



Flashpoint: Form 5500 Clarification... Better Late Than Never

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One of the highly useful provisions from the Setting Every Community Up for Retirement Enhancement Act of 2019 ("SECURE Act") is the ability to adopt a new plan after the end of the plan year, as late as the filing deadline for the employer's tax return. This provision was first effective for tax years beginning in 2020.

This provision created a significant question in relation to Form 5500 filing: does a plan that was adopted after the end of the 2020 but effective for 2020 (and for which there were no plan assets as of December 31, 2020) need to file a Form 5500 for the 2020 year?

This question was answered in the August 6, 2021, edition of the IRS publication Employee Plan News, six days after the normal Form 5500 deadline for calendar year 2020 plans: and the answer is "no, you do not need to file a form." This applies to Forms 5500, 5500-SF, and 5500-EZ.

If the plan at issue is a defined benefit plan, the employer will be required to attach both the 2020 Schedule SB and the 2021 Schedule SB to the 2021 Form 5500. (The IRS promises that it will provide more detailed instructions in the future.)

The publication notes that the IRS expects to provide similar guidance for plans adopted in 2022 for the 2021 year.

If you filed a Form 5558 for such a plan, it is not clear whether a subsequent failure to file a related Form 5500 will cause the IRS to follow up. However, if so, the plan sponsor can simply clarify that the extension request was filed before the IRS guidance was issued, and that no Form 5500 was needed.

You can hear more about this and other IRS updates (including the new EPCRS) from Ilene and Derrin at the remote FIS Advanced Pension Conference on September 1-3, 2021. Join us! (Click **here** for more info).

If you have any questions regarding this guidance, or anything else plan-related, give us a call. Remember, *we are your ERISA solution!*



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