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TOPIC: Electronic DOL Filing for Top Hat Plans to Be Mandatory

CITES: [29 CFR 2520.104-23](#); Proposed Rule at [79 FR 58720](#); [Electronic Filing Portal](#); [Department of Labor Press Release](#).

SUMMARY: On September 30, 2014, the Employee Benefits Security Administration opened a web-based filing system for the required statements for “top hat” plans (i.e., “unfunded” plans established for a “select group of management or highly compensated employees”).

On the same day, rules were proposed that would make electronic filing of these statements *mandatory*; currently, filing them electronically is optional. Under the proposed rules, electronic filing would become mandatory 120 days after the final rule is published in the Federal Register.

DISCUSSION: Unlike *qualified* deferred compensation plans, top hat plans are not required to file annual Form 5500s. Instead, the plan administrator may file, with the Secretary of the Department of Labor (DOL), within 120 days of plan adoption, a “statement” including: the name and address of the employer; the employer identification number; a declaration that the employer maintains a plan or plans primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees; and a statement of the number of such plans and the number of participants in each plan. The proposed rules would require that, in the future, these statements be filed with the DOL electronically.

The preamble notes that the proposed regulations are not intended to change the existing requirements for a top hat statement, though electronic filing will require submission of an e-mail address. The electronic filing process will provide a confirmation to the plan administrator that the filing has been received. Once filed, these forms will be posted on the department's website at <http://www.dol.gov/ebsa> and be available to the public.

RELEVANCE: Currently, plan administrators may, if they choose, electronically file top hat statements. 120 days after the final rule is published in the Federal Register, electronic filing will become mandatory, and information contained in the statements will be publicly available on the DOL website.

***WRNewswire* #14.11.03 was written by Marla Aspinwall of Loeb & Loeb, LLP.**

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