



PENSION ANALYST COMPLIANCE BULLETIN



IRS and DOL provide additional electronic filing guidance

In late September, both the IRS and Department of Labor (DOL) issued regulations regarding certain electronic filings related to employee benefit plans. The IRS guidance is final and effective September 29, 2014, but generally not applicable until 2015. The DOL guidance is proposed and open for comment but may be followed immediately.

IRS requires electronic filing for certain employee benefit plan returns

Under regulations issued on September 29, 2014, filers who file at least 250 returns with the IRS during a calendar year must file Form 8955-SSA and certain Form 5500 series returns electronically. A filer that does not file these returns electronically will be considered to not have filed the return and may be subject to penalties. The maximum annual penalty for failing to file Form 8955-SSA is \$5,000 per participant and the maximum annual penalty for failing to file Form 5500-EZ is \$15,000.

Form 8955-SSA

Form 8955-SSA is the “Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits”. This Form was created in 2011 to [replace Schedule SSA](#), which had been removed from the Form 5500 filing package in 2008 due to privacy concerns with the electronic filing of those forms through the EFAST2 system. Since its introduction, filers have been able to submit Form 8955-SSA to the IRS either on paper or electronically via the “Filing Information Returns Electronically” (FIRE) system. Electronic filing has been voluntary.

The new regulations require the use of the FIRE system to file Form 8955-SSA, if the 250-return threshold is met. This requirement applies to Form 8955-SSA filings for plan years beginning on or after January 1, 2014, which have filing deadlines (not taking into account extensions) on or after July 31, 2015. The standard deadline for filing Form 8955-SSA is the last day of the seventh month following the last day of the plan year to which the Form relates. As a result, a plan with a 12-month plan year beginning January 1, 2014 is required to file Form 8955-SSA electronically for that plan year. However a plan with a short plan year beginning January 1, 2014 and ending on or before June 30, 2014 is not required to file the Form 8955-SSA electronically for that plan year, even if the 250 return threshold is met.

The determination of whether the 250-return threshold has been met depends on whether the plan administrator is or is not the employer. If the plan administrator is not the employer, only forms filed with the IRS by the plan administrator are counted. However, if the plan administrator is the employer, forms filed by the plan administrator, employer, and all employers in the sponsoring employer’s controlled group are counted. Forms that must be counted in making this determination include, but are not limited to: Form W-2, all forms in the Form 1099 series, Form 941, corporate Form 1040, Form 5330, Forms 8955-SSA for all plans, and Forms 5500 for all plans. If the plan administrator does not file a plan’s Forms 1099-R because the payor does so, those forms are not counted towards the plan’s 250-return threshold.

Form 5500-EZ

In general, plans that are required to file Form 5500-EZ, the “Annual Return of One-Participant (Owner and their Spouses) Retirement Plan”, must file paper forms unless they meet additional criteria that allow them to instead file Form 5500-SF electronically via EFAST2. The new regulations confirm that a one-participant plan or foreign plan that files at least 250 returns must file Form 5500-SF via EFAST2. However, defined benefit plans will not have to attach either Schedule SB or Schedule MB.

This requirement applies for plan years beginning on or after January 1, 2015, where the filing deadline (not taking into account extensions) is after December 31, 2015. For these filings, the 250 return threshold is determined by counting returns filed by the plan administrator, employer, and all members of the employer's controlled group, but not forms filed by a third party payor.

Delinquent filers may not file electronically

When a plan sponsor uses the DOL's Delinquent Filer Voluntary Compliance (DFVC) Program, it must also file any delinquent Forms 8955-SSA with the IRS for the related plan years to avoid being assessed penalties by the IRS. These forms must continue to be filed on paper and cannot be filed electronically.

Similarly, under the IRS pilot program that provides administrative relief for late filers of Form 5500-EZ, those delinquent forms must continue to be filed on paper and are not eligible for electronic submission.

Top hat plan statements may be filed electronically with the DOL

Unfunded nonqualified plans that cover a select group of management or highly compensated employees are referred to as "top hat plans". To be exempt from ERISA's reporting and disclosure requirements, these plans must file a "top hat plan statement" with the DOL within 120 days of the plan's effective date. Currently, these statements must be filed on paper with the DOL.

Under proposed regulations published on September 30, 2014, plan sponsors will be required to file top hat plan statements electronically through a new system that provides electronic copies of the required form and will not accept the submission until all required information is provided. While these rules are currently just proposed and comments will be accepted through December 29, 2014, plan sponsors that want to file their top hat plan statements electronically before the final rules are published may do so following the proposed procedures. When these statements are filed electronically, the plan administrator receives an electronic confirmation of the filing and the documents are promptly posted on the DOL website.

To file a top hat plan statement electronically, a plan administrator should go to <http://www.dol.gov/ebsa/efiletophatplanfilinginstructions.html> to obtain the filing instructions. In addition to the instructions, that page provides a link to the actual online filing system at <https://www.askebsa.dol.gov/efile/Home/tophat>.

Compliance Bulletin by Prudential Retirement

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