

5500 Filings for Health and Welfare Plans – The Forgotten Filing

Employers who maintain a retirement plan for their employees are very familiar with the requirement to file an IRS Form 5500 and associated schedules each year. However, many employers are unaware that they may also have a 5500 requirement for their health and welfare plans, possibly including health, dental, vision, life insurance, short-term and long-term disability, and health FSA plans. The rules surrounding 5500 filings for health and welfare plans have changed a bit over the years, and remain somewhat confusing for most employers.

Filing Exceptions

5500's and associated schedules are due by the last day of the seventh month following the end of the plan year (e.g. July 31st for a calendar plan year). There are a number of exceptions to this filing requirement. We've highlighted the most common below:

1. A given health and welfare plan has fewer than 100 participants on the first day of the plan year and is “unfunded, fully insured or a combination of insured and unfunded”

- a. “Unfunded” means that plan benefits are paid from the general assets of the employer
 - b. “Funded” means that the plan benefits are fully insured, including paid from a trust
2. Health and welfare plan(s) sponsored by a governmental employer
 3. Health and welfare plan(s) sponsored by a church

The exception for plans with fewer than 100 participants is probably the item that catches most employers off-guard. An employer may have more than 100 employees, but no more than 100 participants in a given health and welfare plan. An employer may have been under 100 participants for many years, and through growth or consolidation of plans may now find itself above 100 participants. Employers in the neighborhood of 100 participants or employees should be especially mindful of the number of participants in each applicable health and welfare plan.

The second area that seems to trip up employers is that any plan that is self-funded (but not paid exclusively from the general assets of the employer) does not get the benefit of the “over 100 participant” exception, and must file a 5500 form.

Plan sponsors should also note that if there are more than 100 participants in a plan there is also an audit requirement, and the audit must accompany the 5500 filing.

5500 and Schedule A Information

For each applicable health and welfare plan, the employer should receive information from the insurance carrier or TPA with the necessary information to complete a Schedule A for that plan. The information includes items such as the insurer's name, address, and IRS information, as well as premiums and/or claims paid, and commissions paid to the insurance agents. Some carriers initiate this communication on their own, and others wait for a request of the information. It is the employer's ultimate responsibility to ensure that the applicable information is received, however.

Together or Separate?

Once the Schedule A information is gathered, an employer must decide whether to file a 5500 for each applicable benefit and Schedule A or submit a single filing under a "wrap plan". A wrap plan document can, and often is, a stand-alone document incorporating all applicable benefits into a single plan document, often solely for the purposes of a single 5500 filing. However, if designed correctly, a Section 125 or Flexible

Benefit/Cafeteria Plan, may include language to "wrap" the included benefits for 5500 purposes. Obviously, a single 5500 filing is less cumbersome to prepare and submit, and is usually less costly to the employer as well.

Uh-Oh!

So, what do you do when you find that you haven't been filing and should have been or that you missed a year (or two or three)? The DOL offers a Delinquent Filer Voluntary Compliance Program (the DFVCP) to assist employers in becoming compliant on their own, as long as the employer applies for the program before an IRS or DOL audit is initiated. For a fee of \$2,000 (\$750 for "small plans") per year and capped at \$4,000 per plan (wrapped or individual), an employer can avoid the penalties and fines that the DOL would otherwise assess if they discovered the missing filings instead. While \$4,000 isn't insignificant, it is significantly less than what a DOL decision would end up costing. Employers could be fined up to \$1,100 for each day they fail or refuse to file a complete report, subject to certain maximum penalty amounts or imprisonment (or both).

Who Prepares the 5500?

A few years ago, electronic submissions of the 5500 became mandatory under the EFAST-2 program, and it has become increasingly

difficult for an employer to prepare their own 5500 filing. Many consultants (like Kushner & Company), agents, CPA's and law offices can assist in preparing the 5500 filing. It is important to note, however, that the sole responsibility for the filing falls on the employer.

While the filing deadline is the last day of the seventh month after the end of the plan year,

there is an automatic extension of 2- 1/2 months that can be applied for prior to the initial deadline. You should reach out to your service providers well in advance of the deadline to ensure adequate time to gather all applicable data and prepare the filing.

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