

# BENEFITS INSIGHTS

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## Form 5500 Annual Return/Report of Employee Benefit Plan

Each year, employee benefit plan administrators are generally required to file a return/report regarding the plan's financial condition, investments and operations. The annual reporting obligation is generally satisfied by filing the Form 5500 Annual Return/Report of Employee Benefit Plan or Form 5500-SF Short Form Annual Return/Report of Small Employee Benefit Plan, plus any required schedules and attachments. The Department of Labor (DOL), Internal Revenue Service (IRS) and the Pension Benefit Guaranty Corporation (PBGC) jointly developed the Form 5500 series to consolidate the main annual reporting requirements for employee benefit plans.

The Form 5500 series is intended to protect the rights and benefits of plan participants and beneficiaries by assuring that:

- Employee benefit plans are operated and managed in accordance with certain prescribed standards
- Employee benefit plan participants and beneficiaries are provided with or have access to sufficient plan information

In addition, the Form 5500 series is an important compliance, research and disclosure tool for the DOL. It is also a source of information and data for use by other federal agencies, Congress and the private sector in assessing employee benefit, tax and economic trends and policies.

An employee benefit plan's Form 5500 or 5500-SF must accurately reflect the plan's characteristics and operations for the reporting period. An employee benefit plan administrator's reporting obligations under the Form 5500 or 5500-SF will vary based on the type and size of benefit plan involved. For example, the administrator of an insured health plan will typically have significantly fewer reporting obligations than the administrator of a large pension plan.

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## Helpful Resources

- DOL webpage on the Form 5500 Series, including links to informational copies of current and prior Forms 5500 and 5500-SF, schedules, instructions and links to general reporting and compliance assistance: <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-5500>.
- DOL webpage dedicated to EFAST2 electronic filing information, including links to FAQs about EFAST2 and EFAST2 User Guides: [www.efast.dol.gov/welcome.html](http://www.efast.dol.gov/welcome.html)
- DOL Fact Sheet and FAQs about the Delinquent Filer Voluntary Compliance Program: <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/dfvcp.pdf>
- DOL's Form 5500 and Form 5500-SF Filing Tips: <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/forms/efast2-form-5500-filing-tips>
- IRS Form 5500 Corner: <http://www.irs.gov/Retirement-Plans/Form-5500-Corner>

## Frequently Asked Questions about the Form 5500 Series

### *Am I required to file a Form 5500 or 5500-SF for my employee benefit plan?*

Administrators of ERISA employee benefit plans are required to file an annual Form 5500 or 5500-SF, unless a reporting exemption applies. More specifically, if you are the administrator of a profit sharing plan, stock bonus plan, money purchase plan, 401(k) plan, defined benefit plan, 403(b) plan or welfare benefit plan, you must file a Form 5500 or 5500-SF for the plan each year.

**Certain welfare benefit plans are exempt from all or part of the Form 5500 series reporting requirements.** For example, there is an exemption from Form 5500 series reporting for small welfare benefit plans (fewer than 100 participants at the beginning of the plan year) that are unfunded, fully insured or a combination of unfunded and fully insured. More information on which welfare benefit plans are exempt from the filing requirement is provided below.

The Form 5500 filing requirement does not apply to cafeteria plans based on the rationale that cafeteria plans are merely funding vehicles. However, a Form 5500 or 5500-SF is required for any component benefit plan that is an ERISA welfare plan (for example, health FSAs and dental, long-term disability, AD&D and group term life plans), unless an exemption applies.

To illustrate, assume an employer maintains a cafeteria plan to allow employees to pay their health insurance premiums with pre-tax dollars. All ten of the employer's employees participate in both the cafeteria plan and the underlying fully insured health plan. In this scenario, the employer does not need to file a Form 5500 for the cafeteria plan, and no reporting is required for the health plan because it falls under the Form 5500 filing exemption for small and fully insured welfare benefit plans.

As another illustration, assume the same facts, except that there are 250 employees participating in both the cafeteria plan and underlying fully insured health plan. In this scenario, a Form 5500 is not required for the cafeteria plan, but the employer must annually file a Form 5500, with all required schedules and attachments, to satisfy the ERISA reporting requirement for the health plan.

#### *Which welfare plans must file a Form 5500 or 5500-SF?*

##### Must File:

- Large funded plans
- Large unfunded plans
- Large insured plans
- Large combination unfunded/insured plans
- Small funded plans

##### Exempt from filing:

- Small unfunded plans
- Small insured plans
- Small combination unfunded/insured plans
- Unfunded or insured plans for certain select employees (management or highly compensated employees)
- Employer-sponsored day care centers
- Certain apprenticeship and training plans
- Plans not subject to ERISA

Multiple employer welfare arrangements (MEWAs) that are required to file a Form M-1 (“Report for Multiple Employer Arrangements (MEWAs) and Certain Entities Claiming Exception (ECE)”) must file Form 5500 regardless of plan size or the type of funding (including small unfunded or insured welfare plans).

#### *What is a small plan?*

Small plans are those with fewer than 100 covered participants at the beginning of the plan year.

#### *Who are covered participants?*

Participants are covered by the plan on the earlier of: (1) the date the plan says participation begins; (2) the date the individual become eligible to receive a benefit; or (3) the date the individual makes a voluntary or mandatory payment. Participants may include employees and former employees (for example, COBRA beneficiaries).

Covered dependents are NOT counted as participants when determining if a plan qualifies for the small plan exemption.

#### *What is an unfunded plan?*

Unfunded plans are those where benefits are paid solely from the general employer assets and not from plan assets in whole or in part. Participant contributions (except if accepted through a cafeteria plan) are plan assets under DOL regulations. Also, a plan that uses a trust or separately maintained fund to hold plan assets (or act as a conduit for the transfer of plan assets) is not unfunded.

### *What is an insured plan?*

Insured plans are those where benefits are paid solely through insurance policies. Premiums must be paid directly by the employer from its general assets. Alternatively, premiums may be paid partly from an employer's general assets and partly by participant contributions, which the employer forwards no later than three months after receipt.

### *Am I eligible to file a Form 5500-SF for my employee benefit plan?*

Eligible small employee benefit plan filers may use the Form 5500-SF instead of the regular Form 5500. Form 5500-SF is a simplified annual reporting form. To be eligible to use Form 5500-SF, an employee benefit plan must:

- Have fewer than 100 participants at the beginning of the plan year
- Meet the conditions for exemption from the plan audit requirement
- Have all of its assets invested in certain secure investments with a readily determinable fair value
- Hold no employer securities
- Not be a multiemployer plan
- Not be required to file a Form M-1

### *How do I electronically file a Form 5500 or 5500-SF for my employee benefit plan?*

All Forms 5500 and 5500-SF, including required schedules and attachments, must be filed electronically using the DOL's EFAST2 electronic filing system. Administrators cannot file paper annual reports by mail or other delivery service.

Under EFAST2, plan filers may choose to use either approved third-party vendor software or the DOL's Web-based filing system (IFILE) to prepare and submit Forms 5500 or 5500-SF. Third-party vendor software typically offers more functionality than IFILE. For example, some third-party vendor software may support transmission of batch filings and may integrate with a plan filer's system to automatically complete some of the required Form 5500 or 5500-SF information. IFILE can only transmit single filings, and it does not integrate with a filer's system to help complete the annual report.

Plan filers must obtain EFAST2 electronic credentials to sign and/or submit the Form 5500 or 5500-SF, or to prepare a return in IFILE. In addition to the online resources noted above, plan filers may obtain assistance through the toll-free EFAST2 Help Line at 1-866-463-3278.

### *How many Forms 5500 or 5500-SF do I need to file?*

For benefits provided by a single business entity, the number of annual reports to file depends on how many separate ERISA plans the plan sponsor maintains. A plan sponsor can determine how many separate ERISA plans it maintains by reviewing its employee benefit plan documents. For plan sponsors that are part of a controlled group, generally only one Form 5500 or 5500-SF is required for each employee benefit plan maintained by the controlled group. However, in a controlled group setting, consideration must be given to whether or not the funds contributed by controlled group members are available to provide benefits to all eligible employees of the controlled group.

Plan sponsors may decide to combine more than one type of ERISA welfare benefit into a single plan to consolidate annual reporting. The intention to combine benefits into a single plan should be reflected in the governing plan documents, such as a wrap document. If

ERISA welfare benefits are combined into a single plan, the plan administrator would generally only be required to annually file one Form 5500 or 5500-SF for the plan's benefits.

#### *What is the deadline for filing Form 5500 or 5500-SF?*

Form 5500 or 5500-SF must generally be filed by the last day of the seventh month following the end of the plan year, unless an extension applies. For calendar year plans, the deadline is normally July 31 of the following year.

#### *How can I obtain an extension for filing Form 5500 or 5500-SF?*

A plan administrator may request a one-time extension of two and one-half months by filing IRS Form 5558 by the unextended due date of the Form 5500 or 5500-SF. If the Form 5558 is filed on or before the normal due date of the Form 5500 or 5500-SF, the extension is automatically granted.

In addition, an automatic extension for filing Form 5500 or 5500-SF until the due date of the employer's federal income tax return will apply if: (1) the plan year and the employer's tax year are the same; (2) the employer has been granted an extension of time for filing its federal income tax return to a date later than the normal due date for the Form 5500 or 5500-SF; and (3) the administrator maintains a copy of the application for extending the due date of the employer's federal tax return. This automatic extension cannot be further extended by using Form 5558, and it cannot extend beyond a total of nine and one-half months following the close of the plan year.

#### *Am I required to file a Form 5500 or 5500-SF if the employee benefit plan was terminated during the prior year?*

Yes. If an employee benefit plan was terminated last year, a final Form 5500 or 5500-SF is generally due on the last day of the seventh month following the date of the plan termination. The last annual report for a plan is called a "terminal report." The terminal report cannot be filed until all the plan's assets have been distributed or legally transferred, or all benefit liabilities under a welfare benefit plan have been satisfied.

#### *What is my employee benefit plan's number?*

The employer assigns the plan number. The plan number should appear in the plan's summary plan description. Once a plan number has been used for a plan, it should not be used for any other plan, even if the first plan has been terminated. Generally, retirement plans are numbered sequentially from 001, and welfare benefit plans are numbered sequentially from 501.

#### *Who do I contact if I have questions about completing Form 5500 or 5500-SF?*

For answers to your filing questions, please contact your tax advisor or the DOL's Employee Benefits Security Administration (EBSA) at 1-866-463-3278. You may find answers to your questions by referring to the online resources noted above.

#### *What are the penalties for not complying with the Form 5500 or 5500-SF requirements?*

The DOL and IRS can assess penalties for noncompliance with the annual reporting requirements, including submitting incomplete Forms 5500 or 5500-SF or not filing Forms 5500 or 5500-SF by the due date. For example, the DOL has the authority under ERISA to

assess penalties of up to \$2,194 per day for each day an administrator fails or refuses to file a complete Form 5500 or 5500-SF.

The penalties may be waived if the noncompliance was due to reasonable cause. The IRS can also impose civil penalties for noncompliance with certain Form 5500 or 5500-SF reporting obligations. In addition, ERISA provides for criminal penalties for willful violations of its reporting requirements.

The DOL typically sends a Notice of Intent to Assess a Penalty to notify filers of a proposed DOL penalty due to a late or incomplete annual return. The CP 283 Notice is sent to notify filers of a proposed IRS penalty due to a late or incomplete Form 5500, 5500-SF or 5500-EZ return.

#### *What is the Delinquent Filer Voluntary Compliance (DFVC) program?*

The DFVC program was created by the DOL to encourage employee benefit plan administrators to voluntarily file overdue annual reports and pay reduced civil penalties. Plan administrators are eligible to use the DFVC program only if they make the required filings prior to being notified in writing by the DOL of a failure to file a timely annual report.

To use the DFVC program, plan administrators should take the following steps:

- Complete the Form 5500 or 5500-SF for the year at issue, or the most current form available
- Check box D of the Form 5500 or box C of the Form 5500-SF
- Electronically file the delinquent Form 5500 or 5500-SF under EFAST2
- Use the DFVC's online calculator to determine the penalty amount and pay the penalty

Under the DFVC program, penalties can be paid online or by mail, although the DOL strongly encourages electronic payments.

Although the DFVC program only reduces the penalty amounts under ERISA, the IRS has also agreed to provide penalty relief where the conditions of the DFVC program have been satisfied. Late filers of the Form 5500 series qualify for penalty relief from the IRS if they complete the following steps:

- Complete the Form 5500 or 5500-SF for the year at issue, or the most current form available
- Satisfy all of the DFVCP requirements;
- File a paper form 8955-SSA with the IRS (no electronic filings);
- Check the box on Form 8955-SSA, Part I, line C (Special Extension) and enter "DFVCP" in the description on line C; and
- Mail the Form 8955-SSA and the delinquent returns to the IRS within 30 calendar days of the DFVCP filing.

The PBGC may provide certain penalty relief for delinquent annual returns/reports filed for Title I plans where the conditions of the DFVCP have been satisfied.