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NEWSLETTER

The Department of Labor Goes Digital – EFAST2

In an effort to reduce paper output and better track the receipt of Form 5500 and Form 5500-SF filings, the Department of Labor rolled out their new filing system for Forms 5500 and 5500-SF called the ERISA Filing Acceptance System II or EFAST2. Effective January 1, 2010, all Forms 5500 and 5500-SF for the years 2009 going forward are required to be filed electronically with the Employee Securities Benefits Administration (EBSA). In addition, any corrective or delinquent filings for years prior to 2008 must also be filed electronically via EFAST2.

The Good, the Bad and the Ugly - What this means for Plan Filers

1. The DOL and EBSA are no longer accepting paper filings of the Form 5500 or Form 5500-SF for any years except 2008—and that exception ends October 15, 2010.
2. Filings submitted via any other format other than that specified under EFAST2 guidelines will be rejected by the DOL and EBSA and be classified as not filed. If the form isn't submitted in the accepted format by the filing deadline, it will be considered delinquent and subject to penalties by both the IRS and the DOL.
3. Plan sponsors will be required to register with EFAST2 to obtain their signer credentials. These credentials allow them to electronically sign their Form 5500 or 5500-SF so that they or their designated administrator (third party administrator, depository, CPA) can submit the filing via EFAST2. There is one alternative to this registration process called the e-signature option.
4. Under the e-signature option, plan filers who have service providers that manage the filing process for the plans can elect to have the service providers get their own signing credentials and submit the electronic Form 5500 or 5500-SF for the plan. This option requires written authorization from the plan administrator to submit the filing electronically. In addition, the plan filer must manually sign a paper copy of the Form 5500 or 5500-SF so the service provider can attach a PDF copy of the manually signed form to the electronic filing. This option is not available for corrective (amended) filings or filings submitted under the Delinquent Filer Voluntary Compliance (DFVC) program.
5. There is now an electronic documentation trail to show when a form was submitted to the EBSA. The DOL and IRS anticipate this will significantly reduce the number of correspondences issued to plan filers inquiring as to the whereabouts of filings.

Do as we say, not as we do

While the DOL actively pursues avenues in which to reduce paper, they don't encourage it for the plan filers. Even though plan filers must now submit the Forms 5500 and 5500-SF electronically, the DOL still requires that plan filers keep a signed and dated hard copy of the filing for their records.

Airing your laundry in public – The "catch" to the e-signature option

Electronically filed Forms 5500 and 5500-SF are on a publicly accessible website.

As such, if a plan filer elects the e-signature option and sends in the manually signed Form 5500 or 5500-SF for the service provider to attach as a PDF file to the electronic filing, the image of that signature will be available for public viewing.

Delinquent Filers and Amended Form 5500s under EFAST2

Late filers may submit such filings under the Delinquent Filer Voluntary Compliance (DFVC) Program. As with current filings, these are submitted under the EFAST2 guidelines.

There are two terms used in EFAST2 that are significant:

* The term "current year" filings refers to the Form 5500 and Schedules which are used for timely filings. For example, both 2009 and 2010 Form 5500 and Schedules are considered current year forms (at this time) for this purpose.

* "Correct-year" filings refer to the Form 5500 and Schedules that would have been filed for a plan year had the filing been submitted in a timely fashion."

No ifs, ands or buts – The DOL takes a stand

With the advent of mandatory electronic filing effective January 1, 2010, the DOL received questions regarding options to electronic filing. Plan filers with either no access or limited access to the internet, or who relied on administrative processes that were paper-based instead of computer-based, wondered if there was an alternative to the electronic filing mandate.

The answer – *No*.

The DOL is adamant that all Forms 5500 and 5500-SF be filed electronically. The only limited exception is for year 2008, which may be filed in paper format until October 15, 2010. After October 15, 2010, all Forms 5500 and 5500-SF *must* be filed electronically.

Frequently Asked Questions (FAQs) and more information on EFAST2

If you'd like to read more about EFAST2, please visit www.efast.dol.gov.