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Submitted electronically: RJoseph.Durbala@irs.gov

Tuawana Pinkston
Internal Revenue Service
Room 6129
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

**Re: Proposed Collection: Comment Request for the
Annual Return/Report of Employee Benefit Plans
OMB Number: 1545-1610 (81 Fed. Reg. 18687)**

Dear Ms. Pinkston:

AARP appreciates the opportunity to comment on information that plan sponsors should report on the Form 5500 and its related schedules to the Department of Labor, the Internal Revenue Service and the Pension Benefit Guaranty Corporation.

On behalf of our millions of members, we have a strong interest in ensuring that as many employees as possible are covered by employer-sponsored retirement plans; that benefits are adequate, secure and appropriately funded; that non-highly compensated employees accumulate their fair share of tax-subsidized benefits; that retirees are reasonably protected from financial risk to their retirement security; and that older and longer-service plan participants are adequately protected and treated fairly.

Concerns about the importance of a secure stream of retirement income highlight the critical importance of strengthening Social Security, which is the largest source of annuitized wealth for most workers. Social Security is the principal source of family income for about half of older Americans, and roughly one quarter of those aged 65 or over live in families that depend on Social Security benefits for 90 percent or more of their income. Nonetheless, Social Security was never intended to be the only source of retirement income. For those workers who have employer-sponsored retirement plans, it is important that participants and the assets in their benefit plans be protected.

The Form 5500 is the primary source of information concerning the operation, funding, assets, and investments of retirement plans for the three agencies charged with enforcing ERISA plans (the Department of Labor, the Internal Revenue Service and the Pension Benefit Guaranty Corporation) as well as related agencies such as the Securities and Exchange Commission. Collection of this information should provide the governing agencies and participants with needed information to determine a plan's health and compliance with the law. No other reporting document is as crucial to the enforcement efforts of the agencies.

In many of its reports, the ERISA Advisory Council has suggested that the Form 5500 be revised to collect certain information to better protect participants and provide the enforcing agencies with the information that they need to better target their enforcement efforts. Consistent with many of the Advisory Council's suggestions, the GAO issued a report entitled: *Private Pensions: Targeted Revisions Could Improve Usefulness of Form 5500 Information* (GAO-14-441, Jul 7, 2014), also recommending many improvements to the Form.

AARP appreciates the efforts of the Internal Revenue Service to develop a more useable Form 5500 without making the form administratively burdensome to plans, plan sponsors and service providers. AARP supports the proposed changes to the Form 5500, but believes that additional amendments to the form could further improve its usefulness to participants and the agencies.

Reporting of Risk Shifting Transactions

During recent years, many employers have engaged in "de-risking, or risk-shifting." Under risk shifting, financially solvent employers who otherwise could not terminate a plan because it is not 100% funded, "terminate" specific categories of workers or retirees who are vested under the plan. Risk shifting is accomplished by purchasing insurance annuities, the offering of lump sum payments, or both, for limited groups of workers, primarily deferred vested participants, retirees, or both.

Because of the seriousness of the effects of this new trend, the Form 5500 should capture this information so that the government agencies responsible for enforcing ERISA know when plans are undertaking risk shifting, the form it takes, and to what plan participant categories it applies.

For plans that purchase insurance annuities, a schedule of the Form 5500 should capture the following information:

- How many participants and beneficiaries were offered annuities;
- How many accepted, if voluntary selection;
- If the plan or the participants are holding the annuity certificates;
- If the fiduciary protected spousal rights;

- Did the plan comply with the DoL's requirement to purchase the safest available annuity including review of the insurer's solvency and extent of coverage by the state guaranty fund;
- In what state is the insurer chartered, and what state is the insurer's principal place of business; and
- If the fiduciary provided timely and adequate disclosure of the process to participants and beneficiaries.

For plans that lawfully offered lump sum payments to participants, a schedule of the Form 5500 should capture the following information:

- Which groups and how many participants were offered lump sum payments;
- How many participants accepted, by key demographics;
- What interest rate calculation was used to calculate the present value of the payment;
- Was unbiased information provided to participants to explain the pros and cons of the decision;
- Were spousal rights protected; and
- Were the tax consequences to the participant explained.

Although a question concerning in-service distributions on Schedule H/I of the Form 5500 references these transactions, AARP submits that more detailed information is needed for all three agencies for informational, planning and enforcement purposes because of the potential impact on the stability of the nation's pension plan system.

Successor Plan

The Form 5500 should add a question to determine whether the reporting plan is a successor to other plans that filed prior Form 5500s under a different EIN. If the answer is yes to this question, the reporting plan should identify all predecessor EINs. In this manner, the plan's administration and management can be traced back.

Investments

The types, costs, risks and returns of retirement plan investments are vital to the health of the retirement system. Over the forty years since ERISA was enacted, debates over appropriate investments for retirement plans have raged, as has litigation over imprudent investments ranging from Las Vegas real estate transactions to Enron's employer stock to alternative investments such as hedge fund Long-Term Capital Management. Fittingly, the Form 5500 should capture in significant and understandable detail the investments each retirement plan holds in order to promote transparency in the operation and administration of these plans.

The categories of investments should be revised to reflect current modern portfolio theory. Moreover, these categories should be mindful of the ongoing shift to defined contribution plans. The Form 5500's detail should include, among other

information, the name, types of investments, underlying holdings of plan assets, and plan performance and benchmarks. For example, trust investments should be specifically identified (rather than lumped together as they now are) and separated in a way that provides more transparency concerning their performance.

Moreover, alternative investments, including hedge funds, derivatives, swaps and private equity investments should be itemized within their own separate category of “alternative investments” with subcategories of each of the above (i.e., hedge funds, derivatives, swaps, private equity). The Form 5500 instructions should be clear and specific in providing definitions of the investments that are to be listed in each category. This specificity will provide more transparency so the performance of individual investments can be measured. This is particularly important given the high fees of many alternative investments and the often-volatile performance. Indeed, the investment losses from some hedge funds and other alternative investments are legendary and underscore that monitoring of these types of investments are crucial.

Many alternative investments and employer stock plans have no readily ascertainable value because they are not publicly traded. The Form 5500 instructions should clarify which fiduciary has the responsibility for making the good faith determination of the fair or current value of assets where there is no readily ascertainable value and the methodology for making this determination.

In addition, the designers of the revised Form 5500 should consider requiring information concerning indirect investments so that the underlying investments can be monitored for diversification, performance and fees.

Moreover, with the recent changes to the definition of fiduciary, all investments that are affiliated with the plan sponsor, any fiduciary or any service provider—that is, proprietary investments—should be identified.

To the extent plan assets are treated differently on the Form 5500 compared with accounting standards, the governing agencies should review such differences and work with the AICPA to align these differences as much as possible to achieve the standards of the accounting profession and the ERISA enforcing agencies. We also note that Schedule H requires that plan assets be reported differently than required investment industry reports to other regulators. We again urge the Departments and the PBGC to work with the investment industry and other regulators to determine if these reports can be better aligned, keeping in mind the purpose of the Form 5500 and the necessity of protecting participants and beneficiaries.

The bottom line is that the Form 5500 should provide useful information about investments to the agencies and participants. We urge that Schedule H and its instructions be reviewed and revised to implement these suggestions. Moreover, this schedule along with the rest of the Form 5500 should be filed electronically in a format that is easily searchable. If the Form 5500 is electronically filed, it can then be made available on a website as soon as practicable so it is available to the public, thereby

fulfilling one of ERISA's policies of improving disclosure to participants. Section 2(b), ERISA § 1001(b).

Fees

Any fees and compensation paid to service providers should be disclosed on the Form 5500.

Service provider fees should be disclosed in a format that is consistent with section 408(b)(2) disclosure requirements so that the information can be consistently tracked. Consequently, AARP suggests that the Form 5500 should require a total of the amount of compensation paid to a service provider with subtotals of eligible indirect compensation, reportable indirect compensation, and direct compensation. The instructions should clarify which type of compensation falls into which grouping and which expenses may be deducted from investment returns to determine net returns. Either the 408(b)(2) disclosures and/or the Form 5500 should include reporting of performance and expense ratios.

Appraisals and financial statements for ESOPS should be required attachments to the Form 5500, along with the identity of the appraisers. If there are concerns over confidentiality because of public disclosures, either there could be a delay in public disclosures (perhaps a lag time of two years) or a confidentiality agreement may be executed for an entity or person who is not a government official.

Improved consistency and complete and better data should facilitate enforcement efforts. It will also enable a comparison of plans and service providers. AARP realizes that to implement its suggestions requires revision of Schedule C.

Service Providers

The Form 5500 should require the plan administrator to report service providers' service to the plan and the method of compensation for specific services. The more detailed the reporting, the more useful the information will be. The current codes are not consistently used and should be updated to better reflect the current state of the industry.

In particular, one question should ask whether the compensation includes revenue sharing. Another method for ascertaining this information is, for example, the reporting plan could check boxes to report whether a third party 401(k) plan administrator provides advice on choosing a platform, the types of investment categories, recordkeeping, and the like. For each provider, the Form 5500 could have a list of potential services that the plan administrator checks off.

Small Plans

Small plans (those with fewer than 100 participants) account for a large majority of plans, but the Form 5500-SF requires little reporting for these plans. The Form 5500-SP should require information on general categories of small plan investments and the costs and expenses for these investments. With proper reporting, plan fiduciaries will be able to compare the performance of their plan's investments through benchmarking and comparison of the amount the plan pays in fees. It would help small employers to see and understand plan fees because these plans frequently do not have advisers to help negotiate service provider fees and do not have the bargaining power that size brings. We submit that this reporting will not be burdensome on small plans because their broker or third party administrator would complete the forms and schedules.

At a minimum, a complete list of all service providers should be required so the governing agencies can better protect plan participants from unscrupulous service providers.

Plan Administration and Plan Design

The plan administrator should report the names, terms of service, and contact information of all known fiduciaries of the plan, including any persons who served on any committees with fiduciary responsibility and any Section 3(38) fiduciaries, for the current and prior five years. The Form should specifically require the identification of the named fiduciary(ies) required under Section 402(a) of ERISA, 29 U.S.C. § 1102(a).

With regard to 401(k) plans, the Form 5500 should add checkboxes so a plan administrator can indicate whether a plan uses auto-enrollment, auto-escalation and/or an employer match. Currently, there is no source to collect this information from all 401(k) plans.

Audits and Financial Reporting

The Form 5500 should require plan administrators to identify whether or not the Plan auditor is a member of the AICPA Employee Benefit Plan Audit Quality Center. If the Service finds that there is a pattern of varied and inconsistent auditing practices, the Service can work with the AICPA to correct the problem(s). By such action, audit quality should improve which is a benefit to the government, participants and beneficiaries, plans, plan fiduciaries, and plan sponsors.

The Form 5500 should also require plan administrators to include in the filing any certification issued in connection with a limited scope audit (such as investment values may not have been subject to independent verification of fair value).

Finally, the instructions to the Form 5500 should explain whether uncashed checks issued to pay benefit obligations and the underlying amounts are plan assets, as well as the appropriate reporting requirements on the Form 5500. The lack of guidance

on the plan asset status of such funds has resulted in varied accounting practices and inconsistent reporting on Form 5500.

Form 5500 Filing

The plan administrator should certify that the information reported on the Form 5500 is accurate and correct. In addition, if key information is not reported or reported incorrectly, the Form 5500 should be returned to the filer and resubmitted. For example, in response to the question to identify the plan administrator, a response of Plan Administrator is insufficient. In such an instance, the Form 5500 should be returned to the filer for resubmission.

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AARP appreciates having the opportunity to provide its views on revisions to the Form 5500 and realizes that its suggestions will require the three government agencies which are charged with enforcing ERISA to work together to update this Form, not only the IRS. If you have any questions, please do not hesitate to contact Michele Varnhagen at 202/434-3760.

Sincerely,



David Certner
Legislative Counsel and Legislative Policy Director
Government Affairs

cc: Joe Canary
Director, Office of Regulations and Interpretations
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Christopher Bone
Director of Policy, Research, and Analysis Department
Pension Benefit Guaranty Corporation