



# Pension Analyst

Important information

Plan administration and operation

December 2008

## Federal agencies expand Form 5500 rules for 403(b) plans

### Who's affected

These developments affect sponsors of ERISA 403(b) plans.

### Background and summary

For over 30 years, ERISA 403(b) plans have been subject to limited Form 5500 filing requirements. These rules required ERISA 403(b) plans to complete only certain parts of the Form 5500, and have exempted those plans from completing the many schedules required for qualified plan filings.

On November 16, 2007, the Department of Labor (DOL), Internal Revenue Service (IRS), and Pension Benefit Guaranty Corporation (PBGC) published final annual reporting regulations that will remove the limited filing exemption that applies to 403(b) plans. Effective for plan years beginning on or after January 1, 2009, ERISA 403(b) plans will generally be subject to standard Form 5500 filing requirements. In addition, sponsors of plans with 100 or more eligible participants generally will need to have their plans audited by an independent qualified public accountant.

In addition, although the [final 403\(b\) rules](#) issued in July 2007 provided certain 403(b) contracts with special treatment, there is no corresponding provision in the final 5500 rules to exclude assets from the 5500 filing. The assets under those 403(b) contracts must be included on the plan's Form 5500.

This publication discusses the structure of the Form 5500 and the various schedules to help ERISA 403(b) plan sponsors become more familiar with standard Form 5500 filing requirements. We will provide you with additional information regarding the 2009 Form 5500 filing requirements during the upcoming year.

### Action and next steps

In preparation for the 2009 plan year, sponsors of ERISA 403(b) plans should review the rules in this publication to become familiar with standard Form 5500 rules. Additionally, plan sponsors should begin taking steps to identify a Form 5500 preparation service and if applicable, an independent qualified accountant.

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The Form 5500 Series is the primary tool used by the DOL and IRS to gather information about retirement plans for compliance and research purposes. The form includes information about the plan's operation, funding, assets, and investments.

The forms and schedules to be completed within the Form 5500 Series vary depending on whether a plan is a large plan or small plan. A "large plan" is generally a plan with 100 or more eligible employees. A "small plan" is as a plan with fewer than 100 eligible employees at the beginning of the plan year. If a plan has between 80 and 120 eligible employees as the beginning of the plan year, it can choose to be classified (i.e., as either a small or large plan) the same as the previous year.

## Large plan filing requirements

Large plans report basic plan information on Form 5500. Detailed plan information is reported on various schedules. Plan sponsors only need to complete those schedules that apply to their plans. For an overview of schedules associated with the Form 5500 Series that are applicable to large 403(b) plans, please refer to the chart titled "[Form 5500 Schedules Applicable to Large 403\(b\) Plans.](#)"

## Small plan filing requirements

For plan years beginning on or after January 1, 2009, the DOL has provided a new two-page form, Short Form 5500 (Form 5500-SF) for use by small plans "with secure and easy to value investment portfolios." A plan is eligible to use the Short Form if the plan:

- Covers fewer than 100 eligible employees, or would be eligible to file as a small plan under the 80-120 eligible employee rule;
- Holds no employer securities and is not a multiemployer plan;
- Has 100% of its assets in investments that have a readily determinable fair market value; and
- Is eligible for the [small plan audit waiver](#) for the reason that at least 95% of the plan's assets are "qualifying plan assets" (e.g., annuity contracts, mutual fund shares, or other assets held by an insurer, bank, or broker-dealer).

Generally, small 403(b) plans that are eligible to use the Short Form 5500 would only need to complete the two-page form with no schedules.

Small plans that are not eligible to use the Form 5500-SF must complete the Form 5500 along with applicable schedules. Small plans complete different schedules than large plans. The small plan schedules require less detailed information.

## Direct Filing Entities

The DOL provides special reporting rules for plan investments. Underlying investment information about the investment accounts or trusts may be reported in one of two ways:

1. The provider of each pooled separate account (PSA), common collective trust (CCT), master trust investment account (MTIA) or 103-12 investment entity (IE) files a separate Form 5500 and applicable schedules for each account or trust. The provider of the PSA, CCT, MTIA or 103-12 IE becomes a Direct Filing Entity (DFE). Prudential Retirement reports its pooled separate accounts as a DFE.

As a DFE, the provider of the investment account or trust provides a list of all plans that invested in that account at any time during the year. The provider also supplies information about the underlying assets of the account.

Each plan investing in the account/trust files its own Form 5500 and must identify the accounts or trusts in which the plan invested, but information about the account's or trust's underlying assets is not required.

If Prudential Retirement does not provide Form 5500 preparation services for your plan, and your plan has assets in pooled separate accounts, you must notify your Form 5500 preparer that Prudential Retirement files as a DFE.

2. The entity providing the PSA, CCT, MTIA, or 103-12 does not file a Form 5500 for that account/trust (i.e., the providing entity does not file as a DFE).

When the entity providing the PSA, CCT, MTIA, or 103-12 does not file as a DFE, each large plan investing in that account/trust must report its individual interest in the underlying assets of the account/trust on a line-by-line basis when filing Schedule H of Form 5500. Since Prudential Retirement reports as a DFE, this option does not apply for investments held at Prudential.

## Audit requirement

For plan years beginning on or after January 1, 2009, large 403(b) plan filers are required to attach a written opinion of an independent qualified public accountant to the Form 5500.

Small 403(b) plans will not have to obtain an independent qualified accountant's opinion, if the following conditions are met:

- At least 95% of the plan's assets are qualifying assets, or the assets that are not qualifying assets are covered by a bond that meets ERISA bonding requirements; and
- The summary annual report (SAR) includes enhanced disclosure regarding the financial institutions involved in holding or issuing plan assets, and, if applicable, the surety company that issues the bonding necessary to comply with bonding requirements.

"Qualifying assets" are investments in any of the following categories:

- Qualified employer securities;
- Participant loans that meet the prohibited transaction exemption rules;
- Assets held by a regulated financial institution;
- Shares issued by an investment company registered under the Investment Company Act of 1940;
- Investments and annuity contracts issued by any insurance company qualified to do business under the laws of a state; or
- Participant-directed investments.

The DOL has indicated that it expects small 403(b) plans will meet the conditions to be eligible for the exception from the audit requirement.

## Electronic filing requirement

For plan years beginning on or after January 1, 2009, Form 5500 and Form 5500-SF must be filed electronically using the ERISA Filing Acceptance System (EFAST2). EFAST2 is a wholly electronic filing and processing system that replaces the existing paper-based filing system. More information regarding EFAST is available at the [DOL's Web Site](#).

## Next steps

While the first expanded Form 5500 filings generally will not be due for the 2009 plan year until 2010, sponsors of ERISA 403(b) plans should begin to familiarize themselves with the new requirements and begin preparations to identify a Form 5500 service provider. In addition, large ERISA 403(b) plans should also begin taking steps to obtain the services of an independent qualified accountant. For more information on selecting an independent qualified accountant, please see the DOL publication titled, "[Selecting An Auditor For Your Employee Benefit Plan.](#)"

## Form 5500 Schedules Applicable to Large\* 403(b) Plans

Schedule Title	Schedule Description	Requirement
<b>Form 5500</b>		Must complete
<b>Form 5500-SF</b>	<b>Short Form 5500</b>	Not applicable.
<b>Schedule A</b>	<b>Insurance Information</b>	Must complete if plan has insurance contracts. Most plans invested with Prudential fall into this category.
<b>Schedule C</b>	<b>Service Provider Information</b>	Must complete if service provider was paid \$5,000 or more (unless certain exceptions apply) and/or an accountant or actuary was terminated.  Beginning with plan years beginning in 2009, Schedule C will require significantly more fee disclosure information, including disclosure of indirect and non-monetary compensation.
<b>Schedule D</b>	<b>DFE/Participating Plan Information</b>	Must complete Part I if plan participates in a PSA, CCT, MTIA or 103-12 IE.
<b>Schedule G</b>	<b>Financial Transaction Schedules</b>	Must complete if Schedule H, lines 4b, 4c, or 4d are "Yes".
<b>Schedule H</b>	<b>Large Plan and DFE Financial Information</b>	Must complete.
<b>Schedule I</b>	<b>Small Plan Financial Information</b>	Not applicable.
<b>Schedule R</b>	<b>Retirement Plan Information</b>	Must complete unless plan meets exception.
<b>Accountant's Report</b>		Must attach.

This chart contains a brief summary of the schedules associated with the Form 5500 and is not intended to encompass all information found on these schedules. For more detailed information, please refer to the instructions for each schedule, which can be found on the [Employee Benefits Security Administration's web site](#).

\*Small 403(b) plans eligible to file Form 5500-SF are not required to complete Schedules.

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### Pension Analyst by Prudential Retirement

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