

New Compliance Questions on Form 5500 Filing



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New Compliance Questions on Form 5500 Filing



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The Internal Revenue Service (IRS) recently announced that it will be collecting additional compliance information on qualified plans. The additional information gathered will be used by the IRS to monitor tax compliance, encourage plan sponsor development and use of internal controls, compile data to use for future Employee Plans Compliance Unit (EPCU) projects, and check plans for potential disqualification errors.

The additional compliance questions may be answered on either the Form 5500 or 5500-SF or may be answered via the submission of a new paper-only Form 5500-SUP. The full name of Form 5500-SUP is the *Annual Return of Employee Benefit Plan Supplemental Information*.

The initial draft Form was released last October and further modified by the IRS in March, 2015. This new form is expected to be effective for plan years beginning on or after January 1, 2015, but only applies to Form 5500-series returns with a filing deadline (without extension) after December 31, 2015.

Form 5500 (or Form 5500-SF) filers that are required to file **at least** 250 returns (including Forms 1099-R and Form 945) during a calendar year will be required to answer the new compliance questions on the Form 5500 or 5500-SF which is filed electronically through the EFAST2 filing system. If the filer files **fewer** than 250 returns in a calendar year, the filer has the option to answer the questions electronically under EFAST2 or via the paper form 5500-SUP. Filers who answer the IRS compliance questions electronically on the Form 5500 or 5500-SF do not need to file a paper Form 5500-SUP.

The additional compliance information that will be gathered includes items such as:

- Trustee name and phone number,
- Whether the plan is a 401(k) plan,
- Whether the plan is Safe Harbor or uses the ADP/ACP Test,
- If the ADP/ACP Test is used, whether the current year testing method is used,
- Whether coverage testing is satisfied by the ratio percentage test or average benefits test,
- Whether permissive aggregation with other plans is used to satisfy coverage and nondiscrimination testing,
- Whether the plan has been timely amended for ALL tax law changes,
- Dates and other information related to the most recent plan amendment or restatement,



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- Opinion or Advisory Letter information for adopters of pre-approved master and prototype documents or volume submitter plans OR determination letter information for plans that are individually designed,
- Whether the plan is maintained in a U.S. territory,
- If the plan had unrelated business taxable income and the amount, and
- Whether in-service distributions were made during the plan year and the amount.

The Form 5500-SUP requires that the EFAST2 acknowledgement code be entered on the top of the Form. This 30 character code is received after the Form 5500 or 5500-SF is electronically filed, which means that if the plan is filing the paper Form 5500-SUP, it will need to be filed after the Form 5500/5500-SF is submitted through EFAST2 and the code is generated.

It will be important to understand and correctly answer the new compliance questions to avoid inadvertently providing incorrect information and possibly triggering an audit.

Answering some of the compliance questions will be challenging because they do not always have clear cut answers. For example, for the question “Did the plan perform ADP/ACP testing for the plan year using the current year testing method?”, how should a plan respond if it uses the prior year testing method for the ADP test and the current year testing method for the ACP test? For now, this is just a yes or no question as to whether the current year testing method was used.

Perhaps the scariest compliance question is the one which asks, “Has the plan been timely amended for ALL required tax law changes?” If a plan has been in existence for a while, there will have been many amendments required through the years. And, while it is likely that the plan has been amended and restated timely if the plan sponsor has partnered with a Third Party Administrator or ERISA attorney who has kept the plan document up-to-date, the person answering that question may not have the detailed history of all of this activity.

Another question worth noting is one that inquires about unrelated business taxable income. If this applies, the corresponding amount must be entered on the form. Unrelated business taxable income normally is not an issue for retirement plans invested in mutual funds and similar investment vehicles but it could apply in situations where participants invest in partnerships or in ESOPs. If this applies, a Form 990-T may need to be filed as well.

The good news is that a few questions that were on the original Form 5500-SUP issued in October were removed with the revised Form issued in March. The original Form asked for the amount of contributions deducted for the plan year and the amount of any ESOP dividends paid.



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Stay tuned for further developments. No matter which direction this goes, it is clear that plan sponsors need to be prepared to provide additional compliance data on the retirement plan to assist the IRS in it's determination that all regulations are being followed.



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