



September 19, 2006

Filed Electronically

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

Re: Comment on Proposed Revisions of Form 5500

Dear Sir or Madam,

The American Benefits Council (Council) appreciates the opportunity to comment on the proposed revisions to the Form 5500 Annual Return/Report forms issued in July 2006. The 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 sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

We would like to start by applauding the Employee Benefits Security Administration (EBSA) for streamlining the annual reporting burden, especially for small businesses, by introducing a new short-form, simplified report for some small plans (Short Form 5500) and removing several schedules from the Form 5500. We would also like to commend EBSA for providing a marked-up version of the Form 5500 in addition to the narrative, making it easier to view the proposed changes in context.

The Council has significant concerns, however, about other portions of the proposal. Foremost of these concerns are timing issues: the September 19th deadline for comment letters and the proposed 2008 effective date for implementation of the changes are insufficient for the industry to analyze their effect and build the necessary technology. Part of this analysis is to understand how these revisions will relate to the disclosure of service provider compensation that EBSA has announced it will require as part of the "necessary services" exemption under ERISA Section 408(b)(2).

Building the technology will require significant and complex programming and allocation of technical resources in 2007 to allow for the ongoing recording of compensation information beginning in 2008. Systems planning and budgeting of resources are typically done far in advance. Requiring significant technology work in 2007 will conflict with reasonable business plans and would be in addition to that necessary to support the recently enacted Pension Protection Act.

The Council accordingly recommends that EBSA extend the comment letter deadline for the proposed changes to the Form 5500 so it coincides with the comment period for the yet-to-be-released proposed regulations under ERISA Section 408(b)(2). Further, we request an extension of the proposed effective date to the 2010 plan year so as to allow reasonable time to make systems revisions and avoid a conflict with those changes necessary to comply with the Pension Protection Act.

The remainder of this comment letter outlines some of the basic issues identified by Council members in the proposal. However, Council members are still analyzing the proposal and we reserve the right to provide further comments in additional letter(s).

Schedule C

Initially, the Council is concerned with the elimination of the “40 highest-paid service provider” limit for disclosure on the Form 5500. Some larger plans have hundreds of service providers that meet the definition, which will greatly complicate 5500 reporting for these plan sponsors. The time needed to compile all of this information will be considerable. The Council recommends, at the very least, that the proposal be revised to apply a larger limit or to trigger a limit if payments to the reported service providers would constitute some large percentage of the fees paid by the plan.

Actual/Estimate Dollar Amounts versus Calculation Formula

The Council appreciates and understands the Department of Labor’s (DOL’s) desire to ensure that fiduciaries receive full and fair disclosure in order to perform their responsibilities. However, most needed by plan sponsors to ensure that the arrangement is reasonable is easy to compare information. If not comparable, plan fiduciaries will have a difficult time determining whether an arrangement is reasonable.

The Council believes the up-front (and on-going) disclosure of direct and anticipated indirect compensation, in the form of formulas such as basis points on invested assets and how float would be determined, or any other method by which the service provider’s indirect compensation will be determined, has great

value. Plan sponsors want – and need – the ability to compare simple numbers and formulas. The addition of estimated numbers based on differing assumptions will only complicate the comparison – yet estimates are quite likely to be what the plan administrators receive. If plan fiduciaries are armed with the formulas prior to entering into a service agreement, it will place the fiduciary in a better negotiating position and reveal any potential conflicts. Plan sponsors are also concerned that service provider costs to build a system that gives actual numbers or projects actual numbers using differing assumptions will inevitably be passed along to the plan and ultimately to participants and beneficiaries.

While plan administrators have the obligation to submit Schedule C as part of Form 5500, the burden of providing the information the plan administrators need generally rests with the service providers. The Council’s members indicate that current technology generally is not capable of providing plan-level detail on the amount of indirect compensation the service providers receive. Indirect compensation received from mutual funds (in the form of 12b-1 fees, for example) can form a significant portion of the indirect compensation earned by service providers that would be reportable. Indirect compensation received by service providers from mutual funds is generally paid via one system (such as a brokerage system or NSCC) while plan and participant records are held on another system (a recordkeeping system). Although some service providers currently track indirect compensation information at the plan level, this is not always the case and sufficient lead time is necessary to provide appropriate integration of systems to implement the new reporting requirements.

Pooled Separate Accounts, Common or Collective Trusts

Plans are not now required to include in their annual reports information on the individual transactions of pooled separate accounts and common or collective trusts. Nothing in EBSA’s proposed revisions or related preamble suggest that EBSA intends to change the existing reporting exemptions. Nonetheless, some have questioned the continued validity of the existing exemptions. The Council requests that EBSA issue guidance indicating that the existing reporting exemption for pooled vehicles remains effective.

Unfunded Health and Welfare Plans

The Council recommends that EBSA revise the instructions to Schedule C to clarify that health and welfare plans that do not use plan assets to pay expenses (directly or indirectly) are not subject to the requirement to report third party payments to plan service providers. The Schedule C reporting is designed to capture information that ERISA Section 103(c)(3) requires plan administrators to report. This section requires reporting regarding service providers who receive “directly or indirectly compensation from the plan,” so the requirement to report

third-party payments should not apply to health and welfare plans that do not use plan assets to pay service providers.

Schedule B

A worrisome proposed change to Schedule B is that the plan's actuary must show the percentages of plan assets held in stock, debt, real estate and other investments, with a further breakdown of debt investments including percentage in government, investment-grade and high-yield holdings and a measure of the duration of aggregate debt investments (the "Macauley duration"). The Schedule B is prepared and certified by the plan's actuary and should include only information that the actuary uses to make its calculations. If this information is added to the 5500, it should be included in other schedules (such as the Schedule H mentioned below).

The Council is also concerned that the information requested is not necessary and will add significant costs for employers when plan sponsors should be encouraged, not discouraged, from continuing to sponsor defined benefit plans. Although the proposed regulation indicates the asset distribution information for single employer plans should be readily available from 10-K filings with the Securities and Exchange Commission and the Macauley duration should be a simple computation for managers of bond portfolios, this will not always be the case.

Not all plan sponsors are required to file 10-Ks and asset allocation information in the plan sponsor's financial statements is often aggregated for all of the employer's plans – foreign and domestic, qualified and nonqualified – with no detail for individual plans. In addition, the asset allocation information filed with the 10-K is as of the plan sponsor's measurement date for Financial Accounting Standards Board (FASB) requirements, which may not coincide with the reporting date for the plan.

Further, adding the duration information will require significant time and expense for many plan sponsors. While investment managers may provide duration information, it may not be the Macauley duration. Even if the Macauley duration is provided by the investment manager, the duration calculations for each manager may need to be aggregated by plan sponsors who may have several fixed income portfolio managers. In some cases, the plan sponsor may look to the custodian bank to provide this calculation, especially if the bank provides consolidated Form 5500 reporting information, but the cost of these calculations will likely be an added expense for plan sponsors.

The Council also recommends that EBSA provide clear definitions of what asset types should be reported under each of the four proposed categories and the

three subcategories of debt instruments so that filers and providers of information can be consistent in reporting. In addition, as mentioned above, Schedule B may not be the appropriate form for providing the information since it is unlikely that the plan's actuary would have sufficient information to attest to the information required without significantly more effort than is necessary now (and additions to required actuarial training so they could analyze the information). At the very least, in order to avoid reconciliation challenges for auditors and preparers of the financial statements, the Council recommends harmonizing the asset classifications reported on the plan's financial statements with the Schedule H and Schedule B asset class distinctions.

Commingled Funds and Master Trusts

Most of the Schedule B analysis appears to contemplate fund disclosure in the context of registered mutual funds. However, the requirement to provide the asset breakdown and Macauley duration of debt instruments may prove to be a more difficult challenge for plans that invest in common or collective funds, other commingled funds or group trusts. When the plan's assets are held in a multi-plan master trust that holds investments in commingled funds, the analysis is even more challenging.

In this case, without a modification of the requirements, the plan sponsor or service provider would be required to obtain the asset breakdown and duration figures for each of the commingled funds within the master trust, calculate the master trust's portion of the total commingled fund holding, and roll the pro-rata figures for each commingled fund into a comprehensive calculation for the master trust. At the very least, significant lead time would be necessary so that service providers and plan sponsors could develop efficient and accurate methods of providing consistent and timely information. In some cases, the reporting periods of the plans will not coincide with the reporting periods of the commingled funds, causing further complications. One potential simplification method, particularly where the funds themselves file 5500s, would be to allow plan sponsors to record the total amount of the commingled vehicle as a one-line item, under a particular category (since the overwhelming majority of the fund's assets will fall under only one of the four categories), and allow duration figures reported for the commingled funds invested in debt securities to be based on a duration figure provided at least annually by the commingled fund, rather than as of the plan's reporting year end.

403(b) Plan Changes

Council members are also concerned about the expansive reporting changes proposed for 403(b) plans subject to Title I of ERISA. The proposed revisions would significantly increase the administrative costs and responsibilities

applicable to the charitable and non-profit organizations that sponsor 403(b) plans.

While many 403(b) plans may qualify to file the proposed Short Form 5500, that filing will still require significant information gathering including extensive financial information. The new filing requirements will be more difficult for 403(b) plan sponsors because those plans, unlike 401(k) plans, rarely have a centralized recordkeeper or involve just one financial institution. Either the plan sponsor will need to gather the necessary financial information from a wide range of providers and piece together the Form 5500 or hire a centralized recordkeeper (or Form 5500 preparer), obviously increasing the costs of the plan. Non-profit organizations are often more cost sensitive than for-profit companies, may have an extremely limited administrative capacity and are generally reluctant to take on new responsibilities at the expense of their main mission. The increased costs and administrative burdens could adversely affect the plans offered by many non-profit organizations and the Council asks you to reconsider the proposal.

Amendments to Pre-2008 Filings

Although not a part of the proposed changes, the separate final rule on electronic filing requires all electronic submissions after 2008. Amendments to pre-2008 filings would also need to be made electronically. The Council respectfully requests that paper amendments to pre-2008 filings be permitted.

Again, we appreciate the opportunity to comment on the proposed changes to the Form 5500, and will provide additional comments as our members continue to analyze the proposal. If the comment period is not extended as we have requested, we would appreciate it if EBSA would, nonetheless, review and consider such additional commentary. We believe that the American Benefits Council offers an important and unique perspective of both the employer sponsors of retirement plans and the service providers that assist them, and we look forward to working with you on these important changes.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Jacobson", written in a cursive style.

Jan M. Jacobson
Director, Retirement Policy
American Benefits Council