

Form 5500s

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Form 5500s

- A. Background on form 5500
 - i. In the US – private sector employers provide for an estimated 2.3 million health plans ...
 - ii. Form 5500 Annual Return/Report – primary source of info about the operation, funding, assets and investments of those employee benefit plans and essential compliance and research tool for the DOL, IRS and PBGC
 - iii. Other agencies rely on form 5500 for assessment employee benefit, tax, and economic trends and policies
 - iv. Form 5500 / form 5500-SF must be filed electronically with EBSA under EFAST2... electronic system operated by a private sector contractor
 - v. Agencies review Form 5500 for compliance with applicable reporting requirements ... if incomplete – rejected and civil penalties (potentially)
 - vi. Plan administrator has to keep copy of Form 5500 and Form 5500-SF (including schedules and attachments) with signatures for the plan's records
 - vii. Plan administrator must make paper copy available on request of participants, beneficiaries and the DOL
 - viii. Most info from Form 5500/Form 5500-SF filed electronically via EFAST2 is available, free to public, via internet

- B. What is it? - Form developed by the DOL, IRS and PBGC
 - i. Required for health and welfare benefit plans with at least 100 participants
- C. What does it do: (1) Helps to ensure that operation and management of plans is in compliance with the prescribed standards and (2) Gives participants and beneficiaries a way of accessing certain information so as to protect their rights under the plan
- D. Who must file? Plans with more than 100 participants on the 1st day of the plan year (File Form 5500 and the associated schedule with the DOL) each yr. -
- E. Who is a participant?
 - i. Active participants (employed and covered by plan)
 - ii. Former EEs
 - 1. Retired EE
 - 2. COBRA beneficiaries
 - iii. Deceased participants whose beneficiaries are entitled to benefits in the future
- F. All welfare benefit plans (including MEWAs) covered by ERISA unless:
 - i. Plan covers fewer than 100 participants as of the beginning of the plan year and is unfunded, fully insured, or a combination of the two and not subject to Form M-1

1. Unfunded – has its benefits paid as needed directly from the general assets of the employer
 2. A fully insured welfare benefit plan has its benefits provided exclusively through insurance contracts or policies, the premiums of which must be paid directly to the insurance carrier by the employer or employee organization from its general assets or partly from its general assets and partly from contributions by its employees or members (which the employer or employee organization forwards within three (3) months of receipt). The insurance contracts or policies discussed above must be issued by an insurance company or similar organization (such as Blue Cross, Blue Shield or a health maintenance organization) that is qualified to do business in any state.
 3. A combination unfunded/insured welfare benefit plan has its benefits provided partially as an unfunded plan and partially as a fully insured plan. An example of such a plan is a welfare benefit plan that provides medical benefits and life insurance benefits. See 29 CFR 2520.104-20.
- ii. Plan is maintained outside the US primarily for nonresident aliens
 - iii. Government plan

- iv. Unfunded or insured welfare benefit plan maintained for a select group of management or highly compensated employees (29 CFR 2520.104-24)
- v. Plan maintained only to comply with workers' comp, unemployment comp or disability insurance laws
- vi. Plan that participates in a group insurance arrangement that files a Form 5500 on behalf of the welfare benefit plan in 29 CFR 2520.103-2
- vii. An apprenticeship or training plan meeting all of the conditions of 29 CFR 2520.104-22
- viii. Unfunded dues financed welfare plan exempted by 29 CFR 2520.104-26
- ix. Church plan
- x. Plan maintained solely for (1) an individual or individual and her spouse, who wholly own a trade or business or (2) partners or the partners and their spouses

G. Do I need a Form 5500 for each of the benefits offered?

- i. If not wrapped – YES
- ii. A form 5500 must be filed for each benefit plan with more than 100 participants
- iii. Form 5500 for a wrap must include all benefits under the plan ... even those with less than 100 participants ... since all benefits = 1 plan

- H. Who files it?
- I. The fiduciary of the plan
 - i. Usually the plan administrator
- J. When is the filing deadline?
 - i. The last day of the 7th month after the plan year ends
 - 1. July 31 for a calendar-year plan
- K. Can an extension be requested?
 - i. Yes
 - ii. Form 5558 Application for Extension of Time to File Certain Employee Plan Returns
 - 1. Must be sent to: Department of Treasury, IRS, Ogden, UT 84201-0045
 - 2. 1-time option
 - 3. Extension is automatically granted until the extended due date of the federal income tax return of the employer if:
 - a. Employer's tax year and plan year are the same; and
 - b. Employer was granted an extension of time to file its federal income tax return later than the due date for the plan's Form 5500 due date.
- L. How is it filed?

- i. Electronically through EFAST2
 - 1. <https://www.efast.dol.gov/welcome.html>
 - 2. Help Line 1-866-GO-EFAST
- M. How to complete the Form 5500
- N. Proposal to modernize the Form 5500 – July 21, 2016 – DOL, IRS and PBGC (the Agencies) published in the Federal Register a Notice of Proposed Forms Revisions to the Form 5500 Annual Return/Report Series
 - i. Agencies have implemented revisions of Form 5500 relating to EFAST filing system changes in the past
 - ii. Target implementation of proposed forms – Plan Year 2019 form 5500 series returns/reports
 - iii. Changes intended to address changes in applicable law and shifts in data needed for the Agencies enforcement priorities, policy analysis and compliance assistance ... changes would improve publicly available information about employee benefit plans and reinforce impt fiduciary duties
 - iv. 5 broad categories of goals to improve employee benefit plan reporting for filers, plan participants and beneficiaries, the public and the Agencies
 - 1. Modernize financial reporting
 - 2. Provide greater information regarding group health plans

- a. Proposal would eliminate current reporting exclusion for small insured and self-funded welfare benefit plans
 - b. Create a new Schedule J – report coverage, participation, claims, benefit and other group health benefit information
- 3. Enhance data mining ability
- 4. Improve service provider fee information
- 5. Enhance compliance with ERISA and the Code
- v. Overview of general changes – Form 5500
 - 1. All group health plans must file Form 5500, including the new Schedule J, regardless of size or funding
 - 2. small group health plans may not file Form 5500-SF
 - 3. controlled group plans must attach a list of groups under common control or affiliated service groups
 - 4. Forms will use checked descriptive boxes instead of using codes and letters for plan features and attributes
 - 5. an electronic Form 5558 will make on-line extensions possible
 - 6. implications – increase the # of group health plans that must file Form 5500 (Agencies estimate 2.15

million new plans) and use of boxes to reduce filer errors

vi. Schedule J – Group Health Plan Information – NEW

1. Requires health plan data in 5 categories

- a. Group health plan characteristics (fully insured plans w/less than 100 participants)
- b. Service provider and SL info
- c. Financial information
- d. Health benefits claims processing and payments
- e. Compliance info (i.e. MEWA; attestation of compliant docs)

O. Non-compliance penalties

P. DOL audit due to Form 5500s: filing inconsistencies, failure to file or late filing

i. Table

Q. Case Studies

R. DFVCP - The DOL's Delinquent Filer Voluntary Compliance Program (DFVCP) encourages voluntary compliance with the annual reporting requirements and gives plan administrators the opportunity to avoid potentially higher civil penalties by paying a reduced penalty amount and bringing the plan into compliance with past filings. DFVCP provides for a penalty of \$10 per day

past the filing deadline up to a maximum of \$2,000 per year and a maximum penalty capped at \$4,000 per plan regardless of the number of years filed at one time under the program.

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