

# Form 5500 Updates: Achieving Full Compliance Navigating the New Schedules and Data Demands

## A Live 90-Minute Audio Conference with Interactive Q&A

### Today's panel features:

Brenda DeSaro, Manager, Pension Services Group, **Amper Politizner & Mattia**, Bridgewater, N.J.

Lona Ebert, Senior Manager, Retirement Services, **Virchow Krause & Co.**, Appleton, Wis.

Cynthia Whitacre, Partner, **5500 Tax Group Inc.**, Greenville, S.C.

**Thursday, May 7, 2009**

The conference begins at:

**1 pm Eastern**

**12 pm Central**

**11 am Mountain**

**10 am Pacific**

The audio portion of this conference will be accessible by telephone only. Please refer to the dial in instructions emailed to registrants to access the audio portion of the conference.

CLICK ON EACH FILE IN THE LEFT HAND COLUMN TO SEE INDIVIDUAL PRESENTATIONS.

If no column is present: click **Bookmarks**  or **Pages**  on the left side of the window.

If no icons are present: Click **View**, select **Navigational Panels**, and chose either **Bookmarks** or **Pages**.

If you need assistance or to register for the audio portion, please call Strafford customer service at **800-926-7926 ext. 10**

# Form 5500 Updates Teleconference

May 7, 2009

Lona Ebert, Virchow Krause & Co.  
[lebert@virchowkrause.com](mailto:lebert@virchowkrause.com)

Cynthia Whitacre, 5500  
Tax Group Inc.  
[cynthia.whitacre@5500tax.com](mailto:cynthia.whitacre@5500tax.com)

Brenda DeSaro  
Amper, Politziner & Mattia  
[desaro@amper.com](mailto:desaro@amper.com)

# Today's Program

- Current Issues And Key Form 5500 Changes For 2008 Plan Years, slides 3 through 11 (*Lona Ebert*)
- Key Form 5500 Changes For 2009 Plan Years, slides 12 through 22 (*Cynthia Whitacre*)
- Form 5500 Audit Topics, slides 23 through 39 (*Brenda DeSaro*)

# **Current Issues And Key Form 5500 Changes For 2008 Plan Years**

# **Problems With Form 5558 – Application For Filing Extension With Certain Employee Plan Returns**

- New procedure effective January 2008
- No signature is required on the Form 5558 unless it's being used for extending the Form 5330 (Return of Excise Taxes Related to Employee Benefit Plans)
- Only acknowledgement to be received from the IRS is for when the 5558 is used to extend the Form 5330
- In January 2009, the IRS changed its procedures again

# Problems With Form 5558 – Application For Filing Extension With Certain Employee Plan Returns (Cont.)

- Acknowledgement letters from the IRS include the following:

“We have received your Form 5558, Application for Extension of Time to File an Employee Plan Return, for the return (form), plan number, and tax period identified above, and have approved your request. We have extended the due date to file your return to (IRS inserts mo/day/yr).

“It is important to attach a copy of this letter and a copy of your Form 5558, Application for Extension of Time to File an Employee Plan Return, to your return when you file it. It will show the Department of Labor (DOL) that we granted you an extension of time to file your return. If a copy of the extension and notice is not attached to the return, it could be processed as a late filed return.

“If you have any questions, please call us at the number shown above, or you may write us at the address shown at the top left of this letter.”

- Now, the nightmare begins

# Schedule C Reporting

- Schedule C is to be attached to the Form 5500 filing of large pension and welfare plans
- Any contract administrator or person receiving, directly or indirectly, more than \$5,000 of compensation for services rendered is to be reported on the Schedule C. Schedule C only lists fees paid from plan assets
- Insurance fees and commissions listed on Schedule A are not reported again on the Schedule C
- Schedule C is “open for public inspection”
- Definition of “indirect compensation”

# Schedule C Reporting (Cont.)

- The Schedule C can be reported on cash basis or accrual basis, but must be consistently applied from year to year
- Definition of “person” for Schedule C purposes
- Unless a contract administrator or other person receives more than \$5,000 in compensation, a Schedule C is not required
- Accountants and/or enrolled actuaries terminated by the plan during the plan year are also reported on the Schedule C
- Items reported on the Schedule C should be gathered throughout the year to ease the preparation after year-end



# **Schedules SB And MB – Defined Benefit Plans**

- Replace Schedule B
- Schedule SB (Single Employer Defined Benefit Plan Actuarial Information)
- Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information)
- Short plan-year issues
- The actuarial schedules submitted with the Schedule SB or MB must be an original version or in the IRS-issued paper form, for the EFAST system to properly read the form
- An enrolled actuary must sign the Schedule SB or MB
- Form is open to public inspection

# Alternative Reporting For Certain Small Plans

- Who is eligible?
- Simplified return

# Form 5500-SF

- Effective for 2009 filing years
- Form appears simpler, but it collects nearly all the same information as the current Form 5500 and related schedules and condenses it to two pages
- Who is eligible?
- Owner-only plans may file Form 5500-SF electronically beginning in 2009 or continue filing paper Form 5500-EZ
- Only schedule to be provided with Form 5500-SF is Schedule SB for defined benefit plans

# Form 5500-SF (Cont.)

- New Form 5500-SF consists of the following:
  - Simplifies the reporting of participant counts (line 5)
  - Schedule I information reported in lines 7 and 8
  - Line 9 reports plan characteristic codes – 2 new codes
  - Part V includes compliance-related questions that were previously reported in Line 4 of Schedule I
  - New compliance questions.
  - Remainder of form pulls questions from Schedule R regarding minimum funding requirements and plan termination and transfer of plan assets

# **Key Form 5500 Changes For 2009 Plan Years**

# Schedule C: 2009 changes

- Continues to be limited to large plan filers, and the \$5,000 reporting threshold was retained
- Requires direct compensation paid by the plan to be reported on a separate line from indirect compensation received from sources other than the plan or plan sponsor
- Additional codes added to types of services provided
- Alternative reporting option: Indirect compensation
- New Part II: Identify each service provider that failed or refused to provide the information necessary to complete Part I

# Technical Improvements/Clarifications To Forms

- Form 5500
  - New pension plan characteristics codes
  - Question on number of contributing employers
  - Optional line for principal preparer has been deleted
- Schedule A – Identify insurers that fail to supply information
- Schedule H
  - Large plan failures to pay benefits due
  - Schedule of delinquent participant contributions
  - Questions on blackout compliance
  - Reporting of mutual fund dividends
- Schedule I
  - Small plan failures to pay benefits due
  - Questions on blackout compliance
  - Separate disclosure of fees paid to administrative service providers

# Technical Improvements/Clarifications To Forms (Cont.)

- Schedule R – numerous revisions
  - Questions 10-12 added about ESOP (since removal of IRS-only Schedule E)
  - Part V – questions 10-12 - collects PPA-required information on multi-employer DB plans and additional information related to major contributing employers.
  - Part VI - questions 18-19 – asset allocation question for large DB plans
  - Deletion of Question 9 – coverage question
  - New minimum funding question



# Comprehensive E-Filing

- Electronic filing is currently possible but not required – EFAST1
- EFAST2 replaces EFAST1
- Electronic filing becomes mandatory with EFAST2 for plan years beginning 1/1/09 or later
  - Required for retirement and welfare plans
  - Exception: Form 5500-EZ electronic filing not available
  - Form 5500-EZ may elect to file a Form 5500-SF and electronically file
  - Also applies to 403(b) plans, except those not subject to Title I of ERISA
- Any plan which has a due date before 1/1/10 will automatically have an extension until 90 days following the date on which the Form 5500 is available for filing electronically (i.e. 3/31/10)
  - Short plan-years are encouraged to wait and file electronically, but it is not required
  - May file utilizing the prior year's form and mail the forms

# Comprehensive E-Filing (Cont.)

- Software: Three options
  1. A private, Web-based system
  2. A third-party software application
  3. DOL's Web-based system (IFILE) – no frills, free
- Registration with EFAST2
  - Begins 1/2/2010
  - Must register if using IFILE or third-party software
  - [www.efast.dol.gov](http://www.efast.dol.gov) and click “Register”
  - If you are registered for EFAST1, you will need to register again for EFAST2
  - All persons who touch a Form 5500 in any way, including signers, will need to register with EFAST2 and obtain a user ID and PIN
  - DOL will limit one set of log-in credentials per e-mail address – *can't obtain signature authority for your client*

# Comprehensive E-Filing (Cont.)

- When registering , disclose what user types(s) you are. The type selected affects the available menu
  - Filing author (return preparer)
  - Filing signer (person who signs the return) – individuals, not plan sponsors/entities
  - Schedule author (schedule-only preparer – i.e. actuary and Schedule MB or SB)
  - Transmitter (party who transmits the electronic return)
  - Third-party software developer

# Comprehensive E-Filing (Cont.)

- IFILE – the basics of how it works
  - Complete forms on screen by navigating through each section of each form
  - Add forms by clicking on the schedule name/letter from a menu and completing the form
  - Add attachments such as the accountant’s opinion/report
    - Accountant’s opinion/report **MUST** be in PDF format only, as it requires a signature
    - Other attachments can be PDF or text files
    - 2GB limit on the size of the electronic file; large attachments will not be able to be transmitted
  - Once preparation is complete, associate a signer
    - Provide signer’s e-mail address
    - Program searches and matches the e-mail address to those registered with EFAST2
    - If the signer is registered, an e-mail will be generated informing the signer that a return is awaiting their signature
    - If the signer is not registered or if the e-mail address entered is incorrect, an error message will be displayed

# Comprehensive E-filing (Cont.)

- The signer logs in and is able to create a PDF version of the entire return for review
  - Once the signer is satisfied with the return, he/she clicks a button to sign the return
  - Signer must acknowledge under penalty of perjury that the return is accurate to the best of their knowledge
  - Signer must enter user ID and PIN and select whether they are signing as the plan administrator or plan sponsor
  - The signer's name will appear on the DOL Web site as the signer of the return
- Submission of the return
  - In IFILE only; the author may submit the filing
  - Within one minute, an “acknowledgement ID” is received which is a list of numbers
    - This ID does NOT mean that the return has been received and all is acceptable
    - Acknowledges the “envelope” with the return was received, unopened and unread
  - Within approximately 20 minutes, errors and warnings should be available
    - Filers may retrieve the errors/warnings report
    - A list of errors/warnings is available if the return is validated before submission
    - In most cases, no new errors will be discovered after filing, if none are discovered or if they are corrected during the validation submission
  - In IFILE, returns must be submitted one at a time. No batch submission is available

# Comprehensive E-filing (Cont.)

- Viewing submitted filings
  - IFILE or third-arty software users will all view the same screen
  - The “status” of the submitted returns are displayed
    - “Processing” – Contents of electronic envelope are still being read and processed
    - “Unprocessable” – Couldn’t read the contents of the electronic envelope – not considered to be filed
    - “Filing stopped” – Large amount of info missing – not considered to be filed
    - “Error” – Errors in the filing that require correction
    - “Received” – Return has been processed, but warnings still may be available to be viewed
  - Each “status” is hyperlinked
    - Click on the status link to view a detailed list of problems with the return
    - Must correct the errors and resubmit until the return is accepted
    - 30-day letters will no longer be regenerated and mailed
  - Successfully submitted filings will be disclosed on EFAST2 Web site within 90 days
  - [www.efast.dol.gov](http://www.efast.dol.gov) and click “Search For Filings”
    - Can drill down and view each schedule
    - Do not submit any information that you do not want to become a matter of public record

# Comprehensive E-Filing (Cont.)

- Other items
  - Plan sponsor must maintain a paper copy of the electronic return, complete with original signatures
  - Extension procedures will not change (although Form 5558 will no longer be required to be attached to the Form 5500)
  - Amending pre-2009 forms or filing pre-2009 forms late (including utilizing the delinquent filer voluntary compliance, or DFVC, program) will do so electronically
    - DFVC - Use current year forms and indicate the dates
    - If amending, you must resubmit the Form 5500 and all of the schedules included with the original filing (even those that remain unchanged)
    - Must reference the original acknowledgment ID with the amended filing
  - Barcodes on the current forms will be eliminated with EFAST2

# **Form 5500 Audit Topics**



# What Auditors Look For On Form 5500

- In connection with an audit of an employee benefit plan, the auditor is required to read the Form 5500 to which the audited financial statements will be attached. While reading the Form 5500, the auditor is required to review the Form 5500 for material inconsistencies with the audited financial statements and material misstatements of fact
- If an audit of the plan is required, the Department of Labor considers a complete return-filing to be the signed Form 5500 and the audited financial statements. Since both these documents arrive together, they should be consistent with each other, and information should not conflict
- Let's go through a Form 5500 review and hit upon several areas where material inconsistencies and misstatements could occur

# In General: Reading The Form 5500

- On page 1 of the Form 5500, line 1a, the plan name is listed. On line 1b, the plan number is listed. The auditor will make sure they agree to the audited financial statements
- Also, on the bottom of page 1, the auditor verifies if the Form 5500 is signed and dated by an appropriate plan representative
- On page 2 of the Form 5500, lines 7 (a to i) show various headcounts. The auditor will first make sure the numbers exceed the amount that requires an audit. Generally, this amount is more than 100 eligible participants. Be careful of the 80-to-120 rule. Next, they look at the changes from beginning of year to end of year, to ensure they appear reasonable

# In General: Reading The Form 5500 (Cont.)

- Also, on page 2 of the Form 5500 on line 8a and 8b, codes are filled in to describe plan features. The auditor verifies that the codes utilized are appropriate to the specific features of the audited plan
- Schedule A (Insurance Investment Information): On this schedule, the insurance company is named (not all plans have an insurance company). The auditor verifies this is the correct organization and that the investments are held by an insurance compan.
- Schedule A – We see if any of the plan investments are pooled separate accounts (PSA)? A PSA is a type of investment vehicle. The auditor will check this is the proper classification
- Schedule A – Does the total of PSA equal the audited financial statements for PSAs? The auditor will compare these figures

# In General: Reading The Form 5500 (Cont.)

- Schedule H - (Investment Information - Large Plan)
- The auditor will check: Do the net assets available for benefits (page 2 line 1L(b)) equal the net assets available for benefits per the audited financial statements? They should. If they do not, this could be due to several items
  - Timing items: Receivables or payables. You will need to have a reconciling footnote. Are the financial statements prepared on the same basis of accounting (i.e., accrual, cash basis or modified cash basis)?
  - Contract value vs. fair value: The investments are required to be shown as fair value on the Form 5500. However, the financial statement figures are required to be presented at contract value (per SOP-94-4-1, *see next slide*). If this is the case, the Form 5500 may not agree with the financial statements, and a footnote disclosure may be needed to reconcile the two documents

# In General: Reading The Form 5500 (Cont.)

- Financial Accounting Standards Board Staff Position, FSP AAG INV-1 and SOP 94-4-1, *Reporting of Fully Benefit-Responsive Investment Contracts Held by Certain Investment Companies Subject to the AICPA Investment Company Guide and Defined Contribution Health and Welfare and Pension Plans* (the “FSP”). As required by the FSP, the statement of net assets available for plan benefits should present the fair value of the investment contracts as well as the adjustment of fully benefit-responsive contracts from fair value to contract value, and the statement of changes in net assets available for plan benefits should be prepared on a contract value basis

# **In General: Reading The Form 5500 (Cont.)**

- Schedule H - (Investment Information - Large Plan) (Cont.)
- The auditor will verify: Do the beginning of the year net assets available for benefits (line 1L(a)) per the Form 5500, equal the beginning of the year net assets available for benefits per the audited financial statements? They should. If not, there could be a timing issue from last year or something else. A reconciling footnote should be in the audited financial statements
- In general, the figures presented on the Form 5500 (lines 1a to 2l(2)) for the various categories should reconcile to the audited financial statements
- The auditor will look at Part III “Accountant’s Opinion” and make sure the name of the firm/accountant is correct, the EIN is correct, and most importantly the opinion rendered is correct
- A limited-scope audit should have the disclaimer box checked and the “Yes” box for 29 CFR 2520.103-8

# In General: Reading The Form 5500 (Cont.)

- Schedule H - (Investment Information - Large Plan) (Cont.)
- Another item of concern is line 4a in Schedule H. Although this is just a yes or no answer, if no is selected, it is not a good thing. The question is asking if the employee deferrals and loan repayments (in general) were remitted to the plan in a timely manner per 29 CFR (Code of Federal Regulations) 2510.3-102. If the transfer of the funds was not timely, there are various ways to correct this untimely filing. How this question is answered supports some of the items tested in the audit
- Also on this page is line 4e, asking if the plan was covered by a fidelity bond (not fiduciary liability insurance) and what the amount is. This is a required item for the plan, and an insurance agency can help fulfill this matter. The auditor will ask for the bond and verify the amount listed and that the coverage is reasonable

# **In General: Reading The Form 5500 (Cont.)**

- Schedule H - (Investment Information - Large Plan) (Cont.)
- In general, these are the items an auditor will compare to the audited financials and support documentation in their audit file
- There are other areas that are compared throughout the Form 5500 that vary according to the specifics of the audit and type of plan (DC vs. DB)



# Recommendations On How To Prepare For A Plan Audit

- First step: Select the qualified auditor for your plan. The AICPA has resources available to help determine who is the best fit and what measuring stick to use. [www.aicpa.org/ebpaqc/homepage.htm](http://www.aicpa.org/ebpaqc/homepage.htm) or [www.dol.gov/esba/publications/selectinganauditor.html](http://www.dol.gov/esba/publications/selectinganauditor.html)
- Why is the choice of a quality auditor important? “A quality audit will help protect the assets and the financial integrity of your employee benefit plan and ensure that the necessary funds will be available to pay retirement, health, and other promised benefits to your employees”
- “Should a plan auditor have experience in auditing employee benefit plans (EBP)? One of the most common reasons for deficient accountants’ reports is the failure of the auditor to perform tests in areas unique to employee benefit plan audits.” Ask your auditor how many and what types of EBP audits they and their firm perform

# Recommendations On How To Prepare For A Plan Audit (Cont.)

- Step 2: Ask for an engagement letter, in order to communicate the expectations and responsibilities of both the auditor and the client
- Step 3: Meet with the auditor/firm early
  - The sooner discussions start between the necessary parties, the smoother the audit should run
  - At the meeting, it's advisable to create an audit timeline in order to help decide what information is needed, what date it is needed by. and who will be supplying it
- Step 4: Ask questions as the audit progresses. If you understand why the auditor is asking for an item, you may know of another item that will answer the audit question better

# Recommendations For Plan Audit Conduct

- Be professional and respectful
- If you agree to have something ready, be ready. This will result in a smooth and successful audit
- Try to provide the requested materials to the auditor in a timely manner. Or, if there is a delay, let them know
- Ask the auditor for some “best practice” suggestions. These can be very helpful, by providing other options
- Take responsibility for YOUR plan. Outsourcing services does not outsource responsibility

# New 403(b) Plan Reporting Requirements

- On Nov. 16, 2007, the Department of Labor (DOL) issued “Annual Reporting and Disclosure; Revision of Annual Information Return/Reports; Final Rule and Notice” ([www.dol.gov/ebsa/regs/fedreg/final/20071116.pdf](http://www.dol.gov/ebsa/regs/fedreg/final/20071116.pdf))
- From this document, we can read: “Section 2520.104-44 and the current Form 5500 Annual Return/Report instructions provide for limited reporting for pension plans that exclusively use a tax deferred annuity arrangement under Code section 403(b)(1), custodial accounts for regulated investment company stock under Code section 403(b)(7), or a combination of both. The exemption in section 2520.104-4(b)(3) is being **eliminated**, with the result that Code section 403(b) pension plans subject to Title 1 will now be treated the same under the regulations as any other Title I pension plan for purposes of the annual report requirement under Title I of ERISA.”

# New 403(b) Plan Reporting Requirements (Cont.)

- To translate:
- The exemption referred to is: Completing the entire Form 5500 (not just a few lines)
- Also, when completing the entire Form 5500, in general if the plan has more than 100 eligible participants, an audit is required to accompany the 5500 filing
- The current effective date of these changes is for plan and reporting years beginning on or after Jan. 1, 2009

# New 403(b) Plan Reporting Requirements (Cont.)

- If you have a 403(b) plan, this change may not apply to you
- This change is only for 403(b) plans that are under Title 1 of ERISA
- Consult with an ERISA attorney if there is any doubt if your plan is or isn't under Title 1 of ERISA

# New 403(b) Plan Reporting Requirements (Cont.)

- There will be many challenges to perform audits for these plans
- To name a few:
  - Maintaining all the plan documentation from the beginning of the plan
  - Maintaining all the records of past and current participants during the life of the plan
  - How many custodians has the plan had over the years? Are they all still in existence?
  - Maintaining all the transfers of participant accounts in and out of the plan
  - Reconciling what are or aren't plan assets
  - Acquiring asset information for the 2008 plan year, to support the requirements that the audited financial statements be comparative and support beginning balances

# **New 403(b) Plan Reporting Requirements (Cont.)**

- Earlier preparation is key!!
- Consider agreed-upon procedures for 2008 plan year figures
- Any questions?



Labor Department final regs for Form 5500

<http://www.dol.gov/ebsa/regs/fedreg/final/20071116.pdf>

Labor Department revisions to Form 5500 annual return and report forms

<http://www.dol.gov/ebsa/regs/fedreg/notices/20071116.pdf>

2008 plan year Form 5500 Schedule C

<http://www.irs.gov/pub/irs-pdf/f5500sc.pdf>

2008 plan year Form 5500 Schedule SB

<http://www.irs.gov/pub/irs-pdf/f5500ssb.pdf>