

Legacy Advisor

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BENEFIT PLANS

The Benefits of Compliance Audits



Jim Kemperas



Chris Kogut

As all trustees know, gathering and protecting benefit plan assets are key fiduciary duties owed to participants. The Employee Retirement Income Security Act of 1974 (ERISA) requires plan trustees to collect all contributions due to the fund. Under ERISA, delinquent contributions are considered a prohibited advance of credit to a party-in-interest (contributing employer).

However, recognizing that all plans regularly face the challenge of collecting delinquent contributions, the U.S. Department of Labor issued Prohibited Transaction Class Exemption 76-1, which exempts the extension, settlement, or non-collection of delinquent contributions from being considered prohibited – provided that the plan makes a reasonable, systematic and diligent effort to collect the contributions. Compliance audits fulfill this condition of the class exemption.

A compliance audit is a review of certain employer records in order to determine whether the employer's contributions are in compliance with the terms of the collective bargaining agreement and the plan's governing trust document. Having

a compliance audit program in place means that the plan trustees can:

- be assured that the plan is receiving the proper amount of employer contributions,
- determine whether the plan has accurate and complete participant data used to determine eligibility and provide benefits,
- convey to employers that the trustees are monitoring contributions, and
- avoid a qualified opinion on the plan's financial statements.

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Legacy News

Legacy Professionals LLP is proud to announce that effective January 1, 2010 Eileen E. Brassil, CPA has been admitted to the partnership. Eileen works primarily with Taft-Hartley benefit plans, labor organizations and other nonprofits. She now chairs the Firm's Accounting and Auditing (A&A) Committee which is responsible for keeping up on current developments in the areas of accounting principles and auditing standards and for developing policies and procedures for the Firm in that respect. Eileen is a member of the AICPA and the Illinois CPA Society, where she also is a part of the Employee Benefit Plans Member Forum.



Eileen Brassil, CPA

Furthermore, we are pleased to announce the promotion of Doug Schwegman, CPA to Manager in the Audit Department. Chris Kogut and Mike Scrementi have also been promoted to Compliance Audit Department Senior Managers. Additionally, Bruce A. Pavlik, CPA now serves as the partner in charge of the Department. Our Compliance Audit Department of more than twenty professionals performs over 2,000 compliance audits each year. See article to the left for more information on compliance audits.

Partner Bob Cann, CPA traveled to Hollywood, Florida to speak at the National Labor and Management Conference on February 15, 2010. Bob spoke on changes to the Forms 5500 and 990 in his presentation entitled "Don't Shoot the Messenger: IRS Filing Updates." Bob provides highlights from the presentation in his article on page 2. For more information on the conference, visit www.laborandmanagement.com.

This issue was edited by Eileen E. Brassil, CPA, Partner, ebrassil@legacypas.com.

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Changes to the 2009 Form 5500



Bob Cann, CPA

After years of discussion, the Department of Labor (DOL) is requiring a number of significant changes affecting the Form 5500 for plan years beginning on or after January 1, 2009. A key change is that for the first time, the Form is required to be electronically filed. Refer to the electronic filing article on page 3 for information on that new requirement.

Another significant revision is reporting of Schedule C – *Service Provider Information* has been modified to require additional detail

about both direct and indirect payments to plan service providers. The DOL is expecting these revisions to result in greater transparency and disclosure. Previously, only the top forty compensated service providers totaling more than \$5,000 in direct and indirect compensation were required to be reported on Schedule C. Under the new requirements, all amounts received by service providers totaling \$5,000 or more in direct and indirect compensation must now be reported by the plan. Moreover, amounts received by fiduciaries and “enumerated service providers” totaling more than \$1,000 in indirect fees (e.g., gifts, awards, trips, etc.) must also be reported on Schedule C. As a result of the more detailed reporting requirements for service provider compensation, the 2009 Schedule C will have a larger list of service codes to

accurately disclose the relationship of the service provider to the plan. Finally, service providers who fail or refuse to provide the necessary information are required to be identified on the revised schedule.

Schedule R has also undergone a series of alterations on this version of the Form 5500. Many of these alterations were reported in 2008 as attachments to the schedule. Part V reports information on multiemployer defined benefit plans and information related to major contributing employers. Part VI includes asset allocation questions for large defined benefit plans. Furthermore, the minimum funding questions have been altered.

Finally, note that Schedule SSA – *Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits* will no longer be part of the Form 5500, but will be a separate form filed directly with the Internal Revenue Service (IRS). Currently this Form will be prepared as a paper filing, but the IRS hopes to provide electronic filing of the Form in 2011.

Indeed there are a number of very significant changes that will require your attention when working with your preparer to complete the Form 5500 for your plan. Please feel free to contact your Legacy representative with any questions.

By Bob Cann, CPA, Partner, Director of Compliance Services Chicago office, rcann@legacypas.com



Our Chicago Office is Moving June 1

We are pleased to announce the relocation of our Chicago office. Effective June 1, 2010 our new address will be 311 South Wacker Drive, Suite 4000, Chicago, IL 60606. Our fax and phone numbers will remain the same.

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Mandatory Electronic Filing

For the first time, it is mandatory for benefit plans to file the Form 5500 electronically with the Department of Labor (DOL) using their new EFAST2 system. With the predecessor system, known as EFAST1, the DOL made electronic filing possible, but not mandatory. EFAST2 opened for registration on January 2, 2010 and its use is now required for welfare plan and retirement plan filings, including all 403(b) plans subject to Title I of ERISA, submitted for years beginning on or after January 1, 2009.

Electronic filing is not available for Form 5500-EZ, however, Form 5500-SF may be submitted online in lieu of Form 5500-EZ, as long as the filer is eligible to file the Form 5500-SF.

In order to file electronically, every person who touches a Form 5500 in any way, including the signers, will need to register with EFAST2 to obtain a unique user name and PIN, commonly referred to as a credential. The DOL is limiting one set of credentials per email address, and each individual

attempting to obtain a credential must apply for himself or herself. That is, preparers are not allowed to obtain signature authority for their clients.

To obtain credentials, log into I-REG at www.efast.dol.gov, and go through the series of input screens which will ultimately result in the assignment of a credential. A User ID and PIN will be assigned – which should be saved to access the credential.

Once the credential has been obtained, authorized parties can prepare the Form 5500. Upon its acceptance by the DOL, the Form will be posted on the internet within a very short period of time. One important note - it is absolutely critical to leave social security numbers off the Form. The DOL will reject any filing containing such a number.

By Bob Cann, CPA, Partner, Director of Compliance Services Chicago office, rcann@legacycpas.com



Peter Castellarin

“I’ve been impressed with the professionalism of the people at Legacy. We always get prompt answers. They have helped us muddle through lots of regulatory issues with the DOL and the IRS. We rely heavily on Legacy and we have never been disappointed. They provide top-notch service to our Funds.”

- **Peter Castellarin**, CEO, M&O Insulation Company and M&O Environmental Company; Trustee, Local No. 17 Heat and Frost Insulators Welfare, Pension, and Annuity Funds

The Benefits of Compliance Audits *continued from page 1*

At Legacy Professionals LLP our compliance audits begin with a detailed understanding of the plan’s collective bargaining agreements. Our compliance auditors’ next step is to thoroughly examine contributing employers’ payroll, tax, and disbursement records. In some cases, it is necessary to examine corporate tax returns and general ledgers.

Several benefit plans have further requested that we look for the existence of related companies that were established to avoid payment of contributions or to conceal nonunion employees performing covered work.

We have a staff of over twenty professionals in three offices dedicated solely to conducting compliance audits. Overseen by partner Bruce A. Pavlik CPA, the compliance audit department is managed by Jim Kemperas, Chris Kogut, Mike Scrementi, Jim Lamont and Nathan Grochow.

Feel free to contact us if you have any questions or need any additional information on compliance audit services.

By Jim Kemperas and Chris Kogut, Compliance Audit Senior Managers, Chicago office, jkemperas@legacycpas.com and ckogut@legacycpas.com

IFEBP Annual Conference

We attended the International Foundation of Employee Benefit Plans' (IFEBP) 55th U.S. Annual Employee Benefits Conference Sunday, November 8 - Wednesday, November 11, 2009 at the Orange County Convention Center in Orlando, Florida.

Bruce Pavlik, CPA, Partner spoke at the Annual Conference. His sessions included: "Plan Fees and Expenses – New Fee Disclosures," "Current Fiduciary Issues in Investments," and "Health Care Fraud – Funds and Participants at Risk!"

Eileen Brassil, CPA, Partner presented at various sessions including "Investment Auditing," "Retiree Funding and Health Care Costs," and "The Latest in Real Estate as an Asset Class."

The Annual Conference was a great educational and networking experience. At the Legacy booth, Managing Partner Bob Tiberi, Bruce Pavlik, and Marketing Director Julie Tucek visited with attendees and friends of the Firm, speaking with clients and meeting several new Legacy prospects.

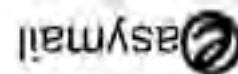
For more information about the IFEBP, you can visit their website at www.ifebp.org.



(from left to right: **Tom Stiede**, Plan Manager of Chicago Area IBT Benefits Trust Funds, Chairman of Local 703 IBT Grocery & Food Employees' Trust Funds; **Ken Boyd**, President/International Vice President of UFCW International Union Local 1546; Legacy's **Julie Tucek** and **Bruce Pavlik**.)



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info@legacycpas.com
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via email or if you'd
like to contribute to our
next issue.



30 North LaSalle Street
Suite 4200
Chicago, IL 60602

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