



September 19, 2006

**Via E-Mail and Regular Mail**

Office of Regulations and Interpretations  
Robert J. Doyle, Director  
Employee Benefits Security Administration  
Room N – 5669  
Attn: Revision of Form 5500 - (RIN 1210-AB06)  
U. S. Department of Labor  
200 Constitution Avenue, NW.  
Washington, DC 20210

RECEIVED  
OFFICE OF REGULATIONS  
AND INTERPRETATIONS  
2006 SEP 20 PM 2:18

**RE: Proposed Revisions to Form 5500**

Dear Mr. Doyle:

Nationwide Financial Services, Inc. ("Nationwide") appreciates the opportunity to submit its comments concerning the proposed revisions to the Form 5500 Annual Return/Report forms, including a proposed new Short Form 5500.

**Introduction**

Nationwide Financial Services, Inc. is the holding company for Nationwide Life Insurance Company and other companies that comprise the domestic life insurance and retirement savings operations of the Nationwide group of companies. Nationwide's main business segments include institutional products which provide funding for retirement plans, including profit-sharing plans with salary deferrals. Nationwide's institutional products business is generally transacted through unregistered separate accounts, the Nationwide Trust Company FSB, or other affiliated entities.

**General Issues**

Nationwide strongly supports the Department of Labor's ("Department") efforts to update the annual reports and streamline annual reporting burdens. Specifically, Nationwide believes that the new requirements relating to disclosure, such as revenue sharing and indirect compensation payments to unaffiliated and affiliated third parties, are necessary.

Additionally, Nationwide is a proponent of the continued industry practice of reporting earnings on plan assets retained by service providers as part of their compensation, revenue sharing, and other indirect compensation in the form of estimates. We contend it is necessary to estimate those amounts, and would further request the Department consider providing examples of permissible estimate calculations.

Regarding the proposed provisions on Schedules A and C for reporting insurers and service providers who have refused or failed to provide certain information, we believe the value of such provisions is significantly outweighed by the potential for misuse.

However, if the Department should chose to proceed with this approach, we would request your consideration of modifications and clarifications, described in more detail below.

Regarding the proposed changes impacting 403(b) plans, Nationwide believes these requirements, while well intended, will not achieve the Department's goals. It is our belief these changes will unnecessarily increase administrative costs for service providers to the retirement plans industry, as well as plan sponsors and participants.

### **Schedule C - Estimates of Indirect Compensation**

We appreciate the Department's recognition of the unique reporting burdens of providers of bundled services, such as the allocation of expenses and compensation to individual plans. This is of particular concern with respect to those bundled service arrangements through which compensation from investment product providers, such as mutual fund companies, may be used to offset or reduce plan service costs. These savings are based in part upon the service provider maintaining omnibus trading accounts with each investment product provider with compensation based upon a percentage of those assets. In disclosing such compensation under a bundled service arrangement, the accepted industry practice is to disclose the existence of such compensation and a general range of estimated compensation based on the level of assets upon which the compensation is paid. Reporting indirect compensation in the form of estimates is critical for the above reasons. Thus, we request that the Department provide examples of acceptable methods of calculating and estimating indirect compensation.

### **Schedules A and C – Provisions for Reporting Insurers and Service Providers**

The proposed revisions, as previously mentioned, do not provide any practical utility and have a high potential for abuse. The current reporting process provides the Department with sufficient information regarding the insurer. A separate Schedule A is required for each insurance contract. Significantly, insurers are required to transmit and certify the accuracy of information to the administrator that is necessary to complete the Schedule A, pursuant to the Employee Retirement Income Security Act of 1974 (ERISA) section 103. One of our core business values is to act with honesty and integrity. We do not take our obligations under ERISA lightly. Lastly, we believe that the criminal and civil penalties under ERISA for failing to provide the information are more than adequate motivation for insurers and the proposed changes do not add any meaningful value.

Moreover, if the proposed reporting processes are incorporated into the Schedules, the Department would need to rely on plan administrators to accurately complete the forms. The opportunity for misuse is not diminished even if one assumes the majority of plan administrators will complete the form correctly. Plan administrators could misuse these provisions by threatening to "report" an insurer or service provider as leverage in various negotiations, to not merely request information needed but demand it in a format convenient to the plan administrator, or in situations where a dispute arises as to the level of information required. Therefore, we respectfully request the Department reconsider the addition of these provisions.

Should the Department proceed with the proposed reporting processes, we recommend the Schedules be further revised to require the plan administrator to complete and certify, under penalty of law, the following: the plan administrator contacted the insurer or service provider requesting the information and the information was not provided, document the date of contact, and explain in more detail the information that was not provided. These measures will reduce, but not completely eliminate, the likelihood for abuse of this tool.

### **Revocation of Limited Reporting for Section 403(b) Plans**

We recognize the Department's efforts to uncover significant issues relating to 403(b) plans wherein investigations have found improper handling of employee contributions to be a predominant issue. However, we believe a targeted question on Form 5500 regarding the timing of deposits for 403(b) plans and efforts by the Department to educate 403(b) sponsors of their obligations will accomplish the Department's goal without being as financially burdensome to plan sponsors and participants as the proposed changes.

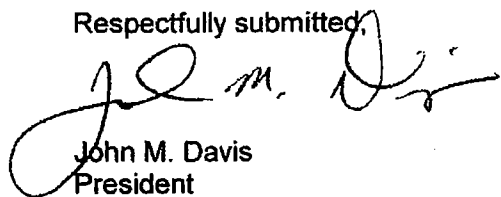
Full reporting for 403(b) plans is impractical. It is extremely difficult, if not impossible, for plan sponsors to fully gather the data necessary to complete the Form 5500. Historically, 403(b) plans were merely a contract between the vendor and the employee. The employer was typically not a party to the contract. In addition, as employees change employers they may have relationships with multiple vendors. Employers will face a monumental challenge in gathering the data from all the vendors as they have no existing method of identifying all such vendors, especially with respect to vendors of former employees. Thus, a lack of sufficient records needed to complete the Form 5500 is a serious concern for employers.

The cost of an annual audit is also disproportionate to the value. These plans are generally limited to holding annuities and mutual funds. An annual audit would only add cost without the commensurate practical utility. An employer will have to invest significant time and resources to obtain the information necessary for the audit, especially where multiple vendors are involved. It is important to differentiate between 401(k) and 403(b) plans when analyzing the impact of the cost of an audit to a plan sponsor. For-profit employers have tax incentives for establishing and maintaining retirement plans. Conversely, tax-exempt entities have no tax incentives to set up or continue a retirement plan. It is our concern the added financial burden of the audit (i.e. preparation, obtaining information, and actual audit expense) will cause employers to discontinue their existing 403(b) plans and employers that continue the plans will pass these unnecessary costs directly onto participants.

In summary, we do not believe full reporting and an annual audit will significantly further the Department's goal of correcting the improper handling of employee contributions. It is our belief the addition of a specific question regarding timing of contributions on Form 5500 as well as written guidance (i.e. education) from the Department will have a greater impact on addressing the issue of the proper administration of employee contributions.

We appreciate the opportunity to comment on these proposed revisions and the careful consideration of the Department of our remarks and the recommendations set forth herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John M. Davis". The signature is fluid and cursive, with the first name "John" being the most prominent part, followed by "M." and "Davis".

John M. Davis  
President

Nationwide Private Sector Retirement Plans