



## **BENEFIT NEWS BRIEF**

### ***IRS Employee Plans Compliance Unit Project: Form 5500 Non-Filers and Late Filing Penalty Awareness***

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The IRS' Employee Plans Compliance Unit (EPCU) has begun the Form 5500 Non-Filer Project to promote compliance with Form 5500 filing requirements according to the *IRS Employee Plans News*, Issue 2011-7, October 12, 2011.

#### **The Project Process**

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The newsletter explained that the EPCU sends compliance check letters to plan sponsors for whom the IRS has no record of a Form 5500 or 5500-SF filing with DOL (or Form 5500-EZ with IRS) 6-9 months after the return's due date. The compliance check letter asks the plan sponsors to either file the return or explain why it wasn't filed. If the plan sponsor files the return, the EPCU closes its contact. According to the newsletter, many times the plan sponsor did file Form 5500, but it didn't match IRS records. In these cases, the IRS updates its records to reflect current plan information (for example, a correct EIN, plan number or plan sponsor name).

If the IRS does not receive a response to the letter, it closes the compliance check and may send a referral to Employee Plans Examinations or the Department of Labor.

If the plan sponsor is required to file Form 5500 but doesn't, the IRS will send a delinquency notice (CP 403 Notice) asking the plan sponsor to respond within 30 days. If there is no response, the IRS will send a subsequent notice (CP 406 Notice) requesting a response within 30 days. The IRS doesn't grant extensions of time to reply to the CP 406 notice. A word to the wise is sufficient. If your plan receives a compliance check letter or follow-up notice, respond in a timely manner.

#### **Late Filing Penalties**

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The newsletter continued that many plan sponsors aren't aware of the IRS penalty for filing their Form 5500 late of \$25 per day until filed, up to a maximum of \$15,000. The DOL may also assess civil penalties for the late filing of the same Form 5500 of up to \$1,100 per day, with no maximum.

The EPCU doesn't evaluate 'reasonable cause' explanations they are given during a non-filer compliance check. However, the IRS and DOL may abate or reduce penalties if there were mitigating circumstances or conditions that adversely affected the plan's ability to file a return.

### **DOL's Delinquent Filer Voluntary Compliance (DFVC) Program**

The newsletter explained that if a plan sponsor hasn't filed Form 5500 but is required to, there is an opportunity to substantially reduce DOL penalties and eliminate the IRS penalty under the DFVC Program. This program is not available to Form 5500-EZ filers. However, Form 5500-EZ filers may attach an explanation for filing late to their return to provide information they wish the IRS to consider before assessing penalties. Plan sponsors should indicate on their return if they have been accepted by the DFVC Program to avoid IRS penalties. For more information see: [http://www.dol.gov/ebsa/compliance\\_assistance.html#section8](http://www.dol.gov/ebsa/compliance_assistance.html#section8).

### **Contacting the EPCU**

If you have questions about this EPCU project, interested persons are encouraged to please email the EPCU at [EPCU@irs.gov](mailto:EPCU@irs.gov). Please include the words "*Form 5500 Non-Filer Project*" in the subject line.

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