



December 5, 2016

Submitted electronically to e-ORI@dol.gov

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

Re: RIN 1210-AB63

Proposed Revision of Annual Information Return/Reports

The Pension Rights Center is a nonprofit consumer organization that has been working since 1976 to protect and promote the retirement security of American workers, retirees and their families. We appreciate the opportunity to comment on the proposed revisions to the annual reporting Form 5500. Our comments will address reporting requirements of particular interest to participants. We commend the Labor Department, Department of Treasury and Pension Benefit Guaranty Corporation (Agencies) for expanding these requirements.

Form 5500 reporting has not kept pace with changes in retirement savings plans (401(k)-type plans). The proposal includes additional reporting for these plans that will provide new information enabling policymakers to better evaluate the effectiveness of various individual account plan features and practices. Additional questions on fees and investments will give participants greater insight into the operation of their plans. Breaking down general questions into specific categories will not only benefit policymakers but will help participants to understand important features of their plans.

DISCUSSION

We applaud the Agencies for expanding the required reporting of plan practices and features that directly affect participants. With the proliferation of participant-directed individual account plans, the retirement security of participants depends on the choices they are given under their plans, as well as the choices they make while they are participants in the plans. Plans vary greatly in their designs and generosity. In order to improve the retirement system

for all, policymakers need detailed information on plan features and operations, as well as on employee participation and choices.

Questions concerning the default features of individual account plans will be particularly useful to policymakers in determining whether a particular default feature is commonly used by plans and whether it is effective, either in raising levels of participation or increasing contribution rates. The default options include automatic enrollment, default contribution level, qualified default investment alternatives, and automatic escalation. The new Part VII of Schedule R will provide needed information on these features as well as on employer matches, elective deferrals, and the number of participants choosing to remain in a plan's default investment options.

The definition of "active participant" has been a special concern to researchers, journalists, and the Pension Rights Center. Since 2004 the Form 5500 has not distinguished between participants with account balances and participants who "actively" participate in individual account plans by making a contribution to their accounts during the plan year. This is a significant distinction since employees who are automatically enrolled in a plan have the option each year not to contribute. Lower income employees who are automatically enrolled in a plan may later decide they no longer can afford to make contributions, yet they maintain an account with the plan. We are very pleased to see question (3) of Line 7g under Basic Plan Information asks for the number of participants who made contributions during the plan year. This question will enable a comparison between number of participants contributing and the number with account balances.

However, there remains a problem with the concept of "active participant" for 401(k)-type plans as defined in the proposed Instructions on p.47611 for Lines 7a(1) and 7a(2). Here "active participant" includes those individuals eligible to become participants in a 401(k) plan but who have never elected to participate.¹ Many employees do not affirmatively opt to participate in a plan. In addition, those who are automatically enrolled may immediately opt-out and never participate in the plan. Individuals who do not actively participate in a plan should not be reported as "active participants." We recommend that these individuals be reported as "eligible but not electing to participate." This could be reported as a new question under Line 7g.

¹ In 2004 the number of "active" participants reported using this definition was an estimated 10 million in excess of the actual number of individuals actively participating. See Employee Benefits Security Administration, Private Pension Plan Bulletin Historical Tables and Graphs 1975-2014, Appendix C.
<https://www.dol.gov/sites/default/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletin-historical-tables-and-graphs.pdf>

The proposed Schedule H will provide new and valuable information for participants and policy makers about plan investments and fees. For example, new questions in Part II of Schedule H (Line 2i (12)) break down administrative expenses into those paid by the plan and those charged to individual accounts. Charges to individual accounts are further separated into transaction-based expenses and plan-wide expenses. The breakout includes questions on how plan-wide expenses are apportioned among participant accounts, either per capita, as a portion of the account balance, or other. Schedule H also includes compliance questions of direct interest to participants, such as whether the plan administrator provided required investment disclosures and whether the Summary Plan Description is in compliance with Labor Department regulations. Additionally, plans will be required to attach a copy of the investment option comparative chart provided to participants and list the types of designated investment alternatives available under the plan.

Enhanced reporting on service providers and their fees in Schedule C will encourage plan sponsors to more closely monitor their service providers and to seek alternative service providers when fees are excessive. The revised Schedule C will add transparency to service provider arrangements and will be of interest to many participants as well as plan sponsors. For example, reported compensation must include payments made from participants' accounts. Also, if a service provider is not explicitly compensated for recordkeeping due to offsets, rebates or other compensation, the filer must provide a dollar value for the compensation received by the service provider for recordkeeping. Small plans who do not file the Short-Form will now be required to file Schedule C.

The uncashed checks of missing participants are a significant problem. Participants who have made good faith contributions to a retirement savings plan should receive the benefits they are due even when the benefit amount is small. The Compliance section of Schedule H, Part IV, Line 4z, includes several questions about uncashed checks and requires a description of procedures followed by the plan to monitor uncashed checks and locate missing participants. It would also be helpful to include a question on the number of former participants who were successfully cashed out during the year, i.e. their checks were not returned as uncashed.

When companies combine and re-combine or spin-off divisions, separated participants can easily lose track of their former employers and their benefits. The additional questions on plan terminations in Part VI of Schedule H will help some participants track down their benefits. The questions include details on transfers of assets and liabilities from one plan to another, whether the transfer was due to a merger, consolidation, spinoff or other arrangement, and the requirement for defined contribution plans to provide identifying information for any federally insured bank that received assets from the accounts of missing participants (Line 7d of

Schedule H Part IV). Although this can be important information for participants, a typical participant looking for plan benefits will not think to check out Schedule H. Therefore, the Pension Rights Center recommends that the Labor Department add a brief sentence to Line 5 under Basic Plan Information that states plan termination information is reported on Schedule H.

In addition, for plans that opt not to take advantage of the PBGC's Missing Participant Program, there should be a listing of the names and locations of any IRA providers or state unclaimed property programs that received rollovers for participants who could not be located at the time of plan termination.²

We are pleased that the proposed Form 5500-SF (Short Form) will include many of the new questions of interest to participants in defined contribution plans that are on the longer form. These include the questions on uncashed checks, plan terminations, plan operations, participant contributions and new questions on fees and investments plus a copy of the investment option comparative chart.

We support the re-introduction of a revised Schedule E. The new Schedule E will help plan administrators recognize key information relating to their Employee Stock Ownership Plans (ESOP) and identify potential problems. We recommend adding information concerning voting rights held by the ESOP, either the percentage held by the ESOP or a yes/no question as to whether the ESOP holds a majority of the voting rights. Similarly, we recommend asking who exercises the voting rights, the trustee, the participants, or another arrangement. These questions could be asked separately for allocated shares and unallocated shares.

ADDITIONAL RECOMMENDATIONS

- The Center recommends that Line 9a(8) of Basic Plan Information include a question on whether a defined contribution plan with automatic enrollment has a Code section 414(w) feature that permits withdrawal of the account without penalty if the withdrawal is made within 90 days.

² The PBGC has issued a proposed rule to establish a missing participant program for terminating defined contribution plans as required by the Pension Protection Act of 2006. <https://www.gpo.gov/fdsys/pkg/FR-2016-09-20/pdf/2016-22278.pdf>

- We suggest that Line 9a(5) of Basic Plan Information regarding frozen plans include a question on whether a plan is frozen to new entrants only or whether benefit accruals are also frozen for current participants.
- We recommend that several questions on missing participants from defined contribution plans be added to Part VI of Schedule H, Plan Termination Information; namely, whether there were missing participants at the time of termination and, if so, whether a diligent search was made to locate them, and whether the employer used the voluntary PBGC missing participants program to transfer participant assets or to report missing participants and the location of their accounts.
- The Center recommends that IRS-only compliance questions be included in Form 5500 and Form-SF based on subject matter, rather than included in an IRS-only schedule. IRS compliance questions are often of interest to participants and, may, as in the case of an ESOP that loses its tax exempt status under IRC Section 409(p), signal possible breaches of fiduciary duty that could trigger excise taxes and income tax liability for participants. Compliance questions presented in context are more easily understood than a list of unrelated questions on a separate schedule. Participants may be likely to ignore a separate IRS schedule. Additionally, by including the questions in Form 5500 and Form-SF, employers may be less inclined to request a paper form.

We appreciate the opportunity to comment on the proposed revisions to Form 5500.

Sincerely,

A handwritten signature in cursive script that reads "Jane T. Smith".

Jane T. Smith
Policy Analyst