



Form 5500 Annual Return/Report Of Employee Benefit Plan

March 7, 2012

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

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.

Under ERISA, the requirement to file an annual Form 5500 applies to all ERISA plans. Department of Labor Regulations exempt certain welfare plans (less than 100 participants) from all or part of the Form 5500 reporting requirements. 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.

Frequently asked questions about the Form 5500:

What health & welfare plans must file a form 5500?

- Large funded plans
- Large unfunded plans
- Large insured plans
- Large combination unfunded/insured plans
- Small funded plans (benefits paid from plan assets in whole or in part funded with employee contributions not accepted through cafeteria plan)

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 becomes 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.

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. 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, such as a wrap-around document. 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 31st of the following year. Form 5500 must be filed with the Employee Benefits Security Administration (EBSA), not the IRS. Effective with 2009 plan years, all Forms 5500, including required schedules, must be filed electronically using the DOL's EFAST2 electronic filing system.

How can I obtain an extension for filing? Generally, you may request a one-time 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. If the Form 5558 is filed on or before the normal due date of the Form 5500, the extension is automatically granted.

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.

What are the penalties for not complying with the Form 5500 requirements? The DOL and IRS can assess penalties for noncompliance with the annual reporting requirements, including submitting incomplete Forms 5500 or not filing by the due date. For example, the DOL has the authority under ERISA to assess penalties of up to \$1,100 per day for each day an administrator fails or refuses to file a complete Form 5500. The penalties may be waived if the noncompliance was due to reasonable cause.

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

What is the Delinquent Filer Voluntary Compliance Program (DFVC)? 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. The DOL maintains an online calculator to assist filers in determining the applicable penalty amount, which can be found at www.dol.gov/ebsa/calculator/dfvcmain.html. Additional information regarding the DFVCP can be found at www.dol.gov/ebsa/Newsroom/0302fact_sheet.html and www.dol.gov/ebsa/FAQs/faq_DFVC.html

Where can I get additional information about Form 5500? The DOL has many helpful resources which can be found at:

www.dol.gov/EBSA/5500MAIN.HTML
www.efast.dol.gov/welcome.html
www.dol.gov/ebsa/form5500tips.html

Also, feel free to contact your Lawley Benefits Group Consultant to inquire on how we can help you comply with these filing requirements.

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