

Form 5500 Update

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Disclaimer

The information and opinions presented today are those of the presenter and do not necessarily represent the opinions or positions of Wolters Kluwer.



New DOL Initiative – Form 5500

- Matching plan sponsors filing retirement plan reports to welfare plan filings for same business

RE: REQUEST FOR CLARIFICATION OF YOUR EMPLOYEE BENEFIT PLAN ANNUAL REPORTING REQUIREMENTS

→ However, we have no record of a Form 5500 for a health benefit plan filed in 2010 or 2011 using this EIN. We are therefore asking you for information to determine whether you were required to file Form 5500 for a health benefit plan for 2011.

Such missing/late filings may be filed under DFVC.



New GAO Study

The **U.S. Government Accountability Office (GAO)**, a non-partisan agency serving the Congress, has been asked by the Congress to conduct a study *on the clarity and usefulness of Form 5500 data* related to plan investment and service provider and fee information. As part of our study, we will soon convene a web-based panel of individuals with a variety of experiences with the form to help us identify concerns and modification options to improve the clarity and usefulness of information reported on the form. [emphasis added]



Form 5500/5500-SF Changes

- IRS changes 2012 – two additions
 - Forms 5500/5500-SF is now requesting preparer information *(optional)*
 - **Preparer's name**, firm name, address and **phone**

SIGN HERE			
	Signature of employer plan sponsor	Date	Enter name of individual signing as employer or plan sponsor
SIGN HERE			
	Signature of DFE	Date	Enter name of individual signing as DFE
Preparer's name (including firm name, if applicable) and address; include room or suite number. (optional)			Preparer's telephone number (optional)
For Paperwork Reduction Act Notice and OMB Control Numbers, see the instructions for Form 5500.			Form 5500 (2012)

Form 5500/5500-SF Changes

- Schedules H and I - Trustee information
- Name of trust and EIN (*optional*)

Part V Trust Information (optional)	
6a Name of trust	6b Trust's EIN

- 800.829.4933 to verify EIN



Form 5500/5500-SF Changes

- “Same as sponsor” boxes reintroduced

3a Plan administrator's name and address <input type="checkbox"/> Same as Plan Sponsor Name <input type="checkbox"/> Same as Plan Sponsor Address
--

23b: The Plan Administrator name and address are the same as the Plan Sponsor. Do I need to check both the “Same as Plan Sponsor Name” and the “Same as Plan Sponsor Address” checkboxes in Line 3a of the Form 5500 and Form 5500-SF?

No. If both the Plan Administrator name and address are the same as the Plan Sponsor name and address, you should only select the “Same as Plan Sponsor Name” checkbox. However, if the Plan Administrator name is different than the Plan Sponsor name, but the Plan Administrator address is the same as the Plan Sponsor address, only check the “Same as Plan Sponsor Address” checkbox.

Note: If you checked the “Same as Plan Sponsor Name” checkbox and are viewing and/or printing a PDF facsimile of the filing from the EFAST2 public disclosure Website, you will only see the “Same as Plan Sponsor Name” box checked. The facsimile will not populate the Plan Administrator name and address fields with the information from the Plan Sponsor fields.



Revised Business Codes

~~315230~~ - Women's & Girls' Cut & Sew Apparel Mfg. = 315240
~~315290~~ - Other Cut & Sew Apparel Mfg. = 315280
~~423600~~ - Household Appliances and Electrical & Electronic Goods
~~441221~~ - Motorcycle Dealers
~~441229~~ - All Other Motor Vehicle Dealers
~~441228~~ - Motorcycle, ATV, and All Other Motor Vehicle Dealers
~~443111~~ - Household Appliance Stores
~~443112~~ - Radio, Television, & Other Electronics Stores
~~443120~~ - Computer & Software Stores
~~443130~~ - Camera & Photographic Supplies Stores
~~443141~~ - Household Appliance Stores
~~443142~~ - Electronics Stores (including Audio, Video, Computer, and Camera Stores)
~~451220~~ - Prerecorded Tape, Compact Disc, & Record Stores
~~454311~~ - Heating Oil Dealers
~~454312~~ - Liquefied Petroleum Gas (bottled gas) Dealers
~~454319~~ - Other Fuel Dealers
~~454310~~ - Fuel Dealers (including Heating Oil and Liquefied Petroleum)
~~524130~~ - Reinsurance Carriers
~~531114~~ - Cooperative Housing (including equity REITs)
722110 - Full Service Restaurants = 722511
~~722210~~ - Limited Service Eating Places
722513 = Limited-Service Restaurants
722514 = Cafeteria and Buffets
722515 = Snack and Non-alcoholic Beverage Bars



Comparison #1

Application

- ERISA §408(b)(2) applies to any size retirement plan subject to ERISA. [See www.dol.gov/ebsa.]
 - Requires disclosure of prospective fees.
- Schedule C is completed only by large plan filers for retirement plans and funded welfare benefit plans.
 - Requires disclosure of fees already incurred / paid by plan.



Comparison #2

Effective date

- **ERISA §408(b)(2)** initial disclosures due July 1, 2012; must be delivered by service provider to the responsible plan fiduciary.
- **Schedule C** was implemented with the 2009 plan year filing and is the obligation of the plan sponsor/plan administrator.



Comparison #3

How is a service provider defined?

- [ERISA §408\(b\)\(2\)](#) refers to categories of services provided by Covered Service Providers (CSP) who expect to receive at least **\$1,000** in compensation for services to a plan, which includes:
 - ERISA fiduciary service providers to a covered plan or to a "plan asset" vehicle in which such plan invests;
 - Investment advisers registered under Federal or State law;
 - Recordkeepers or brokers who make designated investment alternatives available to the covered plan (e.g., a "platform provider");
 - Providers of one or more of the following services to the covered plan who also receive "indirect compensation" in connection with such services:

Accounting, auditing, actuarial, banking, consulting, custodial, insurance, investment advisory, legal, recordkeeping, securities brokerage, third party administration, or valuation services.



Comparison #3 [continued]

How is a service provider defined?

– **Schedule C** requires disclosure of any person (ERISA §3(9)) and Key Service Providers who receive **\$5,000*** or more in combined direct / indirect compensation for services to the plan or on account of their position with the plan, including:

- ERISA §3(21) Fiduciary
- Contract administrator
- Consultant
- Custodian
- Investment Advisor
- Investment Manager
- Broker
- Recordkeeper

*Employee paid more than \$25,000



Comparison #4

Reporting of non-monetary compensation

- **ERISA §408(b)(2)** has exception for amounts of \$250 or less
- **Schedule C** excludes gifts or gratuities that are valued at \$50 or less, so long as the aggregate value of gifts from one source is less than \$100. Gifts with a value less than \$10 not counted toward the \$100 limit. [See FAQ #34]



Comparison #5

How frequently must disclosure updates occur?

- **ERISA §408(b)(2)** requires disclosure (after the initial disclosure on July 1, 2012) be made reasonably in advance of engagement or change; prior to extensions or renewals of contracts or arrangements.
- **Schedule C** allows for post-engagement, after year-end reporting.



Comparison #6

Must you report a service provider that fails to comply?

- **ERISA §408(b)(2)** treats the plan fiduciary as engaging in a prohibited transaction with regard to the contract or arrangement between the plan and the service provider if there is a failure by the service provider to disclose the required information.
 - [See <http://www.dol.gov/ebsa/regs/feedisclosurefailurenotice.html>]
- **Schedule C** allows for reporting of failures to provide information to complete Schedule C on an annual basis on Part II, Line 4 of Schedule C.



The Disclosure “Disconnect”

- *ERISA §408(b)(2)* fee disclosures to the responsible plan fiduciary currently applies to retirement plans only
- *ERISA §404(a)(5)* participant disclosures apply only to participant directed defined contribution plans
- *Schedule C* is completed by large plans only (both retirement and welfare plans)
- **Prohibited transactions** may arise in any ERISA plan
 - Size doesn't matter



Reporting ERISA §408(b)(2)

Failures: DOL

- Fee Disclosure Failure Notice

This web page allows plan fiduciaries to electronically notify the Department of Labor of a service provider's failure to disclose fee information required by the Department's 408(b)(2) regulation. To go directly to the Fee Disclosure Failure Notice, click on the link on the bottom of this page.

- <http://www.dol.gov/ebsa/regs/feedisclosurefailurenotice.html>



Reporting ERISA §408(b)(2) Failures: Form 5500

- Prohibited transaction:
 - Form 5500-SF, line 10b
 - Schedule H / I, line 4d
- Schedule C?
 - Item reported on Schedule C relates to **failure to provide information to complete Schedule C** rather than the ERISA §408(b)(2) disclosures.



Reporting ERISA §408(b)(2) Failures: IRS

- Form 5330
 - If responsible plan fiduciary qualified for exemption, nothing to report.
 - **Covered Service Provider** that failed ERISA §408(b)(2) disclosure rule must file (as disqualified person). Complete Form 5330, Schedule C.
 - Not clear what the “amount involved” is in these cases.
 - CSP files Form 5330 based on its fiscal year.



Take-away

ERISA §408(b)(2) gives the Schedule C preparer a roadmap for the types and sources of compensation *possibly* paid to various service providers associated with a plan.

Schedule C captures the *actual* payments from the plan, whether it be directly or indirectly.



The Big Question

Does the potential indirect compensation shown on an ERISA §408(b)(2) disclosure result in that indirect compensation being “eligible”?

- Indirect compensation that is *eligible* qualifies for simplified reporting on Schedule C.
- This simplified reporting is referred to as the *Alternative Reporting Option* in the Schedule C instructions.



Form 5500-EZ Changes

- No “Same as sponsor” boxes
- Addition of space to provide *optional paid preparer* information just below signature box (page 2)
- *Optional trust information* may be inserted at lines 4a-b
- New line 11a
 - Applies only to defined benefit plans
 - Enter amount from line 39 of Schedule SB



Issues with Form 5500-EZ

- The PPA 2006 modified the term “partner” to include an individual who owns more than two percent of an S corporation.
 - See IRC Section 1372(b); also PPA 2006 Section 1103(a)(2)(E).
- One-participant plans covering 100 or more participants must file Form 5500-EZ on paper
 - No benefit plan audit



Filing Search for One-Participant Plans

- Starting January 1 2011, *all* Short Form filing records submitted with One-Participant Plan Box checked are blocked from public access
- Consider filing Form 5500-SF instead of Form 5500-EZ!





Electronic Filing

- Form 5500-EZ –
 - 30% of one-participant plans are e-filing, using Form 5500-SF
- Form 8955-SSA – 25% e-filing
 - Data transcription errors
 - Processing concerns
 - Higher chance to receive IRS contact

Form 8955-SSA

- How to file
 - e-file using FIRE or
 - paper submission
- No attachments accepted – must use official page 2
- Instruction change for Line 6(a) and (b) and line 7
 - Code A entries are counted for lines line 6 (a) and (b)
 - Line 7 should equal 6 (a) plus (b)
 - Line 7 does not equal the total of separate participant listed on page 2 of the form if Codes B, C, or D are shown.



Form 8955-SSA

Line 6, 7 and 8 and Part III Line 9

6	a. Participants who separated with a deferred vested benefit required to be reported on this Form 8955-SSA	6a	
	b. Participants who separated with a deferred vested benefit voluntarily reported on this Form 8955-SSA in the same year as the separation occurred	6b	
7	Total number of participants reported on lines 6a and 6b	7	
8	Did the plan administrator provide an individual statement to each participant required to receive a statement?		<input type="checkbox"/> Yes <input type="checkbox"/> No

PART III Participant Information - enter all requested information

9 Enter one of the following Entry Codes in column (a) for each separated participant with deferred vested benefits who:

Code A — has not previously been reported.

Code B — has previously been reported under the above plan number, but whose previously reported information requires revisions.

Code C — has previously been reported under another plan, but who will be receiving benefits from the plan listed above instead.

Code D — has previously been reported under the above plan number, but whose benefits have been paid out or who is no longer entitled to those deferred vested benefits.



E-Filing of Form 8955-SSA

- Does the Plan Administrator have to sign an electronic filing of Form 8955-SSA?
- NO! See [IRS] FAQ #12. On the **FIRE** system, it is optional to insert the name(s) of the signer(s).
 - It may be “best practice” to ask the plan administrator to sign a paper copy to keep in its files, but not required.



Signature Requirements

- For paper filings, both plan sponsor and plan administrator must sign and date.
- If same person, then only plan administrator must sign and date.

Under penalties of perjury, I declare that I have examined this statement, and to the best of my knowledge and belief, it is true, correct, and complete.					
Sign Here	▶	Signature of plan sponsor	Date signed	Signature of plan administrator	Date signed



FIRE Your Clients!

- Electronic filing of Form 8955-SSA may prove a viable solution for many of your clients
 - *No signature requirements!*
 - You can resolve any issues
 - Third party software options may include either
 - Creation of a file suitable for you to initiate filing on **FIRE**, or
 - A service that automatically initiates the **FIRE** filing upon your request



Form 5558

- Changes to Form 5558 (Rev. August 2012)
 - One plan per Form (manual processing – Ogden Service Campus)
 - Check box added to identify first time Form 5500 series filer
- Will we ever be able to file this form electronically?



Form-5558 Part II

Part II Extension of Time To File Form 5500 Series, and/or Form 8955-SSA

- 1 Check this box if you are a first-time filer of the Form 5500 series return/report for the plan listed in Part I, C above.
- 2 I request an extension of time until ____ / ____ / ____ to file Form 5500 series (see instructions).
Note. A signature IS NOT required if you are requesting an extension to file Form 5500 series.
- 3 I request an extension of time until ____ / ____ / ____ to file Form 8955-SSA (see instructions).
Note. A signature IS NOT required if you are requesting an extension to file Form 8955-SSA.

The application is **automatically approved** to the date shown on line 2 and/or line 3 (above) if: **(a)** the Form 5558 is filed on or before the normal due date of Form 5500 series, and/or Form 8955-SSA for which this extension is requested, and **(b)** the date on line 2 and/or line 3 (above) is not later than the 15th day of the third month after the normal due date.



Form 5558 Processing Questions

- Write or fax the EP Entity Unit in Ogden using the following contact information:
 - Internal Revenue Service
Ogden, UT 84201-0018
Attention: EP Entity Unit, Mail Stop 6273
 - Fax Number: (801) 620-7116





Other Filing Help

- Form 5500 Corner
 - <http://www.irs.gov/Retirement-Plans/Form-5500-Corner>
- Customer Account Services [1-877-829-5500]
 - RetirementPlanQuestions@irs.gov
 - Critical to include

EIN

Dates

Plan number

Issues

Plan name

Contact information

DFVC Update

- Technical updates reflect use of EFAST2 system, correct mailing address for penalty checks, etc.
- May use online calculator to pay fine
 - www.dol.gov/ebsa - under Compliance Assistance
- What about Form 5500-EZ?



DFVC Tips

- Penalty stops when the filer submits Form 5500 electronically (EFAST2)
 - If paying by check, calculate amount based on original due date of filing up to EFAST2 acceptance date.
 - There is no overnight delivery address. Note that payments to the DFVCP also can be made electronically.
- No attachment to Form 5500 required; just check the DFVC box at Line D



EFAST2 FAQ - Signatures

- Q33c: Can I sign the Form 5500/5500-SF using my company's name rather than my own name?
 - No. The signature on the Form 5500 and/or 5500-SF must reflect an individual's name and not a company name.
- This is true when signing as a practitioner, too!
- Practitioner-signer on I-File has odd result.



E-Signature Option

- FAQ #33a. Also separate FAQ series on efast.dol.gov
- Allows practitioners with proper written *annual* authorization to electronically sign and file on behalf of their clients.
- NO filing can be processed through EFAST2 if not properly electronically signed.



EFAST2 Attachment FAQ

- FAQs 28 and 29 to require attachments to be right side up and not upside-down or sideways



Landscape Attachments

Attachment to 2011 Schedule H (Form 5500), line 4j
Schedule of Reportable Transactions as of 10/31/2011
EIN: 36-6151099; PN: 009

Plan Sponsor: KELLOGG COMPANY as sponsor of MASTER RETIREMENT TRUST
Plan: KELLOGG COMPANY MASTER RETIREMENT TRUST

(a)	(b)	(c)	(d)	(e)	(f)
Identity of issuer, borrower, lessor or similar party	Description of Asset/Transaction	Purchase Price	Selling Price	Cost of Asset	Current Value On Trans Date
Series of Transactions:					
* Northern Trust Short Term Investment Fund	Common/collective fund	715,887,721	0	715,887,721	715,887,721
* Northern Trust Short Term Investment Fund	Common/collective fund	0	720,105,399	720,105,399	720,105,399
* MFB NT Collective S&P 500 Index Fund	Common/collective fund	444,000,000	0	444,000,000	444,000,000
* MFB NT Collective S&P 500 Index Fund	Common/collective fund	0	261,000,000	230,249,253	261,000,000
US Treas Bd 3.5% due 02/15/2039	Government securities	198,998,609	0	198,998,609	198,998,609
US Treas Bd 3.5% due 02/15/2039	Government securities	0	181,272,625	176,691,581	181,272,625
US Treas Bd 4.25% due 11/15/2040	Government securities	142,377,303	0	142,377,303	142,377,303
US Treas Bd 4.25% due 11/15/2040	Government securities	0	119,388,787	118,818,886	119,388,787
US Treas Bd 4.375% due 05/15/2041	Government securities	121,817,326	0	121,817,326	121,817,326
US Treas Bd 4.375% due 05/15/2041	Government securities	0	33,943,509	31,560,736	33,943,509
US Treas Bd 4.75% due 02/15/2041	Government securities	79,805,819	0	79,805,819	79,805,819
US Treas Bd 4.75% due 02/15/2041	Government securities	0	84,209,131	79,805,819	84,209,131
Single Transaction in Excess of 5%:					
* MFB NT Collective S&P 500 Index Fund	Common/collective fund	0	135,000,000	119,829,784	135,000,000
*Party-in-interest.					

This way is correct



Attachment to 2011 Schedule H (Form 5500), line 4j
Schedule of Reportable Transactions as of 10/31/2011
EIN: 36-6151099; PN: 009

Plan Sponsor: KELLOGG COMPANY as sponsor of MASTER RETIREMENT TRUST
Plan: KELLOGG COMPANY MASTER RETIREMENT TRUST

(a)	(b)	(c)	(d)	(g)	(h)	(i)
Identity of issue, borrower, lessor or similar party	Description of Asset/Transaction	Purchase Price	Selling Price	Cost of Asset	Current Value On Trans Date	Net Gain
Series of Transactions						
* Northern Trust Short Term Investment Fund	Common/collective fund	Purchases	715,887,721	0	715,887,721	0
* Northern Trust Short Term Investment Fund	Common/collective fund	Sales	0	720,105,399	720,105,399	0
* MFB NT Collective S&P 500 Index Fund	Common/collective fund	Purchases	444,000,000	0	444,000,000	0
* MFB NT Collective S&P 500 Index Fund	Common/collective fund	Sales	0	261,000,000	230,249,253	30,750,747
US Treas Bd 3.5% due 02/15/2039	Government securities	Purchases	198,998,609	0	198,998,609	0
US Treas Bd 3.5% due 02/15/2039	Government securities	Sales	0	181,272,625	176,691,581	4,581,044
US Treas Bd 4.25% due 11/15/2040	Government securities	Purchases	142,377,303	0	142,377,303	0
US Treas Bd 4.25% due 11/15/2040	Government securities	Sales	0	119,388,787	118,818,886	569,901
US Treas Bd 4.375% due 05/15/2041	Government securities	Purchases	121,817,326	0	121,817,326	0
US Treas Bd 4.375% due 05/15/2041	Government securities	Sales	0	33,943,509	31,560,736	2,382,773
US Treas Bd 4.75% due 02/15/2041	Government securities	Purchases	79,805,819	0	79,805,819	0
US Treas Bd 4.75% due 02/15/2041	Government securities	Sales	0	84,209,131	79,805,819	4,403,313
Single Transaction in Excess of 5%						
* MFB NT Collective S&P 500 Index Fund	Common/collective fund	Sales	0	135,000,000	119,829,784	15,170,216
*Party-in-interest.						

IRS Correspondence

- To improve the processing time of your correspondence, the following is recommended:
 - Completely read and follow the instructions provided in the notice to resolve the issue
 - Include a copy of the notice you receive when responding to the IRS
 - Do not use your last contact at a Service Campus for a new issue or question



IRS Correspondence

- Fax vs. Mail
 - If the Notice or Letter provides an option of faxing the response for the specific case, faxing the response to the IRS eliminates mailing time only
 - There is no special treatment if response is mailed or faxed
 - The processing of request remains the same
 - Faxing will not expedite resolution



Closed or Resolved Notification

- Consider request processed if no correspondence requiring additional information is received
- If response is regarding a penalty assessment, abatement of penalty, or a consolidation of two accounts, IRS will issue an acknowledgement letter or notice of the actions taken on the account



Closed or Resolved Notification

- No closed or resolved notification are sent by IRS on requests for name changes, address changes, response to a Taxpayer Delinquency Notice (TDI)CP 403/406, and/or an IRS generated letter regarding TDI.
- Beginning January 1, 2013, Notice 283 will assess penalty – no longer issuing “proposed” penalty notices.



Correction of EIN and Plan # Errors

- If a Form 5500 is filed using the wrong EIN or plan number
 - File an amended return (preferred) or
 - Contact the Service Call Site at 1-877-829-5500 and explain
- If a CP 403 and 406 notice is received requesting information regarding Form 5500 or Form 5500-SF, respond to the notice providing the correct EIN and/or plan number; the account will be updated accordingly



Google Information Removal

- The DOL does not have jurisdiction over Form 5500/5500-SF information that has been posted to Google, Bing, or any other internet site.
- If a filer wishes to have their information removed from an internet site, they must contact that internet site directly.



2013 Form Changes

Schedules H/I – line 5c; Form 5500-SF – line 6c.

- PBGC Coverage Question. A new Question 5c has been added which asks filers of defined benefit plans whether or not the plan is covered under the PBGC insurance program. Plan Characteristic Code “IG” has been removed.
- 5c/6c If the plan is a defined benefit plan, is it covered under the PBGC insurance program (see ERISA section 4021)? Yes No Not determined

Other 2013 Form Changes

Form M-1 Compliance attachment (for certain welfare plans)

Lots of new edit tests, but are items you likely thought were already active!

2009 forms obsolete

Official Public Disclosure Room changes in progress



If You Care....

Busiest day for EFAST2 in 2012

– October 15

- 37,030 filings received
- 2,111 calls received by EFAST2 Contact Center





Thank You!

Questions welcome at

www.form5500help.com



Retirement & Benefits Compliance
Customer Conference

© CCH Incorporated August 2013

Continuing Education

Please – before you leave:

1. Sign in

- Verify your attendance
- Check the box if you want your attendance reported to IRS (for ERPA reporting and those with a PTIN only)

2. Pick up your certificate of attendance

- Certificates will not be emailed after the conference