

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

Each year, pension and welfare benefit plans generally are required to file an annual return/report regarding their financial condition, investments, and operations. The annual reporting requirement is generally satisfied by filing the Form 5500 Annual Return/Report of Employee Benefit Plan and any required attachments.

The Department of Labor, Internal Revenue Service, and the Pension Benefit Guaranty Corporation jointly developed the Form 5500 series so employee benefit plans could utilize the Form 5500 to satisfy annual reporting requirements under Title I and Title IV of ERISA and under the Internal Revenue Code.

The Form 5500 Series is an important compliance, research, and disclosure tool for the Department of Labor, 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. The Form 5500 Series is part of ERISA's overall reporting and disclosure framework, which is intended to assure that employee benefit plans are operated and managed in accordance with certain prescribed standards and that participants and beneficiaries, as well as regulators, are provided or have access to sufficient information to protect the rights and benefits of participants and beneficiaries under employee benefit plans.<sup>1</sup>

### **Helpful Resources:**

Form 5500 and Form 5500 EZ: <http://www.dol.gov/EBSA/5500MAIN.HTML>

Form 5500 Instructions: <http://www.irs.gov/instructions/i5500/ar01.html>

2009 Form 5500 Revision: [http://www.dol.gov/ebsa/compliance\\_assistance.html#section5](http://www.dol.gov/ebsa/compliance_assistance.html#section5)

2009 Form 5500 Schedule C FAQ: [http://www.dol.gov/ebsa/faqs/faq\\_scheduleC.html](http://www.dol.gov/ebsa/faqs/faq_scheduleC.html)

Frequently Asked Questions about EFAST: [http://www.dol.gov/ebsa/faqs/faq\\_efast.html](http://www.dol.gov/ebsa/faqs/faq_efast.html)


IRS Form 5500 Corner: <http://www.irs.gov/retirement/article/0,,id=117588,00.html>

Form 5500 Filing Tips: <http://www.dol.gov/ebsa/form5500tips.html>

Reporting and disclosure guide for Employee Benefit Plans  
<http://www.dol.gov/ebsa/pdf/rdguide.pdf>

### **Frequently Asked Questions about Form 5500<sup>2</sup>**

***Am I required to file Form 5500?*** Under ERISA, the requirement to file an annual Form 5500 applies to all ERISA plans. Department of Labor Regulations exempt certain welfare plans from all or part of the Form 5500 reporting requirements. If you are a plan administrator for a retirement plan, defined benefit plan, welfare benefit plan, corporate pension and profit sharing plan, certain 403(b) plans or a 401(k) plan, generally you must file a Form 5500 each year. Generally, "any plan, fund, or program which is established or



maintained by an employer or employee organization for the purpose of providing certain benefits” to its employees, former employees or beneficiaries, subject to certain exceptions, are subject to ERISA (Form 5500 filing). “Small” plans and one-participant plans use the Form 5500-EZ.

Code § 6039D (d) (1) requires an employer to file an annual return for a cafeteria plan. However, in 2002, the IRS suspended this requirement, so employers with cafeteria plans no longer need to file an annual information return for the cafeteria plan since it is merely a funding vehicle and not itself an employee welfare benefit plan as defined by ERISA. An ERISA Form 5500 will be required for any component benefit plan that is an ERISA welfare plan (e.g., health FSAs, dental, long-term disability, AD&D, and group term life plans) unless an exemption applies. For example, there is an exemption from ERISA reporting for any component welfare benefit plans that are small (fewer than 100 participants at the beginning of the plan year) and unfunded, or small and fully insured or a combination of the two.<sup>3</sup>

For example assume that an employer maintains a small premium payment plan to pay their health insurance premiums with pre-tax dollars. All ten of the employer’s employees participate in the cafeteria plan and the underlying health insurance plan which is “fully insured.” Under this scenario, the employer does not need to file a 5500 or Schedule F for the cafeteria plan and no reporting is required for the health insurance plan, which is small and fully insured and exempt from the Form 5500 filing requirements. Assuming the same facts except that there are 250 employees who all participated in the cafeteria plan, then no Form 5500 is required for the cafeteria plan, but the employer must file a Form 5500 plus additional schedules to satisfy the ERISA reporting requirement.

### ***What health & welfare plans must file a form 5500?***

#### 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
- 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

***What qualifies as a small plan?*** Small plans cover 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.

***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.

***What is a small insured plan?*** A small insured plan also requires less than 100 covered participants. Additionally to be insured benefits must be paid only through insurance policies, premiums must be paid directly by the employer from general assets (no later than 3 months after being withheld or contributed) or partly from participant contributions, and insurance refunds that participants are entitled to must be refunded within three months.


***How many form 5500s do I need to file?*** For benefits provided by a single business entity, the number of forms to file depends on how many separate ERISA plans the plan sponsor is maintaining. Additionally, for benefits provided by a controlled group of businesses consideration must also 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 are free to combine more than one type of ERISA welfare benefits into a single plan for 5500 compliance purposes. The intention to combine benefits into a single plan should be reflected in the governing plan documents. If you file separate Form 5500s, there may be no need for a wrap-around document; because each plan would stand on its own and have a separate plan number (e.g. health insurance is plan #501, dental insurance is plan #502 etc.).

***What is the deadline for filing?*** The 5500 Report must generally be filed by the last day of the seventh month following the end of the plan year, unless an extension has been granted. For calendar year plans, the deadline is normally July 31<sup>st</sup> of the following year. Form 5500 or 5500-EZ must be filed with the Employee Benefits Security Administration (EBSA), not the IRS. Refer to the form instructions to determine the filing address for your form. You may want to mail your 5500 filing by certified or overnight delivery for proof of mailing. Refer to the IRS list of approved private delivery services in the instructions. Since the date of mailing is treated as the filing date, it is important to retain written proof of mailing in the event of a dispute.

***How can I obtain an extension for filing?*** Generally, you may request an extension by filing IRS Form 5558 by the unextended due date of your Form 5500. An extension of up to two and one-half months may be granted. You can request a copy of Form 5558 directly from the IRS. Plans eligible to file Form 5500-EZ are automatically granted an extension for filing Form 5500-EZ until the extended due date of the employer's Federal income tax return, provided certain conditions are met. Please refer to the IRS *Instructions for Form 5500-EZ* for details.

***When must I file the 5500 electronically?*** The Department of Labor has issued a final rule requiring all Form 5500s to be filed electronically for plan years beginning on or after January 1, 2009. Although the DOL will require electronic filing for the 2009 plan year, plan sponsors will not file for the 2009 plan year until 2010.

***Am I required to file if the plan was terminated during the prior year?*** Yes. If you terminated your plan last year, a final Form 5500 is generally due on the last day of the seventh month following the date of the plan termination, even if your aggregate plan assets were never greater than \$100,000.



**What is my plan number?** The employer assigns the plan number. The plan number should appear in the plan's SPD. 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. Once a plan number is used, it should always be used in connection with the plan and should not be used for any other plan even if the first plan is later terminated.

**If I have more than one qualified retirement plan, do I need to file a Form 5500 for each plan?** Yes, unless you are eligible to file Form 5500-EZ and the combined assets of all plans was \$100,000 or less at the end of every plan year beginning on or after January 1, 1994. If however, you have more than \$100,000 in plan assets, a separate Form 5500 or Form 5500-EZ should be filed for each plan.

**Whom do I contact if I have questions about completing Form 5500 or Form 5500-EZ?** For answers to your filing questions, please contact your tax advisor or the Employee Benefits Security Administration (EBSA) (1-866-463-3278).

**Do I report a deceased participant's plan assets on the IRS Form 5500?** A deceased participant's assets must be reported as an asset of the plan until those assets are distributed from the plan to a beneficiary.

**What is the Delinquent Filer Voluntary Compliance Program (DFVC)?** In an effort to encourage pension and welfare plan administrators to file overdue annual reports, the EBSA is providing plan administrators with the opportunity to pay reduced civil penalties for voluntarily complying with the annual reporting requirements. Plan administrators are eligible to pay reduced civil penalties under the program if the required filings under the DFVC Program are made prior to the date on which the administrator is notified in writing by the Department of Labor of a failure to file a timely annual report under Title I of ERISA. See [www.dol.gov](http://www.dol.gov) for more information about DFVC.

**What is a CP213 Notice?** The CP 213 Notice is sent to notify filers of a "proposed" IRS penalty due to a late or incomplete Form 5500 or Form 5500-EZ return. See <http://www.irs.gov/retirement/article/0,,id=112128,00.html> for frequently asked questions about the CP 213 Notice.

---

<sup>1</sup> Department of Labor [www.dol.gov/ebsa](http://www.dol.gov/ebsa).

<sup>2</sup>[www.fidelity.com](http://www.fidelity.com)

<sup>3</sup> DOL Reg. § 2520

This article is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice or tax advice. Readers should contact legal and financial counsel for legal and financial advice.

Content copyright © 2009 Zywave, Inc. Images copyright © Getty Images, Inc. All rights reserved.