

September 20, 2016

Ms. Phyllis Borzi  
Assistant Secretary  
Employee Benefits Security Administration  
Department of Labor  
200 Constitution Ave. NW  
Washington D.C. 20210

**RE: Proposed Rule Annual Reporting and Disclosure (RIN 1210-AB63)**

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Dear Assistant Secretary Borzi:

On behalf of Summit Consulting, LLC (Summit), we write to offer comments on the proposed revision of annual reporting forms and reports. Summit is a specialized analytics advisory firm that uses quantitative techniques to analyze administrative datasets in an effort to measure performance, quantify benchmarks and model risk. We have deep experience analyzing Form 5500 filings and have leveraged this data for numerous pension and welfare research projects. Since 2010, our statisticians and economists have served the Department of Labor (DOL) Employee Benefit Security Administration (EBSA) providing quantitative research, statistical sampling, and enforcement analytics to support the agency's work of securing retirement and welfare benefits for American workers. Based on our experience with this data, we offer comments on the scope and specificity of proposed data elements in the Form 5500 with the aim of improving data collections and fully leveraging the expanded data for future analysis efforts.

Our comments are organized into two sections. First, we discuss comments pertaining to group health plans. Second, we discuss comments regarding pension plans.

**Group Health Plans**

*Proposed Form Revisions*

Due to how they are defined in the existing version of the Form 5500, there are a handful of data elements that create analytical limitations. We are excited to see that the proposed rule includes revisions to address these challenges.

- **Extension of reporting requirements to group health plans with less than 100 members.** Through this requirement, DOL would collect information not previously available from this population. Policymakers are interested in the small group market and how it has responded to provisions of the

Affordable Care Act (ACA). These proposed reporting requirements could answer questions about this impact.

- **Funding status.** The addition of this new data element provides a more accurate and efficient way to classify plans as fully-insured or self-insured. This will improve the quality of DOL’s annual report to Congress on self-insured plans. Further, it will enable new research opportunities. In combination with the requirement described above on small group health plans, this information would allow policymakers to quantify shifts from fully-insured to self-insured in the small group market.

### *Suggested Revisions*

We see the inclusion of the new Schedule J as an opportunity to conduct richer analysis on group health plans required to report this information. We have a number of suggestions for your consideration aimed at improving analysis potential.

**Network adequacy** is a metric that is receiving increased attention. As defined by the National Association of Insurance Commissioners (NAIC), an adequate network is one that is “sufficient in numbers and appropriate types of providers...” One way to quantify this measure is through the ratio of providers to enrollees. We suggest requesting the number of providers in four specialties that align with Centers for Medicare and Medicaid Services (CMS) priorities<sup>1</sup> for Qualified Health Plans (QHPs): (1) mental health, (2) oncology, (3) primary care, and (4) dental. This will allow for examination of this ratio.

Regarding **Part IV Health Benefit Claim Processing and Payment**, we suggest the following:

1. **Specify the definition of claim as a single service rendered to the provider.** This definition, captured as item 24 on the CMS-1500<sup>2</sup> form, offers the simplest unit for reporting and analysis and is a common way of organizing data across plans. Additionally, adjudication occurs at this level, which aligns with the subpopulations requested in Part IV (e.g. paid, denied). If plans reported data at a higher level, the scenario where one service is paid and one is denied creates a reporting dilemma, as the claim could be counted in

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<sup>1</sup> Center for Consumer Information and Insurance Oversight, Centers for Medicare & Medicaid Services, “Final 2016 Letter to Issuers in the Federally-Facilitated Marketplaces,” *CMS.gov*, February 20, 2015, <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2016-Letter-to-Issuers-2-20-2015-R.pdf>.

<sup>2</sup> Centers for Medicare & Medicaid Services, “Health Insurance Claim Form,” *CMS.gov*, last modified February 1, 2012, <https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/Downloads/CMS1500.pdf>.

more than one group. This definition further ensures that all plans report information in a similar way, which is crucial for analysis and interpretation.

2. **Request claims information in questions 18a, 18b, 18c, 19, 20, and 21 in three distinct categories: (1) health, (2) dental, and (3) pharmacy.** A single plan may be responsible for reporting claims information from more than one of these categories. In the current form, the plan will report statistics aggregately for all of these categories, which presents analytical challenges when examining trends across plans.
3. **Narrow the definition of denied and pended claims.** Variation exists in how plans define denied and pended claims. To improve the precision of data collected, we suggest that DOL refine this definition to reflect common reasons for denial or pend. The CMS adjustment reason codes<sup>3</sup> offer a common language that could be utilized for this purpose. Without a common definition, plans may classify claims differently due to differences in adjudication procedures.
4. **Define “dollar value” of denied claims as the provider charged amount.** In response to DOL’s request for comments on denied claims information, this definition is less burdensome for plans to report than other suggestions. However, the provider charged amount should also be collected for paid claims (in addition to the current proposed definition, Part IV, Number 21). This allows for comparisons between the charged amount of paid claims and denied claims.

Revisions to the Schedule A improve clarity regarding the number of persons receiving specific welfare benefits such as health, life insurance, accidental death and disability, and long term care. This additional information will allow analysts to observe the level of coverage provided to participants across benefit types and provide insight into the richness of benefits offered. To further improve the quality of the data collected, we suggest the following:

- **Add a column to collect the number of participants in addition to the number of covered persons.** The current and proposed Form 5500 uses the term participant for employees who are enrolled in welfare benefit plans. The number of covered persons is defined as the sum of participants, beneficiaries, and dependents. Proposed changes to the Schedule A will ask for the total number of covered persons associated with each type of benefit. The Form 5500 will continue to collect the total number of

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<sup>3</sup> "Claim Adjustment Reason Codes • Asc X12 External Code Source 139," *Washington Publishing Company*, last modified July 22, 2016, <http://www.wpc-edi.com/reference/codelists/healthcare/claim-adjustment-reason-codes/>.

participants separate from their beneficiaries and dependents. However, without tracking the number of participants by type of benefit, analysts will still have an incomplete picture of the types of benefits accessed by participants.

For example, consider a single employer plan. If life insurance is offered to all employees at no cost, then we would expect the total number of participants on the Form 5500 to be the total number of employees, all of whom receive life insurance benefits. If the plan does not provide health benefits at zero cost, the total number of participants in the health plan may be substantially less than the number receiving life insurance benefits. However, the proposed field on the Schedule A will not capture this difference because it includes dependents in addition to participants.

Finally, DOL asks for comments in light of the *Gobeille v. Liberty Mutual Insurance Co.* decision. In our opinion, Schedule J improves the scope of data collected through the Form 5500 on group health plans. However, the aggregate nature of this data limits the analysis potential as compared to the state all-payer claims databases. As has been suggested by others, we support the idea of a national level all-payer claims database (APCD) for self-insured plans, operated by DOL. This initiative would provide an unprecedented opportunity for research and analysis of claims data that could inform efforts to improve quality and utilization at a national level. A national APCD would allow DOL to track trends over time among self-insured plans, develop benchmarks, and identify anomalies. This information could be used to inform new policies, refine existing regulation, and assist plan participants.

### Pension Plans

#### *Proposed Form Revisions*

The existing version of the Form 5500 collects a good deal of pension plan financial information. However, this information has several key limitations. We are pleased to see that several of these limitations are significantly mitigated in the proposed rule.

- **Elimination of Schedule I and extension of Schedule C filing requirements.** The vast majority (over 75%) of pension plans file a Form 5500 Short Form, which collects limited information on plan financials. Under the proposed rule, many plans will continue filing the Short Form. However, even among plans filing the full Form 5500, there is variety in how much financial and service provider information is disclosed under the current rules. Some plans file the Schedule H, which asks for the broadest set of information

under the current Form, but other plans file the abbreviated Schedule I and are exempt from filing the Schedule C, which discloses information on service providers. The Schedule I offers researchers only high level information about the details of plan assets, liabilities, expenses and income; these financial categories are not sufficiently detailed to make meaningful analyses about a plan's financial status. Requiring all plans that file the full Form 5500 to file the Schedule H and Schedule C will offer invaluable insight on plan performance and expenses. For example, by extending the filing requirements for Schedule C, researchers will be able to compare expenses across a wide set of plans. This will increase transparency in the service provider industry and potentially increase marketplace competitiveness.

- **Requirement that Schedule of Assets must be in a data capturable format.** Plans are already required to disclose important information on plan financial health and investments. However, this data is submitted in a free-form fashion that cannot be analyzed easily. The proposed rule offers a standardized format that will facilitate more accurate investment comparisons across plans. For example, it will allow analysts to examine a plan's portfolios to determine whether their investment options' performance (considering fees and returns) are comparable to other similarly sized plans. These data will allow researchers to identify underperformers, and that knowledge can be used by plan sponsors to negotiate better investment options to improve participants' retirement security.
- **Disclosure of administrative expenses.** The proposed rule would require plans to disclose more detailed information about administrative expenses. It asks plans to identify when expenses are charged directly to participants. Currently, Form 5500 expense information leaves a good deal of uncertainty for plan costs. The information will be more insightful if it explicitly notes whether participants are being charged directly for plan costs. This will allow researchers and regulators to identify participants' true costs and more accurately assess the performance of retirement plans based on cost.

### *Suggested Revisions*

We are pleased to see many changes in the proposed rule that will allow researchers and other stakeholders to measure plans' financial performance with greater accuracy. These new elements will provide greater transparency and protection for plan participants and beneficiaries. In addition to the changes already proposed, we offer the following suggestions.

1. **Add a field to collect Central Registration Depository (CRD) Number on the Schedule C.** This information would be relevant for all service providers that provide investment advisory and asset management services to plans. If it were included in Schedule C filings, it would allow analysts to connect Form 5500 data to other data sources, such as Form ADV filings from the Security and Exchange Commission (SEC). As the Form 5500 is modernized, we believe that it is important to take a forward-looking approach and proactively facilitate the ability to connect data sources across agencies.
2. **Collect information regarding participant and employer contribution frequency and timing on the Schedule H.** Frequency of contributions (i.e. bi-weekly, monthly, yearly) is important for calculating investment returns completely and accurately. It is important to identify the timing of participant and employer contributions separately. Participant contributions should be deposited according to the employer's pay period schedule, but employer contributions can be transmitted at employer's discretion (in accordance with plan documents). Plans with more frequent and/or earlier contributions have more time to accumulate investment returns across a plan year than those with contributions that come in at the end of a plan year. As an example, consider plan ABC that receives all employer contribution at end of year and plan XYZ that receives employer contributions monthly. Without knowing the timing of contributions, we are likely to find that plan XYZ has better returns than plan ABC. Considering only one plan year, this is true in an absolute sense. However, it may be attributable to contribution timing rather than inferior investment options.

Thank you for considering our suggested improvements to the Form 5500 based on our experience and expertise. Should you have any questions about our comments, please contact Heather Brotsos ([heather.brotsos@summitllc.us](mailto:heather.brotsos@summitllc.us) or 202.407.8300) and Yuwen Dai ([yuwen.dai@summitllc.us](mailto:yuwen.dai@summitllc.us) or 202.760.2445).

Sincerely,

Summit Consulting, LLC