ILLINOIS CPA SOCIETY®

a: 550 W. Jackson, Suite 900
Chicago, IL 60661-5742

p: 800.993.0407 or 312.993.0407
f: 312.993.9432

www.icpas.org

October 4, 2016

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: RIN 1210-AB63
Annual Reporting and Disclosure
Room N-5655
U. S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

The Employee Benefits Committee and Tax Executive Committee of the Illinois CPA Society ("Committees") appreciate the opportunity to provide their perspective and comments on the Proposed Revision of Annual Information Return/Reports, as published in the Federal Register on July 21, 2016. Our comments represent the collective views of the Committees and not the individual views of the members or organizations with which they are affiliated. The organization and operating procedure of the Committees are outlined in Appendix A to this letter.

While we recognize the need for the Department of Labor ("DOL"), Internal Revenue Service ("IRS") and Pension Benefit Guaranty Corporation ("PBGC") (collectively, the "Agencies") to be able to better utilize the data disclosed on the Form 5500 (Annual Return/Report of Employee Benefit plan) for enforcement, research and policy formulation programs, we feel the Agencies should take into consideration our comments as outlined below.

**General Comments**

The proposal indicates that employee pension plans, employee welfare benefit plans, plan sponsors, plan administrators, and service providers would be affected by the changes in the Form 5500 filing requirements. In reviewing the proposed changes, we feel that the overall burden and cost of complying with the revisions, as absorbed by service providers (such as investment advisory firms, insurance providers, Third Party Administration ("TPA") firms, CPA firms performing audits of plans and software vendors involved in maintaining and revising Form 5500 filing software) will be excessive and the providers may instead pass on the burden and costs to the sponsors of retirement and welfare plans. In some instances this will cause the costs of maintaining these plans to become impractical and force plan sponsors, especially sponsors maintaining small pension and welfare benefit plans, to consider the termination of these programs for their employees.

Investment advisory firms will need to take into consideration the additional reporting requirements to Schedules C and H of the Form 5500. In addition to providing more extensive information regarding the investments in a plan (such as CUSIPs and other identifying information, cost, share classes, maturity dates, surrender charges and asset categories), the firms

will now have to closely examine the services provided and the fees they receive, which may need to be reported on Schedule C under the proposed revisions. These additional requirements will necessitate that reports provided by such providers to plan sponsors are re-designed to comply with the changes, and the costs incurred by the firms may be excessive and may be passed on to the plan sponsors, or to the participants within the plans.

Insurance providers will now need to insure that small health plans (of less than 100 participants), which have in the past been exempt from the filing of Form 5500, receive the information necessary to complete Form 5500. The insurance provider will also have to provide more extensive information so that the plan sponsor can accurately complete the proposed Schedule J. The costs of providing this additional information, as well as ensuring that Plan sponsors file the Form 5500 when required, may be excessive and the costs incurred by the providers may be passed on to the plan sponsors. In addition, plan sponsors of such small health plans already support their employees by providing such benefits in the face of ever increasing health care costs and compliance, and will now have to comply with yet another filing requirement. They will have to engage a preparer for their annual Form 5500 filing. The Agencies appear to be unaware of the fact that Insurance providers do not, historically, prepare Form 5500 filings at all, for their clients. This will result in further increased costs for small health plan sponsors to engage a preparer for their filing, and will represent another reason they may choose to terminate such arrangements in the face of increased compliance that is pressed upon them.

TPA firms will need to gather additional information from plan sponsors in order to accurately prepare compliance reports and the Form 5500 for submission. Some of these changes are being incorporated into the 2016 Form 5500 filing (such as trustee information, paid preparer information, and 401(k) Plan compliance questions), and will continue to be required in the future. The proposed revisions will create a need for the TPA, especially in the case of a small welfare benefit plan, to request information from plan sponsors who, up to this point, have never had to file a return in the past and may not be aware of the filing requirements or the information which is necessary to complete the returns. The TPA firms may then begin charging fees to plan sponsors for the preparation of the Form 5500 for small welfare benefit plans which have never been charged to plan sponsors in the past. In addition, the cost to the TPA firms to gather the additional information necessary to complete the returns may prove to be excessive and may be passed on to the plan sponsors.

CPA firms performing certified audits of retirement and welfare benefit plans will have to add to, and redesign, their procedures to properly test and verify the information required by the proposed revisions. The revisions will also cause the firms to require more time to analyze the information that they have received to ensure that it is in compliance with the proposed revisions. The cost to the firms to perform these additional procedures will likely be passed on to the plan sponsor. In the case of small retirement and welfare benefit plans that are subject to the audit requirement, the costs incurred with the additional procedures may reach a point where the plan sponsor may consider the termination of the plan.

Software vendors will need to completely redesign their software to incorporate the changes required by the proposed revisions. In addition to moving items from one schedule to another

and changing the way that certain questions are answered, new forms, such as the Schedule E and J, will have to be created. The testing and implementation time, as well as the cost to the vendor may be excessive and may be passed on to the TPA firms utilizing the software, who will ultimately pass along the costs to plan sponsors as they prepare their annual Form 5500 filings.

Our analysis indicates that the proposed revisions will cause time and cost increases for all parties involved in the maintenance and administration of retirement and welfare benefit plans. The cost of these revisions in some cases may be excessive and could be passed onto the sponsors of the plans, increasing the costs for some who may be unable to absorb these additional costs. If sponsors of plans were to terminate their plans due to the excessive cost of the changes, it would appear to defeat the purpose of the Agencies involved in the proposed revisions, which is to offer the ability to save for retirement and to offer and provide funding for welfare benefits to employees of a business.

**Specific Comments**

Noninterest-Bearing Cash

The proposed rules include a change to the way non-interest-bearing cash is presented on Schedule H. The change would move it to a subset of General Investments – Cash and Cash Equivalents, that category is then excluded from inclusion on the supplemental Schedule of Assets Held for Investment at End of Year. Since noninterest-bearing cash earns no investment income and in many cases is not held for investment but used only to facilitate deposits to and withdrawals from the Plan, we do not believe including it with General Investments is an improvement. In addition, we do not believe excluding cash and cash equivalents that do earn income from the Schedule of Assets Held for Investment at End of Year is an improvement since there would be no way to determine the portion of cash and cash equivalents earning investment income from the portion that is not earning investment income. Therefore, we recommend no change to the way these items are currently presented on Schedule H.

Participant Loans

The proposed rules include a change to the way participant loans are presented on Schedule H. The change would move them from General Investments to Receivables to conform to the presentation under U.S. Generally Accepted Accounting Principles. While we agree this is an improvement and eliminates confusion between the Plan financial statements and the Schedule H, many auditors are still considering participant loans to be excluded from the audit, except for compliance related audit procedures, when the loans are certified under the limited scope audit regulations. The proposed rule should clarify whether as receivables the participant loans are still eligible for limited scope audit treatment, and if not, consideration should be given to the additional cost to plan sponsors for auditors to perform full scope audit procedures on participant loans that may have previously been excluded from such procedures.

## Plans Requiring an Audit

The proposed rules include a change related to when a plan requires an independent audit. Currently, in general, plans in which the number of participants equals or exceeds 100 at the beginning of the plan year, or exceed 120 at the beginning of the plan year if a Schedule I was filed in the prior year, must have an audit, even if the number of participants with account balances is less than those counts. The proposed change to the audit requirement would only require audits of plans in which the number of participants with account balances was 100 or more at the beginning of the plan year (or also at the end of the plan year for new plans). We believe that many plan sponsors may try to keep the participant count below 100, and therefore avoid the audit requirement, by excluding eligible employees from participating in the plan, or by making improper distributions from the plan, which is a violation of the terms of the plan document, and, generally, ERISA and the tax law. In addition, auditors have found that most compliance errors such as errors in the definition of compensation, errors in contribution calculations, errors in the application of eligibility provisions, and timeliness of deposits of deferrals, occur in the plans with many eligible employees but few contributing participants. Changing the rules about which plans are subject to the plan audit requirement will result in less independent oversight, and potentially lead to a growing trend in compliance errors, than under the current rules.

## Schedule H, item 4i, Schedules of Assets

While we understand the Agencies' requested changes regarding the disclosures made on the supplemental schedules in order to promulgate making the disclosures in a fashion that yields "data capturable" or "data mineable" data, we do not believe that the Agencies have adequately demonstrated, or analyzed, the amount of work this is going to represent that will be borne by plan sponsors, and service providers to their plans. Requiring that all input be done via data capturable fields, in standardized formats, to list in detailed fashion each and every asset held (or disposed of during the plan year) by a funded retirement or welfare plan, is an enormous amount of work on a plan-by-plan basis, even if the information could be imported from various asset managers or custodians should they be able to produce reports that provide the requested information. Currently, the identifying information mentioned in the proposal, as far as CUSIPs, CIKs, LEIs, FIGIs, etc. is rarely if ever present and do not believe that this information will be provided in complete fashion to plan sponsors for each investment asset that is reportable on the supplemental ERISA Schedules. That will leave the plan sponsor, and its preparer, and their accounting firm (for audited plans) in a situation where Form 5500 would need to be filed on an incomplete basis, and it will also substantially delay the preparation of Forms 5500 for such plans.

We believe the Agencies' overall objective is to improve the timeliness of the plan audit, and Form 5500 filing process rather than to delay it because of the enormous amount of additional work this is going to represent on each Form 5500 that holds investment assets. There are a lot of situations under the current EFAST2 system where audits, and Form 5500 filings, are being made at the last minute (or late) since complicated issues are not able to be resolved as quickly as everyone would like and we believe the additional information reporting requirements for the Schedules of Assets is going to further delay the overall process.

We would like to propose, should these additional supplemental schedule disclosures be required, that Form 5500 filings be accepted where the additional information that would be requested is incomplete, in a similar fashion as it does currently with respect to Schedule A. That is, if the disclosures on supplemental schedules are incomplete because the required information was not completely provided to the plan sponsor, and its preparer, then the filing would still be accepted as a complete filing, with an area and additional questions added to Schedule H to identify what the missing information is, and which service provider failed to provide it.

Proposed Breakout of Administrative Expenses into 11 types in Item 2i of Schedule H

This level of detail seems to be a duplicative effort given that service providers paid directly by the Plan in excess of $5,000 are already specifically identified in Schedule C. In addition, requiring further breakdowns and sourcing as to whether administrative expenses are charged directly to participant accounts, charged pro-rata based on account balances, or per capita, is going to necessitate a lot of additional work by Form 5500 preparers and plan sponsors since current reporting by asset managers and those who provide reports used for Form 5500 preparation does not provide this level of detail. We propose that the proposed breakout of administrative expenses not be required.

New Questions in Part III Accountant's Opinion

Newly proposed question 3f asks if the accountant advised whether the IQPA report, including the financial statements and/or notes required to be attached to the return/report, or the IQPA's communications with those charged with governance (AU-C 260 and AU-C 265, formerly SAS 114 and 115) disclosed any of the following and seven specific items are listed.

Generally accepted auditing standards require timely communications under AU-C 260 and 265, but do not require these communications to be completed prior to the issuance of the auditor's report on the financial statements. Communications under AU-C 260 and 265 generally occur after issuance of the auditor's report on the financial statements. For those plans whose auditor's report is dated just prior or on the October 15th extended due date the communications under AU-C 260 and 265 would not yet be available to the Plan Administrator and therefore they would not be able to answer this question and would need to delay the filing of their 5500 past the October 15th extended due date.

In addition, the financial statements and footnotes to which the IQPA report is attached are those of the Plan Administrator and, therefore, they should already be aware of the seven items specifically asked about in this question as they pertain to the contents of the financial statements and footnotes and should not rely on the IQPA to advise them of such.

Newly proposed question 3g asks if the IQPA had a peer review performed in accordance with their state's requirements. However, the IQPA may be a new firm and have not yet undergone its first peer review. Preparers of the form 5500 should have an opportunity to provide comments if the answer to this question is "no." In addition, preparers may be confused what is meant by "state's requirements." We suggest that question 3g be revised to include the word "licensing" (i.e., state's licensing requirements).

Element 1 of the newly proposed question 3g asks for the name of the peer reviewer. However, preparers of the form 5500 may be confused whether this element refers to the name of the peer reviewing firm or the peer review team captain, who may or may not have been the individual responsible for reviewing the employee benefit plan audits during the peer review. We suggest that element 1 be revised to ask for the name of the peer reviewing firm.

Element 2 of the newly proposed question 3g asks for the year of the IQPA's last peer review. However, preparers of the form 5500 may be confused whether this element refers to the year-end of the peer review, the date of the exit conference, the date the peer review was accepted by the applicable peer review acceptance committee or the date the peer review was completed, which could occur in different calendar years. We suggest that element 2 be revised to ask for the year end of the peer review (e.g., April 30, 2016).

Element 3 of the newly proposed question 3g asks for the rating of the IQPA's last peer review report. Of the 29,000+ firms and sole practitioners peer reviewed nationally under the AICPA Peer Review Program every three years, approximately one third permit their peer review results to be posted to the AICPA Public File as a condition of membership in the Center for Audit Quality (CAQ), Governmental Audit Quality Center (GAQC), Employee Benefit Plan Audit Quality Center (EBPAQC) and/or Private Companies Practice Section (PCPS); the peer review results of the remaining two thirds remain confidential. However, the following general information is available in the Firm Search section of the AICPA Public File for all firms and sole practitioners enrolled in the peer review program:

- The firm's name and address
- The fact that the firm is enrolled in the AICPA Peer Review Program
- The date of acceptance and the period covered by the firm's most recently accepted peer review
- Whether the firm's enrollment in the program was terminated or dropped

We suggest that the peer review results remain confidential for those firms and that element 3 of the newly proposed question 3g be eliminated.

Element 4 of the newly proposed question 3g asks for the number of years that the peer reviewer has been the IQPA's peer reviewer. However, this element should probably refer to the number of times that the peer reviewer has been the firm's peer reviewer or the number of peer reviews that the peer reviewer has performed for the IQPA, since peer reviews are ordinarily performed every three years. In addition, because DOL studies on audit quality have not demonstrated a negative correlation between the number of times that a peer reviewer has been the IQPA's peer reviewer, we strongly suggest that element 4 be eliminated.

Element 5 of the newly proposed question 3g asks whether the peer review covered employee benefit plans. However, employee benefit plan audits may be a new practice area to the IQPA or have been acquired as part of a merger and appropriately not included in the scope of the IQPA's most recent peer review. Preparers of the form 5500 should have an opportunity to provide comments if the answer to this question is "no."

Requiring Additional Information from Sponsors of Welfare Plans on Form 5500

1. The small group health insurance market is very fragile. Many small groups are considering dropping their plans due to the rising health insurance premiums. Participation is waning because even if the employer is paying 50% of the cost many employees still cannot afford it. Adding the burden and expense of filing Form 5500 annually may cause the smallest of employers to drop their plans altogether, which will leave many employees without current coverage at that point.

2. If one of the Agencies' goals is to assure ongoing compliance with "grandfathered status rules" it is too late. One of the larger Blue Cross brokerage houses has told us that less than 3% of their plans on the books are still "grandfathered." By 2019, that number will probably be less than 1% as the grandfathered plans offered lower out of pocket maximums and deductibles than current new fully insured plans and will be too expensive to continue. The insurance carriers do not offer any grandfathered alternatives and with the slightest change in plan design the carrier forces a group on to non-grandfathered plans. In other words, the carriers enforce 95% of the compliance in this regard. Even if an employer changes the contribution level (unknown to the carrier) and technically is not grandfathered, the employee is probably still better off in the grandfathered plan because the out-of-pocket expense will be much lower. Requiring additional information about grandfathered benefits on Form 5500, and on Schedule J, for large and small health plan filings, seems unnecessary at this point.

3. Groups under 100 employees are generally reluctant to self-insure their health plans as the group does not have credible claims experience and the owners deem these plans as too risky. If they do self-insure, it is usually a hybrid-type stop loss plan where all the premiums are paid to an insurance company and there is no fund maintained by an employer.

4. Schedule J, Part 1, Item 6a refers to COBRA which only applies to groups 20 and over. Perhaps the scope for requiring Form 5500 filings should be lowered to 20 or more participants. These groups would almost all be fully insured in "Affordable Care Act" off the shelf type plans with few compliance issues. This would reduce the compliance burden on truly small health plan sponsors (with less than 20 participants) if they did not have to annually file Form 5500.

5. Given that many of these small groups probably use smaller accounting firms (and in many cases sole practitioner type firms), many of which have no experience filing form 5500, what will be the true cost to the many groups with less than 20 employees to have this reporting completed? Do the Agencies really want to see a substantial increase in the number of health plan filings completed, and have them prepared by inexperienced preparers (or plan sponsors themselves, who will also be inexperienced)?

6. What are the Agencies' enforcement initiatives around the Form 5500 filing requirements for small health plans and plan sponsors? Recently, EBSA increased the potential fines for failing to file Form 5500 to as much as $2,603/day late. Currently, there are many

large welfare plan sponsors which are out of compliance, not through intent, but because they are not familiar with the Form 5500 filing requirements. Does EBSA plan on enforcing these enhanced penalty provisions against small health plan sponsors when there will likely be many who are out of compliance with the revised filing requirements? Would it be better to consider continuing an exemption for small, unfunded health plans but with a lower filing threshold than in the past (i.e. 50, or 20 as suggested above), in order not to see the result of increased non-compliance with the filing requirements for welfare plans in general?

We appreciate the opportunity to offer our comments and input.

Sincerely,

**Kathleen Musial, CPA**
Chair, Employee Benefits Committee

**Jeffrey Rozovics, CPA**
Chair, Taxation Executive Committee

APPENDIX A
EMPLOYEE BENEFITS COMMITTEE
ORGANIZATION AND OPERATING PROCEDURES
2016-2017

The Employee Benefits Committee of the Illinois CPA Society (Committee) is composed of the following technically qualified, experienced members appointed from industry, government and public practice. The Committee usually operates by assigning Subcommittees of its members to study and discuss fully exposure documents proposing additions to or revisions of accounting, audit and attestation standards. The Subcommittee develops a proposed response that is considered, discussed and voted on by the full Committee, which is then submitted to the appropriate senior level committee of the Illinois CPA Society for its review and approval. Support by the two Committees results in the issuance of a formal response, which at times includes a minority viewpoint. Current members of the Employee Benefits Committee and their business affiliations are as follows:

**Public Accounting Firms:**

**Large:** (national & regional)

| | |
|---|---|
| Rose Ann Abraham, CPA | Baker Tilly Virchow Krause LLP |
| Janice Forgue, CPA | Marcum LLP |
| David Kot, CPA | BKD, LLP |
| William Zorc, CPA | Marcum LLP |

**Medium:** (more than 40 professionals)

| | |
|---|---|
| Brent DeMay, CPA | Sikich LLP |
| Joseph Klapka, CPA | Legacy Professionals LLP |
| Kenneth Kobiernicki, CPA | Ostrow Reisin Berk & Abrams Ltd |
| Kathleen Musial, CPA (Chair) | BIK & Co, LLP |
| Eric Wallin, CPA | Legacy Professionals LLP |

**Small:** (less than 40 professionals)

| | |
|---|---|
| Kenny Adegoke, CPA | Washington Pittman & McKeever, LLC |
| JoAnn Cassell, CPA | Cassell, Inc. |
| Nicholas Cheronis, CPA | Nicholas Cheronis, CPA |
| Jodi Dicenzo, CPA | JLD Consulting LLC |
| Matthew Mauer, CPA | HDB, LLC |
| Daniel Schober, CPA | Daniel Schober, CPA |
| Douglas Taylor, CPA | Mann, Weitz & Associates, LLC |
| Aimee Urnikis, CPA | Sassetti, LLC |

**Government:**

| | |
|---|---|
| Kathryn McAlpine, CPA | Internal Revenue Service |

**Industry:**

| | |
|---|---|
| G. David Nolan, CPA | National Life Insurance Company |
| Andrew Strimaitis, JD | Barack Ferrazzano Kirschbaum & Nagelberg LLP |
| Mark Wachholz, CPA | Property Casualty Insurers Association of America |
| Mark Yahoudy, CPA | Verisight Group |
| Donald Weinoff, CPA | Quorum Consulting Group |

**Staff Representative:**

| | |
|---|---|
| Paul Pierson, CPA | Illinois CPA Society |

APPENDIX A
TAXATION EXECUTIVE COMMITTEE
ORGANIZATION AND OPERATING PROCEDURES
2016-2017

The Taxation Executive Committee of the Illinois CPA Society (Committee) is composed of the following technically qualified, experienced members. These members have Committee service ranging from newly appointed to more than 20 years. The Committee is an appointed senior technical committee of the Society and has been delegated the authority to issue written positions representing the Society on matters regarding the setting of standards on and regulation of taxation services. The Committee's comments reflect solely the views of the Committee, and do not purport to represent the views of their business affiliations. Current members of the Committee and their business affiliations are as follows:

| | |
|---|---|
| Gregory Ciokajlo, CPA (Past Chairperson) | Ciokajlo, Hein & Associates Inc. |
| Jeremy Dubow, CPA (Vice Chairperson) | NDH Group, Ltd. |
| Paige Goepfert, CPA | RSM US LLP |
| Mark Heroux, CPA | Baker Tilly Virchow Krause, LLP |
| Kathleen Howe-Hrach, CPA | BMO Harris Bank N.A. |
| Andrew Klemens, CPA | BKD, LLP |
| David Kupiec, CPA | Kupiec & Martin, LLC |
| Jeffrey Rozovics, CPA (Chairperson) | Rozovics Group PC |
| Eunice Sullivan, CPA | S&P Solutions Ltd. |
| Madhuri Thaker, CPA | Plante Moran, PLLC |
| Ryan Vaughan, CPA | Ernst & Young LLP |
| **Staff Representative:** | |
| Gayle S. Floresca, CPA | Illinois CPA Society |