

December 5, 2016

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Ms. Suzanne Adelman
Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: RIN 1210-AB63
Annual Reporting and Disclosure, Room N-5655
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

Re: RIN 1210-AB63 – Annual Reporting and Disclosure

Dear Ms. Adelman:

The Council of Insurance Agents & Brokers (“The Council”) appreciates this opportunity to comment on the Department of Labor’s (“Department”) proposed rule regarding annual reporting requirements under Part I of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”) and related revisions to Form 5500 (“Proposed Rule”).¹ The Council represents the largest and most successful property/casualty and employee benefits agencies and brokerage firms. Council member firms annually place more than \$200 billion in commercial insurance business in the United States and abroad. Our members operate both nationally and internationally, conducting business in some 30,000 locations and employing more than 120,000 people worldwide.

The Council, as a general matter, strongly supports policies and regulatory measures that *encourage* employers of all sizes to offer robust employee benefits. Consequently, we generally disfavor proposals that impose unnecessary costs and/or administrative burdens on employers that offer such benefits, particularly smaller employers with limited financial resources and little (if any) “back office” support.

Here, the Department proposes, among other things, to broaden Form 5500 reporting obligations to include all group health plans covered by Title I of ERISA, including those with fewer than 100 participants (most of which currently are exempt from these reporting requirements). The Council opposes this feature of the Proposed Rule because it would result in yet another significant hurdle and expense for small employers that wish to provide employee health benefits. Indeed, today, many large, sophisticated employers find Form 5500 reporting complex

¹ 81 Fed. Reg. 47496 (July 21, 2016). The Department, jointly with the Internal Revenue Service and the Pension Benefit Guaranty Corporation, published concurrently with this Proposed Rule proposed revisions to Form 5500 Annual Return/Report of Employee Benefit Plan and Form 5500-SF Short Form Annual Return/Report of Small Employee Benefit Plan. 81 Fed. Reg. 47534 (July 21, 2016).

and resource-intensive. Ultimately, therefore, the Department's proposal is likely to result in more small employers dropping coverage for their employees—a trend which our members are already seeing in the marketplace (due to the high cost and administrative complexity of offering health coverage), despite potential penalties under the Affordable Care Act.

Small employers are not the only parties likely to be negatively impacted by the Department's proposal. The more robust data call for group health plans contemplated in the Department's proposed Schedule J could require substantial reprogramming of current reporting systems for insurers and third party administrators. The cost of those changes will be passed on to employers sponsoring the health plans—again, a disincentive to provide coverage.

The Council also questions the usefulness and practical application of some elements of the Proposed Rule. For instance, the new Schedule J would require employers to report certain aggregate claims data, but without extra definitional clarity (i.e., what is a "claim," when is a claim "paid," and what is a "denied" claim versus, for example, a claim on which less than 100% is paid), such reporting will be highly problematic for employers and not particularly useful for the Department. Additionally, it is not clear how data on total paid, denied, and appealed claims across all types of coverages (e.g., medical, dental, prescription, vision, wellness and health flexible spending arrangements) would help the Department identify patterns and/or potential problems. On the other hand, requiring employers to report by type of coverage would dramatically increase the already-high Form 5500 burden on large and small businesses, exacerbating the challenges and negative consequences discussed above.

For the foregoing reasons, The Council urges the Department to refrain from extending Form 5500 obligations to currently-exempt small employers and from increasing the reporting burden for group health plans (i.e., through a new Schedule J). These measures are likely to result in fewer employers offering health benefits and, at the same time, very limited value to the Department's monitoring and enforcement efforts.

Respectfully submitted,



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