Kibble & Prentice
A USI Company

COMPLIANCE ALERT
February 1, 2010

NEW FORM 5500 ELECTRONIC FILING REQUIREMENT

An insured and/or unfunded health and welfare plan is required to file a Form 5500 when 100 or more participants are covered by the plan at the beginning of the plan year. Similar plans with fewer than 100 participants are exempt from the reporting requirement.

This year, a number of changes go into effect that will impact 5500 filings for plan years that began on or after January 1, 2009, including a new electronic filing program. For a calendar-year plan, the filing deadline is July 31, 2010.

The following summarizes some of the new requirements for plan administrators of insured and/or unfunded welfare plans. This summary does not address any specific requirements as they may pertain to funded arrangements or retirement plans. This is the first in a series of communications that we will provide addressing the electronic delivery requirements.

Electronic Filing

What is the new filing requirement?

Plan years that began on or after January 1, 2009, are required to file an electronic Form 5500 using the new EFAST2 system. This includes short plan years that began in 2009.

No paper filings of any kind will be accepted as of January 1, 2010, other than timely filed 2008 plan year filings, which will only be accepted via mail through October 15, 2010.

What is electronic filing?

The ERISA Filing Acceptance System (EFAST2) is a web-based filing system for electronic Form 5500 filings. Access to the system can be direct (via IFILE, a basic online system) or through an EFAST2-approved vendor. The 5500s prepared for Kibble & Prentice/USI Northwest clients are prepared and transmitted through an approved EFAST2 vendor.

EFAST2 can be accessed online at http://www.efast.dol.gov. Further information on the electronic filing requirement is also available beginning on page 5 of the *Instructions for Form 5500* (http://www.dol.gov/ebsa/pdf/2009-5500inst.pdf).

How do I register for electronic filing?

In order to file your 5500, you will first need to register for *signing credentials* with EFAST2.

To do so, complete the following steps:

1. **Identify the Filing Signer**. There are a number of roles an individual may perform with respect to the Form 5500. In general, for a single-employer insured/unfunded welfare plan, where a third-party prepares and transmits the Form 5500, individuals will only need to register as a **Filing Signer**. A **Filing Signer** is any individual who can sign the Form 5500. Signers include the plan administrator and plan sponsor. An employer may have multiple individuals who sign the Form 5500. The Signer(s) must ensure that the information reported is correct prior to submission.

2. **Register for Filing Credentials.** Users must register with EFAST2 to receive appropriate credentials in order to sign the Form 5500. This process is required even if you have a third-party preparing your Form 5500. Go to http://www.efast.dol.gov and register as a Filing Signer. There are six (6) easy steps to this process:

   - Read and accept the privacy statement;
   - Provide contact information and select user type(s) – in most cases this is a Filing Signer;
   - Select a challenge question and answer;
   - Verify registration information;
   - Receive a credentials email notification; and
   - Retrieve and activate credentials

   Once the first four steps described above are completed, you will receive an email with a link to retrieve your User ID and PIN. The User ID and PIN are needed in order to sign the Form 5500. You will be asked to return to EFAST2 and acknowledge receipt of the credentials and establish a password. This information, including your PIN, is personal to you and may not be shared with others.

   If there are multiple company officials who can sign the Form 5500, each official will need to register to obtain their unique Signer credentials. Again, credentials may not be shared between company officials.

   For a link to screen shots to guide you through this process, see the EFAST2 Guide to Filers & Service Providers http://www.efast.dol.gov/fip/pubs/EFAST2_Guide_Filers_Service_Providers.pdf (beginning on page 6).

When can I get my credentials?

The system is now operational; you can set up your access at anytime. We encourage acquiring credentials well in advance of any filing deadline.

How do I file my 5500 electronically?

Historically, you may have received your Form 5500 filing via mail. You will now receive this filing electronically (via email).

You will receive an email directing you to a secure Web site, where you can download and review your Form 5500 for accuracy. Once you review the filing, you will transmit the Form 5500 electronically to EFAST2 (a simple click of a button from the secure site), then electronically sign the Form 5500. Your User ID and PIN together serve as your electronic signature.

You will receive an email confirmation that the filing was received by EFAST2 (called the "Processing" email), then a follow-up email indicating "Filing Received" (accepted as complete by the system), "Filing Error" (indicating that additional information is necessary, and an amended return should be filed to complete the filing), or "Filing Stopped" (an error occurred in the submission process; an amended return must be filed to fix the noted problem). If you receive any errors in the filing process, please contact your Kibble & Prentice/USI Northwest service team, and we will assist you in fixing and amending your filing.

Please note, only the plan administrator and plan sponsor can submit and sign the Form 5500. Kibble & Prentice/USI Northwest cannot do this on your behalf. Therefore, it is important that you complete the credentialing process in a timely manner.

I sign a Form 5500 for both our retirement plan and health & welfare plan. Do I need to obtain separate credentials?

No, credentials are specific to the individual and not the plan. Therefore, your User ID and PIN will work as an electronic signature for both the retirement plan's 5500 filing as well as the filing associated with your health & welfare benefits. As a reminder, the reporting rules generally do not allow a single Form 5500 to cover both retirement plan benefits and health & welfare plan benefits.

What about filing an extension?

As before, filing a Form 5558 (*Application for Extension of Time to File Certain Employee Plan Returns)* will automatically grant up to an additional two and one half months to file your Form 5500.

There is no change to the process to request a filing extension. A Form 5558 is filed with the Internal Revenue Service (IRS) prior to any filing deadline. This process is still completed via mail. Generally, Kibble & Prentice/USI Northwest will file the Form 5558 on your behalf and send you a copy for your records.

When the extended 5500 is filed using the electronic system, a copy of the Form 5558 is no longer included. Instead, only the appropriate box in Part I, Line D will be checked on your completed Form 5500 to reflect the extension.

What about amending a past 5500 filing?

Beginning January 1, 2010, all amended filing must be submitted electronically through EFAST2. Amended filings are submitted using the current filing year's Form 5500, schedules and instructions. These forms take the place of the Form 5500 pages that would have been included in the prior year's filing. When filing an amendment electronically, the entire Form 5500 and all associated schedules and attachments will need to be resubmitted, with the appropriate box checked in Part 1, Line B of the 5500, indicating an amended return.

Also, once a 5500 is submitted, if changes need to be made (whether there was an error or missing information), this will be done through the amendment process. The Department of Labor (DOL) anticipates an increase in the volume of amendments it receives, particularly in this first year of the electronic delivery program. There are no penalties associated with filing an amendment.

What about delinquent Form 5500 filings?

Delinquent filings must be submitted electronically. Such filings are submitted using the current filing year's Form 5500, schedules and instructions. These forms take the place of the Form 5500 pages that would have been included in the prior year's filing.

Plan sponsors should take advantage of the Delinquent Filer Voluntary Compliance Program (DFVCP) to file late 5500s. There are fees associated with filing through the DFVCP, although these fees are drastically reduced from those assessed by the DOL for non-submission of 5500s.

See http://www.dol.gov/ebsa/calculator/dfvcpmain.html for instructions and a link to the DFVCP penalty calculator and online payment system.

In the future, DOL officials have indicated that they hope to better interface the electronic payment system with the EFAST2 program.

Do I need to keep a record of my 5500 filing?

Yes. Even though the 5500 is filed electronically, plan administrators are still required to retain an original, signed paper version of the complete filing as part of their records. Further, a paper copy of the filing must be made available upon request by a participant, beneficiary and/or the DOL. Kibble & Prentice/USI Northwest requests that you provide us with a scanned copy of your signed 5500 filing for our records.

How is the system working? Can we expect issues?

EFAST2 is brand new. Like most new software systems, there are sure to be issues that will need to be addressed. Around 70% of all 5500 filings that the DOL receives are for calendar-year plans due by July 31, 2010. Given this large volume, the DOL has already indicated that they may have a system capacity issue when plan sponsors try to file their 5500s in July. While they are trying to correct the issue, plan sponsors with filings due on July 31, 2010 should prepare to file their reports early (ideally before July) or request an extension if there are system issues.

Other 5500 Changes

What other changes will I see on the Form 5500 filing for 2009 and beyond?

- The optional preparer information lines have been removed from the Form 5500.
- The format of the Schedule A has changed to further break out and clarify commission and fee information.
- A new section (Part IV) has been added to the Schedule A to report an insurance carrier that fails or refuses to provide the information necessary to complete a Schedule A. Further, language has been added to advise the plan administrator to notify the insurer of their intent to identify the insurer on the Schedule A as not providing the information needed.
- The *Instructions for Form 5500*[1] make it clear that a Schedule C is not required for plans that would not have to complete a Schedule H as part of their plan filing because they meet the conditions of the limited exception under *29 CFR § 2520.104-44* per *Technical Release 92-01*. Generally, *Technical Release 92-01* applies to insured and unfunded plans that use a Section 125 cafeteria plan for participant contributions, and such contributions are held in the general assets of the employer. For more information on *Technical Release 92-01*, see http://www.dol.gov/ebsa/Newsroom/tr92-01.html.

Where can I get more information?

We will continue to update you with information on these new requirements, including specifics from the EFAST2-approved software vendor that will actually transmit the filing on your behalf to the DOL.

More information on all of these new requirements can be found on the DOL's EFAST2 Web site, http://www.efast.dol.gov/.

For frequently asked questions, visit http://www.dol.gov/ebsa/faqs/faq-EFAST2.html.

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[1] For a copy of the *Instructions for Form 5500*, see http://www.dol.gov/ebsa/pdf/2009-5500inst.pdf, summary on page 2, details on page 22.