BrightScope®

Submitted electronically [e-ORI@dol.gov]

December 2, 2016

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

To Whom It May Concern:

BrightScope, Inc. ("BrightScope[1]") appreciates this opportunity to comment on the U.S. Department of Labor's (the "Department") Proposed Revision of Annual Information Return/Reports and Annual Reporting and Disclosure[2]. BrightScope is supportive of the Department's goal to update and modernize its data collection and display for plan participants and plan sponsors. In 2009, BrightScope launched its public 401k plan ratings in an effort to improve retirement outcomes for participants by improving transparency in the ERISA defined contribution plan market. We have since evolved our business to provide information on advisors, asset managers and mutual funds. One of BrightScope's core competencies is the examination and analysis of the Form 5500 and audit reports for participants, financial advisors, asset managers, and recordkeepers in the defined contribution space. We believe that increasing financial transparency is important, as it ensures a vibrant, competitive marketplace and prevents abuses. If implemented appropriately, the proposed changes to the Form 5500 will be beneficial to participants and plan sponsors. We have specific comments on a handful of the proposed changes that we submit to the DOL with the goal of further improving the transparency individual participants have into their retirement plans.

Modernizing Financial Data

In response to: Modernizing financial information: Modernizing the Schedule H, Line 4i Schedules of Assets[3]

BrightScope applauds the Department's recommendation to increase transparency into the investments held within employee benefit plans. The largest proposed change would require filers to use a "data-

[1] BrightScope Inc. is a financial information and software company that provides retirement plan ratings and analytics through which plan sponsors can benchmark and improve their plans. More information about BrightScope can be found on our website at www.brightscope.com.
[2] Annual Reporting and Disclosure. *Federal Register*, Vol. 81, No. 140. Pages 47496-47532. Proposed Revision of Annual Information Return/Reports Form Revisions. *Federal Register*, Vol. 81, No. 140. Pages 47533-47681.
[3] Annual Reporting and Disclosure. Pages 47507-47509.

capturable format" for the investment menu of large ERISA plans and include identifiers such as a CUSIP, CIK, EIN, LEI, or NAIC Company code. By our calculation, this would enable third-parties like BrightScope to more easily capture and evaluate the investment lineups of over 65,000 ERISA defined contribution plans and 8,000 ERISA defined benefit plans.[4] In addition, the removal of Schedule I (and subsequent filing of Schedule H with machine readable formats) would introduce an additional 81,000 defined contribution plans and 3,500 defined benefit plans with machine readable investment menus.[5] BrightScope believes this change will increase investment transparency which is a critical element in evaluating overall plan fees. This proposed change will allow plan sponsors to more easily fulfill their fiduciary obligation to analyze and benchmark their ERISA plans. It will allow services providers to better understand competitive pricing dynamics. The increased transparency will help the industry make the case that while there are still plans with high fees and bad investments, the vast majority of plans are well-run and competitive. And of course, the end beneficiary of all of these changes are the participants, who may never view these materials but will benefit from the more competitive market environment.

The Department also recommends disclosure of the Brokerage Window in a "data-capturable format." This is a much needed upgrade to current disclosure rules. BrightScope observes that under current rules the Schedule H Line 4i some plans list all brokerage window holdings individually intermingled with funds on the core investment lineup[6], some plans list brokerage funds and assets rolled up to a single investment line "Brokerage Account" in the audit report[7], and some plans do not list brokerage assets at all. This inconsistency makes it difficult to evaluate brokerage holdings across the DC marketplace. Access to this data will greatly inform the policy discussion on the benefit and potential risks of a brokerage window in the defined contribution space. BrightScope recommends the DOL adopt clear language that brokerage assets be separated out and clearly labeled as held through the brokerage window, so as to avoid any confusion about which holdings are in the core lineup and which holdings are in the brokerage window.

Concerns with Modernizing Financial Data

While BrightScope applauds the spirit of the Department's proposal, we have concerns about the details of how this would be implemented. Of chief concern is the selection of unique identifiers for providing fund level information. We have noted some of the potential pitfalls in the following comments.

In order to make machine readable data actionable for the private sector and general public, the highest value in providing machine readable data would be to have asset level detail down to the financial instrument level (i.e. share class) such as a ticker symbol or CUSIP. In the case of Investment Act of 1940 products like mutual funds, a ticker symbol or CUSIP can be linked to a fund database to pull in information on fees and performance.[8] It is critical to note that ticker symbols and CUSIPs can link to *share class level* information on fees. BrightScope observes that about 50% of the investment

[4] According to BrightScope's calculation, based on 2014 Form 5500 data submitted by July 31, 2016.
[5] According to BrightScope's calculation, based on 2014 Form 5500 data submitted by July 31, 2016.
[6] See Acknowledgement ID 20151002130501P040022128253001 (EIN/PN 134922641/002 for Form 5500 Year 2014), pages 17-48 of the audit report (Schedule H, Line 4i)
[7] See Acknowledgement ID 20160223101738P040012316465001 (EIN/PN 930584541/001 for Form 5500 Year 2014), page 18 of the audit report (Schedule H, Line 4i): "Total Participant Directed Investments: $2,484,041,148"
[8] PIMCO Total Return – Institutional Share Class has as CUSIP 693390700.
https://www.pimco.com/investments/mutual-funds/total-return-fund/inst

information in the Department's audit reports currently do not have share class information.[9] [10] Therefore any person or firm evaluating a plan based on the current disclosures would have to make share class assumptions, which limits the accuracy of any performance or fee analysis of the plan. It is not uncommon for a single fund to have 10+ share classes and the range of expense ratios across those share classes to exceed 1%. BrightScope uses human assumptions and computer algorithms to determine fee levels when share class information is not present. BrightScope's current policy of giving the plan sponsor the benefit of the doubt when it makes share class assumptions means we may be systematically underestimating plan fees, to the detriment of the participants in those plans. We believe the Department should require a single standardized identifier—ticker symbol or CUSIP— not a multitude of choices like CUSIP, CIK, EIN, LEI, or NAIC as outlined by the current proposal.

The CUSIP is the preferred symbol because it is more universal than the ticker symbol, which only applies to funds that trade on an exchange. However, it is important to highlight that CUSIP information may be difficult to access for both the private sector and the general public. For mutual fund products, a data subscription from a data provider to access CUSIPs is required. For collective trust and pooled separate accounts, third party vendors of CUSIP data will be incomplete; that data must be acquired from the asset manager or plan sponsor (if known).[11] The Department should be aware that there is no complete, searchable database for CUSIPs for free public and open use, however these remain the only true unique identifier in the industry to date that is utilized by all fund providers. Issues with the other suggested identifiers are noted below.

In recommending the machine readable format, the Department should note that a CIK or an EIN can represent an entire company. If a filer uses a company EIN or CIK in their machine readable format, they may roll up many different financial instruments into a single row, thereby greatly reducing the value of the recommended proposal. For example, a plan that has entirely proprietary Vanguard assets could file with the EIN 23-1945930 and roll the entire investment menu into a single line item "Vanguard", thereby removing all value of the holdings data.

The Department recommends a Legal Entity Indicator (LEI) as a mechanism to deliver machine readable data. While LEI data is free and searchable by any person or business, it is essential to note that LEI data is granular to the *fund level not the share class level.* Providing fund level information does not give participants or plan sponsors the detailed level of data they need to assess the fees they are paying for their investment holdings. Some mutual funds can vary over 100 basis points in fees from their cheapest share class to their most expensive.[12]

[9] BrightScope internal research

[10] See Acknowledgement ID 20160725154847P030049467463001 (EIN/PN 742487834/001 for Form 5500 Year 2015), page 15 of the audit report (Schedule H, Line 4i): $1.691 billion listed in mutual funds without a share class for that mutual fund, including $379,840,000 in "American Euro Pacific Growth Fund" which has 18 different share classes, although not all are eligible on a defined contribution platform. See Summary Prospectus for ticker "REREX" effective date, June 1, 2016, page 1.

[11] BrightScope has received CUSIPs from some of our asset manager clients for their pooled separate accounts and collective trusts. This represents CUSIP coverage of about 1% of the collective trusts and pooled separate accounts we track in our database.

[12] See Summary Prospectus for "Voya High Yield Bond" (ticker: IMYCX) effective date July 29, 2016, page 1. Total Annual Fund Operating Expenses after Waivers and Reimbursements for C share class is 1.82%, I share class is 0.69%. Merely listing the LEI for "Voya High Yield Bond" (LEI #: OTPD0VW0B2EUAT57PE57) would not inform participants or sponsors to link to other data sources to determine the fee level in the fund.

Furthermore, the Department should recognize that when blending across registration types, BrightScope notes the potential for data collisions. For example, NAIC Company Code (20430) for "Harbor Ins Co" has the same CIK as "Invesco Advisers, Inc." (20430). These data collisions render the data provided less valuable unless it is clear which code is being provided in all cases.

For the reasons listed above, BrightScope recommends that the required financial instrument identifier be a ticker symbol or CUSIP. BrightScope recognizes that the compliance to update systems and compliance to deliver machine readable data may be significant in size. To this end, we maintain the opinion that this is critical to harmonize the 408(b)2 and Form 5500 where this fee level information should currently be provided with the consistency of CUSIP.

Access to More Data

In response to: Updating fee and expense information on plan service providers with a focus on harmonizing annual reporting requirements on Schedule C with DOL's final disclosure requirements at 29 CFR 2550.408b-2.[13]

The Department proposes attaching the 404(a)5 (Participant Fee Disclosure) to all Short Form filings. Much like the current audit report attachments for plans with over 100 participants, this would provide unstructured and free form data about investment options, fees, and service providers on over 487,000 Short Form filing defined contribution plans and over 30,000 Short Form filing defined benefit plans.[14] While capturing and ingesting free flowing text data on this scale is a technical challenge for the private sector, the availability of data for the consumer is a large step towards greater transparency. In fact, because many industry observers have noted that some of the largest fee abuses occur in the small and micro market, any transparency into this market would be a big win for small plan participants.

Improve Provider Fee Transparency

Access to more data is important and BrightScope believes that with the following changes to the proposal further transparency can be achieved at minimal incremental burden.

The Department proposes to make some Short Form filing pension plans file a Schedule C for disclosure of service providers. In BrightScope's view, the small plan market has the least amount of transparency and we applaud this approach as a first step. We would like this recommendation to be applied to *all ERISA defined contribution plans* as well, along with the removal of the $5,000 compensation limit currently in place on the Schedule C, Part 1, Item 2. Many small plans do not pay their service providers over $5,000, so maintaining this requirement will not bring about significant gains in transparency. This change should require ERISA plans to disclose the recordkeepers and financial advisors who service their 401k plans. Furthermore, "small" service providers are disclosed on 404(a)5 and 408(b)2 filings, and the Department should be cognizant of this fact when working to harmonize these compliance documents. BrightScope recommends attaching both the 404(a)5 and 408(b)2 filings to the short form.

The Department recommends changing the reporting of indirect compensation from mere disclosure to more structured dollar-based reporting. By reporting the dollar amount paid in indirect compensation, the change in reporting would eliminate data that is difficult to ingest and comprehend for sponsors and

[13] Annual Reporting and Disclosure. Pages 47509-47510.

[14] According to BrightScope's calculation, based on 2014 Form 5500 data submitted by July 31, 2016.

participants like referencing attached supplemental schedules[15], vague formulas,[16] or complex formulas.[17] BrightScope is encouraged by the recommendation to bring more structured reporting to this area and we believe it should enhance the transparency of the ERISA service provider marketplace and improve participants understanding of fees.

BrightScope Recommended Changes to Form 5500

In addition to our above comments relating to specific elements in the proposal, we would also like the Department to consider adding the additional changes to the final ruling.

Improved Advisor Disclosure

For plans receiving advisory services, BrightScope would like to recommend to the Department that the Schedule C, Part 1, Item 2 asks for a field for the Central Registration Depository (CRD) number for *any advisor* performing advisory services to the ERISA plan, regardless of the size of the plan. Currently, Schedule C, Part 1, Item 2 requests a text description of the provider as well as the EIN, a field that currently allows for ambiguity in response and no clear link to the named advisor that has decision making authority on the plan.[18] This field is an important and relevant factor for participants in understanding the value of their plan. Requiring a standard unique identifier would alleviate the current issues.

Every registered financial advisor and firm in the United States must register with the Securities Exchange Commission (SEC) or Financial Industry Regulatory Authority (FINRA) and are provided with a CRD. The SEC and FINRA filings contain data about licensing, registration, professional background, complaints, history, and disciplinary actions. Given the Fiduciary Rule, this detailed information on a financial advice provider is even more important for participants and sponsors to due diligence on quality of advice with data from the SEC and FINRA. BrightScope recommends that every single advisor be required to put their individual CRD on the Schedule C of the Form 5500. This recommendation along with the recommendation that every single ERISA plan provide a Schedule C would provide the marketplace a thorough and comprehensive view of the financial advisors servicing defined contribution and defined benefit plans.

Advisor Fee Disclosure

BrightScope recommends a check box denoting whether an advisor or firm is paid fee for service, fee-based, or compensated by commission. Clarity of compensation models for services allows participants and plan sponsors to understand any potential conflict-of-interest in advisory services.

Improved Disclosure on non-Mutual Fund Products

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[15] See Schedule C, Part 1, Item 3 of Acknowledgement ID 20151015174057P040052021473001 (EIN/PN 134029115/001 for Form Year 2014) for example.

[16] See Schedule C, Part 1, Item 3 of Acknowledgement ID 20150306091146P030162473249001 (EIN/PN 200925675/001 Form Year for 2014) for example.

[17] See Schedule C, Part 1, Item 3 of Acknowledgement ID 20150924083743P040015453313001 (EIN/PN 593507322/333 Form Year for 2014) for example.

[18] Unfortunately, since 2006, BrightScope has observed 500 distinct EINs for Fidelity on 5500 filings – Schedules A & C. For a more granular example, we observe 3 different EINs for Fidelity on the Schedule C of Acknowledgement ID 20151015152602P030051473681001 (EIN/PN 134099534/336 Form Year for 2014). Because of this diversity of EINs, BrightScope has ceased relying on EIN as a unique indication of a business entity.

As presented the proposed revisions leave a significant component of the marketplace non-transparent: financial instruments that are not Investment Act of 1940 compliant like collective trusts and pooled separate accounts. Collective trusts represent 22% of all 401k plan assets and separate accounts represent 4% of plan assets.[19] These products do not disclose their fees or performance to the public at large. Without explicitly calling for these products' expense ratios on the Form 5500, plan participants and plan sponsors will struggle to find the costs of their investments or effectively benchmark them to other products in the marketplace. Furthermore, in the effort to harmonize 408(b)2 filings with 5500 filings will fall short. It is BrightScope's strong recommendation to require fee disclosure *on all* financial instruments: mutual funds, collective trusts, pooled separate accounts, and other products.

Service Provider Fees

The Department recommends that each service provider has a Schedule C filing.[20] BrightScope understands this is an attempt to provide more transparency to the fees paid to each provider for a service. Currently, the Schedule C, Part 1, Item 2 allows for a single service provider to list a single fee for a bundled set of services.[21] We believe that listing fees for each *individual service provided* by a single service provider would add much greater transparency to plan sponsor and plan participants with regards to *exactly* what fees pay for *exactly* what services.

Service Providers paid out of Corporate Assets and Improved Recordkeeper Disclosure

In addition, the Department leaves in place on the Schedule C, Part 1, Item 2 the restriction that service providers paid out of corporate treasury are not included in the Form 5500. Many large plan sponsors pay for consulting services out of corporate treasury and as such participants have no visibility into who is advising the plan. BrightScope believes that participants have a right to know exactly who is making recommendations about the plan design and investment structure of their retirement plan and recommends that all compensated service providers related to the Retirement Plan—regardless of how they receive their pay—should be disclosed on the Schedule C. In the case of a provider paid out of corporate assets, a simple acknowledgement of who they are and the service they provide is sufficient.

Furthermore, BrightScope believes that participants should know who the recordkeeper of their ERISA plan, regardless of whether a plan files a Short Form or Schedule C. Recordkeeping is a vital plan service to defined benefit and defined contribution plans. Public understanding of the named recordkeeper allows participants and sponsors to assess any potential conflicts of interest of plan services.

Service Provider Codes

BrightScope also recommends the Department adds more granularity in the Service/Compensation codes found on the Schedule C.[22] Separating code #15 "Recordkeeping and information management (computing, tabulating, data processing, etc.)" into "Recordkeeping" and a separate code for

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[19] BrightScope and Investment Company Institute. 2015. *The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2013*. San Diego, CA: BrightScope and Washington, DC: Investment Company Institute. Available at www.ici.org/pdf/ppr_15_dcplan_profile_401k.pdf. Page 35.

[20] Proposed Rules - Annual Reporting and Disclosures. Page 47577.

[21] See Schedule C, Part 1, Item 2 of Acknowledgement ID 20150916111643P040003714983001 (EIN/PN 560906609/003 for Form Year 2014). Fidelity receives over $11M in compensation for 10 different services including recordkeeping, trustee, asset management, as well as other services.

[22] http://www.dol.gov/ebsa/pdf/2014-5500inst.pdf. Pages 26-27.

"information management" would eliminate confusion, as there are service providers like Bloomberg that may be doing information management but are captured as recordkeepers.[23]

Qualified Default Investment Alternatives (QDIAs)

BrightScope applauds the increased visibility into Qualified Default Investment Alternatives (QDIAs) with the Departments recommendation to check a box if a plan as any available QDIA: target date/lifecycle, stable value , money market, balanced fund, professionally managed account, or other.[24] QDIAs play a critical role in Americans retirement savings, with the lion's share of money flowing into target date funds. At last examination, target date funds had $790 billion[25] in assets and 73% of all 401(k) plans had a target date fund.[26] BrightScope estimates target date funds will top $2 trillion in assets by 2020.[27] As target date funds continue to grow in popularity, we witness an increase in custom (or "white label") target date funds, totaling over $107 billion in assets, including 685 distinct funds that are trackable.[28] Unfortunately, disclosure on these custom or white label funds provides very little insight to the general public about any details of the target date fund like the name of the asset managers, funds invested, equity and bond percentages, glidepath allocation, sub account management, or fees.[29] BrightScope urges the Department to require more disclosure of custom and white label target date funds to include the asset managers, fund names and dollar balances of the target date sleeves. Other important nuances would be to provide definition on other services related to the custom target date such as advisory, glidepath management, allocation management and other consulting fees.

Conclusion

We hope you find the foregoing comments helpful in your review of the Proposed Revision. We remain excited and encouraged by the Department's efforts to improve the Form 5500 and the resulting benefits this will provide to participants in better understanding their defined contribution retirement plan. If you have further questions or need additional information, please contact us at ryan@brightscope.com.

Sincerely,

Ryan Alfred
President and COO
BrightScope, Inc.
A Strategic Insight Company

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[23] See Schedule C, Part 1, Item 2 of Acknowledgement ID 20151013130024P040041402903001 (EIN/PN 1604680202/334 for Form Year 2014). BrightScope has seen other providers we know in the industry do not do recordkeeping services like "Dodge & Cox" and "BlackRock" also get tagged as a recordkeeper when we believe it to be "information management" services.

[24] Proposed Revision of Annual Information Return/Reports Form Revisions. Pages 47571, 47574.

[25] https://www.ici.org/research/stats/retirement/ret_16_q1

[26] BrightScope and Investment Company Institute. 2015. *The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2013*. San Diego, CA: BrightScope and Washington, DC: Investment Company Institute. Page 31.

[27] http://blog.brightscope.com/2015/05/05/latest-trends-in-target-date-funds/

[28] BrightScope internal research.

[29] See Acknowledgement ID 20151006120143P030024144605001 (EIN/PN 310345740/009 for Form 5500 Year 2014), page 29. $53 million in white label target date funds.