

MEMO# 33877

November 1, 2021

ICI Comment Letter on Proposed Changes to Form 5500

[33877]

November 2, 2021

TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: ICI Comment Letter on Proposed Changes to Form 5500

On October 29, 2021, the Institute submitted the attached comment letter to the Department of Labor (DOL) on the proposed revisions to the Form 5500 Annual Return/Report forms required for employee pension and welfare benefit plans. The proposed revisions were jointly released by DOL, the Internal Revenue Service (IRS), and Pension Benefit Guaranty Corporation (PBGC) (the Agencies)[\[1\]](#) and are intended to implement provisions under the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act).[\[2\]](#) In addition, the proposal includes changes to the Schedule H financial reporting of investment assets (including making the data collected more minable), changes to the rules for counting participants for purposes of eligibility for small plan simplified reporting, changes to improve reporting on defined benefit pension plan funding, and changes to improve tax compliance reporting for tax-qualified plans.

Our comment letter makes three main recommendations regarding the proposal:

- The Agencies should postpone aspects of the proposal not related to implementing the SECURE Act changes, such as the proposed revisions to Schedule H. We urged DOL to hold off on these changes and issue a re-proposal as part of the broader Form 5500 reform project on DOL's long-term agenda,[\[3\]](#) after obtaining greater input from stakeholders. We explained that the system changes associated with such form changes are costly and that requiring multiple rounds of significant changes, as opposed to implementing the changes simultaneously, will drastically increase the overall cost. We cautioned that plan participants could bear the cost of such changes.
- With respect to section 202 of the SECURE Act, the new consolidated filing framework for groups of similar defined contribution plans, the Agencies should (1) permit large plans within the filing group to have a consolidated plan audit, (2) expand the consolidated filing framework to cover 403(b) plans, and (3) clarify the requirement that participating plans have the same investments.
- The Agencies should retain the proposal's modification to the rules for determining the

number of participants in a defined contribution plan, for purposes of eligibility for simplified reporting options available to small plans. We explained that this change makes sense in light of new requirements enacted under the SECURE Act that will require 401(k) plans to extend participation to certain long-term part-time workers.

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endnotes

[1] For a description of the proposal, see ICI Memorandum No. 33783, dated September 22, 2021. Available here: <https://www.ici.org/memo33783>

[2] For a description of the SECURE Act, see ICI Memorandum No. 32118, dated December 20, 2019. Available here: <https://www.ici.org/memo32118>. In relevant part, the SECURE Act includes two important changes intended to make it easier for employers to offer retirement plans to their workers, both with significant implications for annual reporting obligations. Section 101 of the SECURE Act allows otherwise unrelated employers to band together and participate in defined contribution multiple employer plan (MEP) arrangements referred to as "pooled employer plans" or "PEPs". Like existing MEPs, a PEP arrangement will file a single Form 5500. The SECURE Act requires PEPs and other MEPs to report on Form 5500 certain information beyond that which was already required for MEPs, including the aggregate account balance of each participating employer. Section 202 of the SECURE Act directs the IRS and DOL to work together to modify Form 5500 so that all members of a group of defined contribution plans meeting certain requirements (including having the same trustee, named fiduciary, and plan administrator) may file a single consolidated Form 5500. The new law requires implementation of the consolidated Form 5500 framework not later than January 1, 2022, to be effective for returns and reports for plan years beginning after December 31, 2021.

[3] The most recent agenda includes this project as a long-term agenda item and indicates that DOL expects to issue a proposal in May 2022. See <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1210-AC01>. The preamble to the proposal describes that regulatory action as "part of a strategic project with the IRS and PBGC to improve the Form 5500" by "[m]odernizing the financial and other annual reporting requirements" and "continuing to make the investment and other information on the Form 5500 more data mineable," while also focusing on "enhancing the agencies' ability to collect employee benefit plan data that best meets the needs of changing compliance projects, programs, and activities." 86 Fed. Reg. 51488, 51492 (September 15, 2021).