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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2520

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4065

RIN 1210–AB97

Annual Information Return/Reports

AGENCY: Internal Revenue Service, Treasury; Employee Benefits Security Administration, Labor; Pension Benefit Guaranty Corporation.

ACTION: Final forms revisions.

SUMMARY: This document contains final forms and instructions revisions for the Form 5500 Annual Return/Report of Employee Benefit Plan and Form 5500–SF Short Form Annual Return/Report of Small Employee Benefit Plan, effective for plan years beginning on or after January 1, 2022. The changes to the forms and instructions in this document primarily implement annual reporting changes for defined benefit plans included in that proposal. A limited number of instruction changes focus on reporting for multiple-employer pension plans (including pooled employer plans). The remaining changes are technical changes that are part of the annual rollover of the Form 5500 and Form 5500–SF forms and instructions.

DATES: The final forms and instructions revisions in this document are effective for plan years beginning on or after January 1, 2022.

FOR FURTHER INFORMATION CONTACT: Janet Song, Florence Novellino, or Colleen Brisport Sequeda, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor (DOL), (202) 693–8500 for questions related to reporting requirements under Title I of ERISA. For information related to the IRS reporting requirements under the Internal Revenue Code, contact Cathy Greenwood, Employee Plans Program Management Office, Tax Exempt and Government Entities, (470) 639–2503. For information related to PBGC reporting and changes in this document, including proposed changes to the actuarial schedules, contact Karen Levin, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, (202) 229–3559.

Customer service information: Individuals interested in obtaining general 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*).

SUPPLEMENTARY INFORMATION:

I. Background

Titles I and IV of the Employee Retirement Income Security Act of 1974 (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 plans.[1] 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''),[2] in accordance with related 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, and related instructions and regulations, are also promulgated under the DOL's general regulatory authority in ERISA sections 109 and 505.

The Form 5500 Annual Return/Report serves as the principal source of information and data available to the Department of Labor (DOL or the Department), the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC) (collectively the ''Agencies'') concerning the operations, funding, and investments of approximately 844,000 pension and welfare benefit plans that file.[3] ERISA plans cover roughly 158 million workers, retirees, and dependents of private sector pension and welfare plans[4] with estimated assets of $12.9 trillion.[5] Accordingly, the Form 5500 Annual Return/Report is essential to each Agency's enforcement, research, and policy formulation programs, as well as 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 for use by other Federal agencies, Congress, and the private sector in assessing employee benefits, tax, and economic trends and policies. The Form 5500 Annual Return/Report also serves as a primary means by which the operations of plans can be monitored by participating employers in multiple-employer plans and other group arrangements, by plan participants and beneficiaries, and by the general public.

On September 15, 2021, the Agencies published a notice of proposed forms revisions (NPFR) to amend the Form 5500 Annual Return/Report primarily to implement annual reporting changes related to legislative provisions in the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) focused on multiple-employer pension plans (MEPs) and defined contribution reporting groups (DCGs). The NPFR also set forth additional proposed changes intended to improve reporting on multiemployer and single-employer defined benefit pension plans, updated reporting on Form 5500 Annual Return/Report to

[1] Sections 101 and 104 of Title I and section 4065 of Title IV of ERISA and sections 6057(b), 6058(a), and 6059(a) of the Code, and related regulations, impose annual reporting and filing obligations on pension and welfare benefit plans, as well as on certain other entities. Plan administrators, employers, and others generally satisfy these annual reporting obligations by filing the Form 5500 or Form 5500–SF.

[2] 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/Partners and Their Spouses) Retirement Plan or a Foreign Plan (Form 5500–EZ). The Form 5500–EZ is a return that is required to satisfy section 6058(a) of the Code only. Form 5500–EZ filers are not subject to Title I of ERISA.

[3] Estimates are based on 2019 Form 5500 filings. DOL notes that single employer welfare plans with under 100 participants that are unfunded or insured (generally don't hold assets in trust) are exempt from filing a Form 5500 under 29 CFR 2520.104–29. Therefore, while DOL estimates there are 2.0 million health plans and 662,000 non-health welfare plans, respectively, only 69,000 and 91,000 of these plans filed a 2019 Form 5500.

[4] Source: DOL/EBSA calculations using the Auxiliary Data for the March 2020 Annual Social and Economic Supplement to the Current Population Survey.

[5] EBSA based these estimates on the 2019 Form 5500 Annual Return/Report filings, reported SIMPLE assets from the Investment Company Institute (ICI) Report: The U.S. Retirement Market, First Quarter 2021, and the Federal Reserve Board's Financial Accounts of the United States Z.1 December 9, 2021.

make the financial information collected on the Form 5500 Annual Return/Report more useful and usable, enhanced the reporting of certain tax qualification and other compliance information by retirement plans, and transferred to the DOL Form M–1 (Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)) (Form M–1) participating employer information for multiple-employer welfare arrangements that are required to file the Form M–1.[6] 86 FR 51488 (Sept. 15, 2021). The DOL simultaneously published a proposed rulemaking (NPRM) required to implement the proposed forms revisions. 86 FR 51284 (Sept. 15, 2021). The NPFR and the NPRM are collectively referred to as the September 2021 proposal.

The Agencies received 114 comments on the September 2021 proposal. The comments, which were all posted on the Department's website, generally focused on the proposed changes for the 2022 plan year forms and on future rulemakings. In December 2021, the Department published a final forms revisions rulemaking (2021 Final Forms Revisions) that set forth a narrow set of changes to the instructions for the Form 5500 and Form 5500–SF, effective for plan years beginning on or after January 1, 2021. 86 FR 73976 (Dec. 29, 2021). Those instruction changes generally implemented annual reporting changes for MEPs, including pooled employer plans (PEPs).[7] The Department noted in that publication that other changes to the Form 5500 Annual Return/Report would be the subject of one or more separate and later final notices to address other elements of the September 2021 proposal.

This document sets forth a limited number of annual reporting changes that would apply beginning with the 2022 plan year Form 5500 Annual Return/Report. These changes focus mainly on finalizing the improvements in annual reporting for defined benefit pension plans that were included in the September 2021 proposal, but also include some further annual reporting changes for MEPs.[8] Specifically, the annual reporting changes for 2022 being adopted in this document are revisions to Schedules MB, SB, and R and their respective instructions to improve reporting by defined benefit plans subject to Title IV of ERISA and additions to the plan characteristics codes reportable on line 8 of Form 5500 and line 9 of Form 5500–SF that require defined contribution MEPs (including PEPs) to be identified as such. No changes to the DOL's implementing regulations are required for these forms and instructions changes.

In this document, the Agencies are not adopting final annual reporting changes based on other proposals included in the September 2021 proposal because of the need to coordinate the careful consideration of public comments and other regulatory processes for adopting final changes to the Form 5500 Annual Return/Report with a separate contractual development schedule for integrating forms and instructions changes into the wholly-electronic EFAST2 filing system that receives and displays Form 5500 Annual Return/Report filings.

ERISA section 103 broadly sets out annual reporting requirements for employee benefit plans. The Form 5500 Annual Return/Report and the DOL's implementing regulations are promulgated through notice and comment rulemaking under general ERISA regulatory authority and specific ERISA provisions authorizing limited exemptions to these requirements 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 filings are also information collections for the Agencies, subject to a separate clearance process under the Paperwork Reduction Act (PRA). EFAST2, on the other hand, is operated by a private sector government contractor on behalf of the Agencies. Each year the EFAST2 system is rolled over for the coming year's annual return/report filings; for example, the system must be updated to reflect changes from the 2021 plan year return/report filings to the 2022 plan year return/report filings. That rollover process is governed by a contractual development schedule that sets deadlines designed to ensure that forms and instructions changes are smoothly integrated into the EFAST2 system and the products developed by private software developers to provide filing services to employee benefit plans. Integration of the regulatory and EFAST2 processes is less complicated in years that do not involve material changes to the forms or instructions. These processes, however, are considerably more challenging when the Agencies propose substantial changes to the forms and instructions.

As noted above, the Agencies received 114 public comments on the September 2021 proposal. The comments were from a wide range of stakeholders. Some commenters were generally supportive of the proposed changes while others objected to some aspects of the proposal. Objections include those based on an alleged lack of legal authority or conflicts with legislative intent, challenges to the value of some of the proposed information collections, and concerns about administrative costs and burdens of some of the proposed annual reporting requirements that would purportedly create disincentives for employers to establish or continue to offer employee benefit plans to their employees. Some public commenters also suggested alternative approaches for some of the proposed annual reporting changes, and a range of commenters argued for delayed applicability dates for some proposed changes if they were adopted as final revisions to the forms and instructions.

The Agencies are still evaluating public comments on elements of the September 2021 proposal not included in these final forms revisions, including DCG reporting and related audit issues,[9]

[6] The SECURE Act was enacted on December 20, 2019, as Division O of the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94).

[7] Specifically, the 2021 Final Forms Revisions adopted revisions to the instructions for the 2021 Form 5500 Annual Return/Report that: (1) Note that a pooled employer plan operated by a pooled plan provider that meets the definition under ERISA section 3(43) is a multiple-employer plan that files a single Form 5500 Annual Return/Report; (2) require defined contribution multiple-employer pension plans, including pooled employer plans, to report aggregate account balance information by employer in addition to existing ERISA section 103(g) reporting requirements on participating employer information; and (3) require ''pooled employer plans'' to indicate whether they are in compliance with the Form PR registration requirements and provide the AckID number for their latest Form PR filing.

[8] A Form 5500 Annual Return/Report for the 2022 plan year generally is not required to be filed until seven months after the end of the 2022 plan year, *e.g.,* July 31, 2023, for calendar year plans, and a 2½-month extension is available by filing IRS Form 5558, Application for Extension of Time to File Certain Employee Plan Returns, on or before the normal due date.

[9] The SECURE Act directed DOL and Treasury to develop a consolidated reporting option for certain groups of defined contribution or individual account plans. Section 202 of the SECURE Act provides that the Secretaries, shall, in cooperation, modify annual return/report so that all members of a group of defined contribution or individual account plans described in section 202(c) may file a single aggregated annual return/report satisfying the requirements of both section 6058 of the Code and section 104 of ERISA. The SECURE Act further provides that, in developing the consolidated return/report, the Secretaries may require any information regarding each plan in the group as such Secretaries determine is necessary or appropriate for the enforcement and administration of the Code and ERISA. The SECURE Act also requires that the consolidated return/report include such information as will enable participants in any

Schedule MEP and related reporting requirements regarding MEPs, financial statement improvements to the Schedule H and Schedules of Assets, changes in participant counting methodology for Independent Qualified Public Accountant (IQPA) purposes, changes regarding reporting on participating employers for MEWAs that file the Form M–1, and additional questions on pension plan compliance with certain Code requirements. These were areas in which a number of commenters suggested a delay in implementation, substantial revisions, or re-proposals. The Agencies agree that sufficient lead time for programming and systems changes, as well as time to develop contracts and other communications among plans and service providers is needed to properly implement these significant changes to annual reporting requirements. The Agencies also believe that, in light of the public comments on these aspects of the September 2021 proposal, employee benefit plan stakeholders are best served by the Agencies taking additional time to consider the range of public comments on these proposals and develop final rules that are cost-effective and improve the annual report data in a way that is protective of the retirement security interests of participants and beneficiaries. Accordingly, rather than rush consideration of issues and decision-making on these important annual reporting issues, the Agencies have decided that any changes to the Form 5500 Annual Return/Report in connection with the above listed elements of the September 2021 proposal will be addressed either in a further final forms revisions notice based on the September 2021 proposal, or re-proposed with modifications in a separate proposal that would focus on a broader range of improvements to the annual reporting requirements. As the Department noted in the September 2021 proposal, the Department added an additional regulatory project to its semi-annual agenda as part of a separate project with the IRS and PBGC to: (i) Modernize the financial and other annual reporting requirements on the Form 5500 Annual Return/Report; (ii) continue an ongoing effort to make investment and other information on the Form 5500 Annual Return/Report more data mineable; and (iii) consider potential changes to group health plan annual reporting requirements, among other improvements that would enhance the Agencies' ability to collect employee benefit plan data in a way that best meets the needs of compliance projects, programs, and activities. *See www.reginfo.gov* for more information. In the Agencies' view, this approach is the best way to allow for appropriate consideration of relevant public comments and facilitate a smooth and efficient process for integrating any new schedules or other annual reporting changes into the EFAST2 annual rollover process for Form 5500 Annual Return/Report filings.

Discussed below are final forms revisions on specific elements of the September 2021 proposal with respect to which the Agencies completed review of the public comments and reached conclusions on final forms and instructions changes in time to coordinate those changes into the EFAST2 development cycle for the 2022 plan year Form 5500 Annual Return/Report.[10]

II. 2022 Form 5500 Annual Return/Report Changes

A. Schedules MB, SB, and R—Modifications and Additions to Information Reported

As described more fully below, the Agencies are adding new questions and revising existing questions to the Form 5500 Annual Return/Report Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information), Schedule SB (Single-Employer Defined Benefit Plan Actuarial Information), and Schedule R (Retirement Plan Information), and modifying the contribution and benefit attachment requirements to enable the Agencies to more easily access defined benefit pension plans' information and project more precisely insurance programs' liabilities. For both single-employer and multiemployer defined benefit pension plans, the Agencies are providing plans with the option to provide certain required attachments in a spreadsheet file (CSV format).

1. Schedule MB Modifications

In summary, and as described in more detail below, the changes to Schedule MB and its instructions include the following: (1) Modify Schedule MB, line 3 instructions to require that additional information be included in the currently required attachment that shows the date and amount of each withdrawal liability amount paid to the plan (*i.e.,* a breakdown between lump sum amounts and amounts that are part of a schedule of periodic payments); (2) modify Schedule MB by clarifying the line 4f instructions and Schedule MB language concerning when or if plans in critical status or critical and declining status are projected to either emerge or become insolvent; (3) modify Schedule MB by adding a new requirement in a new line 6f to report information about the interest assumption used to determine the present value of vested benefits for withdrawal liability determinations; (4) modify Schedule MB for the questions related to the line 6 ''expense load'' to better align with the various ways multiemployer plans incorporate expense loads into their calculations; (5) modify Schedule MB, line 8 by requiring additional information about benefits and contributions for plans with 1,000 or more total participants at the beginning of the plan year; and (6) modify Schedule MB by changing the benefit information required to be included in the ''age/service'' scatter attachment (required for PBGC-insured multiemployer plans with active participants).

a. Line 3—Contributions Made to the Plan for the Plan Year

Currently, line 3 of Schedule MB requires that if any of the employer contributions reported in line 3 include amounts owed for withdrawal liability, an attachment must be provided listing the total withdrawal liability amounts and the dates such amounts were contributed. In the NPFR, the Agencies proposed to modify the instructions to line 3 to require that the total withdrawal liability amounts reported on the attachment be broken down between periodic withdrawal liability amounts and lump sum withdrawal liability amounts. The Agencies received several comments on proposed changes to the withdrawal liability attachment. Two commenters expressed opposite views about whether the additional information should be reported. One expressed support because the additional detail will result in more transparency. The other expressed concern because, in the commenter's opinion, that additional level of details could be misinterpreted by bankers and creditors. Because the only additional detail being added to the attachment relates to type of payment (*i.e.,* whether a payment is part of a series of periodic payments or a lump sum), the Agencies do not share that concern and are therefore requiring the breakdown, as proposed. Two commenters asked the Agencies to clarify when a withdrawal liability

plan using a consolidated return/report to identify the consolidated return/report filed with respect to their plan.

[10] Consistent with the Agencies' annual updates to the Form 5500 Annual Return/Report, the final versions of the 2022 plan year forms and instructions may include minor technical edits or corrections that do not require notice and comment under the PRA, or the APA, or review under any relevant Executive Order.

payment should be considered a periodic payment and when it should be considered a lump sum payment in situations where it is not clear which payment type applies (*e.g.,* where an employer making annual periodic payments settles the remaining obligation with a lump sum payment or makes a lump sum payment to cover delinquent periodic payments). The Agencies agree that clarification for such situations would be helpful and are revising the instructions to line 3 accordingly. One commenter noted that information about withdrawal liability payments is not maintained by a plan's actuary and requested that, rather than expanding the information that is reported on the Schedule MB attachment, all of the detailed information about withdrawal liability payments (*i.e.,* date, amount and type of payment) be reported as an attachment to a part of the Form 5500 Annual Return/Report that someone other than the actuary (*e.g.,* the plan sponsor or auditor) is responsible for completing (*e.g.,* Schedule R). The Agencies acknowledge that the plan's actuary does not have direct access to information about withdrawal liability payments but the same is true of the other information that is reported on Schedule MB (*e.g.,* date and amount of contributions) and, to date, this does not appear to have posed a problem. The Agencies continue to believe that the withdrawal liability information should be provided on an attachment to Schedule MB because Schedule MB is where information about contributions to the plan, including withdrawal liability payments, is reported. Accordingly, no changes are being made in response to this comment.

b. Line 4f—Rehabilitation Plan Projected To Emerge From Critical or Critical and Declining Status

Currently, line 4f of Schedule MB requires completion by a plan that is in critical or critical and declining status. The year the plan is projected to emerge from critical status or become insolvent is reported on Schedule MB, and an illustration of year-by-year cash flow projections is provided in a required attachment to line 4f. The Agencies' review of filers' previous responses to line 4f suggested that the instructions on how to fill out this line correctly might have been unclear to filers. In the NPFR, the Agencies proposed to modify the instructions to line 4f and to clarify the time period for the year-by-year cash flow projection and the basis for the projections. Two commenters wrote that the instructions needed further clarification, especially with respect to how the instructions describe the first and last year to be included in the projection. One of those commenters questioned whether the required projection period would necessitate doing additional projections (as opposed to reporting projections that had to be done to determine the year of emergence/insolvency). In response, the Agencies are clarifying in the final forms revisions both the time period and basis for projection in line 4f. The Agencies believe the revised instructions will make clear that the projections to be reported in the attachments are projections that have already been done.

c. Line 6—Checklist for Actuarial Assumptions

Currently, line 6 of Schedule MB is where filers provide information about the actuarial assumptions used to determine plan liabilities. The Agencies proposed in the NPFR to add a new item to line 6 (line 6f) regarding the interest rate used to determine the present value of vested benefits for withdrawal liability determinations. With respect to plans that do not use a single interest rate for this purpose, the proposed instructions required the reporting of the single equivalent interest rate that produces the same present value of vested benefits. Two commenters expressed concerns about the extra work it would take to determine the single equivalent interest rate noted above. The same commenters also requested clarification as to which withdrawal liability calculations should be considered when determining the equivalent single interest rate that produced the same result (*i.e.,* is it based on when the withdrawal liability amount is assessed or when the employer withdrew). In response, the Agencies are revising this question and instructions in these final forms revisions. As revised, the instructions provide that the filer will check a box in a new line, 6f(1), to report whether the interest assumption for this purpose is a single interest rate, ERISA section 4044 interest rates, or something else (*i.e.,* ''Other''). If the ''single rate'' box is checked, the single interest rate is reported in a new line, 6f(2). If the ''Other'' box is checked, the filer must provide an attachment describing the interest rate assumption. Lastly, if this question doesn't apply (*i.e.,* if no employers withdrew and were assessed withdrawal liability during the plan year), the filer will check an ''N/A'' box. One of the commenters asked whether the definition of ''withdrawal'' is limited to complete withdrawals (*i.e.,* whether amounts assessed with respect to partial withdrawals are included when determining the single rate that produced the same result). That commenter noted that in Schedule R the definition of withdrawal is limited to complete withdrawals, but that it is not clear that that this definition carries over to Schedule MB. In response, PBGC has clarified the instructions accordingly.

In addition, the Agencies proposed to modify the questions related to the line 6 ''expense load'' to better align with the various ways multiemployer plans incorporate expense loads into their calculations. Filers would be required to indicate if an expense load is included in normal cost and, if so, whether it is determined as a percentage of normal cost, a dollar amount that varies from year to year, or something else. In addition, the Agencies proposed moving the expense load item from line 6e to a new line 6i and the salary scale item from 6f to 6e and revising the instructions accordingly so that the expense load assumptions that may differ between pre-retirement and post-retirement are grouped together. No revisions are being made to these proposed changes.

d. Line 8—Miscellaneous Information

Currently, line 8 of Schedule MB requires filers to report miscellaneous information about demographics, benefits, and contributions. The Agencies proposed in the NPFR to modify line 8 by requiring additional information about demographics, benefits, and contributions, as described below. After considering the public comments, the Agencies have decided to adopt the changes to line 8 described below. As is currently required under line 8, the additional requirements would apply only to PBGC-insured multiemployer plans with 500 or more total participants as of the beginning of the plan year.

• *Benefit Projections*—Currently, plans are required to attach a projection of benefits expected to be paid in each of the next ten years (see line 8b(1)).[11] The Agencies proposed in the NPFR to modify the format of the attachment to show the benefit projection broken down into three categories based on the participant's or beneficiary's status on

[11] The current instructions provide that the line 8b(1) attachment is required for plans with 500 or more participants as of the valuation date, not as of the beginning of the plan year. The Agencies proposed changing that to ''the beginning of the plan year'' because the only participant count reported on Schedule MB is the count at the beginning of the plan year (*i.e.,* line 2b(3)(c), column 1) and because doing so is consistent with another Schedule MB requirement, See instructions for line 8b(2).

the valuation date (*i.e.,* active, terminated vested, or in pay status). In addition, the projection period was extended from 10 to 50 years. Three commenters stated that the line 8b(1) proposal would be costly and burdensome. These commenters also stated that the projection would unlikely produce meaningful, reliable, and useful information because future benefit accruals are not reflected. The Agencies are not persuaded that this change to line 8 would be unduly costly or burdensome. Rather, as noted in the NPFR, based on the Agencies' experience with the valuation software generally in use by affected DB pension plans, the incremental cost of expanding a projection from 10 to 50 years is nominal. In addition, the Agencies paired these line 8 changes with a provision that allows filers to attach a spreadsheet file (CSV format) instead of a PDF file. The ability to use generally available spreadsheet software to produce the required data will allow the Agencies to more easily access defined benefit plans' information and to project more precisely insurance programs' liabilities. However, after considering the comments received, the Agencies decided to reduce the number of plans required to provide the benefit projection attachment (from plans with 500 or more participants to plans with 1,000 or more participants).[12] Also, although a projection may provide more meaningful results if additional accruals were reflected and/or if the projection were done stochastically, the Agencies did not add such a requirement or requirements as part of these final forms revisions because of the potentially more significant compliance costs involved. The Agencies believe that by increasing the projection period from 10 to 50 years, this will provide valuable information and enable the Agencies to better estimate anticipated future benefit payments from pension plans.

• *Contribution Projections*—The Agencies also proposed in the NPFR to add a new requirement that plans provide, as an attachment, a 10-year projection of employer contributions and withdrawal liability payments. A new line, line 8b(3), would be added to Schedule MB where the filer would report whether the projection is required. As is the case with the benefit projection attachments, the instructions would provide the required format for the attachment. In addition, although the Agencies did not receive any substantive comments concerning this new requirement, to be consistent with the modification to line 8b(1) noted above, the final forms revisions provides that this 10-year projection of employer contributions and withdrawal liability payments is required only for plans with 1,000 or more participants as of the beginning of the plan year.

• *Average age/benefit*—The Agencies additionally proposed in the NPFR to require plans to report the average age and average monthly benefit separately for (1) terminated vested participants and (2) retired participants and beneficiaries receiving payments. Under the proposal, this information would be provided directly on Schedule MB, in new line 8b(4). Two commenters provided comments on the new line 8b(4) requirement. Although one supported the proposal, the other commented that the additional data was both unnecessary and costly. In an effort to minimize the burden on plans, the Agencies have decided not to move forward with this part of the proposal. Accordingly, this final forms revision does not include a new line 8b(4).

• *Age/service scatter*—The Agencies proposed in the NPFR a change to the existing ''age/service'' attachment for line 8b(2), which is required for PBGC-insured multiemployer plans with active participants, regardless of the number of participants. Currently, the scatter shows, for each ''attained age'' and ''years of credited service'' grouping of active participants, the number of active participants, and, if the total number of active participants at the beginning of the plan year is 1,000 or more, (1) for plans that use compensation to determine benefits, the average compensation, and (2) for cash balance plans, the average cash balance account (see line 8b(2)). These latter two requirements do not apply for any age/service grouping of fewer than 20 participants. Because there are few, if any, multiemployer cash balance plans, the Agencies proposed modifying the additional reporting requirement for multiemployer plans with 1,000 or more active participants by replacing the required information related to cash balance plans with a requirement to report average accrued monthly benefits as of the valuation date for each grouping. Two commenters provided comments on the proposed change to the age/service scatter. One suggested that the Schedule MB instructions be modified to specify that plans that do not use compensation to determine benefits should enter ''N/A'' in each age/service grouping. The Agencies do not believe such modification is needed because the existing instructions for line 8b(2) state that only plans ''using compensation to determine benefits'' need to provide average compensation data. There is no need to enter ''N/A'' because it is implied. The other commenter asked whether the cash balance information will also be removed from the Schedule SB (for single-employer plans). The Agencies believe that it was clear from the NPFR that no changes were proposed with respect to the age/service scatter on Schedule SB (for single-employer plans).

2. Modifications to Schedule SB

In the NPFR, the Agencies proposed adding two new reporting requirements for PBGC-insured single-employer plans with 500 or more total participants to better align requirements for single-employer defined benefit plans with the more detailed requirements for PBGC-insured multiemployer plans. The new reporting requirements proposed in the NPFR were:

• A 50-year benefit payment projection broken down into three categories based on the participant's or beneficiary's status on the valuation date (*i.e.,* active, terminated vested, in pay status), and

• The average age and average monthly benefit separately for (1) terminated vested participants and (2) retired participants and beneficiaries receiving payments (similar to the information required to be reported in line 8b(4) of Schedule MB).

For the most part, the Agencies proposed that these two new reporting requirements would be similar to the Schedule MB requirements for multiemployer plans (lines 8b(1) and 8b(4), respectively). However, because the only participant count information for single-employer plans on Schedule SB is as of the valuation date, to determine whether a plan has 500 or more participants (and is thus required to provide information for these two new reporting requirements) the Agencies proposed that participants be counted as of the valuation date instead of as of the beginning of the plan year (the ''count'' date for multiemployer plans). To facilitate these changes, the Agencies proposed rearranging Schedule SB line 26. Currently, line 26 relates only to the ''age/service'' scatter of active participant data required to be attached to Schedule SB for single-employer plans covered by Title IV of ERISA with active participants. The Agencies proposed changing line 26 into a three-part question (26a, 26b, and 26c). Current line 26 would become new line 26a. The benefit projection question would become new line 26b, and the

[12] In addition, the Agencies added the 50-year benefit projection attachment to Schedule SB (for single-employer plans).

average age/benefit question would become new line 26c.

The Agencies received several comments about the benefit projection attachment. One commenter supported the change. Two commenters expressed concern that the benefit projection attachment would impose substantial additional costs and burdens on plans without any apparent benefit. As discussed above in the Agencies' responses to comments received on Schedule MB and in the NPFR, it is the Agencies' understanding that these projections are done as part of the valuation, so the only additional work would be to capture those projected amounts in an accessible or downloadable file. Accordingly, we are not convinced that the additional burden is significant. However, after considering the comments received, the Agencies have decided to reduce the number of plans required to provide the benefit projection attachment from plans with 500 or more participants to plans with 1,000 or more participants. In addition, and consistent with the Schedule MB change from the proposal with respect to multiemployer plans, the Agencies are not moving forward with the proposal to require reporting average age and benefit information for retirees and terminated vested participants (*i.e.,* there will not be a new line 26c(2)).

One commenter expressed concern about the application of line 26b to MEPs because they believe attaching a benefit projection would impose substantial additional costs and burden without any apparent benefit. The same commenter requested that, at a minimum, cooperative and small employer charity (CSEC) pension plans (almost all of which are MEPs) be exempt from this requirement. The Agencies see no compelling reason to treat PBGC-insured MEPs differently from other single-employer plans with respect to this requirement. However, it should be noted that it was never the intent to have CSEC plans provide this information. The current instructions state that CSEC plans are not required to complete Part VI—Miscellaneous Items (the section which includes line 26). As noted above, the proposal called for breaking down line 26 into new lines 26a, 26b, and 26c. Since all three of those lines are part of line 26 (and in Part VI), the proposal exempted CSEC plans from the proposed new reporting requirements.

The Agencies received one comment on line 26c(2) to clarify what should be shown as the average benefit for terminated vested participants in cash balance plans. As noted above, the Agencies have decided not to move forward with that part of the proposal (*i.e.,* line 26c(2) will not be added to the Schedule SB). Accordingly, the question asked by the commenter is moot.

Finally, the Agencies proposed modifying Part IX of Schedule SB, and its instructions, so that it relates to elective amortization funding relief provided under the American Rescue Plan (ARP) Act of 2021 instead of elective funding relief provided under the Pension Relief Act of 2010 (PRA 2010). The NPFR explained that the PRA 2010 information is no longer needed because ARP reduces to zero all shortfall amortization bases, including amortization bases established pursuant to the PRA 2010 elective funding relief. As modified, plan sponsors of single-employer defined benefit plans that elect to have the ARP extended amortization rule apply before the 2022 plan year would be required to report the first plan year to which the extended amortization rule applies. The proposal would require such a plan to check a box to indicate the first plan year for which the plan elected to have ARP amortization funding relief. One commenter opposed the change as unnecessary because Schedule SB attachments would indicate when an election was made. The Agencies agree that they could obtain this information from attachments, but information reported on attachments cannot be accessed electronically. In addition, because this is only a check box for which the answer will not change from year-to-year, there is virtually no burden associated with it. Accordingly, the Agencies are adopting this requirement as part of the final forms revisions.

3. Modification to Schedule R Reporting Requirement

Currently, Schedule R's Part V, line 13 requirement requires multiemployer defined benefit pension plans subject to minimum funding standards to report identifying information about any participating employer whose contributions to the plan account for more than five percent of the total contributions for the year. The NPFR proposed to change this requirement to require plans to report identifying information about any participating employer that either (1) contributed more than five percent of the plan's total contributions or (2) was one of the top ten highest contributors. The Agencies received no comments on this proposal and have incorporated this modification in the final forms revisions.

4. Change in Format for Certain Schedule MB and SB Attachments

EFAST2 filers currently file Form 5500 Annual Return/Report attachments as PDF and plain text (TXT) files. A PDF file is required only if the attachment must be signed. TXT attachments are rarely provided. Many attachments include a lot of numbers (*e.g.,* benefit projections, age/service scatters) that are reported in tables. These numbers have to be extracted out of PDF tables and entered into databases or spreadsheets before the Agencies can use the information for various projects, studies, etc. This is costly and inefficient. In the NPFR, the Agencies proposed to modify the instructions to allow and suggest (but not require) that certain attachments be provided in a spreadsheet file (such as CSV format), rather than PDF or TXT formats. The Agencies did not receive any comments on this proposed modification of the instructions and have incorporated this change in the final forms revisions.

Thus, the instructions for the Schedules MB and SB are being modified to permit (but not require) certain attachments to Schedule MB and SB to be provided in a spreadsheet file (CSV format) rather than PDF or TXT formats. The following chart lists the Schedule MB and Schedule SB attachments that are affected by the formatting change:

Attachment	Schedule MB	Schedule SB
Schedule of Projection of Expected Benefit Payments	Line 8b(1)	Line 26b.
Schedule of Active Participant Data (*i.e.,* Age/service scatter)	Line 8b(2)	Line 26a.
Withdrawal Liability Amounts	Line 3	N/A.
Schedule of Projection of Employer Contributions and Withdrawal Liability	Line 8b(3)	N/A.

B. Reporting Changes for Multiple-Employer Plans

The final forms revisions include a limited number of changes to the instructions for the Form 5500 Annual Return/Report that are intended to clarify and improve annual reporting for ERISA-covered defined contribution MEPs, including those that meet the definition of ''pooled employer plan.'' New plan characteristics codes are being added to the Form 5500 and Form 5500–SF instructions for filers to use to identify different types of defined contribution MEPs on Form 5500 and Form 5500–SF, Part II, lines 8 and 9, respectively. The Form 5500 and Form 5500–SF instructions are also being updated to clarify which entities should report as plan sponsors on line 2a and as plan administrators on line 3a, with respect to certain types of defined contribution MEPs. For 2022 filings, these revisions include other minor amplifying and clarifying changes to instructions for 2022 forms.

With respect to the new plan characteristics codes, the final forms revisions add new defined contribution MEP characteristics codes for the List of Plan Characteristics Codes for Form 5500 and Form 5500–SF, Part II, lines 8 and 9, respectively. The addition of identifying codes will help the Agencies, participants and beneficiaries, and the public identify and distinguish between different types of defined contribution MEPs, including new plan types like PEPs and existing plan types like association retirement plans and professional employer organization MEPs. The new defined contribution pension feature codes are:

- For both Form 5500 and Form 5500–SF—Code 2U—Multiple-employer pension plan sponsored by a bona fide group or association of employers that is an Association Retirement Plan that meets all the conditions under 29 CFR 2510.3–55(b).
- For both Form 5500 and Form 5500–SF—Code 2V—Multiple-employer pension plan that is a Professional Employer Organization Plan (PEO Plan) that meets all the conditions under 29 CFR 2510.3–55(c).
- For Form 5500 Only—Code 2W—Multiple-employer pension plan that is a pooled employer plan that meets the definition under ERISA section 3(43).[13]
- For both Form 5500 and Form 5500–SF—Code 2X—Multiple-employer defined contribution pension plan that does not fall under characteristics code 2U, 2V or 2W (Form 5500) or, for Form 5500–SF, is eligible to file the Form 5500–SF and does not fall under characteristics code 2U or 2V (Form 5500–SF).

Thus, for both Form 5500 and Form 5500–SF, a filer would enter Code 2U for a defined contribution MEP that is an Association Retirement Plan under applicable conditions in 29 CFR 2510.3–55(b). For both Form 5500 and Form 5500–SF, a filer would enter Code 2V for a defined contribution MEP that is a PEO Plan under applicable conditions in 29 CFR 29 CFR 2510.3–55(c). For the Form 5500, a filer would enter Code 2W for a defined contribution MEP that is a pooled employer plan as defined in ERISA section 3(43). All other defined contribution MEPs would enter Code 2X on their Form 5500 and Form 5500–SF filing as applicable. Note that Code 2W is being added to the Form 5500 instructions but was intentionally skipped in the Form 5500–SF instructions because PEPs are not eligible to file the Form 5500–SF and, therefore, Code 2W is not an eligible code for Form 5500–SF filers.

One of the several commenters expressing broad support for the part of the Agencies' proposal dealing specifically with MEP reporting provided a number of more specific comments. First, the commenter observed that while the pooling of employers and capital in the provision of retirement benefits has the potential to improve access to workplace retirement plans in the United States, multiple-employer plans raise novel governance and oversight challenges. The commenter specifically noted that the lack of an identifier for particular kinds of multiple-employer plans hampers comparisons across plan types, especially those relating to fees. That commenter also pointed out that the Agencies' September 2021 proposal would have filers specifically identify different types of MEPs: Association retirement plans within the meaning of 29 CFR 2510.3–55(b); PEO Plans within the meaning of 29 CFR 2510.3–55(c); PEPs within the meaning of ERISA Section 3(43); and other MEPs covering the employees of two or more employers that are not single or multiemployer plans for annual reporting purposes. In that regard, the commenter cited as a key benefit of the proposal an ability to systematically track and evaluate the new plan types that have been established in recent years. As noted above, however, there were a range of other commenters who objected to parts of proposed Schedule MEP or otherwise raised concerns with the proposal's new requirements for MEP reporting. These commenters generally focused their concerns on Parts II and III of the proposed Schedule MEP, and their comments largely related to requesting delay, removal, and reconsideration, rather than opposing providing identifying information proposed on Part I.

Although finalizing proposed Schedule MEP would provide more public information and provide more information in a more usable data capturable form and serve the interests of users of Form 5500 Annual Return/Report data, including the DOL, IRS, PBGC, other Federal agencies, Congress, and the private sector that use the Form 5500 Annual Return/Report as an important source of information and data in assessing employee benefit, tax, and economic trends and policies,[14] as discussed above, the Agencies have concluded that more time should be spent considering issues and alternatives presented by the public comments before deciding whether and, if so, how to finalize the proposed Schedule MEP as a vehicle for annual reporting of information on MEPs. The Agencies believe, nonetheless, that MEPs, especially defined contribution MEPs such as PEPs and PEOs, can present added complexity and related challenges to the Agencies when performing oversight and enforcement functions, and that participants and beneficiaries of such plans should be able to easily find and identify Form 5500 Annual Return/Report information for MEPs providing them with employee benefits, including those that may be sponsored by PEOs. The Agencies also believe that the information proposed for Part I of Schedule MEP is important for tracking and evaluating new MEP types, and for providing needed transparency for participants and beneficiaries of MEPs, and that such disclosures should be made for existing MEPs and newly established type of plans like PEPs. The Agencies also

[13] 29 U.S.C. 1002(43). The term pooled employer plan does not include a multiemployer plan as defined in ERISA section 3(37) and also does not include a plan established before the date the SECURE Act was enacted unless the plan administrator elects to have the plan treated as a pooled employer plan and the plan meets the ERISA requirements applicable to a pooled employer plan established on or after such date. It also does not include a plan maintained by employers that have a common interest other than having adopted the plan.

[14] 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).

concluded that much of the information proposed for Part I of the proposed Schedule MEP could be added with very limited changes to the forms or instructions. Accordingly, in light of the importance of MEP identifying information, the limited changes to the instructions involved for EFAST2 development purposes, and the relatively small burden of the additional information collection, the Agencies decided to make the above-described changes to the Form 5500 Annual Return/Report so that better and more useable identifying information on MEPs is collected beginning with the 2022 plan year forms. These changes also will help supplement the MEP reporting changes adopted beginning with the 2021 plan year forms.[15]

In addition to adding plan characteristics codes that identify MEP types, to address commenter concerns regarding how PEO plans should file, the instructions also contain clarifying additions to Part II of Form 5500 and Form 5500–SF that collect plan sponsor and plan administrator information. First, for Form 5500, the instructions for line 2a are revised so that the instructions for identifying the ''plan sponsor'' include instructions specifically for PEPs and PEO plans.[16] The instructions for Form 5500, line 3a are similarly revised so that the term ''plan administrator'' includes the above two additional types of plans, and references to the above definitions.[17] For Form 5500–SF, a parallel corresponding change has been made to instructions on identifying the ''plan sponsor'' and ''plan administrator'' for lines 2a and 3a, respectively, for PEO MEPs. Since PEPs are not permitted to file Form 5500–SF, no corresponding change to the instructions is made for PEPs. Other minor clarifying and conforming edits are made to instructions for lines 2a and 3a of both forms.

III. Regulatory Impact Analysis

The following is a discussion of the examination of the effects of this rule as required by Executive Order 12866,[18] Executive Order 13563,[19] the Paperwork Reduction Act of 1995,[20] the Regulatory Flexibility Act,[21] section 202 of the Unfunded Mandates Reform Act of 1995,[22] Executive Order 13132,[23] and the Congressional Review Act.[24] For the Department of Labor, the annual report form is a creature of rulemaking under ERISA sections 104 and 110. As such, form and instruction changes can involve both rulemaking under the Administrative Procedure Act and other rulemaking standards as well as approval under the Paperwork Reduction Act of changes to the form and instructions as an information collection. This tri-agency document is intended to constitute the regulatory impact analysis and Paperwork Reduction Act statement for DOL and a Paperwork Reduction Act statement for IRS and PBGC.[25]

A. Executive Orders 12866 and 13563

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 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).[26] 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 Agencies have provided an assessment of the potential costs, benefits, and transfers associated with the final forms revisions. In accordance with the provisions of Executive Order 12866, the final forms revisions were reviewed by OMB. Pursuant to the Congressional Review Act, OMB has designated the final forms revisions as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

1. 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, these final forms revisions are making limited changes that would apply

[15] See footnote 7, supra, for a description of those changes.

[16] ERISA Section 3(16)(B) provides that the term ''plan sponsor'' means—(i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of an employee benefit plan established or maintained by an employee organization, or (ii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or similar group of representatives of the parties who establish or maintain the plan.

[17] ERISA Section 3(16)(A) provides that the term ''plan administrator'' means—(i) the person specifically so designated by the terms of the instrument under which the plan is operated; (ii) if an administrator is not so designated, the plan sponsor; or (iii) in the case of a plan for which an administrator is not designated and a plan sponsor cannot be identified, such other person as the Secretary may be regulation prescribe.

[18] Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

[19] Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 18, 2011).

[20] 44 U.S.C. 3506(c)(2)(A) (1995).

[21] 5 U.S.C. 601 *et seq.* (1980).

[22] 2 U.S.C. 1501 *et seq.* (1995).

[23] Federalism, 64 FR. 153 (Aug. 4, 1999).

[24] 5 U.S.C. 804(2) (1996).

[25] The regulatory impact analysis in various places refers to ''Agencies'' because the underlying decisions regarding the form and instructions generally are collective decisions of the DOL, IRS, and PBGC, but they should not be read as indications that the IRS and PBGC changes are subject to rulemaking processes, including Executive Orders 12866 and 13563.

[26] Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

beginning with the 2022 Form 5500 Annual Report/Return with most changes focused on defined benefit plans and some improvements to MEP reporting. The annual reporting changes are revisions to Schedules MB, SB, and R, and to the respective instructions, that are designed to improve reporting by defined benefit plans subject to Title IV of ERISA, and to the Form 5500 and Form 5500–SF instructions that further implement section 101 of the SECURE Act in ways that expand and improve transparency of MEP reporting, including for pooled employer plans.

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 to accurately project defined benefit pension plan and PBGC insurance program liabilities. The PBGC's 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. In 2019 PBGC estimated there were 23,694 single employer defined benefit plans and 1,375 multiemployer defined benefit plans that are covered by the PBGC and would be impacted by these changes.[27]

MEP Reporting Improvements Additions: The final forms revisions include new plan characteristics codes to identify pooled employer plans, association retirement plans, and PEO plans, along with a residual category code for all other defined contribution MEPs. These changes are designed to continue SECURE Act section 101 implementation by clarifying and further improving previous MEP reporting changes.

2. Affected Entities

The Agencies use historical filings of the Form 5500 to estimate affected entities. As discussed below, there have been several changes by statute and regulation that have created new types of MEPs. This analysis uses as its base the 2019 Form 5500 filings then estimates potential changes to the number of filers due to SECURE Act amendments creating pooled employer plans. As a result, there is uncertainty regarding the Agencies' ability to measure costs and benefits that may result from the final forms revisions. The Agencies nonetheless are presenting below an overview of potentially affected entities and an approach to evaluating the possible impact of the final forms revisions.

Defined Contribution Pension Plans: In 2019, there were 686,809 defined contribution plans with 109.1 million total participants and 85.5 million active participants. Plans with fewer than 100 total participants (small plans) account for 87.4 percent of plans.[28]

Defined Benefit Pension Plans: In 2019, there were 46,870 defined benefit plans with 32.8 million total participants and 12.6 million active participants. There were 45,302 single-employer defined benefit plans and 1,366 multiemployer defined benefit plans.[29]

Multiple-Employer Pension Plans (MEP): 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.[30] In 2019, there were 4,741 MEPs filing a Form 5500, 202 of which were defined benefit pension plans and 4,538 were defined contribution pension plans. There were 7.5 million participants reported as covered by these plans.[31]

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 in 29 CFR 2510.3–55(b). The Agencies do 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. These final regulations add a new code to identify association retirement plans.

Professional Employer Organizations (PEOs) Plan: A PEO MEP is a defined contribution MEP 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.[32] The Agencies do 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 instead assume a substantial percentage of PEOs do sponsor MEPs, including defined contribution MEPs. These final regulations add a new code to identify PEO 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'' sponsored by a ''pooled plan provider.'' In its 2020 final rule on Registration Requirements for Pooled Plan Providers, the Agencies 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.[33] Approximately 71 pooled plan providers have filed with the DOL an initial Form PR Pooled Plan Provider Registration (Form PR) and reported to service at least one pooled employer plan.[34] With these records the Agencies have estimated there will be, on average, approximately 2.85 pooled employer plans per registered pooled plan provider. Therefore, the Agencies estimate a total 202 pooled employer plans will file the Form 5500 in 2022 for their 2021 reporting year.[35] The final forms revisions add a new code to identify pooled employer plans.

[27] Due to differing methodologies between Agencies such as weightings factors for delinquent filers and how plans currently receiving financial assistance are counted, the EBSA and PBGC estimates for the ME universe differ slightly. For purposes of this analysis EBSA is using their estimate of 1,366. PGBC 2019 Pension Insurance Data Tables. *https://www.pbgc.gov/sites/default/files/2019_pension_data_tables.pdf.*

[28] Employee Benefits Security Administration. ''Private Pension Plan Bulletin, Abstract of 2019 Form 5500 Annual Report.'' (2021). The 2019 Form 5500 data set is the most recent available because Form 5500 filings for the 2019 reporting year generally are not required to be filed for calendar year plans until July through October of 2020, and the deadline for fiscal year plans may extend well into 2021. The User Guide for the 2019 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-2019.pdf* (Accessed February 9, 2022).

[29] *Id.*

[30] *See, e.g.,* 2020 Form 5500 instructions at 14.

[31] Employee Benefits Security Administration. ''Private Pension Plan Bulletin, Abstract of 2018 Form 5500 Annual Reports.'' (June 2020).

[32] 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.*)

[33] 85 FR 72934, 72949 (Nov. 16, 2016).

[34] Department of Labor. Form PR. *https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-pr.*

[35] The estimated total number of pooled employer plans is calculated as follows: 2.85 pooled employer plans (average per provider) * 71 registered pooled plan providers = 202 pooled employer plans in total (rounded).

The Agencies do 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. 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. The Agencies 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 that there are a variety of approaches in how pooled employer plans are offered, and a variation in the number of employers that have joined a pooled employer plan.

Although the Agencies do not know for certain how many plans would decide to offer benefits through a pooled employer plan, the Agencies believe 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 Agencies 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 Agencies use these averages to inform the estimate of the average number of participating plans in a pooled employer plan. The final estimate does take into account one pooled plan provider registrant that has already listed 2,000 participating employers. It is estimated that a total of 3,369 small employers (*i.e.,* under 100 plan participants) and 842 large employers would seek to provide benefits as participating employers in pooled employer plans.[36] The Agencies assume this would result in a direct decrease of defined contribution Form 5500–SF filers and a decrease of defined contribution Form 5500 filers, and a total reduction of filers from 843,662 to 839,728 filers. Such a reduction in filers would be partially offset by an increase in pooled employer plan filings. In the proposed rule, the Agencies requested comments regarding the number of employers that have already joined a pooled employer plan; however, no comments were received that helped the Agencies revise the estimates of the number of filers.

3. Benefits

Defined Benefit Plan/Title IV Questions for the 2022 Form 5500s: The 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 research and better protect plan participants and beneficiaries.

Schedule MB collects actuarial information on multiemployer defined benefit plans and certain money purchase plans. Based on reviewing previously filed Schedules MB responses to line 4f, it appears to the Agencies that the instructions may be unclear as to how to fill out line 4f of Schedule MB correctly. Clarification of the line 4f instructions and line language is intended to provide more consistent and correct responses. Revisions to line 6 and clarification of the expense load percentage calculation is intended to allow the Agencies to easily identify the expense load and more accurately project plan liabilities. The changes to line 6 will provide greater transparency in the actuarial status and the actuarial assumptions of the plans. The expansion of line 8b to require additional projected benefit payment and employer contribution information will allow the Agencies to collect more information to more precisely project defined benefit pension plans' and insurance programs' liabilities.

Schedule SB collects actuarial information on single-employer defined benefit plans. The expansion of line 26 to require additional projected benefit payment information and the change to Part IX will allow the Agencies to collect more information to more precisely project defined benefit pension plans' and insurance programs' liabilities. It also aligns the filing requirements for single-employer defined benefit plans with the more detailed requirements for PBGC-insured multiemployer plans resulting from the modification of line 8 on the schedule MB.

Schedule R collects information on retirement plans. Previously, multiemployer defined benefit pension plans were required to report identifying information for each employer that contributed more than five percent of total contributions to the plan during the plan year. The final forms revisions, instead, requires 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 will provide greater transparency as related to concentrations of potential risk within participating employers.

The final forms revisions also make 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 spreadsheet files (such as CSV formats). 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. The Agencies expect this option may simplify the process for preparing and filing attachments.

Multiple-Employer Pension Plan Reporting Improvements: The final forms revisions add new plan characteristics codes to identify pooled employer plans, association retirement plans, and PEO plans, along with a residual category for all other defined contribution MEPs. This information 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 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

[36] 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 201 pooled employer plans assumed to be created. It is also assumed that each one of these other 201 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 + (201*11*0.8) = 3,369 (rounded). Similarly, the total number of large participating plans is calculated as 400 + (201*11*0.2) =842 (rounded).

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 to 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 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 Agencies 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.[37] 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.[38] Specifically, the study finds that a MEP with $125 million and 80 participating companies cost 78 basis points, whereas 80 single-employer plan each with $1.5 million in assets would have an estimated cost of 111 basis points per plan. 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.[39] 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.

4. Costs

The Agencies anticipate that the costs for plans to satisfy their annual reporting obligations would on average stay the same for most plans and increase slightly for some under the final forms revisions relative to the current regime.[40] The Agencies estimate that the final forms revisions would impose an additional annual burden of $5.0 million with most costs falling on 25,069 defined benefit plan filers.

Defined Benefit Plan/Title IV Questions for the 2022 Form 5500s: The final forms revisions include changes related to reporting requirements for defined benefit pensions subject to filing Schedules MB, SB, and R. The Agencies believe the changes and additional questions reflect information plans should know and expect that reporting this information would result in a de minimis increase in burden.

Based on the changes that will be effective beginning with the 2022 Schedules SB, MB and R, and the relevant comments for each, the Agencies believes that the implementation of the changes by plans will be the only measurable change and the aggregate change is de minimis. The opinion is founded on the idea that the changes can be described by one or more of the following; (1) The change replaces an existing data element for a new element or set of elements that are assumed to be at hand for plans, (2) changes to reporting thresholds based on plan size reduce the number of plans required to respond and this change offsets any potential additional burden incurred by plans still required to report[41] and (3) the changes are benign and meant to clarify or simplify reporting. Therefore, the Agencies include 2 hours for plan administrators to prepare for the reporting changes in plan year 2022 and assume there to be no ongoing additional burden from the changes in subsequent years. This results in a one-time cost of $5.0 million for the 25,069 defined benefit plan filers.

Multiple-Employer Pension Plan (MEP) Reporting Improvements: New to the 2022 plan year forms are four new plan characteristics codes to identify different types of defined contribution MEPs: (a) Pooled employer plans, (b) association retirement plans, and (c) PEO plans, along with a residual category (d) for all other defined contribution MEPs. Plans already report characteristics codes and the inclusion of these additional codes for these recently added plan types does not increase the estimated plan reporting burden for these plans.

5. Uncertainty

The SECURE Act created pooled employer plans. Due to these final 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 Agencies assume 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

[37] 85 FR at 72949–72950.

[38] Szapiro, Aron, ''Pooled Employer Plans: Paperwork or Panacea.'' Accessible at *https://www.morningstar.com/lp/paperwork_or_panacea.*

[39] 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.* (Accessed July 21, 2021.))

[40] The Agencies believe 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.

[41] Using data from the 2019 PBGC Data Tables table S–31 and M–6, EBSA calculates that the change in size threshold will half the number of PBGC insured Single-employer (SE) plans required to provide information (where applicable) from 19.2 percent (4,511 plans) to 10 percent (2,343 plans) of the plan universe (23,477 plans) in plan year 2020. The PBGC insured multiemployer universe reporting falls as well, from 79.7 percent (1,091 plans) to 62.1 percent (850 plans) of the plan universe (1,369 plans). *https://www.pbgc.gov/sites/default/files/2019-pension-data-tables.xlsx.*

file and there is a way to identify them, the Agencies face significant uncertainty about the number of each type of entity and whether they are 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.

The Agencies requested information during the proposed rule stage that would help improve its estimates of the numbers of affected entities, employers and the burdens they would experience, but did not receive comments that would help improve its estimates.

6. Alternatives

As discussed earlier in the preamble, the Agencies considered alternative approaches for some of the information required to be reported in order to reduce possible burden, including:

In the NPFR, line 8b(3) of Schedule MB and line 26b of Schedule SB were proposed to be applicable to plans with 500 or more participants. After receiving comments on the proposed changes, the Agencies decided to revise this requirement for these lines and also for line 8b(1) of Schedule MB so the requirement would only be applicable to plans with 1,000 or more participants, hence reducing the number of plans required to provide attachments. In the NPFR, line 8b(4) of Schedule MB and line 26(c) of Schedule SB were proposed to require plans to provide the average age and average benefit for terminated vested participants and participants in pay-status. After receiving comments on the proposed changes, the Agencies decided to not include these provisions in the final rule.

The Agencies also considered finalizing the Schedule MEP but as discussed above, the Agencies decided not to finalize the Schedule MEP in the final forms revisions because of the need to carefully consider the public comments, allow sufficient lead time for programming and systems changes, as well as time to develop contracts and other communications among the plans and their service providers, done in conjunction with a separate contractual development schedule for integrating form and instruction changes into the EFAST2 wholly-electronic filing system that receives and displays Forms 5500 series annual returns/reports.

B. Paperwork Reduction Act Statement

In accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), the Agencies solicited comments concerning the information collection request (ICR) included in the revision of the Form 5500 Annual Return/Report. At the same time, the Agencies also submitted an information collection request (ICR) to the Office of Management and Budget (OMB), in accordance with 44 U.S.C. 3507(d).

The Agencies did not receive comments that specifically addressed the paperwork burden analysis of the information collection requirement contained in the proposed rule.

In connection with publication of the final forms revision, the Agencies are submitting an ICR to OMB requesting a revision of the collection of information under OMB Control Number 1210–0110 reflecting the instruction changes being finalized in this document. The Agencies will notify the public when OMB approves the ICR.

A copy of the ICR may be obtained by contacting the PRA addressee shown below or at *www.RegInfo.gov*. PRA ADDRESSEE: Address requests for copies of the ICRs to James Butikofer, Office of Research and Analysis, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N–5655, Washington, DC 20210 or email: *ebsa.opr@dol.gov*. ICRs submitted to OMB also are available at *http://www.RegInfo.gov*.

The burden analysis is based on data from the 2019 Form 5500 filings (the latest year for which complete data are available). The burden analysis includes the burden of the current information collection and adjusts it for changes made by the final forms revisions.

Burden estimates take into account the change in plan counts due to the creation of pooled employer plans, with an increase in MEPs and a small decrease in single employer plans, reflecting some single employer plans moving to pooled employer plans. The Agencies estimated that there are 4,538 defined contribution MEPs and that 202 PEPs will be formed. The burden also includes the additional burden from the changes to the 2022 Form 5500 and related schedules.

The Agencies' burden estimation methodology excludes certain activities from the calculation of ''burden.'' If the activity is performed for any reason other than compliance with the applicable Federal tax administration system or the Title I annual reporting requirements, it was not counted as part of the paperwork burden. For example, most businesses or financial entities maintain, in the ordinary course of business, detailed accounts of assets and liabilities, and income and expenses for the purposes of operating the business or entity. These recordkeeping activities were not included in the calculation of burden because prudent business or financial entities normally have that information available for reasons other than Federal tax or Title I annual reporting. Only time for gathering and processing information associated with the tax return/annual reporting systems, and learning about the law, was included. In addition, an activity is counted as a burden only once if performed for both tax and Title I purposes. The Agencies also have designed the instruction package for the Form 5500 Annual Return/Report so that filers generally will be able to complete the Form 5500 Annual Return/Report by reading the instructions without needing to refer to the statutes or regulations. The Agencies, therefore, have considered in their PRA calculations the burden of reading the instructions and find there is no recordkeeping burden attributable to the Form 5500 Annual Return/Report.

Note that to reflect OMB's preference that burden incurred by service providers be reported as hour burden instead of cost burden, burden that has historically been included as cost burden has been included here as hour burden.

A summary of paperwork burden estimates follows. As noted above, these estimates include the burden of the overall Form 5500 information collection and makes adjustments for the final instructions revisions included in this document.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Annual Information Return/Report of Employee Benefit Plan.

Type of Review: Revision of existing collection.

Affected Public: Individuals or households; Private Sector—Business or other for-profit; Not-for-profit institutions.

OMB Number: 1210–0110.

Total Respondents: 839,728.

Total Responses: 839,728.

Estimated Total Burden Hours: 3,029,299.

Estimated Total Annualized Costs: $0.

Agency: Department of Treasury—IRS.

Title: Annual Information Return/Report of Employee Benefit Plan.

Type of Review: Revision of existing collection.

Affected Public: Individuals or households; Private Sector—Business or other for-profit; Not-for-profit institutions.

OMB Number: 1545–1610.

Total Respondents: 984,354.

Total Responses: 984,354.

Estimated Total Burden Hours: 1,970,038.

Estimated Total Annualized Costs: $0.

Agency: PBGC.

Title: Annual Information Return/Report of Employee Benefit Plan.

Type of Review: Revision of existing collection.

Affected Public: Individuals or households; Private Sector—Business or other for-profit; Not-for-profit institutions.

OMB Number: 1212–0057.

Total Respondents: 25,069.

Total Responses: 25,069.

Estimated Total Burden Hours: 17,743.

Estimated Total Annualized Costs: $0.

Paperwork and Respondent Burden: Estimated time needed to complete the forms listed below reflects the combined requirements of the IRS, the DOL, and the PBGC. The times will vary depending on individual circumstances. The estimated average times are:

TABLE 1—AVERAGE ESTIMATED TIME PER SCHEDULE, PER FILER TYPE

	Pension plans		
	Large	Small, filing Form 5500	Small, filing 5500–SF
Form 5500	1 hr, 50 min	1 hr, 19 min.	
Sch A	2 hr, 52 min	2 hr, 52 min.	
Sch MB	8 hr, 53 min	8 hr, 14 min	8 hr, 14 min.
Sch SB	6 hr, 38 min	6 hr, 49 min	6 hr, 49 min.
Sch C	2 hr, 49 min.		
Sch D	1 hr, 39 min	20 min.	
Sch G	14 hr, 14 min.		
Sch H	7 hr, 38 min.		
Sch I		2 hr, 6 min.	
Sch R	1 hr, 41 min.	1 hr, 7 min.	
Form 5500–SF			2 hr, 35 min.

	Direct filing entities				
	Master trusts	CCTs	PSAs	103–12 IEs	GIAs
Form 5500	1 hr, 50 min	1 hr, 29 min	1 hr, 24 min	1 hr, 33 min	1 hr, 22 min.
Sch A	2 hr, 54 min	2 hr, 48 min	2 hr, 46 min	2 hr, 52 min	2 hr, 53 min.
Sch C	3 hr, 1 min	1 hr, 1 min	29 min	1 hr, 22 min	51 min.
Sch D	1 hr, 30 min	47 min	34 min	49 min	41 min
Sch G	12 hr, 32 min			5 hr, 42 min.	
Sch H	8 hr, 7 min	7 hr, 36 min	7 hr, 33 min	8 hr, 17 min	7 hr, 38 min.

	Welfare plans that include health benefits	
	Large	Small, unfunded, combination unfunded/fully insured, or funded with a trust 5500–SF
Form 5500	1 hr, 45 min	1 hr, 14 min.
Sch A	3 hr, 40 min	2 hr, 43 min.
Sch C	3 hr, 38 min.	
Sch D	1 hr, 52 min	20 min
Sch G	11 hr, 0 min.	
Sch H	8 hr, 36 min.	
Sch I		1 hr, 56 min.
Form 5500–SF		2 hr, 35 min.

	Welfare plans that do not include health benefits		
	Large	Small, filing Form 5500	Small, filing Form 5500–SF
Form 5500	1 hr, 45 min	1 hr, 14 min.	
Sch A	3 hr, 40 min	2 hr, 43 min.	
Sch C	3 hr, 38 min.		
Sch D	1 hr, 52 min	20 min.	
Sch G	11 hr, 0 min.		
Sch H	8 hr, 36 min.		
Sch I		1 hr, 56 min.	
Form 5500–SF		2 hr, 35 min.	

The aggregate hour burden for the Form 5500 Annual Return/Report (including schedules and short form) is estimated to be 5 million hours annually shared between the DOL, IRS, and the PBGC. The hour burden reflects filing activities carried out directly by filers.

Presented below is a chart showing the total hour and cost burden of the revised Form 5500 Annual Return/Report, including the changes due to the current and past revisions. The chart displays the total hour burden separately allocated across the DOL, the IRS, and the PBGC.

TABLE 2—HOUR BURDEN DISTRIBUTION PER AGENCY

	Hour burden		
	DOL	IRS	PBGC
Pension Large Plans	893,879	409,717	2,513
Pension Small Plans	929,498	1,063,423	12,649
Welfare Large Plans	1,065,506	17,906	.....
Welfare Small Plans	64,616	22,140	.....
DFEs	70,103	34,404	75
EZ Filers	.....	374,340	.....
January 2013 Revision	630	.....	.....
2014 CSEC Revision	2,728	.....	.....
2021/2022 Revisions	2,339	48,108	2,507
Total Agency Burden	3,029,299	1,970,038	17,743

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[42] 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 and are likely to have a significant economic impact on a substantial number of small entities.[43] Unless the head of an agency certifies that a final rule is not likely to have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires the agency to present a final regulatory flexibility analysis of the final rule.[44] The Department prepared an Initial Regulatory Flexibility Analysis at the proposed rule stage. However, the final forms revisions are focused only on a subset of the requirements proposed. As discussed in the cost section above, most changes have negligible or no added burden. The Defined Benefit Plan/Title IV Revisions have added costs in the first year as plans make changes to what information is being reported. In 2019 there were 23,694 single employer defined benefit plans and 1,375 multiemployer defined benefit plans that are covered by the PBGC and would be impacted by these changes. These plans are a non-substantial fraction (3.7 percent) of the 686,809 pension plans filing in 2019. The Department certifies that the final forms revisions will not have a significant impact on a substantial number of small entities. Therefore, the Department has not prepared a Final Regulatory Flexibility Analysis.

[42] 5 U.S.C. 601 *et seq.* (1980).

[43] 5 U.S.C. 551 *et seq.* (1946).

[44] 5 U.S.C. 604 (1980).

D. 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.[45] For purposes of the Unfunded Mandates Reform Act, as well as Executive Order 12875, the final forms revisions does not include any Federal mandate that the Agencies expect would result in such expenditures by State, local, or tribal governments, or the private sector.[46]

E. 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.[47] 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 final rule.

In the Agencies' view, the final forms revisions 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. 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 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.

[45] 2 U.S.C. 1501 *et seq.* (1995).

[46] Enhancing the Intergovernmental Partnership, 58 FR 58093 (Oct. 28, 1993).

[47] Federalism, *supra* note 6.

IV. Appendices

The Agencies have included Appendices A and B to provide more detailed illustrations and explanations of the changes, which will be implemented for the 2022 Form 5500 series, expected to be available for filing on January 1, 2023:[48] Appendix A contains a detailed description of final changes to the 2022 Form 5500, Schedules MB, SB and R. Appendix B contains a detailed description of final changes to the 2022 Form 5500 and Form 5500–SF to implement Section 101 of the SECURE Act.[49]

[48] Consistent with prior year practice, ''information-only'' copies of the forms, schedules, and instructions may be published earlier than January 1, 2023.

[49] This approach of showing proposed changes will reduce costs associated with publication of the proposed form changes in the **Federal Register** and provide greater flexibility for the related EFAST2 development processes. The Agencies intend to publish mock-ups of the forms on the DOL's website as part of the EFAST2 third party software

developer certification process and in furtherance of public education efforts about the changes to be implemented.

Consistent with the Agencies annual updates to the forms, the final versions may include minor technical corrections that do not require further notice and comment under the PRA, the APA, or any relevant Executive Order.

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APPENDIX A - CHANGES TO 2022 SCHEDULE MB, SCHEDULE SB AND SCHEDULE R, AND THEIR INSTRUCTIONS

1. Changes to 2022 Schedule MB and Instructions to Improve PBGC Reporting.

- **Instructions to 2022 Schedule MB.** Line 3 of the 2022 Schedule MB instructions is modified to read as follows:

Line 3. Contributions Made to Plan. Show all employer and employee contributions for the plan year. Include employer contributions made not later than 2½ months (or the later date allowed under Code section 431(c)(8) and ERISA section 304(c)(8)) after the end of the plan year. Show only contributions actually made to the plan by the date this Schedule MB is signed.

Add the amounts in both columns (b) and (c) and enter both results on the total line. All contributions must be credited toward a particular plan year.

If any of the contributions reported in line 3 include amounts owed for withdrawal liability, report in line 3(d) the total withdrawal liability amounts included in line 3(b).

Attach a list showing the date and amount of each withdrawal liability amount included, broken down between periodic amounts and lump sum amounts. For this purpose, include a withdrawal liability payment as a lump sum only if the entire liability is paid in one lump sum or if the payment from an employer that paid its assessed withdrawal liability in periodic installments (e.g., monthly or quarterly) in prior years settled the remaining liability via one lump sum payment during the plan year. Use the format shown below and label this attachment ***"Schedule MB, line 3(d) – Withdrawal Liability Amounts."*** The attachment may be provided in a spreadsheet file (CSV format).

Schedule MB line 3(d) – Withdrawal Liability Amounts			
Payment Date	**Periodic Amounts**	**Lump Sum Amounts**	**Total Amounts**

- **2022 Schedule MB.** Line 4f of Schedule MB is modified to read as follows:

***

f If the plan is in critical status or critical and declining status, and is: • Projected to emerge from critical status within 30 years, enter the plan year in which it is projected to emerge; • Projected to become insolvent within 30 years, enter the plan year in which insolvency is expected and check here …….. ☐ • Neither projected to emerge from critical status nor become insolvent within 30 years, enter "9999."	**4f**	

***

- **Instructions to 2022 Schedule MB.** Instructions for line 4f of the 2022 Schedule MB are modified to read as follows:

Line 4f. If Code C (Critical Status) or Code D (Critical and Declining Status) was entered on line 4b you must complete line 4f as follows:

If the projections underlying the actuarial certification for the plan year indicate that the plan is:

- Projected to emerge from critical status within 30 years, enter the plan year in which the plan is projected to emerge from critical status.
- Projected to become insolvent within 30 years, check the box provided and enter the plan year in which the insolvency is expected. In addition, attach an illustration showing year-by-year cash flow projections for the period beginning with the plan year and ending with the year the plan is projected to become insolvent (or, if earlier, the 19th year after the plan year) and a

summary of the assumptions underlying the projections. Label this attachment "***Schedule MB, line 4f – Cash Flow Projections.***"

- Neither projected to emerge from critical status nor become insolvent within 30 years, enter "9999." In addition, attach an illustration showing year-by-year cash flow projections for the 20-year period beginning with the plan year and a summary of the assumptions underlying the projections. Label this attachment "***Schedule MB, line 4f – Cash Flow Projections.***"

- **2022 Schedule MB.** Lines 6e and 6f are modified and line 6i is added to the 2022 Schedule MB, to read as follows:

***

6 Checklist of actuarial assumptions					
a Interest rate for 'RPA 94 current liability				**6a**	
		Pre-retirement		Post-retirement	
b Rates specified in insurance or annuity contracts		☐ Yes ☐ No ☐ N/A		☐ Yes ☐ No ☐ N/A	
c Mortality table code for valuation purposes:					
(1) Males	**6c(1)**				
(2) Females	**6c(2)**				
d Valuation liability interest rate	**6d**	%		%	
e Salary scale	**6e**	%	☐ N/A		
f Withdrawal liability interest rate					
(1) Type of interest rate	**6f(1)**	☐ Single rate ☐ ERISA 4044 ☐ Other ☐ N/A			
(2) If "Single rate" is checked in (1), enter applicable single rate				**6f(2)**	%
g Estimated investment return on actuarial value of assets for year ending on the valuation date				**6g**	%
h Estimated investment return on market value of assets for year ending on the valuation date				**6h**	%
i Expense load included in normal cost reported in line 9b				**6i**	☐ N/A
(1) If the expense load is described as a percentage of normal cost, enter the assumed percentage				**6i(1)**	%
(2) If the expense load is a dollar amount that varies from year to year, enter dollar amount included in line 9b				**6i(2)**	
(3) If neither (1) nor (2) describes the expense load, check the box				**6i(3)**	☐

***

- **Instructions to 2022 Schedule MB.** Instructions for the salary scale assumption (line 6f on the 2021 Schedule MB) are renumbered to be line 6e. Instructions for the withdrawal liability interest rate assumption, a new item to be reported on line 6f, are added as shown below.

Instructions for the expense load assumption (line 6f for the 2021 Schedule MB) are renumbered to be line 6i and modified as shown below.

Lines 6f(1) and 6(f)(2). Withdrawal Liability Interest Rate. In line 6f(1), check the box that describes the type of interest rate assumption used to determine the present value of vested benefits for withdrawal liability determinations for employers withdrawing during the plan year. If the present value of vested benefits noted above was not determined by the time the Form 5500 is filed, check "N/A". In addition:

- If "Single rate" is checked, enter the single rate in line 6f(2).
- If "Other" is checked, attach a description of the interest rate used for this purpose and label this attachment "***Schedule MB, line 6f(1) – Description of Withdrawal Liability Interest Rate".***

Line 6i. Expense Load Included in Normal Cost. If the normal cost reported in line 9b does not include a load for administrative or investment expenses, check the "N/A" box. Otherwise, provide information in lines 6i(1), 6i(2), or 6i(3), whichever is applicable, about the expense load included in the normal cost. If the expense load is described as a percentage of normal cost, the reported percentage in line 6i(1) should be the expense load as a percent of the unloaded normal cost. For example, if the expense load is 5% of the normal cost, the unloaded normal cost is $100,000 and the reported normal cost is $105,000, enter 5%, not 4.8% (i.e., $5,000/$105,000). Enter rates to the nearest .1 percent.

- **2022 Schedule MB.** The title for line 8b is modified and a new line 8b(3) is added to the 2022 Schedule MB to read as follows:

***

8 Miscellaneous information		
a If a waiver of a funding deficiency has been approved for this plan year, enter the date (MM-DD-YYYY) of the ruling letter granting the approval	**8a**	
b Demographic, benefit, and contribution information		
(1) Is the plan required to provide a projection of expected benefit payments? (see instructions) If "Yes," attach a schedule	☐ Yes ☐ No	
(2) Is the plan required to provide a Schedule of Active Participant Data? (see instructions) If "Yes," attach a schedule	☐ Yes ☐ No	
(3) Is the plan required to provide a projection of employer contributions and withdrawal liability payments? (see instructions) If "Yes," attach a schedule	☐ Yes ☐ No	

***

- **Instructions to 2022 Schedule MB**. Instructions for lines 8b(1) and 8b(2) are modified and instructions for line 8b(3) are added to the 2022 Schedule MB, to read as follows:

Line 8b(1). Schedule of Projection of Expected Benefit Payments. Check "Yes" only if this is a multiemployer plan covered by Title IV of ERISA that has 1,000 or more total participants as of the beginning of the plan year (i.e., reported on line 2b(3)(c), column (1)).

If line 8b(1) is "Yes," in an attachment, provide a projection of benefits expected to be paid separately for active participants, terminated vested participants, and retired participants and beneficiaries receiving payments, and for the entire plan (not to include expected expenses) in each of the next fifty years starting with the plan year and based on the participant's status as of the valuation date. For purposes of this projection, assume (1) no additional accruals, (2) experience (e.g., termination, mortality, and retirement) is in line with valuation assumptions, (3) no new entrants, and (4) benefits are paid in the form assumed for valuation purposes.

Use the format shown below and label the schedule "***Schedule MB, line 8b(1) – Schedule of Projection of Expected Benefit Payments.***" The attachment may be provided in a spreadsheet file (CSV format).

Schedule MB, line 8(b)(1) - Schedule of Projection of Expected Benefit Payments				
Plan Year	**Active Participants**	**Terminated Vested Participants**	**Retired Participants and Beneficiaries Receiving Payments**	**Total**
Current Plan Year				
Current Plan Year + 1				
Etc.				
Current plan year + 49				

Line 8b(2). Schedule of Active Participant Data. Check "Yes" only if this is a multiemployer plan covered by Title IV of ERISA that has active participants.

If line 8b(2) is "Yes," attach a schedule of the active plan participant data used in the valuation for this plan year. Use the format shown below and label the attachment *"**Schedule MB, line 8b(2) – Schedule of Active Participant Data.**"* The attachment may be provided in a spreadsheet file (CSV format).

Schedule MB, line 8b(2) – Schedule of Active Participant Data													
	YEARS OF CREDITED SERVICE												
	Under 1			1 to 4			5 to 9				40 & up		
Attained Age	No.	Average		No.	Average		No.	Average		.	No.	Average	
		Comp.	Accrued Mon. Ben.		Comp.	Accrued Mon. Ben.		Comp.	Accrued Mon. Ben.			Comp.	Accrued Mon. Ben.
Under 25 25 to 29 30 to 34 35 to 39 40 to 44 45 to 49 50 to 54 55 to 59 60 to 64 65 to 69 70 & up													

Expand this schedule by adding columns after the "5 to 9" column and before the "40 & up" column for active participants with total years of credited service in the following ranges: 10 to 14; 15 to 19; 20 to 24; 25 to 29; 30 to 34; and 35 to 39. For each column, enter the number of active participants with the specified number of years of credited service divided according to

age group. For participants with partial years of credited service, truncate the total number of years of credited service. Years of credited service are the years credited under the plan's benefit formula.

Plans reporting 1,000 or more active participants on line 2b(3)(c), column (1), and using compensation to determine benefits must also provide average compensation data. For each grouping, enter the average compensation of the active participants in that group. For this purpose, compensation is the compensation taken into account for each participant under the plan's benefit formula, limited to the amount defined under section 401(a)(17) of the Code. Do not enter the average compensation in any grouping that contains fewer than 20 participants.

Plans reporting 1,000 or more active participants on line 2b(3)(c), column (1), must also provide average accrued monthly benefits, as of the valuation date, that are payable at normal retirement age. For each grouping, enter the average accrued monthly benefit that is payable at normal retirement age for the active participants in that group. Do not enter the average accrued monthly benefit in any grouping that contains fewer than 20 participants.

General Rule. In general, data to be shown in each age/service bin includes:

1. the number of active participants in the age/service bin,
2. the average compensation of the active participants in the age/service bin, and
3. the average accrued monthly benefit of the active participants in the age/service bin, using $0 for anyone who has no accrued monthly benefit.

In general, information should be determined as of the valuation date. Average accrued monthly benefits may be determined as of either:

1. the valuation date or

2. the day immediately preceding the valuation date.

Line 8b(3). Schedule of Projection of Employer Contributions and Withdrawal Liability Payments. Check "Yes" only if this is a multiemployer plan covered by Title IV of ERISA that has 1,000 or more total participants as of the beginning of the plan year (i.e., reported on line 2b(3)(c), column (1)). If line 8b(3) is "Yes," in an attachment, separately provide a projection of employer contributions and withdrawal liability payments expected to be received for the entire plan in each of the next ten years starting with the plan year. For purposes of this projection, use the assumption used to determine the plan's status under line 4b. Use the format shown below and label the schedule "***Schedule MB, line 8b(3) – Schedule of Projection of Employer Contributions and Withdrawal Liability Payments.***" The attachment may be provided in a spreadsheet file (CSV format).

Schedule MB, line 8b(3) – Schedule of Projection of Employer Contributions and Withdrawal Liability Payments			
Plan Year	**Employer Contributions**	**Withdrawal Liability Payments**	**Total**
Current Plan Year			
Current Plan Year + 1			
Etc.			
Current plan year + 9			

2. Changes to 2022 Schedule SB and Instructions to Improve PBGC Reporting.

- **2022 Schedule SB.** Line 26 is modified in Part VI of the 2022 Schedule SB to read as follows:

26 Demographic and benefit information	
a Is the plan required to provide a Schedule of Active Participants? If "Yes," see instructions regarding required attachment.	☐ Yes ☐ No
b Is the plan required to provide a projection of expected benefit payments? If "Yes," see instructions regarding required attachment	☐ Yes ☐ No

- **Instructions to 2022 Schedule SB.** The first two paragraphs of the instructions for line 26 (now line 26a) are modified to reference line 26a instead of line 26 as shown below. The remaining paragraphs of the instructions for line 26 (now line 26a) are not modified. In addition, instructions for line 26b are added as follows:

Line 26a. Schedule of Active Participant Data. Check "Yes" only if (a) the plan is covered by Title IV of ERISA and (b) the plan has active participants.

If line 26a is "Yes," attach a schedule of the active plan participant data used in the valuation for this plan year. Use the format shown and label the schedule ***"Schedule SB, line 26a – Schedule of Active Participant Data."*** The attachment may be provided in a spreadsheet file (CSV format).

Line 26b. Schedule of Projection of Expected Benefit Payments. Check "Yes" only if this plan is covered by Title IV of ERISA and has 1,000 or more total participants as of the valuation date.

If line 26b is "Yes," in an attachment, provide a projection of benefits expected to be paid separately for active participants, terminated vested participants, and retired participants and beneficiaries receiving payments, and for the entire plan (not to include expected expenses) in each of the next fifty years starting with the plan year and based on the participant's status as of the valuation date. For purposes of this projection, assume (1) no additional accruals, (2) experience (e.g., termination, mortality, and retirement) is in line with valuation assumptions, (3) no new entrants, and (4) benefits are paid in the form assumed for valuation purposes.

Use the format shown below and label this attachment *"**Schedule SB, line 26b – Schedule of Projection of Expected Benefit Payments.**"* The attachment may be provided in a spreadsheet file (CSV format).

	Schedule SB, line 26b – Schedule of Projection of Expected Benefit Payments			
Plan Year	**Active Participants**	**Terminated Vested Participants**	**Retired Participants and Beneficiaries Receiving Payments**	**Total**
Current Plan Year				
Current Plan Year + 1				
Etc.				
Current plan year + 49				

- **2022 Schedule SB**. The title for Part IX of the 2022 Schedule SB and line 41 are replaced with the following:

Part IX	Pension Funding Relief under the American Rescue Plan Act of 2021 (See instructions)
41 If an election was made to use the extended amortization rule for a plan year beginning on or before December 31, 2021, check the box to indicate the first plan year for which the rule applies. ☐ 2019 ☐ 2020 ☐ 2021	

- **Instructions to 2022 Schedule SB**. The instructions for Part IX are replaced with the following:

Part IX – Pension Funding Relief under the American Rescue Plan Act of 2021

Line 41. If an election was made under Code section 403(c)(8) or ERISA section 303(c)(8) to apply the extended amortization rule for a plan year beginning on or before December 31, 2021, check the box to indicate the first plan year for which the rule applies (i.e., the box for the 2019, 2020, or 2021 plan year).

3. Changes to 2022 Schedule R Instructions to Improve PBGC Reporting.

- **Instructions to 2022 Schedule R.** Line 13 is modified in the instructions for Part V of the 2022 Schedule R to read as follows:

Line 13. This line should be completed only by multiemployer defined benefit pension plans that are subject to the minimum funding standards (see Code section 412 and Part 3 of Title I of ERISA). Enter the information on lines 13a through 13e for any employer that, for the plan year, (1) contributed more than five (5) percent of the plan's total contributions or (2) was one of the top-ten highest contributors. List employers in descending order according to the dollar amount of their contributions to the plan. Complete as many entries as are necessary to list all employers required to be reported.

APPENDIX B - CHANGES TO FORM 5500 AND FORM 5500-SF INSTRUCTIONS

1. Changes to 2022 Form 5500 Instructions.

- **Instructions to 2022 Form 5500, Section 4, What to File, Quick Reference Chart of Form 5500, Schedules, and Attachments.** Footnote 2 for Small Pension Plan and Small Welfare Plan is modified to add a new clarifying text at the end to read as follows:

[2] Pension plans and welfare plans with fewer than 100 participants at the beginning of the plan year that are not exempt from filing an annual return/report may be eligible to file the Form 5500-SF, a simplified report. In addition to the limitation on the number of participants, a Form 5500-SF may only be filed for a plan that is exempt from the requirement that the plan's books and records be audited by an independent qualified public accountant (but not by reason of enhanced bonding), has 100 percent of its assets invested in certain secure investments with a readily determinable fair market value, holds no employer securities, is not a multiemployer plan, is not required to file a Form M-1 (*Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)*) for the plan year, and is not a pooled employer plan. See the Form 5500-SF Instructions, *Who May File Form 5500-SF*.

- **Instructions to 2022 Form 5500, Section 5, Part II, line 2a.** The instruction following paragraph 1 that includes the definition for the term "plan sponsor," is modified to add new fourth and fifth bulleted list text that read as follows:

  - The pooled plan provider that operates the plan, in the case of a pooled employer plan that meets the definition under ERISA section 3(43); or
  - The professional employer organization (PEO), in the case of a PEO multiple-employer plan that meets the conditions under 29 CFR 2510.3-55(c).

- **Instructions to Form 5500, Section 5, Part II, line 2a, "Note" Paragraph.** The first sentence of the accompanying Note to line 2a, definition for the term "plan sponsor," is modified to read as follows:

> **Note.** In the case of a multiple-employer plan, file only one annual return/report for the plan. If an association, pooled plan provider, PEO or other entity is not the sponsor, enter the name of a participating employer as sponsor. ***

- **Instructions to 2022 Form 5500, Section 5, Part II, line 3a.** The instruction following paragraph 1 that includes the definition for the term "plan administrator" is modified to add new second and third bulleted list text to read as follows:

  - The pooled plan provider that operates the plan, in the case of a pooled employer plan that meets the definition under ERISA section 3(43);
  - The professional employer organization (PEO), in the case of a PEO multiple-employer plan that meets the conditions under 29 CFR 2510.3-55(c);

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

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

- **Instructions to 2022 Form 5500, Section 5, List of Plan Characteristics Codes for line 8a, Pension Benefits Provided Under the Plan.** The "Defined Contribution Pension Features" codes are modified to add, to the two-character plan characteristics codes from the List of Plan Characteristics Codes that describe the characteristics of the plan being reported, four new multiple-employer defined contribution pension features codes that, when applicable, must be reported on Part II, line 8a of the Form 5500, as follows:

LIST OF PLAN CHARACTERISTICS CODES FOR LINES 8a AND 8b

***

CODE	Defined Contribution Pension Features

***

2U	Multiple-employer pension plan sponsored by a bona fide group or association of employers that is an Association Retirement Plan that meets all the conditions under 29 CFR 2510.3-55(b).
2V	Multiple-employer pension plan that is a Professional Employer Organization Plan (PEO Plan) that meets all the conditions under 29 CFR 2510.3-55(c).
2W	Multiple-employer pension plan that is a pooled employer plan that meets the definition under ERISA section 3(43).
2X	Multiple-employer defined contribution pension plan that does not fall under characteristics code 2U, 2V or 2W.

***

2. Changes to 2022 Form 5500-SF Instructions.

- **Instructions to 2022 Form 5500-SF, Specific Line-by-Line Instructions, Part I – Annual Report Identification Information.** The CAUTION note that appears after the "Multiple-Employer Plan Participating Employer Information" data element box is modified to

*Multiemployer plans and pooled employer plans cannot use the Form 5500-SF to satisfy their annual reporting obligations. They must file the Form 5500. For these purposes, a plan is a pooled employer plan if it is a multiple-employer pension plan that meets the definition under ERISA section 3(43), and ****

add a reference to "pooled employer plans" in the first sentence and revise the third sentence to add a clause referring to such plans, so those sentences read or begin as follows:

- **Instructions to 2022 Form 5500-SF, Specific Line-by-Line Instructions, Part II, line 2a.** The instruction for paragraph 1 is modified to strike existing text in paragraph 1, and in its place add a definition of the term "plan sponsor" to read as follows:

1. Enter the plan sponsor's name. If the plan covers only the employees of one employer, enter the employer's name.

The term ''plan sponsor'' means:

- The employer, for an employee benefit plan that a single employer established or maintains;
- The employee organization, in the case of a plan of an employee organization;
- The association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan, if the plan is established or maintained jointly by one or more employers and one or more employee organizations, or by two or more employers; or
- The professional employer organization (PEO), in the case of a PEO multiple-employer plan that meets the conditions under 29 CFR 2510.3-55(c).

***

- **Instructions to 2022 Form 5500-SF, Specific Line-by-Line Instructions, Part II, Basic Plan Information, line 3a.** Modify the instruction sentence that appears after the

numbered paragraph list and begins with *"Plan administrator for this purpose means*," to insert a new third bulleted list item to read as follows:

- The professional employer organization (PEO), in the case of a PEO multiple-employer plan that meets the conditions under 29 CFR 2510.3-55(c); or

- **Instructions to 2022 Form 5500-SF, Part IV, Specific Line-by-Line Instructions, line 9, Benefits Provided Under the Plan.** The "Defined Contribution Pension Features" codes are modified to add, to the two-character plan characteristics codes from the List of Plan Characteristics Codes that describe the characteristics of the plan being reported, three new multiple-employer defined contribution pension plan feature codes that, when applicable, must be reported on Part IV, line 9a of the Form 5500-SF as follows:

LIST OF PLAN CHARACTERISTICS CODES FOR LINES 9a AND 9b

***

CODE	Defined Contribution Pension Features

***

2U	Multiple-employer pension plan sponsored by a bona fide group or association of employers that is an Association Retirement Plan that meets all the conditions under 29 CFR 2510.3-55(b).
2V	Multiple-employer pension plan that is a Professional Employer Organization Plan (PEO Plan) that meets all the conditions under 29 CFR 2510.3-55(c).
2X	Multiple-employer defined contribution pension plan that does not fall under characteristics codes 2U or 2V and is not a pooled employer plan as defined in ERISA section 3(43).

***

Statutory Authority

Accordingly, pursuant to the authority in sections 101, 103, 104, 109, 110 and 4065 of ERISA and sections 6058 and 6059 of the Code, the Form 5500 Annual Return/Report and the instructions thereto are proposed to be amended as set forth herein.

Signed at Washington, DC, this 9th day of May, 2022.

Ali Khawar,

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

Eric Slack,

Director, Employee Plans, Tax Exempt and Government Entities Division, Internal Revenue Service.

Gordon Hartogensis,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2022–10658 Filed 5–20–22; 8:45 am]

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2018–0008; T.D. TTB–179; Ref: Notice No. 177]

RIN: 1513–AC40

Establishment of the West Sonoma Coast Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 141,846-acre ''West Sonoma Coast'' viticultural area in Sonoma County, California. The viticultural area lies entirely within the established Sonoma Coast and North Coast viticultural areas and contains the established Fort Ross–Seaview viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective June 22, 2022.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

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I. Background on Viticultural Areas

A. TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission to TTB of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

B. Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and, once approved, a name and a delineated boundary codified in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

C. Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and allows any interested party to petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions to establish or modify AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA;
- If the proposed AVA is to be established within, or overlapping, an existing AVA, an explanation that both identifies the attributes of the proposed AVA that are consistent with the existing AVA and explains how the proposed AVA is sufficiently distinct from the existing AVA and therefore appropriate for separate recognition;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

II. West Sonoma Coast Petition

A. General Characteristics

TTB received a petition from Patrick Shabram, on behalf of the West Sonoma Coast Vintners, proposing the establishment of the ''West Sonoma Coast'' AVA. The proposed West Sonoma Coast AVA is located in Sonoma County, California, and is entirely within the established Sonoma Coast AVA (27 CFR 9.116) and North