

Fact Sheet

U.S. Department of Labor
Employee Benefits Security Administration
February 23, 2023

Changes for the 2023 Form 5500 and Form 5500-SF Annual Return/Reports

Today, the U.S. Department of Labor, Internal Revenue Service, and the Pension Benefit Guaranty Corporation released two Federal Register Notices announcing changes to the Form 5500 Annual Return/Report of Employee Benefit Plan and Form 5500-SF Short Form Annual Return/Report of Small Employee Benefit Plan effective for plan years beginning on or after January 1, 2023.

The key revisions, which include changes related to provisions in the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), include:

- *A consolidated Form 5500 reporting option for certain groups of defined contribution retirement plans – defined contribution group (DCG) reporting arrangements.*
- *Improved reporting by multiple-employer plans (MEPs), including pooled employer plans (PEPs).*
- *A change in the participant-counting methodology for determining eligibility for simplified reporting alternatives available to small plans.*
- *A breakout of reporting of administrative expenses paid by the plan on a plan’s financial statements,*
- *Further improvements in financial and funding reporting by PBGC-covered defined benefit plans.*
- *The addition of selected Internal Revenue Code compliance questions to improve tax oversight and compliance of tax-qualified retirement plans.*
- *Technical and conforming changes as part of the annual rollover of forms and instructions.*

Additionally, technical adjustments were made to the Federal Register Notices to address certain provisions in SECURE Act 2.0 of 2022 on Code section 403(b) MEPs, including PEPs, minimum required distributions, and audit requirements for plans in DCG reporting arrangements.

Background

Titles I and IV of ERISA and the Code, subject to exemptions, generally require employee benefit plans to file annual returns/reports about, among other things, the financial condition and operations of the plan. Plans can generally satisfy this requirement by filing a Form 5500 Annual Return/Report of Employee Benefit Plan or, if eligible, a Form 5500-SF Short Form Annual Return/Report of Small Employee Benefit Plan, together with any required schedules and attachments (together “Form 5500 Annual Return/Report”), in accordance with their instructions.

The Forms 5500 and 5500-SF are sponsored by the DOL, IRS, and PBGC as a single form series that employee benefit plans can use to meet filing obligations under Titles I and IV of ERISA and the Internal Revenue Code.¹

The Form 5500 Annual Return/Reports are a critical enforcement, compliance, and research tool for the DOL, the IRS, and PBGC. These filings are the Agencies' main source of information and data regarding the operations, funding, and investments of the approximately 864,000 pension and welfare benefit plans that file.² The Form 5500 data is also an important resource for other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies. Additionally, the Form 5500 is the primary public disclosure document for participating employers, plan participants and beneficiaries, and the public to monitor the operations of plans, including multiple-employer plans (MEPs) and group filing arrangements.

A. 2021 Proposed Forms Revisions and Proposed Rule

On September 15, 2021, the Agencies published a Notice of Proposed Forms Revisions.³ The proposal focused on implementing annual reporting changes related to SECURE Act provisions related to MEPs, including PEPs, and DCG reporting arrangements. The proposal also included:

- Financial reporting improvements for plans generally.
- A change in the participant-counting methodology for determining eligibility for simplified reporting alternatives available to “small plans” (generally fewer than 100 participants).
- Adding to the DOL Form M-1 a requirement to report participating employer information for multiple-employer welfare arrangements (MEWAs) required to file that form,
- Proposed improvements in reporting by defined benefit pension plans.
- Additional questions on certain compliance issues for tax-qualified retirement plans.

The department received 114 written comments during the 60-day comment period. The comments and petitions came from a variety of parties, including plan sponsors and other plan fiduciaries, individual plan participants and beneficiaries, financial services companies, academics, elected government officials, trade and industry associations, and others.⁴

¹ Certain one-participant plans and foreign plans not subject to Title I of ERISA are required to file Form 5500-EZ.

² Estimates are based on 2020 Form 5500 filings. Welfare plans with fewer than 100 participants that are unfunded or insured (do not hold assets in trust) are generally exempt from filing a Form 5500. Therefore, while DOL estimates there are 2.5 million health plans and 673,000 non-health welfare plans, only 63,000 and 21,000 of these plans respectively filed a 2020 Form 5500. DOL estimates that there are approximately 2.5 million health plans, 673,000 other welfare plans, and 747,000 pension plans covered by ERISA in the United States that cover roughly 152 million private sector workers, retirees, and dependents and have estimated assets of \$12 trillion.

³ See 86 FR 51488 (Sept. 15, 2021). The DOL simultaneously published a notice of proposed rulemaking to make corresponding amendments to the ERISA Title I annual reporting regulations. See 86 FR 51284 (Sept. 15, 2021).

⁴ Comments to the NPRM are available at www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB97.

B. Phased Implementation of the September 2021 Proposal

The September 2021 proposal has been implemented in three phases to integrate the regulatory process for making the form changes into the annual development schedule for EFAST2. EFAST2 is the electronic filing and processing system for the Form 5500. The first two phases have been completed. Federal Register Notices that adopted forms and instructions changes for the 2021 and 2022 plan year forms were published in 2021 and 2022. The current Federal Register Notices complete the third and final phase.

Phase I—Published December 29, 2021, included minor instruction changes and adjusted reporting of participating employer information to address the SECURE Act amendment of ERISA section 103(g).⁵

Phase II—Published May 23, 2022, adopted forms and instructions changes that added new questions to and revised existing questions on Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information), Schedule SB (Single-Employer Defined Benefit Plan Actuarial Information), and Schedule R (Retirement Plan Information). It modified the contribution and benefit attachment requirements for those schedules to enable the Agencies to easily access defined benefit pension plans' information and precisely project insurance programs' liabilities. It also added four new plan characteristic codes to the Form 5500 that defined contribution MEPs (including PEPs) use to identify plan features.⁶

Phase III—The Federal Register Notices announced today complete the third and final phase. The Notice of Final Forms Revisions is a tri-agency notice because it includes final forms and instructions revisions for DOL, IRS, and PBGC. The second is a DOL-only rulemaking notice with implementing changes to the Title I annual reporting regulations.

C. Overview of Phase III Changes to the Form 5500

The Phase III final tri-agency forms revisions and DOL-only regulations involve the following major categories of changes.

- **Consolidated Form 5500 for Defined Contribution Retirement Plan Groups**

Phase III implements the SECURE Act requirement that DOL and IRS jointly develop a consolidated annual reporting option for certain groups of defined contribution retirement plans. The final forms revisions and regulations are generally similar to the September 2021 proposal. They include a filing option for new type of direct filing entity called a DCG reporting arrangement and a new Schedule DCG (Individual Plan Information). DCGs will generally be subject to the Form 5500 requirements for large pension plans. Large plans in a DCG arrangement and small plans not meeting the audit waiver conditions will still be subject to a separate plan-level audit by an independent qualified public accountant (IQPA) as if they were filing separately.

⁵ 86 FR 73976 (Dec. 29, 2021).

⁶ 87 FR 31133 (May 23, 2022).

Some conditions in the September 2021 proposal were eliminated or adjusted in response to comments expressing concerns about operational complexity and costs. For example, for DCGs, use of a single trust, an audit of that trust, and limits on the types of investments plans may have if they participate in a DCG were eliminated.⁷

- Reporting by PEPs and other MEPs

Phase III includes modifications to the Form 5500 to further implement SECURE Act changes that establish PEPs as a new type of retirement plan. These steps will be accomplished primarily by the new Schedule MEP (Multiple-Employer Retirement Plan Information). As with Schedule DCG, some aspects of the proposed Schedule MEP have been streamlined based on commenters' input, mainly relating to PEP-specific questions.

- Change in Participant-Count Methodology for Small Plan Simplified Reporting Options

Phase III revises the counting methodology for determining the 100-participant threshold for certain small plan simplified reporting alternatives, including the conditional waiver of the IQPA annual audit. The counting methodology for defined contribution retirement plans will be based on the number of participants with account balances, rather than the current method that counts individuals who are eligible to participate even if they have not elected to participate and do not have an account in the plan. This change is intended to reduce expenses for small plans and encourage more small employers to offer workplace retirement savings plans to their employees.

- Schedule H Breakout of Administrative Expenses

Phase III, similar to the September 2021 proposal, adds breakout categories to the "Administrative Expenses" category of the Income and Expenses section of the Schedule H (Financial Information) balance sheet to improve fee and expense transparency.

- Funding and Financial Reporting by Defined Benefit Plans

The final forms revisions that build upon the 2022 revisions include changes to Schedule R and Schedule SB to further improve PBGC-covered defined benefit plans' financial and funding reporting.

⁷ SECURE Act section 202 directed DOL and IRS to establish a consolidated Form 5500 filing option for groups of defined contribution plans that satisfy certain criteria. The statute included a deadline of December 31, 2021. The Agencies' Phase II Federal Register Notice explained that, instead of rushing consideration of the issues presented by the public comments, and in light of the significance of the changes to annual reporting requirements involved, the Agencies decided they needed more time to consider the public comments and develop a final approach to the DCG filing option. Subsequently section 345 of SECURE Act 2.0 was enacted, which provides with respect to DCG arrangements and IQPA audits that "any opinions required by section 103(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1023(a)(3)) shall relate only to each individual plan which would otherwise be subject to the requirements of such section 103(a)(3)." The Phase III changes include DCG audit provisions that are consistent with the SECURE Act 2.0 direction.

- Selected Tax Qualification Compliance Questions

The final forms revisions add certain Code compliance questions to improve tax oversight and compliance of tax-qualified retirement plans, including plans in a DCG filing.

The Phase III Federal Register Notices also include certain technical and conforming changes. They also include appendices that illustrate the changes to the forms and instructions, and “mock-ups” of the new Schedule DCG, Schedule MEP, and their instructions.

Mock-ups of the forms and instructions will be available on reginfo.gov as part of the Paperwork Reduction Act clearance process. The normal release of “for information-only” copies of the forms and instructions will happen later in 2023.

D. Regulatory Impact Analysis

The Federal Register Notices include regulatory impact and Paperwork Reduction Act analyses that estimate that these changes will reduce overall filing costs by roughly \$95 million annually.

Estimated Burden Change by Type of Filer, All Changes					
Type of Plan	Number of Filers Under Current (Thousands)	Number of Filers Under Final (Thousands)	Aggregate Cost Under Current (Millions)	Aggregate Cost Under Final (Millions)	Aggregate Cost Change (Millions)
Large Plans	148.8	129.4	\$261.2	\$227.6	-\$33.6
Small Plans	705.6	700.1	\$232.9	\$231.3	-\$1.5
DFEs	9.7	9.9	\$11.4	\$15.2	\$3.8
Form Changes	864.1	839.4	\$505.5	\$474.1	-\$31.4
Audit Cost Changes					-\$63.3
Total Changes					-\$94.7
Notes: Some displayed numbers do not sum up to the totals due to rounding. Calculations are based on the 2020 Private Pension Plan Bulletin data files. Large plans are defined as 100 participants or more. Small plans are generally defined as fewer than 100 participants.					

E. Certain Proposed Changes Being Deferred to Later Form 5500 Improvement Project

The Federal Register Notices do not include certain elements of the September 2021 proposal that are being deferred for further consideration as part of a separate overall improvement project for the Form 5500 Annual Return/Reports.

The September 2021 proposal included revisions to the content requirements for the Schedules of Assets filed by large, funded plans. These revisions would have modernized the data elements reported about a plan’s individual investments and require that the schedules be filed electronically in a structured format so that they can be mined for data. The proposed changes

were designed to improve the consistency, transparency, and usability of information regarding plan investments.

While many commenters supported a standardized electronic format, some said further consultation with stakeholder groups is needed, especially custodians who would likely be called upon to provide the asset information needed to satisfy the proposed new data elements on the Schedules of Assets. After considering the public comments, DOL decided the improved transparency and financial accountability goals would best be reached by using the public comments to refine the Schedules of Assets changes and repropose them as part of the more general Form 5500 improvement project currently on the DOL semi-annual regulatory agenda.⁸

A similar conclusion was reached on moving participating employer information reporting to the Form M-1 for MEWA group health plans and requiring it for non-plan group health MEWAs. The broader project will focus on improving group health plan reporting, and the Form M-1 proposal could be better integrated into those potential improvements.

F. Effective and Applicability Dates

The DOL-only final rule will be effective 30 days after publication in the Federal Register. The rule will be applicable for plan years beginning on or after January 1, 2023.

The Form 5500 is filed by the end of the seventh month after the end of the plan year (generally by the end of July for calendar year plans, though a 2½-month extension is available). Thus, filing of the 2023 forms generally will not begin until July 2024. Per EFAST2's normal annual schedule, the 2023 Form 5500 series of forms and instructions are scheduled to be released for filing as part of the EFAST2 electronic filing system on January 1, 2024.

Contact Information

For questions about the final rule, contact EBSA's Office of Regulations and Interpretations at 202-693-8500.

⁸ See www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=1210-AC01. The regulatory action is part of a strategic project with the IRS and PBGC to improve the Form 5500 Annual Return/Report of Employee Benefit Plan. Modernizing the financial and other annual reporting requirements on the Form 5500, making the investment and other information on the Form 5500 more data mineable, and potential changes to group health plan annual reporting requirements are part of that evaluation. The project is also focused on enhancing the agencies' ability to collect employee benefit plan data that best meet the needs of changing compliance projects, programs, and activities.