



The Association of
Accountants and
Financial Professionals
in Business

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

December 3, 2016

To the Reviewer:

The Small Business Financial and Regulatory Affairs Committee (SBFRC) of the Institute of Management Accountants (IMA) appreciates the opportunity to express our views on the Proposed Revision of Annual Information Return/Reports and DOL Annual Reporting and Disclosure Proposed Rule (RIN 1210-AB63).

The IMA is a global association representing over 80,000 accountants and finance team professionals. Our members work inside organizations of various sizes, industries and types, including manufacturing and services, public and private enterprises, not-for-profit organizations, academic institutions, government entities and multinational corporations.

The SBFRC addresses issues that impact small and medium-sized organizations. On behalf of IMA's members, the SBFRC engages and suggests solutions to standard-setters and regulatory agencies such as the Financial Accounting Standards Board (FASB), Securities and Exchange Commission (SEC), International Accounting Standards Board (IASB), Small Business Administration, American Bankers Association, Internal Revenue Service and others. Information on the committee and past comment letters can be found at <http://www.imanet.org/about-ima/advocacy/small-business-financial-and-regulatory-affairs-committee>.

This regulatory action is part of a long-term strategic project by the Department of Labor with the Internal Revenue Service and the Pension Benefit Guaranty Corporation to modernize and improve the Form 5500 Annual Return/Report of Employee Benefit Plan. Modernizing the financial and other annual reporting requirements on the Form 5500 and making the investment and other information on the Form 5500 more data mineable are part of that evaluation. The project is also focused on enhancing the agencies' ability to collect employee benefit plan data that best meets the needs of changing compliance projects, programs, and activities.

A list of some of the proposed changes is included as Appendix A to this document. The changes are extensive and comprehensive. The department has, as required by Executive Order 12866, estimated the burden of imposition of these changes on various types of affected parties. The department estimates that there will be an increase in the number of filers, from 816,000 currently, to approximately 2,970,000. This is an increase of 264%. The cost of compliance is expected to increase from \$488.1 million to \$817.0 million. This is an increase of \$328.9 million, or a 67.4% increase. These costs can be expected to be incurred annually and increased by inflation for the lifetime of these regulations. In addition, a total of \$328.8 million in one-time transition costs is also expected.



This increased level of burden falls primarily on small businesses. Almost all of the expected additional 2.2 million health care plans expected to file for the first time have less than 100 participants. Executive Order 12866 requires that any significant regulatory action be submitted for review to the Office of Management and Budget. A significant regulatory action is, among other things, one that can be expected to have a negative annual effect of \$100 million annually. The stated annual effect is, as calculated above, \$328.9 billion.

The Department has calculated the effect of the rule on small entities, but seemingly has not consulted with the Small Business Administration on any disclosed matter except for that of the definition of a small entity. The Department has also apparently not consulted with any tribal organizations affected by the rule, a specific requirement of Executive Order 12866. The Department states that it will do so after the rule is published. It is our opinion that Small entities, plans and/or businesses should have been consulted prior to the promulgation of this rule. It is also our opinion that tribal entities should have been so consulted as well.

The Regulatory Flexibility Act specifically requires that in the case of an interpretive rule involving the internal revenue laws of the United States that the Act applies to the extent that such interpretative rules impose on small entities a collection of information requirement. The Department asks questions about the efficacy, appropriateness, and quality of the information it is attempting to gather, but seems to imply that prior to the hoped for response to these questions, the Department had internally asked and answered these questions without consulting any external entity.

To summarize, it would seem that the Department has engineered this rule without consultation with any of the constituencies affected by this law, or those required to have input into the development of its structure. It would be our suggestion that such consultations take place, be evaluated and incorporated into the body of the rule as an integral part of its development.

We would suggest that roundtables and/or surveys of affected constituencies might be a source of reaction to the nature and content of this rule. The department has apparently not considered the advisability or beneficial effect on acceptance that the involvement of the relevant parties of interest might bring to the table. One possible difficulty with this methodology might be the size of the rule itself. At nearly 800 pages, comprehension of and accessibility to the rule by constituents would seem to be easily compromised. The sheer size and scope of the rule would be daunting enough to an individual (both reasonable and competent) so as to make effective understanding of the rule and the responses to it questionable at best.

It is the considered opinion of the members of the Committee that this rule needs to be further examined by the constituent parties and amended by them according to their input. The rule is too massive and involved to rest solely on the shoulders of internal department analysis. The public must be involved in the construction of regulation that affects it. Involvement in the reaction to the rule is a singularly unsatisfactory way to affect the development of a rule this massive, sweeping and complicated.



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We are available to discuss our views.

Respectfully,

A handwritten signature in black ink that reads "Gerald S. Silberstein". The signature is written in a cursive style and is positioned above the typed name.

Gerald S. Silberstein, PhD, CPA, MBA, CMA
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Appendix A

Investment detail

Goal

- Modify the asset breakouts on the balance sheet component to enable more accurate and detailed reporting on the types of assets held, including alternative investments, hard-to-value assets, and investments through collective investment vehicles

Impact

- Reporting for several asset elements will be moved on the proposed report: this is not expected to have a significant impact on SMEs
- Some of the additional investment details are likely readily available and therefore unlikely to significantly increase the burden on SMEs:
 - Interest-bearing cash (i.e. money market bank deposits)
 - US government securities broken out from other government securities
 - Breakout for other loans (not loans to participants), exchange traded notes, and asset backed securities
 - Breakouts for “publicly traded” and “non-publicly traded” preferred and common stock
- Proposed increased detail that may increase the burden and/or risk for SMEs. In most cases this will require additional analysis & recordkeeping by the plan or its consultants & providers. In some cases, this will require interpretation, which is inherently subject to differences
 - Investment grade debt and high-yield debt (changed from “preferred” and “all other”)
 - Breakouts of the various types of funds held in Insurance General Accounts (unallocated contracts), including deposit administration, immediate participation guarantees, guaranteed investment contracts and “other”.
 - Sub-categories for the value of interests in “limited partnerships”, “venture capital operating companies”, “private equity”, “hedge funds”, and “other partnership/joint venture interests”.
 - The proposal notes that there is no universally accepted definition of “hedge funds” and “private equity funds” and specifically invites comments on whether there is disagreement on the common definitions
 - The proposal further requests off-balance-sheet reporting of the assets in partnerships/joint ventures that are, and are not, plan assets
 - Breakouts of real estate including: developed and undeveloped real property (other than employer real property), real estate investment trusts (REITs), mortgage-backed securities (including collateralized mortgage obligations (CMOs)), real estate operating companies (REOCs), and other
 - New reporting of derivatives, including futures, forwards, options, swaps and other
 - New category for foreign investments, with breakouts to separately report holdings of foreign equities and debt interests, including American Depository Receipts, US-traded foreign stocks and stocks traded on foreign markets, foreign real estate, currency and other. Foreign securities held through US registered investment or exchange traded funds, CCTs, PSAs, or master trusts would not be reported in this category.



- New reporting for tangible personal property, with sub-categories for collectibles, precious metals, and other.
- New reporting for commodities, including precious metals and other.
- Additional questions regarding whether the plan has investment acquisitions that are leveraged; if yes, additional details required

XBRL submission

Goal

- Enhancing mineability of data filed on annual return/reports

Impact

- Although XBRL is not specifically mentioned, the proposal does request that some data be provided in data-capturable formats via EFAST, replacing the current option to attach an accountant's report or investment data.
- Replace "Schedule of Assets Acquired and Disposed of Within Year" with "Schedule of Assets Disposed of During the Plan Year"; some items (such as short-term bank CDs) may be excluded. Although this information is likely available, the stated intention to ensure dispositions are reflected regardless of acquisition date leads one to assume it may increase risk.
- Require addition of identifying numbers for assets (such as CUSIP)
- Filers would have to check a box identifying "hard-to-value" assets (generally, those not listed on a national or over-the-counter exchange, or for which quoted market prices are not available in financial publications or similar sources)

Estimate of new burden on SMEs for reporting, liability, legal and accounting consultation, etc.

With the additional asset details that this proposal envisions, SMEs will likely incur increased costs, either using internal staff or outside providers. For those plans invested in any asset without a readily available market valuation, there will also be increased exposure due to interpretations of the valuation or reporting thereon.

Administrative and operations related disclosures – Increase number of filers and expand the data collected

- *Goal* –
 - Provide more transparency and better competitive data within the insurance industry thereby creating more effective competition and ultimately reducing consumer expense.
- *Impact* -
 - Expands the data currently collected on 681,000 pension plans and expands the filing to require millions of group health/pension plans regardless of size to file an annual Form 5500. Existing regulations provide exemption from filing for group plans with fewer than 100 enrollees.
 - Requires plan administrators to disclose more detailed information about administrative expenses within their plans. Schedule H will have new reporting subcategories to include questions on fee disclosures (salaries, audit, legal, recordkeeping and actuarial fees, and

- other plan expenses including identifying when participant accounts are charged directly for plan expenses and how expenses were allocated among participants), leveraged asset acquisitions, annual fair market valuations, designated investment alternatives, investment managers, plan terminations, asset transfers, administrative expenses, uncashed participant checks, SPDs, and other topics.
- Requests additional administrative data regarding participant accounts, contributions, and distributions as well as the type/setup of their retirement plan.
 - Provides other administrative and operational disclosure changes including no longer requiring schedule D for plans that invest through a direct filing entity (DFE), a new separate Schedule E used for ESOP reporting, the usage of schedule H for small plans instead of the separate schedule I, and additional questions in schedule R regarding participation rates, matching contributions, and nondiscrimination.
 - Provides new requirement of an Independent Qualified Public Accountant (IQPA) reporting which will include informing the DOL of any audit finding of compliance failures, insolvency issues, operational deficiencies, and similar along with if the IQPA has had a peer review and if the review included an audit of employee benefit plan.
 - Includes controlled group information to be reported of not only plan status but also a breakdown of contributions by the employer, a schedule of controlled group members, and their employer identification numbers.
 - Reports are to include if participants are being provided with financial education and financial advice.

Schedule C expansion – Update how service provider fees are reported

- *Goal* –
 - “Harmonize” the fee disclosure requirements of Schedule C with the DOL’s service provider fee disclosure requirements under Section 408(b)2 of ERISA, expand the amount of data collected and better align financial information reporting.
- *Impact* –
 - Expands reporting to those plans required to file the Form 5500, regardless of size. Currently, only large plans (100 participants or more) must file therefore a portion of provider data is not captured.
 - Requires the reporting of the actual compensation paid to or received by covered service providers. This is to be based on the expected compensation disclosures that the service provider furnished when the plan was establishing.
 - Applies to certain welfare plans that are not currently subject to the regulation while more clearly defining the types of compensation and narrowing the classes of service providers to be reported.
 - Simplifies reporting of indirect compensation by eliminating the “eligible indirect compensation” reporting concept, combine direct and indirect line items, and provide flexibility for service providers in determining the amounts to report as estimate or dollar amount. Only “covered” service providers would be required to report and compensation would match Section 408(b)(2) of ERISA. The changes are expected to reduce the number of entities required to be reported on Schedule C, as well as the scope of information needed. Agencies request feedback on if particular types of indirect compensation that would be too expensive or burdensome to estimate at the plan level.



- Reports “covered” service providers who have received \$1,000 or more in total compensation instead of current requirement of \$5,000 in direct compensation.
- Uses a separate Schedule C, instead of repeating lines, for each service provider required to be reported so that information is more straightforward.
- Clarifies and expands the existing question that asks the filer to indicate generally whether the service provider has a relationship to the employer, an employee organization, or a person known to be a party-in-interest.
- Moves the termination of service providers question to Schedule H to associate it with a new compliance question. Agencies specifically seek comments on whether the proposed new question should be limited to a narrower class of service providers or specific termination circumstances.
- Requires plan administrators to disclose and provide estimated costs of recordkeeping services received either without explicit compensation, or for compensation offset or rebated based on other compensation received by the service provider, an affiliate or subcontractor. This necessary information is similar to requirements under Section 408(b)(2) of ERISA.

Estimate of the new burden on SMEs for reporting, liability, legal and accounting consultation

- The proposed changes will greatly increase the number of employers (potentially millions of plans) required to fulfill the Form 5500 reporting requirements with the greatest impact being on small welfare plans.
- Reporting responsibilities will require more data, more resources and be subject to increased scrutiny by Federal agencies.
- While it will be several years for many of the proposed changes to become effective, plan sponsors will need to evaluate existing systems to ensure they are able capture the new required data and formats. Conceivably there will be additional expenses incurred to conduct this analysis, prepare the organization, update processes in addition to hard costs potentially passed along by support providers to fulfill the requirements as the changes will require significant system changes by processors.
- The proposed changes include a number of subjective questions that will be difficult to reduce to yes/no responses; therefore, significantly more labor most likely will be involved for administrators and service providers of which are currently operating within a somewhat mature and proven automated environment.
- Small plans which are eligible to file on Form 5500-SF will be required to provide additional information about the plan’s investments including allocating the investments into one of eight categories. If a small plan is not invested in one of the eight categories, it would not be eligible to file on Form 5500-SF.
- Small plans which are not eligible to file on Form 5500-SF will be required to complete the lengthier Schedule H (Financial Information) with the elimination of Schedule I (Financial Information – Small Plan).
- Small plans which have assets that are hard to value will file Form 5500 rather than Form 5500-SF.
- More complete reporting will be required for service providers who receive only “eligible indirect compensation” from a plan similar to other service providers.



- A separate Schedule C will be filed for each service provider with data aligned with service provider fee disclosure rules.

IRS Compliance

The IRS has proposed adding a number of IRS-only questions to Form 5500 which seem to be done in conjunction with ERISA compliance. One of the main issues at hand is whether the questions should be added to the forms individually based on subject matter or whether they should be added collectively on a single IRS-only schedule.

ERISA Compliance

The DOL has voiced significant concerns over compliance with ERISA section 411. The proposal would add a new question under Part IV of Schedule H inquiring as to whether any person disqualified under ERISA section 411 was permitted to serve the plan.

As a point of information, ERISA section 411 disqualifies people who have been convicted of certain crimes from serving as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, employee, consultant or adviser of any employee benefit plan for a specified period. This question is perceived to serve as a facilitator in identifying/determining whether of the plan's fiduciaries, employees, and service providers potentially participated in an act prohibited by ERISA section 411.

Another proposed compliance question is whether the employer sponsoring the plan paid administrative expenses that were not reported as service provider compensation on Schedule C or as a plan administrative expense on Schedule H.

Summarizing, the proposed changes/additions appear to gravitate towards additional disclosures in order to facilitate the monitoring of employees and other stakeholders of the organization and ensure that they are not in conflict with ERISA and its standing.

Schedule H, Parts I and II Investment Disclosure

The Agencies are proposing that the asset breakout enable more accurate and detailed reporting on the various assets being held by a plan. This includes alternative investments, hard-to-value assets, and investments through collective investment vehicles.

There is a concern by the Agencies that many of the filers inconsistently report on the various existing categories and as such important financial information is obscured by consolidation of many diverse investments into a catch all "other" category. This is a direct byproduct of the proliferation of new, highly sophisticated and complex investments, which do not fit into the currently existing reporting categories.

There is also a corresponding proposal for the income/expense statement in order to get a better picture of earnings and expenses associated with plan investments and operations.

The GAO has been a strong supporter of the proposed changes given their position that current plan asset categories are not representative of current plan investments and as such provide little insight into the investments themselves, what are the corresponding risks, or even the structure of these investments.

There are a number of proposed changes, with some of the more seemingly significant being: Currently, the Form 5500 provides little in the way of detail or transparency about the range of plan investments in bonds, loans, and other debt instruments and obligations. The general debt heading would change to 'Investment grade debt' and 'High-yield debt', rather than 'preferred' and 'all other.' It is intended to have the submitted information to correspond to the more detailed information provided on Schedule R for defined benefit pension plans with 1,000 participants or more.



Under 'General Investments', previous information would be retained with an addition of two breakouts; 'publicly traded' and 'non-publicly traded' securities, listed under 'preferred' and 'common stock' as applicable.

There is also a proposal to replace the single line existing category titled 'Value of Interest in Funds Held in Insurance General Accounts (Unallocated Contracts)' by adding breakouts of various types of unallocated contracts.

There is also a proposal for a new category for foreign investments with breakouts to separately report holdings of foreign equities and debt interests.

There is also a proposal addressing the perceived need by GAO and other Agencies for more detail on plan investments in hedge funds and private equity funds due to substantial increases in the percentage of plans investing in hedge funds.

To summarize the above, there is little doubt that there is a substantial amount of increased responsibilities. There are many proposals and they all have a common thread – additional reporting to create a greater perception of disclosure. The various Agencies have taken the position that the current reporting format has become stale, dated, and that given the increase of sophisticated and complex financial instruments there is a dire need for immediate change.

Obviously, with a greater degree of disclosure there is a corresponding degree of complexity and costs to be borne by the various affected organizations. Additionally, given the additional breakouts with greater details, it would appear that the affected organizations would require a greater degree of technical expertise to assist in its preparation. On the plus side, this information could possibly be retrieved from current financial information if the organization is able to create and put in place an accounting reporting system that would retrieve the information (as coded) from the financial data available.