

Form 5500 Workbook

for Health & Welfare Plans

2007 Plan Years

Table of Contents

Part 1 of 5	
Introduction and Form 5500 Exemptions	

Chapter 1: Introduction to the 2007 Form 5500 for Health & Welfare Plans	3
<i>A. Form 5500 “Annual Report” for ERISA Welfare Plans</i>	<i>3</i>
<i>B. How to Use EBIA’s Form 5500 Workbook</i>	<i>3</i>
<i>C. How to Prepare for Form 5500 Filings</i>	<i>4</i>
1. Suggestions Before Starting to Enter Form 5500 Information	4
2. Reminders When Entering Form 5500 Information	4
<i>D. Reporting Obligations in Addition to Form 5500 May Also Apply</i>	<i>4</i>
1. ERISA Annual Form M-1 Reporting by MEWAs Providing Health Benefits	4
2. Code Annual Return Requirement for VEBA’s (and Pension Plans)	5
Chapter 2: What Health & Welfare Plans Must File Form 5500?	7
<i>A. Overview of What Plans Must File Form 5500</i>	<i>7</i>
<i>B. Small Unfunded Welfare Plan Exemption</i>	<i>8</i>
1. Small Plans Must Have Fewer Than 100 “Covered Participants” at Beginning of Year	8
2. Unfunded Plans Must Have No “Plan Assets” and No Insurance	9
<i>C. Small Insured Welfare Plan Exemption</i>	<i>11</i>
1. Plan Benefits Must Be Paid Through Policies Issued by Insurers or Similar Organizations	11
2. Premiums Must Be Paid Directly to the Insurer	12
3. Participant Contributions Must Be Applied Solely to Premiums	12
4. Participant Contributions Must Be Paid to the Insurer Within Certain Timeframes	13
5. Certain Insurance Refunds Must Be Returned to Contributing Participants	13
<i>D. Small Combination Unfunded/Insured Welfare Plan Exemption</i>	<i>14</i>
<i>E. Important! Form 5500 Is Required for ERISA Benefits Under a Cafeteria Plan</i>	<i>14</i>
1. Effect of Code § 6039D Suspension: Illustration With a Combined Plan	15
2. Effect of Code § 6039D Suspension: Illustration With Separate Plans	16
<i>F. Exemption for Welfare Plans for Certain Select Employees</i>	<i>16</i>
<i>G. Exemption for Day Care Centers</i>	<i>17</i>
<i>H. Special Form 5500 Rule for Group Insurance Arrangements (GIAs)</i>	<i>17</i>
<i>I. Other Form 5500 Exemptions or Special Rules</i>	<i>17</i>

Part 2 of 5
Preparation and Filing of Form 5500

Chapter 3: Determining How Many Form 5500s Are Required	21
<i>A. Overview of How Many Form 5500s Are Required</i>	<i>21</i>
<i>B. One Form 5500 for Each Plan Maintained by a Single Employer</i>	<i>21</i>
1. Determining How Many Plans Exist	21
2. Plan Design and Related Considerations When Bundling Benefits Into One Plan	22
<i>C. Many Controlled Group Plans Are Permitted to File as Single Employer Plans</i>	<i>23</i>
<i>D. Multiemployer Plans</i>	<i>24</i>
<i>E. Multiple Employer Plans (Including MEWAs)</i>	<i>24</i>
Chapter 4: Form 5500 Mechanics: Who, What, When, and How	25
<i>A. Overview of Form 5500 Mechanics</i>	<i>25</i>
<i>B. Generally, the Plan Administrator Is Responsible for Filing Form 5500</i>	<i>25</i>
1. Who Is the Plan Administrator?	25
2. Who Signs the Form 5500?	26
<i>C. Form 5500 Is Filed Using One of Two Computer-Scannable Formats</i>	<i>26</i>
1. Hand Print Format Is Preprinted or Computer Generated	26
2. Machine Print Format Is Computer Generated	27
<i>D. Form 5500 Is Normally Due Seven Months After End of Plan Year</i>	<i>28</i>
1. Date of Mailing Is Date of Filing	28
2. 2-1/2 Month Extension With Form 5558	29
3. Automatic Extension to Due Date of Employer Income Tax Return	29
4. Special Extensions Granted by DOL for Natural Disasters	29
5. Short Plan Years	29
6. Amended and Final Form 5500s	30
7. Filing Form 5500 Under the DFVC Program	30
<i>E. Filing Form 5500 by Mail</i>	<i>30</i>
<i>F. Filing Form 5500 Electronically</i>	<i>30</i>
1. Status of Form 5500 Electronic Filing	30
2. Electronic Filing Is Currently Done Using the Machine Print Format of Form 5500	31
3. Obtaining Necessary Numbers: Form EFAST-1	31
4. DOL Acknowledgment of Electronic Filing	32
5. Maintaining and Reviewing Copies of Electronically Filed Form 5500s	32
6. DOL Publications on the Web Regarding Electronic Filing	32
<i>G. Electronic Form 5500 to Be Required for 2009 and Later Years</i>	<i>33</i>
1. No Waiver of Filing Penalties	33
2. Changes to Form 5500 to Accommodate Required Electronic Filing	33
Chapter 5: Completing Form 5500 Main Body	37
<i>A. Overview of Form 5500 Main Body</i>	<i>37</i>
<i>B. When Form 5500 Main Body Is Required</i>	<i>37</i>
<i>C. Line-by-Line Information Required by Form 5500 Main Body</i>	<i>38</i>
1. Part I: Plan Year	38
2. Part I, Line A: Type of Plan	38
3. Part I, Line B: Type of Filing	39
4. Part I, Line C: Collectively Bargained Plan	40
5. Part I, Line D: Extension of Time or DFVC Filing	40

6. Part II, Line 1: Name of Plan	40
7. Part II, Line 1b: Plan Number	41
8. Part II, Line 1c: Effective Date of Plan	41
9. Part II: Signature Line	42
10. Part II, Line 2a: Plan Sponsor's Name and Address	42
11. Part II, Lines 2b and 2c: Employer Identification Number (EIN) and Telephone	43
12. Part II, Line 2d: Business Code	44
13. Part II, Line 3a: Plan Administrator's Name, Address, EIN and Telephone Number	44
14. Part II, Line 4: Changes in Plan Sponsor Name, EIN, or Plan Number	45
15. Part II, Line 5: Identity of Third-Party Preparers (Optional)	46
16. Part II, Lines 6 and 7: Number of Participants at Beginning and End of Plan Year	46
17. Part II, Line 8b: Benefits Provided	48
18. Part II, Lines 9a and 9b: Funding and Benefit Arrangements	48
19. Part II, Line 10b: Identification of Attached Schedules	49
20. Form 5500—Required Schedules	50
Chapter 6: Schedule A (Insurance Information)	51
A. <i>Overview of Schedule A (Insurance Information)</i>	51
1. Insurance Company Is Responsible for Providing Timely Schedule A Information	51
2. But Do Not Delay Filing Form 5500 for Missing Schedule A Information!	51
B. <i>When Schedule A Is Required</i>	52
1. When Plan Benefits Are Provided by an Insurance Company or Similar Organization	52
2. Schedule A May Also Be Required Where Plan Has Investments in Insurance Company	53
C. <i>Line-by-Line Information Required by Schedule A</i>	53
1. Lines A, B, C, and D: Plan Year and Plan Identifying Information	53
2. Part I: Separate Schedule A Is Generally Required for Each Policy	54
3. Part I, Lines 1a, b, c, and d: Identifying Insurance Carrier and Contract	55
4. Part I, Line 1e: Reporting Number of Covered Persons	55
5. Part I, Lines 1f and 1g: Policy or Contract Year	56
6. Part I, Line 2: Total Fees and Commissions Paid to Agents, Brokers, and Others	56
7. Part I, Lines 2a, b, c, d, and e: Commissions and Fees by Agent, Broker, or Other Person	58
8. Part II, Lines 3–6: Investment and Annuity Contract Information	59
9. Part III: Reporting Welfare Benefit Contract Information	59
Chapter 7: Schedule C (Service Provider Information)	63
A. <i>Overview of Schedule C (Service Provider Information)</i>	63
B. <i>When Schedule C Is Required</i>	63
1. When Is Compensation "Paid by the Plan"	63
2. Impact of Participant Contributions on Need for Schedule C	64
C. <i>Line-by-Line Information Required by Schedule C</i>	64
1. Lines A, B, C, and D: Plan Year and Plan Identifying Information	64
2. Part I, Line 1: Total Service Provider Compensation Paid by the Plan	65
3. Part I, Line 2: Service Providers Receiving \$5,000 or More in Compensation	66
D. <i>Reporting Termination Information</i>	67
Chapter 8: Schedule D (DFE/Participating Plan Information) and Direct Filing Entity Requirements	69
A. <i>Overview of Schedule D (DFE/Participating Plan Information)</i>	69
B. <i>When Schedule D Is Required</i>	69
1. Schedule D Filed by Plans Participating in Certain Investment Arrangements	69
2. Schedule D and DFE Form 5500s	70
C. <i>Line-by-Line Information Required by Schedule D and Other Information That May Be Required by DFE Form 5500</i>	72

1. Schedule D, Lines A, B, C, and D: Plan Year and Plan or DFE Identifying Information	72
2. Schedule D, Part I: Interests in MTIAs, CCTs, PSAs, and 103-12 IEs (Plans and DFEs).....	73
3. Schedule D, Part II: Information on Participating Plans (DFEs Only)	74
4. DFE Form 5500s—Other Schedules or Attachments That May Be Required	76
Chapter 9: Schedule H (Large Plan Financial Information) & Accountant’s Opinion	79
A. <i>Overview of Schedule H (Large Plan Financial Information)</i>	79
B. <i>When Schedule H Is Required</i>	79
1. Large Funded Plans Report Financial Information on Schedule H	79
2. Large Unfunded, Insured, and Combination Plans Are Exempt.....	79
C. <i>Line-by-Line Information Required by Schedule H</i>	81
1. Lines A, B, C, and D: Plan Year and Plan Identifying Information	81
2. Part I: Asset and Liability Statement	82
3. Part II (Income and Expenses Statement)	92
4. Information Required by Part III of Schedule H (Accountant’s Opinion).....	101
5. Information Required by Part IV of Schedule H (Transactions During Plan Year)	105
Chapter 10: Schedule I (Small Plan Financial Information)	117
A. <i>Overview of Schedule I (Small Plan Financial Information)</i>	117
B. <i>When Schedule I Is Required</i>	117
1. Small Funded Plans Report Financial Information on Schedule I.....	117
2. Certain Small Funded Plans May File Schedule H (the “80-120” Rule).....	117
C. <i>Line-by-Line Information Required by Schedule I</i>	118
1. Lines A, B, C, and D: Plan Year and Plan Identifying Information	118
2. Part I: Small Plan Financial Information	118
3. Information Required by Part II of Schedule I (Transactions During Plan Year)	124
Chapter 11: Form 5500 Schedule G (Financial Transactions)	131
A. <i>Overview of Schedule G (Financial Transactions)</i>	131
B. <i>When Schedule G Is Required (Tied to Certain Transactions on Schedule H)</i>	131
C. <i>Line-by-Line Information Required by Schedule G</i>	131
1. Lines A, B, C, and D: Plan Year and Plan Identifying Information	131
2. Part I: Loans or Fixed Income Obligations in Default or Classified as Uncollectible	132
3. Part II: Leases in Default or Classified as Uncollectible	133
4. Part III: Nonexempt (Prohibited) Transactions	134
Chapter 12: Filing Amended Form 5500s to Correct Prior Deficiencies	137
A. <i>Overview of Amended Form 5500s</i>	137
B. <i>When Amended Form 5500s Should Be Filed</i>	137
1. To Correct Self-Discovered Deficiencies.....	137
2. To Correct Form 5500s Rejected by DOL	137
3. Responding to DOL Information Requests Regarding Form 5500	138
C. <i>Mechanics of Filing Amended Form 5500s</i>	138
1. Amended Paper Forms: Include Only Those Schedules/Attachments Being Amended	138
2. Amended Electronic Forms: Include All Schedules/Attachments Even If Not Amended.....	138
Chapter 13: Filing Final Form 5500s for Terminated Plans	141
A. <i>Overview of Final Form 5500s</i>	141
B. <i>When Final Form 5500s Should Be Filed</i>	141
1. Plan Terminations	141
2. Mergers and Consolidations	142
3. Possible Need for Final Form 5500s When Bundling Benefits Into One Plan	142
C. <i>Mechanics of Filing Final Form 5500s</i>	142

Chapter 14: Correcting Late or Unfiled Form 5500s Under the DFVC Program	143
A. <i>Overview of Delinquent Filer Voluntary Compliance (DFVC) Program Filings</i>	<i>143</i>
B. <i>When DFVC Filings Can Be Made</i>	<i>143</i>
1. DFVC Program Is Available Only for Late or Unfiled Form 5500s	143
2. DFVC Program Is Available Only to Plans Not Yet Notified of Form 5500 Problems	143
3. DFVC Program Is Available to Late Filing GIAs but Not Other DFEs	143
C. <i>Mechanics of Filing Form 5500 Under the DFVC Program</i>	<i>144</i>
1. History of the DFVC Program	144
2. Complete Form 5500 Must Be Filed for Each Plan Year for Which Relief Is Sought	144
3. Plans Seeking DFVC Relief Must Also Pay Applicable Penalties	146
4. Other Important Aspects of the DFVC Program	148

Part 3 of 5

Noncompliance Consequences and Related Obligations

Chapter 15: Consequences of Form 5500 Noncompliance	153
A. <i>Overview of Form 5500 Noncompliance Consequences</i>	<i>153</i>
B. <i>Form 5500 Civil Penalties</i>	<i>153</i>
1. Amount and Period of Statutory Civil Penalties	153
2. Penalties May Not Be Treated as a Plan Administrative Expense	154
3. Liability for Form 5500 Penalties Cannot Be Contracted Away	154
4. DOL Procedures for Assessing (and Waiving) Form 5500 Civil Penalties	154
C. <i>Form 5500 Criminal Penalties</i>	<i>155</i>
1. Criminal Penalties Under ERISA	155
2. Penalties Under General Federal Criminal Statutes	156
Chapter 16: Summary Annual Reports (SARs) and Other Form 5500-Related Participant Disclosures	157
A. <i>Overview of Summary Annual Reports (SARs) and Other Participant Disclosures</i>	<i>157</i>
B. <i>Summary Annual Reports (SARs)</i>	<i>157</i>
1. When SARs Are Required	157
2. Required Content for SARs	157
3. Who Must Be Furnished Automatically With SARs?	159
4. Timing of SAR Distribution	160
5. SAR Distribution for Terminating Plans	160
6. Approved Methods for SAR Distribution	160
7. Furnishing SARs by Mail	161
8. Furnishing Materials by Hand-Delivery	162
9. Furnishing Materials Electronically	162
10. Consequences of Failure to Furnish SARs	164
C. <i>Right to Request and Examine Latest Form 5500 and Final Form 5500</i>	<i>165</i>
1. Participants and Beneficiaries May Obtain Copies of Form 5500 on Written Request	165
2. Participants and Beneficiaries May Also Automatically Examine Form 5500	165
3. How Must Requested Documents Be Furnished (or Made Available for Examination)?	166
4. Plan May Charge Copy Costs	166
5. Deadlines for Responding to Requests	166
6. Consequence of Failing to Furnish Requested Documents: \$110 Per Day Penalties	166
Chapter 17: Form 5500 Recordkeeping	169
A. <i>Overview of Rules Requiring or Affecting Record Retention</i>	<i>169</i>
B. <i>ERISA Recordkeeping Rule and Form 5500</i>	<i>169</i>

C. <i>Persons Subject to ERISA Recordkeeping Rule</i>	169
1. Group #1—Persons Required to File Form 5500: Plan Administrators and DFEs	170
2. Group #2—Persons Required to Certify Form 5500 Information: Insurers, CPAs, etc.	170
3. Group #3—Persons Who Would Be Required to File or Certify	170
4. Obligation Generally Remains With Original Recordkeeper	171
D. <i>Impact of Using Third-Party Vendors for Recordkeeping Services</i>	171
1. ERISA Recordkeeping Responsibilities Generally Cannot Be Delegated	171
2. Service Contracts Should Bind Recordkeeper to ERISA Standards and Guarantee Access to Records by Plan Sponsor	172
E. <i>What Records Must Be Retained?</i>	172
1. Records Sufficient to Verify Information Reported on Form 5500	172
2. Records Subject to Rule Are Defined Broadly	172
3. Summaries or Recaps of Actual Records Are Not Sufficient	173
4. A Special Note on Claims Records: When Must They Be Maintained?	173
F. <i>How Long Must Records Be Retained?</i>	173
1. Six Years From Form 5500 Filing Date	173
2. Eight-Year Rule of Thumb	174
G. <i>Loss or Destruction of Records Subject to ERISA § 107</i>	174
H. <i>Consequences of Failing to Comply With Recordkeeping Rules</i>	174
1. No Statutory Penalties but Fiduciary Liability Possible	174
2. Criminal Penalties Possible	174

Part 4 of 5
Background Topics 1 through 5

Background Topic 1: Identifying Which Fringe Benefits Are ERISA Welfare Plans	179
A. <i>Overview—Identifying Fringe Benefits That Are ERISA Welfare Plans</i>	179
1. What Employers Are Subject to ERISA?	179
2. What Fringe Benefits Are ERISA Welfare Benefits?	179
3. ERISA’s Definition of Welfare Benefit Plan	179
4. Identifying ERISA Benefits	180
B. <i>Is There a Plan, Fund, or Program?</i>	181
1. Basic “Plan, Fund, or Program” Test Is Easy to Satisfy	181
2. Nevertheless Some Arrangements Do Not Qualify	181
3. No Written Document Is Needed to Create a Plan, Fund, or Program	181
C. <i>Is the Plan, Fund, or Program Established or Maintained by an Employer?</i>	182
1. An Employer Need Not Do Much to Establish or Maintain a Plan	182
2. In Self-Insured Plans, Employer Maintenance Will Be Clearly Present	182
3. In Insured Arrangements, Disputes About Employer Maintenance Sometimes Occur	182
4. Individual Insurance Policies Can Create an ERISA Plan	183
5. Once Established by Employer, Plan Is Likely to Remain Subject to ERISA	184
D. <i>Does the Plan Provide the Type of Benefits Listed in ERISA?</i>	184
1. ERISA Plans Provide Specific Types of Benefits	184
2. Offering ERISA and Non-ERISA Benefits in One Plan	186
3. Who Are Participants and Beneficiaries?	187
4. Plans Covering Self-Employed Individuals or Partners	187
5. Plans Covering Only One Employee (or Former Employee)	188
E. <i>Government, Church, and Other Statutory Exemptions</i>	189
1. Governmental Plans	189

2. Indian Tribal Governments	189
3. Church Plans	190
4. Plans Maintained Solely to Comply With Workers' Compensation, Unemployment Compensation, or Disability Insurance Laws	192
5. Plans Maintained Outside United States for Nonresident Aliens	192
<i>F. "Payroll Practice" Regulatory Safe Harbors</i>	<i>192</i>
1. Payment of Wages	193
2. Unfunded Sick-Pay or Income Replacement Benefits	193
3. Unfunded Vacation, Holiday, Jury Duty, and Similar Pay	195
<i>G. Regulatory Safe Harbor for Voluntary Plans</i>	<i>195</i>
1. Conditions of Regulatory Safe Harbor for Voluntary Plans	196
2. Group and Individual Insurance Policies Can Both Fall Within the Safe Harbor	197
3. No Employer Contributions to Plan Are Permitted Under Voluntary Plan Safe Harbor	197
4. Plan Must Be Completely Voluntary for Employees	197
5. Employer Functions Must Be Limited to Those Listed in Voluntary Plan Safe Harbor	197
6. Employer Functions Must Not "Endorse" the Plan	199
7. What Payments Can the Insurer Make to the Employer Under the Safe Harbor?	203
8. Failing the Safe Harbor Does Not Necessarily Create an ERISA Plan	203
<i>H. Other Regulatory Exemptions</i>	<i>204</i>
1. On-Premises Facilities	204
2. Holiday Gifts	204
3. Sales to Employees of Employer "Articles or Commodities"	204
4. Remembrance Funds	204
5. Hiring Halls	204
6. Strike Funds	204
7. Unfunded Scholarship or Educational Assistance Programs	204
8. Payroll Deductions Deposited in Savings Accounts (Christmas Clubs)	205
9. Industry Advancement Programs	205
<i>I. Special Issues in Identifying ERISA Benefits</i>	<i>205</i>
1. Cafeteria Plans, Premium-Only Plans	205
2. Employee Assistance Plans (EAPs)	205
3. Wellness, Disease Management, and Similar Programs (Help Lines)	206
4. Drug Testing Programs	207
5. Employer Goods or Services Provided to Employees (or Former Employees)	207
6. Health Savings Accounts (HSAs) and Medical Savings Accounts (Archer MSAs)	208
7. Health Reimbursement Arrangements (HRAs)	209
8. Severance Plans	210
9. Reduction-in-Force (RIF) or Retirement Incentive Programs	211
10. Employee Training Benefits	212
11. Business Travel Accident Benefits	212
12. Life or Accident Insurance Coverage Providing Under Company Credit Card	212
13. Split-Dollar Life Insurance	212
14. Individual Conversion Policies Under Group Health, Life, or Other ERISA Plans	213
15. Dependent Care Assistance Programs	213
16. Multiple Employer Welfare Arrangements	213
<i>J. Table: ERISA Status of Common Fringe Benefits</i>	<i>214</i>
Background Topic 2: Identifying MEWAs—Multiple Employer Welfare Arrangements	219
<i>A. Form 5500 and Multiple Employer Welfare Arrangements (MEWAs)</i>	<i>219</i>
<i>B. Who Should Consult This Background Topic?</i>	<i>219</i>

C. Why Employers Use MEWAs	219
D. ERISA Definition of MEWA	220
1. Controlled Group Rules Apply in Identifying MEWAs.....	220
2. It Is Possible to Create a MEWA Inadvertently	221
3. Certain Collectively Bargained Plans and Certain Other Arrangements Are Not MEWAs	222
E. Does ERISA Apply at the MEWA Level or at the Participating Employer Level?	222
1. DOL Commonality of Interest Test for Employer Status	223
2. DOL Control Test for Employer Status	223
F. Form 5500 Obligations for MEWAs and Participating Employers	224
1. If MEWA Is Itself an ERISA Plan, Employers Are Treated as Having One Plan	224
2. If MEWA Is Not ERISA Plan, Employers Are Treated as Having Individual Plans	224
Background Topic 3: Identifying ERISA Plan Assets	227
A. Form 5500 and Plan Assets	227
B. Who Should Consult This Background Topic?	227
C. Plan Asset Category #1: Participant Contributions Are Always Plan Assets	227
1. Plan Assets Include Amounts Paid to Employer or Withheld From Wages	227
2. A Wide Range of Payments From Both Participants and Beneficiaries Are Included	227
3. When Do Participant Contributions Become Plan Assets?.....	229
D. Plan Asset Category #2: Employer General Assets Can Become Plan Assets	230
1. Employer Apparent Intent, in Documents and Representations, Controls	230
2. Paying Benefits From Other Than General Assets Raises Questions	231
E. Plan Asset Category #3: Amounts Attributable to Plan Assets	234
1. Insurance Company Distributions as Plan Assets	234
2. Other Payments Attributable to Plan Assets	237
Background Topic 4: Identifying Which Plans With Plan Assets Are Deemed Unfunded	239
A. Form 5500, Technical Release 92-01, and Other DOL Nonenforcement Policies	239
B. Who Should Consult This Background Topic?	239
C. Technical Release 92-01: Cafeteria Plans and Participant Contributions	239
1. Technical Release 92-01 Extends to After-Tax COBRA and Similar Contributions.....	240
2. Cafeteria Plan Contributions Must Be Sole Reason for Plan Assets	240
3. Cafeteria Plan Contributions Must Not Be Segregated From Employer Assets	240
4. Plan Can Avoid Segregation Problem by Giving TPA Checkwriting Authority	240
5. Plan Might Also Avoid Segregation Problem by Careful Administration and Documentation	241
D. Technical Release 92-01: Insured Plans With Participant Contributions	242
E. Other DOL Nonenforcement Policies for Certain Insurer Distributions	242
1. DOL Nonenforcement Policy for Demutualization Distributions	242
2. DOL Limited Nonenforcement Policy for Plans That Receive Certain Insurance Distributions	242
Background Topic 5: Identifying Nonexempt (Prohibited) Transactions	245
A. Form 5500 and Nonexempt (Prohibited) Transactions	245
B. Who Should Consult This Background Topic?	245
C. Overview of Prohibited Transactions for Health and Welfare Plans	245
1. ERISA Prohibited Transactions in General	245
2. Prohibited Transactions for Health & Welfare Plans	245
D. Two Types of Prohibited Transaction	246
1. Prohibited Transactions With Parties in Interest (ERISA § 406(a)(1)).....	246
2. Fiduciary Self-Dealing Prohibited Transactions (ERISA § 406(b))	248
E. Elements of a Prohibited Transaction	249

- 1. Presence of Plan Fiduciary 249
- 2. Presence of Party in Interest 249
- 3. Presence of Plan Assets 250
- 4. Bad Faith Is Not Required 250
- 5. Neither Gain by Party in Interest Nor Benefit or Loss to Plan Is Relevant 250
- F. *Numerous Prohibited Transaction Exemptions (PTEs) Are Available* 251
 - 1. Statutory Exemptions 251
 - 2. Administrative Exemptions 251
- G. *How to Approach Prohibited Transactions* 251
- H. *Common Prohibited Transactions for Health & Welfare Plans* 252
 - 1. Mishandling Participant Contributions 252
 - 2. Reasonable Compensation to Third-Party Service Providers 253
 - 3. Fiduciary Conflicts of Interest in Connection With Service Providers 255
 - 4. Plan Sponsors Providing Plan Administrative Services 256
 - 5. Retention of “Float” by Financial Service Provider 257
 - 6. Loans, Extensions of Credit, Advancement of Funds 257
 - 7. Conditioning Plan Benefits on Release of Employment Claims 258
 - 8. Settling Claims Involving ERISA Plans 258
- I. *Consequences of Fiduciary Breaches and Prohibited Transactions* 259

Part 5 of 5
Sample Documents, Forms, and Contact Information

- A. *Filled-In Sample Form 5500 for XYZ Corporation Welfare Benefits Plan* 265
- B. *Sample Page from Form 5500 Machine Print Format* 285
- C. *Sample Summary Annual Report for ABC Company Flex Plan* 287
- D. *2007 Form 5500 and Instructions (with Schedules A, C, D, G, H and I)* 291
- E. *Form 5558 (Application for Extension of Time) and Instructions* 383
- F. *Form SS-4 (Application for Employer Identification Number)* 387
- G. *Phone Numbers of EBSA Contacts* 389

* * *

- Glossary** **393**
- Index** **401**