



December 2, 2016

Submitted electronically via the Federal Rulemaking portal @ www.regulations.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 NW.
Washington, DC 20210

Dear Sir or Madam,

Subject: RIN 1210-AB63—Aon Hewitt Comments on Proposed Revision of Annual Information Return/Reports

Aon Hewitt appreciates the opportunity to submit our comments relating to the proposed revision of the Form 5500, Form 5500-SF, and schedules.

Who We Are

Aon plc (NYSE:AON) is a leading global provider of risk management, insurance brokerage and reinsurance brokerage, and human resources solutions and outsourcing services. Through our more than 72,000 colleagues worldwide, Aon unites to empower results for clients in over 120 countries via innovative risk and people solutions.

Aon Hewitt, a business unit of Aon, empowers organizations and individuals to secure a better future through innovative talent, retirement and health solutions. We advise, design and execute a wide range of solutions that enable companies to cultivate talent to drive organizational and personal performance and growth, navigate retirement risk while providing new levels of financial security, and redefine health solutions for greater choice, affordability and wellness. Aon Hewitt is the global leader in human resource solutions, with nearly 34,000 professionals on six continents serving more than 20,000 companies worldwide.

Comments on Specific Items

Form 5500, Line 7g(3): Number of participants that made contributions during the plan year. Aon Hewitt requests clarification of the participants who should be included in this line. Specifically, please confirm that a welfare plan should report each participant who made any contribution to the plan at any time during the plan year, and was a participant at any time during the plan year—rather than reporting just active participants on a certain date (e.g., last day of plan year).

Also, Aon Hewitt requests clarification of the types of retirement plan contributions that should be included in this line. Specifically, please confirm if a plan should report any participant making any of the following contributions: elective before-tax contributions under Code Section 402(g), elective after-tax contributions, elective Roth contributions under Code Section 408A, and rollover contributions. It is important that the



types of contributions be specified in order for all sponsors to uniformly report this information.

Form 5500, Line 7g(4): Number of participants that terminated employment during the plan year that had their entire account balance distributed as of the end of the plan year. Aon Hewitt requests clarification as to the definition of “entire account balance.” Please confirm that if a participant has an account balance at the beginning of the plan year, terminates during the year, and depletes his/her total account balance before the end of the plan year, he/she should be included.

For simplicity of reporting, as long as the entire account is distributed during the plan year, we do not believe it is helpful to track if the participant takes multiple distributions after termination. Additionally, we do not believe it is helpful to track if the participant takes a partial distribution (such as an in-service distribution) in a prior plan year, but totally depletes his/her account by the end of the plan year reported.

Schedule A, Line 7d: Check all applicable boxes and enter approximate number of persons covered at end of contract year by benefit type [Life Insurance]. Aon Hewitt requests clarification as to whether all types of life insurance coverage should be reported (e.g., employer-provided, optional, dependent-coverage), and how to report coverage with different contract years.

Schedule A, Line 11a: Were there any premium payment delinquencies for premiums due but unpaid during the year? If “Yes,” enter number of times delinquent and for each delinquency enter the number of days delinquent. Aon Hewitt requests clarification of the delinquencies that should be included in this line. Specifically, please confirm if this includes delinquencies in payment from the employer to the carrier and/or payment from individual participants. If reporting is required at the individual participant-level, employers/administrators will be required to develop and implement new processes for tracking and reporting this information.

Schedule C, Line 1d: Check here if the person identified on Line 1a was a fiduciary within the meaning of section 3(21) of ERISA at any time during the plan year. Whether a service provider is an ERISA fiduciary is a functional definition. Accordingly, the question (as written) appears to require a legal interpretation of the plan fiduciary. Specifically, the plan fiduciary must determine that the service provider acted in a manner that would support a finding that it was a fiduciary under ERISA. As an alternative, Aon Hewitt suggests that the question be revised to ask whether the person identified on line 1a has acknowledged that it served as a fiduciary during the plan year. That response is factual in nature and does not require a legal interpretation.

Schedule C, Line 4a: Did the service arrangement involve any related party compensation? If the answer to Line 4a is “Yes,” complete Line 4b(1)-(4). Aon Hewitt requests clarification on what is to be included as “related party compensation” for this item, and how it should be distinguished from “indirect compensation” reported in Line 3.

Schedule C, Line 4b(3): Identify status as an affiliate or subcontractor. Aon Hewitt requests clarification as to whether “related party compensation” is limited to compensation paid and received by affiliates and subcontractors. The proposed instructions provide that related party compensation should include “any compensation that is paid among the *service provider*, affiliates and subcontractors in connection with the services rendered to the plan.” Please confirm how payments to and from the service provider should be reported for purposes of this item.



Schedule H, Line 1b(14): Self-directed brokerage windows. The proposed requirement to report self-directed brokerage window (SDBW) assets by investment category is an unnecessary burden on employer plans and their service providers. Plan fiduciaries are responsible for the decision to offer a SDBW under their plans, and the selection of the SDBW provider. Plan fiduciaries are not responsible for participant investment selections and therefore do not track investment selections. SDBW providers follow participant directions of investments within their individual SDBW accounts. SDBW providers have no fiduciary responsibility for the participant investment selections and also do not track SDBW investments in aggregate by plan. The nature of a SDBW is to allow participants with the desire to expand their investment options with such an alternative. SDBW providers may offer a universe of possible funds numbering in the thousands. Participants who elect to invest in their plan's SDBW understand that they have the obligation to individually monitor their own investments.

If sponsors or SDBW providers must report on participant SDBW investment selections, the cost of reporting will increase significantly. This cost increase will ultimately be borne by participants in the SDBW. Therefore, the ultimate effect of requiring employers or SDBW providers to report on SDBW investments will be to decrease the account balances and retirement income of SDBW participants. Aon Hewitt suggests that the requirement to report SDBW fund investments be removed.

Schedule H, Line 4k: Has the plan failed to provide any benefit when due under the plan? The proposed instructions to this line indicate that a plan should--

Include in this amount the total of any outstanding amounts that were not paid when due in previous years that have continued to remain unpaid.

And the last paragraph of the proposed instructions states--

Do not enter "Yes" if the only benefits not paid are those owed to "missing" or "lost" participants, and the plan fiduciaries have acted in compliance with the Department of Labor's Field Assistance Bulletin 2014-01 to attempt to locate the participants.

The IRS Form 5500 Corner provides further clarifications to this item for current Line 4I (which is 4k of the proposal):

Based on comments received in response to a Paperwork Reduction Act notice regarding the 2016 Form 5500 and Form 5500-SF published in the Federal Register by the IRS on March 31, 2016, for changes to be made for the 2016 forms (see 81 FR 18887), the IRS announced that, in the absence of other guidance, filers do not need to report on Lines 4I of the Schedule H and I to the Form 5500 and 10f of the Form 5500-SF unpaid required minimum distribution (RMD) amounts for participants who have retired or separated from service, or their beneficiaries, who cannot be located after reasonable efforts or where the plan is in the process of engaging in such reasonable efforts at the end of the plan year reporting period.

Aon Hewitt requests that the agencies provide further clarification of this item. In working with our clients, we have found that sponsors and their counsel interpret this item differently.

- Meaning of the phrase "continued to remain unpaid." This amount should include the total of any outstanding amounts that were not paid when due in previous years that continued to remain



unpaid at the end of the plan year.

- Efforts to locate missing participants. The DOL Field Assistance Bulletin 2014-01 (the DOL FAB) provides that “[a]t a minimum, fiduciaries should take all of the following steps before abandoning efforts to find a missing participant and obtain distribution instructions.” The listed steps are: use certified mail, check related plan and employer records, check with designated plan beneficiary, and use free electronic search tools.

The DOL FAB specifically applies only to terminating defined contribution plans and is not consistent with the current or proposed requirements for performing a diligent search for PBGC terminating defined benefit plans. On November 18, 2016, Aon Hewitt submitted a comment letter to the PBGC on the proposed regulations under ERISA Section 4050 Missing Participants (a link to this letter is below). Although the circumstances and legal guidance are somewhat different, Aon Hewitt believes that comments relating to the location of missing participants for PBGC purposes are also relevant in this situation. The PBGC requires a diligent search for a defined benefit plan to include the use of a commercial locator service. In our experience, for some sponsors the use of a locator service can be successful and cost effective. We therefore suggest that any instructions or guidance provided with respect to efforts required to search for missing participants should allow, but not require, the use of a commercial locator service. Moreover, when a locator service is used, additional efforts to search for participants using “free electronic search tools” are redundant and should not be required.

Electronic search tools are not free if they are performed by an outside provider. Moreover, for many “free” online search tools the search may be free, but there is still charge to access the information necessary to locate a person. Commercial locator services have tools that generally would be equal to or better than any “free” electronic search tool. Therefore, Aon Hewitt suggests that the instructions be clarified to specify that the response may be “No” if the fiduciary uses a commercial locator service, even if it does not also use free electronic search tools.

Finally, Aon Hewitt suggests that if a locator service is utilized, the use of certified mail should not also be required. Certified mail is not even required by the PBGC for terminating defined benefit plans. Sending a certified letter is a manual process that can be significantly time-consuming and expensive. Accordingly, when the plan fiduciary has already invested in the use of a commercial locator service, a certified letter should not be required.

Schedule J: Aon Hewitt is concerned that the proposed changes would raise significant burdens on plans and service providers, and that increased costs to administer the changes would be passed on to participants. In particular, new Schedule J would add significant data collection obligations across multiple plans and service providers. It would require the development of new functionality, resulting in a considerable increase in administrative time and expense to sponsors.

In addition, Aon Hewitt is concerned about consistency, accuracy, and timeliness of data reporting across service providers, which could subject a sponsor to risk of penalties for inaccurate or late filings. Aon Hewitt recommends that relief be provided to sponsors who rely in good faith on data provided by service providers for reporting purposes that is discovered to be inaccurate, or whose reporting is delayed due to the untimeliness of service providers.



Schedule J, Line 2: The plan offers health coverage to the following (check all that apply).

Aon Hewitt requests clarification on reporting for individuals eligible for coverage under a plan who may not fit within the identified categories (e.g., domestic partners, children over age 26).

Schedule J, Line 3: Indicate which of the following types of benefit(s) and design characteristics are included under the Plan (check all that apply). Aon Hewitt requests clarification on the definition to be used for reporting a “wellness program.”

Schedule J, Line 4a(1)(b): If the health funding or benefit arrangement is through a prototype/off-the-shelf insurance product, enter the identification number of the prototype/off-the-shelf insurance product. Aon Hewitt requests clarification on what identification number is to be reported where the product has no “state assigned product identification number” (e.g., number assigned by the prototype sponsor or insurer).

Schedule J, Line 6a: How many persons were offered COBRA benefits during the year? Aon Hewitt requests clarification as to whether “persons” should be limited to qualified beneficiaries or include dependents of qualified beneficiaries during annual enrollment. Aon Hewitt is also concerned about the accuracy of reporting where development of a report will be required based on changing eligibility data, such as when a participant elects coverage but does not pay and loses eligibility.

Schedule J, Line 6c: How many persons were receiving coverage under the plan through COBRA during the plan year? Aon Hewitt requests clarification regarding whether any person who is covered under COBRA at any time during the plan year should be reported for this item. Aon Hewitt is also concerned about the accuracy of reporting where coverage may be provided and/or terminated retroactively due to election timing, nonpayment of premiums and/or employee fraud.

Schedule J, Part IV: Health Benefit Claims Processing and Payment. Because reporting will require outreach to multiple carriers and administrators, time-intensive data gathering and aggregation, Aon Hewitt has concerns regarding the consistency of reporting across multiple service providers, and the timeliness and accuracy of this data from providers.

Schedule J, Line 19: Were there any claims for benefits or appeals of adverse benefit determinations that were not adjudicated within the required timeframes?

Schedule J, Line 19(1): Number of claims. Aon Hewitt requests clarification regarding what claims should be included for this item (e.g., complete claims only, all claims, including incomplete and incorrectly-filed claims, etc.)

Schedule J, Line 19(2): Number of appeals. Aon Hewitt requests clarification on reporting for plans with multiple levels of appeals. It should be noted if the reporting is based on appeals or claims.

Schedule R, Line 23d: Enter the number of participants making sufficient elective contributions to receive maximum employer match. Aon Hewitt suggests that the addition of this data element in annual reporting is burdensome and unnecessary, and should therefore be removed from the final requirements. Depending upon the complexity of the plan, determining the number of participants that make sufficient



elective contributions to maximize their matching contribution may require data from multiple entities. For some plans the applicable matching contribution for a plan's participants may vary depending upon employer population. Even if the determination of the number of participants making the maximum elective contributions to maximize the matching contribution can be obtained with minimum administrative burden, it is unclear why this information is of value to anyone but the sponsor. Accordingly, there is no reason to make this information available to the public.

Schedule R, Line 24b(3): Enter the number of participants that have not made any investment decision and remain invested in the plan's default investment account(s). Aon Hewitt suggests that this item be revised to request the number of participants with accounts that are 100% invested in the plan's qualified default investment alternative (QDIA). A plan record keeper is able to track whether a participant's account is 100% invested in the plan's QDIA. However, the sponsor has no way of knowing whether such participant made an affirmative decision to remain 100% invested in the QDIA or whether he/she simply did not consider the plan's investment alternatives and therefore remained in the QDIA by "default."

Resources

The Aon Hewitt comment letter submitted to the PBGC on November 18, 2016, is available [here](#).

Closing

If you have any questions, please contact the undersigned at the telephone number or email address below.

Sincerely,

Aon Hewitt

Peter Warman
Aon Hewitt Law Department
(847) 442-2805
peter.warman@aonhewitt.com