

Form 5500 in 2022, 2023 and Beyond!

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Your Co-Host

► Joanne Pecina



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- ▶ Slides and recordings will be available on ERISApedia.com webcast tab.

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Timothy M. McCutcheon, J.D., CPA




S. Derrin Watson, J.D., APM

Your Presenters
Today

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What we will cover:



- ▶ Non-Multiple Employer Plan Form Changes 2021 and 2022
- ▶ Multiple Employer Plan Form Changes 2021 and 2022
- ▶ The Future - Or What Did Not Get Finalized in the 9/15/21 Proposed Regs

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2021 NON-MEPS

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Non-Multiple Employer Plan Form Changes 2021 - In General



- ▶ The form year 2021 is for plans with plan years beginning in 2021.
- ▶ Active Form Versions
 - ▶ Form 5500 and –SF
 - ▶ 2019 and 2020 version remain active
 - ▶ Amended returns for 2019 and 2020 made on those forms
 - ▶ For prior years, use the 2021 return
 - ▶ Forms 5500-EZ
 - ▶ Only 2020 and 2021 versions remain active
 - ▶ Amendments to 2019 EZs made on 2019 5500-SF
- ▶ Administrative Penalties
 - ▶ Increased maximum DOL penalty: \$2,259/day
 - ▶ Applies to penalties assessed after Jan. 15, 2021, for violations that occurred after Nov. 2, 2015.

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Non-Multiple Employer Plan Form Changes 2021 – Retroactively Adopted Plan



- ▶ Check new box for plan retroactively adopted in 2021 effective in 2020.

- ▶ Box E, Form 5500, 5500-EZ
- ▶ Box D, Form 5500-ES

E If this is a retroactively adopted plan permitted by SECURE Act section 201, check here..... ☐

- ▶ No need to file 2020 form
- ▶ Attach 2020 SB to 2021 return as PDF attachment
 - ▶ Label it: The first year Schedule SB attachment for a plan retroactively adopted pursuant to SECURE Act 201

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Non-Multiple Employer Plan Form Changes 2021 – Extensions for tax-exempt organizations



- ▶ If a tax-exempt organization uses a Form 8868 to request an extension for its Form 990, the filer is automatically granted an extension of time to file the Form 5500/5500-SF until the extended due date of filing Form 990.
- ▶ An extension granted by using this automatic extension procedure cannot be extended beyond a total of 9-1/2 months beyond the close of the plan year.
 - ▶ October 15 for calendar year plan

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Non-Multiple Employer Plan Form Changes 2021



- ▶ **Form 5500-EZ. Extensions of Time.** Part I, line B of Form has been revised to add checkboxes for plans filed under an extension of time using Form 5558, or automatic extension, or special extension.
- ▶ **Schedule MB.** A new line 3(d) has been added to require a multiemployer defined benefit plan to report the amount of withdrawal liability payments that is included in line 3(b) employer contributions.
- ▶ **Schedule SB.** Line 6 is broken down into new lines 6a, 6b, and 6c requiring that the target normal cost and expected plan-related expenses be reported separately. Line 6a reports the present value of current plan year accruals decreased by any mandatory employee contributions. Line 6b reports expected plan-related expenses, and line 6c reports the sum of lines 6a and 6b. Line 31a makes a conforming change to reflect that it is total target normal cost as reported on line 6c.
- ▶ **Schedule SB.** A new Code 9 has been added to Line 27: Community Newspaper plans and plans within the controlled group as described in SECURE Act section 115.

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2022 NON-MEPS

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Non-Multiple Employer Plan Form Changes 2022



- ▶ On May 23, 2022, the Agencies issued final regulations that finalized just a handful of changes that will be effective for the 2022 filing year (plan years beginning in 2022)
- ▶ Most of the Non-MEP changes effective for 2022 were made at the behest of PBGC:
 - ▶ Schedule MB
 - ▶ Schedule SB
 - ▶ Schedule R

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Non-Multiple Employer Plan Form Changes 2022 - Schedule MB



- ▶ Line 3 – Contributions Made to the Plan for the Plan Year
 - ▶ Total withdrawal liability amounts reported on the attachment to Line 3 must be broken down between periodic withdrawal liability amounts and lump sum withdrawal liability amounts.
- ▶ Line 4f – Rehabilitation Plan Projected to Emerge from Critical or Critical and Declining Status
 - ▶ The instructions to line 4f were modified to clarify the time period for the year-by-year cash flow projection and the basis for the projections.

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Non-Multiple Employer Plan Form Changes 2022 - Schedule MB



- ▶ Add New Line 6f – Checklist for Actuarial Assumptions
 - ▶ New line, 6f(1), reports whether the interest assumption is a single interest rate, ERISA section 4044 interest rates, or something else (i.e., “Other”).
 - ▶ If the “single rate” box is checked, the single interest rate is reported in a new line, 6f(2).
 - ▶ If the “Other” box is checked, the filer must provide an attachment describing the interest rate assumption.
 - ▶ If this question doesn’t apply (i.e., if no employers withdrew and were assessed withdrawal liability during the plan year), the filer will check an “N/A” box.
- ▶ Line 8 – Miscellaneous Information
 - ▶ Benefit Projections - Additional information Required in Attachment
 - ▶ Contribution Projections - New Attachment

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Non-Multiple Employer Plan Form Changes 2022 - Schedule SB



- ▶ Line 26.
 - ▶ Also need to include a “Schedule of Projection of Expected Benefit Payments” (1,000 or more total participants)
- ▶ Line 41.
 - ▶ This formerly referred to Pension Funding Relief Under Pension Relief Act of 2010. It now refers to the Pension Funding Relief under the American Rescue Plan Act of 2021

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Non-Multiple Employer Plan Form Changes 2022 - Schedule R



► Line 13 Additional Information for Multiemployer Defined Benefit Pension Plans

- Currently required for each employer that contributed more than 5% of total contributions to the plan
- Now required if the employer either
 - (1) contributed more than five percent of the plan's total contributions or
 - (2) was one of the top ten highest contributors

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Non-Multiple Employer Plan Form Changes 2022 - CSV Attachments



- Certain attachments to Schedules MB/SB may be (but are not required) to be provided in a spreadsheet file (CSV format). The following chart lists the Schedule MB/SB attachments that may be made in CSV format:

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

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Changes to IREG


- EFAST2 Internet Registration (IREG) is used for website authentication and signature credentials
- Signature credentials (UserID and PIN) are not changing
- Website authentication will be changing from UserID and Password to MultiFactor Authentication (MFA)
- MFA will be done through redirects to login.gov
- Effective date of this change is planned to be phased in during calendar year 2023
- EFAST2 publications (user guides, tutorials, FAQ) will be updated

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IREG Change Phase In

- Subject to change, the Government is looking to phase-in the IREG change as noted below

User Type	Transition Date
New users	1/1/2023
Existing IFILE filing authors, filing signers, and schedule authors	1/1/2023 thru 9/1/2023
Third-party software developers and transmitters	1/1/2023 thru 1/1/2024

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MEPS – GENERAL INFO

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Different strokes



- ▶ IRS MEP: Non-union plan maintained by more than one employer [Code §413(c)]
- ▶ DOL rules allow MEP to file as single plan if:
 - ▶ Association retirement plan [DOL Reg. §2510.3-55(b)]
 - ▶ Professional employer organization (PEO) plan [DOL Reg. §2510.3-55(c)]
 - ▶ Pooled Employer Plan (PEP) ERISA § 3(43)
 - ▶ “Old school MEP”: Commonality and control

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DC Group of Plans SECURE §202

Must be effective for years beginning after 2021



- ▶ Agencies must modify regulations so that all members of a group of plans may file a single aggregated 5500/5500-SF
- ▶ Agencies may require the 5500 to include any information regarding each plan in the group as the Agencies determine is necessary or appropriate for the enforcement or that will enable a participant in a plan to identify any 5500 filed with respect to the plan
- ▶ Requirements of a Defined Contribution Group (DCG)
 - ▶ Defined contribution plans
 - ▶ Same trustee
 - ▶ Same one or more named fiduciaries
 - ▶ Same 3(16) administrator
 - ▶ Plan years beginning on the same date
 - ▶ Provide the same investments or investment options to participants and beneficiaries.

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MEPS 2021

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MEP Changes 2021



- ▶ Covers the following non-PEP Multiple Employer Plans:
 - ▶ ARPs
 - ▶ PEOs
 - ▶ Old School MEPs

- ▶ No Schedule MEP - Just attachment listing employer information
 - ▶ Attachment has been required since 2014
 - ▶ Sometimes called CSEC attachment

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MEP Changes 2021



- ▶ The New CSEC Attachment requires:
 - ▶ (a) Name of participating employer
 - ▶ (b) EIN
 - ▶ (c) Percent of Total Contributions
 - ▶ (d) Aggregate account balance information by employer – New for DC plans

- ▶ Does not affect other non-PEP multiple-employer pension and welfare plans.

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Sample Attachment for MEPs



Multiple-Employer Plan Participating Employer Information			
Form:	5500		
Plan Name:			
Sponsor EIN:			
Plan Number:			
Year:			
1. Name of participating employer	2. EIN	3. Percent of Total Contributions for Plan Year	4. Aggregate Account Balances at End of Year Attributable to Participating Employer

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MEP Changes 2021 Pooled Employer Plans



- ▶ Form 5500 instructions:
 - ▶ PEP files single 5500
 - ▶ PEPs check MEP box in Part A
 - ▶ PEPs have same attachment as other MEPs
 - ▶ PEPs cannot file Form 5500-SF
- ▶ Must also on a separate attachment or as part of the participating employer MEP attachment
 - ▶ Has Pooled Plan Provider (PPP) complied with Form PR filing requirements?
 - ▶ If “yes,” provide the AckID number for the pooled plan provider’s latest Form PR filing
 - ▶ On or before Jan 27, 2021 format: aaaaaaaaa-3333-4886-ffff-999999999999
 - ▶ After Jan 27, 2021 format: RY234DDDD Y=last digit of the year.

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Sample Attachment for PEPs



Pooled Employer Plan/Pooled Plan Provider Information

Form:	5500
Plan Name:	
Sponsor EIN:	
Plan Number:	
Year:	

1a. Is the pooled plan provider currently in compliance with the requirements for filing the Form PR (Pooled Plan Provider Registration Statement)? (See Form PR Instructions and 29 CFR 2510.3-44.)

☐ Yes ☐ No

1b. If "Yes" is checked in line 1a, 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 to rejection as incomplete.)

AckID _____

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MEP Changes 2021 Defined Contribution Groups



- ▶ "The Agencies are still evaluating public comments on elements of the September 2021 proposal not included in these final forms revisions, including DCG reporting..."
 - ▶ [May 23, 2022 Preamble to Final Rule]
- ▶ DCGs may NOT file one 5500 for 2021

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MEP CHANGES 2022

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MEP Changes 2022 (5500 and SF)



- ▶ 5500 Line 2a Instructions. Definition of Plan Sponsor added new items in red:
 - ▶ The employer, for an employee benefit plan that a single employer established or maintains;
 - ▶ The employee organization in the case of a plan of an employee organization; or
 - ▶ The association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan, if the plan is established or maintained jointly by one or more employers and one or more employee organizations, or by two or more employers.
 - ▶ **The pooled plan provider that operates the plan, in the case of a pooled employer plan that meets the definition under ERISA section 3(43); or**
 - ▶ **The professional employer organization (PEO), in the case of a PEO multiple-employer plan that meets the conditions under 29 CFR 2510.3-55(c).**

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MEP Changes 2022



► 5500 Line 2a Instructions. Definition of Plan Sponsor

- The first sentence of the accompanying Note to line 2a, definition for the term “plan sponsor,” is modified to read as follows:
 - Note. In the case of a multiple-employer plan, file only one annual return/report for the plan.
 - If an association, pooled plan provider, PEO or other entity is not the sponsor, enter the name of a participating employer as sponsor.

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MEP Changes 2022 (5500 and SF)




- 5500 Line 3a Instructions. Definition of Plan Administrator added new red items:
- The term “plan administrator” means:
 - The person or group of persons specified as the administrator by the instrument under which the plan is operated;
 - The plan sponsor/employer if an administrator is not so designated; or
 - Any other person prescribed by regulations if an administrator is not designated and a plan sponsor cannot be identified.
 - **The pooled plan provider that operates the plan, in the case of a pooled employer plan that meets the definition under ERISA section 3(43);**
 - **The professional employer organization (PEO), in the case of a PEO multiple-employer plan that meets the conditions under 29 CFR 2510.3-55(c);**

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MEP Changes 2022



- Instructions to 2022 Form 5500, Section 5, Part II, line 3, New Caution paragraph. The following CAUTION paragraph in a caution box graphic is added after the Note section.

 *In the case of a pooled employer plan, information for the pooled employer plan and the pooled plan provider operating the plan reported on the Form 5500 must match the information reported on the Form PR. Failure to report the same information could result in correspondence from the Department of Labor or the Internal Revenue Service.*

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Summary of MEP Changes 2022 Plan Sponsor/Plan Administrator



Type	Sponsor	Administrator
ARP	Designated participating employer	Normal rule*
PEO	PEO	PEO
PEP - 5500 Only	Pooled Plan Provider	Pooled Plan Provider
Old School MEP	Designated participating employer	Normal rule*
DCG	None - Not Allowed	None - Not Allowed

► Normal rule:

- The person or group of persons specified as the administrator by the instrument under which the plan is operated;
- The plan sponsor/employer if an administrator is not so designated; or
- Any other person prescribed by regulations if an administrator is not designated and a plan sponsor cannot be identified.

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MEP Changes 2022



► 5500/5500-SF New Characteristic Codes

- 2U. Association retirement plan
- 2V. PEO Plan
- 2W. PEP (Form 5500 only)
- 2X. Old school MEP

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Summary of MEP Changes 2022 Filing Requirements



Type	Form	Schedule/Attachment	Codes
ARP	5500/5500-SF	CSEC Attachment (a)-(d)	2U
PEO	5500/5500-SF	CSEC Attachment (a)-(d)	2V
PEP	5500 Only	CSEC & Other Attachment AckId	2W
Old School MEP	5500/5500-SF	CSEC Attachment (a)-(d)	2X
DCG	None - Not Allowed	None - Not Allowed	N/A

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THE FUTURE

Major items in 2021 proposed regs not in 2022 final regs

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No change to participant count



- ▶ Proposal: Base small plan status on participants with account balances
 - ▶ Applies to small plan audit exemption
 - ▶ Applies to eligibility to file 5500-SF
- ▶ Example
 - ▶ 403(b) plan has 200 participants but only 25 have balances
 - ▶ The rest don't defer
 - ▶ Today must file as large, audited plan; not so under proposal
- ▶ Not adopted yet!

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The Future – Changes not yet implemented MEP filing



- ▶ Schedule DCG (Individual Plan Information) to provide individual plan-level information for defined contribution pension plans covered by a DCG
- ▶ Schedule MEP (Multiple Employer Pension Plan). MEPs would report information specific to MEPs, including the ERISA section 103(g) participating employer information.
- ▶ Transfer the participating employer information from the Form 5500 Annual Return/Report to the Form M-1 for all multiple employer welfare arrangements that offer or provide coverage for medical benefits.

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The Future – Changes not yet implemented



- ▶ 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.
- ▶ 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.

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The Future – Changes not yet implemented 5500, SF, and proposed Schedule DCG



- ▶ Add a nondiscrimination and coverage test question that was on the Schedule T before it was eliminated.
- ▶ Add a question for section 401(k) plans about ADP test (current year, prior year, safe harbor)
- ▶ Add a question 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.

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The Future - Reasons given for not implementing most of the September 15, 2021 proposals.



- ▶ A number of commenters suggested a delay in implementation, substantial revisions, or re- proposals
- ▶ Sufficient lead time for programming and systems changes
- ▶ Time to develop contracts and other communications among plans and service providers is needed to properly implement these significant changes to annual reporting requirements
- ▶ Employee benefit plan stakeholders are best served by the Agencies taking additional time to consider the range of public comments on these proposals and develop final rules that are cost-effective and improve the annual report data in a way that is protective of the retirement security interests of participants and beneficiaries

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The Future - Next Steps



- ▶ Items not implemented in the September 2021 proposal will be addressed either:
 - ▶ In a further final forms revisions notice based on the September 2021 proposal, or
 - ▶ Re-proposed with modifications in a separate proposal that would focus on a **broader range of improvements** to the annual reporting requirements.

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The Future - And Beyond



- ▶ DOL added an additional regulatory project to its semi-annual agenda as part of a separate project with the IRS and PBGC to:
 - ▶ (i) modernize the financial and other annual reporting requirements on the Form 5500 Annual Return/Report;
 - ▶ (ii) continue an ongoing effort to make investment and other information on the Form 5500 Annual Return/Report more data mineable; and
 - ▶ (iii) consider potential changes to group health plan annual reporting requirements, among other improvements that would enhance the Agencies' ability to collect employee benefit plan data in a way that best meets the needs of compliance projects, programs, and activities.

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Thank you!

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- ▶ Derrin's books are available at ERISApedia.com
 - ▶ Who's the Employer (8th ed)
 - ▶ 403(b) Plan eSource
 - ▶ 457 Plan eSource
 - ▶ Plan Correction eSource (with Ilene Ferenczy and Alison Cohen)
- ▶ Coming this year:
 - ▶ Plan distribution eSource
- ▶ Tim's book
 - ▶ 5500 eSource



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A Few Reminders

- ▶ ASPPA/NIPA certificates will be emailed within a day or two. ERPA certificates may take up to two weeks.
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- ▶ After the webcast you will be presented with a short Google Forms survey. Please let us know how we are doing.



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For Further Study



Joanne Pecina will demonstrate how to find more information on today's topic from the ERISApedia.com resources.