

## Employee Benefits Plan Newsletter

# Changes to the 2016 Forms 5500 and 5500-SF and Increases to ERISA Penalty Amounts

By Louis F. LiBrandi, Principal

The U.S. Department of Labor (DOL), Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC) have released advance information regarding changes to the 2016 Form 5500/5500-SF annual return/report schedules and related instructions. The changes are generally not significant. Changes to the Form 5500 and Form 5500-SF and their schedules for plan year 2016 are described under "Changes to Note" in the respective 2016 instructions.

Following are some of the key changes to the Forms being proposed as well as associated penalties.

### Form 5500

#### IRS Compliance Questions (Schedules H, I and R)

Although the questions appear on the 2016 Form, the IRS has decided that filers:

- Should not enter the Preparer's Information at the bottom of the first page of Form 5500 for the 2016 plan year;
- Should not answer the IRS questions (Lines 4o and 6a through 6d of Schedules H and I); and,
- Should not answer the "Part VII — IRS Compliance Questions" of the Schedule R.

The guidance issued by the IRS for these items is similar to that for the 2015 Form 5500.

#### Schedules H and I

Line 4o has been updated. This line item requires a response from plans that are required to meet the minimum funding requirements of Internal Revenue Code (IRC) section 412 (i. e., defined benefit and money purchase plans). A response is required regarding distributions which were made during the plan year to participants who attained age 62 who had not separated from service.

Line 4p regarding in-service distributions has been eliminated.

Line 5c is modified to add a new question. The existing Line 5c question asks if a plan is a defined benefit plan and whether or not it is covered by the PBGC insurance program. Filers who answer "yes" to this question must now enter the "My PAA" generated confirmation number for the PBGC premium filing for the plan year.

#### Schedule MB

Line 5i has been modified to eliminate "Reorganization" as an actuarial cost method.

## Schedule SB

The instructions for Line 27, Code 1, have been updated to reflect guidance on certain issues relating to the application of the Cooperative and Small Employer Charity Pension Flexibility Act.

## Form 5500-SF

Line 10j regarding unrelated business taxable income incurred by the trust has been eliminated.

## IRS Compliance Questions

Although the questions appear on the 2016 Form, the IRS has decided that filers:

- Should not enter the Preparer's Information at the bottom of the first page of Form 5500-SF for the 2016 plan year;
- Should not complete "Part IX — IRS Compliance Questions" on the Form 5500-SF.

The guidance issued by the IRS for these items is similar to that for the 2015 Form 5500-SF.

## ERISA Penalty Increases

### Administrative Penalties

The Form 5500 instructions have been updated to reflect an increase in the maximum civil penalty amount assessable under ERISA Section 502(c)(2), required by the Federal Civil Monetary Penalties Inflation Adjustment Act Improvements Act of 2015.

DOL regulations published on June 30, 2016 increased the maximum penalty to **\$2,063 per day** for a plan administrator who fails or refuses to file a complete or accurate Form 5500 report. The increased penalty under section 502(c)(2) is applicable for civil penalties assessed after August 1, 2016 for associated violation(s) that occurred after November 2, 2015, the date the 2015 Inflation Adjustment Act was enacted. The new maximum penalty is significantly higher than the previous penalty of **\$1,100 per day** and reflects the fact that previous penalties were either capped or have not been adjusted for many years.

***Plan administrators must be vigilant regarding their filing responsibilities and deadlines as penalties can become very costly.***

### Other Penalties

In addition to the penalties described above for failure to timely file the Form 5500 series, there are increased penalties for many other employee benefit compliance violations as a result of the Improvements Act. Such penalties include failure to furnish a statement of benefits to former retirement plan participants or beneficiaries, or failure to maintain proper retirement plan records under ERISA Section 209(b) (\$28 per employee, up from \$11 per employee) and failure to furnish plan documents to the DOL upon request under ERISA section 502(c)(6) (\$147 per day per employee, up from \$110 per day per employee). Several other penalties enforceable by ERISA have also been adjusted for inflation. [The Department of Labor's Fact Sheet](#) has more information on this matter.

### Contact Us

Questions regarding the 2016 Form 5500 and/or other questions on compliance matters pertaining to employee benefit plans should be directed to Louis F. LiBrandi at [lilibrandi@pkfod.com](mailto:lilibrandi@pkfod.com) or Anthony Bianchi at [abianchi@pkfod.com](mailto:abianchi@pkfod.com) at 212.286.2600.

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