

Fact Sheet



U.S. Department of Labor
Employee Benefits Security Administration
May 13, 2010

Form 5500 E-Filing Requirement

Given the importance of the Form 5500 information and data, it is critical that the Department of Labor, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation establish an annual reporting process that provides accurate and timely information on Form 5500 information in the most cost-effective manner possible. The EFAST2 system, expected to receive over 1 million filings each year, allows plan filers to easily upload Form 5500 information and data. In addition to being cost-effective, the system generally provides access to filed reports within 1 day of receipt.

Background

The Form 5500 Series annual reports are the primary source of employee benefit plan financial information and data available to the Department of Labor, Internal Revenue Service and Pension Benefit Guaranty Corporation, participants and beneficiaries, other federal agencies, researchers, and the general public.

The Department of Labor announced its intent to establish an electronic filing requirement for the Form 5500 Series annual reports in 2005, nearly five years before filers eventually needed to comply. As part of a public notice and comment process, the Department twice deferred implementation of the requirement to allow plans and service providers more time to make the necessary adjustments.

In 2005, the Department first issued a proposed rule to announce its intention to move to a wholly electronic filing system for receipt of Form 5500 Series filings beginning with filings for the 2007 plan year.

In 2006, the Department published the final electronic filing rule, which deferred the electronic filing mandate to filings for the 2008 plan year.

In November of 2007, the Department published final rules on the proposed Form 5500 Series revisions deferring the electronic filing mandate by another year. The electronic filing requirement was deferred to apply to Form 5500 and small plan Form 5500-SF filings with EFAST2 made on or after January 1, 2010.

Benefits of Electronic Filing for Plans, Participants, Sponsors, and Public

An all electronic filing system benefits plans, participants, sponsors and the public. It reduces filer error and, as a result, reduces the need for correspondence and the burden associated with responding to correspondence and resubmission of Form 5500 Series filings. The increased accuracy of filings reduces the potential for filer penalties. The electronic system also increases the timeliness of the data for public disclosure and enforcement, thereby enhancing the protections for participants and beneficiaries; and lowers processing costs, benefiting taxpayers generally.

The resulting improvement in the timeliness and accuracy of the information from electronic filing will assist EBSA in its enforcement, oversight, and disclosure roles and ultimately enhance the security of plan benefits.

Costs and Complexity of Dual Paper and Electronic Systems Made Exceptions Impractical

Maintaining any paper filing system, even on a reduced scale and/or for a limited period of time, would be unduly costly and inefficient. Creating a system that could continue to process both electronic and paper submissions was estimated to cost more than twice as much to develop and operate than an all electronic system.

The Department concluded that any economic benefit that might accrue to some limited class of filers from a continued paper filing option would be outweighed by the benefits to participants and beneficiaries at large and to the Department and taxpayers generally of implementing a single, wholly electronic system.

EBSA Engaged in Comprehensive, Ongoing Outreach to Educate and Help Filers Prepare

Recognizing the challenges involved in changing current practices and procedures in order to move to a new wholly electronic filing system, the Department undertook an ongoing public outreach effort last year to provide Form 5500 Series filers with the information they need to satisfy their electronic filing and annual reporting obligations.

The Department established a Web site dedicated to the new EFAST2 system that includes an array of educational and compliance assistance materials, including FAQs and an IFILE Tutorial.

Staff of the Department conducted four webcasts designed to facilitate compliance with the new annual reporting requirements and electronic filing system, three of which are archived on the EBSA Web site and available for viewing, in addition to participating in a variety of educational conferences and outreach programs sponsored by associations and other organizations.

There is also a toll-free Form 5500 Series help desk that is available from 8:00 a.m. to 8:00 p.m. (ET); call 1-866-GO-EFAST (1-866-463-3278).

EFAST2 System Includes an IFILE Option, Specially Suited to Small Businesses That Have Simple Filings and Want a Low Cost Filing Option

IFILE is the Form 5500 and Form 5500-SF preparation and submission application that is on DOL's web site. It is free to use and allows filers to prepare, sign, and submit individual filings. With file sharing as part of the software, different people can work on a single filing in a coordinated and streamlined manner.

All parties who are required to sign the Form 5500 Series filings can obtain a personal identification number (PIN) through a simple registration process on the EFAST2 Web site. That PIN can be used as an electronic signature when filing the Form 5500 or the Form 5500-SF. The EFAST2 system greatly simplified the process for getting an electronic signature PIN so that anyone that can use the Internet and an email system can easily get a PIN.

The electronic signature process has two simple steps: (1) registering as a signer to get Signer credentials and (2) affixing a PIN to the electronic form.

Electronic Signature Options

The Department issued guidance regarding the EFAST2 electronic filing requirements telling plan administrators that they must register for a PIN and then electronically sign the plan's Form 5500 or Form 5500-SF, as applicable, before it is filed with EFAST2 by personally affixing the PIN to the electronic submission. The PIN signature attests that the signer has reviewed the Form 5500 Series filing and that the information is true, correct and complete to the best of the signer's knowledge.

The guidance also provided that, because the EFAST2 PIN is the plan administrator's electronic signature for purposes of the Form 5500/Form 5500-SF, the PIN must be protected and not shared. The electronic filing regulations and the Form 5500/Form 5500-SF instructions also require that plan administrators keep a manually signed copy of the Form 5500 or Form 5500-SF as part of the plan's records.

Allowing a service provider to affix the plan administrator's PIN would be inconsistent with our current guidance because the administrator would not be personally electronically signing the filing, and the administrator would be sharing his or her PIN with the person preparing and transmitting the Form 5500 or Form 5500-SF to EFAST2.

The Department has, however, responded to requests from the regulated community asking for a change in these electronic signature requirements by permitting plan administrators to authorize plan service providers that manage the plan's annual filing process to electronically submit the Form 5500/Form 5500-SF for the plan.

Under this new e-signature option, service providers that manage the filing process for plans can get their own EFAST2 signing credentials and submit the electronic Form 5500 or 5500-SF for the plan. The service provider must confirm that it has specific written authorization from the plan administrator to submit the plan's electronic filing. In addition, the plan administrator must manually sign a paper copy of the electronically completed Form 5500 or 5500-SF and the service provider must include a PDF copy of the first two pages of the manually signed Form 5500 or 5500-SF as an attachment to the electronic Form 5500 or 5500-SF submitted to EFAST2. The service provider must communicate to the plan administrator any inquiries received from EFAST2, DOL, IRS or PBGC regarding the filing, and inform the plan administrator that, by electing to use this option, the image of the plan administrator's manual signature will be included with the rest of the return/report posted by the Labor Department on the Internet for public disclosure.

Civil Penalties for Failures to File the Form 5500 or Form 5500-SF

Given the importance of the Form 5500 Series annual reports, ERISA and the Internal Revenue Code provide for assessment or imposition of civil penalties in cases in which there is a failure or refusal to file a complete and accurate annual return/report.

Electronic filing of the Form 5500 or Form 5500-SF is required and there are civil penalties for failing to file.

EBSA's efforts this year are focused on helping employee benefit plan sponsors, especially small businesses, successfully make the transition to the new, electronic EFAST2 filing system. The

Department will, however, continue to seek civil penalties for violations of the annual reporting requirements in appropriate cases.

Contact Information

For questions about filing under EFAST2 or general Form 5500 Series inquiries call **1-866-GO-EFAST (1-866-463-3278)**, weekdays 8:00 a.m. to 8:00 p.m. (ET).

This fact sheet has been developed by the U.S. Department of Labor, Employee Benefits Security Administration, Washington, DC 20210. It will be made available in alternate formats upon request: Voice Telephone: 202-693-8664; Text Telephone: 202-501-3911. In addition, the information in this fact sheet constitutes a small entity compliance guide for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.