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December 5, 2016

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
U.S Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

**Re: RIN 1210-AB63**

Dear Sir and Madam:

AARP appreciates the opportunity to submit comments on the Department of Labor's proposed rule to update the information reported to the Department and participants in the annual employee benefits report, known as the Form 5500. As the largest nonprofit, nonpartisan organization representing the interests of Americans age 50 and older and their families, with a membership of nearly 38 million nationwide, a major priority for AARP is to assist Americans in accumulating and effectively managing adequate retirement assets to supplement Social Security. Many of our members currently participate, or have participated, in employer-sponsored retirement plans. Timely, accurate and understandable reporting to participants on employee benefits is one of the hallmark requirements of the Employee Retirement Income Security Act of 1974 (ERISA) and a cornerstone of effective retirement planning and management.

Participants and beneficiaries must timely understand their employee benefits in order to know if they are earning benefits and to enforce their rights. ERISA generally requires that employers or plan administrators provide several key documents: a plan trust, summary plan description, periodic individualized benefit statements, and annual reporting of plan financial information (Form 5500). While the Form 5500 provides much important and critical plan information to the Department and participants, it has been a source of confusion and missed opportunity as well. We ask the Department to consider requiring additional types of information that a participant needs to know, and in the language they are most likely to understand.

The following are AARP's priorities for improvements to make the form both more useful to participants and not unduly burdensome for employer and plan compliance.

- 1) **Timely Filing:** ERISA states that the Form 5500 shall be filed within 270 days of the end of the plan year. In addition, the Department provides extensions upon request. Too often, employers are lax with plan filings. As a result, both the Department and participants often are reviewing information that is over two years old. Especially since employers are required to use electronic delivery, it is critical that the Department require immediate filing by the statutorily required date and limit exceptions to cases of demonstrated hardship. In addition, the Department, after any internal review for statutory compliance, should immediately post the form on the Department's website. The Department should require both plans and itself to make every effort to publish this important employee benefit information at the earliest date possible.
- 2) **Easy to Find:** The Department should require employers, upon filing with DOL, to provide notice to participants that the form is available and how to review it. The document should be clearly identified as to the information it contains. It should also be required to be displayed clearly and prominently on any employee benefit database maintained by the employer and available to employees.

Currently, the form is buried amongst other information on the Department's website and uses identifying terminology (e.g. EFAST) that most plan participants would not understand. Further, participants often cannot find their plan information unless they know the exact plan name or employer identification number. The Department should require its contractors to provide multiple methods of searching for the form. Variation of employer names and other common methods should be required. Participants should be provided a Department contact if they cannot find their documents.

- 3) **Clear and full plan contact information:** Many employers do not fill out all form questions or answer the form in non-understandable ways. For example, when asked for the plan or contact name, many employers will write "Administrative Committee" or "ABC Co. Plan Committee". Such answers do not help participants understand who in the company is involved with the plan. The Department should require plans to provide the name of a specific contact individual (regardless of whether that person is the Administrator) and their contact information and ensure all submissions clearly answer all questions.
- 4) **Clear and understandable investment information:** Currently, the Form 5500 allows and encourages plans to aggregate plan investments in unclear categories such as "master trusts." These categories may have made more sense when most retirement plans were defined benefit plans, but do not make sense for defined contribution plans. The Department should either shift to clear categories -- such as index funds, large cap stock funds, bond funds, and insurance annuities -- or the Department should require plans to list specific

investments by name ranked by size of holdings. The Department may decide to limit listings, for example, investments greater than X% of plan assets or require the top ten holdings. Currently, most of this information is in the attachments, but most participants do not know it is there and the attachment is not word searchable. The Department should ensure that attachments are word searchable. In addition, the Department asked for comments on how to identify brokerage accounts and windows. Again, participants often do not understand these industry terms, but AARP believes they should be separately reported, including the number of participants who are using a brokerage window. Brokerage windows are more often used by management and higher paid participants and their usage may provide some indication of overall plan value.

- 5) **Clear and complete fee information:** In addition, the Form 5500 also currently does not require clear, complete and understandable listing of all plan fees and who paid them. There should be a separate fee section which the Department clearly identifies as the place to list all fees. As the Department has required for the Schedule C and other fee disclosures, fees should be clearly broken down into major categories – administrative fees, investment fees, advisory fees, commissions and bonuses, and all other fees. Fees should separately denote who paid the fee – employer, plan, or participant. It also would be helpful to report all plan administrative expenses on a separate schedule. Currently, expenses are mixed together and it is difficult for participants to discern which expenses were for plan staff salaries as opposed to investment manager or other service provider charges.
- 6) **Clear vesting information:** Finally, the Form 5500 is a helpful resource for understanding how many plan participants are vested, etc. The Department should continue to require the form to include this type of information which helps participants understand where and how they fit in the plan.

The form also should denote the number of terminated and retired participants during the covered period and the number taking each form of payment option -- lump sums, annuities, periodic withdrawals, etc. Again, as pension plans shift to defined contribution type plans, it is helpful for participants and policymakers to understand changes in distribution options and retirement delivery sources.

Finally, we urge the Department to consult with leading academics and research organizations on which employee benefit information is most important to them and how DOL should ask for and publish it. We are at a critical time in employee benefit policy. The Form 5500 should be a source of model plan information. The Department and researchers should be able to easily analyze Form 5500 information to show best practices and emerging new practices.

We appreciate the Department's interest and commitment to improving employee benefit reporting. We urge the Department to timely act and are willing to provide any further assistance as needed.

If you have any questions, please feel free to contact Michele Varnhagen of our Government Affairs office at [MVarnhagen@arp.org](mailto:MVarnhagen@arp.org) or 202-434-3829.

Sincerely,

A handwritten signature in black ink, appearing to read "David Certner", with a long horizontal flourish extending to the right.

David Certner  
Legislative Counsel and Legislative Policy Director  
Government Affairs