



**DEPARTMENT OF LABOR**

**Employee Benefits Security Administration**

**29 CFR Part 2520**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 301**

**PENSION BENEFIT GUARANTY CORPORATION**

**29 CFR Part 4065**

**RIN 1210-AB97**

**Proposed Revision of Annual Information Return/Reports**

**AGENCIES:** Employee Benefits Security Administration, Labor; Internal Revenue Service, Treasury; Pension Benefit Guaranty Corporation.

**ACTION:** Notice of proposed forms revisions.

**SUMMARY:** This document contains proposed changes to the Form 5500 Annual Return/Report forms filed for employee pension and welfare benefit plans under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (Code). The proposed form revisions primarily relate to statutory amendments to ERISA and the Code enacted as part of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act). The Department of Labor (DOL), the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC) (collectively “Agencies”) are also proposing certain additional changes intended to improve reporting on multiemployer defined benefit pension plan funding, update Form 5500 financial reporting to make the financial information

collected on the Form 5500 more useful and usable, enhance the reporting of certain tax qualification and other compliance information by retirement plans, and, transfer to the DOL Form M-1 (Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)) (Form M-1) participating employer information for multiple employer welfare arrangements that are required to file the Form M-1. The proposed revisions would affect employee pension and welfare benefit plans, plan sponsors, administrators, and service providers to plans subject to annual reporting requirements under ERISA and the Code.

**DATES:** Written comments must be received by the Department of Labor on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit written comments, identified by RIN 1210–AB97, by one of the following methods:

*Federal eRulemaking Portal:* [http:// www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments. To facilitate receipt and processing of comments, the Agencies encourage interested parties to submit their comments electronically.

*Mail:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210, Attention: Proposed Form 5500 Revisions RIN 1210–AB97.

*Instructions:* All submissions must include the agency name and Regulatory Identifier Number (RIN) for this rulemaking. The Agencies will share any comment submitted to one of the Agencies individually with the other Agencies. To avoid unnecessary duplication of effort, the DOL also will treat public comments submitted in response to this Notice of Proposed Forms Revisions as public comments on the Notice of Proposed Rulemaking to the extent they include information relevant to the proposed regulatory amendments. If you submit comments

electronically, do not submit paper copies. Comments will be available to the public, without charge, online at: <http://www.regulations.gov> and <http://www.dol.gov/agencies/ebsa> and at the Public Disclosure Room, Employee Benefits Security Administration, Suite N-1513, 200 Constitution Ave., NW, Washington, DC, 20210.

*Warning:* Do not include any personally identifiable or confidential business information that you do not want publicly disclosed. Comments are public records posted on the Internet as received and can be retrieved by most Internet search engines.

**FOR FURTHER INFORMATION CONTACT:** Janet Song or Colleen Brisport Sequeda, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693-8500 for questions related to reporting requirements under Title I of ERISA. For information related to the IRS changes and questions under the Internal Revenue Code, contact Cathy Greenwood, Employee Plans Program Management Office, Tax Exempt and Government Entities, (470) 639-2503. For information related to PBGC changes, including proposed changes to the actuarial schedules, contact Karen B. Levin, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, (202) 229-3559.

*Customer service information:* Individuals interested in obtaining general information from the DOL concerning Title I of ERISA may call the EBSA Toll-Free Hotline at 1-866-444-EBSA (3272) or visit the DOL's website ([www.dol.gov/agencies/ebsa](http://www.dol.gov/agencies/ebsa)).

## **SUPPLEMENTARY INFORMATION**

### **I. OVERVIEW OF THE PROPOSAL**

#### **A. Background of Form 5500 Annual Return/Report of Employee Benefit Plan**

Sections 101 and 104 of Title I and section 4065 of Title IV of the Employee Retirement Income Security Act of 1974 (ERISA) and sections 6057(b), 6058(a), and 6059(a) of the Internal Revenue Code of 1986 (Code), and related regulations, impose annual reporting and filing obligations on pension and welfare benefit plans, as well as on certain other entities. Plan administrators, employers, and others generally satisfy these annual reporting obligations by filing the Form 5500, Annual Return/Report of Employee Benefit Plan (Form 5500), or Form 5500-SF, Short Form Annual Return/Report of Small Employee Benefit Plan (Form 5500-SF) (together “Form 5500 Annual Return/Report”).<sup>1</sup> Specifically, filing of the Form 5500 or the Form 5500-SF, as applicable, with any required schedules and attachments in accordance with the instructions and related regulations, constitutes compliance with the applicable annual reporting requirements under Title I of ERISA and the Department’s implementing regulations.<sup>2</sup> Filing of a Form 5500 or Form 5500-SF, together with the required attachments and schedules in accordance with the instructions, by plan administrators, employers, and certain other entities also satisfies the annual filing and reporting requirements under Code sections 6057(b), 6058(a), and 6059(a). Filing the Form 5500 Annual Return/Report will also satisfy an applicable plan administrator’s annual reporting obligation under section 4065 of Title IV of ERISA.

The Form 5500 Annual Return/Report serves as the principal source of information and data available to the Agencies concerning the operations, funding, and investments of

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<sup>1</sup> Certain one-participant plans and foreign plans that are not subject to the requirements of section 104(a) of ERISA are required to file Form 5500-EZ, Annual Return of One Participant (Owners/Partners and Their Spouses) Retirement Plan or a Foreign Plan. Beginning with 2020 forms filed on or after January 1, 2021, the Form 5500-EZ is required to be filed electronically through the same system as the Form 5500—the Form 5500 Electronic Filing Acceptance System (EFAST2). From 2009 to 2019, such plans had been permitted to file the Form 5500-SF electronically in lieu of filing the Form 5500-EZ on paper with the IRS. *See* instructions for 2020 Form 5500-EZ and Form 5500-SF.

<sup>2</sup> ERISA section 103 broadly sets out annual reporting requirements for employee benefit plans. The Form 5500 Annual Return/Report and the DOL’s implementing regulations generally are promulgated under the ERISA provisions authorizing limited exemptions to these requirements and simplified reporting and disclosure for welfare plans under ERISA section 104(a)(3), simplified annual reports under ERISA section 104(a)(2)(A) for pension plans that cover fewer than 100 participants, and alternative methods of compliance for all pension plans under ERISA section 110. The forms, instructions, and related regulations are also promulgated under the DOL’s general regulatory authority in ERISA sections 109 and 505.

approximately 843,000 pension and welfare benefit plans that file.<sup>3</sup> ERISA plans cover roughly 154 million workers, retirees, and dependents of private sector pension and welfare plans<sup>4</sup> with estimated assets of \$12.2 trillion.<sup>5</sup> Accordingly, the Form 5500 Annual Return/Report is essential to each Agency’s enforcement, research, and policy formulation programs, as well for the regulated community, which makes increasing use of the information as more capabilities develop to interact with the data electronically. The data is also an important source of information and data for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies. The Form 5500 Annual Return/Report also serves as a primary means by which the operations of plans can be monitored by participating employers in multiple employer plans and other group arrangements, plan participants and beneficiaries, and by the general public.

The last time the Agencies implemented significant changes to the forms and schedules was for the 2009 form year, in conjunction with the move to mandatory electronic filing and a related update to the ERISA Filing Acceptance System (EFAST2).<sup>6</sup> Those changes were proposed in 2006, 71 FR 41615 (Jul. 21, 2006), and finalized in 2007, effective for the 2009 form series. 72 FR 64731 (Nov. 16, 2007). Other discrete changes that have been made to the Form 5500 Annual Return/Report over those years were generally set forth annually in the “Changes to Note” section in the instructions, some of which have involved targeted rulemaking

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<sup>3</sup> Estimates are based on 2019 Form 5500 filings. DOL notes that single employer welfare plans with under 100 participants that are unfunded or insured (generally don’t hold assets in trust) are exempt from filing a Form 5500 under 29 CFR 2520.104-29. Therefore while DOL estimates there are 2.5 million health plans and 885,000 non-health welfare plans, respectively, only 69,000 and 91,000 of these plans filed a 2019 Form 5500.

<sup>4</sup> Source: U.S. Department of Labor, EBSA calculations using the Auxiliary Data for the March 2019 Annual Social and Economic Supplement to the Current Population Survey.

<sup>5</sup> EBSA based these estimates on the 2018 Form 5500 filings with the U.S. Department of Labor (DOL), reported SIMPLE assets from the Investment Company Institute (ICI) Report: The U.S. Retirement Market, First Quarter 2021, and the Federal Reserve Board’s Financial Accounts of the United States Z1 June 10, 2021.

<sup>6</sup> EFAST2 is an all-electronic system that receives and displays Forms 5500 Series Annual Returns/Reports and Form PR Pooled Plan Provider Registrations. EFAST2 is operated by a private-sector government contractor on behalf of DOL, IRS, and PBGC.

activity to implement reporting changes required by law.<sup>7</sup> The Agencies most recent significant initiative with respect to the Form 5500 was the publication of a proposal to modernize the forms and instructions in July 2016. 81 FR 47534 (July 16, 2016) (Tri-Agency Notice of Proposed Forms Revisions) and 81 FR 47496 (July 16, 2016) (DOL Notice of Proposed Rulemaking) (together the 2016 Modernization Proposal). The 2016 Modernization Proposal ultimately was not adopted as final changes to the forms, instructions, and regulations, although a small number of changes that were included in the 2016 proposal have been finalized, as set forth in the “Changes to Note” Section in the instructions to the Form 5500 Annual Return/Report for the years in which the changes were made.

## **B. Recent Legislative Changes Supporting Proposed Annual Reporting Improvements**

The SECURE Act,<sup>8</sup> which overall was designed to expand and preserve workers’ retirement savings, is the most significant legislation impacting ERISA and Code provisions pertaining to retirement plans since the Pension Protection Act of 2006. Among other things, the SECURE Act directed the Secretary of Labor and the Secretary of Treasury (together “Secretaries”) to develop a new aggregate annual reporting option for certain groups of retirement plans and included other statutory amendments that directly impact annual reporting requirements for multiple-employer pension plans (MEPs). In relevant part, the SECURE Act’s expansion of MEPs and direction for the Secretaries to establish a consolidated reporting option for defined contribution pension plans that share certain key characteristics should help expand retirement coverage by making it easier for record keepers and other financial services providers

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<sup>7</sup> See, e.g., Revisions to Annual Return/Report-Multiple-Employer Plans, Interim Final Rule, 79 FR 66617 (Nov. 10, 2014) (updating the Form 5500 instructions to require all multiple employer plans, including MEWAs, to provide a list of participating employers and certain financial information, as required by ERISA section 103(g)); Filings Required of Multiple Employer Welfare Arrangements and Certain Other Related Entities, Final Rule, 78 FR 13781 (Mar. 1, 2013) (among other things, added new questions to Form 5500 for MEWAs that are required to complete the Form 5500 to provide information on their most recent Form M-1 (Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs) filing) (Form M-1).

<sup>8</sup> The SECURE Act was enacted December 20, 2019, as Division O of the Further Consolidated Appropriations Act, 2020 (Pub. L. 116-94).

to offer attractive retirement plan alternatives and for employers, especially small ones, to pick from among a broader array of alternatives what works best for them and their employees.

Section 202 of the SECURE Act provides that the Secretaries, shall, in cooperation, modify the Form 5500 Annual Return/Report so that all members of a group of defined contribution individual account plans described in section 202 may file a single aggregated annual return/report satisfying the requirements of both section 6058 of the Code and section 104 of ERISA. The SECURE Act further provides that, in developing the consolidated return/report, the Secretaries may require any information regarding each plan in the group as such Secretaries determine is necessary or appropriate for the enforcement and administration of the Code and ERISA. The SECURE Act also mandates that the consolidated reporting by such a group must include such information as will enable participants in each of the plans to identify any aggregated return/report filed with respect to their plan. Section 202 provides that to constitute an eligible group of plans, all of the plans in the group must be either individual account plans or defined contribution plans as defined in section 3(34) of ERISA or in section 414(i) of the Code; must have the same trustee as described in section 403(a) of ERISA; the same one or more named fiduciaries as described in section 402(a) of ERISA; the same administrator as defined in section 3(16)(A) of ERISA and plan administrator as defined in section 414(g) of the Code; must have plan years beginning on the same date; and must provide the same investments or investment options to participants and beneficiaries. Section 202 further provides that a plan not subject to Title I of ERISA shall be treated as meeting these requirements for being eligible to be part of a consolidated reporting group of plans, if the same person that performs each of the functions described in the above requirements, as applicable, for all other plans in such group performs each of such functions for such plan.<sup>9</sup>

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<sup>9</sup> SECURE Act Section 202(c).

Section 101 of the SECURE Act amended ERISA section 3(2) and added ERISA sections 3(43) and 3(44) to allow for a new type of ERISA-covered MEP—a defined contribution pension plan called a “pooled employer plan” operated by a “pooled plan provider.” Pooled employer plans allow multiple unrelated employers to participate without the need for any common interest among the participating employers (other than having adopted the plan).<sup>10</sup> Under section 3(2) of ERISA, a pooled employer plan is treated for purposes of ERISA as a single plan that is a multiple employer plan. A pooled employer plan is defined in section 3(43) as a plan that is an individual account plan established or maintained for the purpose of providing benefits to the employees of two or more employers; that is a qualified retirement plan or a plan funded entirely with individual retirement accounts (IRA plan); and the terms of which must meet certain requirements set forth in the statute.<sup>11</sup> The term pooled employer plan does not include a multiemployer plan as defined in ERISA section 3(37) or a plan maintained by employers that have a common interest other than having adopted the plan.<sup>12</sup> The term also does not include a plan established before the date the SECURE Act was enacted unless the plan administrator elects to have the plan treated as a pooled employer plan and the plan meets the ERISA requirements applicable to a pooled employer plan established on or after such date. The

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<sup>10</sup> DOL sought comments through a Request for Information published on July 31, 2019, on “open” MEP structures (those without the need for any commonality among the participating employers or other genuine organization relationship unrelated to participation in the plan) being treated as one multiple employer plan for purposes of compliance with ERISA. The DOL does not have any current plan to take further action regarding defined contribution open MEPs due to the SECURE Act provisions permitting pooled employer plans as a type of open MEP.

<sup>11</sup> 29 U.S.C 1002(43).

<sup>12</sup> In establishing a pooled employer plan as a new type of multiple employer plan, the SECURE Act in section 101(c) specifically referred to plans maintained by employers that have a common interest other than having adopted the plan. For example, the DOL’s recent final association retirement plan regulation, at 29 CFR 2510.3-55, published July 31, 2019, clarified and expanded the types of arrangements that could be treated as MEPs under Title I of ERISA to include plans established and maintained by a bona fide group or association of employers or by a professional employer organization (PEO). The SECURE Act provision excluding a “plan maintained by employers that have a common interest” from the definition of a pooled employer plan does not preclude employers with a common interest other than participating in the plan from establishing or participating in a pooled employer plan. Rather, it means that if a group of employers with a common interest other than participating in the plan establish a MEP, e.g., an association retirement plan under the DOL’s regulation, the association retirement plan will not be subject to the SECURE Act requirements for a plan to be a pooled employer plan.



existence of this new type of multiple employer plan requires some adjustments to the Form 5500 to provide for annual reporting by such plans.<sup>13</sup>

Section 101 of the SECURE Act also amended ERISA section 103(g) for MEPs. Section 103(g) of ERISA requires that the annual return/report of a MEP generally must include a list of participating employers and a good faith estimate of the percentage of total contributions made by each participating employer during the plan year. The SECURE Act amended section 103(g) to expand the participating employer information that must be reported on the Form 5500 Annual Return/Report<sup>14</sup> also to require the aggregate account balances attributable to each employer in the plan (determined as the sum of the account balances of the employees of each employer and the beneficiaries of such employees), and applied section 103(g) to retirement plans that currently meet the definition of a MEP under ERISA section 210(a), including any pooled employer plans, for plan years beginning on or after January 1, 2021.<sup>15</sup> With respect to a pooled employer plan, section 103(g) further requires that the annual return/report must include the identifying information for the person designated under the terms of the plan as the pooled plan provider.

In addition to various changes to the forms and instructions to address these statutory changes and reflect the existence of pooled employer plans and defined contribution plan reporting arrangements, some of the annual reporting changes being proposed are intended to ensure appropriate transparency and financial accountability for pooled employer plans, other

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<sup>13</sup> New section 3(44) of ERISA establishes requirements for pooled plan providers, including a requirement to register with the DOL before beginning operations as a pooled plan provider. A parallel requirement to file a registration statement with the Secretary of Treasury is in section 413(e)(3)(A)(ii) of the Code. On November 16, 2020, the DOL published a notice of final rulemaking establishing the registration requirement for pooled plan providers. 85 FR 72934 (Nov. 16, 2020). The Treasury Department and the IRS have advised that filing the Form PR with the DOL will satisfy the requirement to register with the Secretary of the Treasury. The instructions to the Form PR (Pooled Plan Provider Registration) (Form PR) advised registrants to use the same identifying information on the Forms 5500 Annual Return/Report filed by the pooled employer plans, particularly name; EIN for the pooled plan provider; any identified affiliates providing services; trustees; and plan name and number for each pooled employer plan. The Form PR and its instructions, as well as any Form PR that have been filed with the DOL by pooled plan providers, are available on the DOL website at [www.efast.dol.gov](http://www.efast.dol.gov).

<sup>14</sup> SECURE Act Section 101(d).

<sup>15</sup> SECURE Act Section 101(e)(1).

MEPs, and defined contribution plan reporting arrangements. The rationales for some of those changes apply more broadly to retirement plans as a class (for example, improvements to the content and format for the financial schedules that retirement plans use to report information regarding their assets, investments, income, and expenses), and, accordingly, some of the changes are being proposed for retirement plans in general.

## **C. Overview of Proposed Changes to Forms, Schedules, and Instructions**

### *1. General Proposed Changes*

The proposed revisions involve the following major categories of changes, along with other technical revisions and updates, to the current structure and content of the Form 5500 Annual Return/Report.

- Update the Form 5500 and its instructions to establish requirements pursuant to section 202 of the SECURE Act for consolidated returns/reports for eligible defined contribution group (DCG) reporting arrangements as an alternative method of compliance for certain individual account or defined contribution retirement plans relying on the consolidated report to satisfy the generally applicable requirement that employee benefit plans file a Form 5500. This would include adding a new Schedule DCG (Individual Plan Information) to provide individual plan-level information for defined contribution pension plans covered by a DCG consolidated Form 5500 filing. It would also include adding a new checkbox on the Form 5500 (Part II, line 10a(4)) to indicate that Schedule DCG is attached to the Form 5500, with a space for the filer to enter the number of Schedules DCG (one per plan) attached to the Form 5500 filing.
- Update the Form 5500 and its instructions to add a new Schedule MEP (Multiple Employer Pension Plan). MEPs would report information specific to MEPs, including the ERISA section 103(g) participating employer information, updated to add the new

aggregate account information that is relevant only for pension plans, on the Schedule MEP. Questions intended to satisfy the SECURE Act's reporting requirements for pooled employer plans and questions to link the Form PR (Pooled Employer Registration) and the Form 5500 for each plan operated by a pooled plan provider would also be on the Schedule MEP. A new checkbox would be added to the Form 5500 (Part II, line 10a(5)) to indicate that Schedule MEP is attached to the Form 5500.

- Transfer the participating employer information from the Form 5500 Annual Return/Report to the Form M-1 for all multiple employer welfare arrangements (MEWAs) (plan and non-plan MEWAs) that offer or provide coverage for medical benefits, and continue to require reporting of participating employer information on the Form 5500 Annual Return/Report for plan MEWAs that provide other benefits.<sup>16</sup>
- Update Schedule H and instructions to standardize the schedules of investment assets required to be included in the annual return/report (Schedule H, line 4i Schedules), so that the information can be entered or imported for improved electronic use and transparency.
- Update the Form 5500 and 5500-SF and their instructions on counting participants to change the current threshold for determining when a defined contribution plan may file as a small plan, including eligibility for the waiver of the requirement for small plans to have an audit and include the report of an independent qualified public accountant (IQPA) with their annual report. Specifically, instead of using all those eligible to participate, filers generally would look at the number of participants/beneficiaries with account balances as of the beginning of the plan year (the first plan year would use an

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<sup>16</sup> The Agencies may choose as part of a final rule to have those plan MEWAs that are not required to file the Form M-1 complete the relevant participating employer information on the Schedule MEP rather than continuing to complete as an attachment to the Form 5500. The agencies invite comment on any preference from a disclosure, forms preparation, or data usage perspective as to how the information is collected.

end of year measure). This proposed change would be reflected in a new line item on the Form 5500 and Form 5500-SF.<sup>17</sup>

- Add trust questions to the Form 5500, the Form 5500-SF, and the IRS Form 5500-EZ, regarding the name of the plan’s trust, the trust’s EIN, the name of the trustee or custodian, and the trustee’s or custodian’s telephone number. This information will enable the Agencies to more efficiently focus on compliance concerns for retirement plan trusts, including those for pooled employer plans and DCG reporting arrangements.
- Revise the 2021 5500 Annual Return/Report instructions to provide an interim method of reporting participating employer information for MEPs and pooled plan provider identification information for pooled employer plans pending the Schedule MEP implementation for 2022 plan year filings.

Section 101 of the SECURE Act also amended ERISA section 104(a)(2)(A) to permit the Secretary of Labor to prescribe by regulation simplified reporting for MEPs subject to ERISA section 210(a) with fewer than 1,000 participants in total, as long as each participating employer has fewer than 100 participants. The DOL is not, however, currently proposing to amend the current reporting rules to establish a “simplified report” for such plans. The DOL is interested in stakeholder comments on why MEPs subject to ERISA section 210(a) should be subject to different reporting requirements than single employer plans that cover fewer than 1,000 participants, and on appropriate conditions and limitations for such a simplified report that would

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<sup>17</sup> This change was proposed partly in light of section 112 of the SECURE Act, which provides that long-term, part-time workers that have reached specified minimum age requirements and worked at least 500 hours in each of three consecutive 12-month periods must be permitted to make elective contributions to a Code section 401(k) qualified cash or deferred arrangement for plan years beginning on or after January 1, 2024. This could add to the number of participants who are eligible to, but who elect not to participate in a plan, which could impact whether a plan needs to file as a large plan. The DOL expects that excluding from the participant count those participants who are eligible to participate but did not have an account balance will reduce expenses for small employers to establish and maintain a small retirement plan, and as a consequence, encourage more employers to offer workplace-based retirement savings plans to their employees.

ensure transparency and financial accountability comparable to that for other large retirement plans.

## *2. Internal Revenue Code-Based Questions for the 2022 Form 5500s*

To better identify non-compliant plans, the IRS is proposing the following changes to the 2022 forms, schedules, and instructions, including adding the proposed Schedule DCG, so that certain questions are answered at the individual plan level (not the DCG level) in order for a plan's annual reporting obligation to be satisfied by a DCG Form 5500 filing:

- Add a nondiscrimination and coverage test question to Form 5500, Form 5500-SF, and proposed Schedule DCG that was on the Schedule T before it was eliminated. The question asks if the employer aggregated plans in testing whether the plan satisfied the nondiscrimination and coverage tests of Code sections 401(a)(4) and 410(b).
- Add a question to Form 5500, Form 5500-SF, and proposed Schedule DCG, for section 401(k) plans, asking whether, if applicable, the plan sponsor used the design-based safe harbor rules or the “prior year” or “current year” ADP test.
- Add a question to Form 5500, Form 5500-SF,<sup>18</sup> and proposed Schedule DCG asking whether the employer is an adopter of a pre-approved plan that received a favorable IRS Opinion Letter, the date of the favorable Opinion Letter, and the Opinion Letter serial number.

## *3. Defined Benefit Plan/Title IV Questions for the 2022 Form 5500s*

The proposal includes certain changes designed to improve reporting by defined benefit plans subject to Title IV of ERISA. The proposed changes would:

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<sup>18</sup> IRS will separately make a parallel update to the Form 5500-EZ, which is solely in the jurisdiction of the IRS.

- Modify Schedule MB, line 3 instructions to require an attachment that breaks down the total withdrawal liability amounts by date, separately specifying the periodic withdrawal liability amounts and lump sum withdrawal liability amounts.
- Modify Schedule MB by adding a new requirement for plans that assess withdrawal liability to an employer during the plan year, to report the interest rate used to determine the present value of vested benefits for withdrawal liability determinations. This information would be reported in a renumbered new line, 6f.
- Modify Schedule MB for the questions related to the line 6 “expense load” to better align with the various ways multiemployer plans incorporate expense loads into their calculations.
- Modify Schedule MB, line 8 by requiring additional information about demographics, benefits and contributions for plans with 500 or more total participants on the valuation date. Certain PBGC-insured single-employer plans would be required to report the some additional information as well.
- Modify Schedule MB by changing the “age/service” scatter attachment which is currently required for PBGC-insured multiemployer plans with active participants, regardless of the number of participants.
- Modify Schedule MB by clarifying the line 4f instructions and Schedule language concerning when or if plans in critical status or critical and declining status are projected to emerge or become insolvent.
- Make the Schedule SB, line 26 reporting requirements about demographics and benefits similar to the requirements for PBGC-insured multiemployer plans.
- Modify Schedule SB’s Part IX, line 41 because the previously required information related to elective funding relief under the Pension Relief Act of 2010 is no longer relevant, and in its place, require information about the elective funding relief under the American Rescue Plan Act of 2021.

- Modify Schedule R's Part V, line 13 requirement that multiemployer defined benefit pension plans subject to minimum funding standards report identifying information about any participating employer whose contributions to the plan account for more than five (5) percent of the total contributions for the year to require that the ten employers who contributed the largest amounts be reported, even if that employer's contribution accounted for less than five (5) percent of the total.
- Modify the instructions to permit (but not require) certain attachments to Schedule MB and SB to be provided in a tabular format (spreadsheet) rather than PDF or TXT formats.

#### **D. Appendices**

The Agencies have included the following appendices to provide more detailed illustrations and explanations of the proposed changes: (1) Appendix A—a facsimile of proposed Schedule MEP (Multiple Employer Pension Plan) and its instructions; (2) Appendix B—a facsimile of proposed Schedule DCG (Individual Plan Information) and its instructions; (3) Appendix C—a detailed description of proposed changes to the 2021 Form 5500, the Form 5500-SF, and their instructions; (4) Appendix D—a detailed description of proposed changes to the 2022 Form M-1 and its instructions; (5) Appendix E—a detailed description of proposed changes to the 2022 Form 5500, Form 5500-SF, applicable schedules, and their instructions.<sup>19</sup>

Certain amendments to the annual reporting regulations are necessary to accommodate some of the proposed revisions to the forms. The DOL is publishing separately today in the Federal Register proposed amendments to the DOL's annual reporting regulations. That document includes a discussion of the findings required under sections 104 and 110 of ERISA

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<sup>19</sup> The appendices include mock-ups of certain forms or parts of forms that are intended to be illustrative and facilitate stakeholders' ability to comment on the proposed changes. This approach of showing proposed changes will reduce costs associated with publication of the proposed form changes in the Federal Register and provide greater flexibility for the related EFAST2 development processes. The Agencies intend to publish mock-ups of the forms on the DOL's Web site as part of the EFAST third party software developer certification process and in furtherance of public education efforts about the changes to be implemented.

that are necessary for the DOL to adopt the Form 5500 Annual Return/Report, including the Form 5500-SF, if revised as proposed herein, as an alternative method of compliance, limited exemption, and/or simplified report under the reporting and disclosure requirements of Part 1 of Subtitle B of Title I of ERISA.

## **II. REQUEST FOR COMMENTS**

The Agencies invite comments from interested persons on all facets of the proposed forms and instruction changes. Comments should be submitted in accordance with the instructions at the beginning of this document. Commenters are asked to take into account the costs and burdens to plans, participants and beneficiaries, plan fiduciaries, plan service providers, and other affected parties, in commenting on the proposed annual reporting changes, including any suggested alternatives.

As noted above, the DOL also is publishing elsewhere in today's Federal Register a Notice of Proposed Rulemaking with proposed amendments to the reporting and disclosure regulations at Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations to implement certain proposed Form 5500 Annual Return/Report changes under Title I of ERISA. To avoid unnecessary duplication of effort, public comments submitted in response to this Notice of Proposed Forms Revisions will be treated as public comments on the Notice of Proposed Rulemaking to the extent they include information relevant to the proposed regulatory amendments.

The DOL components of this proposal are generally focused on implementing annual reporting changes related to the SECURE Act and MEPs and a limited number of other supporting proposed changes intended to ensure the Form 5500 serves as an appropriate transparency and financial accountability tool for retirement plans, including pooled employer plans and MEPs. The DOL has added a separate project to its semi-annual regulatory agenda



that would focus on a broader range of improvements to the Form 5500 annual reporting requirements. The regulatory action is part of a strategic project with the IRS and PBGC to improve the Form 5500 Annual Return/Report. Modernizing the financial and other annual reporting requirements on the Form 5500, continuing to make 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 meets the needs of changing compliance projects, programs, and activities. *See* [www.reginfo.gov](http://www.reginfo.gov) for more information. Public comments on such broader improvements to the Title I components of the Form 5500 are beyond the intended scope of this rulemaking.

### **III. DISCUSSION OF PROPOSED CHANGES**

#### **A. SECURE Act Section 202 Defined Contribution Group (DCG) Reporting**

##### **Arrangements**

Section 202 of the SECURE Act directs the Secretaries to modify the Form 5500 to allow certain groups of defined contribution pension plans to file a single consolidated annual return/report. For a group of plans to be able to file a consolidated return/report, the SECURE Act provides that all of the plans must be either individual account plans or defined contribution pension plans that have the same trustee; the same one or more named fiduciaries; the same plan administrator under ERISA and the Code; the same plan year; and provide the same investments or investment options for participants and beneficiaries.

The SECURE Act also provides that in developing the consolidated return or report for such arrangements, the Secretaries shall require such information as will enable a participant in a plan to identify any consolidated return or report filed with respect to the plan, and may require such return or report to include any information regarding each plan in the group as each

Secretary determines is necessary or appropriate for the enforcement and administration of the provisions of ERISA and the Code.

Pursuant to Section 202 of the SECURE Act directing the Secretaries to modify the Form 5500 to allow certain groups of defined contribution pension plans to file a single consolidated annual return/report, the DOL and the IRS (the “Departments”) have determined that an efficient and effective approach to establishing such a consolidated return/report option would be to amend the Form 5500 and its related instructions to provide that the filing requirements for large pension plans and direct filing entities (DFEs) would generally apply to this new type of DFE—a defined contribution group (DCG) reporting arrangement, except that an additional schedule to report individual plan level information—the proposed Schedule DCG, would have to be attached for each plan included in the DCG filing.<sup>20</sup> Consistent with section 202(b) of the SECURE Act, as discussed in more detail below, the Departments are proposing to obtain for each plan in the DCG the additional information requested on a new proposed Schedule DCG, and are proposing certain other key conditions for DCG reporting arrangements that are intended to ensure appropriate transparency and financial accountability. Specifically, under the proposal: (1) the DCG would file a Form 5500 under rules and conditions that apply generally to large defined contribution pension plans; (2) each of the plans participating in the DCG would need to meet certain conditions as discussed in more detail below, including that the participating plan

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<sup>20</sup> The proposed new regulation that would be at 29 CFR § 2520.104a-9 published in the parallel NPRM provides that, as would be the case for all of the participating plans in the DCG reporting arrangement if they were filing individually, the aggregated Form 5500 for the DCG is due no later than the end of the 7<sup>th</sup> month after the end of the common plan year that all the plans must have in order to participate in a DCG reporting arrangement pursuant to the requirement in section 202 of the SECURE Act and the proposed regulation that would be at 29 CFR § 2520.104-51. Because the DCG filing is an alternative to each participating plan filing its own Form 5500, that would mean that each plan would have to submit its own IRS Form 5558 to extend the plan’s due date, and, as a consequence, extend the due date for the DCG filing. A plan that did not submit a timely Form 5558 and that participated in a DCG filing that was submitted after the 7<sup>th</sup> month normal due date would be treated as having filed late. Public comments are specifically solicited on how the filing extension process should be structured for DCGs, including whether DCG reporting arrangements should be able to file a single Form 5558 to obtain an extension for filing the DCG consolidated report on behalf of the participating plans as an alternative to having each individual plan file a Form 5558 for there to be an extension for the reporting group as a whole. The Departments note that under the somewhat similar consolidated reporting provisions applicable to GIAs, the GIA is permitted to use the Form 5558 to apply for an extension of time the GIA consolidated report on behalf of the plans participating in the GIA.

must not hold any employer securities, be 100% invested in certain secure, easy to value assets that meet the definition of “eligible plan assets” and be audited by an IQPA or be eligible for the waiver of the annual examination and report of an IQPA under 29 CFR 2520.104-46, but not by reason of enhanced bonding; (3) the DCG’s Form 5500 would have to provide the plan level information reported on the proposed Schedule DCG regarding the covered plans, including an IQPA audit report for each participating large plan; and (4) the investment assets of the plans participating in the DCG would have to be held in a single trust of the DCG reporting arrangement and the consolidated Form 5500 filed by the DCG would include an audit of the DCG’s trust financial statements.

An important aspect of the audit of the DCG trust would be that, in the DOL’s view, the versions of the separate schedules referenced in ERISA section 103(a)(3)(A) and 29 CFR 2520.103-10(b) and proposed 2520.103-14(b) that would be filed as part of the DCG consolidated Form 5500 would be treated as ERISA section 103(b)(3) supplemental schedules for purposes of the required IQPA’s opinion on whether those schedules are presented in conformity with DOL rules and regulations, including the delinquent participant contributions schedule filed by the DCG in connection with line 4a of its Form 5500, Schedule H. The DOL views these conditions as providing important financial accountability and oversight protections while also allowing DCGs to offer annual reporting cost-efficiencies, particularly for the small plans that we believe SECURE Act section 202 was intended to benefit, that are comparable to those that can be offered by MEPs, including pooled employer plans.

The DOL is also publishing a separate Notice of Proposed Rulemaking that includes a proposal to add new regulations at 29 CFR 2520.103-14 and 2520.104-51 pursuant to section 110 of ERISA that would set forth this DCG option as an alternative method of compliance for eligible plans with the generally applicable requirement to file their own separate Form 5500.

## *1. General Section 202 Conditions Applicable to Covered Plans*

The Departments' review of the conditions in section 202 of the SECURE Act suggests that it was primarily aimed at plans of unrelated small businesses that adopt a plan that has received approval from the IRS as to its form through the IRS Pre-Approved Program (pre-approved plan) offered by the same provider, and that section 202 was intended to provide this type of business structure with annual reporting cost efficiencies similar to those that MEPs and pooled employer plans can offer to their participating employers. Accordingly the conditions and reporting requirements in this proposal focus on such arrangements. The Departments solicit public comments on whether the final rule should include other or different conditions for DCG reporting arrangements.

Under the proposed Form 5500 form changes and the DOL's related proposed regulation, and pursuant to the terms of section 202 of the SECURE Act, all of the plans relying on the DCG consolidated return/report must be individual account plans or defined contribution pension plans that have the same trustee and trust(s); the same one or more named fiduciaries; the same plan administrator under ERISA and the Code; the same plan year; and provide the same investments or investment options for participants and beneficiaries. The Departments are providing the following explanations of some aspects of and limitations related to those conditions that are part of the proposal.

With respect to the same trustee requirement, section 403(a) of ERISA provides that, except as provided in ERISA section 403(b), all assets of an employee benefit plan shall be held in trust by one or more trustees. The criteria set forth in ERISA section 403(b) apply to the DCG trustee under the proposal, except, pursuant to the SECURE Act provision there must be only one trustee for all the plans participating in a DCG reporting arrangement. The common trustee must be either named in the trust instrument or in the plan instrument or appointed by a person who is a named fiduciary of the participating plan, and upon acceptance of being named or

appointed, the trustee shall have exclusive authority and discretion to manage and control the assets of the plan, except to the extent that the plan expressly provides that the trustee is subject to the direction of a named fiduciary who is not a trustee (in which case the trustees shall be subject to proper directions of such fiduciary which are made in accordance with the terms of the plan and which are not contrary to ERISA), or authority to manage, acquire, or dispose of assets of the plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA.

The Departments note that, historically, the IRS conditions applicable to many pre-approved plans required that employers who used what was known as a “master” plan were required to use the same trust or custodial account, whereas each employer had a separate trust or custodial account in a “prototype plan.”<sup>21</sup> Under the proposal, the “same trust” requirement for the consolidated report would be satisfied by the same trust structure historically used by employers using “master” plans. Use of sub-trusts of the DCG trust would be permitted, but the proposal would not cover arrangements that allow separate plans to have a separate trust for investments. As discussed in more detail below, part of the reason for this provision stems from considerations related to the establishment of audit requirements for DCG reporting arrangements and the otherwise generally applicable requirement under Title I of ERISA for plans that cover 100 or more participants file with their Form 5500 an audit report of an independent qualified public accountant (IQPA) and the application of Generally Accepted Auditing Standards or GAAS (which ERISA section 103 applies to employee benefit plan audits).

Although, as described above, section 202 of the SECURE Act includes a requirement that the eligible plans must have the same “trustee” as described in section 403(a) of ERISA, the Departments note that it is commonplace for ERISA covered plans to use insurance (*e.g.*,

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<sup>21</sup> See [www.irs.gov/retirement-plans/types-of-pre-approved-retirement-plans](http://www.irs.gov/retirement-plans/types-of-pre-approved-retirement-plans).

individual account plans using variable annuity structures and Code section 403(b)(1) plans) and custodial accounts (*e.g.*, Code section 403(b)(7) plans) as funding vehicles. ERISA section 403(b) includes explicit exceptions to the trust requirement for such plan designs. There is no legislative history for SECURE Act section 202 discussing why the provision was limited to plans with “trustees,” and the Departments do not believe that the SECURE Act section 202 requirement for a “trustee” can be read to include plans without trustees funded by insurance or custodial accounts pursuant to the trust exceptions in ERISA section 403(b). Nonetheless, the Departments specifically solicit comments on whether they should, pursuant to their general regulatory authority, provide a consolidated reporting option for plans that use the same custodial account or insurance policy as the funding vehicle for their plans, and if so, whether special conditions should apply in light of the absence of a trustee or trustees.

With respect to the “same one or more named fiduciaries requirement,” ERISA section 402 provides that every employee benefit plan shall be established and maintained pursuant to a written instrument. Such instrument shall provide for one or more named fiduciaries who jointly or severally have authority to control and manage the operation and administration of the plan. Section 402 of ERISA further provides that the term “named fiduciary” means a fiduciary who is named in the plan instrument, or who, pursuant to a procedure specified in the plan, is identified as a fiduciary (A) by a person who is an employer or employee organization with respect to the plan or (B) by such an employer and such an employee organization acting jointly. The Departments understand that it is customary for the employer/plan sponsor to be a named fiduciary of the employer’s plan. The Departments do not believe the SECURE Act intended that each employer in a group of plans be a named fiduciary of every plan in the group. Accordingly, the proposal would allow for the employer/plan sponsor to be a named fiduciary of each employer’s own plan, provided that the other named fiduciaries under the plans are the same and common to all plans.

The SECURE Act further requires that all the plans have the same administrator as defined in section 3(16)(A) of ERISA and plan administrator as defined in section 414(g) of the Code. Under the proposal, the plans must designate the same person (which could be an entity or organization) as the administrator. In general, under ERISA and the Code the “plan administrator” or “administrator” is the person specifically so designated by the terms of the instrument under which the plan is operated. If an administrator is not so designated, the plan administrator is the plan sponsor, as defined in section 3(16)(B) of ERISA. The Departments do not believe that the default “plan sponsor” provision is workable in this context, and, accordingly, the proposal requires that there be a designated common plan administrator and that the administrator be the same for all the plans relying on the DCG consolidated Form 5500.

The proposal also requires that all the plans provide the same investments or investment options to participants and beneficiaries to be able to rely on the DCG consolidated Form 5500 as satisfying their annual reporting obligation. In the Departments’ view, this requirement in part was intended to allow for appropriate transparency in the consolidated financial information that would be filed by the DCG. To the extent the covered plans had different investments or investment options, much more detailed financial reporting would be needed to provide appropriate oversight and accountability. The Departments also believe that, even absent the proposed “eligible plan assets condition for DCGs,” the SECURE Act’s “same investments or investment options” requirement effectively precludes plans that hold employer securities from participating in a DCG reporting arrangement as well as precluding treatment of brokerage windows as an “investment option” because such investments and investment alternatives would conflict with the investment uniformity objectives of the SECURE Act requirement. The Departments, however, specifically solicit comments on whether the final rule should allow employer securities as an exception to the “same investments or investment options” requirement. The Departments also solicit comments on whether the final rule should allow brokerage windows, self-directed brokerage accounts, and similar features in plans participating

in DCG arrangements, and, if so, what reporting requirements should be applied, e.g., what information should be collected regarding the brokerage windows/accounts, the participants using the brokerage windows/accounts, and the individual assets held by the plans as a result of investments made through brokerage windows/accounts.

Section 202 further provides that a plan not subject to Title I of ERISA can be part of a DCG reporting arrangement if the non-Title I plan and all other plans in the reporting group have the same persons acting as the trustee as defined in ERISA section 403(a), the named fiduciaries as described in ERISA section 402(a), the administrator as defined in ERISA section 3(16)(A), and the plan administrator as defined in Code section 414(g), as applicable. In the Departments' view, this provision was directed at so-called "one-participant" plans required to file the IRS Form 5500-EZ. IRS views the current Form 5500-EZ as providing plan sponsors with a simple and streamlined means to satisfy the annual reporting requirement under section 6058 of the Code. The information being requested on the Schedule DCG for a DCG is almost identical to the information already provided on the Form 5500-EZ, so that the group filing arrangement would not effectively reduce the information a Form 5500-EZ filer would need to provide to IRS in a separate filing. Additionally, the plan administrator will need to file a consolidated Form 5500 (with any required schedules) for the DCG that provides aggregate information for all Form 5500-EZ filers. Presumably, the DCG will require a Form 5500-EZ filer to provide at least as much information as would be required to file an individual Form 5500-EZ. Finally, IRS might incur significant costs and use significant resources if it were to develop a separate group filing arrangement for Form 5500-EZ filers. Before incurring these costs and using these resources, IRS requests comments from interested parties on whether Form 5500-EZ filers are expected to be interested in participating in a DCG structure, including a separate DCG structure only for Form 5500-EZ filers, in light of the lack of burden reduction that a Form 5500-EZ filer would experience by participating in a DCG structure. With respect to the latter, the Departments



request comments on the feasibility of including both ERISA and non-ERISA filers in a single DCG filing, including with respect to the application of the audit requirements under Title I.

## *2. Conditions for Plans to Participate in a DCG Reporting Arrangement*

To be eligible to rely on the proposed alternative method of compliance, the employee benefit plan (1) must have all of its investment assets held in a single trust of the DCG reporting arrangement; (2) the plan must not hold any employer securities at any time during the plan year; (3) at all times during the plan year, the plan must be 100% invested in certain secure, easy to value assets that meet the definition of “eligible plan assets” (see the instructions for line 6a of the Form 5500-SF), such as mutual fund shares, investment contracts with insurance companies and banks valued at least annually, publicly traded securities held by a registered broker dealer, cash and cash equivalents, and plan loans to participants; (4) the plan must be audited by an IQPA or be eligible for the waiver of the annual examination and report of an IQPA under 29 CFR 2520.104-46, but not by reason of enhanced bonding (*see* instructions for line 6b of the Form 5500-SF); and (5) multiemployer plans and MEPs (including pooled employer plans and professional employer organizations (PEOs)) cannot participate in DCG reporting arrangements.

An important aspect of the audit of the DCG trust would be that, in the DOL’s view, the versions of the separate schedules referenced in ERISA section 103(a)(3)(A) and 29 CFR 2520.103-10(b) and 2520.103-2(b) that would be filed as part of the DCG consolidated Form 5500 would be treated as ERISA section 103(b)(3) supplemental schedules for purposes of the required IQPA’s opinion on whether those schedules are presented in conformity with DOL rules and regulations, including the delinquent participant contributions schedule filed by the DCG in connection with line 4a of its Form 5500, Schedule H. The DOL views these conditions as providing important financial accountability and oversight protections while also allowing DCGs to offer annual reporting cost-efficiencies, particularly for the small plans that we believe

SECURE Act section 202 was intended to benefit, that are comparable to those that can be offered by MEPs, including pooled employer plans.

With respect to the audit requirement for large plans participating in a DCG, the DOL understands that under GAAS, it would not be possible to have a consolidated audit of all the participating plans in the DCG reporting arrangement. Rather, under GAAS, each large plan in the DCG reporting arrangement would have to be subject to its own separate audit. By comparison it would be possible, under GAAS, for a DCG reporting arrangement to be subjected to a single audit if it used a single trust for all of the plans covered by the DCG report. Such a “single trust” audit, however, would cover only the trust’s financial statements and would not cover aspects of plan operations and finances that would be covered by a GAAS audit at the plan level. The DOL views an IQPA audit as an important financial transparency and accountability condition for DCG reporting arrangements. Generally, pension plans and funded welfare plans with 100 or more participants are required to have an audit of the plan’s financial statements performed by an IQPA. Under Statement on Auditing Standards No. 136 (SAS 136), *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA*, independent qualified public accountants are required to consider relevant plan provisions that affect the risk of material misstatement for various transactions, account balances, and related disclosures. Areas such as participant eligibility, plan contributions, benefit payments and participant loans are all covered as part of a plan level audit. Additionally, auditors are required to communicate reportable findings to the plan that are identified during the audit of the plan. For example, it has been the DOL’s experience that plan audits lead to increased reporting of prohibited transactions, such as identifying and disclosing delinquent participant contributions.

An audit of a trust, such as a DCG trust, does not have similar requirements. In a trust audit, the line items on the trust’s financial statement are audited, but because the underlying participating plans themselves are not audited, compliance with the provisions of the plans that

are invested in and funded by the trust are not audited. Therefore, in a trust audit, the amount of contributions received by the trust might be tested against the contributions remitted by participating plans, but, whether those contributions amounts remitted are in accordance with the individual plan provisions would not be tested, as they would be tested in an audit of the plan. There could be undisclosed, material errors in the amount of contributions remitted to the trust versus what should have been remitted. Similarly, in a trust audit, the benefit payments to participants might be tested in terms of amounts paid and whether they were authorized, but whether those were in compliance with plan provisions, such as vesting provisions, would not be tested as they would be tested in a plan's audit. In a plan audit, participant data is tested. Participant data testing involves determining whether employees are properly included or excluded from participating and whether the census data upon which eligibility for certain contributions and distributions are made is accurate. The audit of a trust would not test this at all. Finally, the materiality threshold for a trust audit could be significantly higher than that which would apply in the case of an individual participating plan because the trust threshold would be based on total assets in the trust rather than assets in each individual plan. After carefully considering these issues, the Departments decided to propose that a large plan that elects to participate in a DCG must continue to be subject to an IQPA audit and that the audit report for the plan would have to be filed with the consolidated Form 5500 of the DCG reporting arrangement.

The DOL acknowledges that at least some of these considerations could be applied to small plans participating in the DGC arrangement. While the DOL did not believe it would be appropriate to relieve from the IQPA audit requirement those large plans currently subject to the audit, it also did not believe that it would be appropriate to require small plans that are not currently required to have an IQPA audit to have such an audit as a condition of participating in a DCG reporting arrangement. Rather, in light of the fact that DCG reporting arrangements would be consolidating the assets of many unaffiliated small plans under the control of a single trustee

in a single trust, and the DOL's understanding that such a trust could be subject to a single GAAS audit, the DOL is proposing that the DCG trust be audited by an IQPA as a way of adding protections for funds aggregated in the DCG trust. The DOL notes that this structure has some parallels to the current reporting alternative for group insurance arrangements (GIAs) under 29 CFR 2520.103-2, another type of DFE that files the Form 5500 Annual Return/Report on behalf of participating welfare benefit plans. The need for more information for DCGs than for GIAs is due to the difference between retirement and welfare plans, including the respective requirements under the Code, and also due to the fact that GIAs must provide welfare benefits fully through insurance.

DOL further acknowledges that, under the proposal, for plans to be able to satisfy their annual reporting obligation by relying on the Form 5500 filing by a DCG reporting arrangement, the plans would have to be 100% invested in eligible plan assets as defined in the Form 5500-SF instructions.

Accordingly, plan assets in the DCG trust would, by definition, be held by regulated financial institutions, including banks or similar financial institutions and insurance companies, and may qualify for limited scope audit treatment in accordance with ERISA section 103(a)(3)(C). Thus, even for large plans, the investment assets certified by those financial institutions/insurance companies would not be audited, and the auditor would not be performing valuation work on the assets covered by the bank or insurance company certifications. Although that may diminish some aspects of the IQPA requirement for large plans in DCG reporting arrangements, the DOL did not believe that it would be appropriate to propose that large plans be precluded from participating in a DCG unless the plan disclaimed reliance on the limited scope audit provisions in ERISA section 103(a)(3)(C) and had a full scope audit performed.

The DOL further expects that, because all of the investments held in the DCG's single trust would be the subject of the DCG audit, it is likely that to reduce expenses the DCG

reporting arrangement and the participating large plans would engage the same auditor to perform the audits of the DCG trust and any individual large plans participating in the DCG reporting arrangement. Alternatively, to the extent the individual plans engage different auditors, the DOL expects that the use of reports issued under Statement on Standards for Attestation Engagements No. 16 (SSAE 16) may permit the individual plan auditors to use those reports for the DCG trust to reduce their own audit work on the trust as part of the individual plan audit. The same rules for determining whether an individual plan is required to file as a large plan would apply to the plans within a DCG, including the “80 to 120” transition rule at 29 CFR 2520.103-1(d). Similarly, if finalized, the proposed change on using participants with account balances, rather than all eligible participants, to determine small plan status for general annual reporting purposes also would apply.

With respect to the condition prohibiting multiemployer plans and MEPs from being part of DCG reporting arrangements, the Departments do not believe that section 202 of the SECURE Act was focused on allowing groups of multiemployer plans or MEPs, which already file a single Form 5500 that covers all of the employers that participate in the plan, to file a single consolidated Form 5500 covering the group of multiemployer plans or MEPs. The Departments are also concerned that allowing a single consolidated Form 5500 in the case of such plans, for example, a group of multiemployer section 401(k) plans, could result in an undesirable reduction in transparency and financial accountability. Further, creating a consolidated report for such groups of plans would likely be much more complicated and costly than what is being proposed in this document. Nonetheless, the Departments acknowledge that such a limitation is not expressly set forth in section 202 of the SECURE Act, and, accordingly, solicits public comments on whether the final rule should include multiemployer plans and MEPs, and if so, what conditions should apply to DCG reporting arrangements that would include such plans.

### *3. Content Requirements for DCG Form 5500*

The proposal also sets forth the content requirements for the consolidated Form 5500 return/report filed by the DCG reporting arrangement. Under the proposal, DCGs would not be permitted to file a Form 5500-SF. Rather, DCG reporting arrangements would be required to file a Form 5500 Annual Return/Report that includes largely the same information that large pension plans and other DFEs are generally required to file, except that a DCG reporting arrangement would also be required to include in its annual report a proposed Schedule DCG (described below) to report individual participating plan information for each plan that is a part of the DCG reporting arrangement. Specifically, the content of the DCG annual return/report would include a Form 5500 Annual Return/Report of Employee Benefit Plan and any statements or schedules required to be attached to the form for such entity, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule C (Service Provider Information), Schedule D (DFE/Participating Plan Information), Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), Schedule R (Retirement Plan Information), Schedule DCG (Individual Plan Information), schedules described in §2520.103-10(b)(1) and (b)(2), an IQPA audit report and the related financial statements covering the DCG trust, and, for DCG consolidated Form 5500 filings that are intended to cover large plans (generally those with 100 or more participants), an IQPA audit report and the related financial statements attached to the Schedule DCG for each such individual large plan. Financial statements include the financial statements of the trust, the notes to the financial statements and the schedules described in paragraph (b)(1) of §2520.103-10.

Information reported on the various schedules to the Form 5500, other than the proposed Schedule DCG, would be reported in the aggregate. Thus, a Schedule A would be required for all insurance contracts that constitute one of the investments or investment alternatives available to all of the participants in a plan, regardless of whether certificates were to be issued to individual plans or participants upon selection of that option by a participant. The fees and commissions paid with respect to any insurance contracts available for investment by any of the

plans/participants would be reported on the Schedule A. Similarly, a service provider to the trust and to each of the plans would be reported on Schedule C, even if the service provider did not actually provide services or charge fees to a particular plan because, for example, the service provider provided investment management services with respect to a particular investment option that was not selected by any of the participants in a particular plan. The \$5,000 threshold would be based on the total amount received by the service provider. Reporting on Schedule C would still be required if the total amount was \$5,000 or more, even if the amount paid by or charged against the assets of each the participating plans was less than \$5,000 per plan. Reportable transactions on Schedule G would include any involving the assets of the trust and any parties in interest with respect to the trust. For reporting delinquent participant contributions on Schedule H, Line 4a, the Agencies would expect the DCG filing the annual report to identify the delinquent participating employer in the attachment already required in the instructions.

The Departments expect that cost savings for plans relying on a DCG filing compared to plans filing separately would generally only begin to emerge when the DCG collectively exceeds an aggregate participant count of 100 participants. In other words, the Departments do not expect a DCG filing to provide meaningful cost savings for plans, as compared to filing their own annual report, in the case of DCG arrangements with an aggregate participant count of under 100 participants. Rather, the Departments expect in such cases that the individual plans would likely qualify for filing the Form 5500-SF and that they would likely find it more cost effective to file their own separate Form 5500-SF.<sup>22</sup> Accordingly, this proposal does not include an option under which such a “small” DCG could file as a small plan filer. The Departments solicit comments on whether stakeholders expect there to be “small” DGCs, whether a “small” DCG alternative should be made available, and what the content requirements for such an

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<sup>22</sup> Section III.A.1 of this preamble discusses the Departments’ view that creating a consolidated group filing for employers required to file a Form 5500-EZ is similarly unlikely to generate administrative efficiencies for those employers, as compared to continuing to file separately.

alternative should be, *e.g.*, whether the content of the “small” DCG annual return/report should include Schedule I instead of Schedule H, whether it should include the IQPA audit report and/or the schedules of assets, and whether it should include the Schedule C.<sup>23</sup>

#### *4. Proposed Schedule DCG (Individual Plan Information)*

Section 202(b) of the SECURE Act specifically provides that IRS and DOL may require the consolidated Form 5500 return/report filed by the DCG reporting arrangement to include any information regarding each plan in the group as IRS and DOL may determine necessary or appropriate for the enforcement and administration of the Code and ERISA. The proposed Schedule DCG would contain the plan level information needed by the IRS for administering and enforcing tax laws passed by Congress and by the DOL for important Title I oversight functions, particularly with respect to large plans. A separate Schedule DCG would be required to be completed for each individual plan, similar to the requirement to complete a separate Schedule A for each insurance contract held by a plan or DFE filing the Form 5500. IRS examines individual plans, not groups of plans, to ensure that plan sponsors and/or employers comply with the tax laws governing retirement plans, and to help protect the retirement benefits of participants and beneficiaries. Thus, IRS requires information with respect to a plan’s qualification, financial condition, and operation on a separate basis for each plan filing as part of a DCG. Individual plan financial information already reported on the Form 5500-SF is important for the DOL to continue to ensure that participants and beneficiaries of the individual

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<sup>23</sup> Since the aggregate participant count of the entire DCG would be less than 100, there could be no “large plans” participating in such a “small” DCG so the issue of an individual audit for a participating large plan would not arise.



plans participating in a DCG receive their promised benefits. The proposed Schedule DCG includes:

- Part I- DCG name and EIN/PN modeled on the similar plan-level information on other schedules to the Form 5500. Information in Part I must match the DCG information reported on Part II of the consolidated Form 5500.
- Part II- confirmation that the plan for which the Schedule DCG is being filed is a single employer plan (as noted above, MEPs and multiemployer plans may not participate in a DCG under the proposal) and, if applicable, identification of the plan as a collectively bargained plan.
- Part III- basic individual plan information, including the plan name, plan number, plan effective date, plan sponsor's name and address, plan sponsor's EIN, plan sponsor's telephone number, plan sponsor's business code, total number of participants, total number of active participants, number of participants with account balances, and number of participants who terminated employment during the plan year with accrued benefits that were less than 100% vested.
- Part IV- plan financial information, including total plan assets (including participant loans), total plan liabilities, net plan assets, contributions received or receivable in cash from the employer, participants, and others; noncash contributions and, total contributions; benefit payments, corrective distributions, and certain deemed distributions of participant loans, direct expense information, net income, and assets transferred to (from) plans.
- Part V- two-digit boxes for entry of all applicable codes in the List of Plan Characteristics Codes in the instructions to the Form 5500.
- Part VI- compliance questions relating to delinquent participant contributions, plan assets/liabilities transferred from the plan, indication of whether the plan is a defined

contribution plan subject to section 412 of the Code, plan coverage and nondiscrimination information, and whether a plan is a pre-approved plan that received a favorable IRS Opinion Letter.

- Part VII- questions for large plans (generally plans covering 100 or more participants as of the beginning of the plan year) regarding the required individual IQPA report and financial statements that must be filed with the Schedule DCG filed for the participating large plan.

## **B. SECURE Act Section 101 Amendment to ERISA Section 103(g) Participating Employer Information**

### *1. Participating Employer Reporting Under ERISA Section 103(g)*

As discussed above, section 103(g) of ERISA, which was added to ERISA by the Cooperative and Small Employer Charity Pension Flexibility Act (CSEC Act) in 2014,<sup>24</sup> requires multiple employer plans to include with their annual reports “a list of participating employers” and, with respect to each participating employer, “a good faith estimate of the percentage of total contributions made by such participating employers during the plan year.” The DOL issued an interim final rule on November 10, 2014, which implemented the section 103(g) reporting requirements by requiring filers that check the “multiple employer plan” box on the face of the Form 5500 or the Form 5500-SF, and to attach a list of participating employers and a good faith estimate of the percentage of total contributions made by each participating employer during the plan year.<sup>25</sup> The 2014 interim final rule and the corresponding instructions further provided that unfunded or insured multiple employer welfare plans that are exempt under 29 CFR 2520.104–44 from filing financial statements with their annual report must attach a list of participating employers, but do not have to include an estimated amount of contributions from each

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<sup>24</sup> Pub. L. No. 113-97 (Apr. 7, 2014).

<sup>25</sup> 79 FR 66617 (Nov. 10, 2014).

employer.<sup>26</sup> Pursuant to the interim final rule, the section 103(g) reporting change became effective with the 2014 Form 5500 Annual Return/Report forms. The 2016 proposal on modernization of the Form 5500 included a proposal to finalize these changes.<sup>27</sup>

The DOL received four comments on the interim final rule and six additional comments in connection with the Paperwork Reduction Act (PRA) notice associated with the publication of the interim final rule.<sup>28</sup> In addition, two comments on the 2016 proposal related to the proposal to finalize the 2014 interim final rule.<sup>29</sup> The central concerns of most of the commenters was that filing the participating employer list imposes material costs and burdens on multiple employer plans and that making the employer list public was not in the best interests of plan participants and beneficiaries. One commenter suggested that the DOL should not apply the section 103(g) reporting changes to defined contribution or welfare plans because ERISA section 103(g) was added as part of the CSEC Act, which generally focused on ERISA minimum funding requirements that are not applicable for the majority of defined contribution pension plans or to any group health and welfare plans. In the 2016 proposed rule as well as in the Field Assistance Bulletin No. 2019-01,<sup>30</sup> DOL stated its position that it believes the section 103(g) reporting requirements adopted by the 2014 interim final rule, which apply the new requirements to all multiple employer plans (defined benefit pension plans, defined contribution plans, and welfare plans), are a reasonable and appropriate way to implement Congress' directive in the CSEC Act. The information has proven useful to the DOL for its oversight functions for both MEPs and those MEWAs that file the Form 5500, regardless of the types of benefits provided by the MEWA. Before the DOL finalized the section 103(g) reporting requirements, the SECURE

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<sup>26</sup> See, e.g., 2020 Form 5500 instructions at 14; see also 2020 Form 5500-SF instructions at 8-9.

<sup>27</sup> 81 FR 47534, 47564-47565.

<sup>28</sup> See Proposed Extension of Information Collection Request Submitted for Public Comment; Revisions to Annual Return/Report – Multiple Employer Plans, 79 FR 66741 (Nov. 10, 2014).

<sup>29</sup> Comments are available on the DOL's website.

<sup>30</sup> In 2019, the DOL issued Field Assistance Bulletin No. 2019-01, which provided transition relief for MEPs that failed to file a complete and accurate participating employer information with their Form 5500 Annual Return/Report for the 2017 and prior plan years.

Act was enacted, which amended the original language in ERISA section 103(g), reaffirming that MEPs, including association retirement plans, PEOs, and the newly created pooled employer plans would have to report not just the existing identifying information, but also new financial information.

Specifically, section 101 of the SECURE Act amended ERISA section 103(g) by providing that annual reports for “any plan to which [ERISA] section 210(a) applies (including a pooled employer plan)” must include (1) a list of participating employers in the plan, a good faith estimate of the percentage of total contributions made by such participating employers during the plan year, and the aggregate account balances attributable to each employer in the plan (determined as the sum of the account balances of the employees of such employer (and the beneficiaries of such employees)); and (2) with respect to a pooled employer plan, identifying information for the person designated under the terms of the plan as the pooled plan provider. Although the SECURE Act added a specific reference to ERISA section 210(a), DOL believes that this reference was meant to emphasize that defined contribution multiple employer pension plans and different types of MEPs that became more accessible in recent years, such as association retirement plans, professional employer organization plans (PEOs), and the newly created pooled employer plan are required to comply with the participating employers reporting requirements, and not just defined benefit pension plans.

The SECURE Act reporting changes are effective for plan years beginning on or after January 1, 2021. In order to implement the SECURE Act reporting requirements on a timely basis, the Agencies are proposing that, for the 2021 plan year, MEPs (including pooled employer plans, association retirement plans, and PEOs) would be required to provide the participating employer information as a nonstandard attachment to the 2021 Form 5500 Annual Return/Report in a similar manner as currently required, and the content of the attachment would be updated to add the aggregate account balances attributable to each participating employer in the plan to the

current requirement to provide identifying information and the percent of contributions by each participating employer. In addition, a MEP that is a pooled employer plan would be required to indicate on the nonstandard attachment for 2021 that it is a pooled employer plan and provide information similar to information required to be reported on a proposed Schedule MEP, as discussed below, for the 2022 and following plan years, including confirming that the entity identified as the plan sponsor and administrator in Part I of the Form 5500 is the pooled plan provider, and providing the ACK ID for the pooled plan provider's most recent Form PR. For the 2022 and following plan years, MEPs would be required to report the participating employer information in a standard format on a proposed new Schedule MEP, as discussed below.

## *2. Participating Employer Reporting for MEWAs*

As discussed above, the SECURE Act amended ERISA section 103(g) by directing the reporting requirements specifically to multiple employer plans subject to ERISA section 210(a). The DOL continues to believe that receiving participating employer information from multiple employer welfare plans is important for oversight of such arrangements and should be continued. Even though the DOL originally relied on ERISA section 103(g) when it added the requirement for all multiple employer plans to provide the participating employer information, there are other rulemaking and reporting authorities that support continuing the reporting requirement for multiple employer welfare plans and extending it to non-plan MEWAs that file the Form M-1 (Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Other Entities Claiming Exception (ECEs) (Form M-1).

Based on the authority in ERISA sections 101(g), 505, and 734, the DOL in 2003 promulgated a regulation at 29 CFR §2520.101-2 that required the administrators of both multiple employer welfare plans and non-plan MEWAs that offer or provide coverage for medical benefits to file the Form M-1 on an annual basis (Form M-1 annual report) as well as upon occurrence of certain registration events (Form M-1 registration filing). Effective for plan

years beginning on or after January 1, 2022, DOL is proposing to require MEWAs (plan and non-plan MEWAs) that offer or provide coverage for medical benefits to provide the participating employer information on the Form M-1 and not as an attachment to the Form 5500 Annual Return/Report. Specifically, new questions would be added to Form M-1 requiring MEWAs (plan and non-plan MEWAs) that offer or provide coverage for medical benefits to identify each participating employer in the MEWA by name and EIN and provide a good faith estimate of each participating employer's percentage of the total contributions made by all participating employer during the plan year. However, similar to the 2014 interim final rule issued under ERISA section 103(g), the Form M-1 proposal does not require contribution information from unfunded or insured MEWAs. Furthermore, the Form M-1 proposal would require contribution information on the Form M-1 annual report filing but not the Form M-1 registration filing. The DOL specifically solicits comments on whether the final rule should require participating employer information on only the annual Form M-1 filing, and not on other M-1 required filings, in light of the fact that only annual information is required for plans reporting participating employer information on the Form 5500.

With respect to multiple employer welfare plans that do not offer or provide coverage for medical benefits, and thus are not required to file a Form M-1 (for example, life or disability benefits), section 103 of ERISA provides the DOL with the authority to require the plan administrator to furnish, as part of the Form 5500 annual report, the "name and address of each fiduciary." *See* ERISA section 103(c)(2). In the DOL's view, the employer is acting as a fiduciary with respect to its decision to provide ERISA-covered benefits through a MEWA rather than through a single employer plan and also is a fiduciary for purposes of continuing to monitor the plan that it adopted.<sup>31</sup> Accordingly, the DOL is relying on ERISA section 103(c)(2) as its

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<sup>31</sup> *See* Advisory Opinion Letter 2007-06A (Aug. 16, 2007) ("decisions regarding the method through which benefits are to be paid under an employee welfare benefit plan, including the selection of an insurer and the negotiation of the terms of any contractual arrangement obligating the plan, are matters that generally are subject to the fiduciary

authority for requiring multiple employer welfare plans (other than those that file the Form M-1) to continue reporting the participating employer identifying information, and unless unfunded or insured, a good faith estimate of each participating employer's percentage of the total contributions made by all participating employer during the plan year.<sup>32</sup> As is currently required for such plans, the information would continue to be filed as an attachment to the Form 5500 Annual Return/Report. MEWAs, however, whether those reporting on the Form 5500/Form 5500-SF or the Form M-1, would not be required to provide the new aggregate account balances information that was added by the SECURE Act to section 103(g).

For the 2021 plan year, pending the implementation of the Form M-1 changes, all plan MEWAs would continue to provide participating employer information as a nonstandard attachment to the 2021 Form 5500 Annual Return/Report in a similar manner as currently required.

The proposal, by transferring the participating employer information from the Form 5500 Annual Return/Report to the Form M-1 for MEWAs that offer or provide coverage for medical benefits and continuing to require reporting of participating employer information on the Form 5500 Annual Return/Report for plan MEWAs that provide other benefits, would enable the DOL to receive such information from both plan and non-plan MEWAs, regardless of how they are funded or structured. The DOL and other users of the Form M-1 data (e.g., state insurance regulators) would have access to updated and current lists of participating employers because the

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responsibility provisions of Title I of ERISA"); Information Letter to Diana Ceresi (Feb. 2, 1998) ("when the selection of a health care provider involves the disposition of employee benefit plan assets, such selection is an exercise of authority or control with respect to the management and disposition of the plan's assets within the meaning of section 3(21) of ERISA, and thus constitutes a fiduciary act..."); *See also* Advisory Opinion Letter 2018-01A (Nov. 5, 2018) (In the context of a pension plan rollover service provider, not covered by Title 1 of ERISA, "When plan sponsors or other responsible fiduciaries choose to have a plan participate in the RCH Program, they are acting in a fiduciary capacity, and would be subject to the general fiduciary standards and prohibited transaction provisions of ERISA in selecting and monitoring the RCH Program.")

<sup>32</sup> Similar to the 2014 interim final rule issued under ERISA section 103(g), such multiple employer welfare plans that are unfunded or insured and exempt under 29 CFR 2520.104-44 from filing financial statements with their annual report will continue to be required to attach a list of participating employers, but do not have to include the contribution information. *See, e.g.*, 2020 Form 5500 instructions at 14; *see also* 2020 Form 5500-SF instructions at 8-9.

Form M-1 must be filed annually as well as upon the occurrence of certain registration events (30 days prior to MEWAs operating in any state or expanding their operations into an additional state; and within 30 days of a merger, material change, or a participant increase of 50% or more).

**C. Proposed Form 5500-Schedule MEP (Multiple Employer Pension Plan Information) and Requirement that MEPs (including Pooled Employer Plans) file the Form 5500 and not the Form 5500-SF**

The proposal would add a new Schedule MEP (Multiple Employer Pension Plan Information) to the Form 5500 Annual Return/Report that would be completed by MEPs. The proposal also would add a limited number of additional data items elsewhere on the Form 5500 relevant to MEPs. The proposed Schedule MEP would provide a unified vehicle to report information related to new SECURE Act provisions, including information unique to MEPs. The first section, Part I, like the other schedules to the Form 5500, would require filers to enter identifying information (which must match the information entered on the Form 5500) and to indicate the plan type by checkbox. The instructions would provide general definitions for purposes of annual reporting for the various categories of pension plans that must complete the Schedule MEP. This would include different types of MEPs (group or association retirement plans within the meaning of 29 CFR 2510.3-55(b) (association retirement plans), professional employer organization plans within the meaning of 29 CFR 2510.3-55(c) (PEO plans), pooled employer plans within the meaning of ERISA section 3(43), and other MEPs covering the employees of two or more employers that are not single or multiemployer plans for annual



reporting purposes). Multiemployer plans, as defined under section 3(37) of ERISA, would not be required to complete the Schedule MEP.<sup>33</sup>

Part II of the proposed Schedule MEP would be a repeating line item on which all MEPs would report information under ERISA section 103(g) regarding participating employers, including employer/plan sponsor name, EIN, and the percentage of total contributions to the plan or arrangement by each participating employer, and the aggregate account balances information the SECURE Act added to ERISA section 103(g).<sup>34</sup> That information is currently collected for MEPs as a non-standard attachment to the Form 5500 and Form 5500-SF.<sup>35</sup> Pursuant to the SECURE Act, a new data element would be added to require reporting of the aggregate account balances for each participating employer in the MEP.

Part III would be completed by pooled employer plans. A pooled employer plan would be required to indicate whether the pooled plan provider operating the plan (identified on the Form 5500 for each of the pooled employer plans it operates as both the plan sponsor and the plan administrator) has complied with the registration requirements for pooled plan providers under section 3(43) and 3(44) of ERISA by filing a Form PR, in accordance with that form's instructions.<sup>36</sup> The pooled employer plan would be required to provide the "ACK ID"—the acknowledgement code generated by the system in response to a completed filing—for the most recent Form PR submitted.<sup>37</sup> Pooled employer plans would also be required to indicate whether certain services were provided by an affiliate, and, if relying on a prohibited transaction

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<sup>33</sup> Multiemployer defined pension benefit plans are required to provide, on Form 5500, Schedule R (Retirement Plan Information), identifying information and the percentage of contributions for those plans that are five percent or more contributors for the plan year being reported.

<sup>34</sup> As discussed above, MEWAs would report the participating employer information either as an attachment to the Form 5500 or on the Form M-1.

<sup>35</sup> The total contributions are the amount reported on Form 5500, Schedule H, line 2(a)(3) or the total of lines 8a(1), 8a(2), and 8a(3) on the Form 5500-SF.

<sup>36</sup> See Form PR and its instructions, available at [www.efast.dol.gov](http://www.efast.dol.gov).

<sup>37</sup> The instructions to the Form PR advise the pooled plan provider that it must keep, under section 107, the electronic receipt for the Form PR filing as part of the records of the pooled employer plans operated by the pooled plan provider.

exemption for the use of an affiliate, to identify the prohibited transaction (whether a class or individual) exemption.

The DOL, through rules and other initiatives, has pursued and required improvements in fee transparency to ensure that ERISA plan fiduciaries and plan participants are effectively informed about service provider fees and expenses, including cost and performance information of designated investment alternatives under the plan. These considerations are particularly important in the case of pooled employer plans and MEPs given their structure and the roles that traditional service providers end up playing as plan sponsors and plan administrators. Accordingly, comments are specifically solicited on whether more specifically tailored questions should be added, in addition to those already on the Schedules C and H, to report fee and expense information on pooled employer plans and other MEPs, including information on how fees and expenses are allocated among participating employers and among covered participants and beneficiaries.

Further, the proposal would require all MEPs, similar to the current rule for multiemployer plans and the proposed rule for DCGs, to file the Form 5500 regardless of whether they would otherwise be eligible to file the Form 5500-SF. Making the filings across plan types more uniform would enable more consistent and informed oversight of collective retirement arrangements. Small MEPs would have the same simplified Form 5500 reporting as small pension plans, including MEPs, that currently file the Form 5500. They would be able to file the Schedule I instead of the Schedule H and its financial attachments, would not be required to complete the Schedule C or Schedule G, and would be able to file without having an IQPA audit and attaching an IQPA report.

#### **D. Improving Usability of Data Collection for Schedule H, Line 4i Schedules of Assets**

By their nature, MEPs have the potential to build up a substantial amount of assets quickly and the effect of any abusive schemes on future retirement distributions may be hidden or difficult to detect for a long period. The DOL is aware that MEPs could be the target of fraud or abuse for this reason. Although DOL is not aware of direct information indicating that the risk for fraud and abuse is greater for MEPs than for other defined contribution pension plans, a key component of the proposal is to make the financial information reported on the Form 5500 Annual Return/Report more data mineable and accessible for enforcement and analysis purposes. The DOL does not believe it would be sensible to limit this aspect of the proposal to just pooled employer plans and other MEPs because, although an important data improvement for MEPs, the need for more relevant and comparable financial information extends to defined contribution and defined benefit pension plans generally. Reports from GAO, the DOL–Office of Inspector General, the ERISA Advisory Council, and the Treasury Inspector General for Tax Administration (“TIGTA”) have focused on the need for increased transparency and accountability generally in connection with employee benefit plan investments in hard-to-value and alternative assets and those held through pooled investment vehicles. It also would be confusing and inefficient to try to adopt these kinds of financial reporting improvement just for MEPs or for certain types of MEPs.

Mandatory e-filing, which was implemented for the 2009 form filing year, changed both the regulated community’s and the government’s ability to use the Form 5500 Annual Return/Report data. The data sets developed from e-filing information have been helping researchers, businesses, and other plan professionals.<sup>38</sup> The Form 5500 Annual Return/Report

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<sup>38</sup> EBSA is responsible for collecting the Form 5500 Annual Return/Report, in part, to fulfill the statutory requirements under Sections 104 and 106 of ERISA, which require that DOL make annual reports filed under Title I of ERISA available to the public. EBSA also makes the Form 5500 filings and data available to the public under the Freedom of Information Act (FOIA), 5 U.S.C. §552. EBSA fulfills its responsibilities by making the Form 5500 Annual Return/Report data available for downloading in bulk. See <http://www.dol.gov/ebsa/foia/foia.html>. These bulk data files, which EBSA updates at the end of each month with the Form 5500 Annual Return/Report data collected during that month, are downloaded by private-sector organizations that, in some cases, also make the data available on the Internet. Thus, most returns/reports are currently open to public inspection, and the contents are public information subject to publication on the Internet.

data sets can be one of the major building blocks for a private organization to use in developing information for employees and employers on plan administration. Currently, however, the line 4i attachments to Schedule H (Schedule of Assets Held at End of Year, Schedule of Assets Acquired and Disposed of Within Year and the Schedule of Reportable Transactions) are difficult to search, filter, aggregate, and analyze because they are not filed in a standardized electronic format. As a result, the Agencies, policymakers, employers, labor organizations, participants and beneficiaries, and the public have difficulty accessing key information about plan investments. This proposal to establish a standardized electronic filing format for the Schedule H, line 4i Schedules of Investments is also intended to be responsive to the OIG's recommendation that the Agencies create a searchable reporting format for the Schedule H, line 4i Schedules of Assets and otherwise increase the accessibility of Form 5500 Annual Return/Report information, particularly information on hard-to-value assets and multiple-employer plans. See *DOL-OIG EBSA Needs to Provide Additional Guidance and Oversight to ERISA Plans Holding Hard-To-Value Alternative Investments*, at 17. See also *Private Pensions: Targeted Revisions Could Improve Usefulness of Form 5500 Information*, at 37; see also *U.S. Gov't Accountability Office, GAO-12-665, Federal Agencies Should Collect Data and Coordinate Oversight of Multiple Employer Plans* (2012), at 30.

Schedule H, line 4i would be separated into two elements—line 4i(1) would ask whether the plan held assets for investment at the end of the year; line 4i(2) would ask about assets acquired and disposed of during the plan year. The information to be collected as part of the schedules would be largely unchanged, but some adjustments are being proposed to improve the consistency and quality of the data. The proposal clarifies conventions for identifying filers by name and identifying number(s).<sup>39</sup> The proposal would require plans to use legal entity and

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<sup>39</sup> These changes are also intended to address concerns raised by the GAO in recommending that “the Agencies develop a central repository for EIN and Plan Numbers (PNs) for filers and service providers to improve the comparability of form data across filings.” *GAO Private Pensions: Targeted Revisions Could Improve Usefulness of Form 5500 Information*, at 37.

other industry and regulatory identifiers for investment assets whenever possible. Check boxes are also being added for participant directed individual account plans to identify investments that are designated investment alternatives and qualified default investment alternatives and to require entry of the total annual operating expenses for the investments expressed as a percentage of assets that was furnished to participants and beneficiaries in their most recent “404a-5 statement.”<sup>40</sup> With the expected increase in employers choosing to offer retirement benefits through MEPs and DCGs, instead of stand-alone plans that file their own annual return/report, and the requirement for DCGs to provide the same investments and investment alternatives, these changes are intended to help the Agencies, employers, and other interested stakeholders compare plan participation, investment options, and investment performance from year-to-year.

## **E. Schedules MB, SB and R – Proposed Modifications and Additions to Information Reported**

As described more fully below, the Agencies propose adding new questions to the Form 5500 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), and modifying the demographic and benefit attachment requirements to enable the Agencies to project more precisely defined benefit pension plans’ and insurance programs’ liabilities. Also for multiemployer defined benefit pension plans, among other changes, the Agencies propose identifying a larger number of

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<sup>40</sup> See 29 CFR 2550.404a-5. The DOL published a final rule in 2012 that was designed to help America’s workers manage and invest the money they contribute to their 401(k)-type pension plans. The rule requires that workers in this type of plan are given, or have access to, the information they need to make informed decisions, including information about fees and expenses; the delivery of investment-related information in a format that enables workers to meaningfully compare the investment options under their pension plans; that plan fiduciaries use standard methodologies when calculating and disclosing expense and return information so as to achieve uniformity across the spectrum of investments that exist among and within plans, thus facilitating “apples-to-apples” comparisons among their plan’s investment options; and a new level of fee and expense transparency. Requiring the total annual operating expenses from those statements to be included on the plan’s Form 5500 is intended to help further that objective by allowing third-party data aggregators to build tools that will help employers, participants and beneficiaries, the Agencies, and other interested members of the public evaluate and monitor investment alternatives being made available for America’s workers to save to their retirement.

contributing employers. For both single-employer and multiemployer defined benefit pension plans, the Agencies propose the option to provide certain required attachments in a spreadsheet file to make it easier for the Agencies to access the information.

*1. Schedule MB Modifications*

Currently, Schedule MB requires that if any of the employer contributions reported in line 3 include amounts owed for withdrawal liability, an attachment must be provided listing the total withdrawal liability amounts and the dates such amounts were contributed. The Agencies propose modifying the line 3 instructions to require an attachment that breaks down the total withdrawal liability amounts by date, separately specifying the periodic withdrawal liability amounts and lump sum withdrawal liability amounts.

Currently, line 6 of Schedule MB requires filers to provide information about the actuarial assumptions used to determine plan liabilities. The Agencies propose adding a new requirement for plans that assess withdrawal liability to an employer during the plan year to report the interest rate used to determine the present value of vested benefits for withdrawal liability determinations. This information would be reported in a new line, which would become line 6f. In addition, the Agencies propose modifying the questions related to the line 6 “expense load” to better align with the various ways multiemployer plans incorporate expense loads into their calculations. Filers would be required to indicate if an expense load is included in normal cost and, if so, whether it is determined as a percentage of normal cost, a dollar amount that varies from year to year, or something else. As part of the modification, the Agencies propose moving the expense load from line 6e to a new line 6i and to revise the instructions accordingly.

In addition, the Agencies propose modifying line 8 of Schedule MB by requiring additional information about demographics, benefits, and contributions as described below. As is the case currently with respect to line 8, these requirements would apply only to PBGC-

insured multiemployer plans with 500 or more total participants as of the beginning of the plan year.

- *Benefit Projections* - Currently, such plans are required to attach a projection of benefits expected to be paid in each of the next ten years (see line 8b(1)).<sup>41</sup> The Agencies propose modifying the format of the attachment to show the benefit projection broken down into three categories based on the participant's or beneficiary's status on the valuation date (i.e., active, terminated vested, in pay status). In addition, the projection period would be extended from 10 to 50 years. It is the Agencies' understanding that almost all valuation software automatically generates these numbers and that it takes the same amount of effort to project 50 years as it does to project 10 years.
- *Contribution Projections* - The Agencies propose adding a new requirement that such plans provide, as an attachment, a 10-year projection of employer contributions and withdrawal liability payments. A new line, line 8b(3), would be added to Schedule MB where the filer would report whether the projection is required. As is the case with the benefit projection attachments, the instructions would provide the required format for the attachment.
- *Average age/benefit* - The Agencies propose requiring such plans to report the average age and average monthly benefit separately for terminated vested participants and retired participants and beneficiaries receiving payments. This information would be provided directly on Schedule MB, in new line 8b(4).

The Agencies also propose a change to the “age/service” scatter attachment which is currently required for PBGC-insured multiemployer plans with active participants, regardless of the number of participants. Currently, the scatter shows, for each “attained age” and “years of

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<sup>41</sup> The current instructions provide that the line 8b(1) attachment is required for plans with 500 or more participants as of the valuation date, not as of the beginning of the plan year. The Agencies are proposing to change that to “the beginning of the plan year” because the only participant count reported on Schedule MB is the count at the beginning of the plan year (i.e., line 2b(3)(c), column 1) and because doing so is consistent with another Schedule MB requirement, See instructions for line 8b(2).

credited service” grouping of active participants, the number of active participants, and if the total number of active participants at the beginning of the plan year is 1,000 or more, (1) for plans that use compensation to determine benefits, the average compensation, and (2) for cash balance plans, the average cash balance account (see line 8b(2)). The Agencies propose modifying the age/service scatter by deleting the required information related to cash balance plans and adding a requirement to report average accrued monthly benefits as of the valuation date for each grouping (for plans with 1,000 or more active participants at the beginning of the year). As is the case with respect to average compensation, the accrued benefit information would not be required for any age/service combination that contains fewer than 20 participants.

The Agencies also propose clarifying the line 4f instructions and Schedule language concerning when (or if) plans in critical status or critical and declining status are projected to emerge or become insolvent, as filers’ previous responses indicate they may have been confused as to how to fill out line 4f correctly.

## *2. Modifications to Schedule SB*

The Agencies propose making the Schedule SB (actuarial schedule), line 26 reporting requirements about demographics and benefits similar to the requirements for PBGC-insured multiemployer plans. Consistent with the requirements for PBGC-insured multiemployer plans, the new single-employer plan requirements would apply only to plans with 500 or more total participants. However, because the only participant count information reported on Schedule SB is as of the valuation date, for single-employer plans, participants are counted as of the valuation date for this purpose instead of as of the beginning of the plan year. Such plans would be required to attach a projection of benefits expected to be paid in each of the next 50 years broken down into three categories based on the participant’s or beneficiary’s status on the valuation date (i.e., active, terminated vested, in pay status). The instructions would provide the requirements for the attachment’s format. The Agencies are also proposing that these plans report the average



age and average monthly benefit separately for terminated vested participants and retired participants and beneficiaries receiving payments. As discussed above, the Agencies do not believe the benefit projection requirement would be burdensome for such single-employer plans, as almost all valuation software automatically generates these numbers.

To facilitate these changes, the Agencies propose rearranging Schedule SB line 26. Currently, line 26 relates only to the “age/service” scatter of active participant data required to be attached to Schedule SB for PBGC-insured single-employer plans with active participants. The Agencies propose changing line 26 into a three-part question (26a, 26b, and 26c). Line 26a would be the current line 26. New line 26b would require PBGC-insured single-employer plans with 500 or more total participants as of the valuation date to attach a projection of expected benefit payments. New line 26c would be the line for plans to report average age and average monthly benefit information.

The Agencies propose modifying Part IX of the Schedule SB, and its instructions, so that it relates to elective funding relief provided under the American Rescue Plan (ARP) Act of 2021 instead of elective funding relief provided under the Pension Relief Act of 2010 (PRA 2010). The PRA 2010 information is no longer needed because the ARP Act reduces to zero all shortfall amortization bases, including amortization bases established pursuant to the PRA 2010 elective funding relief. As modified, plan sponsors of single-employer defined benefit plans that elect to have the ARP Act extended amortization rule apply before the 2022 plan year would be required to report the first plan year to which the extended amortization rule applies.

### *3. Modification to Schedule R Reporting Requirement*

The Agencies propose modifying Schedule R’s Part V, line 13 requirement that multiemployer defined benefit pension plans subject to minimum funding standards report identifying information about any participating employer whose contributions to the plan

account for more than five (5) percent of the total contributions for the year. The proposed change would require that plans report identifying information about any participating employer who either (1) contributed more than five percent of the plan’s total contributions or (2) was one of the top ten highest contributors. This will ensure that reported data represents a reasonable sampling of contributors.

*4. Change in Format for Certain Schedule MB and SB Attachments*

EFAST filers currently file Form 5500 attachments as PDF and plain text (TXT) files. A PDF file is required only if the attachment is supposed to be signed. TXT attachments are rarely provided. Many attachments include a lot of numbers (e.g., benefit projections, age/service scatters) that are reported in tables. These numbers have to be extracted out of PDF tables and entered into databases or spreadsheets before the Agencies can use the information for various projects, studies, etc. This is costly and inefficient. It would be more efficient for the Agencies if this information was instead provided by filers in a tabular format (spreadsheet). Therefore, the Agencies propose modifying the instructions to allow and suggest (but not require) that certain attachments be provided in a tabular format (spreadsheet) such as CSV or XLS rather than PDF or TXT formats. The attachments affected by this change are:

Attachment	Schedule MB	Schedule SB
Schedule of Projection of Expected Benefit Payments	Line 8b(1)	Line 26b
Schedule of Active Participant Data (i.e., Age/service scatter)	Line 8b(2)	Line 26a
Withdrawal Liability Amounts	Line 3	N/A
Schedule of Projection of Employer Contributions and Withdrawal Liability	Line 8b(3)	N/A

Because much of this information is automatically generated by valuation software, the Agencies expect that this option may simplify the process for preparing attachments as well.

## **F. Internal Revenue Code-Based Questions for the 2022 Form 5500s**

Prior to 2009, Schedule E, ESOP Annual Information, Schedule P, Annual Return of Fiduciary of Employee Benefit Trust, and Schedule T, Qualified Pension Plan Coverage Information, were required as part of the annual return under section 6058(a) of the Code and associated regulations, but they were not information collections of the DOL or the PBGC. Beginning in 2009, DOL mandated electronic filing of Form 5500, Annual Return/Report of Employee Benefit Plan, and Form 5500-SF, Short Form Annual Return/Report of Small Employee Benefit Plan. Limitations on the IRS' authority to require electronic filing of annual returns resulted in the removal of the "IRS-only" schedules from the Form 5500 filing requirements. See Code section 6011(e).

The 2011 report from the TIGTA entitled "The Employee Plans Function Should Continue Its Efforts to Obtain Needed Retirement Plan Information" notes that the lack of information contained on Schedules E, P, and T can negatively impact the IRS's ability to effectively focus on specific factors of noncompliance when selecting retirement plans for examination. This lack of information may result in the IRS selecting relatively compliant plans, which increases the burden on these plans and affects the IRS's ability to identify and focus on potentially noncompliant plans. Additionally, the Employee Plans (EP) function has focused its examination strategy on identifying plans with non-compliance by using compliance strategies and data analysis. Compliance strategies use agents' experience to identify certain types of plans where EP sees numerous qualification failures. EP uses data analysis by identifying certain responses to questions on the Form 5500 that indicate that a plan may be non-compliant.

Rather than reinstating the Schedules E, P, and T, the IRS is proposing to add new questions to the 2022 Form 5500 that are designed to assist the IRS in identifying plans that are non-compliant relating to Code section 410(b) coverage, Code section 401(a)(4) non-discrimination, and Code section 401(k) non-discrimination testing. Additionally, the IRS is

proposing to add a question that will help it identify whether adopters of pre-approved plans have been updated timely for changes in the law. DCGs would report this information at the plan level as part of the Schedule DCG.

Specifically, the proposal would add a nondiscrimination and coverage test question to Form 5500 and Form 5500-SF that was on the Schedule T before it was eliminated. The question asks if the employer aggregated plans in testing whether the plan satisfied the nondiscrimination and coverage tests of Code sections 401(a)(4) and 410(b). A plan that is aggregated with another plan to pass either nondiscrimination or coverage testing generally has more issues that are technically complicated and raise the possibility of non-compliance. Adding this question will allow EP to identify these plans for examination over plans that are likely more compliant with the law. This question is also helpful when performing pre-examination analysis and allows the IRS to narrow any inquiries for information that is requested from the plan sponsor. The restoration of this question also reflects the elimination of optional coverage and nondiscrimination demonstrations in the IRS determination letter process. *See* Rev. Proc. 2012–6, 2012–1 I.R.B. 235, and Announcement 2011–82, 2011–52 I.R.B. 1052.

The proposal would add a question to Form 5500 and Form 5500-SF, for section 401(k) plans, asking whether the plan sponsor used the design-based safe harbor rules or, if applicable, the “prior year” or “current year” ADP test. ADP testing and nondiscrimination are significant compliance issues for section 401(k) plans. For example, a plan that performs prior year or current year ADP testing is more likely to have compliance issues than a plan with a designed-based safe harbor. Adding this question will allow EP to identify for examination section 401(k) plans that use ADP testing over plans that have designed-based safe harbors. This question will also help the IRS perform pre-examination analysis and, for design-based safe harbor plans, verify whether (1) allocations of required safe harbor contributions comply with the terms of the plan, and (2) proper notice requirements are satisfied on an annual basis.

The proposal would add a question to Form 5500 and Form 5500-SF,<sup>42</sup> asking whether the employer is an adopter of a pre-approved plan that received a favorable IRS Opinion Letter, the date of the favorable Opinion Letter, and the Opinion Letter serial number. This question will help the IRS identify whether a plan sponsor has adopted a pre-approved plan and to determine whether the plan was adopted timely in accordance with the Code section 401(b) remedial amendment period. This question will also assist the IRS in determining whether to select a plan for examination as a late amender for changes in the law.

Finally, the proposal would add a new checkbox F to Form 5500-EZ, Part I, asking whether a filer is required to file Form 5500-EZ electronically pursuant to Treas. Reg § 301.6058-2. A filer who has to file at least the applicable number of returns with the IRS during a calendar year generally must file Form 5500-EZ electronically under EFAST2. The applicable number is 10 for returns required to be filed during calendar years after 2022. If a filer is required to file Form 5500-EZ electronically, but fails to do so, the filer is deemed to have failed to file Form 5500-EZ. This question will assist IRS in determining if a filer is in compliance with IRS mandatory electronic filing rules, in the event a paper Form 5500-EZ is filed.

#### **G. Change to Participant-Count Methodology for Determining Independent Qualified Public Accountant Audit Requirement for Individual Account Plans**

The Agencies are proposing to change the rules for determining when a defined contribution pension plan is exempt from the requirement to include an IQPA report with its annual return/report filing. Currently, the plan size measure for the IQPA audit requirement is based on the total number of participants at the beginning of the plan year, including those eligible to elect to have contributions made under a section 401(k) qualified cash or deferred

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<sup>42</sup> IRS will separately make a parallel update to the Form 5500-EZ, which is solely in the jurisdiction of the IRS.

arrangement even if they have not elected to participate and do not have an account balance in a section 401(k) or 403(b) plan. Some stakeholders have pointed out that the use of this definition for the audit threshold may result in two plans with the same number of active participants, e.g., 85 account holders, with one subject to an audit and the other not based on the number of non-participating but eligible employees of the plan sponsor. They questioned the policy basis for such a difference in application of the audit requirement. Further, under this definition, some stakeholders have suggested that section 112 of the SECURE Act could make it even more likely that a plan with a small number of active participants may be required to bear the cost of an audit based on eligible but not participating employees being counted toward the audit threshold. Specifically, because section 112 provides that long-term, part time workers that have reached the plan's minimum age requirement and worked at least 500 hours in each of three consecutive 12-months period must be permitted to make elective contributions to a section 401(k) qualified cash or deferred arrangement for plan years beginning on or after January 1, 2024, there could be more employees eligible to participate that elect not to do so. These eligible employees who are not active participants would still be impacting the threshold for determining whether the plan would have to file as a large plan.<sup>43</sup>

To address these issues, the Agencies are proposing to add to the Form 5500 and Form 5500-SF a new question for defined contribution pension plans only, asking for the number of participants with account balances at the "beginning of the year," in addition to the current end-of-year count for defined contribution pension plan participants with account balances. Defined contribution pension plans would determine whether they have to file as a large plan and whether they have to attach an IQPA report and audited financial statements based on the number of participants with account balances as of the beginning of the plan year, as reported on the face of the Form 5500 or Form 5500-SF. To avoid circumstances in which a beginning-of-year count

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<sup>43</sup> The Agencies proposed a similar change in 2016 and received few comments on that aspect of the proposal. 81 FR 47534 (Jul. 16, 2016).

would result in an inappropriate exclusion of large plans from the audit requirement, for first plan year filings, the participant count for this purpose would exclude only plans that have fewer than 100 participants with account balances both at the beginning of the first plan year and the end of the first plan year.<sup>44</sup> Thus, under the proposal, the determination would be based on the number of participants with account balances as of the beginning of the plan year (as reported on proposed line 6g(1) of the Form 5500 or line 5c(1) of the Form 5500-SF), except that the determination for first plan year filings would be based on the number of participants with account balances both at the beginning of the plan year and at the end of the plan year (as reported on proposed line 6g(2) of the Form 5500 and line 5c(2) of the Form 5500-SF).

## **H. Miscellaneous and Conforming Changes for Forms and Instructions**

Various other technical, formatting, and conforming changes to the forms, schedules, and instructions are being proposed as part of the substantial restructuring of the Form 5500 Annual Return/Report described in this notice. For example, to implement the proposed Schedule MEP and Schedule DCG, the proposal includes conforming changes to other parts of the forms, schedules, and instructions. The instructions for what constitutes a multiple employer plan for purposes of the Form 5500 would generally be left unchanged, but conforming changes would be made throughout the instructions as necessary to reference the Schedule MEP and pooled employer plans for pension plans. The instructions would also be amended to reflect the transferring of the participating employer information from the Form 5500 Annual Return/Report to the Form M-1 for MEWAs that offer or provide coverage for medical benefits, and continued reporting of participating employer information on the Form 5500 Annual Return/Report as an attachment for plan MEWAs that provide other benefits. The instructions for Part I, DFE box, would be updated to add a code for DCGs, which would be instructed to check the DFE box, enter the correct code, and attach the proposed Schedule DCG. The

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<sup>44</sup> This would not otherwise change how participants are counted for Form 5500 reporting purposes.

proposed Schedule MEP and Schedule DCG would be added to the list of pension schedules. DCG filers would have to check that they are adding the Schedule DCG and enter the number of Schedules DCG attached. Other conforming changes would also be made throughout the instructions as necessary to reference DCGs and Schedule DCG. The DOL's reporting regulation at 29 CFR 2520.103-1(c)(2)(ii) and the Form 5500-SF instructions would be amended to add MEPs and DCGs to those types of filers that are not permitted to file a Form 5500-SF, but must instead file the Form 5500, with all required schedules and attachments. The instructions would be revised to state that pooled employer plans and DCGs would not report investment assets aggregated into master trust investment accounts (MTIAs) because the purpose of the MTIA reporting structure is to provide a financial reporting structure for groups of affiliated plans (e.g., separate plans of controlled group members) that utilize master trusts for the collective investment of the assets of the affiliated plans. The Departments do not believe that separate pooled employer plans and DCGs are "affiliated" in the way that was envisioned for master trust reporting by plans and may in fact create an overly complex and undesirable lack of transparency if used in the case of pooled employer plans and DCGs.

The proposal would also add new breakout categories to the "Administrative Expenses" category of the Income and Expenses section of the Schedule H balance sheet. The Agencies have determined that to get a better picture of plan expenses, particularly those related to service providers, more detail in this category is warranted. Accordingly, data elements would be added for "Salaries and allowances," "Independent Qualified Public Accountant (IQPA) Audit fees," "Recordkeeping and Other Accounting Fees," "Bank or Trust Company Trustee/Custodial Fees," "Actuarial fees," "Legal fees," "Valuation/appraisal fees," and "Trustee fees/expenses (including travel, seminars, meetings)." Other than IQPA Audit Fees and Bank or Trust Company Trustee/Custodial Fees, these questions were on the Form 5500 prior to 1999.<sup>45</sup> As noted above

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<sup>45</sup> See 1998 Form 5500, line 32(g).



in connection with pooled employer plans and MEPs, transparency and improved reporting of fees and expenses is an ongoing objective for the DOL and an important goal for continuing to improve the Form 5500 as a tool for financial transparency and accountability among employee benefit plans. Accordingly, the agencies specifically request comments on whether the final rule should require more detailed reporting regarding fee and expense information on the Form 5500. Useful comments would include, for example, suggestions on how to improve reporting of direct and indirect service provider compensation, generally and in particular with respect to pooled employer plans, other MEPs, and DCG reporting arrangements (including information about how the fees and expenses are allocated among participating plans, employers, and plan participants and beneficiaries, as applicable). Another example of an area of interest on fee information is whether the Form 5500 would be an appropriate vehicle for collecting information on fees charged to participants or alternate payees by a retirement plan—including plan service provider fees the plan passes on to participants—for review and qualification of domestic relations orders.<sup>46</sup>

The proposal would also amend the Form 5500 instructions to make explicit that the pooled plan provider operating the pooled employer plan must report the same identifying information—*i.e.*, name and EIN for itself, identified affiliates and other service providers, and trustees—on the Form PR for the pooled plan provider and on the Forms 5500 for every pooled employer plan the pooled plan provider operates. The instructions to the new Form PR have parallel instructions. The proposal would also amend the Form 5500 and Form 5500-SF instructions and make conforming changes to the other parts of the forms, schedules, and instructions to implement the proposed changes described above to the participant count

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<sup>46</sup> See Government Accountability Office (GAO) Report GAO 20-541, “Retirement Security: DOL Could Better Inform Divorcing Parties About Dividing Savings,” which recommended that “EBSA should explore ways to collect information on fees charged to participants or alternate payees by a retirement plan—including plan service provider fees the plan passes on to participants—for review and qualification of domestic relations orders and evaluate the burden of doing so. For example, DOL could consider collecting fee information as part of existing reporting requirements in the Form 5500.”

methodology for individual account plans for determining whether such plans have to file as a large plan and whether they have to attach an IQPA report.

#### **IV. Paperwork Reduction Act Statement**

As part of continuing efforts to reduce paperwork and respondent burden, the general public and Federal agencies are invited to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data will be provided in the desired format, reporting burden (time and financial resources) will be minimized, collection instruments will be clearly understood, and the impact of collection requirements on respondents is properly assessed. Currently, the DOL is soliciting comments concerning the proposed revisions of the Form 5500 Annual Return/Report, Form M-1 and Summary Annual Report, which are information collection requests subject to the PRA. A copy of the ICRs may be obtained by contacting the person listed in the PRA Addressee section below. The DOL has submitted a copy of the proposed revisions to the Office of Management and Budget (OMB) in accordance with 44 U.S.C. 3507(d) for its review of the DOL's information collection. The IRS and the PBGC intend to submit separate requests for OMB review and approval based upon the final forms revisions. The DOL and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility;
- Evaluate the accuracy of the estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, D.C., 20503 and marked “Attention: Desk Officer for the Employee Benefits Security Administration.” Comments can also be submitted by Fax: 202-395-5806 (this is not a toll-free number), or by email: OIRA\_submission@omb.eop.gov. OMB requests that comments be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], which is 30 days from publication of the proposed rule to ensure their consideration.

*PRA Addressee:* Address requests for copies of the ICR to James Butikofer, Office of Regulations and Interpretations, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N- 5655, Washington, DC 20210. Email: ebsa.opr@dol.gov. ICRs submitted to OMB also are available at <http://www.RegInfo.gov>.

*Form 5500 ICR:* As described below, DOL is requesting a new OMB Control Number for this collection. The request for a new control number is for administrative reasons only. The DOL is currently in the process of requesting an extension for OMB Control Number 1210-0110, Annual Information Return/Report of Employee Benefit Plan. Once all of the outstanding actions are complete, the DOL intends to submit a nonmaterial change request to transfer the burden from the new ICR to the existing OMB control number for the Annual Information Return/Report of Employee Benefit Plan (1210-0110) and proceed to discontinue the use of the new control number.

The Agencies' burden estimation methodology excludes certain activities from the calculation of "burden." If the activity is performed for any reason other than compliance with the applicable federal tax administration system or the Title I annual reporting requirements, it was not counted as part of the paperwork burden. For example, most businesses or financial entities maintain, in the ordinary course of business, detailed accounts of assets and liabilities, and income and expenses for the purposes of operating the business or entity. These recordkeeping activities were not included in the calculation of burden because prudent business or financial entities normally have that information available for reasons other than federal tax or Title I annual reporting. Only time for gathering and processing information associated with the tax return/annual reporting systems, and learning about the law, was included. In addition, an activity is counted as a burden only once if performed for both tax and Title I purposes. The Agencies also have designed the instruction package for the Form 5500 Annual Return/Report so that filers generally will be able to complete the Form 5500 Annual Return/ Report by reading the instructions without needing to refer to the statutes or regulations. The Agencies, therefore, have included in their PRA calculations a burden for reading the instructions and find there is no recordkeeping burden attributable to the Form 5500 Annual Return/Report. The DOL solicits comments regarding whether or not any recordkeeping beyond that which is usual and customary is necessary to complete the Form 5500 Annual Return/Report. Comments are also solicited on whether the Form 5500 Annual Return/Report instructions are generally sufficient to enable filers to complete the Form 5500 Annual Return/Report without needing to refer to the statutes or regulations.

*Summary Annual Report ICR:* Section 2520.104b-10 sets forth the requirements for the Summary Annual Report (SAR) appendix and prescribes formats for such reports. The DOL is proposing to revise the currently approved information collection (1210-0040) to include required additions to the SAR formats that reflect the addition of the new Schedule MEP and Schedule DCG to the 5500 Annual Report/Return.

*Form M-1 ICR:* Effective for plan years beginning on or after January 1, 2022, DOL is proposing to amend the Form M-1 information collection (1210-0116) by adding new questions requiring MEWAs (plan and non-plan MEWAs) that offer or provide coverage for medical care to identify each participating employer in the MEWA by name and EIN. MEWAs that are not unfunded or insured must also provide participating employer's percentage of the total contributions (employer and employee) made by all employer participating in a MEP. This information is currently reported as a non-standard attachment as part of the Form 5500 filing. The reporting of this burden is being moved from OMB control number 1210-0110. For the 2021 plan year, pending the implementation of the Form M-1 changes, plan MEWAs that offer or provide coverage for medical care would be required provide participating employer information as a nonstandard attachment to the 2021 Form 5500 Annual Return/Report in a similar manner as currently required. A summary of paperwork burden estimates follows:

Agency: DOL-EBSA

Type of Review: New information collection.

Title: Annual Information Return/Report of Employee Benefit Plan

Affected Public: Individuals or households; Private Sector –Business or other for-profit; Not-for-profit institutions.

Forms: Form 5500 and Schedules.

Total Respondents: 804,000

Total Responses: 804,000

Frequency of Response: Annually.

Estimated Total Burden Hours: 588,000.

Total Annualized Costs: \$275 million.

Agency: Department of Treasury- IRS

Type of Revision – Revision of existing collection

Title of Collection: Annual Return/Report of Employee Benefit Plan

OMB Control Number: 1545–1610

Affected Public: Individuals or households; Private Sector –Business or other for-profit; Not-for-profit institutions

Forms: Form 5500 and Schedules.

Total Respondents: 804,000

Total Responses: 804,000

Frequency of Response: Annually.

Estimated Total Burden Hours: 354,000.

Total Annualized Costs: \$142 million.

Agency: PBGC

Type of Revision: Revision of existing collection

Title of Collection: Annual Information Return/Report

OMB Control Number: 1212-0057

Affected Public: Individuals or households; Private Sector –Business or other for-profit; Not-for-profit institutions

Forms: Form 5500 and Schedules.

Total Respondents: 24,744

Total Responses: 24,744

Frequency of Response: Annually.

Estimated Total Burden Hours: 1,242.

Total Annualized Costs: \$2 million.

Agency: DOL-EBSA

Type of Revision: Revision of existing collection

Title of Collection: Annual Report for Multiple Employer Welfare Arrangements.

OMB Control Number: 1210-0116

Affected Public: Not-for-profit institutions, Businesses or other for-profits

Forms: Form M-1

Total Respondents: 687.

Total Responses: 687.

Frequency of Response: Annually.

Estimated Total Burden Hours: 141.

Total Annualized Costs: \$126,556.

Agency: DOL-EBSA

Type of Revision: Revision of existing collection

Title of Collection: Summary Annual Report Requirement

OMB Control Number: 1210-0040

Affected Public: Not-for-profit institutions, Businesses or other for-profits

Total Respondents: 761170.

Total Responses: 177,793,034.

Frequency of Response: Annually.

Estimated Total Burden Hours: 1,110,692.

Total Annualized Costs: \$20,320,505.

The DOL solicits comments regarding whether or not any recordkeeping beyond that which is usual and customary is necessary to complete the Form 5500 Annual Return/Report. Comments are also solicited on whether the Form 5500 Annual Return/Report instructions are generally sufficient to enable filers to complete the Form 5500 Annual Return/Report without needing to refer to the statutes or regulations.



*Paperwork and Respondent Burden:* Estimated time needed to complete the forms listed below reflects the combined requirements of the IRS, the DOL, and the PBGC. The times will vary depending on individual circumstances. The estimated average times are:

	Pension Plans		
	Large	Small, Filing Form 5500	Small, Filing 5500-SF
<b>Form 5500</b>	1 hr, 51 min.	1 hr, 19 min.	
<b>Sch A</b>	2 hr, 52 min.	2 hr, 52 min.	
<b>Sch MB</b>	8 hr, 49 min.	8 hr, 6 min.	8 hr, 6 min.
<b>Sch SB</b>	6 hr, 38 min.	6 hr, 49 min.	6 hr, 49 min.
<b>Sch C</b>	2 hr, 52 min.		
<b>Sch D</b>	1 hr, 39 min.	20 min.	
<b>Sch G</b>	14 hr, 22 min.		
<b>Sch H</b>	11 hr, 51 min.		
<b>Sch I</b>	2 hr, 6 min.	2 hr, 6 min.	
<b>Sch R</b>	1 hr, 45 min.	1 hr, 7 min.	
<b>Form 5500-SF</b>			2 hr, 35 min.
<b>Sch MEP</b>	10 min.		
	Welfare plans that include health benefits		
	Large	Small, unfunded, combination unfunded/fully insured, or funded with a trust 5500-SF	
<b>Form 5500</b>	1 hr, 45 min.	1 hr, 14 min.	
<b>Sch A</b>	3 hr, 40 min.	2 hr, 43 min.	
<b>Sch C</b>	3 hr, 38 min.		
<b>Sch D</b>	1 hr, 52 min.	20 min.	
<b>Sch G</b>	11 hr, 0 min.		
<b>Sch H</b>	12 hr, 46 min.		
<b>Sch I</b>		1 hr, 56 min.	
<b>Form 5500-SF</b>		2 hr, 35 min.	
	Welfare plans that do not include health benefits		
	Large	Small, Filing Form 5500	Small, Filing Form 5500-SF
<b>Form 5500</b>	1 hr, 45 min.	1 hr, 14 min.	
<b>Sch A</b>	3 hr, 40 min.	2 hr, 43 min.	
<b>Sch C</b>	3 hr, 38 min.		
<b>Sch D</b>	1 hr, 52 min.	20 min.	
<b>Sch G</b>	11 hr, 0 min.		
<b>Sch H</b>	12 hr, 46 min.		
<b>Sch I</b>		1 hr, 56 min	
<b>Form 5500-SF</b>			2 hr, 35 min.
<b>Sch M1</b>	15 min.		

	Direct Filing Entities					
	Master Trusts	CCTs	PSAs	103-12 IEs	GIAs	DCGs
<b>Form 5500</b>	1 hr, 50 min.	1 hr, 30 min.	1 hr, 23 min.	1 hr, 38 min.	1 hr, 26 min.	1 hr, 50 min.
<b>Sch A</b>	2 hr, 54 min.	2 hr, 48 min.	2 hr, 46 min.	2 hr, 51 min.	3 hr, 1 min.	2 hr, 52 min.
<b>Sch C</b>	3 hr, 2 min.	1 hr, 2 min.	29 min.	1 hr, 56 min.	1 hr, 22 min.	2 hr, 42 min.
<b>Sch D</b>	1 hr, 30 min.	48 min.	34 min.	1 hr, 1 min.	54 min.	1 hr, 39 min.
<b>Sch G</b>	12 hr, 34 min.			8 hr, 3 min.		11 hr, 6 min.
<b>Sch H</b>	12 hr, 19 min.	11 hr, 47 min.	11 hr, 43 min.	12 hr, 16 min.	12 hr, 1 min.	8 hr, 36 min.
<b>Sch DCG</b>						1 hr, 33 min.

The aggregate hour burden for the Form 5500 Annual Return/Report (including schedules and short form) is estimated to be 0.9 million hours annually. The hour burden reflects filing activities carried out directly by filers. The cost burden is estimated to be \$419 million annually. The cost burden reflects filing services purchased by filers. Presented below is a chart showing the total hour and cost burden of the revised Form 5500 Annual Return/Report separately allocated across the DOL and the IRS. There is no separate PBGC entry on the chart because, as

explained below, its share of the paperwork burden is very small relative to that of the IRS and the DOL.

		DOL		IRS	
		Hours	Costs	Hours	Costs
<b>Pension</b>	<b>Large Plans</b>	261,464	\$ 62,431,639.11	142,897	\$ 31,568,313.36
	<b>Small Plans</b>	174,999	\$ 87,694,622.39	176,481	\$ 103,113,327.32
<b>Welfare</b>	<b>Large Plans</b>	108,142	\$ 111,593,190.83	9,953	\$ 1,811,627.38
	<b>Small Plans</b>	6,137	\$ 5,407,649.86	2,507	\$ 1,252,295.71
<b>Total</b>	<b>Large Plans</b>	369,607	\$ 174,024,829.94	152,850	\$ 33,379,940.74
	<b>Small Plans</b>	181,136	\$ 93,102,272.24	178,988	\$ 104,365,623.03
<b>DFEs</b>		37,642	\$ 8,014,192.20	21,908	\$ 4,543,173.65
<b>Total Plans</b>		588,385	\$ 275,141,294.38	353,746	\$ 142,288,737.43

The paperwork burden allocated to the PBGC includes a portion of the general instructions, basic plan identification information, a portion of Schedule MB, a portion of Schedule SB, a portion of Schedule H, and a portion of Schedule R. The PBGC's Estimated Share of Total Form 5500 Annual Return/Report Burden is: 1,242 Hours and \$1.6 million per year.

**APPENDIX A – PROPOSED SCHEDULE MEP (MULTIPLE-EMPLOYER RETIREMENT PLAN INFORMATION) AND INSTRUCTIONS**

<p align="center"><b>SCHEDULE MEP (Form 5500)</b></p> <p align="center">Department of the Treasury Internal Revenue Service</p> <hr/> <p align="center">Department of Labor Employee Benefits Security Administration</p> <hr/>	<p><b>MULTIPLE-EMPLOYER RETIREMENT PLAN INFORMATION</b></p> <p><b>This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA) and Section 6058(a) of the Internal Revenue Code (the Code)</b></p> <p><b>File as an attachment to Form 5500.</b></p> <p align="center">▶</p>	<p align="right">OMB Nos. 1210-XXXX 1210-XXXX</p> <hr/> <p align="center"><b>2022</b></p> <hr/> <p align="center"><b>This Form is Open to Public Inspection</b></p>
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**For calendar plan year 202X or fiscal plan year beginning** \_\_\_\_\_ **and ending** \_\_\_\_\_

<b>A</b> Name of plan	<b>B</b> Three-digit plan number (PN) ▶	
<b>C</b> Plan administrator's name as shown on line 2a of Form 5500	EIN	

**Part I Type of Multiple-Employer Pension Plan.** All multiple-employer pension plans must complete.

- Line 1 Check the appropriate box to indicate type of multiple-employer pension plan. (See Instructions)**
- a  association retirement plan (See 29 CFR 2510.3-55) (Complete Part II)
  - b  professional employer organization (PEO) plan (See 29 CFR 29 CFR 2510.3-55) (Complete Part II)
  - c  pooled employer plan (PEP) (See 29 CFR 2510.3-44) (Complete Parts II and III)
  - d  other multiple-employer pension plan (Describe) \_\_\_\_\_ (Complete Part II)

**Part II Participating Employer Information.**

All multiple-employer pension plans that are subject to section 210(a) of ERISA (see instructions for filing the Form 5500) must complete Part II, in addition to Part I, in accordance with the instructions, to report the information for each employer participating in the MEP.

**Line 2 Participating Employer Information.** Complete as many entries as needed to list the required information for each participating employer that is not an individual person (See instructions).

2a. Name of Participating Employer	2b. EIN	2c. Percentage of Total Contributions for the Plan Year	2d. Aggregate Account Balances Attributable to Participating Employer
2a. Name of Participating Employer	2b. EIN	2c. Percentage of Total Contributions for the Plan Year	2d. Aggregate Account Balances Attributable to Participating Employer

**CAUTION** Do not individually list information for working owners (see instructions and 29 CFR 2510.3-55(d)(2)) or other individuals who are participants or beneficiaries in the plan or arrangement that are no longer associated with a particular participating employer or participating employer plan. (See instructions). Providing identifying information for individuals may result in rejection of this filing. If there are any such individuals in the plan, answer "Yes" to line 2e and provide the total information for all such individuals, without providing names or other identifying information.

**2e.** Does the plan include any individuals not participating through an employer or who are individual working owners?  
 Yes  No

**2f.** If you answer "Yes" in line 2e, enter a good faith estimate of percentage of total contributions made by all such individuals that are not listed on line 2a during the plan year.

**2g.** If you answer "Yes" in Line 2e, enter the aggregate account balances for all such individuals that are not listed on line 2a.

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**Part III Pooled Employer Plan Information.**

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Pooled employer plans must answer all of the questions in Part III, in addition to completing all of Parts I and II.

**Line 3.** Has the pooled plan provider (identified as the plan sponsor and administrator in Part II of the Form 5500) acknowledged in writing that it is the named fiduciary and plan administrator?  Yes  No

**Line 4.** Has the pooled plan provider (identified as the plan sponsor and administrator in Part II of the Form 5500) acknowledged in writing its administrative responsibilities for the plan?  Yes  No

**Line 5.** Is the pooled plan provider currently in compliance with the Form PR (Pooled Plan Provider Registration Statement) requirements? (See instructions and 29 CFR 2510.3-44)  Yes  No

**5a** If "Yes" is checked, enter the ACK ID for the most recent Form PR that was required to be filed under the Form PR filing requirements. (Failure to enter a valid ACK ID will subject the Form 5500 filing for any PEP operated by the pooled plan provider to be rejected as incomplete.)

ACK ID \_\_\_\_\_

**Line 6.** Have services been provided to the plan through affiliates or other related parties to the pooled plan provider?  
 Yes  No

**6a** If "Yes," are you relying on a prohibited transaction exemption? If you answer yes, enter the PTE(s) on which you are relying.  Yes (enter PTE \_\_\_\_\_)  No

## **PROPOSED INSTRUCTIONS FOR SCHEDULE MEP**

### **2022 Instructions for Schedule MEP (Form 5500) (Multiple-Employer Retirement Plan Information)**

#### **General Instructions**

The Schedule MEP provides information about multiple-employer pension plans (MEPs). It consists of three parts. All MEPs must complete Parts I and II to indicate the specific type of plan or arrangement, to complete a list of participating employers, and to provide certain required information.

Part III only needs to be completed by pooled employer plans to answer questions specific to pooled employer plans and the pooled plan provider that sponsors and administers the pooled employer plan.

#### **Who Must File**

Schedule MEP (Form 5500) must be attached to a Form 5500 filed for a pension plan that checks the “multiple employer plan” box on Part I of Form 5500, to provide information specific to such plan, including a list of participating employers and related information.

Remember to check the Schedule MEP box on the Form 5500 (Part II, line 10a(5)) to indicate that Schedule MEP is attached to the Form 5500.

Welfare plans are not required to file the Schedule MEP.

## Specific Instructions

### Part I Type of Multiple-Employer Pension Plan

**Line 1.** For purposes of completing the Schedule MEP, check the element that best describes the type of plan.

**Element (a) Association Retirement (Defined Contribution) Plan.** Check this box if the Schedule MEP is being filed for a defined contribution MEP that is an Association Retirement Plan and complete Part II. A defined contribution pension plan sponsored by a bona fide group or association of employers is a MEP that is an Association Retirement Plan if: (1) the group or association has at least one substantial business purpose unrelated to offering and providing employee benefits to its employer members and their employees; (2) each employer member directly acts as an employer of at least one employee participating in the MEP; (3) group or association has a formal organizational structure, (4) the group or association is controlled by its employer members; (5) employer members of the group or association have a commonality of interest; (6) plan participation is limited to employees and former employees of its employer members, and their beneficiaries; (7) the group or association must not be a bank or trust company, insurance issuer, broker-dealer, or other similar financial services firm (including a pension record keeper or third-party administrator) or owned or controlled by such an entity or any subsidiary or affiliate of such an entity, other than to the extent such an entity, subsidiary or affiliate participates in the group or association in its capacity as an employer member; and (8) the group or association meets any other applicable conditions under 29 CFR 2510.3-55(b).

**CAUTION.** Do not check this box for a defined benefit plan sponsored by a bona fide group or association of employers. See instructions for element (d) Other Multiple Employer Pension Plan.

**Element (b) Professional Employer Organization (Defined Contribution) Plan (PEO Plan).** Check this box if the Schedule MEP is being filed for a defined contribution MEP that is a



Professional Employer Organization Plan (PEO Plan) and complete Part II. For this purpose, a professional employer organization (PEO) is a human-resource company that contractually assumes certain employer responsibilities of its client employers. A defined contribution pension plan sponsored by a PEO is a MEP that is a PEO Plan if the PEO (1) performs substantial employment functions on behalf of its client employers, and maintains adequate records relating to such functions; (2) have substantial control over the functions and activities of the MEP as the plan sponsor, the plan administrator, and a named fiduciary and continues to have plan obligations to MEP participants after the client employer no longer contracts with the organization; (3) ensures that each client employer that adopts the MEP acts directly as an employer of at least one employee who is a participant covered under the MEP; (4) ensures that participation in the MEP is available only to employees and former employees of the PEO and client employers, employees and former employees of former client employers who became participants during the contract period between the PEO and former client employers, and their beneficiaries; and (5) meets any other applicable conditions under 29 CFR 29 CFR 2510.3-55(c).

**CAUTION.** Do not check this box for a defined benefit plan sponsored by a PEO. See instructions for element (d) Other Multiple Employer Pension Plan.

**Element (c) Pooled Employer Plan (PEP).** Check this box if the Schedule MEP is being filed for a MEP that is a PEP plan and complete Parts II and III. A pooled employer plan operated by a “pooled plan provider” is a MEP if: (1) the plan is an individual account plan established or maintained for the purpose of providing benefits to the employees of two or more employers; (2) the plan is a qualified retirement plan or a plan funded entirely with individual retirement accounts (IRA-based plan); and (3) the terms of the plan meets certain requirements set forth in ERISA section 3(43).

A “pooled plan provider” with respect to a pooled employer plan is defined in ERISA section 3(44) and Code section 413(e) to mean a person that:

1. is designated by the terms of the plan as a named fiduciary under ERISA, as the plan administrator, and as the person responsible to perform all administrative duties that are reasonably necessary to ensure that the plan meets the Code requirements for tax-favored treatment and the requirements of ERISA and to ensure that each employer in the plan takes actions as the Secretary of Labor or the pooled plan provider determines necessary for the plan to meet Code and ERISA requirements, including providing to the pooled plan provider any disclosures or other information that the Secretary may require or that the pooled plan provider otherwise determines are necessary to administer the plan or to allow the plan to meet Code and ERISA requirements;

2. acknowledges in writing its status as a named fiduciary under ERISA and as the plan administrator;

3. is responsible for ensuring that all persons who handle plan assets or are plan fiduciaries are bonded in accordance with ERISA requirements; and

4. registers as a pooled plan provider by filing a Form PR in accordance with 29 CFR 2510.3-44.

**Note.** The term “pooled employer plan” does not include a multiemployer plan or plan maintained by employers that have a commonality of interest other than having adopted the plan. The term also does not include a plan established before January 1, 2021, which is the effective date of the SECURE Act provisions allowing pooled employer plans to begin operating, unless the plan administrator elects to have the plan treated as a pooled employer plan and the plan meets the Code and ERISA requirements applicable to a pooled employer plan established on or after such date, including the requirement that the pooled plan provider file a Form PR with the Department of Labor before beginning to operate any pooled employer plan(s).

**CAUTION.** The pooled plan provider must be the same as the person identified as the plan sponsor and administrator in Part II of the Form 5500. All information for the pooled employer

plan and the pooled plan provider operating the plan reported on the Form 5500, including Schedule MEP, must match the information reported on the Form PR. Failure to use consistent identifying information could result in correspondence from the Department of Labor or the Internal Revenue Service.

**Element (d) Other Multiple-Employer Pension Plan.** Check this box, describe the type of MEP (e.g., defined benefit multiple-employer pension plan or collectively bargained multiple-employer pension plan that did not elect to be treated as a multiemployer plan) and complete Part II of the Schedule MEP if the Schedule MEP is being filed for a plan that is maintained by more than one employer and is not one of the plans already described.

**Note.** A multiple employer pension plan can be collectively bargained and collectively funded, but if covered by PBGC termination insurance, must have properly elected before September 27, 1981, not to be treated as a multiemployer plan under Code section 414(f)(5) or ERISA sections 3(37)(E) and 4001(a)(3) and have not revoked that election or made an election to be treated as a multiemployer plan under Code section 414(f)(6) or ERISA section 3(37)(G).

**Part II Multiple-Employer Plan Participating Employer Information.**

All MEPs (including association retirement plans, PEO plans, pooled employer plans (PEPs), and other multiple-employer pension plans) must complete Part II to report the information for each participating employer in the MEP filing the Form 5500.

Complete as many entries as needed to list the required information for each participating employer that is not an individual person.

**Note.** The amounts listed in line 2c and line 2f must equal 100 percent (with a permitted variance of less than 1 percent due to rounding).

**Line 2a.** Enter the name of each participating employer in line 2a.

**Note.** If there are any working owners without employees participating in the plan, answer “Yes” to line 2e and provide the total contribution and account balance information for all such individuals on lines 2f and 2g, without providing names or other identifying information. For purposes of completing this schedule, a “working owner” has the same meaning as in 29 CFR 2510.3-55(d)(2).

**Line 2b.** Enter the EIN of the participating employer.

**CAUTION.** Do not enter SSNs in lieu of an EIN. The Schedule MEP is open to public inspection, and the contents are public information and are subject to publication on the Internet. Because of privacy concerns, the inclusion of a SSN or any portion thereof on this Schedule MEP may result in the rejection of the filing.

**Line 2c.** Enter a good faith estimate of the participating employer’s percentage of the total contributions made by all participating employer (including the total contribution amount for individuals reported on line 2f) during the plan year. If a participating employer made no contributions for the plan year (including participant contributions), enter “-0-” on line 2c.

**Line 2d.** Enter the aggregate account balances for the participating employer, determined as the sum of the account balances of the employees of such employer (and the beneficiaries of such employees).

**Line 2e.** If the plan includes any individuals not participating through an employer or who are individual working owners, answer “Yes” to line 2e and complete lines 2f and 2g. Do not identify such individuals on line 2a.

**Line 2f.** If the answer to line 2e is “Yes,” enter a good faith estimate of the percentage of total contributions made by such individuals that are not listed on line 2a.

**Line 2g.** If the answer to line 2e is “Yes,” enter the aggregate account balances for all individuals that are not listed on line 2a.

### **Part III. Pooled Employer Plan Information.**

If this filing is for a pooled employer plan (PEP), you must answer lines 3, 4, 5, and 6.

**Line 3.** You must indicate whether the pooled plan provider (identified as the plan sponsor and administrator in Part II of the Form 5500) acknowledged in writing to all the participating employers that it is the named fiduciary and plan administrator.

**Note:** You must also identify the pooled plan provider as the named fiduciary on Schedule C and report all required service provider information.

**Line 4.** You must indicate whether the pooled plan provider (identified as the plan sponsor and administrator in Part II of the Form 5500) has acknowledged in writing its administrative responsibilities for the plan. These administrative duties include conducting proper testing with respect to the plan and the employees of each employer in the plan that are necessary to comply with all applicable qualification and other tax requirements, and ensuring that all plan fiduciaries and persons who handle plan funds are bonded in accordance with section 412 of ERISA.

**Line 5.** To be able to operate one or more pooled employer plans, pooled plan providers must satisfy a number of conditions, including compliance with the Form PR (Pooled Plan Provider Registration) requirements. See 29 CFR 2510.3-44.

Pooled employer plans must answer whether the pooled plan provider that is the plan sponsor and administrator for the pooled employer plan has complied with the Form PR registration requirements. If you check “Yes” in line 5 to indicate that the pooled plan provider has complied with the registration requirements, enter in line 5a the Receipt Confirmation Code (ACK ID) for the most recent Form PR that was required to be filed under the Form PR filing requirements.

Failure to enter a valid Receipt Confirmation Code (ACK ID) for the pooled plan provider’s most recent Form PR will subject the Form 5500 filing to rejection as incomplete.

**Line 6.** If services have been provided to the plan through affiliates or other related parties to the pooled plan administrator, you must answer “Yes” to line 6 and complete line 6a. If you are relying on a prohibited transaction exemption (PTE), enter the PTE number. If you answer “No,” you must complete Schedule G to report nonexempt transactions.

For these purposes, the term affiliate includes all persons who are treated as a single employer with the person intending to be a pooled plan provider under section 414(b), (c), (m), or (o) of the Internal Revenue Code and are expected to provide services to pooled employer plans sponsored by the pooled plan provider, and any officer, director, partner, employee, or relative (as defined in section 3(15) of the Act) of such person; and any corporation or partnership of which such person is an officer, director, or partner.

# APPENDIX B-PROPOSED SCHEDULE DCG (INDIVIDUAL PLAN INFORMATION) AND INSTRUCTIONS

## Schedule DCG

Department of Labor  
  
Department of the Treasury  
Internal Revenue Service

## Individual Plan Information

**This schedule is required to be filed under Section 103 of the Employee Retirement Income Security Act (ERISA) and Section 6058(a) of the Internal Revenue Code (Code)**

▶ File as an attachment to Form 5500

OMB Nos. 1210-XXXX  
1210-XXXX

**2022**

This Form is Open to Public Inspection.

### Part I DCG Information

<b>A</b> Name of DCG	<b>B</b> Three-digit plan number for DCG (PN) ▶ <b>C</b> EIN for DCG
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### Part II Individual Plan Identification Information

Complete a separate Schedule DCG for each individual plan whose reporting obligations are intended to be satisfied by the DCG's Form 5500 filing

This Schedule is for  a single-employer plan  a collectively-bargained plan

#### Part III Basic Individual Plan Information

<b>1a</b> Name of plan	<b>1b</b> Three-digit plan number (PN) ▶ <b>1c</b> Effective date of plan
<b>2a</b> Plan sponsor's name (employer, if for a single-employer plan) Mailing address (include room, apt., suite no. and street, or P.O. Box) City or town, state or province, country, and ZIP or foreign postal code (if foreign, see instructions)	<b>2b</b> Employer Identification Number (EIN) <b>2c</b> Plan sponsor's telephone number <b>2d</b> Business code
<b>3</b> If the name and/or EIN of the plan sponsor or the plan name has changed since the last return/report filed for this plan, enter the plan sponsor's name, EIN, the plan name and the plan number from the last return/report: <b>3a</b> Sponsor's name <b>3c</b> Plan Name	<b>3b</b> EIN <b>3d</b> PN
<b>4a</b> Total number of participants at the beginning of the plan year..... <b>b</b> Total number of participants as of the end of the plan year ..... <b>c(1)</b> Total number of active participants at the beginning of the plan year ..... <b>c(2)</b> Total number of active participants at the end of the plan year ..... <b>d</b> Number of participants with account balances as of the beginning of the plan year ..... <b>e</b> Number of participants with account balances as of the end of the plan year..... <b>f</b> Number of participants who terminated employment during the plan year with accrued benefits that were less than 100% vested .....	<b>4a</b> <b>4b</b> <b>4c(1)</b> <b>4c(2)</b> <b>4d</b> <b>4e</b> <b>4f</b>

### Part IV Financial Information

		(a) Beginning of Year	(b) End of Year
<b>5a</b> Total plan assets .....	<b>5a</b>		
<b>(1)</b> Participant loans .....	<b>5a(1)</b>		
<b>b</b> Total plan liabilities .....	<b>5b</b>		
<b>c</b> Net assets (subtract line 5b from line 5a)	<b>5c</b>		

<b>6a</b> Contributions received or receivable in cash from		<b>Amount</b>
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(1) Employers . . . . .	6a(1)	
(2) Participants . . . . .	6a(2)	
(3) Others (including rollovers) . . . . .	6a(3)	
b. Noncash contributions . . . . .	6b	
c. Total contributions (add lines 6a(1)-(3) and line 6(b)) . . . . .	6c	
6d Benefit payment and payments to provide benefits:	6d(1)	
e Corrective distributions (see instructions) . . . . .	6e	
f Certain deemed distributions of participant loans (see instructions) . . . . .	6f	
g Administrative service provider's expense (salaries, fees, commissions) . . . . .	6g	
h Other expenses . . . . .	6h	
i Net income (loss) . . . . .	6i	
j Transfers of assets	6j(1)	
(1) To this plan . . . . .		
(2) From this plan . . . . .	6j(2)	

**Part V Plan Characteristics**

7 Enter the applicable two-character feature codes from the List of Plan Characteristics Codes in the instructions.

**Part VI Compliance Questions**

- 8a Was there a failure to transmit to the plan any participant contributions within the time period described in 29 CFR 2510.3-102? Continue to answer "Yes" for any prior year failures until fully corrected. (See instructions and DOL's Voluntary Fiduciary Correction Program.) . . . . .
- 8b Were there any nonexempt transactions with any party-in-interest? . . . . .
- 8c Has the plan failed to provide any benefit when due under the plan? . . . . .

	Yes	No	Amount
8a			
8b			
8c			

9a If, during this plan year, any assets or liabilities were transferred from this plan to another plan(s), identify the plan(s) to which assets or liabilities were transferred. (See instructions.)

9b(1) Name of plan(s)	9b(2) EIN(s)	9b(3) PN(s)

10 Is this a defined contribution plan subject to the minimum funding requirements of section 412 of the Code?  Yes  No

11a Does the plan satisfy the coverage and nondiscrimination tests of Code sections 410(b) and 401(a)(4) by combining this plan with any other plans under the permissive aggregation rules?  Yes  No

11b If this is a Code section 401(k) plan, check the correct box to indicate how the plan is intended to satisfy the nondiscrimination requirements for employee deferrals and employer matching contributions (as applicable) under Code sections 401(k)(3) and 401(m)(2)?

- Design-based safe harbor method
  "Prior year" ADP test
  "Current year" ADP test
  N/A

12 If the plan sponsor is an adopter of a pre-approved plan that received a favorable IRS Opinion Letter, enter the date of the Opinion Letter    /    /    (MMDDYYYY) and the Opinion Letter serial number                   .

**Part VII Accountant Opinion Information for Large Participating Plans**



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**13** Complete lines 13a through 13c if the report of an independent qualified public accountant is attached to this Schedule DCG.

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**a** The opinion reflected in the attached report of an independent qualified public accountant for this plan is (see instructions):

(1)  Unmodified    (2)  Qualified    (3)  Disclaimer    (4)  Adverse

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**b** Check the appropriate box(es) to indicate whether the IQPA performed an ERISA section 103(a)(3)(C) audit. Check boxes (1) and (2) if the audit was performed pursuant to both 29 CFR 2520.103-8 and 29 CFR 2520.103-12(d). Check box (3) if pursuant to neither.

(1)  DOL Regulation 2520.103-8    (2)  DOL Regulation 2520.103-12(d)    (3)  neither DOL Regulation 2520.103-8 nor DOL Regulation 2520.103-12(d).

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**c** Enter the name and EIN of the accountant (or accounting firm) below:

(1) Name:

(2) EIN:

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## **PROPOSED INSTRUCTIONS FOR SCHEDULE DCG**

### **2022 Instructions for Schedule DCG (Form 5500) Individual Plan Information**

#### **General Instructions**

##### **Purpose of Schedule**

This schedule is used for a plan administrator to report information regarding each individual plan participating in a Defined Contribution Group (DCG) Reporting Arrangement, as permitted by SECURE Act section 202.

##### **Who Must File**

Schedule DCG must be attached to a Form 5500 filed for a DCG reporting arrangement. Each plan participating in the DCG reporting arrangement must individually complete a Schedule DCG as an attachment to the Form 5500.

Remember to check Schedule DCG box on the Form 5500 (Part II, Line 10(a)(4) to indicate Schedule DCG is attached to the Form 5500.

#### **Specific Instructions**

##### **Part I – DCG Information**

Lines A, B, and C. The information must be the same as reported in Part II of the Form 5500 to which this schedule is attached.

Do not use a SSN in line C in lieu of an EIN. The Schedule DCG and its attachments are open to public inspection, and the contents are public information. Because of privacy concerns, the inclusion of a SSN or any portion thereof on this Schedule DCG or any of its attachments may result in the rejection of the filing.

You can apply for an EIN from the IRS online, by fax, or by mail depending on how soon you need to use the EIN. For more information, see Section 3: Electronic Filing Requirement under General Instructions to Form 5500.

## **Part II – Individual Plan Identification Information**

A separate Schedule DCG must be filed for each individual plan participating in the DC Group Reporting Arrangement.

**Box for Single-Employer Plan.** Check this box if the Schedule DCG is filed for a single-employer plan. A single-employer plan for this reporting purpose is an employee benefit plan maintained by one employer or one employee organization (determined on a controlled group basis) in which the funds attributable to each employer are available to pay benefits only for that employer's employees.

**Box for Collectively-Bargained, Single-Employer Plan.** Check this box if the contributions to the plan and/or the benefits paid by the plan are subject to the collective bargaining process. The contributions and/or benefits do not have to be identical for all employees under the plan.

## **Part III - Basic Individual Plan Information**

Complete separately for each individual plan that participates in the DCG Reporting Arrangement.

**Line 1a.** Enter the formal name of the plan or enough information to identify the plan. Abbreviate if necessary. If an annual return/report or a schedule has previously been filed on behalf of the plan, regardless of the type of form or schedule that was filed, use the same name or abbreviation as was used on the prior filings. Once you use an abbreviation, continue to use it for that plan on all future annual return/report or schedule filings with the IRS, DOL, and PBGC. Do not use the same name or abbreviation for any other plan, even if the first plan is terminated. If the plan has changed its

name from the prior year filing(s), complete line 3 to indicate that the plan was previously identified by a different name.

**Line 1b.** Enter the three-digit plan or entity number (PN) of the employer or plan administrator assigned to the plan. This three-digit number, in conjunction with the EIN entered on line 2b, is used by the IRS, DOL, and PBGC as a unique 12-digit number to identify the plan.

**Line 1c.** Enter the date the plan first became effective.

**Line 2a.** Enter the name of the plan sponsor. If the plan covers only the employees of one employer, enter the employer's name. Enter the current street address, the name of the city, the two-character abbreviation of the U.S. state or possession and zip code.

A post office box number may be entered if the Post Office does not deliver mail to the sponsor's street address.

**Note.** Use the IRS Form 8822-B, *Change of Address or Responsible Party — Business*, to notify the IRS if the address provided here is a change in your business mailing address or your business location.

**Line 2b.** Enter the nine-digit EIN assigned to the plan sponsor/employer. Do not use a SSN in lieu of an EIN. Because of privacy concerns, the inclusion of a SSN or any portion thereof on this line may result in the rejection of the filing.

Employers without an EIN must apply for one as soon as possible. To apply for an EIN from the IRS:

- Mail or fax Form SS-4, Application for EIN, obtained at [www.irs.gov/orderforms](http://www.irs.gov/orderforms).
- See <https://www.IRS.gov/Businesses> and click on “Employer ID Numbers” for additional information. The EIN is issued immediately once the application information is validated. (The

online application process is not yet available for corporations with addresses in foreign countries or Puerto Rico.)

**Line 2c.** Enter the plan sponsor’s telephone number, including the area code.

**Line 2d.** Enter the six-digit business code from the list of business codes (on pages xx) that best describes the primary nature of the plan sponsor’s business. Do not enter code 525100 (Insurance & Employee Benefit Funds) or 813930 (Labor Unions and Similar Labor Organizations) unless the predominant industry in which the active participants are employed is the industry of insurance and employee benefit funds, or the industry of labor unions and similar labor organizations.

**Line 3.** If the plan sponsor’s name and/or EIN have changed or the plan name has changed since the last return/report or schedule was filed for this plan, enter the plan sponsor’s name, EIN, the plan name, and the plan number as it appeared on the last return/report or schedule filed.



*The failure to indicate on line 3 that a plan sponsor was previously identified by a different name or a different EIN or that the plan name has been changed could result in correspondence from the DOL and/or the IRS.*

**Line 4a.** Enter the total number of participants at the beginning of the plan year.

**Line 4b.** Enter the total number of participants at the end of the plan year.

**Line 4c(1).** Enter the total number of active participants at the beginning of the plan year.

**Line 4c(2).** Enter the total number of active participants at the end of the plan year.

“Participant” for purpose of lines 4a(1)–4c(2) means any individual who is included in one of the categories below.

1. Active participants (for example, any individuals who are currently in employment covered by

the plan and who are earning or retaining credited service under the plan) including:

- Any individuals who are eligible to elect to have the employer make payments under a section 401(k) qualified cash or deferred arrangement, and
- Any nonvested individuals who are earning or retaining credited service under the plan.

This category does not include (a) nonvested former employees who have incurred the break in service period specified in the plan or (b) former employees who have received a “cash-out” distribution or deemed distribution of their entire nonforfeitable accrued benefit.

2. Retired or separated participants receiving benefits (for example, individuals who are retired or separated from employment covered by the plan and who are receiving benefits under the plan).

This category does not include any individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

3. Other retired or separated participants entitled to future benefits (for example, any individuals who are retired or separated from employment covered by the plan and who are entitled to begin receiving benefits under the plan in the future). This category does not include any individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

4. Deceased individuals who had one or more beneficiaries who are receiving or are entitled to receive benefits under the plan. This category does not include any individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the beneficiaries of that individual are entitled under the plan.

**Line 4d.** Enter the number of participants included on line 4a (total number of participants at the beginning of the plan year) who have account balances. For example, for a section 401(k) plan the number entered on line 4d should be the number of participants counted on line 4a who have made a contribution, or for whom a contribution has been made, to the plan for this plan year or any prior

plan year.

**Line 4e.** Enter the number of participants included on line 4b (total number of participants at the end of the plan year) who have account balances. For example, for a section 401(k) plan the number entered on line 4e should be the number of participants counted on line 4b who have made a contribution, or for whom a contribution has been made, to the plan for this plan year or any prior plan year.

**Line 4f.** Include any individual who terminated employment during this plan year, whether or not he or she (a) incurred a break in service, (b) received an irrevocable commitment from an insurance company to pay all the benefits to which he or she is entitled under the plan, and/or (c) received a cash distribution or deemed cash distribution of his or her nonforfeitable accrued benefit.

#### **Part IV – Financial Information**

**Note.** The cash, modified cash, or accrual basis accounting methods may be used for recognition of transactions in Part IV, as long as you use one method consistently. If Form 5500 or Form 5500-SF was filed for the previous year, amounts reported on lines 5a, 5b, and 5c for the beginning of the plan year must be the same as reported for the end of the plan year for the corresponding lines on the return/report for the preceding plan year. However, if Schedule DCG was filed in the previous year, the amount reported on lines 5a, 5b, and 5c for the beginning of the plan year must be the same as reported for the end of the plan year on the Schedule DCG filed for the previous year. Use whole dollars only.

***Current value*** means fair market value where available. Otherwise, it means the fair value as determined in good faith under the terms of the plan by a trustee or a named fiduciary, assuming an orderly liquidation at time of the determination. *See* ERISA section 3(26).

**Line 5a.** Enter the total amount of plan assets at the beginning of the plan year in column (a).

Do not include contributions designated for the 2022 plan year in column (a). Enter the total amount of plan assets at the end of the plan year in column (b).

**Line 5a(1).** Enter the current value of all loans to participants including residential mortgage loans that are subject to Code section 72(p). Include the sum of the value of the unpaid principal balances, plus accrued but unpaid interest, if any, for participant loans made under an individual account plan with investment experience segregated for each account, which are made in accordance with 29 CFR 2550.408b-1 and secured solely by a portion of the participant's vested accrued benefit. When applicable, combine this amount with the current value of any other participant loans. Do not include in column (b) a participant loan that has been deemed distributed during the plan year under the provisions of Code section 72(p) and Treasury Regulations section 1.72(p)-1, if both of the following circumstances apply:

1. Under the plan, the participant loan is treated as a directed investment solely of the participant's individual account; and
2. As of the end of the plan year, the participant is not continuing repayment under the loan.

If both of these circumstances apply, report the loan as a deemed distribution on line 6f. However, if either of these circumstances does not apply, the current value of the participant loan (including interest accruing thereon after the deemed distribution) must be included in column (b) without regard to the occurrence of a deemed distribution.

**Note.** After a participant loan that has been deemed distributed is included in the amount reported on line 6f, it is no longer to be reported as an asset on line 5a unless, in a later year, the participant resumes repayment under the loan. However, such a loan (including interest accruing thereon after the deemed distribution) that has not been repaid is still considered outstanding for purposes of applying Code section 72(p)(2)(A) to determine the maximum amount of subsequent loans. Also,



the deemed distribution is not treated as an actual distribution for other purposes, such as the qualification requirements of Code section 401, including, for example, the determination of top-heavy status under Code section 416 and the vesting requirements of Treasury Regulations section 1.411(a)-7(d)(5). See Q&As 12 and 19 of Treasury Regulations section 1.72(p)-1.

The entry on line 5a, column (b) (plan assets at end of year) must include the current value of any participant loan included as a deemed distribution in the amount reported for any earlier year if, during the plan year, the participant resumes repayment under the loan. In addition, the amount to be entered on line 6f must be reduced by the amount of the participant loan reported as a deemed distribution for the earlier year.

**Line 5b.** Enter the total liabilities at the beginning and end of the plan year. Liabilities to be entered here do not include the value of future pension payments to participants. The amount to be entered in line 5b for accrual basis filers includes, among other things:

1. Benefit claims that have been processed and approved for payment by the plan but have not been paid (including all incurred but not reported (IBNR) welfare benefit claims);

2. Accounts payable obligations owed by the plan that were incurred in the normal operations of the plan but have not been paid; and

3. Other liabilities such as acquisition indebtedness and any other amount owed by the plan.

**Line 5c.** Enter the net assets as of the beginning and end of the plan year. (Subtract line 5b from 5a). Line 5c, column (b), must equal the sum of line 5c, column (a), plus lines 6g (net income (loss)) and 6h (transfers to (from) the plan).

**Lines 6a(1) and (2).** Enter the total cash contributions received and/or receivable by the plan from employers and participants during the plan year. Plans using the accrual basis of accounting must not include contributions designated for years before the 2022 plan year on line 6a(1).

**Line 6a(3).** Enter the amount of all other contributions including transfers or rollovers received from other plans valued on the date of contribution.

**Line 6b.** Enter the current value, at date contributed, of securities or other noncash property.

**Line 6c.** Enter the total cash, noncash, and other contributions received and/or receivable by the plan from employers and participants during the plan year.

**Line 6d.** Enter the total amount of benefits paid directly to participants or beneficiaries, including payments made (and for accrual basis filers payments due) to or on behalf of participants or beneficiaries in cash, securities, or other property (including rollovers of an individual's accrued benefit or account balance); all eligible rollover distributions as defined in Code section 401(a)(31)(D) paid at the participant's election to an eligible retirement plan (including an IRA within the meaning of Code section 401(a)(31)(E)).

**Line 6e.** Enter total amount of corrective distributions, including all distributions paid during the plan year of excess deferrals under section 402(g)(2)(A)(ii), excess contributions under section 401(k)(8), excess aggregate contributions under Code section 401(m)(6), and allocable income distributed. Also include on this line any elective deferrals and employee contributions distributed or returned to employees during the plan year as well as any attributable income that was also distributed.

**Line 6f.** Enter the total amount of certain deemed distributions of participant loans, including a participant loan that has been deemed distributed during the plan year under the provisions of Code section 72(p) and Treasury Regulations section 1.72(p)-1 only if both of the following circumstances apply:

1. Under the plan, the participant loan is treated as a directed investment solely of the participant's individual account; and

2. As of the end of the plan year, the participant is not continuing repayment under the loan.

If either of these circumstances does not apply, a deemed distribution of a participant loan should not be reported on line 6d. Instead, the current value of the participant loan (including interest accruing thereon after the deemed distribution) must be included on line 5a(1)), column (b) (participant loans – end of year), without regard to the occurrence of a deemed distribution.

**Line 6g.** The amount to be reported for expenses involving administrative service providers (salaries, fees, and commissions) during the plan year includes the total fees paid (or in the case of accrual basis plans, costs incurred during the plan year but not paid as of the end of the plan year) by the plan for, among others:

1. Salaries to employees of the plan;
2. Fees and expenses for accounting, actuarial, legal, investment management, investment advice, and securities brokerage services;
3. Contract administrator fees; and
4. Fees and expenses for individual plan trustees, including reimbursement for travel, seminars, and meeting expenses.

**Line 6h.** Other expenses (paid and/or payable) include other administrative and miscellaneous expenses paid by or charged to the plan during the plan year, including among others office supplies and equipment, telephone, and postage.

#### **Part V - Plan Characteristics**

**Line 7.** Enter all applicable plan characteristics codes that applied during the reporting year from the List of Plan Characteristics Codes shown in the instructions for Form 5500.

## Part VI - Compliance Questions

**Line 8a.** Plans that check “Yes,” must enter the aggregate amount of all late contributions for the year. The total amount of the delinquent contributions must be included on line 8a for the year in which the contributions were delinquent and must be carried over and reported again on line 8a for each subsequent year (or on line 4a of Schedule H or I of the Form 5500 if not eligible to file the Form 5500-SF or not eligible or choosing not to rely on a DCG Form 5500 filing to satisfy the plan’s reporting requirement in the subsequent year) until the year after the violation has been fully corrected by payment of the late contributions and reimbursement of the plan for lost earnings or profits. If no participant contributions were received or withheld by the employer during the plan year, answer “No.”

An employer holding participant contributions commingled with its general assets after the earliest date on which such contributions can reasonably be segregated from the employer’s general assets will have engaged in a prohibited use of plan assets (see ERISA section 406). If such a nonexempt prohibited transaction occurred with respect to a disqualified person (see Code section 4975(e)(2)), file IRS Form 5330, Return of Excise Taxes Related to Employee Benefit Plans, with the IRS to pay any applicable excise tax on the transaction.

**Line 8b.** Check “Yes” if any nonexempt transaction with a party-in-interest occurred. Do not check “Yes” with respect to transactions that are: (1) statutorily exempt under Part 4 of Title I of ERISA; (2) administratively exempt under ERISA section 408(a); (3) exempt under Code sections 4975(c) or 4975(d); (4) the holding of participant contributions in the employer’s general assets for a welfare plan that meets the conditions of ERISA Technical Release 92-01; or (5) delinquent participant contributions or delinquent loan repayments reported on line 8a. You may indicate that an application for an administrative exemption is pending. If you are unsure whether a transaction is exempt or not, you should consult either with a qualified public accountant, legal counsel, or both. If the plan is a qualified pension plan and a nonexempt

prohibited transaction occurred with respect to a disqualified person, an IRS Form 5330 is required to be filed with the IRS to pay the excise tax on the transaction. Plans that check “Yes” must enter the amount.

**Nonexempt transactions.** Nonexempt transactions with a party-in-interest include any direct or indirect:

- A. Sale or exchange, or lease, of any property between the plan and a party-in-interest.
- B. Lending of money or other extension of credit between the plan and a party-in-interest.
- C. Furnishing of goods, services, or facilities between the plan and a party-in-interest.
- D. Transfer to, or use by or for the benefit of, a party in-interest, of any income or assets of the plan.
- E. Acquisition, on behalf of the plan, of any employer security or employer real property in violation of ERISA section 407(a).
- F. Dealing with the assets of the plan for a fiduciary’s own interest or own account.
- G. Acting in a fiduciary’s individual or any other capacity in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries.
- H. Receipt of any consideration for his or her own personal account by a party-in-interest who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

**Party-in-Interest.** For purposes of this form, party-in interest is deemed to include a disqualified person. *See* Code section 4975(e)(2). The term “party-in-interest” means, as to an employee benefit plan:

**A.** Any fiduciary (including, but not limited to, any administrator, officer, trustee, or custodian), counsel, or employee of the plan;

**B.** A person providing services to the plan;

**C.** An employer, any of whose employees are covered by the plan;

**D.** An employee organization, any of whose members are covered by the plan;

**E.** An owner, direct or indirect, of 50% or more of:

1. the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation;

2. the capital interest or the profits interest of a partnership; or

3. the beneficial interest of a trust or unincorporated enterprise which is an employer or an employee organization described in C or D;

**F.** A relative of any individual described in A, B, C, or E;

**G.** A corporation, partnership, or trust or estate of which (or in which) 50% or more of:

1. the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,

2. the capital interest or profits interest of such partnership, or

3. the beneficial interest of such trust or estate, is owned directly or indirectly, or held by persons described in A, B, C, D, or E;

**H.** An employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10% or more shareholder directly or indirectly, of a person described in B, C, D, E, or G, or of the employee benefit plan; or

**I.** A 10% or more (directly or indirectly in capital or profits) partner or joint venture of a person described in B, C, D, E, or G.

**Line 8c.** You must check “Yes” if any benefits due under the plan were not timely paid or not paid in full. This would include required minimum distributions to 5% owners who have attained 72 whether or not retired and/or non-5% owners who have attained 72 and have retired or separated from service; see Code section 401(a)(9). Include in this amount the total of any outstanding amounts that were not paid when due in previous years that have continued to remain unpaid.

**Note:** In the absence of other guidance, filers do not need to report on this line unpaid required minimum distribution (RMD) amounts for participants who have retired or separated from service, or their beneficiaries, who cannot be located after reasonable efforts or where the plan is in the process of engaging in such reasonable efforts at the end of the plan year reporting period. Plan administrators and employers should review their plan documents for written procedures on locating missing participants. Although the Department of Labor’s Field Assistance Bulletin 2014-01 is specifically applicable to terminated defined contribution plans, employers and plan administrators of ongoing plans may want to consider periodically using one or more of the search methods described in the Field Assistance Bulletin in connection with making reasonable efforts to locate RMD-eligible missing participants.

**Line 9a.** Check “Yes” if all of the plan assets (including insurance/annuity contracts) were distributed to the participants and beneficiaries, legally transferred to the control of another plan, or brought under the control of the PBGC.

**Line 9b.** Enter information concerning assets and/or liabilities transferred from this plan to another plan(s) (including spinoffs) during the plan year. A transfer of assets or liabilities occurs when there is a reduction of assets or liabilities with respect to one plan and the receipt of these assets or the assumption of these liabilities by another plan. Enter the name, plan sponsor EIN, and PN of the transferee plan(s) involved on lines 9b(1), (2), and (3), respectively.

Do not use a SNN in place of an EIN or include an attachment that contains visible SSN.

**Note.** A distribution of all or part of an individual participant’s account balance that is reportable on Form 1099-R should not be included on line 9c.



*IRS Form 5310-A, Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan*

*Assets or Liabilities; Notice of Qualified Separate Lines of Business, must be filed at*

*least 30 days before any plan merger or consolidation or any transfer of plan assets or liabilities to another plan. There is a penalty for not filing IRS Form 5310-A on time.*

**Line 10.** Check “Yes” if this is a defined contribution plan subject to the minimum funding requirements of Code section 412.

**Line 11a.** Check “Yes” if this plan was permissively aggregated with another plan to satisfy the requirements of Code sections 410(b) and 401(a)(4). Generally, each single plan must separately satisfy the coverage and nondiscrimination requirements. However, generally, an employer may designate two or more separate plans as a single plan for purposes of applying the ratio percentage test of Treasury Regulations section 1.410(b)-2(b)(2) or the nondiscriminatory classification test of Treasury Regulations section 1.410(b)-4. Two or more plans that are permissively aggregated and



treated as a single plan for purposes of the minimum coverage test of Code section 410(b) must also be treated as a single plan for purpose of the nondiscrimination test under Code section 401(a)(4). See Treasury Regulations sections 1.410(b)-7(d) and 1.401(a)(4)-(9)(a) for more information.

**Line 11b.** Check the applicable method used to satisfy the nondiscrimination requirements of Code section 401(k). A safe harbor 401(k) plan is similar to a traditional 401(k) plan but, among other things, it must provide for employer contributions. These contributions may be employer matching contributions, limited to employees who defer, or employer contributions made on behalf of all eligible employees, regardless of whether they make elective deferrals. The safe harbor 401(k) plan is not subject to the complex annual nondiscrimination tests that apply to traditional 401(k) plans. Check “Design-based safe harbor method” if this is a safe harbor 401(k) plan, that is, a SIMPLE 401(k) plan under Code section 401(k)(11), a safe harbor 401(k) plan under Code section 401(k)(12), or a qualified automatic contribution arrangement under Code section 401(k)(13). If the plan, by its terms, does not satisfy the safe harbor method, it generally must satisfy the regular nondiscrimination test, known as the actual deferral percentage (ADP) test. Check the appropriate box to indicate if the plan uses the “current year” ADP test or the “prior year” ADP test. Check “current year” ADP test if the plan uses the current year testing method under which the ADP test is performed by comparing the current plan year’s ADP for highly compensated employees (HCEs) with the current plan year’s (rather than the prior plan year’s) ADP for nonhighly compensated employees (NHCEs). Check all boxes that apply for a plan that tests different groups of employees on a disaggregated basis. Check “N/A” if the plan is not required to test for nondiscrimination under Code section 401(k)(3), such as a plan in which no HCE is benefiting.

**Line 12.** If a plan sponsor or an employer adopted a pre-approved plan that relied on a favorable Opinion Letter of a pre-approved plan, enter the date of the most recent favorable Opinion Letter issued by the IRS and the Opinion Letter serial number listed on the letter.

## **Part VII – Accountant’s Opinion for Individual Participating Plan**

**Line 13.** If any plans participating in the arrangement have 100 participants or more, using the same rules for counting participants as for individual plan filings, including the “80 to 120” rule at 29 CFR 2520.103-1(d), each such plan must be audited and an IQPA report and audited financial statements for such plan must be attached to the Schedule DCG for that participating plan. The audit and its report must follow the same rules as required for a plan that is filing its own Form 5500 Annual Return/Report and not having any of its reporting obligations satisfied by the filing of a Form 5500 by a DCG. *See Instructions to Schedule H, Line 3.*

**Line 13a.** These boxes identify the type of opinion offered by the IQPA. The plan administrator should confirm with their IQPA whether the opinion was an unmodified, qualified, disclaimer of, or adverse opinion before answering Line 13a. Line 13a(1). Check if an unmodified opinion was issued pursuant to SAS 136. Generally, an unmodified opinion is issued when the IQPA concludes that the plan’s financial statements are presented fairly, in all material respects, in accordance with the applicable financial reporting framework (generally accepted accounting principles (GAAP) or another basis such as modified cash or cash basis). This also includes the form of opinion that SAS 136 permits an IQPA to issue when the IQPA has performed an ERISA section 103(a)(3)(C) audit pursuant to 29 CFR 2520.103-8 or 29 CFR 2520.103-12, or both, and had no modifications. Under 29 CFR 2520.103-8, the examination and report of an IQPA does not need to extend to statements or information regarding assets held by a bank, similar institution, or insurance carrier that is regulated and supervised and subject to periodic examination by a state or federal agency provided that the statements or information are prepared by and certified to by the bank or similar institution or the insurance carrier. The term “similar institution” as used here does not extend to securities brokerage firms (see DOL Advisory Opinion 93-21A). Under 29 CFR 2520.103-12, an audit of an employee benefit plan does not need extend to the investments in a pooled investment fund that files a separate audited Form 5500 as a 103-12 IE. For more information on filing requirements for

103-12 IEs, See Section 4: What to File. Neither of these regulations exempt the plan administrator from engaging an IQPA nor from attaching the IQPA's report to the Schedule DCG.

**Line 13a(2).** Check if a qualified opinion was issued. Generally, a qualified opinion is issued by an IQPA when (a) the IQPA, having obtained sufficient appropriate audit evidence, concludes that misstatements, individually or in the aggregate, are material but not pervasive to the financial statements or (b) the IQPA is unable to obtain sufficient appropriate audit evidence on which to base the opinion, but the auditor concludes that the possible effects on the financial statements of undetected misstatements, if any, could be material but not pervasive.

**Line 13a(3).** Check if a disclaimer of opinion was issued. A disclaimer of opinion is issued when the IQPA is unable to obtain sufficient appropriate audit evidence on which to base the opinion, and the IQPA concludes that the possible effects on the financial statements of undetected misstatements, if any, could be both material and pervasive.

**Line 13a(4).** Check if the plan received an adverse accountant's opinion. Generally, an adverse opinion is issued by an IQPA Instructions for Schedule H (Form 5500) -37- when the IQPA having obtained sufficient appropriate audit evidence, concludes that misstatements, individually or in the aggregate, are both material and pervasive to the financial statements.

**Line 13b.** Check "DOL Regulation 2520.103-8" or "DOL Regulation 2520.103-12(d)" (or both boxes, if applicable) if the IQPA performed an ERISA Section 103(a)(3)(C) audit of the plan's financial statements pursuant to DOL regulations 29 CFR 2520.103-8, 29 CFR 2520.103-12(d), or under both. If it was not performed pursuant to 29 CFR 2520.103-8 or 29 CFR 2520 103-12(d), check box (3). Note. These regulations do not exempt the plan administrator from engaging an IQPA or from attaching the IQPA's report to the Form 5500. If you check box 103-8 or 103-12(d) or both, you must also check the appropriate box on line 13a to identify the type of opinion offered by the IQPA.

**Line 13c.** Enter the name and EIN of the accountant (or accounting firm) in the space provided on line 13c. Do not use a SSN or any portion thereof in lieu of an EIN. The Schedule DCG is open to public inspection, and the contents are public information and are subject to publication on the Internet. Because of privacy concerns, the inclusion of a SSN or any portion thereof on this Schedule DCG may result in the rejection of the filing.

**APPENDIX C –PROPOSED CHANGES TO PARTICIPATING EMPLOYER INFORMATION UNDER ERISA 103(g) TO 2021 FORM 5500/FORM 5500-SF INSTRUCTIONS**

To implement the SECURE Act’s amendment of section 103(g) of ERISA, the instructions for the multiple-employer plan check box on Part I, line A of the 2021 Form 5500 and Form 5500-SF would be modified as follows:

- The participating employer information updated to add reporting of “aggregated account balance” information.
- Pooled employer plans would be required to include in the Section 103(g) attachment new “Pooled Employer Plan Information,” using the format provided in the instructions.
- The current graphic in the Form 5500 and Form 5500-SF instructions for Part I, Line A “Box for Multiple Employer Plan” entitled “Multiple-Employer Plan Participating Employer Information,” for the Section 103(g) attachment would be replaced with the following.

<b>Multiple-Employer Plan Participating Employer Information (Insert Name of Plan and EIN/PN as shown on the Form 5500)</b>			
<b>Participating Employer Information</b>			
All multiple-employer pension plans must complete elements 1-4. Multiple-employer welfare plans are required to complete elements 1, 2, and 3 only. Multiple-employer welfare plans that are unfunded, fully insured, or a combination of unfunded/insured and exempt under 29 CFR 2520.104-44 from the obligation to file financial statements with their annual report are required to complete elements 1 and 2 only. Complete as many entries as needed to report the required information for all participating employers in the plan.			
1. Name of participating employer	2. EIN	3. Percent of Total Contributions for the Plan Year	4. Aggregate Account Balances Attributable Participating Employer
1. Name of participating employer	2. EIN	3. Percent of Total Contributions for the Plan Year	4. Aggregate Account Balances Attributable Participating Employer
<b>Pooled Employer Plan Information</b>			
Only pooled employer plans complete this section.			
5. Has the pooled plan provider (identified as the plan sponsor and administrator in Part II of the Form 5500) acknowledged in writing that it is the named fiduciary? <input type="checkbox"/> Yes <input type="checkbox"/> No			
6. Has the pooled plan provider (identified as the plan sponsor and administrator in Part II of the Form 5500) acknowledged in writing that it is the named fiduciary and plan administrator under section 3(16) of ERISA? <input type="checkbox"/> Yes <input type="checkbox"/> No			
7. Is the pooled plan provider currently in compliance with the Form PR (Pooled Plan Provider Registration Statement) requirements? (See instructions and 29 CFR 2510.3-44). <input type="checkbox"/> Yes <input type="checkbox"/> No			

**7a** If "Yes" is checked, enter the AckID for the most recent Form PR that was required to be filed under the Form PR filing requirements. (Failure to enter a valid AckID will subject the Form 5500 filing for any PEP operated by the pooled plan provider to rejection as incomplete.)

AckID \_\_\_\_\_

**APPENDIX D –PROPOSED CHANGES TO  
2022 FORM M-1 AND INSTRUCTIONS**

**1. Proposed Changes To 2022 Form M-1—Report for Multiple Employer Welfare Arrangements (MEWAS) and Certain Entities Claiming Exceptions (ECES)**

- A new Part IV would be added to the 2022 Form M-1 to read as follows:

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**PART IV                      MEWA PARTICIPATING EMPLOYER INFORMATION**

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Only MEWAs are required to complete Part IV. If this filing is an annual report, complete boxes 22a-22f. If this filing is a registration filing, complete boxes 22a and 22b only.

**Important.** MEWAs that are unfunded, fully insured or combination unfunded/insured complete boxes 22a and 22b only.

Complete as many repeating entries as needed to identify all participating employers in the plan.

<b>22a.</b> Name of Participating Employer	<b>22b.</b> EIN	<b>22c.</b> Percentage of Total Contributions for the Plan Year
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**CAUTION.** Do not individually list information for self-employed individuals or other individuals participating in the MEWA that are not associated with a particular participating employer. Providing identifying information for individuals may result in rejection of this filing. If there are any such individuals in the MEWA, answer “yes” to line 22d and provide the total contribution information for all such individuals on box 22e, without providing names or other identifying information.

**22d.** Does the MEWA include any self-employed individuals or individuals who are participants or beneficiaries in the MEWA that are not associated with a particular participating employer?

Yes  No

**22e.** If “Yes,” enter a good faith estimate of percentage of total contributions made by all such individuals that are not listed on box 22a during the plan year.

**2. Proposed changes to 2022 Form M-1 Instructions**

The instructions for Form M-1 would be amended to add the following accompanying instructions for Part IV. Complete boxes 22c-22f for annual report only.

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**Part IV- MEWA Participating Employer Information**

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**Important:** Only MEWAs are required to complete Part IV. If this filing is an annual report, complete boxes 22a-22f. If this filing is a registration filing, complete boxes 22a and 22b only.

MEWAs that are unfunded, fully insured or combination unfunded/insured as described in 29 CFR 2520.104-44 complete boxes 22a and 22b only.

**Box 22a and 22b.** Enter each participating employer in the MEWA during the plan year, identified by name and EIN number. Any employer who was obligated to make contributions to the

MEWA for the plan year, made contributions to the MEWA for the plan year, or whose employees were participants covered under the MEWA is a “participating employer” for this purpose.

**CAUTION.** Enter the EIN of the participating employer. Do not enter a SSN in response to questions asking for an EIN. Because of privacy concerns, the inclusion of a SSN on the Form M-1 or on an attachment that is open to public inspection may result in the rejection of the filing.

**Box 22c.** Enter a good faith estimate of the participating employer’s percentage of the total contributions made by all participating employer (including the total contribution amount for individuals reported on box 22d) during the plan year. If a participating employer made no contributions for the plan year (including participant contributions), enter “-0-” on line 2c.

**Box 22d.** If the MEWA includes any self-employed individuals or other individuals participating in the MEWA that are not associated with a particular participating employer, answer “Yes” to box 22d and complete box 22e. Do not identify such individuals on box 22a.

**Box 22e.** If the answer to box 22d is “Yes,” enter a good faith estimate of percentage of total contributions made by such individuals that are not listed on box 22a without providing names or other identifying information.

**NOTE.** Group insurance arrangements (GIAs) that filed a Schedule D with its Form 5500 for the current plan year are not required to complete Part IV. See the “Who Must File” paragraph in Section 1 and 29 CFR 2520.104- 43 for a description of a GIA and when a GIA may file a consolidated Form 5500 on behalf of participating plans in the GIA.



**APPENDIX E – OTHER PROPOSED CHANGES TO 2022 FORM 5500, FORM 5500-SF,  
FORM 5500-EZ, SCHEDULES and INSTRUCTIONS**

**1. Proposed Changes to Instructions to 2022 Form 5500 and Form 5500-SF for Part I,  
“Multiple Employer Plan Checkbox.”**

- **Instructions for 2022 Form 5500.** The instructions for Part I, Line A - “Box for Multiple-Employer Plan” would be modified as follows:

- Second paragraph - Delete the phrase “multiple-employer pension plans” and add the phrase “and not required to file a Form M-1 (Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)), for example, multiple-employer welfare plans providing life or disability benefits,” after the phrase “multiple-employer welfare plans required to file a Form 5500.”

- Third paragraph – Delete the phrase “Multiple-Employer Plan Participating Employer Information” and replace with the phrase “Participating Employer Information for Multiple-Employer Welfare Plan Not Providing Medical Benefits.”<sup>47</sup>

Replacing the current graphic in the Form 5500 for Part I, Line A “Box for Multiple-Employer Plan” entitled “Multiple-Employer Plan Participating Employer Information,” with the following:		
<b>Participating Employer Information for Multiple-Employer Welfare Plan Not Providing Medical Benefits (Insert Name of Plan and EIN/PN as shown on the Form 5500)</b>		
1. Name of participating employer	2. EIN	3. Percent of Total Contributions for the Plan Year
1. Name of participating employer	2. EIN	3. Percent of Total Contributions for the Plan Year

- Add the following “Note” paragraph after the graphic.

**Note.** Do not report the participating employer information as an attachment for multiple-employer pension plans or multiple-employer welfare plans offering or providing medical benefits. Multiple-employer pension plans report the participating employer information on Schedule MEP.

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<sup>47</sup> For 2022, it would be expected that this information would be entered as structured repeating line items or in a format that would be imported into the system, rather than a nonstandard, read-only attachment.

Multiple-employer welfare plans that offer or provide medical benefits report the participating employer information on Form M-1 (Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)).

- The accompanying instructions for the “Box for Multiple-Employer Plan” on the 2021 Form 5500-SF at Part I, line A, Annual Report Identification Information would be revised to read the same as the instructions for the 2022 Form 5500 described above, except all references to “Form 5500” would be changed to “Form 5500-SF.”

## **2. Proposed Changes to 2022 Schedule H and Instructions to Standardize Data Collection For Schedule H, Line 4i Schedules of Assets**

- **Instructions for Schedule H.** Instructions for Part IV, line 4i of the 2022 Schedule H would be modified to read as follows:

**Line 4i. Schedules of Assets.** Check “Yes” in elements (1) and/or (2) and complete, as appropriate, the “line 4i(1) Schedule of Assets Held for Investment at End of Year” and the “line 4i(2) Schedule of Assets Acquired and Disposed of During the Plan Year.” You may not create your own schedules of assets in the form of an attachment or otherwise. You must complete the schedule through IFile or using EFAST-approved third-party software. If the plan both disposed of assets during the plan year and held assets for investment at end of year, you must complete both the lines 4i(1) and 4i(2) schedules. Generally, plans that are ongoing must answer “Yes” to line 4i(1) and complete the “line 4i(1) Schedule of Assets Held for Investment at End of Year.”

**Notes:** (1) Participant loans under an individual account plan with investment experience segregated for each account, that are made in accordance with 29 CFR 2550.408b-1 and that are secured solely by a portion of the participant’s vested accrued benefit, may be aggregated for reporting purposes in line 4i. Under identity of borrower enter “Participant loans,” under rate of

interest enter the lowest rate and the highest rate charged during the plan year (e.g., 8%–10%), under the cost and proceeds columns enter zero, and under current value enter the total amount of these loans. (2) Column (d) cost information for the line 4i(1) Schedule of Assets Held for Investment at End of Year and the column (c) cost of acquisitions information for the line 4i(2) Schedule of Assets Disposed of During the Plan Year may be omitted when reporting investments of an individual account plan that a participant or beneficiary directed with respect to assets allocated to his or her account (including a negative election authorized under the terms of the plan). Likewise, cost information for investments in Code sections 403(b)(1) annuity contracts and Code section 403(b)(7) custodial accounts may also be omitted. (3) Investments in Code section 403(b)(1) annuity contracts and Code section 403(b)(7) custodial accounts generally may also be treated as one asset held for investment for purposes on the line 4i schedules. For Code section 403(b)(7) accounts, show the corresponding line 1b(5)(A) categories to show the types of investment accounts.

**Line 4i(1). Schedule of Assets Held for Investment at End of Year.** Assets held for investment purposes for purposes of the line 4i(1) Schedule of Assets Held for Investment at End of Year include all investment assets held by the plan on the last day of the plan year other than cash and cash equivalents reported on Schedule H, line 1a. You must complete the Schedule of Assets Held for Investment at End of Year if you answered “Yes” to line 4(i)(1).

Complete as many entries in each element as needed to identify all assets held for investment at end of year. Although a format is shown in the instructions for informational purposes, you cannot create your own schedules of assets, but must complete the schedules through IFile or using EFAST-approved third-party software.

Schedule H, Line 4i(1) Schedule of Assets Held for Investment				
<b>a</b> Check if issuer, borrower, lessor or similar party is a party-in-interest <input type="checkbox"/>	<b>b</b> Name of issuer, borrower, lessor, or similar party	<b>c</b> Check if asset is hard-to-value asset <input type="checkbox"/>	<b>d</b> CUSIP, CIK, LEI, NAIC Company Code, other registration number:	<b>e</b> Cost
<b>f(1)</b> Indicate Sch. H, line 1b asset category.  <b>(2)</b> <input type="checkbox"/> Check here if entry in <b>f(1)</b> is held through a CCT or PSA that did not file a Form 5500.  <b>(3)</b> <input type="checkbox"/> Check here if the asset is a designated investment alternative in a defined contribution plan  <b>(4)</b> <input type="checkbox"/> Check here if the asset is a qualified default investment alternative in a defined contribution plan  <b>(5)</b> <input type="checkbox"/> Check here if the asset is held in a participant-directed brokerage account that is required to be broken out and separately reported (see instructions for reporting assets held through a participant-directed brokerage account)	<b>g</b> Description of investment, including, as applicable share class, maturity date, rate of interest, par or maturity value, including whether asset/investment is subject to surrender charge. See instructions for reporting assets held through a participant-directed brokerage account.	<b>h</b> Current value	<b>i.</b> If a checkbox for <b>f(3)</b> or <b>f(4)</b> is checked, enter the total annual operating expenses for the designated investment alternative expressed as a percentage of assets that was furnished to participants and beneficiaries in their most recent "404a-5 statement.	

For each asset held directly by the plan or investing filing entity, complete elements (a)-(i).

Participant-directed brokerage account assets reported in the aggregate on line 1c(15) generally may be treated as one asset held for investment for purposes here, except investments in tangible personal property, loans, partnership or joint venture interests, real property, employer securities, and investments that could result in a loss in excess of the account balance of the participant or beneficiary who directed the transaction must be reported as separate aggregations of assets on line 4i(1), with an indication of which of the line 1c breakouts on which that the asset was reported in the balance sheet.

**Element (a).** Check the box in element a if the issuer of the investment is a person known to be a party-in-interest to the plan. This includes when the seller, issuer, lender, or similar party is

the employer, employee organization, a service provider to the plan, or other party interest, including a subcontractor or affiliate.

**Element (b).** Enter the name of the seller, issuer, lender, or similar party. If the person is a plan sponsor, service provider, or DFE also identified on the Form 5500, Schedule C or any other of the Schedule H line 4 schedules, or is a DFE that files its own Form 5500, use the same name in all places.

**Element (c).** Check here if the asset is a “hard-to-value” asset. Assets that are not listed on any national exchanges or over-the-counter markets, or for which quoted market prices are not available from sources such as financial publications, the exchanges, or the National Association of Securities Dealers Automated Quotations System (NASDAQ), are required to be identified as hard-to-value assets on the Schedule of Assets Held for Investment at End of Year. Bank collective investment funds or insurance company pooled separate accounts that are primarily invested in assets that are listed on national exchanges or over-the-counter markets and are valued at least annually need not be identified as hard-to-value assets. CCTs or PSAs invested primarily in hard-to-value assets must also be identified as a hard-to-value asset. A non-exhaustive list of examples of assets that would be required to be identified as hard-to-value on the proposed schedules of assets is: non-publicly traded securities, real estate, private equity funds; hedge funds; and real estate investment trusts (REITs). Check this box for all assets designated as “level 3” in the accompanying IQPA report.

**Element (d).** If the person is a plan sponsor, service provider, or direct filing entity also identified on the Form 5500, Schedule C, or Schedule D, or any other of the Schedule H line 4 schedules, or is a DFE that files its own Form 5500, use the same identification numbers in all places. If the person identified in element c, has a CUSIP, CIK number, LEI, NAIC Company Code, or other government or market exchange registration or identity number, you must include all that apply here.

**Element (e).** Enter the acquisition cost of the asset.

**Element (f).** Enter in element f(1) which category the asset was part of the total on line 1b and check all applicable boxes.

**Element (g).** Enter a description of the investment, including, as applicable maturity date, rate of interest, par, or maturity value, including whether asset/investment is subject to surrender charge. Include any restriction on transferability of corporate securities. (Include lending of securities permitted under Prohibited Transactions Exemption 81-6.)

**Element (h).** Enter current value. For purposes of the Form 5500, “current value” means fair market value where available. Otherwise, it means the fair value as determined in good faith under the terms of the plan by a trustee or a named fiduciary, assuming an orderly liquidation at time of the determination. See ERISA section 3(26).

**Element i.** If the checkbox for element f(3) or f(4) is checked, enter the total annual operating expenses for the designated investment alternative expressed as a percentage of assets that was furnished to participants and beneficiaries in their most recent 404a-5 statement.

**Line 4i(2) Assets Acquired and Disposed of During Plan Year.** Complete as many entries in each element as needed to identify all acquired and disposed of during the year.

Although the format is shown in the instructions for informational purposes, you cannot create your own schedules of assets, but must complete the schedules through IFile or using EFAST-approved third-party software.

You must identify on the line 4i(2) Schedule each investment asset sold during the plan year except:

1. Debt obligations of the U.S. or any U.S. agency.

2. Interests issued by a company registered under the Investment Company Act of 1940 (e.g., a mutual fund).

3. Bank certificates of deposit with a maturity of one year or less.

4. Commercial paper with a maturity of 9 months or less if it is valued in the highest rating category by at least two nationally recognized statistical rating services and is issued by a company required to file reports with the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934.

5. Participations in a bank common or collective trust.

6. Participations in an insurance company pooled separate account.

7. Securities purchased from a broker-dealer registered under the Securities Exchange Act of 1934 and either: (1) listed on a national securities exchange and registered under section 6 of the Securities Exchange Act of 1934 or (2) quoted on NASDAQ.

Assets acquired and disposed of during the plan year shall not include any investment that was not held by the plan on the last day of the plan year if that investment is reported in the annual report for that plan year in any of the following:

1. The schedule of loans or fixed income obligations in default required by Schedule G, Part I;

2. The schedule of leases in default or classified as uncollectible required by Schedule G, Part II;

3. The schedule of nonexempt transactions required by Schedule G, Part III; or

4. The schedule of reportable transactions required by Schedule H, line 4j.

You must complete the “Schedule of Assets Acquired and Disposed of During the Plan Year” if you answered “Yes” to line 4(i)(2).

Schedule H, Line 4i(2) Schedule of Assets Acquired and Disposed of During the Plan Year				
a Check if issuer, borrower, lessor or similar party is party-in-interest <input type="checkbox"/>	b Name of issuer, borrower, lessor, or similar party	c Check if asset is hard-to-value asset	d EIN, CUSIP, CIK, LEI, NAIC Company Code, other registration number:	e Indicate Sch. H, line 1c asset category.
f Cost	g Sales price	h Total expenses incurred with disposal of asset, including any termination or surrender charges	i Net gain/loss	j Description of investment, including, as applicable share class, maturity date, rate of interest, par or maturity value, including whether asset/investment is subject to surrender charge. See instructions for reporting assets held through a participant-directed brokerage account

**Element (a).** Indicate in element (a) whether the seller, issuer, lender, or similar party is the employer, employee organization, or other party interest, including a subcontractor or affiliate.

**Element (b).** Enter the name of the seller, issuer, lender, or similar party. If the person is a plan sponsor, service provider, or direct filing entity also identified on the Form 5500, Schedule C, or Schedule D, or any other of the Schedule H line 4 schedules, use the same name in all places. If the asset was held through a master trust, 103-12 IE, CCT, or PSA provide the name, EIN and PN of the entity. For DFEs use the same identifying information used on the entity’s own Form 5500.

**Element (c).** Check here if the asset is a “hard-to-value” asset. Check this box for all assets designated as “level 3” in the accompanying IQPA report.



**Element (d).** In element (d) enter the EIN of issuer, borrower, lessor, similar party. If the person is a plan sponsor, service provider, or direct filing entity also identified on the Form 5500, Schedule C, or Schedule D, or any other of the Schedule H, line 4 schedules, use the same name in all places. Also enter, separated by commas, if applicable, the CUSIP, CIK, LEI, NAIC Company Code, or other registration number.

**Element (e).** Enter in element (e) in which category the asset was part of the total on line 1(b).

**Element (f).** Enter the acquisition cost here.

**Element (g).** Enter the sale price.

**Element (h).** Enter the total expenses incurred with disposal of asset, including any termination or surrender charges.

**Element (i).** Enter the net gain (loss) on the asset.

**Element (j).** Enter a description of the investment, including maturity date, rate of interest, collateral, par, or maturity value.

**3. Proposed Changes to Form 5500, Form 5500-SF and Instructions on counting participants for determining small plan filing status for defined contribution plans**

- **Instructions to 2022 Form 5500.** Instructions to Section 4, “What to File” section of the 2022 Form 5500 would be modified to delete the paragraph above the “Exceptions” section and replace with the following paragraph:

To determine whether a plan is a “small plan” or “large plan,” for defined benefit pension plans and welfare plans, use the number reported on Form 5500, line 5. Defined contribution

pension plans use the number reported on the Form 5500 line 6g(1), except use the number reported on the Form 5500 line 6g(2) for defined contribution pension plans that check the “first return/report box on Part I, line B.

- **Instructions to 2022 Form 5500.** Instructions to “80-120 Participant Rule” paragraph in Section 4, “What to File,” “Exceptions” section of the 2022 Form 5500 would be modified by deleting the phrase “on line 5” in the first sentence and deleting the phrase “line 5 of the” in the second sentence.

- **Instructions to 2022 Form 5500.** Instructions to “Short Plan Year Rule” paragraph in Section 4, “What to File,” “Exceptions” section of the 2022 Form 5500 would be modified by amending the last sentence to eliminate the reference at the end to Line 5:

**(1) Short Plan Year Rule: \*\*\***

If such an election was made for the prior plan year, the 2022 Form 5500 must be completed following the requirements for a large plan, including the attachment of the Schedule H and the accountant’s reports, regardless of the number of participants entered in Part II.

- **2022 Form 5500.** Line 6 of Part II of 2022 Form 5500 would be modified by amending line 6, renumbering 6g as line 6g(2) and adding line 6g(1), to read as follow:

<b>6. Number of participants (welfare plans complete only Lines 6a(1), 6(a)(2), 6b, 7c, 7d, and 7g(3)).</b>		
* * *		
<b>g(1)</b> Number of participants with account balances as of the beginning of the plan year (only defined contribution plans complete this item).....	<b>6g(1)</b>	
<b>g(2)</b> Number of participants with account balances as of the end of the plan year (only defined contribution plans complete this item).....	<b>6g(2)</b>	

- **Instructions to 2022 Form 5500.** Instructions to line 6g of Part II of 2022 Form 5500 would be modified to read as follows:

**Line 6.** Number of participants (welfare plans complete only Lines 6a(1), 6(a)(2), 6b, 7c, 7d, and 7g(3)).

**Line 6g.** Enter in Line 6g(1) the number of participants who have account balances at the beginning of the plan year. Enter in Line 6g(2) the number of participants included on line 6f (total participants at the end of the plan year) who have account balances at the end of the plan year. For example, for a Code section 401(k) plan the number entered on line 6g should be the number of participants counted on line 6f who have made a contribution, or for whom a contribution has been made to the plan for this plan year or any prior plan year. Welfare benefit plans and defined benefit plans should leave line 6g blank.

- **Instructions to 2022 Form 5500-SF.** Instructions to “Who May File” section of the 2022 Form 5500-SF would be modified by amending paragraph (1) to read as follows.

1. The plan (a) covered fewer than 100 participants at the beginning of the plan year 2022, or (b) under 29 CFR 2520.103-1(d) was eligible to and filed as a small plan for plan year 2022 and did not cover more than 120 participants at the beginning of plan year 2020. To determine whether a plan is eligible, for defined benefit pension plans and welfare plans, use the number reported on Form 5500-SF line 5a. Defined contribution pension plans use the number reported on the Form 5500-SF line 5c(1), except use the number reported on the Form 5500-SF line 5c(2) for defined contribution pension plans that check the “first return/report box on Part I, line B;

- **2022 Form 5500-SF.** Line 5c of Part II of 2022 Form 5500-SF will be renumbered as line 5c(2) and line 5c(1) would be added to read as follow:

<b>c(1)</b> Number of participants with account balances as of the beginning of the plan year (only defined contribution plans complete this item).....	<b>5c(1)</b>	
<b>c(2)</b> Number of participants with account balances as of the end of the plan year (only defined contribution plans complete this item).....	<b>5c(2)</b>	

- **Instructions to 2022 Form 5500-SF.** Instruction to second sentence of line 5 of Part II of 2022 Form 5500-SF will be deleted and replaced with the following two sentences as follows.

**Line 5. \*\*\***

Enter in element (c)(1) the number of participants who have account balances with account balances as of the beginning of the plan year. Enter in element (c)(2) the number of participants included on line 5b (total participants at the end of the plan year) who have account balances at the end of the plan year.

- **Instructions to 2022 Form 5500-SF.** Instruction to line 6 of Part II of 2022 Form 5500-SF would be modified by amending paragraph (1) to read as follows:

1. The plan (a) covered fewer than 100 participants at the beginning of the plan year 2022, or (b) under 29 CFR 2520.103-1(d) was eligible to and filed as a small plan for plan year 2019 and did not cover more than 120 participants at the beginning of plan year 2020 (see instructions for Who May File Form 5500-SF on counting the number of participants to determine whether a plan is eligible);

**4. Proposed Changes to 2022 Schedule MB, Schedule SB and Schedule R, and their Instructions to Improve PBGC Reporting.**

- **Instructions to 2022 Schedule MB.** Instructions for line 3 of the 2022 Schedule MB would be modified to read as follows:

**Line 3. Contributions Made to Plan.** Show all employer and employee contributions for the plan year. Include employer contributions made not later than 2½ months (or the later date allowed under Code section 431(c)(8) and ERISA section 304(c)(8)) after the end of the plan year. Show only contributions actually made to the plan by the date this Schedule MB is signed.

Add the amounts in both columns (b) and (c) and enter both results on the total line. All contributions must be credited toward a particular plan year.

If any of the contributions reported in line 3 include amounts owed for withdrawal liability, report in line 3(d) the total withdrawal liability amounts included. Attach a list showing the date and amount of each withdrawal liability amount included, broken down between periodic amounts and lump sum amounts. -Label this attachment “*Schedule MB, Line 3(d) – Withdrawal Liability Amounts*”.

Schedule MB Line 3(d) – Withdrawal Liability Amounts			
Payment Date	Periodic Amounts	Lump Sum Amounts	Total Amounts

• **2022 Schedule MB.** Line 4f of the 2022 Schedule MB would be modified to read as follows:

<p><b>f</b> If the plan is in critical status or critical and declining status, and is:</p> <ul style="list-style-type: none"> <li>• Projected to emerge from critical status within 30 years, enter the plan year in which it is projected to emerge;</li> <li>• Projected to become insolvent within 30 years, enter the plan year in which insolvency is expected and check here ..... <input type="checkbox"/></li> <li>• Neither projected to emerge from critical status nor become insolvent within 30 years, enter “9999.”</li> </ul>	<b>4f</b>	
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• **Instructions to 2022 Schedule MB.** Instructions for line 4f of the 2022 Schedule MB would be modified to read as follows:

**Line 4f.** If Code C (Critical Status) or Code D (Critical and Declining Status) was entered on line 4b you must complete line 4f as follows:

If, based on the most recent actuarial certification for the plan year and the most recently adopted rehabilitation plan, the plan is:

- Projected to emerge from critical status within 30 years, enter the plan year in which the plan is projected to emerge from critical status.

- Projected to become insolvent within 30 years, check the box provided, enter the plan year in which the insolvency is expected. In addition, attach an illustration showing year-by-year cash flow projections for the period ending with the year the plan is projected to become insolvent (or the 20th year after the valuation year if earlier) and a summary of the assumptions underlying the projections. Label this attachment “*Schedule MB, Line 4f – Cash Flow Projections*”.

- Neither projected to emerge from critical status nor become insolvent within 30 years, enter “9999.” In addition, attach an illustration showing year-by-year cash flow projections ending with the 20th year after the valuation year and a summary of the assumptions underlying the projections. Label this attachment “*Schedule MB, Line 4f – Cash Flow Projections*”.

- 2022 Schedule MB.** Lines 6e and 6f would be modified and line 6i would be added to the 2022 Schedule MB, to read as follows:

<b>6 Checklist of actuarial assumptions</b>			
<b>a</b> Interest rate for ‘RPA 94 current liability .....			<b>6a</b>
<b>b</b> Rates specified in insurance or annuity contracts .....		Pre-retirement <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Post-retirement <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
<b>c</b> Mortality table code for valuation purposes:			
(1) Males .....	<b>6c(1)</b>		
(2) Females.....	<b>6c(2)</b>		
<b>d</b> Valuation liability interest rate.....	<b>6d</b>		%
<b>e</b> Salary scale .....	<b>6e</b>	%	<input type="checkbox"/> N/A
<b>f</b> Withdrawal liability interest rate .....	<b>6f</b>	%	<input type="checkbox"/> N/A
<b>g</b> Estimated investment return on actuarial value of assets for year ending on the valuation date			<b>6g</b> %
<b>h</b> Estimated investment return on market value of assets for year ending on the valuation date .....			<b>6h</b> %
<b>i</b> Expense loading included in normal cost reported in line 9b			<input type="checkbox"/> N/A
(1) If expense load is described as a percentage of normal cost, enter the assumed percentage....	<b>6i(1)</b>		%
(2) If expense load is dollar amount that varies from year to year, enter dollar amount included in line 9b.....	<b>6i(2)</b>		
(3) If neither (1) nor (2) describes the expense load, check the box .....	<b>6i(3)</b>		<input type="checkbox"/>

- **Instructions to 2022 Schedule MB.** Instructions for lines 6e and 6f would be modified and for line 6i would be added to the 2022 Schedule MB, to read as follows:

**Line 6e. Salary Scale.** If a uniform level annual rate of salary increase is used, enter that annual rate. Otherwise, enter the level annual rate of salary increase that is equivalent to the rate(s) of salary increase used. Enter the annual rate as a percentage to the nearest .01 percent, used for a participant from age 25 to assumed retirement age. If the plan's benefit formula is not related to compensation, check the "N/A" box.

**Line 6f. Withdrawal Liability Interest Rate.** If any employer withdrew from the plan during the plan year, enter the interest rate used to determine the present value of vested benefits for withdrawal liability determinations. If multiple interest rates were used (e.g., select and ultimate rates under ERISA 4044 or blended liabilities reflecting different interest rate structures), report the single equivalent interest rate that produces the same present value of vested benefits for withdrawal liability determinations.

If different interest rates were used for different employers that withdrew during the plan year, report the weighted average interest rate used for this purpose (weighted by the applicable withdrawal liability amount). If no employers withdrew from the plan during the plan year, check "N/A".

**Line 6i. Expense Loading Included in Normal Cost.** If the normal cost reported in line 9b does not include a load for administrative or investment expenses, check the "N/A" box. Otherwise, provide information in lines 6i(1), 6i(2), or 6i(3), whichever is applicable, about the expense load included in the normal cost. If the expense load is described as a percentage of normal cost, the reported percentage in line 6i(1) should be the expense load as a percent of the unloaded normal cost. For example, if the expense load is 5% of the normal cost, the unloaded normal cost is

\$100,000 and the reported normal cost is \$105,000, enter 5%, not 4.8% (i.e., \$5,000/\$105,000).

Enter rates to the nearest 0.1 percent.

- **2022 Schedule MB.** The title for line 8b would be modified and new lines 8b(3) and 8b(4) would be added to the 2022 Schedule MB to read as follows:

<b>8 Miscellaneous Information</b>		
<b>a</b> If a waiver of a funding deficiency has been approved for this plan year, enter the date (MM-DD-YYYY) of the ruling letter granting the approval.....	<b>8a</b>	
<b>b</b> Demographic, benefit, and contribution information		
<b>(1)</b> Is the plan required to provide a projection of expected benefit payments? (See the instructions.) If “Yes,” attach a schedule .....		<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>(2)</b> Is the plan required to provide a Schedule of Active Participant Data? (See the instructions.).....		<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>(3)</b> Is the plan required to provide a projection of employer contributions and withdrawal liability payments? (See instructions.) If “Yes,” attach a schedule .....		<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>(4)</b> If line 8b(1) is “Yes”, enter the average age and average monthly benefits, as of the valuation date separately for terminated vested participants and retired participants and beneficiaries receiving payments	<b>(1) Terminated Vested Participants</b>	<b>(2) Retired Participants and Beneficiaries Receiving Payments</b>
(a) Average age as of the valuation date .....		
(b) Average monthly benefit as of valuation date.....		

- **Instructions to 2022 Schedule MB.** Instructions for lines 8b(1) and 8b(2) would be modified and instructions for lines 8b(3) and 8b(4) would be added to the 2022 Schedule MB, to read as follows:

**Line 8b(1). Schedule of Projection of Expected Benefit Payments.** Check “Yes” only if this is a multiemployer plan covered by Title IV of ERISA that has 500 or more total participants as of the beginning of the plan year (i.e., reported on line 2b(3)(c), column (1)).

If line 8b(1) is “Yes,” in an attachment, provide a projection of benefits expected to be paid separately for active participants, terminated vested participants, and retired participants and beneficiaries receiving payments, and for the entire plan (not to include expected expenses) in each of the next fifty years starting with the current plan year of this filing assuming (1) no additional accruals, (2) experience (e.g., termination, mortality, and retirement) are in line with valuation assumptions, (3) no new entrants are covered by the plan, and (4) benefits are paid in the form





Expand this schedule by adding columns after the “5 to 9” column and before the “40 & up” column for active participants with total years of credited service in the following ranges: 10 to 14; 15 to 19; 20 to 24; 25 to 29; 30 to 34; and 35 to 39. For each column, enter the number of active participants with the specified number of years of credited service divided according to age group. For participants with partial years of credited service, truncate the total number of years-credited. Years of credited service are the years credited under the plan’s benefit formula.

Plans reporting 1,000 or more active participants on line 2b(3)(c), column (1), and using compensation to determine benefits must also provide average compensation data. For each grouping, enter the average compensation of the active participants in that group. For this purpose, compensation is the compensation taken into account for each participant under the plan’s benefit formula, limited to the amount defined under section 401(a)(17) of the Code. Do not enter the average compensation in any grouping that contains fewer than 20 participants.

Plans reporting 1,000 or more active participants on line 2b(3)(c), column (1), must also provide average accrued monthly benefits, as of the valuation date, that are payable at normal retirement age. For each grouping, enter the average accrued monthly benefit that is payable at normal retirement age for the active participants in that group. Do not enter the average accrued monthly benefit in any grouping that contains fewer than 20 participants.

**General Rule.** In general, data to be shown in each age/service bin includes:

1. the number of active participants in the age/service bin,
2. the average compensation of the active participants in the age/service bin, and
3. the average accrued monthly benefit of the active participants in the age/service bin, using \$0 for anyone who has no accrued monthly benefit.

In general, information should be determined as of the valuation date. Average accrued monthly benefits may be determined as of either:

1. the valuation date or
2. the day immediately preceding the valuation date.

**Line 8b(3). Schedule of Projection of Employer Contributions and Withdrawal**

**Liability Payments.** Check “Yes” only if this is a multiemployer plan covered by Title IV of ERISA that has 500 or more total participants as of the beginning of the plan year (i.e., reported on line 2b(3)(c), column (1)). If line 8b(3) is “Yes,” in an attachment, separately provide a projection of employer contributions and withdrawal liability payments expected to be received for the entire plan in each of the next ten years starting with the current plan year of this filing based on the assumptions used for to determine the plan’s status under line 4b. Use the format shown below and label the schedule “*Schedule MB, Line 8b(3) – Schedule of Projection of Employer Contributions and Withdrawal Liability Payments*”.

**Schedule MB, Line 8b(3) – Schedule of Projection of Employer Contributions and Withdrawal Liability Payments**

<b>Plan Year</b>	<b>Employer Contributions</b>	<b>Withdrawal Liability Payments</b>	<b>Total</b>
Current Plan Year			
Current Plan Year + 1			
Etc.			
Current plan year + 9			

**Line 8b(4)(a). Average Age.** If line 8b(1) is “Yes,” enter the average age nearest birthday, as of the beginning of the plan year, separately for terminated vested participants and retired participants and beneficiaries receiving payments.

**Line 8b(4)(b). Average Monthly Benefits.** If line 8b(1) is “Yes,” enter the average monthly benefit, as of the beginning of the plan year payable to terminated vested participants, assuming commencement at normal retirement age and the average monthly benefit paid during the month containing the valuation date to retired participants and beneficiaries receiving payments. Enter the monthly benefits in rounded whole dollars.

- **2022 Schedule SB.** Line 26 would be modified in Part VI of the 2022 Schedule SB to

read as follows:

26. Demographic and Benefit Information	
a. Is the plan required to provide a Schedule of Active Participants? If “Yes,” see instructions regarding required attachment. ....	<input type="checkbox"/> Yes <input type="checkbox"/> No
b. Is the plan required to provide a projection of expected benefit payments? (See instructions.) If “Yes,” attach a schedule?.....	<input type="checkbox"/> Yes <input type="checkbox"/> No
c. If line 26b is “Yes,” enter the average age and average monthly benefits, as of the valuation date separately for terminated vested participants and retired participants and beneficiaries receiving payments	
	<b>(a) Terminated Vested Participants</b>
	<b>(b) Retired Participants and Beneficiaries Receiving Payments</b>
(1) Average age as of the valuation date .....	
(2) Average monthly benefit as of valuation date .....	

- **Instructions to 2022 Schedule SB.** The first two paragraphs of the instructions for line 26 (now line 26a) would be modified to reference line 26a instead of line 26 as shown below. In addition, instructions for lines 26b and 26c would be added as follows:

**Line 26a. Schedule of Active Participant Data.** Check “Yes” only if (a) the plan is covered by Title IV of ERISA and (b) the plan has active participants.

If line 26a is “Yes,” attach a schedule of the active plan participant data used in the valuation for this plan year. Use the format shown on the following page and label the schedule **“Schedule SB, Line 26a – Schedule of Active Participant Data.”**

**Line 26b. Schedule of Projection of Expected Benefit Payments.** Check “Yes” only if this plan is covered by Title IV of ERISA and has 500 or more total participants as of the valuation date.

If line 26b is “Yes,” in an attachment, provide a projection of benefits expected to be paid separately for active participants, terminated vested participants, and retired participants and beneficiaries receiving payments, and for the entire plan (not to include expected expenses) in each of the next fifty years starting with the current plan year of this filing assuming (1) no additional

accruals, (2) experience (e.g., termination, mortality, and retirement) are in line with valuation assumptions, (3) no new entrants are covered by the plan, and (4) benefits are paid in the form assumed for valuation purposes. Use the format shown below. The attachment may be provided in a spreadsheet file. Label this attachment “**Schedule SB, Line 26b – Schedule of Projection of Expected Benefit Payments**”

**Schedule SB, Line 26b - Schedule of Projection of Expected Benefit Payments**

Plan Year	Expected Annual Benefit Payments			Total
	Active Participants	Terminated Vested Participants	Retired Participants and Beneficiaries Receiving Payments	
Current Plan Year				
Current Plan Year + 1				
Etc.				
Current plan year + 49				

**Line 26c(1). Average Age.** If 26b is “Yes,” enter the average age nearest birthday, as of the valuation date, separately for terminated vested participants and retired participants and beneficiaries receiving payments.

**Line 26c(2). Average Monthly Benefits.** If 26b is “Yes,” enter the average monthly benefit, as of the valuation date payable to terminated vested participants, assuming commencement at normal retirement age and the average monthly benefit paid during the month containing the valuation date to retired participants and beneficiaries receiving payments. Enter the monthly benefits in rounded whole dollars.

- **2022 Schedule SB.** The title for Part IX of the 2022 Schedule SB and line 41 would be modified and replaced with the following:

<b>Part IX</b>	Pension Funding Relief under the American Rescue Plan Act of 2021 (See instructions.)
<b>41</b>	If an election was made to use the extended amortization rule for a plan year beginning on or before December 31, 2021, check the box to indicate the first plan year for which the rule applies. <input type="checkbox"/> 2019 <input type="checkbox"/> 2020 <input type="checkbox"/> 2021

- **Instructions to 2022 Schedule SB.** The **instructions** for Part IX would be modified and replaced with the following:

**Part IX – Pension Funding Relief under the American Rescue Plan Act of 2021**

**Line 41.** If an election was made under Code section 403(c)(8) or ERISA section 303(c)(8) to apply the extended amortization rule for a plan year beginning on or before December 31, 2021, check the box to indicate the first plan year for which the rule applies (*i.e.*, the box for the 2019, 2020, or 2021 plan).

- **Instructions to 2022 Schedule R.** Line 13 would be modified in the instructions for Part V of the 2022 Schedule R to read as follows:

**Line 13.** This line should be completed only by multiemployer defined benefit pension plans that are subject to the minimum funding standards (see Code section 412 and Part 3 of Title I of ERISA). Enter the information on lines 13a through 13e for any employer that, for the plan year, (1) contributed more than five percent of the plan’s total contributions or (2) was one of the top ten highest contributors. List employers in descending order according to the dollar amount of their contributions to the plan. Complete as many entries as are necessary to list all employers required to be reported.

**5. Proposed Changes to 2022 Schedule H, Schedule I, Form 5500-SF, Form 5500-EZ And Their Instructions To Add New Trust Questions**

- **2022 Schedules H and I.** The following Trust Information questions, lines 6a-6d, would be added as new Part V of 2022 Schedule H and Part III of 2022 Schedule I:

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**Trust Information**

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**Line 6a.** Name of trust

**Line 6b.** Trust EIN

**Line 6c.** Name of trustee/custodian

**Line 6d.** Trustee's or custodian's telephone number

- **2022 Form 5500-SF.** Trust Information questions identical to lines 6a-6d of Schedules H and I shown above would be added to 2022 Form 5500-SF as new Part VIII, lines 14a-14d.

- **2022 Form 5500-EZ.** Trust Information questions identical to lines 6a-6d of Schedules H and I shown above would be added to Part II of 2022 Form 5500-EZ as new lines 4a-4d, and current lines 4-11 would be renumbered as lines 5-12.

- **Instructions to 2022 Schedules H and I.** Instructions for new Trust Information questions, lines 6a-6d, would be added as instructions for new Part V of 2022 Schedule H and Part III of Schedule I to read as follows.

**Line 6a.** Enter the name of the trust. If a plan uses more than one trust, enter the primary trust in which the greatest dollar amount or largest percentage of the plan assets as of the end of the plan year is held. For example, if a plan uses three different trusts, X, Y, and Z, and the percentages of the plan assets are 35%, 45%, and 20%, respectively, Trust Y with 45% of the total plan assets would be entered in line 6a.

**Line 6b.** Enter the EIN assigned to the employee benefit trust, if one has been issued to the trust. If you do not have a trust EIN, enter the EIN you would use on Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRS, Insurance Contracts*, to report distributions from employee benefit plans and on Form 945, *Annual Return of Withheld Federal Income Tax*, to report amounts of income tax withheld from those payments. Do not enter a SSN.

A trust EIN can be obtained from the IRS by applying on Form SS-4, *Application for EIN*. See the instructions for Form 5500, line 2b, to apply for an EIN. Also see the IRS EIN application

link page at [www.irs.gov/businesses](http://www.irs.gov/businesses) and click on “Employer ID Numbers” for additional information. The EIN is issued immediately once the application information is validated.

**Lines 6c and 6d.** Enter the name of the trustee or custodian and the trustee’s or custodian’s telephone number.

- **Instructions to 2022 Form 5500-SF.** Instructions to new Trust Information questions identical to instructions to lines 6a-6d of Schedules H and I shown above would be added to instructions for new Part VIII of 2022 Form 5500-SF, except the line numbers would be lines 14a-14d.

- **Instructions to 2022 Form 5500-EZ.** Instructions to new Trust Information questions identical to instructions to lines 6a-6d of Schedules H and I shown above would be added to instructions for 2020 Form 5500-EZ as lines 4a-4d and current instructions to lines 4-11 would be renumbered as lines 5-12.

**6. Proposed Changes to Form 5500 to add new checkboxes for proposed Schedules DCG and MEP.**

- **2022 Form 5500**

(1) Line 10(a) of Part II of 2022 Form 5500 would be modified by adding new checkboxes for new schedules: DCG and MEP to read as follow:

10. Check all applicable boxes in 10a and 10b to indicate which schedules are attached and, where indicated, enter the number attached. (See instructions)

**a. Pension Schedules**

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(4)  \_\_\_\_\_ **DCG** (Individual Plan Information)

(5)  \_\_\_\_\_ **MEP** (Multiple-Employer Retirement Plan Information)

**7. Proposed Changes to 2022 Schedule R, Form 5500-SF, Form 5500-EZ and Their Instructions to Add New IRS Required Compliance Questions**

• **2022 Schedule R.** New Part - IRS Compliance questions, lines 21a, 21b, and 22, would be added to 2022 Schedule R as follows:

**IRS Compliance Questions**

**Line 21a.** Does the plan satisfy the coverage and nondiscrimination tests of Code sections 410(b) and 401(a)(4) by combining this plan with any other plans under the permissive aggregation rules?      Yes      No

**Line 21b.** If this is a Code section 401(k) plan, check the correct box to indicate how the plan is intended to satisfy the nondiscrimination requirements for employee deferrals and employer matching contributions (as applicable) under Code sections 401(k)(3) and 401(m)(2)?

Design-based safe harbor method

"Prior year" ADP test

"Current year" ADP test

N/A \_\_\_

**Line 22.** If the plan sponsor is an adopter of a pre-approved plan that received a favorable IRS Opinion Letter, enter the date of the Opinion Letter \_\_\_/\_\_\_/\_\_\_\_\_ (MMDD YYYY) and the Opinion Letter serial number\_\_\_\_\_.

- **2022 Form 5500-SF.** New IRS Compliance questions identical to lines 21a, 21b, and 22 of Schedule R shown above would be added to 2022 Form 5500-SF as new Part IX, lines 15a, 15b and 16.

- **2022 Form 5500-EZ.** The following IRS Compliance question would be added to Part V of 2022 Form 5500-EZ as new line 13.

**Line 13.** If the plan sponsor is an adopter of a pre-approved plan that received a favorable IRS Opinion Letter, enter the date of the Opinion Letter \_\_\_/\_\_\_/\_\_\_\_\_ (MMDD YYYY) and the Opinion Letter serial number\_\_\_\_\_.

- **Instructions to 2022 Schedule R.** Instructions for new Part VII-IRS Compliance questions, lines 21a – 21c and 22, would be added to instructions for 2022 Schedule R to read as follows.

**Line 21a.** Check “Yes” if this plan was permissively aggregated with another plan to satisfy the requirements of Code sections 410(b) and 401(a)(4). Generally, each single plan must separately satisfy the coverage and nondiscrimination requirements. However, generally, an employer may designate two or more separate plans as a single plan for purposes of applying the ratio percentage test of Treasury Regulations section 1.410(b)-2(b)(2) or the nondiscriminatory classification test of Treasury Regulations section 1.410(b)-4. Two or more plans that are permissively aggregated and treated as a single plan for purposes of the minimum coverage test of Code section 410(b) must also be treated as a single plan for purpose of the nondiscrimination test under Code section 401(a)(4). *See* Treasury Regulations sections 1.410(b)-7(d) and 1.401(a)(4)-(9)(a) for more information.

**Line 21b.** Check the applicable method used to satisfy the nondiscrimination requirements of Code section 401(k). A safe harbor 401(k) plan is similar to a traditional 401(k) plan but, among other things, it must provide for employer contributions. These contributions may be employer matching contributions, limited to employees who defer, or employer contributions made on behalf of all eligible employees, regardless of whether they make elective deferrals. The safe harbor 401(k) plan is not subject to the complex annual nondiscrimination tests that apply to traditional 401(k) plans. Check “Design-based safe harbor method” if this is a safe harbor 401(k) plan, that is, a SIMPLE 401(k) plan under Code section 401(k)(11), a safe harbor 401(k) plan under Code section 401(k)(12), or a qualified automatic contribution arrangement under Code section 401(k)(13). If the plan, by its terms, does not satisfy the safe harbor method, it generally must satisfy the regular nondiscrimination test, known as the actual deferral percentage (ADP) test. Check the appropriate box to indicate if the plan uses the “current year” ADP test or the “prior year” ADP test. Check “current year” ADP test if the plan uses the current year testing method under which the ADP test is performed by comparing the current plan year’s ADP for highly compensated employees (HCEs) with the current plan year’s (rather than the prior plan year’s) ADP for nonhighly compensated employees (NHCEs). Check all boxes that apply for a plan that tests different groups of employees on a disaggregated basis. Check “N/A” if the plan is not required to test for nondiscrimination under Code section 401(k)(3), such as a plan in which no HCE is benefiting.

**Line 22.** If a plan sponsor or an employer adopted a pre-approved plan that relied on a favorable Opinion Letter of a pre-approved plan, enter the date of the most recent favorable Opinion Letter issued by the IRS and the Opinion Letter serial number listed on the letter.

- **Instructions to 2022 Form 5500-SF.** Instructions for new IRS Compliance questions identical to instructions to lines 21a – 21c and 22 of 2022 Schedule R shown above would be added as instructions for new Part IX of 2022 Form 5500-SF, except the instruction line numbers would be lines 15a, 15b and 16.

- **Instructions to 2022 Form 5500-EZ.** Instructions for new IRS Compliance question, line 13 would be added to instructions for Part V of 2022 Form 5500-EZ to read as follows.

**Line 13.** If a plan sponsor or an employer adopted a pre-approved plan that relied on a favorable Opinion Letter of a pre-approved plan, enter the date of the most recent favorable Opinion Letter issued by the IRS and the Opinion Letter serial number listed on the letter.

**8. Proposed change to Participant-Count Methodology for Determining Independent Qualified Public Accountant Audit Requirement for Individual Account Plans**

- **2022 Form 5500.** Current line 6g, Number of participants with account balances as of the end of the plan year (only defined contribution plans), would be renumbered as line 6g(2) and a new line 6g(1) would be added to the 2022 Form 5500 read as follows.

**Line 6g(1).** Number of participants with account balances as of the beginning of the plan year (only defined contribution plans).

- **Instructions to 2022 Form 5500.** Instructions to line 6g of 2022 Form 5500 would be modified to read as follows:

**Line 6g.** Enter in line 6g(1) the number of participants included on line 5 (total participants at the beginning of the plan year) who have account balances at the beginning of the plan year. Enter in line 6g(2) the number of participants included on line 6f (total participants at the end of the plan year) who have account balances at the end of the plan year. For example, for a Code section 401(k) plan the number entered on line 6g(2) should be the number of participants counted on line 6f who have made a contribution, or for whom a contribution has been made to the plan for this plan year or any prior plan year. Welfare benefit plans and defined benefit plans should leave lines 6g(1) and 6(g)(2) blank.

- **2022 Form 5500-SF.** Current line 5c, Number of participants with account balances as of the end of the plan year (only defined contribution plans), would be renumbered as line 5c(2) and a new line 5c(1) would be added to 2022 Form 5500-SF read as follows.

- **Line 5c(1).** Number of participants with account balances as of the beginning of the plan year (only defined contribution plans).

- **Instructions to 2022 Form 5500-SF.** Instructions to line 5c of 2022 Form 5500-SF would be added to read as follows:

**Line 5c.** Enter in line 5c(1) the number of participants included on line 5a (total participants at the beginning of the plan year) who have account balances at the beginning of the plan year. Enter in line 5c(2) the number of participants included on line 5b (total participants at the end of the plan year) who have account balances at the end of the plan year. For example, for a Code section 401(k) plan the number entered on line 5c(2) should be the number of participants counted on line 6f who have made a contribution, or for whom a contribution has been made to the plan for this plan year or any prior plan year. Welfare benefit plans and defined benefit plans should leave lines 5c(1) and 6(g)(2) blank.

**9. Proposed changes to Form 5500-EZ to add new checkbox F to Part I for filer not required to e-file Form 5500-EZ**

- **2022 Form 5500-EZ.** The following new checkbox F would be added to Part I of the 2022 Form 5500-EZ.

F If you are not required to file Form 5500-EZ electronically pursuant to Treas. Regs. 301.6058-2, check this box (see instructions) ..... ►

- **Instructions to 2022 Form 5500-EZ.** Instructions to the new checkbox F added to Part I of the 2022 Form 5500-EZ would be added to read as follows:

## **Instructions for Electronic Filing Certification**

Check box F only if you are filing using paper Form 5500-EZ and you are not required to electronically file Form 5500-EX pursuant to Treas. Regs. 301.6058-2, which requires a return required to be filed under Code section 6058, such as Form 5500-EZ, to be filed electronically if the filer is required by the Code or regulations to file at least 10 returns during the calendar year that includes the first day of the plan year.

## **Statutory Authority**

Accordingly, pursuant to the authority in sections 101, 103, 104, 109, 110 and 4065 of ERISA and sections 6058 and 6059 of the Code, the Form 5500 Annual Return/Report and the instructions thereto are proposed to be amended as set forth herein.

Signed at Washington, D.C.

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Ali Khawar, Acting Assistant Secretary,

Employee Benefits Security Administration, U.S. Department of Labor.

Eric Slack, Director, Employee Plans,

Tax Exempt and Government Entities Division, Internal Revenue Service.

Gordon Hartogensis, Director,

Pension Benefit Guaranty Corporation.

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