

August 1, 2016

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**Re: OMB Control No: 1545-1610; Annual Return/Report of Employee Benefit Plan
(Form 5500 Series)**

The American Retirement Association (“ARA”) is writing to express its concerns about certain statements made by the Internal Revenue Service (“IRS”) in its July 7, 2016 submission to your office regarding the 2016 Form 5500 series, including the proposed Form 5500-SUP. As noted in the ICR Documents section of the submission, the ARA submitted written comments to the IRS on May 31, 2016¹, regarding some of its concerns about the agency’s approach to the additional compliance data collection required by the proposal.

The ARA is a national organization of more than 20,000 members who provide consulting and administrative services to American workers, savers, and sponsors of retirement plans and IRAs. ARA members are a diverse group of retirement plan professionals of all disciplines including financial advisors, consultants, administrators, actuaries, accountants, and attorneys. The ARA is the coordinating entity for its four underlying affiliate organizations, the American Society of Pension Professionals and Actuaries (“ASPPA”), the National Association of Plan Advisors (“NAPA”), the National Tax-deferred Savings Association (“NTSA”) and the ASPPA College of Pension Actuaries (“ACOPA”). ARA members are diverse but united in a common dedication to America’s private retirement system.

The ARA/ASPPA letter of June 8, 2015 to OMB² described the challenges and costs to accumulate the proposed compliance data. Nothing has changed since that letter; in fact, the challenge is exacerbated by the delay in submitting this proposal to OMB (July 2016 vs May 2015) and the failure on the part of the IRS, to date, to formally publish any draft instructions for the 2016 revisions to the compliance questions.

In its Supporting Statement, the IRS states that 2016 questions are almost identical to those proposed in 2015 but that changes were made to the compliance questions proposed in 2015 in response to public comments. The ARA acknowledges the significant improvements made to the compliance

¹http://www.asppa.org/Portals/2/PDFs/GAC/Comment%20Letter/IRS_Compliance_Questions_Comment_Letter5.31.16.pdf

²<http://asppa-net.org/Portals/2/PDFs/GAC/Comment%20Letter/OMB6.8.15final.pdf>

items and appreciates the IRS's actions in this regard. However, the IRS's assertion that "...information for these new items need only be added to the annual information request issued by the Form 5500 preparer..." fails to recognize that the industry relies on highly efficient technology solutions rather than manual processes to provide cost effective services.

Many service providers have transitioned to an electronic information request, where that data automatically feeds into the software that prepares the Form 5500 series; therefore, the addition of any item to the information request requires technology and programming resources. The compliance questions are not simply additions to the existing annual data collection form. The information request and the response format must be designed so that it will properly populate the response in the Form 5500 software. These features cannot be designed and implemented in service provider systems until the form and its instructions are finalized.

Recordkeeping systems are the primary source for most data used for the preparation of the current Form 5500 series; however, the compliance data often resides in systems that may be distinct from the recordkeeping system or maintained by a different service provider. Coordination or integration of these systems, accumulation of information from other providers, and development of a mechanism to gather data that is not being tracked in a single database will be required in order to accurately provide the compliance data, whether the Form 5500 is compiled by the recordkeeper or some other third-party preparer.

Every compliance question being added to the Form 5500 series requires careful analysis to determine where or how to source the information for the appropriate response. While the underlying information may be available, unless there is sufficient time to budget for, plan, design and build data capture/integration for these new elements, someone must manually collect, interpret, and enter the data somewhere so that it can be maintained for future years. None of this structure currently exists and plan providers cannot make such changes until the Form 5500 series and its instructions are finalized. Unless the requirement to complete the compliance information is delayed, it is likely that many plan sponsors and service providers will have to manually compile the data for 2016 (and to some extent for 2017), with systems changes able to be fully implemented for 2018 reporting years.

The IRS also asserts in its Supporting Statement that Form 5500 series changes are released in December of the year before the year in which the Form is effective; that a vast majority of filings are not due until at least the following July 31; and, historically this standard timeframe has been sufficient for preparers. With this assertion, the IRS has failed to consider the complexity of the changes for 2016 versus historical changes. For example, except for statutory changes since 2009, only two changes were made to each of the 2013 and 2014 Forms 5500 series and three of those revisions affected a relatively small subset of the filing population.³

It is important to recognize that it is common for a plan to engage a variety of service providers to facilitate recordkeeping, compliance, and Form 5500 preparation. When multiple computerized systems are utilized and a range of service providers are engaged by a plan, such businesses must arrange to reprogram systems and to coordinate collection and sharing of the required information.

³ The 2013 Instructions for Form 5500 added Form M-1 Compliance Information, affecting only welfare plan filers, while a PBGC coverage question was added to Schedules H and I and Form 5500-SF only for defined benefit plan filers. The 2014 Form 5500 was revised to include a line for the total number of active participants at the beginning of the plan year (affecting all filers) and to require multiple-employer plans ("MEPs") to create an attachment to identify participating employers by name, EIN, and percentage of total contributions. The number of MEP filers in 2014 is estimated to be fewer than 5,000, per data available at <https://www.dol.gov/ebsa/foia/foai-5500.html#2014>.

As a practical matter, final forms and instructions must be issued before these businesses can proceed. Based on the complexity of the revisions proposed for 2016, it would likely take 6-12 months for the necessary capital investments to be approved and technology, communication, and procedure changes to be developed, tested, and implemented.

The Department of Labor (“DOL”) noted in its recently proposed revisions to the Form 5500⁴ that there are approximately 723,300 pension plan filers, of which 621,800, or nearly 86%, are small plan filers. Thus, the cost and time burdens of these new requirements will weigh most heavily upon these small businesses and the participants in those plans.

Finally, the DOL’s Employee Benefits Security Administration (“EBSA”) has issued proposed changes to the Form 5500 series which, in their present form, will require substantial investment and resources by service providers. Coordination of the IRS compliance questions with the EBSA’s proposal will allow time for systems innovations to provide the most accurate and complete data on the Form 5500 series.

For these reasons, the ARA recommends that the effective date for mandatory collection of compliance questions be delayed to coincide with the effective date of the proposed Form 5500 series revisions from the DOL, which are expected to be applicable to the 2019 plan year Form 5500 filings.

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These comments were prepared by ASPPA’s Reporting and Disclosure Subcommittee of the ASPPA Government Affairs Committee, Kizzy Gaul, Chair, on behalf of the ARA. Please contact Craig Hoffman, General Counsel and Director of Regulatory Affairs at the ARA at (703) 516-9300, ext. 128, if you have any comments or questions regarding the matters discussed above.

Thank you for your time and consideration.

Sincerely,

/s/

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⁴ See <https://www.gpo.gov/fdsys/pkg/FR-2016-07-21/pdf/2016-14892.pdf>, page 45702.

cc:

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