

Comment Request for Form 5500 and Schedules

October 1, 2001

Garrick Shear, Room 5244
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

Gerald B. Lindrew, Room N-5647
Office of Policy and Research
US Department of Labor
Pension and Welfare Benefits Administration
200 Constitution Avenue, NW
Washington, DC 20210

Re: Comment Request for Form 5500 and Schedules

Gentlemen:

We are sending this letter in response to the request for comments on the Form 5500 Series. The requests for comments appeared in the Federal Register: 66 FR 19287, April 13, 2001, and 66 FR 33274, June 21, 2001. We understand that Form 5500 Series is a joint project of the DOL, IRS, and PBGC, and that some of the questions "belong" to one agency or are shared. Therefore, a copy of this letter is being sent to Garrick Shear on behalf of the IRS and Gerald B. Lindrew on behalf of the DOL and PBGC.

ASPPA is a national organization of approximately 4,200 members who provide actuarial, consulting, administrative, legal and other professional services for about one-third of the qualified retirement plans in the United States, the majority of which are maintained by small businesses. ASPPA's mission is to educate pension actuaries, consultants, administrators and other benefits professionals and to preserve and enhance the private retirement system as part of the development of a cohesive and coherent national retirement income policy. Its large and broad-based membership gives it unusual insight into current practical problems with ERISA and qualified retirement plans, with a particular focus on the issues faced by small employers.

We appreciate the several improvements already made in the organization of the general instructions for the 2000 Form 5500 Series, including among other changes, better organization of the instructions related to direct filing entities (DFEs). Although, as discussed below, reporting on DFEs is still an area of some confusion. We also appreciate the reinstatement of the prior rule that allows filing for a short plan year on the currently available form and suggest that the instruction on page 13, or a cross reference, be included in the instructions for "Final Return/Report" (page 5) and "Change in Plan Year" (page 6).

We have two ongoing concerns regarding the Form 5500 Series, including some questions and suggestions categorized below by subject, which we would like you to consider:

- **Early Release Date.** Software vendors must receive complete information at the **earliest possible date** to enable the 5500 software to be written, debugged, and released sooner; and
- **Changes Needed for More Accurate Reporting.** Certain modifications need to be made to improve the quality of data filed and reduce the number of rejected return/reports.

Our primary concern is the release date – the software vendors must receive complete information at the earliest possible date to enable the 5500 software to be written, debugged, and released sooner. The EFAST computers can more efficiently process forms generated using software versus hand print forms. Using software is also the most efficient and accurate means to complete the Form 5500 Series. Preparers need time to install and learn the software and then time to complete the forms. Once completed, service providers need time to send the forms to plan sponsors for signature and filing.

The delayed release of the 5500 software increases the already heavy burden on plan sponsors and service providers because the majority of plans operate on a calendar year and have a common filing deadline. Even the 2000 software with the earliest release date was late by at least 4 months, making it extremely difficult or impossible for plan sponsors to meet the regular filing deadline. Although an extension of up to 2 ½ months can be obtained, time spent completing the extension forms takes time away from preparing the Form 5500. Much work needs to be done before the Form 5500 can be completed and, as explained next, very little of it can be done before the end of the plan year.

Preparation of the Form 5500 occurs after weeks of work, which involves gathering and compiling data, determining eligibility, calculating contributions, making allocations and performing various nondiscrimination tests. Typically all administrative work for small plans is done *after* the end of the plan year. Sponsors of large plans are likely to have more resources than small plans and may be able to do some, but not all, administrative work *during* the plan year. Both large and small plans need essential year-end data, such as employee compensation and market values in order to perform the administrative work and ultimately complete the return/report forms. Large plans have an additional time burden, because the plan auditor must prepare the accountant's opinion and usually will not start the audit work until *after* a draft of the Form 5500 and its schedules is provided. Certain small plans may also face this additional burden in the future if they do not meet the new DOL conditions for the small plan audit waiver.

Any DFE that does not operate on a calendar year has a special problem because the DFE's filing deadline may occur before the forms are available. For example, while plans complete the 2000 Form 5500 for plan years *beginning* in 2000, DFEs complete the 2000 Form 5500 for DFE years that *end* in 2000. The deadline to file a DFE Form 5500 for a CCT, PSA, 103-12 IE, or MTIA is 9½ months after the DFE year ends. Thus, if the DFE year ended on Jan. 31, 2000, then the 2000 DFE Form 5500 was due by 11/15/2000, but the forms were not available until several months later. While filing by a CCT, PSA, or 103-12 IE is voluntary, MTIAs are required to file. To enable an MTIA with a DFE year-end of Jan. 31, 2001, to file by 11/15/2001, the 2001 Form 5500 would need to already be available.

To enable MTIAs to meet their filing deadline and encourage other DFEs to voluntarily file a DFE Form 5500, we suggest that DFEs be permitted to use the most recent available form and enter the correct dates – similar to the method available when filing for a short plan year.

Any plan which must file a return/report for a short plan year should not be forced to use the hand print forms in order to meet its filing deadline. The hand print forms for plan years beginning in 2000 were available in March of 2001, while the software was not fully functional and able to print until several weeks later. Technically, the 2000 Form 5500 was "available" but we feel it is not realistic to expect the hand print form to be used by any plan sponsor or service provider that uses software. For example, some plans with a short plan year had an extended filing deadline of April 15, 2001 or May 15, 2001, but fully operational software was not available soon enough to meet the filing deadline. In fact, although generally available in June, the delayed release of the 2000 software may have made it difficult to file even by June 15, 2001. Earlier release of the software specifications would enable software vendors to complete their work and get the software out before, or at the same time as, the hand print forms are released.

In summary, we recommend that all EFAST specifications for the 2001 Form 5500 Series be provided to software vendors as soon as possible. Ideally the specifications for the 2001 Form 5500 Series would be available to software vendors by the third quarter of 2001. This will help plan sponsors, but still may not be early enough to help DFE filers, as noted above, who should be encouraged to file by using the currently available form and entering the DFE year dates.

Our second major area of concern relates to improving on the quality of data filed and reducing the number of rejected return/reports. Our goal is to have clear and workable forms and instructions so that the annual return/report forms may be completed accurately. It is expensive for the government, practitioners, and plan sponsors alike to process a rejected return. We want to avoid rejected returns. It is our understanding that the forms are scanned by the EFAST computers and subjected to "edit checks" to see that the filing is complete.

Understandably, the edit checks are still evolving and some adjustments may be needed. With this in mind we offer the following specific comments. If implementing any of the following suggestions would delay release of the 2001 forms, we respectfully request that the clarification be made with the release of the 2002 forms.

Plan year at top of form: Prior to the release of the 1999 forms, entering the plan year at the top of the form was optional for plans using a calendar year. We have received conflicting reports about whether the calendar year may be entered. Most users find the visual reference helpful. Thus, we suggest that the instructions for Part I on page 13 specify that entering the calendar year is optional.

Plan Name (Form 5500, line 1a): The plan name is reported on line 1a as well as at the top of most schedules on line A, but there is less space to enter data on line A of the schedules as compared to line 1a of Form 5500. Please clarify in the instructions that the name reported on line A of the schedules should be truncated.

If the plan name reported in line 1a on this year's form is different than reported on last year's form, the DOL said at its Educational Outreach programs that, to help identify the plan, filers should report the new plan name and the old name in line 1a. For example, *ABC Pension Plan formerly known as XYZ Pension Plan*. There may not be enough room in line 1a (and certainly not on line A of the schedules) to do this – most plan names are longer than used in our example. If this is required, it should be in the instructions. Due to the space limitations noted above for line A, we suggest the instructions clarify that only the new plan name is to be reported on line A of the schedules.

Plan sponsor's name (Form 5500, line 2a): In the past, the EIN and PN (reported on lines 2b and 1b of Form 5500) were used to identify the plan sponsor and the plan for which the filing is made. It is our understanding that "minor" differences in the plan sponsor's name were disregarded on pre-99 forms. For example, if the name included "Co." instead of "Company" and the EIN and PN matched, then the filing would be accepted. Of course, the legal name of the plan sponsor should be reported on line 2a and changes to the name or EIN should be reported on line 4. We are concerned that space limitations in line 2a may require the use of abbreviations. We hope when EFAST processes the return/reports that obvious abbreviations in the plan sponsor's name will be accepted even if a change is not noted in line 4.

Plan Characteristic Codes (Form 5500, line 8): It would be helpful if the instructions were clarified to identify the following:

- 1) When does one code "require" the use of another code? For example: (A) If code 2F is reported must the plan also select either code 2G or 2H as applicable? (B) If code 2J is reported will the plan be required to report code 2E, 2I, 2O, or 2P?
- 2) Which codes trigger filing a schedule? For example: (A) From information provided by the EFAST help line it appears that if code 2B or 2C is entered, then Schedule R is required. (B) Will Schedule R also be required if *any* defined benefit code is entered in line 8a on Form 5500?
- 3) When should code 4S be used in line 8b? Would a first time filer ever report code 4S? We have received a number of questions related to code 4S and suggest its use be clarified. A literal reading of code 4S makes it available *only* to certain "...welfare plan(s) that **stopped** filing Form 5500s in an earlier plan year..." (emphasis added), so it appears code 4S should *not* be used by a plan filing for the first time. For example, assume a welfare plan has always had 99 or less participants and been exempt from filing for all prior plan years because it is unfunded, fully insured, or both. Further assume that the 2000 Form 5500 is the first time this plan is required to file (*i.e.*, line 6 will be at least 100). In this case, should Box B(1) be checked to indicate first-time filer *and* code 4S be reported in line 8b to explain why no filing was done before? If code 4S should not be reported in this case, then how should this first year's filing be done so that EFAST does not send a letter asking why the plan never filed for the prior years?

Schedule A and Schedule C: Prior to the release of the 1999 forms, certain amounts properly reported on Schedule A were *not* required to be reported on Schedule C. At a DOL Educational Outreach program, it was pointed out that this instruction changed for 1999 and later. Reference was made to the instructions for line 2, element (c) on Schedule A – which use the word "also" (as in "also to be reported on Schedule C"). Please refer to the following example.

Example: Assume a large plan properly completes Schedule A and reports John Johnson in line 2 of Schedule A as receiving \$6,000. Also assume the plan paid (either directly or indirectly) an additional \$1,000 to John Johnson. In this case, it is our understanding that the PWBA expects Schedule C, line 2 to be completed to report \$7,000 paid to John Johnson, but that if the *only* payment Johnson received was the \$6,000 reported on

Schedule A, then he should *not* be listed on Schedule C. (Prior to 1999, based on the facts in this example, the \$6,000 would only have been reported on Schedule A and, if the plan was required to file a Schedule C, then the \$1,000 would have been reported on Schedule C in line 1.)

Using the numbers in the example above, we believe it is misleading to report the \$6,000 on both Schedules A and C. We believe this situation constitutes “double reporting.” The forms are open to public inspection and a reasonable person would be likely to (erroneously) conclude that Johnson was paid \$13,000. We suggest that any payment properly reported on line 2 of Schedule A should *not* also be reported on Schedule C. The current instructions could be easily misunderstood, especially since pre-99 filers were *not* accustomed to double reporting. However, if double reporting is required, then the instructions could be improved by adding an example so filers can understand what should be reported.

Schedule B, line 2a: For a plan filing a Form 5500, the instructions refer to the *net* assets reported on Schedule H or I, as applicable. For a plan filing a Form 5500-EZ, the reference is to line 11a, *total* assets. We believe the reference to Form 5500-EZ should be to *line 11a minus 11b* in order to report *net* assets.

Schedule C: It would be helpful if the instructions were clarified: (A) to state that no Schedule C is required to be filed by a welfare plan that is not required to file Schedule H or I and (B) to improve the instructions about what to report on Schedule C when a service provider is reported on Schedule A (see example given above under Schedule A and Schedule C).

Schedule D: Plan sponsors and service providers are having trouble getting information from direct filing entities (DFEs), especially the EIN and PN for element (c). The filing requirements are not yet universally understood by plans or DFEs. Large plans already provide a schedule of assets held for investment as an attachment to Schedule H, line 4i. The information reported on Schedule D is viewed by many as an additional burden. For some contracts (*e.g.*, pooled separate accounts), the same values must be reported on Schedule A, D, and H. Is there any way to simplify and avoid redundant reporting? See also Schedule H below.

Schedule F: There continues to be some confusion about how to complete lines 2, 3, and 4. Should the number of employees or participants be reported on a particular date or for the entire plan year?

The instructions for line 5 say to include “administrative expenses...paid directly by the employer...”, but this information is often so difficult to obtain (at least in the case of small plans because the employer often does not track carefully the expenses it is paying in connection with the plan in its bookkeeping system) that we ask that you consider not requiring it.

With regard to line 6, if the filing is being done for *both* a welfare plan and a fringe benefit plan, both plans have terminated, and this is a final return/report, the instructions say to leave line 6 blank. If there is some reason it must be blank, then perhaps this could be explained in the instructions.

Also, please provide instructions to clarify whether multiple-employer fringe benefit plans require a separate Schedule F for each participating employer.

Schedule G: The instructions for Part III would benefit by including an example of what to report for a particular nonexempt transaction. For example, if an employer is late transmitting employee contributions, which of the elements in Part III should be completed, which should be left blank, and how is the amount reported to be computed?

Schedule H: It is our understanding that a *master trust* must file a DFE Form 5500, but a DFE Form 5500 filing by a CCT, PSA, or 103-12 IE is optional. According to the instructions on page 38 for lines 1c(9), 1c(10), 1c(11), and 1c(12), a plan must do line-by-line reporting and cannot report aggregate values in line 1c(9) or 1c(10) unless the CCT or PSA has filed a DFE Form 5500. The instructions need to be clarified for a 103-12 IE that does not file a DFE Form 5500. In this case, may the plan still report the value of the 103-12 IE on line 1c(12) or must it do line-by-line reporting with regard to the 103-12 IE?

With regard to CCTs and PSAs, practitioners report that they are experiencing delays in getting information needed to do line-by-line reporting, which makes it even harder for plans to file the Form 5500 by the filing

deadline. (We have received no feedback about 103-12 IEs.)

Schedule H, lines 3a and 3c: It has been reported to us that a “limited scope” audit results in a “disclaimer” by the accountant. If the *only* reason for the accountant’s opinion being subject to a “disclaimer” is the “limited scope” nature of the audit, please clarify in the instructions for line 3 whether line 3a(3) should be checked.

Schedule H, line 4i: With regard to the schedule of assets held for investment, the instructions should be clarified as to how a plan’s Form 5500 should report plan assets held in one or more MTIAs for which the MTIAs filed Form 5500.

Schedule I, line 4i: To assure that line 4i is being answered consistently, the instructions should clarify whether or not you intend a “mutual fund” to be treated as a “single security” for purposes of line 4i.

Schedule P, line 1a: There are only 35 spaces available to enter the name of the trustee(s). It is common for more than one trustee to be appointed. There needs to be more space in line 1a so that all the names of the trustees can be entered on Schedule P.

Schedule R, who must file & Part II: Presumably Schedule R must be filed by any plan that reports a defined benefit code (e.g. 1A, 1B, etc.) as well as by any plan reporting code 2B or 2C on Form 5500, line 8a. According to the EFAST help line if *either* code 2B (target benefit) or 2C (money purchase) is reported on Form 5500 in line 8a, then an EFAST edit check expects Schedule R to be filed *and* requires completion of Part II. As explained next, this may not be obvious to all filers and we suggest further guidance be provided as to whether Schedule R must be filed for a “frozen” plan and when Part II must be completed.

The instructions for Schedule R indicate that Part II is to be completed by plans that are subject to the minimum funding standards (see “Part II – Funding Information” on page 49). As described in the instructions for Schedule B (see the **Note** on page 21), certain terminating defined benefit pension plans are no longer subject to minimum funding. Additionally, there are certain target benefit and money purchase plans which are “frozen plans” – meaning there are no past, current or future contributions owed to the plan. Most practitioners view frozen plans as no longer subject to minimum funding. Therefore, a reasonable filer might not complete Part II of Schedule R for certain terminating defined benefit plans or other frozen plans as just described. *The instructions need to clarify if a terminating defined benefit plan or a frozen plan must complete Schedule R and, if so, whether or not Part II is required.* There is no plan characteristic code (Form 5500, line 8a) to identify a plan as “frozen” so *if a frozen plan is not required to complete Part II, what will prevent the return from being rejected?*

Schedule R, line 2: On Schedule R, in line 2, plans must report the EIN used for distributions if the EIN is *other than* the EIN of the plan sponsor or plan administrator. Is there some way to have all the EIN reporting on either Schedule P or Schedule R?

Schedule R, lines 4 and 8: Please explain when the “N/A” box would be appropriate in lines 4 and 8. If there is no situation when the “N/A” box would apply, then we suggest you remove it.

Schedule SSA: Plan sponsors need a method to identify former participants who remain on SSA records as still due plan benefits. The instructions on page 51 encourage plan sponsors to report changes or corrections to previously reported information so that the Social Security Administration (SSA) can provide accurate information to participants or their beneficiaries. Only certain participants (entry code A) are *required* to be reported on Schedule SSA. Participants reportable under the other codes (*i.e.*, entry codes B, C, or D) have been inconsistently reported. Plan sponsors may not have complete records especially in merger and acquisition situations. How can a plan sponsor obtain a list, including name and Social Security number, of the individuals who according to the SSA database are still due benefits from the plan sponsor’s plan? It is likely that many of the individuals in the SSA database have already been paid or another plan sponsor has assumed the liability for plan benefits. Plan sponsors could compare this list with the plan’s current records and provide SSA with updated information.

Schedule SSA, line 1b: With regard to cleaning up the SSA database, as discussed above, could line 1b be expanded to permit a terminated plan, which has already filed its final Form 5500, to file Schedule SSA with updated information?

Schedule SSA, line 4(a): Does the second “column (a)” (which appears before column (g)) ever need to be completed? Software systems do not allow its completion. If it is not needed, it should be removed from the form.

Schedule SSA, lines 4(f), 4(g), and 4(h): Please clarify whether dollar and cents may be entered on Schedule SSA. The form seems to allow “cents” but it is rumored that only whole dollars should be entered.

Schedule T, line 3d: We believe the second sentence in the instructions for line 3d may have a typographical error. Instead of “nonexcludable” we believe it may have been meant to say “excludable” – we suggest it be changed to read as follows: “Also check this box if, during the plan year, all of the nonhighly compensated employees of the employer were *excludable*.” (Emphasis added.)

Schedule T, lines 4d and 4e: We appreciate the improvements in the instructions, such as the additional labels (“excludable” and “nonexcludable”) to identify disaggregated parts and the ability to use a line 3 exception in line 4d instead of a numeric answer when appropriate. Preparers still report that they are confused about how to report disaggregated parts, especially how to describe the “excludable” and “nonexcludable” parts of a 401(k) or 401(m) plan and what, if anything, to report when no discretionary contributions were made. Also, more room may be needed to describe the excludable and nonexcludable disaggregated parts.

Form 5500-EZ, line 10d: The instructions for line 2g of Schedule H and Schedule I have instructions for reporting negative deemed distributions. We note that a similar instruction is *not* included for Form 5500-EZ. Do you want negative deemed distributions to be reported on line 10d?

Form 5500-EZ, line 10g: For several years the instructions have excluded *unrealized gains and losses* from the amount reported in line 10g (“Amounts received by the plan other than from contributions”). The 2000 instructions now exclude *realized gains and losses* as well as *unrealized gains and losses* from line 10g. This is probably intended to simplify reporting, but it prevents any reconciliation of the beginning and ending year values reported in line 11.

In summary, we recommend that the 2001 Form 5500 Series, including all EFAST specifications, be released as soon as possible by making only the changes absolutely essential to clarify the original intent of the questions or comply with law changes. Although we would prefer the above suggestions be reflected in the 2001 forms and instructions, if they would delay the release of the forms, then we suggest such changes be incorporated into the 2002 forms and that all EFAST specifications for the 2002 forms would be released to software vendors by the third quarter of 2002 at the latest.

In closing, we want to thank you for continuing to make needed improvements in the Form 5500 Series and being receptive to feedback from stakeholders such as our organization. This letter has been prepared by the Reporting and Disclosure Subcommittee for ASPPA Government Affairs with additional comments by Janice Wegesin, chair of the 401(k) Subcommittee for ASPPA Government Affairs.

Sincerely,

Valeri L. Stevens, APM, Chair
Reporting and Disclosure Subcommittee

Brian Graff, Esq.
ASPPA Executive Director

R. Bradford Huss, Esq., APM, Co-Chair
ASPPA Government Affairs Committee

Bruce Ashton, Esq., APM, Co-Chair
ASPPA Government Affairs Committee

Theresa Lensander, QPA, CPC, Chair
ASPPA Administration Relations Committee

cc: Alan Lebowitz, DOL/PWBA
Carol Gold, IRS
Stuart Sirkin, PBGC



[Click here to return to ASPPA Government Affairs](#) | [Click here to visit the ASPPA web page](#)