

# Checklist for Form 5500 Reporting Requirements for Multiple Employer Plans

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As you may be aware, many PEOs recently received a notice from the Department of Labor (“DOL”) advising that the Form 5500 filed for the 2016 plan year with regard to their PEO-sponsored plan(s) had been rejected. The reason these filings are being rejected is a requirement which was established by The Cooperative and Small Employer Charity Pension Flexibility Act (“CSEC Act”) of 2014. The CSEC Act generally requires a multiple employer plan to include certain additional information about the employers participating in the plan. The DOL originally issued guidance regarding this requirement in an interim final rule (“IFR”) published in the Federal Register on November 10, 2014 (79 FR 66617). While the rule was in effect for Form 5500 filings beginning with the 2014 plan year, it appears that DOL has only begun enforcing the rule for the 2016 filings (and presumably years after that).

**Please note that NAPEO will be presenting a webinar on March 4, 2019, “The DOL Has Rejected your Company’s 2016 Form 5500 Filing: Now What?”** Questions to be addressed on the webinar include:

- “I just received a Notice of Rejection for my 2016 plan year Form 5500. What should my next step be?”
- “What is NAPEO doing to try to help employers like me that received a Notice of Rejection from the DOL?”
- “What happens if I don’t respond to the DOL’s Notice of Rejection?”
- “What dollar penalties can apply to me?”
- “I am getting ready to file a new Form 5500 for the 2018 plan year. What happens if I continue to file in a coded/redacted manner?”

The following is a checklist of questions to be asked by PEOs in determining how to comply with the reporting requirement generally. NAPEO members are encouraged to review this checklist.

## STEP 1: IS YOUR PEO-SPONSORED PLAN IS A “MULTIPLE EMPLOYER PLAN?”

- The IFR uses the existing definition of “multiple employer plan” in the instructions for the Form 5500.
- Specifically, a multiple employer plan is defined as a plan that is maintained by more than one employer and is not a “single employer plan” or a “multiemployer plan” for Form 5500 filing purposes. This definition encompasses multiple employer pension and retirement plans, including multiple employer 401(k) plans, as well as multiple employer welfare arrangements of “MEWAs”.
- As needed, a PEO should consult with legal counsel in determining whether its PEO-sponsored plan is a multiple employer plan.
- If the plan is not a multiple employer plan, you can disregard the remainder of this checklist. The additional reporting requirement under the CSEC Act does not apply to the plan.
- If the plan is a multiple employer plan, please proceed to Step 2.

## STEP 2: IS YOUR PEO-SPONSORED MULTIPLE EMPLOYER PLAN A RETIREMENT PLAN?

- If your PEO-sponsored multiple employer plan is not a retirement plan, please proceed to Step 3.
- If your PEO-sponsored multiple employer plan is a retirement plan, the following will be needed in order to complete the CSEC Act filing requirement:
  - 1. You will need to create an attachment to the Form 5500 titled “Multiple-Employer Plan Participating Employer Information.”
  - 2. The attachment must include the name of the plan, its EIN, and its plan number.
  - 3. The attachment should list the name and EIN of each participating employer in the plan during the plan year. This includes:
    - Any employer that made contributions to the plan during the plan year.
    - Any employer that was obligated to make contributions to the plan during the plan year.
    - Any employer whose employees were covered under the plan during the plan year.
  - 4. The attachment should include a good faith estimate of each employer’s percentage of total contributions made by all participating employers during

the year.

- Total contributions include both employer and participant contributions. Therefore, you will need to take into account all contribution types ((i.e., matching contributions, profit sharing contributions, other discretionary contributions, safe harbor contributions, and participant contributions).
  - The estimate can be calculated using the cash, modified cash, or accrual method, as long as it is consistent with how other financial transactions are reported on the Form 5500.
- If you use a third party to help prepare your Form 5500, you should coordinate with the preparer regarding the reporting obligation and to make sure they understand how you will be reporting this information.
  - You should review your CSAs and other documents governing the client relationship, and determine whether any existing contractual provisions regarding confidentiality that may run from your PEO to a worksite employer are implicated by reporting this information.

### STEP 3: IS YOUR PEO-SPONSORED MULTIPLE EMPLOYER PLAN A HEALTH AND WELFARE PLAN?

- If your PEO-sponsored multiple employer plan is a health and welfare plan (including a MEWA), the following will be needed in order to complete the CSEC Act filing requirement. **However, if your plan is exempt from the obligation to file financial statements with the annual report, your plan does not have to include a good faith estimate of each employer's percentage of total contributions made during the plan year:**
  - 1. You will need to create an attachment to the Form 5500 titled "Multiple-Employer Plan Participating Employer Information."
  - 2. The attachment must include the name of the plan, its EIN, and its plan number.
  - 3. The attachment should list the name and EIN of each participating employer in the plan during the plan year. This includes:
    - Any employer that made contributions to the plan during the plan year.
    - Any employer that was obligated to make contributions to the plan during the plan year.
    - Any employer whose employees were covered under the plan during the plan year.
  - 4. The attachment should include a good faith estimate of each employer's percentage of total contributions made by all participating employers during the year (**unless the plan is exempt from the obligation to file financial statements with its annual report, in which case this requirement does not apply**).
    - Total contributions includes both employer and participant

- contributions.
- The estimate can be calculated using the cash, modified cash, or accrual method, as long as it is consistent with how other financial transactions are reported on the Form 5500
- You should consult with your legal advisor and discuss whether your plan could be considered a multiple employer welfare arrangement (MEWA). If so, you could also have a “M-1” filing requirement, and your plan could also be subject to certain state laws and regulations.
- If you use a third party to help prepare your Form 5500, you should coordinate with the preparer regarding the reporting obligation and to make sure they understand how you will be reporting this information.
- You should review your CSAs and other documents governing the client relationship, and determine whether any existing contractual provisions regarding confidentiality that may run from your PEO to a worksite employer are implicated by reporting this information.

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