



# Instructions for Form 5310-A

(May 1991)

## Notice of Merger, Consolidation, or Transfer of Plan Assets or Liabilities

(Section references are to the Internal Revenue Code.)

**Paperwork Reduction Act Notice.**—We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

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

	Recordkeeping	Learning about the law or the form	Preparing, copying, assembling, and sending the form to IRS
Form 5310-A	6 hrs., 13 min.	42 min.	50 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form more simple, we would be happy to hear from you. You can write to both the **Internal Revenue Service**, Washington, DC 20224, Attention: IRS Reports Clearance Officer, T:FP; and the **Office of Management and Budget**, Paperwork Reduction Project, (1545-1225), Washington DC, 20503. Do Not send the form to either of these offices. Instead, see below for information on where to file.

### Purpose of Form

Form 5310-A is used by plans to give notice of merger, consolidation, or transfer of plan assets or liabilities to another plan (required by Code section 6058(b)).

### General Instructions

To save you time from having to resubmit a corrected Form 5310-A, please be sure to enter a response for each required line item. Here are some tips to help you complete the form correctly.

1. N/A (not applicable) is accepted as a response only for line 1c.

2. If an item requests a numeric response, a number must be entered.

The IRS may, at its discretion, require additional information any time it is deemed necessary.

#### A. Who Must File

*Pension Plan, Profit-Sharing Plan, and other Deferred Compensation Plan.*— Any sponsor or plan administrator of a pension, profit-sharing, or other deferred compensation plan (except a multiemployer plan covered by PBGC insurance) should file this form for a plan merger, a plan consolidation, or a transfer of plan assets or liabilities to another plan. See Code section 6058(b).

**Exception.** Do not file Form 5310-A if the merger, consolidation or transfer of plan assets or liabilities 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 equals the fair market value of the entire plan assets. For example, each plan has no unallocated suspense account or outstanding section 412(d) waiver balances.

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 as merged 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. For example, the plan has no

unallocated suspense account or outstanding section 412(d) waiver balances.

b. The sum of the account balances for each of the participants in the resulting plans equals the account balance of the participant in the plan before the spinoff.

c. The assets in each of the plans immediately after the spinoff equals the sum of the account balances for all participants in that plan. For example, there is no unallocated suspense account or outstanding section 412(d) waiver balances in any of the plans spun off.

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 percent of the assets of the larger plan. This condition must be satisfied on at least one day in the larger plan's plan year during which the merger occurs. All previous mergers occurring in the same plan year are taken into account in determining the percentage of assets described above. In addition, mergers occurring in previous or subsequent plan years are taken into account in determining the percentage of assets above if such mergers are, in substance, one transaction along 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 with respect to the subsequent merger. For example, assume that a merger involving less than 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, Form 5310-A must be filed and both mergers must be reported.

b. The provisions of the larger plan that allocate assets upon 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 benefits of the participants in the other plan(s) to the extent of the present value of their benefits as of the date of the merger.

4. There is a spinoff of a **defined benefit plan into another defined benefit plan** and both of the following conditions are met:

a. With respect to each resulting spinoff plan, other than the spinoff 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 spinoff plans (other than the spinoff plan with the greatest value of plan assets after the spinoff) plus other assets previously spun off during the plan year in which the spinoff occurs is less than 3 percent of the assets of the plan before the spinoff as of at least one day in that plan's plan year. Spinoffs occurring in previous or subsequent plan years are taken into account in determining that the percentage of assets spun off if such spinoffs are, in substance, one transaction along 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, the spinoff(s) must be reported on the Form 5310-A filed with respect to the subsequent spinoff. For example, assume that a spinoff involving less than 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 assets of the plan. As a result of the second spinoff, Form 5310-A must be filed and both spinoffs must be reported.

A transfer of assets or liabilities is considered to be a combination of separate mergers and spinoffs, and, unless the parts of the transaction that are deemed to be a spinoff or merger conform to one of the situations described above, the employer or plan administrator must file the Form 5310-A.

**Note:** When assets or liabilities are transferred from one plan to another, a Form 5310-A should be filed for each plan.

No IRS letter will be issued when a Form 5310-A is filed.

**Penalties.**—If you are filing Form 5310-A to report a plan merger, consolidation, or transfer of plan assets or liabilities there is a penalty for late filing. 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, consolidation, or transfer of plan assets or liabilities.

## B. Where To File

File this form as follows:

(i) *Single Employer Plans.*—Send the forms to the District Director, EP/EO Division, for the key district in which the employer's principal place of business is located.

(ii) *Plan Maintained by More Than One Employer.*—Send the forms to the District Director, EP/EO Division, for the key district in which the principal place of business of the plan sponsor or administrator is located. This means the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of those who established or maintain the plan.

If entity is in this IRS District	Send the notice to this address
Albany, Augusta, Boston, Brooklyn, Buffalo, Burlington, Hartford, Manhattan, Portsmouth, Providence	Internal Revenue Service EP/EO Division P.O. Box 1680, GPO Brooklyn, NY 11202
Baltimore, District of Columbia, Newark, Philadelphia, Pittsburgh, Richmond, Wilmington, any U.S. possession or foreign country	Internal Revenue Service EP/EO Division P.O. Box 17288 Baltimore, MD 21203
Cincinnati, Cleveland, Detroit, Indianapolis, Louisville, Parkersburg	Internal Revenue Service EP/EO Division, P. O. Box 3159, Cincinnati, OH 45201
Albuquerque, Austin, Cheyenne, Dallas, Denver, Houston, Oklahoma City, Phoenix, Salt Lake City, Wichita	Internal Revenue Service EP/EO Division Mail Code 4950 DAL 1100 Commerce Street Dallas, TX 75242
Atlanta, Birmingham, Columbia, Ft. Lauderdale, Greensboro, Jackson, Jacksonville, Little Rock, Nashville, New Orleans	Internal Revenue Service EP/EO Division P.O. Box 941 Atlanta, GA 30370
Anchorage, Boise, Honolulu, Laguna Niguel, Las Vegas, Los Angeles, Portland, Sacramento, San Francisco, San Jose, Seattle	Internal Revenue Service EP Application Receiving Room 5127 P.O. Box 536 Los Angeles, CA 90053-0536
Aberdeen, Chicago, Des Moines, Fargo, Helena, Milwaukee, Omaha, St. Louis, St. Paul, Springfield	Internal Revenue Service EP/EO Division 230 S. Dearborn DPN 20-6 Chicago, IL 60604

## C. Signature

In general, the plan administrator must sign both copies of 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 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.

## Specific Instructions

The following instructions are keyed to the line items on the form.

**1a.** Enter the name and address of the plan sponsor. If the Post Office does not deliver mail to the street address and the sponsor has a P. O. box number, show the P. O. box number instead of the street address. If the plan covers only the employees of one employer, enter the employer's name.

"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 section 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 partner(s) of a partnership, the partnership.

The plan sponsor should be the same name used (or that will be used) when the Form 5500 series return/reports are filed for the plan.

**1b.** Enter the 9-digit employer identification number (EIN) assigned to the plan sponsor. This should be the same EIN that was used (or will be used) when the Form 5500 series returns/reports are filed for the plan. (Please do not use a social security number.) An EIN may be secured by using **Form SS-4**, Application for Employer Identification Number, which may be obtained by calling 1-800-829-3676.

The plan of a group of entities required to be aggregated under section

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

**1c.** Enter the month the tax year ends for the employer whose EIN you entered on line 1b.

**3a.** Enter the name you designated for your plan.

**3b.** Enter the 3-digit number that the employer or plan administrator has assigned to the plan. This number should be the same as the 3-digit number entered on the latest Form 5500, or Form 5500-C/R filed for this plan.

**3c.** Plan year means the calendar, policy, or fiscal year on which the records of the plan are kept. Enter four digits in month-day order. For example, March 31 would be 0331.

**3d.** Enter the date the plan originally became effective. Enter six digits in month-day-year order.

**3e.** Enter the total number of participants. The term "participants" includes retirees and other former employees and the beneficiaries of both who are receiving benefits under the plan or will at some future time receive benefits under the plan. Enter the total of: (1) the number of employees who are participating in the plan including employees under a section 401(k) qualified cash or deferred arrangement who are eligible, but do not make elective deferrals, (2) former employees who are receiving benefits under the plan or will at some future date receive benefits under the plan, and (3) beneficiaries of former employees who are receiving benefits under the plan. (This means one beneficiary for each former employee regardless of the number of individuals receiving benefits. For example, payment of a former employee's benefit to three children is considered a payment to one beneficiary.)

**4a.** Complete line 4a if this is a defined benefit plan. Enter the number for the type of benefit in the box at the left margin.

**4b.** Complete line 4b if this is a defined contribution plan. Enter the number for the type of plan in the box at the left margin.

**5.** If the plan sponsor is a member of a controlled group of corporations, trades or businesses under common control, or an affiliated service group, all employees of the group will be treated

as employed by a single employer for purposes of certain qualification requirements such as coverage. If the plan sponsor is a member of such a group, attach a statement showing in detail all members of the group, their relationship to the plan sponsor, the type of plans each member has, and the plans common to all members.

**5a.** If the employer is a member of an affiliated service group, enter 1. If not, enter 2. If you are uncertain as to whether or not you are a member of an affiliated service group, attach the following information:

**(1)** A description of the nature of the business of the employer, specifically discussing whether it is a service organization whose principal business is the performance of management functions for another organization, including the reasons therefor.

**(2)** The identification of other members (or possible members) of the affiliated service group.

**(3)** A description of the nature of the business of each member (or possible member) of the affiliated service group describing the type of organization (corporation, partnership, etc.) and indicating whether such member is a service organization or an organization whose principal business is the performance of management functions for the other group member(s).

**(4)** the ownership interests between the employer and the members (or possible members) of the affiliated service group (including ownership interests as described in section 414(m)(2)(B)).

**(5)** A description of services performed for employers by the members (or possible members) of the affiliated service group, or vice versa (including the percentage of each member's (or possible member's) gross receipts and service receipts provided by such services, if available, and data as to whether their services are a significant portion of the member's business) and whether or not, as of December 13, 1980, it was unusual for the services to be performed by employees of organizations in that service field in the United States.

**(6)** A description of how the employer and the members (or possible members) of the affiliated service group associate in performing services for other parties.

**(7)** A description of management functions, if any, performed by the employer for the member(s) (or possible member(s)) of the affiliated service group, or received by the employer from any other member(s) (or possible member(s)) of the group (including data as to whether such management

functions are performed on a regular and continuous basis) and whether or not it is unusual for such management functions to be performed by employees of organizations in the employer's business field in the United States.

**(8)** If management functions are performed by the employer for the member(s) (or possible member(s)) of the affiliated service group, a description as to what part of the employer's business constitutes the performance of management functions for the member(s) (or possible member(s)) of the group (including the percentage of gross receipts derived from management activities as compared to the gross receipts from other activities).

**(9)** A brief description of any other plan maintained by the member(s) (or possible member(s)) of the affiliated service group, and such other plan(s) is designated as a unit for qualification purposes with the plan for which a determination letter has been requested, and

**(10)** A description of how the plan(s) satisfies the coverage requirements of section 410(b) if the member(s) (or possible member(s)) of the affiliated service group is considered part of an affiliated service group with the employer.

**5b.** If the employer is a member of a controlled group, enter 1. If not, enter 2.

**6.** Enter 1 if this is a governmental plan or church plan not subject to ERISA.

Enter 2 if this is a multiple employer plan described in section 413(c). A multiple employer plan is a plan maintained by more than one employer, that is NOT maintained pursuant to a collective bargaining agreement. Under this plan type, contributions from each group employer must be available to pay benefits of any participant, even if employed by another employer. Also enter the number of employers adopting the plan.

Enter 3 if this plan is not described above. Most plans will enter 3.

Complete 7a through f for the plan being merged or consolidated or the plan to which the assets or liabilities of the plan are being transferred with the plan named in 3a. If there is more than one plan, other than the plan named in 3a, attach a separate Form 5310-A with lines 1a, 1b, 3b, and 7a through 7f completed for each of the additional plans.

**7a.** List the name of the plan, other than the plan named in 3a, involved in this transaction.

**7b through 7f** Complete 7b through 7f for the plan listed in 7a.