



## Compliance Update

July 2017

Normally the newsletter talks about a number of recent topics. However, I wanted to devote this edition to just two topics because they are important and I did not want them to get lost in the shuffle.

### **Form 5500 Filing Deadline**

The ERISA filing rules applicable to welfare benefit plans are very clear. You have to file an annual report (i.e. Form 5500) if there were at least 100 participants (i.e. employees) in the plan as of the first day of the plan year. You look at all the lines of coverage. For example, there could be 85 employees in the medical coverage and 115 employees in the company-paid life coverage. In this case you would need to file the forms since at least one line of coverage had at least 100 participants (i.e. employees) in it on the first day of the plan year.

The forms are due seven months after the close of the plan year. So if the plan is maintained on a calendar-year basis, the 2016 Form 5500 is due July 31, 2017. Filing the forms late can result in a late filing penalty of over \$2,000 per day!!!! Therefore, it is imperative that you make sure all the forms are filed on time. If you cannot meet the July 31<sup>st</sup> deadline you can file for an automatic 2½ month extension (i.e. October 16, 2017) by filing IRS Form 5558 before the original filing deadline (i.e. July 31, 2017).

If you missed a past filing you can submit the late forms under the Delinquent Filer Voluntary Compliance Program and pay a reduced penalty. However, to take advantage of the DFVC Program, you have to file the late forms before being contacted by the government about the delinquent forms.

All the forms have to be filed electronically so it is pretty easy for the government to discover late filings. What happens is the employer files the forms for its retirement plan (e.g. a 401k plan) but neglects to file the forms for its welfare benefit plans (e.g. health, life, disability, etc.). When this occurs the government can easily cross check the filings and see that the employer failed to file all the Form 5500s.

A couple of exceptions to the filing rules: All retirement plans have to file an annual report. If there are at least 100 participants in the retirement plan the employer has to file a Form 5500 and if there are fewer than 100 participants in the retirement plan the employer files a Form 5500-SF. Again, the general rule is the employer has to file a Form 5500 if there are at least 100 participants (i.e. employees) in the welfare benefit plan as of the first day of the plan year. If there are fewer than 100 participants (i.e. employees) in the welfare benefit plan as of the first day of the plan year, the employer need not file any forms UNLESS the plan is considered “funded.” If the plan is considered “funded” then the employer has to file Form 5500-SF if there are fewer than 100 participants in the plan as of the first day of the plan year. A plan is considered “funded” if it is maintained in conjunction with a trust. A trust is a separate legal entity. As a practical matter, most self-funded plans are not maintained in conjunction with a trust and are considered unfunded which means there is no need to file any forms if there are fewer than 100 participants (i.e. employees) in the plan on the first day of the plan year.

#### [Form 5500 Explainer](#)

This link explains the rules. Remember, if the forms are filed late, it is an automatic “checkbook” item. That is, penalties are automatically assessed.

#### **PCORI Fee**

The PCORI fee applies to self-funded health plans including HRAs. The fee is relatively inexpensive (i.e. \$2.16 per covered person) compared to the cost of health coverage. The fee is reported on IRS Form 720 and is paid with IRS Form 720V.

#### [Paying the PCORI Fee](#)

The fee has to be reported and paid by the end of this month regardless of the plan year. That is, the deadline is the same (i.e. July 31, 2017) for all plans regardless of the plan year.

The statute does not impose a specific penalty if the forms and fees are not paid on time. However, the government does have the option to assess a penalty of up to 5% per month to a maximum penalty of 25% of the unpaid amount. This penalty may be waived if the failure is due to reasonable cause and not willful neglect.