

From: Alan Moore [mailto:AlanM@slavic.net]
Sent: Thursday, November 20, 2014 12:15 PM
To: EBSA, E-ORI - EBSA
Subject: RN 1210-AB66 SSEC Act, Form 5500 Final Rule

The final rule that requires publishing the client list(the adopting employers) attached to the new 5500 will significantly damage the Professional Employer Organization (PEO) industry by revealing critical information protected under privacy regulations. PEOs sponsor and administrate approximately 500 of the 5,000 Multiple Employer Plans in the country and provide a higher level of compliance that can be achieved by the typical small business that is representative of the adopting employers. Requiring that the list be filed with the 5500 certainly benefits the DOL's effort to regulate and monitor Multiple Employer Plans, but publishing it serves no purpose for participants or adopting employers, as they already receive reports at the worksite plan level of any and all information concerning their accounts, provided by the financial institutions and third party plan administrators.

Quoted below is an excerpt from an order issued by the Secretary Perez of the Department of Labor in 2005 governing the issue of privacy, which I interpret to mean that client lists of private companies are proprietary and due the privilege of privacy and should not be disclosed to the public. The majority of all confidentiality agreements used today protect against the dissemination of client lists, and the proposed final rule violates that business standard.

Perez's Order 2,-2005, including the regulation issued by the Office of Government Ethics Regulation---both indicate that publishing the list should not be done.

"Purpose — To establish policies and procedures for ensuring that all external links on the Department of Labor's (the "Department" or "DOL") public Web sites are in compliance with applicable laws and regulations, consistent with the mission of the Department, and provide information that is accurate, timely, and appropriate.

1. **Authority** — Secretary's Order 2-2005, Delegation of Authority and Assignment of Responsibility for DOL Enterprise Communications Initiative.
2.
3. **Applicable Laws and Regulations** — The following laws and regulations, in addition to the programmatic laws administered by the Department, should be considered when establishing external links:
 - a. **Office of Government Ethics Regulations** — 5 C.F.R. § 2635.702 (may not endorse outside entities or their products or services); 5 C.F.R. § 2635.703 (**may not release nonpublic information**) and 5 C.F.R. § 2635.704 (**may use government property only for official purposes**).
 - b. **Privacy Act of 1974** — This law establishes fair information practices for the collection, maintenance, and use of personal information by Federal agencies. It provides a civil remedy against the Government for damages and criminal penalties against individuals for failure to comply. (5 U.S.C. § 552a)
 - c. **Privacy Policy on Data Collection Over Department of Labor Web sites** — This policy establishes procedures for the collection, use, and disposition of personally identifying information collected via the Department's public Web site. (DLMS 9-1500) "

The Office of Government Ethics Regulation states in Title 5 CFR 2635.703the DOL "may not release nonpublic information."

And, in section 2(E) of that CFR it also says: "To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details

when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D)".

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