



Overview of the Current Compliance Landscape

And some things to be aware of going forward

Presented by Ascensus' Wrangle Team and ACA Prime

Introduction

Wrangle and ACAPrime collaborate to bring greater understanding on reporting and disclosure requirements such as those under ERISA, ACA, the DOL and IRS.

In addition, we partner to refer clients to each other's areas of expertise, such as RxDC and Form 5500 Reporting.

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General Compliance Overview

- ❑ Ever-increasing burden on employers/plan sponsors for reporting and compliance
 - Over the past couple of years there have been a number of NEW reporting requirements that apply to just about all employers/plan sponsors
- ❑ Review a Timeline of the various reporting requirements
 - Begins in January and runs through December
- ❑ Wrangle and ACA Prime partnership
 - Form 5500, Plan Documents, PCORI, RxDC, ACA
- ❑ New requirements: RxDC, GAG Clause
- ❑ ACA IRS Enforcement Activity



Timeline of Reporting

= Impacting Multiple Groups Benefits, HR, Owners within an Org



- ❑ As an upcoming slide shows - there is now reporting preparation, creation and mailing/submitting required all year long
- ❑ This reporting now impacts so many functions within an organization
 - For smaller organizations - that means more and more is falling onto 1 or 2 individuals, sometimes the owner themselves

NOTE: It is more important than ever to make sure you/your organization are using a timeline (as seen in an upcoming slide), a checklist or trusted partner(s) to keep track of everything - this will allow individuals to spend their time on things that ultimately move the needle for the business rather than spending valuable time on administrative tasks.

DOL Reporting and Disclosure with Form 5500s and Plan Documents

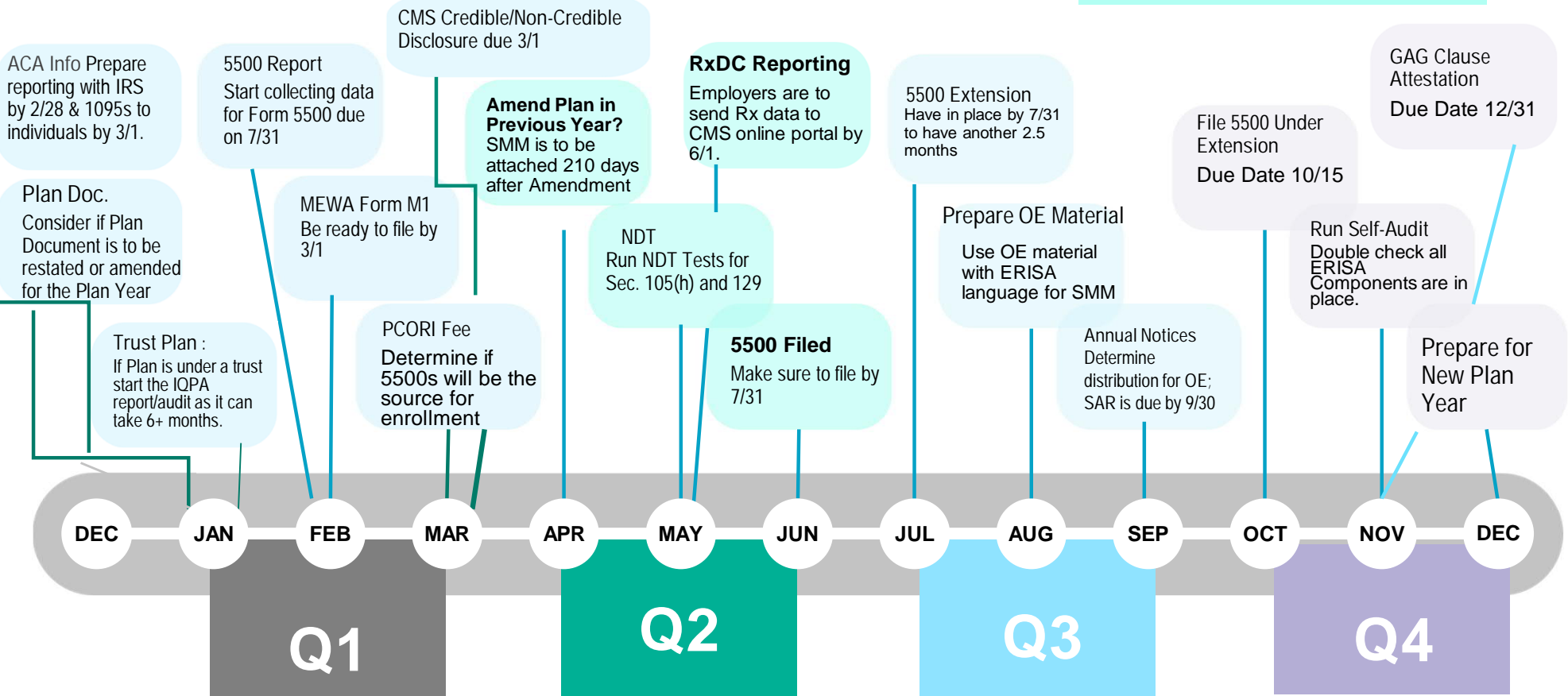


Looking at the big picture, Form 5500s and Plan Documents run in the same ERISA health and welfare arena as those tasks under ACA and at times can even overlap.

The main focus is to make sure that the plan participants funds are handled correctly, the participants are well informed of their benefits and the operations of the ERISA Plan can be overseen by the DOL and IRS.

Best Times of Year for Reporting and Disclosure- Using a Calendar Plan Year for Large Group

Golden Rule: No Backdating



This checklist is meant as a guide and may not include compliance tasks for a specific plan. Best practice is to review your plan's attributes with your legal to ensure all compliance measures have been met.

Why Do you Need a Plan Document and SPD?

It is the law under ERISA Section 402 and the DOL and protects the Plan Sponsor.



A plan sponsor is to maintain official written plan documents describing the terms and conditions of its welfare benefit plans. Without the document, it will be difficult to prove the plan's terms support any benefits decision. Courts would likely apply a standard of review less favorable to the employer.

It can satisfy the plan disclosure and notice requirement of numerous other laws and mandates.



Some other rules are: Health Insurance Portability and Accountability Act (HIPAA), the Family and Medical Leave Act (FMLA), the Patient Protection and Affordable Care Act (ACA). It is a vehicle for communicating plan benefits as well as the rights and obligations to participants.

You can bundle benefits together to be under one plan.



Without a Wrap Plan Document benefits technically cannot be bundled. A Form 5500 listing numerous benefits together without the Wrap Plan Document is out of compliance. The DOL can and has required 5500s to be filed for each benefit and will have a late filing penalty.

Why We Talk about the Form 5500 Report

- ❑ The Form 5500 is not a tax report; its purpose is to highlight the funding and operations of the employee benefit plan.
 - The financials such as the premium going to the carrier for the fully insured benefits
 - Commissions for brokers
 - The number of enrolled participants and covered persons
- ❑ It is reviewed by both the IRS and DOL and is required under Title 1 of Employee Retirement Income Security Act of 1974, also known as ERISA, under reporting and disclosure mandates
- ❑ The DOL also uses the data to study trends and reports its findings to Congress and other federal agencies.

Form 5500	Annual Return/Report of Employee Benefit Plan	OMB Nos. 1210-0110 1210-0089
Department of the Treasury Internal Revenue Service	This form is required to be filed for employee benefit plans under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 (ERISA) and sections 6057(b) and 6058(a) of the Internal Revenue Code (the Code).	2023
Department of Labor Employee Benefits Security Administration	▶ Complete all entries in accordance with the instructions to the Form 5500.	This Form is Open to Public Inspection
Pension Benefit Guaranty Corporation		

- ❑ Key Questions:
 - Who files: Employers who have 100 or more enrolled participants at the beginning of the plan year as well as all Trusts and MEWAs.
 - When is it due: 7 months after the end of the ERISA Plan Year; if an extension was applied, there is an additional 2 ½ months added.

What Are the Basics on Nondiscrimination Testing (NDT)?

Which Benefits Require NDT?

- The Internal Revenue Code requires that Sections 79 (group term life when over \$50K), 105(h) (self-insured health and health FSA), 125 (pretax dollars) and 129 (dependent day care) plans not show favoritism for highly compensated employees (HCE) or key employees.

When are the Tests Conducted?

- To ensure that there is no discrimination, these plans are required to undergo regular nondiscrimination testing. For Section 125 plans, testing should be done after the end of each plan year. Best practice is to conduct the test during Q3 so elections of HCEs can be capped prior to release of the W2s. Testing should also be completed when the plan is first established or when there are population changes for HCEs/NHCEs at the first of the month for elections.

Which Employers are to Run the testing?

- These tests apply to all employers - whether they are for profit, non-profit, governmental or church.

PCORI Fee

- ❑ The PCORI Fee, or Patient-Centered Outcomes Research Institute Fee, is a fee imposed on issuers of specified health insurance policies and plan sponsors of applicable self-insured health plans. It was established under the Affordable Care Act (ACA) to fund the Patient-Centered Outcomes Research Institute (PCORI)
- ❑ Due July 31st
- ❑ Form 720, Part II
- ❑ Calculation:
 - Based on the average number of lives covered
 - Different methods (Actual count, snapshot, member months, Form 5500, etc.)
 - Rate x covered lives
 - (2024 Rate = \$3.22, 2023 Rate = \$3.00, 2022 = \$2.79)
- ❑ Through 2029 (current 10-year extension)

Form 720, Part II

Patient-Centered Outcomes Research Fee (see instructions)		(a) Avg. number of lives covered	(b) Rate for avg.	(c) Fee base	995 No.
3	Applicable self-insured health plans				133
	(c) With a plan year ending before October 1, 2021		\$2.66		
	(d) With a plan year ending on or after October 1, 2021, and before October 1, 2022	18	\$2.79	\$49.62	
			Rate	Tax	
1	Sport fishing equipment (other than fishing rods and fishing poles)		10% of sales price		41
0	Fishing rods and fishing poles (limits apply, see instructions)		10% of sales price		110
7	Electric outboard motors		3% of sales price		42
4	Fishing tackle boxes		3% of sales price		114
4	Bows, quivers, broadheads, and points		11% of sales price		44
6	Arrow shafts		\$.55 per shaft		106
0	Indoor tanning services		10% of amount paid		140
		Number of gallons	Rate	Tax	
4	Inland waterways fuel use tax		\$.29		64
5	LUST tax on inland waterways fuel use (see instructions)		.001		125
1	Section 40 fuels (see instructions)				51
7	Biodiesel sold as but not used as fuel				117
7	Floor Stocks Tax—Ozone-depleting chemicals (floor stocks). Attach Form 6627.				20
Total. Add all amounts in Part II					\$ 49.62

IRS Website: Patient-Centered Outcomes Research Institute fee | Internal Revenue Service (irs.gov)

NEW Reporting: RxDC

- New to employers in 2023
- Typically, the carrier, TPA, PBM will handle the reporting if you responded to their survey, RFI, questionnaire by their due date.
 - **If You Did Not Respond, You Are on the Hook For Some Reporting to CMS**
 - Most often requires = D1 and P2 Reports
- Due June 1st
- Access to HIOS System can be difficult, frustrating and requires personal authentication
- CMS has a dedicated RxDC site with great information and resources: [Prescription Drug Data Collection \(RxDC\) | CMS](#)



NEW Reporting: GAG Clause Attestation

- ❑ *Simply stated:* A “gag clause” is a contractual term that directly or indirectly restricts specific data and information that a plan or issuer can make available to another party. *(1st reporting was due 12/31/2023)*
- ❑ Gag clauses might be found in agreements between a plan or issuer and any of the following parties:
 - a health care provider;
 - a network or association of providers;
 - a TPA; or
 - another service provider offering access to a network of providers.
- ❑ Due December 31st
- ❑ Easier to submit than RxDC - just a webform
- ❑ CMS has a dedicated GAG Clause Prohibition site: [Gag Clause Prohibition Compliance Attestation | CMS](#)

ACA Reporting - Increased Activity by IRS

Department of the Treasury
Internal Revenue Service
IRS

Taxpayer Name
Taxpayer Address
City, ST Zip code

Date: 02/13/2018
Tax year: YYYYY
Employer ID number: #####
Person to contact:
Contact Name: #####
Employee ID Number: #####
Contact telephone number: (###) ###-####
Contact web number: (###) ###-####
Rescission date: 03/05/2018

Dear Taxpayer:

We have made a preliminary calculation of the Employer Shared Responsibility Payment (ESRP) that you owe.

Proposed ESRP \$0.00

Our records show that you filed one or more Forms 1095-C, Employer-Provided Health Insurance Offer and Coverage, and one or more Forms 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, with the IRS. Our records also show that for one or more months of the year at least one of the full-time employees you identified on Form 1095-C was allowed the premium tax credit (PTC) on his or her individual income tax return filed with the IRS. Based on this information, we are proposing that you owe an ESRP for one or more months of the year.

You generally owe an ESRP for a month if either:

- You did not offer minimum essential coverage (MEC) to at least 100% of your full-time employees (and their dependents) and at least one of your full-time employees (and their dependents), but at least one of your full-time employees was certified as being allowed the PTC (because the coverage was unaffordable or you offered MEC to at least 100% of your full-time employees (and their dependents), but at least one of your full-time employees was certified as being allowed the PTC (because the coverage was unaffordable or you did not provide minimum value, or the full-time employee was not offered coverage).

This letter certifies, under Section 1411 of the Affordable Care Act, that for at least one month in the year, one or more of your full-time employees was enrolled in a qualified health plan for which a PTC was allowed. Based on this certification and information contained in our records, we are proposing that you owe an ESRP of \$0.00.

What you must do
Review this letter carefully. It explains the proposed ESRP and what you should do if you agree or disagree with this proposal. You must tell us whether you agree or disagree with the proposed ESRP by the Response date on the first page of this letter.

The following items are included:

- An explanation of the employer shared responsibility provisions in Internal Revenue Code (IRC) Section 4980H, which are the basis for the ESRP. See **About the ESRP.**
- An **ESRP Summary Table** itemizing your proposed ESRP by month.
- An **Explanation of the ESRP Summary Table.**

Letter 226-J (Rev. 1-2018)
Catalog Number 450903

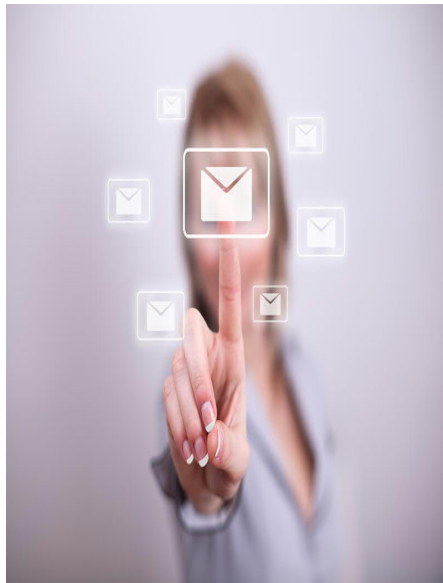
- ❑ Seen an uptick in IRS activity related to 1094/1095 Reporting.
 - Electronic filing requirement (new for 2023)
 - Enforcement is \$\$ to the government
 - Burden of proof is on the employer once you get the letter
 - 2022 Letters starting to go out
- ❑ Things to look for in your forms
 - Code combinations make sense
 - MEC indicator on 1094 is checked!
 - Proper affordability code in Line 16 and cost in Line 15

Conclusion and Final Thoughts

1. Important to keep a checklist of reporting requirements and due dates
2. Know who is handling what (internal and external)
 - Know your and your company's limits (time, knowledge, resources, etc.)
 - Is your time more valuable doing something else?
3. Get things done ON TIME
4. Keep records of your compliance



Who To Contact



Compliance Task	Name/Company	Contact information
ACA Reporting	Ben Smith, JD, ACAPrime.com Managing Director	P:844-438-1095, ext. 3 ben@acaprime.com
RxDC	Ben Smith, JD, ACAPrime.com Managing Director	P:844-438-1095, ext. 3 ben@acaprime.com
GAG Clause Attestation	Ben Smith, JD, ACAPrime.com Managing Director	P:844-438-1095, ext. 3 ben@acaprime.com
PCORI Fee	Ben Smith, JD, ACAPrime.com Managing Director	P:844-438-1095, ext. 3 ben@acaprime.com
Form 5500s	Elaine Harvey Sales Director	P: (614)582-4290 eharvey@wrangle5500.com
Plan Documents and SPDs	Elaine Harvey, Sales Director	P: (614)582-4290 eharvey@wrangle5500.com

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