

Fact Sheet

U.S. Department of Labor
Employee Benefits Security Administration
September 14, 2021

SECURE Act and Related Revisions to Employee Benefit Plan Annual Reporting on the Form 5500

On September 14, 2021, the U.S. Department of Labor (DOL), the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC) (together “Agencies”) jointly announced a tri-agency notice of proposed forms revisions to the Form 5500 Annual Return/Report forms filed for employee pension and welfare benefit plans. The DOL simultaneously published a proposed rulemaking (NPRM) to implement the proposed forms changes under the Employee Retirement Income Security Act (ERISA). The proposals are intended to implement changes to the Form 5500 annual reporting under the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act). The Agencies are also proposing certain additional changes to improve reporting on single-employer and multiemployer defined benefit pension plan funding, enhance Form 5500 financial reporting and make the data collected more usable, improve tax compliance reporting, and improve reporting of participating employer information by multiple employer welfare arrangements (MEWAs).

The Form 5500 Annual Return/Report is essential to each Agency’s enforcement, research, and policy formulation programs, as well for the regulated community. It is also an important source of information and data for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies.

- Titles I and IV of ERISA, and the Internal Revenue Code (Code), generally require, unless exempt by statute or regulation, pension and other employee benefit plans to file annual returns/reports concerning, among other things, the financial condition and operations of the plan. Filing a Form 5500, Annual Return/Report of Employee Benefit Plan (Form 5500) or, if eligible, a Form 5500-SF, Short Form Annual Return/Report of Small Employee Benefit Plan (Form 5500-SF), together with required schedules and attachments (collectively “Form 5500 Annual Return/Report”) generally satisfies these requirements.
- Not all plans are required to file a Form 5500 Annual Return/Report, e.g., many small fully insured or unfunded group health and other ERISA welfare benefit plans are exempt by regulation. Approximately 822,100 to 843,000 pension and welfare plans filed an annual return/report in 2018 and 2019, respectively. ERISA plans that file the Form 5500 cover roughly 154 million workers, retirees, and dependents of private sector pension and welfare plans with estimated assets of \$12.2 trillion.
- The Form 5500 annual filings serve as the principal source of information and data concerning the operations, funding, and investments of those pension and welfare benefit plans. The Form 5500 Annual Return/Report also serves as the primary means by which the

operations of these employer-sponsored benefit plans can be monitored by the Agencies, participating employers in such plans, plan participants and beneficiaries, and the public.

The SECURE Act and other recent legislative and regulatory changes related to multiple employer pension plans (MEPs) and defined contribution pension plan group reporting arrangements require an update to the Form 5500 Annual Return/Report Series and related regulations.

- SECURE Act section 101 amended ERISA to authorize defined contribution retirement “pooled employer plans” (PEPs) operated by “pooled plan providers.” PEPs allow multiple unrelated employers to participate in a single employee benefit plan, without the need for any common interest among the participating employers other than adopting the plan. Pooled plan providers are required to register with the DOL and IRS by filing the Form PR (Registration for Pooled Plan Provider), which we established by regulation at 85 FR 72934 (Nov. 16, 2020). To date, approximately 50 entities have filed the Form PR to register as pooled plan providers.
- The SECURE Act also amended ERISA section 103(g), which already required MEPs to provide participating employer identification and contribution information. The SECURE Act (1) added a requirement to report the aggregate account balance for each participating employer; (2) limited the 103(g) reporting requirements to MEPs covered by ERISA section 210(a), including pooled employer plans; and (3) required pooled employer plans to include identifying information for the person designated under the terms of the plan as the pooled plan provider.
- SECURE Act section 202 directs the Secretary of the Treasury and the Secretary of Labor (“Secretaries”) to modify the Form 5500 so that a group of defined contribution retirement plans that satisfy certain criteria may file a single consolidated annual return/report beginning with the 2022 plan year. It further provides that the Secretaries may require that the consolidated filing include any information regarding each plan in the group as the Secretaries determine is necessary or appropriate for the enforcement and administration of the Code and ERISA.

The Proposed Changes Address SECURE Act Amendments, But Also Provide for Other Improvements to the Collection of Information Regarding the Employee Benefit Plan Investments and Operations.

The proposed regulations and forms revisions involve the following major categories of changes, along with other technical revisions and updates:

- *Consolidated Form 5500 for Defined Contribution Retirement Plan Groups.* The proposal would implement the SECURE Act requirement for DOL and IRS jointly to develop a consolidated annual return/report for certain groups of defined contribution retirement plans. The proposal would add a new type of direct filing entity (DFE) called a defined contribution group (DCG) reporting arrangement and establish a new Schedule DCG (Individual Plan Information) for such filing arrangements in addition to the more generally applicable Form 5500 requirements.

- A separate Schedule DCG (Individual Plan Information) would have to be filed as part of the consolidated Form 5500 for each participating plan to report individual plan-level information. Schedule DCG generally would report less individual plan information than if an individual plan filed its own Form 5500. The DCG's overall trust would be subject to an audit by an independent qualified public accountant (IQPA). Large plans participating in the DCG would continue to be subject to a separate plan-level IQPA audit.
- All plans participating in the DCG must be defined contribution pension plans and (1) have the same plan administrator; (2) have the same named fiduciaries; (3) have the same trustee(s) and same trust holding the assets of the participating plans; (4) have the same plan year; (5) provide the same investments or investment options to all participants and beneficiaries, (6) have investment assets held in a single trust of the DCG; (7) not hold any employer securities; (8) be 100% invested in certain secure, easy to value assets that meet the definition of "eligible plan assets" under the instructions for the simplified Form 5500-SF, such as mutual fund shares, investment contracts with insurance companies and banks valued at least annually, publicly traded securities held by a registered broker dealer, cash and cash equivalents, and plan loans to participants; (9) be audited by an IQPA or be eligible for the waiver of the annual examination and report of an IQPA under 29 CFR 2520.104-46, but not by reason of enhanced bonding; and (10) not be a multiemployer plan or a MEP.
- The plan administrator common to all of the plans must file the consolidated DCG Form 5500 covering all the participating plans, including all required schedules.
- Reporting by Pooled Employer Plans (PEPs) and other MEPs. The proposal would modify the Form 5500 to reflect pooled employer plans as a type of MEP and implement SECURE Act changes to MEP reporting of participating employer information. The proposal would require all MEPs, including PEPs, and DCGs to file the Form 5500 regardless of size. There would be no option for them to file the Form 5500-SF. The other changes would be added primarily through a new Schedule MEP (Multiple-Employer Retirement Plan Information) to:
 - Identify the type of MEP, e.g., pooled employer plan, professional employer organization, etc.
 - Confirm for pooled employer plans that the sponsoring pooled plan provider has filed the Form PR (Pooled Plan Provider Information).
 - Complete the MEP participating employer information that is currently collected as a nonstandard attachment to the Form 5500 and Form 5500-SF, and the aggregate account information required by the SECURE Act.
 - As an ancillary matter, for multiple employer welfare plans that provide medical benefits, the proposal would move the existing requirement to report participating employer information from the Form 5500 to the Form M-1 (Report for Multiple Employer Welfare Arrangement (MEWA) and Certain Entities Claiming Exception (ECEs)) filed

by such plans and extend that reporting requirement to non-plan MEWAs that file the Form M-1.

- *Financial Transparency and Accountability for Investment Assets.* Although needed to ensure adequate financial reporting by PEPs and DCGs, the rationales for the improvements to financial reporting apply to MEPs generally and to other types of retirement and welfare plans currently required to file schedules of investment assets (generally not required for small plans). To improve the usability of reported data, the proposal would:
 - Update the Schedule H and instructions to standardize the electronic filing format for the schedules of assets required to be included in the annual return/report (Schedule H, line 4i Schedules);
 - Add additional disclosures to the schedules of assets regarding the characteristics of investments that plans hold for investment;
 - Improve the level of detail in direct expense reported on the Schedule H; and
 - Add new trust questions to the Form 5500, the Form 5500-SF, and the IRS Form 5500-EZ, Annual Return of A One Participant (Owners/Partners and Their Spouses) Retirement Plan or A Foreign Plan, regarding the name of the plan's trust, the trust's employer identification number (EIN), the name of the trustee or custodian, and the trustee's or custodian's telephone number.
- *Change in Participant-Count Methodology to Allow More Plans to Use Simplified Reporting Options.* The proposal would change the rule for when defined contribution retirement plans can file as "small plans" for simplified reporting options, including waiver of the IQPA annual audit.
 - The rule would be based on the number of participants with account balances, instead of the current rule based on those eligible to participate even if they have not elected to participate.
 - The goal is to help reduce expenses for small defined contribution retirement plans and encourage more small employers to offer workplace retirement savings plans.
- *Funding and Financial Reporting by Defined Benefit Plans.* The proposal would add a limited number of questions designed to improve financial and funding reporting by PBGC-covered defined benefit pension plans. The proposed changes would:
 - Modify Schedule MB to (1) require an attachment that breaks down the total withdrawal liability amounts by date, separately specifying the periodic withdrawal liability amounts and lump sum withdrawal liability amounts; (2) add a new requirement for plans that assess withdrawal liability to an employer during the plan year, to report the interest rate used to determine the present value of vested benefits for withdrawal liability determinations; (3) modify the questions related to the line 6 "expense load" to better align with the various ways multiemployer plans incorporate expense loads into their calculations;(4) require additional information about demographics, benefits and

contributions for plans with 500 or more total participants on the valuation date (certain PBGC-insured single-employer plans would be required to report the same additional information as well); (5) change the “age/service” scatter attachment which is currently required for PBGC-insured multiemployer plans with active participants, regardless of the number of participants; and (6) clarify the line 4f instructions and Schedule language concerning when or if plans in critical status or critical and declining status are projected to emerge or become insolvent;

- Modify the Schedule SB to: make line 26 reporting requirements about demographics and benefits similar to the requirements for PBGC-insured multiemployer plans; and modify Schedule SB’s Part IX, line 41 because the previously required information related to elective funding relief under the Pension Relief Act of 2010 is no longer relevant, and in its place, require information about the elective funding relief under the American Rescue Plan Act of 2021.
- Modify the instructions to permit (but not require) certain attachments to Schedule MB and SB to be provided in a tabular (spreadsheet) format rather than PDF or TXT formats.
- Modify Schedule R’s Part V, line 13 requirement that multiemployer defined benefit pension plans subject to minimum funding standards report identifying information about any participating employer whose contributions to the plan account for more than five (5) percent of the total contributions for the year to require that the ten employers who contributed the largest amounts be reported, even if that employer’s contribution accounted for less than five (5) percent of the total.
- *Selected Tax Qualification Compliance Question.* The proposal would add Code compliance questions for tax-qualified retirement plans to improve tax oversight and compliance. To better identify non-compliant plans, the proposal would:
 - Add a nondiscrimination and coverage test question to Form 5500, Form 5500-SF, and proposed Schedule DCG. The question asks if the employer aggregated plans in testing whether the plan satisfied the nondiscrimination and coverage tests of Code sections 401(a)(4) and 410(b) (this question was on the Schedule T to the Form 5500 before that schedule was eliminated).
 - Add a question to Form 5500, Form 5500-SF, and proposed Schedule DCG, for section 401(k) plans, asking whether, if applicable, the plan sponsor used the design-based safe harbor rules or the “prior year” or “current year” ADP test.
 - Add a question to Form 5500, Form 5500-SF, Form 5500-EZ, and proposed Schedule DCG asking whether the employer is an adopter of a pre-approved plan that received a favorable IRS Opinion Letter, the date of the favorable Opinion Letter, and the Opinion Letter serial number.

Timing of the Proposed Changes

If adopted, the proposed changes generally would be effective for plan years beginning on or after January 1, 2022. Form 5500s for the 2022 plan year generally are not required to be filed

until 7 months after the end of the 2022 plan year, e.g., July 2023 for calendar year plans, and a 2½-month extension is available. Certain changes to MEP reporting of participating employer information and reporting of basic identifying information for PEPs would apply to reporting for plan years beginning on or after January 1, 2021, by using an interim nonstandard attachment in place of the new Schedule MEP that would not apply until the 2022 plan year.

Burden Estimate

The regulatory impact analysis in the DOL proposed regulation estimates that the regulations and forms revisions in this proposed rule would result in the total number of filers decreasing by nearly 20,000 due to the pooled employer plan and DCG reporting provisions, and the overall reporting burdens would decrease by approximately \$64.6 million annually, \$63.9 million annually in audit cost savings and \$700,000 annually in other reporting costs.

Public Comment Period

- The NPRM includes a 45-day comment period for submitting comments and includes instructions for how interested persons can submit comments electronically to the Federal eRulemaking portal at www.regulations.gov. Comments submitted during the comment period will be available to the public online at www.regulations.gov and www.dol.gov/agencies/ebsa.
- The proposal specifically solicits comments on various topics, including, for example:
 - Whether the final rule should provide a consolidated reporting option for plans that use the same custodial account or insurance policy rather than a trust as the funding vehicle for their plans, and if so, whether additional conditions should apply due to the absence of a trustee.
 - Whether or not large plans participating in a DCG should be required to be audited and have an IQPA attached to the Schedule DCG for any such plan that chooses to rely on the consolidated Form 5500 filing by the DCG to satisfy its annual reporting requirement.
 - Whether the final rule should allow brokerage windows in plans participating in DCG and, if so, what reporting requirements should be included regarding the brokerage window, the participants using the brokerage windows, and the individual assets held by the plans as a result of investments made through brokerage windows.
 - Whether the requirements for filing the consolidated Form 5500 report by a DCG are sufficient or whether different or additional conditions should be included in the final rule and forms revisions.
 - Whether the proposed changes require any recordkeeping beyond that which is usual and customary to complete the Form 5500 Annual Return/Report.
 - Whether the Form 5500 Annual Return/Report instructions enable filers to complete the Form 5500 Annual Return/Report without needing to refer to the statutes or regulations.

- Where the Form 5500-EZ filers are interested in participating in a DCG structure, including a separate DCG structure for Form 5500-EZ.
- Whether it is feasible to include both plans covered by Title I of ERISA and those not covered by Title I of ERISA in a single DCG filing, including with respect to the application of the audit requirement under Title I.
- The DOL will treat public comments submitted in response to this Notice of Proposed Forms Revisions as public comments on the Notice of Proposed Rulemaking to the extent they include information relevant to the proposed regulatory amendments. Comments submitted will be shared with the other Agencies.
- As noted above, the DOL components of the proposal are generally focused on annual reporting changes related to the SECURE Act and MEPs and a limited number of other supporting proposed changes intended to ensure the Form 5500 serves as an appropriate transparency and financial accountability tool for retirement plans, including pooled employer plans and MEPs. The DOL has added a separate project to its semi-annual regulatory agenda that would focus on a broader range of improvements to the Form 5500 annual reporting requirements. That regulatory action is part of a strategic project with the IRS and PBGC to improve the Form 5500 Annual Return/Report. See www.reginfo.gov for more information. Public comments on such broader improvements are beyond the intended scope of this rulemaking.

Contact Information

Contact the Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693–8500 for questions related to reporting requirements under Title I of ERISA and the DOL’s NPRM. For information related to the IRS changes and questions under the Internal Revenue Code, contact Cathy Greenwood, Employee Plans Program Management Office, Tax Exempt and Government Entities, (470) 639-2503. For information related to PBGC changes, including proposed changes to the actuarial schedules, contact Karen B. Levin, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, (202) 229–3559.