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Submitted Electronically to e-ORI@dol.gov

Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue NW
Room N-5655
Washington, DC 20210

Re: RIN 1210-AB63 – Proposed Revision of Annual Information Return/Reports and Proposed Rule Regarding Annual Reporting and Disclosure

Greetings:

On behalf of the American Council of Life Insurers ("ACLI")[1], we offer comments on the Department of Labor (the "DOL"), the Internal Revenue Service ("IRS") and the Pension Benefit Guaranty Corporation's (collectively, the "Agencies") Form 5500 Annual Return/Report Notice of Proposed Forms Revision[2] ("NPFR") and the DOL's proposed amendments to regulations relating to annual reporting requirements under Title I of the ERISA[3] (together, the "Proposal"). ACLI member companies provide insurance contracts and other investment products and services to all types of employee benefit plans subject to ERISA's reporting and disclosure requirements - including both defined benefit and defined contribution plans. The burden associated with providing data and information to complete the Form 5500 and associated schedules rests primarily with plan service providers, and, accordingly, ACLI member companies play a significant and essential role assisting plan sponsors in completing the Form 5500 and applicable schedules.

The changes proposed by the Agencies are perhaps the most significant revisions to the Form 5500 and associated schedules since their creation. Indeed, the Agencies state in the preamble that

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[1] ACLI is a Washington, D.C.-based trade association with approximately 280 member companies operating in the United States and abroad. ACLI advocates in state, federal, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing 95 percent of industry assets.
[2] 81 Fed. Reg. 47534 (July 21, 2016).
[3] 81 Fed. Reg. 47496 (July 21, 2016).

the financial statements contained in current Schedule H and Schedule I are based on data elements that have remained largely unchanged since the Form 5500 was established in 1975. Further, as noted by the Agencies, the last two major form revisions cycles were focused on moving filers to new technologies for filing the Form's data, and therefore, the Agencies "generally deferred proposing major form changes that would add *substantial* new burdens" (*emphasis added*). Clearly, this Proposal does "add substantial new burdens."

The breadth and substance of the proposed revisions require extensive and comprehensive review. In reviewing the impact of the proposed revisions, insurers, as service providers, must evaluate current reporting and disclosure systems and determine the changes that would be required to comply with the proposed revisions. Further, the Agencies invite comments and suggestions as to other alternative solutions and whether and how such alternatives would be more, or less, beneficial compared to the proposed changes to the forms, schedule and instructions, considering the cost to plans, participants and beneficiaries, fiduciaries, plan service provides, and others. Although we are appreciative of the 60-day comment period extension provided by the Agencies, we continue to believe that the relatively short comment period provided by the Agencies limits stakeholder ability to provide comprehensive and detailed comments. Accordingly, the comments we offer here are somewhat limited.

We are concerned that the Agencies did not solicit stakeholder input prior to issuing the Proposal. At a minimum, it would have been helpful if the Agencies had consulted with those impacted by the Proposal – both plan sponsors and service providers – to discuss the proposed changes and solicit information regarding the real-world impact of such changes as part of the draft development process. For example, the Agencies could have accomplished this through a Request for Information, with targeted questions. Given the significant and far-reaching impact of the Proposal, we respectfully recommend that the Agencies treat this Proposal as an Advance Notice of Proposed Rulemaking ("ANPRM"), carefully consider and evaluate stakeholder comments, meet with stakeholders to discuss issues raised, and subsequently re-issue a new proposal for stakeholder evaluation and comment. If the Agencies decide not to take this step, then we urge the Agencies to hold a public hearing with an additional opportunity for written comments.

Our comments below are in four parts. Part I includes our general comments and observations. Part II includes our comments on the proposed revision to the regulations implementing the limited-scope audit exemption. Part III includes our comments on the proposed revisions to Schedules A, C, D, H and R. Part IV includes comments on discrepancies we have identified so far with respect to the Forms' instructions.

I. General Comments

<u>Effective Date</u>

The Agencies state that the revisions, which are being proposed in conjunction with a recompete of the ERISA Filing and Acceptance System (EFAST2) contract, if adopted, would generally apply for plan years beginning after January 1, 2019. Given the significant operational changes that will be required as a result of the proposed form revisions, this effective date cannot be met. From an operational standpoint, plan sponsors and service providers will need at least 3 years from the release of the revised forms and rules to allow time for plan sponsors, software industry vendors, and plan recordkeepers to update their current systems and processes. The activities required include the education of plan sponsors and fiduciaries, sponsor/vendor process review and development, building and testing data system revisions, and staff training development and implementation. Plan sponsors, software vendors and recordkeepers will need to have this work completed by December 31 of the year immediately preceding the first plan year to which the revised Form 5500 is applicable. If the Agencies intend to issue the final revised Forms and rules in 2017, the changes should not be effective any earlier than for plan years beginning on or after January 1, 2021.

Transition Issues

Reporting for the first plan year during which the new forms are applicable will require additional work and guidance. For example, it appears that plan sponsors would be required to recreate the beginning balances for all of the new lines on the Schedule H and Form 5500 SF. Readjusting beginning balances will also increase auditing costs as auditors will be required to review and verify the new beginning balance(s). Also, plans sponsors and service providers will be faced with increased costs associated with required updates to their systems capabilities. At a minimum, we request the Agencies provide a mapping document for the first plan year for which the revised forms are applicable. Further, we recommend that the Agencies consult with the American Institute of CPAs regarding the accounting implications of the Proposal, particularly with respect to transition issues. For example, would the proposed revisions result in the need for a reconciliation statement?

Plans Sponsor and Service Provider Costs and Burdens

The Agencies indicate in the proposed changes that "The burden increase for small pension plans that are eligible to file the form 5500 SF is much less than it is for those pension plans filing the Form 5500 Annual Return/Report that have complex portfolios that include alternative and hard to value assets or are employee stock ownership plans, which plans are of greater concern with respect to retirement security of their participant plans." We disagree. The significant increase in questions throughout the forms increases the burden for all plans and service providers. For example, the compliance questions on Schedule H and Form 5500 SF have been expanded by 10 while the Schedule R has had significantly more added including time consuming participation questions.

The proposed form changes will increase costs and make the filing process more burdensome for both service providers and plan sponsors. For example:

- Recordkeepers and Service Providers will need to build new systems and/or develop new programming. Plan sponsors costs will increase in several ways, including:
    - Increased cost for additional staff or time necessary to gather and maintain the data required for the 2019 forms.
    - Increased audit costs due to the additional audit requirements.
- The filing process will become much more burdensome for plan sponsor as:
    - They will be required to provide more data prior to the creation of the filing. Collecting additional data by those creating the form 5500 will be required to answer all of the questions.
    - The time required to complete the filing will increase, due to the increased number of attachments and questions. Further, additional signatures requested from Trustees and fiduciaries will add time and complexity.
- The filing process will be more burdensome for plan service providers as a result of:
    - Data being collected from multiple sources.
    - System updates and increased communication between software vendors and plan sponsors.

For example, in the case of a full-service recordkeeper, whose responsibilities include preparation of the Form 5500 and schedules for forwarding to the plan administrator for review and filing, completion of the newly proposed Schedule H will require the recordkeeper to obtain the following information from the plan sponsor to complete the following new compliance questions:

- Line 4o - plan investment option chart.
- Line 4p - number and type of designated investment alternatives available under the plan.
- Line 4q - the plan's offering of a designative investment manager.
- Line 4s - whether the plan incurred unrelated business taxable income.
- Line 4u - whether the sponsoring employer paid any administrative expenses not reported on Schedule H, Line 2i.
- Line 4v - whether any person disqualified under ERISA Section 411 served, or was permitted to serve, the plan in any capacity.
- Line 4w - whether the plan has leveraged investments.
- Line 4x – whether the plan sponsor or its affiliates provided any services to the plan in exchange for direct or indirect compensation.

Moreover, the plan sponsor would likely need to acquire some of this information from one or more of the assets managers it has retained for its plan.

It appears that, from a practical standpoint, the Agencies' additions in the aggregate have turned an informational report/return into an annual plan self-audit. Given the extraordinary amount of additional work, systems updates, and training that will be required by plan sponsors and service providers to complete the Form 5500 and Schedules, as proposed, we question whether the value of inclusion of the volume of additional information sought is justified by the additional costs and burden the proposed revisions will have on plan sponsors and service providers. In this regard, we note that the Agencies' last major revision to the Form 5500, proposed in 2006, and finalized in 2007[4], and effective for the 2009 form series, estimated the total annual burden cost to be $333 million.[5] The Proposal estimates the total annualized costs to be $667.7 million[6], <u>more than doubling the annual cost burden associated with completion of the Form 5500 and Schedules</u>. We expect the actual cost burden of the Proposal to be even greater.

II. <u>Proposed Regulatory Changes</u>

DOL proposes several changes to 29 C.F.R. 2520.103-8, the regulations implementing the limited-scope audit exemption described in ERISA section 103(a)(3)(c). DOL proposes to amend the current regulation to require that the limited scope audit certification:

- Appear on a separate document from the list of plan assets covered by the certification;
- Identify the banks or insurance companies holding those plan assets that are subject to the certification;
- Describe the manner in which the bank or insurance company is holding the assets subject to the certification; and
- State whether the bank or insurance company is providing current value information regarding the assets covered by the certification, and, if so, state that the assets for which current value is being certified are separately identified in the list of assets covered by the certification.

Additionally, if current value is not being certified for all of the assets covered by the certification, the Proposal would require that the certification include a caution that it is not certifying current asset

[4] 72 Fed. Reg. 64731 (Nov. 16, 2007).
[5] 72 Fed. Reg.at 64755.
[6] *See* 81 Fed. Reg. at 46568.

value and the asset values provided by the bank or insurance company may not be suitable for use in satisfying the plan's obligation to report current value information on the Form 5500.

Finally, if the certification is being providing by an agent on behalf of the bank or insurance company, the Proposal would require that the certification must include a statement certifying that the person providing the certification is an authorized agent acting on behalf of the bank or insurance company and affirming that the bank or insurance company is taking responsibility for the accuracy and completeness of the certification and the underlying records used as a basis for the information being certified.

We have a number of significant concerns regarding certain of these proposed changes generally, but in particular, the way in which they would appear to apply to insurance company contracts and separate accounts established and maintained by insurance companies in connection with those contracts.

The current limited scope audit regulation provides a balanced approach that in turn enables auditors to engage, and plan sponsors to satisfy, their audit requirements under ERISA while appropriately accommodating the characteristics of insurance contracts issued to ERISA plans. When a group annuity contract or other insurance contract is issued to a plan sponsor or plan trust, the insurance contract is the plan asset, rather than the specific investment holdings in which its reserves are invested. As a matter of insurance law, those underlying asset positions are owned by the insurance carrier, not the plan. This is true both of general account contracts, where a contract holder has no divisible interest in any particular investment holding, and in individually managed separate accounts, where all of the asset holdings in a separate account are required to be used for the benefit of a particular plan. Investments in both general and separate accounts are regulated by state insurance departments, as are the contracts under which the contract reserves are held. A limited scope audit is consistent with the regulation of insurance carriers and contracts and with state insurance law.

The proposed additional audit certification rules requiring a caution declaration where "current value" is not being provided by the asset holder are troubling and do not provide any additional value either to plan sponsors or participants. The Department has not clearly defined what is considered "current value" and such ambiguity would lead to potential misreporting of the required declaration for regulated entities that report using contract value.

The law supports plan sponsor reliance on limited scope audits. The entities that are allowed to certify value are highly regulated by State and/or Federal agencies and are themselves subject to full-scope audit and examination. Qualified plan auditors should be able to continue to rely on the current certification protocols under the limited scope audit exception without being required to make misleading declarations and cautions that the certification they are relying on is somehow unsuitable, notwithstanding their compliance and consistency with FASB public reporting requirements. The likely outcome of this new requirement will be for plans to incur increased auditing costs that in most cases would not add value, would be passed on to plans and could serve to unfairly disadvantage insurance company providers.

It appears that the goal of this new requirement is instead targeted to the valuation of "hard-to-value" investments whose value may not readily ascertainable, such as certain "Level 3" assets in current employee benefit plan reporting. It should be noted that neither limited nor full scope audits are designed to determine the fair value of these investments. Under a full scope audit, the valuation methodologies for determining asset values are what is tested, not the actual value of the investments themselves. In a limited scope audit, valuation methods are audited by the State and Federal agencies regulating the bank, insurance company or similar institution. The new certification rules appear to place a greater value on private sector auditing methodology over that of government regulatory agencies. Alternately, if it is the Department's intent to target arrangements where one entity currently certifies assets not within its control, we would suggest a more narrowly targeted approach.

We recommend that DOL provide guidance on the following issues with respect to its proposed changes to 29 C.F.R. 2520.103-8:

- How will DOL define the term "plan assets" for purposes of the proposed revision, in the context of an annuity contract, which is required to invest plan assets in the general account or separate accounts? There appears to be some inconsistencies between the Proposal's assumption and state law related to "ownership" of the physical securities held in an insurance company separate account. Our understanding of the plan asset is it is the insurance companies promise to provide the value held in the general or separate account as defined in the annuity contract; it is not the individual securities held within the general or separate account itself. For a separate account, the value of the plan asset would be the NAV of the separate account multiplied by the number of units of participation allocated to the plan. For the general account, it would be the contract value computed according to the terms of the annuity contract.

- What is meant by "manner in which the company is holding the assets?" We recommend that DOL provide specific examples as it relates to when plan assets are held in the form of an annuity contract. For example, a limited scope auditor should ascertain that the sponsor holds a fully executed insurance contract, and should obtain appropriate documentation from the regulated entity sufficient to support the value provided, such as a certified statement for a general account product or an asset listing and participation statement for a separate account contract.

- What is the definition of "current value"? For separate accounts, insurance companies tend to use the term "fair value", and for the general account, insurance companies use the term "contract value." We recommend that the DOL clarify that the term "current value" means, consistent with public financial reporting definitions, "*the value at which an investment can be redeemed or the amount a plan participant would receive at plan year end if they were to withdraw or transfer funds within the plan prior to maturity for an event other than death, disability, termination or retirement.*"

III. <u>Proposed Forms Revisions</u>

<u>Schedule A</u>

We recommend that the Agencies consider only requiring the Schedule A for Health and Welfare contracts. For Pension contracts, (DA's, IPG's and GICs) everything required to be provided on the Schedule A is already reported on, or can easily be reported on other schedules. For example:

- The Form 5500, Line 10 indicates Insurance Contracts.
- The Schedule of Assets reports the Name of Insurance Carrier, EIN of Insurance Carrier, NAIC Code.
- The Schedule H and Form 5500 SF report the specific asset information.
- The Schedule C and 5500 SF can be updated to report all commissions.

Further, Schedule A, Line 2 asks if the policy or contract was issued by an insurance contract issued by an insurance company that is wholly owned by the plan or the plan sponsor. No instructions were provided for line 2. We recommend that the Agencies provide instructions and examples.

The Agencies propose to add lines to Schedule A for reporting whether any premium payments were overdue and, if so, the amount delinquent, and whether there was a policy or contract reported on the Schedule that was issued by an insurance company wholly owned by the plan or the plan sponsor. This will likely involve a manual procedure be undertaken by the insurance company, and raises the following questions requiring clarification:

- Would insurance companies be expected to supply the customer with "yes" there is due & unpaid and the amount is "$XX"?
- How would any variance in due and unpaid amounts that may be been paid between the time the insurance company prepares the information and the time the plan files be addressed?
- If payments for overdue premiums are made between the time the insurance company prepares the Schedule and the time the Plan files, is the insurance company required to provide the plan with amended Schedule? What if such amounts are paid over time?
- Would overdue premium payments due be reported in a current ERISA reporting period or would revisions be required for a prior year?
- Would a premium be considered overdue if it is within a policy's grace period?
- How would the insurance company calculate the amount delinquent in a self-administered, summary billed arrangement (common with large employers) where employers report volume of coverage with the associated premium calculation? Would the insurance carrier have to make assumptions in order to calculate overdue premium payment(s)?

Finally, we recommend that commissions and fees be moved to the Schedule C so all commissions and fees can be easily found within one form.

Schedule C

According to the Agencies, the proposed revisions to Schedule C attempt to better harmonize reporting on the Schedule C with the disclosure requirements of DOL's service provider disclosure regulation at 29 CFR 550.408b-2. While we support such harmonization, trying to map a 408b-2 disclosure to the Schedule C suggests they have not yet been effectively harmonized, and will prove to be quite challenging. Accordingly, we request the Agencies provide an example of how the Schedule C will be mapped to the 408b-2 disclosure, or alternatively consider whether the 408b-2 disclosure itself could be fully or partially substituted for this Schedule.

The proposed revision to Schedule C will result in inconsistencies between the Schedule C and the 408b-2 disclosure that will likely cause confusion with plan sponsors and fiduciaries. For example, while 408(b)(2) allows indirect compensation to be expressed as an amount, formula, percentage of the covered plan's assets, or a per capita charge for each participant or beneficiary, the proposed change to Schedule C would require an amount or estimated amount. We are unclear as to the Agencies' basis for this inconsistency in reporting. This requirement will be particularly difficult and challenging for those plan sponsors who received fully compliance 408(b)(2) disclosures with formulaic or percentage expressions of indirect compensation, and are required, for Schedule C purposes, to convert such formulas or percentages to specific or estimated dollar amounts.

We have the following additional comments with respect to the proposed revisions to Schedule C:

- New line 1(d) would require the plan sponsor/fiduciary to check the box if the service provider identified in Line 1a was a fiduciary within the meaning of section 3(21) of ERISA during the plan year. Recordkeepers will rely on the plan sponsor/administrator to answer this question. It is likely that the day-to-day contact at the plan sponsor/administrator's office may not know how to answer this question and, accordingly, will mark 'no'. Consequently, some service providers will be misidentified as fiduciaries, and some fiduciaries will be misidentified as non-fiduciaries.

- New line 4(a) would require the plan sponsor/administrator to disclose whether the service arrangement involved any related party compensation. We recommend that the Agencies provide more guidance on the term "related party compensation" including examples. Additionally, we note that the individual preparing the Schedule C may not be aware of all the "related party compensation" with respect to the plan.

Schedule D

The Agencies propose to add a new line 1(d) requiring reporting of the investing plan's value in the DFE as of end of the DFE reporting year. We question the necessity of this revision. The investing plan will be reporting the amount on their Schedule of Assets Held and the values will not coincide with the amount showing for the plan on the DFE filing. Investments trading at an omnibus level may not have this information by plan. Further complexities may occur when a plan's plan year is different from the PSA or CCT's DFE year.

Schedule H

The New Proposed Definition of "Hard to Value Assets"

The proposed definition of "hard to value assets," for purposes of Schedule H, Part IV, Line 4(i), would provide that a common/collective trust (CCT) or pooled separate account (PSA) that are invested primarily in hard-to-value assets must themselves be identified as hard-to-value assets, regardless of whether they are valued at least annually. We disagree. Mutual funds invest in similar assets, including the "hard-to-value" underlying assets mentioned in the proposed guidance, yet they are not considered "hard to value" assets. While CCTs or PSAs may not be listed on an exchange, this does not mean the assets are valued any differently or have more risk than a mutual fund listed on an exchange. The Agencies have provided no explanation or basis for this disparate treatment.

While we acknowledge that many plans are holding a wider range of assets that they have historically held, that wide range is outside the CCT and PSA structure. CCTs and PSAs continue to be regulated by state or federal agencies and continue to be subject to governmental audit and regulation. Banks, trusts and insurance carriers, continue to hold these assets and provide independent valuation of those assets. The valuation of CCTs and PSAs are consistent with a mutual fund, and in many cases, use the same or similar custodian and valuation agents as mutual funds. Simply not being listed on a national exchange does not in and of itself make it a hard-to-value asset.

In addition, plans do not own the underlying investments in CCTs or PSAs. The plan owns units of participation in the overall CCT or PSA. Under FASB Accounting Standards Codification TM (ASC) (Topic 820), CCTs and PSAs are able to use the NAV per share as practical expedient to estimate the fair value of a CCT or PSA if the following criteria is met:

- The investee has calculated NAV consistent with ASC 946, which contains guidance on how investment companies calculate NAV.
- The NAV has been calculated as of the investor's measurement date (e.g., date of the financial statements); and
- It is not probable at the measurement date that the reporting entity redeem the investment at an amount different from NAV.

We recommend the Agencies adopt this approach, and allow for the NAV to be used as a practical expedient to estimate the fair value of a CCT or PSA, if the above criteria are met, rather than labeling them as “hard to value assets”. This would further insure consistency with the FASB treatment of “hard to value assets” used in completing a plan’s financial statements.

This proposed definitional change raises a further complication, with respect to the Form 5500-SF. In order to be eligible to file a Form 5500-SF, a plan cannot invest in hard-to-value assets. This will significantly increase the filing burdens for plans that would, but for the change in the definition, be able to file the Form 5500-SF. Although this change will likely increase the number of plans required to file the Form 5500 instead of the Form 5500-SF, it does not appear the Agencies considered this additional cost and burden in its evaluation of the costs and respondent burdens associated with the Proposal.

Participant-Directed Brokerage Accounts

The Agencies propose to require additional Schedule H asset reporting relating to participant-directed brokerage accounts, including the types of investments held in such accounts. These additional reporting requirements will result in substantial additional plan sponsor burdens. Currently, plan sponsors are not responsible for the monitoring of participant-directed brokerage window investments that are not designated investment alternatives. Service providers assisting plan sponsors in the completion of the Form 5500 will generally have no information on participant-directed brokerage account investments, and systems must be built to obtain such information from, what will likely be, multiple brokers. These requirements will increase costs and burdens to plan sponsors and participants without any clear corresponding benefit. Among other items, it will be very costly to obtain the participant-directed brokerage account detail contemplated by the Proposal. Designing systems required to identify, track, and report this information will involve an immense and costly effort dependent on the participant-directed brokerage account provider’s cooperation. In August 2014, the DOL issued a Request for Information regarding such participant-directed brokerage accounts and currently includes a rulemaking project regarding the adoption of standards for such accounts as a long-term project in its regulatory agenda. Accordingly, and given that it is unclear why the Agencies seek such information, or whether the burden and cost associated with doing so is justified, we recommend that the Agencies await any final DOL rulemaking standards prior to amending the Schedule H to require additional participant-directed brokerage window reporting.

Trustee/Custodian Signature Requirement

The Proposal would require a trustee/custodian signature to be affixed, under penalty of perjury, on the Schedule H. We fail to understand the basis for this change, as the trustee/custodian is already certifying the assets – and, in many cases, the entity preparing the filing is not the trustee/custodian. Further, requiring a trustee/custodian signature appears to shift the responsibility for ensuring the accuracy and content of the filing from the plan administrator – the entity that has such responsibility - to a plan trustee/custodian. The IRS eliminated the need to provide a trustee/custodian signature when it eliminated the required filing of Schedule P, through IRS 2007-63. We question the basis for this change.

Additional Comments on Proposed Revisions to Schedule H

We have the following additional comments on the Agencies’ proposed revisions to Schedule H:

- The Agencies did not include updates for the earnings on Line 2 in relation to the new investment breakouts to Line 1. We request the Agencies update the instructions to map the earnings on Line 2 to Line 1, or, line 2 needs to be expanded to match line 1. Without a mapping document, plans may interpret the interaction between these provisions differently. For example, there is a line for earnings on “Loans – other than participant” but there is no longer an asset line for “Loans – other than participant”. And would the plan sponsor place all the earnings on Exchange Traded Notes and Asset Backed Securities in 2c(a)(F) “Other”?

- The Agencies proposed to expand the Schedule H, Line 2 Expense information. The expansion of the administrative breakouts will require extensive system changes for recordkeepers and service providers. The changes will require additional information collection from the plan sponsor for expenses paid from plan assets as well as ERISA Budget accounts.   This level of breakdown is a duplication because the detail is already reported on the Schedule C.

- With respect to Schedule H Line 7b/7c Plan Transfer information – the Proposal would require that the Plan Name, as listed on the Form 5500, EIN, PN, date of transfer, and type of transfer for transfers in and out of the plan be reported. This additional report places an additional burden on both plan sponsors and service providers. Processes will need to be updated to request the information and the data will also need to be stored. Further, Participants seeking information may not know the plan name on the Form 5500, as, participants are not familiar with the EFAST website system. The plan sponsor will likely not verify the plan name when providing the data to the recordkeeper causing the potential for incorrect data being submitted.

- The Agencies proposed to revise the Schedule of Assets to a structured format and add columns for:

    - Investment Name,
    - Investment is considered ‘hard to value’,
    - EIN/CUSIP/CIK/LEI/NAIC or other registration numbers,
    - Description of Investment, including applicable share class, maturity date, rate of interest, par or maturity value and whether the asset/investment is subject to surrender charge:

  We recommend the sections have all columns with consistent information up front and have all columns placed at the end. For example, “Check if asset is hard-to-value asset” is (iii) for Element (a), (iv) for Element (b) and (v) for Element (c). This should be in the same position for all 3 Elements. Additionally, there is also no place to enter the current value in each investment.

  Extensive changes will be needed to accommodate these proposed changes. This will be an additional burden for both plan sponsors and service providers as much of the data being requested is not available on websites. As such, recordkeepers and TPA providers will need to request more information from their plans sponsors.

- The Agencies proposed to revise Schedule H, Part I, Line 1b(11) to require reporting on Derivatives & line 1b(14)(F) to require reporting on Investments that could result in a loss in excess of the account balance of the participant or beneficiary who directed the transaction, including derivatives. We recommend that the Agencies provide more direction as the definition of these items. Will these assets that are held for trading be valued at fair value? Additionally, building systems to track and identify the positions held in these contracts and those that are subject to a loss in excess of the account balance of the participant/beneficiary will be very costly and time consuming for purposes of completing 1b(14)(F). Wouldn’t the amount entered into derivative contracts on 1b(11)) and the unrealized appreciation on 2c(5)(D) be sufficient? Service providers will also not have access to over-the-counter derivative transactions that are privately negotiated, and this will create further costs in the collection of this information. Derivatives are complex in nature and it will be difficult for some preparers and plan sponsors to make these determinations, which may lead to frequent incorrect reporting, particularly on 1b(14)(F).

- New Part II, Line 2(e)(1)(B) would require reporting of all hardship distributions made from a 401(k) plan. Compliance with this reporting requirement will place additional cost burdens on plan sponsors and service providers, and we are unclear as to the corresponding benefit with inclusion of this information on the Schedule H.

- New Part IV, Line 4(o) would require attachment of the investment option comparative chart or charts used to satisfy a plan's 404a-5 disclosure requirement. We question the justification for inclusion of an attachment, given (1) it will create additional burdens for the plan sponsor and (2) it will not be in a data minable format. Further, we are concerned that some information included in current disclosures may be proprietary and would potentially be available to the general public. We recommend that, similar to other compliance questions (since this is a compliance question), the Agencies simply ask, in a yes or no format, whether the plan sponsor met its disclosure obligations under 404a-5.

- New Part IV, Line 4p would require a plan provide the number of designated investment alternatives (DIAs) available under the plan and indicate the number of DIAs that are index funds. This question duplicates information already listed on the Schedule of Assets Held, and the end goal of adding a duplicative reporting requirement is not clear. The Agencies should eliminate this proposed additional reporting requirement.

- New Part IV, Line 4s would require reporting on unrelated business taxable income (UBTI). We question the value of requiring the reporting of this information on the Form 5500, as the IRS already obtains this information directly on the Form 990 filed by the plan sponsor.

- New Part IV, Line 4z would require reporting on individual account plan uncashed checks, including, the total number and value of such checks, the procedures followed by the plan to verify a participant or beneficiary's address prior to mailing a check, and the procedures followed by the plan to monitor uncashed checks, including steps to locate "missing" or "lost" participants. This additional reporting requirement, which will place additional cost burdens on plans and service providers, raises several questions:

    - Does this require reporting of the total historical number and value of uncashed checks, or only apply to uncashed checks during the plan year.
    - How would a plan account for checks issued but uncashed at the time of the Schedule's preparation, but cashed subsequently (prior to filing).
    - Many plans have their own procedures regarding the locating of "lost" or "missing" participants, while the plan's recordkeeper may also have such procedures in place. Whose procedures are to be disclosed?
    - Are escheated funds considered "uncashed" checks?

- New Part V, Question 6, would require disclosure of any of the plan's service providers, other than an accountant or actuary, for a "material failure" to meet the terms of a service arrangement, or failure to comply with Title I of ERISA, including the 408(b)(2) disclosure requirements. The Department should provide guidance on what constitutes "material failure" for purposes of this question. Further, given that it involves service providers, we recommend that it be moved from Schedule H to Schedule C.

Schedule R

There appear to be several discrepancies and issues requiring further clarification associated with Schedule R, New Part VI, *Nondiscrimination and Coverage*. For example:

- With respect to Lines 19(a) and 19(b) regarding nondiscrimination requirements, does the IRS intend for these line items to not be completed until after such nondiscrimination testing, if applicable, is completed for the plan year? It is important to note that such items can be answered according to the provisions in the plan document, and therefore could be completed on Schedule R prior to conducting the actual nondiscrimination testing. Or is the intent that these items, until applicable testing is completed, shall not be completed and consequently delay the completion and filing of the form?

- With respect to Line 19a, the proposed line item wording and line item instructions don't align with each other. The line item recap states that Line 19a will read "If this is a section 401(k) plan, check the correct box to indicate how the plan is intended to satisfy nondiscrimination requirements for employee deferrals and employer match contributions (as applicable) under section 401(k)(3) and 401(m)(2). Such boxes are labeled [ ]Design-based safe harbor method [ ]ADP/ACP test [ ]Both.

  However, the instructions say to check "Yes" if the plan includes a cash or deferred arrangement (CODA). This would imply that the Line Item 19a is a Yes/No question such as "Does this plan have cash or deferred arrangement (CODA)?

- With respect to Line 19b, the proposed line item wording and line item instructions don't allign with each other. The line item Recap states that Line 19b will read "If the ADP test is used, did the plan perform ADP testing for the plan year using the "current year testing method" for non-highly compensated employees? Answer choices are: [ ] Yes or [ ] No.

  However, the instructions say "If Line 19a is checked "Yes", check the applicable method used to satisfy the nondiscrimination requirements of Code section 401(k), with the applicable responses being a choice of "current year ADP test", "prior year ADP test", and "N/A".

- While proposed Line item 19a wording references nondiscrimination requirements for both employee deferrals and employer matching contributions, and both the ADP and ACP test, proposed Line item 19b and corresponding instructions only reference the ADP test.

- Line 20(a) requires that the plan "Check the box to indicate the method used by the plan to satisfy the coverage requirements under section 410(b)." Is the intent for this item to be answered on the basis of the plan year that corresponds to the Form 5500 reporting period, or testing that was performed during the reporting period? For example, assuming the Form 5500 Reporting Period to be Plan Year beginning 01/01/2019 and ending 12/31/2019. Within these dates, coverage testing was completed for the Plan Year beginning 01/01/2018 and ending 12/31/2018. In this example, would completion of the 2019 Schedule R Line Item 20(a) need to be delayed until coverage testing for Plan Year 2019 (01/01/2019 – 12/31/2019) is complete (sometime later in 2020)? Or may this item be completed on the basis of 2018 Coverage testing that was completed during the reporting period of 01/01/2019 – 12/31/2019?

- With respect to proposed Line 22(a) "Were employees participating in the plan eligible to receive employer contributions even if they did not make any elective deferrals?" Check [ ] Yes [ ] No.

How should this be answered if participants are eligible to receive, but no such contribution was funded by the employer (e.g. discretionary profit sharing contribution)? This item may conceivably not be answerable until the plan sponsor makes a decision to fund…which could be after the original filing deadline and delayed as late as 30 days prior to the 2-1/2 extended deadline.

- Proposed Line 23 requests additional information on employer matching contributions contingent on employee elective deferrals.

    - With respect to proposed, Line 23c, requiring reporting of the percentage, amount or other formula for the maximum employer matching contributions, we note that there may be more than one formula, for example there may be more than one formula for different classes of employees.

    - Proposed Line 23d, requiring reporting of the number of participants making sufficient elective deferrals to receive the maximum employer match, may prove difficult to answer. While a plan may have a stated formula, participants can change their deferral percentage throughout the year and data obtained as a result of this question may not be accurate.

- With respect to proposed Line 24b, regarding automatic escalation, the question appears confusing as it seems to be asking for the maximum percentage. Is it being asked as requesting the ceiling of the maximum escalation for a participant who has been in the plan since escalation was adopted - or for a participant who was recently hired, automatically enrolled but is not at the plan maximum yet?

- Proposed Line 25 seeks reporting of the number participants making catch up contributions. This data cannot be easily gathered, and will require recordkeepers to update their systems.

IV. Conflicting Instructional Information

Our review of the 2019 Form 5500 Introduction along with the Instructions for Appendix B – Form 5500 and Appendix C 5500-SF identified conflicting information that requires clarification, as follows:

- Form 5500-EZ vs Form 5500-SF. The Appendix B Instructions state one-participant plans and foreign plans can file Form 5500-EZ with IRS or the Form 5500-SF through EFAST2. Page 132 of the Introduction states a new electronic version of the Form 5500-EZ is proposed and the Form 5500-SF can no longer be used by these filers. Please advise if EZ filers can no longer use the 5500-SF. If this is the case, the instructions should be updated.

- Determination of large or small plan filer as it relates to the need for an accountant opinion. Page 62 of the Introduction summarizes how defined contribution pension plans would determine the need to file as a large plan and attach an IQPA report. This determination is based upon the number of participants with account balances or Line 7g(1) as of the beginning of the plan year. Conversely on page 335 of the Form 5500 Instructions and page 677 of the 5500-SF Instructions refer to ‘participants at the beginning of the plan year’.

  Based on the direction provided above, it appears that defined contribution plans would use 7g(1) to determine large versus small plan filing status while defined benefit plans would use line 6 to make this determination. If this is correct we request the Instructions be updated to better define the determination of large or small plan filer and the need for an accountant opinion.

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As discussed above, the Agencies' proposed revision to the Form 5500 and Schedules will significantly increase plan sponsor and service provider burden and cost. Indeed, by the Agencies' own estimates, the annualized cost to complete the Form and Schedules will double. Given the significant and far-reaching impact of the Proposal, we recommend that the Agencies treat it as an ANPRM, carefully consider and evaluate stakeholder comments, meet with stakeholders to discuss issues raised, and subsequently re-issue a new proposal for stakeholder evaluation and comment. If the Agencies decides not to take this step, then we urge the Agencies to hold a public hearing with an additional opportunity for written comments.

On behalf of the ACLI member companies, thank you for consideration of these comments. We welcome the opportunity to discuss these comments and engage in productive dialogue with the Agencies on this Proposal.

Respectfully,

James H. Szostek

Howard M. Bard