

FORM 5500 FILING REQUIREMENTS FOR EMPLOYEE WELFARE PLANS

What Plans are Subject to ERISA Reporting Requirements?

The following welfare benefit plans are subject to ERISA reporting requirements:

- Welfare plans with 100 or more participants at the beginning of the plan year
- "Funded" plans of any size

A plan is "funded" when its benefits are paid from a trust or plan account, not through insurance or the general assets of the employer.

A welfare plan is any employer-sponsored plan or program that offers any of the following benefits:

- Medical, surgical or hospital care
- Benefits in the event of sickness, accident, death, or unemployment
- Vacation benefits, if funded
- Apprenticeship or other training programs (but not educational assistance or tuition reimbursement programs)
- Day care centers (but not dependent care assistance programs)
- Scholarship funds
- Pre-paid legal services

The following plans are exempt from filing a Form 5500:

- Plans required by state law, such as workers' compensation, unemployment compensation or disability insurance
- Plans solely for an individual or an individual and his or her spouse who wholly owns a trade or business
- Plans solely for partners in a partnership
- Government plans
- Church plans under ERISA § 3(33)
- Unfunded or insured welfare plan for a select group of management or highly compensated employees
- Apprenticeship or training programs that have filed appropriate notice with the Department of Labor
- Plans maintained and administered outside the United States, primarily for the benefit of nonresident aliens
- Unfunded welfare benefit plans financed by dues and maintained by an ERISA § 3(4) employee organization (e.g., a labor union)
- A plan that participates in a group insurance arrangement that files a Form 5500 on behalf of the plan

Section 125 Filing Requirements

There are currently no IRS welfare plan annual report requirements. Internal Revenue Code Section 6039D requires all cafeteria plans (Section 125), educational assistance plans (Section 127), and adoption assistance plans (Section 137) to annually file a Form 5500 with a Schedule F. There is no exception for plans with less than 100 participants. However, the IRS has now suspended this requirement for all past and future filings until further notice. A Section 125 cafeteria plan must now file a Form 5500 only if it is

otherwise required to do so under the ERISA reporting requirements, i.e., it contains a health flexible spending account ("FSA") that has 100 or more participants or is funded.

What Must Employers Send to the Government?

Form 5500 and relevant Schedules are filed with the Department of Labor's Pension and Welfare Benefit Administration ("PWBA") at the address indicated in the 5500 instructions.

When Must a Form 5500 be filed?

Form 5500 and relevant Schedules must be filed for each plan year by the last day of the seventh month after the close of the plan year. For a calendar year plan, the plan administrator would need to file by July 31 of the following year.

A plan may receive a one-time filing extension of up to 2 ½ months by filing a Form 5558 with the IRS before the normal due date (not including extensions) of the Form 5500. Approved copies of the Form 5558 will not be returned to the filer, but a photocopy of the Form 5558 that was filed must be attached to the Form 5500.

Large Welfare Benefit Plan Filing Requirements (more than 100 Participants)

Welfare benefit plan filers must complete the Form 5500 and unless otherwise specified, attach the following schedules and information:

1. Schedule A (as many as needed), to report insurance and investment contracts held by the plan.
2. Schedule C, if applicable, to list service providers and any terminated accountants or actuaries.
3. Schedule H, to report financial information, unless exempt.

Wrap-Around Plan

A "wrap-around plan" containing both health benefits and other welfare benefits only needs to file one Form 5500. If a plan administrator has filed separate 5500's in the past and is now combining all benefits into one wrap-around welfare plan, the plan administrator must file a 5500 that is designated as the final return for each separate plan being consolidated. In addition, a Form 5500 must be filed for the consolidated wrap-around plan.