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# Form 5500 Guide June 2024

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## Introduction to Health and Welfare Form 5500

The Form 5500 Series is part of ERISA's overall reporting and disclosure requirements and is a compliance, research, and disclosure tool for the Department of Labor (DOL); a disclosure document for plan participants and beneficiaries; and 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. This guide focuses on the Form 5500 annual report that must be filed with the DOL that contains information about a company's health and welfare benefit plans (e.g., medical, dental, life). Retirement (or pension) plans are also separately subject to Form 5500 filing requirements, but those requirements are not discussed within this guide.

Form 5500 annual filings are [public records](#).

The [Form 5500, associated schedules, electronic filings requirements, and other assistance](#).

## Plans Required to File a Form 5500

Employers sponsoring plans that are subject to ERISA are generally required to file a Form 5500 with the DOL when their plan is unfunded and has 100 or more participants on the first day of a plan year.

### *Counting Plan Participants*

When determining whether a Form 5500 is required for an unfunded ERISA plan, it is only necessary to count enrolled employees and former employees, not spouses or dependents. The following are counted to determine whether a plan has 100 or more participants:

- Current employees covered by the plan on the first day of the plan year (i.e., enrolled in benefits);
- Former employees covered by the plan on the first day of the plan year (i.e., COBRA or retiree participants); and
- Former employees who were eligible to elect coverage COBRA on the first day of the plan year.

\*\*\* If there is a WRAP document bundling multiple benefits into a single ERISA plan, the count is based on the number of unique participants across all benefits considered to be part of the same ERISA plan.

A Form 5500 is required for any size ERISA plan that is funded or that is sponsored by a multiple employer welfare arrangement (MEWA).

- Funded Plans – Funded plans are those where the plan assets are held separately in a trust or VEBA. Most plans are unfunded, meaning plan costs are paid out of the employer's general assets. NOTE: Both fully insured and self-funded plans can be "unfunded", in which case a Form 5500 is not required if the participant count is less than 100.
- MEWAs – MEWAs are formed when unrelated entities share benefit plans. For example, benefits shared by entities without enough common ownership to form a controlled group under §414 (i.e., <80% common ownership), benefits shared by entities within an affiliated service group, or benefit plans covering non-employees such as independent contractors, owners, or board members. A Form 5500 and a Form M-1 are required annually for MEWAs unless there is 25% or more common ownership between the participating employers, or if the non-employees participating in the plan make up less than 1% of the covered plan participants.

## *Which Plans are Subject to ERISA?*

Form 5500 filing requirements only apply to plans that are subject to ERISA, but most plans offered by employers to their employees and family members are subject to ERISA. Examples of ERISA benefits include, but are not limited to:

- a medical plan,
- a dental or vision plan,
- a health reimbursement arrangement (HRA),
- a health flexible spending account (FSA),
- life insurance,
- an employee assistance program (EAP),
- a disease specific policy, and
- an onsite medical clinic.

Examples of non-ERISA benefits include, but are not limited to:

- a health savings account (HSA),
- a dependent care account plan (DCAP),
- a cafeteria plan, and
- tuition reimbursement.

Certain employers are exempt from ERISA regardless of what type of benefits they offer. Plans offered by government, tribal, or church employers are NOT subject to ERISA and thus do not have to file a Form 5500 for any of their plans.

In addition, there is a safe harbor for certain voluntary plans. Voluntary plans meeting the following requirements are NOT subject to ERISA and do not have to file a Form 5500:

- No employer contributions
- Participation must be voluntary; and
- Limited employer involvement (no employer endorsement).

Allowing premium payments on a pre-tax basis through the employer's cafeteria plan would be considered "employer involvement." In addition, most plans will fail the no endorsement requirement and thus are subject to ERISA.

Finally, certain so-called payroll practices are not considered ERISA plans even though they may provide a type of benefit that is normally subject to ERISA. Most commonly, vacation, sick leave, PTO, and holiday pay from an employer's general assets are not an ERISA plan (but would be if those benefits are paid from a trust). Likewise self-funded short-term disability plans paid from the employer's general assets are not ERISA plans (even though a fully insured STD plan would be subject to ERISA).

## Form 5500 Filing Due Date

The Form 5500 for an ERISA plan is due the last day of the seventh month after the end of the ERISA plan year, including short plan years. So, for a calendar year plan, the Form 5500 is generally due on July 31<sup>st</sup>. If the due date falls on a Saturday, Sunday, or legal holiday, the Form 5500 is due the next day that is not a Saturday, Sunday, or legal holiday.

An extension of up to 2 1/2 months is available for employers that request an extension using Form 5558 (Application for Extension of Time to File Certain Employee Plan Returns). Form 5558 must be filed with the IRS, not with the DOL. If Form 5558 is filed on or before the normal due date of the Form 5500, the extension request will be automatically granted; no approval is necessary. For a calendar-year plan, the 2 1/2-month extension will result in a Form 5500 due date of October 15<sup>th</sup>. More information about [Form 5558](#)

## Form 5500 Filing Method (Electronic Submission Required)

Form 5500s must be electronically filed and signed via EFAST2, the DOL's all-electronic, web-based system. Signers must register for filing credentials which will act as the signature. Many consultants, including insurance agents, CPAs, law offices and other vendors in this space can assist in preparing the Form 5500 filing.

Employers that choose to file their own Form 5500 using EFAST2 must choose between two Form 5500 filing methods. Filers can prepare and submit Form 5500s using the DOL's free ("no-frills") web application (called "IFILE").

[EFAST2 and IFILE Quick Start Guide - Steps for Filing a Form 5500 Series Return/Report \(dol.gov\)](#)

Alternatively, filers can use EFAST2-approved third-party software, which integrates with the EFAST2 system. The DOL maintains a list of [approved software and vendors](#).

Electronic filing details may change slightly from year to year. Consult the DOL's [EFAST2 filing webpage](#) for the most current information and general assistance.

*EFAST2 website credentials have changed to Login.gov.*

EBSA began moving EFAST2 users to a single sign-in solution at Login.gov to access federal government websites by ending the need for users to obtain unique EFAST2-issued credentials. Login.gov enables users to log-in securely to many government agencies' services with a single username and password. As of January 2024, EFAST2 users will need to login or register through <https://secure.login.gov>.

## Number of Form 5500s to File

Plan sponsors must consider how many ERISA plans have been established to determine how many Form 5500 filings are required. A Form 5500 is required for each ERISA plan. While the default rule is that each benefit with a separate insurance contract or plan document is considered a separate plan for ERISA purposes, the employer can control the number of ERISA plans through plan documentation.

### Plan Documentation (WRAP Documents)

A WRAP document is commonly used to bundle multiple benefits into a single ERISA plan; this is sometimes referred to as a mega-WRAP or umbrella document. So, for example, rather than treating the medical, dental, vision, life, disability, and health FSA as six separate ERISA plans (501, 502, 503, 504, 505 and 506), they could be bundled into a single ERISA plan (501). One of the advantages of bundling multiple benefits into a single ERISA plan via a WRAP document is that it simplifies annual Form 5500 filing requirements. When a WRAP document incorporates all benefits into one comprehensive plan, a single Form 5500 is required if there are at least 100 unique participants in the plan (however, all benefits under the plan must be listed in the filing regardless of the number of plan participants in each separate benefit). Without a WRAP document, separate Form 5500 filings will be required for each benefit with 100 or more participants at the beginning of the plan year.

## Employers Sharing Benefit Plans

If multiple employers participate in a single ERISA plan that is not a MEWA (employers within a §414 controlled group due to 80% or more common ownership), only one Form 5500 filing is required on behalf of the plan. The controlled member designated as the plan sponsor is responsible for filing the Form 5500 and each participating employer is not required to file a separate Form 5500.

On the other hand, when multiple employers participate in a MEWA, the number of Form 5500 filings will depend upon whether the ERISA plan exists at the MEWA level or whether each participating employer is considered to have established a separate ERISA plan. To determine whether an ERISA plan exists at the MEWA level, commonality of interest and control are considered. If both requirements are met, the plan is considered a single ERISA plan at the MEWA level. It is more common that each participating employer will be considered to sponsor its own ERISA plan and thus be required to file separate Form 5500s.

## Form 5500 Structure

The Form 5500 consists of the main body, in addition to various schedules and attachments that supplement the information contained within the main body.

### Form 5500 Main Body

All filings must include the Form 5500 main body. The three parts of the Form 5500 main body are described in the table below.

<b>Form 5500 Main Body Parts</b>	<b>Information Required</b>
<b>Part I</b>	Plan year, plan type (e.g., single employer plan), and filing type (e.g., first, final or amended filing).
<b>Part II</b>	<ul style="list-style-type: none"><li>• Plan name, number, and effective date.</li><li>• Plan sponsor name, EIN and contact information.</li><li>• Plan administrator's name, EIN and contact information.</li><li>• Counts for various participant groups at the beginning and ending of the plan year.</li><li>• Codes to indicate what type of benefits are offered by the plan.</li><li>• Plan funding details (e.g., insured, trust, general assets of the employer).</li><li>• Which schedules, if any, are attached.</li></ul>
<b>Part III</b>	Indicate whether the plan is a MEWA required to file a Form M-1.

The Form 5500 changes from year to year. The employer should use the version of the form for the year in which the plan year begins. For example, for a 2023 calendar year plan that is required to file a Form 5500 in 2024 (for the 2023 plan year), the 2023 Form 5500 should be used.

## Plan Numbers

A 3-digit plan number is assigned to each ERISA plan by the plan sponsor in the plan document. Plan numbers should start with 501 and then proceed sequentially (i.e., 501 for the first plan, 502 for the second, 503 for the third, etc.). However, if a plan is terminated, which would include folding a stand-alone plan into a larger ERISA plan via a WRAP document, the plan number associated with the terminated plan should be retired and not used again by that employer for future plans. Note that switching insurance carriers or TPAs or changing the details of the plan design (e.g., switching from a PPO to an HDHP) does not constitute terminating the plan and would not require a new plan number.

## Controlled Groups

In the case of a controlled group filing a Form 5500 for a plan covering the employees of multiple members of the controlled group, one member company should be selected as the plan sponsor/plan administrator whose name and EIN is used on the Form 5500. This choice should also be reflected in the plan documentation. It is common to choose the parent or holding company, but this is not required – any member of the controlled group can be chosen. If necessary, the plan sponsor's name and EIN can be changed from year-to-year using Line 4 of the Form 5500 main body.

## WRAP Plans

When completing the Form 5500 main body for a plan with a WRAP document that bundles multiple benefits into a single ERISA plan, the information reported should reflect the ERISA plan including all individual component benefits. For example, the participant counts should reflect the number of unique participants enrolled in any component benefit under the ERISA plan. So, an ERISA plan consisting of major medical and dental benefits with 25 participants enrolled in medical-only, 12 participants enrolled in dental-only, and 135 participants enrolled in both medical and dental would list 172 unique participants.

Likewise, the benefit type codes and plan funding details should reflect all component benefits. For example, a bundled ERISA plan consisting of an unfunded self-funded medical benefit, a fully insured dental benefit and a fully insured life insurance benefit would list codes 4A( health), 4B (life) and 4D (dental) under benefit types on Line 8b of the Form 5500 main body and would check both "Insurance" and "General assets of the sponsor" under plan funding details on Line 9 of the Form 5500 main body.

## Schedules

The Form 5500 structure includes many schedules to supplement the information reported in the Form 5500 main body. The required schedules will vary depending on plan type (e.g., health and welfare versus retirement) and plan funding (e.g., funded versus unfunded). Most health and welfare plans will only require the following schedules, if any:

- Schedule A (Insurance Information) – Required if any benefits under an employee benefit plan are provided by an insurance company or similar arrangement (i.e., fully insured plans).
- Schedule C (Service Provider Information) – Required if any service provider who rendered services to the plan received \$5,000 or more in compensation, directly or indirectly from the plan. However, a Schedule C is typically required only for funded plans (i.e., plan assets held in a separate account via trust or VEBA).
- Schedule H (Financial Information) - Typically required only for a funded welfare benefit plan (i.e., plan assets held in a separate account via a trust or VEBA).



## *Schedules for Fully Insured Plans*

Each fully insured plan must have a Schedule A attached to the Form 5500 main body. Most insurance companies automatically issue a Schedule A for benefit plans with over 100 participants. If the insurance company does not automatically furnish a Schedule A, it is the employer's responsibility to request one. Should the carrier fail to provide a Schedule A, the employer must still complete the Schedule A to the best of their ability and indicate that the carrier failed to provide the required information in Part IV, Lines 11 and 12 of the Schedule A.

### *Tips for Schedule As*

- In some cases, especially where multiple benefits are bundled into a single ERISA plan via a WRAP document, the contract or policy year for the fully insured benefit may differ from the ERISA plan year. For example, if the plan year is July 1, 2023 – June 30, 2024, and the insured benefit policy or contract year is a calendar year, use the Schedule A information for the policy or contract ending December 31, 2023.
- The main body of the Form 5500 asks for the number of covered "participants", which includes only covered employees and form employees (subscribers) and does not include spouses or dependents. By contrast, the Schedule A asks for the number of covered "persons," but the instructions do not define that term. Most people assume that the difference in language is intentional and "covered persons" means something different than "covered participants", which strongly suggests covered persons include all members. For this reason, along with the fact that the Form 5500 main body count may include all participants for various benefits bundled under the ERISA plan, it is common that the counts will differ between the Form 5500 main body and the Schedule A.

## *Schedules for Self-Funded Plans*

Unfunded, self-funded plans, including most self-funded major medical plans, HRAs, and health FSAs, typically do not have any schedules. An unfunded, self-funded plan would only file the Form 5500 main body. In the case of an ERISA plan that includes multiple benefits (due to use of a WRAP document), it is often not apparent that these component benefits exist just by reviewing the Form 5500, although data from these component benefits should be reflected in the participant counts, benefit types and funding sources reported on the Form 5500 main body.

NOTE: Many service providers receiving more than \$5,000 in compensation will automatically issue a Schedule C because they do not know whether the employer is required to file one. An unfunded plan is not required to file a Schedule C just because the service provider automatically issued one.

On the other hand, if a self-funded plan is funded, additional information must be reported via Schedule C and Schedule H. Funded plans required to file Schedule H must also typically include a statement from an independent qualified public accountant to accompany the Schedule H.

## *Potential Penalties for Failing to File Form 5500*

Penalties for failing to file Form 5500 include civil fines under ERISA §502(c)(1), which increase over time and can reach thousands of dollars per day. There are also civil penalties for late filings. These penalties cannot be contractually shifted to another party, except in very specific circumstances. The formal sanction imposed by the DOL for failure to timely file a required annual report is \$50/day calculated from the date the annual report was first delinquent. However, if the plan sponsor voluntarily files late using the Delinquent Filer Voluntary Compliance Program, the penalty can be greatly reduced. NOTE: A rejected Form 5500 is considered not filed until it is corrected by the plan administrator.



## Delinquent Filer Voluntary Compliance Program (DFVCP)

The Employee Benefits Security Administration (EBSA), a branch of the DOL, offers an amnesty program called the Delinquent Filer Voluntary Compliance Program (DFVCP) for late filers that voluntarily submit a late Form 5500. Penalty amounts under the program are significantly reduced to as little as \$10 per day, up to a maximum sanction of \$4,000 per plan, but the filing under the amnesty program must generally be initiated by the late filer, not by federal enforcement. More information about the [DFVCP and FAQs](#).

## Summary Annual Report (SAR)

For plans that file a Form 5500, a summary annual report (SAR) may be required to be distributed to plan participants. A SAR is a boiled-down summary of the Form 5500. The SAR generally contains information regarding funding and insurance information, basic financial information, a statement regarding rights to request a copy of the full annual report, and an offer of assistance in a non-English language. The DOL's [model template](#) for plan years beginning in 2023 or later.

### *Tips for the Summary Annual Report (SAR)*

- A SAR distribution is generally only required for fully insured plans that are required to file a Form 5500.
- Assuming the plan described in the SAR is not funded, the basic financial statement would not be included.

The SAR is generally required for any plan subject to Form 5500 filing, but there is an exception for self-funded plans without any segregation of assets in a trust or otherwise (unfunded). Therefore, most self-funded plans are not required to distribute a SAR. A self-funded plan is only required to distribute a SAR if the plan is funded.

The SAR must be provided annually within nine months after the plan year ends to plan participants at the time of the SAR distribution. If the plan administrator obtains an extension of time to file the Form 5500, the SAR must be furnished within two months after the end of the extension period. SAR distribution methods must comply with ERISA, which allows delivery by hand, mail, or electronically for those meeting the DOL's safe harbor for electronic delivery. A participant requesting a SAR who does not receive the SAR within 30 days of that request can be awarded up to \$110 per day until the SAR is provided.

## Miscellaneous Form 5500 Issues

### Short Plan Year

ERISA does not permit a plan year beyond 12 months. Therefore, to change a plan year, employers must run a short plan year. In addition, a short plan year may occur if a plan year is cut short. A Form 5500 is required for any short plan year just as it is for a full 12-month plan year.

That also means, for example, that if an insurance carrier offers an 18-month health insurance contract (or rate guarantee), then the contract consists of a regular 12-month plan year and a 6-month plan year. The employer can decide whether to run the short plan year before or after the regular 12-month plan year, but in either case a separate Form 5500 is due seven months after the end of each plan

year. The employer cannot wait until the end of the 18-month policy period and then file a single Form 5500 covering the entire 18-month period.

### Non-Calendar Year Plan

Employers may choose to have a plan year that does not coincide with the calendar year. For such plans, the Form 5500 is due the last day of the seventh month after the end of the ERISA plan year. So, for a September – August plan year, the Form 5500 would be due by March 31<sup>st</sup> (without the 2 ½ month extension).

Moreover, since the Form 5500 itself changes from year to year, the employer should use the version of the form for the year in which the plan year began, not the version for the year in which the Form 5500 is being filed. For example, the Form 5500 for an October 1, 2022 – September 2023 plan year would be due April 30, 2024 (seven months after the end of the plan year), and the 2022 version of the Form 5500 should be used.

### Terminated Plan and Plans Dropping Below 100 Participants

A “final” Form 5500 must be filed for a plan that has terminated. This includes a previous stand-alone plan that has been folded into a larger ERISA plan via use of a WRAP document. The final Form 5500 is generally due at the regular time following the end of the plan year. In some situations, this may be a short plan year (i.e., less than 12 months). A terminated plan files a final Form 5500 by checking Part I, Box B of the Form 5500 main body and otherwise completes the main body as normal.

#### *Determining Final Filing Due Date for a Terminated Plan*

The final plan year ends on the date on which all plan assets (if any) have been distributed, or the date on which no participants remain covered under the plan, whichever is later.

If a plan drops below 100 participants so that no Form 5500 will be filed in the following year, but the plan is not being terminated, Code 4R should be entered in the benefit type on Line 8b of the Form 5500 main body. If the plan later goes back above 100 participants and starts filing again, code 4S should be entered on Line 8 of the first renewed Form 5500.

### Amended Filing

An amended filing must be submitted as a complete replacement of the previously submitted filing. When filing an amended return, the entire form, with all required schedules and attachments, must be resubmitted through EFAST2. It is not possible to submit just the parts of the filing that are being amended.

### Mergers and Consolidations

The facts and circumstances in the merger or acquisition are important in determining Form 5500 filing requirements for affected ERISA plans.

- In some cases, the seller will terminate all ERISA plans and the acquired employees will move to the buyer’s plan(s). In such cases, the seller will be required to file a final Form 5500. The Form 5500 instructions provide that a final Form 5500 should be made for the plan year ending when all plan assets have been transferred to the control of another plan.
- In other cases, the buyer may adopt or takeover the seller’s plans rather than terminating them. In these situations, a plan termination does not occur, but instead, upon filing Form 5500s following the acquisition, the plan name, plan number, and plan sponsor information may need to be changed and should be indicated in Part II, Line 4 of the Form 5500 main body.
- Finally, there may be situations where separate ERISA plans are merged. In such situations, to avoid confusion, it may be desirable for both plans to be terminated and a new plan to be

established. The two plans being merged would each file a final Form 5500. The new plan would check the first time return box (Part 1, Box B of Form 5500 main body) on its first filing.

## Frequently Asked Questions

[If the insurance policy year is different than the ERISA plan year, what Schedule A information do I use?](#)

Use the Schedule A information for the policy or contract that ends during the ERISA plan year. For example, If the ERISA plan year is July 1, 2023 – June 30, 2024, and the insured benefit policy or contract year is calendar year, use the Schedule A information for the policy or contract ending December 31, 2023.

[Can I file one Form 5500 for multiple benefit plans?](#)

Maybe. An employer needs to have an umbrella (bundled, mega) WRAP document in place before various benefits can be filed together under a single Form 5500. If there is not a WRAP document bundling the benefits into a single ERISA plan, the default is to treat each benefit as a separate ERISA plan, in which case each plan would require a separate Form 5500 filing. To file benefits together without an appropriate WRAP document could result in some benefits being deemed not filed at all and delinquent.

[Is there a statute of limitations regarding missing Form 5500 filings?](#)

No. The DOL takes the position that there is no statute of limitations regarding missing Form 5500 filings. Technically, a Form 5500 must be filed for every year there is an ERISA plan subject to Form 5500 filing requirements, all the way back to when the reporting obligations began (1988) to be in full compliance. That being said, when delinquent filings are discovered and plan sponsors (employers) are determining how far back to file, it is common that employers will simply go back 3-5 years. For late filings, remember the DFVCP.

[If two employers are part of the same §414 controlled group due to common ownership and share a medical plan with >100 participants, but neither employer separately has over 100 participants, are they required to file a Form 5500?](#)

Yes. It doesn't matter for Form 5500 purposes how many employees a given participating employer may have, but rather how many participants are covered by the plan in question. In addition, in this scenario, a single Form 5500 is required for the shared ERISA plan; each employer does not submit a separate Form 5500. For such plans, either employer along with their EIN could be listed as the plan sponsor, but that information should generally be used consistently from one plan year to the next.

[Is a Form 5500 required for a stop-loss policy?](#)

Generally, no. A stop-loss policy is typically purchased by the employer, is in the employer's name, and the employer is paying the premiums. Even if stop-loss premiums are factored into employee contributions, total plan expenses generally far exceed the stop-loss premium. A rare exception could be if the plan documents clearly state that employee funds are used to pay for the stop-loss policy, or if employee contributions exceed total plan costs.

### Does a small, self-funded plan need to file a Form 5500?

Generally, no. Smaller ERISA plans (<100 participants) are not subject to Form 5500 filing requirements unless the plan is "funded", meaning the plan funds are segregated from the employer's general assets, typically via trust or VEBA. This is not common, especially for small plans; most often plan claims are simply paid out of the employer's general assets, in which case the plan is unfunded. On the other hand, if the plan is funded, a Form 5500 will need to be filed (no exception for small plans).

Be careful with level-funded plans. A level-funded plan is typically treated as a self-funded plan. The employer's monthly contribution paid to the TPA for a level-funded plan is not a premium, but rather employer funds that are held until needed to pay claims, stop-loss premiums, administration fees, etc. If the TPA holds those funds in an account in the employer's name, the plan should be treated as unfunded and no Form 5500 is required. But if the TPA holds those funds in an account in its own name or places the funds into a trust until needed, the plan might be considered funded, in which case a Form 5500 would be required even if the plan has <100 participants.

### Does my cafeteria plan have to file a Form 5500?

No. In 2002, the IRS indefinitely suspended the requirement that employers file an annual Schedule F and Form 5500 for fringe benefit plans (including cafeteria plans). This suspension did not affect other schedules or other information that employers subject to ERISA may have to include in the annual Form 5500 filing. For example, though an employer does not have to file anything for its cafeteria (pre-tax premium conversion) plan, it still may have to file a Form 5500 for a medical plan or health FSA that is run through the employer's cafeteria plan.

### Would a fully insured medical plan that pays consulting fees instead of commission need to include a Schedule C?

No. A Schedule C is used to report information about service providers paid by the plan, but Schedule C is only required if the plan is funded (meaning the assets of the plan are segregated from the general assets of the plan sponsor, generally by the use of a trust or VEBA). Therefore, since most plans are unfunded, most plans are exempt from filing a Schedule C.

### If I change companies or file for more than one company, do I need to register in efast2 under each company?

No. According to the DOL, it is not possible (or necessary) under EFAST2 for an individual who works for multiple companies to add each of the companies to the individual's profile. Although users provide employment information when registering, EFAST2 credentials are personal and not linked to a company or plan. Only one active registration is required, and credentials can be used to identify a registrant for multiple years and for multiple filings.