

Agencies Release 2007 Form 5500 Annual Report

By Cynthia Marcotte Stamer

The U.S. Department of Labor Employee Benefits Security Administration (“EBSA”), the Internal Revenue Service (“IRS”) and the Pension Benefit Guaranty Corporation (“PBGC”) recently released advance informational copies of the 2007 Form 5500 Annual Return/Report of Employee Benefit Plan and related instructions (“Form 5500”).

The Form 5500 package released October 10, 2007 includes several changes compared to the 2006 Form 5500 Forms. Significant changes to the 2007 Form 5500 package include:

- A new simplified reporting option for eligible plans with fewer than 25 participants required by the Pension Protection Act (“PPA”); and
- Revised Schedule B instructions to reflect the updated mortality tables and the list of codes used for valuation purposes, as well as for calculating current liability for plan years beginning on or after January 1, 2007.

Instructions included in the package also caution 2008 Form 5500 filers to expect additional changes to the 2008 Form 5500 package in response to changes required to comply with the PPA. Given these expected changes, the EBSA is warning plan administrators expecting to file 2008 short plan year Form 5500s to anticipate that it may be necessary for them to delay preparation of the 2008 short plan year return until the 2008 forms become available for use.

Subject to limited exceptions, all ERISA plan administrators generally are required by ERISA to file an annual Form 5500 for their employee benefit plans.

Separate Form 5500 filing obligations also may apply under the Internal Revenue Code (the “Code”).

All plan administrators and plan sponsors need to keep in mind that timely filing of Form 5500 is important. Plan administrators caught by the EBSA failing to file required Form 5500s can face stiff penalties. For instance, under existing EBSA enforcement policy, plan administrators filing annual reports after the date the report was required to be filed (a “late report”) may be assessed \$50 per day, with no limit, for the period they failed to file, determined without regard to any extensions for filing. Plan administrators caught by the EBSA failing to file an annual report may be assessed a penalty of \$300 per day, up to \$30,000 per year, until a complete annual report is filed. Plan administrators who presently are exposed to these penalties due to an unresolved failure or untimely filing required by ERISA can qualify for reduced penalties by filing these forms in accordance with the EBSA’s existing Delinquent Filer Voluntary Compliance Program (“DFVC Program”). The EBSA recently has released a tool to help plan administrators calculate their penalties under the DFVC Program.

For plans subject to Form 5500 filing obligations under the Code, the Code imposes separate penalties, which are administered and assessed by the IRS. Accordingly, the DFVC program does not resolve any penalties assessable under the Code. Rather, tax penalties for non-filing or late filing in violation of the Code must be resolved separately with the IRS.

If you have questions about the Form 5500 or other ERISA matters relating to the design or administration of your employee benefit plans or human resources

practices, contact Cynthia Marcotte Stamer at 972.419.7188 or cMarcotte
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About Cynthia Marcotte Marcotte Stamer

Vice Chair of Section of Real Property, Probate and Trust Law Employee Benefit Plans And Other Compensation Arrangements Group and Board Certified In Labor and Employment Law by the Texas Board of Legal Specialization, attorney Cynthia Marcotte Stamer has more than 20 years experience helping employers and business leaders, plan fiduciaries and administrators, insurers and other plan vendors and others design, implement, administer and defend health and other employee benefit and compensation, insurance and other human resources practices, policies and strategies.