

Procedures for Requesting a Waiver of the Electronic Filing Requirements for Form 8955-SSA and Form 5500-EZ

Rev. Proc. 2015-47

SECTION 1. PURPOSE

This revenue procedure sets forth procedures for plan administrators of retirement plans (or, in certain situations, employers maintaining retirement plans) that are required to file electronically Form 8955-SSA, Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits, or Form 5500-EZ, Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan, to request a waiver of the electronic filing requirement due to economic hardship.

SECTION 2. BACKGROUND

Section 6011(e) of the Internal Revenue Code authorizes the Internal Revenue Service (IRS) to issue regulations that require an entity to file returns on magnetic media if the entity is required to file at least 250 returns during the calendar year. The term magnetic media includes electronic filing, as well as other magnetic media specifically permitted under applicable regulations, revenue procedures, publications, forms, instructions, or other guidance on the IRS.gov Internet Web site. On September 29, 2014, the Department of the Treasury and the IRS issued final regulations under §§ 301.6057-3 and 301.6058-2 of the Procedure and Administration Regulations (electronic filing regulations) (T.D. 9695, 79 F.R. 58256). These regulations require certain plan administrators (or, in certain situations, employers maintaining a retirement

plan) to file electronically Form 8955-SSA registration statements and Form 5500 series returns. Form 5500 series returns include Form 5500, Annual Return/Report of Employee Benefit Plan, Form 5500-SF, Short Form Annual Return/Report of Small Employee Benefit Plan, and Form 5500-EZ.

Under § 301.6057-3 of the electronic filing regulations, a Form 8955-SSA registration statement must be filed electronically if the plan administrator is required to file at least 250 returns during the calendar year that includes the first day of the plan year. Under § 301.6058-2 of the electronic filing regulations, a Form 5500 series return must be filed electronically if the plan administrator and the employer maintaining the plan are, in the aggregate, required to file at least 250 returns during the calendar year that includes the first day of the plan year. These electronic filing regulations provide that if a filer is required to file electronically a Form 8955-SSA registration statement or a Form 5500 series return and fails to do so, the filer is deemed to have failed to file the registration statement or the return, respectively.¹

The electronic filing regulations provide that the Commissioner of the IRS (Commissioner) may waive the electronic filing requirement in cases of undue economic hardship. The regulations further provide that the principal factor in determining economic hardship will be the amount, if any, by which the cost of filing the registration statement or return electronically exceeds the cost of filing the registration statement or return on paper or other media. The regulations also provide that a request for a waiver

¹ Although the electronic filing regulations generally require electronic filing, certain IRS programs that provide relief from late filing penalties require filers to file delinquent Form 8955-SSA registration statements and Form 5500-EZ returns on paper. See Notice 2014-35, 2014-23 I.R.B. 1072, and Rev. Proc. 2015-32, 2015-24 I.R.B. 1063.

must be made in accordance with published guidance and that the waiver will specify the type of filing and the period to which it applies. The waiver is also subject to any terms and conditions regarding the method of filing that may be prescribed by the Commissioner.

The electronic filing requirement under § 301.6057-3 of the electronic filing regulations applies to Form 8955-SSA registration statements required to be filed for plan years that begin on or after January 1, 2014, but only for filings with a filing deadline (not taking into account extensions) on or after July 31, 2015. Filers of Form 8955-SSA registration statements due on July 31, 2015, would be eligible for an automatic extension until October 15, 2015, if they filed Form 5558, Application for Extension of Time to File Certain Employee Plan Returns. The electronic filing requirement under § 301.6058-2 of the electronic filing regulations applies to Form 5500 series returns required to be filed for plan years that begin on or after January 1, 2015, but only for filings with a filing deadline (not taking into account extensions) after December 31, 2015. Form 8955-SSA registration statements that are filed electronically are filed using the Filing Information Returns Electronically (FIRE) system. Form 5500 series returns that are required to be filed electronically are generally filed under the Department of Labor's ERISA Filing Acceptance System (EFAST2). However, because Form 5500-EZ returns are paper-only returns that are filed with the IRS, filers of Form 5500-EZ returns that are required to file electronically must file Form 5500-SF returns using EFAST2 in lieu of the Form 5500-EZ.

SECTION 3. SCOPE

As explained in the preamble to the electronic filing regulations, because the Department of the Treasury and the IRS believe that electronic filing will not impose significant burdens on the taxpayers covered by the regulations, the Commissioner anticipates granting waivers of the electronic filing requirement only in exceptional cases. The preamble adds that the Department of the Treasury and the IRS anticipate issuing guidance that will set forth procedures whereby a taxpayer may request a hardship waiver from the requirement to electronically file Form 8955-SSA registration statements and Form 5500 series returns. The preamble notes, however, that the Department of the Treasury and the IRS anticipate that the guidance would not provide hardship waiver procedures for any electronic filing requirement for a form that a filer is already required to file electronically, such as Form 5500 and Form 5500-SF (which are required to be filed electronically through EFAST2 under a Department of Labor rule). Accordingly, the waiver procedures provided for in **SECTION 4** of this revenue procedure apply only to Form 8955-SSA and Form 5500-EZ filings.

Also, as previously announced in the preamble to the electronic filing regulations, the IRS anticipates adding items on the Form 5500 and Form 5500-SF relating solely to Code requirements and intends to provide an optional paper-only form containing those Code-related items for use by filers that file fewer than 250 returns during the calendar year. Filers that are required to electronically file Form 5500 series returns using EFAST2 and that file at least 250 returns during the calendar year would be required to answer these IRS-only questions electronically using EFAST2 (even though the Department of Labor rule requiring electronic filing does not apply to these IRS-only questions). The Department of the Treasury and the IRS do not believe that answering

these IRS-only questions electronically would impose any significant burdens because these filers are already required to electronically file a Form 5500 or Form 5500-SF return using EFAST2. Accordingly, a waiver of the electronic filing requirement will not be granted with respect to these questions.

SECTION 4. HARDSHIP WAIVER PROCEDURES

.01 Waiver requests. The IRS will approve or deny a request for a waiver of the electronic filing requirement for Form 8955-SSA or Form 5500-EZ based on each filer's particular facts and circumstances. In the case of a waiver request relating to Form 8955-SSA, the filer must be the plan administrator required to file Form 8955-SSA under § 6057(a). In the case of a waiver request relating to Form 5500-EZ, the filer must be either the plan administrator or the employer that maintains the plan as provided in § 6058(a). In determining whether to approve or deny a request, the IRS will consider the filer's ability to file timely the registration statement or return electronically without incurring an undue economic hardship. The IRS will generally grant a waiver if the filer can demonstrate that undue economic hardship would occur by complying with the electronic filing requirement, including a demonstration of any incremental costs the filer would incur in filing electronically rather than using a paper form.

To request a waiver, the filer (or the filer's authorized representative) must file a separate written request for each plan for which a waiver is requested. For example, a plan administrator that is seeking a waiver of the electronic filing requirement for Form 5500-EZ for two plans maintained by the same employer must file two separate waiver requests.

Each request for a waiver must contain the following information:

(1) A notation at the top of the request stating, in large letters, the type of form followed by the words “*e-file* Waiver Request” (for example, “Form 8955-SSA *e-file* Waiver Request” or “Form 5500-EZ *e-file* Waiver Request”).

(2) The filer’s name, employer identification number (EIN), mailing address, phone number, e-mail address, and a contact name.

(3) The name and EIN of the employer maintaining the plan (if different from the filer).

(4) The name of the plan and the plan number.

(5) The plan year for which the waiver is requested.

(6) A detailed statement that provides the following information:

(a) the steps the filer has taken in an attempt to meet its requirement to timely file its registration statement or return electronically,

(b) why the steps were unsuccessful, and

(c) the undue economic hardship that would result by complying with the electronic filing requirement, including any incremental costs to the filer of complying with the electronic filing requirement. Incremental costs are those costs that are above and beyond the costs to file on paper. The incremental costs must be supported by a detailed computation that includes a schedule detailing the costs to file on paper and the costs to file electronically.

(7) A statement as to what steps the filer will take to assure its ability to file future registration statements or returns electronically. If a subsequent waiver is requested for a registration statement or return for a later year, the IRS will consider the failure by the

filer to take these steps in determining whether a waiver should be granted for the later year.

(8) A statement signed by the filer with the following language:

Under penalties of perjury, I declare that I have reviewed the request and, to the best of my knowledge and belief, the information contained in this waiver request is true, correct, and complete.

Requests made by an authorized representative of the filer must include a valid Form 2848, Power of Attorney and Declaration of Representative.

The waiver request should not be attached to the filer's paper Form 8955-SSA registration statement or Form 5500-EZ return. Extension requests or payments should not be submitted with the waiver request.

.02 Time for Filing a Waiver Request. Filers must submit a request for a waiver of an electronic filing requirement on or before the due date (including any extensions) of the Form 8955-SSA registration statement or the Form 5500-EZ return for which the waiver is sought. Filers may apply for an extension of time to file the Form 8955-SSA registration statement or Form 5500-EZ return by filing Form 5558, Application for Extension of Time To File Certain Employee Plan Returns, on or before their normal due dates. For information regarding the due date (including extensions) of a Form 8955-SSA registration statement or a Form 5500-EZ return, see the instructions for these forms.

Filers are encouraged to file the waiver request at least 45 days before the due date (including extensions) of the registration statement or return. This will give the IRS sufficient time to process the waiver request, and maximize the amount of time the filer

will have to file the Form 8955-SSA registration statement or Form 5500-EZ return electronically if the IRS denies the request.

.03 Place for Filing a Waiver Request. Filers should file a waiver request with the IRS Ogden Submission Processing Center.

Use the following address if using the U.S. Postal Service:

Internal Revenue Service
Ogden Submission Processing Center
Attn: Forms 8955-SSA and 5500-EZ *e-file* Waiver Request, Stop 1110
Ogden, UT 84201

Use the following address if using an overnight delivery service:

Internal Revenue Service
Ogden Submission Processing Center
Attn: Forms 8955-SSA and 5500-EZ *e-file* Waiver Request, Stop 1110
1973 N. Rulon White Blvd.
Ogden, UT 84404

Filers may also fax the waiver request to the IRS Ogden Submission Processing Center at (877) 801-2985.

.04 IRS Responses to Waiver Requests. The IRS will review and process waiver requests in a timely manner and will send the filer written notice of rejection or approval of the filer's waiver request. The written notice will provide additional information regarding any further steps to be taken by the filer. The IRS will not be considered to have waived the electronic filing requirement unless the filer receives written approval from the IRS that the waiver request has been granted. In the absence of written approval from the IRS that the waiver request has been granted, a failure to file electronically constitutes a failure to file. Under § 6652(d)(1) and (e), a failure to file timely either a Form 8955-SSA registration statement or a Form 5500-EZ return is subject to penalty unless it is shown that the failure was due to reasonable cause.

SECTION 5. STATEMENT OF AVAILABILITY OF IRS DOCUMENTS

For copies of recently issued Revenue Procedures, Revenue Rulings, Notices, and other guidance published in the Internal Revenue Bulletin or Cumulative Bulletin, please visit the IRS Web site at <http://www.irs.gov> or the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective September 28, 2015.

SECTION 7. 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 numbers 1545-2187 and 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 under **SECTION 4, HARDSHIP WAIVER PROCEDURES**. This information is required to enable the Commissioner, Tax Exempt and Government Entities Division, to insure that waivers for electronically filing are properly granted. The likely respondents are small businesses or organizations.

The estimated total annual reporting recordkeeping burden is 240 hours.

The estimated annual burden per respondent/recordkeeper is 8 hours. The estimated number of respondents/recordkeepers is 30.

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 8. DRAFTING AND OTHER INFORMATION

The principal author of this revenue procedure is Robert M. Walsh of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue procedure, contact Mr. Walsh at 202-317-4102 (not a toll-free number). For questions concerning a request for a waiver, please contact the IRS taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number).

For information regarding the FIRE system, see the FIRE system webpage at [http://www.irs.gov/Tax-Professionals/e-File-Providers-&Partners/Filing-Information>Returns-Electronically-\(FIRE\)](http://www.irs.gov/Tax-Professionals/e-File-Providers-&Partners/Filing-Information>Returns-Electronically-(FIRE)). For information regarding EFAST2, see the EFAST2 filing webpage maintained by the Department of Labor at <http://www.efast.dol.gov/welcome.html>.