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SUBJECT

RETIREMENT PLAN SPONSORS SHOULD NOT ANSWER THE COMPLIANCE QUESTIONS ON THE 2015 FORMS 5500 AND 5500-SF AND RELATED SCHEDULES

SUMMARY

The Internal Revenue Service instructs plan sponsors not to complete new compliance questions on 2015 Form 5500 and 5500-SF and Schedules H, I, and R.

DETAILS

On December 7, 2015, the IRS published Form 5500 and Form 5500-SF, which included new compliance questions that were optional for 2015 but expected to be required for 2016. On February 17, 2016, the IRS posted instructions on its website directing plan sponsors NOT to answer the compliance questions on the 2015 Forms 5500 and 5500-SF and related schedules H, I and R, because they were not approved by the Office of Management and Budget before the forms were published.

This information was first made public in a Feb 16, 2016, message to software developers for the electronic system by which Forms 5500 are submitted, EFAST-2. Revised versions of the 2015 instructions for both forms contain the new information regarding the optional questions.

The revised instructions read as follows:

Form 5500 IRS Compliance Questions.

New Lines 4o, 4p 6c, and 6d were added to Schedules H and I. The IRS has decided not to require plan sponsors to complete these questions for the 2015 plan year and plan sponsors should skip these questions when completing the form.

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New Part VII (IRS Compliance Questions) was added to Schedule R for purposes of satisfying the reporting requirements of section 6058 of the Code. The IRS has decided not to require plan sponsors to complete these questions for the 2015 plan year and plan sponsors should skip these questions when completing the form.

Form 5500-SFIRS Compliance Questions.

New Lines 10j, 14c, 14d, and new Part IX (IRS Compliance Questions)

were added to this Form for purposes of satisfying the reporting requirements of section 6058 of the Code. The IRS has decided not to require plan sponsors to complete this question for the 2015 plan year and plan sponsors should skip this question when completing the form.

Although IRS instructs sponsors not to answer these compliance questions for on any 2015 annual report, IRS did issue on February 19, 2016, nine frequently asked questions to assist in clarifying the new compliance questions on the 2015 Form 5500-series returns:

- ▶ For the compliance question that asks how the 401(k) plan satisfies the nondiscrimination requirements for employee deferrals and employer matching contributions, which box should I select if the plan uses both the design-based safe harbor method and an ADP/ACP test?
- ▶ For the compliance question that asks if the "current year testing method" for NHCEs is used in performing ADP/ACP testing for the plan year, which box should I select if the current year testing method is used for either the ADP or ACP test, and the prior year testing method is used for the other?
- ▶ For the compliance question that asks how the plan satisfies the coverage requirements under section 410(b), how should I answer if the plan meets exceptions to the coverage rules?
- ▶ For the compliance question that asks whether the plan trust incurred unrelated business taxable income, when would I choose the "N/A" checkbox?
- ▶ For the compliance question that asks whether in-service distributions were made during the plan year, what types of in-service distributions should be reported?
- ▶ Am I allowed to use the plan sponsor's EIN in place of getting a trust EIN to answer the question on trust information?
- ▶ For the compliance question that asks whether a plan has been timely amended for all required tax law changes, how should I answer this question if the plan sponsor has used the IRS Employee Plans Compliance Resolution System (EPCRS) to correct the failure to amend the plan for required law changes by the applicable deadlines?
- ▶ For the compliance question that asks for the date the last plan amendment/restatement for required tax law changes was adopted, which date should I enter for a plan that uses a pre-approved plan document and has adopted all required interim amendments but has not been restated for PPA by December 31, 2015?
- ▶ A multiple-employer plan may file one Form 5500 to report information about the entire plan. Does the IRS require responses to the IRS compliance questions at the participating-employer level or at the plan level?

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