



COMPLIANCE BULLETIN

Significant Changes Proposed to Form 5500

HIGHLIGHTS

- The proposal would eliminate the current filing exemption for small group health plans.
- Small group health plans that are fully insured would be required to provide only basic information.
- The new Schedule J would report information about group health plan operations and compliance.

IMPORTANT DATES

January 1, 2019

The proposed changes to the Form 5500 would apply for plan years beginning on or after Jan. 1, 2019.

January 1, 2020

EFAST2 is expected to begin processing the 2019 Form 5500.

OVERVIEW

On July 21, 2016, a [proposed rule](#) was published by federal regulators that seeks to modernize and improve the Form 5500 annual return/report that is filed by employee benefit plans. In general, the changes are expected to apply for plan years beginning on or after Jan. 1, 2019.

While the Form 5500 is periodically updated so that it stays current with legal and market developments, these proposed updates are significant because of their focus on group health plans. Significantly, the proposed rule would eliminate the current filing exemption for small group health plans and require group health plans to complete a new detailed schedule.

In addition to these changes, the proposed changes would expand the Form 5500's financial and compliance reporting, analytics capability and service provider information.

ACTION STEPS

Employers should monitor these proposed changes to the Form 5500 and consider how the changes would affect them if they are finalized. Employers with small group health plans that have been exempt from the Form 5500 filing requirement may wish to contact service providers to evaluate their options for Form 5500 filings.

Provided By:
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BACKGROUND

Employee benefit plans—retirement plans and welfare plans—are generally required to file an annual return/report concerning, among other things, the financial condition and operations of the plan. Filing the [Form 5500 Annual Return/Report of Employee Benefit Plan](#), together with any required attachments and schedules through the ERISA Filing Acceptance System (currently EFAST2) generally satisfies this annual reporting requirement.

The Department of Labor (DOL), Internal Revenue Service (IRS) and the Pension Benefit Guaranty Corporation (collectively, the Departments) jointly oversee the Form 5500 series.

Because the Form 5500 is the primary source of information about the operation, funding, assets and investments of employee benefit plans, the Departments periodically update the Form 5500 in order to stay current with legal requirements and market developments.

PROPOSED CHANGES FOR GROUP HEALTH PLANS

Exemption for Small Group Health Plans

The proposed changes would **eliminate the complete Form 5500 exemption** for small group health plans. Under the Departments' proposal, all ERISA-covered plans that provide group health benefits would be required to file a Form 5500, together with any required attachments and schedules, including a new Schedule J (Group Health Plan Information).

For **small, fully insured plans** that provide health benefits, the DOL is proposing a new limited exemption as an alternative form of reporting. Specifically, these small plans would be required to answer only a limited number of questions on the Form 5500 and the new Schedule J. According to the DOL, this limited filing is intended to serve as an annual registration statement with basic identifying and insurance information.

The current exemptions from financial reporting on Schedules H, G and C for insured plans, unfunded plans and plans that are combination of unfunded/insured would continue to apply to all qualifying welfare plans, regardless of size. Also, the current exemption from financial reporting on Schedule G for welfare plans that cover fewer than 100 participants would continue to apply.

New Schedule J

The new proposed Schedule J (Group Health Plan Information) would report information about group health plan operations and ERISA compliance, plus compliance with certain provisions of the Affordable Care Act (ACA). Key aspects of this reporting would include:

Under the proposal, all ERISA-covered plans that provide group health benefits, regardless of size, would be required to file a Form 5500, including the new Schedule J (Group Health Plan Information), as well as any other applicable schedules.

CURRENT EXEMPTION FOR SMALL WELFARE PLANS

Small welfare plans are currently completely exempt from the Form 5500 filing requirement if they:

- ✓ Have fewer than 100 covered participants at the beginning of the plan year; and
- ✓ Are unfunded (benefits are paid from the employer's general assets), fully insured or a combination of insured and unfunded.

COMPLIANCE BULLETIN

- ✓ The approximate number of covered participants and beneficiaries and the number of persons offered and receiving COBRA coverage under the plan;
- ✓ What type of group health benefits are offered under the plan;
- ✓ How benefits are funded (that is, through a health insurance issuer, through a trust or from the general assets of the employer);
- ✓ Whether one or more of the plan's benefit package options are claiming grandfathered status under the ACA and whether the plan is a high deductible health plan (HDHP) or includes a health flexible spending account (FSA) or health reimbursement arrangement (HRA);
- ✓ Whether the plan received rebates, refunds or reimbursements from a service provider (such as a medical loss ratio (MLR) rebate and offset rebates from favorable claims experience), and, if so, the type of service provider, the amount received and how the rebates were used;
- ✓ Detailed claims payment data, including information on benefit claims and claims appeals; and
- ✓ Compliance information, including whether the plan's summary plan description (SPD) and summary of benefits and coverage (SBC) comply with the applicable content requirements and whether the plan complies with federal coverage mandates, such as the parity requirements for mental health and substance use disorder benefits.

ACA Transparency in Coverage Reporting

To avoid duplication, the DOL is considering whether a group health plan could satisfy its obligation under the ACA's **transparency in coverage reporting requirement** by filing a completed Form 5500 and Schedule J and providing that information to the necessary parties.

According to the DOL, much of the information required to be reported under the ACA's transparency in coverage reporting requirement—for example, data on enrollment, claims payment policies and practices and claims denials—is information that would be included in the proposed Schedule J.

The ACA's **transparency in coverage reporting requirements**, which are not currently effective, will require non-grandfathered group health plans and health insurance issuers to disclose detailed plan information to HHS, state insurance commissioners and the public.

OTHER PROPOSED CHANGES

In addition to the changes described above for group health plans, the proposed revisions to the Form 5500 include the following updates:

- ✓ **Financial Information** – Improved reporting on alternative investments, hard-to-value assets and investments through collective investment vehicles;
- ✓ **Data Mining** – Conversion of more elements of the Form 5500 into data or information that is organized in a structured manner to make them usable for data-mining and analytic purposes;

COMPLIANCE BULLETIN

- ✓ **Service Provider Fee Information** – Updated fee and expense information for plan service providers; and
- ✓ **Compliance Information** – Additional reporting on plan operations, service provider relationships and financial management of plans.

EFFECTIVE DATE

The proposed revisions, if finalized, would generally apply for plan years beginning on or after Jan. 1, 2019. According to the Departments, some form changes may be made earlier or later, depending on the public comments and developments in the EFAST2 system process.