

Special points of interest:

- 2005 FORM 5500
- EBSA PROPOSES MANDATORY ELECTRONIC FILING OF FORM 5500
- UPDATE PHI ACCESS FORM
- SPECIAL ENROLLMENT PERIOD CHANGE

2005 FORM 5500

The following is an excerpt from Spencer Research Reports:

The Department of Labor's Employee Benefits Security Administration (EBSA), the Internal Revenue Service, and the Pension Benefit Guarantee Corporation have released advance copies of the 2005 version of the Form 5500 annual/report for employee benefit plans. The modifications to the Form 5500 for plan year 2005 are described under "Changes to Note" in the 2005 Instructions. Of particular importance, the Schedule T (Qualified Pension Plan Coverage Information) is no longer required; the instructions for the Schedule A (Insurance Information) reflect EBSA guidance issued earlier this year on reporting of insurance fees and commissions; and the Schedule B (Actuarial Information) and its instructions improve reporting on investment returns, actuarial assumptions, and the summary of eligibility and benefit provisions used in plan valuations.

Information copies of the 2005 version of the forms, schedules and instructions are available on the EBSA's website at <http://www.efast.dol.gov>. Filers should monitor EFAST website for information on approved software vendors for completing the 2004 forms and on availability of the official, government printed forms. Advance copies of the 2005 Form 5500 cannot be used for 2004 filings.

For general assistance, contact EFAST Help Line at 866-463-3278.

EBSA Proposes To Require That 5500 Forms Be Filed Electronically

The following is an excerpt from Spencer's Benefit Reports News:

The Department of Labor's Employee Benefits Security Administration (EBSA) has issued proposed regulations that would establish an electronic filing requirement for Form 5500 annual reports required to be filed with the agency by plan administrators and other entities. The proposal includes a new method for filing individual Form 5500 return. The proposed regulations appeared in the August 30 *Federal Register* (see [Text: EBSA, Proposed Regulations, Electronic Filing Of Annual](#)

[5500 Reports](#)).

Currently, the EBSA, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation use an automated document processing system—the ERISA Filing Acceptance System—to process the Form 5500 series filings. As part of the EBSA's efforts to update and streamline the current processing system, the agency has determined that improvements and cost savings in the filing processes can best be achieved by adopting a wholly electronic filing processing system and eliminating the currently accepted paper filings. The EBSA believes that a wholly electronic system will result in, among other things, re-

duced filer errors and, consequently, reduced correspondence and potential for filer penalties; more timely data for public disclosure and enforcement, thereby enhancing the protections for participants and beneficiaries; and lower annual report processing costs.

As part of the move to a wholly electronic filing system, the proposed regulations would, upon adoption, require all Form 5500 filings to be made electronically. The regulations would not apply until plan years beginning on or after Jan. 1, 2007, with the first electronically filed forms due in 2008.

Individual Electronic Filing Allowed

In the preamble to the proposed regulations, the EBSA explains, "It is anticipated that the new electronic filing system will incorporate the Internet as the sole medium for transmission of all filings and that the system will incorporate immediate validity and accuracy checks that will reduce both the error and rejection rate of filings and eliminate much of the costly post-filing paper correspondence and related potential penalties. The Department does not anticipate charging any filing fees in connection with the new system."

According to the EBSA, "It is intended that the new electronic filing system will provide more than one vehicle for the electronic submission of annual return/reports. First, it is intended that the new filing system will offer users of approved, privately developed Form 5500 computer software a secure Internet-based method for transmission of Form 5500s created through the use of the software. This Internet-based transmission process will supersede all of the other currently available methods of transmitting machine-print versions of the Form 5500, including use of computer diskette, CD-ROM, magnetic tape, and modem. Third-party software is expected to remain the primary means of producing Form 5500s, with the simple difference being that the reports will be filed electronically rather than through the use of paper.

"Second, the Department also intends to include in the new system, as a separate filing method, a dedicated, secure Internet Web site through which plan administrators will be able to input data and to complete

and submit Form 5500 filings on an individual plan-by-plan basis. It is anticipated that the Internet Web site will provide the filer with the capability of entering and saving data for an individual filing through multiple sessions, authorizing input for that filing from multiple parties (service providers, accountants, actuaries, etc.); uploading attachments; saving return/reports to a repository; and retrieving, updating, and editing stored filings, as well as creating and submitting amended filing data to EBSA."

The proposed regulations would add a new section 2520.104a-2, Electronic Filing of Annual Reports, to Subpart E of Part 2520 of Title 29 of the Code of Federal Regulations. The proposed regulations would not apply to any reporting requirements imposed solely under the Internal Revenue Code (i.e., not required under ERISA Sec. 104(a)). The regulations clarify that the requirement to file annual reports electronically does not affect an entity's record retention or disclosure obligations.

Comments on the proposed regulations must be submitted by October 31 to the Office of Regulations and Interpretations, EBSA, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210 (Attn: Form 5500 E-filing regulation (RIN 1210-AB04)). Comments also may be submitted electronically to the following e-mail address: e-ori@dol.gov. For further information, contact Yolanda R. Wartenberg at (202) 693-8510.

Update PHI Access Form

Our PHI Access Form was developed for your use in documenting those employees or classes of employees who will be given access to Protected Health Information (PHI). As changes occur in your staffing, we request that you submit a revised PHI Access Form to the Compliance Manager at BAS' Homewood office at 17475 Jovanna Drive Suite 1B, Homewood, IL 60430 or fax to 708-799-2848 or email to privacyassistance@benadmsys.com

Attached is a PHI Access Form for your use in updating the names or classes of employees that are allowed to receive PHI from BAS.

We further request that you provide BAS with a copy of the Business Associate Agreement you have with your broker and/or consultant.

Special Enrollment Period Change

The following is an excerpt from SPBA Update:

The final HIPAA Portability regulations require a change in how most plans have administered the Special Enrollment Period rules. These changes apply to plans on the first day of the plan year beginning on or after July 1, 2005.

Current Procedures – If an employee is covered under a major medical plan with a \$500 deductible and then gives birth to a child, plans permit the employee to add the child to the major medical plan with a \$500 deductible. Most plans typically do not permit the employee to change their health plan selection and move to a plan with a \$250 deductible.

New Rule – Under the final HIPAA Portability rules, the employee in the above scenario must be given the opportunity to enroll in a different plan option, if another option exists. According to DOL officials, the regulation provides some flexibility to plans in deciding whether to carryover the deductible and lifetime limits, provided plan participants are treated in a uniform manner.

The preamble to the final HIPAA Portability rule describes this change on page 78732. "These regulations further clarify that individuals who enroll during a special enrollment period must generally be treated the same as individuals who enroll when first eligible. That is, relative to similarly situated individuals who enroll when first eligible, special enrollees must be offered all the same benefit packages, cannot be required to pay more for coverage, and cannot be subject to a longer preexisting condition exclusion."

PHI ACCESS

Individuals with Access to Protected Health Information

HIPAA requires that only those employees or classes of employees or other persons under the control of the Plan sponsor, and as described in your Plan document, will be given access to Protected Health Information (PHI)*. In order to assist us in identifying the appropriate individuals who may be given access to PHI, please consider those persons involved in activities, such as:

- General Plan administration - medical, dental and vision;
- Lawsuits involving your Plan;
- Renewal process;
- Claims appeals;
- Cases handled by Utilization Review;
- Determinations of claims to be paid outside of the Plan; and
- Administration of COBRA, Flex, etc.

For example, if the Board of Directors or Officers of the company may view PHI when dealing with lawsuits, renewals, etc., you may simply state "Board of Directors" or "Officers of the company". Please note that all employees who have access to PHI will be required to undergo training on your Plan's HIPAA Policies & Procedures.

Group Name:

Please insert the **Name, Title and Department** of the individuals who have access to PHI:

Name	Title	Department

Contact: _____ Phone: _____

E-mail: _____

If you need additional space, please attach a separate sheet. Please FAX this Form to 708-799-2848 or mail it to Benefit Administrative Systems, L.L.C., 17475 Jovanna Drive, Suite 1B, Homewood, IL 60430

*Protected Health Information (PHI):

1. Either identifies the person or reasonably can be used to identify the person;
2. Is created or received by the health care provider, health plan, employer, or health care clearinghouse;
3. Is maintained or transmitted by a covered entity orally, in writing, or electronically; and
4. Relates to the past, present, or future physical or mental health/condition of a person or relates to the provision of health care to a person, OR relates to the payment for the provision of health care to a person.