

2018 Employee Benefits Webinar Series
Back to Basics Series – Form 5500 Filing
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Agenda



- Welfare Plans Subject to Form 5500
- Exemptions to Form 5500
- When is Form 5500 Due?
- Completing Form 5500
- Type of Plan
- Type of Filing
- Assigning Plan Year and Plan Number
- Required Schedules
- Form 5500 Penalties
- Delinquent Filer Voluntary Compliance Program (DFVCP)
- Multiple Employer Welfare Arrangements (MEWAs)
- Summary Annual Reports (SARs)

What plans are required to file Form 5500?

- General Rule: Unless an exemption applies, each separate welfare plan subject to ERISA must file an “annual report” with the DOL
 - The Form 5500 series is used for this purpose.
- A welfare plan is any employer-sponsored plan or program that offers any of the following benefits:
 - Medical
 - Dental
 - Life insurance
 - Disability
 - Apprenticeship and training
 - Scholarship funds
 - Severance pay

What plans are exempt from filing Form 5500?

- Welfare benefit plans that covered fewer than 100 participants as of the beginning of the plan year and are:
 - Unfunded (benefits are paid through the employer's general assets (including pre-tax employee contributions and COBRA payments))
 - Fully insured
 - A combination of insured and unfunded

What plans are exempt from filing Form 5500?

- Governmental plans
- Church plans
- Plans required by state law, such as workers' compensation, unemployment compensation or disability insurance
- Plans maintained outside the US, primarily for the benefit of nonresident aliens

Common Misconception: There is no blanket exemption for tax-exempt entities.

Small Plan Exemption

- Welfare plans with fewer than 100 employees participating on the first day of the plan year are not required to file a form 5500
 - Exemption applies even if participants exceed 100 during the year
 - A large plan that has been filing Form 5500s may stop doing so for any year in which it has fewer than 100 participants at the start of the plan year
 - Use Code 4R in line 8B of Form 5500 when not filing next year
 - Use Code 4S in line 8B if restarting filing after claiming exemption

Note: *The small plan exemption is not the “80-120” rule, which permits a nonexempt plan to continue filing the same financial Schedule with its Form 5500 if the plan has at least 80 covered participants but not more than 120 in a later year – generally applicable to retirement plans.*

Small Plan Exemption

- For purposes of the exemption, only covered participants are counted
- Participants are:
 - Employees
 - Former employees who are on COBRA
- Participants do not include spouses and dependent children, including children covered by a qualified medical child support order (QMCSO)
- Participants are “covered” the earlier of:
 - The date specified in the plan document
 - The date the individual becomes eligible to receive a benefit
 - The date the individual makes a contribution to the plan

Small Plan Exemption

- Plan documents and actual operations must be reviewed to determine whether welfare benefits are being provided under a single plan or separate plans
- Treatment of multiple benefit options
 - If an employer offers multiple benefit options within the same line of coverage (e.g., the employer offers HMO and PPO medical options) and has not created plan documents distinguishing the plans as having separate plan numbers, they may be considered a single plan for purposes of determining whether the small plan exemption applies

When is Form 5500 Due?



Deadlines

- All required forms, schedules, statements and attachments must be filed by the last day of the 7th calendar month after the end of the plan year
- July 31 for calendar year plans
- Next business day if the filing deadline is on a Saturday, Sunday or Federal holiday

Extensions

- An extension of up to 2 ½ months is available for employers that request an extension using Form 5558
 - Extension is automatic if Form 5558 is filed on or before the normal due date (not including extensions) of the Form 5500
 - A separate Form 5558 should be filed for each Form 5500 for which an extension is desired
- Automatic extension to the due date of the employer's federal income tax return is available, although filing Form 5558 may be easiest administratively
- Form 5500 must be filed electronically using the EFAST2 system

There are three main parts to the Form 5500:

- Part I requires information about the type of plan, the type of Form 5500, whether the plan operates on a calendar year, whether the plan is collectively bargained, and whether the Form 5500 is filed pursuant to an extension of time or under the Delinquent Filer Voluntary Correction (DFVC) Program
- Part II consists of ten questions (with numerous subparts) requiring:
 - Identifying information about the plan, its sponsor, and its administrator;
 - Information about the number of plan participants and about the type and funding of benefits; and
 - Identification of the Schedules that are filed with the Form 5500
- Part III requires to plan to disclose whether it is in compliance with any Form M-1 requirement that may apply

Form 5500 Main Body

- Any plan that must file Form 5500 must file the main body of the Form
- The Schedules that must be attached will vary depending on the size of the plan and means of providing benefits
- Certain plans will file only the main body, with no attached Schedules
 - For example, health FSAs or HRAs maintained as separate plans – they would enter benefit Code 4A in Line 8b
 - Self-insured severance plans treated as separate, unfunded plans of the plan sponsor also would file only the main body of Form 5500 – they would enter benefit Code 4I in Line 8b

Type of Plan: Part I, Line A of Form 5500 describes the type of plan being reported

- **Single Employer:** Plan sponsored by an individual employer or controlled group of corporations
- **Multiemployer:** Plan maintained pursuant to one or more collective bargaining agreements, under which more than one employer contributes to the plan on behalf of its employees.
- **Multiple employer:** Plan to which more than one employer is required to contribute but that is neither a multiemployer plan nor a single employer plan

Type of Plan

- Generally, plans sponsored by a controlled group of corporations are considered to be single employer plans for Form 5500 reporting purposes and need only file one Form 5500 for each plan maintained by the group
 - Separate Form 5500's may be required by each employer participating in a plan if the funds attributable to each employer are available only to provide benefits for the employees of that employer
 - Otherwise, if funds attributable to any employer are available to provide benefits for all employees, only one Form 5500 is required for each plan maintained by the group

Type of Filing

- Part I, Line B of Form 5500 describes the type of filing
- Check “first return/report” for a new plan or for a plan that has never filed a Form 5500
- Check “an amended return/report” if the filing is an amended filing
- Check “final return/report” if the Form 5500 is the last filing for a terminated plan
- Check “short plan year return/report (less than 12 months)” if the Form 5500 is being filed with respect to a short plan year, and insert the dates

Assigning the Plan Year

- Employers may choose the plan year
- The plan year is the 12 month period (or shorter, in the case of a short plan year) that is in the plan document or SPD
- In the absence of a plan year in the plan document or SPD, the policy year is used
- Plans years cannot exceed 12 months

Assigning the Plan Number

- Employers choose the plan numbers
- For welfare plans, start at 501 for the first plan and then consecutively number other plans as 502, 503, etc.
- Once you use a plan number for a plan, continue to use it for that plan on all future filings
- Do not re-use a plan number if the plan is terminated

Part II: Signature Line

- Form 5500 includes separate signature lines for the plan administrator and the plan sponsor, although, for a welfare plan filing, only the plan administrator is required to sign
- Under the EFAST2 system, anyone required to sign a Form 5500 must register online to obtain “filing signer” credentials, which will give them a PIN that serves as an electronic signature for Form 5500 purposes
- If the plan administrator is an entity (e.g., the employer/plan sponsor, as is typical for single employer plans), the electronic signature must be in the name of an individual authorized to sign on behalf of the entity

Recordkeeping Reminder: ERISA requires the plan administrator to maintain a copy of Form 5500 and all required signatures as part of the plan's records, even though the Form 5500 is filed electronically.

Part II, Line 4: Changes in Plan Sponsor Name, EIN, or Plan Number

- Complete Form 5500 using the current plan number and the plan sponsor's current name and EIN
- If the plan number or plan sponsor's name or EIN has changed since the last Form 5500 was filed for the plan, the plan sponsor must enter the name, EIN, and plan number as they appeared on the last Form 5500 on Line 4

Part II, Lines 8a and 8b: Benefits Provided

- The Instructions for the Form 5500 include a list of 18 codes to identify welfare plan benefits

Part II, Lines 9a and 9b: Funding and Benefit Arrangements

- For funding and benefit arrangement purposes, minimum premium plans, where an employer funds a claims account up to a specified amount (similar to an attachment point under a stop-loss insurance policy), are generally treated by the DOL as insured arrangements

Part II, Line 10b: Identification of Attached Schedules

- The Schedules attached to Form 5500 must match what is reported on Line 10, and all applicable Schedules must be attached to the Form 5500 or it will be considered incomplete

Required Schedules

- Small plans (retirement plans or funded welfare plans with <100 participants) report Schedules A, D, I as appropriate
- Large plans (those with >100 participants) report Schedules A, C, D, G, H and Accountant's Report, as appropriate
- Generally, welfare benefit plans that are subject to reporting (large insured and self-insured plans) will report Schedule A for any fully insured plans and will not report Schedules C, D, G, H or Accountant's report as long as they're not funding benefits through a trust
 - In most cases, Schedule C is only required for a self-insured plan when benefits are funded through a trust or employee contributions are made after-tax

Schedule A

- Schedule A (Insurance Information) consists of three parts:
 - Part I requires identifying information about insurance contracts under which plan benefits are provided, plus fees and commissions paid to brokers, agents, or other persons
 - Part II requires additional information about investment and annuity contracts
 - Part III requires additional information about insurance contracts providing health and welfare benefits, including the type of benefits provided; premiums paid; and, for experience-rated contracts, detailed information about benefit charges, remainder of premium, and policyholder reserves

Schedule A

- The carrier is responsible for providing timely Schedule A information
 - Do not delay filing due to missing Schedule A information
 - The Instructions provide that if Schedule A information is missing due to a refusal to provide information, the filer should check “yes” on Part IV, Line 11 and specify the information not provided on Line 12
 - An amended Form 5500 should then be filed when the missing information is obtained

Note: *It is ultimately the plan’s responsibility to ensure the accuracy of a filed Form 5500; the plan administrator should, to the extent possible and practical, double-check against its own records the information provided by the carrier.*

Schedule A and Stop-Loss

- Schedule A can be required for stop-loss policies that are treated as an asset of the plan, which can happen if:
 - The policy is issued to the plan rather than to the employer;
 - Payments under the policy are made to the plan rather than to the employer; or
 - Policy premiums are not paid exclusively out of employer general assets – meaning that participant contributions are used to pay the premiums)

***Note:** A plan may inadvertently make a stop-loss policy subject to Schedule A requirements by including stop-loss costs in the calculation of plan costs, thereby adding it to participants' premium equivalent.*

(However, DOL Advisory Opinion 2015-02A permits plan sponsors to design the plan such that no monies attributable to employee contributions are used for paying stop-loss premiums.)

Schedule A

- Part I, Line 1e: Reporting Number of Covered Persons
- This line requires an estimate of the number of “persons” covered under the policy as of the end of the policy year
- The DOL recognizes that this number will fluctuate over the course of the policy year

Note: *The number of “persons” covered by the policy is not expected to match the number of “participants” reported in the main body of the Form 5500.*

Schedule A

- Part I, Lines 1f and 1g: Policy or Contract Year
- The information entered on Schedule A should pertain to the insurance contract or policy year ending with or within the plan year
- However, if the insurance company maintains records on the basis of a plan year rather than a policy or contract year, however, the information entered on Schedule A may pertain to the plan year instead of the policy or contract year

***Example:** A health plan's policy year runs from July 1 to June 30. If the plan has a calendar year, the plan administrator will receive Schedule A information from the carrier that does not correspond to the plan year. The Schedule A information included with the plan's 2015 Form 5500 should relate to the policy year ending on June 30, 2015.*

Penalties may be assessed for late or unfiled Form 5500s as well as incomplete or otherwise deficient forms

- Late Filers - Plan administrators filing a late annual report (i.e., after the date the report was required to be filed, including extensions) may be assessed \$50 per day, with no limit, for the period they failed to file, determined without regard to any extensions for filing
- Non-Filers - Plan administrators who fail to file an annual report may be assessed a penalty of \$300 per day, up to \$30,000 per year, until a complete annual report is filed
- Consider Delinquent Filer Program (only available prior to audit)
- For Welfare Plans: Consider a Wrap Plan Document / SPD
 - Wrap documents consolidate the plans for Form 5500 purposes

Delinquent Filer Voluntary Compliance Program (DFVCP)



- The DOL allows plan administrators pay reduced penalties for voluntarily complying with the annual reporting requirements
- Large Plans:
 - The penalty amount is \$10 per day overdue (without regard to any extensions), max of \$2,000 per plan
 - If the DFVC submission relates to more than one delinquent filing for the same plan, the maximum penalty amount is \$2,000 each, not to exceed \$4,000 per plan
 - If failures involve multiple plans, consider implementing a wrap document to consolidate plans for DFVCP purposes

Multiple Employer Welfare Arrangements (MEWAs)



- MEWA's that provide health benefits generally must file an annual Form M-1 to report on compliance with the group health plan mandates contained in Part 7 of ERISA
 - Includes HIPAA Portability, Mental Health Parity, GINA, and the ACA Market Reforms (restrictions on annual limits, preventive care)
- Changes to MEWA Reporting Requirements
 - 2013 DOL final regulations made changes to Forms M-1 and 5500
 - Form M-1 compliance be documented in connection with Form 5500 filings
 - In addition, the limited Form 5500 filing exemption for insured or unfunded (or combination) plans with fewer than 100 participants is no longer available to plans required to file Form M-1

SAR has a prescribed format:

- It must be provided by the end of the ninth month after the close of the plan year (September 30 for calendar year plans)
- Extension of two months granted if Form 5558 completed and submitted with Form 5500
- Common misconception that SARs are not required for health plans
 - If a Schedule A is required (or the plan is funded through a trust), a SAR is required

Significant Changes Proposed for Plan Years Beginning in 2019

- Proposed rule (from July 2016) eliminates the small plan exemption for group health plans – all group health plan returns would be required to include new Schedule J
 - Would require reporting information such as plan design, the categories of benefits provided, whether the plan is an HDHP or includes an HRA or FSA, whether the plan is grandfathered, the number of individuals offered as well as how many elected COBRA, claims payment policies and practices, enrollment data, financial disclosures, denied claims information, cost sharing, and identification of service providers such as TPAs, pharmacy benefit managers (PBMs), or wellness program managers

Significant Changes Proposed for Plan Years Beginning in 2019

- Other changes:
 - Expanded use of Schedule C for certain small plans
 - Identification of participating controlled group members and contribution rates
 - Additional questions, such as whether the SPD and SBCs are in compliance, whether coverage is provided in compliance with applicable laws, including HIPAA, GINA, MHPAEA and the ACA

HR Professional Credits



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Questions?

