

Justification for No material/Nonsubstantive Change

The Department of Labor (Department) is submitting a no material/non-substantive change request for changes to the instructions to the Annual Return/Report of Employee Benefit Plan (Form 5500 and Form 5500-SF) (OMB Control Number 1210-0110). As further discussed below, the Department is seeking to make a non-substantive change to the instructions for the Form 5500 and 5500-SF for the 2023 filing year deleting text describing a new electronic method of filing for IRS Form 5558, which employee benefit plan administrators use to obtain an extension of time from the IRS for filing Form 5500 and Form 5500-SF.

The Form 5500 and Form 5500-SF and the Department's implementing regulations are promulgated through notice and comment rulemaking under general ERISA regulatory authority. The Annual Report regulation, promulgated at 29 CFR 2520.103, sets forth the information that a plan administrator must file annually with the Department, as well as Treasury and PBGC. The Form 5500 and Form 5500 SF, and related schedules, are forms which the Department, Treasury, and PBCG have prescribed for filing the annual report. IRS Form 5558 is the form prescribed by the IRS to obtain an extension of time for filing Form 5500 and Form 5500-SF from the IRS. The Form 5500 and Form 5500-SF both require plan administrators that have filed a Form 5558 with the IRS to indicate that this is the case.

In 2016, the Department, along with IRS and PBGC, published a comprehensive proposed rule titled, Proposed Revision of Annual Information Return/Report, to update various elements of the Form 5500 series. In the preamble, the IRS proposed to create an electronic version of the Form 5558 to be processed through EFAST2, the Department's electronic filing system, which would enable filers to use the same system to request an extension that they use to file the Form 5500. 81 FR 47534 (Jul. 21, 2016) at 4756, Part G. Electronic Filing of Certain IRS-only Forms, Section 2, Form 5558. In connection with publishing the final notice of form revision rule 88 FR 11984 (Feb. 24, 2023), the Department submitted to OMB for review the instructions for the Form 5500 and Form 5500-SF which included the text referencing the availability of electronic filing for the Form 5558 in the EFAST2 system.

This request is based on a very recent IRS communication to the Department that the IRS has determined that it will not permit electronic filing of the Form 5558 through EFAST2. Until recently, IRS communicated to DOL that it intended to make electronic filing of the Form 5558 through EFAST2 available beginning on January 1, 2024. IRS has explained that it determined that "as a result of a safeguard issue that involves the EFAST2 system . . . IRS decided to remove the Form 5558 from EFAST2 for 2024 to allow time to resolve the safeguard issue to protect taxpayer's data."

The change is not material and is nonsubstantive because it only covers changes to the instructions for the Form 5500 and the Form 5500-SF which would reflect that a new method of filing which has never been used to file Form 5558 is not available. Paper Form 5558 filings will continue to be required in order to request an extension of time to

file the Form 5500 and the Form 5500-SF.

Below are the proposed revisions to the instructions regarding electronic filing of the 5558.

2023 Form 5500 Instructions

- (1) Page 5, column 1 – **Extension of Time to File Using Form 5558:** Delete the phrase, “Beginning January 1, 2024, you can file Form 5558 electronically through EFAST1 or” in the second sentence and changed to “You can file paper Form 5558 with the IRS.”

Extension of Time To File Using Form 5558

A plan, GIA, or DCG may obtain a one-time extension of time to file a Form 5500 Annual Return/Report (up to 2½ months) by filing IRS Form 5558, Application for Extension of Time To File Certain Employee Plan Returns, on or before the normal due date (not including any extensions) of the return/report. ~~Beginning January 1, 2024, you can file Form 5558 electronically through EFAST2 or~~ You can file paper Form 5558 with the IRS. Approved paper copies of the Form 5558 will not be returned to the filer. A copy of the completed extension request must, however, be retained with the filer’s records. File the paper Form 5558 with the Department of the Treasury, Internal Revenue Service Center, Ogden, UT 84201- 0045.

- (2) Page 17, column 2 – **Line D – B o x for Extension and DFVC Program:** Delete the phrase “,either electronically filing through EFAST2 or filing a paper form with the IRS”.

Line D - B o x for Extension and DFVC Program. Check the appropriate box here if:

- You filed for an extension of time to file this form with the IRS using a completed Form 5558, ~~either electronically filing through EFAST2 or filing a paper form with the IRS.~~ (A copy of the Form 5558 must be retained with the filer’s records);

2023 Form 5500-SF Instructions

- (3) Page 5, column 1 – **Extension of Time To File Using Form 5558:** Delete the phrase, “Beginning January 1, 2024, you can file Form 5558 electronically through EFAST2 or” in the second sentence and changed to “You can file paper Form 5558 with the IRS” and delete the final sentence.

Extension of Time To File Using Form 5558

If filing under an extension of time based on the filing of an IRS Form 5558, Application for Extension of Time To File Certain Employee Plan Returns, check the appropriate box on the Form 5500-SF, Part I, line C. A one-time extension of time to file the Form 5500-SF (up to 2½ months) may be obtained by filing Form 5558 on or before the normal due date (not including any extensions) of the return/report. ~~Beginning January 1, 2024, you can file Form 5558 electronically through EFAST2 or~~ You can file paper Form 5558 with the Department of Treasury, Internal Revenue Service Center, Ogden, UT 84201-0045. Approved copies of the paper Form 5558 will not be returned to the filer. A copy of the completed extension request must be retained with the plan’s records. ~~See How to File—Electronic Filing Requirement for details on EFAST receipt and acknowledgement of filings.~~