

August 5, 2010

Gerald Shields  
Internal Revenue Service  
Room 6129  
1111 Constitution Avenue, NW  
Washington, DC 20224

Re: Comment Request for Form 5500 and Schedules

Dear Mr. Shields,

The Pension Rights Center is a nonprofit consumer organization that has been working since 1976 to promote the retirement security of American workers and their families. We appreciate this opportunity to comment on the Form 5500. With this letter we are highlighting an issue that relates to the quality, utility and clarity of the information the Form collects on “active” participants in defined contribution plans.

Form 5500 filings give important data for evaluating the success of policies designed to enhance the retirement security of American workers. For example, provisions in the Pension Protection Act of 2006 were designed to increase participation in private retirement plans by encouraging sponsors of individual account plans to include automatic enrollment features in their plans. However, since employees automatically enrolled in plans retain the option to opt-out, a significant number of individuals may not be actually participating in these plans. In order for policymakers to assess the success of automatic enrollment features in achieving their objectives it will be important for them to know how many individuals continue to participate in individual account plans.

Question 6(a) of the 2010 Form 5500 asks for “active” participant information. The definition of active participant includes “any individuals who are eligible to elect to have the employer make payments under a Code section 401(k) qualified cash or deferred arrangement.” Since, as noted above, some workers choose to opt-out of their employer-sponsored plans, often because they cannot afford to contribute, the definition of “active” participant overstates the number of workers who are “in fact” participating.

Between 1999 and 2004 the Form 5500 included IRS Schedule T. The information collected on Schedule T enabled researchers with the Employee Benefits Security Administration of the Department of Labor to calculate the number of participants who contributed or received contributions to their accounts from employers. Workers who chose not to contribute were not counted. As reported in Appendix B to the *2010 Private Pension Plan Bulletin Historical Tables and Graphs*, defining “active” participants to include all who were eligible to participate, whether or not they contributed or received contributions, inflated the number of active participants in defined contribution plans in 2004 by 10 million persons or 20%.<sup>1</sup> This also inflated the number

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<sup>1</sup> This percentage was calculated from Table 1 of Appendix B. The change in definition also applied to “non-vested former employees who had not (at the time the Form 5500s were submitted) incurred the break in service period established by their plan.” This group would principally be participants in defined benefit pension plans. The

of total participants in plans since the number of active participants is part of the total under Question 6.

Also of concern is the fact that Question 6(g) of the 2010 Form 5500 asks defined contribution plans for the number of participants with account balances as of the end of the plan year. The Instructions to Form 5500 for line 6(g) ask for the number of participants who have made a contribution, or for whom a contribution has been made, to the plan for this plan year or any prior plan year. This number could include employees who initially contributed and later decided to stop making contributions. Simply having an account balance does not imply actively contributing.

In sum, we encourage the IRS, in cooperation with the Employee Benefits Security Administration, to devise a question that will yield an accurate count of employees who have made or received contributions to their accounts during the plan year. An improved definition of "active" participants will be of great benefit to policymakers, as well as to researchers, analysts, the media and consumer organizations such as ours.

Sincerely,



Jane T. Smith  
Policy Associate



Rebecca Davis  
Legislative Counsel