

# DOL Update

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# Overview

- Changes at EBSA
- Items of Note
- Enforcement Activities
- Audit Quality Initiatives
- Form 5500 Changes
  - 2022
  - 2023

## Changes at EBSA

- Assistant Secretary Lisa Gomez
- Confirmed by the Senate in October 2022

# DOL Updated Guidance on Independence

- IB 2022-01 issued on September 2, 2022
- Revises and restates the interpretative bulletin 29 CFR 2509-75.9, dating back to 1975, to remove certain outdated and unnecessarily restrictive provisions and to reorganize other provisions for clarity.
  - Definition of Office
  - Ability for a member to divest publicly-traded securities held during the period being audited if certain conditions exist
  - Guidance can be found at:
  - <https://www.dol.gov/newsroom/releases/ebsa/ebsa20220902>

# Auditor Independence—What Changed

- Accountant or firm is no longer disqualified because of holding publicly traded securities of plan sponsor during the period covered by the financial statements
- Accountant, firm, partners, shareholder employees, professional employees of the firm, and their immediate family have to dispose of the holdings prior to the period of professional engagement

# Auditor Independence—What Changed

- Period of Professional Engagement
- Begins when the accountant either:
  - Signs an initial engagement letter or other agreement to perform the audit
  - Begins to perform any audit, review or attest procedures
  - Whichever is earlier

# Auditor Independence—What Changed

## Exception for new audit engagements

“ . . . Other financial interests in the plan sponsor during the period covered by the financial statements categorically impair the accountant’s independence even if divested before commencing a new audit engagement.”

# Cybersecurity

- Department issued guidance in April 2021
- <https://www.dol.gov/newsroom/releases/ebsa/ebsa20210114>
- Guidance comes in three parts
  - Tips for Hiring a Service Provider
  - Cybersecurity Best Practices
  - Online Security Tips
- Review Plan's Cybersecurity Practices



# Disaster Relief Notice 2020-01

## Participant Contributions and Loan Repayments

- Issued at the beginning of the Covid pandemic in March 2020
- Indicated the Department would not—**Solely on the basis of a failure attributable to the COVID-19 outbreak**—Take enforcement action with respect to a temporary delay in forwarding such payments or contributions to the plan.
- Expires on the 60th day following the announced end of the National Emergency—May 11, 2023.

## Schedule H, Part III, Line-3a

### Part III Accountant's Opinion

**3** Complete lines 3a through 3c if the opinion of an independent qualified public accountant is attached to this Form 5500. Complete line 3d if an opinion is not attached.

**a** The attached opinion of an independent qualified public accountant for this plan is (see instructions):

(1)  Unmodified    (2)  Qualified    (3)  Disclaimer    (4)  Adverse

**b** Check the appropriate box(es) to indicate whether the IQPA performed an ERISA section 103(a)(3)(C) audit. Check both boxes (1) and (2) if the audit was performed pursuant to both 29 CFR 2520.103-8 and 29 CFR 2520.103-12(d). Check box (3) if pursuant to neither.

(1)  DOL Regulation 2520.103-8    (2)  DOL Regulation 2520.103-12(d)    (3)  neither DOL Regulation 2520.103-8 nor DOL Regulation 2520.103-12(d).

Line 3a(1):

- ✓ Check if an unmodified opinion was issued pursuant to SAS 136.
- ✓ This also includes the form of opinion that SAS 136 permits an IQPA to issue when the IQPA has performed an ERISA section 103(a)(3)(C) audit pursuant to 29 CFR 2520.103-8 or 29 CFR 2520.103-12, or both, and had no modifications.

# Enforcement Activities

## Major Reporting Compliance Initiatives

- Missing IQPA Reports
  - Large plan filers
  - Section 104-50 deferred audits
- Late Filers/Non-Filers/Stop-Filers
- Delinquent Filer Voluntary Compliance Program
- Form 5500-SF Eligibility

## Pay Attention to DOL Enforcement Correspondence

- Inquiry Letter
- Notice of Rejection Letter (NOR)
  - Respond within 45 days
- Notice of Intent to Assess a Penalty Letter (NOI)
  - Respond withing 30 days
- Notice of Determination Letter (NOD)
  - Respond within 30 days
- Administrative Law Judges Appeal (ALJ)
  - Respond within 30 days

# Pay Attention to DOL Enforcement Correspondence

## What You and Your Clients Don't Want to Happen

*Final Order—If the Plan Administrator does not respond timely and properly to the NOD, the case is sent to Treasury for collection of the civil penalty in the NOI or NOD letters, plus interest*

# Audit Quality Study

- Based on 2020 Form 5500 filings
- Statistically based sample size of 307 plans
  - To the entire population of audits
  - Five strata
  - Divided between “simple” and “complex” plans
- Workpaper reviews completed
- Data analysis and report drafting

# Plan Audit Universe

- 86,800 Plan Audits
- 4,300 CPA firms performing audits
- \$11 trillion in plan assets subject to audit



# Ongoing Audit Quality Activities

- Complete Audit Quality Study
- Workpaper reviews of firms with audit practices less than 100 EBP audits
- Firm inspections of firms with large EBP audit practices
- Outreach with state CPA societies and other stakeholder organizations
- Participation with AICPA Ethics, Peer Review and Quality Center groups



# 2022 Form 5500 Changes

- Multiple Employer Plans
  - New plan characteristic codes
  - Pooled Employer Plan (PEP) must complete the “Pooled Employer Plan/Pooled Plan Provider Information” attachment
- Schedule MB
- Schedule R

# 2022 Form 5500 Changes

## Multiple-Employer Plans

New plan characteristic codes have been added for Form 5500, Part II, Line 8a, to identify different types of multiple-employer defined benefit contribution plans

- Pooled employer plan (PEP)
- Association retirement plan
- PEO multiple-employer plan, and
- Other multiple-employer plan

# 2022 Form 5500 Changes

## Multiple-Employer Plans

Pooled Employer Plan (PEP) must complete the “Pooled Employer Plan/Pooled Plan Provider Information” attachment

The attachment may be included

- As part of the “Multiple-Employer Plan Participating Employer Information” attachment,
- or
- As a separate attachment entitled “Pooled Employer Plan Information”

# 2023 Form 5500 Changes

- Published in the Federal Register, February 24, 2023
- Changes relate to some SECURE Act provisions
- Other changes intended to improve reporting of:
  - Plan audits
  - Plan expenses
  - Compliance information
  - Technical changes

## 2023 Form 5500 Changes— 7 Major Categories

- Adds a Schedule DCG for defined contribution group reporting arrangements—There will be a Schedule DCG for each participating plan
- Adds a Schedule MEP for multiple-employer pension plans
- Changes the methodology for counting participants for the purposes to determining the eligibility for small plan reporting options
- Adding new breakout categories to Administrative Expenses section on Schedule H

## 2023 Form 5500 Changes— 7 Major Categories

- Additional defined benefit plan reporting improvements
  - Changes to Schedules R and SB
- Miscellaneous and conforming changes to forms and instructions
- Adds certain new Internal Revenue Code compliance questions

# 2023 Form 5500 Changes

## Defined Contribution Group Reporting Arrangement

- One Form 5500 (not eligible for SF)
- One Schedule A, C,D,G,H (as applicable)
- Schedule DCG for each participating plan

# 2023 Form 5500 Changes

## Defined Contribution Group Reporting Arrangement

Combined reporting supplemental schedules as referred to in 29 CFR 2520.103-10, for all of the participating plans unless otherwise provided for in the instructions to the Form 5500

- Schedule of Assets Held for Investment
- Schedule of Assets Acquired and Disposed of During the Plan Year
- Schedule of Reportable Transactions
- Schedule of Non-Exempt Transactions
- Schedule of Delinquent Participant Contributions



# 2023 Form 5500 Changes

## Defined Contribution Group Reporting Arrangement

- Schedule DCG for each plan is Individual Plan Information
  - Part I—DCG Information
  - Part II—Checkboxes to confirm single employer plan, collectively bargained plan and whether first filing, amended filing or final filing
  - Part III—Basic Individual Plan Information—Plan name, number, effective date, sponsor information, and participant information
  - Part IV—Plan Financial Information—Assets liabilities, income, expenses, transfers
  - Part V—Plan Characteristics
  - Part VI—Compliance Questions
  - Part VII—Accountant Opinion Information for participating plans. Separate audited financial statements for each participating plan with over 100 participants and small plans who do not meet the audit waiver requirement

# 2023 Form 5500 Changes

## Schedule MEP and MEP Reporting

- New *Schedule MEP—  
Multiple-Employer Pension Plan Information*
- Reports information specific to MEPs
  - Participating employer information
  - Aggregate account information
  - Link Form PR information to plan specific information operated by a PPP

# 2023 Form 5500 Changes

## Counting Participants

- Methodology for Determining Eligibility for Small Plan simplified Reporting for Individual Account Plans
- Number of participants/beneficiaries with account balances as of the beginning of the year
  - First plan year would use end-of-year information
- New line on the Form 5500 and Form 5500-SF
  - Report participants with account balances at beginning of plan year

# 2023 Form 5500 Changes

## Schedule H Breakout Categories for Administrative Expenses

- Salaries and allowances
- Contract administrator fees
- Other recordkeeping fees
- IQPA 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
- Other expenses

# Audit of PEP vs. DCG

## **Pooled Employer Plan**

- One plan = One audit
- If plan has over 100 participants, must have an audit
- Subject to the 80-120 rule

## **Defined Contribution Group (of Plans)**

- Multiple plans reporting as a group = Multiple audits
- The participating plans that have over 100 participants must have an audit.
- Subject to the 80-120 rule

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Session Evaluation

# DOL Resources

- EBSA Website: [www.dol.gov/ebsa](http://www.dol.gov/ebsa)
  - For DOL publications, FAQs, copies of the Form 5500, instructions and related schedules
- EBSA Office of the Chief Accountant  
202-693-8360
- EBSA Office of Regulations and Interpretations  
202-693-8500
  - For questions about ERISA reporting, filing or other regulatory requirements
- DOL EFAST Help Center  
1-866-463-3278 (1-866-GOEFAST)
  - For questions regarding the Form 5500 or related schedules

# Questions

