

# Form 5500 Updates – What's New and an Update on the New Audit Standards

May 25, 2021

# AGENDA

- Changes to 2020 Form 5500
- Changes to 2020 Form 8955-SSA
- Other developments
  - The CARES Act
  - Special extension for providing SARs and AFNs
  - The SECURE Act
  - American Rescue Plan ACT (ARPA)
  - Update on changes to ERISA auditing standards

# Changes to 2020 Form 5500

# 2020 Form 5500 changes

## One participant and foreign pension plans

- The boxes for “a one participant plan” and “a foreign plan” have been removed from Part I of Form 5500-SF.
- Commencing January 1, 2021
  - Form 5500-EZ can now be filed electronically through the Department of Labor (DOL)’s EFAST2 system. In the past, the Form 5500-EZ could only be filed by paper to the IRS so filers who were subject to the electronic filing requirement had to file the Form 5500-SF instead of Form 5500-EZ.
  - Must use the Form 5500-EZ instead of the Form 5500-SF, except for certain amended returns.

<b>Form 5500-SF</b> Department of the Treasury Internal Revenue Service		<b>Short Form Annual Return/Report of Small Employee Benefit Plan</b> This form is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 (ERISA), and sections 6057(b) and 6058(a) of the Internal Revenue Code (the Code). ▶ Complete all entries in accordance with the instructions to the Form 5500-SF.		OMB Nos. 1210-0110 1210-0089
Department of Labor Employee Benefits Security Administration Pension Benefit Guaranty Corporation		<b>2020</b>		<b>This Form is Open to Public Inspection</b>
<b>Part I Annual Report Identification Information</b>				
For calendar plan year 2020 or fiscal plan year beginning _____ and ending _____				
<b>A</b> This return/report is for: <input type="checkbox"/> a single-employer plan <input type="checkbox"/> a multiple-employer plan (not multiemployer) (Filers checking this box must attach a list of participating employer information in accordance with the form instructions.)				
<b>B</b> This return/report is <input type="checkbox"/> the first return/report <input type="checkbox"/> the final return/report <input type="checkbox"/> an amended return/report <input type="checkbox"/> a short plan year return/report (less than 12 months)				
<b>C</b> Check box if filing under: <input type="checkbox"/> Form 5558 <input type="checkbox"/> automatic extension <input type="checkbox"/> DFVC program <input type="checkbox"/> special extension (enter description) _____				
<b>Part II Basic Plan Information</b> —enter all requested information				
<b>1a</b> Name of plan			<b>1b</b> Three-digit plan number (PN) ▶	
			<b>1c</b> Effective date of plan	
<b>2a</b> Plan sponsor's name (employer, if for a single-employer plan) Mailing address (include room, apt., suite no. and street, or P.O. Box) City or town, state or province, country, and ZIP or foreign postal code (if foreign, see instructions)			<b>2b</b> Employer Identification Number (EIN)	
			<b>2c</b> Sponsor's telephone number	
			<b>2d</b> Business code (see instructions)	

# 2020 form changes (continued)

Beginning January 1, 2021, an amended “one-participant plan” or “foreign plan” required to file Form 5500-EZ/5500-SF electronically must file based on the below chart.

<b>Amended return</b>	<b>Filed in calendar year 2021</b>	<b>Filed in or after calendar year 2022</b>
To amend a one-participant or foreign plan originally filed electronically through EFAST2 using Form 5500SF	If it was a 2019 or 2018 form, use the 2019 or 2018 Form 5500-SF through EFAST2; otherwise, use the 2020 Form 5500-EZ through EFAST2.	Use the just-prior-year Form 5500-EZ for amending originals filed for the just-prior year. Use the current-year form for amending originals filed for the current or all other years.
To amend a one-participant or foreign plan originally filed electronically through EFAST2 using Form 5500-EZ	Use the 2020 Form 5500-EZ through EFAST2.	Use the just-prior-year Form 5500-EZ for amending originals filed for the just-prior year. Use the current-year form for amending originals filed for the current or all other years.
To amend a one-participant or foreign plan originally filed on paper 5500-EZ	File on paper 5500-EZ with the IRS on the form year that corresponds to the original filing.	File on paper 5500-EZ with the IRS on the form year that corresponds to the original filing.

# 2020 form changes (continued)

## Form 5500

The instructions for Line 10(f) were updated to reflect the changes to the Required Minimum Distribution (RMD) age to age 72 (amended by the SECURE Act) as follows:

- **Line 10f.** You must check “Yes” if any benefits due under the plan were not timely paid or not paid in full. This would include RMDs to five-percent (5%) owners who have attained age 72 whether or not retired and/or non-five-percent (non-5%) owners who have attained age 72 and have not retired or separated from service (Code Section 401(a)(9)).

Remember that the CARES Act permitted participants to waive the requirement for RMDs for defined contribution plans (including 403(b) plans and governmental 457(b) plans) for any RMD that would otherwise be due during 2020. This includes RMDs due to participants whose required beginning date is April 1, 2020 (for their 2019 RMD), but who did not take their first RMD by December 31, 2019.

**Important: The waiver did not apply to RMDs due from defined benefit plans during 2020.**

# 2020 form changes (continued)

## Schedule H

The instructions for Schedule H were revised as follows:

- Part III (Accountant's Opinion)
  - **Line 3a (type of accountant's opinion).** Instructions for an unmodified opinion were updated to reflect the Statement on Auditing Standards (SAS) 136, *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA*. The instructions indicate to check unmodified opinion if it was issued pursuant to SAS 136. SAS 136 permits the Independent Qualified Public Accountant (IQPA) to issue a form of an unmodified opinion when the IQPA has performed an audit pursuant to 29 CFR 2520.103-8 and/or 29 CFR 2520.103-12 (an ERISA section 103(a)(3)(C) audit).
  - **Line 3b (formerly applied to limited scope audits).** The “yes” and “no” boxes were replaced by a question about which of the following section of the DOL regulations the ERISA Section 103(a)(3)(C) audit was performed.
    - 29 CFR 2520.103-8
    - 29 CFR 2520.103-12(d)
    - Not performed pursuant to either of these sections

# 2020 form changes (continued)

## Schedules H/I

- Line 4I (Failure to pay benefits when due)
  - The instructions for Line 4I have been revised to increase the RMD age from 70½ to 72 amended by SECURE Act.
- Line 5c (PBGC insurance)
  - The instructions for Line 5c have been revised to clarify that the “yes” box is the appropriate box to check if the plan was covered by PBGC at any time during the plan year.



# 2020 form changes (continued)

## Schedule R

### Additional information for multiemployer defined benefit pension plans

- Line 14 has been revised to provide multiemployer plans with a choice of three counting methods to count inactive participants and to require that an attachment be provided depending on the counting method chosen. A plan that reports a number on lines 14b or 14c that differs from the corresponding number it reported for the plan year immediately preceding the current plan year also must attach an explanation of the reason for the difference.

# 2020 form changes (continued)

## Amended or late prior year's Form 5500

- Use current year's (2020) Form 5500/5500-SF for the 2018 and prior plan years. Forms for the applicable amended or late plan year cannot be used.
- Beginning on January 1, 2021, EFAST2 will support two active form years (i.e., for 2021, the current form year (2020) and the just-prior form year (2019); in 2022, the 2021 and 2020 form year, and so on).
- According to the DOL's FAQs on the EFAST2 electronic filing system, they have eliminated the special option of using either the current year (2020) Schedule C, or the applicable year Schedule C.
- Note the following exceptions:
  - Schedules B, E, P, MB, SB, R, and T for the applicable year must be used.
  - When using the correct plan year schedule for plan year prior to 2009, it must be attached as a pdf document to the filing.

# 2020 form changes (continued)

DOL's EFAST search engine

The EFAST2 website publicly shows successfully submitted Forms 5500 and 5500-SF (forms, schedules and attachments), with the following exceptions:

- Filings/attachments containing sensitive information (e.g., social security number, financial information, etc.)
- Filings for plan years before 2009
- One-participant and foreign plans (Forms 5500-SF and 5500-EZ filings)
- Filings identified as amendments and linked to their original filing
- Prior-year filings submitted on a current-year form

# 2020 form changes (continued)

## Administrative Penalties

The Form 5500/5500-SF instructions were updated to reflect the new maximum civil penalty for plan administrators who fail or refuse to file a complete Form 5500/5500-SF report.

- The following chart outlines some of the increases in the civil penalties for employee benefit plans for violations that occurred after November 2, 2015 (the enactment of the Federal Civil Penalties Inflation Adjustment Act of 2015), except as otherwise noted below, throughout the years.
  - Other penalties may be assessed (e.g., for failure to include required schedules or audit reports), which have not been adjusted for inflation are not displayed below (DOL's Form 5500 Deficient Filer Enforcement Program).

Employee benefit plans							
Violation	2015 penalty amount; penalties assessed on or before Aug 1, 2016	2016 penalty amount; penalties assessed after Aug 1, 2016, but on or before Jan 13, 2017	2017 penalty amount; penalties assessed after Jan 13, 2017, but on or before Jan 2, 2018	2018 penalty amount; penalties assessed after Jan 2, 2018, but on or before Jan 2, 2019	2019 penalty amount; penalties assessed after Jan 2, 2019, but on or before January 15, 2020	2020 penalty amount; penalties assessed after Jan 15, 2020, but on or before January 15, 2021	2021 penalty amount penalties assessed after January 15, 2021
Failure or refusal to file an annual report (Form 5500) with the DOL (unless a filing exemption applies)	\$1,100 per day	\$2,063 per day	\$2,097 per day	\$2,140 per day	\$2,194 per day	\$2,233 per day	\$2,259 per day
Failure of a multiple employer welfare arrangement (MEWA) to file an annual report (Form M-1) with the DOL	\$1,100 per day	\$1,502 per day	\$1,527 per day	\$1,558 per day	\$1,597 per day	\$1,625 per day	\$1,644 per day

# Changes to 2020 Form 8955-SSA

# 2020 Form 8955-SSA changes

## Change in the instructions for Form 8955-SSA

The following information was added to the instructions for Form 8955-SSA

- **Purpose of form.** Revised to clarify how the form is to be used to report information about deferred vested participants using the correct entry codes.
- **How to file.** Caution under “How to File” has been revised to clarify that no attachments are allowed with Form 8955-SSA.
- **Transfer of a participant’s benefit to the plan of a new employer.** Revised to clarify that the new plan administrator must complete a Form 8955-SSA using Entry Code C, except in the rare situation where the previous plan number and employer identification number (EIN) are not available; then, Entry Code A would be used.

# Other developments

# CARES Act

- The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) allowed plan sponsor of single-employer defined benefit pension plans additional time to make required minimum employer contributions that were due in 2020 until January 1, 2021, which was later extended to January 4, 2021 (IRS Notice 2020-82).
- On July 31, 2020, the IRS issued Notice 2021-61 which indicated if a sponsor took advantage of the extended deadline for making contributions and there were contributions designated for the plan made after the deadline for filing the 2019 Form 5500 filing, the plan sponsor **must** submit an amended Schedule SB to reflect the additional contributions. Although there is no deadline for submitting an amended Form 5500 filing, we recommend submitting the amended 2019 Form 5500 filing prior to submitting the 2020 Form 5500 filing because changes in the amended 2019 Form 5500 filing may affect information reported on the 2020 Form 5500 filing.
  - Large defined benefit plans (100 or more participants as of the beginning of the plan year) employer contributions that were deferred were most likely not reported on the plan's audited financial statements for the 2019 plan year as a contribution receivable or as a reconciling amount. Most auditors will not revise the prior year's audit report but will most likely adjust the subsequent plan year's audit report to include the deferred contributions. Therefore, although the amended Schedule SB will no longer agree with the audit report and the Schedule H, if the audit report was not revised, there is no need to update the Schedule H to reflect information reported on the amended Schedule SB.



# Special extension for providing SARs & AFNs

ERISA Section 518 allows DOL to extend deadlines for providing notices for up to one year in the case of a federally declared disaster (as determined by the President of the U.S.) or a terroristic or military action.

On April 28, 2020, the DOL issued Notice 2020-01, which provides deadline relief to help employee benefit plans, plan participants, and plan service providers impacted by the COVID-19 pandemic. This notice was coordinated with and reviewed by the Department of the Treasury, the Internal Revenue Service, and the Department of Health and Human Services (HHS).

- The CARES Act amended Section 518 to add a public health emergency declared by the Secretary of HHS to the events that allow a one-year extension.
- Employee benefit plans will not be in violation of ERISA for failure to timely furnish a notice, disclosure, or document that must be furnished **between March 1, 2020 and 60 days after the announced end of the COVID-19 national emergency** (provided this period does not exceed one year), if plan sponsor acts in good faith by furnishing the documents as soon as administratively practicable.
  - Good faith acts include the use of electronic means of communicating with plan participants who the plan sponsor reasonably believes have effective access to **electronic means of communication**, including email, text messages, and continuous access websites.

# Special extension for providing SARs & AFNs (cont'd)

- Recognizing the COVID-19 national emergency is still ongoing, and that plan sponsors, participants and beneficiaries continue to require relief, the DOL issued Notice 2021-01 which provides that plans and individuals subject to the relief under Notice 2020-01 will have the applicable period disregarded until the earlier of: (a) one year from the date first eligible for relief under the prior Notice, or (b) 60 days after the end of the outbreak period.
  - Secretary of HHS most recently renewed the Covid-19 Pandemic Public Health Emergency (first issued January 31, 2020) through July 20, 2021. (See <https://www.phe.gov/emergency/news/healthactions/phe/Pages/default.aspx> for latest updates.)

# SECURE Act – Pooled Employer Plan (PEP)

- The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) provides for a new type of multiple employer plan, called a Pooled Employer Plan (PEP).
- A PEP allows unrelated small employers to pool together to participate in a single defined contribution plan.
- The SECURE Act allows pooled plan providers to start operating pooled employer plans beginning on January 1, 2021, but requires that pooled plan providers register electronically by submitting Form PR (*Registration for Pooled Plan Provider*) to the DOL no earlier than 90 days and not later than 30 days before beginning operations as a pooled plan provider with the Secretary of Labor and the Secretary of the Treasury.
- PEPs will be required to file a Form 5500 or 5500-SF filing. Since PEPs will not be effective until January 1, 2021, the first Form 5500 filings for these plans will commence with the 2021 plan year. The 2021 Form 5500 filings are generally due starting in the 2022 calendar year. It must include a list of all participating employers — with information on the account balances and percentage of the total contributions attributable to each employer. There is an exemption from the audit requirements if there are no more than 1,000 participants in the PEP and no employer has more than 100 participants.

# SECURE Act increased penalties for failure to file timely return/notice

The SECURE Act increased several penalties for retirement plans that fail to file timely and accurate forms or provide notice for filings/notices submitted/provided after December 31, 2019.

Form/notice	Failure to file late penalties before December 31, 2019	Failure to file late penalties after December 31, 2019
Form 5500*	\$25 per day the failure continues, not to exceed \$15,000	\$250 per day the failure continues, not to exceed \$150,000
Form 8955-SSA	\$1 per participant per day the failure continues, not to exceed \$5,000	\$10 per participant per day the failure continues, not to exceed \$50,000
Notification of a change in the status of the plan (such as a change in the plan name or a termination of the plan), or a change in the name or address of the plan administrator	\$10 for each failure, not to exceed \$5,000	\$100 for each failure, not to exceed \$50,000

\* This penalty is in addition to the civil penalty for failure to file a timely Form 5500.

# American Rescue Plan Act (ARPA)

The American Rescue Plan Act (ARPA) of 2021, which was signed into law on March 11, 2021, provides significant funding changes that will provide relief to single-employer and multiemployer defined benefit pension plans.

- May require amended Schedule SB/MB for single employer and multiemployer defined benefit pension plans that take advantage of this relief for 2020 (if 2020 Form 5500 already filed) and/or prior plan years. Plan sponsors, actuaries and other service providers awaiting guidance from the Internal Revenue Service

# Reminders

# Form 5500 reminders

- You cannot attach an encrypted or password protected document to a Form 5500 filing.
- The auditor report consists of the accountant's opinion and finalized financial statements which should be uploaded in the attachment labeled, "Schedule H Line 3c or Schedule I line 4k — Accountant Opinion/IQPA report."
  - The Schedule of Assets Held for Investment and Schedule of Reportable Attachments are separate attachments to Schedule H. You can copy the pages from the financial statements or insert a document (tag page) indicating the information is included in the Accountant Opinion/IQPA report attachment.
  - If any delinquent participant contributions or participant loan repayments were reported on line 4a of Schedule H/I, you will need to include an attachment which provides information about whether this was corrected and how it was corrected.
- The attachments to the actuarial schedule (Schedule SB/MB) will need to be split out into the applicable labeled attachments or placed into one "Actuarial Statement" attachment and insert a document (tag page) for the other attachments indicating the information is included in the "Actuarial Statement" attachment.

# Form 5500 reminders (continued)

- The DOL uses email to communicate with filers regarding Form 5500/5500-SF inquiries and rejections. The initial emails are sent from [DRC@dol.gov](mailto:DRC@dol.gov). The emails are sent to the email associated with the plan administrator's electronic signature on Form 5500/5500-SF. Therefore, it is important for the client to update their email address in the DOL's EFAST system if there is a change. If DOL does not obtain a response to the emails, they will contact the plan administrator by phone or mail before assessing penalties or fees.
- The IRS does not send emails regarding Form 5500/5500SF. According to the DOL's FAQs on EFAST electronic filing system, if the plan sponsor/plan administrator receives a suspicious email that claims to come from the IRS, they should delete it or forward it to the IRS mailbox at [phishing@irs.gov](mailto:phishing@irs.gov) and then delete it.



# Summary annual report (SAR) reminders

- A SAR is a summary of the information reported on the Form 5500 filing, which is required for defined contribution pension plans and certain welfare benefit plans.
- A SAR is not required for:
  - Defined benefit plans because the PBGC's Annual Funding Notice (AFN) replaced the SAR commencing with the plan years beginning after December 31, 2007
  - Welfare benefit plans that are solely funded from the general assets of the plan sponsor (self-funded); if the plan is both self-funded and insured, a SAR **is** required
  - Master trust, common/collective trust, pooled separate account, 103-12 investment entity
  - One participant or foreign pension plans
- The SAR must be distributed to each participant and to each beneficiary of deceased participants who are receiving benefits no later than nine months after the end of the plan year, or two months after the extended filing deadline for submitting Form 5500, whichever is later.
- If the plan sponsor waives the small pension plan audit requirement, required language must be included in the SAR, the AFN, or as a standalone document. In most cases, the required language is included in the Form 5500 software.

# Form 5558 reminders

## Application for Extension of Time to File Certain Employee Plan Returns

Form 5558 **must** be filed no later than the due date for filing Form 5500 series (i.e., last day of the seventh month after the end of the plan year). If the filing date for submitting Form 5558 falls on a weekend or holiday, Form 5558 may be filed the next business day.

- 2½ month filing extension (15<sup>th</sup> day of third month after normal due date)
  - However, if the extended filing date falls on a weekend or holiday, according to informal guidance our government form software vendor (ftwilliam.com) obtained from the IRS, **preparer must still insert the 15<sup>th</sup> day of the third month.**
  - Request an extension for only one plan on each Form 5558 (can no longer include an attachment to Form 5558 to request an extension for multiple plans).
- No signature required on Form 5558 if requesting extension for Form 5500 and/or 8955-SSA.

To ensure proof of mailing Form 5558, it should be filed by the U.S. Postal Service's certified mail, express mail or other mail services providing receipt of delivery. Alternatively, Form 5558 may be filed through one of the IRS approved private overnight mail delivery carriers (DHL Express, FedEx, or UPS).

# Automatic extension of Form 5500 filings

The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (Surface Transportation Act) changed the tax return filing deadlines for corporations, partnerships, and tax-exempt entities and, in turn, affected the automatic extensions to file Forms 5500 and 8955-SSA.

- If the plan sponsor is a calendar year **C corporation** and the plan year and tax year coincide, and the plan sponsor applied for an extension for its 2020 corporate return, the corporate extension filing deadline is October 15, 2021. Therefore, the 2020 Form 5500/8955-SSA automatic extension filing deadline is October 15, 2021, which is the same filing deadline as the Form 5558 extended deadline of October 15, 2021 (had the plan sponsor applied for an extension on or before August 2, 2021).
- If the plan sponsor is a calendar year **partnership** and the plan year and tax year coincide, and the plan sponsor applied for an extension for its 2020 partnership return, the partnership extension filing deadline is September 15, 2021, but the Form 5558 extended deadline is October 15, 2021. By filing Form 5558, the plan sponsor is granted an extra month to file Form 5500.
  - Note the filing deadline for the **S corporation** tax return was not affected by this law, therefore the extended filing deadline for a calendar year S Corporation 2020 return is September 15, 2021. Filing Form 5558 extends the due date of a calendar year Form 5500 to October 15, 2021.
- Since the Form 5500 preparer may not know whether the plan sponsor is a C corporation or an S corporation or whether an extension was requested for the corporate tax return, we recommend filing Form 5558 to request the 2½ month extension.

# Retention reminders

- Section 107 of ERISA requires that Form 5500 filings, including the plan records used to support the filings, be retained for at least six years from the filing date. The following documentation should be retained at least six years after the Form 5500 filing date, including, but not limited to:
  - Copies of Form 5500 (including all required schedules and attachments)
  - Financial reports and supporting documentation
  - Participant and actuarial data
  - Evidence of plan's fidelity bond
  - Corporate income-tax returns (to reconcile deductions)
- The Form 5500 filing and documentation can be maintained electronically, provided it complies with the Section 2520.107-1 of the DOL regulations (*Use of electronic media for maintenance and retention of records*).
- Although ERISA imposes no specific penalty for a failure to maintain records under Section 107, any person who knowingly violates those requirements, as with other ERISA violations, can be liable for up to \$100,000 in fines (\$500,000 for a corporation) and ten years in prison, among other criminal penalties.

# Retention reminders (continued)

- The IRS rules on the length of time plan fiduciaries should keep plan records mirror the length of time the IRS can audit them. For qualified retirement plans, plan fiduciaries must keep records associated with any plan filing for at least three years from the date it was filed.
  - According to informal guidance from the IRS, if issues are discovered on audit, the IRS could extend their audit authority to filings occurring more than three years in the past if a substantial error is identified.
- Form 8955-SSA is used to satisfy the reporting requirements of Section 6057(a) of the Internal Revenue Code.
  - While you are only required to retain Form 8955-SSA for at least three years, it is difficult, if not nearly impossible, to obtain a copy of prior Form 8955-SSA and/or Schedule SSA (Form 5550) filings which were filed by mail. Since the Form 8955-SSA filings for most plan sponsors are now filed electronically, it may make it easier for the plan sponsor to obtain a copy of the prior Form 8955-SSA filing. **However, we recommend the plan sponsor maintain a signed copy of the Form 8955-SSA filing for their records beyond the three-year period.**

# 2020 Form 8955-SSA reminders

- Form 8955-SSA is an annual registration statement identifying separated participants with deferred vested benefit which applies to pension plans (not welfare benefit plans) and is filed with the IRS (not the DOL).
- Many plan sponsors need to file Form 8955-SSA electronically because they satisfy the “250-returns” threshold. Form 8955-SSA must be filed electronically, using approved IRS third-party software and an IRS transmitter control code (TCC) for Form 8955-SSA.
  - For those of you that use ftwilliam.com to prepare the Form 8955-SSA filings, the Form 8955-SSA batch file must be uploaded using their fulfillment service **no later than two business days prior to the filing deadline.**
  - Ftwilliam.com have published the following deadlines for uploading the calendar year end 2019 Form 8955-SSA filings to their fulfillment service:
    - **August 2, 2021 filing deadline — must be uploaded no later than noon Central Time on July 29, 2021**
    - **October 15, 2021 filing deadline — must be uploaded no later than noon Central Time on October 13, 2021**

# 2020 Form 8955-SSA reminders (continued)

- The IRS FIRE (Filing Information Returns Electronically) system, which is used to transmit Form 8955-SSA filing electronically to the IRS, is offline each year from approximately the first week of December through the first week of January of the following year due to system updates. If the filing deadline occurs within this timeframe, the IRS recommends the filer should either submit the filing earlier or apply for an extension (Form 5558), if applicable.

# 2020 Form 8955-SSA reminders (continued)

- If the plan is using the one-year lag for reporting terminated participants with deferred vested benefits on Form 8955-SSA for single-employer pension plans (or two successive one-year breaks in service lag for multiple and multiemployer pension plans), it is important to keep track of the Code A participants who were not previously reported on the prior year's Form 8955-SSA.
- If Form 5500 is the final return for a plan year, Form 8955-SSA for that plan year must report Code D for deferred vested participants that were previously reported for the plan on a prior Form 8955-SSA and are no longer entitled to a benefit because they are receiving benefits, their benefits were paid in full, or their benefit was transferred to another plan or to an insurance company to pay out as an annuity.



# 2020 Form 8955-SSA reminders (continued)

There is **no** delinquent filer program when only Form 8955-SSA (or former Schedule SSA) is delinquent. However, IRS Notice 2014-35 provides relief from IRS' late filing penalties in cases where not only Form 8955-SSA is delinquent, but Form 5500 is also delinquent, and the plan sponsor submits the late Form 5500/5500-SF filing under the DOL's Delinquent Filer Voluntary Compliance Program (DFVCP).

- The filer of the delinquent Form 8955-SSA must check the box on Line C, Part I of Form 8955-SSA and enter "DFVCP."
- In addition, the delinquent Form 8955-SSA must be submitted to the IRS by paper (not electronically) no later than 30 days after the delinquent Form 5500 was submitted to the DOL under the DFVCP.

# Update on ERISA Auditing Standards

# UPDATE ON NEW AUDIT STANDARDS

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- COVID – 19 Considerations
- Auditing Guidance Updates
- Accounting Guidance Updates

# COVID- 19 CONSIDERATIONS

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## Going Concern Auditing Procedures

- Management's responsibility to evaluate
- Auditor's responsibilities: AU-C section 570
- Evaluation should be one year from date of financial statements are issued (or available to be issued)
- Paragraph 31 of AU-C section 570 addresses significant delays in the issuance of financial statements
- EBP Considerations
  - a) DB Plans
  - b) Plan Sponsors of DC plans

# COVID- 19 CONSIDERATIONS

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## Going Concern Auditing Procedures

- Recommend tailoring disclosures to specific facts and circumstances
- AICPA guidance to date – Type 2 subsequent event
- Recommended that disclosures addresses:
  - a) Impact on plan sponsor
  - b) Impact on plan operations and administration
  - c) Impact on investments/ fair values

# COVID- 19 CONSIDERATIONS

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## Other Matters

- Risks and uncertainties
- Auditor Report:
  - a) Emphasis of a matter
  - b) Going Concern
- Audit procedures performed via videoconference
- Source document issues
- Management representation letters

# COVID- 19 CONSIDERATIONS

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- Required changes to plan documents / amendments
- Changes to internal controls, processes and procedures
- Consider the effect on the audit plan and procedures
- Significant changes to planned audit strategy or significant risks
- Matters related to accounting policies, practices or estimates
- Control related matters including significant deficiencies and material weakness
- Matters requiring consultation

# COVID- 19 CONSIDERATIONS

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- Auditor's evaluation of the entity's ability to continue as a going concern
- Significant differences noted during the audit



# AUDIT GUIDANCE UPDATES

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- SAS No. 136 Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA
- SAS 140 Amendments to AU-C Sections 725, 730, 930, 935 and 940 to incorporate Auditor Reporting Changes From SAS Nos. 134 and 137
- AICPA issued SAS 141 which defers the effective dates of Statements on Auditing Standards 134 - 140
- Deferred until periods ending on or after December 15, 2021
- Earlier implementation would be permitted to allow those firms that are in a position to proceed with implementation as of the original effective date

# SAS 136 – AUDITOR REPORTING

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Addresses auditor responsibility to form an opinion and report on EBPs subject to ERISA	Changes the form and content of the EBP auditor's report
Prescribes certain <b>new performance requirements</b> for EBP audits	Includes reporting revisions to align with SAS 134
	Create new AU-C section 703

# EXAMPLE OF NEW AUDITOR'S REPORT

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## Independent Auditor's Report

[Appropriate Addressee]

### Scope and Nature of the ERISA Section 103(a)(3)(C) Audit

We have performed audits of the financial statements of ABC 401(k) Plan, an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (ERISA), as permitted by ERISA Section 103(a)(3)(C) (ERISA Section 103(a)(3)(C) audit). The financial statements comprise the statements of net assets available for benefits as of December 31, 20X2 and 20X1, and the related statement of changes in net assets available for benefits for the year ended December 31, 20X2, and the related notes to the financial statements.

Management, having determined it is permissible in the circumstances, has elected to have the audits of ABC 401(k) Plan's financial statements performed in accordance with ERISA Section 103(a)(3)(C) pursuant to 29 CFR 2520.103-8 of the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA. As permitted by ERISA Section 103(a)(3)(C), our audits need not extend to any statements or information related to assets held for investment of the plan (investment information) by a bank or similar institution or insurance carrier that is regulated, supervised, and subject to periodic examination by a state or federal agency, provided that the statements or information regarding assets so held are prepared and certified to by the bank or similar institution or insurance carrier in accordance with 29 CFR 2520.103-5 of the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA (qualified institution).

Management has obtained certifications from a qualified institution as of December 31, 20X2 and 20X1, and for the year ended December 31, 20X2, stating that the certified investment information, as described in Note X to the financial statements, is complete and accurate.

# EXAMPLE OF NEW AUDITOR'S REPORT

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## Opinion

In our opinion, based on our audits and on the procedures performed as described in the Auditor's Responsibilities for the Audit of the Financial Statements section

- the amounts and disclosures in the accompanying financial statements, other than those agreed to or derived from the certified investment information, are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America.
- the information in the accompanying financial statements related to assets held by<sup>3</sup> and certified to by a qualified institution agrees to, or is derived from, in all material respects, the information prepared and certified by an institution that management determined meets the requirements of ERISA Section 103(a)(3)(C).

## Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of ABC 401(k) Plan and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our ERISA Section 103(a)(3)(C) audit opinion.

# EXAMPLE OF NEW AUDITOR'S REPORT

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## Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error. Management's election of the ERISA Section 103(a)(3)(C) audit does not affect management's responsibility for the financial statements.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about ABC 401(k) Plan's ability to continue as a going concern for [insert the time period set by the applicable financial reporting framework].

Management is also responsible for maintaining a current plan instrument, including all plan amendments, administering the plan, and determining that the plan's transactions that are presented and disclosed in the financial statements are in conformity with the plan's provisions, including maintaining sufficient records with respect to each of the participants, to determine the benefits due or which may become due to such participants.

# EXAMPLE OF NEW AUDITOR'S REPORT

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## Auditor's Responsibilities for the Audit of the Financial Statements

Except as described in the Scope and Nature of the ERISA Section 103(a)(3)(C) Audit section of our report, our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

# EXAMPLE OF NEW AUDITOR'S REPORT

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## Auditor's Responsibilities for the Audit of the Financial Statements (Continued)

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the ABC 401(k) Plan's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about ABC 401(k) Plan's ability to continue as a going concern for a reasonable period of time.

# EXAMPLE OF NEW AUDITOR'S REPORT

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## Auditor's Responsibilities for the Audit of the Financial Statements (Continued)

Our audits did not extend to the certified investment information, except for obtaining and reading the certification, comparing the certified investment information with the related information presented and disclosed in the financial statements, and reading the disclosures relating to the certified investment information to assess whether they are in accordance with the presentation and disclosure requirements of accounting principles generally accepted in the United States of America.

Accordingly, the objective of an ERISA Section 103(a)(3)(C) audit is not to express an opinion about whether the financial statements as a whole are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.



# EXAMPLE OF NEW AUDITOR'S REPORT

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## Other Matter — Supplemental Schedules Required by ERISA

The supplemental schedules of [identify the title of supplemental schedules and periods covered] are presented for purposes of additional analysis and are not a required part of the financial statements but are supplementary information required by the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information included in the supplemental schedules, other than that agreed to or derived from the certified investment information, has been subjected to auditing procedures applied in the audits of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with GAAS. For information included in the supplemental schedules that agreed to or is derived from the certified investment information, we compared such information to the related certified investment information.

In forming our opinion on the supplemental schedules, we evaluated whether the supplemental schedules, other than the information agreed to or derived from the certified investment information, including their form and content, are presented in conformity with the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA.



# EXAMPLE OF NEW AUDITOR'S REPORT

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## Other Matter — Supplemental Schedules Required by ERISA

In our opinion

- the form and content of the supplemental schedules, other than the information in the supplemental schedules that agreed to or is derived from the certified investment information, are presented, in all material respects, in conformity with the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA.
- the information in the supplemental schedules related to assets held by<sup>4</sup> and certified to by a qualified institution agrees to, or is derived from, in all material respects, the information prepared and certified by an institution that management determined meets the requirements of ERISA Section 103(a)(3)(C).

[Signature of the auditor's firm]

[City and state where the auditor's report is issued]

[Date of the auditor's report]



# AUDIT GUIDANCE UPDATES

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## Major Changes

- ERISA section 103(a)(c) audit
  - a) Replaces formerly known as “limited scope audit”
  - b) Not considered a scope limitation
- Terms
  - a) ERISA plan financial statements
  - b) ERISA plan audit
  - c) Reportable findings

# SAS NO. 136 AUDITS OF EBPS SUBJECT TO ERISA

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## Key Provisions

- Obtain the agreement of management :
  - Maintaining a current plan instrument including plan amendments
  - Administering the plan
  - Determining the plan's transactions are in conformity with the plan's provisions
  - Maintaining sufficient participant's records
  - Providing draft Form 5500 prior to the dating of the auditor's report that is substantially complete
- Usually obtained via the engagement letter

# SAS NO. 136 AUDITS OF EBPS SUBJECT TO ERISA

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## Key Provisions

### Risk Assessment

- Obtain and read the most current plan instrument for the audit period , including effective amendments, as part of obtaining an understanding of the entity sufficient to perform risk assessment procedures
- Consider whether to test specific plan provisions

# SAS NO. 136 AUDITS OF EBPS SUBJECT TO ERISA

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## Key Provisions

### Planning and Fieldwork and Documentation

- Perform procedures to test that received and disbursed amounts reported by the trustee or custodian were determined in accordance with the plan provisions
- If the auditor has determined that it is not necessary to test any relevant plan provisions as part of risk assessment, the auditor is required to document the considerations in reaching such conclusions

# SAS NO. 136 AUDITS OF EBPS SUBJECT TO ERISA

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## Changes to Form and Content of Auditor's Report

ERISA Plan Audit without an ERISA section 103(a)(3)(c) audit:

- Formerly referred to as a full-scope audit
- Types of opinion
  - Unmodified opinion
  - Modified

# SAS NO. 136 AUDITS OF EBPS SUBJECT TO ERISA

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## Changes to Form and Content of Auditor's Report

ERISA Plan Audit without an ERISA section 103(a)(3)(c) audit:

- Requires ordering of certain report elements
  1. Opinion – required to be placed first
  2. Basis for opinion
  3. Going concern – if applicable
  4. Key audit matters – if applicable
  5. Responsibilities of management for the financial statements
  6. Responsibilities of Auditor for the audit of the financial statements
  7. Other matters such as supplemental schedules required by ERISA



# SAS NO. 136 AUDITS OF EBPS SUBJECT TO ERISA

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## Engagement Acceptance

- When Management elects to have an ERISA Section 103(a)(3)(c) audit, management agrees to determine
  1. Audit is permissible
  2. Investment information if prepared and certified by a qualified institution
  3. Certification meets the requirements in 29 CFR 2520.105-5
  4. Certified information is appropriately measured and disclosed
- Included in the engagement letter

# SAS NO. 136 AUDITS OF EBPS SUBJECT TO ERISA

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## Planning and Fieldwork

- Inquire how management determined entity id qualified institution
- Evaluate management's assessment
- Perform procedures for certified investment information
- Perform procedures in information and disclosures not certified

# SAS NO. 136 AUDITS OF EBPS SUBJECT TO ERISA

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## Certified Information

- Required procedures with respect to certified investment information:
- Evaluate management's assessment or whether the entity issuing the certification is a qualified institution
- Identify which investments information is certified
- Obtain from management and read certification
- Compare certified information with the related information presented and disclosed in the financial statements and supplemental disclosures

# SAS NO. 136 AUDITS OF EBPS SUBJECT TO ERISA

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## Certified Information

- Read the disclosures relating to the certified investment information to assess whether they are in accordance with the presentation and disclosure requirements for GAAP

# POTENTIAL CHALLENGES TO INTERNAL CONTROLS

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- Controls over payroll, changes due to employee terminations and furlough expenses, managing plan changes and the definition of compensation, the company matching contributions, changes to the requirements for hardship withdrawals?
- Are compensating controls in operation and effective?
- Required written communications within 60 days to those charged with governance
- What about controls at key outside service providers. Is SOC report available or delayed?

# RISK AREAS - EMPLOYEE BENEFIT PLANS

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- COVID – 19 Impact
  - a) Plan sponsor match
  - b) Timeliness of deposits
  - c) Contributions
  - d) Plan changes
  - e) Plan sponsor is acquired by another Company
- Change in TPA ( investment, custodian, record keeper)

# RISK AREAS - EMPLOYEE BENEFIT PLANS

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- Material nonroutine entries
- Additional fraud risks and internal control issues
- Use of TPA without a SOC report
- Significant new alternative investments
- ESOP – Valuation
- SOC Report covering part of the audit period or with carveouts for subservice organizations
- Certification not covering all of the investments

# RISK AREAS - EMPLOYEE BENEFIT PLANS

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- Change in auto-enrollment features
- Increase in hardship withdrawals or participant loans
- Changes in fee arrangements
- New student loan benefits
- Changing regulations on required minimum distributions
- Increased regulatory focus on missing participant data and uncashed checks
- Increase in cybersecurity risk and reliance in electronic information



# Questions

Due to updates on the polling site, a Thank You for texting message will no longer be sent.

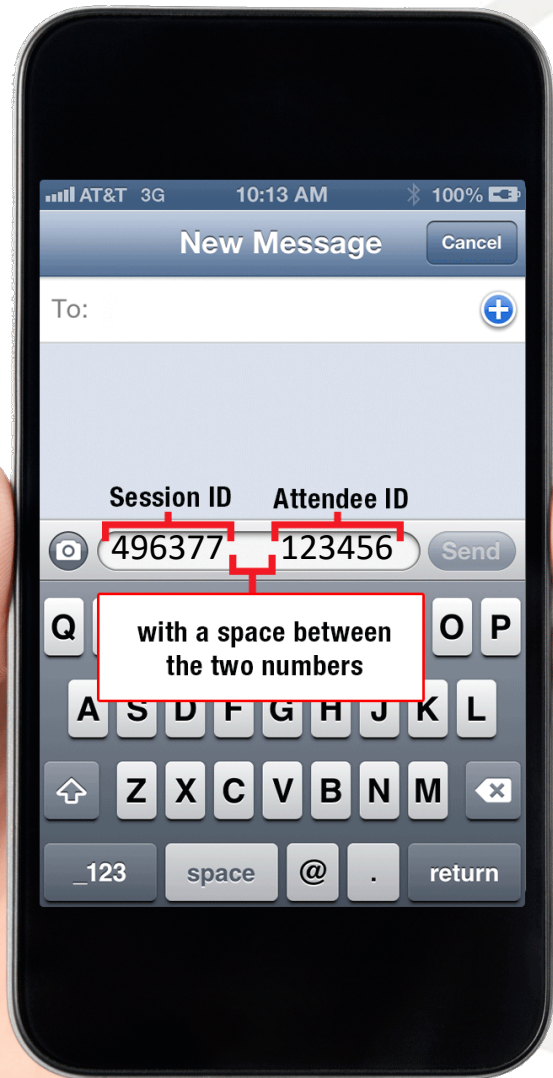
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(See sample of phone  
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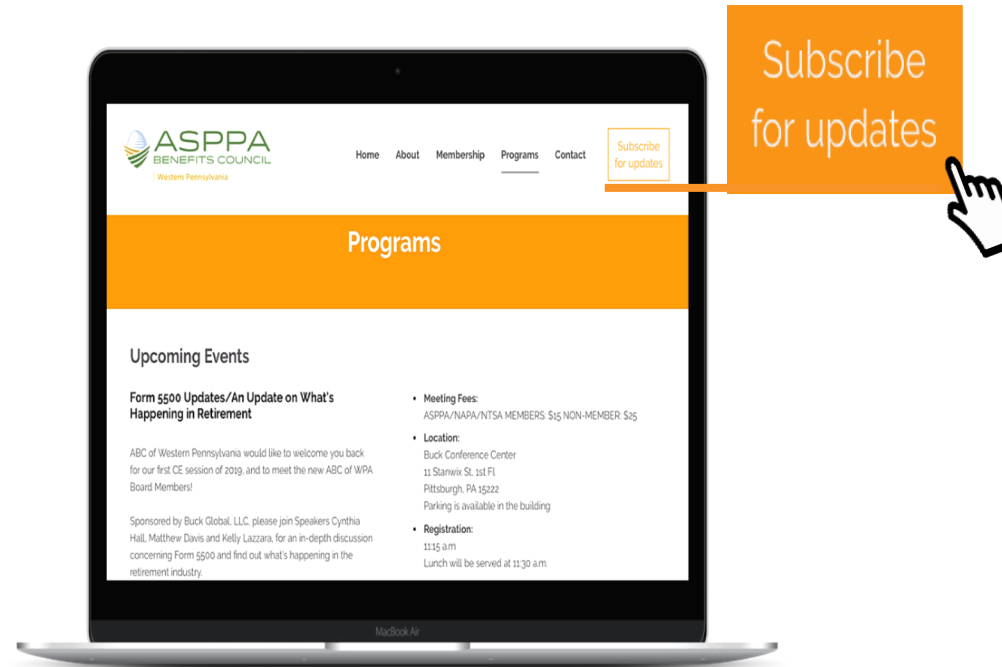
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