



Compliance Corner Webinar:

Form 5500

Responses by Holly Young,
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May 16, 2019

Q: Does a +100 employees group that is 100% employer paid self-insured plans need to file 5500?

A: Yes, but if the plan is paid out of general assets (unfunded), the employer does not need to file a Schedule A or Schedule C.

Q: Where does a small employer (<100 participants) with a level-funded health plan fall into this definition of Unfunded vs. Funded?

A: A Level-Funded plan is treated as a self-insured plan and the rules then go to, is the plan "funded" (e.g. is there a trust?) or is it "unfunded" (paid out of general assets). If "funded" then the plan will need to file a 5500 with corresponding schedules regardless of the number of participants.

If "unfunded" they would meet the small employer exemption and not need to file if less than 100 participants at the beginning of the plan year. If they have 100 or more participants at the beginning of the plan year, they would only need to file a 5500, no schedules.

Q: is level funded plan classified as unfunded?

A: It is considered "self-insured" and the funding depends on how the benefits are paid. See question above.

Q: Where are we with smaller Employers (down to 2) having to file 5500's? Do you think this will ever happen?

A: That is left to be seen. In 2016 talks began between the DOL, PBGC, and IRS about expanding 5500 reporting requirements including getting rid of the small employer exemption that currently exists. According to the Society of Human Resource Management, in an interview with Lisa Allen who is the Vice President of Regulatory Affairs, she tells SHRM that the IRS and DOL have not met since 2017 to discuss the 5500 revisions. Right now, there is speculation that talks will resume in 2020 and 5500 revisions would then be effective in 2021.

Q: how important is the accuracy of the number of participants?

A: While an employer always wants to be as accurate as possible in the information they file with any regulatory agency, as there can be penalties for incorrect information, the accuracy of participant numbers can be challenging because many times the Insurance Carriers will include all covered persons in their numbers on the Schedule A and Schedule C information they provide. It is recommended that the employer exercise good faith efforts in determining how many participants (covered employees, retirees or COBRA recipients) to provide as numbers on the 5500 form and schedules. Red flags may arise if there is a significant increase and decrease in participants, so employers are encouraged to review previous filings to ensure they are using the same sources for data. With that said, the employer is likely to be okay if numbers are inaccurate



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but they made a good faith effort in reporting what they believed to be correct.

Q: What are the pitfalls of adding post tax voluntary plans in a wrap? What is the risk?

A: The pitfalls of adding voluntary plans to a Wrap document is that they now fall under an ERISA plan and may have to be reported on when submitting a 5500 even if they have less than 100 participants at the beginning of the plan year, because even if just one benefit within the Wrap has 100 or more recipients then every plan in the Wrap must have a Schedule A.

I don't know that I would classify it as a "risk," at least not to the employer, but many times the carriers of these voluntary plans are not prepared to issue Schedule A information and often times do not provide that information. Fortunately, the employer can indicate on the Schedule A that the insurance carrier failed to provide the information, so it goes back on the insurance carrier.

Q: When does an EAP program need to be included in the 5500?

A: If they are part of a Wrap document that is required to file a 5500, they must also submit a Schedule A for the EAP. Or if the plan offers any services deemed to be "medical" services that make them an ERISA covered plan. At that point there is the small plan exemption to look at, but if they have more than 100 or more participants at the beginning of the year, then they would need to file a 5500.

Q: Can you please talk about the difference between an SPD Wrap document and an SPD Mega Wrap Document? Is one 5500 needed in either case?

A: A wrap document is a relatively simple document that "wraps" around the insurance policy, coverage certificate or plan booklet. The benefits available under the plan continue to be governed by the insurance policy, coverage certificate or plan booklet, while the wrap document supplements with the information necessary to comply with ERISA. In effect, the wrap document fills the gaps left by insurance carriers and third-party administrators. Wrap documents may be used by employers to consolidate employee welfare benefit plans into a single plan, commonly referred to as an "umbrella" or "mega-wrap" plan.

One 5500 report would be complete for an SPD Wrap or a Mega-wrap.

Source: <https://www.shrm.org/hr-today/news/hr-magazine/pages/0113-wrap-documents.aspx>

Q: Will all Schedule A's be calendar year?

A: Many times carriers default to a calendar year, but if the ERISA plan year is an off-calendar year, then the employer can go back to the carrier and request the information for the plan year the employer uses.



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Q: I kept seeing Calendar Plan Year in your presentation. What if client has a plan year beginning June 1st how do we complete a 5500? Do we use information from Plan Year June 1st through May 31st?

A: Employers will use their own plan year, so a plan year that starts June 1st would end May 31st and then the 5500 would be due at the end of the seventh month following the last day of the plan year (May 31st), so the 5500 must be submitted by December 31st.

Q: If you have regular open enrollment meetings that include voluntary benefits, are you then required to file on those VBs?

A: It depends, if pre-tax then Yes. If after-tax, maybe - They are required to be reported IF the plan sponsor is involved with at least one of the following items:

- Selection or endorsement of the carrier(s);
- Markets or recommends the benefit(s) offered;
- Distributes information about the voluntary benefits with the other employer offered ERISA benefits;
- Involved with the negotiation of rates;
- States the program is subject to ERISA; or
- Assists employees with claims or disputes.

Q: In your 2nd quiz question did each benefit have a 500 #? Or does the wrap have 1 500 # for all of the plans in the wrap?

A: Each benefit that filed would have had their own 500 number, for example, 501 for Medical Dental and Vision; 502 for STD and LTD and 503 for Worksite Plan. Once the employer filed a "final" 5500 for each of the plan, because they were now all part of a Wrap Document, the Wrap Document would then be the next 500 number available, so in this example, 504.

Q: Do level funded plans with less than 100 participants required to file a 5500 form?

A: It depends, please refer to questions 1 and 2.

Q: Is the 5500 filing requirement based on the 100+ count on the first day of the plan year based on eligible, or participating, or FTE?

A: The 100 or more account includes only those employees, retirees or those on COBRA who are ON the plan. Eligible or FTE are not included if those employees in those categories did not enroll in that benefit plan.



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Q: How does it work with parent organizations that might own several smaller subsidiaries? Is it all about who is covered on the plan? Meaning if they're combined in a single plan then they file but if they have their own plans and are each under 100 employees then they don't?

A: Yes. If each company has their own EIN and under that EIN, they have their own plan, they would likely fall under the small employer exemption if less than 100 participants at the beginning of the plan year. However, if all of the companies (with separate EINS) are all under one contract for insurance, likely under the parent company's EIN, then a 5500 would need to be filed based on the total of all participants from all the companies.

Q: If an employer creates an Extended Leave Bank from a vacation/sick conversion to PTO, is this considered an ERISA plan? If the employee leaves employment, then there is no benefit. It may be funded. If it's funded, is it considered an ERISA plan, or is it an ERISA plan regardless?

A: If a plan like this funded with its own account and it has a defined policy, then according to the ERISA guidelines, it would be an ERISA covered plan. If vacation pay comes from the general assets of the company, it is not covered under ERISA.

Q: There was some talk about all employers having to file 5500's. What is the status of that?

A: Please see response to question number 4.

Q: I acquired a new client who has no idea if they ever filed or if the prior broker ever did a wrap doc. How should we proceed?

A: First conduct a search on the E-FAST system. If not, then determine how many years back, they need to go where they should have filed and file the 5500s under the Delinquent Filer Voluntary Compliance Program (DFVCP) to reduce late fees.

Q: Who primarily files the 5500, the employer, broker, CPA, or TPA?

A: It can be any of the above, but ultimately it is the employer who is responsible for the filing.

Q: Must level funded (small employer) plans file a Form 5500?

A: Please see questions 1 and 2.



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Q: Many times a Schedule A includes Spouses and Dependents. Are you supposed to add those in the Schedule A count?

A: That is true and it's even more confusing because the Schedule A asks for "persons: covered. While there is some debate and the government has been rather silent on the definition, most of the information I've read recommends using the same number as defined by "participant" for the sake of the 5500.

Q: Voluntary products that are brought to the employees by the employer are not considered "sponsored" Does sponsorship by the Employer entail only having their logo on the carrier forms and having mandated meetings?

A: It could be. Please see the response to question 11.

Q: Is a 5500 needed for an employer with 100+ employer eligible with less than 100 participants on the plan.

A: No, as long as it meets the unfunded requirements for the small employer exemption.

Q: Can a broker do a search for client's ERISA plan number through the portal discussed?

A: Yes, once registered on the EFAST 2 system with the Department of Labor, you are able to conduct searches.

Q: Employer has 135 employees on life insurance, 85 on medical, and 95 on dental. Do they have to file a 5500?

A: If the plans are in a Wrap document, then one 5500 would be filed with Schedule As for each (barring they are not self-insured and paid with general assets). If they are individual plans, then only the Life Insurance will need a 5500.