

DOL Issues Final 5500 Rules for MEPs and PEPs, but Defers Finalizing Broader Changes

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On December 29, 2021, the Department of Labor (“DOL”) released a final form revisions (“Final Revisions”) modifying the Form 5500 Annual Return/Report of Employee Benefit Plan (“Form 5500”) for benefit plans. 86 Fed. Reg. 73976 (Dec. 29, 2021). DOL completed the Final Revisions a mere three months after the agency issued a Notice of Proposed Rulemaking (the “NPRM,” summarized [here](#)). 86 Fed. Reg. 51284, 51488 (Sept. 15, 2021). The Final Revisions primarily address issues related to multiple employer plans (“MEPs”) and pooled employer plans (“PEPs”) and leaves other proposed changes affecting most plans – including reporting of detailed expenses and IRS compliance issues – for future rulemaking.

Key Changes to the Form 5500

DOL revised the 2021 Form 5500 and Form 5500-SF instructions to require defined contribution MEPs to provide information on the aggregate account balances attributable to participating employers. Specifically, MEPs must identify participating employers in the plan and provide an estimate of the percentage of total contributions for each employer. In response to comments, DOL emphasized in the Final Revisions – and makes clear in the Form 5500 instructions – that the requirement of account balance reporting does not apply to defined benefit MEPs. The Final Revisions also do not provide Schedule MEP content requirements as set forth in the NPRM, and DOL states in the Final Revisions that guidance on Schedule MEPs will be provided in a subsequent final rule. The NPRM would have attached this new Schedule MEP to the Form 5500 for the purpose of requiring retirement MEPs to provide plan specific information on an annual report.

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The Final Revisions also make several PEP-specific changes. The first clarify that a PEP is treated as a MEP, meaning that a PEP is required to file a single Form 5500 and include such other information as is required of MEPs. PEP sponsors are also required to indicate whether they have complied with the Form PR filing requirements and, if so, to provide the AckID number for the most recent Form PR filed by the PEP's pooled plan provider. The Form PR is a registration statement filed with the DOL required prior to operating a PEP. Finally, the Final Revisions clarify that PEPs can only file the Form 5500 and are restricted from filing the Form 5500-SF.

Uncertainty for DCGs & Other Proposals

The Final Revisions are limited to the changes for the 2021 Form 5500, so DOL did not provide final rules for defined contribution groups ("DCGs"), which are permitted to file a consolidated Form 5500 for the 2022 plan year. Created by the SECURE Act, DCGs were intended to be an alternative to the PEP structure, and the NPRM imposed a number of controversial requirements on DCGs that some argued made the structure unworkable. DOL's decision not to finalize DCG filing rules creates a significant uncertainty for providers and sponsors considering the DCG structure.

DOL deferred consideration of other parts of the NPRM as well, including the proposed changes to Schedule H and the Schedule of Assets Held for Investment, defined benefit plan reporting, trustee reporting and changes to participant counting methods for purposes of the audit requirement.

Applicability Dates and Next Steps

The Final Revisions are generally applicable to reporting for plan years beginning on or after January 1, 2021. With respect to the items in the NPRM that were not addressed, DOL, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation stated that the open topics will be discussed in one or more future notices. Notably, the agencies have added a new regulatory project to the regulatory agenda related to improving the Form 5500 and are targeting this fall to issue a notice of proposed rulemaking in that project. It is not clear whether the agencies will finalize additional changes to the Form 5500 before that project is released in proposed form.

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