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Our Employee Benefits and Executive Compensation attorneys have a diversified national practice. We assist clients of all shapes and sizes - businesses in virtually every industry sector, 501(c)(3)s and other tax-exempt organizations, and governmental entities under 414(d) - on compensation and benefit-related issues.

It Ain't Easy Being Green: More Changes to Form 5500 Electronic Filing

After publication of the alert [Important Changes to Form 5500 Filing Requirements](#), the Department of Labor ("DOL") and Internal Revenue Service ("IRS") have issued important new guidance about how plan sponsors should implement electronic filing for the 2009 Forms 5500 that are due this year.

E-Signature Option

The DOL has changed its policy on the electronic signing of Forms 5500. The initial rule (as published in the prior alert) did not allow service providers and preparers to electronically sign the Form 5500 on behalf of their plan sponsor clients. Now, the DOL has created an e-signature option that allows service providers to electronically sign and submit the Form 5500 on behalf of the plan sponsor, if certain procedures are followed:

- The plan sponsor must review the Form 5500, manually sign a paper copy, and mail it back to the service provider – so much for being green!
- The plan sponsor must provide written authorization for the service provider to electronically sign the Form 5500, including naming the plan types and specific plan years that may be filed by the service provider, i.e., "I authorize [service provider] to file the [2009] Form 5500 for the [name of plan] on behalf of Great Company, Inc."
- The service provider must electronically submit the paper Form 5500, signed by the plan sponsor, to the DOL as an attachment to the electronic Form 5500 filing, and the service provider must use its own EFAST2 credentials for the electronic filing. (Please note that submitting the plan sponsor's manually-signed Form 5500 as an attachment to the electronic filing means that it will be posted on the DOL's website, and anyone will be able to view the plan sponsor's signature. If the plan sponsor does not want its signature available on the DOL website, it should register for its own electronic signature credentials and electronically sign the Form 5500 itself, rather than authorizing a service provider to do so.)

If you are a plan sponsor who has not heard about this change from your service provider, you may want to contact them and ask if they can assist you with the new e-sign filing option, and with instructions for making the required authorization.

Regardless of whether you file your own Forms 5500 electronically, or you authorize a service provider to do so on your behalf, do not wait until the filing deadline this year (Monday, August 2nd, unless an extension is filed until October 15th), because there may be computer systems limitations in this first year of mandatory electronic filing that could cause your Form 5500 filing to be filed late. Also, always remember to keep a signed paper copy of the Form(s) 5500, and all Schedules and Attachments, in your files each year.

Form 8955-SSA

As we've previously reported, Schedule SSA is no longer filed with the DOL (and can no longer be submitted electronically for any Form 5500 series filings, including delinquent or amended filings). Its replacement, the new Form 8955-SSA, will now be filed exclusively with the IRS.

Recently, the IRS announced that the filing deadline for the 2009 Form 8955-SSA will be deferred for now, but will likely occur in 2011. Please note that plan sponsors will be required to file the Form 8955-SSA for the 2009 plan year. The requirement is not being eliminated for 2009 – only deferred – so be sure to retain your 2009 records until the filing has been made. We will keep you up-to-date on Form 8955-SSA developments as they become available.

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

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