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DOL: Top Hat, Apprenticeship, and Training Benefit Filings Must Be Electronic

DOL final regulations require top hat plan statements and notices for apprenticeship and training benefits to be filed electronically. DOL's electronic filing system has been open on a voluntary basis since 2014.

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Background

Unfunded or insured nonqualified plans for a select group of management or highly compensated employees ("top hat" plans) that are exempt from ERISA's participation, vesting, funding, and fiduciary rules are only exempt from ERISA's reporting and disclosure rules if a "top hat plan statement" is filed with the DOL. The plan is deemed to satisfy the reporting and disclosure rules if the statement is mailed to the DOL within 120 days of the date the plan starts. The statement must include the name, address, and Employer Identification Number of the employer, the number of such plans, and the number of employees covered by each of them.

Failure to submit the top hat plan statement does not result in penalties but does subject the plan to expanded reporting and disclosure requirements.

Similarly, welfare benefit plans that provide only apprenticeship or training benefits, or both, are exempt from reporting and disclosure if a notice is mailed to the DOL and the plan administrator discloses certain information to employees participating, or eligible to enroll, in the plan.

In 2014, the DOL proposed regulations to require electronic filing of these statements and notices with the agency. Contemporaneously, DOL launched a new tool for accepting submissions. (See our [October 17, 2014 For Your Information.](#))

Final regulations include mandate as proposed

Effective August 16, 2019, the final regulations require electronic submission of these notices and statements through DOL's website. The final rule does not change the current content requirements

in either of the regulations. The web address for the portal has changed since its 2014 launch. The current links are available at [Top Hat Statement](#) and [Apprenticeship and Training Notice](#).

Buck comment: As noted in our previous article, a new top hat statement is generally not required to report a change in the employer if the employer identified in the original registration statement still employs participants covered by the plan and is authorized to respond to DOL document requests about the plan. Neither is a new form needed when a plan is amended to add a new class of participants.

The Apprenticeship/Training instructions advise that a new notice is required when any of the information on file becomes inaccurate. For example, the types of changes that require a new filing include, but are not limited to, those that affect available courses of study, prerequisites for enrollment, or enrollment procedures.

For both forms, there's an "amended filing" check box if a mistake needs to be corrected.

In closing

Employers should be aware of this new electronic filing mandate when implementing new top hat plans and establishing (or changing) apprenticeship or training programs.

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