

Webinar Title Q&A – the following questions were asked during the two webinar sessions in March 2018

Do all group sizes have to have a Wrap Document or just 100+ life groups?

All Employers are subject to ERISA, regardless of employee size and will have a plan document and summary plan description requirement for ERISA plans that they sponsor. The Wrap plan can provide the supplemental ERISA language that can act as a companion document to the insurance contracts/certificates provided by the insurance carriers.

Are all employers subject to ERISA?

All private sector employers of all business types who maintain retirement and/or welfare benefit plans for their employees. This includes: Corporations, S Corporations, Partnerships, LLC, Sole proprietors, and nonprofit organizations.

Does having a Wrap plan trigger a 5500 filing requirement even if we have well under 100 participants in our health plan?

The Wrap plan is helping the employer satisfy the plan document/SPD requirement under ERISA and does not automatically trigger the Form 5500 filing requirement. If all plans in the Wrap have less than 100 participants in each plan, there is no Form 5500 required. However, as soon as at least one of the plans in the Wrap exceeds 100 participants as of the first day of the plan year, that will trigger Form 5500 filing for the Wrap plan and you will need to provide participation details and Schedule A data for all of the benefits in the Wrap plan regardless of the participation in those plans.

Can you cover again who needs to complete 5500?

For purposes of the health and welfare benefit plan, unless your plan is funded, you will not be required to file a Form 5500 until you have over 100 participants in an ERISA covered benefit plan as of the first day of the plan year.

Do the 100 participants include employees, spouses and children or just employees?

For purposes of determining whether or not you are subject to Form 5500 filing requirements you will count the employees that are participating in the plan and you disregard the number of family members they have. Once you have 100 employees participating in a plan subject to ERISA that will trigger the Form 5500 filing requirement.

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Employee Benefits Corporation | ERISA Compliance: Wrap Plans/Form 5500 Filing

Q: What if you have plans that are under 100 lives but you put them into the wrap plan, are you required to have them filed in the 5500?

A: If you bundle benefits together and at least one of the plans has over 100 participants on the first day of the plan year, the employer must include all of the plans regardless of participation on the Form 5500 filing.

Q: So the magic number for 5500 is one hundred participants?

A: Yes, the threshold for Form 5500 filing is 100 or more participants on the first day of the plan year.

Q: For wrap plan numbers, if the wrap uses one number, but the underlying certificates from the carriers use different plan numbers, how should this be handled? For example, the wrap plan is number 503, but the medical carrier has an ERISA section using 501 as the plan number. Do the underlying plans need to be consistent with any wrap plan number?

A: All underlying coverage will take the Wrap plan number. The purpose of the Wrap is to bundle multiple ERISA plans under one common ERISA plan number.

Q: For the 5500 filing should be 100 participants in the health benefits or employees in the company?

A: The participant count used to determine 5500 filing status is based upon employees who are actually enrolled in the coverage(s).

Q: Is the carrier responsible for providing the SPD to the employer?

A: The carrier is not responsible for providing the SPD to the employer.

Q: Can you please articulate the 4/1/2018 change again and what document it affects?

A: The Department of Labor (DOL) has issued a final rule on disability claims procedures that must be adopted by April 1, 2018. We have provided an update to our Wrap Plan customers to comply with the new rules under the Wrap plan document and SPD and disability carriers should be amended their policy and certificates of insurance.

Q: Does this apply to a public K-12 School District?

A: Governmental entities like public school districts are exempt from ERISA and are not subject to plan document, SPD or Form 5500 filing requirements.

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Q: For the 5500 filing: is the participant count taken at the beginning or end of plan year?

A: The Form 5500 threshold is determined looking at the participation count on the 1st day of the plan year.

Q: Are all certificates of coverage similar in look? Are there sample certificates available to view?

A: Each carrier could use a different format for policy booklets or insurance certificate. I am not aware of a model that they follow and we don't have a sample available. You should consult with your insurance carriers for that detail.

Q: What is the information needed in a Plan Document/Summary Plan Description that isn't included with the certificate of insurance.

A: We covered some of the typical items missing from the policy booklets/insurance certificates on slides 20-21 from the handouts. These items include plan name, named fiduciary, plan numbers, plan administrator, and plan agent for service of legal process to name a few.

Q: I am sorry but I missed what the April 1st deadline is for.

A: The Department of Labor (DOL) has issued a final rule on disability claims procedures that must be adopted by April 1, 2018. We have provided an update to our Wrap Plan customers in order to comply with the new rules. Disability carriers should be amending their policies and certificates of insurance to incorporate the new required rules.

Q: If an employer contributes to an H.S.A., does that make it subject to ERISA?

A: No. An employer can contribute to an employee's HSA without triggering ERISA. ERISA would only be triggered if the employer held the HSA funds in trust in the name of the employer and provided direction of investments, etc. This is not common.

Q: If we use a benefit portal and our wrap and SPDs are on it will we comply with the DOL distribution requirements even if some of our employees don't use computers as part of their daily work?

A: If an employee does not use a computer as a regular function of their job, you need their written permission to provide benefit communications electronically.

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Q: How would an employer find out if they were delinquent with filing Form 5500's for prior years?

A: The Department of Labor (DOL) has a history of Form 5500 filings for an employer at www.EFAST.doc.gov that should provide details of what Form 5500s (if any) the employer has filed. The employer should compare the Form 5500 filing history to their employee participation records to determine when or if the Form 5500 was required.

Q: I am new to my position at my current company. How can I tell if we have a wrap plan in place or not?

A: If a Wrap plan was in place there should be plan document and a SPD on record with the employer. You can also look at the Form 5500 filing history on www.EFAST.dol.gov to see if any Form 5500s have been filed with multiple lines of coverage under one Form 5500. However, note that not all employers that complete a Form 5500 with multiple benefits have an actual plan document to support the bundled benefits.

Q: So does the small employer exception go from 99 employees and less...or does it start at 80 employees and less?

A: Per the Form 5500 filing instructions "Do not file a Form 5500 if you have a welfare benefit plan that covered fewer than 100 participants as of the beginning of the plan year and is unfunded, fully insured, or a combination of insured and unfunded, as specified in 29 CFR 2520.104-20."

Q: What is the difference/when should you restate a Wrap Plan versus Amending a Wrap Plan?

A: Implementing a Wrap plan initially or as a plan that assigns a new ERISA plan number would begin with an effective date from the current coverage period and would not be tied to any prior Form 5500 filings or plan document history. If an employer is intending to adopt a plan document that really is just updating it for current plan details and required language an employer can tie their plan using the same plan number and referencing the original effective date, thus amended and restating a plan that had already been in existence.

Q: Would we ever have common SPD covering retirement and benefits plans?

A: That would be rare because the requirements for retirement and health and welfare plans are different and would further complicate compliance if they were combined under one plan.

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Q: Did you say that EBC provides two separate files: 1) SPD and 2) Plan Document?

A: We have taken the approach of creating a separate Wrap plan document and separate Wrap summary plan description (SPD) to satisfy ERISA compliance requirements. Another approach would be to create a document/SPD all in one.

Q: Can you please send us an electronic copy of the DOL Electronic Disclosure Regulations?

A: The final rule on electronic disclosure can be found here:
<https://www.gpo.gov/fdsys/pkg/FR-2002-04-09/pdf/02-8499.pdf>

Q: If an employer puts a voluntary plan on an online enrollment system, does that qualify as an endorsement from an employer?

A: Employer endorsement really is a facts and circumstances determination best made by the employer's legal advisor.

Q: Would increasing the deductible in a plan from one year to the next be considered a material reduction?

A: Generally if the details of the health plan coverage are left defined in the benefit booklet and the Wrap plan generally references the carrier name and coverage. In the event there is a deductible change the employer or insurance carrier would make available a new benefit booklet, but it does not necessarily constitute a material reduction as long as the major medical plan remains a sponsored benefit. Notifying employees of out-pocket-differences should be done as soon as possible and would also be communicated via the required Summary of Benefits and Coverage (SBC). We also recommend the employer contact an insurance professional or legal advisor who may be best equipped to answer this question with the specific facts and circumstances.

Q: Can you please re-explain the Wrap plan date requirements if you have self-funded health and dental but are fully insured for vision, life and LTD and they have plan years/insurance years?

A: You can combine fully insured and self-funded plans together under a single Wrap plan. You need to identify one plan year cycle for the Wrap plan overall. Any insured plans that run on a different cycle, you will include the Schedule A that has a plan year that ends inside the Wrap plan year if you are subject to Form 5500 filing requirements. Self-funded plans are required to file a Schedule C for amounts in excess of \$5,000 and the data is reported on the policy year. All of this is analyzed and factored into the decision surrounding which plan year will be used for the wrap plan year.

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Q: What plan changes constitute a SAR? What is needed from group to complete the SAR?

A: Plan changes do not constitute a SAR. The Summary Annual Report (SAR) is generated either by the employer or the third party that is tasked with Form 5500 preparation and is a result of Form 5500 filing. The SAR is distributed within 9 months from the end of the plan year if it is required. The SAR for health and welfare plans includes details regarding plan types, premiums and in some cases financial information related to the plan.

Q: You might touch on this, but how detailed do the eligibility provisions in the SPD need to be? Can they be very general (all full-time working 30 hours) or specific including the waiting period, classes, etc.?

A: Typically the eligibility criteria will include hourly requirements and waiting periods. In some cases additional specific detail or exclusions are defined within the eligibility statement in the SPD as well.

Q: So if I have a company that takes it's medical, dental, vision, 401k PRE-TAX, am I subject to ERISA guidelines?

A: The medical, dental and vision plans if provided under a group contract will be subject to ERISA regardless of how the plan premiums are paid for. If the coverages for dental and vision are individual contracts, it is possible ERISA will be triggered by permitting the employee's to pay for their premiums with pre-tax dollars. The 401k plan is subject to ERISA regardless of how the plan is funded because it is an employer sponsored retirement plan.

Q: An employer still needs to have SPD's even if the employer will have a wrap document?

A: It is possible to combine the plan document and spd into one document. In that case the employer will need to distribute the entire document. The ERISA requirement can also be satisfied by creating a plan document and separate SPD that is shorter and geared towards employee communication. The employer will sign and retain the plan document for their records and distribute the SPD to the plan participants. Our wrap SPD is to be used in connection with the various benefit booklets, insurance certificates and summary plan descriptions for the underlying benefits.

Q: Where does an employer find their plan numbers?

A: The DOL does not assign plan numbers. ERISA plan numbers can be assigned by the employer or a third party. 500 series numbers are assigned to health and welfare plans and the 000 series is assigned to retirement plans.

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Where do you find your plan #, i.e. Health & Welfare plans begin with the number 5?

The plan number should be assigned by the employer at the time that the plan is initiated. Each benefit offered should have a different plan number. Health and welfare benefit plans use the 500 series numbers. Retirement plans start with a zero (0) and will not overlap with health and welfare benefit plan numbers. Typically the health plan is 501, dental plan is 502, and ancillary benefits are higher. You should not reuse a number that had been previously assigned to a plan that is no longer active or no longer actively filing a Form 5500 (i.e. cafeteria plan filings were suspended in April 2002 but were required prior to that date). If an employer is not sure of the plan numbers that are in use, it would be best to skip ahead in the numbering to avoid reusing a number that had been previously assigned.

Q: Does Employee Benefits Corporation provide services to file Form 5500?

A: Yes, we provide Form 5500 preparation services. You can contact our Sales team at sales@ebcflex.com for more information.

Q: What do you suggest when we reasonably cannot get employees to sign the document that they received their SPD? We send it to them through intercompany mail and their manager put it in their mailbox or hands it to them. There is no proof they get their SPD and ERISA Wrap document.

A: You may ask employees to sign a roster when they receive paperwork that is handed to them or ask that they sign an actual acknowledgement form and return it to HR if you are looking for definitive proof they received the SPD when distributing information via paper. If that fails, I would keep a list of who you distributed the information to along with the method in which it was delivered for your records.

Q: Are Group Voluntary Plans subject to ERISA?

A: If an employer “endorses” the plan and fails to satisfy the safe harbor rules, the voluntary plan may be subject to ERISA. I covered the details of this in slides 15-16 in the handouts.

Q: If an HRA has less than 100 enrolled, is a 5500 filing required?

A: Generally no, unless the HRA funds are held in trust. The small employer exception would not apply for funded plans. This is not common. Many employers establish the HRA as a “promise to pay” and they use general assets to reimburse eligible claims as they are presented to the plan.

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Q: Can a client file one 5500 filing for all benefits if they do not have a Wrap Document?

A: No. If an employer is filing a combination of benefits under one ERISA plan number, there should be a Wrap plan document and SPD to support the combining/bundling of benefits.

Q: Are true Voluntary plans required to file form 5500? Even if they are over 100 participants?

A: Generally, individual contract voluntary plans would not be subject to ERISA unless the employer fails the safe harbor rules and endorses the plans. Group voluntary plans are typically subject to ERISA by nature of the contract. Form 5500 filing is an ERISA requirement only required if the voluntary plans are considered subject to ERISA.

Q: So should the Section 125 plan be included in your wrap document if you include the Medical deferral?

A: The Section 125 plan itself is not subject to ERISA, but the component benefits under the Section 125 plan might be subject to ERISA and should be included in the Wrap plan. For example, an employer might have a Section 125 plan that includes the ability to pay your share of medical premiums pre-tax through payroll. The Section 125 plan is not subject to ERISA; however, the group medical plan is and should be included under a Wrap plan.

Q: As a local government employer are we exempt from both the SPD distribution and Form 5500 filing requirement?

A: Correct, governmental entities are exempt from ERISA and are not required to create or distribute a SPD or file a Form 5500.

Q: Are Affordable Care Act (ACA) measurement periods required to be included in ERISA plan document? I have been told that ACA requires employer to amend their plan document with measurement period information.

A: ERISA does not require that a Wrap plan include ACA measurement methods and time periods. This is a requirement of the Employer Shared Responsibility rules under the Affordable Care Act (ACA). The wrap plan however, is a convenient place to define and then make available to health plan participants, since the carriers will not include this detail in policy booklets.

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Q: Regarding electronic distribution... Is the fact that an employee has access to computers as a core job function enough, or would "best practices" dictate that an employer obtain a wet signature on an authorization to distribute ERISA info electronically?

A: The DOL safe harbor rules indicate that if the employee uses a computer as a regular function of their job you are not required to get written permission to distribute benefit information electronically. You are however required to include a statement that says "they have a right to a paper copy upon request at no additional charge".

Q: When distributing the wrap SPD, the assumption is you also have to distribute all of the certificate booklets that go with it, even if employee isn't enrolled in all of the benefits?

A: This would be true if they have not yet gotten the benefit booklets or insurance certificates. However, you may also take the approach that you distribute the Wrap SPD, which names the carriers and coverages, along with an explanation that indicates the participant should refer to the benefit booklet or insurance certificate for the specifics about each plan they are enrolled in and if they don't have a current copy they can request that the employer help them get a copy. That way you avoid distributing or redistributing benefit booklets/insurance certificates to those that already have a copy or don't need one. We have also seen employer create one large file that includes the Wrap SPD and the benefit booklet/insurance certificates for all the benefits under the wrap. Our approach is the first option described above. The Wrap SPD plus the benefit booklet/insurance certificates/SPDs will satisfy the DOL SPD requirement.

Q: For our basic life/add, STD/LTD disability- does Employee Benefits Corporation have some referrals as to vendors who do provide services to file 5500?

A: We can provide Form 5500 preparation services and you can contact our Sales team for details at sales@ebcflex.com

Q: Should the ACA lookback language be in the Wrap Document as well? Or do you just defer to the Cert of Coverage and/or SPD for further detail on eligibility?

A: The insurance carriers are not required to define the ACA measurement methods and time periods or eligibility in the benefit booklets or insurance certificates so you will not find that detail there. ERISA does not require that a Wrap plan include ACA measurement methods and time periods. This is a requirement of the Employer Shared Responsibility rules under the Affordable Care Act (ACA). The wrap plan however, is a convenient place to define and then make available to health plan participants.

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Q: If one plan has 100 or more participants at beginning of plan year, but the other plans have less than 100. Do all lines need to be included in 5500 filing if they are included in wrap document?

A: If all plans in the Wrap have less than 100 participants in each plan, there is no Form 5500 required. However, as soon as at least one of the plans in the Wrap exceeds 100 participants as of the first day of the plan year, that will trigger Form 5500 filing for the Wrap plan and you will need to provide participation details and Schedule A data for all of the benefits in the Wrap plan regardless of the participation in those plans.

Q: Do you believe a Wrap needs to specifically identify the insurance carrier, or can they merely list the coverage line?

A: Our Wrap plan does not specifically include the insurance certificates and benefit booklets, but references them by name. In order for the employee to connect the Wrap SPD with the appropriate coverage details, the insurance carrier name is listed with the coverage type. The Wrap SPD plus the benefit booklet/insurance certificates/SPDs will satisfy the DOL SPD requirement.

Q: Does the SPD Wrap also have the same "10 year" potential life span as a SPD?

A: Yes, if there no material changes over the span of 10 years, the employer must distribute a new SPD every 10 years at minimum.

If we have a TPA, Who needs to complete form 5500?

Ultimately the responsibility to file the Form 5500 falls on the employer. You may delegate the preparation services by contracting with a third party like an accountant or a third party administrator (TPA).

If the insurance carrier Schedule A includes dependents, then how does employer track actual enrolled employees? Do they use their own file records?

Yes. It will be up to the employer to calculate the participation counts for the beginning and ending plan dates required as part of the Form 5500 filing.

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For a controlled group, is there any issue with keeping the Wrap Plan and 5500s separate for each member of the group?

A control group may opt to maintain separate Wrap plans for each of the related employers or combine all under one Wrap plan. This will generally be determined by the differences or similarities in the benefit offerings to the related employers. Keep in mind however, that separate Wrap plans will have separate Form 5500 filing requirements.

What was the website to check prior 5500 history?

The EFAST Website <https://www.efast.dol.gov> has Form 5500 filing history available at the Department of Labor. Typically if an employer is unsure what numbers are in use and they do not have Form 5500 history readily available, it would be best to skip ahead in the numbering series to avoid the possibility of reusing a number. There is no issue with skipping numbers, just reusing retired numbers.

How does an employer terminate an old ERISA plan number?

When you file your Form 5500 for the final time, you check the box "final return/report" and follow the rest of the directions for filing a final return. This notifies the DOL not to expect any future filings for the plan number.

So if an employer sponsors 4 plans and each have fewer than 100 participants, they do not need to file a 5500?

Correct. If each of the plans separately has less than 100 participants and you do not have a Wrap plan, you are not subject to Form 5500 filing requirements for each of the plans. You would however, be subject to the Plan Document and SPD requirement for each of the plans.

If the 4 plans are part of a Wrap plan and you do not have unique participation that exceeds 100 participants on the 1st day of the plan year, you would not be subject to Form 5500 filing requirements. You are only required to count the employee once even if they participate in more than one line of coverage.

How do you go from these multiple plan #'s to one to simplify the 5500 form filing process?

The plans that previously existed under separate plans and plan numbers are now "wrapped" into one document file and one plan number. Employers will need to file one final Form 5500 for each of the old plan number(s) that had been in use and then the Wrap Plan is generally assigned a new plan number and going forward all of the plans are "wrapped" together and are filed under that Wrap Plan number following the effective date of the Wrap Plan. When an employer files a final return it means that they

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as part of the filing are checking the box “final return/report” on the Form 5500, which will notify the Employee Benefits Security Administration (EBSA) not to look for future filings for that plan number.

Can you use a wrap document if you have different plans with different renewal dates, eligibility and/or contribution levels?

Yes, however, it may be possible to have more than one wrap plan in consideration of differences. This is generally part of the discussion you will have as you design your Wrap plan.

We have a Section 125 POP in place so the share of the employee's premium for health, dental, vision and voluntary life are deducted tax free. Are we subject to ERISA?

The POP is a vehicle for the pre-tax benefits under Section 125 and is not an ERISA plan. However, the underlying benefits like the health, dental and vision plans are ERISA plans and require a plan document and SPD. The voluntary life plan may satisfy the exception from ERISA based on how involved the employer is in offering and maintaining that life plan. If it ends up being a group voluntary life plan, then it is subject to ERISA as well. This assumes of course that you are an employer that is subject to ERISA.

Is it acceptable to send a link/website to employees to access the SPDs versus sending each individual a copy of the SPD?

There are Treasury Department and Department of Labor electronic distribution requirements that you can access by going to the DOL website and doing a search for those requirements. We included some of the safe harbor rules in the presentation (see below). Assuming you otherwise qualify for electronic distribution, if you are going to post information to a website or intranet, at minimum you must notify the employees about what has been posted and how they access the information, along with the statement that they have the right to request copy in paper format from the employer. See the safe harbor rules below:

DOL Electronic Disclosure Regulations, 67 Fed. Reg. 17264 (April 9, 2002) and Treas. Reg. Sec. 1.401(a)-(21)

1. Employees must have ready access to the employer's information system (a kiosk or central computer does NOT meet this requirement).
2. Employees' computer access must be in the same area where the employees are expected to perform their duties (could be at home).
3. Access to the employer's computer system must be an integral part of employees' duties.
4. The SPD may be distributed digitally to employees who do not meet the above criteria if:
 - a. Employees provide an e-mail address where the documents can be delivered

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- b. Employees must complete a consent form to agree that they will receive the documents digitally
 - c. Consent must occur AFTER employees have received a statement explaining the digital delivery system and what hardware and software will be required to receive it.
 - d. If system requirements change, the employees must receive notification of the change and complete a new consent (e.g., notice was first sent in Microsoft® Word, now being provided in Adobe® Acrobat®).
5. Digital delivery must be calculated to ensure actual receipt (e.g., return receipt, notification of undeliverable mail, etc.).
6. Employees must receive notice that the documents will be delivered digitally prior to distribution.
7. Employees must receive a notice that the documents can be requested and received in paper form at no charge.

Does the SPD need to be delivered to employees that are not eligible for the benefits? To the employees that participate (are enrolled)?

Generally you provide the SPD to new **participants** in the plan within 90 days of employment. For a new plan you have 120 days to provide the SPD to plan participants. Further you are required to provide an updated SPD if there are amendments and you are also required to provide a SPD within 30 days of written request.

Will this presentation be eligible for CE credits toward SHRM or HCRIS?

This webinar was not submitted for approval for outside association CE credits. We can however, upon request provide a certificate of attendance in order for you to pursue the CE credit on your own.

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