RSM

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RSM US LLP
One South Wacker Drive
Suite 500
Chicago, IL 60606
www.rsmus.com

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: RIN 1210-AB63
Annual Reporting and Disclosure
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: RIN 1210-AB63 - Form 5500 Improvement and Modernization Proposal

RSM US LLP appreciates the opportunity to offer our comments on the Form 5500 Improvement and Modernization Proposal. RSM US LLP is a leading provider of audit, tax and consulting services focused on the middle market. We have approximately 9,000 professionals and associates in 86 cities nationwide. Annually, we audit more than 2,000 employee benefit plans, including single-employer and multi-employer plans with a variety of funding arrangements, such as defined benefit pension plans, 401(k) plans, employee stock ownership plans, and health and welfare plans. RSM US LLP is an active member of the AICPA Employee Benefit Plan Audit Quality Center Executive Committee and the AICPA Employee Benefit Plans Expert Panel and its various taskforces.

Because the Form 5500 Annual Return/Report serves as the primary means by which the operations of plans can be monitored by plan participants and beneficiaries, we agree that it is important to seek ways to improve its usefulness for such purposes. Many of the proposed requirements provide for additional information that increases transparency and therefore is helpful in this regard. We also agree that it is important for the Employee Benefits Security Administration (EBSA), Internal Revenue Service (IRS) and Pension Benefit Guaranty Corporation (PBGC) in their oversight roles, to be able to mine certain data from the Form 5500.

We believe, however, that a balance must be achieved when weighing the potential benefits of additional transparency with the impact of the associated incremental costs and consequences for plans. For example, many additional compliance questions are proposed to be added to the form, which will be time-consuming to complete and thus will increase the costs of plan administration. Additional information only should be required if it better enables plan participants and beneficiaries to understand the operations of their plan or if it improves the oversight by the regulatory agencies in a meaningful way. We also believe itis important to perform a cost-benefit analysis each time consideration is given to requiring new information in the Form 5500. For example, given the number and extent of new required disclosures regarding plan operations, we believe it would be more cost effective for EBSA to request that Congress amend the law to return to filing the summary plan description with EBSA, rather than requiring the numerous detailed individual new disclosures.

AU-C 720, *Other Information in Documents Containing Audited Financial Statements*, provides that the auditor has certain responsibilities with respect to other information in documents containing audited financial statements and the auditor's report thereon. Because the audited financial statements and the auditor's report thereon are included in the Form 5500 Annual Return/Report, the auditor is required to read the Form 5500 in order to identify material inconsistencies, if any, with the audited financial statements. Therefore, additional and more detailed required disclosures will result not only in more

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preparer time, but also in the auditor spending more time to compare the consistency of the expanded Form 5500 information with other information obtained for the audit, which will result in more expense for the plan. Both preparer and auditor costs should be considered when performing a cost-benefit analysis for new required disclosures.

Further, it is important to understand that completion of the Form 5500 requires gathering vast amounts of information, and cooperation among the plan sponsor, the third-party plan administrator, the actuary and the preparer of the plan's financial statements each year. Each of these parties will want to be sure that the portion of the Form 5500 for which it is responsible is completed accurately. Again, with the proper focus being the participants and beneficiaries of the plan, we believe it is important that there not be redundancies in disclosure requirements and that the requirements for provision of the information be clear.

Our initial comments below address proposed disclosures about the independent qualified public accounting firm. Additional comments in this letter address a number of areas within the Form 5500 where we believe the new requirements place undue hardship on the plan in providing the information, areas where we believe the incremental cost to obtain the information to fulfill the requirement exceed the expected benefit of such information to the participants, beneficiaries or regulators, and areas where we believe the addition of the information does not provide the appropriate context for full understanding of the information. In addition, we have included comments related to certain aspects of the proposal that we believe should be clarified or modified. Page number citations are from Federal Register Volume 81 No. 140 dated July 21, 2016.

Disclosures about the independent qualified public accountant (IQPA)

Accountant's opinion (pages 47549, 47582 and 47583)

As proposed, Part III would require the IQPA's report to be attached to the Form 5500 Annual Return/Report. We believe this requirement could be interpreted to mean that *only* the IQPA's report needs to be attached, as the only document attributable to the IQPA is the auditor's report. The financial statements, financial statement footnotes and schedules are the responsibility of the plan. We suggest this requirement be clarified to require that the IQPA's report, along with the plan's audited financial statements, the financial statement footnotes and any schedules be attached together.

As proposed, question 3h would require disclosure of the reason for the IQPA report not being completed in time and the date by which an amended filing will be made with an IQPA report. When an IQPA report is not completed, there generally is an issue or issues that are delaying the completion of the audit. The timing of the disposition of such issues generally cannot be known at the time of the filing of Form 5500, so the date by which the amended filing will be made should be removed.

Currently, the requirement to include an IQPA report with the filing of a Form 5500 is based on the total number of participants (including those eligible but not participating in a Code section 401(k) or 403(b) plan) at the beginning of the plan year. The regulatory agencies are proposing to change the rules for determining when a plan is exempt from the requirement to include an IQPA report with its filing. In that regard, the agencies are proposing to add to the Form 5500 a new question, for defined contribution pension plans only, asking for the number of participants with account balances at the beginning of the plan year. Defined contribution pension plans would determine whether they have to file as a large plan and whether they have to attach an IQPA report based on the number of participants with account balances as of the beginning of the plan year, as reported on the face of the Form 5500 or Form 5500–SF. For first plan year filings, the plan would have to have fewer than 100 participants with account balances both at the beginning of the plan year and the end of the plan year. We support this proposed change and believe the Department of Labor should consider whether this change would require a revision to the regulation as currently no such revision is proposed.

From a practical standpoint, the requirement to file the IQPA's report at the same time as the Form 5500 always has presented timing issues for the Form 5500 preparer and the auditor. Among other issues, the auditor often needs to wait for the plan's schedules to be completed, and the Form 5500 preparer then has to wait for the auditor to opine on the schedules. This often results in last-minute Form 5500 preparation, and tight turnaround of audited financial statements. We believe both the preparation of the Form 5500 and the performance of the audit would be more efficient if the Form 5500 could be filed at an earlier date (e.g., by April 30 for a calendar-year-end plan) without the IQPA's report or the plan's audited financial statements, the financial statement footnotes and any schedules. Then the IQPA's report, along with the plan's audited financial statements, the financial statement footnotes and any schedules, could be filed at a later date (e.g., by October 15 for a calendar-year-end plan). This bifurcated deadline would result in more accurate financial statement disclosure of reconciling items as the final, rather than draft, Form 5500 filing would be available.

Disclosure of name of the audit engagement partner (page 47583)

Proposed item 3c(3) of Part III in Schedule H is not marked as new, however, it would require disclosure of the name of the audit engagement partner, which is not currently required by either the Form 5500 or the regulations. We are unclear as to the purpose of this disclosure, as we do not understand how knowing the name of the audit engagement partner can be meaningful to plan participants or beneficiaries. Including the audit engagement partner's name in the Form 5500 does not provide the appropriate context around or insight into the partner's work experiences or skill level. Information about an engagement partner's work experiences and skill level typically is given to the plan sponsor. We believe the plan sponsor is in a better position to evaluate information about the qualifications of an engagement partner, and it sufficiently represents the interests of plan participants and beneficiaries, making further disclosure of the engagement partner's identity unnecessary.

We also do not believe disclosure of the engagement partner's name in the Form 5500 would reflect the appropriate balance between the engagement partner's role in the audit and the firm's responsibility for the audit, as it is not the engagement partner alone who issues an auditor's report, but rather the firm, which represents the collective efforts of many seasoned professionals. Other professionals, including other members of the engagement team and national office partners, play an important role in performing a quality audit and in the firm's quality control system.

If the intended purpose of the disclosure of the name of the audit engagement partner is an attempt to increase the engagement partner's sense of accountability for audit quality, we caution that there is no clear evidence about whether public disclosure of the name of the audit engagement partner will improve audit quality. We do not believe disclosure of the name of the engagement partner will impact the performance of the professional duties of the partner, as such partners already are accountable to multiple parties, including their firms, their clients and regulators. More importantly, they are accountable to those who use the auditor's report. Engagement partners realize that a lack of professional accountability can have dire consequences, not only for their firm, but also for them personally. Auditors are subject to state laws that generally require CPA firms be owned by individual CPAs. For this reason, personal financial resources of partners are at stake with each auditor's report issued. Also, a state board of accountancy can suspend or revoke a license to practice if a complaint regarding the auditor's professional conduct is received and found to be valid. The consequences to an engagement partner of failing to exercise due care in the performance of an audit are significant, and they would be no more or less significant if the engagement partner's name were disclosed in the Form 5500.

We have significant concerns that naming the engagement partner in the Form 5500 could increase the number of unwarranted claims brought against partners solely by providing that information. As a result, the proposed disclosure runs the unintended risk of increasing frivolous litigation and disrupting client services provided by engagement partners. Also, an increased risk of litigation may negatively affect an engagement partner's behavior, such as by reducing his or her willingness to participate in audits of employee benefit plans. Further, increased personal litigation against engagement partners will be a disincentive for firm professionals to remain in the public accounting profession.

In addition, the proposed disclosure requirement could lead to potential confusion if two audit engagement partners had the same name, or if an engagement partner changed his or her name or changed firms.

Therefore, for the reasons stated above, we suggest proposed new question 3c(3) be removed.

The IQPA's communications with those charged with governance (pages 47563 and 47583)

Proposed new requirement 3f asks if the accountant advised the plan whether the IQPA's communications with those charged with governance disclosed certain matters, including material internal control weaknesses, among other matters. The matters required to be communicated by the auditor to those charged with governance in accordance with professional auditing standards are intended solely for the information and use of management, those charged with governance and others within the audited organization. We do not believe it is appropriate for the auditor to make publicly available information that audit standards require to be limited to management, those charged with governance and other limited specified parties.

The matters listed in requirement 3f typically are the responsibility of plan management, rather than the auditor. Plan management already knows or should know about the types of matters in 3f (e.g., errors, irregularities, illegal acts, loss contingencies, etc.), in order to determine whether such matters require presentation or disclosure by the plan's management in the plan's financial statements. If additional acknowledgement of such matters is deemed necessary, the question should be reworded to ask the plan administrator whether the matters exist, not whether the accountant has advised the client about the matters. Such a change would avoid misleading Form 5500 users in thinking the IQPA is part of the plan's internal control or financial reporting, which it cannot be under professional standards. If such an approach is taken, the question should be moved to Part IV because it is the client's responsibility to prepare financial statements and to disclose such matters, if material.

Also, the proposal does not include clear instructions regarding the detailed requirements of question 3f, and therefore those requirements may be subject to interpretation. For example, does the requirement to disclose "the existence of plan qualification issues pursuant to the Internal Revenue Code" include situations where the plan has corrected a qualification issue pursuant to IRS guidance, or should such disclosures only include uncorrected plan qualification issues? It is not clear the intent of this reporting item or whether it would be meaningful because virtually all plans have some compliance matters and many are immaterial and are timely corrected. The determination of whether a plan qualification matter exists would require input from legal counsel and/or tax advisors, which many plans do not engage on an annual basis, and such input would be costly.

The background information regarding this change suggests this information would be helpful to "provide participants with information about potential problems with the management of plan assets." We believe the question is so general that it does not provide information that is of any value as it does not address the nature of the issue or the status of any actions taken to address the issue. It would merely trigger discomfort and uncertainty with respect to the plan's status. We therefore suggest removing question 3f.

If the regulatory agencies believe this information is necessary, we suggest an additional area be added to permit the plan sponsor to explain the appropriate actions it has taken, or will be taking, to address such matters. If this question is retained in some form, we are concerned it could lead to an increase in the number of inquiries that could trigger examinations. As such, we recommend specifying that any such initial inquiries would not deny the plan sponsor the opportunity to qualify for relief under the Voluntary Fiduciary Correction Program or Voluntary Correction Program.

Further, if question 3f is retained and relocated to Part IV, it should be noted that the following technical corrections should be made to conform its requirements with current auditing standards generally accepted in the United States of America:

- References to SAS 114 and 115 should be replaced with references to AU-C Section 260 and AU-C Section 265, respectively
- The term "errors or irregularities" should be replaced with "misstatements due to error or fraud"
- The term "illegal acts" should be replaced with "noncompliance with laws and regulations"
- The term "material internal control weaknesses" should be replaced with "material weaknesses in internal control"

Independent qualified public accountant peer review (page 47583)

Proposed new question 3g of Part III in Schedule H asks whether the IQPA had a peer review performed in accordance with its state's requirements. We do not believe the plan sponsor will be in a position to know whether the IQPA's peer review was performed "in accordance with the requirements of the applicable state board of accountancy." Peer review is only required to be performed every three years; therefore, the sponsor may incorrectly respond "No" in a year that the firm was not subject to peer review.

If the answer to question 3g is "yes," the plan is required to disclose information about the peer review, including the name of the peer reviewer, the year of their last peer review, the rating received in the last peer review report, the number of years that the peer reviewer has been the firm's peer reviewer and whether the peer review covered employee benefit plans. Information regarding the name of the peer reviewer, the year of their last peer review and the rating received in the last peer review report is available on the website of the American Institute of Certified Public Accountants.

Information related to the number of years that the peer reviewer has been the firm's peer reviewer is not relevant as there is no rotation requirement for the firm performing the peer review. Information related to whether the peer review covered employee benefit plans currently is not meaningful because the rating received in the peer review report is an overall rating and is not indicative of the audit quality as it relates solely to employee benefit plans. Moreover, a "pass" peer review rating is not affirmation that the IQPA performed a quality audit of the specific plan's financial statements as the specific plan audit may not have been selected for review during the peer review process.

Therefore, for the reasons stated above, we suggest proposed new question 3g be removed.

Other proposed Form 5500 disclosures

Part I

Plan for a controlled group of corporations (page 47608)

A new requirement on Line A(3) of Part I would require a plan for a controlled group of corporations, a group of trades or businesses under common control or an affiliated service group to attach certain information about the controlled group members, including the name of each member, its employer identification number and a good-faith estimate of each employer's percentage of the total contributions made by all employers. This request is derived from the recent amendment to ERISA Section 103(g), which requires this disclosure for multiple-employer plans. There is no comparable legislative requirement for this disclosure by these controlled groups or similar entities.

Unlike multiple-employer plans, these groups generally are treated as a single entity for purposes of the compliance requirements of the Internal Revenue Code. In addition, there is no current requirement to track these costs by participating employer, as there is for multiple-employer plans. As such, we anticipate that there may be an incremental annual cost to prepare even a good-faith estimate of the contribution by employer. We cannot determine, and there is no discussion in the proposal about, the alleged value this information would provide for "oversight, research or enforcement purposes." Thus, we request that the agencies delete this new question.

Part II

Basic plan information (page 47571)

Question 9a(10) of Part II requires a plan to distinguish whether it is partially participant-directed or totally participant-directed. We believe the instructions for this requirement should be expanded to clarify whether the plan document for an ESOP that includes the statutory language for diversification is considered to be partially participant directed.

Proposed new question 9a(13) would require pension plans to report whether a rollover from a plan was used to start up the business sponsoring the plan. The requirement includes the acronym "ROBS" but does not define the acronym as Rollovers as Business Start-Ups. We suggest that the ROBS acronym not be used in the question unless it is defined.

In question 9a(15), we believe that the "Plan sponsor(s) received services of leased employees" option may be misplaced, and perhaps should be located within the coverage-related matters of question 7.

Schedule A (page 47577)

In new question 11 of Part II in Schedule A, the requirement to report premium payment delinquencies is duplicative with information that plan administrators will have to provide in new Schedule J. We suggest removing question 11 from Schedule A.

Schedule C (page 47605)

We appreciate the Department of Labor's effort to provide harmony between the Schedule C reporting requirements and the service provider disclosure requirements of ERISA section 408(b)(2). However, the expansion of this filing requirement to include sponsors of small pension plans that are not eligible to file Form 5500-SF will present a difficult burden for those employers. We therefore suggest that the filing requirement not be expanded to include sponsors of small pension plans.

Even large plan sponsors will be significantly challenged to gather the necessary detailed information so as to provide complete and accurate responses to all of the new Schedule C requirements. Many of the new required disclosures are highly dependent on information provided by third parties. Some plan sponsors and Form 5500 preparers may not know how to respond to many of the new questions, such as those related to compensation codes, categorizing revenue-sharing structures, and determining whether the service provider is a fiduciary. We therefore recommend that each new requirement to provide additional information be reviewed to determine whether large plan sponsors will be able to respond accurately and without incremental costs that would exceed any potential benefit to be derived from the provision of the information.

Schedule E

Method of release of common stock from a loan suspense account (page 47579)

For the release of common stock from a loan suspense account, there are only two permitted methods – (a) principal and interest and (b) principal only. Therefore, we believe these two methods should be the only possible responses to question 1f in Part I, and the “Other (Describe method):” response should be deleted.

Dividends (page 47579)

With respect to the questions in Part IV of Schedule E regarding dividends, we have the following comments:

- We believe clarifying instructions should be provided for question 4d(2) as to the proper calculation of the dividend rate.
- We suggest guidance be provided as to whether “dividends” include distributions made by S corporations.
- We suggest adding a question about whether dividends applied to debt service satisfy the return-for-value standard of IRC Section 404(k) for a C corporation or IRC Section 4975(f) for an S corporation, as appropriate.

Schedule G

Amount involved (pages 47581 and 47621)

Question 4f in Part III requires disclosure of the “amount involved in nonexempt transaction.” The instructions for question 4f require disclosure of the “principal amount of nonexempt transaction.” This disparity in terminology may lead to confusion as the two terms do not have the same meaning. For example, for late deposits, the principal amount of the nonexempt transaction is the value of the deposits that were late, but the amount involved in the nonexempt transaction is only the lost earnings on those late deposits. Therefore, we suggest the instructions be revised to require disclosure of the amount involved in the nonexempt transaction, as that is consistent with the reporting of prior years.

Net gain or loss on the transaction (page 47621)

Proposed question 4g requires disclosure of the net gain or loss on the transaction. Because often there is not a gain or loss associated with nonexempt transactions, we suggest revising the instructions for question 4g to read as follows (proposed additions are shown in bold font):

> Enter the net gain (or loss) on the transaction**, if applicable**.

Form 5330 (page 47621)

The proposed instructions for question 4 in general state that if the plan is a qualified pension plan and a nonexempt prohibited transaction occurred with respect to a disqualified person, the disqualified person must file IRS Form 5330. The specific instructions to question 4k, however, do not repeat this language. Question 4k asks whether a Form 5330 with payment of excise taxes to the IRS was required, and the question fails to include the choice of "Not Applicable." Under the current provision of the IRC, no excise tax is due and no Form 5330 is required for non-exempt transactions of 403(b) or health and welfare plans. Pursuant to the instructions on page 47602, a question may only be answered as "Not Applicable" if the form specifically provides for that response. As such, we suggest the instructions for question 4k be clarified and the form be modified to include the "Not Applicable" response.

If a Form 5330 was required, question 4k also requires disclosure of whether the Form 5330 was in fact filed. It should be noted that if the disqualified person was someone other than a member of management (such as a third party provider), plan management may not know whether the Form 5330 was filed. Also, the Form 5330 frequently is filed after the Form 5500. We believe this requirement may cause preparers of the Form 5500 to believe that the Form 5330 is required to be filed before the Form 5500 can be filed, which could delay the filing of the Form 5500. We suggest the requirement to disclose whether the Form 5330 was filed be deleted.

Schedule H

Balance sheet (page 47539)

The proposal would modify the asset breakouts on the balance sheet component of the Schedule H to require detailed reporting on the types of assets held by a plan, including alternative investments, hard-to-value assets, and investments through collective investment vehicles. Although the proposed changes take into account the fact that many complex investments do not fit neatly into any of the existing reporting categories, the proposed categories do not align with U.S. generally accepted accounting principles (GAAP).

The level of detail to be disclosed requires a deep understanding of the plan asset regulations for the determination of whether the plan asset is the equity position in the entity (e.g., partnership) or the underlying assets of that entity. As a result, preparers will be required to perform an incremental analysis of investments to align the information with the proposed presentation requirements, and we believe filers will inconsistently report the various categories.

Additionally, in our experience, relatively few plans hold investments that are subject to analysis under the plan asset regulations. Therefore, an evaluation of the benefits of providing such information should be performed, given the concerns raised regarding the incremental cost and challenges with consistency of the information. If the regulatory agencies proceed with the requirement for disclosure, it might be more efficient to make these inquiries in a compliance question, rather than in the body of the balance sheet. If detailed disclosure on Schedule H is required, all of the categories should be clearly defined in the Schedule H instructions.

Participant loans (page 47539)

Per the proposal, participant loans would be reported as a breakout element under renumbered Line 1a as a ‘‘Receivable’’ rather than under the heading ‘‘General Investments.’’ We agree with this change as this presentation conforms with U.S. generally accepted accounting principles, which require participant loans to be classified as notes receivable from participants. This change in presentation raises the following two questions, which we believe should be addressed in the instructions to Form 5500 and related regulations:

1. Should participant loans continue to be presented in the supplemental Schedule of Assets Held for Investment, or should they be excluded?
2. Will the Department of Labor continue to allow participant loans to be included in the information certified by a bank, similar institution or insurance carrier under 29 CFR 2520.103-8, and thereby excluded from the scope of the audit?

Common or Collective Trusts (CCTs) and Pooled Separate Accounts (PSAs) (pages 47540 and 47546)

We agree that a plan’s interest in CCTs and PSAs should be reported in the aggregate as single line items on Schedule H of a plan’s Form 5500, regardless of whether the CCTs or PSAs file as Direct Filing Entities (DFEs). However, we believe the detail of the underlying investments should not be reported on the plan’s Schedule of Assets Held for Investments at End of Year. Instead, the detail disclosure of the underlying investments should be reported in the DFE filing, and therefore we would support amendments requiring CCTs and PSAs to file as DFEs.

It should be noted that participants can obtain the investment mix, strategies and objectives of these funds more timely or in real time through investment brochures and information provided by the issuers. The historical information related to underlying investments in these funds reported in a plan’s Form 5500 would not be timely or useful to a participant in making investment decisions. The underlying detail, if reported in the plan’s Form 5500, may cause the participant to be confused as to which unit of account they own because a participant trades units of the fund and not units of the underlying investments, similar to investments in a mutual fund. Additionally, the plan’s record keeper maintains records of the plan’s interest in such funds at the overall fund level but may not have information related to the underlying investments held by such funds for purposes of the plan’s filing because the underlying detail is not necessary for individual participant accounting, The overall fund would maintain records of the total units and values of the underlying investments, but may not be able to confirm or certify the plan’s proportion of the underlying investments held by the fund.

Income and expense statement (pages 47542 and 47582)

The proposal states that more detail is warranted for plan expenses, particularly those related to service providers. Accordingly, an additional data element is proposed for “independent qualified public accountant (IQPA) audit fees.” Sometimes two or more IQPA firms may be retained by the plan – one to audit the plan’s financial statements and another firm to provide other services, such as payroll audits. In some situations the IQPA may also prepare the Form 5500. To allow for the provision of services by more than one firm and for multiple purposes, we believe this data element should be divided into two elements – “IQPA fees paid by the plan for the plan audit” and “IQPA fees paid by the plan for other services.” Alternatively, the instructions should be revised to clarify that the data element for “IQPA audit fees” only includes fees paid by the plan for the audit of the plan, and does not include plan audit fees paid by the plan sponsor.

Also, an additional data element is proposed under the ''administrative expenses'' category in Schedule H to report aggregate plan expenditures on trustee travel, meetings, education and similar expenses, whether paid directly by the plan or as a reimbursement to trustees. We believe this is unnecessary as this disclosure is duplicative with the disclosures required in Schedule C. There is no benefit to plan participants or beneficiaries in requiring duplicative disclosures.

In addition, the proposal would require that administrative expenses charged directly against participant accounts be separately reported from those direct expenses charged to other plan asset sources. We believe this requirement is going to be very time-consuming for the plan sponsor as expenses charged to other plan asset sources currently are not tracked separately. Expenses charged directly against participant accounts already are disclosed to the individual participants. Therefore, we do not believe aggregate disclosure of the information will be useful to participants or beneficiaries.

We also believe a cost-benefit analysis should be completed to determine whether the level of detail asked for is necessary and helpful to participants, beneficiaries or regulatory agencies. For example, as proposed, income interest on participant notes would need to be split out between interest income received in cash vs. that which is receivable in cash. We do not see a need for this distinction as it does not appear to be useful information.

Proposed Line 2c(2)(C) requires disclosure of dividends received from registered investment company shares (e.g., mutual funds). However, the Form 5500 Schedule H instructions require Line 2c(6)(E) to include the total of all registered investment company earnings, including interest, dividends, gain (loss) on sale of property, unrealized appreciation (depreciation), and, if the asset has been sold during the plan year, the net investment gain (loss), as appropriate for asset type. Please clarify on which line dividends and capital gain distributions received from registered investment companies should be reported. Also, if dividend income and realized and unrealized gain or loss on registered investment company investments are to be reported separately, please clarify on which line the capital gains distributions received from registered investment company shares should be included.

Proposed Lines 2c(4) and (5) require separate reporting of net gain (loss) on sale of assets and unrealized appreciation (depreciation) of assets. To be consistent with the financial reporting requirements of GAAP, we suggest combining the realized gain (loss) with the unrealized appreciation (depreciation) and reporting the combined amount on a single line.

Certifications (page 47626)

We agree with the requirement in Line 3b of Part III requiring that a copy of the certification(s) be attached to the Form 5500 if the audit opinion was limited in scope pursuant to U.S. Department of Labor regulations 29 CFR 2520.103-8 and 2520.103-12(d). We believe the plan administrator also should be required to acknowledge it has determined the conditions for limiting the scope of the audit have been met. Further, the regulations should describe the acceptable form and content of the certification, and should require (a) a reference to which schedules or reports are being certified or (b) an itemization of the investment information to which the certification applies, in case the attachments become separated from the certification. The certification should include the name of the plan (or plan ID) and the period covered by the certification.

In the instructions to Line 3b and in 29 CFR 2520.103-8, it would be helpful if more guidance was provided to explain the meaning of "complete and accurate," and "qualified institutions," as well as the meaning of assets "held" by a bank, similar institution or insurance carrier. Many entities claim they have been authorized by a qualified institution to provide certifications on their behalf, so we suggest guidance be added as to whether and how such entities may provide certifications. In addition, many investments no longer are physically “held” by banks, similar institutions and insurance carriers.

Part IV compliance questions (page 47583)

As proposed, Part IV of Schedule H would require the use of a specified data format to complete certain of the required supplemental schedules. Currently, the auditor opines on the schedules attached to the financial statements before they are attached to the Form 5500. The preparer of the Form 5500 then simply attaches the schedules on which the auditor opined, together with the financial statements, and cross references to where such schedules are attached.

From a practical standpoint, requiring the schedules to be completed in a specified data format will not allow the completion of the Form 5500 to flow smoothly, as the auditor will be waiting for the schedules to be completed in the specified format, and the Form 5500 preparer will be waiting on the auditor to opine on the schedules. The requirement will result in more time needed to complete the form because information is prepared in more than one format, resulting in a duplication of efforts. We believe Form 5500 preparers should be allowed to refer to the supplemental schedules attached to the audited financial statements where applicable, instead of being required to complete the form in a specified data format.

Schedule of reportable transactions (page 47583)

When completing the schedule of reportable transactions in compliance with question 4j, it can be burdensome for plans to provide investment cost information, which often is not tracked by providers because GAAP requires investments to be accounted for at fair value. We believe the schedule would accomplish its purpose of reporting transactions in excess of 5% of the current value of plan assets by requiring disclosure only of the current value of the investments sold and any expenses incurred with the sale – and not requiring disclosure of the historical cost of the investment or the related gain or loss on the transaction. We recognize that such action may require the revision of the applicable regulation, and we support such an amendment.

Designated investment alternatives (page 47584)

For participant-directed individual account plans, new question 4p would require disclosure of the number of designated investment alternatives available under the plan and certain detailed information regarding the nature of such investment alternatives. We question the need for this disclosure and whether the expected benefits from so many details would outweigh the anticipated incremental costs of providing them.

Unrelated business taxable income (page 47584)

Proposed new question 4s asks whether the plan trust incurred unrelated business taxable income. We believe this requirement is duplicative because, if material, unrelated business taxable income would be disclosed in the audited financial statements. If the level of unrelated business taxable income is not material, it is not helpful to require its inclusion in the Form 5500. If the intent of the question is to remind plan management of the need to report unrelated business taxable income and to pay the applicable income tax, if any, we suggest the question be revised to inquire as to whether the plan has procedures in place to determine whether such income needs to be reported and the applicable taxes paid.

Fair market value (page 47584)

Proposed new question 4t asks whether all plan assets were valued at least annually at fair market value. Use of the term “fair market value” is not consistent with other similar terms, such as “current value,” “readily determinable fair value,” and “fair value,” used throughout the Form 5500 and its instructions.

Because inconsistent use of terms may cause confusion for preparers, we believe such terms should be clearly defined in the instructions, and where two or more terms are deemed to have the same meaning, only one of the terms should be used consistently throughout the form and its instructions. Further, we believe the regulatory agencies should consider adopting the GAAP definition of fair value.

Plan sponsor provision of services (page 47584)

Proposed new question 4u asks whether any employer sponsoring the plan paid any of the administrative expenses of the plan that were not reported on Schedule H, Line 2i. It should be noted that obtaining this information can be costly because, for example, often the provision of a service by a provider may benefit multiple plans, and the costs paid by the sponsor are not allocable to each plan. The costs attributable to general office supplies, postage, and the applicable portion of the salary costs of persons who provide services to the plan rarely are separately tracked by a plan sponsor. We do not think this additional information would be useful to plan participants or their beneficiaries and question whether the benefits of disclosing this information exceed the associated costs of obtaining the information.

Disqualified persons (page 47584)

Proposed new question 4v asks whether any person who is disqualified under ERISA Section 411 served or was permitted to serve the plan in any capacity. We do not believe plan sponsors are generally in a position to know whether any persons who served the plan are disqualified. For example, is the plan expected to know whether any disqualified persons employed by a service provider served the plan? Also, it should be noted that every plan has a disqualified person associated with it, as the term is defined in ERISA Section 3 – the plan sponsor. Few sponsors would appreciate the technical nuance of which ERISA section applies. As such there may be many incorrect responses to this inquiry, rendering its data value useless.

Investment acquisitions that are leveraged (page 47584)

Proposed new question 4w requires disclosure of certain information related to investment acquisitions that are leveraged. To improve the clarity of this question, we believe it should be revised to read as follows (proposed additions are shown in bold font; proposed deletions are struck through):

> **If the plan is not a leveraged ESOP, does it** ~~Does the plan~~ have investment acquisitions that are leveraged, including assets subject to collateralized lending activities (*e.g.,* securities lending arrangements, repurchase agreements (repos), etc.)?

Plan sponsor provision of services in exchange for compensation (page 47584)

Proposed new question 4x asks whether the plan sponsor or its affiliates provide any services to the plan in exchange for direct or indirect compensation. We believe this question is redundant with the requirements of Schedule C. Also, it should be noted that such situations would be very rare and therefore asking a separate question about them causes more costs to be incurred without any corresponding benefit to the participants or beneficiaries.

Summary plan description (page 47584)

Proposed new question 4y asks whether the summary plan description is in compliance with the requisite requirements. We believe most summary plan descriptions are derived from pre-approved documents. Therefore, we question what benefits can be obtained from asking this question annually. As noted elsewhere in our letter, to the extent that EBSA is concerned about this question and has added numerous questions to the Form 5500 regarding specific plan attributes, we suggest a legislative effort to reinstate the requirements to file updated summary plan descriptions with EBSA, rather than burdening plans with extensive, annual reporting requirements.

Number and value of uncashed checks at the end of the plan year (page 47584)

Proposed new question 4z would require disclosure of the number and value of uncashed checks at the plan year end. Some sponsors may find it difficult to obtain the number and value of uncashed checks because the associated benefits have been deducted from the plan account but the related funds for issuance of the checks have been moved to an omnibus bank account, which may be commingled with funds of other plans. Also, the requirement to disclose the number and value of uncashed checks will expand the scope of the auditor's responsibilities under AU-C 720.

In addition, we do not believe the plan should be required to annually describe the procedures followed by the plan to (a) verify a participant's or beneficiary's address before a check was mailed or (b) monitor uncashed checks, including steps to locate "missing" or "lost" participants. The disclosure of these types of details would not be meaningful to plan participants or beneficiaries. We believe the plan should simply be required to disclose whether it has such procedures in place, instead of disclosing the details of the procedures and the number and value of the uncashed checks.

Plan termination information (page 47584)

Proposed new question 7a(2) in Part VI would require disclosure of the year the plan assets were distributed to plan participants and beneficiaries if a resolution to terminate the plan has been adopted. We believe this question should include the option to disclose that the plan assets have not yet been distributed.

Proposed new question 7b(3) would require disclosure of the date of transfer of assets and liabilities to another plan. It would be helpful if this question would be clarified to indicate whether the "date of transfer" refers to the date on which legal control was transferred or the date of physical transfer.

Proposed new question 7d would require certain disclosures regarding financial institutions where plan assets were transferred in the name of missing participants each year until the final return/report is filed for the plan. We believe it would be more cost effective to simply require annual reporting of that year's payments. Perpetual reporting of such payments is unnecessary because the participant should be able to obtain the related information in the EFAST2 system or its successor. Since retirement plans frequently exist for decades, this could accumulate to hundreds of pages of information. It seems that a separate system needs to be developed to retain and report this information, if the regulatory agencies believe it is necessary.

To take into account situations in which plan assets were transferred to interest-bearing federally insured bank accounts in the name of missing participants, we suggest clarifying question 7e to read as follows (proposed additions are shown in bold font; proposed deletion is struck through):

> **Other than amounts transferred to financial institutions as described in 7d, were** ~~Were~~ all the plan assets distributed to participants or beneficiaries?

Also, if finalized, the PBGC's recently proposed rule would expand its Missing Participants Program to cover terminated 401(k) and other defined contribution plans and certain defined benefit plans that currently are not covered by the Program. As part of this expansion, the PBGC would require the filing of certain information on separate forms. Many of the disclosures required in these forms would be duplicative with many of the new proposed required disclosures on Form 5500, such as the requirement to disclose certain information regarding direct rollovers made for persons who had not elected a distribution. We suggest the duplicative disclosures related to missing participants only be required in the proposed new PBGC forms, and not in the annual Form 5500.

Trustee signature (page 47585)

As proposed, Part VI of Schedule H would require the signature of the plan trustee or custodian. Generally, the trustee or custodian is an outside third party, rather than an employee of the plan sponsor. We are concerned that requiring the signature of the trustee or custodian on this schedule may provide a misconception about the responsibility for the financial statements. Management is responsible for the fair presentation of the financial statements, which includes accurately reporting information provided by the plan trustee or custodian, and oversight of the system of internal control that includes the activities of the trustee or custodian. Having the trustee sign the schedule may inadvertently cause users to believe the plan trustee or custodian, rather than management, is responsible for that portion of the financial statements.

Additionally, requiring the plan trustee or custodian to sign this schedule will be burdensome for the financial reporting process in at least two related ways. First, the trustee would want to make sure no changes are made to the data within the form after it is signed. Second, the absence of changes cannot be guaranteed given the number of parties involved in the preparation of the Form 5500 and the magnitude of the details that need to be provided.

Schedule of delinquent participant contributions (page 47585)

We have the following comments with respect to the proposed schedule of delinquent participant contributions on Line 4a:

- We suggest providing instructions to clarify how column (c) would be completed if there are multiple locations with varying contribution cycles.
- We question the need to disclose the amount not corrected under PTE 2002-51 in column (d)(2) as we do not see any benefit from that disclosure; simply referring to correction under the Voluntary Fiduciary Correction Program with or without the application of PTE 2002-51 should be sufficient.
- The question in column (h) regarding the Form 5330 filing would need an “N/A” answer option for 403(b) plans and health and welfare benefit plans because currently the only answer options are “yes” or “no.” These other plan types can have late deposits but are not subject to the excise tax under IRC Section 4975 or the requirement to file Form 5330.

Schedule of assets held for investment at end of year (pages 47585 and 47586)

Proposed Line 4i(1)(a)(iii) asks whether the asset is a “hard-to-value” asset, without providing a definition for that term. We suggest “hard-to-value” be defined clearly in the instructions to this line item. For example, this definition could specify that this category includes assets that are not quoted or listed on active exchanges or that do not have audited net asset values. Also, we believe instructions should be provided as to how proposed Line 4i(1)(a)(iv) is to be completed by funds of funds.

The proposed instructions to Line 4i(1)(b) require the plan to break out its interest in each asset in the master trust for each of the required disclosures. It is not always possible to obtain the dollar amount of the plan’s portion of each underlying type of investment as it relates to each fund because often these are commingled in a general account. Each plan may then create managed portfolios, such as target date funds, which are made up of a mixture of those general investments with the recordkeeping for each plan based on that portfolio. For example, a master trust at its most granular level may invest in mutual funds, bonds, stocks, limited partnerships, etc. A plan in the master trust may then have a mixture of these investments offered to participants such as the following:

- Stable Value Fund
- Fixed Income Fund
- Domestic Equity Fund
- Target Date Fund 2018
- Target Date Fund 2020

In addition, large master trusts also pool both defined contribution and defined benefit plan assets. Therefore, the master trust records may not break out the general types of investments in a way to allow the plan to disclose the dollar amount by type unless the participant direction correlates to specific investments in the master trust. In addition, the master trust may include a significant amount of investments, making this disclosure voluminous and cumbersome for each plan. Investments held by the master trust should be reported by the master trust filing; it is not necessary to repeat this information in the plan-level filing or financial statements. Therefore, we believe the plan should not be required to break out its interest in each asset in the master trust for each of the required disclosures. If a plan is required to report its proportionate share of each individual investment in a master trust, we suggest such information be reported on Schedule D, instead of Schedule H.

Proposed Line 4i(1)(d) asks for disclosure related to investments in “102-12” investment entities. We believe this should be corrected to read “103-12” investment entities.

Additionally, the proposed change to require the master trust to operate on a calendar year or the master trust and all of the plans invested in the mater trust to operate on the same fiscal year (on page 47546) may cause more differences between reporting on the Form 5500 and reporting on the audited financial statements. Where the master trust reports on a calendar-year basis and the participating plan reports on a fiscal year end, the proposal would require the information to be reported by the plan to be for the master trust year ending within the plan year, which is not consistent with the financial reporting requirements in GAAP. In addition, it may not be practical to force the master trust or the participating plans to change their year ends. If the requirement is retained, the agencies should consider whether to grandfather pre-existing master trust arrangements.

It should be noted that the FASB has proposed changes with regard to master trust disclosures. As the comment period has ended on that exposure draft, it may be prudent to monitor whether those changes are adopted and, as a result, whether and what implications such changes may have for the Form 5500.

Schedule of assets disposed of during the plan year (pages 47586)

As proposed, the new schedule of assets disposed of during the plan year requires numerous details, and we question whether the expected benefit of the provision of such details outweighs the anticipated incremental costs of providing them.

Schedule J

The addition of Schedule J to the reporting requirements is a dramatic change for employers - particularly the small employers that previously were not required to provide information regarding unfunded, insured, or a combination of unfunded/insured health benefit plans. As noted below we do not expect the usefulness of some of the requested data to exceed the incremental cost of creating the related reports.

Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) compliance (page 47587)

With respect to the collection of the COBRA coverage information required by Line 6 of Part I in new Schedule J, we caution that employers may not have the requisite information to provide this data, and therefore we expect that the usefulness of the data will not outweigh the anticipated incremental cost of providing it.

Rebates, reimbursements and refunds (page 47587)

Per the new requirements of Line 7, a plan must report whether it received rebates, refunds or reimbursements from any service provider. The reporting requires identification of the type of service provider, the amount received and how the plan used the rebates. We believe many employers will have difficulty identifying this information. We question whether the expected benefit of the provision of such details outweighs the anticipated incremental costs of providing them.

Service provider information (page 47587)

Lines 9 through 14 of Part II require group health plans to identify plan service providers that are not otherwise reported on Schedules A or C. We believe it will be challenging for employers to gather all of the required data related to their various providers. For example, in many cases, the core service provider (e.g., the third-party administrator) will arrange for the management of mental health services on behalf of the plan sponsor. We question whether the expected benefit of the provision of such details outweighs the anticipated incremental costs of providing them.

Lines 9 through 14 also require provision of the National Association of Insurance Commissioners National Product Number. We believe clarifying instructions should be provided as to whether, and if so, how, this requirement applies to plans that use a noninsurer third-party administrator or any off-the-shelf type of product that such a third-party administrator may use.

Failure to transmit to the plan any participant contributions or repayments (page 47587)

Per Line 17 of Part III, group health plans that are not required to complete Schedule H now will be required to report any failure to timely transmit participant contributions to the plan. Because this is a new reporting requirement for unfunded plans, we anticipate there will be confusion regarding the late remittance issue because in an unfunded/uninsured plan there is no trust to which the employer remits the assets. Therefore, we suggest that clarifying instructions be provided.

Health benefit claims processing and payment (pages 47587 and 47588)

We believe properly responding to the series of questions in Lines 18 through 21 of Part IV would impose substantial recordkeeping requirements on plans. Specifically, plans would have to separately track pre-service and post-service claims. We do not believe the incremental costs of this additional recordkeeping justify any incremental benefits that could be obtained from the detailed required disclosures.

Schedule R

Participant-directed defined contribution pension plans (page 47549)

We believe not all systems are able to accumulate the necessary data to answer the new compliance questions regarding participation, contributions, and asset allocation by age, and participant level diversification.

Employer contributions (page 47594)

Proposed new Part VII requires a lot of information regarding the employer's contribution. We believe such information would be in the summary plan description, which is available to all plan participants. We do not see any benefit in repeating such information each year in the annual Form 5500. The requirement to file the summary plan description with the Department of Labor was eliminated by the Taxpayer Relief Act of 1997, and therefore adding a requirement to the Form 5500 to provide information that is readily available in the summary plan description appears to violate the spirit of the Taxpayer Relief Act of 1997. Instead of requiring numerous additional new questions in the Form 5500 that essentially disclose elements of the summary plan description, we believe it would be more cost effective to require that the law be amended to return to filing the summary plan description with EBSA.

Schedules SB and MB

Moving information from attachments to open text fields on the schedule (page 47555)

Under the proposal, a number of items would be required to be reported directly on the Schedule SB, rather than as a PDF attachment, including the following:

- Schedule of active participant data
- Late election to apply funding balances to quarterly installments
- Use of multiple mortality tables and substitute mortality tables
- Change in non-prescribed actuarial assumptions or method change for the current plan year
- Schedule of amortization bases

The proposed requirements to embed such information within the form itself are problematic in that the data provided in such attachments is very detailed, complex and massive in quantity. Transferring such data to the form itself could lead to clerical mistakes. Also, the additional actuarial time needed to transfer such data to the form itself will add to the administrative costs of the plan, which is not beneficial to participants or beneficiaries. We understand the Department of Labor's desire to enhance the mine-ability of the data provided on Form 5500 for its purposes. We have concerns, however, that the desire to enhance the mine-ability of data filed on annual return/reports may lead to problems with the accuracy of the data and may cause the plan to incur unnecessary costs.

New required disclosures (page 47555)

We believe the following proposed new requirements will require more professional actuarial time and thus will cause the plan to incur additional actuarial fees:

- Schedule of Retired Participants and Beneficiaries Receiving Payment Data, including data by age bracket, average age and average annual benefit reported
- Schedule of Terminated Vested Participant Data, including data by age bracket, average age, average annual benefit, assumed form of payment and the assumed first age of payment
- Disclosure of average age and average credited service of active participants

We believe the costs to disclose this information will exceed any expected benefits for plan participants and beneficiaries.

Number and value of uncashed checks at the end of the plan year (page 47678)

As proposed, Line 14t of Schedule SB would require disclosure of the number and value of uncashed checks at the plan year end. Because Schedule SB typically is prepared and signed by the plan's actuary, this requirement could be burdensome for some plans because the actuary would not typically be responsible for this type of information. Also, the question is duplicative with question 4z of Schedule H, which typically is completed by the plan sponsor as discussed above.

We appreciate this opportunity to provide feedback on the proposed guidance, and we would be pleased to respond to any questions the Office of Regulations and Interpretations may have about our comments. Please direct any questions to Josephine Hammond, National Director of Employee Benefit Plan Services, at 608.829.5410.

Sincerely,

RSM US LLP

RSM US LLP