

IRS Requires Most Employee Benefit Plans to File Electronically

A Practical Guidance® Article by The Wagner Law Group

The IRS has issued final regulations that will require almost all employee benefit plan filings to be made electronically.

Background

Generally, Applicable Large Employers are required to file Forms 1094 and 1095 with the IRS to report their compliance with the ACA's employer shared responsibility provisions (i.e., the employer mandate). Forms 1094 and 1095 provide certain information to the IRS and taxpayers regarding individuals who are covered by Minimum Essential Coverage.

For fully-insured group health plans, the insurance carrier is responsible for furnishing the Forms 1095-B to the IRS and employees, and the employer is responsible for furnishing Forms 1095-C to the IRS. For self-funded group health plans, the employer/sponsor is generally responsible for issuing and filing both Forms 1095-B and 1095-C.

Previously, as with many other types of forms, only employers that annually filed 250 or more returns of one type were required to file Forms 1095 electronically. Form 5330, which is used for the Return of Excise Taxes Related to Employee Benefit Plans, also required electronic filing by filers meeting the annual 250-return threshold.

The Form 5500 Series is used by employee benefit plans to satisfy annual reporting requirements under ERISA and the Internal Revenue Code. The Department of Labor had previously published a final rule requiring electronic filing of the Form 5500, Annual Return/Report of Employee Benefit

Plan, and Form 5500-SF, Short Form Annual Return/Report of Small Employee Benefit Plan, for plans covered by Title I of the ERISA.

Final Regulations

The final regulations:

- Reduce the 250-return filing threshold to generally require electronic filing by filers of 10 or more returns in a calendar year. The final regulations also create several new rules mandating the e-filing of certain returns and other documents not previously subject to the requirement.
- Require filers to aggregate almost all information return types covered by the regulation to determine whether a filer meets the 10-return threshold and is required to e-file their information returns.
- Eliminate the e-filing exception for corporate income tax returns reporting total assets of under \$10 million at the end of the taxable year. —and—
- Permit waivers for filers that would experience hardship in complying with the e-filing requirements. However, the hardship waiver is not applicable to Form 5500 filings.

The new e-filing requirements are generally effective for filings due after December 31, 2023.

The final regulations are at: <https://www.federalregister.gov/documents/2023/02/23/2023-03710/electronic-filing-requirements-for-specified-returns-and-other-documents>

Related Content

Practice Notes

- [ACA Employer Reporting Obligations for Employer Shared Responsibility Mandate](#)

Statutes & Regulations

- 88 Fed. Reg. 11,753 (Feb. 23, 2023)

Treatises

- Employee Benefits Law § 10.02, “Plans Covered by the Reporting and Disclosure Requirements”
- Employee Benefits Law § 10.03, “Reporting to Government Agencies”

The Wagner Law Group

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