



## Flashpoint: If You Sponsor a MEP: You May Need to Act Before October 15!

The Department of Labor (DOL) issued a Field Assistance Bulletin (FAB 2019-01) on July 24, 2019, relating to Form 5500 filings for Multiple Employer Plans (MEPs). If you sponsor or administer MEPs, it is likely that this FAB applies to you. As it warns of possible compliance issues and grants transitional relief, you need to pay attention. This issue should not apply to sponsors of Open MEPs that file separate Forms 5500 for each adopting employer, if the box for single-employer plan was checked, so long as the Form 5500 reflects the name and EIN of the adopting employer, rather than the MEP administrator.

### *The Issue*

In 2014, when Congress passed the Cooperative and Small Employer Charity Pension Flexibility Act (CSEC Act), Section 103(g) of the Employee Retirement Income Security Act of 1974, as amended (ERISA) was added to require that Form 5500 or 5500-SF for MEPs contain certain information about participating employers. This requirement became effective for plan years beginning in 2014, and mandated that the MEP attach a listing to the Form 5500 containing:

- The name and EIN of each participating employer; and
- For each such employer, a good-faith estimate of the contributions made to the MEP during the year by that participating employer (including both employer and participant contributions) as a percentage of the total contributions made to the MEP for the year by all participating employers.

The DOL reviewed nearly 300 Forms 5500 filed by large MEP filers and found that more than 35% of those filings failed to properly include this information. Some of the noncompliant filers provided partial information. The FAB makes it clear, however, that partial information (such as partial EINs or abbreviations or labels (such as "Client 1") in lieu of the employer's name) is not acceptable.

The DOL can (and apparently intends to in the future) treat MEPs that do not comply with ERISA Section 103(g) as if the Form 5500 has not been filed. The penalty can be as high as \$2,194 per day.

## *The Transitional Relief*

Recognizing that enforcement of noncompliant filings for 2014 through 2017 at this time would be burdensome and would penalize plan fiduciaries who possibly did not understand the reporting requirement, the DOL is providing transition relief for all years through 2017.

**To qualify for this transitional relief—that is, to avoid the possibility of owing penalties for 2014 through 2017—a MEP sponsor must properly file this information on the 2018 plan year Form 5500.**

If the 2018 Form 5500 is filed properly, the DOL will refrain from rejecting the 2014-2017 Forms 5500 or seeking civil penalties against the Plan Administrator solely due to the failure to comply with these rules. No revision of the 2014 through 2017 Forms is required to obtain this relief.

*But the 2018 Deadline Is in Less Than Two Weeks ....!*

The DOL acknowledges that (1) some MEP sponsors have already filed the Form 5500 for the 2018 year, and (2) other MEP sponsors are in the process of preparing this filing, which is due on July 31, 2019, for calendar year plans. Therefore, the DOL is granting an **automatic** 2½ month extension for the filing of Form 5500 (or for the filing of amended Forms 5500 for plans that already have filed for 2018). For calendar year plans, this extension lasts until October 15, 2019.

To properly take advantage of this extension, the Form 5500 filer must check the box under Part 1, Line D on the 2018 Form 5500 or Form 5500-SF entitled “special extension,” and insert “FAB 2019-01” as the description of the special extension. If the Form 5500 has already been filed, the Plan Sponsor has until October 15, 2019, to file an amended return to include the required information.

While a Form 5558 is not required to qualify for this extension, a MEP sponsor may still file the form. This may be particularly important for a MEP that is not run on a calendar year basis. While the relief of the FAB is not specifically limited to calendar year plans, the language granting automatic extension is not clearly worded. One other word to the wise: if a Form 5558 is not filed, the MEP will not have the same automatic extension for the filing of Form 8955-SSA with the IRS.

## *Final Notes*

The rules outlined above apply for both retirement and health MEPs, although the reporting as to percentage of total contributions does not apply to health plans that are exempt from filing financial statements. Even those plans must list the participating employers and EINs.

If you sponsor or administer MEPs, this is a unique opportunity to get these plans back on track without having to perform back reporting. Don't miss the October 15 deadline! If you do, the only way to correct for the 2014-2017 years will be to amend the filings to contain the required information.



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