

Employee Plans News

Issue 2014-7, May 9, 2014

[Pilot penalty relief program for some late Form 5500-EZ filers](#)

[Changes to IRS Penalty Relief for DOL DFVC Filers of Late Annual Reports](#)

[Related employers phone forum](#) (May 22 at 2 p.m. EDT) – how the IRS reviews controlled and affiliated service groups

Groups are accepting nominations for three-year terms on:

- Information Reporting Program Advisory Committee ([IRPAC](#)) – apply by May 30, 2013
- Internal Revenue Service Advisory Council ([IRSAC](#)) – apply by June 13, 2014

[PBGC](#) – What's new for practitioners?

New Penalty Relief Program for Form 5500-EZ Late Filers

A new pilot program gives sponsors and administrators of retirement plans **not** covered by Title I of ERISA automatic relief from IRS late filing penalties on past due:

- Form 5500-EZ, *Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan*, or
- Form 5500, *Annual Return/Report of Employee Benefit Plan*, if you must file this return because your non-ERISA plan doesn't meet the filing requirements for Form 5500-EZ for plan years before 2009.

The pilot program will be open from June 2, 2014 to June 2, 2015 ([Revenue Procedure 2014-32](#)). No fee or other payment is required under the pilot program.

Plans eligible for relief

- Non-ERISA plans covering only a 100% business owner or one or more partners, and their spouses (no common law employee participants).
- Plans maintained outside the U.S. primarily for non-resident aliens (foreign plans) subject to IRS annual reporting.

Your plan isn't eligible for relief under the pilot program for any year that your plan was subject to Title I of ERISA. Instead, you may pursue penalty relief for these years through the Department of Labor's [Delinquent Filer Voluntary Compliance Program](#).

Program requirements

To qualify for penalty relief, you must:

1. Not have received a CP 283 Notice, *Penalty Charged on Your 5500 Return*, for the delinquent return.

2. File the late return plus any required schedules and attachments, using the original IRS form for that year (but use only a Form 5500-EZ for 2009 and later years even if the plan could've originally submitted a Form 5500-SF). Annual actuarial reports for defined benefit plans need to be prepared even if they are not required to be included with the filed return.
3. Write 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" on each late return that you submit (failure to do this may cause your late return to be ineligible for penalty relief).
4. Attach a completed one-page transmittal schedule to the front of each late return.
5. Mail (electronically filed returns through EFAST2 are **ineligible** for penalty relief under the pilot program):
 - **Forms 5500-EZ** to:
Internal Revenue Service
1973 North Rulon White Blvd.
Ogden, UT 84404-0020
 - **Forms 5500** to:
Internal Revenue Service
Employee Plans Delinquent Filer Program
EP Classification
9350 Flair Drive
El Monte, CA 91731-2828

You may use the United States mail or the following **private delivery services**:

- DHL Express: DHL Same Day Service.
- Federal Express: FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2 Day, FedEx International Priority and FedEx International First.
- United Parcel Service: 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.

Penalties waived

The plan sponsor or administrator can face late filing penalties for delinquent Forms 5500 and Forms 5500-EZ as high as \$15,000 for each late return, plus interest.

Requests for comments on a permanent late filer program

At the close of this pilot program, we're considering a permanent program, which will likely require late filers to pay a fee or other payment. We invite your comments on:

- Whether we should establish a permanent program?
- How should we determine fees for late filed Forms 5500-EZ and 5500?

Please send your comments by:

- **Mail to:**
CC:PA:LPD:PR (Rev. Proc. 2014-32),
Room 5203, Internal Revenue Service,
POB 7604 Ben Franklin Station,
Washington, D.C. 20044
- **Hand delivery** (Monday - Friday, 8 a.m. - 4 p.m. ET) to:
CC:PA:LPD:PR (Rev. Proc. 2014-32),
Courier's Desk, Internal Revenue Service,
1111 Constitution Ave., N.W.,
Washington, D.C.
- **Email to:** Notice.comments@irs.counsel.treas.gov - include "Rev. Proc. 2014-32" in the subject line.

Additional resources

- [Revenue Procedure 2014-32](#) (pilot penalty relief program)
- [Notice 2014-35](#) (IRS penalty relief for late annual returns)
- [Changes to IRS Penalty Relief for DOL DVFC Filers of Late Annual Reports](#)
- [Form 5500 Corner](#)

Changes to IRS Penalty Relief for DOL DFVC Filers of Late Annual Reports

Since 2002, the IRS has waived its late filing penalties for Form 5500 series filers who satisfy the Department of Labor's [Delinquent Filer Voluntary Compliance Program](#) requirements. However, due to changes to the DOL's electronic filing system, filings under DFVC no longer include all information required by the IRS. The [Form 8955-SSA, Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits](#), which replaced the Schedule SSA (Form 5500), must be filed directly with the IRS.

The IRS has therefore modified the requirements for qualifying for IRS penalty relief. The IRS is now waiving its late filing penalties only for filers who:

1. satisfy the Department of Labor's [Delinquent Filer Voluntary Compliance Program](#) requirements for:
 - Forms 5500, *Annual Return/Report of Employee Benefit Plan*, or
 - Form 5500-SF, *Short Form Annual Return/Report of Small Employee Benefit Plan*;
2. file a paper Form 8955-SSA with the IRS for the same delinquent tax year filings; and
3. meet the requirements of [Notice 2014-35](#) (see below).

Plans eligible for relief

Retirement plans governed by Title I of ERISA that:

- must file a Form 5500-series return (but not Forms 5500-EZ or 5500-SF for plans without employees); and
- are eligible for DOL's Delinquent Filer Voluntary Compliance Program.

The IRS has a separate [Form 5500-EZ Late Filer Pilot Program](#) for relief from late filing penalties for non-ERISA plans that must file Forms 5500-EZ or 5500-SF because they cover only the owner, partner and spouses.

Requirement of Notice 2014-35 for penalty relief

You don't have to request relief from the IRS. Instead, you can qualify for penalty relief if you complete the following steps:

1. satisfy all of the Delinquent Filer Voluntary Compliance Program requirements
2. file a paper Form 8955-SSA with the IRS (electronic filings aren't eligible)
3. check the box on Form 8955-SSA, Part I, line C (Special extension), and enter "DFVC" in the description on line C
4. mail the Form 8955-SSA for the delinquent returns to the IRS (address in the [instructions](#)) by the later of:
 - 30 calendar days after you complete the DFVC filing, or
 - December 1, 2014.

IRS penalties that can be waived

In addition to DOL penalties, plan administrators may also face IRS penalties for not filing the plan's Form 5500-series annual return and Form 8955-SSA by the required [deadline](#). The IRS may impose a penalty of:

- \$1 for each participant for whom the plan fails to file a Form 8955-SSA statement for each day the failure continues, up to \$5,000 for any plan year
- \$1 for each day for not filing a notification of change of status, up to \$1,000
- \$1,000 for each failure to file an actuarial report by the required deadline
- \$25 each day the Form 5500-series return is not filed, up to a maximum of \$15,000

Additional resources

- [Notice 2014-35](#)
- [Form 5500 Corner](#)
- [Form 8955-SSA Resources](#)
- [New Penalty Relief Program for Form 5500-EZ Late Filers](#)
- [Revenue Procedure 2014-32](#) (pilot program for late Form 5500-EZ filers)