

How to Understand and Review Form 5500

There is no doubt that operating an ERISA retirement plan can be costly and time-consuming, and it may be burdensome to devote company resources to understanding complex rules and regulations. Reviewing trustee reports, reconciling payroll deposits, and meeting employee needs related to the plan is time-consuming. On top of all that, there is the annual requirement to report plan information to the Department of Labor (DOL) via Form 5500.

As a Third Party Administrator (TPA), we prepare numerous forms 5500 each year which are provided to our clients with the disclaimer that the client is ultimately responsible for the accuracy of the form. Because we realize how complicated some of the forms can be, we sometimes wonder, “Will the person who signs this form understand it?” When a client calls to ask questions about the financial schedules, or to inquire about how we came up with the number of employees, or even just to report an address change, we feel some satisfaction because we know that the client is taking the retirement plan reporting seriously and reviewing the plan’s 5500 before filing it.

If you are the person – or one of the people – at your company who is responsible for administering the company’s retirement plan, *please make sure you review the Form 5500 for your plan each year*. It is important for you to understand the 5500. Your TPA or recordkeeper who prepares the filing only has access to the information you or your payroll provider or accountant has supplied. When we ask for information about your company and your employees, we request a lot of detail, because each bit of information can make a difference in how we approach your plan. Incorrect or incomplete information can cause errors on the 5500 filing, and you are the last line of defense in preventing these mistakes. As one who understands your company and your workforce, you are in the best position to notice if important information has been omitted or if errors have been made.

With that in mind, and realizing that you may not have the time and expertise to examine your 5500 line-by-line, here are the important items you need to review on your Form 5500-SF (short form) or Form 5500 (long form):

- **Is the plan a “small plan” or a “large plan” ?**

The participant count information on the form determines whether the plan is considered “small” or “large” and the filing requirements vary depending on which type of plan you have. A small plan generally has fewer than 100 participants and a large plan generally has more than 100 participants. The participant count shown on the Form 5500 should make sense to you. The total participant count must include any *active* employees who are eligible for the plan even if they do not have an account balance, and it will also include *former* employees who still have an account balance.

- **Are your investments reflected accurately in the financial information, both in amount and type?**

Does the financial information reported on the 5500 make sense? When you compare it to the trust information from your custodian, can you follow the activity and tie the net assets back to what is reported on the 5500? If not, discuss the reconciliation with your plan consultants.

Retirement Management Services, LLC
905 Lily Creek Road
Louisville, KY 40243

www.consultRMS.com Phone: 502-429-0767

If you have a small plan and are filing a short form 5500, you will see a question on the form asking if all of the plan's holdings are invested in "eligible assets". The answer to this question must be marked "yes" if you are filing the Form 5500-SF. If your investment menu includes only publicly traded stocks, bonds, and mutual funds, then it makes sense to answer this question yes. If you have any doubts, discuss it with your TPA or financial advisor. If you have plan assets held in multiple accounts, especially if you have different custodians or financial advisors involved, *do not* assume your other consultants are aware of all of the plan assets. You should check each year to make sure all holdings from all accounts are included on the form.

If your plan is required to be audited or if you have a small plan but are required to file using the long form 5500, then the *type* of investments must be reflected accurately in the financial section (Schedule H or Schedule I) of the 5500. In this case, any questions you have regarding how the investments are classified may be directed to your TPA, to your custodian, or, if applicable, to your auditor.

- **Are you operating the plan in such a way so that answers to the compliance questions are not raising red flags to the DOL or IRS?**

Both the short and long forms 5500 have a section called "Compliance Questions." Your TPA can help you understand the questions in this section, but if you want in-depth information about what is being asked, the place to start is the Form 5500 instructions, which can be found at <https://www.dol.gov/agencies/ebsa/key-topics/reporting-and-filing/form-5500>

There are "correct" answers to these questions and giving the "correct" answers indicates you are likely to be operating the plan in compliance with ERISA. If you give a "wrong" answer to one of these questions, it indicates there may have been a problem in operating the plan or in understanding it. I am sure from the perspective of the DOL, if you give a "wrong" answer to one of the operational questions, then you are aware there is a problem, *and you should already be taking steps to correct it.*

The following questions are not a comprehensive examination of the compliance questions, but a high level explanation of many of the compliance questions:

Q "Was there a failure to transmit to the plan any participant contributions within the time period described in 29 CFR 2510.3-102?"

If your employees are deferring pay into the plan or making loan payments from their pay into the plan, you must deposit those funds as soon as reasonably possible. The DOL is *very* strict about this. If you have a "small" plan, then you have until the 7th business day following the pay date to make the deposits. And the timing of the deposits should be consistent from payroll to payroll. If, for some reason, you missed a deposit or were late, you should honestly answer "yes" to this question and discuss with your advisors the additional steps to take. Large plans are expected to deposit their contributions and loan payments in a shorter time period than 7 business days after each pay date.

Q "Were there any nonexempt transactions with any party-in-interest?"

In general, for 401(k) and profit sharing plans *without* employer stock, the transactions allowed within a plan are narrowly limited to participant contributions, participant distributions, participant loans, investment gain and loss, certain plan expenses (which are disclosed through investment materials and contracts or Form 5500 reporting on Schedule C), and miscellaneous small adjustments due to errors and corrections. If there were other transactions involving the plan, you should ask "was there any self-

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dealing?” Self-dealing would include a sale, exchange, lease, loan or any type of benefit given to someone who should not be benefitting from the plan. Was any unnecessary and disallowed risk taken with plan assets on behalf of someone who should not be incurring a risk or liability to the plan? ERISA plans exist to benefit the participants by allowing them to accumulate funds for retirement on a tax-deferred basis, and plan fiduciaries are charged with protecting the participants’ interests in the plan. The employer, service providers for the plan, employee organizations, company owners, etc. should not be performing independent transactions with the plan assets. There are limited circumstances under which service provider fees may be paid from the plan.

Q “Was this plan covered by a fidelity bond?”

Generally, unless you have a “one-participant” plan, your plan should have a fidelity bond that specifically meets the bonding requirements set out by the DOL. This is something you can discuss with your insurance provider and your TPA, but generally the bond should be for an amount equal to at least 10% of plan assets, up to \$500,000 (or \$1,000,000 if the plan contains company stock).

Q “Were any fees or commissions paid to any brokers, agents, or other persons by an insurance carrier, insurance service, or other organization that provides some or all of the benefits under the plan?”

This question appears on the short form 5500, or, on the long form, it is addressed on Schedule A. If you are unsure about the answer to this question, your TPA and recordkeeper/custodian will be able to assist you. In many cases, when there is a contract within the plan that requires this to be answered “yes,” the recordkeeper/custodian will send you a report with the “Schedule A Information,” even if your plan is not audited.

Q “Did the plan have any participant loans?”

This question appears on the short form 5500, or, on the long form, it is addressed within the financial information section (Schedule H or Schedule I). If the plan allows participant loans, and there were loans outstanding at the beginning of the year, but they were all paid off so that there were none outstanding at the end of the year, then make sure this question is answered as “yes” and the dollar amount at the end of the year is reported as zero.

Q “Did the plan hold any assets whose current value was neither readily determinable on an established market nor set by an independent third party appraiser?”

Current value must be determined annually. Assets such as real estate, non-publicly traded securities, shares in a limited partnership, and collectibles do not belong in a retirement plan unless they will be independently and accurately valued *every year*. If you have such assets in the plan, you must provide the current value for them on this line, as of the end of the plan year.

If you are filing a short form 5500, then you essentially answered “no” to this question already on page 1 of the form where it asked about eligible assets, and you will not see the question in your list of compliance questions.

Q “Did the plan have assets held for investment?”

This question appears only on the long form 5500. Generally, the answer to this question is “yes.” Your auditor will provide the necessary schedule to attach to the 5500 with the audit report.

Q “Were any plan transactions or series of transaction in excess of 5% of the current value of plan assets?”

This question appears only on the long form 5500. The custodian or record-keeper for the plan assets will provide this information if it applies during the plan year. Your auditor will provide the necessary schedule to attach to the 5500 with the audit if the answer to this question is “yes.”

Q “If this is an individual account plan, was there a blackout period?” And, if so, did you provide either “the required notice or [did] one of the exceptions to providing the notice [apply] under 29 CFR 2520.101-3?”

More than likely, if there was a blackout period for your plan, your recordkeeper or custodian prepared a notice for you to hand out to your employees. A blackout period is a period lasting more than three consecutive business days during which access to plan assets is unavailable or limited. It is likely that the only time this will occur in your plan is if you move your assets to a new custodian or record-keeper, or if you change the investment lineup within the plan itself.

Q “Has a resolution to terminate the plan been adopted during the plan year or any prior plan year?”

Unless the party preparing your 5500 has been informed otherwise by you, this question will be answered “no.” If that is not correct, inform your TPA immediately so you can discuss the procedures necessary to wind down the plan. If your company *may* be involved in a merger, sale, or any discontinuance of the retirement plan, you should consult with your TPA at your earliest opportunity and keep them apprised of any discussions regarding the matter.

If you still have questions after reviewing the Form 5500, ask for help.

It is ultimately the responsibility of the plan’s trustees and the employer to ensure the information on the Form 5500 is correct; therefore, it is important that people at the company who are familiar with the retirement plan review the form before it is filed. If there are lingering questions after company representatives review the form, follow up with the plan advisors and make sure the questions are answered and resolved.