

<b>Bombardier Airplane Model/Serial Number</b>	<b>AFM Title</b>	<b>AFM Revision</b>
CL-600-2B16 (Variant 604) 5701 through 5988 inclusive	Sub-sub section B., Wing Anti-ice System, of sub-section 4., Operation in Icing Conditions, of Section 02-04, Operating Limitations, of Chapter 2 – LIMITATIONS; and sub-section M., Icing Conditions During Flight, of Section 04-14, Ice and Rain Protection, of Chapter 4 – NORMAL PROCEDURES; of Bombardier Challenger 605 CL-600-2B16 AFM, PSP 605-1	Revision 54, dated December 18, 2019
CL-600-2B16 (Variant 604) 6050 through 6153 inclusive	Sub-sub section B., Wing Anti-ice System, of sub-section 4., Operation in Icing Conditions, of Section 02-04, Operating Limitations, of Chapter 2 – LIMITATIONS; and sub-section M., Icing Conditions During Flight, of Section 04-14, Ice and Rain Protection, of Chapter 4 – NORMAL PROCEDURES; of Bombardier Challenger 650 CL-600-2B16 AFM, PSP 650-1	Revision 19, dated December 18, 2019

**(h) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; fax 516-794-5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

**(i) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF-2021-06, dated February 26, 2021, for related information. This MCAI may be

found in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0787.

(2) For more information about this AD, contact Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; fax 516-794-5531; email [9-avs-nyacos@faa.gov](mailto:9-avs-nyacos@faa.gov).

(3) For service information identified in this AD, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1-866-538-1247 or direct-dial telephone 1-514-855-2999; email [ac.yul@aero.bombardier.com](mailto:ac.yul@aero.bombardier.com); internet <https://www.bombardier.com>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

Issued on September 9, 2021.

**Lance T. Gant,**

*Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

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**BILLING CODE 4910-13-C**

**DEPARTMENT OF LABOR****Employee Benefits Security Administration****29 CFR Part 2520****RIN 1210-AB97****Annual Reporting and Disclosure**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Proposed rule.

**SUMMARY:** This document contains proposed amendments to Department of Labor (DOL) regulations relating to annual reporting requirements under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The proposed amendments contained in this document would conform these DOL reporting regulations to proposed revisions under Title I of ERISA and the Internal Revenue Code (Code) to the Form 5500 Annual Return/Report of Employee Benefit Plan and Form 5500-SF Short Form Annual Return/Report of Small Employee Benefit Plan being published in this issue of the **Federal Register** in a separate Notice of Proposed Forms Revisions (NPFRR) prepared jointly by DOL, the Internal Revenue Service (IRS), and the Pension

Benefit Guaranty Corporation (PBGC) (collectively “Agencies”). Those proposed form changes and these proposed regulatory amendments primarily implement statutory changes enacted as part of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act). Conforming changes also are being proposed to the requirements for the summary annual report. The proposed regulatory amendments would affect employee pension and welfare benefit plans, plan sponsors, administrators, and service providers to plans subject to annual reporting requirements under ERISA and the Code.

#### DATES:

*Comment due date:* Comments are due on or before November 1, 2021.

*Proposed applicability dates:* If adopted, the proposed regulatory amendments to implement the SECURE Act’s amendment of section 103(g) would apply to 2021 plan year reporting. All other proposed regulatory amendments would apply to reporting for plan years beginning on or after January 1, 2022.

**ADDRESSES:** You may submit written comments, identified by RIN 1210–AB97, by one of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Mail:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210, Attention: Proposed Revision of Annual Information Return/Reports RIN 1210–AB97.

*Instructions:* All submissions must include the agency name and Regulatory Identifier Number (RIN) for this rulemaking. The DOL will share any comment submitted in response to this regulatory proposal with the IRS and the PBGC. To avoid unnecessary duplication of effort, the Agencies also will treat public comments submitted in response to this notice of proposed rulemaking as public comments on the Notice of Proposed Forms Revisions to the extent they include information relevant to the proposed regulatory amendments. If you submit comments electronically, do not submit paper copies. Comments will be available to the public, without charge, online at <http://www.regulations.gov> and <http://www.dol.gov/agencies/ebsa> and at the Public Disclosure Room, Employee Benefits Security Administration, Suite N–1513, 200 Constitution Ave. NW, Washington, DC 20210.

*Warning:* Do not include any personally identifiable or confidential

business information that you do not want publicly disclosed. Comments are public records posted on the internet as received and can be retrieved by most internet search engines.

#### FOR FURTHER INFORMATION CONTACT:

Janet Song or Colleen Brisport Sequeda, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693–8500 (this is not a toll-free number), for questions related to these proposed amendments to the DOL regulations.

*Customer service information:* Individuals interested in obtaining information from the DOL concerning Title I of ERISA may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the DOL’s website ([www.dol.gov/agencies/ebsa](http://www.dol.gov/agencies/ebsa)).

#### SUPPLEMENTARY INFORMATION:

##### A. Legislative and Regulatory Reporting Framework

Titles I and IV of ERISA and the Internal Revenue Code (Code), generally require pension and other employee benefit plans to file annual returns/reports concerning, among other things, the financial condition and operations of the plan. Filing a Form 5500 Annual Return/Report of Employee Benefit Plan (Form 5500) or, if eligible, a Form 5500–SF Short Form Annual Return/Report of Small Employee Benefit Plan (Form 5500–SF), together with any required schedules and attachments (together “the Form 5500 Annual Return/Report”),<sup>1</sup> in accordance with their instructions, generally satisfies these annual reporting requirements.

ERISA section 103 broadly sets out annual financial reporting requirements for employee benefit plans under Title I of ERISA. The Form 5500 Annual Return/Report for Title I purposes is promulgated pursuant to DOL regulations under the ERISA provisions authorizing limited exemptions and simplified reporting and disclosure for welfare plans under ERISA section 104(a)(3), simplified annual reports under ERISA section 104(a)(2)(A) for pension plans that cover fewer than 100 participants, and alternative methods of compliance for all pension plans under ERISA section 110. The Form 5500 Annual Return/Report, and related instructions and regulations, are also promulgated under the DOL’s general

regulatory authority in ERISA sections 109 and 505.

In addition to being an important disclosure document for plan participants and beneficiaries, the Form 5500 Annual Return/Report is a critical enforcement, compliance, and research tool for the DOL, the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC) (together “Agencies”). The Form 5500 Annual Return/Report is also an important source of information and data for use by other Federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies. In the United States, there are an estimated 2.5 million health plans, an estimated 885,000 other welfare plans, and nearly 772,000 private pension plans. These plans cover roughly 154 million private sector workers, retirees, and dependents, and have estimated assets of \$12.2 trillion. The Form 5500 Annual Return/Report serves as the principal source of information and data available to the Agencies concerning the operations, funding, and investments of approximately 843,000 pension and welfare benefit plans that file.<sup>2</sup> Accordingly, the Form 5500 Annual Return/Report is essential to each Agency’s enforcement, research, and policy formulation programs, as well for the regulated community, which makes increasing use of the information as more capabilities develop to interact with the data electronically. The data is also an important source of information and data for use by other Federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies. The Form 5500 Annual Return/Report also serves as the primary means for monitoring the operations of plans by participating employers in multiple employer plans and other group arrangements, plan participants and beneficiaries, and by the public.

The forms, schedules, and instructions, also serve to help the DOL carry out its statutory directives under sections 506 and 513 of ERISA. Specifically, section 506(a) of ERISA authorizes the Secretary of Labor to coordinate with other Agencies to avoid unnecessary expense and duplication of functions among Government agencies. The Agencies designed the Form 5500

<sup>1</sup> References to the “Form 5500 Annual Return/Report” may include depending on the context, the Form 5500, the Form 5500–SF, and the Form 5500–EZ, Annual Return of One Participant (Owners and Their Spouses) Retirement Plan (Form 5500–EZ). The Form 5500–EZ is a return that is required only to satisfy the Code. Form 5500–EZ filers are not subject to Title I of ERISA.

<sup>2</sup> Estimates are based on 2019 Form 5500 filings. DOL notes that welfare plans with less than 100 participants that are unfunded or insured (do not hold assets in trust) are generally exempt from filing a Form 5500. Therefore, while DOL estimates there are 2.5 million health plans and 885,000 non-health welfare plans, respectively only 69,000 and 91,000 of these plans filed a 2019 Form 5500.

Annual Return/Report so that it could be used simultaneously to satisfy annual return/report requirements to the Agencies, and to help the Agencies more effectively and efficiently (from both the public's and the Agencies' perspectives) provide oversight, assist with compliance, and enforce the provisions of ERISA and the Code. Section 506(b) gives the DOL responsibility for detecting and investigating civil and criminal violations of Title I of ERISA. The Form 5500 Annual Return/Report is one of the important tools the DOL uses to carry out its responsibility to detect and investigate such violations. Section 513(b)(2) of ERISA specifically directs DOL to undertake research studies relating to pension plans, including but not limited to (A) the effects of this subchapter upon the provisions and costs of pension plans, (B) the role of private pensions in meeting the economic security needs of the nation, and (C) the operation of private pension plans including types and levels of benefits, degree of reciprocity or portability, and financial and actuarial characteristics and practices, and methods of encouraging the growth of the private pension system.

Recent legislative and regulatory changes affecting multiple employer pension plans (MEPs) and similar arrangements are spurring the current need to update the Form 5500 Annual Return/Report and related regulations. Specifically, as discussed in more detail in the NPFR, the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act),<sup>3</sup> included various provisions designed to improve the private employer-based retirement system. Among other things, the SECURE Act included changes designed to simplify retirement plan administration for certain eligible defined contribution plans and added provisions to the Code relating to MEPs, including MEPs with pooled plan providers, and adopted provisions under Title I of ERISA that designated these MEPs with pooled plan providers as pooled employer plans.

The NPFR published concurrently in this issue of the **Federal Register** sets forth a discussion of form and instruction changes that relate to these proposed regulations. These proposed revisions to the DOL's reporting regulations are needed for the DOL to implement the forms revisions proposed in the three-agency (DOL, IRS, and

PBGC) Notice of Proposed Forms Revisions (NPFR).

## **B. Discussion of the Proposed Revisions to 29 CFR Part 2520**

### *1. Section 2520.103-1(a)(2)*

Section 2520.103-1 generally describes the content of the Form 5500 Annual Return/Report as a limited exemption and alternative method of compliance for ERISA-covered employee benefit plans to satisfy annual reporting requirements under Title I. The proposal adds a reference to "section 202 of the SECURE Act" to paragraph (a)(2) of § 2520.103-1 to set forth the authority for prescribing a consolidated report alternative method of compliance for certain groups of defined contribution retirement plans under proposed §§ 2520.103-14 and 2520.104-51, discussed below, relating to defined contribution group (DCG) reporting arrangements.

### *2. Sections 2520.103-1(b)(1) and 2520.103-1(c)(1)*

Paragraphs (b) and (c) of § 2520.103-1 generally describes the contents of the annual report for large plans (generally those with 100 or more participants) and small plans (generally those with fewer than 100 participants). The proposal would amend § 2520.103-1(b)(1) to add a proposed multiple employer plan (MEP) schedule (titled Schedule MEP) to the list of schedules and attachments required to be included with the Form 5500 for large MEPs. A parallel update is being proposed to § 2520.103-1(c)(1) to add the Schedule MEP as a schedule that small MEPs must include with the Form 5500.<sup>4</sup>

### *2. Section 2520.103-1(c)(2)(ii)*

Paragraph (c) of § 2520.103-1 describes the conditions under which an eligible small plan (generally with fewer than 100 participants) may file the Form 5500-SF. The proposal would add § 2520.103-1(c)(2)(ii)(F) to state that MEPs, which include pooled employer plans, as well as MEPs described in the DOL's regulation at § 2510.3-55 (association retirement plans and professional employer organization (PEO) MEPs), are not permitted to use the Form 5500-SF regardless of whether the plan meets the size and other requirements for filing a Form 5500-SF. A similar prohibition applies under the current regulation to MEWA plans required to file the Form M-1 and to multiemployer plans. The proposal would also add a new § 2520.103-1(c)(2)(ii)(G) to provide a similar

prohibition on filing the Form 5500-SF for DCG reporting arrangements. As described below in proposed §§ 2510.103-14 and 104-51, DCG reporting arrangements must file the aggregated annual report for participating plans using the Form 5500, including the schedules and attachments that are generally required for large retirement plans and Direct Filing Entities (DFEs) as well as a Schedule DCG (Individual Plan Information) for each plan whose reporting obligation is being satisfied by the DCG filing.

### *3. Amendments to § 2520.103-10*

Section 2520.103-10 identifies financial schedules that are required to be included as part of the Form 5500 Annual Return/Report depending on the characteristics and operations of the plan. The listed schedules include the "Schedule of Assets Held for Investment" and "Schedule of Assets Acquired and Disposed within the Plan Year." Paragraph (b) of § 2520.103-10 sets forth the content requirements for these schedules. The NPFR being published concurrently with this NPRM includes proposed additions and clarifications to the content of the "Schedules of Assets Held for Investment" and the "Schedule of Assets Acquired and Disposed within the Plan Year" that are designed to improve the consistency, transparency, and usability of the information reported regarding plan investments. The proposed changes to the contents and format of the schedule are described in detail in the NPFR and also set forth in the proposed amendment to the regulatory text in paragraph (b)(1)(i) of § 2520.103-10. Currently, filers typically file the schedule as a PDF. Of particular note, the proposal specifies that the schedules would have to be filed electronically through the ERISA Filing Acceptance System II (EFAST2) electronic filing system in a structured format in accordance with the EFAST2 requirements and the Form 5500's instructions.

### *4. New §§ 2520.103-14, 2520.104-51 and 2520.104a-9—Consolidated Form 5500 as an Alternative Method of Compliance for Plans Participating in a DCG Reporting Arrangement*

The proposal would amend the ERISA annual reporting regulations to implement the SECURE Act section 202 directive to the Secretary of Labor to jointly with the Secretary of the Treasury provide for a single, aggregated Form 5500 option that would satisfy the annual reporting obligations for the defined contribution pension plans

<sup>3</sup> The SECURE Act was enacted on December 20, 2019, as Division O of the Further Consolidated Appropriations Act, 2020 (Pub. L. 116-94).

<sup>4</sup> See NPFR for detailed discussion of the proposed Schedule MEP and Schedule DCG.

participating in the group. Under the proposal, several conditions relating to the DCG reporting arrangement, the participating plans, and the content of the Form 5500 filing would have to be satisfied before the aggregated filing would satisfy the annual reporting requirements of the separate participating plans. The NPFR describes those conditions in detail. The conditions also are set forth in a proposed new 29 CFR 2520.103–14 and 2520.104–51.<sup>5</sup>

With respect to the content requirements for a DCG consolidated Form 5500 filing, proposed paragraph (b) of § 2520.103–14 provides that the consolidated DCG report would be required to include a Form 5500 “Annual Return/Report of Employee Benefit Plan” and various statements or schedules based on the characteristics and operations of the participating plans, including Schedule A (Insurance Information), Schedule C (Service Provider Information), Schedule D (DFE/Participating Plan Information), Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), Schedule R (Retirement Plan Information), Schedule DCG (Individual Plan Information),<sup>6</sup> supplemental schedules referred to in 29 CFR 2520.103–10 with information aggregated for all the participating plans, the report and opinion of an independent qualified public accountant (IQPA) for the DCG trust, and an IQPA report and opinion for any individual participating plans with 100 or more participants that would be subject to the audit requirement if filing a separate Form 5500. This would include separate financial statements, if such financial statements are prepared in order for the independent qualified public accountant to form the required opinions on the DCG trust required under the proposal and the individual participating large plans required by section 103(a)(3)(A) of the Act and § 2520.103–2(b)(5).<sup>7</sup>

<sup>5</sup> The proposal is modeled to some extent on the existing annual reporting rules for fully insured welfare benefit plans that participate in a group insurance arrangement (GIA) and for investment entities that file as a Direct Filing Entity. See 29 CFR 2520.103–2, 2520.103–12, 2520.104–21, and 2520.104–43.

<sup>6</sup> See NPFR for detailed description of the proposed Schedule DCG. A separate Schedule DCG would be required for each individual participating plan. In the case of an existing plan that joins a DCG filing arrangement, the identifying information regarding the plan and employer/plan sponsor that was used in prior filings for the plan must be used to identify the plan and the employer/plan sponsor on the Schedule DCG for the plan.

<sup>7</sup> See NPFR for a more detailed discussion of the content requirements for DCG Form 5500.

Proposed paragraph (d) would make clear that the DCG reporting arrangement must comply with the electronic filing requirements that apply to all plan filers and direct filing entities (DFE). See § 2520.104a–2 and the instructions for the Form 5500 Annual Return/Report for electronic filing requirements. In addition, the proposed paragraph emphasizes that the common plan administrator of all the participating plans that is filing the consolidated Form 5500 must maintain an original copy, with all required signatures, as part of its records (which also would be treated as records of each of the participating plans).

The proposed new § 2520.104–51 would authorize the DCG consolidated report as an alternative method of compliance under ERISA section 110 for defined contribution pension plans that participate in DCG reporting arrangements. Specifically, filing of a complete and accurate consolidated Form 5500 for the DCG reporting arrangement would relieve the administrator of each individual participating defined contribution pension plan that meets the requirements of paragraph (b) of § 2520.104–51 of the obligation to file an individual annual report under Title I of ERISA. This alternative method of compliance would be available only for a defined contribution pension plan in a plan year in which (i) such plan participates in a DCG reporting arrangement that meets the conditions of paragraph (c) of this proposed § 2520.104–51; and (ii) the DCG reporting arrangement has filed with the Secretary of Labor in accordance with proposed § 2520.104a–9, a complete and accurate consolidated annual report that meets the content requirements under proposed § 2520.103–14. To make clear that the DCG reporting arrangement is a direct filing entity (DFE) that is submitting the aggregated Form 5500 on behalf of the participating plans, proposed § 2520.104–51(b)(2) provides that the term “DCG reporting arrangement” shall be used in place of the term “plan” where it appears in §§ 2520.103–3, 2520.103–4, 2520.103–6, 2520.103–8, 2520.103–9, and 2520.103–10 and elsewhere in subparts C and D of 29 CFR part 2520, as applicable.

Proposed § 2520.104–51 would also provide that the reporting relief for individual plans would apply only if all plans participating in the DCG reporting arrangement (i) are individual account plans or defined contribution plans; (ii) have—(A) the same trustee (“common trustee”) and same trust holding the assets of the participating plans (“common trust”); (B) the same one or

more named fiduciaries, except the proposal would allow for the employer/plan sponsor to be a named fiduciary of each employer’s own plan provided that the other named fiduciaries under the plans are the same and common to all plans (“common named fiduciaries”); (C) a designated administrator that is the same plan administrator for all the participating plans (“common plan administrator”); (D) plan years beginning on the same date (“common plan year”); (iii) provide the same investments or investment options to participants and beneficiaries (“common investments or investment options”); (iv) have the investment assets held in a single trust of the DCG reporting arrangement; (v) not hold any employer securities; (vi) be 100% invested in certain secure, easy to value assets that meet the definition of “eligible plan assets” (see the instructions for line 6a of the Form 5500–SF), such as mutual fund shares, investment contracts with insurance companies and banks valued at least annually, publicly traded securities held by a registered broker dealer, cash and cash equivalents, and plan loans to participants; (vii) be audited by an IQPA or be eligible for the waiver of the annual examination and report of an IQPA under 29 CFR 2520.104–46, but not by reason of enhanced bonding; and (viii) may not be a multiemployer plan or a MEP (including association retirement plans, pooled employer plans and professional employer organization plans (PEO plans)).

Proposed § 2520.104–51 would also expressly state that the alternative method of complying with the Title I annual reporting requirements would not relieve the administrator of the individual participating plans from any other requirement of Title I of the Act, including, for example, the provisions that require that plan administrators furnish copies of the summary plan description to participants and beneficiaries (ERISA section 104(b)(1)), furnish certain documents to the Secretary of Labor upon request (ERISA section 104(a)(6)), and furnish a copy of a Summary Annual Report (SAR) to participants and beneficiaries of the plan (ERISA section 104(b)(3)). Proposed § 2520.104–51(c)(2)(iii) provides that all plans participating in a DCG reporting arrangement must have a designated common plan administrator that is the same plan administrator for all the participating plans. The SECURE Act was not explicit on whether this was intended to require the same person to be the plan administrator under ERISA section

3(16)(A) for the purpose of meeting the annual reporting requirements for each participating plan or was intended to require that the same person be the plan administrator of each participating plan for all purposes under ERISA. The proposal requires that the same person sign the DCG filing as the plan administrator for each participating plan. The Department solicits comments on whether the final rule should address whether individual plans participating in a DCG may have a separate statutory administrator responsible for other duties ERISA assigns to the plan administrator (e.g., distribution of summary plan descriptions).

Finally, proposed new § 2520.104a–9 provides that, as would be the case for all of the participating plans in the DCG reporting arrangement if they were filing individually, the aggregated Form 5500 for the DCG is due no later than the end of the 7th month after the end of the common plan year that all the plans must have in order to participate in a DCG reporting arrangement pursuant to the requirement in section 202 of the SECURE Act and the proposed regulation at § 2520.104–51. Because the DCG filing is an alternative to each participating plan filing its own Form 5500, that would mean that each plan would have to submit its own IRS Form 5558 to extend the plan's due date, and, as a consequence, extend the due date for the DCG filing. A plan that did not submit a timely Form 5558 and that participated in a DCG filing that was submitted after the 7th month normal due date would be treated as having filed late. Public comments are specifically solicited on how the filing extension process should be structured for DCGs, including whether DCG reporting arrangements should be able to file a single Form 5558 to obtain an extension for filing the DCG consolidated report on behalf of the participating plans as an alternative to having each individual plan file a Form 5558 for there to be an extension for the reporting group as a whole.<sup>8</sup>

As noted above, section 110 of ERISA permits the DOL to prescribe for pension plans alternative methods of complying with any of the reporting and disclosure requirements if the Secretary finds that: (1) The use of the alternative method is consistent with the purposes of ERISA and it provides adequate disclosure to plan participants and beneficiaries, and adequate reporting to the Secretary; (2) application of the

statutory reporting and disclosure requirements would increase costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan; and (3) the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate. The DOL believes that the proposal on DCG reporting arrangements meets those conditions, especially given the statutory direction in the SECURE Act to create such a reporting option, but also specifically solicits comments on the required findings under section 110.

As also discussed in the NPFR, the DOL expects that cost savings for plans relying on a DCG filing compared to plans filing separately will generally require the DCG to collectively exceed an aggregate participant count of 100 participants. In other words, the DOL does not expect a DCG filing to provide meaningful cost savings for plans compared to filing their own annual report in the case of DCG arrangements with an aggregate participant count of under 100 participants. Rather, we expect in such cases that the individual plans would likely qualify for filing the Form 5500–SF and that they will likely find it more cost effective to file their own separate Form 5500–SF. Accordingly, this proposal does not include an option under which such a “small” DCG could file as a small plan. Nonetheless, the DOL solicits comments regarding the merit of those expectations and assumption and whether the rules should provide a simplified reporting option for “small” DCG reporting arrangements.

#### 5. Section 2520.104b–10

Section 2520.104b–10 sets forth the requirements for the Summary Annual Report (SAR) appendix and prescribes formats for such reports. The DOL proposes updating this section to reflect the new filing option for DCG reporting arrangements and the addition of the new Schedule MEP and Schedule DCG to the 5500 Annual Report/Return. The proposal includes adding to the existing model language in the DOL's regulation new text that plans would use to provide a brief description of the plan based on the plan characteristic codes listed for the plan on the Form 5500, including whether it is a defined contribution or defined benefit plan, and whether the plan is a pooled employer plan, another type of multiple employer plan, a single employer plan, or a plan participating in a DCG reporting arrangement, respectively. The proposed new regulatory language also includes text for plans to use that states

a copy of the Schedule DCG and the Schedule MEP are available on request, as applicable. For plans participating in a DCG reporting arrangement, the new language advises that a statement of the aggregate assets and liabilities of all the plans in the DCG reporting arrangement and accompanying notes, a statement of aggregate income and expenses of the DCG reporting arrangement and accompanying notes, and a copy of the audit report filed for the trust of the DCG reporting arrangement are available on request. Finally, the new SAR language would state that a copy of the Form 5500 annual report filed for the plan or DCG is available online from EBSA via a DOL website at [www.efast.dol.gov](http://www.efast.dol.gov).

#### C. Applicability Dates

If adopted, the proposed amendments to implement the SECURE Act's amendment of section 103(g) would apply to reporting for plan years beginning on or after January 1, 2021. The other proposed rules, including those under section 202 of the SECURE Act and structuring the schedules of assets held for investment, generally would apply to reporting for plan years beginning on or after January 1, 2022. The NPFR published concurrently in this issue of the **Federal Register** sets forth a comprehensive discussion of form and instruction changes that relate to these proposed regulations.

#### D. Regulatory Impact Analysis

The following is a discussion of the DOL's examination of the effects of this rule as required by Executive Order 12866,<sup>9</sup> Executive Order 13563,<sup>10</sup> the Paperwork Reduction Act of 1995,<sup>11</sup> the Regulatory Flexibility Act,<sup>12</sup> section 202 of the Unfunded Mandates Reform Act of 1995,<sup>13</sup> Executive Order 13132,<sup>14</sup> and the Congressional Review Act.<sup>15</sup>

##### 1.1. Executive Orders

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the

<sup>9</sup>Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

<sup>10</sup>Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 18, 2011).

<sup>11</sup>44 U.S.C. 3506(c)(2)(A) (1995).

<sup>12</sup>5 U.S.C. 601 *et seq.* (1980).

<sup>13</sup>2 U.S.C. 1501 *et seq.* (1995).

<sup>14</sup>Federalism, 64 FR 153 (Aug. 4, 1999).

<sup>15</sup>5 U.S.C. 804(2) (1996).

<sup>8</sup>Under the somewhat similar consolidated reporting provisions applicable to GIAs, the GIA is permitted to use the IRS Form 5558 to apply for an extension of time the GIA consolidated report on behalf of the plans participating in the GIA.

importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Under Executive Order 12866, “significant” regulatory actions are subject to review by the Office of Management and Budget (OMB).<sup>16</sup> Section 3(f) of the Executive order defines a “significant regulatory action” as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as “economically significant”); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive order.

A full regulatory impact analysis must be prepared for major rules with economically significant effects (for example, \$100 million or more in any 1 year), and the Office of Management and Budget (OMB) reviews “significant” regulatory actions. It has been determined that this rule is not economically significant within the meaning of section 3(f)(1) of the Executive order. Pursuant to the terms of the Executive order, OMB has determined, however, that this action is “significant” within the meaning of section 3(f)(4) of the Executive order. Therefore, the DOL has provided an assessment of the potential costs, benefits, and transfers associated with this proposed rule. In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by OMB. Pursuant to the Congressional Review Act, OMB has designated this proposed rule as not a “major rule,” as defined by 5 U.S.C. 804(2).

## 1.2. Introduction and Need for Regulation

The Form 5500 Annual Return/Report is the principal source of information and data available to the Agencies concerning the operations, funding, and investments of pension and welfare benefit plans covered by ERISA and the Code. Accordingly, the Form 5500 Annual Return/Report is essential to

each Agency’s enforcement, research, and policy formulation programs and is a source of information and data for use by other Federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies. The Form 5500 Annual Return/Report also serves as the primary means by which the operations of plans can be monitored by plan participants and beneficiaries and the general public.

As discussed earlier in this document and the related NPFR publishing concurrently with this proposal, the SECURE Act included various provisions designed to improve the private employer-based retirement system by seeking to make it easier for businesses to offer retirement plans, and for individuals to save for retirement, through the creation of new plan structure and reporting options. These new structures will require new annual reporting, which has resulted in the need to update the Form 5500 Annual Return/Report and related regulations.

*Pooled Employer Plans and Other MEPs:* The SECURE Act amended ERISA and the Code to address certain MEPs administered by pooled plan providers. Under section 3(43) of ERISA such plans are called pooled employer plans. The proposed regulation would add a new Schedule MEP to the Form 5500 annual report to collect information on employers participating in MEPs and to gather compliance information on pooled employer plans. Some of the information on the proposed Schedule MEP is currently reported on the Form 5500 Annual Return/Report by MEPs, but it is reported on a nonstandard attachment. Only an image or picture of the attachment is available through the EFAST2 public disclosure function. Making the information data-capturable by including it on the proposed Schedule MEP would improve the uniformity and accuracy of the data and increase its usability.

*“Defined Contribution Group (DCG) Reporting Arrangement”:* Section 202 of the SECURE Act directs the Secretary of the Treasury and the Secretary of Labor (together “Secretaries”) to modify the returns required under section 6058 of the Code and the reports required by section 104 of the ERISA, respectively, so that all members of a group of defined contribution individual account plans that meet certain conditions may file a single aggregated annual return/report satisfying the requirements of both such sections. The SECURE Act provides that to constitute an eligible group of plans, all of the plans in the group must be either individual account plans or defined contribution plans,

must have the same trustee, the same named fiduciaries, the same administrator, plans years beginning on the same date, and must provide the same investments or investment options to participants and beneficiaries. The proposed rule would establish the conditions, including the SECURE Act conditions, under which filing a single, aggregated Form 5500 Annual Return/Report by a “defined contribution group (DCG) reporting arrangement” would satisfy the individual, annual reporting obligations for each of the plans participating in the group. As discussed in more detail in the NPFR, the proposed rule also includes adding a new Schedule DCG (Individual Plan Information) to provide individual plan-level information for plans covered by a DCG consolidated Form 5500 filing.

In addition, although not directly implementing SECURE Act changes, some of the changes being proposed in this document are intended to ensure that annual reporting by pooled employer plans, other MEPs, and DCGs provides appropriate financial and operational transparency and accountability. Certain proposed changes would benefit workers in plans other than pooled employer plans and DCGs would apply more broadly, e.g., improving the quality of financial reporting. Other changes being proposed relate to efforts to improve compliance and oversight with respect to the Code issues and defined benefit plans subject to the PBGC insurance program under Title IV of ERISA.

*Schedule H, Schedule of Assets Held for Investment, and Schedule of Assets Acquired and Disposed of Within the Year:* As discussed in the NPFR, the Agencies are proposing structural, data element, and instruction changes to the current Schedule H, Line 4i Schedules of Assets. Current Line 4i would be broken into two items to identify the existing schedules separately: Line 4i(1) would identify the Schedule of Assets Held for Investment at End of Year, and Line 4i(2) would identify the Schedule of Assets Acquired and Disposed of Within Year (together “Schedules of Assets”). The current regulations and instructions require most large plans and DFEs to attach the Schedules of Assets to the Form 5500, Schedule H.<sup>17</sup>

<sup>17</sup> In 2019, the plans required to file the Form 5500 included any benefit plan or a welfare benefit plan that covered 100 or more participants as of the beginning of the plan year and a Form 5500 filed for a master trust investment account (MTIA), common/collective trust (CCT), pooled separate account (PSA), 103–12 investment entity (103–12 IE), or GIA. However, fully insured, unfunded, or a combination of unfunded/insured welfare plans and fully insured pension plans that meet the

<sup>16</sup> Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

They are the only place on the Form 5500 Annual Return/Report where plans are required to list individual plan investments identified by major characteristics, such as issue, maturity date, interest rate, cost and current value. As such, they are the only part of the Form 5500 Annual Return/Report useful to evaluate the year-to-year performance, liquidity, and risk characteristics of a plan's individual investments.

The current reported information suffers from several shortcomings. First, filers currently submit this information as non-standard attachments to filers' electronic Form 5500 Annual Return/Report filings, so only an image or picture of the attachments is available through the EFAST2 public disclosure function. A survey panel of plan sponsors, service providers, representatives of plan participants, and researchers was conducted in 2014 as part of a Government Accountability Office (GAO) report; 11 of 31 respondents indicated that having no standard reporting format was a very or extremely significant challenge. GAO reported that attachments to the form may be as long as 400 pages, making it particularly difficult for users to find information.<sup>18</sup> Second, filers do not always provide the Line 4i Schedules of Assets in the same place in each annual return/report. For example, the Line 4i Schedules of Assets are often incorporated in the larger audit report of the plan's IQPA that itself is filed as a nonstandard attachment to the Form 5500 Annual Return/Report. Third, the schedules do not require a standardized method for identifying and describing assets on the Line 4i Schedules. Different filings may identify the same stock or mutual fund with various different names or abbreviations. In the aforementioned GAO survey, most researchers indicated that a lack of a standard reporting format or unique identifier for plan assets was a major challenge, while representatives of plan sponsors and service providers did not.<sup>19</sup>

Data capturability of the Line 4i Schedules of Assets would make it much easier and more efficient to monitor plan holdings as computer

programs can read and analyze the data much more efficiently. Currently, entities expend considerable resources collecting the data and presenting it in a usable format, to which they then sell access. Making the information data capturable at the submission stage of the process would be more cost effective as it removes the need for a second entity to gather the information, and allow more entities access to the data at a lower overall cost. The DOL's Office of Inspector General ("DOL-OIG") and the GAO have both recommended that EBSA implement changes to create more detailed and structured Schedules of Assets.<sup>20</sup> It would also allow the Agencies and the interested public, including the participants and beneficiaries in impacted plans, to better monitor a larger number of pension plans and their asset allocations. A number of private entities have been using the information reported on Line 4i Schedule of Assets Held for Investment in larger pension plan Form 5500 Annual Return/Report filings into data-capturable information and have been using it to compare plan investment menus and investment allocations. The DOL believes this development is evidence that plans sponsors and their service providers are interested in having access to these data. For example, one company that uses the Schedules of Assets data sent a letter to DOL stating that they believe that the information on the Form 5500 Annual Return/Report is very useful in "helping the agency understand the performance and design of retirement plans in the market place" and that the data availability fosters "third party data collection and evaluation efforts that in turn help protect retirement plan participants."<sup>21</sup> Plan sponsors can use this information to see better how their investment menus compare to similarly situated plans and service providers use this information to identify plans with underperforming investments in order to attract new business. This can lead to more competition and improved plan performance, which would ultimately

benefit plan participants and beneficiaries.

*Defined Benefit Pension Plan/ERISA Title IV Additions:* The Form 5500 collects information from defined benefit pension plans in Schedules MB, SB, and R. The PBGC has determined that it needs more detail in these schedules accurately to project defined benefit pension plan and PBGC insurance program liabilities. The PBGC's proposed changes to the information required to be reported by PBGC-insured defined benefit plans would remedy the deficiencies of the current Form 5500 filings and better protect participants. There are 23,371 single employer defined benefit plans and 1,373 multiemployer defined benefit plans that are covered by the PBGC and would be impacted by these changes.<sup>22</sup>

*Internal Revenue Code Compliance Additions:* Prior to 2009, Schedule E, ESOP Annual Information, Schedule P, Annual Return of Fiduciary of Employee Benefit Trust, and Schedule T, Qualified Pension Plan Coverage Information, were required as part of the annual return under section 6058(a) of the Code and associated regulations, but they were not information collections of the DOL or the PBGC. Beginning in 2009, DOL mandated electronic filing of Form 5500, Annual Return/Report of Employee Benefit Plan, and Form 5500-SF, Short Form Annual Return/Report of Small Employee Benefit Plan. At that time limitations on the IRS' authority to require electronic filing of annual returns resulted in the removal of the "IRS-only" schedules from the Form 5500 filing requirements. The lack of information from these schedules has negatively impacted the IRS's ability to focus effectively on specific factors of noncompliance when selecting retirement plans for examination. Rather than reinstating the Schedules E, P, and T, the IRS is proposing to add new questions to the 2022 Form 5500 designed to assist the IRS in identifying plans that are non-compliant relating to Code section 410(b) coverage, Code section 401(a)(4) non-discrimination, and Code section 401(k) non-discrimination testing. Additionally, IRS is proposing to add a question that would help it identify whether adopters of pre-approved plans have been updated timely for changes in the law.

#### Affected Entities

Major portions of this proposal relate to SECURE Act statutory changes that

requirements of 29 CFR 2520.104-44 are exempt. If a Schedule I was filed for the plan for the 2018 plan year or a Form 5500-SF and the plan covered fewer than 121 participants as of the beginning of the 2019 plan year, the Schedule I may be completed instead of a Schedule H. Plans that file a Form 5500-SF for the 2019 plan year are not required to file a Schedule H for that year.

<sup>18</sup> Private Pensions: Targeted Revisions Could Improve Usefulness of Form 5500 Information, at 17.

<sup>19</sup> *Id.*

<sup>20</sup> See EBSA Needs to Provide Additional Guidance and Oversight to ERISA Plans Holding Hard-to-Value Alternative Investments at 17, September 30, 2013. <https://www.oig.dol.gov/public/reports/oa/2013/09-13-001-12-121.pdf>; Private Pensions: Targeted Revisions Could Improve Usefulness of Form 5500 Information, at 37, June 5, 2014. <https://www.gao.gov/products/gao-14-441>.

<sup>21</sup> See August 23, 2010 Comment Letter from Ryan Alfred, President, BrightScope, Inc. Re: Proposed Extension of Information Collection, Form 5500 [http://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201009-1210-002](http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201009-1210-002).

<sup>22</sup> PGBC 2018 Pension Insurance Data Tables. [https://www.pgbc.gov/sites/default/files/2018\\_pension\\_data\\_tables.pdf](https://www.pgbc.gov/sites/default/files/2018_pension_data_tables.pdf).



(1) recognized a new type of multiple employer plan under Title I of ERISA called pooled employer plans; and (2) called for the Secretaries to establish a new consolidated annual report for certain groups of defined contribution pension plans (herein called DCG reporting arrangements). The SECURE Act amendments first authorized pooled employer plans to begin operating beginning on January 1, 2021; even early adopted pooled employer plans generally will not file a Form 5500 before July 2022. Similarly, DCG reporting arrangements are a new filing option starting with the 2022 plan year; such consolidated filings will not begin until July 2023. Thus, there is no historical Form 5500 information that the DOL can use reliably to evaluate the number of affected entities. As a result, there is significant uncertainty regarding the DOL's ability to measure costs and benefits that may result from this proposal. The DOL nonetheless is presenting below an overview of potentially affected entities and an approach to evaluating the possible impacts of this proposal. In evaluating costs and benefits, the DOL took account of the fact that various types of plans could be affected by more than one proposed revision. DOL is also soliciting data relevant to an evaluation of costs and benefits and comments on alternative methodologies and assumptions for evaluating the costs and benefits.

**Defined Contribution Pension Plans:** In 2018, there were 675,007 defined contribution plans with 105.8 million total participants and 83.4 million active participants. Plans with fewer than 100 total participants (small plans) account for 87.4 percent of plans.<sup>23</sup>

**Defined Contribution Group (DCG) Reporting Arrangement:** As this is a new type of annual reporting method, the DOL does not have data on how many DCGs would be created nor the number of plans that would choose to satisfy their individual filing obligations by meeting the requirements for being part of a DCG, including the filing of a consolidated Form 5500 Annual Return/Report by the common plan

administrator. We note that in 2018 there were 499,234 small defined contribution plans that reported the plan characteristic code 3D in their Form 5500-SF to indicate that they are intended to operate as pre-approved plans under sections 401, 403(a), and 4975(e)(7) of the Code. The DOL assumes that a DCG reporting option may suit their existing plan and business models and that, therefore, some fraction of these plans may find it advantageous to join a DCG for filing purposes.

**Defined Benefit Pension Plans:** In 2018, there were 46,869 defined benefit plans with 34.0 million total participants and 13.1 million active participants. There were 45,275 single-employer defined benefit plans and 1,388 multiemployer defined benefit plans.<sup>24</sup>

**Multiple Employer Pension Plans:** A MEP, for Form 5500 reporting purposes, generally is a retirement plan maintained by two or more employers that are not members of the same controlled group or affiliated service group under Code section 414(b), (c), or (m), and which is not a multiemployer plan.<sup>25</sup> In 2018, there were 4,730 MEPs filing a Form 5500, of which 207 were defined benefit pension plans and 4,523 were defined contribution pension plans. There were 6.9 million participants reported as covered by these plans.<sup>26</sup> The proposal, if finalized, would establish a new Schedule MEP to report information specific to pension MEPs. While the new Schedule MEP would retain ERISA section 103(g) participating employer information that MEPs must currently file as a non-standardized attachment, it also would add the SECURE Act requirement for pension MEPs to report aggregate account balances information for each participating employer in the MEP. Schedule MEP would also include questions intended to focus on SECURE Act issues and compliance for pooled employer plans.

**Association Retirement Plan.** An association retirement plan is a defined contribution MEP, sponsored by a bona fide group or association of employers that meets the conditions under 29 CFR 2510.3–55(b). The DOL does not have information on how many reporting MEPs are association retirement plans or otherwise to estimate the number of association retirement plans (a sub-class of MEPs) that currently exist.

**Professional Employer Organizations (PEOs) Plan:** A PEO MEP is a defined contribution pension plan sponsored by a bona fide PEO that meets the conditions under 29 CFR 2510.3–55(c). According to the National Association of Professional Employer Organizations, there are 487 PEOs in the United States.<sup>27</sup> The DOL does not have information on how many PEOs currently meet the conditions under 29 CFR 2510.3–55(c) to sponsor defined contribution MEPs for their clients, but assumes a substantial percentage of PEOs do sponsor MEPs, including defined contribution MEPs.

**Pooled Employer Plans.** The SECURE Act amended section 3(2) of ERISA and added section 3(43) to ERISA to authorize a new type of ERISA covered defined contribution MEP referred to as a “pooled employer plan” to be operated by a “pooled plan provider.” In its 2020 final rule on Registration Requirements for Pooled Plan Providers, the DOL noted the uncertainty surrounding the number of pooled employer plans that could be created based on the final rule, the number of employers that would participate in such plans, and the number of participants and beneficiaries that would be covered by them.<sup>28</sup> Approximately 50 pooled plan providers have filed an initial Form PR Pooled Plan Provider Registration (Form PR) and registered with the DOL.<sup>29</sup>

The DOL does not have comprehensive data on how many employers are participating in pooled employer plans or the number of participants covered by the plans until the pooled employer plans file their first Forms 5500 in 2022 for their 2021 reporting year. The DOL attempted to review available public information on pooled employer plans by looking at information included in the filed Forms PR, and by examining news articles and statements on the pooled plan provider's websites. That review indicated that there are a variety of approaches in how pooled employer plans are offered, and a variation in the

<sup>23</sup> Employee Benefits Security Administration. “Private Pension Plan Bulletin, Abstract of 2018 Form 5500 Annual Report.” (2020). The 2018 Form 5500 data set is the most recent available because Form 5500 filings for the 2018 reporting year generally are not required to be filed for calendar year plans until July through October of 2019, and the deadline for fiscal year plans may extend well into 2020. The User Guide for the 2018 Form 5500 Private Pension Plan Research File includes a discussion of the creation of the annual data set and timing of data extraction. See [www.dol.gov/sites/dolgov/files/EBSA/researchers/data/retirement/pension-user-guide-2018.pdf](http://www.dol.gov/sites/dolgov/files/EBSA/researchers/data/retirement/pension-user-guide-2018.pdf) (Accessed July 21, 2021).

<sup>24</sup> *Id.*

<sup>25</sup> See, e.g., 2020 Form 5500 instructions at 14.

<sup>26</sup> Employee Benefits Security Administration. “Private Pension Plan Bulletin, Abstract of 2018 Form 5500 Annual Reports.” (June 2020).

<sup>27</sup> National Association of Professional Employee Organizations, *Industry Statistics* (Accessed 6/28/2021), <https://www.napeo.org/what-is-a-peo/about-the-peo-industry/industry-statistics>. NAPEO had previously reported 904 PEOs but revised its methodology. An explanation of the revision is included on the NAPEO website. See The PEO Industry Footprint 2021, Laurie Bassi and Dan McMurrer, McBassi & Company at page 4 (May 2021) (available at [www.napeo.org/docs/default-source/white-papers/2021-white-paper-final.pdf?sfvrsn=6dde35d4\\_2](http://www.napeo.org/docs/default-source/white-papers/2021-white-paper-final.pdf?sfvrsn=6dde35d4_2)).

<sup>28</sup> 85 FR 72934, 72949 (Nov. 16, 2016).

<sup>29</sup> Department of Labor. Form PR. <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-pr>.



number of employers that have joined a pooled employer plan. While pooled plan providers are required to update the Form PR to advise the DOL and the IRS about the establishment and offering of new pooled employer plans, the Form PR does not collect information on the number of employers participating in their pooled employer plans or the number of employees covered by each plan. One pooled plan provider was reported in another source as having 2,000 employers joined their pooled employer plan, whereas other providers reported five to 10 employers had joined their pooled employer plans. As part of the request for comments, the DOL is seeking information on the number of employers that have already joined a pooled employer plan and the number of employees covered by the plan in total and broken down by employer.

**Pre-approved Pension Plans:** These are plans that reported plan characteristics code 3D when filing the Form 5500 Annual Return/Report. The code 3D indicates “A pre-approved plan under sections 401, 403(a), and 4975(e)(7) of the Code that is subject to a favorable opinion letter from the IRS.” A pre-approved retirement plan is a plan offered to employers by financial institutions and others that are authorized to sponsor pre-approved plans. The pre-approved plan provider then makes the IRS-approved plan available to adopting employers. Providers must make reasonable and diligent efforts to ensure that adopting employers of the plan have actually received and are aware of all plan amendments and that such employers complete and sign new plans when necessary.<sup>30</sup> Of the 611,568 defined contribution pension plans that reported code 3D, 544,090 are reported as small plans, as they report having fewer than 100 participants each. Of these small defined contribution plans, 499,234 file the Form 5500–SF, cover approximately 10.0 million participants, and hold approximately \$0.6 trillion in assets. The DOL expects that Form 5500–SF small pension plan filers are the most likely candidates to join a DCG or a pooled employer plan. The DOL lacks information on the number of plans, whether or not currently Form 5500–SF eligible filers, that would join a DCG or a pooled employer plan. The DOL is seeking comment on this issue.

**Multiple Employer Welfare Arrangement (MEWA):** A MEWA is defined in ERISA section 3(40)(B) generally as an employee welfare benefit

plan or any other arrangement, which is established or maintained for the purpose of offering or providing welfare benefits to the employees of two or more employers, or to their beneficiaries. For purposes of this definition, two or more trades or businesses, whether or not incorporated, are deemed a single employer if such trades or businesses are under common control. Section 3(40) excludes from the definition of the term MEWA any plan or arrangement established or maintained under or pursuant to a collective bargaining agreement, or by a rural electric cooperative or rural telephone cooperative association. MEWAs that offer or provide coverage for medical benefits are generally required to file the Form M–1. In the 2018 calendar year, there were 640 total plan MEWAs that filed a Form M–1 with 2.0 million total participants. There were 47 non-plan MEWAs based on Form M–1 filings.<sup>31</sup>

**Plans affected by change in participant-count methodology for determining large plan versus small plan status and related filing requirements.** As discussed in the NPFR, the Agencies are proposing a change in the methodology for defined contribution pension plans to determine whether the plan is a “large plan” (generally covers 100 or more participants) for purposes of Form 5500 annual reporting requirements, including the requirement to include an IQPA report and other schedules generally applicable to large pension plans. The plan size measure for this annual reporting distinction is based on the total number of participants at the beginning of the plan year and expressly includes employees eligible to participate in a Code section 401(k) plan (“401(k) plan”) even if the employees has not elected to participate and does not have an account balance. The proposed change would use a participant count based on the number of participants at the beginning of the year with an account balance. Current Form 5500 filings collect the number of participants at the end of the year with a balance, and does not currently collect such a figure for the beginning of the plan year. Accordingly, we used the end of year number of participants with a balance to estimate the number of plans impacted by this change. The actual number of plans effected could be higher or lower, depending on a plan’s dynamics, but for plans that are growing, using the end of year number as a proxy for the beginning of year number could lead to an overestimate of

the number of affected plans. Using the current definitions of large and small plans, there are 84,754 large defined contribution plans and 590,254 small defined contribution plans. Using the number of participants at the end of the year with an account balance as a proxy for the new proposed methodology, there are 65,312 large defined contribution plans and 609,695 small defined contribution plans. This would result in an estimated 19,442 defined contribution plans that, if the regulations are finalized as proposed, would be able to file as small plans instead of large ones and would experience cost savings, including due to being able to satisfy the conditions for being exempt from the IQPA report and from including the Schedules of Assets as part of their annual report.

#### Benefits

**Benefits of Changes for Pooled Employer Plans.** The SECURE Act established a new type of ERISA-covered defined contribution pension plan, the pooled employer plan, that is established and maintained by a pooled plan provider that meets the conditions of the statute. By creating the pooled employer plan structure, the SECURE Act permitted multiple unrelated employers to participate without the need for any common interest among the employers (other than having adopted the plan). As discussed above, pooled employer plans need to provide ERISA section 103(g) participating employer information, as well as certain basic information regarding the pooled plan provider. Potentially increased reporting costs for those employers choosing to offer retirement benefits to their employees through participating in a pooled employer plan would be offset by other cost reductions or business benefits relative to not having administer an individual plan as further discussed below.

By participating in a pooled employer plan, employers could minimize their fiduciary responsibilities for ongoing administration and operation of the plan. Employers could benefit from reduced risk and liability because the pooled plan provider would bear most of the administrative and fiduciary responsibility for operating the pooled employer plan, including hiring and monitoring the 3(38) investment manager. Similarly, because the pooled plan provider handles the administrative tasks such as participant communications, plan recordkeeping, submitting the Form 5500 and complying with plan audits, this could increase the operating efficiency for participating employers. Also, as they

<sup>30</sup> IRS website at <https://www.irs.gov/retirement-plans/pre-approved-retirement-plans> (last updated Apr 2, 2021).

<sup>31</sup> These figures are based on calculations from 2018 Form M–1 filing data.

are expected to be professional plan providers, it is anticipated that a pooled plan provider, relative to a small employer, would ensure that more accurate and complete data is reported to the DOL on the Form 5500. Further, as discussed in the regulatory impact analysis to the regulation establishing the Form PR, pooled employer plans generally would benefit from scale advantages, including the ability to obtain lower fees for investment options.<sup>32</sup> The marginal costs for pooled employer plans would diminish and pooled plan providers would spread fixed costs over a larger pool of member employers and employee participants, creating direct economic efficiencies. Szapiro's research finds that the per-employer cost of a large MEP can be lower than the cost of a small single employer plan.<sup>33</sup> Specifically, the study finds that a MEP with \$125 million and 80 participating companies cost 78 basis points, whereas a single-employer plan with \$1.5 million cost 111 basis points. Thus, compared to single-employer plans, MEPS can be a more cost-efficient option for small employers. The increased economic efficiency may result in small businesses being able to compete more easily with larger companies in recruiting and retaining workers due to a competitive employee benefit package. Finally, pooled employer plans may enable participants to achieve better retirement outcomes. VanDerhei's research finds that the adoption of a MEP in which the members do not need to share a common interest, other than participating in the same plan, with a 25 percent opt-out rate among employees, results in an overall 1.4 percent reduction in the retirement savings deficit, compared to when a MEP is not adopted.<sup>34</sup> The study also finds a 3.1 percent reduction in the retirement savings deficit for individuals working for employers with fewer than 100 employees and 3.3 percent reduction in the retirement savings deficit for individuals working for employers with 100 to 500 employees.

*Benefits of Establishing the Proposed Schedule MEP.* A benefit of the

proposed Schedule MEP would provide a unified vehicle to report information related to new SECURE Act provisions, including information unique to MEPs. The participating employer information collected pursuant to section 103(g) of ERISA would also be data capturable and available at publicly viewable website containing images of the Form 5500 and related data sets. That public data would help protect plan participants and beneficiaries by allowing for improved analysis for oversight and research purposes by the government, the regulated community, and other interested stakeholders.

*Benefits of DCGs.* The proposal would update Form 5500 annual reporting requirements to establish requirements pursuant to section 202 of the SECURE Act for a consolidated return/report to provide eligible individual account plans with an alternative method of compliance with annual reporting requirements that would otherwise mandate a separate annual report for each plan. The consolidated reporting option for defined contribution pension plans also allows for more choice and flexibility in the reporting of information to the government. Eligible plans can choose, based on benefits and preferences, if they want to continue with the plan filing as individual plan or as part of a DCG. Plans whose individual reporting obligations would be satisfied by a DCG annual return/report filing may see a reduction in reporting costs depending on their circumstances.

The proposal includes the proposed Schedule DCG to provide individual plan-level information for those defined contribution pension plans whose annual reporting requirement would be satisfied by a DCG's consolidated filing. The uniformity of the DCG arrangement structure and the benefits of consolidated reporting may reduce the complexity and administrative burden of plans. Also, by having a common plan administrator who is expected to be a professional service provider filing on behalf of a group, it may increase the likelihood that more accurate and complete data is reported to the DOL. As a result, there may be an increase in annual reporting compliance and compliance with applicable ERISA requirements in general. Additionally, the Schedule DCG would help the Agency compare individual plan participation and aggregate asset and liability information from year-to-year. The Schedule DCG would include many of the questions that are currently required on the Form 5500-SF, and for large plans, the Schedule H questions regarding the report of an IQPA, as well

as an IQPA report. While this requirement reduces the cost saving of filing as a DCG, the DOL and the IRS (collectively "Departments") believe the information requested is consistent with the SECURE Act provision permitting the Departments to collect whatever plan level information is needed to perform adequate oversight and vital to provide to participants, beneficiaries, and the Departments information needed to adequately monitor the plans and keep track of their assets from year to year.

In light of changes in the financial environment and increasing concern about investments in hard-to-value assets and alternative investments, the proposed requirement that plans participating in DCGs must have investments that meet the currently applicable "eligible plan investment" criteria for filing a Form 5500 is important for regulatory, enforcement, and disclosure purposes. The proposal would also 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 employer identification number (EIN), the name of the trustee or custodian, and the trustee's or custodian's telephone number. This information will enable the Agencies to focus more efficiently on compliance concerns for retirement plan trusts, including those for pooled employer plans and DCG reporting arrangements.

*Changes to Method of Determining Small Plan Status for Certain Filing Exemptions and Requirements:* As described in the NPFR, the proposal would change the current method of counting covered participants for purposes of determining when a defined contribution plan may file as a small plan and whether the plan may be exempt from the IQPA audit requirements generally applicable to large defined contribution pension plans. Under the proposal, defined contribution pension plans, including 401(k) plans and 403(b) plans, would determine whether they have to file as a large plan and whether they have to attach an IQPA report based on the number of participants with account balances as of the beginning of the plan year. Currently, the IQPA requirement includes the total number of eligible participants at the beginning of the plan year, even if the participant is not making contributions, receiving employer contributions, or maintaining an account in the plan. Further, some stakeholders have suggested that section 112 of the SECURE Act could make it even more likely that a plan with a small number of active participants

<sup>32</sup> 85 FR at 72949–72950.

<sup>33</sup> Szapiro, Aron, "Pooled Employer Plans: Paperwork or Panacea." Accessible at [https://www.morningstar.com/lp/paperwork\\_or\\_panacea](https://www.morningstar.com/lp/paperwork_or_panacea).

<sup>34</sup> VanDerhei, Jack. "How Much More Secure Does the SECURE Act Make American Workers: Evidence from EBRI's Retirement Security Projection Mode." *EBRI Issue Brief*. No 501 (2020). VanDerhei refers to MEPs in which the members do not need to share a common interest as "Open MEPs." (Available at [https://www.ebri.org/docs/default-source/ebri-issue-brief/ebri\\_ib\\_501\\_secure-20feb20.pdf?sfvrsn=db6f3d2f\\_4](https://www.ebri.org/docs/default-source/ebri-issue-brief/ebri_ib_501_secure-20feb20.pdf?sfvrsn=db6f3d2f_4) (Accessed July 21, 2021)).

might be required to bear the cost of an audit based on eligible, but not participating employees being counted toward the audit threshold. Specifically, because section 112 provides that, beginning January 1, 2024, long-term, part time workers that have reached the plan's minimum age requirement and have worked at least 500 hours in each of three consecutive 12-months period must be permitted to make elective contributions to a section 401(k) qualified cash or deferred arrangement, there could be more employees eligible to participate that would elect not to do so. This change in counting methodology would result in not counting, for this annual reporting purpose, those long-term, part time workers who are eligible to make elective contributions to a 401(k) plan, but have not in fact elected to participate in the plan. The DOL expects that excluding from the participant count participants who are eligible to participate but do not have an account balance at any time during the plan year will reduce expenses of establishing and maintaining a retirement plan, and as a consequence, encourage more employers to offer workplace-based retirement savings plans to their employees.

*Improving Consistency and Enhancing Usability of Data Filed on the Schedules of Assets.* The financial information reported on the Form 5500 Annual Return/Report, particularly the asset/liability statement, contained in the current Schedule H (Large Plan Financial Information), Schedule I (Small Plan Financial Information), as well as the more recently established Form 5500-SF, is based on data elements that have remained largely unchanged since the Form 5500 Annual Return/Report was established in 1975. Many investments in alternative and hard-to-value assets and held in collective investment funds do not fit squarely into any of the existing reporting categories on data captured financial schedules filed with the Form 5500 (Schedule H for large plans and Schedule I for small plans). The GAO has expressed concerns that many investments with widely varying risk, return, and disclosure considerations are often reported in the catchall "other plan asset" category.<sup>35</sup> GAO also noted that the plan asset categories on the Schedule H are not representative of current plan investments, and provide little insight into the investments themselves, the level of associated risk,

or structures of the investments.<sup>36</sup> The DOL-OIG have also recommended that the Agencies revise the Form 5500 Annual Return/Report to improve reporting of hard-to-value assets and alternative investments.<sup>37</sup> As part of their overall evaluation of how best to structure financial reporting for pooled employer plans, MEPs, and DCG reporting arrangements to maximize usable data while limiting burden increases, the Agencies decided, as discussed in detail earlier in this document and the Notice of Proposed Forms Revisions published simultaneously, to propose format, data element and instruction changes to the Schedule H, Line 4i Schedule of Assets Held for Investment and the Schedule of Assets Acquired and Disposed of Within the Plan Year. Although driven by an interest in ensuring transparency and financial accountability for pooled employer plans, MEPs, and DCG reporting arrangements, the rationales for the changes applied more generally to large pension and retirement savings plans. These changes apply to large plans required to file the Schedules of Assets and would not increase the annual reporting burden for small plans. The proposed changes to the Schedule H Line 4i Schedules of Assets, in addition to better meeting the needs of the Agencies, other government users, and other end users of the data, should serve to address the shortcomings identified in these reports. The basic objective of general financial reporting is to provide information about the reporting entity for the Agencies' enforcement, research, and policy formulation programs, for other Federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies; and for plan participants and beneficiaries and the general public in monitoring employee benefit plans. Making consistent the financial reporting instruments would bring greater transparency to plan transactions, which would enhance the efficiency of the Agencies' enforcement efforts. Specifically, the Agencies would be better able to focus their enforcement efforts, which will reduce the number of investigations involving plans that are not engaging in problematic activities. Additionally, ERISA Section 513(a) authorizes and directs the Secretary of Labor and EBSA to conduct a research

program on employee benefits. The Form 5500 Annual Return/Report is one of the leading sources of data used in this research program. Making uniform and receiving in a data searchable way the financial information reported on the Form 5500 Annual Return/Report would improve the quality of the research conducted by internal and external researchers. This improved research, in turn, would improve the quality of policy decisions made by DOL and other governmental policymakers that rely on the Form 5500 Annual Return/Report data.

*Benefits of Maintaining Participating Employer Information for MEWAs and Expanding It to Non-Plan MEWAs that Provide Medical Benefits.* The proposal, as described in the NPFR, would add new questions to the Form M-1 and instructions to require MEWAs (plan and non-plan) that offer or provide coverage for medical benefits to provide multiple employer participating employer information on the Form M-1 and not as an attachment to the Form 5500 Annual Return/Report. Plan MEWAs that provide other benefits and thus are not required to file a Form M-1 (*i.e.*, life and disability benefits) would continue to report the participating employer information as an attachment to the Form 5500 Annual Return/Report.

The proposal would also change which MEWAs are required to report the participating employer information. The current Form 5500 requirement for MEPs to report participating employer information applies to plan MEWAs only. Non-plan MEWAs providing health benefits would now have to provide the information. Based on 2018 Form M-1 filings, there were 640 plan MEWAs and 47 were non-plan MEWAs.<sup>38</sup> The proposal, by transferring the participating employer information from the Form 5500 Annual Return/Report to the Form M-1 for MEWAs that offer or provide coverage for medical benefits and continuing to require reporting of participating employer information on the Form 5500 Annual Return/Report for plan MEWAs that provide other benefits, would enable the Agencies to receive participating employer information from both plan and non-plan MEWAs, regardless of how they are funded or structured. This would help the Agencies better monitor activities of MEWAs and protect plan beneficiaries.

<sup>36</sup> *Id.*

<sup>37</sup> EBSA Needs to Provide Additional Guidance and Oversight to ERISA Plans Holding Hard-To-Value Alternative Investments, Department of Labor Office of Inspector General Report Number: 09-13-001-12-121 at 4, 18, and 19.

<sup>38</sup> These calculations are based on internal Department calculations based on 2018 Form M-1 filings. See the affected entities section for more information.

<sup>35</sup> GAO Targeted Revisions Could Improve Usefulness of Form 5500 Information, at 12.

*Internal Revenue Code-Based Questions for the 2022 Form 5500s.* In the NPFR, several questions are being proposed to be added to the 2022 Form 5500s to help identify plans that are more likely to experience compliance issues, and help the IRS more effectively conduct investigations. Section III.F of the preamble to the NPFR provides a description of these proposed Code-based questions. The proposal, as set forth in the NPFR, would add a nondiscrimination and coverage test question to Form 5500 and Form 5500-SF that was on the Schedule T before it was eliminated. The question asks if the employer aggregated plans in testing whether the plan satisfied the nondiscrimination and coverage tests of Code sections 401(a)(4) and 410(b). Adding this question will allow EP to identify these plans for examination. This question is also helpful when performing pre-audit analysis and allows the IRS to narrow any inquiries for information that is requested from the plan sponsor. The restoration of this question also reflects the elimination of optional coverage and nondiscrimination demonstrations in the IRS determination letter process. *See* Rev. Proc. 2012-6, 2012-1 I.R.B. 235 and Announcement 2011-82, 2011-52 I.R.B. 1052.

The proposal, as described in the NPFR, would add a question to Form 5500 and Form 5500-SF, for 401(k) plans asking whether the plan sponsor used the design-based safe harbor rules or the “prior year” ADP, or “current year” ADP test, or if it is not applicable. A plan that performs “prior year” or “current year” ADP testing is more likely to have compliance issues than a plan with a “designed-based safe harbor.” Adding this question, would allow EP to identify 401(k) plans that use ADP testing for examination over plans that have designed-based safe harbors. This question would also help the IRS perform pre-audit analysis and for design-based safe harbor plans allow us to verify whether allocations of required safe harbor contributions comply with the terms of the plan; and whether proper notice requirement is satisfied on an annual basis.

Finally, the proposal, as indicated in the NPFR, would add a question to Form 5500 and the Form 5500-SF 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.<sup>39</sup>

<sup>39</sup> IRS is proposing to make a parallel update to the Form 5500-EZ, which is solely in the jurisdiction of the IRS.

This question would help the IRS identify whether a plan sponsor has adopted a pre-approved plan and to determine whether the plan was adopted timely in accordance with the Code section 401(b) remedial amendment period. This question would also assist IRS in determining whether to select a plan for examination as a late amender for changes in the law.

*Defined Benefit Plan/Title IV Questions for the 2022 Form 5500s:* The proposed changes to the Form 5500 Schedules MB, SB, and R would help remedy data and information inadequacies, increasing plans’ transparency, enable Agencies to project more precisely defined benefit pension plans’ and insurance programs’ liabilities, and help the PBGC more effectively conduct investigations and better protect plan participants and beneficiaries.

Schedule MB collects actuarial information on multiemployer defined benefit plans and certain money purchase plans. By revising line 6 and clarifying the expense load percentage calculation, the Agencies would be able to easily identify the expense load and more accurately project plan liabilities to model the impact of additional employers withdrawing from the plan in the future. The proposed changes to the schedule would provide greater transparency in the actuarial status and the actuarial assumptions of the plans. Based on reviewing previously filed Schedules MB responses to line 4f, it appears to the Agencies that there is some confusion as to how to fill out line 4f of Schedule MB correctly, as some of the responses do not make sense. Clarification of the instructions and line language is intended to remove potential confusion and provide more consistent and correct responses.

Schedule SB collects actuarial information on single-employer defined benefit plans. The proposed changes would better align filing requirements for single-employer defined benefit plans with the more detailed requirements for PBGC-insured multiemployer plans. As with the proposed changes to the Schedule MB, these proposed changes would allow for greater transparency in the actuarial status and the actuarial assumptions of the plans.

Schedule R collects information on retirement plans. Previously, multiemployer defined-benefit pension plans were required to report identifying information about any employer whose contributions to the plan exceeded five percent of total annual contribution. The regulation proposes, instead, to require plans to

report identifying information on any employer who (1) contributed more than five percent of the plan’s total contributions or (2) was one of the top ten highest contributors. This would provide greater transparency on contributors and ensure that reported data represents a reasonable sampling of contributors.

The proposed regulation also proposes changes in format for certain attachments. EFAST2 filers currently file some Form 5500 attachments as PDF and plain text files. Due to the nature of the attachments, they often include many numbers that are difficult to extract from these file types. There is consideration being given to steps that could be taken to allow more integration of common tabular formats (spreadsheet) such as Comma Separate Value(s) (CSV). As this is not being considered as a requirement at this point, plans would not incur an additional cost if such functionality were made available. Rather, the Agencies expect this option may simplify the process for preparing and filing attachments.

### 1.3. Cost Estimates and Savings

The DOL anticipates that the costs for plans to satisfy their annual reporting obligations would on average decrease under these proposed regulations relative to the current regime.<sup>40</sup> As shown in Table 1 below, the aggregate annual cost of such reporting under the current regulations and forms is estimated to be \$514.8 million annually, shared across the 822,100 filers subject to the filing requirement.

The DOL estimates that the regulations and forms revisions in this proposed rule would impose an annual burden of \$514.1 million on 804,100 filers, for a total decrease of \$64.6 million annually, \$63.9 million annually in audit cost savings and \$0.7 million annually in other reporting costs. This proposal makes important changes to the requirements currently in effect while also allowing for the number of small plans and large plans to change for annual reporting purposes. The DOL estimates that a total of 17,601 small plans and 563 large plans would opt to join either a DCG or a pooled employer plan, and therefore have their filing requirement fulfilled by these

<sup>40</sup> The DOL believes that the annual cost burden on filers would be higher still in the absence of the regulations enabling use of the Form 5500 Annual Return/Report in lieu of the statutory requirements. Without the Form 5500 Annual Return/Report, filers would not have the benefits of any regulatory exceptions, simplified reporting, or alternative methods of compliance, and standardized and electronic filing methods.

entities. The DOL also estimates that 19,442 large plans would be re-defined and file as small plans as a result of the

change in the current threshold for determining when a defined

contribution plan may file as a small plan.

TABLE 1—ESTIMATED BURDEN CHANGE BY TYPE OF FILER  
ALL PROPOSED CHANGES

Type of plan	Number of filers under current (thousands)	Number of filers under proposed (thousands)	Aggregate cost under current (millions)	Aggregate cost under proposed (millions)	Aggregate cost change (millions)
Large Plans .....	146.8	126.9	\$268.8	\$260.3	– \$8.4
Small Plans .....	666.1	667.9	234.7	235.2	0.5
DFEs .....	9.3	9.4	11.4	18.6	7.2
All Plans .....	822.1	804.1	514.8	514.1	– 0.7
Audit Cost					– 63.9
Overall Total					– 64.6

**Note:** Some displayed numbers do not sum up to the totals due to rounding.

Large plans—100 participants or more.

Small plans—generally fewer than 100 participants.

To estimate the net change in cost burden, as a result of the interaction of the proposed changes, the DOL has also analyzed the cost impact of the individual revisions on classes of filers. In doing so, the DOL took account of the fact that various types of plans would be affected by more than one revision and that the sequence of multiple revisions would create an interaction in the cumulative burden on those plans. The total changes in Table 1 show the accumulated changes. The other tables below show only the impact of a single change at a time from the status quo; therefore, the tables cannot be added to arrive at the estimates in Table 1.

*Schedule MEP and Pooled Employer Plans.* The proposed new Schedule MEP would be filed by all MEPs, including pooled employer plans, and includes participating employer information already filed as an attachment, as well as limited specific reporting requirements for pooled employer plans. The information on participating employers would then be data-readable, whereas currently it is only included as a nonstandard attachment. As discussed in the affected entities section, estimates are available for MEPs that have filed a Form 5500 previously, but not for the newly created pooled employer plans that have yet to file a Form 5500. The

impacts of the DOL recent rulemaking on association retirement plans and PEO MEPs also carries some uncertainty regarding the number of MEPs that may be affected. Approximately 50 entities have filed the Form PR to register as pooled plan providers. Therefore, for purposes of this analysis, the DOL assumes there would be a total of 75 pooled employer plans. As it is the case with MEPs, joining a pooled employer plan translates into less plan maintenance expenditures given that MEPs can take advantage of economies of scale. Additionally, in the DOL's view, the information requested on the Schedule MEP should already be available to plans, so the burden is primarily entering the information onto the form. The burden to file the Schedule MEP is estimated to average 10 minutes for MEPs and 14 minutes for pooled employer plans, with variation depending on the number of participating employers.

Although the DOL does not know for certain how many plans would decide to offer benefits through a pooled employer plan, it is assumed that the current average number of participating employers in a MEP is indicative of the average number of employers that would eventually be in any particular pooled employer plan that may be

established in the future. The DOL estimates that MEPs, on average, have nine employers participating in a MEP with fewer than 100 participants and two employers with 100 or more participants. The DOL uses these measures as estimates for most of the upcoming pooled employer plans, therefore assuming that, for most pooled employer plans, on average there would be nine small participating plans and two large participating plans per pooled employer plan. Combined with one pooled plan provider registrant that has already listed 2000 participating employers, it is estimated that a total of 2,251 small participating plans and 563 large participating plans would provide benefits through pooled employer plans.<sup>41</sup> The DOL assumes this would result in a direct decrease of 2,251 defined contribution Form 5500—SF filers and a decrease of 563 Form defined contribution 5500 filers. As Table 2 shows this would result in a reporting cost reduction of \$1.5 million (not including the audit cost reduction in Table 1) and a total reduction of filers from 822,100 to 819,400 filers. Such a reduction in filers would be partially offset by an increase in pooled employer plan filings. We are not, however, able to explicitly measure the net impact on filings because of the uncertainty

<sup>41</sup> For the calculation of the total number of participating employers in pooled employer plans, it is first assumed that 80 percent of all the employers who would participate in a pooled employer plan are currently providing benefits through small plans, and that the remaining 20 percent through large plans. This distribution would apply to the registrant that has already exceptionally listed 2000 employers (which would then be divided in 1600 small participating plans and 400 large participating plans) and to the other

74 pooled plan providers assumed to be created. It is also assumed that each one of these other 74 pooled plan providers would be servicing in total 11 employers. Therefore, the total number of small participating plans in a pooled employer plan is calculated as:  $1,600 + (74 * 11 * 0.8) = 2,251$  (rounded). Similarly, the total number of large participating plans is calculated as  $400 + (74 * 11 * 0.2) = 563$  (rounded).

regarding the number of pooled employer plans and the resulting increase in pooled employer plan

filings. The DOL requests comments on these estimates.

TABLE 2—ESTIMATED BURDEN CHANGE BY TYPE OF FILER  
INTRODUCTION OF POOLED EMPLOYER PLANS AND SCHEDULE MEP FILING

Type of plan	Number of filers under current rules (thousands)	Number of filers under proposed rules (thousands)	Aggregate reporting cost under current rules (millions)	Aggregate reporting cost under proposed rules (millions)	Aggregate cost change (millions)
Large Plans .....	146.8	146.3	\$268.8	\$267.9	– \$0.9
Small Plans .....	666.1	663.8	234.7	234.0	– 0.7
DFEs .....	9.3	9.3	11.4	11.4	0.0
Overall Total .....	822.1	819.4	514.8	513.3	– 1.5

**Note:** Some displayed numbers do not sum up to the totals due to rounding.

Large plans—100 participants or more.

Small plans—generally fewer than 100 participants.

*DCG filings.* As discussed above, a DCG filing for a group of plans has the potential to reduce reporting burden as only one Form 5500 is filed and signed by a common plan administrator so signatures from separate administrators of the participating plans are not needed. Offsetting these cost savings would be the burden from the consolidated Form 5500 filed by the DCG, including the Schedule DCG to report individual plan information for each participating plans. There are 499,234 small defined contribution plans that file the Form 5500–SF and report the plan characteristic code 3D; the DOL assumes this type of plan may find it advantageous to adopt this new structure of providing benefits and therefore a fraction of them will join a DCG. The DOL seeks comments on these assumptions.<sup>42</sup>

The change in burden from allowing a DCG to file on behalf of plans is estimated in the following manner. Apart from the 499,234 small defined contribution mentioned above, there are 1,813 pre-approved plans.<sup>43</sup> While the DOL does not know if all 1,813 pre-approved plans actually would file on behalf of these 499,234 plans, if they did there would be an average of 275 plans per pre-approved filer. These pre-approved filers are the likeliest entities to file as a DCG. Although DOL lacks sufficient information to confidently estimate how many DCGs will form, the 50 entities that have filed the Form PR to register as a pooled plan provider, so

far, may be suggestive of the number of entities currently seeking to take advantage of new structures to reduce plan administrative costs. Potential DCGs may be better positioned than pooled plan providers to commence operations as they already have client plans that could benefit from the savings and do not have to switch plans. Therefore, the DOL assumes that twice the number of DCGs (100) would form in the first year as the number of pooled plan providers (50). With the availability of DCGs as an option, some service providers may discontinue their provision of individual Form 5500 filing services, and only offer to file as DCGs. Some plans that contract with such service providers may choose to be moved into DCG filings, while others may seek out new service providers because they don't wish to comply with the additional filing obligations placed on DCG filers. For purposes of this analysis, we assume that approximately half of the plans currently associated with a pre-approved plan provider would be offered the opportunity and would agree to comply with the DCG requirements to stay with the same provider. The DOL then uses these results to assume 100 DCGs with a total of 15,350 small plans whose annual return/report filing obligation would be satisfied by the filing of a DCG Form 5500.

As described above, the consolidated return/report that would need to be filed by the DCG to satisfy the annual

reporting requirements of participating plans would have to include a Schedule DCG for each participating plan. The cost calculation must therefore take into account cost of this schedule per plan participating in a DCG. The DOL believes that once individual plans join a DCG, the average cost of filing a Schedule DCG, which would be done for each one of the estimated 15,350 participating plans, would be lower than the cost of filing a Form 5500–SF separately, which cost was incurred by a small plan before joining a DCG. Although the DOL does not know how much lower this new cost would be, it estimates that completing a schedule DCG as part of the DCG's Form 5500 annual return/report would take about 40 percent less time than completing a Form 5500–SF for each individual plan.

As Table 3 shows, assuming the number of DCGs and plans per DCG as described above, along with the estimated cost of filing schedule DCG, the DOL expects an overall cost reduction of \$1.6 million. This cost reduction assumes, as baseline, the current definition of large and small plans, and would be the result of a decrease in the number of Form 5500–SF filers, from 666,100 to 650,700. Such a reduction in filers would be partially offset by an increase in DFE filings, which reflects the introduction of DCGs as filing entities.

<sup>42</sup> The DOL acknowledges that there could be other employers whose plans are outside the category of small defined contribution type, which currently file the Form 5500–SF and report plan

characteristic 3D, that might also find an advantage in joining a DCG and therefore start providing benefits this way.

<sup>43</sup> <https://www.irs.gov/retirement-plans/pre-approved-retirement-plans>.

TABLE 3—ESTIMATED BURDEN CHANGE BY TYPE OF FILER  
INTRODUCTION OF DCGS AND SCHEDULE DCG FILING

Type of plan	Number of filers under current rules (thousands)	Number of filers under proposed rules (thousands)	Aggregate reporting cost under current rules (millions)	Aggregate reporting cost under proposed rules (millions)	Aggregate cost change (millions)
Large Plans .....	146.8	146.8	\$268.8	\$268.8	\$0.0
Small Plans .....	666.1	650.7	234.7	230.1	– 4.6
DFEs .....	9.3	9.4	11.4	14.3	2.9
Overall Total .....	822.1	806.9	514.8	513.1	– 1.6

**Note:** Some displayed numbers do not sum up to the totals due to rounding.

Large plans—100 participants or more.

■ Small plans—generally fewer than 100 participants.

As noted above, there is substantial uncertainty regarding these estimates. The DOL specifically seeks comments on estimates of the number of DCGs, the number of plans joining those DCGs, and the cost of filing a schedule DCG compared to filing a Form 5500–SF, and the overall cost burden savings due to plans joining a DCG.

*Revised financial reporting on the Schedule H:* Revising the Schedule H Line 4i Schedules of Assets to make it

data-capturable to increase the accessibility to this information, including information regarding hard-to-value assets, would increase costs. Without altering the current definition of large and small plans, the DOL estimates that the effect of this change would be to increase the total burden by 370,253 hours, which reflects the increase in burden that large plans and DFEs, both as typical filers of Schedule H, would face. As Table 4 shows, in

total this change would translate into an increase of filing costs of \$41 million (which represents an estimated cost of approximately \$260 per large plan/DFE potentially required to file the Schedules of Assets). The Department seeks comments on the increase in burden for entities filing the Schedule H, and if that burden will decrease over time.

TABLE 4—ESTIMATED BURDEN CHANGE BY TYPE OF FILER  
REVISED FINANCIAL REPORTING ON THE SCHEDULE H

Type of plan	Number of filers under current rules (thousands)	Number of filers under proposed rules (thousands)	Aggregate reporting cost under current rules (millions)	Aggregate reporting cost under proposed rules (millions)	Aggregate cost change (millions)
Large Plans .....	146.8	146.8	\$268.8	\$305.4	\$36.7
Small Plans .....	666.1	666.1	234.7	234.7	0.0
DFEs .....	9.3	9.3	11.4	15.6	4.3
Overall Total .....	822.1	822.1	514.8	555.7	41.0

**Note:** Some displayed numbers do not sum up to the totals due to rounding.

Large plans—100 participants or more.

Small plans—generally fewer than 100 participants.

*Changes to Methodology for Determining Small Plan Status for Purposes of Annual Report Filing Requirements:* The proposal would adopt the change described in the NPFR to the current method of counting participants for purposes of determining when a defined contribution plan may file as a small plan and whether the plan may be exempt from the IQPA audit requirement. Specifically, the proposal would allow plans to count just the number of participants/beneficiaries with account balances as of the beginning of the plan year, as compared to the current rule that counts all the employees eligible to participate in the plan by adding to the Form 5500 and Form 5500–SF a new question, for defined contribution pension plans

only, asking for the number of participants with account balances at the beginning of the plan year.

This change would reduce costs for plans. The additional question imposes little burden as the end-of year number is already tracked and reported, but to plans who now qualify as small instead of large, savings could be significant. EBSA estimates that the typical reporting burden of all required schedules for a small pension plan is \$348. In contrast, the typical reporting burden of all required schedules for a large pension plan is currently estimated by EBSA to be \$1,903. While there would be a cost reduction, these plans and their participants would no longer have the protections provided by the audit, which could result in an

increased risk of errors and fraud, but there are conditions for small plans to be eligible for the audit waiver that are designed to address those potential risks. In the case of small pension plans, to be eligible for the audit waiver small pension plans must meet conditions related to investment assets, financial institutions holding plan assets, disclosures to participants and beneficiaries, and enhanced fidelity bonding for persons who handle certain assets. In the case of welfare plans, both large and small plans, the plan must be fully insured or unfunded to be eligible for the audit waiver. Consistent with the Department's goal of encouraging pension plan establishment and maintenance, particularly in the small business community, the Department



concluded that engaging an accountant should not be the only means by which the security of small plan assets can be adequately protected. Rather, in developing the proposed regulation, consistent with the existing regulatory conditions for the small plan audit waiver, the Department attempted to balance the interest in providing secure retirement savings for participants and beneficiaries with the interest in minimizing costs and burdens on small pension plans and the sponsors of those plans.

The DOL estimates that there could be a reduction of 20,005 large plans filing under the proposed regulations, 19,442 defined contribution plans due to the changing definition of who can file as a small plan, and 563 large participating

plans that could provide benefits through pooled employer plans. An estimated 11,362 of these plans currently provide the IQPA report and audited financial statements and would therefore save in audit costs.<sup>44</sup> The Department estimates that there could be an audit cost reduction of \$7,500 for each one of these 11,362 plans. Plans may still conduct an audit, even if there is no requirement. It is estimated that 25 percent of plans could still conduct an audit.<sup>45</sup> Data on the cost of an audit for these plans is not known and will vary based on plan size and complexity. An estimate of \$7,500 is used to estimate the cost savings.<sup>46</sup> The Department seeks comment on the size of the costs savings. Cost savings of \$63.91 million

annually is estimated for the 8,522 plans (11,362 \* 0.75) that will no longer be required to conduct an audit. These cost-savings are reported in Table 1 above.

As discussed above there are an estimated 19,442 defined contribution plans that would now be able to file as a small plan. Other reporting cost savings for these plans are based on their filing the Form 5500-SF instead of the Form 5500 and the correspondent schedules. As shown in Table 5, the DOL estimates that this redefinition of small and large alone would translate into a decrease of filing costs of \$29.4 million, with a reduction from 146,800 to 127,400 in large plan filers. The DOL requests comments on this estimate.

TABLE —ESTIMATED BURDEN CHANGE BY TYPE OF FILER  
CHANGES TO FILING EXEMPTIONS AND REQUIREMENTS FOR SMALL PLANS

Type of plan	Number of filers under current rules (thousands)	Number of filers under proposed rules (thousands)	Aggregate reporting cost under current rules (millions)	Aggregate reporting cost under proposed rules (millions)	Aggregate cost change (millions)
Large Plans .....	146.8	127.4	\$268.8	\$233.6	– \$35.2
Small Plans .....	666.1	685.5	234.7	240.4	5.8
DFEs .....	9.3	9.3	11.4	11.4	0.0
Overall Total .....	822.1	822.1	514.8	485.4	– 29.4

**Note:** Some displayed numbers do not sum up to the totals due to rounding.

Large plans—100 participants or more.

Small plans—generally fewer than 100 participants.

*Changes for MEWAs that file the Form M-1.* As set forth in the NPR, the proposal would update the Form M-1, transferring the multiple employer participating employer information questions from the Form 5500 to the Form M-1 for MEWAs (plan and non-plan) that offer or provide coverage for medical benefits and continued reporting of participating employer information on the Form 5500 Annual as an attachment for plan MEWAs that provide other benefits. The current Form 5500 requirement for MEPs to report participating employer information applies to plan MEWAs offering all types of benefits—not just those that provide group health plans. The DOL estimates that the change in burden would be *de minimis* for these plans.

However, non-plan MEWAs providing health benefits would now have the added burden of providing the participating employer information. The DOL assumes that non-plan MEWAs already have access to this information, and reporting it would not add a substantive burden to these entities' reporting costs.

*Internal Revenue Code and ERISA Title IV Proposed Changes.* As described in the NPR, the proposal includes changes related to Internal Revenue Code requirements and reporting requirements for defined benefit pensions subject to filing Schedules MB, SB, and R. The Agencies' believe the additional questions reflect information plans should know and expect that reporting this information would result in a *de minimis* marginal burden.

*Assumptions, Methodology, and Uncertainty:* The cost and burden associated with the annual reporting requirement for any given plan depend upon the specific information that must be provided, given the plan's characteristics, practices, operations, and other factors. For example, a small, single-employer defined contribution pension plan eligible to file the Form 5500-SF should incur far lower costs than a large, multiemployer defined benefit pension plan that holds multiple insurance contracts, engages in reportable transactions, and has many service providers that each received over \$5,000 in compensation. The DOL separately considered the cost to different types of plans in arriving at its aggregate cost estimates. The DOL's basis for these estimates follows.

<sup>44</sup> To estimate the number of large plans currently providing the IQPA report and audited financial statements the DOL identified those large plans that would be most likely to be re-defined as small plans and to have filed the Schedule H in 2018, as estimated on the 2018 Form 5500 Pension Research Files. Note that the 80 to 120 participant transition provision at 29 CFR 2520.103-1(d) allows a plan that covers fewer than 100 participants to continue taking advantage of the simplified option or

exemption, as applicable, until they reach 121 participants, therefore not all plans with 100 or more participants will file a plan in a given year.

<sup>45</sup> See <http://Mathematica.org/publications/estimates-of-the-burden-for-filing-form-5500-the-change-in-burden-from-the-1997-to-the-1999-forms>.

<sup>46</sup> A report by Mathematica suggests audit costs of between \$3,000 and \$30,000. Adjusted for inflation this would be about \$5,000 to \$50,000 in 2021 dollars. <https://mathematica.org/publications/>

*estimates-of-the-burden-for-filing-form-5500-the-change-in-burden-from-the-1997-to-the-1999-forms.* See also [www.paychex.com/retirement-services/pooled-employer-plans](http://www.paychex.com/retirement-services/pooled-employer-plans) (accessed July 21, 2021) which suggest \$10,000 to \$20,000. Additionally conversations with stake holders suggest a range similar to the \$10,000 to \$20,000. As the affected plans are expected to be small, the low estimates are averaged (\$5,000 and \$10,000) to arrive at \$7,500.

*Assumptions Underlying this Analysis:* The DOL's analysis assumes that all benefits and costs would be realized in the first year of the reporting cycle to which the changes apply and within each year thereafter. This assumption is premised on the requirement that each plan will be required to file the Form 5500 Annual Return/Report. The DOL has used a "status quo" baseline for this analysis, assuming that the world in the future, absent the proposed regulations, will resemble the present. The DOL does not anticipate that there will be material one-time transition cost for learning or updating systems during the first year in which the reporting changes apply. The proposal would largely apply requirements currently in effect for large MEPs to pooled employer plans and DCGs. The financial services providers and recordkeepers that be sponsoring such plans and DCGs generally are already providing Form 5500 filings services for the employee benefit plans they service so we do not anticipate material start-up costs for them to file Form 5500s on behalf of pooled employer plans or DCGs. We also do not anticipate that individual plans that participate in a DCG reporting arrangement would expend more time to supply information to DCG reporting arrangements during the first year than what they currently incur to supply annual reporting data to service providers that prepare their annual reports (and may in fact incur less time even during the first year). Similarly, the creation of the Schedule MEP mostly reorganizes the way annual reporting data is provided by affected plans, rather than adding significant additional information collection. Similarly, the changes to the content of the Schedules of Assets are calling for reporting of a very limited number of data elements that plans should already have as part of the ordinary business records. The DOL also expects that the formatting changes being proposed to make the Schedules of Assets more usable will match formatting that filers already use to file various other schedules, and, accordingly, they would not involve material costs for learning or system adjustments. Moreover, the DOL is proposing to permit (but not require) certain attachments to Schedule MB and SB to be provided in a tabular format (spreadsheet) rather than PDF or TXT formats. The DOL solicits comments on whether filers would want a similar option for the Schedules of Assets and whether they believe such an option would reduce reporting burdens, including any potential transition cost.

Further, with respect to the limited number of additional questions for defined benefit pension plans and Code-related questions for pension plans relate to existing compliance obligations, those questions should not entail material start-up or learning costs. We also do not anticipate material transition costs related to the proposed changes related to reporting participating employer information which largely apply existing requirements in the context of a new schedule for some filers and as an attachment to current filings for others. Nonetheless, the DOL specifically solicits comments on whether plans or groups of plans anticipate a material increase in such transition costs during the first year.

*Methodology:* Mathematica Policy Research, Inc. (MPR) developed the underlying cost data, which has been used by the Agencies in estimating burden related to the Form 5500 Annual Return/Report since 1999. See 65 FR 21068, 21077–78 (Apr. 19, 2000); Borden, William S., *Estimates of the Burden for Filing Form 5500: The Change in Burden from the 1997 to the 1999 Forms*, Mathematica Policy Research, submitted to DOL May 25, 1999.<sup>47</sup> The cost information was derived from surveys of filers and their service providers, as modified due to comments, which were used to measure the unit cost burden of providing various types of information. The DOL has adjusted these unit costs since 1999 to account for changes to the forms and schedules and increases in the cost of labor and service providers since MPR developed the initial data.

For this forms revision, the DOL used the adjusted MPR unit cost data for pension and non-health welfare plans. The DOL developed the unit cost data for group health plans using the best available data. To develop unit costs for DFEs, the DOL created weighted averages of the unit costs for plans.

To obtain filer counts for pension plans, welfare plans, and DFEs, the DOL used historical counts of Form 5500 Annual Return/Report filers tabulated by type and reported characteristics.

The DOL modeled its approach to calculating burden on the approach used during the 2009 forms revision and the 2016 modernization proposal.<sup>48</sup>

<sup>47</sup> The MPR report can be accessed at <https://mathematica.org/publications/estimates-of-the-burden-for-filing-form-5500-the-change-in-burden-from-the-1997-to-the-1999-forms>. See also Technical Appendix: Documentation of Form 5500 Revision Burden Model at [www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/technical-appendices](http://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/technical-appendices).

<sup>48</sup> See 72 FR 64731 (Nov. 16, 2007) and 81 FR 47496 (July 16, 2016).

Aggregate burden estimates were produced in both revisions by multiplying the unit cost measures by the filer count estimates. The methodology is described in broad terms below.

To estimate aggregate burdens, types of plans with similar reporting requirements were grouped together in various groups and subgroups. Calculations of aggregate cost were prepared for each of the various subgroups both under requirements in effect prior to this action and under the forms as revised. The universe of filers was divided into four basic types: Defined benefit pension plans, defined contribution pension plans, welfare plans, and DFEs. For the plans, each of these major plan types was further subdivided into multiemployer and single-employer plans.<sup>49</sup> Since the filing requirements differ substantially for small and large plans, the plan types were also divided by plan size. For large plans (100 or more participants), the defined benefit plans were further divided between very large (1,000 or more participants) and other large plans (at least 100 participants, but fewer than 1,000 participants). Small plans (less than 100 participants) were divided similarly, except that they were divided into Form 5500–SF eligible and Form 5500–SF ineligible plans, as applicable. Welfare plans were divided into group health plans and plans that do not provide any group health benefits, while plans that provide group health benefits and have fewer than 100 participants were divided into fully insured group health plans and unfunded, combination unfunded/fully insured plans, or funded with a trust group health plans. DFEs were divided into Master Trusts/MTIAs, CCTs, PSAs, 103–12 IEs, GIAs, and DCGs. For each of these sets of respondents, burden hours per respondent were estimated for the Form 5500 Annual Return/Report itself and up to seven schedules or the Form 5500–SF (and the Schedule SB, for Form 5500–SF eligible defined benefit pension plans).

We also separately estimated the costs for each of the forms and schedules that are part of the Form 5500 Annual Return/Report. When items on a schedule are required by more than one Agency, the estimated burden associated with that schedule is allocated among the Agencies. This allocation is based on how many items are required by each agency. The burden associated with reading the instructions

<sup>49</sup> For purposes of this analysis, multiple employer plans were treated as single employer plans.

for each item also is tallied and allocated accordingly.

The reporting burden for each type of plan is estimated in light of the circumstances that are known to apply or that are generally expected to apply to such plans, including plan size, funding method, usual investment structures, and the specific items and schedules such plans ordinarily complete. For example, a large single-employer defined benefit pension plan that is intended to be tax-qualified that has insurance products among its investments and whose service providers received compensation above the Schedule C reporting thresholds would be required to submit an annual report completing almost all the line items of the Form 5500, plus Schedule A (Insurance Information), Schedule SB (Single Employer Defined Benefit Plan Actuarial Information), Schedule C (Service Provider Information), possibly the Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), and Schedule R (Retirement Plan Information), and would be required to submit an IQPA report. In this way, the Agencies intend meaningfully to estimate the relative burdens placed on different categories of filers.

Burden estimates were adjusted for the proposed revisions to each schedule, including items added or deleted in each schedule and items moved from one schedule to another.

The DOL has not attributed a recordkeeping burden to the 5500 Forms in this analysis or in the Paperwork Reduction Act analysis because it believes that plan administrators' practice of keeping financial records necessary to complete the 5500 Forms arises from usual and customary management practices that would be used by any financial entity and does not result from ERISA or Code annual reporting and filing requirements.

The aggregate baseline burden is the sum of the burden per form and schedule as filed prior to this action multiplied by the estimated aggregate number of forms and schedules filed.<sup>50</sup> The DOL estimated the burden impact of changes in the numbers of filings and of changes made to the form and the various schedules. The burden estimates use data from the Form 5500 Annual Return/Report for plan year 2018, which

is the most recent year for which complete data is available.

#### 1.4. Uncertainty

The SECURE Act created pooled employer plans and directed the Departments to make available consolidated reporting for defined contribution pension plans that meet certain requirements. Due to these proposed rules designed to implement the SECURE Act, as well as the DOL's final rules with respect to association retirement plans and PEO-sponsored plans, the DOL assumes that these types of entities will file a Form 5500 and report the number of participating employers, numbers of covered participants, and amount of assets in the future. However, until they file, the Departments face significant uncertainty about the number of each type of entity and whether they are merely providing coverage in a different manner than was already provided by employers to their employees through single employer plans or already existing MEPs (including association retirement plans and PEOs) or whether with the availability of additional commercial arrangements and plans, more employers will establish plans for their employees.

While pooled plan providers have filed a Form PR and list plans they are forming, they do not report the number of participating employers. The DOL has identified 611,568 defined contribution plans that reported code 3D, of which 499,234 are considered small defined contribution plans filing the Form 5500-SF as possible plans that could join a DCG or a pooled employer plan. However, the decision depends not only on cost savings, and administrative ease, but also on employers' preferences and perceptions about the advantages and disadvantages of joining either group or neither.

The Departments request information that will help improve its current estimates of the numbers of affected entities, employers and the burdens they will experience due to these proposed rules.

#### 1.5. Alternatives

As described above, the DOL proposed changes to Title I annual reporting requirements primarily are designed to implement statutory changes enacted as part of the SECURE Act. The DOL considered several alternative approaches to address these statutory changes, including:

- Not requiring an audit for large plans that are part of a DCG reporting arrangement, and instead requiring just an audit of the DCG's trust. Including

more or fewer questions on the Schedule DCG and the Schedule MEP.

- Including more or fewer questions for defined benefit plans on issues under Title IV of ERISA or questions for retirement plans on Internal Revenue Code compliance issues.

- Not adding new content elements to the Schedules of Assets and not requiring the Schedules of Assets to be filed in a data-capturable format.

- Not changing the methodology for participant count for determining whether a defined contribution retirement plan is subject to the annual reporting requirements applicable to large plans versus small plans.

- Allowing a DCG with under 100 total participants to file as a small plan rather than requiring all DCGs to generally follow the annual reporting requirements applicable to large plans—i.e., Form 5500, Schedule A (if applicable), Schedule I, Schedule R (if applicable)—no IQPA audit, and no detailed supplemental schedules.

- Not requiring non-plan MEWAs and/or non-group health MEWA plans report the participating plan information on the Form M-1 and Form 5500, respectively.

While slightly less burdensome than the proposed rule's requirements, requiring fewer data elements or less transparent and usable data filing requirements would provide substantially less information to the DOL, which would impede its ability to fulfill its critical oversight role of protecting participants and plan assets. Employers in DCGs and MEPs also would receive less information to survey the market when choosing a DCG or pooled plan provider or deciding whether to continue to rely on an existing provider. Less information and less usable data filing requirements would also not have as effectively served the interests of other users of Form 5500 data, including the IRS, PBGC, other Federal agencies, Congress, and the private sector who use the Form 5500 filings as an important source of information and data in assessing employee benefit, tax, and economic trends and policies.<sup>51</sup>

#### 2. Paperwork Reduction Act Statement

As part of its continuing effort to reduce paperwork and respondent

<sup>50</sup> Some filers are eligible to file the Form 5500-SF, but choose to file a Form 5500 and attach Schedule I and/or other schedules because they find it less burdensome to do so in their particular situation. Counts of these filings are adjusted to reflect what they would have filed if they had chosen to file the Form 5500-SF.

<sup>51</sup> Section 1 of ERISA states the "Congressional findings and declaration of policy." Of relevance to our consideration of these alternatives, section (b) states, in relevant part: "It is hereby declared to be the policy of this chapter to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto . . . ." 29 U.S.C. 1001(b).

burden, the DOL conducts a preclearance consultation program to allow the general public and Federal agencies to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA).<sup>52</sup> This helps to ensure that requested data will be provided in the desired format, reporting burden (time and financial resources) will be minimized, collection instruments will be clearly understood, and the impact of collection requirements on respondents is properly assessed. Currently, the DOL is soliciting comments concerning the proposed revision of the Form 5500 Annual Return/Report, which is an information collection request (ICR) subject to the PRA. The accompanying Notice of Proposed Forms Revisions includes a separate PRA discussion that includes tables breaking out the average time for filing the Form 5500, Form 5500-SF, and each schedule, broken down by pension plans (sub-grouped by large plans filing the Form 5500, small plan filing the Form 5500, small plan filing the Form 5500-SF), welfare plans that include health benefits (sub-grouped by large plans and small, unfunded, combination unfunded/fully insured, or funded with a trust 5500-SF), welfare plans that do not include health benefits (sub-grouped by large plans filing the Form 5500, small plan filing the Form 5500-SF), and DFEs (sub-grouped by master trusts, CCTs, PSAs, 103-1IEs, GIAs, and DCGs). The discussion also includes a table with the estimated PRA burdens attributable the Form 5500 Annual Return/Report broken down by the portions allocated to the DOL and the IRS. The DOL is also submitting revisions to the Form M-1 and Summary Annual Report ICRs. A copy of the ICRs may be obtained by contacting the person listed in the PRA Addressee section below. The DOL has submitted a copy of the proposed revisions to the Office of Management and Budget (OMB) in accordance with 44 U.S.C. 3507(d) for its review of the DOL's information collection. The DOL and OMB are particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronically delivered responses).

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503 and marked "Attention: Desk Officer for the Employee Benefits Security Administration." Comments can also be submitted by Fax: 202-395-5806 (this is not a toll-free number), or by email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). OMB requests that comments be received by October 15, 2021, which is 30 days from publication of the proposed rule to ensure their consideration.

**PRA Addressee:** Address requests for copies of the ICRs to James Butikofer, Office of Regulations and Interpretations, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N-5655, Washington, DC 20210. Telephone: (202) 693-8410; Fax: (202) 219-4745; Email: [ebbs.opr@dol.gov](mailto:ebbs.opr@dol.gov). These are not toll-free numbers. ICRs submitted to OMB also are available at <http://www.RegInfo.gov>.

### 3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)<sup>53</sup> imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act<sup>54</sup> and are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) of the proposed rule. The DOL has determined that this proposed rule is likely to have a significant impact on a substantial number of small entities. Therefore, the DOL provides its IRFA of the proposed rule, below.

For purposes of this IRFA, an entity is considered a small entity if it is an employee benefit plan with fewer than

100 participants.<sup>55</sup> The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). The basis of EBSA's definition of a small entity for this IRFA is found in section 104(a)(2) of ERISA, which permits the Secretary to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. The DOL has consulted with the SBA Office of Advocacy concerning use of this participant count standard for RFA purposes.<sup>56</sup> The DOL seeks comment on the appropriateness of continuing to use this size standard.

The following subsections address specific components of an IRFA, as required by the RFA.

#### 3.1. Need for and Objectives of the Rule

This proposal would amend the DOL's reporting regulations relating to the annual reporting and disclosure requirements to implement the forms changes that are set forth in the NPFR published concurrently with this notice of proposed rulemaking. DOL strives to tailor reporting requirements to minimize reporting costs, while ensuring that the information necessary to secure ERISA rights is adequately available. The optimal design for reporting requirements changes over time. In addition, the technologies available to manage and transmit information continually advance.

<sup>55</sup> While some large employers may have small plans, in general, small employers maintain most small plans. The Form 5500 Annual Return/Report impacts any employer in any private sector industry who chooses to sponsor a plan. The DOL is unable to locate any data linking employer revenue to plans to determine the relationship between small plans and small employers in industries whose SBA size standard is revenue-based. For a separate project, the DOL purchased data on ESOPs that file the Form 5500 and on defined contribution pension plans that file the Form 5500-SF from Experian Information Solutions, Inc. The Experian dataset provides the number of employees for the plan sponsor. By merging these data with internal DOL data sources, the DOL determined the relationship between small plans and small employers in industries whose SBA size standard is based on a threshold number of employees that varies from 100 to 1,500 employees. Based on these data, the DOL estimates that over 97 percent of small retirement plans and over 80 percent of small health plans are sponsored by employers with fewer than 100 employees. The DOL estimates that over 99 percent of small retirement plans and over 97 percent of small health plans are sponsored by employers with fewer than 1,500 employees. Thus, the DOL believes that assessing the impact of these proposed rules on small plans is an appropriate substitute for evaluating the effect on small entities.

<sup>56</sup> Memorandum received from the U.S. Small Business Administration, Office of Advocacy on July 10, 2020.

<sup>52</sup> 44 U.S.C. 3506(c)(2)(A) (1995).

<sup>53</sup> 5 U.S.C. 601 *et seq.* (1980).

<sup>54</sup> 5 U.S.C. 551 *et seq.* (1946).

Therefore, it is incumbent on the Agencies to revise their reporting requirements from time to time to keep pace with such changes. The proposed forms revisions, and associated DOL regulatory amendments in the proposal, are intended to implement the reporting requirements required by the SECURE Act, taking into account certain recent changes in markets, other law, and technology, many of which are referred to above in this document.

### 3.2. Affected Small Entities

The proposal would change the current method of counting covered participants for purposes of determining when a defined contribution plan may file as a small plan and whether the plan may be exempt from the audit requirement from the current requirement. Specifically, the proposal would allow plans to count just the number of participants/beneficiaries

with account balances as of the beginning of the plan year, as compared to the current rule that counts all the employees eligible to participate in the plan. This change would allow an estimated 19,442 large defined contribution plans to be re-defined and file as small defined contribution plans. The estimated distribution of these plans by amount of assets is shown in Table 6.

TABLE 6—DISTRIBUTION OF LARGE DC PENSION PLANS TO BE REDEFINED AS SMALL FILERS, BY TYPE OF PLAN AND AMOUNT OF ASSETS, 2018

Amount of assets	Total	Single- employer plans	Multiemployer plans	Multiple- employer plans
Total Plans .....	19,442	18,974	134	334
None or not reported .....	50	50	.....	.....
\$1–24K .....	221	220	.....	1
25–49K .....	183	182	.....	1
50–99K .....	312	306	2	4
100–249K .....	816	800	3	13
250–499k .....	1,276	1,260	2	14
500–999K .....	2,561	2,522	4	34
1–2.49M .....	6,158	6,049	3	106
2.5–4.9M .....	4,790	4,683	7	100
5–9.9M .....	2,316	2,259	10	48
10–24.9M .....	592	556	27	10
25–49.9M .....	80	53	25	2
50–74.9M .....	26	12	14	.....
75–99.9M .....	12	6	6	.....
100–149.9M .....	9	6	3	.....
150–199.9M .....	13	4	9	.....
200–249.9M .....	8	3	5	.....
250–499.9M .....	12	1	11	.....
500–999.9M .....	4	3	1	.....
1–2.49B .....	2	1	1	.....

As described in the regulatory impact analysis, above, the DOL estimates that 100 DCGs will form in the first year, filing for 15,350 small plans. These plans would no longer need to file a Form 5500 or Form 5500–SF; their DCG filing a complete Form 5500 Annual Return/Report in accordance with its instructions, including the requirement to include the proposed Schedule DCG for each individual participating plan, would satisfy the reporting requirements for those plans. There also may be some cases in which sponsors of small plans decide to instead participate in the pooled employer plan, which would also result in a number of small plans either being terminated or possibly merged into the pooled employer plan and no longer filing a Form 5500 or Form 5500–SF. As discussed above, the DOL is estimating that 2,251 small employers/plans will join a pooled employer plan.<sup>57</sup>

<sup>57</sup> For the calculation of the total number of employers in pooled employer plans it is first assumed that 80 percent of all the employers who

Due to the change in the requirements to be considered a small plan on the basis of account balance, in total, approximately 609,695 defined contribution pension plans covering fewer than 100 participants with account balances would be eligible to comply with annual reporting requirements applicable to small plans, where previously approximately 590,254 defined contribution plans were filing as small plans. In this regard, in total there would be now 648,837 small plans where previously were 629,397. Estimates of the number of small

would participate in a pooled employer plan are currently providing benefits through small plans, and the remaining 20 percent through large plans. This distribution would apply to the registrant that has already exceptionally listed 2000 employers (which would then be divided in 1600 small participating plans and 400 large participating plans) and to the other 74 pooled plan providers assumed to be created. As explained, it is also assumed that each one of these other 74 pooled plan providers would be servicing in total 11 employers. Therefore, the total number of small participating plans in a pooled employer plan is calculated as:  $1,600 + (74 * 11 * 0.8) = 2,251$  (rounded).

pension plans are based on 2018 Form 5500 filing data.

Additionally, the proposed changes in annual reporting requirements would affect MEWAs. In the 2018 calendar year, there were 143 plan MEWAs and six non-plan MEWAs with fewer than 100 participants that filed a Form M–1.<sup>58</sup>

### 3.3. Impact of the Rule

While many small plans could experience a reduced burden as a result of the proposed changes, it is the 20,005 large plans filing under the proposed regulations, that we estimate would experience a significant impact. Specifically, 19,442 defined contribution plans due to the change in the definition of who can file as a small plan and be eligible for an audit waiver,

<sup>58</sup> These calculations are based on internal DOL calculations based on 2018 Form M–1 filings. In 2018, of the 640 total plan MEWAs, 143 reported having fewer than 100 participants, of which 69 had zero participants. Of the 47 non-plan MEWAs, six reported having fewer than 100 participants all of which had zero participants.

and 563 large participating plans that could provide benefits through pooled employer plans and be covered by the pooled employer plan single audit rather than a separate audit if they sponsored their own single employer plan. An estimated 11,362 of those affected large plans currently provide the IQPA report and audited financial statements that would save in audit costs under the proposal.<sup>59</sup> There is variation in filing requirements based on the characteristics of a plan and types of assets held. However, these plans would no longer need to attach the IQPA report (audit) and other schedules required of large plans with its annual return/report. As described earlier in this document,<sup>60</sup> the Department estimates that there could be an audit cost reduction of \$7,500 for each one of these 11,362 plans. Plans may still conduct an audit, even if there is no requirement. It is estimated that 25 percent of plans could still conduct an audit. Data on the cost of an audit for these plans is not known and will vary based on plan size and complexity. An estimate of \$7,500 is used to estimate the cost savings per year. These plans also would no longer be required to file the Schedule H, but would need to file the Schedule I. The difference in burden between filing Schedule H and Schedule I is estimated to be \$770 per year.<sup>61</sup>

Table 6 above shows that number of plans by the amount of assets in the plans. This shows an estimate of 5,369 plans (those with less than \$1 million in assets) that would see a costs savings of about one percent of plan assets.<sup>62</sup>

The establishment of DCGs, the use of Schedules DCG (\$178 per plan), Schedule MEP (\$20 for most MEPs and \$26 per pooled employer plan), and the other changes could impact a substantial number of small plans, as discussed above, but the impacts per plan are small in magnitude and do not

meet the qualifications for a significant impact for this analysis.

### 3.4. Duplicate, Overlapping, or Relevant Federal Rules

The DOL is unaware of any relevant Federal rules for small plans that duplicate, overlap, or conflict with these regulations.

### 3.5. Description of Steps Taken To Minimize the Impact on Small Entities

These proposed regulations and related changes to the Form 5500 Annual Return/Report generally implement or otherwise relate to SECURE Act changes to ERISA and the Code, and do not include significant modifications to existing small plan simplified reporting options other than expanding the number of plans that will be eligible for simplified reporting options by reason of the proposed change in the method of counting participants for determining small plans versus large plan status. Small pension plans that are invested in “eligible” plan assets and otherwise meet certain requirements are able to use a simplified reporting option of filing Form 5500–SF, which was established by regulation in part to comply with provisions of the Pension Protection Act requiring a simplified form of reporting for plans with fewer than 25 participants. In light of the fact that the majority of small plans required to file an ERISA annual report cover fewer than 25 participants, the simplified reporting option also constitutes the Department’s efforts to further reduce the information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506 (c)(4). The Department, in developing the proposed regulatory changes for Form 5500 filings by DCGs, carried forward an audit waiver for small plans participating in a DCG consolidated Form 5500 filing. We also, in developing the Schedule MEP filing requirements for pooled employer plans and other MEPs, did not expand small plan reporting requirements. We generally limited the information collection to consolidating information onto the Schedule MEP information that is already reported elsewhere by MEPs on the current Form 5500, as discussed elsewhere in this preamble and in the NPFR. Overall, the DOL believes that the proposed changes to the reporting requirements reduce the burden on small plans, while allowing the DOL to collect sufficient information for it to fulfill its statutory responsibilities.

### 4. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector.<sup>63</sup> For purposes of the Unfunded Mandates Reform Act, as well as Executive Order 12875,<sup>64</sup> this proposal does not include any Federal mandate that the DOL expects would result in such expenditures by State, local, or tribal governments, or the private sector.

### 5. Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have “substantial direct effects” on the States, the relationship between the National Government and States, or on the distribution of power and responsibilities among the various levels of government.<sup>65</sup> Federal agencies promulgating regulations that have federalism implications must consult with State and local officials and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the rule.

In the DOL’s view, these proposed regulations would not have federalism implications because they would not have direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among various levels of government. These proposed rules do not have federalism implications because they would have no substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements proposed to be

<sup>59</sup> To estimate the number of large plans currently providing the IQPA report and audited financial statements the DOL identified those large plans are most likely to be re-defined as small plans and have filed Schedule H in 2018, as estimated on the 2018 Form 5500 Pension Research Files. Note that an 80 to 120 participant transition provision allows a plan that covers fewer than 100 participants to continue taking advantage of the simplified option or exemption, as applicable, until they reach 121 participants, therefore not all plans with 100 or more participants will file a plan in a given year.

<sup>60</sup> See fns. 47–49 *supra*.

<sup>61</sup> The methodology DOL uses results in estimates that it will take a small pension plan approximately 12 hours to file a Schedule H, compared to two hours and six minutes to file a Schedule I. See “Methodology” section starting, *supra*, at page 56 for a discussion of the burden estimating methodology.

<sup>62</sup> Plan asset data reflects data reported on 2018 Form 5500 filings.

<sup>63</sup> 2 U.S.C. 1501 *et seq.* (1995).

<sup>64</sup> Enhancing the Intergovernmental Partnership, 58 FR 58093 (Oct. 28, 1993).

<sup>65</sup> Federalism, *supra* note 6.

implemented in these rules do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the National Government and the States. The DOL welcomes input from affected States regarding this assessment.

#### List of Subjects in 29 CFR Part 2520

Accounting, Employee benefit plans, Freedom of information, Pensions, Public assistance programs, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, 29 CFR part 2520 is proposed to be amended as follows:

### PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

■ 1. The authority citation for part 2520 is revised to read as follows:

**Authority:** 29 U.S.C. 1002(44), 1021–1025, 1027, 1029–31, 1059, 1134, and 1135; and Secretary of Labor's Order 1–2011, 77 FR 1088. Sec. 2520.101–2 also issued under 29 U.S.C. 1132, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Sec. 2520.101–5 also issued under 29 U.S.C. 1021 note; sec. 501, Pub. L. 109–280, 120 Stat. 780; sec. 105(a), Pub. L. 110–458, 122 Stat. 5092. Secs. 2520.102–3, 2520.104b–1, and 2520.104b–3 also issued under 29 U.S.C. 1003, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note; sec. 1510, Pub. L. 105–34, 111 Stat. 1068.

■ 2. In § 2520.103–1, revise paragraphs (a)(2), (b) introductory text, (b)(1), (c)(1), (c)(2)(i), and (c)(2)(ii)(D) and (E) and add paragraphs (c)(2)(ii)(F) and (G) to read as follows:

#### § 2520.103–1 Contents of the annual report.

(a) \* \* \*

(2) Under the authority of subsections 104(a)(2), 104(a)(3), and 110 of the Act, section 1103(b) of the Pension Protection Act of 2006, and section 202 of the SECURE Act, a simplified report, limited exemption, or alternative method of compliance is prescribed for employee welfare and pension benefit plans, as applicable. A plan filing a simplified report or electing the limited exemption or alternative method of compliance shall file an annual report containing the information prescribed in paragraph (b) or (c) of this section, as applicable, and shall furnish a summary annual report as prescribed in § 2520.104b–10.

(b) *Contents of the annual report for plans with 100 or more participants electing the limited exemption or*

*alternative method of compliance.*

Except as provided in paragraphs (d) and (f) of this section and in §§ 2520.103–2, 2520.103–14, and 2520.104–44, the annual report of an employee benefit plan covering 100 or more participants at the beginning of the plan year which elects the limited exemption or alternative method of compliance described in paragraph (a)(2) of this section shall include:

(1) A Form 5500 “Annual Return/Report of Employee Benefit Plan” and any statements or schedules required to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule C (Service Provider Information), Schedule D (DFE/Participating Plan Information), Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), Schedule SB (Single-Employer Defined Benefit Plan Actuarial Information), Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information), Schedule MEP (Multiple Employer Plan), Schedule R (Retirement Plan Information), and other financial schedules described in § 2520.103–10. See the instructions for this form.

\* \* \* \* \*

(c) \* \* \*

(1) Except as provided in paragraphs (c)(2), (d), (e), and (f) of this section, and in §§ 2520.103–14, 2520.104–51, 2520.104–43, 2520.104–44, 2520.104a–6, and 2520.104a–9, the annual report of an employee benefit plan that covers fewer than 100 participants at the beginning of the plan year shall include a Form 5500 “Annual Return/Report of Employee Benefit Plan” and any statements or schedules required to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule D (DFE/Participating Plan Information), Schedule I (Financial Information—Small Plan), Schedule SB (Single Employer Defined Benefit Plan Actuarial Information), Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information), Schedule MEP (Multiple Employer Plan), and Schedule R (Retirement Plan Information). See the instructions for this form.

(2)(i) The annual report of an employee pension benefit plan or employee welfare benefit plan and that covers fewer than 100 participants at the beginning of the plan year and that meets the conditions in paragraph (c)(2)(ii) of this section with respect to

a plan year may, as an alternative to the requirements of paragraph (c)(1) of this section, meet its annual reporting requirements by filing the Form 5500—SF “Short Form Annual Return/Report of Small Employee Benefit Plan” and any statements or schedules required to be attached to the form, Schedule SB (Single Employer Defined Benefit Plan Actuarial Information) and Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information), completed in accordance with the instructions for the form. See the instructions for this form.

(ii) \* \* \*

(D) Is not a multiemployer plan;

(E) Is not a plan subject to the Form M–1 requirements under § 2520.101–2;

(F) Is not a multiple employer pension plan, including a pooled employer plan described in section 3(43) of the Act and a multiple employer defined contribution pension plan described in § 2510.3–55 of this chapter; and

(G) Is not a DCG reporting arrangement described in § 2520.104–51.

\* \* \* \* \*

■ 3. In § 2520.103–5, revise paragraph (a) introductory text to read as follows:

#### § 2520.103–5 Transmittal and certification of information to plan administrator for annual reporting purposes.

(a) *General.* In accordance with section 103(a)(2) of the Act, an insurance carrier or other organization which provides benefits under the plan or holds plan assets, a bank or similar institution which holds plan assets, or a plan sponsor shall transmit and certify such information as needed by the administrator to file the annual report under section 104(a)(1) of the Act and § 2520.104a–5, § 2520.104a–6, or § 2520.104a–9:

\* \* \* \* \*

■ 4. In § 2520.103–10:

■ a. Revise paragraphs (a) and (b)(1) and (2);

■ b. Redesignate paragraph (c) as paragraph (d);

■ c. Add a new paragraph (c); and

■ d. In newly redesignated paragraph (d), remove “paragraphs (b)(1), (b)(2) or (b)(6)” and add “paragraph (b)(1), (2), or (6)” in its place.

The revisions and addition read as follows:

#### § 2520.103–10 Annual report financial schedules.

(a) *General.* The administrator of a plan filing an annual report pursuant to § 2520.103–1(a)(2), the report for a group insurance arrangement pursuant to § 2520.103–2, or the report for a defined contribution pension plan



group (DCG) reporting arrangement pursuant to § 2520.103–14, shall, as provided in the instructions to the Form 5500 “Annual Return/Report of Employee Benefit Plan,” include as part of the report the separate financial schedules described in paragraph (b) of this section.

(b) \* \* \*

(1) *Assets held for investment.* (i) A schedule of all assets held for investment purposes at the end of the plan year (see § 2520.103–11) with assets aggregated and identified by:

(A) Identity of issue, borrower, lessor or similar party to the transaction (including a notation as to whether such party is known to be a party in interest);

(B) Description of investment including maturity date, rate of interest, collateral, par, or maturity value; (including whether the investment is a hard-to-value asset);

(C) Cost;

(D) Current value, and, in the case of a loan, the payment schedule;

(E) The asset category in which the asset was reported on the Schedule H;

(F) The Central Index Key (CIK) number, Legal Entity Identifier (LEI) Code, or National Association of Insurance Commissioners (NAIC) Company Code, or other government registration or identity number for the investment described in paragraphs (b)(1)(i)(A) and (B) of this section, or if no government number is available, a market or exchange registration or identity number; and

(G) In the case of individual account plans, whether the investment is a designated investment alternative (DIA) or a qualified default investment alternative (QDIA), and for each such DIA and QDIA with respect to which the return is not fixed, the total annual operating expenses on the latest 404a–5 statement provided to participants during the plan year.

(ii) [Reserved]

(2) *Assets acquired and disposed within the plan year.* (i) A schedule of all assets acquired and disposed of within the plan year (see § 2520.103–11) with assets aggregated and identified by:

(A) Identity of issue, borrower, issuer or similar party;

(B) Descriptions of investment including maturity date, rate of interest, collateral, par, or maturity value;

(C) Cost of acquisitions; and

(D) Proceeds of dispositions.

(ii) [Reserved]

\* \* \* \* \*

(c) *Presentation of investment assets in commingled trusts and direct filing entities (DFEs).* (1) Except as provided in the Form 5500 and the instructions

thereto or for filings by direct filing entities or DCG reporting arrangements, in the case of assets or investment interests of two or more plans maintained in one trust, entries on the schedule of assets held for investment purposes at the end of the plan year and the schedule of assets acquired and disposed of during the plan year shall be completed by including the plan’s allocable portion of the trust.

(2) In the case of direct filing entities and DCG reporting arrangements required to file a schedule of assets held for investment purposes at the end of the plan year and the schedule of assets acquired and disposed of during the plan year, the entries on the schedules shall be completed by including the assets held by the DFE or in the DCG reporting arrangement’s trust and shall include the number of plans with an allocable interest in each listed investment.

\* \* \* \* \*

■ 5. Add § 2520.103–14 to read as follows:

**§ 2520.103–14 Contents of the annual report for defined contribution pension plan group (DCG) reporting arrangements.**

(a) *General.* A defined contribution pension plan group reporting arrangement as described in § 2520.104–51(c) (“DCG reporting arrangement”) that files a consolidated annual report pursuant to § 2520.104–51 shall include in such report the items set forth in paragraph (b) of this section, and shall furnish a summary annual report as prescribed in § 2520.104b–10.

(b) *Contents of the annual report for DCG reporting arrangement.* (1) A Form 5500 “Annual Return/Report of Employee Benefit Plan” and any statements or schedules required to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule C (Service Provider Information), Schedule D (DFE/Participating Plan Information), Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), Schedule DCG (Individual Plan Information), Schedule R (Retirement Plan Information), and the other financial schedules referred to in § 2520.103–10, completed in accordance with the instructions for the form.

(2) A report of an independent qualified public accountant for the DCG trust.

(3) Separate financial statements for the DCG reporting arrangement trust described in § 2520.104–51(c)(2)(i) (in addition to the information required by paragraph (b)(1) of this section), if such financial statements are prepared in

order for the independent qualified public accountant to form the opinion required by section 103(a)(3)(A) of the Act and paragraph (b)(6) of this section. These financial statements shall include the following:

(i) A statement of all trust assets and liabilities at current value presented in comparative form for the beginning and end of the year. The statement of trust assets and liabilities shall include the assets and liabilities required to be reported on the Form 5500; however, the assets and liabilities may be aggregated into categories in a manner other than that used on Form 5500.

(ii) Separate or combined statements of all trust income and expenses and changes in net assets, which includes the categories of income, expense, and changes in assets required to be reported on the Form 5500; however, the income, expense, and changes in assets may be aggregated into categories in a manner other than that used on Form 5500.

(4) Notes to the financial statements described in paragraph (b)(1) or (2) of this section which contain a description of the accounting principles and practices reflected in the financial statements and, if applicable, variances from generally accepted accounting principles; a description of the DCG reporting arrangement including any significant changes in the arrangement made during the period and the impact of such changes on benefits; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the DCG reporting arrangement; an explanation of the differences, if any, between the information contained in the separate financial statements and the assets, liabilities, income, expenses and changes in net assets as required to be reported on the Form 5500; and any other matters necessary to fully and fairly present the financial condition of the DCG reporting arrangement.

(5) In the case of a DCG reporting arrangement some or all of the assets of which are held in a pooled separate account maintained by an insurance carrier, or in a common or collective trust maintained by a bank, trust company or similar institution, a copy of the annual statement of assets and liabilities of such account or trust for the fiscal year of the account or trust which ends with or within the plan year for which the annual report is made as required to be furnished by such account or trust under § 2520.103–5(c). See §§ 2520.103–3 and 2520.103–4 for

reporting requirements for plans some or all of the assets of which are held in a pooled separate account maintained by an insurance company, or a common or collective trust maintained by a bank or similar institution, and see § 2520.104–51(b)(2) for when the term “DCG reporting arrangement” or “DCG” shall be used in place of the term “plan.”

(6) In the case of a plan participating in a DCG reporting arrangement covering 100 or more participants at the beginning of the plan year, the Schedule DCG for each participating plan shall include the following as provided in the instructions to the Schedule DCG:

(i) A report of an independent qualified public accountant for the participating plan.

(ii) Separate financial statements and financial schedules described in § 2520.103–10 for the plan, if such financial statements and schedules are prepared in order for the independent qualified public accountant to form the opinion required by section 103(a)(3)(A) of the Act and paragraph (b)(6) of this section. The financial statement shall include the information set forth in § 2520.103–1(b)(2).

(iii) Notes to the financial statements described in paragraph (b)(2)(i) of this section, which contain the information set forth in § 2520.103–1(b)(3).

(iv) In the case of a participating plan, some or all of the assets of which are held in a pooled separate account maintained by an insurance company, or a common or collective trust maintained by a bank or similar institution, the information described in § 2520.103–1(b)(4).

(c) *Technical requirements.* The accountant’s report required for the DCG trust and any participating plan subject to the requirements in paragraph (b)(6) of this section—

(1) Shall be dated;

(2) Shall be signed manually;

(3) Shall indicate the city and state where issued;

(4) Shall identify without detailed enumeration the financial statements and schedules covered by the report;

(5) Shall state whether the audit was made in accordance with generally accepted auditing standards;

(6) Shall designate any auditing procedures deemed necessary by the accountant under the circumstances of the particular case, which have been omitted, and the reasons for their omission. Authority for the omission of certain procedures which independent accountants might ordinarily employ in the course of an audit made for the purpose of expressing the opinions required by paragraph (b)(5)(iii) of this

section is contained in § 2520.103–8; and

(7) Shall state clearly:

(i) The opinion of the accountant in respect of the financial statements and schedules covered by the report and the accounting principles and practices reflected therein; and

(ii) The opinion of the accountant as to the consistency of the application of the accounting principles with the application of such principles in the preceding year, or as to any changes in such principles which have a material effect on the financial statements.

(8) Any matters to which the accountant takes exception shall be clearly identified, the exception thereto specifically and clearly stated, and, to the extent practicable, the effect of the matters to which the accountant takes exception on the related financial statements given. The matters to which the accountant takes exception shall be further identified as to:

(i) Those that are the result of DOL regulations; and

(ii) All others.

(d) *Electronic filing requirement.* See § 2520.104a–2 and the instructions for the Form 5500 “Annual Return/Report of Employee Benefit Plan” for electronic filing requirements. The common plan administrator for each plan whose reporting obligations are satisfied by a DCG filing under this section must maintain an original copy of the DCG filing, with all required signatures, as part of the DCG’s records.

■ 6. Add § 2520.104–51 to read as follows:

**§ 2520.104–51 Alternative method of compliance for defined contribution pension plan group (DCG) reporting arrangements.**

(a) *General.* Under the authority of section 110 of the Act and section 202 of the SECURE Act, the plan administrator common to each plan (“common plan administrator”), as described in paragraph (c)(2)(iii) of this section, satisfies the obligation to file an annual report for each of the plans participating in the DCG reporting arrangement described in paragraph (c) of this section if the participating plan meets the requirements of paragraph (b) of this section.

(b) *Application.* (1) The alternative method of compliance set out in this section is available only for an individual account or defined contribution pension plan in a plan year in which:

(i) Such plan participates in a defined contribution pension plan group (DCG) reporting arrangement described in paragraph (c) of this section; and

(ii) A consolidated annual report containing the items set forth in § 2520.103–14 has been filed with the Secretary of Labor in accordance with § 2520.104a–9 by the common plan administrator (as described in paragraph (c)(2)(iii) of this section) for all of the plans participating in the DCG reporting arrangement (as described in paragraph (c) of this section).

(2) For purposes of this section, the term “DCG reporting arrangement” or “common plan administrator” shall be used in place of the terms “plan” and “plan administrator,” in §§ 2520.103–3, 2520.103–4, 2520.103–6, 2520.103–8, 2520.103–9, and 2520.103–10 and elsewhere in subpart C of this part and this subpart, as applicable.

(c) *Defined contribution pension plan group (DCG) reporting arrangement.* An arrangement is only a “DCG reporting arrangement” if all plans participating in the arrangement—

(1) Are individual account plans or defined contribution plans as defined in section 3(34) of the Act;

(2) Have—

(i) The same trustee as described in section 403(a) of the Act (“common trustee”) and trust(s) (“common trust”);

(ii) The same one or more named fiduciaries as described in section 402(a) of the Act (“common named fiduciaries”), except that nothing in this paragraph (c)(2)(ii) precludes an individual employer acting as an additional named fiduciary with respect to the individual plan it sponsors;

(iii) A designated plan administrator that is the same plan administrator as defined in section 3(16)(A) of the Act (“common plan administrator”); and

(iv) Plan years beginning on the same date (“common plan year”);

(3) Provide the same investments or investment options (“common investments or investment options”) to participants and beneficiaries; and

(4) Have the investment assets held in a single trust of the DCG reporting arrangement, and the participating plan:

(i) Do not hold any employer securities at any time during the plan year;

(ii) At all times during the plan year, are 100% invested in assets that have a readily determinable fair market value as described in § 2520.103–1(c)(2)(ii)(C);

(iii) Are either audited by an independent qualified public accountant (IQPA) or satisfies the audit waiver conditions in § 2520.104–46(b)(1)(i)(A)(1) and (b)(1)(i)(B) and (C);

(iv) Are not a multiemployer plan; and

(v) Are not a multiple employer pension plan, including a pooled employer plan described in section

3(43) of the Act and multiple employer defined contribution pension plans described in § 2510.3–55 of this chapter.

(d) *Limitations.* The alternative method of reporting set out in this section does not relieve the administrator of a defined contribution pension plan participating in a DCG reporting arrangement described in paragraph (c) of this section from any other requirements of Title I of the Act, including the provisions which require that plan administrators furnish copies of the summary plan description to participants and beneficiaries (section 104(b)(1)), furnish certain documents to the Secretary of Labor upon request (section 104(a)(6)), authorize the Secretary of Labor to collect information and data from employee benefit plans for research and analysis (section 513), and furnish a copy of a summary annual report to participants and beneficiaries of the plan, as required by section 104(b)(3) of the Act.

■ 7. In § 2520.104a–5, revise paragraph (a) introductory text to read as follows:

**§ 2520.104a–5 Annual reporting filing requirements.**

(a) *Filing obligation.* Except as provided in §§ 2520.104a–6 and 2520.104a–9, the administrator of an employee benefit plan required to file an annual report pursuant to section 104(a)(1) of the Act shall file an annual report containing the items prescribed in § 2520.103–1 within:

\* \* \* \* \*

■ 8. Add § 2520.104a–9 to read as follows:

**§ 2520.104a–9 Annual reporting for defined contribution pension plan group (DCG) reporting arrangements.**

(a) *General.* A defined contribution pension plan group (DCG) reporting arrangement described in § 2520.104–51(c) that files an annual report in accordance with the terms of paragraphs (b) and (c) of this section shall be deemed to have filed such a report for purposes of § 2520.104–51.

(b) *Date of filing.* The annual report shall be filed within seven months after the close of the plan year of the DCG reporting arrangement, unless extended. See “When to file” instructions of the

appropriate Annual Return/Report Form.

(c) *Where to file.* The annual report prescribed in § 2520.103–14 shall be filed electronically in accordance with the instructions to the Annual Return/Report Form.

■ 9. In § 2520.104b–10:

■ a. In paragraph (d)(3):

■ i. Revise the “Summary Annual Report for (name of plan)”;

■ ii. Add paragraphs 11 and 12 immediately following paragraph 10 under “Your Rights to Additional Information”; and

■ iii. Remove the last undesignated paragraph and add two undesignated paragraphs in its place; and

■ b. Remove the appendix to the section; and

■ c. Add table 1 at the end of the section.

The revisions and additions read as follows:

**§ 2520.104b–10 Summary Annual Report.**

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

**Summary Annual Report for (name of plan)**

This is a summary of the annual report [insert as applicable either Form 5500 Annual Return/Report of Employee Benefit Plan or Form 5500–SF Annual Return/Report of Small Employee Benefit Plan] of [insert name of plan and EIN/PN] for [insert period covered by this report]. The [insert as applicable either Form 5500 or Form 5500–SF] annual report has been filed with the Employee Benefits Security Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA). Your plan is a [insert a brief description of the plan based on the plan characteristic codes listed for the plan on the Form 5500, including whether it is a defined contribution or defined benefit plan, and whether the plan is a pooled employer plan, another type of multiple employer plan, a single employer plan].

[If the plan is participating in a DCG reporting arrangement]:

Your plan participates in an annual reporting arrangement that files a

consolidated Form 5500 Annual Report for all the separate plans in the arrangement. This summary includes aggregate information on all the participating plans from the consolidated Form 5500. The consolidated Form 5500 also includes a separate schedule (Schedule DCG) for each individual plan. As noted below regarding your rights to additional information, you have a right to receive a copy of the Schedule DCG relating to your plan on request from the plan administrator.]

\* \* \* \* \*

**Your Rights to Additional Information**

\* \* \* \* \*

■ 11. a Schedule DCG for plans participating in a consolidated group Form 5500 filing that includes your plan sponsor’s name, EIN, total number of participants in your plan and basic financial information about the plan.

■ 12. a Schedule MEP, including name and EIN of the employers participating in the MEP, each participating employer’s percentage of the total contributions (employer and employee) made by all employer participating in the MEP and aggregate account balance for each of the employer participating in the MEP.

\* \* \* \* \*

[If the plan is participating in a DCG reporting arrangement]:

You also have the legally protected right to examine the annual report at the main office of the plan (address), (at any other location where the report is available for examination), and at the U.S. Department of Labor in Washington, DC, or to obtain a copy from the U.S. Department of Labor upon payment of copying costs. Requests to the Department should be addressed to: Public Disclosure Room, Room N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. The annual report is also available online at the Department of Labor website [www.efast.dol.gov](http://www.efast.dol.gov).

\* \* \* \* \*

TABLE 1 TO § 2520.104B–10—THE SUMMARY ANNUAL REPORT (SAR) UNDER ERISA: A CROSS-REFERENCE TO THE ANNUAL REPORT

SAR item	Form 5500 large plan filer line items	Form 5500 small plan filer line items	Form 5500–SF filer line items
<b>A. Pension Plan:</b>			
1. Funding arrangement .....	Form 5500–9a .....	Same .....	Not applicable.
2. Total plan expenses .....	Sch. H–2j .....	Sch. I–2j .....	Line 8h.
3. Administrative expenses .....	Sch. H–2i(5) .....	Sch. I–2h .....	Line 8f.
4. Benefits paid .....	Sch. H–2e(4) .....	Sch. I–2e .....	Line 8d.

TABLE 1 TO § 2520.104B-10—THE SUMMARY ANNUAL REPORT (SAR) UNDER ERISA: A CROSS-REFERENCE TO THE ANNUAL REPORT—Continued

SAR item	Form 5500 large plan filer line items	Form 5500 small plan filer line items	Form 5500-SF filer line items
5. Other expenses .....	Sch. H—Subtract the sum of 2e(4) & 2i(5) from 2j.	Sch. I-2i .....	Line 8g.
6. Total participants .....	Form 5500-6f .....	Same .....	Line 5b.
6. Value of plan assets (net):			
a. End of plan year .....	Sch. H-11 [Col. (b)] .....	Sch. I-1c [Col. (b)] .....	Line 7c [Col. (b)].
b. Beginning of plan year .....	Sch. H-11 [Col. (a)] .....	Sch. I-1c [Col. (a)] .....	Line 7c [Col. (a)].
8. Change in net assets .....	Sch. H—Subtract 11 [Col. (a)] from 11 [Col. (b)].	Sch. I—Subtract 1c [Col. (a)] from Col. (b)].	Line 7c—Subtract Col. (a) from Col. (b).
9. Total income .....	Sch. H-2d .....	Sch. I-2d .....	Line 8c.
a. Employer contributions	Sch. H-2a(1)(A) & 2a(2) if applicable.	Sch. I-2a(1) & 2b if applicable .....	Line 8a(1) if applicable.
b. Employee contributions	Sch. H-2a(1)(B) & 2a(2) if applicable.	Sch. I-2a(2) & 2b if applicable .....	Line 8a(2) & 8a(3) if applicable.
c. Participating employer's percentage of the total contributions (employer and employee) made by all employers participating in a MEP.	Sch. MEP Line 2c .....	Sch. MEP Line 2c .....	Not applicable.
d. Aggregate account balance of the employer participating in a MEP (determined as the sum of the account balances of the employees of such employer (including the beneficiaries of such employees).	Sch. MEP Line 2d .....	Sch. MEP Line 2d .....	Not applicable.
e. Gains (losses) from sale of assets.	Sch. H-2b(4)(C) .....	Not applicable .....	Not applicable.
f. Earnings from investments.	Sch. H—Subtract the sum of 2a(3), 2b(4)(C) and 2c from 2d.	Sch. I-2c .....	Line 8b.
11. Total insurance premiums	Total of all Schs. A-6b .....	Total of all Schs. A-6b .....	Not applicable.
12. Unpaid minimum required contribution (S-E plans) or Funding deficiency (ME plans):			
a. S-E Defined benefit plans.	Sch. SB-39 .....	Same .....	Same.
b. ME Defined benefit plans.	Sch. MB-10 .....	Same .....	Not applicable.
c. Defined contribution plans.	Sch. R-6c, if more than zero .....	Same .....	Line 12d.
13. Individual plan information for plans participating in a DCG reporting arrangement.	Schedule DCG .....	Same .....	Not applicable.
B. Welfare Plan:			
1. Name of insurance carrier ..	All Schs. A-1(a) .....	Same .....	Not applicable.
2. Total (experience rated and non-experienced rated) insurance premiums.	All Schs. A—Sum of 9a(1) and 10a.	Same .....	Not applicable.
3. Experience rated premiums	All Schs. A-9a(1) .....	Same .....	Not applicable.
4. Experience rated claims .....	All Schs. A-9b(4) .....	Same .....	Not applicable.
5. Value of plan assets (net):			
a. End of plan year .....	Sch. H-11 [Col. (b)] .....	Sch. I-1c [Col. (b)] .....	Line 7c [Col. (b)].
b. Beginning of plan year .....	Sch. H-11 [Col. (a)] .....	Sch. I-1c [Col. (a)] .....	Line 7c [Col. (a)].
6. Change in net assets .....	Sch. H—Subtract 1 [Col. (a)] from 1 [Col. (b)].	Sch. I—Subtract 1c [Col. (a)] from 1c [Col. (b)].	Line 7c—Subtract [Col. (a)] from 7c [Col. (b)].
7. Total income .....	Sch. H-2d .....	Sch. I-2d .....	Line 8c.
a. Employer contributions	Sch. H-2a(1)(A) & 2a(2) if applicable.	Sch. I-2a(1) & 2b if applicable .....	Line 8a(1) if applicable.
b. Employee contributions	Sch. H-2a(1)(B) & 2a(2) if applicable.	Sch. I-2a(2) & 2b if applicable .....	Line 8a(2) if applicable.
c. Gains (losses) from sale of assets.	Sch. H-2b(4)(C) .....	Not applicable .....	Not applicable.
d. Earnings from investments.	Sch. H—Subtract the sum of 2a(3), 2b(4)(C) and 2c from 2d.	Sch. I-2c .....	Line 8b.
8. Total plan expenses .....	Sch. H-2j .....	Sch. I-2j .....	Line 8h.
9. Administrative expenses .....	Sch. H-2i(5) .....	Sch. I-2h .....	Line 8f.
10. Benefits paid .....	Sch. H-2e(4) .....	Sch. I-2e .....	Line 8d.

TABLE 1 TO § 2520.104B-10—THE SUMMARY ANNUAL REPORT (SAR) UNDER ERISA: A CROSS-REFERENCE TO THE ANNUAL REPORT—Continued

SAR item	Form 5500 large plan filer line items	Form 5500 small plan filer line items	Form 5500-SF filer line items
11. Other expenses .....	Sch. H—Subtract the sum of 2e(4) & 2i(5) from 2j.	Sch. I-2i .....	Line 8g.

Signed at Washington, DC, this 2nd day of September, 2021.

**Ali Khawar,**

*Acting Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.*

[FR Doc. 2021-19713 Filed 9-14-21; 8:45 am]

**BILLING CODE 4510-29-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2021-0580; FRL-8967-01-R1]

### Air Plan Approval; Rhode Island; 2015 Ozone NAAQS Interstate Transport Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Clean Air Act (CAA) requires each State Implementation Plan (SIP) to contain adequate provisions prohibiting emissions that will have certain adverse air quality effects in other states. The State of Rhode Island made a submission to the Environmental Protection Agency (EPA) to address these requirements for the 2015 ozone National Ambient Air Quality Standards (NAAQS). EPA is proposing to approve the submission for Rhode Island as meeting the requirement that each SIP contain adequate provisions to prohibit emissions that will significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

**DATES:** Written comments must be received on or before October 15, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-OAR-2021-0580 at <https://www.regulations.gov>, or via email to [simcox.alison@epa.gov](mailto:simcox.alison@epa.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any

information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

#### Table of Contents

- I. Background
- II. Rhode Island Submission
- III. EPA Evaluation of Rhode Island's Submission
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## I. Background

On October 1, 2015, EPA promulgated a revision to the ozone NAAQS (2015 ozone NAAQS), lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm).<sup>1</sup> Section 110(a)(1) of the CAA requires states to submit, within 3 years after promulgation of a new or revised standard, SIP submissions meeting the applicable requirements of section 110(a)(2).<sup>2</sup> One of these applicable requirements is found in section 110(a)(2)(D)(i)(I), otherwise known as the good neighbor provision, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on other states due to interstate transport of pollution. There are two so-called “prongs” within CAA section 110(a)(2)(D)(i)(I). A SIP for a new or revised NAAQS must contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting air pollutants in amounts that will: Significantly contribute to nonattainment of the NAAQS in another state (prong 1) or interfere with maintenance of the NAAQS in another state (prong 2). EPA and states must give independent significance to prong 1 and prong 2 when evaluating downwind air quality problems under CAA section 110(a)(2)(D)(i)(I).<sup>3</sup>

We note that EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to prior ozone NAAQS in several regional regulatory actions, including the Cross-State Air Pollution Rule (CSAPR), which addressed interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter

<sup>1</sup> National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

<sup>2</sup> SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2) of the CAA are often referred to as infrastructure SIPs and the applicable elements under section 110(a)(2) are referred to as infrastructure requirements.

<sup>3</sup> See *North Carolina v. EPA*, 531 F.3d 896, 909–911 (D.C. Cir. 2008).