

December 5, 2016

Filed Via Email at e-ORI@dol.gov

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, N.W.
Washington, DC 20210

RE: RIN 1210-AB63

Dear Assistant Secretary Borzi, Director Choi, & Director Reeder:

The Committee on Investment of Employee Benefit Assets (CIEBA), the Society for Human Resource Management (SHRM), and the ERISA Industry Committee (ERIC) (the “Organizations”) welcome the efforts of the Department of Labor, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation to modernize the reporting requirements in the Form 5500 Annual Report and to improve the transparency and accessibility of data on the private sector retirement system. We appreciate the opportunity to provide comments on the proposed changes, particularly on the reporting requirements for investment activity and on service provider expense information.

I. Overview of the Organizations

CIEBA members are the Chief Investment Officers of more than 100 of the Fortune 500 companies who individually manage and administer Employee Retirement Income Security Act (ERISA) - governed corporate retirement plan assets. CIEBA members voluntarily sponsor plans and manage almost \$2 trillion of retirement assets on behalf of 15 million participants, representing a very significant portion of the largest private defined benefit and defined contribution retirement plans in the US.

As the largest organization of corporate pension investment officers, CIEBA represents the interests of employee benefit plan sponsors before legislators, Congress, regulators, and the media. Since 1985, CIEBA has provided a nationally recognized forum and voice for corporate pension plan sponsors on investment and fiduciary issues.

ERIC is the only national association that advocates exclusively for large employers on

health, retirement, and compensation public policies at the federal, state, and local levels. ERIC's members provide comprehensive retirement benefits to tens of millions of active and retired workers and their families. ERIC has a strong interest in proposals, such as the proposed rule, that would affect its members' ability to provide secure retirement benefits in a cost-effective and efficient manner.

The Society for Human Resource Management is the world's largest HR professional society, representing 285,000 members in more than 165 countries. For nearly seven decades, the Society has been the leading provider of resources serving the needs of HR professionals and advancing the practice of human resource management. SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China, India and United Arab Emirates.

II. Comments

The members of the Organizations are committed to ensuring that the millions of beneficiaries covered by both their defined benefit and defined contribution retirement plans have access to necessary information about the management of their assets. However, we are concerned that the changes being proposed to Form 5500 don't provide participants, regulators, or policymakers with much additional useful insight. Rather, the proposed changes add unnecessary burdens to plan sponsors, as well as to their accountants and recordkeepers who collect information on investments and service provider fees. Our concerns are discussed in more detail below.

A. Substantial Additional Costs with Unclear Benefits

The Organizations are concerned that the evaluation and implementation of the new requirements will increase legal, compliance, and audit costs and place an even larger toll on staff resources needed to compile the additional data. Importantly, these increased costs may be passed on to the plan participants, if not covered by the plan sponsor. Thus, participants may actually see their fees increase from the changes.

The members of the Organizations already spend a considerable amount of time and resources compiling information currently required by the Form 5500, and they have seen the burdens of it increase substantially over the years. Currently, it can take a large employer over 400 hours of work to complete just Schedule C for its defined benefit master trust.

We appreciate the Agencies' decision to alter the requirements on Schedule C so that employers only have to report direct compensation made to covered service providers. We agree that this will help decrease the burden of having to report on a large number of entities. However, the large amount of information about the service providers that's being required in Schedule C and in other parts of the revised form is still far too extensive, and it will only add to the high reporting burden. Employers do not currently collect much of the data required to answer the new questions. They will have to develop new systems not only to collect

information but also to process and verify it. Employers will also have to spend considerably more time soliciting information from dozens or even hundreds of vendors. Moreover, since many of the new questions are ambiguous or confusing, employers will need to engage legal counsel, which will increase costs. For example, on the main Form 5500, plan sponsors will now be required to provide further information on specific attributes of a retirement plan, including an ambiguous “Other” category with a blank box under Question 9(a)(9).

The new reporting requirements are particularly burdensome to large plan sponsors because they rely on in-house staff, rather than on outsourced service providers, to comply with reporting obligations and submit federal reports such as Form 5500. The Agencies have estimated that it will take large employers approximately 90 hours of additional work to comply with the changes (81 Fed. Reg. at 47568). That, by itself, is a substantial increase in the reporting burden.

However, the Organizations believe that the Agencies have significantly underestimated the additional hours of work that will be required, particularly for large companies with subsidiaries whose plans’ reporting functions are not centralized. One such employer from our memberships estimates that it will take an additional 2,000 hours to complete the form, due to the large quantity of plans they oversee, as well as the additional work that’s required across multiple departments in the company. Additionally, the same employer expects it to take up to 4,000 hours to adjust to the form changes and comply with them in the first year that they’re in effect. Further, even plan sponsors who use outsourced service providers to complete the form on their behalf may incur additional costs, due to the likely increase in fees that would result from the increased time required to complete the form. These costs may be passed onto plan beneficiaries as well. Audit fees would also increase significantly. Some of our members’ auditors have suggested that the annual audit fees could double or even triple as a result of the proposed changes.

Before the Agencies make such significant changes to federal reporting requirements, they ought to demonstrate that the benefits of those changes outweigh the costs. However, the Agencies have done little to quantify the benefits of any of the proposed changes. For example, although the Agencies state that they aim to improve compliance and reduce enforcement costs, they fail to provide any justification for that assertion and have not attempted to quantify the benefits.

B. Consistency in Disclosure

The Agencies should make investment disclosures consistent with other reporting requirements. In Accounting Standards Update 2015-12, the Financial Accounting Standards Board (FASB) changed its reporting requirements so that employee benefit plans only have to report their investment holdings by their general type, not by other, hard-to-measure

information such as the nature of the investments and their risks. This update was the result of a long, collaborative process undertaken with key stakeholders. Yet rather than relying on this existing streamlined framework derived in accordance with those stakeholders, the Agencies are now proposing to create a new, more burdensome system for investment-related disclosures. As a result, employers will have to expend resources to report the same assets in two separate ways.

Not only is that costly and confusing, but it is also redundant to what is already being disclosed in the plan financial statements under the FASB requirements. For example, Schedule H requires large employer plans to report the current value of their investment holdings. This information is already reported in the plan financial statements under Accounting Standards Codification 820. Further, FASB has also simplified the disclosure requirements for investments using the net asset value per share practical expedient under Accounting Standards Update 2015-07, which allows plans to forgo the more strenuous disclosures required by the Fair Value Hierarchy. As a result, the Form 5500 changes would impose two different sets of reporting requirements on plan sponsors for the same information.

C. Schedule H

Many assets fall into multiple categories and cannot be easily segmented by type. For example, an investment can be both a venture capital operating company and a private equity fund. However, these are listed as two distinct categories under Schedule H. Further, even if the Agencies were to craft definitions of the categories that allowed a more consistent granular breakdown, we do not see what value that breakdown would provide.

The Organizations are also concerned that some of the proposed investment-related disclosures on Schedule H will lead to damaging unintended consequences for retirement plans. For example, the proposed changes would require a disclosure of the number of alternative investments, as well as the number of index funds. When the government asks for such specific investment information, it may signal to plan fiduciaries that they should include alternative investments or index funds in their plans. Neither Congress nor the Agencies have ever taken a position in favor of or against any particular investment path. Instead, plan fiduciaries have long been permitted to formulate any investment strategy they believe is most prudent for their beneficiaries, provided they satisfy their obligations as fiduciaries. Under the proposed changes to Schedule H of Form 5500, the Agencies may be unintentionally putting a finger on the scale in favor of particular investments. In addition, as stated earlier on other Schedules, the proposed rule would greatly increase the number of hours required to complete the revised Schedule H, and in some cases, the information being required is redundant to other areas within the Form 5500.

D. Biased Reporting

The Organizations support the Agencies' goal of creating a more transparent retirement system. However, the proposed changes do not accomplish that goal. The questions focus heavily on costs and agency enforcement efforts rather than on providing stakeholders with a picture of the value that is being provided. Given the one-sidedness of this focus, more frivolous litigation will inevitably follow, and this threatens to further undermine the retirement system. The defined benefit system is already seriously strained, and these new requirements will only make managing retirement plans even more cumbersome and costly.

III. Conclusion

CIEBA, ERIC, and SHRM appreciate the opportunity to comment on the proposed changes to the Form 5500 Annual Report. Although we support transparency in the retirement system, we are concerned that the costs of the proposed changes outweigh the benefits. In addition to the costs involved, the drastic increase in required information is concerning to plan sponsors, due to the lack of specific guidance provided by the Agencies that would help to ensure the information provided is correct. Therefore, we urge the Agencies to engage in a collaborative process with stakeholders to develop more cost-effective methods for improving transparency. At the very least, we request that the Agencies hold hearings on the proposed changes and reformulate them after considering stakeholder feedback. We would be pleased to discuss these matters further with the Agencies.

Sincerely,



Ray Kanner
Acting Executive Director, CIEBA Inc.



Will Hansen
Senior VP, Retirement Policy, ERIC



Michael Aitken
VP, Government Affairs, SHRM