

Details of the SECURE Act: Penalties for Late Filing of Form 5500 and 8955-SSA



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In late December of 2019 President Trump signed into law a budget bill to fund the government for the remainder of the fiscal year. Included as an addition to the bill was the SECURE Act (Setting Every Community Up for Retirement Enhancement Act of 2019). Some of the changes within the SECURE ACT increased the penalties for late filing of Form 5500 and Form 8955-SSA.

Section 403 and 404 of the Act increased the fees for late filing for Form 5500 and Form 8955-SSA.

Prior to the SECURE Act, the IRS penalty for late filing of the Form 5500 was \$25 per day up to a maximum of \$15,000. The penalty for late filing of the Form 8955-SSA was \$1.00 for each participant multiplied by the number of days not reported up to a maximum of \$5,000. While not changed in the SECURE ACT, the Department of Labor also can assess penalties for late filing.

Effective for tax years beginning after December 31, 2019, the SECURE ACT dramatically increased the late filing fees to the following:

- The IRS penalty for a late Form 5500 filing is \$250 per day, with a maximum of \$150,000 per plan (per plan year missed).
- The IRS penalty for a late Form 8955-SSA filing is \$10 per participant per day with a maximum of \$50,000.

The filing deadline for the Form 5500 and Form 8955-SSA remained unchanged. The filing deadline is the last day of the seventh month following the plan's year-end. A company can apply for an automatic 2 ½ month extension of time to file the Form 5500 by filing a Form 5558 if needed. The Form 5558 must be filed before the due date of the Form 5500.

Authors Note: If Form 5500 and/or Form 8955-SSA are filed past the deadline, it may be prudent to use the Delinquent Filer Voluntary Compliance Program (DFVCP) as soon as the issue is found. Historically the IRS has waived their late filing penalties for Form 5500 if the plan sponsor who satisfy the DFVCP requirements can demonstrate a reasonable cause for the late filing. The DOL can also assess a penalty of \$2,330 per day (adjusted for inflation) with no maximum for a late Form 5500 filing but by using the DFVCP, the DOL penalties may be reduced to \$10 per day and collected as a user fee. The user fee depends on the number of filing missed but is capped at \$1,500 for small plans and \$4,000 for large plans.



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