

MEMO# 34161

May 25, 2022

Agencies Finalize Additional Form 5500 Changes for PEPs and other MEPs

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: Agencies Finalize Additional Form 5500 Changes for PEPs and other MEPs

On May 20, 2022, the federal agencies with authority over employer-sponsored benefit plans—the Department of Labor (DOL), Internal Revenue Service (IRS), and Pension Benefit Guaranty Corporation (PBGC)—jointly released final revisions to the Form 5500 Annual Return/Report forms (and instructions) required for employee pension and welfare benefit plans.^[1] The changes primarily affect defined benefit (DB) plans, but also include limited changes for reporting on multiple-employer plans (MEPs) (including pooled employer plans (PEPs)).^[2] The changes are effective for plan years beginning on or after January 1, 2022.

Background

In September 2021, the agencies proposed revisions to the Form 5500, and DOL proposed conforming changes to its corresponding reporting regulations under sections 103 and 104 of ERISA.^[3] In December 2021, DOL released a narrow set of final revisions to the instructions for the Form 5500 that implemented changes for MEPs, including PEPs, effective for plan years beginning on or after January 1, 2021.^[4]

Final Revisions

While the new final revisions primarily focus on DB plans,^[5] the changes also include further annual reporting changes for MEPs that will supplement the reporting changes adopted in December 2021.

The agencies have added new plan characteristics codes to be used to identify the type of defined contribution MEP being reported on the Form 5500. The categories of MEPs include:

- an association retirement plan;^[6]
- a professional employer organization (PEO) plan;^[7]
- a PEP; or
- a defined contribution MEP that does not fall into the previous three categories.

In the preamble to the final revisions, the agencies explain that PEPs and PEOs in particular "can present added complexity and related challenges to the Agencies when performing oversight and enforcement functions" and therefore should be easily identifiable on the Form 5500 by the agencies and by participants and beneficiaries.^[8] In the September 2021 proposal, the agencies had proposed requiring all MEPs to file a new Schedule MEP (Multiple-Employer Retirement Plan Information), which would include more information; however, as they explain in the preamble, they will spend more time considering the issues raised by commenters before deciding whether and, if so, how to finalize the Schedule MEP.

The instructions are also updated to clarify which entities would report as plan sponsors and plan administrators. The plan sponsor and the plan administrator are the pooled plan provider that operates the plan, in the case of PEPs, and the PEO, in the case of PEO plans.

These changes to the 2022 Form 5500 series (and instructions) for MEPs are detailed in Appendix B to the final revisions.^[9]

Future Changes

In the preamble to the final revisions, the agencies indicate that they are still evaluating the comments they received on other elements of the September 2021 proposal.^[10] Referencing the many comments they received, the agencies acknowledged their belief that:

employee benefit plan stakeholders are best served by the Agencies taking additional time to consider the range of public comments on these proposals and develop final rules that are cost-effective and improve the annual report data in a way that is protective of the retirement security interests of participants and beneficiaries. ^[11]

Therefore, the agencies will address any changes regarding those additional elements either in further final revisions based on the September 2021 proposal or in a separate proposal that will focus on a broader range of improvements to the Form 5500 requirements.^[12]

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endnotes

^[1] The final forms and instructions were published at 87 Fed. Reg. 31133 (May 23, 2022), available at <https://www.govinfo.gov/content/pkg/FR-2022-05-23/pdf/2022-10658.pdf>. DOL's press release is available at <https://www.dol.gov/newsroom/releases/ebsa/ebsa20220520>.

^[2] PEPs were created by section 101 of the SECURE Act, which allows otherwise unrelated employers to band together and participate in a new type of defined contribution MEP, known as a PEP. For a description of the SECURE Act, see ICI Memorandum No. 32118, dated December 20, 2019, available at <https://www.ici.org/memo32118>.

^[3] For a summary of the proposal, see ICI Memorandum No. 33783, dated September 22,

2021, available at <https://www.ici.org/memo33783>. For a summary of ICI's comments in response to the proposal, see ICI Memorandum No. 33877, dated November 2, 2021, available at <https://www.ici.org/memo33877>.

[4] See ICI Memorandum No. 33975, dated December 29, 2021, available at <https://www.ici.org/memo33975>.

[5] The changes applicable to DB plans include revisions to Schedules MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information), SB (Single-Employer Defined Benefit Plan Actuarial Information), and R (Retirement Plan Information) and their respective instructions.

[6] In 2019, DOL issued a final regulation that defined a "bona fide group or association of employers" that would be deemed to be able to act in the interest of an employer under section 3(5) of ERISA, and thereby permitted to sponsor a defined contribution MEP, provided certain criteria are satisfied. See ICI Memorandum No. 31881, dated August 1, 2019, available at <https://www.ici.org/memo31881>.

[7] DOL's 2019 final regulation also defined a "bona fide professional employer organization" that would be eligible to sponsor a defined contribution MEP.

[8] 87 Fed. Reg. 31133, at 31139.

[9] 87 Fed. Reg. 31133, at 31159.

[10] 87 Fed. Reg. 31133, at 31134-5. The preamble specifies that these additional elements include "DCG [defined contribution reporting groups] reporting and related audit issues, Schedule MEP and related reporting requirements regarding MEPs, financial statement improvements to the Schedule H and Schedules of Assets, changes in participant counting methodology for Independent Qualified Public Accountant (IQPA) purposes, changes regarding reporting on participating employers for MEWAs that file the Form M-1, and additional questions on pension plan compliance with certain Code requirements."

[11] 87 Fed. Reg. 31133, at 31135.

[12] DOL refers to the regulatory project on its current semiannual agenda to work with IRS and PBGC to modernize the Form 5500 reporting requirements and to make the information more data minable. The most recent agenda indicates that DOL expects to issue a proposal in September 2022. In our October 29, 2021 comment letter on the proposed changes, ICI urged DOL to 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, after obtaining greater input from stakeholders.