



***Defined Contribution
Institutional Investment
Association***

Submitted electronically [e-ORI@DOL.gov]

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Office of Regulations and Interpretations
Employee Benefits Security Administration
ATTN: RIN 1210-AB63
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

ATTN: RIN 1210-AB63 - Annual Reporting and Disclosure Proposed Rule

Ladies and Gentlemen:

The Defined Contribution Institutional Investment Association (DCIIA) is pleased to provide commentary to the Department of Labor (Department) on its proposal to update the Annual Reporting and Disclosure requirements for ERISA plans (Proposal). DCIIA is a non-profit association dedicated to enhancing the retirement security of American workers by promoting better plan design and institutional investment management approaches. Our members include record keepers, investment managers, consultants, trustees, law firms, and other industry stakeholders.

DCIIA supports the Department's efforts to synchronize Form 5500 data elements with the fee disclosure requirements under ERISA §§ 408(b)(2) and 404(a)(5). Effective synchronization would make data collection more efficient, but, more importantly; it could reinforce for plan fiduciaries what to focus on when analyzing plan fees. DCIIA also supports the Department's efforts to collect information and store it in a format that can be used to support research efforts intended to improve retirement outcomes. We encourage the Department to accomplish this goal in a balanced manner that takes into account the additional time, cost and liabilities associated with the data collection. In addition to the importance of not adding burdens and cost to the process, we also encourage the Department to consider the impact of its Proposal on plan sponsor behavior so that it does not unintentionally inhibit innovations and decisions that benefit retirement savers.

Specifically, the Proposal makes progress in synchronizing Form 5500 fee disclosure requirements with those under ERISA §§ 408(b)(2) and 404(a)(5) by eliminating the concept of eligible indirect compensation, limiting reporting to covered service providers and coordinating certain relevant compensation thresholds. We recommend that the Department further synchronize requirements by fully harmonizing compensation thresholds. For example, under the Proposal Form 5500 reporting is required for indirect compensation of at least \$1,000 and direct compensation of at least \$5,000 but under ERISA §408(b)(2) the threshold for all types of compensation is \$1,000. We also recommend that the requirement to report the amount of indirect compensation received be consistent by allowing it to be reported in the same manner as it is presently reported for 408(b)(2) purposes, such as by using a



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formula rather than as an estimated dollar amount. Not only would this promote consistency, it would reduce confusion which may arise when creating estimates from omnibus accounts or in other situations where the factors used to generate an estimate are variable.

The Proposal also potentially helps researchers and policymakers by providing new data that could enhance their understanding of participant behavior in the U.S. Defined Contribution (DC) system. At present, most data on U.S. retirement plan participant behavior comes from surveys, such as the Federal Reserve Survey of Consumer Finances (SCF), the Census Survey of Income and Program Participation (SIPP), and private surveys conducted with plan sponsors. As the responses from the SCF and SIPP are self-reported, it is difficult to assess their accuracy. This difficulty is particularly acute given that more participants are automatically enrolled in retirement plans and may be less familiar with their plan details. Private plan sponsor surveys done by different firms may not provide consistent year-over-year data, and their raw results are generally proprietary, limiting their usefulness to other researchers. Providing new data to enhance researchers and policy makers particularly to the extent it is made publicly available would be beneficial to our efforts to improve participant outcomes.

In terms of specific data elements, DCIIA supports the inclusion of the default elective deferral percentage for automatically enrolled participants on the Form 5500, which could supplement data from private surveys. Further, new proposed fields related to the number of participants invested in default investment options could shine a light on an area where there is currently no official data. Another key addition in the Proposal is the inclusion of the matching formula for elective deferrals and the number of participants contributing enough to obtain the maximum employer match. These data points would provide important administrative data to help researchers assess the accuracy of survey data and recalibrate their results. Additionally, since plan sponsors report their business code using a version of the North American Industry Classification System (NAICS), it will help researchers who seek to examine results and trends to see how they vary by industry. However, although this proposed addition could be helpful to researchers, we urge the Department to carefully ensure that data collecting efforts do not impose a burden on Form 5500 preparers that outweigh these ancillary benefits.

Thus, while we support the Department's effort to collect data that can be used to improve the system and outcomes for retirement savers, we favor a balanced approach that takes into account the time, cost and liability associated with collecting the data. The Proposal contains requests for data that are not currently on record keeping systems (for example, unrelated business taxable income (UBTI) or the status of un-cashed checks), data that is not within the expertise of Form 5500 preparers (generally record keepers or third party administrators) to determine (for example, the detailed categorization of investments required on Schedule H) and data that cannot be systematically collected and must be collected manually (for example, travel and entertainment expenses or detailed reporting on non-exempt prohibited transactions). We encourage the Department to consider conducting a cost/benefit analysis on specific data elements that are more time consuming, costly or problematic from a collection standpoint. Input from custodians, record keepers, investment managers, accounting firms/auditors, market research organizations, and staff at companies that currently prepare Form 5500 reporting will be integral to such an analysis and we urge the inclusion of these perspectives.



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We specifically ask the Department to consider the impact on plan fiduciary decision-making of its proposed detailed reporting requirements on alternative investments and its categorization of Collective Investment Trust (CITs).

- For example, we find the categorization of CITs as sophisticated investments similar to hard-to-value assets to be a concern. CITs are often managed by the same investment advisors that manage mutual funds. In many ways, CITs operate similarly to mutual funds, and, when offered to defined contribution plans, are typically daily-priced. CITs currently enjoy a substantial percentage of total invested assets by DC plans. Specifically, according to *The BrightScope/ICI Defined Contribution Plan Profile: A Closer Look at 401(k) Plans*, a study of 34,000 plans representing \$3.3 trillion of assets, CITs represented 22% of all plan assets. The benefits of having CITs as an eligible vehicle for DC plans are numerous and include: the expansion of the universe of available investment strategies and managers, homogeneity of investor type, potential fee flexibility for institutional investors, efficiencies related to pooling and scale, and low to moderate investment minimums. Sending a message to plan fiduciaries that the Department categorizes CITs in the same manner as asset classes that are truly hard to value may discourage their use to the detriment of retirement plan participants. Accordingly, we strongly recommend that CITs not be categorized in the same way as “hard to value” asset classes for reporting purposes.
- Some of our members also have concerns that plan sponsors may already be inhibited from including alternative investments in their lineups due to the perceived increased risk of litigation. The Proposal should not have the unintended consequence of increasing the perceived risks and further inhibit consideration of these options. While alternative investments may not be appropriate in all plans, they can add value by both increasing returns and hedging the risks of extreme market volatility in institutional plan portfolios and can be useful to support innovations and cost savings by allowing defined contribution plans to have the benefit of the broader universe of financial products and strategies. Accordingly, we suggest that the Proposal balance these concerns, such as by including an explanation of the reason for increased collection requirements that acknowledges that alternatives have become more common and the potential benefits of these types of investments.
- Finally, we also believe it is important that detailed asset classification for Schedule H purposes should be harmonized with current investment management operational, investment and reporting considerations. Input from investment managers, custodians and record keepers to leverage current operational and reporting practices would be informative and useful to improve the reporting framework of the Proposal. For example, classification of mortgage-backed securities (MBS) or other asset-backed fixed income securities should be intuitive considering how these securities are used by plans and investment managers in portfolio design and management.



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DCIIA appreciates this opportunity to share our views with the Department and would be happy to engage in further discussion on any of the topics raised in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Minsky'. The signature is written in a cursive, flowing style.

Lew Minsky

Executive Director