

**SUPPORTING STATEMENT**  
**1545-1610**  
**IRS Form 5500 and Schedules**

**1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Part 1 of Title I and Title IV of the Employee Retirement Security Act of 1974, as amended (ERISA), and the Internal Revenue Code (Code), require administrators of pension and welfare benefit plans (collectively referred to as employee benefit plans) to file return/reports annually concerning, among other things, the financial condition and operation of plans. These annual reporting requirements are satisfied generally by filing the annual return/report forms (Form 5500 Series) in accordance with its instructions and related regulations.

Internal Revenue Code (IRC) sections 6057 and 6058 require all plans of deferred compensation described in Part I of Subchapter D of the IRC to file annual information returns. IRC section 6039D requires certain fringe benefit plans to file annual information returns. IRC section 6047e) requires certain employee stock ownership plans (ESOP) to file annual information returns.

**2. USE OF DATA**

Under Title I of ERISA, the administrator of each employee benefit plan, unless otherwise exempt, is required to file an annual report with the Secretary containing the information set forth in section 103 of ERISA. Section 103 requires the reporting of information concerning the financial condition, investment activities, and general operations of an employee benefit plan. Certain plans are also required to file annual reports with the Internal Revenue Service (IRS) under sections 6039D and 6058 of the Code and with the Pension Benefit Guaranty Corporation (PBGC) under section 4065 of Title IV of ERISA. The reporting requirements of Titles I and IV of ERISA, and the Code are satisfied generally by filing, in accordance with the instructions to the forms and related regulations, the annual return/report and appropriate attachments (the Form 5500 Series).

The Form 5500 Series is the principal source of information and data available to the Federal Government concerning the operations of employee benefit plans. There are over 900,000 employee benefit plans that must file the Form 5500 Series. These plans cover an estimated 200 million participants and manage an estimated \$3.5 trillion in assets. For this reason, the Form 5500 Series constitutes an integral part of the enforcement, research and policy formulation programs. For enforcement, the annual report provides a means by which the Federal Government can effectively and efficiently identify actual and potential violations of ERISA and the Code thereby minimizing investigatory contacts with the vast majority of plans. The annual report also provides a fundamental tool for investigators in reviewing the operations and activities of employee benefit plans.

With regard to research and policy formulation, the Form 5500 Series represents the primary source of data for the development and implementation of national pension policy and is becoming increasingly important in the analysis of health and welfare policy.

In addition to providing important enforcement, research, and policy information data, the Form 5500 Series represents the only source of detailed financial and related plan information available to plan participants and beneficiaries, who upon written request must be furnished a copy of the plan's latest annual report by the plan administrator. Moreover, the annual report serves as the basis for the summary annual report which administrators are required to furnish to each participant and beneficiary annually, unless otherwise exempt.

### **3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

Form 5500 and schedules are filed through Department of Labor (DOL).

### **4. EFFORTS TO IDENTIFY DUPLICATION**

The government utilizes a consolidated annual report which eliminates the duplicative reporting that would otherwise result from separate reporting to each agency. There is no similar information gathered or maintained by any state or Federal agency or other sources that would enable the government to effectively monitor the activities of employee benefit plans. While certain information concerning assets held by banks, insurance companies and other investment entities may be reported to state and Federal regulatory authorities, those reports are not normally structured in a manner which would provide meaningful information about those assets attributable to employee benefit plans.

### **5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES**

In an effort to simplify and streamline the Form 5500 Series and to reduce the reporting burden on filers, one Form 5500 was developed (beginning in 1999) for use by large *and* small employers. Small plans (plans with fewer than 100 participants) can now use the same Form 5500 that is used by large plans. A distinction between small and large plans, however, continues in that large plans complete the more detailed Schedule H, *Financial Information*, as opposed to Schedule I, *Financial Information - - Small Plan*.

### **6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES**

ERISA and the Code specifically contemplate the filing of reports by employee benefit plans on an annual basis. A less frequent filing could impair and inhibit the administration and enforcement of the statute.

**7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)**

There are no special circumstances that require the collection be conducted in a manner inconsistent with the above.

**8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS**

Periodic meetings are held between IRS personnel and representatives of the American Bar Association, the National Society of Public Accountants, the American Institute of Certified Public Accountants, and other professional groups to discuss tax law and tax forms. During these meetings, there is an opportunity for those attending to make comments regarding Form 5500 and schedules.

In response to the Federal Register notice dated December 23, 2014 (79 FR 77088), we received 5 comments during the comment period regarding Form 5500 and schedules.

The IRS received comments from 5 organizations:

- Bureau of Economic Analysis (BEA), U.S. Department of Commerce, Economics and Statistics Administration
- American Society of Pension Professionals & Actuaries (ASPPA)
- Indiana Benefits, Inc.
- American Association of Retired Persons (AARP)
- Hunter Benefits Consulting Group, Inc.

These comments fell into 5 categories:

- 1) Those that were supportive of the proposed additions to the forms and/or the burden estimate;
- 2) Those that recommend delaying introduction of the proposed questions to allow service providers time to accommodate data collection, programming, and other system changes to respond to the new data collection elements;
- 3) Those that recommend limiting public disclosure of preparer information;
- 4) Those that recommend modifications to specific proposed questions/addition of other data collection
- 5) Those that recommend IRS provide more information about who is required to file the 5500-SUP, including penalties and late-filing remedies; or that reflected confusion about the purpose of the 5500-SUP.

IRS believes that collection of these IRS compliance questions on the Form 5500 would not add significant burden to filers and would satisfy the PRA

requirements. As authorized by ERISA and the Internal Revenue Code, IRS has the authority to ask these compliance questions to protect employees' retirement benefits.

As indicated in the attachment of the FRN, most of these IRS compliance questions are not new: they had previously been part of the Form 5500 Series and were eliminated because IRS lacked the authority to require electronic filing when the 5500 Series was moved to all-electronic filing through the EFAST2 system in 2009. The Treasury Department and IRS issued the final regulations mandating electronic filing for certain employee benefit plans on September 29, 2014 (e-file mandate), thereby enabling IRS to collect IRS compliance questions electronically starting in 2015.

- 1) IRS appreciates those comments in support of the proposed changes.
- 2) In order to address the recommendations to delay introduction of the questions, the IRS may issue an article explaining the new IRS compliance questions on the Form 5500 Series to help plan administrators and service providers understand the changes and update their processes and systems. 2015 Form 5500 filings are not due until July 31, 2016 or, with an extension, October 31, 2016, for calendar year plans.
- 3) As was discussed with IRS Chief Counsel and Disclosure Office, the name and contact information of the preparer of the Form 5500 Series is considered employee plan information prescribed under sections 6058, 7701(a) (36), 6109, and 6695. This is public information as described in section 6104 and is available to the public.
  - In pertinent part, Int. Rev. Code § 6104(b) mandates that information required by § 6058, i.e. Form 5500 annual returns of employee plans, be made available to the public.
  - The following provisions do not apply to Form 5500:
    - o Sec. 6104(a) relates to applications – not annual returns.
    - o Sec. 6104(a)(1)(A) relates to applications of exempt organizations, i.e. Form 1023 – not Form 5500;
    - o Sec. 6104(a)(1)(B) relates to applications of employee plans, i.e. Form 5300 – not Form 5500.
    - o Sec. 6104(a)(1)(D) relates to the foregoing applications in (a)(1)(A) & (a)(1)(B), specifically supporting papers attached to those applications, and withholding from them “any trade secret, patent, process, style of work, or apparatus, of the organization,” in this case the employee plan.
  - Even if § 6104(a)(1)(D) were applicable – which it is not – the preparer is not the organization, and the preparer's identity is not a trade secret.
  - In general, a “trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him

an opportunity to obtain an advantage over competitors who do not know or use it". Restatement (First) of Torts § 757 cmt. b (1939), quoted in *Public Citizen v. FDA*, 704 F.2d 1280, 1284 n.7 (DC Cir. 1983).

- Sec. 6104(d) relates to exempt organizations – not employee plans.

4) IRS will evaluate and consider recommendations for the improvement of specific questions for 2016 and/or future Form development. Careful thought had already been given to the structure of the specific data collection. For example, IRS has found that the use of feature codes rather than collecting data through a direct question produces less accurate responses.

5) With the issuance of the e-file mandate, many plans are required to file\* electronically using the Form 5500s (in fact, all filers may file electronically if they choose and never file the Form 5500-SUP) and can, therefore, answer these questions electronically through EFAST2 without significant burden increase. The IRS Compliance questions are the same questions on the Form 5500, or Form 5500-SF, or Form 5500-EZ, as applicable, as the questions on the Form 5500-SUP. The difference is the filing METHOD. The Form 5500-SUP is a paper alternative to answering the IRS compliance questions electronically available on the other forms. If the filer answers the questions on the 5500, the filer does not have to complete or submit a Form 5500-SUP. In addition, many of these questions had previously been part of the Form 5500 Series and are therefore, not new: filers have previous experience preparing responses to the questions; and the data continues to be valuable for compliance, for accuracy in classification, and for reducing additional information requests during audits.

Currently, the total number of e-filers of Forms 5500 and 5500-SF is over 700,000. Form 5500 is jointly produced by DOL and IRS respectively under ERISA (Tit. 29 U.S. Code) and the Int. Rev. Code (Tit. 26 U.S. Code). ERISA gives DOL Tit. 29 authority to require electronic filing. However, 26 U.S.C. § 6011(e) imposes a threshold before IRS can require e-filing. Statutorily, IRS cannot require e-filing by a filer of fewer than 250 returns (i.e. for 250 employees or other payees for whom reporting is required on Forms W-2, 1099, etc.). For those small filers, the tax law requires IRS to offer a paper filing option. The Dep't of the Treasury has an outstanding legislative proposal to expand e-filing, but meanwhile current law requires the paper option. See <https://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2016.pdf> at pg. 247.

As of the 2009 Form 5500, DOL established the computerized ERISA Filing Acceptance System (EFAST2) whereby all filers have been required to file Forms 5500 and 5500-SF electronically. Consequently, the IRS had to remove the tax questions due to the lack of authority for e-filing. There were no mandatory IRS-only questions on Form 5500 and 5500-SF after the 2008 Form 5500 (and therefore no need for a paper Form 5500-SUP). Then the Treasury Inspector General for Tax Administration raised concern about the deleterious

effect on tax compliance of the removal of the IRS questions.  
<https://www.treasury.gov/tigta/auditreports/2011reports/201110108fr.html>

- DOL's electronic filing mandate, which applied beginning with the 2009 Form 5500, required all filers to file Forms 5500 and 5500-SF electronically. This resulted in all "IRS-only" questions, including Schedules E, P, SSA, and T, being dropped from the Form 5500 series because the IRS could not mandate that these schedules be filed electronically.
- The lack of information contained on these Schedules negatively impacts the IRS's ability to accomplish its mission to protect participant benefits and plan assets. This also results in the IRS selecting for examination more compliant plans, which increases the burden on these plans and results in inefficient use of IRS resources. The IRS, therefore, decided to add these IRS-only questions back to the Form 5500.
- Section 6011(e) of the Code gives the IRS authority to adopt regulations to mandate electronic-filing for certain filers who file at least 250 returns with IRS. With the issuance of the relevant regulation in Sept. 2014, most plans are now required to answer the IRS-only questions electronically using the Forms 5500 and 5500-SF through EFAST2.
- Unlike the DOL, the IRS cannot mandate all filers to answer IRS questions electronically. Thus, IRS developed the Form 5500-SUP to provide a paper-filing option for those small filers who are not subject to the IRS' e-filing mandate and who choose not to answer the IRS-only questions electronically.

\* Under the regulations, you are required to file a Form 5500 series return/report electronically if you are required to file at least 250 returns of all types during the calendar year that includes the first day of the applicable plan year.

In response to the Federal Register Notice dated May 8, 2015 (OMB Number: 1545-1610), we received 49 comments from 38 separate organizations that raised issues and concerns with the new data collection items on the 2015 Forms 5500 and schedules (Annual Return/Report of Employee Benefit Plan); 5500-SF (Short Form Annual Return/Report of Small Employee Benefit Plan), and 5500-SUP (Annual Return of Employee Benefit Plan Supplemental Information) and the related instructions.

A Congressional letter was received on 8/5/15;

- The Congressional letter raised two major concerns: (1) the implementation timeline; and (2) burden associated with the new data collection required by the new Form 5500-SUP.
- With respect to the 1st comment, the 2015 IRS questions are now optional, which gives service providers and software vendors adequate time to develop and implement any system changes needed to respond to these questions.
- With respect to the 2nd comment, plans should have the requested information because it is necessary for tax-qualified status.

- The burden is small in that the estimated number of filers who will use the Form 5500-SUP is only 500.

The IRS added six compliance questions to the 2015 Form 5500/Form 5500-SF and Schedules, and made two items (preparer and trust information) mandatory rather than optional. The 2015 Form 5500/5500-SF, which can only be filed electronically, will be filed and processed beginning in January of 2016. The Form 5500-SUP was developed to provide a paper-filing option for those filers who are not subject to the IRS electronic filing mandate and choose not to file the IRS compliance questions electronically through EFAST2. In contrast to the approximately 700,000 electronic filers, an estimated 500 or fewer would file on paper, because:

- Only taxpayers that file fewer than 250 returns annually (i.e. have fewer than 250 employees or other payees for whom filing is required) with the IRS are permitted to use this paper option.
- Forms 5500 and 5500-SF are already required to be filed electronically by DOL, and the IRS-only questions are included in Forms 5500 and 5500-SF.
- It is much easier for filers to answer these IRS-only questions electronically when they file the Form 5500/5500-SF through the EFAST2 system.

ABA comments on 2/10/15 concerned: (1) trust EIN; (2) disclosure of preparer information; and (3) burden estimate for collected information.

- With respect to the trust EIN: If the bank service provider is not otherwise aware that a trust's EIN has been deactivated, the trust's existing EIN should be used. If the bank is aware an EIN was deactivated, the trustee should send a fax request to the IRS (801-620-7116) to reactivate it and should use that EIN on the form. Accordingly, the EIN requirement should not be difficult or burdensome. We understand that certain trusts do not have EINs and can, therefore, simply use the EIN of the entity that prepares the Forms 1099-R or Forms 945 relating to plan benefit distributions. We issued FAQs on 12/04/15 on the IRS website addressing this issue.
- With respect to the disclosure of preparer information: Section 6058 of the Code mandates the annual return of an employer plan (i.e. Form 5500) reflecting information prescribed by the IRS relating to the operation of the plan (among other things). The preparation of the Form 5500 relates to the operation of the plan. This information can help identify non-compliance on different returns associated with the same preparer or identify plans participating in tax abusive transactions promoted by the preparer. Section 6104(b) requires that, together with the name and address of the organization and trust, all information required pursuant to section 6058 (that is Form 5500 information) shall be made available

to the public. For decades, § 6104(b) has mandated disclosure of preparer information on millions of Form 990 returns of exempt organizations.

With respect to the burden estimate for collected information: Plans should have the information because it is required for tax qualification

We have reviewed all of the comments that were submitted in response to both Federal Register Notices. All of the comments raise at least one of the following concerns/requests:

1. Delay implementation of the proposed changes and additional data collection for at least 12 months to allow time for system and process changes;
2. Suggest that IRS actively solicit and incorporate input from other stakeholders in proposing changes to Form 5500s;
3. Limit the public disclosure of preparer information

Regarding the request to delay implementation for at least 12 months, it is important to note that the new data IRS will collect in 2015 is critical for the IRS' to help identify abusive transactions, identify funding or minimum coverage requirements issues, conduct special projects to identify potentially noncompliant retirement plans, and populate risk models. The lack of this information will have an impact on IRS' ability to effectively focus on specific indicators of noncompliance when selecting retirement plans for examination. Without sufficient information to select potentially noncompliant retirement plans, the IRS may select more compliant plans, which increases burden on the plans and results in inefficient use of Employee Plan resources by conducting unnecessary examinations. To accommodate the request for more lead time for practitioners to make programming and system changes, we have early-released the IRS compliance question in the Form 5500-SUP twice: on October 17, 2014 and March 27, 2015, and we will change the schedule for releasing final forms and instructions by publishing these new questions "in final" upon receipt of OMB clearance.

With respect to the recommendation that IRS actively solicit and incorporate input from other stakeholders, IRS works with IRPAC, ASPPA, and other organizations when developing the IRS changes to the Form 5500. We received five comments in response to the Paperwork Reduction Act (PRA) Federal Register Notice when initially proposing these changes. Comment number 2 does not request a specific change to the new data collection items so no change will be made.

Regarding comment number 3, starting in the 2015 Plan Year, the preparer information is no longer optional. The preparers' information relates to the operation of the plan, and the IRS is authorized to gather such information pursuant to IRC section 6058. This information would be made available to the public as provided for in IRC section 6104. Therefore, no change will be made.



- Preparer information will help identify plans participating in tax abusive schemes promoted by preparers. Since the preparer information has been optional, only 5-12% of plans have answered the question. Promoters of tax abusive schemes are currently not providing this information. Making the question mandatory will improve the likelihood of identifying plans participating in a tax abusive transaction.
- Section 6058 of the Code mandates the annual return of an employer plan (i.e. Form 5500) reflecting information prescribed by the IRS relating to the operation of the plan (among other things). The preparation of the Form 5500 relates to the operation of the plan.
- Section 6104(b) requires that, together with the name and address of the organization and trust, all information required pursuant to section 6058 (i.e. Form 5500 information) shall be made available to the public.
- Section 6104(a) applies to public inspection of application material relating to tax exempt organizations, such as Application for Determination for Employee Benefit Plan, and Application for Recognition of Exemption under Section 501(c)(3) of Code, but does not apply to inspection of the annual return required under section 6104(b). Section 6104(a)(1)(D) allows an organization filing an application for tax exemption (not an annual return) to request the withholding of information contained in the application or supporting documents which relates to any trade secret, patent, process, style of work, or apparatus of the organization.

(See §§ 301.6104(a)-1 and -5 of the Treasury Regulations)

- The quoted provision is § 6104(a)(1)(D) (relating to applications, not returns) – there is no § 6104(D). Sec. 6104(d) relates to exempt organizations – not employee plans.
- If through examination IRS discovers that a particular preparer has compliance problems with its client's plan, this question will help us to identify other plans that may have similar issues.
- In the past, if a filer opted to answer the questions about preparer identity, those would have been publicly disclosable under § 6104(b) since the authority for the questions was § 6058.

Almost all Forms 5500 are made available to the public by the Dep't of Labor (DOL). Anyone can acquire the data necessary to identify Form 5500 filers in a certain geographic area. Currently, someone can identify potential clients in a specific geographic area by getting an extract of data from the DOL

Some of the comments raised specific questions/concerns related to several of the questions we introduced on the 2015 Form, and we plan to address those concerns through the EP Newsletter and through FAQs that will be published on our website. In 2016, we will also provide additional clarification in the instructions to address these concerns.

The IRS issued FAQs on 12/04/2015 addressing commenters questions regarding the 2015 IRS compliance questions (summarized below) See FAQs attachment for more detail information:

- Filers should choose only the "ADP/ACP test" checkbox if the plan uses

both the design-based safe harbor method and an ADP/ACP test under a 401(k) plan.

- Filers should select the “Yes” or “No” checkbox based on whether or not the current year method is used in performing the ADP test if the current year testing method is used for either the ADP or ACP test, and the prior year testing method is used for the other.
- Filers should leave the response blank if the plan meets exceptions to coverage rules or if the plan is a non-qualified plan.
- Filers should check “N/A” if the plan doesn’t have a trust, such as 412(e) (3) fully-insured plans or certain 403(b) annuity plans.
- Filers should report hardship distributions from 401(k) plans and distributions during working retirement (section 401(a)(36)) from defined benefit or money purchase pension plans for in-service distributions.
- Filers should check “Yes” if the plan sponsor has used EPCRS to correct the failure to amend the plan for required law changes by the applicable deadline.
- Filers should enter the most recent adoption date of the interim amendment if a pre-approved plan document and has adopted all required interim amendments but has not been restated for PPA by December 31, 2015.
- A multiple-employer plan should respond to the IRS compliance questions at the plan level rather than the participating-employer level. The filer should use the trust EIN to report the trust information or the EIN on Form 1099-R and Form 945 if there is no trust EIN.

**9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS**

No payments or gifts are provided to respondents.

**10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES**

The Form 5500 Series filings are required by law to be made available for inspection at the Agencies and at the offices of the plan administrators. Accordingly, the Agencies provide no assurance of confidentiality to respondents.

**11. JUSTIFICATION OF SENSITIVE QUESTIONS**

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the “ Employee Plans Master File (EPMF)” system and a Privacy Act System of Records notice (SORN) has been issued for this System

under:

- 1 IRS 24.046--Customer Account Data Engine Business Master File
- 2 IRS 34.037--IRS Audit Trail and Security Records System
- 3 IRS 50.222--Tax Exempt/Government Entities Case Management
- 4 Records

The Internal Revenue Service PIAs can be found at <http://www.irs.gov/uac/Privacy-Impact-Assessments-PIA>.

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems.

## **12. ESTIMATED BURDEN OF INFORMATION COLLECTION**

Because the Form 5500 Series combines the information collection requests of three federal agencies (the Department of Labor (DOL), the IRS, and the PBGC) into a single return/report, each of the Agencies submits its own ICR and maintains its own OMB approval for the portion of the paperwork burden arising out of the Form 5500 Series that pertains to its own information collections. However, since 1999, the Agencies have adopted a unified approach and methodology for estimating paperwork burden. This ICR requests approval of only the portion of the total paperwork burden of the Form 5500 Series that is attributed to the IRS, although it includes information on the other portions of the total paperwork burden. DOL and PBGC intend to submit separate requests for OMB for a revision of the ICR. The discussion below, therefore, describes the unified methodology underlying the Agencies' estimates of the aggregate burden imposed by the forms revisions as a whole, but requests approval only of the IRS portion of that burden.

DOL has adopted several assumptions in performing this burden estimation. First, the methodology used for this ICR excludes certain types of activities entirely from the calculation of "burden." If an activity is performed for any reason other than compliance with the applicable federal tax administration system or the Title I annual reporting requirements, it is not counted as part of the paperwork burden. For example, most businesses or financial entities maintain, in the ordinary course of business, detailed accounts of assets and liabilities and income and expenses for the purposes of operating the business or entity. DOL has not attributed any recordkeeping burden to the Form 5500 Annual Return/Report because it believes that plan administrators' practice of keeping financial records necessary to complete the Form 5500 Annual Return/Report arises from usual and customary management practices that would be used by any financial entity and is not the result of any ERISA or Code annual reporting and filing requirements.

This burden analysis includes only the time needed for gathering and processing information associated with compliance with the tax return/annual reporting requirements. In addition, an

activity that must be performed for both IRS and DOL purposes is counted once for burden analysis purposes.

The Agencies also have designed the instruction package for the Form 5500 Annual Return/Report so that filers generally will be able to complete the Form 5500 Annual Return/Report by reading the instructions without needing to refer to the statutes or regulations. The Agencies, therefore, have included in their PRA calculations a burden for reading the instructions and have assumed that there is no additional burden for research.

A new burden estimating model, initially based on the Form 5500 Burden Model that a contractor, Mathematica Policy Research, Inc. (MPR) had used for estimating burdens in October 2004, has been developed, for purposes of this burden analysis, by Actuarial Research Corporation (ARC). ARC assembled a simplified model by drawing on implied burdens associated with subsets of filer groups represented in the MPR model. The new model uses a level of detail consistent with reflecting burden differences associated with the various proposed Forms revisions, as described below.<sup>1</sup>

The types of plans that have similar reporting requirements were grouped together to estimate aggregate burdens for this submission. Thus, calculations were prepared for different subsets of types of plans, as appropriate based on the specific reporting requirements. The universe of filers was first divided into three basic plan types: defined benefit pension plans, defined contribution pension plans, and welfare plans. Each of these major plan types was further subdivided into multiemployer and single-employer plans. Since filing requirements differ substantially for small and large plans, the plan types were also divided by plan size. For large plans (100 participants or more), defined benefit plans were further divided into very large (1,000 participants or more) and other large (at least 100 but less than 1,000 participants). For each of these sets of respondents, burden hours per respondent were estimated for the Form 5500 Annual Return/Report itself and for each of up to seven schedules.

In addition to separating plans by type and size, costs were estimated separately for the form and for each schedule. The burden for the Form 5500-SF, as well as the simplified filing requirements for certain small plans was built from the estimated current burden associated with the various line items included in it. When items on a schedule are required by more than one Agency, the estimated burden associated with that schedule was allocated among the Agencies. This allocation was based on whether only a single item on a schedule is required by more than one Agency or whether several or all of the items are required by more than one Agency. Because filers must read not only the instructions for particular items but also instructions pertaining to the general filing requirements, the burden associated with reading the instructions was tallied and allocated accordingly.

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<sup>1</sup> The new burden model developed by ARC has been used to calculate burdens for the paperwork reduction burdens of the Notice of Proposed Rulemaking, the Proposed Forms Revisions, and the Notice of Supplemental Proposed Forms Revisions. This burden model was further updated for the Final Forms Revisions and Final Rules.

The burden for a specific type of plan has been estimated in light of the specific items and schedules that type of plan must complete, as well as its size, funding method, and investment structures. For example, the annual report for a large fully insured welfare plan would consist of only the Form 5500 and the Schedule A (Insurance Information), and Schedules C and G, where applicable. By contrast, a large defined benefit pension plan that is intended to be tax-qualified and that uses a trust fund and invests in insurance contracts and direct filing entities would be required to submit an annual report completing the Form 5500, plus Schedule A (Insurance Information), Schedule SB, or MB (Actuarial Information), whichever one is applicable, Schedule C (Service Provider Information), Schedule D (DFE/Participating Plan Information), possibly the Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), and Schedule R (Retirement Plan Information), and would be required to submit an IQPA's report and opinion. The methodology used to develop the aggregate burden estimates attempts to capture, through its categorization, these different reporting burdens, thereby providing meaningful estimates of significant differences in the burdens placed on different categories of filers.

The aggregate baseline burden for the Form 5500 is the sum of the burden estimates per form and schedule filed multiplied by the estimated aggregate number of forms and schedules. The simplified model developed by ARC draws on Form 5500 Annual Return/Report data representing each plan's filing for plan year 2007 (the most recent year for which complete data is available).

The table summarizes the DOL's estimates of the aggregate time needed to complete each of the forms for plan years 2015, 2016, and 2017, as listed below, reflecting the combined information collection requirements of the IRS, the Department, and the PBGC. The estimates are averages, since the actual time needed for any particular respondent plan to complete any of these forms will vary depending on individual circumstances. The estimated average times for each form for all of the information elements of the three Agencies are:

	Pension Plans		Welfare Plans	
	Large	Small	Large	Small
<b>Form 5500</b>	1 hr., 54 min.	1 hr., 19 min.	1 hr., 45 min.	1 hr., 14 min.
<b>Schedule A</b>	2 hr., 52 min.	2 hr., 51 min.	3 hr., 39 min.	2 hr., 43 min.
<b>Schedule C</b>	3 hr., 4 min.		3 hr., 38 min.	
<b>Schedule D</b>	1 hr., 39 min.	20 min.	1 hr., 52 min.	20 min.
<b>Schedule G</b>	11 hr., 29 min.		11 hr.	
<b>Schedule H</b>	7 hr., 42 min.		8 hr., 35 min.	
<b>Schedule I</b>		2 hr., 5 min.		1 hr., 55 min.
<b>Schedule MB</b>	7 hr., 52 min.	4 hr., 14 min.		

<b>Schedule R</b>	1 hr., 43 min.	1 hr., 5 min.		
<b>Schedule SB</b>	6 hr., 38 min.	6 hr., 49 min.		
<b>Form 5500-SUP</b> (filing time only)		25 min.		25 min.
<b>Simplified Filing Option for Certain Small Plans</b>				
	<b>Pension Plans</b>		<b>Welfare Plans</b>	
<b>Form 5500-SF</b>	2 hr., 32 min.		2 hr., 32 min.	
<b>Schedule MB</b>	3 hr., 20 min.			
<b>Schedule SB</b>	6 hr., 49 min.			

We are making this submission to reflect the IRS portion of the burden developed by the Department of Labor (DOL). The IRS burden is 340,000 hours for Form 5500 and schedules.

The Form 5500-SUP can also be filed by paper with the IRS. The paper Form 5500-SUP should only be used if certain IRS compliance questions are not answered electronically on the Form 5500 or Form 5500-SF. The creation of the paper Form 5500-SUP may create a new paper filing requirement. The paper submission of this form will increase the estimated number of responses by 500 and the estimated annual burden by 208 hours.

The new combined annual burden will be 340,208 hours.

### **13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

As suggested by OMB, our Federal Register notice dated December 23, 2014, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. .

This estimate consists of the monetized hour burden of the portion of the form that service providers will fill out. Essentially it is the total cost incurred by plans that will hire service providers instead of filling out the forms themselves. This estimate reflects longstanding DOL methodology for estimating, inter alia, how many plans will hire service providers. The IRS cannot confirm the methodology Indiana Benefits may have used, or whether it applies only to their specific situation.

For 2015, the IRS will not ask filers to complete Form 5500-SUP or the corresponding tax items on the Form 5500 series. Consequently, they will not impose burden.

Estimates of the annualized cost to respondents for the hour burdens of Form 5500 and schedules is \$112,088,000.

#### **14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT**

The primary cost to the government consists of the cost of printing Form 5500 and schedules. We estimate that the cost of printing the form and schedules is \$3,032,900.

#### **15. REASONS FOR CHANGE IN BURDEN**

The 2015 changes, as outlined in the notice dated December 23, 2014, (79 FR 77088), will generate and increase in burden by 21,000 hours and increase the estimated number of responses by 36,000 per year.

Form 5500-SUP is a paper-only form filed with the IRS that is used by the sponsors and administrators of retirement plans to satisfy the reporting requirements of section 6058. Form 5500-SUP should only be used if certain IRS compliance questions are not answered electronically on the Form 5500 or Form 5500-SF. The creation of Form 5500-SUP, may create a new paper filing requirement. The paper submission of this form will increase the estimated number of responses by 500 and the estimated annual burden by 208 hours.

The DOL EFAST2 system has been in place since 2009, plan administrators can answer the IRS proposed questions electronically using the EFAST2 system when they file Forms 5500 and 5500-SF without incurring start-up, capital or maintenance costs. The difference between the figures provided in the original notice dated December 23, 2014, (79 FR 77088), are a result of taking this into account.

- The basic reason is that the IRS, unlike the DOL, cannot mandate all filers to answer IRS questions electronically. The IRS has to develop the Form 5500-SUP and provide a paper option for those small filers who are not subject to the IRS e-filing mandate and who choose not to answer the IRS-only questions electronically.
- Section 6011(e) of the Code gives the IRS authority to mandate by regulation electronic-filing for certain filers who file at least 250 returns with IRS. With the issuance of the applicable e-file regulation, many plans are required to answer the IRS-only questions electronically using the Forms 5500 and 5500-SF through EFAST2.

- The Treasury Inspector General for Tax Administration raised concern about tax compliance when DOL's e-filing requirement effectively pushed IRS questions off Form 5500. Form 5500-SUP remedies that concern. <https://www.treasury.gov/tigta/auditreports/2011reports/201110108fr.html>

**16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION**

There are no plans for tabulation, statistical analysis and publication.

**17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE**

See attachment below.

**18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I**

There are no exceptions to the certification statement.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**OMB Expiration Date**

We believe the public interest will be better served by not printing an expiration date on the form(s) in this package.

Printing the expiration date on the form will result in increased costs because of the need to replace inventories that become obsolete by passage of the expiration date each time OMB approval is renewed. Without printing the expiration date, supplies of the form could continue to be used.

The time period during which the current edition of the form(s) in this package will continue to be usable cannot be predicted. It could easily span several cycles of review and OMB clearance renewal. In addition, usage fluctuates unpredictably. This makes it necessary to maintain a substantial inventory of forms in the supply line at all times. This includes supplies owned by both the Government and the public. Reprinting of the form cannot be reliably scheduled to coincide with an OMB approval expiration date. This form may be privately printed by users at their own expense. Some businesses print complex and expensive marginally punched continuous



versions, at their expense, for use in their computers. The form may be printed by commercial printers and stocked for sale. In such cases, printing the expiration date on the form could result in extra costs to the users.

Not printing the expiration date on the form(s) will also avoid confusion among taxpayers who may have identical forms with different expiration dates in their possession.

For the above reasons we request authorization to omit printing the expiration date on the form(s) in this package.