

SUBMITTED ELECTRONICALLY

December 2, 2016

Office of Regulations and Interpretations
Employee Benefits Security Administration
US Department of Labor
200 Constitution Ave., NW
Room N-5655
Washington, D.C. 20210

Re: Proposed Revision of Annual Information Return/Reports - RIN 1210-AB63

Dear Members of the Office of Regulations and Interpretations,

Moss Adams audits over 1,550 employee benefit plans annually, ranging in size from 100 to 100,000 participants with \$100,000 to \$5 billion in plan assets. We have frequent interactions with small business owners as well as major corporations, public and private, and third party service providers, who generally are tasked with preparing the Form 5500 Annual Return/Report of Employee Benefit Plan ("Form 5500"). We believe our experience and interactions provide us perspective on these proposed changes from a variety of vantage points. We appreciate the opportunity to provide our comments on the proposed changes to the Form 5500.

The Form 5500 is an informational return for employee benefit plans, with an objective to satisfy the annual reporting requirements under Title I and Title IV of ERISA and the Internal Revenue Code. Employee benefit plans are voluntarily provided to employees by employers, oftentimes at the employer's expense. We are concerned that the extensive proposed changes will add a substantial reporting burden to plan sponsors, and may have unintended consequences of, at worst, dissuading plan sponsors from offering these benefits to, at best, providing insufficient/incorrect information. In addition, the proposed changes will require significant efforts not only for plan sponsors, but also for plan providers in the financial and insurance industries including custodians, recordkeepers, and Form 5500 preparers. The additional effort required by plan service providers will likely equate to increased fees, much of which will be passed along to plan participants. The vast majority of proposed changes are not due to changes in Title I or Title IV of ERISA, but appear to be motivated by the desire of other regulatory agencies and industry professionals to mine data in a manner that would otherwise not be accessible to them. We respectfully request that the Department re-evaluate the necessity and complexity of reporting the additional information in light of the burden it will create for all parties involved. It is unlikely that the average plan participant will benefit from the increased reporting requirements as the complexity of the information and level of detail will not improve a participant's overall understanding of their retirement account balances or other employee benefits.

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We support the comments expressed in the letters submitted by the American Institute of Certified Public Accountants and the American Bankers Association. In addition, we submit the following comments:

Schedule H*Balance sheet, proposal to expand categories of investments:*

Requiring more detailed investment information for plans which only hold readily-marketable investments is overly burdensome. As hard-to-value investments are held by only a minority of plans, we recommend limiting the additional detailed information requirements to the “other” investments section which includes more complex investments such as derivatives, real estate, or hedge funds. Alternatively, ask whether hard-to-value investments are held by the plan, and require additional investment information only for those plans. Non-participant directed plans are more likely to hold hard-to-value investments, so this could be a potential screening question to determine whether additional investment information should be provided.

Line 3c, proposal to add name of the Independent Qualified Public Accountant (“IQPA”) engagement partner:

Plan management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America. It is a common misconception that the plan’s financial statements are “the accounting firm’s financial statements”. We believe that adding the name of the IQPA engagement partner or individual who signs the audit opinion may perpetuate this misconception and cause additional confusion. Further, when an engagement partner signs the audit opinion, they are signing the opinion on behalf of the firm and not as an individual. The name of the firm who audited the financial statements is already required to be included on the Schedule H, and we believe this is the appropriate auditor information to make publically available.

Line 3f, proposal to disclose communication between the plan’s IQPA and those charged with governance:

Communications from the IQPA to those charged with governance over the plan are intended for internal use only, as private communication between the auditor and plan sponsor. It is an opportunity for the auditor to candidly share plan operational issues noted, both large and small, during the course of the audit engagement. We believe that requesting plan sponsors publically disclose this information may have an unintended negative consequence of decreasing the candor between the IQPA and plan sponsor. In addition, under U.S. Generally Accepted Auditing Standards (GAAS), the auditor is not required to complete the communications to those charged with governance prior to issuance of the auditor’s report on the financial statements. This could result in delays in filing the Form 5500 until after the final communication has occurred. If these related questions are retained, the terminology and references should be updated to correspond with current GAAS references.

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Part III - IQPA Report

We suggest that references to the “IQPA Report” be modified to “audit report and audited financial statements and supplemental schedules of the plan” or “the plan’s audit report, financial statements, footnotes, and supplemental schedules”. Where the Form 5500 requests that the “IQPA Report” be attached to the Form 5500, plan sponsors sometimes interpret that to be strictly the one or two-page opinion report from the audit firm, and they neglect to include all required components of the financial statements.

Proposal to add master trust investments to supplemental schedule of assets held:

If a plan invests in a master trust, the footnotes include disclosure of the types of underlying investments held by the master trust. We believe it is more appropriate, and less burdensome, to disclose this information in the footnotes than to include details of every asset/investment held on the supplemental schedule.

Proposal to add Schedule J:

The disclosure of detailed claims information will add an extensive burden to plan sponsors, particularly those of self-insured plans. Disclosing certain information on denied claims, particularly on smaller plans, presents a potential breach of participant privacy. We respectfully request that significant consideration be given to eliminating the following request: “the dollar amount of claims that were denied during the plan year, the denial code, and/or whether the claims were for mental health and substance use disorder benefits or for medical/surgical benefits”. Plan sponsors are usually intentionally insulated from the details of health claims of their employees for good reason; these claims are typically handled by professional, independent, third party administrators. Disclosing details of mental health or substance use disorder claims to employers is unnecessary and may unintentionally lead to discrimination law suits. The HIPAA Security Rule establishes national standards to protect individual’s electronic personal health information and requires appropriate administrative, physical and technical safeguards to ensure confidentiality. Including such information on publically available forms is unreasonable and presents increased security risks for employers. If the reporting and gathering of health claims information is desired by regulators and other industry professionals, they should find another method to achieve their goals and not use a public information return.

The volume of compliance related questions should be considered on a phase-in basis. We believe that more time will be needed both to educate plan sponsors and form preparers and to allow third party vendors time to make the system modifications which will be necessary to compile requested information.

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The Department has dedicated significant time and resources to drafting the Proposal and we support the modernization goal for reporting benefits. However the significant revisions in the Proposal seem to be focused on gathering data for regulators and industry specialists rather than protecting and supporting plan participants and beneficiaries. We would recommend that following the end of the comment period the Proposal be revised to produce a reporting document that provides greater detailed information, while not being overly burdensome to the plan sponsor.

We appreciate the opportunity to provide feedback and we hope that you find our comments meaningful. If you would like to discuss our comments or have any questions, please contact Bertha Minnihan (Bertha.Minnihan@mossadams.com, 408-916-0585) or Susan Mehlman (Susan.Mehlman@mossadams.com, 206-302-6363).

Sincerely,



Bertha A. Minnihan, Partner
Moss Adams LLP