plans section
  - Generally, time has passed to dispute penalties
  - Language of letter not clear; should refer to changes to “*Form 5500 Account*”

# Form 8822-B

[www.irs.gov/form8822b](http://www.irs.gov/form8822b)

<b>Form 8822-B</b> (Rev. October 2014) Department of the Treasury Internal Revenue Service	<b>Change of Address or Responsible Party — Business</b> ▶ Please type or print. ▶ See instructions on back. ▶ Do not attach this form to your return. ▶ Information about Form 8822-B is available at <a href="http://www.irs.gov/form8822b">www.irs.gov/form8822b</a> .	OMB No. 1545-1163
<b>Before you begin:</b> If you are also changing your home address, use Form 8822 to report that change.		
If you are a tax-exempt organization (see instructions), check here <input type="checkbox"/>		
Check <b>all</b> boxes this change affects:		
1 <input type="checkbox"/> Employment, excise, income, and other business returns (Forms 720, 940, 941, 990, 1041, 1065, 1120, etc.)		
2 <input type="checkbox"/> Employee plan returns (Forms 5500, 5500-EZ, etc.)		
3 <input type="checkbox"/> Business location		

- Used to notify IRS within 60 days of a change in *responsible party* for a retirement plan
  - An entity with an EIN (e.g., sponsor, administrator, trust) has mandatory requirement to file form to report change
  - No penalty for failure to file

# Reactivating a Trust EIN

- IRS website updated for process
- Plan trustee or practitioner may fax request to **801.620.7116** to EP Entity Control Unit in Ogden, UT
  - EIN in question
  - Plan name
  - Plan sponsor's mailing address, and
  - Name, address, phone of contact

# Form 5558 – Best Practices

- File *EARLY!*
- Use a shipping/ mailing method that allows you to verify receipt by IRS
- Keep track of what you sent, for which plans, and when
- Make clients aware of the confirmation they will receive



# Polling #7

- Did your firm have any Form 5558 problems during or after last filing season?
  - a. Yes
  - b. Very minor
  - c. No
  - d. Don't know

# Form 5558 Processing Questions

- Write or fax the EP Entity Unit in Ogden using the following contact information:
  - Internal Revenue Service  
Ogden, UT 84201-0018  
Attention: EP Entity Unit, Mail Stop 6273
  - Fax Number: (801) 620-7116

# Other Filing Help

- Form 5500 Corner
  - <http://www.irs.gov/Retirement-Plans/Form-5500-Corner>
- Customer Account Services [1-877-829-5500]
  - [RetirementPlanQuestions@irs.gov](mailto:RetirementPlanQuestions@irs.gov)
  - Critical to include
    - EIN, plan number, plan name
    - Dates, issues, and contact information
    - No attachments – they can't open them!

# Schedule A and Form 5500-SF

- No Schedule A is attached to Form 5500-SF
  - Line 10e must report any fees or commissions paid to brokers, agents, etc. that would be shown on lines 2 and 3 of Schedule A if it were attached
  - Hard expenses are reported at line 8f, *Administrative service providers (salaries, fees, and commissions)*

# Reporting Late Deposits

# How to Report on Form 5500

- Facts:
  - Principal = \$10,000
  - Loss Date = July 15, 2014
  - Recovery Date = October 15, 2014
  - Final Payment Date = February 23, 2015
- Late deposits reported at line 4a of Schedule H / I or line 10a of Form 5500 SF
  - For both 2014 and 2015 plan years
  - Amount = \$10,000

# Attachment to Form 5500

- When plan audit attached, required for line 4a of Schedule H/I
  - May want to include anytime late deposit reported on Schedule I or Form 5500-SF
- Format of attachment is same as shown in FAQs on DOL/EBSA website with tweak for noting whether loan repayments are included in totals.

Schedule H / I Line 4a — Schedule of Delinquent Participant Contributions				
Participant Contributions Transferred Late to Plan	Total that Constitute Nonexempt Prohibited Transactions			Total Fully Corrected Under VFCP and PTE  2002-51
Check here if Late Participant Loan Repayments are included:	Contributions Not Corrected	Contributions Corrected Outside VFCP	Contributions Pending Correction in VFCP	

## Line 4a / 10a

- Reporting late deposits of participant contributions or loan repayment withholding
  - Why doesn't DOL solicit more specific details on the face of the Form 5500 instead of letting Regional offices badger those who admit to having late deposits?



# Common Issue

- DOL audits a § 401(k) plan and decides
  - There were more late deposits than reported on Form 5500 – which could span multiple years, or
  - They don't like the way the correction was calculated
  - So they make the plan sponsor fix it.
- Should an amended Form 5500 be filed?
- Do separate Form 5330 need to be filed for each affected year?

# Q&A

- Should an amended Form 5500 be filed?
  - Technically, yes. It starts the statute of limitations running again only for those items that are amended.
- Do separate Forms 5330 need to be filed for each affected year?
  - One could argue that, technically, yes separate filings are required – but IRS will accept one Form 5330 with appropriate disclosure of all data and full tax payment.

# Polling #8

- Generally, when DOL changes the amount of late deposits applicable to a prior year, do your clients file an amended Form 5500?
  - a. No
  - b. Yes
  - c. No experience

# Example from Form 5330 Instructions

**Figure 1. Example for the calendar 2006 plan year used when filing for the 2006 tax year**

**Schedule C. Tax on Prohibited Transactions (section 4975) (see instructions) Reported by the last day of the 7th month after the end of the tax year of the employer (or other person who must file the return)**

(a) Transaction number	(b) Date of transaction (see instructions)	(c) Description of prohibited transaction	(d) Amount involved in prohibited transaction (see instructions)	(e) Initial tax on prohibited transaction (multiply each transaction in column (d) by the appropriate rate (see instructions))
(i)	7-1-06	Loan	\$6,000	\$900
(ii)				
(iii)				
3 Add amounts in column (e). Enter here and on Part I, line 3a				\$900

**Figure 2. Example for the calendar 2007 plan year used when filing for the 2007 tax year**

**Schedule C. Tax on Prohibited Transactions (Section 4975) (see instructions) Reported by the last day of the 7th month after the end of the tax year of the employer (or other person who must file the return)**

(a) Transaction number	(b) Date of transaction (see instructions)	(c) Description of prohibited transaction	(d) Amount involved in prohibited transaction (see instructions)	(e) Initial tax on prohibited transaction (multiply each transaction in column (d) by the appropriate rate (see instructions))
(i)	7-1-06	Loan	\$6,000	\$900
(ii)	1-1-07	Loan	\$12,000	\$1,800
(iii)				
3 Add amounts in column (e). Enter here and on Part I, line 3a				\$2,700

# Reporting on Form 5330

- Reported on Schedule C as a Prohibited Transaction
  - Refer to examples on page 8 of Instructions
- *Information Needed:*
  - *Amount Involved* is the lost earnings amount [per Rev. Rul. 2006-38].
  - *Interest rate* is 3% through 12/31/2014; 3% through 02/23/2015  
(we'll assume funds experienced losses during period)
  - *Taxable period* is July 15, 2014 to February 23, 2015.
- So, first we have to calculate the amount involved. As a practical matter, many just use the amount calculated as total lost earnings.

# Sample Calculator Results

## VFCP Calculator - Final Results

Lost Earnings and interest, if any, (\$76.72) exceed Restoration of Profits (\$0.00). Therefore the amount due to the plan is: **\$76.72**.

**Note:** This amount does **not** include any Principal Amount that may also need to be paid to the plan. Check the specific transaction to determine if the Principal Amount must be paid.

Principal	Loss Date	Recovery Date	Final Payment Date	Amount Due
\$10,000.00	7/15/2014	10/15/2014	2/23/2015	\$76.72

### Lost Earnings

Total Lost Earnings: \$76.72

- Compare these results to calculation of lost earnings using plan earnings rate – will need to create spreadsheet for this calculation.
- No question if funds are in loss position during period involved or if VFC application will be filed.

*See also Rev. Proc. 95-17.*

# Calculation of *Amount Involved*

## Calculation of Amount Involved

Date	Principal	Interest Rate	Time	Amount Involved
07/15/2014	\$10,000	3.00%	92/365	75.62
10/15/2014	75.62	3.00%	77/365	0.48
Total for period 07/15/2014 to 12/31/2014				76.09
01/01/2015	76.09	3.00%	54/365	0.34
Total for period 01/01/2015 to 02/23/2015				<u>76.43</u>

*See also Revenue Ruling 2006-38*

# Calculation of *Excise Tax* [amounts should be rounded to \$1]

## Calculation of First Tier Excise Tax

Date of PT	Taxable Period	2014 Tax Yr	2015 Tax Yr
07/15/2014	07/15/2014 to 12/31/2014	76.09	76.09
01/01/2015	01/01/2015 to 02/23/2015		0.34
		76.09	76.43
		X 15%	X 15%
	Excise Tax	11.41	11.46



# Example [reporting on separate Forms 5330]

## Schedule C. Tax on Prohibited Transactions (Section 4975) (see instructions) Reported by the last day of the 7th month after the end of the tax year of the employer (or other person who must file the return)

1 Is the excise tax a result of a prohibited transaction that was (box "a" or box "b" must be checked):

a ☐ discrete

b ☒ other than discrete (a lease or a loan)

2 Complete the table below to disclose the prohibited transactions and figure the initial tax (see instructions)

(a) Transaction number	(b) Date of transaction (see instructions)	(c) Description of prohibited transaction	(d) Amount involved in prohibited transaction (see instructions)	(e) Initial tax on prohibited transaction (multiply each transaction in column (d) by the appropriate rate (see instructions))
(i)	07/15/2014	Loan to employer in the form of late deposits of employee payroll withholding on 07/15/2014	76.09	11.41

## Schedule C. Tax on Prohibited Transactions (Section 4975) (see instructions) Reported by the last day of the 7th month after the end of the tax year of the employer (or other person who must file the return)

1 Is the excise tax a result of a prohibited transaction that was (box "a" or box "b" must be checked):

a ☐ discrete

b ☒ other than discrete (a lease or a loan)

2 Complete the table below to disclose the prohibited transactions and figure the initial tax (see instructions)

(a) Transaction number	(b) Date of transaction (see instructions)	(c) Description of prohibited transaction	(d) Amount involved in prohibited transaction (see instructions)	(e) Initial tax on prohibited transaction (multiply each transaction in column (d) by the appropriate rate (see instructions))
(i)	07/15/2014	Loan to employer in the form of late deposits of employee payroll withholding on 07/15/2014	76.09	11.41
(ii)	01/01/2015	Loan to employer in the form of late deposits of employee payroll withholding on 01/01/2015	.34	.05

# Example [reporting on one Form 5330]

**Schedule C. Tax on Prohibited Transactions (Section 4975) (see instructions) Reported by the last day of the 7th month after the end of the tax year of the employer (or other person who must file the return)**

**1** Is the excise tax a result of a prohibited transaction that was (box "a" or box "b" must be checked):

**a** ☐ discrete

**b** ☒ other than discrete (a lease or a loan)

**2** Complete the table below to disclose the prohibited transactions and figure the initial tax (see instructions)

(a) Transaction number	(b) Date of transaction (see instructions)	(c) Description of prohibited transaction	(d) Amount involved in prohibited transaction (see instructions)	(e) Initial tax on prohibited transaction (multiply each transaction in column (d) by the appropriate rate (see instructions))
(i)	07/15/2014	Loan to employer in the form of late deposits of employee payroll withholding on 07/15/2014	76.09	11.41
(ii)	01/01/2015	Loan to employer in the form of late deposits of employee payroll withholding on 01/01/2015	76.43	11.46

Note: most would choose to round to \$1

# Polling #9

- Generally, does your firm file Form 5330 even when the excise tax is  $< \$1$ ?
  - a. Yes
  - b. No
  - c. Don't know

# Form 5330 – Based on Taxpayer's Year

<b>Form 5330</b> (Rev. December 2013) Department of the Treasury Internal Revenue Service		<b>Return of Excise Taxes Related to Employee Benefit Plans</b> (Under sections 4965, 4971, 4972, 4973(a)(3), 4975, 4976, 4977, 4978, 4979, 4979A, 4980, and 4980F of the Internal Revenue Code) ► Information about Form 5330 and its instructions is at <a href="http://www.irs.gov/form5330">www.irs.gov/form5330</a> .		OMB No. 1545-0575
Filer tax year beginning _____, _____ and ending _____, _____				
<b>A</b> Name of filer (see instructions)		<b>B</b> Filer's identifying number (Enter either the EIN or SSN, but not both. See instructions.)		
Number, street, and room or suite no. (If a P.O. box or foreign address, see instructions.)		Employer identification number (EIN)		
City or town, state or province, country, and ZIP or foreign postal code		Social security number (SSN)		
<b>C</b> Name of plan		<b>E</b> Plan sponsor's EIN		
<b>D</b> Name and address of plan sponsor		<b>F</b> Plan year ending (MM/DD/YYYY)		
<b>H</b> If this is an <b>amended return</b> , check here . . . . . ► <input type="checkbox"/>		<b>G</b> Plan number		

# Sample Combined Form 5330

**Schedule C. Tax on Prohibited Transactions (Section 4975) (see instructions) Reported by the last day of the 7th month after the end of the tax year of the employer (or other person who must file the return) (continued)**

**1** Is the excise tax a result of a prohibited transaction that was (box "a" or box "b" must be checked):  
**a** ☐ discrete **b** ☒ other than discrete (a lease or a loan)

**2** Complete the table below to disclose the prohibited transactions and figure the initial tax (see instructions)

(a) Transaction number	(b) Date of transaction (see instructions)	(c) Description of prohibited transaction	(d) Amount involved in prohibited transaction (see instructions)	(e) Initial tax on prohibited transaction (multiply each transaction in column (d) by the appropriate rate (see instructions))
(i)	01/01/2004	late deposit of employee 401k withholding - see attached summary Note: value in column (d) is cumulative for 2004-2010 period	34860.00	5229.00

Attachment to Form 5330

Calculation of First Tier Excise Tax

Date of PT	Taxable Period	2004 Tax Yr	2005 Tax Yr	2006 Tax Yr	2007 Tax Yr	2008 Tax Yr	2009 Tax Yr	2010 Tax Yr
2004	01/01/2004 to 12/31/2009	\$404.50	\$404.50	\$404.50	\$404.50	\$404.50	\$404.50	\$404.50
2005	01/01/2005 to 02/23/2010		2,381.95	2,381.95	2,381.95	2,381.95	2,381.95	2,381.95
2006	01/01/2006 to 12/31/2006			2,959.69	2,959.69	2,959.69	2,959.69	2,959.69
2007	01/01/2007 to 12/31/2007				1,247.09	1,247.09	1,247.09	1,247.09
2008	01/01/2008 to 12/31/2008					190.64	190.64	190.64
2009	01/01/2009 to 12/31/2009						10.44	10.44
2010	01/01/2010 to 08/19/2010 **							0.00
		\$404.50	\$2,786.45	\$5,746.14	\$6,993.23	\$7,183.87	\$7,194.31	\$7,194.31
		X 15%	X 15%	X 15%	X 15%	X 15%	X 15%	X 15%**
Excise Tax		\$60.68	\$417.97	\$861.92	\$1,048.98	\$1,077.58	\$1,079.15	\$682.97
								<b>Total Tax</b>
								<b>\$5,229.25</b>

\*\* 231 days

For illustration purposes only; 2010 plan year total (not tax) must be prorated (231/365) to arrive at Amount Involved on sample Form 5330.

# Consequences

- IRS sent a letter acknowledging receipt of the Form 5330 and imposed penalties and interest, which was expected.
- This also alleviates the need to get a separate check for each Form 5330 filing.
  - The plan sponsor has paid the proper penalty.
  - Full disclosure has occurred.
  - Everybody happy?

# Polling #10

- Generally, does your firm prepare separate Forms 5330 for each affected year?
  - a. Yes
  - b. No, we combine
  - c. No experience

# Closing Thoughts

- Practitioners often do not know about late deposits until well after the event.
- Encourage your clients to see the wisdom of full correction (with or without submitting a VFC application).
- Cross the t's and dot the i's!



# Questions?

Thank you!

*questions@form5500help.com*