

News & Types: Employment, Labor & Benefits Update

ERISA: Delinquent Form 5500 Filers Must Also File With the IRS

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Practices: Employment, Labor & Benefits

Plan sponsors who fail to file Form 5500 annual reports are subject to penalties under ERISA and the Internal Revenue Code (the "Code"). The Secretary of Labor can assess penalties of up to \$1,100 per day against plan administrators who fail or refuse to file complete and timely annual reports. In addition, the Code permits the IRS to impose penalties on late filers of \$25 per day, up to \$15,000 per return or statement. Since 2002, the IRS has waived these penalties for all plan sponsors who satisfied all of the requirements for filing a late Form 5500 under the U.S. Department of Labor's Delinquent Filing Voluntary Compliance Program (DFVCP).

However, due to the changes to the DOL's electronic filing system (EFAST"), an electronic DFVCP filing does not include all of the information required by the IRS. Therefore, in order to benefit from the waiving any late filing penalties by the IRS, plan sponsors must now: (1) still satisfy all of the filing requirement imposed the DOL under its DFVCP program, (2) file a Form 8955-SSA (*Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits*) with "DFVCP" noted in Part I, line C, and (3) mail the completed Form 8955-SSA to the IRS by the later of 30 calendar days after the plan sponsor completes the DFVCP filing or December 31, 2014.