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Office of Regulations and Interpretations
Employee Benefits Security Administration (EBSA)
Room N–5669
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Attn: Revision of Form 5500 (RIN 1210–AB06)

Ladies and Gentlemen:

On July 21, 2006, the Department of Labor proposed far reaching changes to the regulations and instructions governing the Form 5500 Annual Report for ERISA-covered pension and welfare plans. The Investment Company Institute ("Institute") appreciates the opportunity to comment on the proposal.

The Institute's comments relate primarily to the clarity and scope of the changes proposed for Schedule C (Service Provider Compensation). As proposed, the changes will double count some service provider compensation and, as a consequence, result in reports that are confusing and misleading. In this letter, we present suggestions for more administrable and narrowly focused disclosure. We also recommend that the Department delay rescinding the exemption from reporting on which section 403(b) plans currently rely until these plans have adequate time to adjust to comprehensive new operational requirements.

The interest of the Institute's members in Form 5500 is substantial.[1] Mutual funds are the investment vehicle of choice for defined contribution plans — holding nearly half of all defined contribution plan assets and nearly half of all 401(k) plan assets.[2] Mutual fund firms and their affiliates also serve as plan recordkeepers and provide other services for many defined contribution and defined benefit plans.

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[1] The Institute's members include 8,719 open-end investment companies (mutual funds), 652 closed-end investment companies, 195 exchange-traded funds, and 5 sponsors of unit investment trusts. Mutual fund members of the Institute have total assets of approximately $9.273 trillion (representing 98 percent of all assets of US mutual funds); these funds serve approximately 89.5 million shareholders in more than 52.6 million households.

[2] The U.S. Retirement Market, 2005, Fundamentals, Vol. 15, No. 5, Investment Company Institute (July 2006).

In this Form 5500 rulemaking, the Department seeks to accomplish two different objectives. First, the Department seeks to modernize and simplify Form 5500 reporting by mandating and facilitating electronic filing. The move to electronic filing addresses concerns that delays in processing Form 5500 information impairs the Department's ability to make prompt use of the information and impedes public access to current, accurate information about plans. The Institute and its members strongly support electronic filing of Form 5500 and commend the Department for taking this step.

Second, the Department seeks to expand significantly disclosure of the compensation of service providers to plans. The Department states these changes are meant to "ensure that plan officials obtain the information they need to assess the reasonableness of the compensation paid for services rendered to the plan, taking into account revenue sharing and other financial arrangements and potential conflicts of interest that may affect the quality of those services."[3]

The Institute has long been a proponent of the Department's efforts to enhance ERISA disclosure standards and has specifically supported fee and expense transparency in connection with 401(k) plans. The fees and expenses of mutual funds used as investments by employee benefit plans are disclosed in fund prospectus. The Institute supports initiatives to require transparency with respect to fees and expenses associated with other products and services used to invest employee benefit plan assets. Transparency with respect to all investment products and services helps assure retirement security for plan participants and avoids an unlevel playing field among plan providers.

To be effective, public reporting requirements require a high degree of clarity. Filers must understand exactly what must be filed and the information presented on the form must be clear and understandable to the public as well as regulators. For the reasons detailed below, we believe that the Department's proposed changes are unclear and overbroad. They will result in the filing of confusing and misleading information. Adopting the requirements as proposed will undermine the laudable effort to create a searchable data base of accurate and useful information about plans. The Department's goal of ensuring that plan sponsors have information to assess service provider compensation is better served by a project the *Department already has underway*, namely revisions to the regulations issued under Section 408(b)(2) of ERISA. Public reporting of service provider compensation should be more narrowly focused.

The Institute's comments are set forth below. Our suggestions relate primarily to defined contribution plans, but we also offer comments on several aspects of the proposal that relate principally to defined benefit plan service provider arrangements.

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[3] 71 Fed. Reg. at 41621.

I. DISCLOSURE OF SERVICE PROVIDER COMPENSATION

A. The Department Should Rely on Section 408(b)(2) and not Form 5500 to Assure Plan Sponsors Have Information to Evaluate Service Provider Arrangements

The Department should use rulemaking under Section 408(b)(2) to address the adequacy of compensation information available to plan sponsors. Disclosure of service provider compensation pursuant to Section 408(b)(2) occurs at the key decision point—when plan fiduciaries are engaging service providers (or periodically reviewing them). Form 5500 disclosure is made well after the fact. Schedule C is an inefficient means of enforcing effective and useful service provider disclosure to sponsors.

The Institute has supported enhanced fee disclosure under Section 408(b)(2)—including in testimony before the ERISA Advisory Council in 2004.[4] Considerable work already has been done to assure that plan sponsors have information to evaluate service provider compensation, including information about revenue sharing and potential conflicts of interest. In 2000, the Institute worked with other private sector organizations to develop the model 401(k) Plan Fee Disclosure Form that is available to plan sponsors on the Department's website. Recently, the Institute, along with the American Benefits Council, American Council of Life Insurers, the American Bankers Association, and the Securities Industry Association, submitted to the Department a data element list that plan sponsors and service providers could use in discussing service arrangements, including indirect compensation. The list is a complement to the form and is intended to be a helpful tool in assisting plan fiduciaries to fulfill their obligations under Section 408(b)(2).

The Department expects to propose additional guidance under rule 408(b)(2) shortly. This rulemaking, not Form 5500, should be the vehicle to address concerns about fee and expense information provided to plan fiduciaries.

B. Public Reporting of Service Provider Compensation Should Be More Narrowly Focused

The proposed Schedule C reporting scheme is far more extensive and intrusive than necessary and will result in duplicative, misleading and confusing reporting to the Department and the public. As proposed, the changes also will impose significant costs on plans and their service providers. Service providers will be the source of much of the information needed to complete the Schedule, and likely will pass on to their plan clients the costs of this tracking and reporting. Plans typically employ

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[4] See Statement of the Investment Company Institute on Disclosure to Plan Sponsors and Participants Before the ERISA Advisory Council Working Groups on Disclosure (Sept. 21, 2004).

a large number of service providers and also will incur significant costs of their own assembling and reporting the extensive information required by the proposal.

We recommend that the Department (i) clarify precisely who will be considered a plan service provider required to be identified on Schedule C, (ii) narrow the potentially unlimited scope of reporting for indirect compensation, and (iii) revise the proposed allocation rule. The Department also should retain the current reporting exemption for securities commissions by broker and the disclosure requirements regarding float contained in Field Assistance Bulletin 2002-03.

II. SPECIFIC RECOMMENDATIONS REGARDING SCHEDULE C

A. Plan "Service Providers"

1. Confirm that a "Service Provider" is a Person with a Service Relationship Directly with the Plan

We interpret the proposed Schedule C and Instructions to require the plan to report compensation paid to persons who directly provide services to the plan (whether the provider is paid directly or indirectly). This is consistent with ERISA § 103(c)(3), which requires reporting on those "who received directly or indirectly compensation from the plan . . . for service rendered to the plan." Whether a person is a plan service provider depends on whether it has a relationship directly with the plan and not on whether the person is directly paid by the plan.[5] We believe this is the proper scope for Schedule C reporting.

The Department's discussion of the reporting of compensation paid to providers in a "bundled arrangement" suggests, however, that the reporting obligation might be more extensive than the standard described above. Specifically, that discussion suggests that reporting might be required for persons who do not have direct relationships with plans, including sub-contractors of direct plan service providers. It could be misleading and confusing to require reporting on Schedule C of compensation paid to a sub-contractor with whom the plan has no relationship. A sub-contractor to a plan service provider has no service relationship to the plan, because it is in fact providing services for the *service provider* and not the plan. Frequently, sub-contractors are not even aware of the identities of the service providers' plan customers. We request that the Department confirm the general rule that reporting is

[5] Section 104(c)(3) of ERISA requires reporting of persons who received compensation "for services rendered to the plan or its participants." The Department should confirm that Schedule C reporting only applies to persons who provided services to the plan.

not required for those entities (subcontractors) that provide services to plan service providers and not directly to plans.

As for the special case of bundled providers, the proposed Instructions state that generally only the person offering a bundle of services must be reported except when the underlying provider is a fiduciary or is providing one of an identified list of services. (See proposed Instructions p.2). Given the comprehensive range of identified service providers, this exception to the "direct" service provider rule threatens to swallow the general rule, unless the Department more precisely defines a "bundled" arrangement. We suggest that a "bundled arrangement" be defined as an arrangement under which the plan formally contracts with and pays a single entity a "bundled fee," but the role of each of the underlying providers is specifically identified in the services agreement and the plan consents to the role of the underlying providers.[6] This is the typical bundled arrangement, and reporting with respect to the underlying providers is appropriate because they are effectively evaluated and chosen by the plan fiduciary similar to direct service providers hired outside of a bundled arrangement.

The following examples highlight the application of these clarifications:

EXAMPLE: Identify as a service provider a printer retained by the plan administrator, and paid from plan assets, to print summary plan descriptions and other participant communications. Do not identify as a plan service provider a printer engaged by the plan's third party administrator to print the enrollment materials that the third party administrator is contractually required to provide to participants, where the plan fiduciary has not approved use of the specific printer.

EXAMPLE: Include the plan's custodian, but do not include the sub-custodian engaged by the custodian to assist in the performance of its contractual duties to plan customers, where that sub-custodian has not specifically been engaged by the reporting plan.

EXAMPLE: Identify legal counsel hired by the plan's fiduciary and paid from plan assets to draft legally mandated plan amendments. Do not identify a prototype document provider who has licensed an approved prototype document to a third party administrator for offering to the third party administrator's plan clients.

[6] In other words, the Institute proposes that, for purposes of Schedule C, a "service provider" includes any person that directly provides services to a plan (as well as those providers involved in a "bundled arrangement" as defined above), and does not include a person who has no direct service relationship with the plan.

EXAMPLE: Where the plan has purchased trustee, investment advice, and recordkeeping services through a "bundled arrangement" that identifies each party, identify the trustee, recordkeeper and investment adviser each as a service provider because the plan fiduciary has effectively selected and consented to the participation of each of these providers.

B. Confirm that an Investment Company and Its Service Providers are Not Plan "Service Providers" For Purposes of Schedule C

We believe that it is clear that a registered investment company and its service providers would not be considered to be plan service providers for purposes of Schedule C solely as a result of a plan's investment in shares of the investment company. There is nothing in the Department's proposed regulation suggesting the Department takes a contrary view, but we believe specific confirmation would avoid confusion.

The investment company shares or units owned by ERISA plans are "plan assets," but the underlying assets of these investment companies themselves are not. ERISA § 401(b)(1); DOL Reg. § 2510.3-101. When a plan fiduciary selects a mutual fund for a plan, the fiduciary is making an investment and not selecting a collection of plan service providers. Entities that administer and manage the mutual fund are not plan service providers. Plans do not engage these providers. Instead, these entities are service providers to the mutual fund, retained and monitored by the fund's Board of Directors, who themselves have fiduciary duties in entering into these agreements under the Investment Company Act.[7]

We request that the Department specifically confirm in the Schedule C Instructions that investment companies are not plan service providers, and that the investment advisers, recordkeepers, administrators, transfer agents, distributors and others that provide services to these investment companies are not "plan services providers," solely by reason of their provision of services to the mutual fund companies in which plans invest.

Not only are mutual funds (and their providers) not appropriately characterized as plan service providers, it would be extremely difficult to parse out (in dollars) by plan specific components of a fund's expense ratio for purposes of Form 5500 reporting. Many plan mutual fund investors hold their shares through omnibus accounts maintained by financial institutions and it is very difficult to the mutual fund to know the identity and extent of an individual plan's holdings in the fund. In addition, as the ERISA Advisory Council's 2004 Working Group Report on Plan Fees and Reporting

[7] The fees, expenses, and costs associated with an investment in a registered investment company are readily available to the public. Mutual fund expenses generally consist of investment advisory expenses, shareholder servicing or administrative fees, and, in some cases, 12b-1 fees. These expenses are expressed in the fund expense ratio and disclosed in the fund prospectus under SEC rules.

on Form 5500 makes clear, a mutual fund does not have the capacity to allocate to each of its shareholders the fees that, with each day's net asset value, are netted from the fund's holdings. The systems overhaul that would be needed to track this information would be prohibitively expensive. If the Department intends to take a contrary position on this very important point, the Institute requests the opportunity to provide additional specific comments on the application of any required Form 5500 reporting to registered investment companies.

C. Narrow The Standard For Reporting Indirect Compensation

1. The Current Proposal is Unnecessarily Broad, Misleading and Burdensome

The Proposal requires the reporting of indirect compensation received by a long list of enumerated plan service providers ("Enumerated Service Providers"). Indirect compensation is defined generally as an amount "received from a source other than the plan or the plan sponsor by a person who is a service provider *in connection with that person's position with the plan or services rendered to the plan.*" (emphasis added).

This standard is unnecessarily broad. The Proposal would seem to require Schedule C reporting of -

- a payment that a service provider receives from a third party even when not intended as compensation for services provided to the plan but as compensation to the recipient for services it provides *to the third party payor* (*e.g.*, compensation by an investment manager to the plan's custodian for the development of performance measurement tools for the manager's own use);

- a payment or intra-company allocation that a service provider receives from an affiliate; and

- business-related meals and entertainment that a non-fiduciary service provider or its employees receive from a person who wants to do business with the service provider's clients.

The standard also will result in misleading and duplicative reporting. Double counting will occur because proposed Schedule C requires each service provider to report the gross compensation it receives in connection with services to the plan, even if part of that compensation is simply passed on to another service provider.

The costs associated with reporting indirect compensation are potentially enormous. The Department's cost benefit analysis does not address the very significant costs for service providers to annually track, and allocate third party payment information. In addition, we question the Department's estimate that the proposed changes to Schedule C will impose only minimal costs on plans themselves. Given the costs and administrative burdens in reporting indirect compensation, the Department should revise the proposal to focus on information that brings conflicts to light or affects the total compensation an entity receives in connection with transactions involving plan assets, as we describe below.

2. *The Department Should Provide an Exception for Reporting of Payments or Allocations Made to a Service Provider by an Affiliate*

The Department's Proposal does not specifically address reporting of payments or allocations received by a service provider from its own affiliates. The Department should clarify that allocations received by a plan service provider from its affiliates are not separately reportable on Schedule C. Without clarification on this point, significant confusion and duplicative reporting are, in fact, likely.

Reporting allocations received by a plan service provider from its own affiliates serves none of the objectives articulated by the Department. The "interest" that a service provider has in its affiliate should be readily apparent to a prospective plan customer and the plan fiduciary should evaluate any advice or recommendation by that provider relating to its affiliate accordingly. Second, the total compensation to the enterprise is identifiable without this additional reporting and the precise allocation of fees, expenses and profits between a provider and its affiliates is irrelevant to the "reasonableness" of the total compensation paid by the plan or the total compensation received by the enterprise.

Moreover, the allocation of revenues, costs and profits among affiliates frequently has nothing to do with the services provided by the respective affiliates to customer plans, but instead is designed for budgeting, accounting, or other purposes. The requirement that intra-organization allocations be reported would create an unwarranted and confusing distinction between firms that provide services utilizing employees in multiple divisions and firms that use several subsidiaries to provide the same services. If multiple affiliates within an organization are providing services to a plan, it should be sufficient to identify in Part I the organization together with its affiliates and to report compensation on an aggregate basis. For example, Part I could list (a) affiliates A, B, and C, (b) the services A, B, and C provide to the plan, and (c) the direct and indirect total compensation A, B, and C receive in the aggregate.

Under this approach, where a mutual fund's adviser uses profits from its investment management fee to make improvements in its affiliated recordkeeper's business, allocation would not be reportable. Information regarding how an investment adviser allocates revenue and profits among its business lines is of no value to plan sponsors or participants (but is of interest to competitors).

3. *The Department Should Require Reporting of a Third Party Payment to a Service Provider Only Where the Amount of the Payment or the Service Provider's Eligibility For the Payment is Based on a Transaction Involving the Plan*

The Institute recommends that the Department modify the standard for determining when a particular third party payment made to a service provider is reportable on Schedule C. Under the Department's Proposal, the plan administrator would report any payment received "in connection with [the service provider's] position with the plan or services rendered to the plan." Instead, the Department should adopt a more precise and tailored test, similar to the one recently adopted for Schedule A reporting. Specifically, the Institute recommends that a payment be reported on Schedule C if either the eligibility of the provider for the payment or the amount of the payment is based on a transaction involving assets of the plan. This test would be consistent with ERISA section 406(b)(3), the conflict of interest rule which prohibits payments to plan fiduciaries "in connection with" transactions involving plan assets.[8] The standard we recommend would identify compensation arrangements relevant to determining the reasonableness of the provider's compensation and its potential conflicts of interest.

Under the Institute's proposal, the following payments would be *reportable:*

- a payment by a mutual fund investment adviser to an Enumerated Service Provider where the payment is a percentage of assets invested by the plan in the mutual fund; and

- a payment received by a recordkeeper for including a mutual fund on its platform where the recordkeeper must have 1000 plan clients investing in the fund to be eligible for the payment.

[8] If a plan fiduciary is viewed as not having an impermissible conflict where a payment is not received "in connection with" a plan transaction, a non-fiduciary provider with no fiduciary duties to the plan should be treated at least as generously. *See e.g.*, DOL Adv. Op. 99-03A (plan's investment in units of trust on secondary market not prohibited even though fiduciary's affiliate receives service payments from the trust so long as amount received by affiliate unaffected by plan's purchase).

The following payments would *not be reportable* under the Institute's proposal:

- a distributor of a mutual fund company offered on the non-fiduciary recordkeeper's platform hosts a luncheon for the recordkeeper's sales staff to explain new fund offerings; and

- a mutual fund pays for capital improvements of a recordkeeper over time where the recordkeeper need not have a certain amount of plan assets in the mutual fund in order to receive the payment.

D. Modify The Proposed Allocation Rules

1. The Department's Position Regarding Relationship Building Payments Appears Punitive

The proposed Instructions state if "reportable compensation is due to a person's position with or services rendered to more than one plan" the total amount of the consideration received generally should be reported on the Schedule C of each plan "unless the consideration can reasonably be allocated to services performed for the separate plans." (Instructions, p.2). The Department provides the following example:

> For example, if an investment advisor working for multiple pension plans and other non-plan clients receives a gift valued in excess of $1,000 from a securities broker in whole or in part because of the investment advisor's relationship with plans as potential brokerage clients, the full value of the gift would be reported on the Schedule C of all plans for which the investment advisor performed services. On the other hand, if a securities broker received incentive compensation from an investment provider based on amount or value of business with the broker's clients, the Schedule C of each plan could report a proportionate allocation of the incentive compensation attributable to the plan.

It is apparently the Department's view that a payment made because of the recipient's "position with the plan" rather than as compensation (direct or indirect) for plan services may not be allocated among the recipient's clients. We do not understand the basis for distinguishing between the reasons for a payment in determining whether it can be allocated. In our view, reasonable allocation can be made in both situations.

The distinction made in the example reflects a punitive approach towards sales and marketing-related payments between businesses.[9] These types of payments (which are typically not cash gifts as described in the example, but meals and entertainment) are not intended to compensate anyone for services provided to a plan (or to anyone) or to influence plan decision-making but are simply the costs of marketing and relationship-building with others in the industry. It appears that the Department is attempting to indirectly eliminate these perfectly legal payments by requiring disclosure on an unallocated basis. These types of payments are not illegal or unethical. It would be inappropriate to require these payments to be reported as if paid solely in connection with each reporting plan. Instead, we suggest that any payment made to a plan service provider not clearly attributable to a single plan should be allocated among the recipient's plan clients in a reasonable manner.

2. *Unless Reasonable Allocation of Third Party Payments is Permitted, Reporting will be Grossly Misleading*

Even if a payment like the $1,000 payment in the Department's example is actually made for providing business to the payor or for providing access to the non-fiduciary provider's plan clients, there is no legitimate reason to require the recipient to represent that it received 100% of that payment in connection with any one client, when that is clearly not the case. This type of reporting would be grossly misleading, suggesting to the plan administrator that the compensation received by the service provider in connection with its plan is exponentially greater than it actually was. In a situation like the Department's example, a reasonable estimated allocation of the payment provides a much more accurate picture of the amounts received by the provider in connection with the plan.

Finally, we believe that that the Instructions should make clear that only the *recipient* of an indirect payment is responsible for allocating that payment and reporting the amount to the recipient's plan clients. The payor would not typically be in the position to identify the relevant plans and determine the allocation.

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[9] Although the Department reaches two different conclusions in the two examples, we believe that the distinction drawn makes no sense. In each case, the non-fiduciary service provider is receiving consideration from a person that does or wishes to do business with the service provider's plan clients. In the case of the $1,000 gift (which would more likely be a $1,000 group luncheon), the payor spends the money in order to foster a potential source of business. In the case of "incentive compensation" paid to the broker, the payor is compensating the source for playing some role in actually delivering that business. In neither case is the consideration directly related to providing access to or delivering the business of a single plan. However, under the Department's rule, a much lower number is reported to the plan in the case where the business was actually delivered than in the case where it was only a potential. This is non-sensical.

E. Other Schedule C Recommendations

1. Reporting of Brokerage Commissions and Soft Dollar Amounts

Since 1988, the first year that Schedule C was required, plan administrators have not been required to report on Form 5500 commissions paid to non-discretionary securities brokers in connection with the plan's securities transactions, either on an aggregate basis or by broker. The Department's proposal would modify this exception and require reporting of brokerage commissions on securities transactions by broker. Determining the brokerage commissions paid to a particular broker on a plan-by-plan basis with any accuracy is very difficult. Investment managers engage brokers under "omnibus" arrangements that make it nearly impossible to track the dollar amount of the commission per trade and match this to a simple commission rate. We recommend that the Department not require reporting of plan commissions by broker.

The Department also should not require reporting on Form 5500 of soft dollar benefits received by investment managers of retirement plan assets. The Securities and Exchange Commission is currently engaged in several initiatives with respect to the use of soft dollars by investment managers, including managers of plan assets. In July 2006 the Commission issued a final release narrowing the interpretation of the soft dollar safe harbor contained in section 28(e) of the Securities Exchange Act and requesting comment on commission sharing arrangements. The Commission next is expected to conduct a review of disclosure requirements with respect to soft dollars. SEC staff have stated publicly that they expect to present recommendations to the Commission by the end of the year. The regulatory framework applicable to disclosure of use of client commissions should be consistent, regardless of the type of client account involved, to avoid creating incentives for brokers to favor certain types of managers or clients. The Department, which has a long-standing history of coordination with the Commission with respect to soft dollar matters, should defer imposing soft dollar disclosure requirements in Form 5500 until the Commission has addressed the disclosure issues.

2. Float Earned on Plan Assets by Services Providers

After considering the input of the financial services industry, the Department made a policy decision in Field Assistance Bulletin 2003-03 regarding the extent to which float compensation should be disclosed. For administrators of multiple plans, tracking and calculating (even by estimation) is complicated and costly.[10] The Department was aware of this complexity and costs

[10] One Institute member indicated that tracking the information required by the Department's proposal would require changes to at least five different computer systems.

when it developed its position on float disclosure in FAB 2002-03. Providers have modified contracts and implemented new disclosure procedures to conform to the Department's guidance. We believe that disclosure under the procedures adopted in FAB 2002-03 strikes the appropriate balance and allows fiduciaries to understand the extent of compensation being earned through float. The Department should not require reporting on Schedule C of a dollar figure for float earned during the plan year.

III. RETAIN THE CURRENT EXEMPTION FOR FORM 403(b) PLANS AT THIS TIME

Currently, plans funded exclusively through section 403(b) tax deferred arrangements and custodial accounts for regulated investment company stock under IRC § 403(b)(7) are subject to more limited reporting. The 403(b) plan exemption has been available since the inception of reporting requirements in 1975. The Department proposes to take away the exception, and states in the proposal that having to file a full Form 5500 is not a "substantial burden" for those plan administrators.[11]

The Internal Revenue Service will soon release final regulations under section 403(b), the first comprehensive regulations in over 40 years. These new rules will require extensive changes to plan documents, annuity contracts, and service arrangements, as well as significant operational changes. Some 403(b) plans could find themselves subject to ERISA for the first time. These new tax regulations will impose significant costs on plan sponsors, which, by definition, are not profit-making entities.

Imposing the requirement of full Form 5500 reporting, which does impose substantial burdens on section 403(b) plans, at the same time that these plans are devoting significant money and resources to comply with the new tax rules, is simply "piling on." We recommend that the Department delay changes to the reporting requirements for section 403(b) plans until these plans have had sufficient time to implement the new tax rules.

The Department indicated in the Proposal that evidence of improper handling of participant contributions in 403(b) plans motivated its decision to impose full Form 5500 reporting on these plans. Timely forwarding of participant contributions is an important issue. But imposing the entirety of Form 5500 reporting on all 403(b) plans is the *least* tailored (and most burdensome) way to address a compliance problem suffered by a few. The Department already has a project underway

[11] The Department notes in the Proposal that 403(b) plans will be able to avail themselves of the reduced reporting for small plans. Of course there will be many 403(b) plans that are not eligible for reduced reporting. Currently 403(b) plans are not required to fill out lines 6 and 7 of Form 5500, so the Department does not have data on how many plans have more than 100 participants.

that would clarify the deadline for forwarding participant contributions to the plans under 29 C.F.R. § 2510.3-102. The Department should utilize that rulemaking to clarify the application of the participant contribution rules to section 403(b) plans. In any event, requiring reporting "after-the-fact" through the Form 5500 is unlikely to spur better compliance with the contributions rules.

IV. EFFECTIVE DATE

Under the Department's proposal, the new reporting requirements will apply to the 2008 plan year. Even if the Department narrows the reporting as we recommend, service providers will need to make significant changes to their systems to capture the necessary data. This programming will need to begin well in advance of January 1, 2008, to ensure the systems are in place to begin tracking transactions on that date. We believe the Department may need to delay the effective date to assure that service providers have sufficient time to build these systems.

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The Institute appreciates the opportunity to provide its views on the Department's proposed changes to Form 5500 reporting requirements. Please feel free to contact the undersigned at 202 326 5826 (podesta@ici.org) or Michael Hadley at 202 326 5810 (mhadley@ici.org) with any questions.

Sincerely,

/s/ Mary S. Podesta

Mary S. Podesta
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