

Chapter 5

Completing Form 5500 Main Body

<p style="text-align: center;">Form 5500</p> <p style="text-align: center; font-size: small;">Department of the Treasury Internal Revenue Service</p> <hr/> <p style="text-align: center; font-size: small;">Department of Labor Employee Benefits Security Administration</p> <hr/> <p style="text-align: center; font-size: x-small;">Pension Benefit Guaranty Corporation</p>	<p style="text-align: center;">Annual Return/Report of Employee Benefit Plan</p> <p style="text-align: center; font-size: small;">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 6047(e), and 6058(a) of the Internal Revenue Code (the Code).</p> <p style="text-align: center; font-weight: bold; font-size: small;">▶ Complete all entries in accordance with the instructions to the Form 5500.</p>	<p style="text-align: right; font-size: x-small;">OMB Nos. 1210-0110 1210-0089</p> <hr/> <p style="text-align: center; font-size: large; font-weight: bold;">2009</p> <hr/> <p style="text-align: center; font-size: small; font-weight: bold;">This Form is Open to Public Inspection</p>
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A. Overview of Form 5500 Main Body

EBIA Sample Document. See Part 5 for a filled-in sample Form 5500 for a hypothetical employer.

The main body of the Form 5500 consists of two parts. Part I (Annual Report Identification Information) requires information about the type of plan, the type of Form 5500, whether the plan operates on a calendar year, whether the plan is collectively bargained, and whether the Form 5500 is filed pursuant to an extension of time or under the Delinquent Filer Voluntary Correction (DFVC) Program. Part II (Basic Plan Information) consists of ten numbered questions (with numerous subparts) requiring (1) identifying information about the plan, its sponsor, and its administrator; (2) information about the number of plan participants and about the type and funding of benefits; and (3) identification of the Schedules that are filed with the Form 5500.

As discussed in Chapter 4, the Form 5500 for 2009 and later plan years must be filed electronically. Filings for 2009 plan years—including short plan years—cannot use prior-year paper forms.

Do Not Include Social Security Numbers. The contents of the Form 5500 and most Schedules are public information; they are open to public inspection and subject to publication on the Internet. Inclusion of a Social Security number in lieu of EINs (employer identification numbers) anywhere on the Form 5500 or Schedules for a welfare plan could result in rejection of the filing.*

* Instructions for Form 5500 at page 1.

B. When Form 5500 Main Body Is Required

Any plan that must file Form 5500¹ must file the main body of the Form. The Schedules that must be attached to a plan's Form 5500 will vary depending on the size of the plan and means of providing benefits.² Certain plans will file only the main body, with no attached Schedules. This will include self-insured health FSAs and health reimbursement accounts that are maintained as separate plans by the plan sponsor³ and that are treated as unfunded plans exempt from filing Schedule H (such plans will provide plan identifying and other information described in this Chapter 5, including entering benefit Code 4A in Line 8b).⁴ As another example, self-insured severance plans treated as separate, unfunded plans of the plan sponsor would also file only the main body of Form 5500 (such plans would enter benefit Code 4I in Line 8b).

DFEs May Also File Form 5500 Main Body. Direct filing entities (DFEs) that file Form 5500 will also file Form 5500 Main Body. However, certain questions do not apply for DFEs and other special rules apply depending on the type of DFE filing Form 5500. The DFE filing requirements and special rules are discussed in detail in Chapter 8.

¹ See Chapter 2 for a detailed discussion of Form 5500 exemptions.

² See Chapters 6–11 for a detailed discussion of each Schedule possibly required for ERISA welfare plans.

³ See Chapter 3 for a detailed discussion of how many plans a plan sponsor will be deemed to maintain, including how various ERISA benefits may be “bundled” into one ERISA plan for compliance purposes.

⁴ See Chapter 9 for a detailed discussion of when a plan will be deemed to be unfunded and thus exempt from attaching Schedule H.

C. Line-by-Line Information Required by Form 5500 Main Body

1. Part I: Plan Year

Part I	Annual Report Identification Information
For calendar plan year 2009 or fiscal plan year beginning _____ and ending _____	

The calendar year in which the plan year *begins* dictates which Form 5500 to use; for example, if the plan year begins on October 1, 2009, the 2009 Form 5500 should be filed for that year.⁵ The plan year should appear in the plan's SPD.⁶ For insured welfare plans, if there is no plan document separate from the insurance contract and the plan year is not specified in the SPD, then the plan year probably is the insurance contract year.

Do not enter any dates if the plan year is the calendar year. If the plan year is anything other than the calendar year, the beginning and ending dates of the plan year should be entered in the appropriate boxes. (For example, short plan-year filers should enter the short plan year beginning and ending dates.) The Form 5500 may not be filed for a period of greater than 12 months, so be certain not to enter a time period greater than 12 months.⁷

Plan Years Must Match on Schedules. To the extent that any Schedules need to be filed as part of the Form 5500, the plan year identified on the Schedule needs to match the plan year identified in Part I of the Form 5500. Inconsistent plan year reporting is a frequent filing problem.*

* Form 5500 Filing Tips, available at <http://www.dol.gov/ebsa/form5500tips.html>.

There can be no gap between the ending date of a previous year's Form 5500 and the beginning date of the current year's form. Take special care if filing a Form 5500 for a short plan year of less than 12 months (for instance, if the plan changes from a calendar year to a noncalendar fiscal year). In that case, the beginning date entered on the "short plan year" Form 5500 should be one day after the ending date of the previous year's Form 5500, and the ending date should be one day before the beginning date entered on the next year's Form 5500.⁸ (As discussed below, short plan-year filers should also check the appropriate box in Part I, Line B.)

2. Part I, Line A: Type of Filer

Part I	Annual Report Identification Information

A This return/report is for:	<input type="checkbox"/> a multiemployer plan; <input type="checkbox"/> a multiple-employer plan; or <input type="checkbox"/> a single-employer plan; <input type="checkbox"/> a DFE (specify) _____

The type of plan filer must be identified by checking the applicable box. (Only one box should be checked.) A "multiemployer plan" is a plan (other than a plan maintained by a controlled group of businesses) maintained pursuant to one or more collective bargaining agreements, under which more than one employer contributes to the plan on behalf of its employees.⁹ A "single-employer plan" is a plan maintained by an individual employer (i.e., an individual corporation or noncorporate business entity) or by a controlled group of businesses (provided that funds contributed by each controlled group employer are available to pay benefits to employees of all employers in the controlled group).¹⁰

A "multiple-employer plan" is a plan to which more than one employer is required to contribute, but that is not a multiemployer plan (i.e., not collectively bargained) or a single employer plan (including a plan maintained by a controlled group of businesses).¹¹ Certain multiple employer welfare arrangements (MEWAs), including plans maintained by leasing companies or PEOs, may qualify under this definition as "multiple-employer plans."¹² Last, a "DFE" is a "direct filing entity"—one of five identified entities that may file Form

⁵ Instructions for Form 5500 at page 14 (for DFEs, however, the 2009 Form 5500 should be used for the DFE year *ending* in 2009).

⁶ ERISA § 102(b).

⁷ See Form 5500 Filing Tips, available at <http://www.dol.gov/ebsa/form5500tips.html>.

⁸ Form 5500 Filing Tips, available at <http://www.dol.gov/ebsa/form5500tips.html>.

⁹ Instructions for Form 5500 at page 14. It is a common mistake for plans that are not multiemployer plans to identify themselves as such on the Form 5500. See IRS Employee Plans News, available at <http://www.irs.gov/pub/irs-tege/sum06.pdf>. As explained in Chapter 3, a multiemployer plan is treated as one plan, participating employers are not treated as maintaining their own individual plans, and only one Form 5500 is required to be filed.

¹⁰ Instructions for Form 5500 at page 14. As explained in Chapter 3, a plan maintained by several members of the same controlled group under which all funds attributable to any employer are available to provide benefits for all employees is treated as a single plan with a single required Form 5500. It follows that if funds contributed by any controlled group employer are not available to pay benefits to the employees of all controlled group employers, then such an employer will be treated as maintaining its own plan and must file its own Form 5500 (as a separate, single employer plan).

¹¹ Instructions for Form 5500 at page 14.

¹² See Background Topic 2 for more detailed information on MEWAs.

4. Part I, Line C: Collectively Bargained Plan

Part I	Annual Report Identification Information

C	If the plan is a collectively-bargained plan, check here. <input type="checkbox"/>

This box is checked when contributions to the plan or benefits paid by the plan are subject to the collective bargaining process, even if only some of the participants covered by the plan are union members subject to collective bargaining. (Information regarding controlling collective bargaining agreements should appear in the plan SPD.)¹⁹ For example, if a single plan provides benefits to all employees of an employer including some that are collectively bargained and some that are not collectively bargained, the contributions or benefits subject to collective bargaining do not have to be the same for all participants under the plan.²⁰

5. Part I, Line D: Extension of Time or DFVC Filing

Part I	Annual Report Identification Information

D	Check box if filing under: <input type="checkbox"/> Form 5558; <input type="checkbox"/> automatic extension; <input type="checkbox"/> the DFVC program; <input type="checkbox"/> special extension (enter description)

The appropriate box is checked if filing under an extension of time, for one of the reasons discussed in Chapter 4:

- 2-1/2 month extension with Form 5558 (a copy of the Form 5558 should be maintained with the filer's records);²¹
- automatic extension to due date of employer income tax return (maintain a copy of the employer's extension of time to file the income tax return with the filer's records);
- special extension of time granted by DOL (enter a description of the extension of time in the space provided); or
- a delinquent Form 5500 under the Delinquent Filer Voluntary Correction (DFVC) Program (discussed in Chapter 14).

6. Part II, Line 1a: Name of Plan

Part II	Basic Plan Information—enter all requested information
1a	Name of plan

The formal name of the plan should be provided in this box, or, according to the Instructions, enough information to identify the plan.²² The name may be abbreviated if necessary. If a Form 5500 previously has been filed on behalf of the plan, the same abbreviation as was used in the prior filing should be used. And once an abbreviation has been used, it should continue to be used for that plan on all future Form 5500s. According to the Instructions, the same name or abbreviation should not be used for any other plan, even if the first plan is terminated.²³

The formal name of the plan should appear in the plan's SPD and/or plan document.²⁴ For insured welfare plans, if there is no plan document separate from the insurance contract (and the plan name is not specified in the SPD), the plan name used on previously filed Form 5500s probably controls. In rare instances, a change in insurance carriers might result in a new plan and, as a result, a new plan name. In one case, for example, the court held that a life insurance plan terminated when the employer obtained a new life insurance policy, but only because plan documents defined the term "plan" to mean the insurance policy.²⁵ Absent such a definition, it seems unlikely that merely changing insurers would create a new ERISA plan with a new plan name.²⁶

¹⁹ ERISA § 102(b) (SPD must include a statement referring to the collective bargaining agreement and information on how to obtain a copy of that agreement if the plan is maintained pursuant to one or more collective bargaining agreements).

²⁰ Instructions for Form 5500 at page 14.

²¹ DOL FAQs About EFAST2 All-Electronic Filing System, Q/A-26, available at <http://www.dol.gov/ebsa/faqs/faq-efast2.html>.

²² Instructions for Form 5500 at page 15.

²³ Instructions for Form 5500 at page 15.

²⁴ ERISA § 102(b) (SPD must include the name of the plan, and, if different, the name by which the plan is commonly known).

²⁵ *Neuma, Inc. v. AMP, Inc.*, 259 F.3d 864 (7th Cir. 2001).

²⁶ In general, the courts have viewed insurance and HMO contracts as separate from the ERISA plans under which they provide benefits. *See, e.g., Pegram v. Herdrich*, 530 U.S. 211, 24 EBC 1641 (2000) (concluding that "when employers contract with an HMO to provide benefits to employees subject to ERISA, the provisions of documents that set up the HMO are not, as such, an ERISA plan").

7. Part II, Line 1b: Plan Number

Part II	Basic Plan Information —enter all requested information

1b	Three-digit plan number (PN) ▶

The filing plan's plan number—the three-digit number a plan sponsor assigns to a plan to differentiate between the plans that it sponsors—should be entered on this line. (The plan number should appear in the plan's SPD.)²⁷ The Instructions require welfare plans of an employer to be numbered consecutively, starting with 501.²⁸ Once a plan number is used, it should always be used in connection with that plan and should not be used for any other plan even if the first plan is later terminated.²⁹ Thus, when a plan is terminated, its plan number should be retired.

Plan Number and EIN Form Unique Identifier. Together, the plan number and the plan sponsor's EIN (Part II, Line 2b, discussed below) form a unique 12-digit number to identify the plan. A change in either plan number or EIN on subsequently filed Form 5500s can prompt inquiries from the DOL unless Part I, Box B ("the final return/report") (discussed above) is checked on the last filing, "4R" is entered on Line 8 (discussed below) on the last filing, or Line 4 (discussed below) is completed.*

* Form 5500 Filing Tips, available at <http://www.dol.gov/ebsa/form5500tips.html>.

8. Part II, Line 1c: Effective Date of Plan

Part II	Basic Plan Information —enter all requested information

1c	Effective date of plan

The effective date of the plan is entered on this line. The effective date may (but is not required to) appear in the plan SPD;³⁰ alternatively, it may be reflected in the formal plan document.³¹ The effective date is not necessarily the year in which a plan first files a Form 5500, as a plan that is subject to a Form 5500 reporting exemption may have been in existence before that time. For insured welfare plans, if there is no plan document separate from the insurance contract (and the effective date is not specified in the SPD), the effective date used on previously filed Form 5500s probably controls. In rare instances, a change in insurance carriers might result in a new plan and, as a result, a new effective date. In one case, for example, the court held that a life insurance plan terminated when the employer obtained a new life insurance policy, but only because plan documents defined the term "plan" to mean the insurance policy.³² Absent such a definition, it seems unlikely that merely changing insurers would create a new ERISA plan with a new effective date.³³

Notes:

²⁷ ERISA § 102(b) (SPD must include the plan number assigned by the plan sponsor).

²⁸ Instructions for Form 5500 at page 15. For example, if a plan sponsor has two welfare plans and one pension plan (and has not previously sponsored any other welfare or pension plans), the welfare plans would be numbered "501" and "502" and the pension plan would be numbered "001." In addition, the numbers 888 and 999 should not be used as plan numbers. Form 5500 Filing Tips, available at <http://www.dol.gov/ebsa/form5500tips.html>.

²⁹ In this regard, see the discussion in Chapter 3 of the effect on the plan number of bundling or unbundling the benefits in ERISA welfare plans.

³⁰ See ERISA § 102(b).

³¹ See the discussion in Chapter 3 of the effect on a plan's effective date of bundling or unbundling the benefits in ERISA welfare plans.

³² *Neuma, Inc. v. AMP, Inc.*, 259 F.3d 864 (7th Cir. 2001).

³³ In general, the courts have viewed insurance and HMO contracts as separate from the ERISA plans under which they provide benefits. See, e.g., *Pegram v. Herdrich*, 530 U.S. 211, 24 EBC 1641 (2000) (concluding that "when employers contract with an HMO to provide benefits to employees subject to ERISA, the provisions of documents that set up the HMO are not, as such, an ERISA plan").