

Pilot Penalty Relief Program – Late Annual Reporting for Non-Title I Retirement Plans (“One-Participant Plans” and Certain Foreign Plans)

Revenue Procedure 2014-32

Section 1. Purpose

This revenue procedure establishes a temporary one-year pilot program providing administrative relief to plan administrators and plan sponsors of certain retirement plans from the penalties otherwise applicable under §§ 6652(e) and 6692 of the Internal Revenue Code (the “Code”) for a failure to timely comply with the annual reporting requirements imposed under §§ 6047(e), 6058, and 6059 of the Code. The administrative relief provided under this revenue procedure applies only to plan administrators (as defined in § 414(g) of the Code) and plan sponsors of retirement plans that are subject to the reporting requirements of §§ 6047(e), 6058, and 6059 of the Code, but that are not subject to the reporting requirements of Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”). This revenue procedure also requests comments as to whether a permanent relief program should be established and, if so, how fees should be determined.

Section 2. Background

Both the Code and Title I of ERISA impose reporting requirements with respect to certain retirement plans. To minimize the filing burden on plan sponsors and plan administrators of employee benefit plans, the Internal Revenue Service (the “Service”) and the Department of Labor (the “DOL”) (as well as the Pension Benefit Guaranty Corporation) have consolidated various annual reporting requirements in the Form 5500 Series Annual Return/Report. The Form 5500 Series includes: the Form 5500, Annual Return/Report of Employee Benefit Plan; the Form 5500-SF, Short Form Annual Return/Report of Employee Benefit Plan; and the Form 5500-EZ, Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan.

Plan sponsors and plan administrators who fail to file timely Form 5500 series annual returns/reports for their retirement plans may be subject to civil penalties under the Code (or under both Title I of ERISA and the Code). In particular, the Service may assess penalties under §§ 6652(e) and 6692 of the Code for the failure to satisfy the requirements for annual returns. Section 6652(e) generally provides, in part, that in the case of any failure to timely file a return or statement required under § 6058 (annual return of employee benefit plans) or § 6047(e) (returns and reports for employee stock ownership plans), the late filer shall pay, upon notice and demand, a penalty of \$25 for each day the failure continues, up to \$15,000 per return or statement. Section 6692 generally provides that, in the case of any failure to timely file a report required by § 6059 (actuarial report for employee benefit plans), the late filer shall pay a penalty of \$1,000 for each failure. No penalty is imposed under these sections if it is shown that such failure to timely file is due to reasonable cause.

In 1995, the DOL established the Delinquent Filer Voluntary Compliance (“DFVC”) program to reduce ERISA late-filing penalties on filers of delinquent annual reports. In Notice 2002-23, 2002-1 C.B. 742, the Service determined that it would not impose the penalties under §§ 6652(c)(1), (d), (e) and 6692 (to the extent applicable) on a person who is eligible for, and satisfies the requirements of, the DFVC program with respect to the filing of a Form 5500. The relief under Notice 2002-23 was available only to filers who are required to file under both Title I of ERISA and the Code. Notice 2002-23 has been superseded by Notice 2014-35, which will appear in 2014-23 I.R.B. As under Notice 2002-23, the penalty relief provided by Notice 2014-35 does not apply to a delinquent filing of a Form 5500-EZ for retirement plans that do not cover any common law employees (such as a plan under which a business owner and the owner’s spouse are the only participants). See 29 C.F.R. 2510.3-3(b) and (c).

Certain retirement plans that are not subject to Title I of ERISA are exempt from some of the annual reporting requirements if they satisfy certain criteria specified by statute or by the Service in published guidance. For example, for years beginning after 2006, section 1103 of the Pension Protection Act of 2006 (Pub. L. No. 109-280, 120 Stat. 780, 1057) provides that “one-participant plans” with assets of \$250,000 or less at the end of the plan year are not required to file a Form 5500 series return/report. (The Service has determined that such plans must, however, file an annual return/report when the plan is terminated and all assets have been distributed.)

Section 3. Penalty Relief

This revenue procedure provides administrative relief from the penalties imposed under §§ 6652(e) and 6692 of the Code for a failure to timely comply with the annual reporting requirements under §§ 6047(e), 6058, and 6059 of the Code. The relief applies to filers who are eligible to participate under Section 4 of this revenue procedure and who satisfy the requirements of Section 5 of this revenue procedure by no later than June 2, 2015. However, in lieu of the relief provided under this revenue procedure, filers may continue to file for the relief currently available for a failure to timely file that is due to reasonable cause.¹

¹ A request for relief due to reasonable cause may be attached to the delinquent return when the return is filed or may be filed separately. The request should state the reason why the return was late and be signed by a person in authority. See §§ 301.6652-3(b) and 301.6692-1(c) of the regulations. The request (with the delinquent return, if applicable) should be mailed to the filing address provided in the instructions for the most current Form 5500-EZ available to taxpayers.

Section 4. Program Eligibility

.01. General rule. The relief provided by this revenue procedure is only available to the plan administrator or plan sponsor of a retirement plan that is subject to the filing requirements of §§ 6047(e), 6058, and 6059 of the Code but is not subject to Title I of ERISA for the plan year that is delinquent. Thus, the relief under this revenue procedure is only available to the plan administrator or plan sponsor of (1) certain small business (owner-spouse) plans and plans of business partnerships (together, “one-participant plans”) and (2) certain foreign plans.

.02. One-participant plans. For purposes of this revenue procedure, a one-participant plan is a retirement plan with one or more participants that:

- Covers only the owner of the entire business (or the owner and the owner’s spouse); or
- Covers only one or more partners (or partners and their spouses) in a business partnership; and
- Does not provide benefits for anyone except the owner (or the owner and the owner’s spouse) or one or more partners (or partners and their spouses).

.03. Foreign plans. The plan administrator or plan sponsor of a foreign plan (i.e., a retirement plan maintained outside the United States primarily for nonresident aliens) is eligible for relief under this revenue procedure if the employer that maintains the plan is a domestic employer or a foreign employer with income derived from sources within the United States (including foreign subsidiaries of domestic employers) that deducts contributions to the plan on its U.S. income tax return.

.04. Title I plans ineligible. A plan administrator or plan sponsor is not eligible for penalty relief under this revenue procedure if the affected retirement plan is subject to Title I of ERISA for the plan year for which a filing is delinquent. Instead, a plan administrator or plan sponsor of a Title I retirement plan may request relief from penalties under ERISA and the Code in accordance with the DFVC Program’s procedures and Notice 2014-35. Please refer to <http://www.dol.gov/ebsa/> for more information regarding the DFVC Program.

.05. Penalty assessment notices. The relief provided by this revenue procedure is not available if a penalty has been assessed (i.e., if a CP 283 Notice, Penalty Charged on Your Form 5500 Return, has been issued by the Service to a plan sponsor or administrator) with respect to a delinquent return.

Section 5. Procedural Requirements

.01. No payment required. No penalty or other payment is required to be paid under this pilot program. However, if this temporary pilot program is replaced with a permanent program, a fee or other payment will be required. See Section 7 of this revenue procedure.

.02. Filing contents. The applicant must submit the following information to the Service in order to receive penalty relief:

(1) A complete Form 5500 Series return. The submission must include a complete Form 5500 Series Annual Return/Report, including all required schedules and attachments, for each plan year for which the applicant is seeking penalty relief under this revenue procedure. All returns submitted in accordance with this revenue procedure must be sent to the Service at the address listed in Section 5.04 below and cannot be filed through the DOL's EFAST2 filing system. Filings sent to the DOL's EFAST2 filing system will not be treated as submissions under this program and will continue to be subject to applicable penalties under the Code. It should be noted that, for plan years prior to 2009, some plans that were not subject to Title I of ERISA were required to file Form 5500 rather than Form 5500-EZ.

For purposes of this revenue procedure:

(a) A complete return consists of a signed, filled-out paper version of the applicable Form 5500 Series return for the specific plan year that is delinquent.

- For returns for 2008 plan years and earlier, the specific Form 5500 Series return that was required for the plan year must be submitted. For example, if a 2005 Form 5500 should have been filed for the 2005 plan year but was not, a 2005 Form 5500 must be submitted under this program.
- For returns for 2009 plan years and later, only the Form 5500-EZ appropriate for the plan year may be submitted. Thus, a delinquent Form 5500-SF cannot be filed for the plan year, either on paper with the Service or electronically through the EFAST2 system (even if a Form 5500-SF could have been timely filed for the plan year through EFAST2).

(b) A complete return includes all schedules applicable to the plan for the year for which the return is delinquent. For example,

- For plan years prior to 2005, a Schedule B (Actuarial Information) was required to be included with the Form 5500 Series return for non-Title I defined benefit pension plans and certain money purchase pension plans. Accordingly, a submission for these plans for these plan years must include a Schedule B.
- For 2005 and subsequent plan years, a Schedule B (or the successor Schedule SB (Single Employer Defined Benefit Plan Actuarial Information)) was not required to be submitted to the Service with the annual Form 5500 Series return

for one-participant plans and foreign plans subject to filing under the Code and not under Title I of ERISA. Accordingly, a submission for these plans for these plan years need not include a Schedule B (or Schedule SB). However, an applicant must include in the submission a representation that the applicable annual actuarial report has been prepared (even though it is not being submitted to the Service). This statement should be attached to the applicable return in lieu of a Schedule B (or Schedule SB).

- For plan years prior to 2005, a Schedule E (ESOP Annual Information) must be included with the Form 5500 Series return for an ESOP. Accordingly, a submission for these plans for these plan years must include a Schedule E.

(c) Applicants can obtain Form 5500 Series returns, plus required schedules, for any plan year by calling 1-800-TAX Form (1-800-829-3676). Alternatively, applicants can print out electronic versions of these forms on www.irs.gov/retirement or <http://www.dol.gov/ebsa/5500main.html>.

(2) Delinquent returns must be marked. For each delinquent Form 5500 Series return submitted to the Service under this revenue procedure, the applicant must mark in red letters in the top margin of the first page (above the title of the form): “Delinquent return submitted under Rev. Proc. 2014-32, Eligible for Penalty Relief.” Failure to properly mark the submitted delinquent return may cause the Service to treat the return as ineligible for the relief provided under this revenue procedure and assess all applicable penalties (unless the plan administrator or plan sponsor can establish that the failure to timely file was attributable to reasonable cause).

(3) Required Transmittal Schedule. For each delinquent return being submitted, the applicant must complete a paper copy of the Transmittal Schedule provided in the Appendix of this revenue procedure (also available at http://www.irs.gov/pub/irs-tege/appendix_a_transmittal_schedule.pdf). A completed Transmittal Schedule must be attached to the front of each delinquent return. For example, if three delinquent returns are included in the same submission, a separate Transmittal Schedule must be completed and attached to the front of each of the three returns. Failure to include a completed Transmittal Schedule as directed may cause the Service to treat the return as ineligible for the relief provided under this revenue procedure and assess all applicable penalties (unless the plan administrator or plan sponsor can establish that the failure to timely file was attributable to reasonable cause).

.03. Multiple returns. Multiple returns may be included in a single submission. Thus, if a plan has delinquent returns for more than one plan year, the returns may be included in a single submission. Similarly, delinquent returns for more than one plan may be included in a single submission. For example, if an employer maintains a defined contribution plan and a defined benefit plan, and each plan is delinquent for three plan years, the employer may include the six delinquent returns (three for each plan) in a single submission. In all cases, the requirements of Section 5.02 of this revenue procedure must be satisfied for each such return (including the attachment of a separate Transmittal Schedule to the front of each return included in the submission).

.04. Mailing address. Submissions under this revenue procedure must be mailed to different addresses depending on whether the applicant is submitting a Form 5500 or a Form 5500-EZ. In general, applicants will submit Form 5500-EZ under this program. As provided under section 5.02(1) of this Revenue Procedure, however, some applicants will be required to submit Form 5500 for 2008 and earlier plan years because these applicants were required to file Form 5500 for those years rather than Form 5500-EZ. For example, foreign plans, as defined in Section 4.03 of this Revenue Procedure, were generally required to file Form 5500 for 2008 and earlier plan years rather than the Form 5500-EZ.

Submissions of **Forms 5500-EZ** under this revenue procedure should be mailed to:

Internal Revenue Service
1973 North Rulon White Blvd.
Ogden, UT 84404-0020

Submissions of **Forms 5500** under this revenue procedure should be mailed to:

Internal Revenue Service
Employee Plans Delinquent Filer Program
EP Classification
9350 Flair Drive
El Monte, CA 91731-2828

.05. Private delivery services. Certain private delivery services designated by the Service can be used to meet the rule that timely mailing is treated as timely filing/paying. The private delivery service can provide information on how to get written proof of the mailing date.

These eligible private delivery services include only the following:

- DHL Express (DHL): DHL Same Day Service.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2 Day, FedEx International Priority, and FedEx International First.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

Section 6. Effective Date

The relief provided under this revenue procedure is effective June 2, 2014 and will remain in effect until June 2, 2015. Returns submitted after June 2, 2015 will not be entitled to the relief provided by this revenue procedure. If filers are not eligible for relief

under this revenue procedure, they may request relief for reasonable cause as provided in Section 3.

Section 7. Permanent Program and Request for Comments

After this temporary pilot program ends, the Service will consider whether the pilot program should be replaced with a permanent program. The Service has determined that any permanent program that is offered will include a fee or other payment. The Service invites the public to submit comments on whether such a permanent program should be established and, if so, how fees should be determined.

Comments should be submitted to: CC:PA:LPD:PR (Rev. Proc. 2014-32), Room 5203, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, D.C. 20044. Comments may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Rev. Proc. 2014-32), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. Alternatively, comments may be submitted via the Internet at Notice.comments@irs.counsel.treas.gov. Please include "Rev. Proc. 2014-32" in the subject line of any electronic communication. All materials submitted will be available for public inspection and copying.

Section 8. Paperwork Reduction Act

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C 3507) under control number 1545-0956.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in the Transmittal Schedule in the Appendix. This information is required to enable the Commissioner, Tax Exempt and Government Entities Division, to evaluate this pilot program and to determine if this pilot program will be made permanent. The likely respondents are individuals and small businesses or organizations.

The estimated total annual reporting recordkeeping burden is 167 hours.

The estimated annual burden per respondent/recordkeeper is five minutes. The estimated number of respondents/recordkeepers is 2000.

The estimated frequency of responses is occasional.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential as required by 26 U.S.C. § 6103.

Section 9. Drafting Information

The principal drafters of this revenue procedure are Paul C. Hogan and Robert M. Walsh of the Employee Plans, Tax Exempt and Government Entities Division, and William Gibbs of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue procedure, please e-mail Mr. Hogan or Mr. Walsh at RetirementPlanQuestions@irs.gov. For questions regarding submissions under this revenue procedure, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number).

Appendix A Revenue Procedure 2014-32 Transmittal Schedule

1. Applicant's Name (Plan Sponsor or Plan Administrator)

2. Plan Name

3. Applicant's Address

4. Applicant's Employer Identification Number (EIN)

5. Three-Digit Plan Number (PN)

6. Plan Year End Date (Enter MM/DD/YYYY)

7. Required Form and Filing Address (Check one):

A. In accordance with sections 5.02(1)(a) and 5.04 of the revenue procedure, the enclosed version of **Form 5500-EZ** was required to be filed for the year of delinquency and is being mailed to:

Internal Revenue Service
1973 North Rulon White Blvd.
Ogden, UT 84404

B. In accordance with sections 5.02(1)(a) and 5.04 of the revenue procedure, the enclosed version of **Form 5500** was required to be filed for the year of delinquency and is being mailed to:

Internal Revenue Service
Employee Plans Delinquent Filer Program
EP Classification
9350 Flair Drive
El Monte, CA 91731-2828