

accordance with the Federal Advisory Committee Act (15 U.S.C. App. 2) and 41 CFR 101-6.1001-101-6.1035 (1992), has established a Citizens' Advisory Panel (CAP) to provide the Department of Justice with recommendations on ways to reduce the number of complaints of abuse made against employees of the Service, and to minimize or eliminate the causes for those complaints. This notice announces the CAP's forthcoming meeting and the agenda for the meeting.

DATES: February 26-27, 1996 at 8:00 A.M.

ADDRESSES: The Henley Park Hotel, 926 Massachusetts Ave., NW., The Eton Room, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Susan B. Wilt, CAP Designated Federal Official (DFO), Immigration and Naturalization Service, Room 3260, Chester Arthur Building, 425 I Street NW., Washington, DC 20536, Telephone (202) 616-7072.

SUPPLEMENTARY INFORMATION: Pursuant to the charging language of the Senate Appropriations Committee Report 102-331 on the FY 1993 Budget for the Immigration and Naturalization Service, Department of Justice, the Service established a Citizens' Advisory Panel for the purpose of providing recommendations to the Attorney General on ways to reduce the number of complaints of abuse made against employees of the Service and, most importantly, to minimize or eliminate the causes for those complaints. The CAP is authorized by the Attorney General to (1) accept and review civilian complaints made against Service employees, and (2) review the systems and procedures used by the Service for responding to such complaints. (February 11, 1994 at 59 FR 6658)

Summary of Agenda

The principal purpose of the meeting is to set forth recommendations on the Immigration and Naturalization Service's complaint process, education and the development of training, the current training curriculum, and training policies and procedures for Service employees.

Public Participation

The CAP meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the CAP DFO at least 2 days prior to the meeting by contacting the DFO at (202) 514-2373. Any hearing-challenged individuals wishing to attend please contact the DFO by February 20, 1996 so services can be arranged.

Any member of the public may file a written statement with the CAP DFO before the meeting. Materials submitted at the meeting should be submitted in 20 copies. Members of the public will not be permitted to present oral statements at the meeting.

Minutes of the meeting will be available on request from the CAP DFO.

Dated: January 25, 1996.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Annual Reporting and Disclosure Requirements

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of Change to the 1995 Form 5500 Series and Request for Comment.

SUMMARY: This document announces a change made by the Department of Labor to items 15h and 26h on the 1995 Form 5500-C/R, "Return/Report of Employee Benefit Plan (With Fewer Than 100 Participants)," filed by administrators of employee benefit plans under Part 1 of title I of the Employee Retirement Income Security Act of 1974 (ERISA). This change, and additional guidance in the instructions to all forms in the 1995 5500 Series, relate to the handling of participant contributions by employers.

EFFECTIVE DATES: The change is incorporated in the 1995 Form 5500 Series, and is effective for plan years beginning on or after January 1, 1995.

ADDRESSES: Interested persons are invited to submit written comments to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N5669, U.S. Department of Labor, 200 Constitution Ave NW., Washington, DC 20210. Attention: 1995 Form 5500 Series Comments.

FOR FURTHER INFORMATION CONTACT: Susan E. Rees, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC, (202) 219-9141, or George M. Holmes, Jr., Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC, (202) 219-8515. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: As part of its effort to enhance the security and protection of participant contributions, the Department has modified items 15h and 26h on the 1995 Forms 5500-C/R to enable more effective monitoring of the handling of participant contributions by employers.¹ Currently, item 15h of the 1994 Form 5500-CR, applicable to Form 5500-R filers, and item 26h of the 1994 Form 5500-C/R, applicable to Form 5500-C filers, asks whether, during the plan year, the employer owed contributions to the plan that are more than 3 months overdue, and if so, the amount. For the 1995 Form 5500-C/R, the Department has modified items 15h and 26h to focus on participant contributions due from the employer. As modified, item 15h and item 26h now ask whether, during the plan year, there were any participant contributions transmitted to the plan more than 31 days after receipt or withholding by the employer, and if so, the amount.

In general, the Department believes that the information required to be reported in modified item 15h and 26h on the Form 5500-C/R is, or should be, readily available and easily accessible from the plan's and/or the plan sponsor's records and, accordingly, should not result in any new or additional recordkeeping burdens on plans or employers. Further, as with the existing items 15h and 26h, an affirmative response to the modified items does not necessarily mean that the employer has violated ERISA. Lastly, this modification does not affect the administrators of plans with 100 or more participants filing the Form 5500 who, unlike Form 5500-C/R filers, are currently required to disclose on the Form 5500 detailed information about prohibited transactions involving delinquent participant contributions, and must have their plans audited annually by an independent qualified public accountant.²

Statutory Authority

These forms and instructions are issued pursuant to the Secretary's general rulemaking authority under section 505 of ERISA, and under

¹ Among other things, the Department has proposed an amendment to the participant contribution regulation to reduce the maximum amount of time an employer may hold participant contributions before such contributions constitute "plan assets." See 29 CFR § 2510.3-102 and proposed amendment thereto at 60 Fed. Reg. 66036 (December 20, 1995).

² The instructions for the 1995 Form 5500 Series, including the Form 5500 and Form 5500-C/R, have been modified to remind filers that a failure to segregate participant contributions that constitute plan assets from an employer's general assets has prohibited transaction implications.

sections 104(a)(2)(A) and 104(a)(3) of Part 1 of title I of ERISA which authorize the Secretary to prescribe simplified reports. See 29 CFR 2520.104-41.

Effective Date of the Forms

The change to the Form 5500-C/R items 15h and 26h is effective for plan years beginning on or after January 1, 1995. The Department has determined that publication of the change as a proposal for comment prior to publication of the 1995 Form 5500 Series is impracticable and contrary to the public interest. The Department believes that reporting and disclosure of this information is important for the 1995 plan year, and, without incorporating the change immediately, the Department, and participants and beneficiaries, will not be able to monitor and take action on this information. The additional time needed to provide prior notice and opportunity for comment would delay printing and disseminating the 1995 Forms, creating administrative difficulties for filers, and ultimately would be detrimental to the interests of the participants and beneficiaries. Thus, the Department finds for good cause that this prompt action is necessary and permissible under section 553(b)(3)(B) of the Administrative Procedures Act (APA). The Department also has determined that good cause exists to waive the 30 day pre-effective date requirement of section 553(b)(3)(D) of the APA.

Although an opportunity to comment on the change has not been provided prior to the publication of the 1995 Form 5500 Series, the Department will consider public comment on the change for subsequent filing years.

Economic Impact

The Department certifies that the change will not have a "significant economic impact on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The Department has also determined that this action is not a "significant regulatory action" within the meaning of Executive Order 12866 (58 FR 51735, Oct. 4, 1993).

Paperwork Reduction Act

The collection of information contained in this modification to the 1995 Form 5500 C/R has been submitted to the Office of Management and Budget for emergency processing under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). OMB approval has been requested by February 6, 1996. For copies of the OMB

submission, contact Mrs. Theresa O'Malley, U.S. Department of Labor, OASAM/DIRM, Room N-1301, 200 Constitution Ave. NW, Washington, D.C. 20210, 202-219-5095 or via internet to tomalley@dol.gov.

Comments are solicited on the Department's need for this information, specifically to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Persons wishing to comment on the collection of information should direct their comments to the Office of Information and Regulatory Affairs, OMB, Room 10235, NEOB, Washington, D.C. 20503, Attn: Desk Officer for PWBA. Comments must be filed with the Office of Management and Budget within 60 days of this publication. Although an opportunity to comment on the change has not been provided prior to the publication of the 1995 Form 5500 Series, the Department will consider public comment on the change for subsequent filing years. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Department: Mrs. Theresa O'Malley, U.S. Department of Labor, OASAM/DIRM, Room N-1301, 200 Constitution Ave. NW, Washington, D.C. 20210. For further information, contact Gerald B. Lindrew at 202-219-4782.

Title: Annual Report/Form 5500 Series (1210-0016).

Summary: Section 104(a)(1)(A) of ERISA requires plan administrators to file an annual report containing the information described in section 103 of ERISA. The Form 5500 Series provides a standard format for fulfilling that requirement.

Needs and Uses: The change to the Forms 5500-C and R described here is calculated to enhance the security and protection of participant contributions and to enable more effective monitoring of the handling of participant contributions by employers.

Respondents and Proposed Frequency of Response: The Department staff estimates that approximately 665,000 plans will file either Form 5500-C or Form 5500-R for the 1995 plan year (of the estimated 822,000 annual filers).

Estimated Annual Burden: The change to the Forms described here substitute one yes/no/amount question for another in reference to contributions to the plan. It is the belief of the Department of Labor that the same business records should be reviewed as in previous years, so there should be no affect upon the recordkeeping burden of the respondent plans. Therefore, the Department's annual collection burden for the Form 5500 Series will remain at the previously budgeted 1,014,000 hours.

The Change to Form 5500-C/R: Form 5500-C, line 26h, and Form 5500-R, line 15h, are modified to read as follows:

During this plan year:

Were any participant contributions transmitted to the plan more than 31 days after receipt or withholding by the employer?

Yes ☐ No ☐ Amount _____

*Additional Guidance to the Form 5500-C/R Instructions:*³

An instruction for Form 5500-C, line 26h, and Form 5500-R, line 15h, has been added as follows:

Amounts paid by a participant or beneficiary to an employer and/or withheld by an employer for contribution to the plan are participant contributions that become plan assets as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets (see 29 CFR 2510.3-102). An employer holding these assets after that date commingled with its general assets will have engaged in a prohibited use of plan assets (see ERISA section 406). If a nonexempt prohibited transaction occurred with respect to a disqualified person (see Code section 4975(e)(2)), file IRS Form 5330 to pay any applicable excise tax on the transaction.

Signed at Washington, DC, this 29th day of January 1996.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, Department of Labor.

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³ The Department notes that similar guidance is provided for 1995 Form 5500 items 27e and f, relating to nonexempt prohibited transactions.