



December 5, 2016

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 Avenue NW
Washington DC 20210

Submitted via Federal eRulemaking Portal: <http://www.regulations.gov>

Re: Comments on Proposed Revision of Form 5500

Dear Sir or Madam:

WageWorks, Inc. (“WageWorks”) appreciates the opportunity to provide our comments on the proposed rule outlining changes to the Form 5500, Annual Return/Report (“Form 5500”) as outlined by the Employee Benefits Security Administration (“EBSA”) in Federal Register Vol. 81, No. 140 on July 21, 2016 (the “Proposed Changes”).

WageWorks is a leading national provider of benefit administration services to employers, including consumer-directed health care accounts. Our company and the more than 45,000 employers we serve are concerned about the proposed changes. Our employer clients with fewer than 100 employees are particularly concerned about the new reporting obligations they will have.

Under the current rules regarding the Form 5500, welfare benefit plans with under 100 participants at the beginning of the plan year that are unfunded, fully insured, or a combination of insured and unfunded are exempt from the Form 5500 filing requirement.¹ This exemption has been in place since the inception of the Form 5500 reporting requirement and has enabled employer plan sponsors to provide many benefits in addition to health coverage. These include health flexible spending accounts (FSAs), health reimbursement accounts (HRAs), and supplemental insured benefits (such as dental, vision, accident, disability, and cancer coverage) without significant additional reporting costs. Under the Proposed Changes, this exemption would be eliminated and small welfare plans would now be required to file a Form 5500.

¹ 29 CFR 2520.104-20.

We request that EBSA reconsider the proposal to require small welfare benefit plans to file the Form 5500. If the reporting requirement is implemented for small employers, this would place an immense burden on small businesses that sponsor these welfare plans. EBSA's own estimates indicate compliance with this new requirement will place a burden on each employer sponsoring a small unfunded welfare benefit plan of over 20 hours per year – the equivalent of three work days. In addition, these small businesses will likely incur costs to prepare the Form 5500, as few employers complete the Forms 5500 themselves. These costs may exceed the actual cost of providing the benefits to employees and in all cases will be an additional burden on these small businesses, particularly since many of these small businesses are not obligated to provide these benefits to employees.

Plan information must be obtained from multiple entities, increasing the burden of gathering the information for the small employer. The information necessary for reporting is not available from the employers' own files. Additional required information includes: information regarding rebates, refunds or reimbursements from service providers, individual and aggregate claims limits, detailed payment data (including how many benefit claims were submitted, appealed, approved, and denied during the plan year), as well as the total amount of claims paid during the plan year.

We also have some specific comments regarding the Proposed Schedule J:

Limit Schedule J Reporting to Group Health Plans That Are Not Excepted Benefits

The Proposed Revisions require all group health plans to submit a Schedule J as a part of their Form 5500 filings, with an allowance for limited reporting with respect to small, fully-insured group health plans. The Proposed Revisions further state:

All “group health plans” that meet the definition in [ERISA] § 733(a) . . . would be required to file a Form 5500 and applicable schedules, including the proposed Schedule J, regardless of whether such plans are exempt from certain market reform requirements under . . . ERISA § 733 (c) (group health plans consisting solely of excepted benefits). Employee welfare benefit plans as defined in ERISA § 3(1) that do not meet the definition of “group health plan” under [ERISA §] 733 (*i.e.*, they do not provide medical care) are not subject to the proposed enhanced reporting requirements applicable to group health plans.²

To reduce uncertainty for filers resulting from differing interpretations of which types of coverage are subject to the Schedule J requirement, we strongly urge that Schedule J reporting exclude group health plans that are excepted benefits under ERISA § 733(c).

Finally, employers who provide excepted benefits do not generally collect the types of information sought on the Schedule J, and in fact, may not even be subject to certain requirements which give

² 81 Fed. Reg. 47496, 47556 (July 21, 2016).



rise to the reporting requirement on the Schedule J. For example, information to be collected on the Schedule J would be inapplicable to many excepted benefits: the type of group health benefits offered; whether the plan is a high deductible health plan (HDHP), FSA, or HRA; stop loss coverage information; and compliance with the Health Insurance Portability and Accountability Act of 1996 (from which such benefits would be exempt), the Mental Health Parity and Addiction Equity Act of 2008, the Genetic Information Nondiscrimination Act of 2008, the Newborns' and Mothers' Health Protection Act of 1996, the Women's Health and Cancer Rights Act of 1998, and the Patient Protection and Affordable Care Act (many requirements of which do not apply to excepted benefits). Thus, requiring Schedule J reporting with respect to excepted benefits would significantly increase administrative burdens on plan sponsors providing such benefits without a corresponding increase in information that would be useful to the Agencies.

Eliminate Duplicative Reporting

The proposed Schedule J includes numerous data elements already required elsewhere on the Form 5500. Specifically, Schedule J requires filers to report the approximate number of persons covered under the plan at the end of the plan year, though similar information (*e.g.*, the number of participants in the plan at the end of the plan year and number of persons covered under each insurance policy at the end of the plan or policy year) is currently reported on the main Form 5500 and the Schedule A. In addition, filers must report on the Schedule J the plan's funding and benefit arrangement, which also is currently reported on the main Form 5500. Information on participant and employer contributions would also need to be reported on the Schedule J despite such reporting already being required for many health and welfare plans on the Schedule H.

Schedule J should be revised to eliminate duplicative reporting requirements. This would reduce the administrative burden, eliminate duplicative reporting and would reduce the likelihood of errors resulting from reporting same or similar information in multiple sections of the Form 5500.

We appreciate the opportunity to comment on these critical issues, especially as they relate to small businesses that voluntarily provide welfare benefits to their employees. If you have any questions concerning the comments raised in this letter, please don't hesitate to contact me at 650.577.6372 or at Jody.Dietel@WageWorks.com.

Sincerely,



Jody L. Dietel, ACFI, CAS
Chief Compliance Officer
WageWorks, Inc.

