

Washington Pulse

April 14, 2023

Third Phase of Form 5500 Changes Released

The third phase of updates to Form 5500, *Annual Return/Report of Employee Benefit Plan*, was recently released by the Department of Labor's (DOL's) Employee Benefits Security Administration, the IRS, and the Pension Benefit Guaranty Corporation (the "Agencies"). This guidance addresses changes related to provisions in the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE 1.0). The Agencies' third phase of [final forms revisions](#) are effective for plan years beginning on or after January 1, 2023. The DOL simultaneously published a [final rule](#) with an effective date of April 25, 2023, which is required to implement the Agencies' third phase of final forms.

Background

The Agencies originally [proposed changes](#) to Form 5500 in September 2021 and have previously released final forms revisions during Phase I (2021) and Phase II (2022). Phase III of the Agencies' final forms revisions was released in February 2023.

- **Phase I.** In December 2021, the DOL published a [final rule](#) that detailed a narrow set of changes to the instructions for Forms 5500 and 5500-SF, effective for plan years beginning on or after January 1, 2021. These updated instructions implement annual reporting changes for MEPs, including pooled employer plans (PEPs).
- **Phase II.** In May 2022, the Agencies published a second round of [final rules](#) that adopted certain aspects of the September 2021 proposal, effective for plan years beginning on or after January 1, 2022. These forms and instruction revisions implement annual reporting changes for defined benefit plans on Schedules MB, SB, and R, but also add certain codes for MEPs (including one to specifically identify PEPs) to the list of plan characteristics that must be used to describe the plan on the annual report.
- **Phase III.** In February 2023, the Agencies released a third set of [final rules](#) that address many of the remaining provisions included in the initial set of proposed changes. This set of changes applies to the filing of Form 5500 for plan years beginning on or after 2023.

SECURE 1.0 Changes to Form 5500

SECURE 1.0 required MEP plan sponsors to report a new data element and required PEP plan sponsors to identify pooled plan providers. SECURE 1.0 also required the Secretaries of Labor and Treasury to update Form 5500 to allow a single consolidated annual report to be filed on behalf of certain groups of defined contribution groups (DCGs).

- **Schedule MEP.** MEP reporting requirements previously identified in Phases I and II that were required to be included as an attachment to the annual filing will now be reported on the new Schedule MEP. Required data includes the type of MEP, participating employers and percentage of contributions and aggregate account balances, [PEP PR registration information](#), and Ack ID (if applicable). Ack ID is the acknowledgement code generated by the IRS in response to a completed filing for the most recent Form PR submitted. To

accommodate SECURE 2.0 provisions, this final forms revision also amends the definition of a PEP in the Schedule MEP instructions to permit 403(b) plans meeting certain criteria to participate in PEPs.

- **Schedule DCG.** This guidance also implements requirements for a combined annual report for a group of plans under Section 202 of SECURE 1.0. A separate Schedule DCG is required for each individual plan relying on the DCG consolidated Form 5500 to satisfy their annual return/filing obligation. Schedule DCG has seven parts or sections that are designed to permit participants to find information on their specific plan within the consolidated annual filing. (There are no Form 5500-SF or Form 5500-EZ filing options for DCGs.)

Participant Count Method Changes

For defined contribution plans only, the new rule changes which participants are counted when determining whether a plan is eligible for small plan reporting, including the exemption from the independent qualified public accountant (IQPA) audit requirement. Now, only participants with account balances as of the beginning of the plan year will be counted. Under existing rules, participants who are *eligible* to make deferrals—even if they do not elect to participate and do not have a balance in the plan—are still counted when determining whether a plan can file as a small plan. Plans that have fewer than 100 participants with account balances both at the beginning of the first plan year and the end of the first plan year may generally file as a small plan and are exempt from the audit requirement. Conforming changes have also been made to the “80 – 120” participant transition rule instructions.

The change was driven in part by the SECURE 1.0 provision allowing long-term, part-time employees to make elective deferrals. The inclusion of long-term, part-time employees into the plan may increase the total number of participants, requiring small plan filers to transition to large plan filers. This transition could then trigger the need for IQPA audits for many plans that were formerly exempt.

Internal Revenue Code Compliance Questions

The Agencies have added three compliance questions to Form 5500 that are intended to help identify qualified retirement plans that fail to meet coverage and nondiscrimination testing requirements. All plan sponsors that permissively aggregate plans for testing purposes will need to disclose whether the plans satisfy coverage (IRC Code section 410(b)) and nondiscrimination tests (IRC Code section 401(a)(4)). A 401(k) plan sponsor will also need to indicate how the plan is intended to satisfy the nondiscrimination requirements for employee deferrals (IRC Code section 401(k)(3)) and if applicable, employer matching contributions (IRC Code section 401(m)(2)). A third question requires plan sponsors to specify whether their plan is a preapproved plan and if so, they must state the date and serial number of the favorable opinion letter. This final question is designed to identify late amenders. Plan sponsors of MEPs can skip the first two questions.

Changes to Schedules R and SB

Defined benefit plans may be required to complete Schedule R, *Retirement Plan Information* and Schedule SB, *Single-Employer Defined Benefit Plan Actuarial Information*. The Agencies have updated each of these schedules for Form 5500.

- **Schedule R.** This schedule currently requires defined benefit plans with 1,000 or more participants to provide a breakdown of assets in five investment categories. These categories have been modified and expanded to permit more detailed reporting of investment types. For example, the investment category “Stock” has been replaced by “Public Equity” and “Private Equity” and the investment category “Real Estate” will now be categorized as “Real Assets.” In addition, account balances will now be reported as of the *end of the plan year* rather than as of the beginning of the plan year.
- **Schedule SB.** This schedule reports demographics and benefits of single-employer defined benefit plans. Changes to this schedule include revising the form and instructions to represent the present value of expected benefit accruals. Specifically, the instructions for Line 6a no longer require decreasing the present value of accruals by any mandatory employee contributions expected to be made during the plan year. In addition, instructions for Line 6c are modified to require reporting the sum of Lines 6a and 6b, “reduced (but not below zero) by any mandatory employee contributions expected to be made during the plan year.”

Large Plan Filers Required to Complete a More Detailed Version of Schedule H

Large plan filers will now be required to complete a more detailed version of Schedule H, *Financial Information*.

- **Schedule H.** The expense breakdown on Schedule H has been expanded from five lines to 12 lines to capture more detailed expense categories, including salaries and allowances, recordkeeping fees, IQPA audit fees, bank or trust company trustee/custodial fees, actuarial fees, legal fees, and valuation/appraisal fees.

Updates to Forms 5500 and 5500-SF

The Agencies also made minor adjustments throughout Forms 5500 and 5500-SF and their respective instructions to specifically address DCG reporting requirements and attachments to Schedules DCG and MEP. The revisions also include several minor notes and clarifications. For example, instructions for both Forms 5500 and 5500-SF have a new “note” indicating that any amended filings must be submitted as a complete replacement of the previously submitted filing—with all of the required schedules and attachments—through EFAST.

Future Guidance

While the majority of provisions that were included in Phases I, II, and III have been adopted in final form, there are some remaining provisions that are deferred for further development and public input as part of a more general Form 5500 improvement project listed on the DOL’s semi-annual regulatory agenda.

Ascensus will continue to follow any new guidance as it is released. Visit ascensus.com for the latest developments.