

## The Next Generation: EFAST2

The filing process for the Form 5500 will be paperless by 2010.

By Janice M. Wegesin

**W**hen my younger brother was graduating from high school in the early 1970s, educators were warning that by the time we reached the 21st century, one of the greatest challenges each of us would face would be how to manage the enormous amount of leisure time that would result from the efficiencies of computers. There's no doubt that none of us wants to return to the days of manual typewriters or, for that matter, faxes as our most efficient work tools, but we are a long way from living like *The Jetsons*, too.

With the filing of the 2009 Form 5500, however, we take a huge leap into a paperless system, known as EFAST2. It is the second generation of the EFAST (Electronic Filing Acceptance System) project, first introduced with filings for 1999 plan years. Currently, filers of Form 5500 have the option of filing using either an electronic or paper filing. EFAST2, on the other hand, will accept only electronic filings.

The EFAST2 system is expected to be up and running as of January 1, 2010 to accept 2009 plan year filings. Also beginning in 2010, all filings for prior years that are late or amended must be submitted for processing on the EFAST2 system. Filers will submit information using the 2009 (or later) year forms and schedules. As required by the Pension Protection Act of 2006 (PPA), Form 5500 filings for all 2009 and later plan years will be automati-

cally posted to a yet to be developed public disclosure website.

EFAST2 has three Internet components: IREG, EFILE, and IFAS. IREG is the Internet Registration system that will allow filers and signers to apply for credentials required under the new format. IFILE is a free, optional, "no frills," Web-based filing application that may be used to draft or review a Form 5500 filing, and preparers may use IFILE to cooperate in sharing components of a filing. An individual must obtain filing credentials through IREG before using IFILE. The filing itself is processed through IFAS, the Internet Filing Acceptance System.

### Transmitter and E-Signature Credentials

EFAST2 requires that all transmitters as well as those who sign Form 5500 (on the face of the filing as either plan sponsor or plan administrator) apply for authentication credentials. Filers will be sent a postcard in December 2009 announcing the ability to apply for credentials using the Internet registration (IREG) system beginning in January 2010.

The same ID and PIN may be used for signing the Form 5500 as a plan administrator, employer/plan sponsor, and/or Direct Filing Entity (DFE). Similarly, the same ID and PIN used for signing any portion of the Form 5500 may be used as credentials for transmitting individual filings. It should be

noted that third parties such as actuaries, accountants, and fiduciaries are not required to apply for electronic filing credentials as these will not be needed by the plan sponsor in order to complete an electronic filing.

The IREG software will require a separate e-mail address for each applicant; therefore, credentials cannot be requested in batches or the ID and PIN information returned to a common e-mail address. In other words, signers without Internet access will have to establish and maintain an e-mail address before authentication credentials may be requested.

### Internet Filing (IFILE)

IFILE will be an Internet-based option for preparing Form 5500 series reports. Similar to the PBGC's My PAA system, data may be manually entered or files may be uploaded or downloaded through IFILE; however, merging of data files will not be possible. For example, suppose you prepare Form 5500 except for the actuarial schedule (Schedule SB), and the actuary separately prepares Schedule SB. IFILE will not allow you to merge those files through IFILE. On the other hand, IFILE will allow the preparer to give the actuary access to the draft filing and to create the actuarial schedule within that draft form.

IFILE also allows service providers the ability to continue to place the burden to timely file the Form 5500 on the

plan sponsor. Today, most service providers send out paper copies of the Form 5500 filing with instructions for filing. The service provider does not take responsibility (or liability) for timely filing once the report is in the plan sponsor's hands. IFILE will allow you to continue that process with your clients — by delivering an electronic file to the plan sponsor with instructions to upload via IFILE. Using this procedure, the plan sponsor and plan administrator would use their IREG credentials (ID and PIN) to sign, upload, and submit the filing to the EFAST2 system.

## EFAST2 Does Not "Reject" Filings

One concern that arises is whether the new system will reject filings outright. It appears that — at least for 2009 plan year filings — the system will not reject filings but instead acknowledge an attempt to file and identify any *errors or warnings*. An *error* may be, for example, that no audit report was attached. An *error* must be corrected. *Warnings*, on the other hand, may require attention. IFILE, and any third-party software package preparers used to generate filings will contain all of the edit tests that will be run during processing, thereby minimizing the chance for transmitting a file that the EFAST2 system cannot read.

It is not clear what grace period will be allowed for the filer to correct any deficiencies in the filing. In this paperless system, all notices concerning a filing will be sent directly to the transmitter. Plan sponsors using IFILE will receive notices directly, while a third party transmitter will receive the notice if engaged to file on behalf of a plan sponsor. In the latter case, the plan sponsor would not be aware of the notice.

## Outreach

Learning about this new system is key to a smooth transition from EFAST to

EFAST2. DOL has already presented one Webcast that walks you through the e-signature rules, demonstrates IFILE, and explains other features of the new system. (See [www.dol.gov/ebsa](http://www.dol.gov/ebsa) for access to the audio and video.) A second Webcast is planned for this summer.

## There's still paper!

The DOL will eliminate paper from its Form 5500 processes in 2010. However,



plan sponsors must continue to maintain a fully signed paper copy of the filing in its records.

## Non-EFAST2 Forms

Form SSA, replacing the current Schedule SSA used to report separated participants entitled to future benefits, will be processed directly with IRS for plan years beginning in 2009 and later. While there will be some modifications to the format, don't expect any changes to page 2 (at least for the 2009 plan year). It is anticipated that the due date for filing Form SSA will be the same as the date for filing Form 5500.

IRS will be posting draft forms and proposed regulations soon. At that time we should know whether an electronic option for filing Form SSA has been worked out or whether the 2009 filing will be on paper only.

## Plan Sponsor Issues

What should a plan sponsor do right now to prepare for 2009 Form 5500 filings? So much attention has been paid to the new processing regime that changes to the Form 5500 package for 2009 may be overlooked. The most notable changes affecting plan sponsors involve the revised Schedule C and expanded reporting rules for 403(b) plans.

## 2009 Schedule C

Fee disclosure has become a hot-button topic on Capitol Hill and at DOL, in the media, and among benefits professionals. The 2009 Schedule C is DOL's attempt to capture more information about the flow of fees and compensation between plans and service providers. It is well known that investment fund revenue — built into the expense ratio of the fund — is used to pay for plan recordkeeping, trustee, and other fees associated with the operation of a plan. This revenue sharing occurs more often in defined contribution plans because administration of such plans is wrapped in a single package of services provided by an institution and its subsidiaries or through alliances of unrelated service providers; however, there may be some level of revenue sharing in defined benefit plans, too.

A plan usually has two types of expenses or compensation payments: direct and indirect. If the plan issues a check for \$10,000 to pay the actuary's fee, this is a direct payment from the plan. The payment will flow through the plans' financial statements as a hard cost. Fund revenue, on the other hand, flows from the plan as indirect compensation. Indirect compensation includes fees or expense reimbursement payments charged to investment funds and reflected in the value of the investment (or return on investment) of the plan and may include finder's fees, soft dollar revenue, float, and/or brokerage commissions or other transaction-based

fees for transactions or services involving the plan that were not paid directly by the plan or plan sponsor.

Plans are required to disclose all of these relationships and cash flows on the 2009 Schedule C, unless the plan receives adequate disclosure of the revenue sharing activity. Such disclosure must include written materials that disclose and describe (a) the existence of the indirect compensation; (b) the services provided for the indirect compensation or the purpose for payment of the indirect compensation; (c) the amount (or an estimate) of the compensation or a description of the formula used to calculate or determine the compensation, and (d) the identity of the party or parties paying and receiving the compensation. For a bundled arrangement, the disclosures must separately identify each element of indirect compensation that would be required to be separately reported if the plan had to fully report the details on Schedule C.

### Travel, Gifts and Entertainment

Another element of Schedule C reporting involves disclosure of instances where employees of the plan sponsor receive travel, gifts or entertainment (including meals) from service providers that, in total, are valued in excess of \$5,000.

This disclosure looks at each employee and each vendor separately. For example, if the HR director attends three different conferences at the expense of three different service providers, the value of each opportunity must be separately established. If the value of the conference (which may have included airline and housing paid for by the vendor) is more than \$5,000, that separate instance must be reported on Schedule C by showing the employee's name, the plan sponsor's EIN, and the amount of the travel, gifts or entertainment received from the service provider. If no service provider provided at least \$5,000 worth of travel, gifts and entertainment to an individual employee, there is no reporting on Schedule C.

Notwithstanding the requirement to disclose on Schedule C, most plan sponsors closely monitor such freebies from vendors to ensure there is no impropriety or potential conflict of interest when it comes to evaluating and engaging service providers. Gifts and gratuities of any amount paid to or received by a plan fiduciary may violate ERISA and give rise to civil liabilities and criminal penalties.

### 403(b) Plans

Beginning with 2009 plan years, 403(b) plans must report on Form 5500 in the

same manner as 401(a) plans by completing all relevant schedules. In addition, large plan filers must attach the opinion of an independent qualified public accountant along with the audited financial statements. Sponsors of such plans are scrambling to capture data necessary to report on Form 5500. Historically, recordkeeping and administration of 403(b) plans was not as institutionalized as for the 401(k) plan and contracts were considered the property of the participant; therefore, employers may not have maintained sufficiently detailed records.

### Conclusion

Plan sponsors and service providers will have a sharp learning curve for the 2009 Form 5500 filings. There's no transition period so everyone will learn the system and the new forms all at once. Expect some hiccups along the way — and remember that in a few years this, too, will be routine. And then you can start managing that extra leisure time. ➤

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