



Form 5500 proposal reflects SECURE Act changes and more

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In this article

[SECURE Act changes](#) | [Schedule H asset reporting](#) | [Other changes affecting retirement plan filings](#) | [Changes affecting multiple employer welfare arrangements \(MEWAs\)](#) | [Request for comments](#) | [Related resources](#)

Proposed changes to [Form 5500](#), *Annual Return/Report of Employee Benefit Plan*, and supporting Department of Labor (DOL) [regulations](#) would implement provisions in the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 ([Div. O of Pub. L. No. 116–94](#)). These changes include enhanced reporting for multiple-employer plans (MEPs) starting with the 2021 plan year and a new group filing alternative starting in 2022 for certain single-employer individual account and defined contribution (DC) plans. Additional changes unrelated to the SECURE Act would more broadly affect retirement and welfare plans starting in 2022. While these changes are narrower in scope than those [proposed in 2016](#) — but never finalized — plan sponsors, administrators and service providers should review the proposal and consider submitting comments by Nov. 1.

SECURE Act changes

One of the SECURE Act's key policy goals is to encourage DC plan sponsorship — particularly among small employers — by reducing the costs and administrative burdens of offering a workplace retirement plan. With this goal in mind, the SECURE Act introduced a new category of MEPs called “pooled employer plans” (PEPs) for unrelated employers that don't qualify for preexisting MEP structures. The SECURE Act also directs DOL and IRS to implement a simplified group annual reporting option for single-employer DC plans sharing certain characteristics.

MEP enhancements

The proposal would affect filings for all types of retirement MEPs, including association retirement plans and professional employer organization (PEO) plans in existence before the SECURE Act. The changes not only accommodate the introduction of PEPs, but also implement SECURE Act requirements for all MEPs to report enhanced information on participating employers. These changes are in effect for the 2021 plan year, but conforming updates to Form 5500 — including a new Schedule MEP — won't be available until the 2022 plan year. For the 2021 plan year, all MEPs would report the enhanced information on an attachment.

- **Schedule MEP.** Schedule MEP would include information about the type of MEP and the following items for each participating employer:
 - Name, employer identification number (EIN) and percentage of total plan-year contributions to the MEP
 - Aggregate account balance, a new item required by the SECURE Act
 - For PEPs only, the following additional information:
 - Certain compliance information regarding the pooled plan provider
 - Identifying information from the pooled plan provider’s most recent Form PR, *Registration for Pooled Plan Provider*, including the system-generated acknowledgement code
 - Whether the provider’s affiliates have provided services to the PEP and, if so, any prohibited transaction exemptions relied on for those services
- **Prohibition on MEPs filing Form 5500-SF.** All MEPs would have to file Form 5500 starting with the 2022 plan year. Although small MEPs could no longer file Form 5500-SF, *Short Form Annual Return/Report of Small Employee Benefit Plan*, they would be subject to the simplified filing requirements for small pension plans. For example, small MEPs could report financial information on Schedule I instead of Schedule H and would not need an audit report from an independent qualified public accountant (IQPA).
- **No simplified reporting for now.** The SECURE Act authorizes DOL to adopt simplified reporting for MEPs with fewer than 1,000 participants if no participating employer has 100 or more participants. DOL declined to include any such changes in this proposal.

New DC group filing arrangement

The SECURE Act directs DOL and IRS to permit certain groups of DC plans to file a consolidated annual report starting in 2022. The proposal seeks to implement this directive by creating an optional DC group (DCG) filing arrangement. The agencies believe this provision of the SECURE Act is “primarily aimed” at single-employer DC plans sponsored by unrelated small employers that have adopted a preapproved plan with the same provider. However, the statute doesn’t restrict group filing eligibility to these plans.

Conditions for DCG eligibility. The SECURE Act makes new group filings available to DC plans that have the same trustee, named fiduciary, plan administrator, plan year and investment options. The proposal adds conditions that narrow eligibility for the DCG filing option even further:

- **Same trust.** The proposal would require plans to have not only the same trustee but also the same trust.
 - The proposal permits subtrusts for each plan, but plans with separate trusts could not be part of a DCG filing. The DCG trust would be subject to an annual audit, including a report from an IQPA.
 - The DCG filing alternative would not be available to plans without trustees, such as those funded through insurance products or custodial accounts — including 403(b) plans typically offered in the nonprofit and educational sectors.

- **Same named fiduciary and plan administrator.** The employer or sponsor of a plan participating in a DCG filing could serve as a named fiduciary for its own plan, but other named fiduciaries must be common to all participating plans. The proposal also requires plans participating in a DCG filing to have the same designated plan administrator — the plan sponsor could not be the default plan administrator for this purpose.
- **Same investments or investment options.** Under the statute, all plans participating in a DCG filing arrangement must offer the same investments or investment options. The proposal would add more conditions on the types of permissible investment options:
 - Plans participating in a DCG filing would have to be fully invested in the same “eligible plan assets,” which are investments that have a readily determinable fair market value and are held or issued by regulated financial institutions, such as banks, insurance companies and registered investment companies.
 - Plans that hold employer securities or offer brokerage windows couldn’t participate in a DCG filing. More guidance is needed on whether this restriction would also apply to employer securities held indirectly through a diversified pooled investment fund, such as a collective investment trust, that is offered as an investment option by all of the DCG plans.
- **Audit requirements.** Large plans — generally those with 100 or more participants — that participate in a DCG filing would still need to obtain an annual audit, including an IQPA report. Small plans currently exempt from the IQPA audit requirement would remain exempt, although the DCG trust itself would still be subject to audit.
- **Excluded plans.** MEPs and multiemployer plans could not participate in a DCG filing arrangement.

Filing requirements. A DCG would file Form 5500 with applicable schedules and attachments reporting aggregate information for the group, along with the new Schedule DCG. The DCG filing would include a separate Schedule DCG for each participating plan, with information ordinarily reported on the 5500 for an individual plan, such as identifying information, financial information, applicable plan characteristic codes and compliance questions.

- **Filing due date.** DCG filings would have the same due dates as those that apply to individual Form 5500 filings. However, the proposal would require each plan participating in a DCG arrangement to file a separate Form 5558 to request an extension on the plan’s filing deadline.

Fewer DC plans subject to annual audit

When determining whether a DC plan is subject to the annual IQPA audit requirement for plans with 100 or more participants, the current rules count all employees eligible to participate. This can lead to odd outcomes: One plan with 85 participants might be exempt from the requirement, while another plan with 70 participants and less assets might be subject to audit simply because a larger number of employees are eligible to participate but choose not to.

DOL proposes to exclude employees who are eligible but not participating from counting toward the audit threshold. DC plans would instead determine large plan status based on the number of participants with account balances at the beginning of the plan year. Though the SECURE Act doesn’t require this change, DOL notes that the act’s expanded eligibility requirements for long-term, part-time workers will take effect in 2024, potentially subjecting many small plans to the audit requirement absent this relaxation of the rules.

Schedule H asset reporting

Funded pension and welfare benefit plans filing Schedule H, *Financial Information*, must include an attachment to line 4i showing assets held for investment purposes at year-end and any assets that were both acquired and disposed of during the year. Although the instructions provide a suggested format, its use is currently optional, making the financial information difficult to access and analyze.

To make the financial information more easily accessible to government agencies and the broader regulated community, the proposal would require reporting line 4i information in a standard format through IFILE or using approved third-party software. The agencies hope that making the data more mineable will also let them detect fraud and abuse more easily, particularly for MEPs, in which assets may accumulate rapidly. The sponsor would file largely the same information as required by the current form, with some adjustments and clarifications, including such items as:

- The CUSIP, CIK, LEI, NAIC company code, or other registration number of the seller, issuer or lender
- A new check box to identify hard-to-value assets
- For participant-directed DC plans, new checkboxes for designated investment alternatives and qualified default investment alternatives, and the total annual operating expenses expressed as a percentage of assets — consistent with how this information is already disclosed to participants

The proposal would also add new categories of administrative expenses to Schedule H itself, so DOL and IRS can gather better information about service-provider fees and other plan expenses. This change furthers DOL's goals of increasing transparency and improving reporting of fees and expenses.

Other changes affecting retirement plan filings

Although most of the changes focus on DCGs and MEPs, the proposal also includes a few other miscellaneous changes for retirement plan filings.

IRS compliance questions

Several changes would help IRS target audits toward plans likely to have compliance issues:

- **Nondiscrimination testing.** The proposal would add two nondiscrimination testing questions for retirement plans:
 - Whether the plan satisfied the coverage and nondiscrimination requirements of Internal Revenue Code Sections 410(b) and 401(a)(4) using the permissive aggregation rules
 - Whether a 401(k) plan uses a design-based safe harbor, prior-year actual deferral percentage (ADP) testing or current-year ADP testing to satisfy the nondiscrimination rules of Sections 401(k) and 401(m) for employee deferrals and employer matching contributions
- **Preapproved plans.** To help IRS identify plans that haven't been timely updated for changes in law, sponsors of preapproved plans with favorable IRS opinion letters would have to provide the date of the opinion letter and the letter's serial number.

Single-employer DB demographics and benefits

PBGC-insured single-employer DB plans with more than 500 participants would have to answer two new questions on Schedule SB, *Single-Employer Defined Benefit Plan Actuarial Information*, reporting demographic and benefit information:

- 50 years' worth of projected benefits broken down into three participant categories — active, terminated vested or in-pay status — as a separate attachment to line 26
- The average age and average monthly benefit amount for terminated vested and in-pay participants

The proposal would also add a new question relating to the sponsor's election of 15-year shortfall amortization relief under the American Rescue Plan Act of 2021 ([Pub. L. No. 117-2](#)). This question would replace the now-obsolete question about funding relief under the Pension Relief Act of 2010. Tabular information, such as the benefit projection and the age/service scatter for plans with active participants, could optionally be provided in a spreadsheet rather than as a PDF or text file.

Multiemployer DB demographics and benefits

The proposal would make a slew of changes to the reporting requirements for multiemployer DB plans. The significant changes include:

- Plans required to provide an attachment reporting withdrawal liability amounts included in employer contributions would have to break those amounts down between periodic amounts and lump sum payments.
- Plans would have to report the interest rate used to make employer withdrawal liability assessments, if applicable.
- PBGC-covered plans with 500 or more participants would have to provide additional information regarding participants' benefits and future contributions:
 - 50 years' worth of projected benefits, broken down for active, terminated vested or in-pay participants on the valuation date (plans currently provide a 10-year projection, not split into categories)
 - The average age and average monthly benefit amount for terminated vested and in-pay participants
 - A 10-year projection of employer contributions and withdrawal liability payments
- PBGC-covered plans with 1,000 or more active participants would provide the average accrued monthly benefit as part of the age/service scatter (but would no longer provide information on cash balance benefits in the scatter).
- Schedule R, *Retirement Plan Information*, would require reporting identifying details about any participating employer that contributed more than 5% of the plan's total contributions or was one of the 10 highest contributors. (Plans currently report only 5% or higher contributing employers.)

Like single-employer plans, multiemployer plans that provide tabular information, such as the benefit projection and the age/service scatter for plans with active participants, could opt to supply it in a spreadsheet rather than a PDF or text file.

Changes affecting multiple employer welfare arrangements (MEWAs)

Under current rules, plan and non-plan MEWAs providing medical benefits must provide custodial, financial and compliance information by filing the Form M-1 annually and after certain registration events. Plan MEWAs also report the following information on an attachment to Form 5500:

- Each participating employer's name and EIN
- A good-faith estimate of the percentage of each participating employer's total contributions made during the plan year (unfunded or insured MEWAs are exempt from reporting this information)

The proposal would move these items from Form 5500 to Form M-1, so that both plan and non-plan MEWAs providing medical benefits would report the information. Contribution information would be required on the Form M-1 annual filing (but not registration or other filings). Unfunded or insured MEWAs would remain exempt from reporting contribution information.

Plan MEWAs that do not provide medical benefits — and therefore do not file Form M-1 — would continue to report participating employer information on an attachment to Form 5500.

Request for comments

Comments are due Nov. 1. The agencies have asked for comments on the following specific issues:

- Is simplified reporting needed for MEPs with fewer than 1,000 participants and, if so, what conditions and limitations should apply?
- Whether the final rule should include other or different conditions to file as a DCG, including:
 - Should MEPs and multiemployer plans be eligible to participate?
 - Should a simplified filing option be available to small DCGs?
 - Should plans funded with the same insurance policy or custodial account have a similar group reporting option?
 - Could participating plans hold employer securities or offer brokerage windows, and if so, what conditions should apply?
 - Should a DCG be able to file a single Form 5558 requesting an extension for all participating plans?
- Should Schedule H require more details about fees and expenses?
- Should the participating employer information on Form M-1 be included on annual filings but not other required filings?

DOL has also added a separate project to its regulatory agenda that would involve broader changes to Form 5500 annual reporting requirements in coordination with IRS and PBGC. Comments on these broader changes are outside the scope of the proposal.

Related resources

Non-Mercer resources

- [Proposed rule](#) (Federal Register, Sept. 15, 2021)
- [Notice of proposed changes to Form 5500 series](#) (Federal Register, Sept. 15, 2021)
- [Fact sheet](#) (DOL, Sept. 14, 2021)
- [Division O of Pub. L. No. 116-94](#), the SECURE Act (Congress, Dec. 20, 2019)

Mercer Law & Policy resources

- [DOL finalizes pooled plan provider registration requirements](#) (Nov. 20, 2020)
- [Rules for DC multiple-employer plans eased as DOL seeks input on open MEPs](#) (July 31, 2019)

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