

What Is a SAR, and When Must It Be Provided?

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QUESTION: Could you explain the SAR requirement, including when it must be provided? Our company maintains a 401(k) plan, a self-insured health plan, and a cafeteria plan under which employees contribute pre-tax dollars to pay their share of premiums for the self-insured health plan and a health FSA. We treat the self-insured health plan and the health FSA as separate plans for filing Form 5500. Each of our plans covers more than 100 employees.

ANSWER: A SAR is a summary annual report, and its purpose is to summarize for employees the information that appears in an ERISA plan's Form 5500. (The Form 5500 is known as the "annual report," which explains the name "summary annual report.") SARs are required each year for pension plans, including 401(k) plans, and for welfare plans unless an exemption applies. The ERISA plan administrator is responsible for SAR distribution.

The SAR must be furnished to participants covered under the plan and to other individuals who must be provided with summary plan descriptions (SPDs), such as COBRA qualified beneficiaries. SARs may be distributed by any method permissible for SPDs, including electronically.

The deadline for furnishing SARs is nine months after the end of the plan year (which is two months after the normal Form 5500 due date). If a Form 5500 filing extension has been obtained, the SAR deadline is two months after the extended Form 5500 due date. This means that for a calendar-year plan, the SAR normally must be provided by September 30 (if no Form 5500 extension was filed), or by December 15 (if a Form 5500 extension was filed).

The required content for SARs is set out in DOL regulations. For small ERISA pension plans (including 401(k) plans) that are taking advantage of the audit waiver provisions, DOL regulations provide model audit waiver language for the SAR.

Here is a summary of the SAR requirements for your plans:

- **401(k) Plan.** A SAR must be provided to each participant covered by the plan and each beneficiary receiving benefits under the plan—the same individuals who must receive an automatic SPD. Employees who become participants covered under the plan are entitled to receive a SAR after they have satisfied the plan's eligibility requirements, regardless of whether they elect to make deferrals, and former employees remain participants in the plan (and thus are entitled to receive a SAR) until they no longer have an account balance under the plan. An alternate payee receiving payments from the plan under a qualified domestic relations order (QDRO) is a beneficiary for this purpose.
- **Self-Insured Health Plan.** A totally unfunded welfare plan (i.e., a plan that pays benefits solely from employer general assets and not through insurance, a trust, or other separate account) is not required to furnish SARs, even if it is a large plan required to file Form 5500. If, however, your self-insured plan is funded (even partially), then SARs must be provided to participants covered under the plan, including individuals who have elected COBRA continuation coverage and those covered under a qualified medical child support order (QMCSO) but not beneficiaries such as spouses or children covered through an active employee.

- *Health FSA.* Your health FSA is an ERISA plan, but it probably qualifies for the SAR exemption for totally unfunded welfare plans described above. Generally, employee contributions made by salary reduction to a health FSA are treated as benefits paid solely from employer general assets (assuming that there is no other reason to treat the health FSA as funded).
- *Cafeteria Plan.* Your cafeteria plan is not an ERISA plan, so it is not subject to the SAR requirement. As explained above, SARs may be required for component benefits offered under the cafeteria plan unless an exemption applies.

For more information, see EBIA's 401(k) Plans manual at Section XXXI.L ("Summary Annual Reports (SARs)"); EBIA's ERISA Compliance manual at Section XXVI.B ("Summary Annual Report (SAR)"); EBIA's Self-Insured Health Plans manual at Section XXVIII.D ("Summary Annual Report (SAR)"); and EBIA's Cafeteria Plans manual at Sections XXXV.B ("Cafeteria Plans and Participant Disclosures") and XXXV.C ("Health FSA Disclosure Requirements").

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