

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

Rev. Proc. 2015-32

SECTION 1. PURPOSE

This revenue procedure establishes a permanent 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 failing to timely comply with the annual reporting requirements imposed under §§ 6047(e), 6058, and 6059. This permanent program replaces the temporary pilot program established by Rev. Proc. 2014-32, 2014-23 I.R.B. 1073. The administrative relief provided under this revenue procedure applies only to plan administrators (as defined in § 414(g)) and plan sponsors of retirement plans that are subject to the reporting requirements of §§ 6047(e), 6058, and 6059, but that are not subject to the reporting requirements of Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”) (Pub. L. No. 93-406).

SECTION 2. BACKGROUND

Both the Code and Title I of ERISA impose annual 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 “IRS”), the Department of Labor (the “DOL”), and the Pension Benefit Guaranty Corporation have consolidated these various annual reporting requirements by issuing a series of forms that filers can use to satisfy their annual reporting requirements under both the Code and Title I of ERISA. This Form 5500 series includes Form 5500, Annual Return/Report of Employee Benefit Plan; Form 5500-SF, Short Form Annual Return/Report of Employee Benefit Plan; and Form 5500-EZ, Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan.¹

Plan sponsors and plan administrators who fail to timely file Form 5500 series returns for their retirement plans may be subject to civil penalties under the Code. In particular, the IRS may assess penalties under §§ 6652(e) and 6692 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.

¹ In general, returns satisfy Code reporting requirements, and reports satisfy Title I of ERISA reporting requirements. Form 5500 and Form 5500-SF returns/reports can be used to satisfy the reporting requirements of both the Code and Title I of ERISA. Form 5500-EZ returns are used only by plan administrators and plan sponsors of retirement plans that are not subject to the reporting requirements of Title I of ERISA and hence are used to satisfy only the reporting requirements of the Code.

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. Failure to timely file returns/reports may also result in civil penalties under Title I of ERISA.

In 1995, the DOL sought to encourage voluntary compliance by establishing the Delinquent Filer Voluntary Compliance (“DFVC”) program. The DFVC program includes reduced late filing monetary penalties on filers of delinquent annual reports. In Notice 2002-23, 2002-1 C.B. 742, the IRS 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 return. The relief under Notice 2002-23 was available only to filers who were required to file both a report under Title I of ERISA and a return under the Code. Notice 2002-23 has been superseded by Notice 2014-35, 2014-23 I.R.B. 1072. 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 return for retirement plans that are not subject to the annual reporting requirements of Title I of ERISA (such as a “one-participant plan” under which a sole owner of a business 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 IRS in published guidance. For example, for years beginning after 2006, section 1103 of the Pension Protection Act of 2006 (Pub. L. No. 109-280) provides that “one-participant plans” that are not subject to Title I of ERISA with assets of \$250,000 or less at the end of the plan year are not required to file a Form 5500 series return. The IRS has determined that such plans must, however, file an annual return when the plan is terminated and all assets have been distributed.

SECTION 3. PENALTY RELIEF UNDER REV. PROC. 2014-32

Rev. Proc. 2014-32 established a one-year pilot program that provides administrative relief from the penalties imposed under §§ 6652(e) and 6692 for a failure to timely comply with the annual reporting requirements under §§ 6047(e), 6058, and 6059. The relief applies to “one-participant plans” and certain foreign plans, which are not subject to the annual reporting requirements of Title I of ERISA and thus are not eligible for the penalty relief provided by Notice 2014-35.

Under the pilot program, applicants are required to file a complete Form 5500 series return for each year for which the applicant is seeking penalty relief. A complete return consists of a signed, filled-out paper version of the applicable Form 5500 series return, including all required schedules and attachments.

The Form 5500 series return to be submitted under the pilot program is generally the specific Form 5500 series return that was required to be submitted for the plan year.

For example, if a 2005 Form 5500 return should have been filed for the 2005 plan year but was not, a 2005 Form 5500 return must be submitted. For 2009 plan years and later, only the Form 5500-EZ return applicable to the plan year may be submitted. Thus, a delinquent Form 5500-SF return cannot be filed for the plan year, either on paper with the IRS or electronically through the EFAST2 system (even if a Form 5500-SF return could have been timely filed for the plan year through EFAST2).

No penalty or other payment is required to be paid under the pilot program. Section 5.01 of Rev. Proc. 2014-32 states, however, that a fee or other payment will be required if the pilot program is made permanent.

SECTION 4. COMMENTS ON REV. PROC. 2014-32

Section 7 of Rev. Proc. 2014-32 requested comments as to whether the pilot program should be replaced by a permanent program and how the fee for such a permanent program should be determined. All of the comments received were in favor of replacing the pilot program with a permanent program, and two commenters suggested potential fee structures. Commenters noted that a permanent program is needed so that one-participant and foreign plans, which are prohibited from seeking relief under DOL's DFVC program, may also seek relief from late-filer penalties.

SECTION 5. PERMANENT PENALTY RELIEF PROGRAM

This revenue procedure establishes a permanent program to provide administrative relief from the penalties imposed under §§ 6652(e) and 6692 for a failure to timely comply with the annual reporting requirements under §§ 6047(e), 6058, and 6059. The relief applies to filers who are eligible to participate under Section 6 of this revenue procedure and who satisfy the procedural requirements of Section 7 of this revenue procedure. As an alternative to making a submission under this program, filers may instead file for the relief currently available for a failure to timely file that is due to reasonable cause.² However, a filer who is denied relief for reasonable cause with respect to a particular delinquent return will receive a CP 283 Notice, Penalty Charged on Your Form 5500 Return, and, in accordance with Section 6.05, will not be eligible for relief as to that return under this program. Also, filers may not seek relief for reasonable cause as part of their submission under this program.

The permanent program generally follows the requirements of the pilot program, but some changes have been made to reflect the comments received as well as to reflect the addition of a payment requirement.

The most significant change is the addition of a payment requirement with all

² A request for relief due to reasonable cause may be attached to a 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 on Procedure and Administration. 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.

submissions. The payment for each submission is \$500 for each delinquent return for each plan, up to a maximum of \$1,500 per plan. Because applicants under this program will typically be smaller than filers under the DFVC program, a smaller payment is required under this program for two or fewer delinquent returns than is required under the DFVC program, but the maximum amount per plan (which applies under this program to three or more delinquent returns) is the same. In order to keep the calculation of the payment simple, payments are not based on the number of days the return is delinquent.³

As under the pilot program, the permanent program requires that a Form 5500-EZ return be filed even though the applicant could have filed a Form 5500-SF return electronically if the return had been timely filed. Because a Form 5500-SF return must be electronically filed under DOL's EFAST2 filing system and any payment under this program must be submitted directly to the IRS, the Department of the Treasury and the IRS are concerned that it would be difficult to match a payment with a delinquent, electronically-filed Form 5500-SF return. The Department of the Treasury and the IRS will consider future changes in the program to allow electronic filing of delinquent returns as administrative and technological capacities improve.

The permanent program provides that the applicant must submit the delinquent return on the Form 5500-EZ that applied for the plan year for which the return was delinquent. An exception is provided for returns for plan years prior to 1990 because those returns are more difficult for applicants to obtain. For returns for plan years prior to 1990, the applicant may use a current-year Form 5500-EZ filled out with the beginning and ending dates for the plan year for which the return was delinquent.

As noted in Rev. Proc. 2014-32, prior to 2009, some plans that are not subject to Title I of ERISA were required to file returns on Form 5500 rather than Form 5500-EZ. Under the pilot program, these filers were required to file a Form 5500 return for the applicable year rather than a Form 5500-EZ return. To simplify the program for both filers and the IRS, filers that would have been required to file a Form 5500 return under the pilot program are instead required under the permanent program to file a current-year Form 5500-EZ return, filled out with the beginning and ending dates for the plan year for which the return was delinquent.

The pilot program also provided that multiple returns for multiple plans could be included in a submission. Because the permanent program requires a payment based on the number of delinquent returns for each plan, however, the permanent program requires that delinquent returns for each plan must be submitted separately. Thus, multiple delinquent returns for a single plan should be submitted in a single package, but delinquent returns for different plans must be submitted in different packages.

Under the permanent program, applicants must include a Form 14704,

³ Because the lowest payment under this permanent program is \$500 for a delinquent return, some filers who file a delinquent return less than 20 days late may prefer to pay the penalty of \$25 per day under § 6652(e) rather than file under this program.

Transmittal Schedule – Form 5500-EZ Delinquent Filer Penalty Relief Program (Rev. Proc. 2015-32), with each submission, as further described in Section 7.03(3).⁴ Unlike the pilot program, the IRS will contact the applicant if the Form 14704 is not included, the documents submitted are inconsistent with the Form 14704, a required signature on a delinquent return is not provided, or the amount of payment is incorrect. As under the pilot program, however, the IRS generally does not expect to contact the applicant in other cases. Filers may use a tracking or other system provided by the United States Postal Service (or by a private delivery service if a delivery service is used) to determine when delivery of a submission is completed. Filers may also receive notice from their bank or other financial institution when a check has been processed by the IRS.

The Department of the Treasury and the IRS intend that this program will be of indefinite duration, but the program, upon publication of further guidance, may be modified from time to time or terminated.

SECTION 6. 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, or 6059 but is not subject to Title I of ERISA for the plan year that a Form 5500 series return is delinquent. Thus, the relief under this revenue procedure is only available to the plan administrator or plan sponsor of (1) small business (owner-spouse) plans and plans of business partnerships (together, “one-participant plans”) described in Section 6.02 and (2) foreign plans described in Section 6.03.

.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 (that is, 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

⁴ Under the pilot program, the transmittal schedule is an appendix to Rev. Proc. 2014-32. Under this permanent program, the transmittal schedule is a new IRS form.

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 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 with respect to a delinquent return if a penalty has been assessed (that is, if a CP 283 Notice has been issued by the IRS to a plan sponsor or administrator) with respect to that delinquent return.

SECTION 7. PROCEDURAL REQUIREMENTS

.01 Payment. The correct payment must be included with each submission. The amount of the payment is \$500 per delinquent return up to a maximum of \$1,500 per submission (that is, the payment is equal to \$500 for a single return, \$1,000 for two returns for the same plan, and \$1,500 for three or more returns for the same plan). All payments under this program must be submitted by a check payable to the United States Treasury and must be attached to the Form 14704 that is included as part of the submission. The applicant's EIN and the plan number should be written on the check.

.02 Submission limited to a single plan. Multiple delinquent returns for a single plan may be submitted in a single submission, but separate submissions are required for separate plans. For example, if an employer maintains a defined contribution plan and a defined benefit plan, and returns for each plan are delinquent for three plan years, the applicant must submit two separate submissions, one for each plan. In all cases, the requirements of Section 7.03 of this revenue procedure must be satisfied for each such submission (including a Form 14704 and check).

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

(1) A complete Form 5500-EZ return. The submission must include a complete Form 5500-EZ return, 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 IRS at the address listed in Section 7.04 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. For purposes of this revenue procedure:

- (a) In general, the Form 5500-EZ return that applied for the delinquent plan year must be submitted on paper. Thus, a delinquent Form 5500-SF return cannot be filed for a plan year, either on paper or electronically (even if a

timely Form 5500-SF return could have been filed electronically for the plan year through EFAST2).

- (b) A Form 5500-EZ return for the current plan year (rather than the Form 5500 series return that applied for the delinquent plan year) may be filed on paper if either (i) the filer would otherwise be required to file a Form 5500 return for the delinquent plan year, or (ii) the return is delinquent for a year prior to 1990. Any such current-year Form 5500-EZ return must be filled out with the beginning and ending dates for the plan year for which the return was delinquent.
- (c) All schedules applicable to the plan for the year for which the return is delinquent must be included with the return. For example:
- For plan years prior to 2005, a Schedule B (Actuarial Information) was required to be submitted 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 IRS 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 IRS). 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) was required to be submitted with the Form 5500 series return for an employee stock ownership plan. Accordingly, a submission for these plans for these plan years must include a Schedule E.
- (d) The Form 5500-EZ (but not required schedules) that applied for each plan year after 1989 may be found at <http://apps.irs.gov/app/picklist/list/priorFormPublication.html?value=5500-EZ&criteria=formNumber>. In addition, an applicant can obtain a Form 5500-EZ, plus required schedules, for any plan year by calling 1-800-TAX Form (1-800-829-3676). Also, applicable schedules (for plan years after 1994) can be found at <http://www.dol.gov/ebsa/5500main.html>.

(2) Delinquent returns must be marked. For each delinquent Form 5500 series

return submitted to the IRS under this revenue procedure, the applicant must mark in red letters in the top margin of the first page of the return (above the title of the form): "Delinquent Return Submitted under Rev. Proc. 2015-32, Eligible for Penalty Relief." Failure to properly mark the submitted delinquent return may cause the IRS to treat the return as ineligible for the relief provided under this revenue procedure and assess all applicable penalties.

(3) Required Form 14704. Each submission must include a completed paper copy of Form 14704. Form 14704 may be found at <http://www.irs.gov/Forms-&-Pubs>. A completed Form 14704 must be attached to the front of the oldest delinquent return in the submission. For example, if delinquent returns are included in the same submission for the plan years 2010, 2011, and 2012, the completed Form 14704 must be attached to the front of the 2010 return. Failure to include a completed Form 14704 as directed may cause the IRS to treat the returns as ineligible for the relief provided under this revenue procedure and assess all applicable penalties.

.04 Mailing address. Submissions under this revenue procedure should be mailed to:

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

.05 Private delivery services. Applicants may make their submissions using any of the private delivery systems listed in the instructions to the most recent Form 5500-EZ. The private delivery service can provide information on how to obtain written proof of the mailing date.

SECTION 8. EFFECTIVE DATE

The relief provided under this revenue procedure is effective June 3, 2015. Returns submitted before June 3, 2015 will be processed in accordance with Rev. Proc. 2014-32.

SECTION 9. 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 Form 14704. This information is required to enable the Commissioner, Tax Exempt and Government Entities Division, to ensure the proper processing of the delinquent returns and the

associated payments. 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 2,000.

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 10. DRAFTING INFORMATION

The principal drafter of this revenue procedure is Robert M. Walsh of the Office of the Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Department of the Treasury and the IRS participated in the development of this guidance. For further information regarding this revenue procedure, you may contact Mr. Walsh at 202-317-4102 (not a toll-free number). 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).