

Be Prepared for the Modernization of Form 5500

BY TERRY DUNNE

This article discusses how plan sponsors should prepare for the proposed modernization of the Form 5500.

The concept of data mining is fairly straightforward. A mountain of information is collected and then analytic solutions are applied to extract meaning and improve decision-making. In 2012, as the importance of Big Data began to be recognized, *The Atlantic* reported,

Without data mining, when you give someone access to information about you, all they know is what you have told them. With data mining, they know what you have told them and can guess a great deal more. Put another way, data mining allows companies and governments to use the information you provide to reveal more than you think. [Furnas, Alexander, “Everything You Wanted to Know About Data Mining but Were Afraid to Ask,” *The Atlantic* (April 3, 2012)]

In July 2016, the Department of Labor, the Internal Revenue Service and the Pension Benefit Guaranty Corporation (the Agencies) proposed major changes to Form 5500. [Proposed Revision of Annual Information

Return/Reports, 81 Fed. Reg. 47496 (July 21, 2016)] If finalized, the new version of the form will be required for plan years beginning in 2019. As 2019 approaches, plan sponsors should prepare for the possible transformation of Form 5500 into a 21st Century data collection tool, and understand that data mining of the new information could uncover issues that have not surfaced in the past. As proposed, the revised Form 5500 asks new questions and requires answers to be delivered in easily searchable formats. Schedules attached to Form 5500 also must be filed in a standardized electronic format, which means they will become searchable and could provide a rich vein of new information. The data will be available to both public and private organizations.

The Agencies expect the mining of Form 5500 data to facilitate enforcement priorities, policy analysis, rulemaking, compliance assistance, and educational activities. The modernization of Form 5500 could benefit plan sponsors, providers, fiduciaries, and participants in a variety of ways, as well. Thorough analysis of the data could:

- Delineate benchmarks across plan sizes, types, and industries, potentially reducing litigation exposure.
- Establish “reasonable” plan fees by plan characteristics and provider services.
- Determine whether plan investment options and structures correlate to participation, plan performance, and retirement outcomes.
- Show how compensation arrangements affect participants, particularly in defined contribution plans.

There are myriad ways that collecting and analyzing specific plan data could provide greater clarity around long-standing issues associated with ERISA compliance, and establish norms. Of course, the flip side of established norms is that it will become easier for agencies to recognize anomalies.

Consequently, plan sponsors should work with their service providers and partners to understand the pending changes and prepare for the possibility of a new Form 5500. Preparations may include reviewing the types of information that will be collected and establishing processes to provide accurate data in a timely way.

In the interim, before the changes in Form 5500 reporting are required, plan sponsors should communicate with consultants, attorneys, accountants, and advisors to prepare for Form 5500 modernization and develop a plan of action.

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One area of particular interest for the Agencies appears to be the treatment of missing participants' accounts, including the processes plan sponsors have put in place to find missing participants. For instance, one of the proposed compliance questions asks, "Were there any checks to participants or beneficiaries that were uncashed as of the end of the plan year? If so, describe efforts to monitor uncashed checks and to locate missing recipients." [81 Fed. Reg. 47547]

The question was added so the Agencies could better understand the magnitude of the uncashed check issue, raise awareness among plan fiduciaries that procedures should be in place to verify participants' addresses before checks are mailed, and track checks that have not been cashed.

The volume and value of uncashed checks has become more significant since automatic enrollment was introduced. One consequence of high participation and significant turnover is that employees who separate from service leave behind an abundance of retirement plan accounts.

Uncashed checks also may accrue when required minimum distributions (RMDs) are sent to incorrect addresses. The Internal Revenue Code requires plan sponsors to distribute RMDs when participants reach their required beginning date (RBD). Typically, the RBD is April 1 of the year following the year in which a participant attains age 70½ or, if later, the year in which he or she retired. [<https://www.irs.gov/pub/irs-tege/epchd603.pdf>]

Uncashed RMD checks remain plan assets, increasing plan costs and potential liabilities. In some cases, the assets are escheated to the participants' states of residence and absorbed in to the states' general funds. [https://www.rchl.com/assets/user/media/BRG_Eliminating_DC_Friction_and_Leaks.pdf, p. 18] For active, ongoing plans, escheatment may not be an allowable option.

A better approach would be to roll over RMDs into taxable accounts and roll over small balance accounts of former employees into safe harbor IRAs. The Economic Growth Tax Relief Reconciliation Act of 2001 amended the Internal Revenue Code to allow plans to establish IRAs for former plan participants

with account balances of \$1,000 to \$5,000. This allows plan sponsors to effectively outsource participant accounts to qualified IRA providers, thereby saving money, time, and valuable personnel resources (that might otherwise be committed to Form 5500 data preparation). It also preserves the benefits of tax-deferral for former plan participants.

There are a handful of providers, like Millennium Trust Company, Penchecks Trust, Inspira, and Centier Bank, that offer these rollover solutions. They have developed the requisite technology and infrastructure to help companies implement automatic rollover programs to resolve issues related to missing and non-responsive participants. These providers specialize in processing bulk transactions (opening and funding multiple accounts simultaneously), servicing substantial numbers of small balance accounts, and searching for missing former plan participants.

Adding automatic rollover provisions to plan documents, and implementing rollover processes at least once a year, can help plan sponsors and recordkeepers resolve a variety of issues. First, rollovers remove lost or non-responsive participants' accounts from the plan so plan data remains clean. Second, moving assets to safe harbor IRAs preserves participants' tax advantages while the IRA provider searches for and reconnects the former employees with their savings. Third, automatic rollovers may eliminate a Form 5500 red flag that has potential to trigger an audit. In summary, removing small accounts and uncashed check assets from the plan can help reduce plan costs, limit liability, and reduce the complexities of plan administration, including Form 5500 preparation.

The modernization of Form 5500 has not been finalized yet. The comment period ended in December 2016, and the Agencies are considering the concerns that were brought to their attention. Regardless, it's important for plan sponsors to be prepared for the potential changes by addressing obvious areas of interest, such as the treatment of missing participants. If Form 5500 changes are finalized, it's possible the wealth of new data will reveal unexpected trends and issues after plans begin filing in 2019. Let's hope they prove beneficial to all parties. ■