



One Minute Memo[®]

Mandatory Electronic Filing of 5500s to Begin in 2010

2008 Pension 5500s Must Be Posted on Employer Intranet Sites

The Department of Labor has taken another step toward requiring electronic filing and disclosure of all Form 5500 annual reports by announcing that paper filing will no longer be accepted for filings for the 2009 plan year. In a related development, sponsors of defined benefit pension plans who maintain an intranet website for communications with employees must post portions of the plan's Form 5500 on the website beginning with the 2008 annual report.

Electronic Filing Mandatory for 2009 5500s

Beginning January 1, 2010, any company that sponsors a retirement or welfare benefit plan and is required by the Department of Labor to file a Form 5500 must do so electronically instead of by mail. This electronic program is called the ERISA Filing Acceptance System (EFAST2). Mandatory electronic filing applies both to Form 5500 and 5500-SF (the new small plan form being introduced in the 2009 plan year), but not to Form 5500-EZ.

To submit a filing, a plan sponsor or designated person (user) must use either IFILE (a free web-based filing application located on the Department of Labor's website at www.efast.dol.gov, which is anticipated to be available on January 1, 2010) or use third-party certified software.

Electronic filing is mandatory for all plan years beginning in 2009. A Form 5500 for a non-calendar plan year that began in 2008 may still be filed on a paper form after January 1, 2010, provided that it is timely filed no later than October 15, 2010. After that date, no paper forms will be accepted. If a Form 5500 for a short plan year that began in 2009 would otherwise be due before January 1, 2010, an automatic extension is granted until 90 days after the free IFILE software becomes available.

Because of these changes, companies that prepare their own Forms 5500 in-house will need to plan ahead to determine which method they will use to file, and all plan sponsors should anticipate a longer preparation time for their 2009 filings.

Website Posting of Pension 5500s

The Pension Protection Act of 2006 requires each sponsor of a defined benefit pension plan that maintains an intranet website "for the purpose of communicating with employees and not the public" to post portions of the plan's Form 5500. The requirement first applies to the 5500s for plan years beginning in 2008—i.e., the 5500 that is due October 15, 2009, for a calendar year plan that obtained the automatic extension.

The plan sponsor is not required to post the entire Form 5500 with all of its schedules and the audit report, but just the basic Form 5500 itself and Schedule SB, or MB for a multiemployer plan. (Schedules SB and MB replace Schedule B, which in prior years was filed by all pension plans.) A plan sponsor can choose to post the entire Form 5500 if it wishes to do so, but in that case should be sure to first remove Schedule SSA, which includes individual participants' social security numbers.

In many cases the plan sponsor will have its own intranet website, and the plan's recordkeeper will have a separate dedicated website that participants can use to access their benefit information. In the absence of any guidance from the Department of Labor, posting the 5500 on the plan sponsor's website would appear to satisfy the literal language of the statute, although a plan sponsor wishing to be absolutely certain of complying could post it on both sites. Note that the law does not require a plan sponsor to establish a website for posting the 5500, but only to post it on a website if one already exists.

For additional information regarding the new electronic filing and posting requirements, please contact the Seyfarth Shaw attorney with whom you work, or any Employee Benefits attorney on our website (www.seyfarth.com/EmployeeBenefits).



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