

IRS RESPONSE TO COMMENTS ON FORM 5500-SUP

| Comment/Concern | Comment From | IRS Response |
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| We are in support of the proposed additions to the forms. (2/15/15) | Bureau of Economic Analysis | NA |
| ...recommend that IRS delay by at least one year the implementation of the proposed changes and additional data collection for all plans to allow the time needed by service providers to accommodate the extensive data collection, programming, and other system changes that will be required. This is absolutely necessary to minimize the burden of collection and will enhance the quality, utility and clarity of the information that will be collected. (2/23/15) | ASPPA | The proposed Form 5500-SUP was published in in December 2014 and May 2015 for public comment. The forms contained the proposed new questions. Historically, annual Form 5500 Series changes are released in December of the year before the year in which the Series is effective (e.g., December 2013 for the 2014 Form 5500, to be filed in 2015). The vast majority of filings are not due until at least the following July 31. Historically, this standard timeframe has been sufficient for preparers. |
| ...recommend that IRS modify the collection of preparer information to limit the public disclosure of the preparer's name by the use of functions already present in the EFAST2 system and to follow the model of other returns (e.g. Form 1120, Form 945, etc.) which require authorization for the IRS to directly contact the preparer to discuss the return and information contained therein. (2/23/15) | ASPPA | 26 USC section 6058 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. 26 USC section 6104(b) requires that together with the name and address of the organization and trust, all information required pursuant to section 6058 shall be made available to the public. Based on standard IRS procedures, we intend to obtain authorization from the taxpayer before requesting information from a preparer. |
| ...recommend that the IRS expand the Plan Characteristic Code section of the existing Form 5500 series to collect SUP items which are a function of the plan document (i.e., Part III, line 4 of the SUP and its Instructions) or that are similar to items already collected in that section ((i.e., Part III, line 8 of the SUP/ line 7 of the Instructions). (2/23/15) | ASPPA | There are over 60 Plan Characteristic Codes. They are found only in the Form 5500 Series instructions, not on the face of the forms. IRS has found that when Plan Characteristic Codes are used, taxpayers do not always furnish all the codes that are applicable to the plan or do not insert accurate codes. In situations where the information is critical, we prefer to ask questions rather than use codes to ensure the responses are accurate. We have determined that these questions are critical to compliance and should not be included on the form as a code. |
| ...recommend that the IRS modify the financial sections of the existing Form 5500 series to collect the distribution information described at Part III, line 11 of the SUP / line 9 of the Instructions). Extract from specific comment: The proposed information collection at line 11 of the SUP should be accomplished by further bifurcation of the financial statement sections of the forms/schedules rather than collecting that data on the SUP. This approach allows for simpler reconciliation of the data reported on the Form 5500 series and for a uniform format, regardless of which Form 5500 series is filed. (2/23/15) | ASPPA | Certain types of retirement plans are not required to file the financial schedules suggested by the commenter. In addition, IRS determined that it was more efficient to ask a specific question rather than bifurcate the distribution section of the financial statements to break out the various types of distributions. We are interested in a specific type of distribution and a single question was the best approach. |
| ...recommend that the IRS use check boxes at Part III, line 5 of the SUP to collect more specific data regarding the plan's coverage testing. Extract from specific comment: For plan years | ASPPA | For the 2015 form, we will use the question that is currently on the form and will publish clarifying FAQs to address the concern with this year's question. We plan on revising the |

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| <p>beginning before 2005, quite specific detail was required to be presented on Schedule T. Beginning with the 2005 plan year and running through the 2008 plan year, an overly simplified coverage question was inserted at line 9 of Schedule R, similar to line 5 of the SUP. The simplified format relied entirely on the preparer following the instructions to properly complete the item. For example, certain plans did not need to complete the line if the plan, by design satisfied IRC §410(b). The simplified format was of very limited use in evaluating the complexity associated with a plan's coverage testing. (2/23/15)</p> | | <p>question in the 2016 form to incorporate some of the suggestions.</p> |
| <p>...recommend that the IRS simplify the line 6 inquiries relating to plan documents to ensure that filers prepare fact specific information in a uniform manner. Extract from specific comment: Line 6a asks whether the plan has timely adopted the amendments required for all tax law changes, while line 6b requires the date of the last plan amendment/restatement for the required tax law changes (with specific codes for the past three major tax laws). The examples that follow illustrate some of the difficulties that filers will encounter when attempting to provide accurate (and useful) information for these lines. 1) A plan did not timely adopt amendments (or required interim amendments) for EGTRRA; however, the plan subsequently followed procedures under EPCRS for non-amenders and brought the plan up to date. What would be the correct answer for line 6a? 2) A calendar year profit sharing plan that uses a volume submitter document has not been restated for PPA by December 31, 2015, although all interim amendments required by PPA have been adopted. What would be the correct answer for line 6b? 3) A calendar year 401(k) plan is amended and restated for PPA using a pre-approved document before December 31, 2014. Line 6b reflects this information for the 2015 reporting period. As a result of changing service providers in August 2016, however, the plan adopts a different pre-approved PPA document. What would be the correct answer for 6b? (2/23/15)</p> | ASPPA | <p>For the 2015 form, we will use the current question and will publish clarifying FAQs to address the concern with this year's question. We plan on revising the question in the 2016 form to incorporate some of the suggestions.</p> <p>With respect to the three specific questions raised by ASPPA:</p> <ol style="list-style-type: none">1) Check "Yes" for Line 6a if the plan sponsor has used the Employee Plans Compliance Resolution System to correct a non-amender failure.2) Enter the adoption date of the most recent interim amendment on Line 6b.3) Enter the date with respect to the plan document in effect as of the last day of the reporting period (December 31, 2015) on Line 6b. |
| <p>...recommend that the IRS provide more specific information regarding which filers are required to provide the SUP information electronically and the application of certain penalties and late filing remedies. Extract from specific comment: It would be helpful if the instructions directly state that filers required to provide SUP information (or its electronic equivalent) are only those filers (other than DFE filers) that report a three digit plan number at line 1b that is less than 500. The IRS should also modify the instructions to clarify whether the requirement to file electronically is affected by whether the plan sponsor and the plan administrator are different entities... Similarly, under <i>Penalties</i>, it appears the IRS may apply failure to file penalties to the entire Form 5500 series report when a paper Form 5500-SUP is not filed when required (and the information has not been filed electronically). In addition, there is no indication of how this filing should be made if the Form 5500 series is being submitted late utilizing the Department of Labor's DFVC program, or whether <i>reasonable</i></p> | ASPPA | <p>Only taxpayers that file fewer than 250 returns annually with the IRS are permitted to file a SUP. If one of those filers elects to answer all of the tax questions on the electronic Form 5500 or Form 5500/SF, there is no requirement to file a Form 5500-SUP. If a taxpayer doesn't answer the tax questions electronically and fails to file a paper Form 5500-SUP, the electronic Form 5500 or Form 5500/SF will still be accepted as filed. However, that form would be incomplete.</p> <p>IRS intends to publish clarifying FAQs for the 2015 form to explain who has the option to file the 5500-SUP in lieu of answering the IRS questions on Forms 5500 or 5500-SF. We expect to revise the instructions to the 2016 form.</p> |

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| <p>cause for any late filing will be considered. (2/23/15)</p> | | |
| <p>...recommend that you abandon the proposed Form 5500-SUP. The data to be provided on Form 5500-SUP could be gathered more effectively and with much less cost and burden to both plan sponsors and service providers by simply adding new “plan characteristic codes” to the existing Form 5500 or 5500-SF (rather than adding an entirely new filing requirement). Ultimately the costs of plan compliance are borne by plan participants. As regulators (you) and service providers (me), we have a duty to ensure that the retirement security of plan participants isn’t eroded by avoidable and burdensome expenses. (2/19/15)</p> | <p>Indiana Benefits, Inc.</p> | <p>By adding IRS questions to the Form 5500 series that can be filed only under the Department of Labor’s EFAST2 electronic filing system, IRS is effectively mandating electronic filing by taxpayers. Based on 26 USC section 6011(e), IRS cannot mandate electronic filing of the Form 5500 series unless a paper filing option (Form 5500-SUP) is available to taxpayers that file fewer than 250 returns annually. As a result, IRS has no discretion to adopt the commenter’s suggestion.</p> <p>There are over 60 Plan Characteristic Codes. They are found only in the Form 5500 Series instructions, not on the face of the forms. IRS has found that when Plan Characteristic Codes are used, taxpayers do not always furnish all the codes that are applicable to the plan or do not insert accurate codes. In situations where the information is critical, we prefer to ask questions rather than use codes to ensure the responses are accurate. We have determined that these questions are critical to compliance and should not be included on the form as a code.</p> |
| <p>In today’s environment, we’ve moved to narrow specialization and automation. Form 5500 preparation may be handled by a dedicated department, compliance testing may be handled by a different department and plan documents may be handled by yet another department (or outsourced). To suddenly require the collection and reporting of data (not included on 5500’s since 2008 or earlier) is both burdensome and disruptive to plan sponsors, practitioners and service providers. It ignores the processes widespread in the industry to prepare and file Forms 5500. (2/19/15)</p> | <p>Indiana Benefits, Inc.</p> | <p>We believe that all the data is available since plans must know if they meet the qualification requirements, and most of the information we are requesting is generated annually. The plan sponsor, its attorney, accountant and benefit consultant generally work on a collaborative basis to gather the information to file the annual Form 5500. The information for these new items need only be added to the annual information request issued by the Form 5500 preparer and should put little additional burden on the taxpayer and its advisors and preparer.</p> |
| <p>The purpose of Form 5500-SUP is to gather additional data to be used for both enforcement and analysis. I strongly believe that 90% of the data could be gathered with the addition of new “plan characteristic codes” to the existing Form 5500 or Form 5500-SF. While the new codes might not capture the most granular information contained in proposed Form 5500-SUP, the new codes could be used to identify the subset of plans to which the granular data would be meaningful in analysis or enforcement. The identified subset could be then surveyed (by the Employee Plans Compliance Unit – as the EPCU did with their “401(k) Survey”) or selected for audit. Thus the entire universe of retirement plans is not burdened with providing granular data at considerable expense (ultimately borne by plan participants). (see specific recommendations below) (2/19/15)</p> | <p>Indiana Benefits, Inc.</p> | <p>There are over 60 Plan Characteristic Codes. They are found only in the Form 5500 Series instructions, not on the face of the forms. IRS has found that when Plan Characteristic Codes are used, taxpayers do not always furnish all the codes that are applicable to the plan or do not insert accurate codes. In situations where the information is critical, we prefer to ask questions rather than use codes to ensure the responses are accurate. We have determined that these questions are critical to compliance and should not be included on the form as a code.</p> |
| <p>1. Part I (all questions): These items duplicate information already contained on Form 5500 or 5500-SF. Recommendation: omit question (2/19/15)</p> | <p>Indiana Benefits, Inc.</p> | <p>Taxpayers that annually file fewer than 250 returns with the IRS cannot be required to answer the tax compliance questions electronically. These taxpayers are required by law to have a paper option (Form 5500-SUP) to answer these questions.</p> |

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| <p>2. Part II, items 1 and 2: These items duplicate information already contained on Form 5500 or 5500-SF. Recommendation: omit question (2/19/15)</p> | <p>Indiana Benefits, Inc.</p> | <p>Taxpayers that annually file fewer than 250 returns with the IRS cannot be required to answer the tax compliance questions electronically. These taxpayers are required by law to have a paper option (Form 5500-SUP) to answer these questions.</p> |
| <p>3. Part II, item 3: Trust name, Trust EIN, Trustee Name and Trustee telephone number. Recommendation: omit question & substitute by adding plan characteristic codes for “trustee” and “directed/passive trustee” which could be used for focused follow-up by EPCU or examination. Also leave as optional on Form 5500 or Form 5500-SF (since it’s rarely applicable) (2/19/15)</p> | <p>Indiana Benefits, Inc.</p> | <p>The approach recommended would provide only generic information, not plan specific information that IRS has determined is critical to monitoring compliance.</p> |
| <p>4. Item 4a – Is a plan a 401(k) plan? Recommendation: omit question – there is already a plan characteristic code for 401(k) plan (2/19/15)</p> | <p>Indiana Benefits, Inc.</p> | <p>There are over 60 Plan Characteristic Codes. They are found only in the Form 5500 Series instructions, not on the face of the forms. IRS has found that when Plan Characteristic Codes are used, taxpayers do not always furnish all the codes that are applicable to the plan or do not insert accurate codes. In situations where the information is critical, we prefer to ask questions rather than use codes to ensure the responses are accurate. We have determined that these questions are critical to compliance and should not be included on the form as a code.</p> |
| <p>5. Item 4b – 401(k) non-discrimination Recommendation: omit question & substitute by adding plan characteristic codes for “design-based safe harbor” and “ADP/ACP test” (2/19/15)</p> | <p>Indiana Benefits, Inc.</p> | <p>There are over 60 Plan Characteristic Codes. They are found only in the Form 5500 Series instructions, not on the face of the forms. IRS has found that when Plan Characteristic Codes are used, taxpayers do not always furnish all the codes that are applicable to the plan or do not insert accurate codes. In situations where the information is critical, we prefer to ask questions rather than use codes to ensure the responses are accurate. We have determined that these questions are critical to compliance and should not be included on the form as a code.</p> |
| <p>6. Item 4c – 401(k) current year testing Recommendation: omit question & substitute by adding plan characteristic code for “current year testing” (2/19/15)</p> | <p>Indiana Benefits, Inc.</p> | <p>There are over 60 Plan Characteristic Codes. They are found only in the Form 5500 Series instructions, not on the face of the forms. IRS has found that when Plan Characteristic Codes are used, taxpayers do not always furnish all the codes that are applicable to the plan or do not insert accurate codes. In situations where the information is critical, we prefer to ask questions rather than use codes to ensure the responses are accurate. We have determined that these questions are critical to compliance and should not be included on the form as a code.</p> |
| <p>7. Item 5a – 410(b) plan coverage Recommendation: omit question & substitute by adding plan characteristic codes for “ratio percentage test” and “average benefit test” (note that a plan could be using both methods at the same time) (2/19/15)</p> | <p>Indiana Benefits, Inc.</p> | <p>There are over 60 Plan Characteristic Codes. They are found only in the Form 5500 Series instructions, not on the face of the forms. IRS has found that when Plan Characteristic Codes are used, taxpayers do not always furnish all the codes that are applicable to the plan or do not insert accurate codes. In situations where the information is critical, we prefer to ask questions rather than use codes to ensure the responses are accurate. We have determined that these questions are critical to compliance and should not be included on the form as a code.</p> |
| <p>8. Item 5b – permissive aggregation Recommendation: omit question & substitute by adding plan characteristic code for “permissive aggregation used” (2/19/15)</p> | <p>Indiana Benefits, Inc.</p> | <p>There are over 60 Plan Characteristic Codes. They are found only in the Form 5500 Series instructions, not on the face of the forms. IRS has found that when Plan Characteristic Codes are used, taxpayers do not always furnish all the codes that are applicable to the plan or do not</p> |

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| | | insert accurate codes. In situations where the information is critical, we prefer to ask questions rather than use codes to ensure the responses are accurate. We have determined that these questions are critical to compliance and should not be included on the form as a code. |
| <p>9. Item 6a – timely plan amendment. This question is extremely troubling for a number of reasons: 1) IRS has never published a complete, clear and understandable listing of all amendments that a plan would have to adopt to remain tax-qualified. Such a list would (for each required amendment) list the law or regulation mandating the amendment, a clear description of what must be amended, the required effective date of the amendment and the required adoption (signing) date of the amendment. I suspect that many practitioners whose primary duty is the preparation of Form 5500 wouldn't be able to list all of these required amendment for the past 6 years, not to mention every amendment that should have been adopted by a plan that's been in existence since 1978. It only follows that an employer trying to complete Form 5500 for his won plan would be totally clueless in this regard. 2) Most plans have changed service providers (and document providers more than once) – often an unsophisticated client fails to maintain all old document copies. 3) Forms 5500 are signed under penalties of perjury that they are true, correct and complete. Since this question seems to address document compliance from a plan's inception (often well beyond the statute of limitations for any open tax year), it's quite likely that many signers will be perjuring themselves for the reasons mentioned above. Recommendation: omit question (2/19/15)</p> | Indiana Benefits, Inc. | IRS publishes the annual Cumulative List that identifies all recent legislation and IRS guidance that may require plan amendments depending on the design of a given retirement plan. For the 2015 form, we will use the current question and will publish clarifying FAQs to address the concern with this year's question. We plan on revising the question in 2016 form to incorporate some of the suggestions. |
| <p>10. Item 6b – latest plan amendment/restatement. This question is confusing because a plan amendment might include only required (compliance) changes, it might include plan design changes or it might include a combination of both – what are you looking for here? The research required to answer this question and locate the adoption date is quite costly. In addition, when plans change service providers it's a common industry practice to restate the plan document. This could very likely skew the data and result in flawed data analysis and targeting. Recommendation: omit question & substitute by adding 3 plan characteristic codes for “PPA06”, “EGTRRA” and “GUST”. Since non practitioners will have no idea how to answer this question (short of taking a law course or 2), you will need to provide an expanded explanation if you choose to include these codes. (2/19/15)</p> | Indiana Benefits, Inc. | <p>For the 2015 form, we will use the current question and will publish clarifying FAQs to address the concern with this year's question. We plan on revising the question in 2016 form to incorporate some of the suggestions.</p> <p>There are over 60 Plan Characteristic Codes. They are found only in the Form 5500 Series instructions, not on the face of the forms. IRS has found that when Plan Characteristic Codes are used, taxpayers do not always furnish all the codes that are applicable to the plan or do not insert accurate codes. In situations where the information is critical, we prefer to ask questions rather than use codes to ensure the responses are accurate. We have determined that these questions are critical to compliance and should not be included on the form as a code.</p> |
| <p>11. Item 6c – pre-approved plan document. This question is already addressed with an existing plan characteristic code (Code 3E). The research required to gather and enter the IRS Opinion Letter date and serial number will be quite costly. Recommendation:</p> | Indiana Benefits, Inc. | There are over 60 Plan Characteristic Codes. They are found only in the Form 5500 Series instructions, not on the face of the forms. IRS has found that when Plan Characteristic Codes are used, taxpayers do not always furnish all the codes that are applicable to the plan or do not |

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| <p>omit question – if additional research and analysis is required, initiate a targeted EPCU survey or examination sample. (2/19/15)</p> | | <p>insert accurate codes. In situations where the information is critical, we prefer to ask questions rather than use codes to ensure the responses are accurate. We have determined that these questions are critical to compliance and should not be included on the form as a code.</p> <p>The pre-approved plan sponsor is required to provide a copy of the opinion letter to the adopting employer who sponsors the plan and files the annual return. If this was not retained by the employer, it can easily request it. It is not clear how obtaining the letter would be costly.</p> |
| <p>12. Item 6d – individually designed plan document. This question is already addressed with an existing plan characteristic code (Code 3E). If a plan is not a pre-approved document (Code E), then it is considered to be an individually designed plan. The plan sponsor’s EIN and Plan Number for all plans without Code E could be matched against the IRS database containing information on favorable determination letters and the determination letter dates could be located without burdening 5500 filers to provide information already in the possession of IRS. Recommendation: omit question. (2/19/15)</p> | <p>Indiana Benefits, Inc.</p> | <p>There are over 60 Plan Characteristic Codes. They are found only in the Form 5500 Series instructions, not on the face of the forms. IRS has found that when Plan Characteristic Codes are used, taxpayers do not always furnish all the codes that are applicable to the plan or do not insert accurate codes. In situations where the information is critical, we prefer to ask questions rather than use codes to ensure the responses are accurate. We have determined that these questions are critical to compliance and should not be included on the form as a code.</p> <p>The plan sponsor is provided a copy of its favorable determination letter when the plan is approved by the IRS. We don’t understand why it would be burdensome for the plan sponsor to put the date of the letter on the Form 5500.</p> |
| <p>13. Item 7a – ESOP dividends. In the universe of plans, ESOP plans constitute a very small percentage. For that reason, the use of characteristic codes for “interesting” ESOP plan features should be sufficient to support either a targeted EPCU survey or examination sample. Recommendation: omit question & substitute by adding plan characteristic code for “ESOP deductible dividend paid” (2/19/15)</p> | <p>Indiana Benefits, Inc.</p> | <p>This question was deleted in current version of the draft 2015 Form 5500 series.</p> |
| <p>14. Item 7b – ESOP dividend financial questions. This information would be included in the independent auditor’s report (already a required attachment for Form 5500 filers – not required for small plan filers). Also note that this information is easily (and publicly) available for publicly-traded companies. Recommendation: omit question and if data needed for small plan filers, initiate a targeted EPCU survey or examination sample. (2/19/15)</p> | <p>Indiana Benefits, Inc.</p> | <p>This question was deleted in current version of the draft 2015 Form 5500 series.</p> |
| <p>15. Item 8 – USA territory plan. Recommendation: omit question & substitute by adding plan characteristic code for “USA territory plan without 1022 election”. (2/19/15)</p> | <p>Indiana Benefits, Inc.</p> | <p>There are over 60 Plan Characteristic Codes. They are found only in the Form 5500 Series instructions, not on the face of the forms. IRS has found that when Plan Characteristic Codes are used, taxpayers do not always furnish all the codes that are applicable to the plan or do not insert accurate codes. In situations where the information is critical, we prefer to ask questions rather than use codes to ensure the responses are accurate. We have determined that these questions are critical to compliance and should not be included on the form as a code. We</p> |

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| <p>16. Item 9 – Contributions deducted. Items 9a and 9b ask for information already contained on the plan sponsor’s Federal Income Tax return. By matching the sponsor’s EIN on Form 5500 to the applicable sponsor tax return, this information could be located without burdening 5500 filers to provide information already in the possession of IRS. Recommendation: omit question. (2/19/15)</p> | <p>Indiana Benefits, Inc.</p> | <p>plan on revising the question on the 2016 form to incorporate some of the suggestions.</p> <p>This question was deleted in current version of the draft 2015 Form 5500 series.</p> |
| <p>17. Item 10 – Unrelated business taxable income. An extremely small percentage of the universe of plans has unrelated business taxable income. Recommendation: omit question & substitute by adding plan characteristic code for “unrelated business taxable income” – if more data is needed, initiate a targeted EPCU survey of examination sample. (2/19/15)</p> | <p>Indiana Benefits, Inc.</p> | <p>There are over 60 Plan Characteristic Codes. They are found only in the Form 5500 Series instructions, not on the face of the forms. IRS has found that when Plan Characteristic Codes are used, taxpayers do not always furnish all the codes that are applicable to the plan or do not insert accurate codes. In situations where the information is critical, we prefer to ask questions rather than use codes to ensure the responses are accurate. We have determined that these questions are critical to compliance and should not be included on the form as a code.</p> |
| <p>18. Item 11 – In-service distributions. This information would be included in the independent auditor’s report (already a required attachment for Form 5500 filers – not required for small plan filers). To gather this information for small plan filers would be very costly due to existing recordkeeping systems. Recommendation: omit question and if data needed for small plan filers, initiate a targeted EPCU survey or examination sample. (2/19/15)</p> | <p>Indiana Benefits, Inc.</p> | <p>This is an important compliance issue. It is not unusual for plans to improperly make in-service distributions to participants. To identify plans that potentially made improper distributions, the question was added to the Form 5500. We plan to revise the question in the 2016 form to incorporate some of the suggestions.</p> |
| <p>19. Part IV – Preparer information – name, address and telephone number. Historically, this information could be provided optionally, but was not required. Form 5500-SUP would make providing this information mandatory. Unlike most other tax forms containing preparer information, Form 5500 is subject to public disclosure and is posted for public viewing on the Department of Labor’s EFAST2 website. I have a number of very serious concerns with this item, as proposed: 1) In the “changes chart” published in the Federal Register, it was stated that EP Exam needs this information so they can contact preparers for issues relating to the 5500 and plan qualification. The relationship between a practitioner and client is defined and memorialized in a written Service Agreement. Some engagements may be very limited (i.e. preparation and filing of Form 5500), while others might be broader in scope. Accordingly, the 5500 preparer may not be privy or involved in plan qualification matters. Also, the reasoning in the “changes chart” seems to imply that a practitioner has been authorized by the plan sponsor to discuss qualification matters – whether or not this has been authorized by the client (or is even within the terms of the engagement). This might also imply a liability on behalf of the preparer this is not even part of the service agreement! From time to time and for various reasons, there</p> | <p>Indiana Benefits, Inc.</p> | <p>26 USC section 6058 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. 26 USC section 6104(b) requires that together with the name and address of the organization and trust, all information required pursuant to section 6058 shall be made available to the public.</p> <p>Based on standard IRS procedures, we intend to obtain authorization from the taxpayer before requesting information from a preparer.</p> <p>If through the examination process we discover 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.</p> <p>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.</p> |

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| <p>are changes in service providers. After we have terminated our relationship with a client, it would be inappropriate to discuss their tax matters with anyone. 2) I am not aware of any other situation where the identification of a return preparer (for a specific client's return) is made available to the public. This requirement would effectively make my client list publically available. As a small business, what would prevent a large competitor (for example a national payroll company) from identifying all of my clients and aggressively courting them with predatory pricing? I could be out of business in 6 months! This affects not just our firm and our staff members, but all small and medium-sized service providers nationwide. In addition, although we do not serve as a plan fiduciary, we would be exposed to the risk of misdirected lawsuits and threats to the personal safety of our staff by unhappy plan participants. 3) Form 5500 is an "information return" and not a "tax return". As such, preparers of Form 5500 are not required to have a Practitioner Tax Identification Number (PTIN). It is interesting to note that as required annual plan filings have evolved over the years, some (especially larger) service providers have moved to a fully automated 5500 preparation model - where the 5500 Forms are generated "untouched by human hands". Who would be named "the preparer" in this case? If nobody is named, my proprietary client list is made public, but my (fully automated) competitor's client list remains protected! Recommendation: preparer information may be provided optionally, but not mandated. In the event that EP needs additional information about a return or a plan's compliance, they would follow current procedures (which work just fine) of contacting the plan sponsor (who would then engage a practitioner for assistance if needed. (2/19/15)</p> | | |
| <p>The accuracy of the agency's estimate of the burden of the collection of information. In the discussion in the Federal Register, it was estimated that 822,500 would be affected ("Estimated Number of Respondents"). This is the number of retirement plans that would be subjected to the additional reporting requirements. I agree that this is a reasonable estimate. Also in the Federal Register, it was estimated that the additional burden of this form would be 25 minutes ("Additional Burden per Respondent"). This is in contradiction to the estimates contained in the draft instructions for proposed Form 5500-SUP which total 14 hours and 16 minutes, as follows (stated on page 4 of the instructions): Recordkeeping: 6 hr. 27 min./Learning about the law or form: 3 hr. 46 min. / Preparing and sending the form to IRS: 4 hr. 3 min. It is interesting to note that the time estimate above (4 hours - just for preparing and filing proposed Form 5500-SUP) is almost twice the time estimate (2 hours, 32 minutes) for the preparation and filing of Form 5500-SF (to which the SUP is a "supplement")! For a reality check, I prepared a Form 5500-SUP for an average client's plan. I'm a seasoned</p> | <p>Indiana Benefits, Inc.</p> | <p>The 14-hour burden estimate for the Form 5500-SUP was computed under an IRS methodology different from the DoL methodology used for the 5500. The historic IRS methodology (originally formulated by Arthur D. Little (ADL)) requires hypothetical assumptions that may not be realistic for preparers of the 5500 series, as the comment itself concedes. We believe that all the data is available since plans must know if they meet the requirements for plan qualification, and the information we are requesting is generated annually. The plan sponsor, its attorney, accountant and benefit consultant generally work on a collaborative basis to gather the information to file the annual Form 5500. The information for these new items need only be added to the annual information request issued by the Form 5500 preparer and should put little additional burden on the taxpayer and its advisors and preparer.</p> |

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| <p>practitioner and with gathering the necessary data it took me 65 minutes – I was already familiar with the form and instructions so did not add that time. I’d consider this a “best case” preparation time – almost 3 times the Federal Register estimate. For an average preparer, it would probably take twice as long. For a plan sponsor who only completes her own 5500-SUP it might take the full 14 hours (per the estimate in the instructions). If we assume that a blended average time would be 3 hours, the net ANNUAL burden of this form is 2, 467,500 hours! (2/19/15)</p> | | |
| <p>Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology: Eliminate Form 5500-SUP and replace with new codes. (2/19/15)</p> | <p>Indiana Benefits, Inc.</p> | <p>The paper Form 5500-SUP was created because of different filing requirements for electronic filing versus paper submissions. Section 6058(a) of the Internal Revenue Code requires the plan sponsor or plan administrator to file an annual information return with respect to the qualification, financial conditions, and operations of the plan. This law requires that the questions be answered but does not address <i>how</i> they should be answered; answering on the paper Form 5500-SUP is optional.</p> <p>The IRS cannot require all plan sponsors to file the required information return electronically. Only plan sponsors who have to file at least 250 tax and information returns with the IRS during the calendar year are <i>required</i> to file returns electronically (under Section 301.6058-2 of the Treasury regulations). For other taxpayers, electronic filing for the IRS questions is optional (although Department of Labor 5500 questions can only be answered electronically), so the paper form was created to provide a mechanism on which those filers may submit answers to these new compliance questions. Only taxpayers that file fewer than 250 returns annually with the IRS are permitted to file a 5500-SUP.</p> |
| <p>Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information: Nowhere is the estimated cost burden discussed in the Federal Register. An average hourly billing rate for a practitioner might be \$80 to \$150 per hour. For estimate’s sake, let’s assume an hourly rate of \$80 and the annual time burden of 2,467,500 hours. This results in a RECURRING ANNUAL cost for this new form of \$197,400,000.00. Again, this is a cost that will ultimately be borne by plan participants. (2/19/15)</p> | <p>Indiana Benefits, Inc.</p> | <p>We believe that plans should be able to acquire the information needed to respond to the proposed questions with relative ease because the information should be maintained for plan qualification.</p> |
| <p>As someone who has been in this industry more than 25 years and have owned my own firm for more than 14 years, I am very troubled by the data to be collected and apparently made public. Specifically, I am referring to my firm’s information being made public on the Form. I am puzzled as to why TPAs will be forced to publish their client lists. This will not be true of financial advisors, trust companies, fund companies, attorneys or the record keepers. I am obviously not opposed to our information being provided to either the IRS or the DOL. In fact, I think many in the industry already assumed that information was somehow being passed through the EFAST2 filing. Instead of making my client list a matter of public record, may I</p> | <p>Hunter Benefits Consulting Group, Inc.</p> | <p>26 USC section 6058 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. 26 USC section 6104(b) requires that together with the name and address of the organization and trust, all information required pursuant to section 6058 shall be made available to the public.</p> <p>If through the examination process we discover that a particular preparer has compliance problems with its client’s plan, this question will help us to identify other plans that are likely</p> |

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| <p>please suggest that the solution be found with the vendors whereas our information is passed through the EFAST2 filing as meta data? That way my client list remains confidential and the IRS or DOL has the necessary information needed. (2/10/15)</p> | | <p>to have similar issues.</p> <p>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.</p> |
| <p>A primary issue for banks that serve as service providers to employee benefit plans is the Proposal's addition of the Trust Employer Identification Number (EIN) to Form 5500. Bank service providers are concerned that the IRS may have deactivated the original Trust EIN for many plans because the Trust EINs have not been used for a long period of time. (The IRS does not notify bank service providers when deactivating a Trust EIN.) To re-establish the Trust EIN for a plan, or to wait for IRS follow-up correspondence, would take a significant amount of time and resources, providing little or no benefit in return. Consequently, ABA requests that the IRS delete from the Proposal the Trust's EIN from Item 1 of Form 5500.(2/10/15)</p> | | |
| <p>Another concern is the proposed mandatory inclusion of the preparer's name, address, and telephone number on the Form 5500, for the purpose of having this information available for Employee Plan (EP) Exams and Employee Plans Compliance Unit (EPCU) programs. This new requirement would be problematic for bank service providers of plans for several reasons. First, bank service providers may prepare the Form 5500 for review and signature by the plan administrator, but they are not responsible for the information provided on the Form 5500 (other than information about their own compensation). Second, although a bank service provider may be the primary preparer of the Form 5500, in many cases, the bank may not be the only person or entity providing information to the plan administrator for inclusion with the filing and the bank would not be in a position to answer questions about such information. Third, bank service providers are not authorized to speak on behalf of the plan administrator and, in most cases, are contractually prohibited from releasing plan information to third parties in the absence of a subpoena. Finally, responding to IRS inquiries that are more appropriately directed to plan administrators would require substantial bank business and legal resources, which ultimately could result in increased costs for plans. Consequently, ABA requests that the IRS delete Item 2, "Preparer Information," from the Proposal. (2/10/15)</p> | <p>American Bankers Association</p> | <p>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 (801-620-7116) to the IRS to reactivate it and should use that EIN on the form. Accordingly, the EIN requirement should not be difficult or burdensome.</p> <p>We understand that certain trusts do not have EINs and can use the EIN of the entity that prepares the Forms 1099-R or Forms 945 relating to plan benefit distributions.</p> <p>For the 2015 form, IRS intends to issue FAQs addressing this issue. We expect to revise the instructions to the 2016 form to clarify this issue.</p> |
| <p>The Notice requests comments on the accuracy of the IRS' estimate of the burden of the collection of information.⁴ The IRS states that the estimated time to complete the changes proposed in the Notice will be 25 minutes per respondent.⁵ ABA believes that this estimate is well below the time that would actually be required to provide the necessary</p> | <p>American Bankers Association</p> | <p>26 USC section 6058 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. 26 USC section 6104(b) requires that together with the name and address of the organization and trust, all</p> |

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| <p>information. The data that are being requested under the Proposal, for example, often are not centralized in one location. Thus, it may require significant additional time, resources, and staff to collect the information described in the Proposal. The time estimate should take into account these operational variables that impact the data collection process. (2/10/15)</p> | | <p>information required pursuant to section 6058 shall be made available to the public.</p> <p>If through the examination process we discover that a particular preparer has compliance problems with its client's plans, this question will help us to identify other plans that may have similar issues.</p> <p>Based on standard IRS procedures, we intend to obtain authorization from the taxpayer before requesting information from a preparer</p> <p>For the 2015 form, IRS intends to issue FAQs clarifying who is a preparer. We expect to revise the instructions to the 2016 form.</p> |
| <p>We are writing to express our concern about the Internal Revenue Service's (IRS) submission to your office regarding the 2015 Form 5500 series reports, including the new Form 5500-SUP. We have constituents in our states that will face a significant compliance burden due to the additional data collection. The accelerated implementation timeline contained in the submission makes successfully complying with these new requirements particularly difficult. (8/5/15)</p> | <p>American Bankers Association</p> | <p>We believe that plans should be able to acquire the information needed to respond to the proposed questions with relative ease because the information should be maintained for plan qualification.</p> |
| <p>It has been brought to our attention that the IRS may have understated the burden associated with the new data collection required by the new Form 5500-SUP. In particular, the IRS submission does not appear to take into account the additional time needed to collect and report the new data if the data is part of the electronically filed Form 5500 series. An accurate accounting of this burden is important to retirement plan participants, who typically bear at least some of the costs associated with plan administration. (8/5/15)</p> | <p>Senators Benjamin L. Cardin and Robert P. Casey, Jr.</p> | <p>The proposed Form 5500-SUP was published in in December 2014 and May 2015 for public comment. The forms contained the proposed new questions. Historically, annual Form 5500 Series changes are released in December of the year before the year in which the Series is effective (e.g., December 2013 for the 2014 Form 5500, to be filed in 2015). The vast majority of filings are not due until at least the following July 31. Historically, this standard timeframe has been sufficient for preparers.</p> |
| <p>In addition, the current timeline for compliance and limited guidance contained in the IRS submission makes an effective response impractical for many retirement plan service providers. These providers generally do not gear up their data collection and software processing systems based on draft or proposed forms and instructions, which are usually subject to some changes before being officially released. Instead, businesses wait until the final forms and instructions are issued. It then generally takes six to twelve months for the necessary capital investment to be approved and the technology, communication, and</p> | <p>Senators Benjamin L. Cardin and Robert P. Casey, Jr.</p> | <p>We believe that plans should be able to acquire the information needed to respond to the proposed questions with relative ease because the information should be maintained for plan qualification.</p> |

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| <p>procedure changes to be developed and implemented. (8/5/15)</p> | | |
| <p>Because of these concerns, implementation of the new reporting required should be delayed, preferably applying to plan years beginning in 2016. A later effective date would also provide additional time for the IRS to incorporate input from stakeholders, make substantive refinements and enhancements to the Form 5500 series reports in order to accurately capture the additional data, and provide clear instructions to the regulated community. (8/5/15)</p> | <p>Senators Benjamin L. Cardin and Robert P. Casey, Jr.</p> | <p>The proposed Form 5500-SUP was published in in December 2014 and May 2015 for public comment. The forms contained the proposed new questions. Historically, annual Form 5500 Series changes are released in December of the year before the year in which the Series is effective (e.g., December 2013 for the 2014 Form 5500, to be filed in 2015). The vast majority of filings are not due until at least the following July 31. Historically, this standard timeframe has been sufficient for preparers.</p> |
| <p>Burden on clients' retirement plans. The IRS has estimated that 14.28 hours of time will be required to gather data, complete, and file a Form 5500-SUP. Whether a plan elects to file a separate (paper) Form 5500-SUP or include the data in the electronically-filed Form 5500 or 5500-SF, the burden will be similar. Assuming an hourly billing rate of \$100, this will add \$1,428 to the cost of the filing for each retirement plan. Of the 822,500 plans that IRS estimates will make these filings, 650,000 of these are for small plans. Most of our clients' plans are small plans. Here's an example: if a small plan is currently paying \$2,800 for compliance and recordkeeping services, the added cost burden of Form 5500-SUP data requirements represents a 50% increase in cost. Due to business realities, costs of many plans are paid from plan assets, so this will directly affect the retirement savings of the employees covered. On the macro level, IRS estimates that 822,500 plans will be subject to this burden. IRS has estimated that the additional annual burden per plan is 14.28 hours. If you "do the math", and assume an hourly billing rate of \$100, this results in an additional annual cost burden of \$1,174,530,000. Recommendation: Delay implementation for at least 12 months of the Form 5500-SUP changes and other IRS-initiated data collection changes that are new for 2015 (such as the age 70-1/2 required minimum distributions (e.g. item 21 on Form 5500-SF)) Strongly suggest that IRS actively solicit and incorporate input from other stakeholders (plan sponsors, service providers and plan participant representatives) so that a common-sense and cost-effective approach can be used to gather additional data. (6/4-11/15)</p> | <p>Senators Benjamin L. Cardin and Robert P. Casey, Jr.</p> | <p>Form 5500 changes require significant advance planning and coordination among three different government agencies (IRS, DOL and PBGC); due to the uncertainty of future budgets and resources, delaying implementation is not a practical alternative.</p> |
| <p>Burden on our firm. Our firm would be considered a small business. As a small business, we do not have the time or budget to instantly redesign processes and systems to capture data that has never before been required to be reported. Delay implementation for at least 12 months of the Form 5500-SUP changes and other IRS-initiated data collection changes that are new for 2015 (such as the age 70-1/2 required minimum distributions (e.g. item 21 on Form 5500-SF)) Strongly suggest that IRS actively solicit and incorporate input from other stakeholders (plan sponsors, service providers and plan participant representatives) so that a common-sense</p> | <p>See attached list of commenters.</p> | <p>We believe that plans should be able to acquire the information needed to respond to the proposed questions with relative ease because the information should be maintained for plan qualification. The 14-hour burden estimate for the Form 5500-SUP was computed under an IRS methodology different from the DoL methodology used for the 5500. The historic IRS methodology (originally formulated by Arthur D. Little (ADL)) requires hypothetical assumptions that may not be realistic for preparers of the 5500 series.</p> |

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| <p>and cost-effective approach can be used to gather additional data. (6/4-11/15)</p> | | |
| <p>Mandatory sharing of our client list. Historically, providing Form 5500 series preparer information has been optional. While we have no problem making this information available to IRS or the Department of Labor for their use, we have a serious problem with our client list being made available to the public. EFAST2 (the electronic filing system for the 5500 series) has the ability to collect data but also to suppress certain data elements from public disclosure. Although IRS is aware of this capability, as proposed (and explained by IRS) the mandatory preparer information would be made public.</p> <p>There are companies who make Mandatory sharing of our client list. Historically, providing Form 5500 series preparer information has been optional. While we have no problem making this information available to IRS or the Department of Labor for their use, we have a serious problem with our client list being made available to the public. EFAST2 the electronic filing system for the 5500 series) has the ability to collect data but also to suppress certain data elements from public disclosure. Although IRS is aware of this capability, as proposed (and explained by IRS) the mandatory preparer information would be made public.</p> <p>Eliminate the public disclosure of preparer information so that our firm can remain in business so our clients receive quality service and our employees will have jobs. (6/4-11/15)</p> | <p>See attached list of commenters.</p> | <p>The proposed Form 5500-SUP was published in in December 2014 and May 2015 for public comment. The forms contained the proposed new questions. Historically, annual Form 5500 Series changes are released in December of the year before the year in which the Series is effective (e.g., December 2013 for the 2014 Form 5500, to be filed in 2015). The vast majority of filings are not due until at least the following July 31. Historically, this standard timeframe has been sufficient for preparers.</p> |
| | <p>See attached list of commenters.</p> | <p>26 USC section 6058 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. 26 USC section 6104(b) requires that together with the name and address of the organization and trust, all information required pursuant to section 6058 shall be made available to the public.</p> <p>If through the examination process we discover that a particular preparer has compliance problems with its client's plan, this question will help us to identify other plans that are likely to have similar issues.</p> <p>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.</p> |
| <p>AARP appreciates the efforts of the Internal Revenue Service to develop a more useable Form 5500 without making the form administratively burdensome to plans, plan sponsors and service providers. AARP supports the proposed changes to the Form 5500. (2/23/15)</p> | <p>AARP</p> | <p>N/A. This letter explicitly applies to Form 5500 – not 5500-SUP.</p> |
| <p>During recent years, many employers have engaged in “de-risking, or risk-shifting.” Under risk</p> | <p>AARP</p> | <p>This comment specifically refers to Form 5500 – not 5500-SUP. In any case, adding a question</p> |

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| <p>shifting, financially solvent employers who otherwise could not terminate a plan because it is not 100% funded, “terminate” specific categories of workers or retirees who are vested under the plan. Risk shifting is accomplished by purchasing insurance annuities, the offering of lump sum payment, or both, for limited groups of workers, primarily deferred bested participants, retirees, or both. Because of the seriousness or the effects of this new trend, the Form 5500 should capture this information so that the government agencies responsible for enforcing ERISA know when plans are undertaking risk shifting, the form it takes, and to what plan participant categories it applies. (2/23/15)</p> | | <p>would increase paperwork burden for which the tax law rationale would be unclear. On “de-risking,” the applicable tax law has been the subject of divergent interpretations for several years. See Notice 2015-49, 2015-31 I.R.B. 79; <i>contra</i> Priv. Ltr. Ruls. 2014-22-031 (Mar. 5, 2014), 2014-22-030 (Mar. 5, 2014), 2014-22-029 (Mar. 6, 2014), 2014-22-028 (Mar. 7, 2014), 2012-28-051 (Jul. 13, 2012), 2012-28-045 (Jul. 13, 2012). Accordingly, we have determined that a “de-risking” question is not appropriate at this time.</p> |
| <p>The categories of investments should be revised to reflect current modern portfolio theory. Moreover, these categories should be mindful of the ongoing shift to defined contribution plans. (2/23/15)</p> | AARP | <p>By its terms, this comment relates to Form 5500 – not 5500-SUP. This information is under the primary authority of the DOL, which would have to add it to the Form 5500.</p> |
| <p>Any fees and compensation paid to service providers should be disclosed on the Form 5500. (2/23/15)</p> | AARP | <p>This comment expressly concerns Form 5500 – not 5500-SUP. If this were a tax compliance comment, adding a question would increase paperwork burden for which the tax law rationale would be unclear. This information is under the primary authority of the DOL, which would have to add it to the Form 5500.</p> |
| <p>The Form 5500 should require the plan administrator to report service providers’ service to the plan and the method of compensation for specific services. (2/23/15)</p> | AARP | <p>This comment literally goes to Form 5500 – not 5500-SUP. If this were a tax compliance comment, adding a question would increase paperwork burden for which the tax law rationale would be unclear. This information is under the primary authority of the DOL, which would have to add it to the Form 5500.</p> |
| <p>Small plans (those with fewer than 100 participants) account for a large majority of plans, but the Form 5500-SF requires little reporting for those plans. The Form 5500-SF should require information on general categories of small plan investments and the costs and expenses for these investments. (2/23/15)</p> | AARP | <p>This comment is clearly for Form 5500-SF – not 5500-SUP. If this were a tax compliance comment, adding a question would increase paperwork burden for which the tax law rationale would be unclear. This information is under the primary authority of the DOL, which would have to add it to the Form 5500-SF.</p> |
| <p>The plan administrator should report the names and contact information of all known fiduciaries of the plan, including any persons who served on any committees with fiduciary responsibility. The Form should specifically require the identification of the named fiduciary(ies) required under Section 402(a) of ERISA, 29 U.S.C. § 1102(a). (2/23/15)</p> | AARP | <p>Legally, this comment cites the Tit. 29 (ERISA) authority of DoL, not the Tit. 26 (Int. Rev. Code) authority of IRS. This information is under the primary authority of the DOL, which would have to add it to the Form 5500. Nonetheless, Form 5500-SUP would ask for trustee information.</p> |
| <p>The Form 5500 should require plan administrators to identify whether or not the Plan auditor is a member of the AICPA Employee Benefit Plan Audit Quality Center. If the Service finds that there is a pattern of varied and inconsistent auditing practices, the Service can work with the AICPA to correct the problem(s). (2/23/15)</p> | AARP | <p>As stated, this comment is on Form 5500 – not 5500-SUP. This information is under the exclusive authority of the DOL, which would have to add it to the Form 5500. Relative to tax compliance, Form 5500-SUP would ask for preparer information.</p> |
| <p>The plan administrator should certify that the information reported on the Form 5500 is accurate and correct. In addition, if key information is not reported, the Form 5500 should be returned to the filer and resubmitted. (2/23/15)</p> | AARP | <p>Again, this comment says that it is about Form 5500 – not 5500-SUP. This information is under the primary authority of the DOL, which would have to add it to the Form 5500.</p> |