ERISA requires the reporting of specified employee benefit plan information to the Department of Labor (DOL) each year for each pension and welfare benefit plan that covers 100 participants or more as of the beginning of the plan year. Information concerning employee benefit plans is reported on the Form 5500 Annual Return/Report. Plan sponsors are also required to provide all participants and certain beneficiaries with an annual statement summarizing the plan’s latest annual report. This statement, known as a Summary Annual Report (SAR), is a narrative statement of the information contained in the plan’s Form 5500.

Failing to file the Form 5500 can result in civil penalties up to $1,100 for each day a Form 5500 is missing or incomplete. Willful violations of the reporting requirement can result in criminal penalties of up to ten years imprisonment, a fine of up to $100,000 ($500,000 for a company), or both. In addition, plan sponsors can be liable for a penalty of up to $110 per day for failure to respond to a participant’s request for a SAR.

Follow are some commonly asked questions and answers about the Form 5500 filing requirement and the SAR.

**What plans must file a Form 5500?**
The Form 5500 is required for ERISA welfare benefit plans with 100 or more participants (dependents are not considered participants when determining plan size). An ERISA plan with fewer than 100 participants may be required to file if it is funded (i.e., uses plan assets to pay benefits in whole or in part). A plan with fewer than 100 participants that is funded by employee contributions through a cafeteria plan may be deemed unfunded and not subject to the Form 5500 filing requirement.

Common ERISA welfare benefit plans that are subject to the Form 5500 filing requirement include fully-insured and self-funded major medical plans, dental and vision plans, health FSAs, HRAs, wellness programs that provide significant medical benefits, some EAPs, long-term disability coverage, AD&D insurance, life insurance and severance benefits.

**What plans are exempt from 5500 filing?**
Small unfunded, small insured, and small combination unfunded/insured welfare plans are completely exempt from the Form 5500 requirement, as well as government plans, church plans, and plans maintained to comply with workers compensation, unemployment and disability laws.

**When are Form 5500s due?**
The Form 5500 generally must be filed by the last day of the seventh month after the close of the plan year (including short plan years). A 2-1/2 month extension is available to the plan administrator by filing
the Form 5558 (Application for Extension of Time to File Certain Employee Plan Returns). This Form 5558 must be filed with the IRS—not with the DOL.

**How many Form 5500s have to be filed?**
The DOL Form 5500 instructions explain that one Form 5500 is required for each plan. Discretion is left to the employer to designate what constitutes a plan and multiple benefits may be bundled into one plan as long as plan documents (insurance contracts, SPDs, wrap documents) reflect the same. These are some common approaches:

- A single “bundled” plan through which all fringe benefits are provided;
- Multiple plans with different groups of benefits “bundled” in different configurations (e.g., health, dental, vision, and employee assistance under one plan; short-term disability and long-term disability under another);
- One plan for each type of benefit plan (e.g., medical, dental, vision, life, long-term disability, short-term disability, and employee assistance each have a separate plan).

If there is no bundling, there should be one Form 5500 for each insurance contract or for each type of benefit offered.

**What attachments must be filed with the Form 5500?**
Generally, a Schedule A is included with the Form 5500 filing. Schedule A is provided by the insurance carrier. A Schedule C is also included if a service provider is utilized and paid $5,000 or more. Occasionally a Schedule D is included (if a plan participates in a master trust investment account (MTIA), common/collective trust (CCT), pooled separate account (PSA), or 103-12 investment entities (103-12IE)) or a Schedule G (if Schedule H, lines 4b, 4c, or 4d are required to be marked “yes”). Finally, a Schedule H may be included if the plan is self-insured and funded.

**If the benefits plans are bundled, is a Schedule A required for the benefits with less than 100 participants?**
Yes. If the benefits are bundled into one plan and only one of the bundled benefits has over 100 participants, a Schedule A is still required for each insured benefit, even those with fewer than 100 participants. Generally carriers produced Schedule A’s automatically when more than 100 participants are covered on the policy at the start of the plan year. If a Schedule A is required where there are fewer than 100 participants on the policy, a special request should be made to the carrier well in advance of the filing deadline.

**Can a Form 5500 filing be corrected or filed late?**
Yes. The DOL’s Delinquent Filer Voluntary Compliance (DFVC) Program provides reduced civil penalties to plan sponsors that have failed to file Form 5500s or have filed them late. Penalties can be reduced to $10 per day for each day the Form 5500 is filed after the date on which it was due (without regard to any extensions that might have applied), not to exceed the greater of $2,000 per Form 5500 or, in the case of a DFVC submission relating to more than one delinquent Form 5500 filing for the plan, $4,000.
per plan. The DFVC program is available only to plans not yet notified by the DOL of form 5500 problems.

**Can HCW assist with Form 5500 filings?**
Yes. HCW can assist employers by preparing an electronic signature ready Form 5500 for their non-retirement benefit plans. To complete the Form 5500, the employer will need to provide access to their insurance information as well as a copy of their previously filed Form 5500s for the last two years at least sixty days prior to their filing date. Once this information is received HCW can review past filings for compliance, validate information from carriers and vendors, verify and research any outstanding issues, prepare an electronic signature ready Form 5500, and provide the employer with a SAR for distribution to participants.

**More Information**
For more information about the Form 5500 filing requirement, including reporting and filing assistance, please visit [www.dol.gov/ebsa/5500main.html](http://www.dol.gov/ebsa/5500main.html). If you have any questions about the Form 5500 or SAR requirement, please contact your consultant or client manager.