

Employee Benefit Update

Making Sense of Employee Benefit Plan Compliance Requirements

If you are a plan administrator responsible for maintaining your company's employee benefit plans and you have questions like; Am I required to file an annual tax return (Form 5500)? Which Form 5500 is right for me? What schedules of the Form 5500 apply to my plan(s)? Does my plan require an audit? You are not the only one. Like many other activities related to the IRS and Department of Labor (DOL), there is often confusion about employee benefit plan annual returns and their related audits. Here are some of the questions we most frequently encounter.



Who should file a Form 5500?

A Form 5500 series return/report must be filed every year for every pension benefit subject to ERISA, including:

- Profit-sharing plans, stock bonus plans, money purchase plans, 401(k) plans
- 403(b) plans
- Individual retirement accounts (IRAs) established by an employer under Code section 408(c)
- Church pension plans electing coverage under Code section 410(d)

Welfare benefit plans covered by ERISA are also required to file a Form 5500.

Who does not need to file a Form 5500?

The following types of pension benefit plans do not need to file a Form 5500:

- Savings Incentive Match Plans for Employees of Small Employers (SIMPLE plans) that involve SIMPLE IRAs under Code section 408(b)
- Simplified employee pensions (SEPs) or salary reduction SEPs
- Church pension benefit plans not electing coverage under Code section 401(d)
- Governmental plans
- One-Participant (Owners and Their Spouses) Retirement Plans

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Do you have plan participants approaching age 70?

If your retirement plan includes participants approaching age 70, it is important that both your plan administrator and these participants understand the rules regarding Required Minimum Distributions (RMDs), which must begin at age 70 ½. Retirement plan participants are responsible for taking the correct amount of RMDs on time every year from their accounts, and they face stiff penalties for failure to take RMDs.

Required Minimum Distributions generally are minimum amounts that a retirement plan account owner must withdraw annually starting with the year that he or she reaches 70 ½ years of age or, if later, the year in which he or she retires. However, if the account owner is a five percent owner of the business sponsoring the retirement plan, the RMDs must begin once the account holder is age 70 ½, regardless of whether he or she is retired. RMD rules apply to all employer-sponsored retirement plans, including profit-sharing plans, 401(k) plans, and 403(b) plans.

If your plan includes participants who will be required to take RMDs, those participants must take their first RMD for the year in which he or she turns 70 ½. The first RMD payment can be delayed until April 1 of the year following the year in which the participant turns 70 ½, if desired. However, for all subsequent years, including the year in which the first RMD was paid by April 1, the account owner must take the RMD by December 31.

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New form and statement requirements for 5500 filers


Recently, the IRS released the 2009 and 2010 Forms 8955-SSA. These new forms replace the old Schedule SSA which was previously filed as part of the Form 5500. The newly created Forms 8955-SSA are used to report information about separated plan participants with deferred vested benefits under the plan. The forms satisfy the reporting requirements of section 6057(a) for plan years beginning on or after January 1, 2009. The 8955-SSA is a stand alone form that can be filed with the IRS either electronically or on paper. The form is not available for public inspection and should not be included with the filing of form 5500 with the Department of Labor. The 8955-SSA must normally be filed by the last day of the seventh month following the last day of that plan year, plus extensions. However, for plan years 2009 and 2010, the IRS has granted plan administrators additional time to complete and file the Forms 8955-SSA. For these years, Forms 8955-SSA are due on the later of the due date that generally applies for filing the Form 8955-SSA or January 17, 2012.

One important consideration of the new Form 8955-SSA can be found on line eight. Although plan administrators have been required to provide a statement describing the deferred vested benefit to which the participant is entitled for plan years beginning after December 31, 1975, most practitioners were unaware of the requirement to do so and did not provide individual statements. Form 8955-SSA now asks, "Did the plan administrator provide an individual statement to each participant required

to receive a statement?" The statement must be provided to the participant no later than date on which the plan is to file the Form 8955-SSA with the IRS (including extensions). In addition, the Code imposes a \$50 penalty on the plan administrator for each willful failure to furnish the statement or for a willful furnishing of a false statement.


The individual statement needs to include the following participant information from the SSA:

1. The social security number of the participant.
2. The participant's name.
3. Type of annuity (lump sum, term certain annuity, life annuity, etc.).
4. Type of payment (lump sum, annually, monthly, etc.).
5. For defined benefit plans, amount of the periodic payment.
6. For defined contribution plans – the total value of the participant's account.
7. The individual statement also must contain a notice (if applicable) of any benefits which are forfeitable if the participant dies before a certain date.


Instructions, forms, FAQs, and information about filing Form 8955-SSA electronically are available at the IRS website at irs.gov. 


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Required Minimum Distributions are taxed at the income tax rate of the owner of the account. However, if an account owner fails to withdraw a RMD, fails to withdraw the full amount of the RMD, or fails to withdraw the RMD by the applicable deadline, the amount not withdrawn is taxed at 50 percent. If the account owner does not withdraw a RMD or does not withdraw the full amount, he or she will also need to file Form 5329, Additional taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts, with his or her federal tax return for the year in which the full amount of the RMD was not taken.

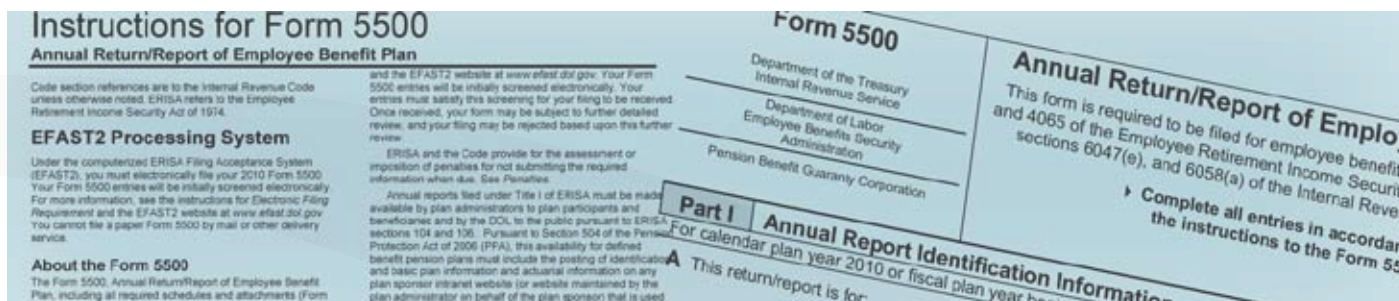
Because the penalty for not taking Required Minimum Distributions is stiff, it is important that your plan's participants are aware of the time at which they must begin. If you have questions about RMDs for your plan participants, be sure to consult your CPA for advice on your specific situation. 

RPB News & Notes

 Bob Maier, a CPA with the Middleton office of Reilly, Penner & Benton LLP has been promoted to Principal. The Milwaukee RPB office recently announced the following promotions: Josh Bierbach and Brian Helf have been promoted to Manager; Rick Grochowske and Juliet Urso have been promoted to Senior; Shanna Pfeffer and Jenny Slater have been promoted to In-Charge.

 Shanna Pfeffer, a CPA with the Milwaukee office of Reilly, Penner & Benton LLP recently received her Certified Fraud Examiner (CFE) credentials. The CFE credential provides Shanna with the knowledge and experience to assist in the prevention and detection of fraud, resolve allegations of fraud from inception to disposition, gather evidence, take statements, write reports and testify to findings for the firm's clients. Shanna is the second CPA at Reilly, Penner & Benton to obtain the CFE credential.

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(Making Sense of Employee Benefit Plan Compliance Requirements continued from page 1)

The following types of welfare benefit plans do not need to file a Form 5500:

- Welfare benefit plans that cover fewer than 100 participants as of the beginning of the plan year
- Unfunded, fully insured, or a combination of insured and unfunded plans
- Governmental welfare benefit plans
- Unfunded or insured welfare benefit plans maintained for a select group of management or highly-compensated employees
- Employee benefit plans maintained only to comply with worker's compensation, unemployment compensation, or disability insurance laws

What forms should be filed?

Form 5500 reporting requirements vary depending on whether the Form 5500 is being filed for a "large plan" or a "small plan." Generally, a return/report filed for a plan that covered 100 or more participants as of the beginning of the plan year should be completed following the requirements for a "large plan" using Form 5500 and the required schedules and attachments.

Plans that covered fewer than 100 participants as of the beginning of the plan year are generally completed following the requirements for a "small plan." However, there are exceptions:

1. **The 80 – 120 Participant Rule.** If the number of participants reported on line 5 is between 80 and 120 and a Form 5500 was filed for the prior plan year, you may elect to complete the return/report in the same category as was filed for the prior return/report. For example, if a Form 5500 was filed for the prior year as a small plan and the number of participants to be entered on the current Form 5500 is 120 or less, you may elect to complete your current Form 5500 using the Form 5500-SF rather than Form 5500.
2. **Short Plan Year Rule.** If the plan had a short plan year of seven months or less for either the prior year plan or the current year, an election can be made to defer filing the accountant's report.


If such an election was made for the prior plan year, the current year Form 5500 must be completed following the requirements for a large plan, including the attachment of Schedule H and the accountant's reports, regardless of the number of plan participants.

For additional guidance on what forms should be filed, the IRS includes a handy chart on pages 12 and 13 of the General Instructions to Form 5500.

Do I need an audit?

Generally, Federal law requires employee benefit plans with 100 or more participants on the first day of the plan year to have an audit as part of their obligation to file an annual return/report (Form 5500 Series). There are however, exceptions to this general rule. If your plan had over 100 eligible participants at any time during the plan year, it would be worthwhile to contact your plan's attorney or third-party administrator to help you evaluate the need for an audit of the plan. It is better to have the audit done before filing the 5500 to avoid receiving a notice from the DOL and potential penalties for non-compliance.

A well-performed audit benefits and protects the plan, the plan sponsor, plan fiduciaries, and the plan's participants by ensuring that the plan is operating in accordance with applicable laws and regulations and within the structure of the plan's governing documents. The plan's auditor will work with other plan fiduciaries to ensure that participants are credited timely with the proper contributions and investment earnings. In some cases an audit will also help to ensure that the plan's assets have been fairly valued.

RPB has been performing audits of employee benefit plans for over 20 years and has a dedicated team of auditors who perform audits for over 75 plans annually. If you have questions about keeping your plans in compliance with annual reporting requirements, we would be happy to assist you. 

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