

IMPORTANT DATES

September 30:

- Distribute Summary Annual Report for calendar-year plans if Form 5500 was filed on July 31

October 14:

- Distribute Notice of Medicare Part D creditable prescription drug coverage to health plan participants, unless previously provided in open enrollment materials

October 15:

- Fund Q3 2021 contribution to defined benefit plans
- Complete and make payment for annual premium, single employer plan variable rate portion of premium, and flat rate premiums due to PBGC
- Distribute Annual Funding Notice for defined benefit pension plans with less than 100 participants, if Form 5558 was filed for an extension
- File Forms 5500 with all schedules (and audited financial statements, if applicable) for calendar year plans, if Form 5558 was filed by July 31st to extend deadline

EXECUTIVE SUMMARY

On September 14, 2021, the Department of Labor (the “DOL”), the Internal Revenue Service (the “IRS”), and the Pension Benefit Guaranty Corporation (the “PBGC”) jointly proposed revisions to the [Form 5500 Annual Return/Report](#) for employee pension and welfare benefit plans. The proposed changes would be effective for plan years beginning on or after January 1, 2022 and would first take effect for the Form 5500s due July 31, 2023 for calendar year plans (or October 15, 2023 if an extension is filed by July 31, 2023).

The proposed modifications would implement various SECURE Act changes and make the information being reported more useful, which would enhance the effectiveness of investigations and audit initiatives of the IRS, the DOL, and the PBGC. Most of the proposed changes would impact retirement plans, while a handful of proposed revisions would affect reporting for Multiple Employer Welfare Arrangements (“MEWAs”).

Key Changes Impacting Retirement Plan Reporting

- For defined contribution plans, like 401(k) and 403(b) plans, the proposed changes would alter how participants are currently counted for reporting purposes. Specifically, plans would be allowed to count only the number of participants with an account balance at the beginning of the plan year, rather than the total number of employees who are participating in the plan, plus those employees who are eligible to participate, but who choose not to. This change is expected to reduce the need for certain small defined contribution plans to have an independent audit.
- Retirement plans would be required to answer tax compliance questions that are intended to help the IRS flag plans with potential compliance issues, including:
 - Whether the plan is using a pre-approved plan document, and, if so, the date and serial number of the IRS favorable approval letter. This would help the IRS identify plans that have not been amended in a timely manner for legally required changes.

- Provide notice to terminated vested employees reported on Form 8955 SSA describing the amount of their vested benefits, if Form 5558 was filed for an extension

- Deadline to utilize contributions correcting 2020 ADP/ACP test failures to count as 2020 annual additions

October 31:

- Provide notice of benefit restrictions under IRC Section 436 to participants if the AFTAP for a defined benefit plan is less than 60% and notice has not previously been provided

- For 401(k) plans, whether the plan uses a “safe harbor” design that exempts it from ADP/ACP testing or, if it is not a “safe harbor” plan, whether the plan utilizes “current year” or “prior year” ADP/ACP testing. This would help the IRS determine if allocations for required safe harbor contributions comply with plan terms and if the proper notice requirements are satisfied on an annual basis.
- Whether the employer aggregates plans for benefits, rights, and features nondiscrimination testing under Code Section 401(a)(4) and/or minimum coverage testing under Code Section 410(b).
- Proposed changes to the Form 5500’s Schedule H (Schedule of Assets) would standardize the information being disclosed to improve electronic use of the schedules and enhance transparency regarding reported plan asset information. The proposed changes would include adding the name and address information for the trustee holding the assets; providing more detail about the range of investments held by a plan; and providing a breakdown of assets acquired and disposed of during the plan year. Investments in participant-directed individual account plans that serve as qualified default investment alternatives (“QDIAs”), and information regarding the total annual operating expenses for the investments as a percentage of assets that were furnished in the most recent 404(a)(5) fee disclosure statement, would also be required. These changes are intended to help the DOL and the IRS, as well as employers and other stakeholders, compare plan participation, investment options, and investment performance from year to year.
- Additional suggested changes to the Schedule H would include breaking out categories of administrative expenses on the balance sheet, which would give the IRS and DOL a more granular view of plan expenses, particularly those related to service providers. Data elements would also be added for different types of fees, such as audit, recordkeeping, trustee/custodial, actuarial, legal, valuation/appraisal, and other similar fees.
- For defined benefit pension plans, the proposed changes include additional disclosures on Schedules MB and SB, which are used to report actuarial, demographic, and funding information for multiemployer and single-employer plans, respectively. The proposed changes would include a 10-year projection of employer contributions and withdrawal liability payments for large multiemployer plans with more than 500 participants, as well as a change in projections of benefits expected to be paid for both single employer and multiemployer pension plans that have more than 500 participants.
- The new modifications would permit defined contribution plans, like 401(k) and 403(b) plans, that are maintained by the same employer or controlled group of employers, to file one Form 5500 as a “Defined Contribution Retirement Plan Group” or “DCG”. However, to qualify as a DCG, certain commonalities would need to be met among all of the plans constituting the DCG, including: the same named fiduciaries; the same trustee and trust; the same plan year; and the same investment options (none of which may be employer securities). This new option may be helpful for organizations that maintain separate plans for union and non-union employees; for salaried vs. non-salaried employees; or for parent/subsidiary organizations that are able to sponsor independent plans while satisfying minimum coverage and other nondiscrimination requirements on their own, although individual plans would be subject to any applicable audit requirements.
- “Pooled employer plans” or “PEPs”, introduced as part of the SECURE Act, would be permitted to report as a single plan with a single audit. PEPs are multiple, unrelated employers participating in a single benefit plan sponsored by a pooled plan provider that has registered with the IRS and the DOL.

Key Changes Impacting Health and Welfare Reporting

- For MEWAs that provide health benefits only, questions regarding participating employers will be moved from the Form 5500 to the Form M-1.
 - For MEWAs that provide health benefits, plus welfare benefits, such as life and disability insurance benefits, this information will stay on the Form 5500.
 - These suggested changes would give the DOL and other users of the Form M-1 data, such as state insurance regulators, access to updated and current lists of participating employers.
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Impact of Changes on Summary Annual Reports

The changes to the Form 5500 would also impact each plan's summary annual report (the "SAR"). Specifically, the SAR would include new language about the aggregate assets and liabilities of the plan, the reporting arrangement of each plan, and a statement that a copy of the audit report filed for the trust of a DCG reporting arrangement is available upon request.

Additional Information

For additional information regarding the proposed regulations to the Form 5500, you may wish to review the [News Release](#), [Fact Sheet](#), the [proposed revisions to the Form 5500](#) and [the DOL's proposed rule](#). To discuss the proposed changes to the Form 5500, or other employee benefits matters, please contact any member of our Employee Benefits and Executive Compensation Group listed below.

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