



Spring 2003

IRS Offers Relief for Delinquent Pension Plan Filers

The Internal Revenue Service (IRS) last spring announced incentives designed to encourage pension plans to satisfy their filing requirements under the 1974 Employee Retirement Income Security Act (ERISA).

Plan administrators who have failed to comply with the rules should welcome these incentives, as the IRS and the Department of Labor (DOL) have recently increased their efforts to crack down on violators.

ERISA Requirements

Pension plan administrators are required to file annual pension plan reports, including financial and plan coverage information, generally on Form 5500. Failure to comply with the filing requirement can be costly, with penalties imposed by both the DOL and the IRS.

Plan administrators can be assessed up to \$1,100 per day by the DOL for each delinquent report. The IRS may assess penalties of \$25 per day, up to \$15,000, for some plans.

Incentives for Delinquent Filers

Since April 1995, the DOL has sponsored the Delinquent Filer Voluntary Compliance Program to encourage compliance with ERISA's filing requirements. Under the program, qualified plan administrators can file returns for past years and pay significantly reduced penalties.

The DOL revised its penalty structure in 2002, further reducing the penalties for participants in the program. The basic penalty was cut from \$50 to \$10 per day for late filings. The maximum penalty for a single late annual report was reduced from \$2,000 to \$750 for a small plan, generally with less than 100 participants at the beginning of the plan year, and from \$5,000 to \$2,000 for a larger plan.

The DOL also established a "per plan" cap, targeting plan administrators who failed to file in multiple years. The per plan cap limits the penalty to \$1,500 for small plans and \$4,000 for larger plans, regardless of how many delinquent reports are filed at one time.

Despite these incentives, some non-complying administrators had remained reluctant to file late reports. Because the IRS did not sponsor a similar program, these late filers were still subject to the IRS penalties.

In March 2002, however, the IRS announced that it would not impose penalties on delinquent filers who qualify for the DOL program. Eligibility for the DOL program is restricted to plan administrators required to file by Title I of ERISA and who have not yet been notified of their delinquency by the DOL. Because of the Title I restriction, plans that file Form 5500-EZ are not eligible. Note that penalties cannot be paid from plan assets.

Closing in on Delinquent Filers

In October 2002, the DOL and the IRS announced a joint project to ensure all employee benefit plans comply with the ERISA filing requirements. The project includes a review of various databases to identify potential non-filers.

Plan administrators who have not filed timely annual reports should take advantage of the relief offered by the DOL and the IRS before they lose their eligibility through identification as non-filers. Particularly in light of the increased efforts to make such identifications, the costs of inaction may be substantial.