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November 1, 2021

**VIA ELECTRONIC SUBMISSION**

Office of Regulatory Interpretation
Employee Benefits Security Administration, Room N-5655,
U.S. Department of Labor
200 Constitution, Ave, NW
Washington, DC 20210

**Re: Proposed Form 5500 Revisions RIN 1210-AB97**

To Whom It May Concern:

The Insured Retirement Institute, Inc. ("IRI")[1] appreciates the opportunity to comment on the joint proposal issued by the Department of Labor ("DOL"), the Department of the Treasury, and the Pension Benefit Guaranty Corporations (collectively, the "Agencies") to revise the Annual Information Return/Report (the "Proposed Revisions")[2] and the DOL's proposal to amend the Annual Reporting and Disclosure Regulations under 29 CFR § 2520 (the "Proposed Amendments" and, together with the Proposed Revisions, the "Proposed Changes").[3]

IRI received and reviewed the comments on the Proposed Changes by the Chamber of Commerce of the United States of America (the "U.S. Chamber"), as submitted on November 1, 2021, and we support the U.S. Chamber's comments, and respectfully urge the Agencies to revise the Proposed Changes in accordance with the U.S. Chamber's requests and recommendations.

Along with IRI's general support of the U.S. Chamber's comments, IRI has additional comments with respect to the Proposed Revisions regarding hard-to-value assets and trust information.

**Hard-To-Value-Assets**:

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[1] IRI is the leading association for the entire supply chain of insured retirement strategies, including life insurers, asset managers, and distributors such as broker-dealers, banks, and marketing organizations. IRI members account for more than 95 percent of annuity assets in the U.S., the top 10 distributors of annuities ranked by assets under management and are represented by financial professionals serving millions of Americans. IRI champions retirement security for all through leadership in advocacy, awareness, research, and the advancement of digital solutions within a collaborative industry community.

[2] 86 FR 51488 (Sept. 15, 2021).

[3] 86 FR 51284 (Sept. 15, 2021).

Under the Proposed Revisions, the Agencies have specifically identified common collective trusts (CCTs) and pooled separate accounts (PSAs), primarily invested in hard-to-value assets, to themselves be identified as hard-to-value assets, regardless of whether they are valued at least annually.[4] IRI respectfully disagrees that CCTs and PSAs should be identified as hard-to-value regardless of the underlying investments. For example, mutual funds invest in similar assets, including the hard-to-value underlying assets mentioned in the proposed guidance. While CCTs or PSAs may not be listed on an exchange, this does not mean the assets are valued any differently or have more risk than a mutual fund listed on an exchange. In addition, many small plan filers using Form 5500-SF currently invest in CCTs or PSAs. Labeling these investments hard-to-value could cause many Form 5500-SF filers to no longer be able to file this short form.

The ERISA Advisory Council's Report on Employee Plan Auditing and Financial Reporting Models includes helpful background commentary on this issue. It states,

> ERISA § 103(a)(3)(C) permits the plan administrator to exclude from the audit any plan assets held by a bank or similar institution, or insurance carrier regulated by a state or federal agency. Based on the statute's legislative history, the Council understands that ERISA contains this exclusion because Congress presumed that assets held by such institutions were already subject to a governmental audit and regulation and therefore at less risk. It also appears that at the time of ERISA's enactment in 1974, retirement plan assets were often held under insurance contracts or in trusts. Custodian banks or trust companies held assets and provided an independent valuation of asset values; most investments had readily ascertainable market values. Witnesses recounted that since 1974, the investment landscape has changed dramatically. Alternative asset classes and hard to value assets have exploded and hold a significant allocation in many plan portfolios. In short, the context in which the limited scope exemption was adopted no longer exists.[5]

IRI agrees that plans are holding a wider range of assets, but CCT and PSA structures should not garner additional concern. As referenced above, CCT and PSA continue to be regulated by state or federal agencies and continue to be subject to governmental audit and regulation. IRI's members, as banks, trusts, and insurance carriers, continue to hold these assets and provide independent valuation of those assets. The valuation of CCTs and PSAs is consistent with a mutual fund, and in many cases, uses the same or similar custodian and valuation agents as mutual funds. Simply not being listed on a national exchange does not make it a hard-to-value asset. In addition, plans do not own the underlying investments in CCTs or PSAs. The plan owns units of participation in the overall CCT or PSA. Under Financial Accounting Standards Board ("FASB") Accounting Standards Codification (ASC) Topic 820[6], CCTs and PSAs are able to use net asset value ("NAV") per share as practical expedient to estimate the fair value of a CCT or PSA if the following criteria is met:

- The investee has calculated NAV consistent with ASC 946, which contains guidance on how investment companies calculate NAV.

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[4] 86 FR 51488, at Page 51549 (Sept. 15, 2021);
[5] ERISA Advisory Council Report on Employee Benefit Plan Auditing and Financial Reporting Models, available at: https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/erisa-advisory-council/2010-employee-benefit-plan-auditing-and-financial-reporting-models# (Nov. 4, 2010).
[6] Financial Accounting Standards Board, Fair Value Measurement (Topic 820), Ref. No. 2018-13, available at: https://asc.fasb.org/imageRoot/81/118196181.pdf (Aug. 2018).

- The NAV has been calculated as of the investor's measurement date (e.g., date of the financial statements); and
- It is not probable at the measurement date that the reporting entity redeem the investment at an amount different from NAV.

For the Agencies to be consistent with FASB, they should allow for the NAV as practical expedient for CCTs and PSAs utilizing NAV as a practical expedient to be reported consistently with assets with readily determinable fair values rather than labeling them as hard-to-value.

**Trust Information**:

IRI disagrees with and respectfully requests that the Agencies revise the Proposed Revisions to eliminate the provision regarding Trusts,.[7] The Proposed Revisions would require submission of Trust Information despite the fact that this element of Form 5500 was eliminated in 2006. The Internal Revenue Service announced the Elimination of Schedule P of the Form 5500 Series in Announcement 2007-63.[8] The purpose of the elimination was to reduce administrative burden and to acknowledge the transition to an electronic filing environment.[9]

Specifically, Announcement 2007-63 states "To reduce administrative burdens of employers, plans, their administrators and trustees and custodians, and in anticipation of the transition to a wholly electronic filing environment under the ERISA Filing Acceptance System (EFAST), the Service has determined that the continued use of a Schedule P, Annual Return of Fiduciary Benefit Trust, in connection with the filing of a plan's Form 5500 is no longer necessary for the efficient administration of the of the Internal Revenue laws."[10] The announcement clearly states that the Schedule P is no longer necessary; "Pursuant to the authority contained in §6033(a) of the Internal revenue code, the Schedule P, which may be completed by a trustee of an employee benefit trust as the annual return of the trust, is being eliminated."[11]

Further, the request under the Proposed Revisions to provide the EIN used on Form 1099-R when no EIN has been assigned to the trust is duplicative and unnecessary. The EIN shown on the plan's Form 1099-R is typically associated with a filing made by an institution which covers many plans and, therefore, has no direct relationship with the Trust being identified at line 6a. The Schedule R reports the EIN used on the Form 1099-R, so there is no reason to duplicate it on another schedule.

Also, for plans with an insurance company as the recordkeeper, the four additional questions under the Proposed Revisions will provide either duplicate information or no information at all. The questions do not fit the business model for insurance companies that provide recordkeeping services for retirement plans. Many of these clients utilize insurance company products, such as separate accounts, and do not have trusts. In addition, the trusts, which are created to hold non-insurance products do not have formal names or EIN numbers.

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[7] 86 FR 51488, at Page 51503 (Sept. 15, 2021);
[8] IRB 2007-30 (Rev. July 23, 2007), ref. Announcement 2007-63, *Elimination of Schedule P of Form 5500 Series*, available at: https://www.irs.gov/pub/irs-drop/a-07-63.pdf (Jul. 21, 2006).
[9] Id.
[10] Id.
[11] Id.

On behalf of IRI and our members, thank you again for the opportunity to provide these comments. If you have questions, or if we can be of any further assistance in connection with the Proposed Revisions and the Proposed Amendments to Form 5500, please feel free to contact the undersigned at emicale@irionline.org.

Respectfully submitted,

Emily C. Micale

Emily Micale
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