



January 2010

## Employee Benefit Plan Current Developments

### I. Form 5500 Electronic Signature – EFAST2

#### *What's New?*

The new federal government system for online filing of the required Form 5500 – Annual Return/Report to the Employee Benefit Security Administration (“EBSA”) at the United States Labor Department has become fully operational.

All 2009 Form 5500 and Form 5500-SF must be filed electronically and in certain situations (see **II** below), other plan year filings must be filed electronically. Depending on the capabilities of the software used by the service provider or employer who is preparing the Form 5500, it can be transmitted to the EBSA by the employer or form preparer after it is electronically signed.

#### *Filing Process Alternatives*

Electronic filing of the Form 5500 will generally be performed using two (2) approaches; the government’s bare bones system – IFILE which was built to support small filers. Information (and draw backs) regarding the IFILE system include; not a user friendly process when compared to third party software, no edit or validation checks, or limited uploading and batch filing capabilities.

The Department of Labor (“DOL”) anticipates that over 90% of the Form 5500s will be filed electronically using approved third party software. The discussion below highlights the registration process for a plan sponsor who has a provider preparing the Form 5500. The process only takes a few minutes to complete and the on-line screen instructions are easy to follow.

#### *Signing Credentials*

The signer of the Form 5500 must obtain filing signer credentials from the DOL. To obtain the filing signer credentials, you must register on the DOL’s website <http://www.efast.dol.gov> and on the left side of the page click on “Register”. Data that will be needed to be provided to the Profile Information includes: name, address, phone number, email address and company name. Before the registration process is complete, an answer will need to be provided to a selected challenge question (e.g., place or date of birth).

Before finalizing the process, the DOL will provide a user ID and pin code. These items should be secured, and not shared. The final step requires the selection of a 10-16 character password to allow you to access your user ID and pin code.

The DOL has indicated that you will need a user ID and password to check the status of submitted filings. It is recommended that more than one individual within organizations have signing authority for the Form 5500 and obtain the required electronic credentials to facilitate the timely transmission of the Form 5500.

### II. Various Types of Form 5500 Filings

#### Delinquent Filings

- 2008 Plan Year Filings  
Employee benefit plans which have a 2008 plan year Form 5500 filing deadline after December 31, 2009 (e.g., 2008 plan year 7/1/2008 – 6/30/2009 Form 5500 due 1/31/2010), the plan sponsor may file a paper 2008 Form 5500 with the DOL through October 15, 2010. A plan sponsor may file the amended 2008 Form 5500 by paper to the DOL through October 15, 2010.

Amended Filings for other than the 2008 Plan Year

- Any amended Form 5500 filed after December 31, 2009 must be filed electronically under EFAST2 using currently available forms.

Short Plan Year 2009 Filings

- Any short 2009 plan year filed after December 31, 2009, can contact the EFAST Contact Center (1-866-GO-EFAST) and explain its circumstances. The DOL can provide permission to file a paper version of the Form 5500 with the DOL based on the specific administrative burdens encountered in filing the Form electronically. Otherwise it appears the short 2009 plan year must file the Form 5500 electronically with the DOL.

Attachments and Exceptions

- There can be more than 50 attachments to a Form 5500. Attachments must be in text or PDF format and must be attached to the electronic filing. Large plan Form 5500 filing may need to contact the DOL helpline for assistance with the transmission of a filing which exceeds the size limitation (approximately 10-15 megabytes).

**III. Schedule SSA for Retirement Plan Filings**

The Schedule SSA will no longer be part of the Form 5500 filing process under EFAST2. A new “Form 8955-SSA” has been developed to replace the Schedule SSA and it will be required to be filed directly with the IRS. No significant changes have been made to the schedule. The IRS anticipates this form will be required to be filed electronically in 2011.

**IV. The Department of Labor**

The Department of Labor has issued its final regulation that establishes a safe harbor period during which amounts that an employer has received from wages for contribution to certain employee benefits plans will not be “deemed plan assets” for purposes of ERISA. The safe-harbor provides that participant contributions that are deposited with the plan within seven business days of receipt or withholding would be deemed to comply with law. This final rule is applicable to “small” benefit plans - a plan with fewer than 100 participants.

If you would like more information about Employee Benefit Plans and current developments, please contact Louis F. LiBrandi at (212) 286-2600; [lbrandi@odmd.com](mailto:lbrandi@odmd.com), or Tim Desmond at 914-381-8900; [tdesmond@odmd.com](mailto:tdesmond@odmd.com).

Best regards,

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