

Washington Pulse

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Form 5500 Changes Proposed

In September 2021, the DOL, IRS, and Pension Benefit Guaranty Corporation (PBGC), collectively referred to as the “Agencies”, released [proposed changes](#) to Form 5500, *Annual Return/Report of Employee Benefit Plan*. The changes are designed to implement certain provisions under the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, which require multiple employer plans (MEPs) to report additional information and allow a group of defined contribution plans to file a consolidated Form 5500. The DOL has also issued a [proposed rule](#) that would amend regulations relating to annual reporting requirements under Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Other proposed changes are aimed at improving financial reporting, expanding eligibility for small plan reporting, and encouraging compliance with Internal Revenue Code-based requirements.

If adopted, the proposed amendment to MEP reporting would apply to plan years beginning on or after January 1, 2021. Other proposed revisions generally would apply to reporting for plan years beginning on or after January 1, 2022. The modifications affect employee pension and welfare benefit plans, plan sponsors, administrators, and service providers subject to annual reporting requirements. Comments to the proposed changes are due by November 1, 2021.

SECURE Act Changes to Form 5500

The SECURE Act requires MEP plan sponsors to report a new data element and sponsors of pooled employer plans (PEPs) to identify pooled plan providers. The SECURE Act also requires the Secretary of Labor and the Secretary of Treasury to update Form 5500 to allow a single consolidated annual report to be filed on behalf of certain groups of defined contribution plans.

New MEP reporting requirement

Under current rules, a MEP plan sponsor must file an attachment to Form 5500 that identifies each participating employer. The attachment must also provide a good faith estimate of the percentage of total contributions made by each participating employer during the applicable plan year.

For plan years beginning on or after January 1, 2021, the SECURE Act requires MEP plan sponsors to report the aggregate account balances attributable to each participating employer. For the 2021 Form 5500, the Agencies are proposing that MEP plan sponsors include the aggregate account balances in a way that’s similar to how other MEP information is currently being reported. For PEPs, the attachment must identify that the plan is a PEP and provide additional information specific to the PEP.

Beginning with the 2022 plan year, the Agencies are proposing to replace the attachment with a new schedule (Schedule MEP, *Multiple Employer Pension Plan*) that includes each participating employer’s contributions and aggregated account balances. Part III of the proposed Schedule MEP contains PEP-specific disclosures.

Under the proposal, employers maintaining welfare plans would not be required to file Schedule MEP, but all MEP plan sponsors would be required to file Form 5500. Currently, the DOL is not proposing to amend the existing reporting rules to establish a “simplified report” for MEPs that have less than 1,000 participants and whose participating employers have less than 100 participants, as suggested under the SECURE Act.

Defined Contribution Group Reporting Arrangements

In accordance with the SECURE Act, the DOL and IRS have proposed a new reporting arrangement—a defined contribution group (DCG). Eligibility to file under the new arrangement requires participating plans in the DCG to be defined contribution plans that have the same

- trustee and trust (plans funded through custodial accounts, such as 403(b) plans, would not be eligible);
- named fiduciaries;
- plan administrator;
- plan year; and
- investments or investment options.

Under the proposal, participating plan sponsors in a DCG arrangement could have sub-trusts, but not separate trusts for investments. The proposal would also require DCGs to be 100 percent invested in “eligible plan assets”, which are secure, easy-to-value assets. Examples include mutual funds, publicly traded securities held by a registered broker dealer, and cash or cash equivalents. In addition, a participating plan

- could not hold employer securities or have brokerage windows,
- could not be a multiemployer plan or a MEP, and
- would have to comply with the annual independent qualified public accountant (IQPA) audit requirement unless eligible for a waiver of the audit.

Participating plan sponsors would file Form 5500 under the rules and conditions that currently apply to large defined contribution plans. Each participating plan sponsor would file a new schedule, Schedule DCG, *Individual Plan Information*, to report individual plan level information. If an extension of time to file the aggregated Form 5500 was needed, each participating plan sponsor would need to request an extension by filing Form 5558, *Application for Extension of Time To File Certain Employee Plan Returns*. Failure to request an extension would result in a late filing for the DCG.

Participant Count Methodology Changes

Eligibility to file as a small plan, eliminating the IQPA audit requirement, is currently based on participant counts as of the beginning of the plan year. Plan sponsors must include employees who are eligible to make elective deferrals even if they have elected not to participate and do not have an account balance in the plan. For defined contribution plans only, the Agencies are proposing that participant counts include only those employees who have account balances at the beginning of the plan year. The change was driven in part by the SECURE Act 's provision allowing long-term, part-time employees to make elective deferrals, thus potentially reducing the plans eligible for small plan reporting. For a plan's initial plan year, the participant count for this purpose would exclude plans that have fewer than 100 participants with account balances both at the beginning of the plan year and the end of the first plan year.

Schedule H – Schedule of Asset Changes

Plan sponsors of funded pension benefit plans and funded welfare benefit plans (e.g., VEBAs) are required to file Schedule H, *Financial Information*. Line 4i requires plan sponsors to attach a schedule reporting any invested assets held at the end of the plan year, and a schedule reporting those assets that were acquired and disposed of within the plan year. The Agencies are proposing to standardize the information reported on Schedule H in order to create a searchable reporting format for improved transparency and electronic use. If the changes are approved, plan sponsors would need to use legal or other industry and regulatory investment identifiers when completing the schedule.

According to the proposal, participant-directed brokerage account assets could be treated as one asset held for investment purposes; however, certain investments would need to be reported separately, such as investments in real property, employer securities, partnership or joint venture interests, and investments that could result in a loss that exceeds the participant's account balance. The Agencies added a check box for hard-to-value assets, including

nonpublicly traded securities, real estate, and hedge funds. Additional check boxes are being added to identify investments that are designated investment alternatives or qualified default investment alternatives. The proposal would require plan sponsors to enter the total annual operating expenses expressed as a percentage of assets, which is currently provided to participants in accordance with the participant fee disclosures required by DOL Regulation 404(a)(5).

Schedules MB, SB, and R Changes

- **Schedule MB.** The Agencies have proposed changes to Schedule MB, *Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information*, which collects actuarial information on multiemployer defined benefit plans and certain money purchase pension plans. The changes are meant to provide greater transparency in the actuarial status of such plans. The Agencies propose modifying the instructions to require an attachment that breaks down the total withdrawal liability amounts by date, and separately specifies the periodic withdrawal liability amounts and lump-sum withdrawal liability amounts. The Agencies would also require plan sponsors to 1) report the interest rate used to determine the present value of vested benefits for withdrawal liability determinations; 2) indicate if an expense load is included in the normal cost; and 3) provide additional information about demographics, benefits, and contributions for PBGC-insured multiemployer plans with 500 or more total participants.
- **Schedule SB.** Similar to the changes that are currently proposed for Schedule MB, proposed changes to Schedule SB, *Single-Employer Defined Benefit Plan Actuarial Information*, would add requirements about reporting demographics and benefits of single-employer defined benefit plans. For ERISA plans with 500 or more total participants as of the valuation date, the Agencies would require a projection of benefits expected to be paid in each of the next 50 years. The average age and average monthly benefit as of the valuation date would also be required. A question relating to elections made regarding pension funding relief under the American Rescue Plan Act of 2021 is also being proposed. The proposed changes reflect an effort to provide the PBGC with more detail to project defined benefit pension plan and PBGC insurance program liabilities.
- **Schedule R.** The proposed changes to Schedule R, *Retirement Plan Information*, would require plan sponsors of multiemployer defined benefit plans to report identifying information about any participating employer who either 1) contributed more than five percent of the plan's total contributions, or 2) was one of the top ten highest contributors.

Compliance Questions

The IRS is proposing to change Form 5500 for the 2022 plan year by adding questions that would help identify plans that fail to meet coverage and nondiscrimination testing requirements. A plan sponsor that permissively aggregates plans for testing purposes would need to disclose whether the plans satisfy the coverage and nondiscrimination tests of Internal Revenue Code Sections 410(b) and 401(a)(4). A 401(k) plan sponsor would need to indicate whether the plan uses a design based safe harbor or the prior-year or current-year ADP testing method. Aimed at identifying late amenders, the IRS is also proposing to add a question asking for the date and serial number of the favorable Opinion Letter for an employer that has adopted a pre-approved plan.

MEWA Reporting Changes

Administrators of multiple employer welfare arrangements (MEWAs) that provide medical benefits must file an annual report, Form M-1, *Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)*. Administrators of "plan" MEWAs must also report, as an attachment to Form 5500, each participating employer's identifying information and a good faith estimate of the percentage of total contributions made by each participating employer during the plan year. Effective for plan years beginning on or after January 1, 2022, the DOL is proposing to require all administrators of MEWAs (plan and non-plan MEWAs) that offer or provide coverage for medical benefits to report the participating employer information on Form M-1 (not as an attachment to Form 5500).

Next Steps

Although the changes are only proposed at this time, plan sponsors and administrators should review the proposals and watch for further developments once comments have been submitted. The Agencies are requesting that comments be made by November 1, 2021. Ascensus will continue to follow any new guidance as it is released. Visit [ascensus.com](https://www.ascensus.com) for the latest developments.

