



DATE: January 21, 2010
TO: Our Valued Client Partners & Friends
FROM: HIB Account Team
RE: **LEGISLATIVE UPDATE 2010-04 ▪ ACTION REQUIRED**
Are You Ready for EFAST2?
5500 Electronic Filing Requirements for 2009 Plan Years

We are pleased to bring you our **Legislative Update 2010-04: Are You Ready for EFAST2? 5500 Electronic Filing Requirements for 2009 Plan Years**. This Legislative Update does include “Action Items” for those employers and or organizations who submit a Form 5500 for their health and welfare plans. Heffernan assists in the preparation of Form 5500 for our Client Partners who are required to do so. We will be forwarding additional information on how we will be assisting you in these action items as more information is clarified on the filing requirements.

We will continue to keep you informed as updates occur, and please, if you have any questions, contact your HIB Account Team for assistance.

Are Your Ready for EFAST2?
5500 Electronic Filing Requirements for 2009 Plan Years

While we have been distracted by 2009’s spate of legislation and regulations produced (COBRA ARRA, CHIPRA, HITECH, and the like), the Department of Labor (DOL) has introduced a significant new set of 5500 filing procedures, including a mandate that all 5500s for the 2009 plan year must be filed electronically. In a moment of great imagination, the DOL has named this new electronic filing system “EFAST2”, which replaces the EFAST electronic filing system previously in effect.

The purpose of this Memorandum is to describe the EFAST2 process for those employers and organizations who submit Form 5500s for their health and welfare plans, as well as to clarify the Schedule C filing requirements.

ELECTRONIC FILING

1. **Filing Options.** Plan Sponsors or their vendors (Filers) have two new methods for filing Form 5500s for 2009:
 - a. Filing directly with the DOL using the “iFile” alternative. Plan Sponsors can find this option on the DOL website; or,
 - b. Using commercial software approved by the DOL (Sungard Relius, for example), or using third party preparers who use the approved software.

Our understanding is that the iFile approach has significant limitations (no SARs and no filing assistance). The DOL expects that only 10% of all filers will use the “iFile” system.

2. **The Electronic Signature.** Regardless of which filing option is chosen, the Plan Sponsor must obtain an electronic signature I.D. and P.I.N. (credentials). To obtain these, the Plan Sponsor must:

LEGISLATIVE UPDATE 2010-04 ■ Are You Ready for EFAST2?

5500 Electronic Filing Requirements for 2009 Plan Years

January 21, 2010

Page 2

- a. Identify the signer(s) who then must register (IREG) on the DOL website (www.efast.dol.gov) to obtain their credentials. Registration contains a number of steps, some of which are to protect the privacy aspect of the credentials. The applicant will receive a letter with Plan Sponsor P.I.N (with an encryption Key) and a separate letter with the signer I.D. The letter also contains details for protecting these components from being misused.
3. **Signer Qualifications.** For purposes of all 5500s, the signers represent the Plan Sponsor and Plan Administrator (as defined under the Employee Retirement Income Security Act of 1974 (ERISA)). The DOL permits a Plan Sponsor to have more than one signer. It's important to note that the signature I.D. remains valid for each filing until it has been unused for three years.
4. **Submission and Approval Required.** With electronic filings, Filers will submit Form 5500 and then wait for the DOL to accept/approve the filing. At the time of filing, the DOL responds with an email accepting the filing or rejecting it with error codes to help correct it. The Filer must then refile the corrected filing. It is important to note that acceptance does not mean the filing is exempt from a DOL/IRS audit! For calendar year plans (filing due date: 7/31/10) we recommend that Filers file no later than mid-July to avoid having the filing rejected without time to correct errors.
5. **Public Information.** Historically, it could take 6 to 9 months from the date filed to view the filing. With EFAST2, the DOL posts acceptable filings within 24 to 48 hours of acceptance.
6. **Paper Filings.** For plan years ending in 2009 (2008 plan years ending on or before 11/30/09), Filers may use the paper process, with submissions going to the EBSA lockbox in Lawrence, Kansas. Please note that the DOL intends to shut down the lockbox on June 30, 2010.
7. **Late or Amended Filings.** For health and welfare plans filing late, Filers must use the current Form 5500 (2009), marking the filing year in a box provided on the new Form. To submit an amended 2008 return, Filers may make paper filings. Filers amending 2009 filings must file electronically.
8. **PDF Attachments.** EFAST2 will accept PDF attachments along with the electronic filings. These may include Accountants' Reports in the case of plans filing Schedule H.
9. **2010 Short Plan Years.** For plan years beginning on or after January 1, 2010, but ending in less than 12 months (short plan year), Filers must use the 2010 Form and must file electronically.

2009 FORM 5500 SCHEDULES A AND C

The 2009 Form 5500 Schedules have undergone revisions. The most common Schedules for unfunded welfare plans (90% of all welfare plan filings) include Schedule As and rarely Schedule C.

1. **Schedule A.** Filers use Schedule As to report premiums paid to insurers, as well as commissions and fees paid by insurers to brokers and agents on the insured plans. Occasionally, insurance carriers fail to provide the data requested by the Filer or broker/agent. For the 2009 plan year, Filers using Schedule As must report insurers who fail or refuse to provide information necessary to the 5500 filing. Filers will also need to notify those insurers that they intend to report them.
2. **Schedule C.** Traditionally, Filers only include a Schedule C if the Plan (not the plan sponsor) has plan expenses in connection with the administration of the Plan being filed. Usually, these expenses related to self-funded plans where the expenses are paid out of plan assets (funded plans such as VEBAs).

LEGISLATIVE UPDATE 2010-04 ■ Are You Ready for EFAST2?

5500 Electronic Filing Requirements for 2009 Plan Years

January 21, 2010

Page 3

The new Schedule C will require Filers to report both direct and indirect compensation paid to service providers. There is one very important exception that applies to most health and welfare Plans: Plans not required to file a Schedule H (large plan financial information and an Accountant's Report) are exempt from filing a Schedule C. Filers required to file Schedule H and to obtain an Accountant's Report should contact their Form 5500 preparer regarding the data required for completion of Schedule C.

IN SUMMARY

Plan Sponsors with 100 or more plan participants on the first day of the plan year must file a Form 5500 for that plan year. They also must produce a Summary Annual Report (using the data collected on the Form 5500 and using the DOL required format) and distribute it to all current plan participants within 60 days of filing the Form 5500. The 5500 is due no later than 7 months following the end of the plan year. 70% of all filers file on a calendar year basis (due by July 31 of the following year).

It is important to note that ERISA requires all private employers and organizations, including non-profit entities who provide employee benefits to their employees to file Form 5500s annually. There is a limited exception for health and welfare plans with less than 100 participants. Public agencies and churches (defined by ERISA) are not subject to ERISA and therefore have no obligation to file Form 5500s.

The Department of Labor (DOL), with the implementation of EFAST2, is indicating a higher level of interest in collecting and making public benefit plan financial data. We expect that the DOL (and possibly the IRS) may have a heightened sense of duty to monitor compliance, even though the Form 5500 is merely a disclosure filing and not a tax filing. As a result, we recommend plan sponsors to pay attention to their 5500 filing obligations and to seek help from their consultants and brokers to assure compliance.

For more information on this topic please visit the DOL EFAST website at

<http://www.efast.dol.gov/portal/app/welcome?execution=e1s1>.

To access archived Legislative Updates please log into www.heffgroup.com and clicking on the link for HIB Client Community. If you need information on your Username and Password please contact your HIB Account Team.

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