



August 29, 2016

Filed Electronically: e-ORI@dol.gov

Office of Regulations and Interpretations
Employee Benefits Security Administration
Annual Reporting and Disclosure, Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: RIN 1210-AB63 – Proposed Revision of Annual Information Return/Reports (Form 5500)
and Proposed Rules Regarding Annual Reporting and Disclosure

Dear Sir or Madam:

The Investment Company Institute,ⁱ the American Benefits Council,ⁱⁱ the SPARK Institute Inc.,ⁱⁱⁱ and the Plan Sponsor Council of America^{iv} write in response to the revisions to the Form 5500 proposed by the Department of Labor (the “Department”), the Internal Revenue Service, and the Pension Benefit Guaranty Corporation (collectively, the “Agencies”) and the Department’s proposed rule on annual reporting and disclosure (together, the “Proposal”).^v We respectfully request a 90-day extension of the deadline for public comments on the Proposal, currently scheduled to end on October 4, 2016.

The changes described in the Proposal are extensive and demand comprehensive review. In substance, the Proposal may represent the most significant set of changes to the Form 5500 since the creation of the form.^{vi} The changes represent suggestions taken from more than 15 reports from the U.S. Government Accountability Office (“GAO”), the Department’s Office of Inspector General, the U.S. Treasury Inspector General for Tax Administration (“TIGTA”), and the ERISA Advisory Council.^{vii} Not only does the Proposal seek new information on dozens of topics that have already been the subject of prior rulemakings or guidance, but in many cases, the Proposal would require the collection, coordination, and reporting of data that the existing regulations and guidance do not require to be collected, monitored, maintained, disclosed, or reported.^{viii} The current deadline for comments does not provide enough time to submit a comprehensive response addressing all of the new information and data elements contemplated by the Proposal.

The comment period coincides with the busiest time of the year for Form 5500 practitioners, meaning sufficient attention cannot be diverted to review the Proposal. Calendar-year plans using the automatic extension will file their Form 5500 on or about October 15, which means that the first priority of plan sponsor employees and Form 5500 practitioners will be to ensure plan administrators,

employers, and sponsors are able to file their 2015 annual reports on time and accurately. These practitioners are highly specialized and must be involved in reviewing the Proposal. The 90-day extension we request would significantly increase the attention that Form 5500 practitioners could devote to providing meaningful comments on the Proposal.

Those within firms that will need to review the Proposal and develop meaningful comments are fully engaged in implementing the final fiduciary rule. We develop our comment letters with input from our members, who in turn rely on in-house attorneys, compliance professionals, relationship managers, and information technology experts. The Department's fiduciary rule requires multiple work streams from all of these individuals, who must ensure the entire organization is ready for the applicability date of the rule in April 2017.

The effect of the Proposal on plan sponsors – particularly smaller employers – requires sufficient time to assess. The Proposal will require hundreds of thousands of new Forms 5500, schedules, and attachments to be filed as a result of the Proposal's elimination of one of the most important exemptions for small businesses – the filing exemption currently available to small fully insured and funded group health benefit plans. In addition, the Proposal will require reporting on a variety of compliance issues and other plan data that may not all be maintained in the possession of a plan's primary service provider. For example, the Proposal's more detailed reporting on Schedule H would require Form 5500 preparers to coordinate plan investment information that is not currently required to be reported from a wide-range of sources. The necessary and crucial assessment of the impact of all of these changes on plan sponsors and Form 5500 preparers cannot be completed in such a short time frame.

Major changes to health plan reporting must be analyzed carefully while resources are still being expended to deal with ACA reporting. Plan sponsors and service providers faced a substantial challenge with the first full year of Affordable Care Act reporting on Forms 1094 and 1095. Significant information technology capacity continues to be devoted to a variety of projects on 1094 and 1095 reporting, including addressing numerous errors created by the IRS system. This is making it difficult to evaluate, in the short time frame provided, the impact of the new Schedule J and the impact of other changes relevant to group health plans.

As stated in the Department's news release, the Agencies are seeking "suggestions on how the agencies can better achieve the goal of transforming the Form 5500 into a '21st Century' information collection tool while minimizing administrative burdens with respect to the operation of plans."^{ix} Each of the undersigned plan to submit detailed comments on the Proposal, as we all did in 2006 (which involved a fraction of the changes of the current proposal). However, the thorough analysis that is required to provide the input you are seeking and that we hope to provide will take a substantial amount of time – significantly more time than the 75 days currently provided from the Proposal's publication in the Federal Register. Our organizations share the Agencies' goal of making the Form 5500 an effective tool without unnecessary burden on plans, but we need time to develop meaningful comments. Our collective members, including both employers and service providers, need time to assess the impact that these changes would have, and whether the Form as proposed is the most efficient way to achieve the Agencies' stated goals.

In balancing our need for more time, there does not appear to be an equally compelling need for the Agencies to require the comments in this short timeframe – particularly given that the Agencies have been working on the Proposal since at least fall 2014 and do not plan to implement the changes until

the 2019 plan year, with processing beginning in 2020. We appreciate that the goal is to have these substantive changes in place before the contracting process for EFAST3 begins. But Department officials, for example, have acknowledged publicly that the last Schedule C revision was rushed so that it was ready for EFAST2, and that rush has resulted in the need for changes after a short period of time. Similar haste in this rulemaking should be avoided.

For these reasons, we are requesting a 90-day extension of the comment period. The undersigned organizations believe that this extension would lead to more thoughtful and comprehensive input, which will ultimately result in improvements to the Form 5500 that would benefit all parties.

/s/ David Abbey

David Abbey
Deputy General Counsel, Retirement Policy
Investment Company Institute

/s/ Tim Rouse

Tim Rouse
Executive Director
The SPARK Institute, Inc.

/s/ Jan Jacobson

Jan Jacobson
Senior Counsel, Retirement Policy
American Benefits Council

/s/ Stephen W. McCaffrey

Stephen W. McCaffrey
Chairman of the Board
Plan Sponsor Council of America

ⁱ The Investment Company Institute (ICI) is a leading global association of regulated funds, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's U.S. fund members manage total assets of \$17.9 trillion and serve more than 90 million U.S. shareholders.

ⁱⁱ The American Benefits Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either directly sponsor or provide services to retirement and health plans that cover more than 100 million Americans.

ⁱⁱⁱ The SPARK Institute represents the interests of a broad-based cross section of retirement plan service providers and investment managers, including banks, mutual fund companies, insurance companies, third-party administrators, trade clearing firms, and benefits consultants. Collectively, our members serve approximately 70 million employer sponsored plan participants.

^{iv} The Plan Sponsor Council of America (PSCA) is a diverse, collaborative community of employee benefit plan sponsors, working together on behalf of more than six million employees to solve real problems, create positive change, and expand on the success of the employer-sponsored retirement system. With more than 1,000 members representing employers of all sizes, we offer a forum for comprehensive dialogue. By sharing our collective knowledge and experience as plan sponsors, PSCA also serves as a resource to policymakers, the media, and other stakeholders as part of our commitment to improving retirement security for millions of Americans. For more information, visit www.pasca.org.

^v See 81 Fed. Reg. 47495 (July 21, 2016) and 81 Fed. Reg. 47533 (July 21, 2016).

^{vi} The Department notes that the Form 5500, the Schedule H, and the Schedule I are based on data elements that have remained "largely unchanged" since the Form 5500 was established in 1975. 81 Fed. Reg. 47495, 47523. The

last two major revisions, in 1999 and 2009, focused on moving filers to a new electronic filing system and deferred major form changes. 81 Fed. Reg. 47495, 47497.

^{vii} 81 Fed. Reg. 47533, 47536-37.

^{viii} To take two immediate examples: First, the Schedule C proposed changes, described by the Agencies as harmonizing the Schedule C requirements with the regulations under ERISA section 408(b)(2), require disclosure of dollar amounts, when the Department deliberately and in response to notice and comment decided to use a more flexible rule in the 408(b)(2) regulation. Second, no current regulation requires a plan to keep track of the number of participants invested in a default investment alternative (as distinct from a participant that actively chose the investment), “maximizing” a matching contribution, or making a “catch-up” contribution. We also note that the Schedule H proposed changes require the reporting of certain types of assets for which other agencies are also involved in developing reporting methodologies. We will need time to analyze where such other methodologies can be leveraged, to avoid confusion and to create efficiencies.

^{ix} EBSA News Release published on July 11, 2016 and available at:
<https://www.dol.gov/newsroom/releases/ebsa/ebsa20160711>.