

Form 5500 - Practical Questions and Answers



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Your Co-Hosts

• Joanne Pecina



• Maureen Pesek







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After the Webinar

- Please join us for a brief educational session on how to find more information on today's topic on ERISApedia.com.
- At the conclusion of the webinar, you will be presented with a short Google Forms survey. Please let us know how we are doing. Completion of the survey is not a requirement for CE credit but we very much appreciate your feedback!
- Slides and recordings will be available on ERISApedia.com webcast tab.





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Your Presenters Today

S. Derrin Watson, J.D., APM



Timothy McCutcheon, J.D.







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PARTICIPANT COUNT CHANGE 80/120





New rules to determine large plan status for DC plans beginning in 2023

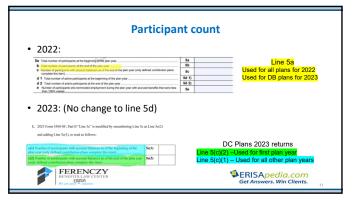
- Has been based on Beginning of Year (BOY) participants/beneficiaries
 - Including participants with no account balances
- Now will be based on participants/beneficiaries with account balances
 - First plan year, use EOY participants
 - All other plan years, use BOY participants
- · No change for DB plans
- New rule limited to plan years beginning in 2023 filed on new forms (released for filing January 1, 2024)
 - Fiscal year plan: Applies for plan year beginning in 2023
- Does not impact 5500-EZ



* Derrin



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Who gets counted

- Count as 1 (and only 1) participant with account balance
 - Participant with alternate payee
 - Alternate payee (no participant)
 - Deceased participant with 5 beneficiaries
 - LTPT participant who defers (has an account balance)
 - Terminated participant with stale uncashed check
- Do not count:
 - Participant (including LTPT) eligible to defer who does not do so and does not have an account balance





DB/DC; status

- DB plan: Count all participants. Rule hasn't changed
- DC plan: Count participants with account balances for 5500/5500-SF
- DB/DC tested as a single plan
 - File two Forms 5500
 - DB plan follows DB rules; DC plan follows DC rules
- Remember, new rule ONLY impacts 5500 status
 - Does not impact who is a participant for purposes of
 - Testing
 - Notices
 - ERISA (other than filing 5500 or 5500-SF)
 - Top heavy





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Beware the EZ

- EZ filing is limited to plans not subject to ERISA
 - No participants other than owner(s)/spouse(s)
- Suppose sole proprietor has part-time assistant
 - Works 750 hours/year
 - Eligible to defer as LTPT in 2024; chooses not to defer; no balance
 - Plan is subject to ERISA in 2024
 - No longer eligible to file EZ
 - File SF with 1 participant





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Beware the EZ

- The definition of participant includes anyone entitled to a benefit under then plan not just active participants.
- Suppose sole proprietor has part-time assistant
 - Assistant terminates 12/15/2022 with a \$200 account balance.
 - Receives a lump sum distribution on 2/1/2023.
 - May not file an EZ in 2023
 - If no new employees hired/participate in 2023 and 2024, may file an EZ in 2024.





When do you count them

- Use the number of participants with account balances on the first day of the plan year (for first plan year only use last day of year)
- Do not use last day of prior year
- Example
 - 12/31/2022 403(b) plan had 200 participants eligible to defer
 - -1/1/2023 the plan had 75 participants with account balances
 - File 2023 return as small plan





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Cash or accrual basis to determine participant count

- Calendar year profit sharing plan established 7/1/2023
- 140 participants
- Employer makes 2023 contribution on March 1, 2024
 - All 140 participants share in contribution
- Must file 2023 return
- How many participants have account balances 12/31/2023?
 - Cash: 0 Accrual: 140
- Instructions unclear. Conservative approach: use accrual



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Optional 80/120 rule

- If at the beginning of the year the plan:
 - Had 80-120 participants, and
 - Filed a 5500 for the prior year
- The plan can file on the same basis as last year
- In other words, if you filed last year as a small plan, you can file as a small plan this year if the plan has < 121 participants at the start of the year
- If you filed last year as a large plan, you can continue to file as a large plan this year if plan has at least 80 participants
 - But why?



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80/120 example for calendar year plan Year 1/1 Participants Type 2020 75 total P Small/SF 2021 100 total P Large (but can file as small/SF) 2022 115 total P Large (but can continue to file as small/SF) 2023 105 P with account Large (but can continue to file as small/SF) 2024 121 P with account Large 110 P with account Large 2025 95 P with account Small/SF (can file as large) 2026 FERENCZY BENEFITS LAW CENTED ERISApedia.com Get Answers. Win Clients.

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Revisit 403(b) plan under 80/120 rule

- 12/31/2022 403(b) plan had 200 participants eligible to defer
- -1/1/2023 the plan had 85 participants with account balances
 - File 2023 return as small plan
 - Could file as a large plan, but why?



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2023 short year returns

- Calendar year plan
- Terminated (assets distributed) 2/15/2023
- 5500 due 9/30/2023
 - Can file 5558 to extend
- Use 2022 form
 - New form and new rules apply to filings after December 31, 2023 $\,$
 - Large plan status based on total participants





MEPS AND DCGS FERENCZY BENEFITS LAW CENTER ERISA WE der your A solution ERISApedia.com Get Answers. Win Clients. 22

DOL view on MEPs and filing

- DOL requires that each ERISA PLAN file Form 5500
- ERISA PLAN includes:
 - Single employer plan
 - Controlled group/ASG plan
 - Certain MEPs
 - 2U: Association plan (defined in regulations)
 - 2V: PEO plan (defined in regulations)
 - 2W: Pooled Employer Plan (PEP registered with DOL)
 - 2X: Other/Plan with commonality/pre-existing business nexus ("closed MEP") * Tim



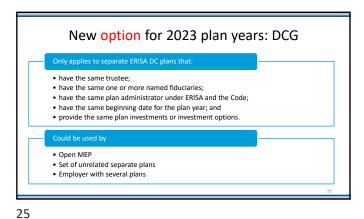


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What about "open MEPs"?

- DOL view is that they represent a series of separate ERISA plans
 - Each of which should file Form 5500
- IRS view is that they are a (single plan) under Code §413(c)





Schedule MEP Part I

- New Schedule MEP must be filed for all ERISA retirement MEPs
 - Does not apply to welfare plans

Part I Type of Multiple-Employer Pension Plan. All multiple-employer pension plans must complete. Close its appropriate but is indicated specific million enabling or pressure plants (appl. application plants may closed little his to the Conference plants may closed little his to the Conference plants and definition conference plants of enables conference plants (enabled by the Conference plant) and application enable plant (enabled by the Conference plants (enabled by the Conference plants) and plants (enabled by the Conference plants) and the Conference plants (enabled by the Conference plants) and the Conferen

- Line 1(d): Try "DC plan of employers with pre-existing business relationship"





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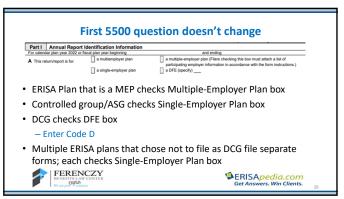
Who would file as "Other MEP"?

- · Kissing cousins
 - Significant common ownership
- Businesses that work together frequently
- Shared employee situations
- Spouses with a single plan for their separate companies treated as controlled group in 2023 and as unrelated in 2024
- Any DB "closed" MEP





Takes the place of existing MEP Schedule 2e, f, g are for sole proprietors, "working owners" Not W-2 employees Not partners of entities on earlier lines The partners of entities on earlier lines



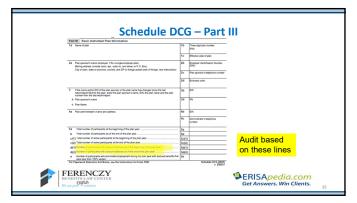
Steps to file as DCG Check DFE Box; Code D File as large return: Form 5500; Schedules A, C, D (part 1), G, H, (no Schedule R) Omit Schedule H lines 4e, 4f, 4k, 4l and 5 No audit for DCG as a whole Financial information on H is sum of all plans More detailed than on DCGs Attach Schedule DCG for each employer that is part of DCG File one DCG for controlled group/ASG

New Schedule H attachments for DCG 5500 • Items not reported on individual Schedules DCG - Plans holding assets with current value not readily determinable - Plans holding noncash contributions - Plans that had blackout period - Plans that failed to give blackout notice FERENCZY BENEFITS LAW CENTER ERISA WE der your A solution

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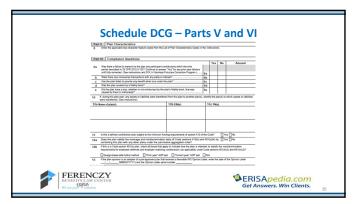
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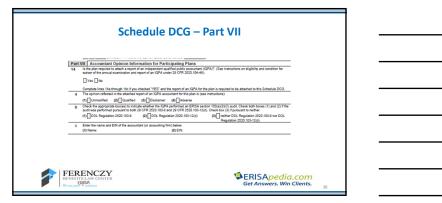






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Why file multiple ERISA PLANS as DCG

- · Not a great incentive to do so
 - Doesn't avoid individual audits
 - Can't file 5500 until all audits of underlying plans complete
- You don't have to track down individual sponsors to sign
- Large employers don't need separate schedule H schedules
- Can file single 5558 for all plans
 - File on paper and attach schedule of plans
 - May NOT file through EFAST no means to attach schedule





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DCG Common Investments

- One of the requirements of filing as a DCG is that all plans share same investments/investment options
- Do not need to keep same investments for a full plan year.
 - May be breach of fiduciary duties to do so
 - Sch H for DCG contemplates blackout periods
- "Options" can include certain brokerage accounts
- What if all options are not selected by one sponsor?
- Have different QDIA?





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COMPLIANCE QUESTIONS AND MORE

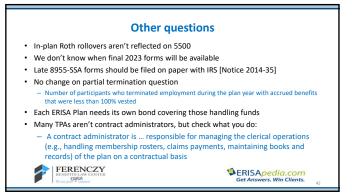




New compliance questions (SF/Schedule R) • 14a: Permissively aggregated plans Applies if aggregated for either coverage or nondiscrimination testing under 401(a)(4) Includes DB/DC combo if aggregated plan is intended to satisfy the nondiscrimination requirements for employee deferral 14b: Check all that apply and employer matching contributions (as applicable) under Code sections 401(k)(3) If current year ACP/prior year ADP, check both boxes - If ADP safe harbor for EEs with 1 YOS, and ADP ☐ "Prior year" ADP test tested for OEEs, check Design-based and test MEPs and PEPs can skip 15. 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 ___/___ (MM/DD/ • Don't have to complete testing before you file * Derrin

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Form 5558 Electronic Filing

- Beginning January 1, 2024, Form 5558 may be filed electronically through EFAST2 or by paper form with the IRS.
 - Electronic filing will be optional
 - Applies to extension requests filed in 2024
- A copy of the completed extension request must still however be retained with the filer's records
- TPA can file; still no signature required
 - For 5330, file on paper with IRS





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EFAST2 Electronic Processing

- Processed 5558 is not publicly disclosable, will not be viewable online
- Status not available from EFAST2 via phone
- Submission will appear on EFAST2 portal Submissions page for the 'filing author' (IFILE) or 'transmitter' (third-party software)
- Filers will continue to receive paper notification from IRS with extension approval or denial
 - No indication that will speed processing of approval letters





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What additional information do I need to ask for?

- Compliance questions
- Additional actuarial questions for defined benefit plans
- Additional Schedule H expense breakdown 2022 2023

Administrative Expenses: (1) monascenta trea
(2) investment advisory and management fies
(4) Other
(5) Total administrative expenses. Add lines 28(1) through (4)





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For Further Study

 $\label{local-control} \mbox{Joanne Pecina will demonstrate how to find more information on today's topic from the ERISA pedia.com resources. \\$



