



To: Assistant Secretary of Labor of the Employee Benefits Security Administration Phyllis C. Borzi

From: Manzi & Associates

Date: December 4, 2016

RE: **RIN 1210-AB63 Notice of Proposed Rulemaking and Notice of Proposed Forms Revisions Form 5500**

Dear Assistant Secretary Borzi:

On behalf of Manzi & Associates, LLC, we are writing to offer comments on the Proposed Revision of Annual Information Return/Reports, as published in the Federal Register on July 21, 2016. We appreciate the opportunity to provide our perspective and comments on the revisions.

We have been auditing employee benefit plans for over forty years and we recognize the need for the Department of Labor and the Internal Revenue Service to better utilize the data and information disclosed on the Form 5500 for enforcement, research, and policy changes. With that said we would like the DOL and the IRS to take into consideration our comments.

Modernize Financial and Plan Operations Information

As stated in the revision, the basic objective of general purpose financial reporting is to provide information about the reporting entity for the Agencies' enforcement, research, and policy formulation programs; to assist other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies; and to assist plan participants and beneficiaries and the general public in better monitoring the activities and investments of employee benefit plans.

With that objective in mind, it is our view that the categories used on the Form 5500 need to be consistently applied regardless of who prepares the Form 5500. Information becomes less useful if it is inconsistently applied and it is felt that ambiguity exists as it pertains to the instructions to the Form 5500 on how to classify a significant amount of investment types. Each investment, if at all possible, should have the ability to be categorized into only one (1) category and that category should be established by the governing documents filed when the investment entity was created/established.

An example of inconsistent presentation can be applied to Limited Partnerships. Limited Partnerships can be classified as a hedge fund or a private equity fund and as such the question will arise as to where to put this investment on the Form 5500. One preparer may choose to classify the investment as an equity fund whereas another preparer may opt to categorize the same investment as a hedge fund. This has the potential to skew the data and the results the regulatory agencies are hoping to derive from the segmented information. As there is no universally accepted definition of hedge and private equity, the directions to the Form 5500 should specify that the preparer utilize the classification established when the investment was originally filed and registered with the United States Securities and Exchange Commission (SEC), if available. A significant amount of the Alternative Investments utilized by employee benefit plans has some form of filing with the SEC (i.e. Form D, Notice of Exempt Offering of Securities). Using categories already established by the SEC would help to address the concerns regarding the inconsistencies in the classifications. This

information is easily accessible and it is free, therefore the cost and burden to plans, participants and beneficiaries, plan fiduciaries, plan service providers and other affected parties would be negligible.

The significant new investment categories will provide users of the data a better way to monitor the investment activities of the employee benefit plans. However, the new category of Foreign Investments is a concern. The amount of time and resources necessary to properly classify investments as “Foreign” as well as to have additional subcategories between foreign equities, foreign debt interests, foreign real estate, foreign currency and foreign other would be extremely burdensome and time consuming. Furthermore we believe that the breakout can be confusing to the users of the information. Users would have to accumulate data from many categories in order to determine their total equities. In our global economy the benefits of this information derived from this data breakout is negligible when compared to the amount of time and cost that would be incurred to generate this information.

Employee benefit plans are increasingly investing in Limited Partnerships and Joint Ventures. These investments are usually valued based upon their financial statements. The new investment income category on the Form 5500 for Partnerships/Joint Venture income should only include the overall net income for the partnership. The management fees associated with the partnerships (which are usually separately stated on the financial statements of the Joint Venture) should be broken out and shown separately from the income. We believe netting the management fees for Joint Ventures, Partnerships, Common collective trust’s, and Pooled separate account’s is misleading to the users of the Form 5500. The results do not provide a clear picture of how much it costs to investment in particular investments types. It allows for management fees of certain investment types to be “hidden” and netted against their income, whereas for other investment activity types (Investment managers and Investment custodians) are separately stated on the Form 5500. We believe that the “philosophy” behind both types of investments and management fees to be fundamentally the same and should be treated as such so as to not mislead the users of the Form 5500. Consistent application of management fees among all types of investments would make it more transparent to the users as to how much a particular investment costs the fund in fees in order for them to determine the reasonableness of that investment in correlation to the income it derives.

Enhance Data Mineability

We believe the proposal to convert the Schedule of Assets into a data-captured format for data-mining and analytic purposes to be problematic. Based on client knowledge, Employee Benefit plans can have thousands of investments. The amount of time and the costs associated with the data entry into a mineable form would be extremely burdensome and expensive to the employee benefit plans. Although the significant amount of new category breakdown would be beneficial and sufficient for users of the Form 5500 to evaluate their retirement plans and manage their savings, the cost of the Data Mineability schedule proposal to the individual employee benefit plans far outweighs the negligible benefit that may be derived. We believe those costs will greatly affect the health of these employee benefit plans.

The proposal addresses DFE’s that employee benefit plans invest in. The proposal calls for the disaggregation of the investments in DFE’s. We believe this to be extremely problematic due to the numerous plan year end differences and the ability to get audited financial statements for the proper year ends. The proposal addresses whether or not the DFE’s files its own Form 5500 and if it does the employee benefit plans will need to indicate that, as well as list the Name, EIN number, and plan number listed on the DFE’s filing. We believe this to be problematic because the information can be difficult to attain. A possible solution could be if the Form 5500 added a check box to this Form similar to the check box on the Schedule A line 11 regarding the “refusal by the insurance company to provide information”. In this way the employee benefit plans would be able to attain the information needed more easily.

The proposal also adds a checkbox for every investment to indicate if an investment is hard to value. Again we point to the potential for lack of consistency among all preparers of the Form 5500 if the instructions to the Form are not extremely clear and concise. We believe providing examples of what the definitions of “hard to value” investments are would help to alleviate potential issues.

On behalf of Manzi & Associates, LLC we appreciate the Department of Labor's consideration of our comments. We stand ready to work with the department to ensure that the Form 5500 provides value to participating employers, participants and their beneficiaries as well as the regulatory agencies that they are subject to.

Sincerely,
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