

DOL ISSUES CHANGES TO 2023 FORM 5500



The U.S. Department of Labor (DOL), the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC) (together “Agencies”) on February 23, 2023 released Federal Register notices that announce changes to the 2023 Form 5500 Annual

Return/Report of Employee Benefit Plan and Form 5500-SF Short Form.

The announcement marks the third and final phase of implementation of a Sept. 2021 regulatory proposal to the 2023 Form 5500, which included changes related to provisions in the [Setting Every Community Up for Retirement Enforcement Act, commonly known as the SECURE Act](#), which affected annual reporting requirements under the Employee Retirement Income Security Act and the Internal Revenue Code.

The first two phases of implementation included publication of Federal Register notices in Dec. 2021 for Phase I and May 2022 for Phase II, respectively, to adopt changes for the 2021 and 2022 Form 5500 Returns/Reports. Today’s Phase III announcement features a Notice of Final Forms Revisions from the department, IRS and PBGC for the 2023 plan year forms and instructions and a Notice of Final Rulemaking by the department that makes corresponding changes to annual reporting regulations under Title I of ERISA.

The 2023 plan year reports – which generally will be filed in 2024 for calendar year plans – include the following changes:

- **A change in the participant-counting methodology for determining eligibility for simplified reporting alternatives available to “small plans,” which are generally plans with fewer than 100 participants.**
 - Filers will look to the number of participants/beneficiaries with account balances as of the beginning of the plan year (the first plan year would use an end- of- year measure) when determining if they are eligible for small plan reporting options. A new line item will be added on both the 2023 Form 5500 and Form 5500-SF for defined contribution pension plans to report participants with account balances at the beginning of the plan year (there already is a line item for reporting the number of participants with account balances at the end of the plan year)
- **The addition of selected Internal Revenue Code compliance questions to improve tax oversight and compliance of tax-qualified retirement plans.**
 - The final revisions include an additional nondiscrimination and coverage test question for the 2023 Form 5500 and Form 5500-SF. The question asks whether a plan maintained by an employer that has aggregated plans in its testing group satisfies the nondiscrimination and coverage tests of Code sections 401(a)(4) and 410(b). Adding this question allows the IRS to identify plans that have an increased risk of being non-compliant. The question is also helpful to the IRS in performing pre-audit analysis and allows the IRS to focus

audit inquiries on information that is specifically relevant to the plan sponsor. This question also reflects an increased need to gather specific testing-group information in light of the elimination of optional coverage and nondiscrimination demonstrations under the IRS determination letter process.

- The final revisions also include an additional question on the 2023 Form 5500 and Form 5500-SF, with respect to section 401(k) plans, that asks whether the plan sponsor used a design-based safe harbor approach or, if applicable, the “prior year” or “current year” ADP test. Adding this question will allow the IRS to distinguish between section 401(k) plans that use ADP testing and those that use designed-based safe harbor approaches. This question will also help the IRS perform pre-examination analysis and, for design-based safe harbor plans, verify whether safe harbor contributions comply with the terms of the plan and applicable safe harbor requirements.
 - The final forms revisions include an additional question on the 2023 Form 5500, Form 5500-SF, and Form 5500-EZ, which asks whether the employer is an adopter of a pre-approved plan that received a favorable IRS opinion letter, and the date and serial number of the favorable IRS opinion letter. This question will help the IRS identify whether an employer has adopted a pre-approved plan and to determine whether the plan was timely adopted and amended.
- **A breakout of reporting on administrative expenses paid by the plan on the plan’s financial statements.**
- The final forms revisions update Schedule H to 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. The data element breakouts for Administrative Expenses will now be “Salaries and allowances,” “Contract administrator fees,” “Recordkeeping fees,” “IQPA audit fees,” “Investment advisory and investment management fees,” “Bank or trust company trustee/custodial fees,” “Actuarial fees,” “Legal fees,” “Valuation/appraisal fees,” “Other Trustee fees/expenses,” and “Other expenses.”

- **Further improvements in financial and funding reporting by PBGC-covered defined benefit plans.**
- **A consolidated Form 5500 reporting option for certain groups of defined contribution retirement plans, improved reporting by pooled employer plans and other multiple employer plans.**
- **Technical and conforming changes as part of the annual rollover of forms and instructions.**

Additionally, technical adjustments were made to the Federal Register notices to address certain provisions in SECURE Act 2.0 of 2022 on Code section 403(b) multiple employer plans, including pooled employer plans, minimum required distributions and audit requirements for plans in defined contribution group reporting arrangements.

The Federal Register notices, [Document #2023-02653](#) for the Notice of Final Forms Revision and [Document #2023-02652](#) for Notice of Final Rulemaking, also include appendices that describe the changes to the forms and instructions as well as

a regulatory impact and paperwork burden analyses. A more detailed summary of the annual reporting changes is included in a fact sheet posted on the department's website today. Mock-ups of the forms and instructions will be available at [reginfo.gov](https://www.reginfo.gov) as part of the Paperwork Reduction Act clearance process. The release of "for information-only" copies of the forms and instructions will happen later in 2023.