

May 31, 2016

Ms. Tuawana Pinkston
Internal Revenue Service, Room 6129
1111 Constitution Ave. NW
Washington, DC 20224

Re: **Comments on proposed Form 5500 series compliance questions**

The American Retirement Association (ARA) is submitting this letter in response to the [request for comments](#) on the proposed compliance questions for the Form 5500 series. ARA appreciates the revisions that were made to the questions and the opportunity to provide input on additional guidance that may be needed.

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 advisers, 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.

SUMMARY

Proposed compliance questions are currently under consideration for addition to the 2016 Forms 5500-EZ and 5500-SF, and to Form 5500 Schedules H, I and R, along with the proposed Form 5500-SUP. ARA has previously expressed its concerns to both the Internal Revenue Service/Treasury and the Office of Management and Budget (OMB) about the compliance questions on the 2015 Form 5500 series reports, including the new proposed Form 5500-SUP¹. While we appreciate the extensive revisions that have been made to the questions, we remain concerned regarding the timing of implementation.

ARA recommends:

1. The effective date for mandatory collection of information solicited by the new compliance questions should be delayed to coincide with the proposed Form 5500 revisions expected

¹ ASPPA submitted written comments to the IRS on February 23, 2015 [[comments to the IRS on February 23, 2015](#)], regarding some of its concerns about the agency’s approach to the additional data collection required by the Form 5500-SUP and subsequently commented in its June 8, 2015 letter to OMB [[June 8, 2015 letter to OMB](#)] about the burden to filers and their service providers in providing this data relative to the 2015 reporting year.

from the Department of Labor which are currently being reviewed by OMB before being published and public comment solicited;

2. The request for the EIN of the plan's trust at 1(b)² should remain an optional question at least for the next 2 plan years so as to provide time for plan sponsors to determine whether a trust EIN has been deactivated by the IRS or apply for an EIN.

DISCUSSION

1. The effective date for mandatory collection of compliance questions should be delayed to coincide with the Form 5500 revisions to be proposed by the Department of Labor which are expected to be applicable to the 2018 or 2019 Plan Year Form 5500 filings.

The prior iteration of new compliance questions were submitted to OMB in May of 2015. Although the prior iteration was ultimately approved by OMB in March of 2016, OMB directed, "Treasury/IRS must coordinate approval of any future renewal or revision of this collection with the Department of Labor (DOL) and Pension Benefit Guarantee Corporation (PBGC)."³ Delaying the mandatory collection of the compliance questions until the 2018 or 2019 plan year Form 5500 filings will allow the required system updates to be completed in coordination with the anticipated changes to the Form 5500 series as part of the Department of Labor's (DOL) modernization efforts for the third iteration of EFAST.

It is important to recognize that many service providers and plan sponsors had expended considerable effort and resources in an attempt to prepare to respond to the compliance questions for the 2015 plan year. ARA believes it is important that the process and timing of any future revisions to the compliance questions and instructions take into account the realities faced by the industry in shifting resources. 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 manual collection of the required information. As a practical matter, these businesses must wait until final forms and instructions are issued. It then generally takes 6-12 months for the necessary capital investments to be approved and technology, communication, and procedure changes to be developed and implemented. To date, instructions for the proposed questions have not been published and service providers cannot expend resources without risk of the questions changing.

In the request for comments, the IRS estimated that responding to the new questions should take a respondent approximately 23 minutes. Without adequate time to put system structure and processes in place to gather and maintain this information, ARA disagrees with this estimate. In its supporting documentation to OMB in 2015, IRS had estimated the time it would take a respondent to complete the paper Form 5500-SUP at 14.28 hours. While there has been substantial revision to the questions, they are not significant enough to justify the differences in estimate. The compliance questions involve information that is not currently being maintained in a format that

² References are to items described in the table presented in the Notice and Request for Comments by the IRS posted on March 31, 2016.

³ See OMB Notice of Action, March 10, 2016, at <http://www.reginfo.gov/public/do/DownloadNOA?requestID=265119>

is readily accessible. Most of the information has either never been required to be reported or has not been required since 2004 and will take significant manual effort to gather.

ARA recommends that the effective date for mandatory collection of compliance questions be delayed to abide by the OMB directive and coincide with the proposed Form 5500 revisions from the Department of Labor which are expected to be applicable to the 2018 or 2019 Plan Year Form 5500 filings. By the time final forms and instructions are issued for this iteration of IRS compliance questions, it will be extremely difficult to implement for the 2016 plan year.

2. The request for the EIN of the plan's trust should remain an "optional" question at least for the next two plan years so as to provide plan sponsors time to determine whether a trust EIN has been deactivated by the IRS and seek reactivation or apply for a new EIN.

A significant number of plans do not have a trust EIN or may not know if they previously received one. This is due to two factors. Since 1983, the income tax regulations have permitted a plan administrator to transfer responsibility for withholding, remitting and reporting income taxes withheld on a plan distribution to the payor.⁴ This practice is very common and has resulted in many plans forgoing applying for an EIN. In addition, before 2009, the IRS routinely deactivated a trust's EIN if it had not been used for reporting for a number of years. This could have happened because responsibility had been transferred to the payor or simply because no reportable distributions had been made for several years (which is fairly common for a small business sponsored plan with a limited number of participants).

Adding to the difficulties, there is no easy way to determine whether an EIN has previously been issued or is still valid, making it impossible in many cases for a plan's service provider to advise as to the proper course of action. Additionally, trusts that applied for an EIN in anticipation of the 2015 compliance questions have encountered issues that delay the receipt of a trust EIN. For example, there are restrictions on the number of EINs that a provider may request in a day. In addition, when applying for a trust EIN, the system does not allow a trust effective date that is more than 25 years ago to be entered. Finally, proving the adage that no good deed goes unpunished, many trusts that have recently applied for an EIN have received burdensome, blanket IRS requests to retroactively file Form 945s for all years the trust was in existence notwithstanding the circumstances described above that would have obviated any obligation to file the form. It should be noted that the EIN used to report distributions and reflected on Form 1099-R is already collected as part of the Schedule R information.

ARA recommends that the request for a trust EIN remain optional until at least the next two plan years and the IRS process to confirm whether a trust EIN has been issued and is still active along with the process to request a trust EIN should be simplified.

⁴ See Treas. Reg. §35.3405-1T, Q&A E-2.

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These comments were prepared by ASPPA's Reporting and Disclosure Sub-committee of the ASPPA Government Affairs Committee, Kizzy Gaul, Chair on behalf of ARA. Please contact Craig Hoffman, General Counsel and Director of Regulatory Affairs at 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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/s/

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