



VIA ELECTRONIC SUBMISSION

December 5, 2016

The Honorable Phyllis C. Borzi
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Mr. Robert S. Choi
Director
Employee Plans, Tax Exempt
and Government Entities Division
Internal Revenue Service
999 North Capitol Street, NE
Washington, D.C. 20002

The Honorable W. Thomas Reeder
Director
Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, D.C. 20005

Re: RIN 1210-AB63 - Proposed Revision of Annual Information Return/Reports (Form 5500)

Dear Assistant Secretary Borzi, Director Choi and Director Reeder:

Associated Builders and Contractors, Inc. (ABC) hereby submits the following comments regarding the proposed changes to the Form 5500 and related regulatory changes (the "Proposal") issued by the Department of Labor, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation (together, the "Agencies"), published in the *Federal Register* on July 21, 2016, at 81 Fed. Reg. 47534.

About Associated Builders and Contractors, Inc.

ABC is a national construction industry trade association representing nearly 21,000 members. ABC and its 70 chapters help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which ABC and its members work. ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of firms that perform work in the industrial and commercial sectors. Moreover, the vast majority of our contractor members are classified as small businesses. Our diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry. The philosophy is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through open, competitive bidding based on safety, quality and value.

Introduction

ABC is committed to compliance with federal laws governing employer-sponsored benefit plans, including the Form 5500 reporting requirements. However, ABC has serious concerns with the Proposal, particularly with the proposed removal of the filing exemption for small group health plans and the proposed new Schedule J disclosures. If adopted, the Proposal would impose a significant financial burden on small employers, and any perceived benefit from the additional reporting would be severely outweighed by the additional costs imposed on such employers.

The Proposal Will Impose a Significant and Costly Burden on Contractors

Under existing regulations, employer-sponsored group health plans with fewer than 100 participants are generally not required to file a Form 5500. The Proposal would eliminate this small plan exception and would require all employer-sponsored welfare plans that are subject to the Employee Retirement Income Security Act of 1974 (ERISA) to file a Form 5500, regardless of the plan's size or funding. In addition, the Proposal would add a new Schedule J, which requires disclosure of certain information relating to group health plans.

The Agencies estimate that this expansion will give rise to more than 2.1 million new filings for small group health plans at a cost of nearly \$228 million. In addition, the Agencies estimate that the expanded filing requirement will add a time burden of approximately 349,000 hours. The Schedule J disclosures are estimated to add a time burden of nearly 1.8 million hours.¹ Based on our past experience, the time burden and costs will far exceed the estimates.

Employers sponsoring group health plans have been inundated with regulations since the enactment of the Affordable Care Act. While ABC understands that the rights of participants in employer-sponsored group health plans need to be protected, the volume of the government's new regulations in the group health plan sphere in the last few years already have imposed a substantial burden on small, private employers. The last thing such employers need at this point is another regulatory burden to be placed upon them.

These additional costs and time burdens will have a negative impact on small employers, especially when considered in conjunction with all the other regulatory burdens that have been imposed on them recently, as noted above. Many small employers operate with low profit margins and any increase in costs and time to comply with new regulatory requirements takes money and time away from the business that could be used to invest in expanding operations or hiring new employees. These employers should be able to focus their time and assets on growing their business, not on filling out paperwork of dubious utility.

¹ 81 Fed. Reg. at 47496, 45502.

The Proposal Provides Little Benefit to Employers and Participants and Appears to Be Merely an Enforcement Tool of the Agencies

A burden in any amount would be too high in light of the failure of the Proposal to generate useful information with respect to group health plans. The Agencies need to take a critical look at the utility of the information provided in the Form 5500 and the proposed Schedule J, as it does not justify the high burden it puts on employers.

The Agencies justify the expansion of the filing requirement to small group health plans by asserting that “requiring reporting will be useful to educate plan sponsors and fiduciaries of their obligations with respect to group health plans.”² However, the Agencies already provide numerous educational tools that assist and educate employers and fiduciaries of their responsibilities with respect to group health plans. Very little is gained by requiring those same employers and fiduciaries to complete a form that provides them with the same assistance that the Agencies already have provided. Rather, the purpose of the Proposal to remove the small plan exemption and to add Schedule J appears to be to provide an additional tool through which the Agencies can enforce the myriad regulations governing group health plans and seek penalties from employers. The Agencies already require employers to file numerous forms and reports that provide the Agencies with information to assist them in the enforcement of these provisions. Requiring small employers to file a Form 5500 and Schedule J for their group health plans would be unnecessarily burdensome and duplicative.

The Proposal Fails to Adequately Safeguard the Confidentiality of the Data

Of great concern to ABC and its members is the fact that any member of the public can access information disclosed in a Form 5500 Annual Report. The information disclosed may not provide a complete picture of the employer’s benefit program and could be taken out of context and inappropriately viewed negatively. In addition, the disclosure of the information to the public means it would be available to competitors, who could misuse the information for anticompetitive purposes.

Conclusion

ABC and its members have serious concerns with the Agencies’ proposed changes to the Form 5500. The proposed changes impose an unjustified additional burden on small employers, fail to generate useful and reliable information, and fail to protect the confidentiality of the information. For these reasons, we urge the Agencies to reconsider imposing such additional reporting requirements and financial burdens on small employers, who are the backbone of the U.S. economy.

² 81 Fed. Reg. at 45501.

Thank you for the opportunity to submit comments on this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ben Brubeck". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Ben Brubeck
Vice President of Regulatory, Labor and State Affairs

Of Counsel: Maurice Baskin
Melissa Kurtzman
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