

Oct. 21, 2021

Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

RE: Proposed Form 5500 Revisions RIN 1210–AB97

The Employee Benefit Plans Thought Leadership Committee of the Pennsylvania Institute of Certified Public Accountants (PICPA) appreciate the opportunity to comment on the proposed changes to Form 5500. The PICPA is a professional CPA association of more than 20,000 members working to improve the accounting profession and better serve the public interest. Founded in 1897, the PICPA is the second-oldest CPA organization in the United States. Membership includes practitioners in public accounting, education, government, and industry. The committee is composed of practitioners from international, regional, and small public accounting firms. The committee's general observations and specific comments are included below.

General Observations

The committee is supportive of the U.S. Department of Labor's (DOL) Form 5500 revisions. However, it is concerned regarding certain elements that may cause undue costs of plan administration, complicate auditing procedures for larger plans, and other concerns detailed in this comment letter. The committee hopes that clarification of certain of the proposed revisions will be a part of the DOL's efforts in implementing such revisions.

New Plan Type

Establish a new type of direct-filing entity called a Defined Contribution Group (DCG) and add a new Schedule DCG (Individual Plan Information) that such reporting groups must file. This type of plan will allow groups to file a single consolidated Form 5500. All plans participating in the DCG must be defined-contribution pension plans and have the same plan administrator, fiduciaries, trustees, trust holding the assets, plan year, and investment options. In addition, the plans must not hold employer securities. The DCG plans are subject to an annual trust-level audit and trust-level financial statements in addition to an audit for each participating plan.

Response: The committee requests clarification on the audit requirement. The concern is that the cost of auditing multiple companies, each with its own payroll company as well as procedures and internal controls within a DCG, may be perceived as excessive or cost-prohibitive by the plan administrator. Does the audit threshold of 1,000 participants at the beginning of the plan year extend to a DCG plan as it does for a pooled employer plan (PEP)?

The committee notes that, under the proposal, multiemployer plans or multiple-employer plans (MEPs) are excluded from participation in a DCG. The committee believes that MEPs should remain excluded from participating in a DCG. To permit them to participate would further complicate audit procedures.

Form 5500 Modifications for Pooled Employer Plans (PEP)

Modify Form 5500 to reflect PEPs as a type of MEP. All MEPs would be required to file a new Schedule MEP (Multiple-Employer Retirement Plan Information), regardless of size. The Schedule MEP would identify the type of MEP and participating employer information and confirm for PEPs that the sponsoring pooled plan provider has filed Form PR (Pooled Plan Provider Information).

Response: The committee agrees that this modification is in line with the changes that are necessary under the SECURE Act.

However, similar to the committee's concern regarding auditing guidance for DCGs, the same questions apply to auditing PEPs. Does the DOL expect that participants will receive the same level of ERISA protection in this type of plan audit as they do in a single-employer plan audit? For example, if a PEP is comprised of hundreds of plans, will each plan be required to be audited annually? Considering the fact that each participating plan will have its own internal control environment at the plan sponsor, how can an of each participating plan be conducted efficiently and completed in a timely manner? If the DOL permits, rotation of audit procedures for plans participating in a PEP, how will that be determined? If materiality is used as a determining factor, how is that appropriate when materiality is not an appropriate consideration for operational errors for participants at the plan level?

Will the DOL provide guidance for the auditor if there are one or more plans within the PEP that are not compliant with the plan document or with ERISA?

If a main benefit of entering into a PEP is reduced administrative fees, smaller companies within the PEP may be subject to increased fees from an audit that they never needed as a stand-alone plan. Another risk is the possibility that pooled plan providers may monitor PEPs to keep them under 1,000 participants at the beginning of a plan year to purposely avoid the audit requirement by continuously opening new PEPs. What safeguards will be set up to ensure the use of the PEP structure is not abused in a manner that avoids compliance and annual audit that affords protection under ERISA to participants?

Form 5500 Schedule of Assets Held for Investment

Update the Form 5500 Schedule H to standardize the electronic filing format for the schedules of assets, add disclosures to the schedules of assets regarding the characteristics of investments, and include more detail for direct expenses reported.

Response: The committee agrees that Form 5500 is an important tool the DOL uses to carry out its responsibility to detect and investigate ERISA violations. Standardizing an electronic format for a plan's investment schedules will allow for data aggregation. The committee believes further clarification is needed regarding standardizing the input. Will the schedule of assets provided within an audited financial statement be sufficient in PDF form or will there be a need to input this information manually into the filing system? Who is responsible for providing additional details and ensuring the information meets DOL requirements? If the information provided is not in the standardized format, will fines be enacted? The committee recommends consideration be given to opening this dialog with large investment custodians so a workable format can be established.

Change to Audit Threshold

Change the participant count methodology for defined-contribution pension plans only to include the number of participants with account balances rather than those eligible to participate. This would allow more defined-contribution pension plans to file as "small plans" for simplified reporting.

Response: It seems contradictory to the protections provided by ERISA to lessen the current requirements that make plans subject to audit by an independent qualified public accountant (IQPA). We feel strongly that a change to the audit threshold in this manner is detrimental to the plan participants that would no longer have the benefit of the assurance provided by an audit. The audit, aside from providing education and guidance to plan sponsors, is often the driver of finding operational errors at the participant level, such as the following:

- Participant missed deferral opportunity due to entry date into the plan being missed
- Participant deferral changes not processed timely
- Participant deferral and match were incorrect due to errors in how compensation was calculated
- Participant income was allocated to a different participant account with a similar name

These findings are similar throughout audits of all sizes, and in many cases are more concentrated in smaller plans. Therefore, it does not benefit participants by eliminating those plans from the audit requirement.

Additionally, the audit industry just implemented, or will implement this year, SAS No. 136, *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA*, as amended. The purposes of SAS No. 136 are to improve audit quality and enhance the communicative value and transparency of the auditor's report. It

includes additional management responsibilities as well as new requirements in all phases of the audit, including engagement acceptance, risk assessment and response, communication with those charged with governance, and audit procedures. SAS No. 136 also contains several new performance requirements that are aimed at testing compliance with the plan document and ERISA. The new SAS was brought on partly due to the deficiencies noted in DOL and peer review findings. The DOL, through the Employee Benefits Security Administration (EBSA), is dedicated to improving conditions throughout the retirement industry to make it safer and easier for people to save for their retirement which is evidenced by their commitment of significant time and resources to the performance of audit quality studies and reviews of IQPA audits. Lessening of the plan requirements for plan audits appears to contradict the DOL's commitment in these areas.

The committee is also concerned that, by changing the audit threshold to only include participants with account balances, the potential exists for plan sponsors to discourage participation in their plans to keep the participant count under the threshold. Smaller plans that are subject to the audit would benefit from the additional procedures and improved communications under SAS No. 136.

For all the reasons noted above, the committee does not agree with a change in the audit threshold.

Withdrawal Liability for Multiemployer Defined Pension Plans Will Be Publicly Available

Add reporting for Pension-Benefit-Guaranty-Corporation-covered defined-benefit pension plans to include further detail on withdrawal liability amounts for multiemployer plans.

Response: The committee is concerned that the reporting of withdrawal liability on Form 5500 will present concerns from plan sponsors that the public disclosure of that liability could be misinterpreted by bankers and creditors. It is recommended that the withdrawal liability not be reported on Form 5500.

Miscellaneous Revisions to Form 5500

The proposed rules would also add the following key revisions, among other items:

- New breakout categories would be added to the "Administrative Expenses" lines of the Schedule H. New breakout categories would include specific lines for audit fees, bank or trust company fees, actuarial fees, legal fees, valuation fees, salaries, trustee fees and expenses.

- Certain IRS questions would be added for retirement plans, including questions related to nondiscrimination and coverage testing, whether the plan utilizes a preapproved plan, and, if so, the date of the plan's favorable opinion letter.

Response: The committee agrees that these revisions will enhance the capabilities of the DOL to determine a reasonable benchmark for plan fees. The committee does question who will be responsible for providing the details of the fees and will the DOL require this information if the fees are paid by the plan sponsor rather than directly from the plan?

The committee agrees that the IRS compliance questions are beneficial to the IRS as they will be used to assess plan compliance with qualification requirements and identify plans for further examination or audit.

We appreciate your consideration of our comments. We are available to discuss any of these comments with you at your convenience.

Sincerely,

A handwritten signature in black ink that reads "Carolyn BryNildsen". The signature is written in a cursive, flowing style.

Carolyn BryNildsen, CPA

Chair, PICPA Employee Benefit Plans Thought Leadership Committee