

Exceptions for Form 5500 Filing – Small Plan or Large Plan:

(1) 80-120 Participant Rule: If the number of participants reported on line 6 of the Form 5500 is between 80 and 120, and a Form 5500 was filed for the prior plan year, the plan sponsor may elect to complete the return/report in the same category ("large plan" or "small plan") as was filed for the prior return/report. Thus, if a return/report was filed for the 2007 plan year as a small plan, including the Schedule I, and the number entered on line 6 of the 2008 Form 5500 is 100 to 120, the plan sponsor may elect to complete the 2008 Form 5500 and schedules in accordance with for a small plan.

Example – a plan has 85 participants in the plan year which starts in 2001. The plan has never had more than 99 participants. The plan is a small plan filer for the 2001 plan year, meaning that the schedules applicable to a small plan must be attached to the Form 5500. The following participant counts apply for the next six plan years.

Plan Year	Participant Count
2002	105
2003	118
2004	125
2005	115
2006	110
2007	120

Pursuant to the exception stated above, the employer may (but does not have to) treat the plan as a small plan filer for the 2002 and 2003 plan years. However, it must file as a small plan for the 2002 plan year in order to be eligible for the exception for the 2003 plan year. If the employer files as a large plan filer for the 2002 plan year, then the exception does not apply to the 2003 plan year and a large plan filing would be required. For the 2004 plan year, the participant count is above 120, so the exception is not available, even if a small plan filing was done in 2002 and 2003. Since the exception does not apply for the 2004 plan year, the plan is not eligible for the exception for the 2005, 2006 and 2007 plan years, even though the participant count is less than 120 in those years. The plan will not again be eligible for a small plan filing unless the participant count falls below 100.

(2) Short Plan Year Rule: If the plan had a short plan year of 7 months or less either the prior plan year or the plan year being reported on the 2008 Form 5500, an election can be made to defer filing the accountant's report in accordance with 29 CFR 2520.104-50. If such an election was made for the prior plan year, the 2008 Form 5500 must be completed following the requirements for a large plan, including the attachment of the Schedule H and the accountant's reports, regardless of the number of participants entered in line 6 of the Form 5500.