

REGULATORY Update



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DOL Proposal Seeks to Modernize Form 5500

Significant changes could be in store for Form 5500, the Department of Labor, Internal Revenue Service, and Pension Benefit Guaranty Corporation announced in July 2016. Form 5500 is the series of forms and schedules that employers are required to file annually for employee benefit plans covered under ERISA, most notably 401(k), pension, and health and welfare plans. The proposed changes seek to modernize several aspects of Form 5500 by requiring enhanced reporting on financials, as well as the introduction of several new questions designed to improve transparency and reliability.

"The 5500 is in serious need of updates to continue to keep pace with changing conditions in the employee benefit plan and financial market sectors," said Phyllis C. Borzi, assistant secretary for the DOL's Employee Benefits Security Administration, in a statement announcing the proposed changes. Because Form 5500 is subject to public inspection, expanded data points would serve to assist government agencies with research, policymaking, and oversight.

For employers that offer workplace retirement plans, the following proposed changes will be of particular interest:

- New compliance questions pertaining to default investments, catch-up contributions, employer contributions, and distributions

- A narrowed focus on reporting of plan- and participant-level fees and expenses via Schedule C (Service Provider Information), including a requirement to file a Schedule C for each provider (Currently, all providers are listed on one Schedule C.)
- The expansion of questions pertaining to plan terminations and plan asset transfers
- Modifications to asset entries on Schedule H (Financial Information), including more detailed financial information for income and expenses entries

The evolution of Form 5500 will undoubtedly improve reporting quality and provide greater transparency of investments and financial transactions. At the same time, it will add another layer of accountability for retirement plan sponsors, who will ultimately be responsible for complying with the proposed changes. More information inherently leads to more scrutiny, particularly regarding the appropriation of fees and expenses, so it is imperative for plan sponsors to fully understand their plans' features and investments and to ensure that they are in compliance with all Form 5500 reporting requirements.



Top 10 Compliance Pitfalls: Lessons Learned

Retirement plan sponsors are tasked with complex fiduciary and administrative responsibilities, with pitfalls around every corner. When compliance tasks fall through the cracks, the IRS, through the Voluntary Correction Program (VCP), provides a way for plan sponsors to correct mistakes and preserve their plans' tax-favored status.

Let's take a look at the [Top 10 Failures](#) discovered via the VCP, along with tips to help you avoid these mistakes and tighten up your firm's compliance practices in 2017.

1) Failure to amend the plan based on tax law changes by the end of the period required by the law. Legislative changes sometimes require a plan document amendment; check with your TPA or service provider to be sure your plan document reflects recent changes in the law.

2) Failure to follow the plan's definition of compensation for determining contributions. The integrity of nondiscrimination tests relies on accurate compensation reporting. Be sure your testing census corresponds to your plan document's definition of compensation and that it incorporates any excluded elements of compensation, such as bonuses and overtime.

3) Failure to include eligible employees in the plan (or to exclude ineligible employees). When eligible employees are excluded from the plan, they may not receive contributions to which they are entitled. Conversely, when ineligible employees are included in the plan, they may receive contributions that they shouldn't receive. Double-check that new employees meet eligibility requirements and that hire dates are accurate.

4) Failure to satisfy plan loan provisions. Coordinate your payroll remittances with your TPA or service provider, and periodically audit loan payment history to ensure accuracy.

5) Impermissible in-service withdrawals. If your plan offers an in-service withdrawal or hardship provision, be sure to verify hardship claims through proper documentation.

6) Employer eligibility failure. This failure occurs when an employer adopts a plan that it legally is not permitted to adopt. Ask your TPA or service provider to verify that your plan has been established under proper guidelines.

7) Failure to satisfy IRC 401(a)(9) minimum distribution rules. Required minimum distributions (RMDs) come into play when an employee attains age 70½. Run periodic reports to put upcoming RMDs on your administrative radar.

8) Failure to pass the ADP/ACP nondiscrimination tests under IRC 401(k) and 401(m). Some nondiscrimination test failures occur because of inaccurate census data. Do a thorough review of census data, and ask your TPA to perform a midyear test to help uncover any inaccuracies that may affect the test results.

9) Failure to properly provide the minimum top-heavy benefit or contribution under IRC 416 to non-key employees. Failed top-heavy tests require corrective contributions in the form of minimum contributions.

10) Failure to satisfy the limits of IRC 415. Exceeding the aggregate contribution limit (\$54,000 in 2017, or \$60,000 for employees age 50 and older) is a compliance violation. Ask your payroll provider if it has safeguards in place to cease contributions once the limit is reached. Review contribution reports periodically to ensure that employees do not exceed the limit.

IRS Announces 2017 Pension Plan Limitations

In October 2016, the IRS released [Notice 2016-62](#), announcing cost-of-living adjustments that affect contribution limits for retirement plans in 2017. Though not exhaustive, the list below includes key changes that plan sponsors should be aware of, as well as some limitations that remain unchanged from 2016:

- The aggregate contribution limit for defined contribution plans is increasing from \$53,000 to \$54,000.
- The annual compensation limit used to calculate contributions is increasing from \$265,000 to \$270,000.

- The limitation on the annual benefit under a defined benefit plan is increasing from \$210,000 to \$215,000.
- The dollar limit used in the definition of "key employee" in a top-heavy retirement plan is increasing from \$170,000 to \$175,000.
- The dollar limit used in the definition of "highly compensated employee" remains unchanged at \$120,000.
- The elective deferral limit remains unchanged at \$18,000.
- The catch-up contribution limit for employees age 50 and older remains unchanged at \$6,000.

We Can Help

Our firm is ready to provide ideas, guidance, and foresight to help prepare your business and your employees for a successful 2017. If you would like to review proposed Form 5500 changes, administrative best practices, or any aspect of your retirement plan, we're here to assist you.

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Authored by the Retirement Consulting Services team at [Commonwealth Financial Network](#).