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CAB 16-6

Milliman

CLIENT ACTION Bulletin
Employee Benefits

Proposed Form 5500 Revisions Seek New Retirement Plan Details

SUMMARY

ERISA-covered retirement plan sponsors would be required to provide significantly detailed information about their plans when filing the Form 5500 (Annual Return/Report of Employee Benefit Plan), under a proposed rule from the Department of Labor (DoL), along with a separate proposed rule issued jointly by the DoL, Treasury/IRS, and the Pension Benefit Guaranty Corporation. (For simplicity, this *Client Action Bulletin* refers to both sets of rules as the DoL's proposed rule.) The DoL's proposal, which affects only ERISA-covered plans, would amend the reporting and disclosure requirements applicable to all employee benefits, but this *CAB* focuses on the key revisions applicable to defined contribution (DC) and defined benefit (DB) retirement plans, including certain small plans (with fewer than 100 participants) that newly would be required to file certain information. (See *CAB 16-5* for the proposed rule's effects on group health plans.)

The DoL seeks comments on the proposed rule by Dec. 5, 2016; if adopted, the DoL anticipates applying the new requirements to plan years starting in 2019 (i.e., forms filed in 2020). The IRS, however, proposes that retirement plan sponsors answer certain compliance-related questions about the plans for the 2016 plan year when filing the Form 5500 in 2017.

DISCUSSION

Background on the Filing of Form 5500

In general, sponsors of employee benefit plans must file annual returns/reports concerning the plans' financial condition, funding, investments, and operations using Form 5500 (Annual Return/Report of Employee Benefit Plan) or Form 5500-SF (Annual Return/Report of Small Employee Benefit Plan), along with related schedules. The proposed rule lists a number of objectives: to modernize the annual financial and investment reporting requirements, improve fee and service provider transparency, improve plan compliance and regulatory oversight, and increase the ability of information users to mine and analyze the data reported. The proposed rule reiterates that plan sponsors are subject to significant civil penalties for failing to comply with the reporting and disclosure requirements.

Proposed Changes to Schedules H and C for Retirement Plans

The proposed rule would make substantive changes to Schedule H (Financial Information) and Schedule C (Service Provider Information). Under the proposed rule, for example, Schedule H calls for plan investments to be broken out by categories, including derivatives, foreign investments, alternative investments, hard-to-value assets, and collective investments. Plans also would have to break out investments held in partnerships and joint ventures, as well as certain interests held through self-directed brokerage accounts.

The proposed rule would require increased disclosure of administrative expenses (e.g., salaries, audit, legal, recordkeeping, actuarial fees). In addition, expenses charged against participant accounts and information on how the expenses are allocated among participants would have to be reported separately from general expenses charged to the plan. Other changes to Schedule H would:

- update the income/expense statement;
- require filers to indicate whether the plan or reporting direct filing entity (DFR) (i.e., a bank, trust company, financial institution, or insurance company) held the investments directly, through a master trust, a common/collective trust (CCT), a pooled separate account (PSA), or a 103-12 investment entity;
- require plans that terminated and transferred plan assets to a financial institution and established accounts for missing participants to provide the name and EIN of the financial

institution, the date of transfer, the number of accounts established, and the total amount transferred; and

- require disclosure of the number of uncashed checks and their total value, along with a description of the plans' procedures for verifying a participant's address in monitoring uncashed checks.

The Schedule C changes reflect the agencies' efforts to align the disclosure requirement with the DoL's fee disclosure rule. The proposed rule would:

- expand reporting to all retirement plans – including currently exempt small plans – that must file the Form 5500 or Form 5500-SF, and require a separate Schedule C for each service provider that is required to be reported;
- require reporting of indirect compensation only for "covered" service providers and for compensation that is required to be disclosed;
- eliminate the alternative reporting of "eligible indirect compensation" (e.g., finder's fees, soft-dollar revenue, float, and brokerage commissions); and
- require information on whether a plan's service provider arrangement includes recordkeeping services and, if so, how the service provider is compensated for the recordkeeping services (e.g., explicitly, by offsets, by rebates).

Changes Affecting DC Plans

The proposed rule adds new questions to the Form 5500, Schedule R (Retirement Plan Information) and Form 5500-SF on participation, contributions, and asset allocation by age, and participant-level diversification. Information sought includes the number of participants making catch-up contributions, investing in default investment options, maximizing the employer match, and deferring compensation. Questions also would be added on the number of participants in plans with account balances as of the beginning of the plan year and on the number of participants that terminated employment during the plan year that had their entire account balance distributed. In addition, plan sponsors would be asked about whether the plan uses a default investment alternative for participants who fail to direct assets in their account and which type of investment alternative is used.

DC plans would determine whether they have to file as a large plan and whether they have to attach an independent qualified public accountant (IQPA) report based on the number of participants with account balances as of the beginning of the plan year. Changes to the Form 5500-SF filed for a participant-directed individual account plan call for attaching an electronic copy of the comparative chart of designated investment alternatives (DIAs) currently required to be provided to participants of such plans.

For plan years beginning in 2016, the IRS proposes to include compliance-related questions on the Form 5500 and Form 5500-SF concerning compliance with nondiscrimination and coverage testing, as well as on the adoption of timely amendments and if the plan has a favorable opinion or advisory letter from the IRS. These questions appear on the 2015 forms, but the IRS indicated in February 2016 that these questions were not required for 2015 filings.

Changes for Single-Employer and Multiemployer DB Plans

For DB plans, the proposed rule expands some data elements, but generally seeks information currently filed as a pdf-formatted attachment to be reported on Schedules MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information) or SB (Single-Employer Defined Benefit Plan Actuarial Information). Such information includes data on: active participants, terminated vested participants, and retirees/beneficiaries in pay status, as well as the expected benefit payments for the next 10 years. It also includes information on: the plan's late election to apply funding balances to quarterly installments; adjustments to the amount of the credit balance reported in the prior year in the first year a plan is subject to the minimum funding requirements; the use of multiple mortality tables and substitute mortality tables; a change in non-prescribed actuarial assumptions and a method change for the current plan year; a schedule of amortization bases; and, for multiemployer plans, the withdrawal liability payments from plan year contributions.

ACTION

All ERISA-covered retirement plan sponsors should review the DoL's proposed rule and consider the additional information they would be required to obtain, report, and disclose if the rule becomes final. In most cases, sponsors will find that the data collection will be administratively burdensome (and thus costly), requiring in many cases significant coordination with the plans' service providers to report accurate information in a timely fashion. The DoL encourages comments on the potential costs and the feasibility of providing the proposed data via the filing of the Forms 5500 and Schedules. The deadline to submit comments to the DoL is Dec. 5, 2016.

Plan sponsors should begin reviewing the compliance-related questions that the IRS proposes for the 2016 plan year filing of the Form 5500.

Plan sponsors also should be mindful of the increased, inflation-adjusted civil penalties applicable to Form 5500 filing failures (and other reporting/disclosure penalties for noncompliance with the DoL's rules) that became effective as of Aug. 1, 2016. A failure or refusal to file the Form 5500, for example, increased to up to $2,063 per day (up from $1,100).

For additional information about the DoL's proposed rule on Form 5500, please contact your Milliman consultant.

