

June 24, 2021

# Demystifying the Form 5500 Requirements (ERISA Reporting for Health & Welfare Benefit Plans)



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**Employee Retirement  
Income Security Act  
(ERISA)**

# ERISA COVERAGE



## Definition of “ERISA Plan”

- Any plan, fund, or program established or maintained by an employer or an employee organization or both for the purpose of providing participants and beneficiaries, through the purchase of insurance or otherwise:
  - Medical, surgical or hospital care or benefits or benefits for sickness, accident, disability, death, or unemployment, or vacation benefits, apprenticeship or other training programs or day care centers, scholarship funds, or prepaid legal services...

# ERISA COVERAGE

- Employee health and welfare benefit plans of *private employers* (both for-profit and not-for-profit) are subject to ERISA
- Plans sponsored by churches and governmental entities are *exempt* from ERISA, but are subject to state mandates and certain federal laws
  - Exception: Plans established by non-ministerial arms of a church in unrelated trades or businesses, that employ laypersons and perform services to the general public, are generally subject to ERISA
  - Churches may opt-in to ERISA and Internal Revenue Code (IRC §410(d) irrevocable election) with respect to *qualified retirement* benefit plans
- Other non-profit entities (to whom church plan exception does not apply) are subject to ERISA
- Certain statutory plans and fringe benefits are *not* subject to ERISA

## ERISA Broad Coverage

ERISA applies to health and welfare plans sponsored by private sector employers including publicly traded companies as well as nonprofit organizations.

# ERISA



## Applies to:

- ✓ Medical, surgical or hospital care
  - ✓ Medical
  - ✓ Dental
  - ✓ Vision
  - ✓ Health FSAs and HRAs
  - ✓ EAPs covering MH/SA treatment
- ✓ Benefits for accident, disability, sickness or death
  - ✓ Life and AD&D
  - ✓ Long Term and Temporary Disability
  - ✓ Long Term Care, Accident and Sickness Indemnity Plans
  - ✓ Funded vacation benefits
  - ✓ On-site day care centers
  - ✓ Funded scholarship programs, apprenticeship or other training programs
  - ✓ Prepaid legal services
  - ✓ Some supplemental unemployment benefits and severance pay plans

# ERISA



## Does not apply to:

- ✓ Pre-tax plans
  - ✓ Section 125 Cafeteria plans and Premium Only (POP) plans
  - ✓ Dependent Care Assistance plans
  - ✓ Transportation/Commuter benefit plans
  - ✓ Health Savings Accounts
- ✓ Workers' compensation, paid family and medical leave and statutory disability benefit programs
- ✓ Payroll practices, e.g.
  - ✓ Wage continuation
  - ✓ Informal severance arrangements
  - ✓ Paid time off for vacation, holidays, military duty, jury duty
- ✓ Certain fringe benefits
  - ✓ Unfunded scholarships
  - ✓ On-site workout facilities
  - ✓ Employee discount plans
  - ✓ Identity theft protection plans
- ✓ Some international benefit plans, if no US-sourced income
- ✓ Certain voluntary plans

# VOLUNTARY PLANS SAFE HARBOR EXCEPTION TO ERISA

Employer must maintain “arms-length distance” - *only permitted employer functions*:

- Withhold employee premiums (after-tax),
- Remit premiums to the insurer, and
- Permit insurer’s agent to have access to employees

Employer may not engage in any of the following activities which constitute endorsement:

- Select or negotiate with the insurer
- Endorse the plan or associate the plan with employer plans (include in materials, or use the employer’s name in the plan name)
- Recommend the plan to employees
- Assert that ERISA applies
- Perform administrative functions other than remitting premiums
- Allow use of the cafeteria plan
- Assist employees with claims

Examples:

Individual cancer/critical illness policies

Individual supplemental hospitalization policies

Individual accident policies



# HEALTH AND WELFARE PLAN TYPES

## Single Employer Plan:

- A plan covering employees, former employees, their spouses and/or dependents
- Sponsored by a single employer (control group rules apply)
  - Parent/Subsidiary Control Group (at least 80% ownership)
  - Brother/Sister Control Group (50% identical common ownership of 80% of shares of all participating entities by up to top 5 shareholders)

## Multiple Employer Plan:

- Maintained by an organization for several entities that do not have sufficient common ownership to constitute a control group and maintain a single employer plan

## Multiemployer Plan:

- Maintained by collective bargaining unit (union) for the benefit of its members

# **Form 5500 Reporting Requirements**

# ERISA REPORTING (FORM 5500) REQUIREMENTS



## In general:

- Plan sponsors subject to ERISA are generally required to file an annual Form 5500, subject to certain exceptions. Form 5500 is an annual information report that is submitted to the US Department of Labor's Employee Benefits Security Administration, reporting certain information on employer-sponsored benefit plans.
- Plan sponsors must also provide a Summary Annual Report (SAR) to all participants after filing Form 5500. The SAR is a summary of the information filed with the EBSA on Form 5500.

# WHEN IS FORM 5500 REQUIRED?

## A form 5500 is required for:

- Qualified retirement plans (such as a 401(k), 403(b) or pension plan), *regardless of the number of participants*
- Single employer health and welfare benefit plans:
  - Maintained for the benefit of employees of a single employer (controlled group rules apply)
  - Consisting of insurance contracts and the plan sponsor's general assets, for any plan year in which there are *at least 100 participants\* on the first day of the plan year*
  - That are funded (trust plans), *regardless of the number of plan participants at the beginning of the year*
- Multiple Employer Health and Welfare Plans that:
  - Provide health care benefits and cover participants that are not part of the same controlled group, *regardless of the number of participants*, or
  - Do not provide health care benefits, are unfunded or fully insured, and cover *at least 100 participants at the beginning of the plan year*
- Multiemployer (Taft-Hartley) welfare benefit plans
  - \*The term "participants" means employees and former employees enrolled in the benefit plan (disregarding spouses and dependents who may be plan beneficiaries).*

Specific reporting requirements apply to each plan type

# SPECIFIC REPORTING REQUIREMENTS

## Single Employer Plans:

- Fully-insured Plans – Form 5500 and Schedule A (Insurance Information) for each policy in effect during the plan year
- Unfunded, Self-Insured Plans\* - Form 5500, noting “general assets of the plan sponsor”
  - No Schedule A is required for stop loss (protects sponsor’s general assets, does not provide a direct benefit for participants or beneficiaries)
  - No Schedule C (Fees Paid to Service Providers) required
- Combination Fully-Insured/Unfunded Self-Insured Plans (See above for each component benefit)

\*Financed by plan sponsor’s general assets, and pre-tax participant contributions under employer’s cafeteria plan (DOL Technical Release 1992-01 relief)

## Multiple Employer Plans/ Multiemployer Plans:

- M-1 is required when health care benefits are provided AND there is <25% common ownership between participating entities
- When M-1 required, small employers <100 participants must file 5500 (no small employer exception)
  - Form 5500 and Schedule A required for fully-insured plans (“general assets” marked if unfunded self-insured plan)
  - Must include list of contributing entities
  - M-1 Receipt Confirmation Code must be reported on Form 5500 when applicable
- No M-1 is required for plans that do not provide health care benefits (e.g., life, disability)
- Most MEWAs are funded plans - benefits are paid by the plan not from each participating employer’s general assets

# SPECIFIC REPORTING REQUIREMENTS

## **Funded (Trust) Plans** – either type:

- Trust Types:
  - Non-Taxable Voluntary Employee Beneficiary Association (VEBA)
  - Taxable Welfare Benefit Plan Trust
- Plan assets may only be used for exclusive benefit of participants and beneficiaries
- No small employer exception
- Required reporting elements:
  - Form 5500
  - Schedule A for all insured plans (including stop loss that is a plan asset)
  - Schedule C (fees paid to Service Providers and others from trust assets)
  - Financial Statement: Schedule H with Independent Public Accountant's Opinion (Audit) Report or Schedule I

# WHAT IS A “PLAN” FOR PURPOSES OF FORM 5500?

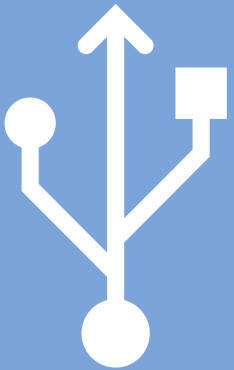
**Welfare benefits incorporated into a consolidated wrap ERISA welfare plan may be filed on one Form 5500:**

- Must have adopted wrap plan document and SPD
- May consist of all fully-insured benefits, all self-insured benefits, or a combination of fully-insured and self-insured benefits
- Multiple benefit types may be wrapped

**If there is no wrap:**

- All policies or separate contracts providing the same type of benefit (e.g., medical) may be filed on one 5500, or
- If insurance contract offers multiple benefits under same contract, a single 5500 can be filed for those benefits, or
- If neither applies, each policy or contract is treated as a separate ERISA plan, separately subject to ERISA 5500 reporting and other disclosure requirements

# FORM 5500 FILING PROCESS



- All 5500s must be submitted electronically via EFAST2
  - Designated filing signer is required on behalf of Plan Administrator
  - Second filing signer may be designated to sign on behalf of Plan Sponsor, but not required
  - Requires EFAST2 IFILE credentials (user ID and PIN) – [unique to user](#)
- Third-party software vendors generally automatically transmit 5500s on receipt of e-signature



# **Summary Annual Report (SAR) Requirements**

# SUMMARY ANNUAL REPORTS



## Summarize annual Form 5500

- Funding and insurance information
- Basic financial information
- Participant's right to receive and/or examine a copy of the full annual report

**Must be distributed to plan participants within two months after 5500 filing deadline (including extensions, if applicable)**

- Can be distributed electronically – if safe harbor or written consent applies
- May be distributed with other plan communications

# **Reporting and Disclosure Deadlines**

# Filing Deadlines and Extensions

General Form 5500 Annual Filing Deadline	Last day of 7 <sup>th</sup> month following close of plan year
Form 5558 Extension	<ul style="list-style-type: none"><li>• Provides an additional 2-1/2 months to file Form 5500</li><li>• Extension application must be mailed to IRS, postmarked by general filing deadline</li></ul>
Automatic Extension	<ul style="list-style-type: none"><li>• May be used when ERISA plan year and sponsor's tax fiscal year are identical</li><li>• Plan sponsor must have filed for an extension to file corporate tax return(s)</li><li>• Filing deadline for 5500 is extended to tax filing deadline</li></ul>
Deadline to Distribute Summary Annual Reports	2 months after 5500 filing deadline, including any extensions
Disaster Relief	From time to time, the IRS will issue relief to taxpayers in natural disaster areas, that also extend to filing Form 5500
Deadline to file Form M-1	<p>Applies to MEWAs only</p> <ul style="list-style-type: none"><li>• Initial registration filing for new MEWA 30 days prior to operating in any state</li><li>• Within 30 days after other events (merger, expansion of operations to another state)</li><li>• Annual filing thereafter, by March 1 following the end of each calendar year in which MEWA operates</li><li>• No extensions available</li></ul>

# WHAT IS THE 5500 REPORTING DEADLINE?

ERISA Plan Year	General 5500 Filing Deadline*	SAR Deadline	Deadline with Extension**	Extended SAR Deadline
1/1-12/31	7/31	9/30	10/15	12/15
2/1-1/31	8/31	10/31	11/15	1/15
3/1-2/28	9/30	11/30	12/15	2/15
4/1-3/31	10/31	12/31	1/15	3/15
5/1-4/30	11/30	1/31	2/15	4/15
6/1-5/31	12/31	2/28	3/15	5/15
7/1-6/30	1/31	3/31	4/15	6/15
8/1-7/31	2/28	4/30	5/15	7/15
9/1-8/31	3/31	5/31	6/15	8/15
10/1-9/30	4/30	6/30	7/15	9/15
11/1-10/31	5/31	7/31	8/15	10/15
12/1-11/30	6/30	8/31	9/15	11/15

\*Deadline is next business day if date falls on a weekend or holiday

\*\*Extension applications must be mailed (postmarked) by General 5500 Filing Deadline



# 2021 IRS/EBSA 5500 DISASTER RELIEF EXTENSIONS

State	Region	Original Filing Deadline	Extended Filing Deadline	Extended SAR Deadline
Alabama	Entire state	3/25-8/2	8/2	10/2
Kentucky	43 counties	2/27-6/30	6/30	8/30
Louisiana	64 parishes	2/11-6/15	6/15	8/15
Oklahoma	Entire state	2/8-6/15	6/15	8/15
Tennessee	23 counties	3/25-8/2	8/2	10/2
Texas	Entire state	2/11-6/15	6/15	8/15
West Virginia	7 counties	2/27-6/30	6/30	8/30

Details and updates can be found on the [IRS Tax Relief website](#)

**Enforcement**

# Enforcement

## Civil penalties:

- DOL Penalties for failure to file Form 5500
  - Statutory maximum (worst-case) penalty = \$2,259 per day per late filing (no cap)
  - Late Filer Enforcement Penalty = \$50 per day per late filing
  - Non-Filer Enforcement Penalty = \$300 per day per late filing (up to \$30,000/year)
  - Delinquent Filer Voluntary Compliance Program (DFVCP) = \$10 per day per late filing (up to \$2,000 per late filing, \$4,000 for multiple years of late filings, per plan)
  - Rejected 5500s treated as not filed
- IRS Penalty for failure to file Form 5500 = \$25 per day (up to \$15,000) per filing (waived for DFVCP filers)
- DOL Penalty for failure to file Form M-1 = \$1,644 per day (applies to multiple employer and multiemployer plans only)
- Penalties are cumulative
- No statute of limitations

## Criminal penalties for intentional violations

- Up to \$100,000 for an individual
- Up to \$500,000 for an entity that is not an individual (e.g., plan sponsor)



# Correcting Filing Errors

# Mistake # 1 – Failure to file Form 5500/Late Filing

## Correction Options:

- Delinquent Filer Voluntary Compliance Program (DFVCP): retroactively file separate 5500s for each missed plan year, for each unique ERISA plan
  - May need to be corrected for several years and multiple benefits (plans)
    - Enforcement stopped if both of the following conditions are met:
      - 5500s must be filed for each plan and plan year for which the sponsor is subject to filing
      - Pay late filing fee under DFVCP (\$10/day/late filing, subject to per plan cap of \$2,000 per plan for a single late filing or \$4,000 for multiple years of late filings)
    - If not self-corrected, DOL may impose substantially greater late filing penalties (up to statutory limit - \$2,259/day/late filing or Late Filer Enforcement Program - \$50/day/late filing)
    - DFVCP not available if sponsors first receives DOL delinquent filing notice
- Reasonable cause: file missed 5500s with letter requesting penalty abatement
  - Requires existence of extreme extenuating circumstances
  - Riskier approach – if rejected, DOL can assess penalties under either penalty scheme

## Mistake # 2 – Failure to include Schedule A for all fully-insured policies under the ERISA wrap document

When a wrap exists, Schedule As must be attached to Form 5500 for all underlying fully-insured component benefits listed in the plan document

### **Correction:**

- Prepare amended return/report for the plan year(s) in question
- Add all missing attachments

No specific deadlines or statutory penalties for self-correction (amending a previously-filed 5500)

## Mistake # 3 – Incomplete or incorrect filings

- Incorrectly identifying plan type (i.e., single employer plan, multiple employer plan, multiemployer plan)
- Filing funded (trust) plan as unfunded, fully-insured, or combination, without required audit report or financial schedules
- Failing to provide listing of contributing entities for multiple employer plan
- Inaccurate M-1 disclosure for multiple employer plan
- Incorrect plan characteristics (coverage) codes

*...Can result in incomplete filing, which may result in penalties if uncorrected.*

### **Correction:**

- Prepare amended return/report for the plan year in question (plan sponsor must electronically sign)
- Add all missing attachments

No specific deadlines or statutory penalties for self-correction (amending a previously-filed 5500)

# Resources

# ERISA REPORTING AND DISCLOSURE RESOURCES

## Website

[www.efast.dol.gov](http://www.efast.dol.gov)

<https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-5500>

<https://www.irs.gov/newsroom/tax-relief-in-disaster-situations>

<https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/technical-releases/92-01>

<https://www.govinfo.gov/content/pkg/CFR-2005-title29-vol9/pdf/CFR-2005-title29-vol9-sec2520-104b-1.pdf>

## Information

- Login/register for EFAST2 user ID and PIN
- E-file Form 5500
- Search for previous filings

- Form 5500 sample forms, instructions
- FAQs
- Links to reporting and filing assistance

Information about tax relief in disaster situations

DOL technical release 92-01 (relief from trust requirements for unfunded plans)

ERISA electronic disclosure requirements

**Wrap Up**

# Continuing Education Credits

This Program, [Activity ID No. 560583](#), has been approved for 1.00 HR (General) recertification credit hours toward aPHR™, aPHRi™, PHR®, PHRca®, SPHR®, GPHR®, PHRi™, and SPHRi™ recertification through HR Certification Institute® (HRCI®).

*The use of this official seal confirms that this Activity has met HR Certification Institute's® (HRCI®) criteria for recertification credit pre-approval."*

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## Next Up:

- 8/26/2021** – ERISA: Fiduciary Obligations
- 9/23/2021** – Medicare: A Timeless Topic
- 10/28/2021** – The Hidden Intricacies of Benefit Notices
- 11/18/2021** – A Continuing Conversation About COBRA

*All scheduled webinars begin at 11 a.m. Central Time*



Thank you!



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