

SUMMARY ANNUAL REPORT: A GUIDE FOR EMPLOYERS

Sponsors of group plans that are subject to ERISA must generally distribute SARs to all plan participants by the last day of the ninth month following the end of the ERISA plan year. However, unfunded self-insured plans are not required to provide SARs.

OVERVIEW

A summary annual report (SAR) is an annual statement in narrative form that summarizes the latest annual report (Form 5500) for an ERISA plan. Generally, employers that sponsor group plans subject to ERISA and Form 5500 filing requirements have compliance obligations regarding the annual distribution of SARs to plan participants. An exception to the SAR distribution requirement applies to unfunded self-insured plans, as explained in greater detail in the SAR Distribution Requirement section below.

This publication provides an overview of the SAR distribution requirement. It describes the process for achieving compliance and includes a chart of **Form 5500 and Summary Annual Report Due Dates** (Appendix A) and a **Sample Employee Communication** to accompany the annual distribution of the SAR (Appendix B). A separate NFP publication, **Form 5500: A Guide for Employers**, addresses Form 5500 requirements, including the exemption from filing Form 5500 for plans that meet the definition of a small welfare plan. For general information about ERISA, see the NFP publication **ERISA Compliance Considerations for Health and Welfare Benefit Plans**.

SAR DISTRIBUTION REQUIREMENT

Sponsors of group plans that are subject to ERISA are generally required to distribute SARs to all plan participants. "Participants" in this context means any employees or former employees, including retirees and COBRA participants, who are enrolled in the plan at the time the SAR is distributed. Employers are required to distribute separate SARs for each separate Form 5500 that is filed with the DOL.

If a plan is not required to file a Form 5500, then there is no corresponding SAR distribution requirement. However, the reverse is not always true. That is, some plans that are required to file a Form 5500 are nonetheless exempt from the SAR distribution requirement. Specifically, under the DOL's SAR rules, totally unfunded welfare plans are not required to provide SARs, regardless of size, even though large, unfunded welfare plans must file a Form 5500. (For reference, an unfunded plan is generally a self-insured plan where benefits are paid out of the plan sponsor's general assets and no plan assets are maintained in a separate account or trust.) By contrast, all large, fully insured plans are subject to both the Form 5500 filing requirement and the SAR distribution requirement. For further information about Form 5500 filing requirements, see the NFP publication **Form 5500: A Guide for Employers**.

For an ERISA plan that is terminated, the SAR requirement applies to the year in which the plan terminated. The SAR must be distributed relative to the final annual Form 5500 filing of the terminated plan, even though there are no current participants at the time of the SAR distribution. For terminated plans, it is generally recommended that employers distribute SARs to all individuals who were participants during the plan year to which the SAR relates.



SAR DISTRIBUTION DUE DATE

Plans must generally distribute SARs to plan participants by the last day of the ninth month following the end of the ERISA plan year. For calendar year ERISA plans, the SAR due date is therefore September 30. Plans that received a two-and-a-half-month extension of time to file their Form 5500 must provide the SAR within two months after the extended filing deadline for the Form 5500. For calendar year plans, the extended SAR due date is therefore December 15. If the SAR distribution due date falls on a weekend or federal holiday, the due date is extended to the next business day. (See Appendix A, **Form 5500 and Summary Annual Report Due Dates**, for a schedule of default and extended Form 5500 and SAR due dates based on ERISA plan year start dates.)

SAR DISTRIBUTION METHOD

Employers may distribute SARs by hand, by mail, or by electronic delivery (e.g., email) in a manner that complies with the DOL's electronic disclosure safe harbor. In general, employers must "use measures reasonably calculated to ensure actual receipt of the material by plan participants, beneficiaries and other specified individuals." The DOL's safe harbor rules allow for electronic distribution to employees who have computer access as an integral part of their job (e.g., work email address or regular access to laptop/phone or other device). Employees without computer access as an integral part of their job must consent to electronic distribution of notices (usually using a personal email address). While electronic delivery can include posting to an employer's intranet or benefits portal, or sending via email (among other electronic means), these measures alone do not satisfy the DOL's distribution requirements. The employer must also notify employees that the notice has been posted and must describe the significance of the notice and the employee's right to request a paper copy.

Importantly, employers should routinely document all methods of delivery used for each required notice and should retain these records in accordance with the employer's record retention policy. In general, records related to ERISA plans should be retained for eight years. For more detailed information about electronic distribution rules, including a **Sample Employee Communication** and a **Sample Employee Consent to Receive Plan Disclosures**, see the NFP publication **Electronic Distribution Rules: A Guide for Employers**.

REQUIRED CONTENT FOR THE SAR

The DOL rules provide model SAR language. Information in the SAR is based upon information contained in the most recent Form 5500; thus, a plan that is not required to include particular information in its Form 5500 is not required to include that information in its SAR. Note that the SAR contact information (i.e., the name, address and telephone number of the representative of the plan administrator) must be accurate as of the SAR distribution date and may therefore differ from the most recent Form 5500 if personnel or address changes occurred after the Form 5500 was filed. Employers with employees who may require language assistance should review the applicable foreign language assistance requirements for SARs and other ERISA plan documents.

The following is a list of items that must be included in the SAR:

- For plan benefits that are not provided through insurance, state the type of claims that the plan sponsor is committed to pay.
- For fully insured benefits, state the type of claims that the plan has contracts with insurers to pay, the name of each insurer, and the total premiums paid for the plan year.
- If the insurance contracts are "experience rated," include additional information about premiums and claims under the contract.
- If plan funds are held in a trust or a separately maintained fund, state the value of the plan assets as of the beginning and the end of the plan year, as well as the amount of increase or decrease in net assets.
- If plan funds are held in a trust or a separately maintained fund, state the amount of 1) the total income during the plan year, including employer contributions, employee contributions, realized gains or losses from the sale of assets, and earnings from investments; and 2) plan expenses, including administrative expenses, benefits, and other expenses.
- A statement that the individual receiving the SAR has a right to request a copy of the Form 5500.
- A list of the items (such as schedules and attachments) in the filed Form 5500.
- A statement that the individual receiving the SAR has a right to receive a statement of plan assets and liabilities or a statement of plan income and expenses (or both statements).
- A statement that the individual receiving the SAR has a right to examine the Form 5500 at, among other places, the main office of the plan.
- Information about how to obtain a copy of the SAR from the DOL.

PENALTIES FOR NONCOMPLIANCE

A participant, beneficiary, fiduciary, or the Secretary of Labor may bring suit to require distribution of the SAR or, presumably, to obtain equitable relief for any damage suffered as a consequence of an employer's failure to distribute the SAR. Criminal penalties can apply to willful violations of some ERISA requirements, including Form 5500 filing and SAR distribution. Such willful violations (i.e., with intent to not meet the requirement) are punishable by a fine of not more than \$100,000 or imprisonment for not more than 10 years, or both. In the case of a violation by a person other than an individual (e.g., a corporation), the fine is limited to \$500,000.

There is no other special penalty under ERISA for failure to distribute SARs. Presumably, however, a participant requesting the SAR who does not receive the summary within 30 days of that request can be awarded up to \$110 per day for each succeeding day (until the SAR is provided).

SUMMARY

Employers that sponsor group plans subject to ERISA should be closely attentive to the respective Form 5500 and SAR filing and distribution requirements. To discuss your Form 5500 and SAR compliance obligations and other aspects of your employee benefits program, or for copies of NFP publications, contact your NFP benefits consultant. For further information regarding NFP's full range of consulting services, see [NFP.com](https://www.nfp.com).

RESOURCES

[DOL Regulation 2520.104b-10\(d\)](#)

[DOL Plan Information](#)

[Summary Annual Report Model Notice](#)

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APPENDIX A

Form 5500 and Summary Annual Report Due Dates

ERISA Plan Year Start Date	ERISA Plan Year End Date	Form 5500 Due Date (without Form 5558 Extension)*	SAR Due Date (without Form 5558 Extension)*	Form 5500 Due Date (with Form 5558 Extension)*	SAR Due Date (with Form 5558 Extension)*
January 1	December 31	July 31	September 30	October 15	December 15
February 1	January 31	August 31	October 31	November 15	January 15
March 1	February 28/29	September 30	November 30	December 15	February 15
April 1	March 31	October 31	December 31	January 15	March 15
May 1	April 30	November 30	January 31	February 15	April 15
June 1	May 31	December 31	February 28/29	March 15	May 15
July 1	June 30	January 31	March 31	April 15	June 15
August 1	July 31	February 28/29	April 30	May 15	July 15
September 1	August 31	March 31	May 31	June 15	August 15
October 1	September 30	April 30	June 30	July 15	September 15
November 1	October 31	May 31	July 31	August 15	October 15
December 1	November 30	June 30	August 31	September 15	November 15

*When the due date falls on a weekend or federal holiday, the due date is extended to the next business day.

APPENDIX B

Sample Employee Communication

Attached/enclosed is a copy of the Summary Annual Report (SAR) for the [Name of Plan]. This report is required by the Employee Retirement Income Security Act of 1974 (ERISA). It provides a summarized text version of a filing the Plan makes with the EBSA, an agency within the DOL, on an annual basis.

Plan participants have a right to receive a paper version of the above-referenced document upon request. Where applicable, the Plan sponsor reserves the right to charge a reasonable fee to cover the cost of furnishing the document. To request a paper copy of the document, or for any questions about the document, please contact [insert HR Department or other employer contact information as reflected in the SAR].