



Indiana Benefits, Inc.

December 5, 2016

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

Re: Proposed Revision of Annual Information Return/Reports (Form 5500 Series) - RIN 1210-AB63

In the Who's fictional rock opera Tommy, the hero, a deaf, dumb and blind teenager, managed to overcome his disabilities and become a pinball wizard. However, in regulatory matters, these disabilities do not produce a good result. The proposed revisions to Form 5500 (the "Proposal") represent a sophomoric work product that is the natural result of a toxic combination: (1) regulating in a vacuum, (2) little understanding of how the industry you're charged to regulate operates on a day-to-day basis and (3) an undeserved sense of self-confidence.

Our firm is a retirement plan consulting firm. We service the retirement plans of over 160 companies - primarily in the Indiana market. In that capacity, we assist with the establishment of new plans, ongoing plan operations (including Form 5500 filings) and assisting clients with plan compliance. In addition, **when a client determines that the benefits of maintaining a retirement plan, no longer outweigh the costs, headaches and liability of providing such a benefit, we assist with the termination of plans.** Now let's get down to brass tacks ...

As mentioned above, business owners and decision-makers are in a constant state of analyzing risks and costs versus benefits. This applies whether evaluating the efficacy of a 401(k) plan, leasing a new fleet of trucks or closing an obsolete plant. In reviewing the Proposal, it's very clear that no risk analysis was done, and that whatever (if any) cost/benefit analysis was done, it was seriously flawed.

DOL's mission, as it pertains to retirement and benefit plans (EBSA), is stated as follows:

"The mission of the Employee Benefits Security Administration is to **assure the security of the retirement, health and other workplace related benefits of America's workers and their families.** We will accomplish this mission by developing effective regulations; assisting and educating workers, plan sponsors, fiduciaries and service providers; and vigorously enforcing the law."

One area in which DOL has been active is in preventing retirement plans from being saddled with excessive fees and expenses. It would seem that this focus is based on the observation that **plan fees and expenses are ultimately borne on the shoulders of plan participants and their beneficiaries**. With the requirements of 408(b)(2) and 404(a)(5), DOL clearly understands the importance of reasonable fees (though not the fact that paper 404(a)(5) notices all end up in the trashbin). It is ironic that this understanding does not extend to the increased costs of compliance that comes with greatly expanded reporting requirements - specifically as contained in the Proposal.

The expanded reporting requirements will double, triple or even quadruple current Form 5500 filing expenses. A careful review of the expanded requirements does not reveal **any** benefit (for the increased reporting) that will be conferred upon plan sponsors, plan participants or beneficiaries. The Proposal will not increase plan coverage, encourage the establishment of new retirement plans or discourage the termination of existing plans (as described above). Rather the expanded information reporting seems to be focused on providing data for the use of marketing organizations and academicians at the expense of those being "studied". To add insult to injury, the Proposal will result in additional marketing (often in the form of time-wasting aggressive cold-calls) directed at those being "studied"!

While practitioners and plan sponsors appreciate the importance of a reporting process, there is no empirical evidence that the current Form 5500 system and data collected are deficient. The Proposal however provides clear evidence that **those who drafted the Proposal are woefully out of touch with the way today's retirement plan system functions**. It's painfully apparent that rather than work with those directly involved in this matter, such as plan sponsors and those who prepare Form 5500, the drafters concocted a stew of marketer's wish-list data, then threw the cauldron at the wall to see what might stick.

While I could comment on a line-by-line basis and dismember the Proposal, I'm going to focus on **the flawed process by which the Proposal was hatched** and the total waste of time, energy and money. You've wasted my tax dollars on a half-baked proposal, you've wasted your own staff time and now you're wasting the time of industry stakeholders having to comment on this mess. Isn't it embarrassing to receive this volume of comments and discover that the Proposal (which you're now financially and emotionally invested in) is what we'd consider (in Indiana) to be low-grade chicken manure (not to be used on vegetables).

As Justin Wilson, the late Cajun Chef used to say, "Now I'm gonna tell ya what ya got to did" - in other words, **here's some constructive comments**:

1. **Start over** - the Proposal is so flawed, that you need to go back to "GO". In this case, "GO" is the existing Form 5500 series.



2. **Establish a conceptual concept for the changes** you'd like to make - what do you want to change and why? Who will these changes benefit and how? Analyze each change individually - what will be involved in supplying data, what's the risk of keeping the item as-is and not changing and what's the cost/benefit of making the change?
3. **Meet with industry groups and engage in a DIALOGUE** with them to brainstorm on the changes and rationale for them. Ask about how best to get the job done.
4. **Meet with more industry groups, focus groups of practitioners and repeat step 3 with them.** All of these parties would be willing to meet with you at NO CHARGE to help you get it RIGHT before you even think about publishing proposed changes in the Federal Register. You don't have to fly them to DC - there's email, free conference call.com and web apps you can use at minimal cost.
5. **Create (very) rough draft revised forms and instructions and then jointly develop them with focus groups of practitioners.**
6. **Revise the draft forms and instructions** and repeat step 5.
7. **Test the revised draft forms and instructions on actual plans** - your practitioner friends would probably be glad to assist.
8. **Develop REAL estimates of the risks (of not implementing changes), costs and benefits,** based on step 7.
9. **Prepare a draft Federal Register filing with draft forms and instructions - then meet with industry groups and focus groups** of practitioners for comments and suggestions
10. **Publish your well-crafted Proposal,** provide adequate time for public comments and don't, I repeat **don't, have the comment period in the busiest time of year for stakeholders** - specifically tax season or Form 5500 deadline dates. When you time comment periods to coincide with the industry's busiest times, you make it painfully obvious how little you care about comments.



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Continued

The US private retirement plan system is a trillion dollar industry. American workers will increasingly depend on this system for their retirement security. They deserve better than your current Proposal. **Together we can craft a better mousetrap!**

Yours truly,

P Gould

Peter Gould
President



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