

COMPLIANCE OVERVIEW

Form 5500 Exemption for Small Welfare Benefit Plans

Employers that are subject to ERISA must file an annual report (Form 5500) with the Department of Labor (DOL) for their employee benefit plans. The Form 5500 must be filed by the last day of the seventh month following the end of the plan year, unless the employer requests an extension.

Small welfare benefit plans that are unfunded or fully insured (or a combination of unfunded and insured) are exempt from the Form 5500 filing requirement. A small welfare benefit plan is one that has fewer than 100 participants at the beginning of the plan year.

A welfare benefit plan is unfunded if benefits are paid as needed directly from the general assets of the employer. Plans that use a trust or separately maintained fund to pay benefits are not considered unfunded. A plan is insured if benefits are paid through insurance policies. If premiums are paid by employees, the employer must forward the employee contributions no later than three months after receipt.

LINKS AND RESOURCES

- DOL's [webpage](#) on Form 5500 requirements
- [Form 5500 Instructions](#)
- DOL's [Reporting and Filing Assistance webpage](#)

Form 5500 Exemption

Welfare benefit plans are exempt if they:

- Have fewer than 100 covered participants at the beginning of the plan year; and
- Are unfunded or fully insured (or have a combination of unfunded and fully insured benefits).

Important Terms

- “Participants” includes only employees and former employees (for example, COBRA beneficiaries) who are participating in the plan.
- Unfunded plans are those whose benefits are paid directly from the employer’s general assets.
- Insured plans are those whose benefits are paid solely through insurance contracts or policies.

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COMPLIANCE OVERVIEW



Form 5500 Basics

Each year, employers must file an annual report with the DOL for their ERISA-covered 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.

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. If the filing due date falls on a Saturday, Sunday or federal holiday, the Form 5500 may be filed on the next day that is not a Saturday, Sunday or federal holiday. 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. 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.

The DOL may assess penalties of up to **\$2,586 per day** for each day an employer fails or refuses to file a complete Form 5500. The DOL has a [correction program](#) that allows employers to voluntarily file overdue Forms 5500 and pay reduced penalties.

Small welfare benefit plans are exempt from the Form 5500 filing requirement if they are unfunded or fully insured (or a combination of unfunded and fully insured).

Form 5500 Exemption

Small welfare benefit plans are exempt from the Form 5500 filing requirement if they are unfunded or insured (or a combination of unfunded and insured). Welfare benefit plans include, for example, group medical plans, group dental and vision plans, health flexible spending accounts (FSAs), health reimbursement arrangements (HRAs), group life insurance benefits and disability benefits.

Requirements for exemption

- Must be a small welfare benefit plan (fewer than 100 covered participants at beginning of plan year)
- Must be unfunded, insured or a combination of unfunded and insured

In addition, welfare benefit plans that are subject to the [Form M-1](#) filing requirement for multiple employer welfare arrangements (MEWAs) are not eligible for this exemption.

COMPLIANCE OVERVIEW



Small Welfare Benefit Plans

For purposes of the Form 5500 exemption, small plans are those with **fewer than 100 covered participants at the beginning of the plan year.**

Counting Participants

To determine whether the small plan exemption applies, employers should count the **number of employees participating in the plan** as of the beginning of the plan year. “Participant” includes only employees and former employees (for example, COBRA beneficiaries) who are participating in the plan. Covered dependents (for example, spouses, domestic partners and children) are **NOT counted** as participants when determining whether a plan qualifies for the small plan exemption.

Number of Plans

Employers will need to determine **how many separate ERISA plans** they maintain to accurately count the number of participants in each plan.

A common practice for employers is to combine more than one type of ERISA welfare benefit (for example, group medical insurance, life insurance, dental and vision insurance and a health FSA) into a single plan, often using a wrap plan document to achieve this. 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.”

Compliance Tip: Employers should consider the impact on the Form 5500 filing requirement when deciding whether to combine different ERISA benefits under one plan or maintain separate plans. An advantage to having a single plan for all benefits is that the employer is required to file only one Form 5500 for the plan (assuming the plan has 100 or more participants). However, combining benefits together under one plan may also trigger the Form 5500 filing obligation for benefits that would not be subject to the Form 5500 if they were maintained in separate plans (because the benefits, on their own, have fewer than 100 participants).

Fluctuating Plan Participant Numbers

A small welfare benefit plan that has fewer than 100 participants at the beginning of the plan year will qualify for the exemption even if the number of participants increases during the plan year to 100 or more. However, the plan will be subject to the Form 5500 requirement for the next plan year if it continues to have 100 or more participants at the beginning of that plan year.

Similarly, a welfare plan that has 100 or more participants at the beginning of the plan year will not qualify for the Form 5500 exemption for that plan year, even if the number of participants decreases during the plan year to fewer than 100. This plan, however, may qualify for the exemption for the next plan year, if it continues to have fewer than 100 participants at the beginning of that plan year.

COMPLIANCE OVERVIEW



EXAMPLE

A fully insured group medical plan has 75 participants at the beginning of the plan year and 105 participants at the end of the plan year. The Form 5500 exemption for small plans applies, even though the plan has more than 100 participants by the end of the plan year, because it had fewer than 100 participants at the beginning of the plan year and otherwise satisfied the conditions of the exemption.

There are **special Form 5500 reporting codes** for welfare benefit plans that qualify for the small plan exemption for some plan years, but not all plan years, based on fluctuating participant numbers.

- Plans that are filing for the current year (that is, filing a 2023 Form 5500) but will be exempt for the next plan year (2024 plan year) should enter “4R” on line 8b of the Form 5500 for the 2023 plan year.
- Plans that were exempt for the previous year (that is, for the 2022 plan year), but are no longer exempt and must resume filing, should enter “4S” on line 8b of the Form 5500 for the 2023 plan year.

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| Enter 4R on Line 8b | Welfare benefit plans that will not file a Form 5500 for the next plan year pursuant to the exemption for small welfare benefit plans. |
| Enter 4S on Line 8b | Welfare benefit plans that stopped filing Form 5500 in an earlier plan year due to the exemption for small welfare benefit plans, but no longer qualify for the exemption. |

Unfunded and Insured Plans

Unfunded Plans

Unfunded plans are those whose benefits are paid as needed **directly from the general assets** of the employer that maintains the plan. Plans that are NOT unfunded include those plans that used a **trust or separately maintained fund** to hold plan assets or act as a conduit for the transfer of plan assets during the year.

Compliance Tip: Employers with self-funded plans that use a separate fund or account for paying benefits (such as level-funded plans) should consult with their legal advisors (and level-funded plan providers, as applicable) to determine whether their plans are considered unfunded for the Form 5500 exemption.

In addition, a plan will not be considered unfunded if it received employee contributions during the plan year. However, based on a DOL [non-enforcement policy](#), if employee contributions are made through a **Section 125 cafeteria plan**, the welfare benefit plan may be treated for annual reporting purposes as unfunded (assuming its benefits are paid from the employer’s general assets, and not from a trust or separately maintained fund). This non-enforcement policy also extends

COMPLIANCE OVERVIEW



to COBRA contributions and other after-tax participant contributions (for example, retiree contributions) received in connection with a Section 125 cafeteria plan.

Insured Plans

Insured plans are those whose benefits are paid **solely through insurance contracts or policies**. The insurance contracts or policies must be issued by an insurance company or similar organization that is qualified to do business in any state. Premiums must be paid directly to the insurance carrier by the employer from its general assets. Alternatively, premiums may be paid partly from an employer's general assets and partly by employee contributions, if the employer forwards the employee contributions **no later than three months after receipt**.

In addition, to qualify for the exemption, insurance refunds to which plan participants are entitled must be returned to them within three months of receipt by the employer. Participants must also be informed when they start participating in the plan about the plan's provisions for allocating insurance refunds. This explanation is often included in the plan's summary plan description (SPD).

Combination Unfunded/Insured Plans: A small welfare benefit plan may qualify for the Form 5500 exemption if it has a combination of unfunded and insured benefits. A combination unfunded/insured welfare benefit plan has its benefits provided partially as an unfunded plan and partially as a fully insured plan. For example, a welfare benefit plan may have an unfunded medical benefit and an insured life insurance benefit.

Form 5500-SF

Small plans 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. To be eligible to use the Form 5500-SF, the plan must:

- Be a small plan (that is, generally have fewer than 100 participants at the beginning of the plan year);
- Meet the conditions for being exempt from the requirement that the plan's books and records be audited by an independent qualified public accountant;
- Have 100% of its assets invested in certain secure investments with a readily determinable fair value;
- Hold no employer securities; and
- Not be a multiemployer plan and not be required to file a Form M-1 for the plan year.