

**MEMO# 28411**

September 29, 2014

# **IRS Issues Final Regulations Regarding Electronic Filing of Certain Retirement Plan Returns**

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TO: PENSION MEMBERS No. 39-14  
BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 42-14  
TRANSFER AGENT ADVISORY COMMITTEE No. 63-14  
OPERATIONS MEMBERS No. 15-14 RE: IRS ISSUES FINAL REGULATIONS REGARDING  
ELECTRONIC FILING OF CERTAIN RETIREMENT PLAN RETURNS

The Internal Revenue Service (IRS) has issued final regulations (the “Regulations”) [\[1\]](#) relating to the requirements for filing certain retirement plan returns and reports on magnetic media. [\[2\]](#) As you may recall, in August 2013, IRS issued proposed regulations that would require electronic filing for certain defined contribution plan statements, returns and reports required under Internal Revenue Code (IRC) section 6057(a)(the Form 8955-SSA filing requirement), IRC section 6057(b) (filing requirements regarding certain plan changes, such as plan name, plan administrator name or address, plan merger, consolidation or termination), and IRC section 6058(the Form 5500 series filing requirements). [\[3\]](#) Under IRC section 6011(e)(1), IRS is authorized to prescribe regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form. IRC section 6011(e)(2)(A) provides that IRS may not require any person to file returns on magnetic media unless the person is required to file at least 250 returns during the calendar year.

As is described below, IRS adopted the proposed rule in final form with several modifications.

## **Effective Dates**

The proposed regulations provided that they would be effective for plan years that begin on or after January 1, 2014, but only for filings with a filing deadline (not taking into account extensions) after December 31, 2014. The Regulations include modifications to the previously proposed effective date, as follows.

Form 8955-SSA and Plan Change Notification Statement. In order to address plans with short plan years, the Regulations include an extended effective date and provide that they

apply to filings under section 6057 for plan years that begin on or after January 1, 2014, but only for filings with a filing deadline (not taking into account extensions) on or after July 31, 2015. [\[4\]](#)

Form 5500 series filings. The Regulations extend the effective date by 12 months, so that the Regulations are effective, with respect to Form 5500 series filings, for plan years that begin on or after January 1, 2015, but only for filings with a filing deadline (not taking into account extensions) after December 31, 2015. In the preamble, IRS states that it anticipates adding items on the Form 5500 and Form 5500-SF relating solely to IRC requirements and intends to provide an optional paper-only form containing those IRC-only requirements for use by small filers. IRS anticipates that the form will be available to satisfy the filing requirements with respect to the 2015 plan year.

## **Electronic Filing Requirements, Hardship Waivers and Penalties**

### **Form 8955-SSA and Plan Change Notification Statement**

The Regulations retain the proposed regulations' filing requirements and require that a plan administrator, within the meaning of IRC section 414(g), [\[5\]](#) file the Form 8955-SSA and notification of plan changes via electronic media [\[6\]](#) if the filer is required by the IRC or regulations to file at least 250 returns during the calendar year that includes the first day of the plan year. [\[7\]](#)

The Regulations also retain the proposed regulation's economic hardship waiver. The preamble to the Regulations states that Treasury and IRS anticipate issuing guidance that will set forth procedures for requesting a hardship waiver. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the 8955-SSA or plan change notification statement on magnetic media in accordance with the Regulations exceeds the cost of filing the 8955-SSA or plan change notification statement on paper or other media. Failure to file electronically results in penalties under IRC section 6652(d). Under IRC section 6652(d), with respect to the 8955-SSA, the penalty is \$1 for each participant with respect to whom there was a failure to file, multiplied by the number of days during which such failure continues, up to a maximum of \$5,000 per plan year. With respect to the plan change notification statement, the penalty is \$1 for each day for which there was a failure to file, up to a maximum of \$1,000.

### **Form 5500 Series Filings**

The Regulations retain the proposed regulations' filing requirements and require that the Form 5500 series, including the Form 5500-EZ, [\[8\]](#) be filed electronically if the filer is required by the IRC or regulations to file at least 250 returns during the calendar year that includes the first day of the plan year. The Regulations provides that the term "filer" means the employer or employers maintaining the plan and the plan administrator within the meaning of IRC section 414(g). For purposes of the Regulations, the returns of the employer or employers maintaining the plan and the plan administrator are aggregated and the IRC aggregation rules found in IRC sections 414(b),(c),(m) and (o) apply.

The Regulations also retain the proposed regulations' economic hardship waiver. The principal factor in determining hardship will be the amount, if any, by which the cost of filing the return in accordance with the Regulations exceeds the cost of filing the return on paper or other media. In the preamble, IRS states that although it will issue guidance setting forth procedures for requesting a hardship waiver, it anticipates that such guidance would not provide hardship waiver procedures for any electronic filing requirement for a

form that a filer is already required to file electronically, such as the Form 5500 and Form 5500-SF, which filers are already required to file electronically through EFAST-2. Failure to file electronically results in a penalty under IRC section 6652(e), which is currently \$25 per day for each day during which such failure continues, up to a maximum of \$15,000.

## **Exclusion for Certain Delinquent Filings**

Unlike the proposed regulations, the Regulations include an exclusion for certain delinquent filings. In the preamble, IRS notes that the Department of Labor currently administers the Delinquent Filer Voluntary Compliance (DFVC) program and IRS recently established a pilot program for late filers of Form 5500-EZ. Because IRS does not currently have the capability to accept electronic filing of a delinquent Form 8955-SSA or Form 5500-EZ, the Regulations provide that such filings are excluded from its electronic filing requirements, if the filings comply with the current paper filing requirements for delinquent filings.

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### **endnotes**

[1] The Regulations are available at:  
<http://www.gpo.gov/fdsys/pkg/FR-2014-09-29/pdf/2014-23161.pdf>.

[2] The Regulations define “magnetic media” as electronic filing, as well as any other media specifically permitted under applicable IRS regulations, revenue procedures, publications, forms, instructions or other guidance on the IRS.gov Web site.

[3] For the Institute’s summary of the proposed regulations, see [Memorandum](#) to Pension Members No. 43-13 [27554], dated September 11, 2013.

[4] In the preamble to Regulations, IRS provides an example, noting that a plan with a short plan year ending on November 30, 2014 would have a filing requirement of June 30, 2015, and thus would not be required to file electronically for that plan year.

[5] IRC section 414(g) defines the term “Plan Administrator” as the person specifically so designated by the terms of the instrument under which the plan is governed, or, in the absence of such a designation, the employer in a single employer plan or the joint board of trustees or similar group in a plan maintained by two or more employers or jointly by one or more employers and one or more employee organizations.

[6] In the Regulations, Treasury and IRS confirmed that the current “Filing Information Returns Electronically” (FIRE) system is an acceptable electronic system to file the Form 8955-SSA.

[7] The Regulations retain the proposed regulations’ determination of 250 returns and provide that the 250 return minimum includes returns of any type, including information returns, such as Forms W-2 and Forms 1099, income tax returns, employment tax returns, and excise tax returns.

[8] Current DOL regulations require electronic filing of the Form 5500 and Form 5500-SF. The preamble to the Regulations notes that in the preamble to the proposed regulations, IRS stated that, although electronic filing is not available for the Form 5500-EZ, certain filers that would otherwise file the Form 5500-EZ on paper may instead file the Form 5500-SF electronically through the DOL EFAST2 system.

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