

# Compliance Bulletin

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## Form 5500 Is Due by July 31, 2023 for Calendar Year Plans



Employers with employee benefit plans that operate on a calendar year basis must file their annual reports ([Forms 5500](#)) for 2022 with the Department of Labor (DOL) by **July 31, 2023**. An employer may extend this deadline by two and one-half months (until Oct. 16, 2023) by filing IRS Form 5558 by July 31, 2023. This extended deadline is typically Oct. 15 for calendar year plans, but for 2022 filings the extended deadline is Oct. 16, 2023.

An employer must file a Form 5500 for each separate employee benefit plan that it maintains, unless a filing exemption applies. Employers can combine different welfare benefits under a single plan to simplify their Form 5500 reporting obligation.

Small welfare benefit plans (fewer than 100 covered participants) that are unfunded or fully insured (or a combination of unfunded and insured) are exempt from the Form 5500 filing requirement.

### Action Steps

- Employers with calendar year plans that do not qualify for the filing exemption should work with their service providers to complete their Form 5500 and file it by July 31, 2023.
- Employers that need extra time should file Form 5588 by July 31, 2023.
- Employers and their service providers should become familiar with [final revisions](#) to the 2022 plan year Form 5500 and Form 5500-SF, which focus mainly on improvements in reporting on the actuarial and retirement plan schedules (Schedules MB, SB, and R) filed by certain defined benefit pension plans. [Final revisions](#) for the 2023 plan year have also been released.

### Annual Reporting Requirement – Form 5500

Each year, employers that are subject to ERISA must file an annual report with the DOL for their employee benefit plans, unless a filing exemption applies.

The annual reporting obligation is generally satisfied by filing the [Form 5500 "Annual Return/Report of Employee Benefit Plan,"](#) including all required schedules and attachments. Small plans (fewer than 100 participants) that do not qualify for a filing exemption may be able to use a simplified form (Form 5500-SF "Short Form Annual Return/Report of Small Employee Benefit Plan") for the annual reporting requirement.

The Form 5500, including required schedules and attachments, must be filed electronically using the DOL's [EFAST2 electronic filing system](#). Employers cannot file the Form 5500 on paper. Under EFAST2, employers may use either approved third-party vendor software or the DOL's web-based filing system (IFILE) to prepare and submit Forms 5500.

### Employers Subject to ERISA

ERISA applies to virtually all private-sector employers that maintain employee benefit plans for their employees, regardless of the size of the employer. This includes corporations, partnerships, limited liability companies, sole proprietorships and nonprofit organizations. ERISA exempts only employee benefit plans maintained by two types of employers:

- **Governmental employers**—Includes employee benefit plans maintained by federal, state or local (for example, city, county or township) governments. This exemption also extends to plans established by an "agency" or "instrumentality" of a federal, state or local governmental entity.

- **Churches**—Includes employee benefit plans established or maintained by a church or convention or association of churches that is exempt from federal income tax. This exemption also applies to a plan maintained by an organization whose principal purpose is administering a benefit plan for church employees, if the organization is controlled by or associated with a church (or convention or association of churches).

## Determining Number of Plans

An employer must file a Form 5500 for each employee benefit plan that it maintains, unless a filing exemption applies. The number of annual reports to file depends on **how many separate ERISA plans** the plan sponsor maintains.

Employers may decide to combine more than one type of ERISA welfare benefit (for example, group health plan, life insurance, disability insurance and health FSA) into a single plan to consolidate annual reporting. If ERISA welfare benefits are combined into a single plan, the plan administrator would generally be required only to annually file one Form 5500 for the plan's benefits.

In general, employers should use a wrap plan document to combine different welfare benefits into a single plan. According to the DOL's [instructions](#) to the Form 5500, an employer must "review the governing documents and actual operations to determine whether welfare benefits are being provided under a single plan or separate plans."

## Form 5500 Deadline

The Form 5500 must be filed by the last day of the seventh month following the end of the plan year, unless an extension applies. For calendar year plans, the deadline is normally **July 31** of the following year.

### *What is the "plan" year?*

Section 3(39) of ERISA defines "plan year" as the calendar, policy or fiscal year on which the records of the plan are kept. A plan year is generally the 12-month period that was established when the welfare benefit plan became effective. Many employers operate their benefit plans on a calendar year basis, from Jan. 1 through Dec. 31 of each year. Other employers operate their plans on a non-calendar year basis, which may be consistent with the company's taxable year or with an insured plan's policy year.

An employer may request a one-time extension of two and one-half months by filing [IRS Form 5558](#) by the normal due date of the Form 5500. For calendar year plans, this extended deadline is typically Oct. 15, but for 2022 filings the extended deadline is **Oct. 16, 2023**. If the Form 5558 is filed on or before the normal due date of the Form 5500 or 5500-SF, the extension is automatically granted.

In addition, an automatic extension for filing Form 5500 until the due date of the employer's federal income tax return will apply if:

- The plan year and the employer's tax year are the same;
- The employer has been granted an extension of time for filing its federal income tax return to a date later than the normal due date for the Form 5500; and
- The employer maintains a copy of the application for extending the due date of the employer's federal tax return.

This automatic extension cannot be further extended by using Form 5558, and it cannot extend beyond a total of nine and one-half months following the close of the plan year.

## Filing Exemption for Small Welfare Benefit Plans

### *What is a "welfare benefit plan"?*

A "welfare benefit plan" includes, for example, a group health plan, a health FSA, an HRA, group dental or vision benefits, a group disability plan or group life insurance.

A small welfare benefit plan is completely exempt from the Form 5500 filing requirement if it:

- Has **fewer than 100 covered participants** at the beginning of the plan year; and
- Is unfunded or fully insured. The plan can have a combination of insured and unfunded benefits and still qualify for the exemption.

An unfunded welfare benefit plan has its benefits paid directly from the general assets of the employer sponsoring the plan. A plan that uses a trust or separately maintained fund to hold plan assets or pay benefits is not unfunded. A fully insured welfare benefit plan has its benefits provided exclusively through insurance contracts or policies.

Participants may include employees and former employees (for example, COBRA beneficiaries). However, **covered dependents are not counted as participants.**

## Penalties

The DOL can assess penalties for noncompliance with the annual reporting requirements, including submitting incomplete Forms 5500 or not filing Forms 5500 by the due date. For example, the DOL has the authority under ERISA to assess penalties of up to **\$2586** 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 [Delinquent Filer Voluntary Compliance Program](#) (DFVCP) was created by the DOL to encourage employee benefit plan administrators to voluntarily file overdue Forms 5500. The DFVCP gives delinquent plan administrators a way to avoid potentially higher penalty assessments by voluntarily completing their late Form 5500s for a year and paying reduced penalties. Plan administrators are eligible to use the DFVCP 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.

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