



Top hat plan statements must 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.

Recently, the DOL finalized rules requiring top hat plan statements to be filed electronically.

Background and overview

The top hat plan statement includes:

- The name, address, and Employer Identification Number of the sponsoring employer;
- A declaration that the employer maintains the plan primarily to provide nonqualified deferred compensation to a select group of management or highly compensated employees; and
- A statement of the number of top hat plans and the number of employees participating in each plan.

In September 2014, the Department of Labor (DOL) published a proposed rule, revising the procedures for filing top hat statements. These rules made it mandatory to file these statements electronically but permitted paper submissions while the rules were in proposed format. In June, the [DOL finalized these rules](#), making it mandatory to electronically file the statement. The final rules are effective August 16, 2019.

Under the final rules, 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. 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.

Next steps

When implementing a top hat plan, plan sponsors must now file the top hat plan statement electronically with the DOL. To file the statement, a plan administrator should go to the [DOL’s website](#) to obtain the filing instructions. In addition to the instructions, that page provides a link to the [actual online filing system](#).

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