

# Instructions for Form 5310 A

Cat. No. 57428E

**Notice of Plan Merger or Consolidation, Spinoff, or  
Transfer of Plan Assets or Liabilities; Notice of  
Qualified Separate Lines of Business**

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Section references are to the Internal Revenue Code unless otherwise noted.

## **What's New**

The form and instructions have undergone revisions in the format and the information required. Review these documents before completing the notice.

## **General Instructions**

### **Purpose of Form**

Form 5310-A is used by employers to give notice of:

- A plan merger or consolidation that is the combining of two or more plans into a single plan.
- A plan spinoff that is the splitting of a single plan into two or more spinoff plans.
- A plan transfer of plan assets or liabilities to another plan that is the splitting off of a portion of the assets or liabilities of the transferor plan and the concurrent acquisition or assumption of these split-off assets or liabilities by the transferee plan.
- Qualified separate lines of business (QSLOBs).

**Note.** An IRS determination letter will not be issued when a Form 5310-A is filed.

# Who Must File

- **Pension plan, profit-sharing plan, or other deferred compensation plan.** Any sponsor or plan administrator of a pension, profit-sharing, or other deferred compensation plan (except a multi-employer plan covered by Public Benefit Guarantee Corporation (PBGC) insurance) should file this form for a plan merger or consolidation, a spinoff, or a transfer of plan assets or liabilities to another plan. See section 6058(b).

**Note.** This form must be filed for each plan with a separate employer identification and plan number if that plan is involved in a merger or transfer of plan assets or liabilities. This includes plans that were not in existence before the plan merger and plans that cease to exist after the plan merger. In the case of a plan spinoff, file Form 5310-A only for the plan in existence before the spinoff.

- **Qualified separate lines of business.** The employer must file notice that it elects to be treated as operating QSLOBs or that it either modifies or revokes a previously filed notice. Only one notice per employer, within the meaning of sections 414(b), (c), and (m) is required.

# Examples

## Example One - Initial Notice

Employer A is composed of four separate corporations that are treated as one employer within the meaning of section 414(b). Employer A treats each corporation as a separate line of business. The 2008 testing year is the first year for which Employer A elects to be treated as operating QSLOBs for the purpose of section 410(b) (see *When To File* for a definition of “testing year”). Employer A must file Form 5310-A and provide information on each of the four QSLOBs on or before the notification date for the 2008 testing year (see *When To File* for a definition of “notification date”). If the notice is not timely filed, Employer A is not treated as operating QSLOBs for purposes of the coverage rules for the 2008 testing year (see *Part III* ).

## Example Two - Modification

The facts are the same as in Example One. During the 2009 testing year, Employer A sold QSLOB four. Also, assume that Employer A timely filed Form 5310-A for the 2008 testing year. For the 2009 testing year, Employer A intends to treat QSLOBs one and two as a single QSLOB. Employer A must modify its initial notice by filing Form 5310-A on or before the notification date for the 2009 testing year, including a revised list of QSLOBs for line 11 of the form. If Employer A does not timely provide a new notice, the initial notice filed for the 2008 testing year will

be treated as the only notice filed for the 2009 testing year (see *Part III*).

### **Example Three - Revocation**

The facts are the same as in Example Two. Assume that Employer A timely filed a new notice for the 2009 testing year. During 2010, Employer A elects not to treat itself as operating QSLOBs for the 2010 testing year. Employer A must revoke the last notice it filed (that is, the notice for the 2009 testing year). Employer A must revoke the notice filed for the 2009 testing year by filing Form 5310-A for the 2010 testing year and indicating on line 9 of the Form 5310-A that it is revoking a previously filed notice and is no longer testing on a QSLOB basis. If such notice is not filed on or before the notification date for the 2010 testing year, the notice filed for the 2009 testing year will be treated as the only notice filed for the 2010 testing year (see *Part III*).

### **Exceptions From Filing Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities**

**Direct rollover.** Do not file Form 5310-A for an eligible rollover distribution that is paid directly to an eligible retirement plan in a direct rollover as described in section 401(a)(31).

**Plan merger or consolidation or spinoff.** Do not file Form 5310-A if the plan merger or consolidation or the



spinoff complies with Regulations section 1.414(l)-1(d), (h), (m), or (n)(2).

Generally, these requirements will be satisfied in the following four situations:

1. Two or more *defined contribution plans* are merged and all of the following conditions are met:
  - a. The sum of the account balances in each plan prior to the merger (including unallocated forfeitures, an unallocated suspense account for excess annual additions, and an unallocated suspense account for an ESOP) equals the fair market value of the entire plan assets.

**Example.** Neither plan has an outstanding section 412(d) waiver balance.

- b. The assets of each plan are combined to form the assets of the plan as merged.
  - c. Immediately after the merger, each participant in the plan has an account balance equal to the sum of the account balances the participant had in the plans immediately prior to the merger.
2. There is a spinoff of a *defined contribution plan* and all of the following conditions are met:
  - a. The sum of the account balances in the plan prior to the spinoff equals the fair market value of the entire plan assets.

**Example.** The plan does not have an outstanding section 412(d) waiver balance.

- b. The sum of the account balances for each of the participants in the resulting plan(s) equals the account balances of the participants in the plan before the spinoff.
- c. The assets in each of the plans immediately after the spinoff equal the sum of the account balances for all participants in that plan.

**Example.** The plan does not have unallocated accounts.

- 3. Two or more *defined benefit plans* are merged into one defined benefit plan and both of the following conditions are met:
  - a. The total liabilities (the present value of benefits whether or not vested) that are merged into the larger plan involved in the merger are less than 3% of the assets of the larger plan. This condition must be satisfied on at least 1 day in the larger plan's plan year during which the merger occurs. All previous mergers (including transfers from another plan) occurring in the same plan year are taken into account in determining the percentage of assets described above.

**Example.** Assume that a merger involving almost 3% of the assets of the larger plan occurs in the first month of

the larger plan's plan year. In the fourth month of the larger plan's plan year, a second merger occurs involving liabilities equal to 2% of the assets of the larger plan. The total of both mergers exceeds 3% of the assets of the larger plan. As a result of the second merger, both mergers must be reported on Form 5310-A. Enter the date of the second merger on line 6g.

Also, mergers occurring in previous plan years are taken into account in determining the percentage of assets above if the series of mergers is, in substance, one transaction with the merger occurring during the current plan year.

Aggregating mergers may cause a merger, for which a Form 5310-A was not initially required to be filed, to become reportable as a result of a subsequent merger. In this case, the merger(s) must be reported on the Form 5310-A filed for the subsequent merger.

- b. The provisions of the larger plan that allocate assets at the time of termination must provide that, in the event of a spinoff or termination of the plan within 5 years following the merger, plan assets will be allocated first for the benefit of the participants in the other plan(s) to the extent of their benefits on a termination basis just prior to the merger.

4. There is a spinoff of a *defined benefit plan* into two or more defined benefit plans and both of the following conditions are met:
  - a. For each plan that results from the spinoff, other than the spunoff plan with the greatest value of plan assets after the spinoff, the value of the assets spun off is not less than the present value of the benefits spun off (whether or not vested).
  - b. The value of the assets spun off to all the resulting spunoff plans (other than the spunoff plan with the greatest value of plan assets after the spinoff) plus other assets previously spun off (including transfers to another plan) during the plan year in which the spinoff occurs is less than 3% of the assets of the plan before the spinoff as of at least 1 day in that plan's plan year.

**Example.** Assume that a spinoff involving almost 3% of the assets of the plan occurs in the first month of the plan year. In the fourth month of the plan year a second spinoff occurs involving liabilities equal to 2% of the assets of the plan. The total of both spinoffs exceeds 3% of the plan assets. As a result of the second spinoff, Form 5310-A must be filed to report both spinoffs. Enter the date of the second spinoff on line 6g.

Spinoffs occurring in previous or subsequent plan years are taken into account in determining the percentage of

assets spun off if such spinoffs are, in substance, one transaction with the spinoff occurring during the current plan year.

Aggregating spinoffs may cause a spinoff, for which a Form 5310-A was not initially required to be filed, to become reportable as a result of a subsequent spinoff. In this case, report the spinoff(s) on the Form 5310-A filed for the subsequent spinoff. Enter the date of the subsequent spinoff on line 6g.

### **Transfer of Plan Assets or Liabilities.**

A transfer of plan assets or liabilities is considered a combination of separate plan spinoffs and mergers. Do not file Form 5310-A for:

- The transferor plan in a transfer transaction if the assets transferred satisfy the spinoff conditions in 2 or 4 above.
- The transferee plan in a transfer transaction if the plan liabilities transferred satisfy the merger conditions in 1 or 3 above.

**Note.** In some situations, the transferor plan may have to file Form 5310-A but not the transferee plan, or the transferee plan may have to file but not the transferor plan.

## **Examples**

### **Transfer of Plan Assets or Liabilities**

Plans A, B, and C are separate plans within the meaning of section 414(l). A portion of the assets and liabilities of both Plan B and Plan C will be transferred to Plan A. None of the plans are excluded from filing under the exceptions from filing listed above. In this situation all 3 plans must:

- File a completed Form 5310-A.
- Enter code 4 (notice of a transfer of plan assets or liabilities) as the reason for filing.
- Complete all parts of Part I and II of the form.

For Plan A, line 6 of the form will show information regarding Plan B and an attached statement with the line 6 information for Plan C. Plan B and Plan C will each enter the information regarding Plan A on line 6.

### **Plan Merger**

Plans A, B, and C are separate plans within the meaning of section 414(l). Plans A, B, and C are being merged. Assets and liabilities from each plan will be merged into Plan D, a new plan that was established for the purpose of effecting the merger. None of the plans are excluded from filing under the exceptions from filing above.

In this situation, four separate Forms 5310-A must be filed. Because Plan D is receiving assets from Plans A, B,

and C, Plan D must file a complete Form 5310-A, enter code 2 (notice of a plan merger) as the reason for filing, and complete all of Parts I and II of the form. Line 6 of the form will show information regarding Plan A and an attached statement with the line 6 information for Plans B and C. Plans A, B, and C are merging with Plan D. Plans A, B, and C will each file a separate Form 5310-A completed as follows: Enter code 2 as the reason for filing, complete all of Parts I and II, and enter the information regarding Plan D on line 6.

## **When To File**

- File Form 5310-A at least 30 days prior to a plan merger or consolidation, spinoff, or transfer of plan assets or liabilities to another plan.
- If you are filing Form 5310-A to notify the IRS that the employer treats itself as operating QSLOBs or the employer is modifying or revoking a previously filed notice, file Form 5310-A on or before the notification date for the testing year. The “notification date” for a testing year is the later of: (a) October 15 of the year following the testing year, or (b) the 15<sup>th</sup> day of the 10<sup>th</sup> month after the close of the plan year of the plan of the employer that begins earliest in the testing year. “Testing year” means the calendar year.

## Penalties

There is a penalty for the late filing of a Form 5310-A to report a plan merger or consolidation, spinoff, or transfer of plan assets or liabilities. The penalty is \$25 a day for each day the Form 5310-A is late (up to a maximum of \$15,000). The form is late if it is not filed at least 30 days before the plan merger or consolidation, spinoff, or transfer of plan assets or liabilities.

## Where To File

File Form 5310-A at the address indicated below:

Internal Revenue Service  
P.O. Box 12192  
Covington, KY 41012-0192

Requests shipped by Express Mail or a delivery service should be sent to:

Internal Revenue Service  
201 West Rivercenter Blvd.  
Covington, KY 41011

**Private delivery services.** In addition to the United States mail, you can use certain private delivery services designated by the IRS to meet the “timely mailing as timely filing/paying” rule for tax returns and payments. These private delivery services include only the following.

- **DHL Express (DHL):** DHL Same Day Service.



- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, and FedEx International First.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2<sup>nd</sup> Day Air, UPS 2<sup>nd</sup> Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

The private delivery service can tell you how to get written proof of the mailing date.

## Signature



*Stamped signatures are not acceptable; see Rev. Proc. 2010-4, which is on page 122 of Internal Revenue Bulletin 2010-1 at*

[www.irs.gov/pub/irs-irbs/irb10-01.pdf](http://www.irs.gov/pub/irs-irbs/irb10-01.pdf).

In general, the employer or plan administrator must sign the form. For single employer plans the plan administrator and the employer are generally the same person. When the plan administrator is a joint employer — union board or committee — at least one employer representative and one union representative must sign. A Form 5310-A filed with the IRS by a representative on behalf of an employer or plan administrator must be accompanied by:

1. A power of attorney specifically authorizing such representation in this matter (you may use Form 2848, Power of Attorney and Declaration of Representative), or
2. A written declaration that the representative is a currently qualified attorney, certified public accountant, enrolled actuary, or is currently enrolled to practice before the IRS (include either the enrollment number or the expiration date of the enrollment card) and is authorized to represent the employer or plan administrator.

## **How To Complete the Notice**

Form 5310-A is screened for completeness. Incomplete notices will be returned. Here are some tips to help you complete the form correctly.

1. The notice has formatted fields that will limit the number of characters entered per field.
2. All data input will need to be entered in Courier size 10 font.
3. Alpha characters should be entered in all capital letters.
4. Enter spaces between any words. Spaces will count as a character.
5. All data fields are entered as an 8 digit field in MMDDYYYY format.

6. If a number is requested, a number must be entered.
7. For questions regarding this form, call the Employee Plans Customer Service at 1-877-829-5500.

The IRS may, at its discretion, require additional information or the submission of a Form 5300, Application for Determination for Employee Benefit Plan, when it is deemed necessary.

## **Specific Instructions**

**Line 1 — Reason for filing.** Enter the appropriate code that describes the reason you are filing Form 5310-A.

Enter **1** for a notice of qualified separate lines of business.

Enter **2** for a notice of a plan merger or consolidation.

Enter **3** for a notice of a plan spinoff.

Enter **4** for a notice of a transfer of plan assets or liabilities to another plan.

## **Part I — All Filers Must Complete Part I**

**Lines 2a and 2b.** Enter the name and address of the employer or plan sponsor. A plan sponsor means:

1. In the case of a plan that covers the employees of one employer, the employer;
2. In the case of a plan sponsored by two or more entities required to be aggregated under sections 414(b), (c), or (m), one of the members participating in the plan; or
3. In the case of a plan that covers the employees and/or partners of a partnership, the partnership.

The name of the plan sponsor/ employer should be the same name that was or will be used when the Form 5500, Annual Return/Report of Employee Benefit Plan, series returns/ reports are filed for the plan.

**Address.** Include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to the street address and the plan has a P.O. box, show the box number instead of the street address. This address should be the address of the sponsor/employer.

**Line 2g.** Enter the 9-digit employer identification number (EIN) assigned to the plan sponsor/employer. This should be the same EIN that was or will be used when the Form 5500 series annual returns/reports are filed for the plan.

For a multiple employer plan, the EIN should be the same EIN that was or will be used when Form 5500 is filed.



*Do not use a social security number or the EIN of the trust.*

The plan sponsor/employer must have an EIN. A plan sponsor/employer without an EIN can apply for one.

- Online—Generally, a plan sponsor/ employer can receive an EIN by Internet and use it immediately to file a return. Go to the IRS website at [www.irs.gov/businesses/small](http://www.irs.gov/businesses/small) and click on Employer ID Numbers.
- By telephone—Call 1-800-829-4933.
- By mail or fax—Send in a completed Form SS-4, Application for Employer Identification Number, to apply for an EIN.

**Note.** Form SS-4 can be obtained at Social Security Administration (SSA) offices or by calling 1-800-TAX-FORM.

For the plan of a group of entities required to be combined under sections 414(b), (c), or (m), whose sponsor is more than one of the entities required to be combined, enter the EIN of only one of the sponsoring members. This EIN must be used in all subsequent filings of determination letter requests, and for filing annual returns/reports unless there is a change of sponsor.

**Line 3.** The contact person will receive copies of all correspondence as authorized in a Form 2848, or Tax Information Authorization, Form 8821. Either complete the contact's information on this line, or check the box and attach a completed Form 2848 or Form 8821.

## **Part II—Plan Merger, Consolidation, Spinoff, or Transfer**

**Line 4a.** Enter the name you designated for your plan. Due to space restrictions, this field is limited to 70 characters, including spaces. Due to this restriction, “Employee” and “Trust” are not necessary in the plan name.

**Line 4b.** Enter the 3-digit number, beginning with “001” and continuing in numerical order for each plan you adopt (001–499). The number assigned to a plan must not be changed or used for any other plan. This should be the same number that was or will be used when the Form 5500 series returns/reports are filed for the plan.

**Lines 5a.** Attach an actuarial statement of valuation showing compliance with section 414(l). The statement must (1) identify the type of transaction involved (for example, merger or consolidation, spinoff, or transfer of plan assets or liabilities), and (2) provide information verifying compliance with the requirements of sections 401(a)(12) and 414(l). This statement need not be signed by an actuary.

**Line 5b.** Enter the code that describes your plan.

Enter **1** for a profit-sharing plan.

Enter **2** for a stock bonus plan.

Enter **3** for a money purchase plan.

Enter **4** for a target benefit plan.

Enter **5** for a profit-sharing/401(k) plan.

Enter **6** for an ESOP plan. Enter **7** for other and specify the type of plan.

**Line 6a.** Enter the total number of plans, other than the plan named on line 4a, involved in this transaction.

**Lines 6c through 6h.** Complete lines 6c through 6h for the other plan(s) involved in the merger or consolidation, spinoff, or transfer of plan assets or liabilities with the plan named on line 4a. If there is more than one other plan, attach a separate statement showing the information requested for lines 6c through 6h.

**Example:** Plans A, B, and C are merging with Plan D. Plan D would complete a Form 5310-A, reporting information about itself on line 4. Plan D would then complete the line 6 information for Plan A and attach two statements showing the line 6 information for Plans B and C. In addition, Plans A, B, and C must each file a separate Form 5310-A (see the example of a plan merger).

**Line 6h.** Enter the code that describes the other plan.

Enter **1** for a defined benefit plan.

Enter **2** for a profit-sharing plan.

Enter **3** for a profit-sharing/401(k) plan.

Enter **4** for a stock bonus plan.

Enter **5** for an ESOP plan.

Enter **6** for a money purchase plan.

Enter **7** for a target benefit plan.

## **Part III—Qualified Separate Lines of Business**

Rev. Proc. 93-40, 1993-2 C.B. 535, contains procedures relating to the notification requirements of section 414(r)(2)(B).

Notice given by an employer applies to all plans maintained by the employer for plan years beginning in the testing year. Once the notification date (see *When To File*) for a testing year has passed, the employer is deemed to have irrevocably elected to apply the specified section(s) on the basis of QSLOBs for all plan years beginning in the testing year.

In addition, after the notification date, notice cannot be modified, withdrawn, or revoked, and will be treated as applying to subsequent testing years unless the employer



takes timely action to provide new notice (see examples under *Who Must File*). Timely action will be deemed to have been taken any time prior to the notification date for any subsequent testing year.

**Line 7a.** If you previously filed a notice of QSLOB for a testing year, enter the first testing year for which such notice applied on line 7b. Enter the date the notice was filed on line 7c.

**Line 8.** Enter the first testing year for which this notice applies. See *When To File* for the definition of “testing year.”

**Line 9.** Indicate whether you are filing this form to give notice that you are no longer testing on a QSLOB basis. If your answer to line 9 is “Yes,” complete line 10 and skip lines 11 and 12. Answer line 10 based on the previously filed notice that you are now revoking. If your answer to line 9 is “No,” complete lines 10 through 12. See *Who Must File* for an example of a revocation.

**Line 10.** Section 414(r) provides rules for determining whether an employer operates QSLOBs for purposes of applying sections 410(b) (relating to minimum coverage), 401(a)(26) (relating to minimum participation rules), and 129(d)(8) (relating to dependent care assistance programs). If you are treated as operating QSLOBs under section 414(r), you will be permitted to apply the aforementioned Code provisions separately for the employees in each QSLOB. Check the appropriate

box(es) for the section(s) you are testing on a QSLOB basis. See instructions for line 9 to determine how to answer this question if you answered “Yes” to line 9.

**Line 11.** Attach a list identifying the part or parts of the employer that make up each QSLOB of the employer. The list should include, for example, the type of business or industry in which the QSLOB is involved, the business unit (such as corporation, partnership, or division) the qualified line of business comprises, and the name (formal or informal) of the QSLOB.

**Line 12.** Enter the information requested on lines 12a through 12e. If there is more than one plan, attach a separate statement showing the information requested on lines 12a through 12e for each plan.

**Line 12b.** Enter the date of the determination letter, if any. Otherwise, leave blank.

**Line 12c.** If the plan is a master or prototype or volume submitter plan, enter the date of the letter and the serial number or the advisory letter number, as applicable.

**Line 12d.** Enter the appropriate date of any pending letter request. If this question is not applicable, leave blank.

**Line 12e.** List on this line the QSLOBs identified on line 11 that have employees benefiting under the plan. If you need additional space to list the QSLOBs, use the area below line 12e.

# How To Get Forms and Publications

**Internet.** You can access the IRS website 24 hours a day, 7 days a week at IRS.gov to:

- Download forms, including talking tax forms, instructions, and publications.
- Order IRS products online.
- Research your tax questions online.
- Search publications online by topic or keyword.
- Sign up to receive local and national tax news by email.

**DVD for tax products.** You can order Pub. 1796, IRS Tax Products DVD, and obtain:

- Current year forms, instructions, and publications.
- Prior year forms, instructions, and publications.
- Tax Map: An electronic research tool and finding aid.
- Tax Law frequently asked questions.
- Tax Topics from the IRS telephone response system.
- Fill-in, print, and save features for most tax forms.
- Internal Revenue Bulletins.

- Toll-free and email technical support.

The DVD is released twice during the year. The first release will be shipped at the beginning of January 2011 and the final release will be shipped at the beginning of March 2011.

Buy the DVD from the National Technical Information Service (NTIS) at [www.irs.gov/cdorders](http://www.irs.gov/cdorders) for \$30 (no handling fee), or call 1-877-233-6767 toll-free to buy the DVD for \$30 (plus a \$6 handling fee). *Price is subject to change.*

**By phone and in person.** You can order forms and publications by calling 1-800-TAX-FORM (1-800-829-3676). You can also get most forms and publications at your local IRS office.

**Privacy Act and Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. Our legal right to ask for this information is in sections 401, 403, 410, 411, 412, and 414 and their regulations. Section 6109 requires you to provide your identifying number. This form must be filed for any plan with a separate employer identification and plan number if that plan is involved in a merger or transfer of plan assets or liabilities. Failure to provide all of the information requested may prevent processing of this form. In addition, failing to file this form timely and in accordance with its instructions, or providing false information, may subject you to penalties. Routine

uses of this information include giving it to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for administering their tax laws. We may also disclose this information to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file the form is listed below and will vary depending on individual circumstances. The estimated average time is:

	<b>Recordkeeping</b>	<b>Learning about the law or form</b>	<b>Preparing, copying, assembling, and sending the form to the IRS</b>
<b>Part I</b>	2 hr., 9 min.	1 hr., 3 min.	2 hr., 20 min.
<b>Part II</b>	3 hr., 21 min.	35 min.	40 min.
<b>Part III</b>	4 hr., 32 min.	35 min.	42 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224.

Do not send the form to this address. Instead, please see *Where To File*.