Plante & Moran, PLLC
27400 Northwestern Highway
P.O. Box 307
Southfield, MI 48037-0307
Tel: 248.352.2500
Fax: 248.352.0018
plantemoran.com

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
Via email: e-ORI@dol.gov

Re: Proposed Revision of Annual Information Return/Reports (RIN 1210–AB63)

Plante & Moran, PLLC (Plante Moran) appreciates the opportunity to comment on the Proposed Revision of Annual Information Return/Reports (RIN 1210–AB63) (the “Proposal”), issued in the July 21, 2016 *Federal Register* by the Department of Labor (“DOL”), Department of the Treasury (“Treasury”), Internal Revenue Service (“IRS”), Pension Benefit Guaranty Corporation (“PBGC”), and Employee Benefits Security Administration (“EBSA”) (collectively the “Agencies”).

Plante Moran audits over 1,200 benefit plans and prepares over 550 Forms 5500, Annual Return/Report of Employee Benefit Plan, each year. We are responding on our behalf as auditors and Form 5500 preparers, as well as advocates for our 900 benefit plan audit clients. These clients have assets from under $1 million to over $29 billion and participant counts of 100 to over 175,000. We feel strongly about the role we play in helping to protect the assets and financial integrity of employee benefit plans in a cost effective manner; and as such, we have compiled the following comments for your consideration.

In the interest of providing a timely response, we limited our comments and suggested changes to those we believe, if made, will have the most significant impact. We believe if our suggested edits are made the overall cost and burden to plan sponsors will be much less than the original Proposal and more closely align cost and benefit. Further, we support the comments made by the joint task force of the American Institute of Certified Public Accountants (“AICPA”) Employee Benefit Plan Audit Quality Center Executive Committee, the AICPA Employee Benefit Plan Expert Panel, and the AICPA Employee Benefit Plan Tax Technical Resource Panel.

We recognize the various Agencies involved in compiling the Proposal spent countless hours reviewing the current Form 5500 and related schedules and identifying areas where reporting could be improved and we applaud the Agencies for these efforts. We also understand the Agencies desire to safeguard participant benefits and appreciate the Agencies taking on this endeavor.

Proposal Process

We appreciate the Agencies’ extension of time for the comment period for the proposed changes. Because the changes are very broad and comments made could impact multiple areas, and based upon the magnitude of the changes included in the Proposal, we suggest the changes be carefully reconsidered by the Agencies in their entirety. We request the Agencies hold a public hearing on the Proposal before it is finalized to allow stakeholders and the Agencies to collaborate on the changes in an efficient and cost-effective manner. Also, if significant changes are made to the Proposal as a result of the comments received by the Agencies, we request a new Proposal be provided for public comment.

Further, we support the American Bankers Association's suggestion of conducting a successful beta test using actual plan data to ensure the regulatory instructions are clear, the requested data are readily available, and to confirm the accuracy of the Agencies' estimated time and costs in preparing the Form 5500. We also believe seeing the proposed, full Form 5500 after initial comments are considered would be more useful for providing further comments.

Underestimated Cost and Burden on Plan Sponsors and Participants

We believe the Proposal significantly increases the amount of information required to be provided by plan sponsors both in the plan's financial statements (specifically the supplemental schedules of audited plans) and in the Form 5500. These changes will place significant burden on plan sponsors and participants in terms of time (for the plan sponsor) and cost (computer system modifications and upgrades and additional effort by the service providers). These additional costs will in many cases be allocated to the participants and reduce their retirement benefits.

Additionally, we do not believe the analysis of time and cost included in the Proposal took into account all costs plans and plan sponsors will incur. We believe it unintentionally excluded outside costs that will be passed on through increased fees. The increased information required will result in increased time for all levels of plan service providers, including custodians and insurance companies, third party administrators, Form 5500 preparers, and auditors. For many service providers, major system changes will also be required to capture and report the volume of information required to be included in the Form 5500. Additionally, increased time will be needed to collect/generate, review and report the increased information in the supplemental schedules to the audited financial statements and the Form 5500.

Specifically related to auditors, additional time will be incurred assisting plan sponsors in making the required disclosures in the supplemental schedules attached to the audited financial statements, and performing audit procedures on the additional information required to be reported in the supplemental schedules. This additional time and effort will increase the cost of administering the plan, which may be passed on to participants. These costs will be disproportionately skewed to the smaller, less sophisticated or resource-limited plan sponsors, as they will require more assistance and have fewer participants to allocate the costs. However, there is also significant concern for those plans that have a large number of investments as the additional costs will be even more significant and time could increase substantially.

There will also be an increase in time for auditors to review the full Form 5500. Auditing standards (AU-C 720, *Other Information in Documents Containing Audited Financial Statements),* require auditors to read the other information in documents containing the audited financial statements and consider whether there are any material misstatements of fact or other inconsistencies which could undermine the credibility of the audited financial statements. The Form 5500 for large plans includes a copy of the audited financial statements. As a result of this requirement, the auditor has been, and will continue to be required to review the entire Form 5500 and not just Schedule H and the supplemental schedules. Therefore, as the Form 5500 reporting requirements increase, it will require additional auditor time as well.

While we appreciate the Agencies' desire to be able to quickly and easily gather data and perform data mining for both statistical purposes and determining the need to audit or monitor plans, we believe the cost and burden to plan sponsors and participants (both plan sponsor hours and additional costs by service providers) greatly outweigh the expected or intended benefit of the additional information. We also believe the impact to the participants that could be a by-product of these changes could be significant (increased costs, less investment options, different investment options, and/or reduced benefits).

In addition to the potential cost increases outlined above, there are also concerns that the cost to prepare the Form 5500, depending on who prepares the Form 5500 and how the fees are charged (a flat fee vs. part of the recordkeeping services), could as much as double if the Proposal is approved as is in some cases. The significance of the fee increase is dependent on the competency of the preparer and how the fees are charged to the plan or plan sponsor.

Unintended Consequences of Proposal

Concerns on Quality

We have concerns that the changes resulting from the Proposal, due to the expected increased time and effort internally, will cause plan sponsors to look to lower-cost service providers or providers and preparers that have little experience in Form 5500 preparation. This in turn will perpetuate the cycle of utilizing providers that may not provide high quality services; resulting in continued deficient audits, reporting and administration.

Participant Counts

One of the changes in the Proposal is the ability for certain defined contribution plans to utilize the “number of participants with account balances” rather than “total number of active participants at the beginning of the year” when determining whether to file as a small or large plan. This change will impact the number of plans requiring an audit, as typically only plans that file as a large plan (based on total active participants) are required to have an audit. In general, we support this change as we believe this will result in significant cost savings for many small plans, particularly plans with lower participation rates.

However, this change could cause a new defined contribution plan to be required to have an audit in year one and then, due to the number of participants with account balances, the plan may not require an audit for many subsequent years. The cost of the first year audit may outweigh the benefit if there were no further audits for a number of years.

Please refer to the Attachment for an example and additional considerations and suggestions.

Burden Exceeds Benefit

The following comments relate to changes for which we believe there is a disproportionally larger burden and cost than expected benefit.

Supplemental Schedules

The Proposal currently requires structuring and standardization of the following schedules:

- Line 4i – Schedules of Assets
    - Line 4i(1) – Schedule of Assets Held for Investment at End of Year
    - Line 4i(2) – Schedule of Assets Disposed of During Plan Year
- Line 4j Schedule of Reportable Transactions
- Line 4a Schedule of Delinquent Contributions

This structuring and standardization includes inputting the schedules directly through iFile or using EFAST2 approved third party software. This structuring and standardization will require investment custodians/trustees to reconfigure their current reporting platforms to (1) provide additional information required under the Proposal and (2) provide it in a manner that can be imported into the DOL form. Both of these scenarios will result in significant additional effort and cost. If the investment custodians/trustees are unable to provide information in a format with the required structuring and standardization, plan administrators will be forced to retype and/or manually input significant volumes of data, adding to the burden of the plan sponsor.

A significant concern related to the changes surrounding the three most commonly used schedules (including the Schedule of Assets Held for Investment at End of Year, Schedule of Reportable

Transactions and Schedule of Delinquent Contributions) relates to financial statement preparation and audit efficiencies. Many plan sponsors and accounting firms have significantly invested in financial preparation software that includes formatting and presentation of the most commonly used schedules and which links the Schedule of Assets Held for Investment at End of Year, the statement of net assets, and other financial statement disclosures. Having a required prescribed form to complete or import information removes these efficiencies and will cause plan sponsors and/or accountants to spend tremendous amounts of time to ensure all amounts agree and reconcile (for example, we can envision much wasted time chasing differences, including the elusive one dollar difference).

We fear that having these schedules required to be in the Form 5500 software will increase audit time substantially, similar to how the effort involved in a Form 11-K audit is increased due to the “EDGARrization” process. Generally, for a Form 11-K, the financial statements are drafted, audited, then input into the EDGAR system. The auditor then obtains the EDGAR version, re-foots the financial statements and in detail compares it to the previously audited draft. Any edits are then passed to the plan sponsor to make. After the edits have been made, an updated version of the “EDGARized” financial statements are provided to the auditor who then re-foots the financial statements and compares them to the previously audited draft. Any subsequently discovered edits are passed to the plan sponsor and made. In some cases there are two rounds of this process, in other cases there are three or more. In general, this process can add 10 to 30 percent to the total audit time. These additional reviews are necessary to ensure the information that was audited is properly reflected within the financial statements filed within the EDGAR system, to which the auditors opinion is attached.

In response to the proposed Form 5500 changes, we envision a similar situation (to the 11-K process described above) where the schedules would be prepared and audited in draft form (outside of the Form 5500 software) and then input into the Form 5500 software. The auditor would then obtain the Form 5500 version, re-foot it and compare it to the previously audited draft. Any edits would then be passed to the plan sponsor or third-party administrator/5500 preparer who would then make necessary changes. This process could occur a few times for less complicated plans to many times for more complicated plans which could delay the completion and filing of the audit and Form 5500, respectively.

One possible solution to allow for data mineability but **not** substantially increase audit costs, would be to amend the Regulations to remove the requirement that these schedules be attached to the financial statements and the Independent Qualified Public Accountant’s (“IQPA”) opinion cover these schedules. Alternatively, a different solution could be to continue to allow the supplemental schedules to be presented as they are currently (within a non-data mineable copy of the financial statements) and the Agencies could use the questions in Schedule H to assist in determining when a plan should be reviewed by the Agencies.

<u>Schedule of Assets Held for Investment at End of Year</u>

Additionally, the Proposal requires a Schedule of Assets Held for Investment at End of Year for the plan for each of the following scenarios, as applicable:

- Assets held directly by the plan
- Investments in master trust (for plan’s proportionate share of master trust ownership)
- Investment in Pooled Separate Accounts (PSAs) and Common Collective Trusts (CCTs)
    - Additional information is required if the PSA and CCT is not a Direct Filing Entity (DFE)
- Investment in 103-12 Investment Entities (for plan’s proportionate share of the investment entity)

Lastly, the Schedule of Assets Held for Investment at End of Year has substantially increased the amount of information required to be gathered and reported.

The Schedule of Assets Held for Investment at End of Year is required to be attached to the financial statements and the IQPA is required to opine on it. Overall, the portion of the Proposal related to the Schedule of Assets Held for Investment at End of Year would create difficulties for investment custodians and trustees to provide the plan level investment information and may prevent the IQPA from reporting on the related supplemental schedules. This is particularly true when a non-DFE filing CCT/PSA or a 103-12 Investment Entity does not have audited financial statements as of the same date of the plan's financial statements.

Since the financial statements need to include the Schedule of Assets Held for Investment at End of Year and the IQPA's opinion needs to cover such schedule, having the financial statements in one format and the schedule in another format (within the EFAST2 system) presents multiple issues related to when the schedule is done, when it is attached to the financial statements, how to maintain quality control over the information in the schedule, etc. Logistically, this would cause significant audit inefficiencies and would in turn lead to increased costs.

We have a significant number of clients who have voluminous Schedule of Assets Held for Investment at End of Year and utilize a scanned copy of the Schedule of Assets Held for Investment at End of Year from the custodian. Having to gather the information, extract to a spreadsheet, round dollars, and manipulate and review this information will cause significant increase in cost with little benefit.

We would suggest maintaining the current reporting of one Schedule of Asset Held for Investment at End of Year for investments held directly (including interests in CCTs/PSAs), with the same level of detail as currently required, in the financial statements rather than in the Form 5500 software. The DOL can use the questions in Schedule H to assist in determining when a plan should be reviewed by the DOL.

Schedule J, Group Health Plan Information

We have significant concerns with the proposed Schedule J, *Group Health Plan Information*. As noted by the Agencies in the Proposal, the new requirement for ERISA-covered group health plans to file a Form 5500 and Schedule J will drastically increase the number of plan sponsors required to file Form 5500 (an estimated 2.1 million additional filings), most of which are small businesses and entities that have not filed a welfare plan Form 5500 in the past. Substantial outreach to plan sponsors by the Agencies and the service provider community may be necessary to ensure effective reporting and compliance with the new rules. The Proposal does not indicate how this new requirement will be communicated to plan sponsors that will be affected, and we are concerned that many plan sponsors will be unaware of the requirement and may not file as required, which will then put an additional late filing burden on these small plan sponsors.

The new filing requirement for information about group health plan operations, ERISA compliance, and compliance with certain provisions of the Affordable Care Act will increase the cost to administer group health insurance for employees, which includes the preparation of the Form 5500 for these small group health plans. Sponsors that cannot afford (or are unwilling to pay for) these additional costs may decide to prepare the Form 5500 and Schedule J on their own, or choose a provider who has little or no experience preparing Form 5500s, which could result in incorrectly prepared returns. We recommend the Agencies consider phased-in implementation of the reporting requirements for group health plans by establishing thresholds (for example, by size or funding status) for immediate and deferred implementation of the new filing requirements.

Overestimated Expected Benefit

We believe the following items will not yield the expected benefit due to variations in different plan sponsors and/or preparers and how to respond due to the judgmental nature of the items.

Subjective Questions

In the Proposal the new questions under 3f of Schedule H, regarding communication of items with those charged with governance are very subjective in nature and, depending on the plan sponsor, Form 5500 preparer and IPQA, the responses could vary significantly. Auditors use significant judgement in determining what items should be reported in an AU-C 260 letter ("End of Audit Letter") and AU-C 265 letter ("Internal Control Letter"), and what items are not significant enough to put in writing (or warrant the attention of those charged with governance). While some firms are "conservative" and put a significant number of items in the End of Audit Letter, other firms may have a different sense of what may warrant the attention of those charged with governance and put less in writing. Additionally, the Auditing Standards allow for other controls to mitigate internal control matters and may eliminate the need to include matters in writing. Whether those mitigating internal controls eliminate the need to report the matter to those charged with governance is a matter of judgement.

Additionally, some of our clients have expressed concern that the audit community, in general, will be less likely to offer suggestions to clients to improve operations for fear it might be perceived as control deficiency (rather than an operational improvement suggestion).

Please see additional comments related to these items in the Attachment.

We believe column iii of the Schedule of Assets Held for Investments at End of Year, which asks the question "Is the asset a hard-to-value asset?" as well as similar questions within Schedule H will yield substantially different results depending on the plan and plan sponsors resources. For instance, many plans we audit are supported by (an internal) Treasury or Investment Group who believe limited partnerships, commingled funds, collective trusts, derivatives, fixed income securities, private equity funds, etc. are **not** hard-to-value assets due to the availability of Net Asset Value per Share (which they believe is a reasonable and materially correct estimation of fair value), and/or due to the resources available to them. Conversely, some plan sponsors might consider investments that are not publicly traded in an active market, such as common/collective trust funds, pooled separate accounts, and government debt securities to be hard-to value assets due to lack of a quoted market prices.

Given the subjective nature of the questions and combined with the questionable benefit (given the possible diverse responses), we would suggest removing them.

Other Perceived Non-Beneficial Items

Engagement Partner

We believe line item 3(c)(3) on Schedule H, which requires disclosure of the name of the audit engagement partner, should be deleted. The firm name and EIN are already disclosed, and including an individual's name could lead users to misunderstand the role of the engagement partner and level of involvement by others within the audit firm. If the DOL has concerns with an audit, the DOL can contact the firm and determine the audit partner. Additionally, if the DOL has concerns related to the quality of a particular audit partner, the DOL can make a referral to the AICPA or relevant state board of accountancy.

Naming a particular engagement partner in the IQPA opinion could also result in the partner being harassed by a disgruntled participant, or worse, the DOL could be putting a partner in harm's way. Additionally, we believe the expected benefits of including the partner's name are outweighed by the significant potential litigation risks and costs this could create. We do not believe a specific engagement partner should be associated with a plan's issues, such as a plan's unfunded status.

Certification

Because certifications can have disclaimers or cautions that are separate from the certification, and because the DOL cannot see what the certification is attached to, we do not believe providing the certification will be as valuable as the Agencies intend. We recommend removing the requirement to attach the schedule or making the suggested changes to the certification as discussed in our response to the Regulation modifications.

Peer Review Letter

We do not believe attaching a copy of the audit firm's peer review letter should be required as it does not add value, for the following reasons:

- ERISA and DOL regulations do not require a plan's IQPA to have a peer review.
- The plan administrator is not responsible for their IQPA's peer review.
- None of the requested information (3(g)(1) to (5)) would typically be known by the plan administrator.
- None of the requested information would typically be of any direct benefit to plan participants and beneficiaries.
- The plan administrator would not necessarily know or be able to readily determine whether the IQPA has a peer review performed in accordance with their state requirements.
- A peer review letter might provide a false sense of security to the reader that the underlying audit provides assurance and certainty that the plan was administered without operational errors.

Other Suggestions For Consideration

Net Asset Value Per Share

Currently within the Form 5500 instructions, investments are generally required to be reported at current value. Current value is defined to mean "fair market value where available," otherwise it is explained to mean "the fair value as determined in good faith under the terms of the plan by a trustee or a named fiduciary, assuming an orderly liquidation at the time of the determination."

Under generally accepted accounting principles ("GAAP"), ASC 820, *Fair Value Measurements*, certain investments in investment companies that do not otherwise have a readily determinable fair value may be reported at their net asset value per share or its equivalent (NAV) as a practical expedient. Under GAAP, an entity is not permitted to estimate fair value of an investment using NAV as a practical expedient if "as of the reporting entity's measurement date, it is probable that the reporting entity will sell the investment for an amount different from the net asset value per share (or its equivalent)."

Although not included in the Proposal, we would encourage the Agencies to explicitly allow the use of NAV as a practical expedient for current value, similar to the practical expedient for fair value under GAAP. This would increase the consistency in reporting between the audited financial statements and the Form 5500. We believe NAV would be a reasonable estimate of fair value and "the fair as determined in good faith under the terms of the plan by a trustee or a named fiduciary, assuming an orderly liquidation at the time of the determination."

Please refer to the Attachment for more detailed schedule-by-schedule comments, concerns and suggestions.

In conclusion, we believe if these changes are made as proposed, the cost of the audit and the cost of the preparation of the Form 5500 could, as much as double depending on how the Form 5500 preparation is charged to the plan sponsor (flat fee vs. imbedded in recordkeeping services). Additionally, we believe the other costs (service provider, plan sponsor time, etc.) would add additional, substantial costs. Therefore, while we understand the Agencies desire to have mineable data from 80,000 large plan Form 5500 filings, we believe the cost and burden for each individual plan related to complying with the Proposal far exceeds the benefits expected by the Agencies.

Thank you again for the opportunity to comment on the Proposed Revision of Annual Information Return/Reports (RIN 1210–AB63) issued in the July 21, 2016 *Federal Register.* We appreciate your consideration of our recommendations and would be pleased to respond to any questions the Administration may have about these comments. Please direct any questions to Theresa Banka at 248-223-3572 or theresa.banka@plantemoran.com or Laura Taylor at 616-643-4025 or laura.taylor@plantemoran.com.

Very truly yours,

PLANTE & MORAN, PLLC

plante moran

Schedule C - Service Provider Information

Reference	Comments and Recommendations
General	***Separate Schedule C for each service provider.*** The Proposal requires a separate Schedule C for each service provider with expanded questions. A requirement that a separate Schedule C be filed for each service provider would place an enormous filing burden on large plan sponsors that use many (in some cases possibly hundreds) service providers. We recommend that this requirement be deleted and kept as is – one Schedule C per Form 5500 filing.
General	***New thresholds for reporting covered service providers and other providers.*** The Proposal suggests that the addition of the covered service provider language to harmonize the Schedule C with the 408(b)(2) regulations will result in fewer service providers reported on the Schedule C. However, the instructions state "[y]ou must complete a separate Schedule C…for (1) each covered service provider who received $1,000 or more in total direct and indirect compensation…in connection with services rendered to the plan or the person's position with the plan…and (2) other persons who received $5,000 or more in direct compensation in connection with services rendered to the plan or the person's position to the plan…" This language appears to contradict the suggestion that fewer service providers will be required to be reported on Schedule C. The $5,000 threshold eliminates the indirect compensation language. However, the majority of service providers who report indirect compensation are covered service providers. Therefore, even with the removal of indirect compensation from the $5,000 threshold, it appears there would not be a reduction in service providers reported. Due to the proposed $1,000 threshold for covered service providers, it appears that a significant number of additional service providers would be required to be reported on separate Schedule C's. If the Agencies' intent was to minimize the number of service providers reported on the Schedule C, we recommend the thresholds for reporting covered service providers and other providers be kept as is.
General	***Elimination of Eligible Indirect Compensation (EIC) and formula estimate for indirect compensation.*** The Proposal also eliminates the concept of Eligible Indirect Compensation (EIC) and the formula estimate for indirect compensation. Most indirect compensation received by service providers falls under the definition of EIC and, therefore, has a reduced reporting requirement. Currently, if the service provider receives non-eligible indirect compensation, the service provider is able to provide a formula to the plan sponsor for inclusion on the Schedule C rather than an estimate of the indirect compensation received. The Proposal would eliminate both the EIC and formula reporting options. Due to the elimination of EIC and non-eligible indirect compensation, service providers will need to rework their Schedule C disclosures to plan sponsors in order to capture the estimate of indirect compensation paid or received rather than providing a formula or listing as EIC. Reworking systems to compute the estimate of indirect compensation will take considerable effort and cost. If service providers are unable to provide this information, it will be the ultimate responsibility of the plan sponsor to accurately report this information as they are signing the Form 5500s under penalty of perjury, and many plan sponsors do not have the necessary resources to calculate the required information.
Line 2a	***Contact information for service providers that are natural persons.*** The proposed requirement to disclose contact information of service providers that

plante moran

Reference	Comments and Recommendations
	are natural persons in a public report/return should be deleted. The instructions state "[i]f the service provider identified is not an individual, in addition to the name, EIN and address of the entity, provide the name of and address for an individual or office that the plan would contact for the information about the service provider." Because the individual contact information would be publicly available and searchable in EFAST2 and likely used by marketers, promoters and others for unintended purposes, a contact at the service provider should not be identified by individual name. If the Agencies believe this is critical information, then the information should be reported to the Agencies in a non-public document.

Schedule E, ESOP Information

Reference	Comments and Recommendations
General	The Proposal seeks to bring back the Schedule E to the Form 5500 filing. Upon review of the suggested questions, many seem redundant and already attainable from the plan's audited financial statements. It seems the Agencies will be using the Schedule E only to make the data more mineable but with little, if any, benefit to participants.

Schedule H – Financial Information

Reference	Comments and Recommendations
Form 5500 and 5500-SF, instructions	One of the changes in the new proposed Form 5500 is the ability for certain defined contribution plans to utilize the number of participants with account balances rather than total number of active participants when determining whether to file as a small or large plan. This change will impact the number of plans requiring an audit, as typically only plans that file as a large plan are required to have an audit. In general we support this change. We believe this change will result in significant cost savings for many small plans, particularly those plans with lower participation rates. However, additional guidance or consideration should be given in regards to first year audits. Based on the proposed instructions, for the purposes of a first year defined contribution plan, the plan should look to line 6, total participants at the beginning of the plan year, to determine whether the plan is a small or large plan. However, in subsequent years, it appears that defined contribution plans should use the participant count on Line 7g(1), which is the number of participants with account balances as of the beginning of the plan year. In instances where all or a significant percentage of employees are eligible for a plan, but only a small number of employees choose to participate, this may result in some unintended consequences. For example, in a situation where an employer has 130 employees and everyone is eligible immediately, the plan would file as a large plan and an audit would be required in the first year. However, for this same plan, if only 75 employees chose to participate, the plan would file as a small plan in the second year and no audit would be required. The audit could then be deferred until such time as the number of participant accounts exceed 100 (or 120 utilizing the 80-120 rule).

Reference	Comments and Recommendations
	We would propose that for first year defined contribution filings, rather than utilizing the total participant count at the beginning of the plan year (line 6), line 5c, which reports the number of participants with account balances as of the end of the plan year, should be utilized. This would alleviate the situation of a plan filing as a large plan (and needing an audit) only in its first year of existence.
Schedule H, Part I Asset and Liability Statement, Line 1b.	Some of the proposed new subcategories of investment types include a mixture of investment types (money market accounts, government securities, etc.) and investment strategy (hedge funds). This may cause confusion about where certain investments should be reported. For example, a hedge fund is an investment strategy that typically is structured as a limited partnership, but could also be a common collective trust or other type of investment entity; however, “hedge fund” is listed as a separate subcategory. We recommend the subcategories be revised to eliminate those that would be considered investment strategies rather than investment types. The Agencies should consider the time, effort, and cost that service providers will incur to implement the changes to their systems necessary to properly classify and report investment in these new subcategories under the proposed changes. These changes may include revisions to service provider information systems and which would be costly to service providers, if they can provide the level of detail required at all. If manual entries are required, the changes could cause diversities in investment categorization and reporting among plans, and is more subject to human error, thus removing some of the system-related internal controls. Plan administrators and Form 5500 preparers typically are not investment experts and may not be able to obtain sufficient information from service providers to understand the differences between the investments reported in the trust statements which will in turn result in diversity in reporting of investments. Given the above, the Agencies consider the possibility that reporting investment information in more categories and subcategories may not result in consistently reported information, and the cost may significantly exceed the benefit.
Schedule H, Part III, Accountant’s Opinion	The IQPA Report is defined in Part III, Accountant’s Opinion, as “generally consisting of an Accountant’s Opinion, Financial Statements, Notes to the Financial Statements, and Supplemental Schedules.” The only document that should be attributed to the IQPA Report is the independent auditor’s report. It is important to note that the plan’s financial statements, notes to the financial statements, and supplemental schedules are the responsibility of plan management, while the independent auditor’s report is the accountant’s opinion over the financial statements and related notes and supplemental schedules. In order to provide additional clarity and minimize any confusion we recommend modifying the wording as follows:

Reference	Comments and Recommendations
	"The IQPA report (also referred to as the independent auditor's report) and the related audited financial statements, notes to the financial statements, and supplemental schedules must be attached to the Form 5500 Annual Return/Report when a Schedule H is attached, unless Line 3h(1), (2), (3), or (4) on Schedule H is checked."
Schedule H, Part III Accountant's Opinion, 3b	There is a new requirement to attach a copy of the certification if a limited scope audit is performed pursuant to 29 CFR 2520.103-8. Additionally the instructions state "[a]lthough you must attach a copy of the certification(s), you do not need to include any attachments to the certification itemizing the assets to which the certification(s) apply." It would appear that the Agencies' intention of obtaining the certification would be to allow EBSA to better determine which assets are subject to a limited scope audit and which would require a full scope audit. Simply attaching the limited scope certification would likely not accomplish this goal due to the following: • Some certifications contain "exception" or "notification" clauses (also referred to as cautions), which may exclude certain assets from the certification. These clauses are often included on separate pages from the certification or as addendums to the investment statements. As such, the users (including the Agencies) may not be able to identify which assets are covered by the certification by simply reviewing the certification. • The Agencies will not receive information on what investments the auditor did not audit due to relying on the certification for the limited scope audit. For example, the certification will not provide information about agency agreements, or which investments are or are not covered by the certification • In situations where assets are held by multiple parties, the inclusion of all the certifications would not assists users of the financial statements to be able to distinguish which parties are certifying which assets. Please see our separate comment letter on the *Proposed Revision to DOL Reporting Regulations to Implement Notice of Proposed Forms Revisions.* In this separate letter we have included comments and recommendations for clarifying the DOL regulations related to limited scope certifications
Schedule H, Line Item 3(c)(3) ~ Disclosure of the Name of Audit Engagement Partner	We believe that line item 3(c)(3) on Schedule H, which requires disclosure of the name of the audit engagement partner, should be deleted based on comments in our cover letter and the following: • Schedule H, Part III, line item 3(c)(1) currently requires the name and EIN of the accounting firm conducting the audit. As such, the user is made aware of the audit firm. Disclosure of the specific partner conducting the audit would not provide any additional useful information to the user.

Reference	Comments and Recommendations
	• An audit is conducted by a team of individuals. Disclosing an individual name could lead users to misunderstand the role of the engagement partner and level of involvement by others within the audit firm. • Auditing standards do not require the disclosure of the audit partner in the auditor's opinion.
Schedule H, Part III Accountant's Opinion, 3f	Question 3f ~ *Did the accountant advise you whether the IQPA report, including the financial statements and/or notes required to be attached to this return/report or the IQPA's communications with those charged with governance (SAS 114 and 115), disclosed any of the following (check all that apply)* The use of "you" and "advise" is unclear. We recommend changing to "Did the auditor communicate to those charged with governance over the plan…" Additionally, the reference to SAS 114 and 115 is outdated. We recommend that the reference to SAS 114 and SAS 115 be changed to AU-C 260 and AU-C 265, respectively.
Schedule H, Part III Accountant's Opinion, 3f (4), (5), and (7)	Line items 3f (4), (5), and (7) relate to items that are the responsibility of plan management, rather than the IQPA, to disclose in the plan's financial statements, notes to the financial statements, and supplemental schedules. As noted above (see Schedule H, Part III, Accountant's Opinion), the IQPA report should only include the independent auditor's report. Including line items 3f (4), (5), and (7) could lead users to believe the IQPA is responsible for information that is the responsibility of plan management. As such we recommend that the items in lines 3f (4), (5), and (7) be deleted or moved to a separate section in Schedule H.
Schedule H, Part III Accountant's Opinion, 3f (1) through (3)	<u>Line 3f (1) and (2) Errors or irregularities and Illegal Acts</u>. We recommend that the boxes related to "errors" and "irregularities" and "illegal acts" be deleted as these terms are no longer used in professional Auditing Standards. As such the IQPA's report and/or IQPA communications to those charged with governance would not address these specific terms. <u>Line 3f (3) Material internal control weaknesses</u>. AU-C 265 addresses the auditor's responsibility to appropriately communicate to those charged with governance and management deficiencies in internal control that the auditor has identified in an audit of financial statements. The auditor's communications can be, and often are, made subsequent to the date the IQPA report is released. Conversely, the Form 5500 is typically filed shortly after the IQPA report is released. As such, if the required communications are made after the Form 5500 is filed, the plan may not "know" to check the box as applicable. Additionally there is judgement involved in assessing internal control deficiencies as control deficiencies, significant deficiencies and material weaknesses. As such, there could be diversity in matters included in the Internal Control Letters.
Schedule H, Part III Accountant's Opinion, 3f (6)	The existence of plan qualification issues pursuant to the Internal Revenue Code is not part of the IQPA's opinion. As a result we recommend that this line item be deleted or moved.

plante moran

Reference	Comments and Recommendations
	Additionally, use of the term “issues” is vague and very subjective. It is not uncommon for most plans to have some level of compliance matters during each year. In many cases the issues are immaterial and many are timely corrected (either through self-correction or the Voluntary Correction Program). From the background and discussion section of the Proposal it is unclear the intent of this reporting item. It seems overly burdensome for a plan administrator to have to report any and all “issues.” Rather it would seem more cost effective for the Agencies to focus on a specific set of “issues” that it is specifically concerned with, and only require reporting of those specific issues, including specific parameters and requirements for reporting, as is the case with delinquent participant contributions and nonexempt transactions.
Schedule H, Part III Accountant’s Opinion, 3g	We do not believe attaching a copy of the audit firm’s peer review letter should be required. To our knowledge, the DOL regulations and ERISA do not require a plan’s IQPA to have a peer review, the plan administrator is not responsible for their IQPA’s peer review, and may not easily have access to such information. Further, none of the requested information would typically be known to the plan administrator or be of direct benefit to plan participants and beneficiaries. In addition, peer review letters cover the entire auditing firm and information in the letter may not be relevant and thus confusing to the plan sponsor and participant.
Schedule H, Part IV, 7b and 7c - Transfer and Mergers	We recommend the Agencies clarify whether the question related to the “date of transfer” relates to the effective date of the plan merger or the date on which the assets were physically transferred between plans. A plan merger generally has an effective date (the date the merger is authorized, which also may be the date the plan obligation has transferred) that is different than the date of the actual physical transfer of plan assets.
Schedule H, Part IV, Line 4i(b) and (c) Master Trust and Non-DFE filings,	The Proposal would create difficulties for investment custodians and trustees to provide the plan level investment information and may preclude the IQPA from reporting on the supplemental schedules. Plans would report their investments in master trusts in **detail** on Schedule H, Line 4i(1) Schedule of Assets Held for Investment at End of Year, including the name and EIN of the master trust Currently, there is not a column for “current value of investments” in the Supplemental Schedule of Assets Held for Investment at End of Year. This information is currently required on the Form 5500 and enables users of the schedule to reconcile the amount reported on the schedule to the total fair value of investments in the plan’s financial statements.
Line 4i – Schedules of Assets Held for Investment at End of Year	The Proposal currently requires structuring and standardization of the schedules noted at left. This structuring and standardization will likely require investment custodians/trustees to reconfigure their current reporting platforms. If the investment custodians/trustees are unable to provide the required structuring and standardization, plan administrators will be forced to retype

<table>
<tr><th>Reference</th><th>Comments and Recommendations</th></tr>
<tr><td>Line 4j Schedule of Reportable Transactions

Line 4a Schedule of Delinquent Contributions</td><td>significant volumes of data. Both of these scenarios will result in significant additional effort and cost.

Please see additional considerations related to additional cost and burden related to schedules required to be included in Form 5500 software included in the cover letter.</td></tr>
<tr><td>Schedule of Assets Held for Investment at End of Year

Line 4i(1)(a) – Assets Held Directly by the plan

Line 4i(1)(b) – Investment in Master Trust

Line 4i(1)(c) – Investments in PSAs and CCTs

Line 4i(1)(d) – Investments in 103-12 Investment Entities</td><td>Overall, the Proposal's regulations related to the Schedule of Assets Held for Investment at End of Year would create difficulties for investment custodians and trustees to provide the plan level investment information. Due to many Form 5500 preparers not generally being investment experts, it may be difficult for the preparers and plan administrators to ascertain the correctness of the data. Additionally, since the auditor is required to opine on the supplemental schedules, the information will be subjected to audit procedures.

Specifically, the following additional requirements could result in significant effort and cost to accumulate, and may cause significant additional audit time and/or prevent the IQPA from reporting on the supplemental schedules:

• Separate schedules of assets based on whether the plan or reporting DFE held the investment directly, through a master trust, CCT/PSA or 103-12.

• Consistent with the comments made by the AICPA Employee Benefit Plan Audit Quality Center Executive Committee, the AICPA Employee Benefit Plan Expert Panel, and the AICPA Employee Benefit Plan Tax Technical Resource Panel, we encourage the Agencies to carefully consider the need for each of the additional reporting and disclosure requirements, and to evaluate whether the additional burden on plans to provide the information is justified by the benefits it provides to the Agencies, participants and beneficiaries, and policy makers.

For all four schedules pertaining to line 4i

• Column (iv) - Requirement that the filer report investment identifiers such as CUSIP, LEI, etc. Given that various identifiers can be utilized, it not clear that this additional information would be beneficial from a data mining standpoint.

• Filers will be required to check a box to indicate whether the asset is hard to value. As proposed, any investment that is not listed on any national exchanges or over-the-counter markets, or for which quoted market prices are not available from sources such as financial publications, the exchanges, or the National Association of Securities Dealers Automated Quotations System (NASDAQ), would be identified as "hard to value." As such, numerous investments, including bank collective trusts, government and corporate bonds, and certificates of deposit will be indicated as "hard to value," which could be misleading to users of the schedule.</td></tr>
</table>

Reference	Comments and Recommendations
	Line 4i(1)(c) – Investments in PSAs and CCTs • If the investment is held through a DFE, the filer is required to list each DFE as an investment and enter for each DFE the name, EIN and PN used by the DFE (previously this information was on schedule D but not included as part of the audit report). • If the investment is not filing as a DFE, the investing plan would have to provide the name of the issuer, borrower, lessor, or similar party of each individual asset in the CCT or PSA in element c(iv) and break out the plan's proportionate interest in each asset (held by the CCT or PSA). o Related to the underlying investments, the Form 5500 preparer for the plan would likely not have all the information related to the Non-DFE filing CCT/PSA to complete the form. Line 4i(1)(d) – Investments in 103-12 Investment Entities • The investing plan would have to provide the name of the issuer, borrower, lessor, or similar party of each individual asset in the CCT or PSA in element c(iv) and break out the plan's proportionate interest in each asset (held by the 103-12IE) Requesting the line item on Schedule H (in each schedule) seems unnecessary (column (vi)). For all schedule pertaining to line 4i – The examples of the schedule do not include a column for "current value of investments." This information is currently required on the Form 5500 and enables users of the financial statements to reconcile the amount reported on the schedule(s) to the total fair value of investments in the plan's financial statements. Specific to Line 4i(1)(b) – Investment in Master Trust Concerns: 1. Duplicative reporting (at plan and master trust level) 2. For plan sponsors with multiple plans in a master trust, the cost provides diminishing value for each plan 3. Removes any reporting relief for large plans that comingle assets in a master trust Suggestions: Remove the schedule of assets held for investment at end of year at the plan level requirement as the plan's financial statements will provide necessary information at a high level and the DOL's desired data mining capabilities can be done at the master trust level (and cover more plans more efficiently)

<table>
<tr><th>Reference</th><th>Comments and Recommendations</th></tr>
<tr><td></td><td>Specific to Line 4i(1)(c) – Investments in PSAs and CCTs

Concerns:
1. Common collective trusts/Pooled separate accounts can have a significant number of investments and to show the plan's proportionate share could have many investments that round to zero.

Suggestions:
1. Rather than create this additional burden on plan sponsors, the DOL should consider requiring common collective trusts/pooled separate accounts to be a DFE
2. For plans invested in non-DFE filing common collective trusts and/or pooled separate accounts, add a question to Schedule H or D to have them list the dollar amount in total for each fund. If the DOL then has concerns about certain funds, they will know what plans invest in the particular fund.</td></tr>
<tr><td>Schedule H, Part IV Compliance Questions, 4(n) through 4(z)</td><td>These questions may be difficult for preparers to answer because preparers typically are not involved in investment decisions or the specific investment options offered in the plan, and may need to consult several sources to obtain the answers.

The plan sponsor/administrator signing the Form 5500 would also have difficulty determining the accuracy of the responses and likely have concern as to the requirement to sign the return under penalty of perjury.

Line 4z – obtaining the information related to uncashed checks, would at a minimum be cumbersome, due to the use of omnibus accounts at many banks, or could cause the requirement for many banks to change the way they do business and having to modify system (thereby adding costs). If benefit payments are written off of plan trust accounts, this would cause significant additional plan sponsor time and cost to reconcile the bank statements on a monthly basis.

Descriptions of processes and internal controls – These items appear to be outside the scope of an informational return. This information seems to be the type of information required for an audit or review by the Agencies. Similar to other information noted above where we indicated costs and burden exceed benefits, we believe it is not efficient to require plans to provide this level of information every year Upon audit or review by the Agencies, the information should be requested and provided.

Many internal controls are outsourced to service providers and (1) service providers change, and (2) service provider controls change. As a result, updating these narratives would be time consuming to plan sponsors, who generally are resource constrained.</td></tr>
</table>

Schedule J – Group Health Plan Information

Reference	Comments and Recommendations
General	***Questions 7 (rebates), 15 (stop loss insurance premium and claim limit) and 18 (benefit payment claims).*** We believe these questions address matters that are proprietary and are not proper information requests for a public document. Further, since only self-insured health plans will be required to complete questions 15 and 18 on Schedule J, it would cause their operations to be subject to public scrutiny, while this will not be the case for the operations of fully insured plans. Should the Agencies believe it is necessary to obtain the information on group health plans required to be reported on Schedule J, the Agencies should consider alternate methods of obtaining this information, such as on a stand-alone filing similar to Form 8955-SSA, *Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits*, or other methods to obtain this information in a non-public filing.
Part I, Group Health Plan Characteristics, Lines (6a – 6c).	***COBRA benefits.*** We recommend these questions be amended to clarify that COBRA only applies to employers with 20 or more employees.
Part I, Group Health Plan Characteristics, Lines 7a – 7b.	***Rebates received by the employer.*** We recommend these questions be amended to focus specifically on medical loss ratio (MLR) rebates, or separate questions should be crafted regarding the MLR rebates. Although these questions address rebates received by the employer, they are constructed to address MLR rebates that must be used in specific ways. Pharmacy rebates and other rebates are not governed by the same regulations as MLR rebates. Further, rebates routinely involve a significant lag time. For example, pharmacy rebates received during one plan year may be related to claims incurred during the previous plan year.
Part I, Group Health Plan Characteristics, Lines 8a – 8b.	***Premium payment delinquencies.*** Because the number of days delinquent is not a standard reporting measure provided by insurance carriers or service providers and will be difficult to gather, we recommend these questions be deleted. Further, most insurance carriers and service providers have a payment grace period of 30 days. In this instance, it is unclear if the delinquency should be measured from the due date or from the expiration of the grace period.
Part II, Service Provider and Stop Loss Insurance Information, Lines 9c, 10c, 11c, 12c, 13c, 14c and 15c.	***Service provider information.*** We recommend these questions be deleted because they require NAIC NPN, which is not readily available information to the plan sponsor.
Part II, Service Provider and Stop Loss Insurance Information, Line 15	***Stop loss policy.*** We believe the stop-loss questions as drafted in the Proposal are difficult to follow and should be revised. Additionally, attachment point and claim limit are generally considered synonymous in the stop-loss industry.
Part III, Financial Information, Line 16.	***Financial information.*** We recommend this line item be deleted. The information requested will be very difficult to compile since employer and employee contributions are not typically housed in the same database. Unless the employer has an integrated HRIS/payroll system, compiling this information will be labor intensive.

Reference	Comments and Recommendations
Part IV, Health Benefit Claims Processing and Payment	***Health claims processing and payment.*** We recommend this part be deleted. Most employers do not serve as plan administrator and therefore do not have access to the data required to complete Schedule J, Part IV. In fact, many employers pay a fee to service providers to make final claims determinations to eliminate employer bias and ensure compliance with HIPAA. As such, employers are unlikely to have this data.
Part V, Compliance Information, Line 29.	We believe this question should be deleted as Michelle's Law deals with student health coverage. The ACA requirement to cover children up to age 26 eliminates student status as a requirement for eligibility.