



Understanding the Basics of Health and Welfare Form 5500: The Who, What, Why, When, Where and How

Presented by:

Lynda Taylor and Ann McAdam
Wrangle, LLC

June 2016

The information herein should not be construed as legal or tax advice in any way. Regulations, guidance and legal opinions continue to change. The preparer has gathered public information and has attempted to present it in an easily readable and understandable format. Situations vary, technical corrections and future guidance may vary from what is discussed in the presentation.

This is meant for informational content only. The presenter makes no warranty of any kind concerning this information. You should seek the advice of your attorney or tax consultant for additional or specific information.

This presentation is not to be duplicated or distributed.

TODAY'S PRESENTERS



Lynda Taylor, COO, Wrangle, LLC

Since 2009, Lynda's sole focus has been on ERISA reporting compliance with the Health and Welfare Form 5500s at Wrangle. Coupling this focus along with her previous experiences with business administration, national sales management and customer service, she developed a dynamic proprietary system that promises consistency and dependability for each of the 10,000+ Form 5500 reports generated by Wrangle each year. She currently serves as Wrangle, LLC's Chief Operating Officer.



Ann McAdam, Technical Consultant, Wrangle, LLC

Ann developed her appreciation for ERISA Compliance starting back in 2002 when she began her career in the employee benefits department at a brokerage firm. In 2007, she gravitated away from the client renewal focus and worked strictly on compliance for the brokerage, training employees and clients as well as managing the 5500 process for all clients. In 2014 she joined Wrangle and became their Technical Consultant.

Why Learn about Health and Welfare Form 5500s?



As a Benefit Professional, your clients typically lean on you to assist on compliance particularly Form 5500 reporting.

The DOL and IRS know many are not upholding the ERISA Reporting and Disclosure provisions.

As a result:

- In FY 2015, EBSA recovered \$ 696.3 million for direct payment to plans, participants and beneficiaries. Funds were collected in various ways such as:
 1. Audits - 67.2% resulting in monetary results for plans or other corrective action
 2. Expensive Penalties:
 - Under ERISA section 502(c)(2), the Secretary of Labor may assess civil penalties of up to \$1,100 per day against a plan administrator who fails or refuses to file a complete and timely Form 5500.

Learning Outcomes

- Develop a firm grasp of the basics: the Who, What, When, Where, Why of the 5500
- Be in-tune with the specific attributes of the 5500 such as the reporting rules of the Schedule As
- Understand the principles of amending the 5500 and know what to do for delinquent filings
- Know what to do if the IRS or DOL corresponds with the Client



AGENDA

Part 1: The Basics

Part 2: Specific Attributes of the 5500

Part 3: Amendments and DFVC Program

Part 4: Hearing from the IRS/DOL

Part 1: The Basics

Where To Begin?



1. The Employer decides to provide benefits to its employees.
2. The Employer establishes a benefit plan -
 - The Employer is now subject to ERISA
 - The Employer is to be deemed as the Plan Sponsor of the ERISA Plan
 - ERISA's definition of a Welfare Benefits Plan can be distilled into the following three basic elements:
 - there must be a plan, fund or program
 - that is established or maintained by an employer
 - for the purpose of providing benefits to participants and beneficiaries

Where To Begin, cont.?



3. The ERISA Plan must be described in a written “Plan Document.”
 - If just the terms of the benefits are provided, this is called a Summary Plan Description (SPD)
 - When all of the ERISA-required elements are “wrapped” around the insurance SPD, this document is called the Wrap SPD
 - And if the Employer bundles the Wrap SPD to multiple benefits, then the wrapping of ERISA provisions under one Plan creates the Mega-Wrap SPD document
4. If a Form 5500 is to be prepared, it is to reflect the same benefit(s) found in the ERISA Plan Document

Definitions of “Participants”



Term	Definition
<i>Active Participant</i>	Active employee (subscriber)
<i>Eligible participant</i>	Benefit only used when specific circumstances are in motion. An Example on where applied: Severance Plans
<i>100+ Participants</i>	Active enrolled EE counts + Active enrolled COBRA + Active enrolled Retiree counts, if applicable

Basic Definitions:

- ❑ “Plan” Year -
 - Wrangle uses “Plan” for the ERISA Plan Year
- ❑ “Policy” Period is the timeframe for the individual policy dates
 - ERISA Plan Year: January 1 –December 31
 - Policy Period:
 - ✓ Anthem Medical: January 1-December 31
 - ✓ Kaiser Medical: July 1 – June 30



More to come on Policy periods within an ERISA Plan
later in the presentation

Why Complete a Form 5500?

- ❑ Under Title I of ERISA, Plan Sponsor's Health and Welfare Plans are to meet reporting and disclosure provisions:
 - Reporting Requirement: Form 5500
 - Disclosure Requirement: Summary Annual Report (SAR)

Plans To File*	Plans Exempt from Filing*
Entities that provide Health and Welfare Plans (unfunded) covering 100+ participants on the first day of the Plan year: Examples - <ul style="list-style-type: none">• Private Corporations• Non-Profits• Private and Charter schools	Entities that provide Health and Welfare Plans (unfunded) covering less than 100 participants on the first day of the Plan year
All Trusts (funded or partially funded plans)	Governmental (including Tribal Govt.)
All Multiple Employer Welfare Arrangements (MEWAs)	Church

Key Note on Plans to File vs Not File

Grey Areas of ERISA

- ❑ Some types of entities can be tricky to determine if under ERISA such as:
 - Charter Schools
 - Church Plans
- ❑ All attributes including the state laws and the Plan Sponsor's internal structure need to be evaluated.
- ❑ Deciding if the 5500 is to be filed under ERISA may need the assistance of an ERISA attorney.

5500 Participant:

5	Total number of participants at the beginning of the plan year	5	
6	Number of participants as of the end of the plan year unless otherwise stated (welfare plans complete only lines 6a(1), 6a(2), 6b, 6c, and 6d).		
a(1)	Total number of active participants at the beginning of the plan year	6a(1)	
a(2)	Total number of active participants at the end of the plan year	6a(2)	
b	Retired or separated participants receiving benefits	6b	
c	Other retired or separated participants entitled to future benefits	6c	
d	Subtotal. Add lines 6a(2), 6b, and 6c.	6d	

Here are the count lines on the 5500 and what they represent:

- ❑ Line 5 Enrolled (active) Employees + COBRA/ex-employees + Retirees (if applicable) as of the first day of the ERISA Plan Year (EPY)
- ❑ Line 6a1 Enrolled (active) Employees [excluding COBRA/ex-employees and Retirees (if applicable)] as of the first day of the EPY
- ❑ Line 6a2 Enrolled Employees (excluding COBRA/ex-employees and Retirees) as of the last day of the EPY
- ❑ Line 6b Enrolled COBRA/ex-employees and Retirees as of the last day of the EPY
- ❑ Line 6c Those entitled to enroll in future COBRA/Retiree benefits but has not yet elected to do so on the last day of the EPY

When is the Annual Form 5500 Due?



- ❑ Due 7 months after the end of the H&W Plan year
- ❑ Example:
 - H&W Plan Year: January 1, 2015 - December 31, 2015
 - Take the December 31st date and add 7 months
 - Due : July 31, 2016
- ❑ There is a one time extension option available

Extensions

Form 5558 (Rev. January 2008) Department of the Treasury Internal Revenue Service	Application for Extension of Time To File Certain Employee Plan Returns ► For Privacy Act and Paperwork Reduction Act Notice, see Instructions on page 3.	OMB No. 1545-0212 File With IRS Only
---	---	--

- ☐ One-time Extension option for an additional 2 ½ months:
 - Form to use: Form 5558
 - Postmarked on or before original due date
 - No signatures required
 - Best practice is to mail the extension form via certified return receipt mail.

DOL Acknowledgement ID

- ☐ Provided by the DOL at E-filing
- ☐ Store with the hard copy of the manually signed 5500 (Plan Sponsors are required to keep this per ERISA law)
- ☐ DOL Acknowledgement ID is the only proof of e-filing date for the Plan Sponsor

Data Typically Found on DOL's EBSA Website:
www.efast.dol.gov

EIN	Plan # (PN)	Received	Acknowledgment ID	Plan Name	Plan End Date
94-1234567	501	10-06-2015	20151006126798P040 026774829023	ABC Co. Health and Welfare Benefit Plan	12-31-2014

Part 2:

Specific Attributes of the Form 5500

Benefits Not Subject to ERISA and 5500s

- ☐ Section 125 Premium Only Plan
- ☐ Dependent daycare
- ☐ Transportation assistance
- ☐ Most short-term state mandated disability plans
- ☐ Most HSAs
- ☐ Virtually all educational assistance plans and vacation plans



Overlooked Benefits Subject to ERISA and 5500s



- ☐ Health care FSAs and HRAs
- ☐ Employee Assistance Program (EAP)
- ☐ Business travel accident (BTA)
- ☐ Pre-paid legal
- ☐ Long term care (LTC)
- ☐ Plans covering Participants in the US Territories:
American Samoa, Marianas, Guam, Puerto Rico & U.S.
Virgin Islands
- ☐ Smoking cessation
- ☐ International policies
- ☐ Formal severance plans
- ☐ Voluntary benefits (such as: disability coverage, Life,
Cancer and Hospitalization)
- ☐ Telehealth

Are Voluntary Benefits Reported on the 5500?

- ❑ If the voluntary benefit falls under medical, life, STD, LTD or AD&D, the Plan Sponsors are encouraged to:
 - Apply the established codes on the 5500 (rather than use 4Q)
 - Check off the descriptions/boxes on the Schedule A
- ❑ “Voluntary Benefit” would be listed under “Other” on page four of the Schedule A if a specific type of benefit was not checked

1 Enter the total number of employers obligated to contribute

8a If the plan provides pension benefits, enter the applicable

b If the plan provides welfare benefits, enter the applicable

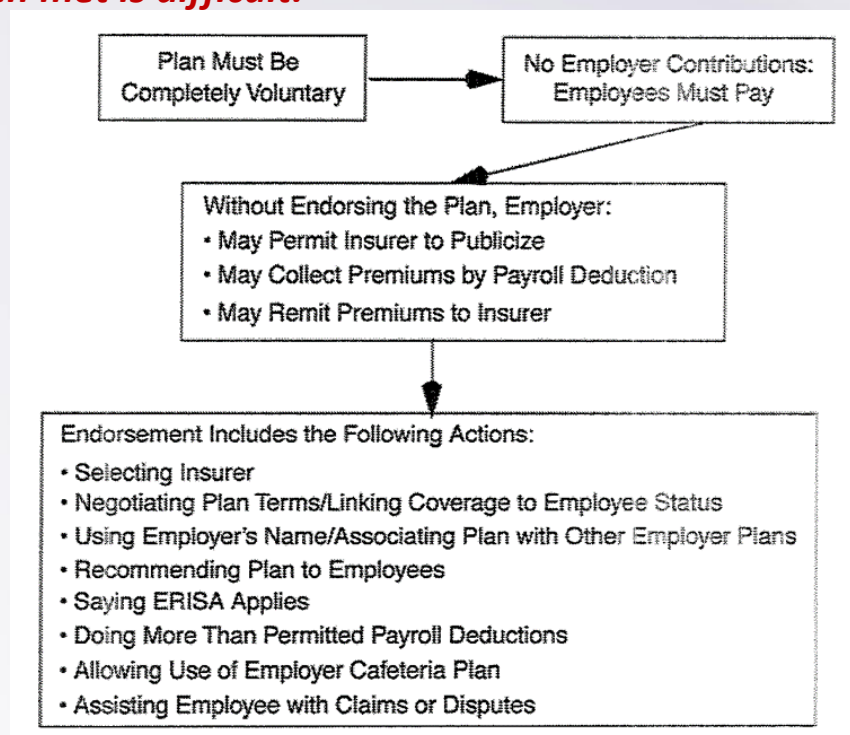
4A 4B 4D 4E 4H 4I 4L 4Q

9a Plan funding arrangement (check all that apply)

Part III Welfare Benefit Contract Information			
If more than one contract covers the same group of employees of the same employer(s) or members of the same employee organizations(s), the information may be combined for reporting purposes if such contracts are experience-rated as a unit. Where contracts cover individual employees, the entire group of such individual contracts with each carrier may be treated as a unit for purposes of this report.			
8 Benefit and contract type (check all applicable boxes)			
a <input checked="" type="checkbox"/> Health (other than dental or vision)	b <input type="checkbox"/> Dental	c <input type="checkbox"/> Vision	d <input type="checkbox"/> Life insurance
e <input type="checkbox"/> Temporary disability (accident and sickness)	f <input type="checkbox"/> Long-term disability	g <input type="checkbox"/> Supplemental unemployment	h <input checked="" type="checkbox"/> Prescription drug
i <input type="checkbox"/> Stop loss (large deductible)	j <input checked="" type="checkbox"/> HMO contract	k <input type="checkbox"/> PPO contract	l <input type="checkbox"/> Indemnity contract
m <input type="checkbox"/> Other (specify)			

Safe Harbor Guidelines for Voluntary Plans

- DOL regulations provide an avenue where ERISA does not apply to voluntary insurance arrangements meeting specified requirements
 - *Deciding if safe harbor has been met is difficult.*



Schedule A Reporting Rules



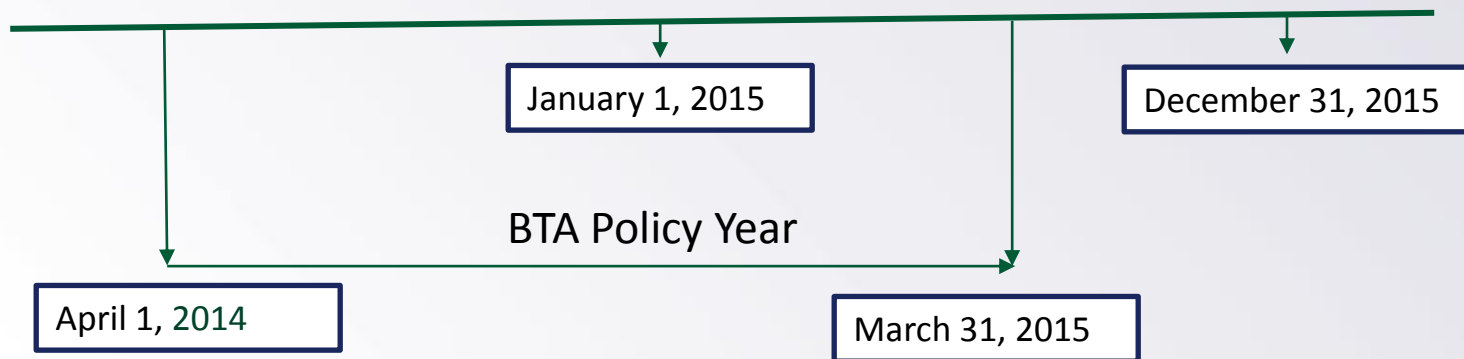
- ❑ There are four basic rules, per the Form 5500 Instructions:
 1. The Schedule A must be reported on the true policy period
 2. The Schedule A can't be for more than 12 months
 3. Form 5500 Schedules are not required for self-funded and unfunded benefits, except when the filer is a Trust Plan
 4. The policy ending date must fall within the ERISA Plan year to be reported in that Form 5500.
 - The Schedule A policy period may need to start prior to fit within the ERISA Plan year

Schedule A Reporting Rules

- ❑ In order for the ending date to fall within the ERISA Plan year (EPY), the Schedule A may need to start prior to the EPY to be reported in the 5500.

For an example:

- ERISA Plan Year: January 1, 2015 – December 31, 2015
- BTA Policy Year: April 1 – March 31



Schedule A Covered Person Counts

- ❑ Best Practice: Report all Covered Persons- Employee and Dependents as provided by the carrier on the Schedule A
- ❑ EE-only is ok if carrier only tracks/reports the subscriber

- The carrier is obligated to provide covered person data because it is required to be used in the report
- Under the Form 5500 Rules, the Form 5500 Schedule A must identify what information the carrier did not provide under Part IV

Part IV	Provision of Information
11	Did the insurance company fail to provide any information necessary to complete Schedule A? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
12	If the answer to line 11 is "Yes," specify the information not provided. ▶ r r r r

Types of Funding for ERISA Plan

Funded Plan

- Payment of benefits comes from Plan Assets.



Unfunded Plan

- Pays benefits *solely* from employer general assets and does not accept participant contribution.

Fully-Insured

- Pays benefits through insurance, not including stop-loss insurance.

Self-Insured

- Pays the Carrier just Administrative service only (ASO) fees from general assets.
The employer pays for the claims.

Certain plans with participant contributions will be deemed to be unfunded if they satisfy the conditions of the DOL non-enforcement policy in Technical Release 92-01.

Self-Funded Benefits

- ❑ Self Funded benefits do not file Schedule A
- ❑ The DOL will know there are self-funded benefits by reviewing page two of the 5500:
 - Benefit codes are used
 - General Assets are checked

8a If the plan provides pension benefits, enter the applicable pension feature codes from the List of Plan Characteristics Codes in the instructions:	
b If the plan provides welfare benefits, enter the applicable welfare feature codes from the List of Plan Characteristics Codes in the instructions:	
9a Plan funding arrangement (check all that apply)	9b Plan benefit arrangement (check all that apply)
(1) <input type="checkbox"/> Insurance	(1) <input type="checkbox"/> Insurance
(2) <input type="checkbox"/> Code section 412(e)(3) insurance contracts	(2) <input type="checkbox"/> Code section 412(e)(3) insurance contracts
(3) <input type="checkbox"/> Trust	(3) <input type="checkbox"/> Trust
(4) <input checked="" type="checkbox"/> General assets of the sponsor	(4) <input checked="" type="checkbox"/> General assets of the sponsor

Special Note: Some Carriers serving as the self funded benefit's TPA send a Schedule C. Schedule C is only to be used if the ERISA Plan is under a Trust

See next slide for more details on Schedule Cs

Plans Under a Trust Can Include a Schedule C

Schedule A vs Schedule C

Schedule A	Schedule C
For Fully-Insured (premium-based) insurance policies.	Only to report fees paid out of trust fund assets to entities for services provided to the Plan.
Includes the total premiums within policy period plus participants (covered persons).	Includes the fees paid out of the trust's plan assets to service providers for legal, marketing, etc.
Commissions, bonus or other sources of revenue from the Carrier to Broker are to be noted.	Broker's commissions are not reportable on a Schedule C. However if the broker's fees were paid out of trust fund assets, then those would be reported on the Schedule C.
Schedule A for stop loss policy is to be included for a trust ERISA Plan.	N/A
DOL requires the name & address of Broker(s) – if applicable.	DOL requires Service Provider(s) and their EIN number.

Part 3:

Amendments & DFVC

Amendments

~~INCORRECT~~



- ☐ For the DOL, amendments are available to correct.
- ☐ The whole 5500 report is re-e-filed.
- ☐ The previous report remains on the DOL website. It cannot be deleted. The DOL will look at the most current filing
- ☐ They are a common place occurrence with e-filing because:
 - No penalties are imposed by the DOL
 - They do not raise a red flag with the DOL
 - Method provided by the DOL to allow the Plan Sponsor to accurately report required information

Amendments

❑ They are recommended for any of the following situations:

1. The original 5500 omitted a benefit or policy
2. The original 5500 did not report a policy through its termination date and therefore created a gap in benefit reporting
3. The carrier updated a Schedule A with revised premium(s) and/or commission(s) at 10%+ higher than what was originally reported
4. The Plan Sponsor's critical information was incorrect
5. The original 5500 should have been noted as a short, final, first or 4R filing

DFVC Filings

- ☐ The DOL requires that the Plan Sponsor file all delinquent years back to 1988 or when the enrolled participant (employee + ex-employee/COBRA) count first hit 100 or more on the first day of the ERISA Plan Year
- ☐ The DOL can more easily find delinquencies due to mandatory e-filing
- ☐ Money maker for the DOL – receiving millions of dollars through penalty assessment
- ☐ Penalty Calculation
 - \$10 per day (Day 1 – Day 199)
 - One year late – capped at \$2,000 per plan (Day 200)
 - Multiple years late – capped at \$4,000 per plan



Part 4:

Hearing from the

IRS/DOL

IRS/DOL Letters

- ☐ May send out incorrect letters
 - False Extension Denials
 - False Penalty Letters
 - Wrong Plan Numbers
- ☐ 10-Business-Day-Action Letters
 - Do not ignore these!
 - Encourage clients to send these to you/us immediately
 - Last known letters are comparing pension filings to health and welfare filings. If the H&W Form 5500 wasn't there, the Plan Sponsor is to receive a letter with 10 business days to respond/act.
 - Another common search is for plans in one year, but failed to file the next year



What Could Be Coming Down the Road?



DOL has reported the following to be released in 2017:

- To modernize and improve the Form 5500
 - Modernizing the financial and other annual reporting requirements on the Form 5500
 - Making the investment and other information on the Form 5500 more data mineable
- ❖ Wrangle surmises more changes to come to enhance the responsibilities for both the fiduciaries and service providers .

Per the EBSA's FY 2017 Congressional Budget Justification Report:

In FY 2017, EBSA will continue to develop regulatory projects related to Title I of ERISA in order to address Departmental priorities and the regulatory agenda.

It is anticipated that major projects will include guidance to facilitate compliance with the fiduciary, reporting and disclosure requirements of ERISA. Major regulatory projects (proposed and final rule stage) will be priorities for EBSA include...(3) revision of the Form 5500 Series and implementing regulations under ERISA...

QUESTIONS?

Disclaimer: Wrangle, LLC as well as its employees and affiliates do not offer legal and accounting consultation and services. Information relayed through Wrangle-produced materials serves to provide general information only; whether expressed or implied it is not intended to constitute legal or other advice or opinions on any specific matters and is not intended to replace the advice of a qualified attorney, accountant, or other professional advisor. Wrangle applies its best effort to provide accurate and complete results and provides its service in accordance with the ERISA rules that govern Form 5500 completion. This document may contain information that is confidential. Any use, disclosure, distribution, or duplication by anyone other than an intended recipient is prohibited.



Thank You!

Presenters:

Lynda Taylor, COO, Wrangle, LLC

ltaylor@wrangle5500.com

Ann McAdam, Technical Consultant, Wrangle, LLC

amcadam@wrangle5500.com

Code	Plan Characteristic/Benefit Codes Found on Page Two of the 5500 under Section 8b
4A	Health (other than vision or dental)
4B	Life Insurance
4D	Dental
4E	Vision
4F	Temporary Disability (accident & sickness)
4G	Prepaid Legal
4H	Long-term disability
4I	Severance Pay
4L	Death benefits (including BTA and AD&D)
4Q	Other (example: EAP or LTC)
4R	Plan will not file a 5500 for next Plan year due to <100 participants
4S	Plan is to resume filing
4T	Multiple Employer Plan has more than one employer contributing and no employer normally contributes more than 10 percent of the total contributions
4U	Collective Bargaining Agreement under Code: 419A(f)(5).

“Voluntary” is not specified in the Form 5500s.