

Department of Labor offers relief for incorrect MEP Form 5500 filings

The Department of Labor (DOL) issued Field Assistance Bulletin No. 2019-01 which provides guidance and temporary relief related to certain Forms 5500 for multiple employer plans (MEPs) subject to Title I of ERISA.

Background

A provision in the Cooperative and Small Employer Charity Pension Flexibility Act of 2014 added an additional Form 5500 filing requirement for MEPs. A Form 5500 for a MEP is required to include a list of participating employers including a good faith estimate of the percentage of total contributions made by each participating employer in the plan year. Multiple employer welfare plans that are exempt under 29 CFR 2520.104-44 from the obligation to file financial statements with their annual report are required to include only a list of participating employers with the corresponding EIN. A sentence was added in Part I of the Form 5500 and Form 5500-SF reflecting the requirement for plans checking the multiple employer box. More detail is provided in the instructions to both Forms.

What the DOL found

In reviewing 2018 filings, the DOL found that some MEPs failed to include a complete and accurate list of participating employers and communicated its findings to the employer. The DOL also found 185 compliant filings and 101 non-compliant filings after reviewing 2016 filings. Examples of non-compliant filings include:

- Abbreviated names, client numbers or entries such as Client 1
- Reporting only the last four digits of EINS
- Filing an attachment with no information other than "Information available upon request"
- Listing the PEO as the only participating employer

What the DOL is offering

The DOL is providing transition relief to plan administrators of MEPs.

The Department will not reject a 2017 Form 5500 or Form 550-SF or any prior year or seek to assess civil penalties provided that the 2018 Form 5500 or Form 5500-SF complies with the filing requirement. The DOL is granting MEPs a special filing extension of up to 2 ½ months to file their annual report in compliance by checking special extension under Part I, Line D on the 2018 Form 5500/ 5500-SF and entering FAB 2019-01. MEPs using this extension do not need to file a Form 5558 with the IRS. If a Form 5558 has already been filed, there is no need to use the extension language but make sure you attach the list.

An amended Form 5500 can be filed if the Form 5500/5500-SF has already been filed. The amended return must be filed by October 15th.

The FAB noted that in providing this relief the DOL reserves the right in individual cases to request that the MEP provide the employer information for previous years in which the plan administrator failed to include complete and accurate information.

Disclaimer: This material is for the sole purpose of providing general information and does not under any circumstances constitute legal advice and should not be used as a substitute for legal advice. You should seek the advice of counsel when applying the requirements to your plan. For more information on this ErisaALERT contact us by phone at 610-524-5351 and ask for Mary Andersen at ERISAdiagnostics, Inc. or 610-994-7442 and ask for Paul Protos at ATR, Inc. Mary is co-author of the Form 5500 Preparers Manual published by Wolters Kluwer.