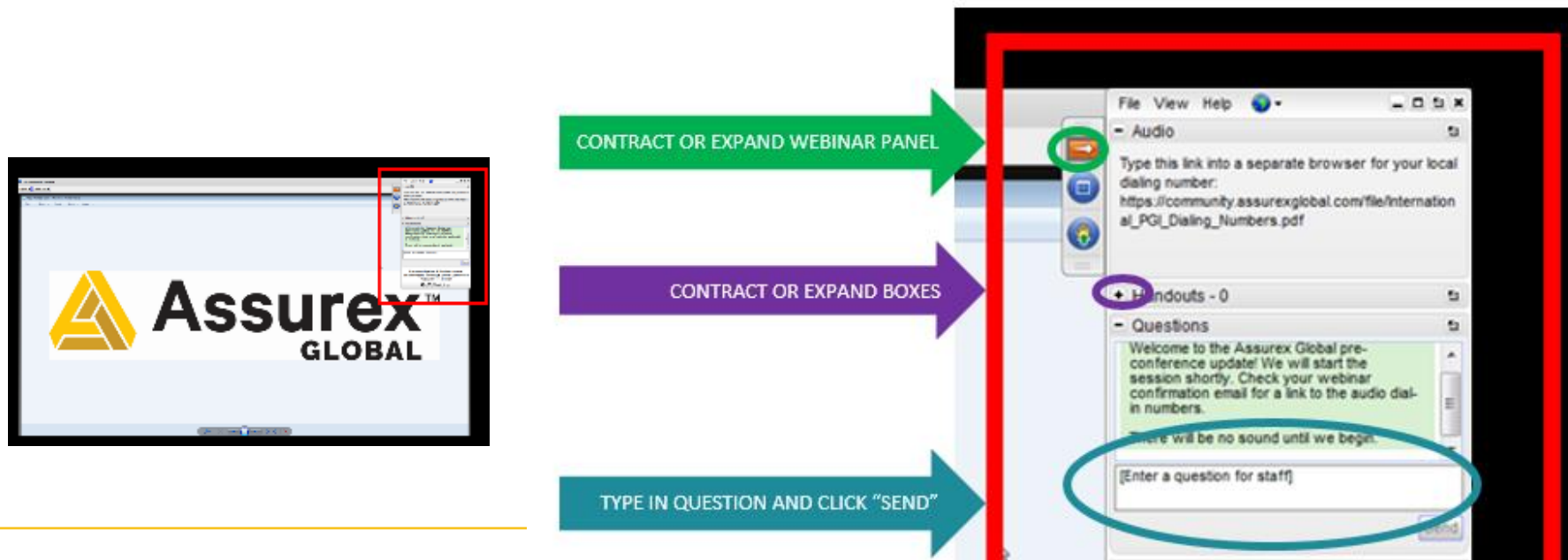


May 2022

Overview of 5500 Reporting Requirements

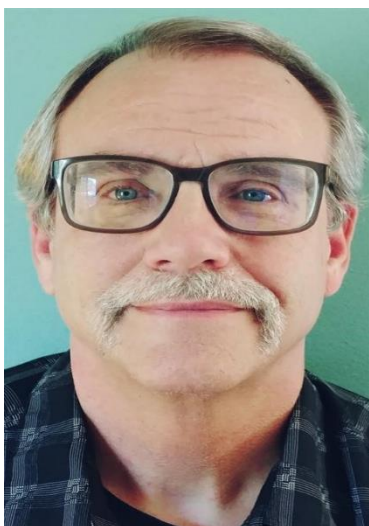
Presented by Benefit Comply

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “Questions” or “Chat” box located on your webinar control panel.
- Slides can be printed from the webinar control panel – expand the “Handouts” section and click the file to download.



Assurex Global Partners

- Bolton & Company
- Cottingham & Butler
- Cragin & Pike, Inc.
- Daniel & Henry
- The Graham Company
- Haylor, Freyer & Coon, Inc.
- Henderson Brothers, Inc.
- The Horton Group
- The IMA Financial Group
- INSURICA
- Kapnick Insurance Group
- Lyons Companies
- The Mahoney Group
- MJ Insurance
- Oswald Companies
- Parker, Smith & Feek, Inc.
- R&R Insurance
- RCM&D
- The Rowley Agency
- Starkweather & Shepley
- Sterling Seacrest Pritchard
- Woodruff Sawyer



Ben Graves, J.D.

- Ben C. Graves has been working in employee benefits for over 25 years. He provides consulting on various employee welfare benefit compliance issues including the Affordable Care Act, COBRA, HIPAA, ERISA FMLA, and other various benefit compliance requirements. He has developed numerous training programs and presented hundreds of employees benefit compliance seminars nationwide. Before joining Benefit Comply, he was the compliance director for a large national employee benefits brokerage firm.



Cheryl Minks, CEBS, SPHR, Senior Consultant

- Cheryl is an experienced benefits professional with 20+ years managing service, compliance, and clinical support teams in small and large agencies. She frequently managed special projects including M & A health and welfare due diligence and served as the HIPAA Privacy and Security Officer. Cheryl was a member of the core team for a data analytics platform selection and implementation project and was instrumental in blending data analytics with clinical support services. Cheryl received her bachelor's degree in Human Resource Management from Metropolitan State University.

Agenda

Overview of 5500 Reporting Requirements

- The Basics
- The Schedules
- Short Plan Year
- Non-calendar Year
- Extended Forms
- Delinquent Filer Voluntary Compliance Program (DFVCP)
- Common Questions and Gotcha's

The Basics

5500 Form Filing

Under ERISA, a Form 5500 is required on behalf of any welfare benefit plan that:

1. Has 100 or more participants as of the beginning of the plan year.
2. Is funded through a trust or custodial account, regardless of participant count.

Tip: The rules do provide an exemption from the filing requirements for governmental and church plans.

Included ERISA Plans



Medical, Dental
or Vision



Accidental
Death &
Dismemberment



Life Insurance



Scholarship
Funds



Severance Pay



Disability



Section 125 Cafeteria
Plan Benefits

Voluntary Benefits and Safe Harbor

ERISA Language to fall under Safe Harbor:

1. No contributions are made by an employer or employee organization;
2. Participation in the program is completely voluntary;
3. The sole functions of the employer, without endorsing the program, is to permit the insurer to publicize the program to employees, to collect premiums through payroll deductions and
4. The employer receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deductions

Tip: allowing pre-tax contributions through Section 125 plan will automatically remove safe harbor

Who counts as a participant?

A person is considered a “welfare benefit plan participant” for purposes of the Form 5500 if they are:

1. A current employee who’s covered by the welfare benefit plan (i.e., enrolled in benefits).
2. A former employee who’s covered by the welfare benefit plan (i.e. those receiving COBRA, retiree medical, etc.).
3. A former employee who’s eligible to elect coverage under COBRA but has yet to elect benefits.

Tip: Spouses and dependents are not counted for this purpose.

Funded or UnFunded?

Funded:

- A “funded” plan is one where funds are set aside in a custodial account or trust fund for the exclusive benefit of plan participants. All funded welfare plans must file a Form 5500, regardless of the number of plan participants. Self-insured welfare plans that hold funds in a trust fund (such as, a “Voluntary Employees’ Beneficiary Association”) or hold employee contributions in a separately maintained fund, makes them funded and subject to annual Form 5500 filings.

UnFunded:

- Most welfare plans covered under ERISA are not funded. Most welfare plans are either fully-insured or partially insured through a stop-loss insurance policy. If a welfare plan covers fewer than 100 participants at the beginning of a plan year and is unfunded and/or insured, then the plan sponsor is not required to file a Form 5500. Also, a plan sponsor does not need to file a Form 5500 for a self-insured welfare plan if the plan has less than 100 participants at the beginning of the plan year and is not funded.

Due Date

The Form 5500 for an ERISA plan is due the last day of the seventh month after the end of the ERISA plan year regardless of the length of the plan-year. If the due-date falls on a Saturday, Sunday, or legal holiday, the 5500 is due the next day that is not a Saturday, Sunday, or legal holiday.

Plan Year Ending in Month	5500 Due Date	5500 Due Date with Extension
June 2022	January 31, 2023	April 15, 2023
July 2022	February 28, 2023	May 15, 2023
August 2022	April 1, 2023	June 17, 2023
September 2022	April 30, 2023	July 15, 2023
October 2022	May 31, 2023	August 15, 2023
November 2022	July 1, 2023	September 16, 2023
December 2022	July 31, 2023	October 15, 2023
January 2023	September 3, 2023	November 15, 2023
February 2023	September 30, 2023	December 16, 2023
March 2023	October 31, 2023	January 15, 2024
April 2023	December 2, 2023	February 17, 2024
May 2023	December 31, 2023	March 16, 2024



Tip: Filings must be completed electronically using the DOL's EFAST system. Paper filings are not accepted.

Schedules

Schedule A (Insurance Information)

Schedule As

- Are used to report insurance information on Form 5500. All commissions and fees paid by an insurance company that are attributable to a contract or policy between a plan and an insurance company, insurance service, or similar organization, are required to be reported on Schedule A. Fees paid directly from an employer to a broker are not reported on Schedule A.

Stop-Loss Contracts

- In most cases, a Schedule A will not be required to report a stop-loss policy that a plan sponsor of a self-insured plan has purchased. This is because in most cases the stop-loss policy is owned by and protects the employer as opposed to the employees. However, there are certain scenarios in which a Schedule A would be required for a stop-loss contract. Specifically, if the policy is issued to the plan rather than to the employer; if payments under the policy are made to the plan rather than to the employer; or if policy premiums are not paid exclusively out of employer general assets (e.g., if premiums are paid through a trust or with participant contributions), then a Schedule A to report the stop-loss contract would be required.

Tip: It is common for insurance carriers to not provide Schedule A information for lines of coverage with fewer than 100 participants covered as of the first day of the plan year. However, the 100 lives filing exemption applies to the ERISA plan, for example under all benefits within a bundled Wrap Plan; not to individual lines of coverage included under the ERISA plan.

Ask insurance carriers for missing Schedule A information when an ERISA plan is required to report on Form 5500 even if the specific line of coverage has fewer than 100 participants.

Schedule C (Service Provider Information)

Schedule Cs

- Schedule C does not apply to unfunded welfare plans, which are the vast majority of welfare plans.
- Schedule Cs are mainly used to report information about service provider fees and other compensation.
- Schedule Cs are not required for small ERISA plans (fewer than 100 participants), even if the plan is required to file a Form 5500 because it is funded. Therefore, Schedule Cs are rarely required for most employee welfare benefit plan Form 5500 filings.

Tip: Service providers are only required to be reported on Schedule C if they received at least \$5,000 in reportable compensation.

Short Plan Year, Non-Calendar Year, and Extended Forms 5500

Short Plan Year

- Between the Section 125 pre-tax rules, and the requirement to make an offer of coverage at least once a year under the ACA's employer mandate, plan years generally cannot be longer than 12 months.
- In order to change a plan-year, employers often use short plan-years. This can occur when an employer tries to sync the plan with other plans it sponsors, or an employer may want to move the plan year to a calendar-year plan-year for administrative ease.
- If an employer utilizes a short plan-year, the plan-year could end on a date other than 12/31.

Tip: Employers often forget to file a separate 5500 after implementing a short plan year. Add this to your follow-up items!

Non-Calendar Year Plans

- Employers may choose to have plan-years that do not coincide with the calendar-year. This could occur because the employer wants the renewal date for fully-insured benefits to match their ERISA plan year.

Extended Forms 5500

- Employers may apply for an automatic extension, which will give the employer an additional 2 ½ months from the original due-date to file Form 5500.
- This will result in the due date falling on the 15th of any given month.

Delinquent Filer Voluntary Compliance Program

The Forgotten Filing

Don't panic - the DOL offers a Delinquent Filer Voluntary Compliance Program (the DFVCP) to assist employers in becoming compliant on their own, if the employer applies for the program before an IRS or DOL audit is initiated.

Penalty Structure

- The basic penalty under the program is \$10 per day for delinquent filings.
- “Per filing” cap. The maximum penalty for a single late annual report is \$750 for a small plan (generally a plan with fewer than 100 participants at the beginning of the plan year) and \$2,000 for a large plan.
- “Per plan” cap. The DFVCP also includes a “per plan” cap. This cap is designed to encourage reporting compliance by plan administrators who have failed to file an annual report for a plan for multiple years. The “per plan” cap limits the penalty to \$1,500 for a small plan and \$4,000 for a large plan regardless of the number of late annual reports filed for the plan at the same time.

Tip: If the DOL finds the violation, employer could be fined up to \$2,400 for each day they fail or refuse to file a complete report, subject to certain maximum penalty amounts or imprisonment (or both). The DFVCP is a good alternative!

Common Questions & Gotchas

Commonly Asked Questions

Question: Which EIN should be used?

- **Answer:** The plan sponsor's EIN... Who is the plan sponsor?
 - ✓ The employer in a single employer plan;
 - ✓ Pick an employer in a controlled group where multiple EINs are covered (holding company is OK) and reflect this in the plan document and SPD;
 - ✓ Plan name can be different than plan sponsor.

Question: The employer is a part of a controlled group, the controlled group has over 100 employees. Does that mean that each employer in the controlled group must file a Form 5500?

- **Answer:** Maybe.
 - ✓ How many plans are there?
 - ✓ How many participants are there as of the first day of the plan year, IN EACH PLAN?
 - ✓ In other words, number of employees is not enough information.

Commonly Asked Questions

Question: is it possible to have different policy years but a single Plan Year for all benefits bundled into a single ERISA Plan?

- **Answer:** Yes

- ✓ It is possible to have different policy years (e.g., insurance policies/contracts renew at a different time), but the Plan Year for all benefits that are bundled into a single ERISA plan must be the same for all the benefits.

Question: Is there a statute of limitations regarding missing Form 5500 filings?

- **Answer:** No

- ✓ The DOL takes the position that there is no statute of limitations regarding missing Form 5500 filings. Technically, the employer is going to need to file for every year they have sponsored an ERISA plan that has over 100 participants as of the first day of the plan year, all the way back to when the reporting obligations began (1988) to be in full compliance. Remember the DFVCP.

Commonly Asked Questions

Question: Can I file one Form 5500 for multiple benefit plans?

- **Answer:** Maybe
 - ✓ An employer needs to have an umbrella (bundled, mega) wrap document in place before they can file their benefits together under a single Form 5500. To file together without appropriate wrap document is technically improperly filed and could result in some benefits being deemed not filed at all and delinquent.

Question: Does a Severance Program need to file a Form 5500?

- **Answer:** Maybe
 - ✓ Generally, employer severance payment policies, plans or arrangements are covered by ERISA (technically as health and welfare or pension plans) if they are a “plan, fund, or program . . . established or maintained by an employer” to provide severance benefits to employees.

Commonly Asked Questions

Question: Schedule A – policy year is different than plan year. What Schedule A information do I use?

- **Answer:** Use the Schedule A information for the policy or contract that ends in the plan year.
 - ✓ For example, If the plan year is July 1, 2021 – June 30, 2022, and the insured benefit policy or contract year is a calendar year, use the Schedule A information for the policy or contract ending December 31, 2021.

Question: What if the Carrier didn't provide the required Schedule A information?

- **Answer:** Contact the carrier but do not delay the Form 5500 filing.
 - ✓ An amended Form 5500 will be required once the Schedule A information is obtained by the filer. Note: The Schedule A includes a section that allows the filer to inform the DOL that the Schedule A was not provided by the carrier (Part IV, line 11).