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Important Changes to Form 5500 Filing Requirements

Venable's Employee Benefits and Executive Compensation Group covered further updates to form 5500 filing requirements in the July, 2010 alert, "[It Ain't Easy Being Green: More Changes to Form 5500 Electronic Filing.](#)"

Audit season is underway, so we wanted to be sure to alert plan sponsors to important changes that will affect the Forms 5500 that you will need to file for your retirement, health and welfare plans for 2009.

Electronic Filing- Don't Wait Until the Last Minute!

For calendar year plans, this July will mark the first time that plan sponsors must file Forms 5500 electronically, using the Department of Labor's electronic ERISA Filing Acceptance System (EFAST2). Plan sponsors may use the Department of Labor's free IFILE system or third-party software. A number of the changes implemented along with EFAST2 alter how you comply with Department of Labor rules regarding filing, including some new requirements you may not be used to.

- Electronic Signature Credentials.** Under EFAST2, plan administrators/sponsors have to sign up for electronic signature credentials in advance in order to submit a Form 5500 filing. If you are the authorized filing signer, you can no longer delegate the task of reviewing and signing the Form 5500 to other staff members or share your EFAST2 PIN. Instead, the person with the electronic signature credentials for the plan must actually view the electronic filing and e-sign the Form 5500 (although once electronically signed, a third-party preparer may submit the Form 5500). By now, you should have already received information from the plan's recordkeeper or third-party administrator about the process that you need to undertake in order to sign up for electronic signature credentials. If you have not received this information, you should contact your plan's recordkeeper or third-party administrator as soon as possible. Don't wait until the last minute and risk technical difficulties with registering for signature credentials, e-signing the forms or attaching audited financial statements or required schedules.
- No SSA Required for 2009.** Because the Department of Labor will now make Forms 5500 publicly available online, within 24 hours of your electronic filing, the Schedule SSA (which included Social Security numbers) has been eliminated for 2009 filings. The IRS is developing a new form to serve the same purpose as the old Schedule SSA that will be filed separately with the IRS. However, for plan year 2009 filings, this requirement is deferred for now.
- Incomplete Filings; Increased Risk of Monetary Penalties.** As you prepare for EFAST2, you should make sure that when your Form 5500 is submitted all schedules and attachments are provided—including the independent qualified public accountant report. Incomplete filings—such as those that are missing the audit report—will cause the EFAST2 system to indicate an error with the entire filing and may cause further review or rejection of your electronic filing. The Department of Labor has indicated that it will no longer send reminders about incomplete filings but it will move immediately toward assessing monetary penalties. Therefore, in order to minimize the risk that you will be assessed any penalties, you should make sure that your audit is complete and that all schedules are attached before you hit the "send" button!

403(b) Reporting Requirements

Now, 403(b) plans that are subject to Title I of ERISA will be treated like 401(k) plans for reporting purposes. As a result, large 403(b) plans (those with over 100 participants) must file a full Form 5500, including audited financial statements, beginning with the 2009 filing.

We reported in the July 2009 alert [Important News for 403\(b\) Plan Sponsors](#) that the Department of Labor has offered some transitional relief to exclude certain contracts or custodial accounts from the audit process due to anticipated problems with obtaining information about some pre-2009 contracts and custodial accounts to which the employer is no longer making contributions. For large 403(b) ERISA-

covered plans, plan sponsors will need to work closely with auditors to determine which contracts and accounts may be excluded from the audits, as auditors were recently instructed by the Department of Labor to note in the audit report if contracts or custodial accounts are improperly excluded.

Additional Disclosure Obligations for Defined Benefit Plans

As a reminder, the Pension Protection Act of 2006 requires defined benefit plan sponsors to post the Form 5500 on the plan sponsor's internal website or intranet *if* you have one. This includes basic plan and actuarial information. Although regulations regarding the details of what must be posted have yet to be issued, the best practice at this point would be to post the Form 5500 and Schedule SB (for single employer plans) or MB (for multiemployer plans) on your internal website.

We would be happy to answer any questions that you may have regarding the Form 5500 or other employee benefit programs. Please contact any member of our [Employee Benefits & Executive Compensation](#) team to discuss these issues.

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