

Disclaimer

The information and opinions presented today are those of the presenter and do not necessarily represent the opinions or positions of ASPPA.



2015 Form 5500 Revisions

- Most changes are associated with proposed IRS Form 5500-SUP
- Schedule MB / SB changes
- EFAST2 changes

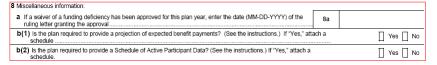


2015 Schedule MB Changes

Renumbered Lines 4a and 4b



New and renumbered lines 8b(1) and 8b(2)



New edit tests



EFAST2 Changes

- 2011 Form year is obsolete effective January 1, 2016
 - May no longer file 2011 Form 5500 even to amend a previously filed 2011 Form 5500 report
 - Will use the 2015 Form 5500 (or current year form) to submit 2011 (or earlier) plan year information
 - When using the 2015 form to submit 2011 (or earlier) data, information will not appear on the DOL's Public Disclosure website

2015 Form 5500 / SUP

ASPPA Notes informer flow text Not of the Administration





Form 5500-EZ Changes (draft) 4a Name of trust 4b Trust's EIN 4c Name of trustee or custodian 4d Trustee or custodian's telephone number 6a(1) Total number of participants at the beginning of the plan year. 6a(1) a(2) Total number of active participants at the beginning of the plan year b(1) Total number of participants at the end of the plan year. 6b(1) b(2) Total number of active participants at the end of the plan year 6b(2) c Number of participants that terminated employment during the plan year with accrued benefits that were less than 100% vested Has the plan been timely amended for all required tax law changes? b Date the last plan amendment/restatement for the required law changes was adopted (MM/DD/YYYY) Enter the applicable code (see instructions for tax law changes and codes). If the employer is an adopter of a pre-approved master and prototype (M&P), or volume submitter plan that is subject to a favorable IRS opinion or advisory letter, enter the date of that favorable letter (MM/DD/YYYY) _____ and the leserial number d If the plan is an individually-designed plan and received a favorable determination letter from the IRS, enter the date of the plan's last favorable determination letter (MM/DD/YYYY) Yes No N/A Were required minimum distributions made to 5% owners who have attained age 701/2 (regardless of whether or not retired) as required under section 401(a)(9)? 15 Did the plan trust incur unrelated business taxable income? If "Yes," enter amount 15 Were in-service distributions made during the plan year? If "Yes," enter amount Preparer's name (including firm name, if applicable) and address, including room or suite number Preparer's telephone numbe AHEAD ASPPA 2015 ASPPA ANNUAL CURVE CONFERENCE

Part VIII	Trust Information			
14a Name of trust 1			14b Trust's EIN	
14c Name of trustee or custodian			14d Trustee's or custodian's telephone number	
Part IX	IRS Compliance Questions			
15a Is the	plan a 401(k) plan?	Yes	∏No	
15b If "Yes match	s," how does the 401(k) plan satisfy the nondiscrimination requirements for employee deferrals and employer sing contributions (as applicable) under sections 401(k)(3) and 401(m)(2)?	Design- based safe harbor method	ADP/ACP test	
testin	ADP/ACP test is used, did the 401(k) plan perform ADP/ACP testing for the plan year using the "current year gracinodo" for nonhighly compensated employees (Treas. Reg sections 1.401(k)-2(a)(2)(li) and 1.401(m)- (lil))?	Yes	∏No	
16a Check	the box to indicate the method used by the plan to satisfy the coverage requirements under section 410(b):	Ratio percentage test	Average benefit test	
	the plan satisfy the coverage and nondiscrimination tests of sections 410(b) and 401(a)(4) by combining an with any other plans under the permissive aggregation rules?	Yes	∏No	
17a Has th	ne plan been timely amended for all required tax law changes?	Yes	∏No ∏N/A	
	the last plan amendment/restatement for the required tax law changes was adopted// Enter the ap law.changes and codes).	plicable code	_(See instructions	
	plan sponsor is an adopter of a pre-approved master and prototype (M&P) or volume submitter plan that is subjectory letter, enter the date of that favorable letter / / and the letter's serial number	t to a favorable IR	S opinion or	
	plan is an individually-designed plan and received a favorable determination letter from the IRS, enter the date of mination letter / /	the plan's last favo	orable	
18 Is the	Plan maintained in a U.S. territory (i.e., Puerto Rico (if no election under ERISA section 1022(i)(2) has been), American Samoa, Guam, the Commonwealth of the Northern Mariana Islands or the U.S. Virgin Islands)?	Yes	∏No	
19 Were	in-service distributions made during the plan year?	Yes	∏No	
	s," enter amount	19		
20 Were	required minimum distributions made to 5% owners who have attained age 70 ½ (regardless of whether or not 1), as required under section 401(a)(9)?	☐ Yes	Πνο Πν/Α	

Form 5500/Form 5500-SF Changes (draft)

• The word "Optional" has disappeared

Preparer's name (including firm name, if applicable) and address (include room or suite number)	Preparer's telephone number

2015 Form 5500 / SUP





	Schedules H/I Changes (draft)						
			ss taxable income?		o		
	Part V	Trust Information					
	6a Name of	ftrust				6b Trust's EIN	
	6c Name o	of trustee or custodian			6d Trustee's or custodia	n's telephone number	
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Schedule R Changes (draft) Exceptions to completing Schedule R if there have been no distributions during the year for certain defined contribution plans have been removed. Part VII IRS Compliance Questions ☐ No 20a Is the plan a 401(k) plan?. 20b if "Yes," how does the 401(k) plan satisfy the nondiscrimination requirements for employee deferrals and employer matching contributions (as applicable) under sections 401(k)(3) and 401(m)(2)?..... ADP/ACP test 20c If the ADP/ACP test is used, did the 401(k) plan perform ADP/ACP testing for the plan year using the "current year testing method" for nonhighly compensated employees (Treas. Reg sections 1.401(k)-2(a)(2)(ii) and 1.401(m)-2(a)(2)(ii))? No Ratio percentage test 21a Check the box to indicate the method used by the plan to satisfy the coverage requirements under section 410(b): Average benefit test 21b Does the plan satisfy the coverage and nondiscrimination tests of sections 410(b) and 401(a)(4) by combining this plan with any other plans under the permissive aggregation rules? Yes No 22a Has the plan been timely amended for all required tax law changes?. 22b Date the last plan amendment/restatement for the required tax law changes was adopted _ Enter the applicable code 220 Date the sast part an interfulne instructions for an interfulne instructions for a law changes and codes). 22c If the plan sponsor is an adopter of a pre-approved master and prototype (MRP) or volume submitter plan that is subject to a favorable IRS opinion or advisory letter, enter the date of that favorable letter. 22d If the plan is an individually-designed plan and received a favorable determination letter from the IRS, enter the date of the plan's last favorable determination letter _ 23 Is the Plan maintained in a U.S. territory (i.e., Puerto Rico (if no election under ERISA section 1022(i)(2) has been made), American Samoa, Guam, the Commonwealth of the Northern Mariana Islands or the U.S. Virgin **AHEAD** ASPPA 2015 ASPPA ANNUAL CURVE CONFERENCE

History of the SUP-data

Official Guidance

- To date, the IRS has posted the following
 - Draft Form 5500-SUP [10/21/2014; updated 03/27/2015]
 www.irs.gov/pub/irs-dft/f5500sup--dft.pdf
 - Draft Instructions for Form 5500-SUP [12/18/2014; updated 03/30/2015]

www.irs.gov/pub/irs-dft/i5500sup--dft.pdf

- Federal Register Notice and Request for Comment
 [12/23/2014]
- Comment due date: February 23, 2015
- ASPPA was only benefits organization to comment.

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IRS Submission to OMB

- IRS stated that collection and reporting of the SUP-data created <u>no</u> additional "burden" for filers.
 - Used IRC \6058 as the basis for its authority
 - Dismissed public comments except those that took the "more is better" approach to data collection
- ASPPA letter pushed for delayed effective date
 - ASPPA met with OMB on July 14









Effective for 2015?

- The effective date is problematic for service providers
 - Sufficient time to adapt electronic systems
 - Data collection issues, both internal and external
 - Some issues (e.g., nondiscrimination testing) may not be finalized by filing due date
- Communicating new data needs to plan administrators / plan sponsors
- ASPPA requested IRS make SUP-data items optional for 2015 plan year reporting.

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Where do things stand as of today?









Preparer Information

• The Notice says....

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Preparer Information: Forms 5500, IRC §§ 6058(a) Optional preparer information was 5500-SF, and eliminated from Form 5500 since 2009 and 7701(a)(36), 5500-Sup 6109, 6695, Preparer's name (including firm name, if added back in the 2012 Form 5500s. § 1.6109 applicable) Preparer information will be mandatory Preparer address (include room or suite Similar items for the plan year beginning in 2015. number) questions were · EP Exam needs at least basic information of Preparer's telephone number on 2008 and preparers, so that Exam can contact preparers for issues relating to Form 5500 previous years Form 5500. and plan qualifications. • It will assist IRS and DOL for projects relating to tax compliance and fiduciary duties. 2015 Form 5500 / SUP

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Paid Preparer - Issues

- Requires individual's name as well as business name, address, phone
- Is this subject to public disclosure?

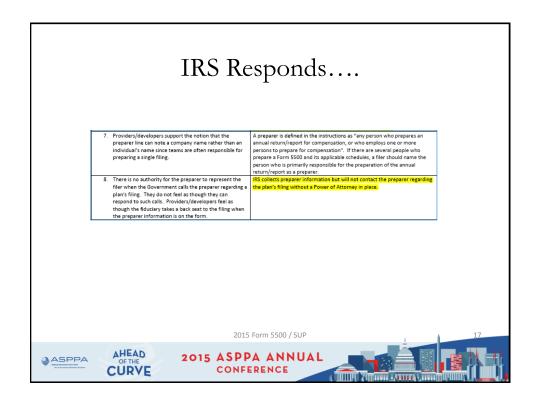
 http://www.dol.gov/ebsa/foia/foia-5500.html
- Approximately 830 individuals preparing more than 10 filings voluntarily supplied information on the 2013 Form 5500 series

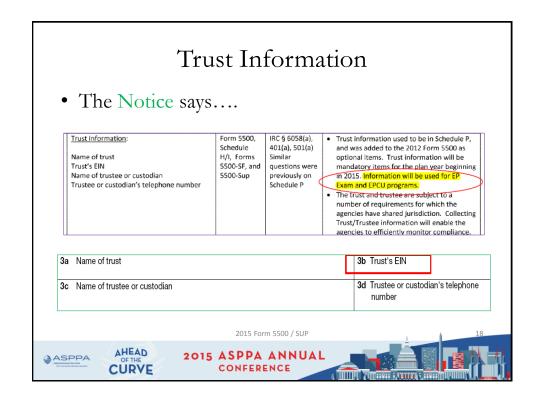
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Trust Information - Issues

- Trust EIN may have been deactivated or reassigned by IRS without knowledge of trustee/service provider
- Trust may not have EIN because of omnibus reporting by institution
 - Draft instructions say to insert EIN shown on Forms 1099-R or 945 (which already appears on line 2 of Schedule R)
- Is there a link to new UBTI question?







2015 Form 5500 / SUP



IRS Responds....

 Many trusts do not have original trust ID numbers due to the IRS recycling ID numbers every three years. Can filers use a sponsor's EIN in place of getting new trust ID

Plan sponsors should use the trust EIN for the trust-related questions on the Form 5500-SF and the Schedules H and I. However, the EIN used on the Form 1099-R and the Form 945 may be used for this purpose if no trust EIN is available. IRS encourages trustees to get a trust EIN from the IRS. The trust's EIN landing page was posted on May 14, 2011 at IRS's website (http://www.irs.gov/Retirement-Plans/How-to-Obtain-or-Re-Establish-an-EIN-for-a-Retirement-Plan-Trust. If a trust's EIN was deactivated, the trustee can send a fax request (801-620-7116) to the EP Entity Control Unit in Ogden, Utah in order to re-activate it. IRS is considering issuing an FAQ to clarify this.

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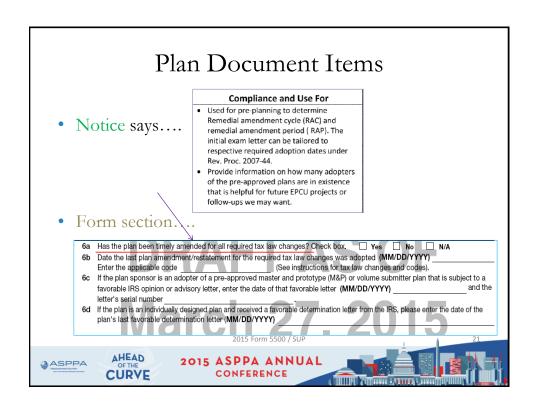
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Plan Document - Issues

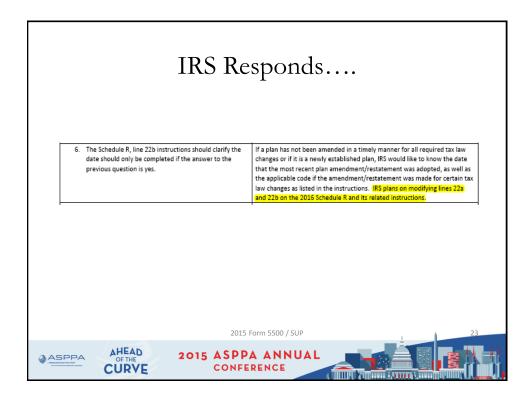
- No explanation how to respond if late amendments cured through EPCRS or closing agreement
- Isn't clear how to respond to item asking for latest amendment/restatement date if PPA interim amendments adopted but not full restatement

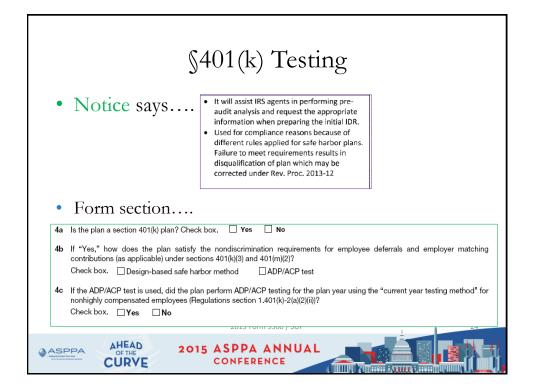




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§401(k) Testing

- ASPPA recommended IRS use feature codes to collect data
 - -2U = 401(k)(3) safe harbor
 - -2V = 401(m)(2) safe harbor
 - -2W = ADP current year testing
- In its OMB submission, **ASPPA** suggestion dismissed because "TRS has found that the use of feature codes…produces less accurate responses"

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[draft] Instructions Lack Clarity

- Instruction drafted for item 4c seems to indicate question is only about testing methodology for ADP but actual question shows both ADP/ACP
- EFAST2 not currently anticipating both boxes checked on items b and c





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IRS Responds....

- The developers are concerned that new IRS fields on the Form 5500-5F (lines 15b, 15c, 16b, 16c) and on the Schedule R (line 20a) require one box to be checked and do not allow multiple boxes to be checked. They believe the responses do not lend to binary responses from all filers. Are changes to the DER warranted?
- 5500-SF Line 15b: A designed-based 401(k) plan, as indicated in the plan document, is an alternative method of meeting the nondiscrimination requirements, and is not required to perform ADP/ACP testing, although it is likely that a plan uses both a safe harbor method for 401(k) and an ACP test for 901(m) to satisfy nondiscrimination requirements. IRS intends to publish an FAQ to accompany the 2015 forms that states a filer may select the box entitled "besign-based safe harbor method" if a plan uses the safe harbor method for the 401(k), regardless of whether this plan also uses an ACP method for the 401(m) portion. Further, IRS may add a new box entitled "Both" to the 2016 form 5500-SF with clarification added to the 2016 instructions noting that the "Both" check box is to be used for situations in which a plan uses the 401(k) safe harbor method for the 401(k) portion and uses an ACP test for matching contributions and employee contributions for the 401(m) portion.

5500-SF Line 15c: The IRS does not believe there is a need for a plan answer both yes and no for this question.





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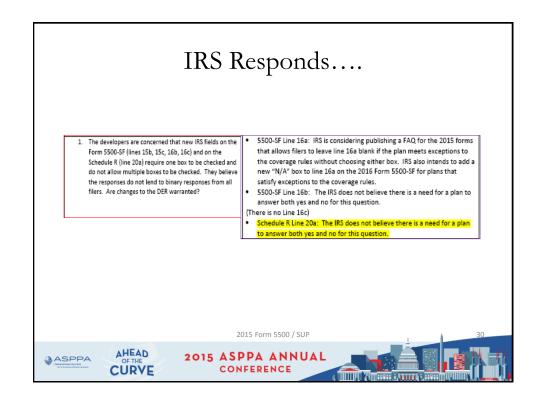


Coverage Testing

• Notice says....

Suggested Changes	Add to	Authorities	Compliance and Use For
Check the box to indicate the method used by the plan to satisfy the coverage requirements under section 410(b): ratio percentage test average benefit test Closes the plan satisfy the coverage and nondiscrimination tests of sections 410(b) and 401(a)(4) by combining this plan with any other plans under the permissive aggregation rules? Check box	Schedule R, Forms 5500- SF, and 5500-Sup	IRC \$56058(a) 401(a)(4), 410(b)	Because of changes on Determination letter program that eliminated the option to request a determination on coverage and nondiscrimination, proposal will assist IRS agents in performing pre-audit analysis and will enable agents to request the appropriate information when preparing the initial IDR. Would provide criteria to enable Classification Specialists and EP Analysts to perform more precise return/issue selections Compliance with respect to contributions/benefits and coverage Encourages development/use of internal controls (for testing and aggregation rules) VCP available under Rev. Proc. 2013-12 for failures which should be identified by sponsor earlier.

ASPPA Suggestion	
Exceptions - check the box for each statement that describes the plan or the employer,	
then skip to line 6.	
The employer employs only HCEs.	
No HCEs benefited under the plan at any time during the plan year.	
The plan benefits only collectively-bargained employees.	
The plan benefits all nonexcludable NHCEs, including leased employees and self-employed individuals.	
The plan is treated as satisfying the minimum coverage requirements of IRC Section 410(b)(6)(C).	
The plan uses the three-year testing cycle rule in Revenue Procedure 93-42.	
If no Exception above applies, check all that apply below: The plan was permissively aggregated with another plan of the employer for coverage testing purposes. The plan was required to be disaggregated for coverage testing purposes. The plan was permissively disaggregated for coverage testing purposes. Coverage testing satisfied using: Ratio Percentage Test Average Benefits Test 401(k) feature 401(m) feature 401(m) feature Nonelective feature ESOP feature ESOP feature ESOP feature	
Excludable Excludable	
Non-excludable Non-excludable	
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Tricky Data Collection Item

• Notice says....

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UBTI before **UBIT**

- UBTI = unrelated business taxable income
 - Income generated that is not related to the [typically, tax exempt] purpose of the entity. Debt-financing may also result in UBTI.
 - Example: for a fee, commuters use the parking facilities of a church during the week. That income to the church is unrelated to its tax-exempt purpose.
- UBIT = unrelated business income tax the tax that may be due on account of UBTI
 - There is a \$1,000 exemption on Form 990-T

ASPPA webcast on this topic - August 2015







UBTI - Issues

- Not well monitored in any size plan
- Not easy to monitor, especially in self directed brokerage
- Form 990-T due by April 15 for calendar year plans

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Distributions - Issues

- Instructions indicate IRS wants a carve out of distributions to active participants (e.g., hardship withdrawals, any other payments in-service)
 - Systems must be adapted to automatically generate this figure
- ASPPA suggested could easily be captured by simply further bifurcating the financial information sections of Schedules H/I and Form 5500-SF

2015 Form 5500 / SUP

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 The instructions need to define a withdrawal for inservice withdrawals (Schedule H) so the filers are aware of what data to report. IRS intends to publish an FAQ to accompany the 2015 forms that provides a more detailed definition and scope description of in-service distributions.

IRS may also modify the question on the 2016 Schedule H and its related instructions.

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New SF/EZ Distribution Item

20 Were required minimum distributions made to 5% owners who have attained age 70 ½ (regardless of whether or not refired), as required under section 401(a)(9)?

- Distinct from line 10f
 - Has the plan failed to provide any benefit when due under the Plan
- Not a SUP question

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IRS Explains

 The information on Form 5500-SF, Line 20 does not appear to be on the forms or schedules.

NOTE: In reviewing the latest draft 5500 instructions we see that line 41 of the Sch H (page 41) and Sch I (page 49) have been updated to include the highlighted which seem to relate to Line 20 on the SF and not Line 41 on the H/l. Line 41. You must check "Yes" if any benefits due under the plan were not timely paid or not paid in full. This would include minimum required distributions to 5% owners who have attained 70% whether or not retired and/or non-5% owners who have attained 70% and have retired or separated from service, see section 401(a)(9) of the Code. Include in this amount the total of any outstanding amounts that were not paid when due in previous years that have continued to remain unpaid.

IRS added an "RMD" question ("Were required minimum distributions made to 5% owners who have attained age 70 ½ (regardless of whether or not retired) as required under section 401(a)(9)") to the 2015 Forms 5500-SF (Line 20) and 5500-EZ for small plans, but did not ask this question for the large plans on the 2015 Form 5500. Thus, this RMD question would not appear on the 2015 Schedule R, or on Schedules H and I. Question 4I of both the Schedules H and I ("Has a plan failed to provide any benefit when due under the plan") is an existing question and is different from the IRS RMD question (although benefit payment on Line 4I could include RMD amount, but is not limited to RMD).







2015 Form 5500 / SUP



Paper or E-file SUP-data?

- Items worked onto Form 5500 and Form 5500-SF for those required (or opting) to provide the information electronically
 - Count all federal tax reports <u>of any kind</u> filed by either the plan sponsor or the plan administrator (includes Forms W-2, 1099-MISC, 1099-R, 940 series, etc.)
 - Similar to rule for mandatory e-filing of Form 8955-SSA that begins for 2014 plan years
 - If count is 250 or more, must electronically file the





Consequences

- A plan required to file the data electronically that fails to do so will be "deemed to have failed to file" the Form 5500.
 - IRC §6652(e) imposes a penalty of \$25/day up to \$15,000
 - Presumably, SUP may be part of late filing cured under DFVC
 - Otherwise? Creates limbo <u>reasonable cause</u>
 opportunity similar to missed Form 8955-SSA

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Any Advantage to Paper?

- Although EFAST2 has the ability to mask data entry, there's been no indication that any SUP data filed electronically will be masked.
- Paper filings are subject to the same public disclosure, but it's unclear how quickly that will happen.
- Section of SUP that ties the paper filing to the EFAST2 filing:



More Paper Filing Issues

- Due date appears to be same as Form 5500 series
 - Paper SUP filing requires insertion of RefAckId, which is only available after related EFAST2 filing is Accepted.
 - Paper SUP filing requires signature of plan administrator or plan sponsor (generally, not both)
 - Difficult to make this all happen on October 15, unless you like stress!

ASPPA REFERENCE FOR THE PAY OF THE RESIDENCE PROPERTY.





2015 Form 5500 / SUP



Considerations

- New data collection and getting clients to understand the new requirements
 - some data was collected prior to the implementation of EFAST2
- Doesn't consider the current business model for plan services
- The significance of the public disclosure of this data









Form 5500 Preparation will be interesting in 2016!

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