

*An Overview of Form 5500  
Filing Requirements*

---

# *An Overview of Form 5500 Filing Requirements*

---

## Table of Contents

I.	5500 SERIES FORMS.....	1
	A. Form 5500-EZ.....	1
	B. Form 5500.....	2
	C. Schedules.....	4
	D. Small Plan Audit Requirements.....	8
II.	FILING DEADLINES.....	11
III.	PLANS WHICH MUST FILE FORM 5500'S.....	11
IV.	PLANS NOT REQUIRED TO FILE FORM 5500'S.....	12
	A. Pension Benefit Plans.....	12
	B. Welfare Benefit Plans.....	13
	C. Fringe Benefits.....	13
	D. Unfunded Welfare Plans.....	14
V.	DOL GUIDANCE FOR FORM 5500.....	14
	A. EFAST Processing Tips (taken from the <i>Instructions to Form 5500</i> ).....	14
	B. Once You File Your Return/Report (taken from the EBSA's <i>Troubleshooters Guide to Filing the ERISA Annual Report – Form 5500</i> ).....	15
	C. Potential Filing Errors and How to Avoid Them.....	16
	D. Telephone Assistance for Completing Forms 5500 or 5500-EZ.....	17
VI.	PENALTIES FOR NON-COMPLIANCE.....	18
	A. IRS Penalties.....	18
	B. DOL Penalties.....	18
	C. Delinquent Filer Voluntary Compliance Program ("DFVC").....	18
	D. Penalty Structure.....	19
VII.	EMPLOYER ID NUMBER vs TRUST ID NUMBER.....	21
	A. The Employer ID Number (EIN) should be used for the following filings:.....	21
	B. The Trust ID Number (TIN) should be used for the following filings:.....	21
	C. All identification numbers can be obtained from the Service Center by filing Form SS-4 or by calling the Teletin Unit.....	22
VIII.	PLAN NUMBERS AND PLAN NAMES.....	22



# *An Overview of Form 5500 Filing Requirements*

---

**The Form 5500 series forms are the annual return/reports for employee benefit plans. The forms are required for all tax-qualified retirement plans, certain non-qualified deferred compensation plans, fringe benefit plans and welfare benefit plans. The forms are filed with the Department of Labor (DOL) and the data contained on the forms is forwarded by the DOL to the Internal Revenue Service (IRS). Although taxes are not paid with such forms, failure to timely file can result in the assessment of massive penalties by both the IRS and DOL. This chapter provides an overview of issues related to Form 5500 filings.**

## **I. 5500 SERIES FORMS**

### **A. Form 5500-EZ.**

1. The plan is a one-participant plan. This means either:
  - a. The plan covers your (or you and your spouse) and you (or you and your spouse) own the entire business; or
  - b. The plan covers one or more partners (or partner(s) and spouse(s)) in a business relationship.
2. Do not need to file if total assets of all plans maintained by the sponsor/participant are less than \$250,000.

For plan years beginning prior to December 31, 2006, this threshold was \$100,000.

- a. Must file Form 5500-EZ for final year of plan even if plan assets are less than \$250,000.

© 2009 by Richard A. Naegele

An earlier version of this chapter was published in the Journal of Pension Planning and Compliance (Fall 1996) by Panel Publishers.

*12.1 • Pension and Profit-Sharing Plan Overview and Update*



7. **80-120 Participant Rule.**

Under the "**80-120 Participant Rule**," if the number of participants as of the beginning of the plan year is between 80 and 120, and a Form 5500 was filed for the prior plan year, you may elect to complete the Form 5500 and schedules in the same category ("large plan" or "small plan") as was filed for the prior return/report. Use the number of participants required to be entered in line 6 of the Form 5500 to determine whether a plan is a "small plan" or a "large plan." For more information, see the Form 5500 instructions under the heading "**What to File**," and **Form 5500 Schedules** on page 7, and **Quick Reference Chart for Form 5500, Schedules and Attachments** on page 11.

8. For Plan Years prior to 2009, Form 5500 comes in two versions – machine readable and handwritten – and a single version must be used for the entire filing. Footnotes and other comments cannot be typed on the Form because such information cannot be read by the scanner.
9. Simplified Form 5500 for small plans. Effective for plan years commencing after December 31, 2006, plans with 25 or fewer participants will be permitted to file a simplified Form 5500 if the plan meets coverage requirements without being combined with another plan, and no related group members or leased employees are covered by the plan.
10. Electronic Form 5500 — Required Beginning with the 2009 Plan Year.
- a. The DOL has required that all Form 5500 filings due for reporting years beginning after December 31, 2008 (the 2009 Plan Year) be filed electronically. The requirement does not apply to Form 5500-EZ.
  - b. Employers that use an intranet website for employee communications internally will be required to post Form 5500 information on the website.
  - c. For plan years beginning in 2008, the Department of Labor must display the electronic form of Form 5500 on the DOL website within 90 days of receipt.
11. Summary Annual Report (SAR).

For plan years commencing after December 31, 2006, Summary Annual Reports are required only for defined contribution plans. Multiemployer defined benefit plans will also have an SAR required within 30 days of the Form 5500 filing due date.

12. Benefit Statements.
  - a. Effective for plan years commencing after December 31, 2006, participant benefit statements are required:
    - i. quarterly for participant-directed defined contribution plans;
    - ii. annually for other defined contribution plans; and
    - iii. every three years for defined benefit plans.
  - b. The DOL will issue model benefit statements.
  - c. Benefit statements may be delivered electronically.
13. Schedule P Eliminated.

The Employee Benefits Security Administration (EBSA) of the Department of Labor announced in a news release on July 13, 2006 that Schedule P, Annual Return of Fiduciary of Employee Benefits Trust, is no longer required beginning with the 2006 Form 5500.

IRS Announcement 2007-63 officially eliminates Schedule P for the 2006 and later plan years. The IRS will treat the filing of a plan's Form 5500 as an annual return for the plan's trust and the later of the plan's Form 5500 filing due date or actual filing date will mark the start of the trust's statute of limitations.

C. Schedules.

1. ***Schedule A (Insurance Information).***

All pension and welfare benefit plans that have insurance contracts must file schedule A, which was modified to more closely align it with GAAP on reporting investment contracts with insurance companies. These changes require better identification of the type of insurance contracts and the type of benefits each plan's insurance contracts provide.

Filers can continue to choose to report insurance information according to either the plan year or the insurance contract policy year ending within the plan year. However, a filer must include a separate schedule A for each insurance contract as part of the shift to computer scannable forms. The instructions address how a filer should complete the form if the insurance provider fails to supply the filer with the necessary information.

2. ***Schedule B (Actuarial Information).***

Beginning with the 2009 plan year, Schedule B will be replaced by two separate actuarial schedules. Schedule SB (Single Employer Defined Benefit Plan Actuarial Information) must be filed by single employer plans, including multiple employer defined benefit plans. Schedule MB (Multiemployer Defined Benefit Plan and certain Money Purchase Plan Actuarial Information) must be filed by money purchase plans that are currently amortizing funding waivers and all multiemployer defined benefit plans. These schedules must be filed as "non-standard" attachments for the 2008 plan year.

All defined benefit plans subject to ERISA's minimum funding standards are still required to file schedule B to provide actuarial data.

3. ***Schedule C (Service Provider Information).***

Larger pension and welfare benefit plans that paid service providers \$5,000 or more or that terminated an accountant or actuary during the plan year are required to file schedule C. Filers have to identify only the 40 highest paid service providers that were compensated from plan assets and no longer have to identify plan trustees annually.

Schedule C will be significantly revised beginning with the 2009 Plan Year to provide details on both direct and indirect income of Service Providers.

4. ***Schedule D (DFE/Participating Plan Information).***

All direct filing entities (DFEs) now must use form 5500. DFEs, including bank common/collective trusts (CCTs), insurance company pooled separate accounts (PSAs), master trust investment accounts (MTIAs), 103-12 investment entities (103-12 IEs) and group insurance arrangements (GIAs), are investment arrangements used by employee benefit plans. These entities are required to file financial information directly with the DOL, Schedule D and its instructions were created to clarify the new rules affecting DFEs and participating plans. This schedule is intended to standardize DFE reporting.

For reporting purposes, a master trust is one that holds the assets of more than one plan sponsored by a single employer or by a group of employers under common control. A regulated financial institution typically serves as trustee or custodian. A master trust must file no later than the due date of the plan with the earliest form 5500 filing date. An individual plan does not need to attach the master trust filing to its filing. Rather, the master trust files directly with the DOL. If the master trust does not file, the DOL will consider each participating plan's form 5500 filing incomplete. Each plan participating in the master trust must complete part 1 of schedule D. Regardless of whether the master trust files with the DOL, the plan is required to complete only item 1c(1) and item 2b(8) on schedule H.

CCTs are trusts that banks, trust companies or similar institutions maintain to collectively invest and reinvest employee benefit plan assets from plans maintained by more than one employer or by a controlled group of corporations. PSAs are accounts insurance companies maintain for a similar purpose. CCTs and PSAs may elect whether to file a form 5500 with the DOL. If they elect to do so, their participating plans must file form 5500 and complete part 1 of schedule D as well as items 9 and/or 10 and items 2b(6) and/or 2b(7) of schedule H. If a CCT or PSA elects not to file a form 5500, its participating plans must allocate and report the CCT's or PSA's underlying assets on a line-by-line basis on part 1 of schedule H.

For reporting purposes a 103-12 IE is an entity - other than a CCT, PSA or MTIA - that facilitates investing the assets of two or more employee benefit plans that are not members of a related group. A 103-12 IE sponsor may elect whether to file a form 5500 with the DOL (no later than the due date of the plan with the earliest form 5500 filing date). An individual plan does not need to attach the 103-12 IE filing; rather, the 103-12 IE files directly with the DOL. If this happens, participating plans must file only form 5500, complete part 1 of schedule D and items 1c(12) and 2b(9) of schedule H. If the 103-12 IE elects not to file directly, each participating plan must file a form 5500 and allocate and report the 103-12 IE's underlying assets on a line-by-line basis on part 1 of schedule H.

5. ***Schedule E (ESOP Annual Information).***

Employee stock ownership plans (ESOPs) are still required to file schedule E, but no material revisions were made.

6. ***Schedule G (Financial Transaction Schedules).***

Large pension and welfare benefit plans that report financial transaction such as loans or fixed-income obligations in default or determined to be uncollectible as of the end of the plan year; leases in default or classified as uncollectible; and nonexempt transactions must use schedule G.

Plans no longer use schedule G to report assets held for investment purposes or reportable transactions. However, in view of the importance of this information to employee benefit plan participants and beneficiaries, the DOL retained the schedules as part of the annual report for large plan filers (see schedule H); the required accountant's opinion also must cover these schedules.

Participant loans no longer have to be reported on the *Schedule of Loans in Default* if the loans are (1) part of a nondiscriminatory program, (2) secured by the participant's account and (3) in a self-directed investment environment.

7. ***Schedule H (Financial Information for Large Plans and DFEs) and I (Financial Information for Small Plans).***

The schedules consolidate financial reporting questions into one schedule. Schedule H reports key financial data for large plans and DFEs.

The instructions provide additional guidance on reporting certain expenses, including

- "Deemed distributions" of participant loans.
- "Corrective distributions" from pension plans.
- Welfare benefit plan "incurred but not reported" claims.

For example, the instructions say that after participant loans have been deemed distributed and reported on item 2g of schedule H or I, they no longer have to be reported as assets.

Corrective distributions are reported as item 2f on schedule H or I. The instructions require plans to report distributions of excess contributions, excess deferrals and aggregate contributions paid during the plan year. Any elective deferrals and employee contributions distributed or returned to employees during the plan year also must be reported.

Welfare benefit plans should include incurred-but-not-reported benefit claims in item 1g of schedule H.

Schedule H requires that large plan filers attach certain schedules to form 5500. These include Schedule of Assets Held for Investment Purposes, Schedule of Investment Assets Both Acquired and Disposed of Within the Plan Year and Schedule of Reportable Transactions. Plan sponsors may omit cost information from the first two schedules for participant- or beneficiary-directed transactions under an individual account plan. Filers also should not take such transactions into account when preparing the Schedule of Reportable Transactions. A transaction is considered directed by a participant or beneficiary only to the extent that such individual, in fact, affirmatively authorized the investment of the asset allocated to his or her account.

8. ***Schedule R (Retirement Plan Information).***

This schedule reports retirement plan distributions and funding. Filers now must report the employer identification number (EIN) of the entity(ies) that make the actual distributions under the plan and the number of single-sum distributions.

9. ***Schedule T (Qualified Pension Coverage Information).***

This schedule consolidates the reporting of coverage information for pension plan tax qualification under IRC section 410(b). Form 5500 provides a space to allow filers to report that their pension plans are not attaching schedule T because the plans are relying on coverage testing information for a prior year under the three-year testing rule in revenue procedure 93-42.

10. ***Schedule SSA (Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits).***

Schedule SSA provides information required by the Social Security Administration. All plan administrators and sponsors of pension plans that have participants who have separated from service with rights to future benefits must file schedule SSA.

D. **Small Plan Audit Requirements.**

1. The Department of Labor has established requirements for small plans to be audited for plan years beginning after April 17, 2001. Generally, Small Plans are plans with fewer than 100 participants on the first day of the plan year. Most small plans should qualify for a waiver of the audit requirements if plan investments are qualifying plan assets.

2. Qualifying plan assets, as defined in the regulations, include:

- a. Any plan asset held by any of the following regulated financial institutions:
  - i. A bank or similar financial institution as defined in 29 CFR 2550.408b-4c;
  - ii. An insurance company qualified to do business under state law;
  - iii. An organization registered as a broker-dealer under the Securities Exchange Act of 1934; or
  - iv. Any other organization authorized to act as a trustee for individual retirement accounts under IRC §408.
- b. Shares issued by an investment company registered under the Investment Act of 1940 (e.g. mutual funds);
- c. Investment and annuity contracts issued by any insurance company qualified to do business under state law;

- d. Qualifying employer securities, as defined in ERISA §407(d)(5);
  - e. Participant loans meeting the requirements of ERISA §408(b)(1); and
  - f. In the case of an individual account plan, any assets in the individual account over which the participant or beneficiary has the opportunity to exercise control and with respect to which a statement is delivered at least annually to the participant or beneficiary from a regulated financial institution (referred to above) describing the assets held or issued by the institution and the amount of such assets.
3. Relief from the Audit Requirement. A small pension plan will qualify for a waiver of the audit requirement if it meets the following conditions:
- a. At least 95% of the plan assets are qualifying plan assets as of the end of the preceding plan year; or
  - b. Any person who handles assets of the plan that do not constitute qualifying plan assets is bonded in accordance with the requirements of ERISA §412, except that the amount of the bond shall not be less than the value of such non-qualifying plan assets.
  - c. In addition to the fidelity bond requirement, the plan administrator must expand the plan's summary annual report to include (i) the name of each regulated financial institution issuing or holding qualifying plan assets and the amount of such assets as of the end of the plan year; (ii) the name of the surety company issuing the fidelity bond if the plan has more than 5% of its investments in non-qualifying assets; (iii) a notice that participants and beneficiaries may have access to evidence of the required bond and copies of the statements from the regulated financial institutions describing the qualifying plan assets; and (iv) a notice that participants and beneficiaries can contact the EBSA Regional Office if they are unable to examine or obtain the copies just mentioned.
4. The determination of whether or not the plan qualifies for waiver of the audit requirement is based upon the facts as of the first day of the plan year; however, the additional disclosures on the summary annual report relate to the facts as of the last day of the plan year.
5. The DOL formulated a series of questions and answers (Q&A) about the small plan audit rules, including the fidelity bond requirements and summary annual report disclosures. Some issues the Q&A address:

- a. If non-qualifying plan assets exceed \$500,000, then the amount of the fidelity bond coverage must be at least equal to the amount of the non-qualifying plan assets. The \$500,000 cap contained in the ERISA §412 rules applies only when the small pension plan has at least 95% of its investments in qualifying plan assets.
  - b. Plans filing Form 5500-EZ are not subject to the small plan audit rules. Similarly, there is no audit requirement for a plan filing Form 5500 (and reporting code 3G at line 8a) because the plan covers only owner-employees but is aggregated with another plan of the employer for nondiscrimination testing.
  - c. A plan that has at least 95% of its investments in qualifying plan assets as of the first day of the plan year can use the traditional summary annual report format at the end of that plan year. There is no need to disclose institutions holding qualifying plan assets or to provide information about the fidelity bond in this institution.
  - d. A contribution that is receivable as of the first day of the plan year is not taken into account in determining what portion of the plan's assets are qualifying plan assets. It is neither a qualifying nor a non-qualifying plan asset. Participant contributions or loan repayments that have not been transmitted within the time periods described in 29 CFR 2510.3-102 arguably should be included.
  - e. The plan sponsor has a "reasonable period" after the first day of the plan year to calculate the value of plan assets and to secure adequate fidelity bond coverage to qualify for the audit relief. A "reasonable period" may be interpreted by DOL to be as long as two or three months after the start of the plan year.
  - f. The most common errors in fidelity bond coverage are (i) the "named insured" is the employer (the named insured should be the plan, not the sponsor of the plan), and (ii) a deductible feature is in force (the coverage should provide "first dollar" recovery).
6. Most small plans should qualify for the waiver of the audit by maintaining the appropriate fidelity bond coverage and making the proper disclosures in the summary annual report.

## **II. FILING DEADLINES.**

The filing deadline for Form 5500 series forms is the last day of the 7th month after the plan year ends.

Automatic 1-1/2 month extension provided if:

1. Single employer plan or single plan of controlled group of employers;
2. Plan year and employer taxable year are the same;
3. Employer tax return has been extended; and
4. Copy of IRS tax filing extension for employer tax return is attached to 5500 series Form.

The plan sponsor can request an extension of up to 2-1/2 months by filing Form 5558 within 7 months after end of plan year (2-1/2 month extension of normal 7 month filing period). Form 5558 provides for an automatic extension of Form 5500.

Final Return. The day on which the final distribution of plan assets occurs is considered to be the last day of a short plan year and the 5500 series Form is due by the last day of the 7th month after such final distribution date. For example, if a terminated calendar year-end plan made a final distribution of plan assets of August 26, 2005, the Form 5500 is due March 31, 2006.

Short Plan Year. If the plan year is 6 months or less, the prior year's form may be used to file for such short plan year. As noted above, the Form and the applicable schedules are due by the last day of the 7th month after the end of the short plan year.

## **III. PLANS WHICH MUST FILE FORM 5500'S.**

All Tax-Qualified Retirement Plans including:

1. Pension Plans.
2. Profit-Sharing Plans.
3. Stock Bonus Plans.
4. Section 401(k) Plans.

Certain non-qualified deferred compensation plans.

Welfare Benefit Plans — Plans covered under Part 1 of Title I of ERISA including:

1. Medical, surgical, hospitalization and dental Plans.
2. Sickness, accident, disability, death and unemployment Plans.

3. Vacation Plans.
4. Apprenticeship and training Plans.
5. Employer sponsored dependent care Plans.
6. Scholarship funds.
7. Life insurance Plans.
8. Other welfare benefit Plans.

#### **IV. PLANS NOT REQUIRED TO FILE FORM 5500'S.**

##### **A. Pension Benefit Plans.**

1. An unfunded excess benefit plan.
2. An annuity or custodial account arrangement under Code section 403(b)(1) or (7) not established or maintained by an employer as described in DOL Regulation 29 CFR 2510.3-2(f).
3. A Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) that involves SIMPLE IRAs under Code section 408(p).
4. A simplified employee pension (SEP) or a salary reduction SEP described in Code section 408(k) that conforms to the alternative method of compliance in 29 CFR 2520.104-48 or 2520.104-49.
5. A church plan not electing coverage under Code section 410(d).
6. A pension plan that is a qualified foreign plan within the meaning of Code section 404A(e) that does not qualify for the treatment provided in Code section 402(e)(5).
7. An unfunded pension plan for a select group of management or highly compensated employees that meets the requirements of 29 CFR 2520.104-23, including timely filing of a registration statement with the DOL.
8. An unfunded dues financed pension benefit plan that meets the alternative method of compliance provided by 29 CFR 2520.104-27.
9. An individual retirement account or annuity not considered a pension plan under 29 CFR 2510.3-2(d).
10. A governmental plan.

B. Welfare Benefit Plans.

1. A welfare benefit plan that covered fewer than 100 participants as of the beginning of the plan year and is unfunded, fully insured, or a combination of insured and unfunded.
2. A welfare benefit plan maintained outside the United States primarily for persons substantially all of whom are nonresident aliens.
3. A governmental plan.
4. An unfunded or insured welfare plan for a select group of management or highly compensated employees which meets the requirements of 29 CFR 2520.104-24.
5. An employee benefit plan maintained only to comply with workers' compensation, unemployment compensation, or disability insurance laws.
6. A welfare benefit plan that participates in a group insurance arrangement that files a Form 5500 on behalf of the welfare benefit plan as specified in 29 CFR 2520.103-2.
7. An apprenticeship or training plan meeting all of the conditions specified by 29 CFR 2520.104-22.
8. An unfunded dues financed welfare benefit plan exempted by 29 CFR 2520.104-26.
9. A church plan under ERISA section 3(33).
10. A welfare benefit plan solely for: (a) an individual or an individual and his or her spouse, who wholly owns a trade or business, whether incorporated or unincorporated; or (b) partners or the partners and the partners' spouses in a partnership.

C. Fringe Benefits.

The IRS announced (in *Notice 2002-24*) that employers maintaining cafeteria plans, educational assistance benefits, or adoption assistance programs no longer must file a Schedule F with Form 5500 to comply with the tax code's annual reporting requirements.

The IRS has also confirmed that a Form 5500 need not be filed solely for purposes of complying with the return filing requirement for certain fringe benefits (under tax code section 6039D). According to the IRS, Form 5500 is not necessary for a cafeteria plan that is not subject to Title I of ERISA. However, a Form 5500, but not a schedule F, must be filed for plans subject to

ERISA reporting requirements (generally welfare plans with more than 100 participants). This IRS filing relief is retroactive, and therefore a delinquent cafeteria plan filer that is not subject to Title I of ERISA does not need to request IRS relief nor file under the DFVC Program.

D. Unfunded Welfare Plans.

Unfunded Welfare Plans with 100 or more participants must file Form 5500 but are exempt from the audit requirement. A plan is unfunded if it is funded entirely with employer money. The IRS has stated that employee money via a Section 125 plan is treated as employer money for these purposes.

**V. DOL GUIDANCE FOR FORM 5500.**

A. EFAST Processing Tips (taken from the *Instructions to Form 5500*).

To reduce correspondence and penalties:

1. Paper forms must be obtained from the DOL or printed using software from an EFAST approved software developer.
2. Filings using photocopies of the computer scannable forms and schedules may be returned or cause correspondence requiring additional information.
3. All information should be in the specific fields or boxes provided on the form and schedules. Information entered outside of the fields or boxes may not be processed.
4. Do not use felt tip pens or other writing instruments that can cause signatures or data to bleed through to the other side of the paper. One-sided documents should have no markings on the blank side.
5. Paper should be clean without glue or other sticky substances.
6. Do not staple the forms. Use binder clips or other fasteners that do not perforate the paper.
7. Do not submit extraneous material or information, such as arrows used to indicate where to sign, notes between preparers of the report, notations on the form, e.g., "DOL copy", etc.
8. Do not submit unnecessary or blank schedules. Except for certain Schedule SSA filings specifically permitted by the instructions, schedules should be submitted only with a Form 5500 or in response to correspondence from the Employee Benefits Security Administration (EBSA) regarding the processing of your return/report.
9. Manual entries on the machine print forms are not permitted.

10. Submit all schedules (including the correct number of schedules) for which a box is checked on Form 5500, Part II, line 10.
  11. Do not attach or send any payments to EFAST.
  12. All Forms 5500s and 5500-EZ must be filed with the EBSA either electronically or at the EFAST address specified on page 5.
  13. Clearly identify all attachments. At the top of each attachment, indicate the schedule and line, if any (e.g., Schedule I, Line 4k), to which the attachment relates.
- B. Once You File Your Return/Report (taken from the EBSA's *Troubleshooters Guide to Filing the ERISA Annual Report – Form 5500*).

When Form 5500 is received by EBSA, it will undergo a number of computerized edit checks. Computerized checks have been developed to identify errors or omissions on your return/report. Results of these checks will provide the basis for correspondence to you. Correspondence will explain reasons for filing failures, how to submit missing or corrected information, and will include a reminder that failure to respond or to provide requested information may result in enforcement action, including the assessment of civil penalties, by the Department of Labor and/or the Internal Revenue Service.

#### Edit Testing

Form 5500 and schedules will be subjected to computerized edit checks that concentrate on ten major areas:

1. Mandatory answer/invalid data.  

Checks identify if you have failed to answer a required question, failed to check an appropriate box, or entered invalid information.
2. Math consistency.  

Checks apply to financial statements that ensure that totals and subtotals equal the sum of their component amounts.
3. Missing schedules.  

Checks verify that schedules are actually attached when you mark "yes" to one or more of the questions on Form 5500 or its schedules that require the attachment of other schedules, or when information on the financial statements indicates that schedules are required to be attached.

4. Financial activity.

Checks identify if you answered the appropriate narrative questions when certain financial activity took place.

5. Missing amount.

Checks identify if you failed to indicate dollar amounts in space provided after marking "yes" to questions or marking appropriate box(es) on Form 5500.

6. Nonexempt.

Checks identify if you failed to answer narrative questions on Schedules H or I.

7. Missing specify/explain information.

Checks determine that when "specify" or "explain" are indicated on the Form 5500 and schedules, a narrative explanation has been provided with the filing.

8. Large plan/DFE financial/transaction information.

Checks identify if the plan/DFE provided required information when the report of an independent accountant is required to be part of the annual report.

9. Final report.

Checks identify if the report is actually a final filing based on answers to certain questions.

10. Entity control.

Checks identify whether consistent identifying data is reported each year for a particular filer in order to maintain accurate year-to-year records for each filer. The following information is used in entity control testing: employer identification number (EIN), plan number (PN), plan name, sponsor name, effective date of plan, total assets (beginning and end of year) and whether this is the first return/report filed for the plan or DFE.

C. Potential Filing Errors and How to Avoid Them.

As explained previously, Form 5500 will be subjected to review to determine its compliance with the filing requirements. The EBSA, IRS and PBGC want to minimize correspondence being sent to plan administrators for deficient filings.

The errors considered most likely to be made are listed below.

1. Omitting Information.

Forms are subjected to review that includes checking specific data elements; omissions, such as missing signature, missing financial data, missing independent qualified public accountant's report; and missing fiscal year beginning and ending dates. *All items on the forms must be completed as required by the instructions.* To enter none for monetary amounts, you must enter a zero (0) or leave the line blank, unless the instructions require that a "0" be entered.

2. Failing to Answer Multiple-Part Questions.

For all multiple-part questions, you must answer all parts as directed. The computerized edit program is designed to identify any multiple-part questions that have not been completely answered.

3. Attaching Supplemental Information to Forms.

Unless specifically permitted in the instructions, under the new computerized edit system, use of the phrase "see attached," or similar wording, is not an acceptable answer in place of entering required information on the forms.

4. Attaching Information Improperly Completed or Labeled.

All information submitted with Form 5500 must identify the plan or DFE name, sponsor's EIN, PN, type of attachment, associated schedule, and line number.

5. Failing to Use Acceptable Forms and Failing to Enter Information Correctly on the Forms.

Under the new EFAST processing system, all forms submitted must meet certain minimum standards, including entering data only in the space provided in accordance with the Form 5500 instructions. See the EFAST Web page at [www.efast.dol.gov](http://www.efast.dol.gov) for more information.

D. Telephone Assistance for Completing Forms 5500 or 5500-EZ.

1. Call EBSA toll-free at (866) 463-3278 for assistance in completing Forms 5500 or 5500-EZ; responding to correspondence from PWBA about EFAST processing of your Form 5500 or 5500-EZ filing; and understanding EFAST. This telephone service is available M-F, 8:00 a.m. through 8:00 p.m. Eastern Standard Time.

2. Access the EFAST Web page at [www.efast.dol.gov](http://www.efast.dol.gov).

## VI. PENALTIES FOR NON-COMPLIANCE.

### A. IRS Penalties.

1. A penalty of \$25.00 per day (up to a maximum of \$15,000.00 per return) may be assessed by I.R.S. for not filing returns for certain deferred compensation plans, certain trusts and annuities, and bond purchase plans. IRC Section 6652(e).
2. A penalty of \$1.00 per day (up to \$5,000.00) for each participant on Schedule SSA. IRC Section 6652(d)(1).
3. A penalty of \$1.00 per day (up to \$1,000.00) for failing to report a change in the status of the plan. IRC Section 6652(d)(2).
4. A penalty of \$1,000.00 for not filing the actuarial statement — Schedule B. IRC Section 6692.

### B. DOL Penalties.

1. A penalty of \$50.00 per day for a late filer may be assessed by DOL.
2. A penalty of up to \$1,100.00 per day if the plan administrator fails or refuses to file a complete return. ERISA Section 502(c)(2).
3. A penalty of \$300.00 per day (up to a maximum of \$30,000.00 per return, per year) for a non-filer may be assessed by the DOL.
4. For egregious omissions, penalties are doubled.
5. The DOL also assesses penalties for the following deficiencies:

	<u>Per Day</u>	<u>Cap</u>
Missing accountant report	\$ 150.00	\$50,000.00
Financial information	\$ 110.00	\$36,500.00
Other information (per employee, not per day)	\$ 11.00	\$ 3,650.00

### C. Delinquent Filer Voluntary Compliance Program ("DFVC").

The Delinquent Filer Voluntary Compliance Program<sup>1</sup> (DFVC) is available to all pension and welfare plan administrators who have not filed timely annual reports for plan years beginning on or after January 1, 1988 and who have not

---

<sup>1</sup> March 27, 2002 Federal Register.  
DOL Press Release (dated March 27, 2002).

DOL Hotline: (202) 219-8776.

yet received notification from the DOL that the plan has failed to file a timely annual report. The DFVC program also applies to top hat plans which failed to file the standard registration statement with the DOL. Effective March 28, 2002, new DFVC rules replace the old rules issued in 1995. Under the new rules, the DFVC Penalty Amounts have been reduced and new per plan maximum penalties have been established.

1. Who is Eligible.

Eligibility for the DFVC Program continues to be limited to plan administrators with filing obligations under Title I of ERISA who comply with the provisions of the program and who have not been notified in writing by the Department of a failure to file a timely annual report under Title I of ERISA. For example, Form 5500-EZ filers and Form 5500 filers for plans without employees (as described in 29 CFR 2510.3-3(b) and (c)), are not eligible to participate in the DFVC Program because such plans are not subject to Title I.

2. Program Criteria.

Participation in the DFVC Program is a two-part process. First, file with EBSA a complete Form 5500 Series Annual Return/Report, including all schedules and attachments, for each year relief is requested. Special simplified rules apply to "top hat" plans and apprenticeship and training plans. Second, submit to the DFVC Program the required documentation and applicable penalty amount. The plan administrator is personally liable for the applicable penalty amount, and, therefore, amounts paid under the DFVC Program shall not be paid from the assets of an employee benefit plan.

D. Penalty Structure.

The late filing penalties under the DFVC Program are as follows:

<u>Plan Type</u>	<u>Per Day Penalty</u>	<u>Per Filing Penalty</u>	<u>Multiple Filings — Per Plan Penalty</u>
Small Plan	\$10	\$ 750	\$1,500
Large Plan	\$10	\$2,000	\$4,000

Per day penalty. The basic penalty under the program is \$10 per day for delinquent filings.

"Per filing" cap. The maximum penalty for a single late annual report is \$750 for a small plan (generally a plan with fewer than 100 participants at the beginning of the plan year) and \$2,000 for a large plan.

"Per plan" cap. The DFVC Program also includes a "per plan" cap. This cap is designed to encourage reporting compliance by plan administrators who have filed to file an annual report for a plan for multiple years. The "per plan" cap limits the penalty to \$1,500 for a small plan and \$4,000 for a large plan regardless of the number of late annual reports filed for the plan at the same time. There is no "per administrator" or "per sponsor" cap. If the same person is the administrator or sponsor of several plans required to file annual reports under Title I of ERISA, the maximum applicable penalty amounts would apply for each plan.

Small plans sponsored by certain tax-exempt organizations. A special "per plan" cap of \$750 applies to a small plan sponsored by an organization that is tax-exempt under Internal Revenue Code §501(c)(3). The \$750 limitation applies regardless of the number of late annual reports filed for the plan at the same time. It is not available, however, if as of the date the plan files under the DFVC Program, there is a delinquent annual report for a plan year during which the plan was a large plan.

"Top hat" plans and apprenticeships and training plans. The penalty amount for "top hat" plans and apprenticeship and training plans is \$750.

#### 4. Simplified Procedures.

The Department simplified the procedures governing participation in the program. The changes are intended to make the program easier to use. For example:

- Plan administrators may use the Form 5500 forms for the year relief is sought or the most current form available at the time of participation. This option allows administrators to choose the form that is most efficient and least burdensome for their circumstances.
- The forms and penalty payment check should no longer be annotated in bold-red print identifying the filing as a DFVC filing.
- The program has been updated to conform to the annual reporting procedures under the computerized ERISA Filing Acceptance System (EFAST).
- The address where DFVC Program remittances are submitted is DFVC Program, EBSA, P.O. Box 70933, Charlotte, NC 28272-0933. Submissions made to the old address will be returned to the filer.

E. IRS and PBGC Penalty Relief.

In addition to the DOL's civil penalties, the IRS has the authority to assess penalties for a plan's failure to timely comply with the tax code's annual reporting requirements. The IRS, in *Notice 2002-23*<sup>2</sup>, and the Pension Benefit Guaranty Corporation (PBGC) also announced penalty relief for delinquent filings of Form 5500 if the plans satisfy the conditions of the DOL's DFVC Program.

**VII. EMPLOYER ID NUMBER vs TRUST ID NUMBER.**

A. The Employer ID Number (EIN) should be used for the following filings:

Form 945 — A plan sponsor may still elect to file Form 945 for pension withholding using the EIN (per Announcement 84-40). However, the plan sponsor must be consistent and also use the EIN on Form 8109 and Form 1099-R. See IRS Circular E for information.

Form 5500 — The EIN must be used to file the Form 5500, not the Trust ID Number.

Determination Letter Requests - The EIN (not the Trust ID number) should be used on all determination letter requests. This is very important in order to maintain all information regarding plan filings under one account number.

Form 5330 — When reporting the plan information on Form 5330, enter the EIN used for the filing of Form 5500. (The Form 5330 should post to the same account as the Form 5500, even if the entity paying the tax is not the plan sponsor.)

B. The Trust ID Number (TIN) should be used for the following filings:

Form 945 — A plan sponsor may still elect to file Form 945 for pension withholding (per Announcement 84-40) using the TIN. However, the plan sponsor must be consistent and also use the TIN on Form 8109 and Form 1099-R. See Circular E for information.

Form 5500 — Schedule P - The TIN should be entered on the Schedule P attached to Form 5500.

Form 990T — The TIN should be used to report any unrelated business taxable income (UBI) on Form 990T.

Invest Plan Assets - This will avoid plan assets being confused with employer assets.

---

<sup>2</sup> IRS Notice 2002-23 (March 27,2002)

- C. All identification numbers can be obtained from the Service Center by filing Form SS-4 or by calling the Teletin Unit.

### **VIII. PLAN NUMBERS AND PLAN NAMES.**

Basically, the general rule for plan numbers is that all pension Plans can use any plan number between 001 - 499 and all welfare Plans use numbers between 501-999. The numbers do not have to be used consecutively. Once a plan number is finalized, it cannot be used again.

The rule for plan names is that the sponsor can call the plan anything he wishes. However, a suggestion is to use a combination of the plan sponsor's name and the type of plan.

The most important thing to remember is to be consistent. Any change in plan number and plan name from the prior year return should be highlighted on the return. If a plan sponsor changes the plan name, in any way, and does not highlight that change on the return, the IRS may consider this as a filing for a new plan.