



# AMERICAN BENEFITS COUNCIL

November 17, 2015

*Submitted via e-mail*

Ms. Mabel Echols  
Office of Management and Budget  
NEOB, Room 10235  
725 17<sup>th</sup> Street, NW  
Washington, DC 20503

Mr. Robert Choi  
Director, Employee Plans  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

## **Re: Changes to Annual Return/Report of Employee Benefit Plans – Form 5500 Series**

Dear Ms. Echols and Mr. Choi:

This letter is submitted on behalf of the American Benefits Council (the Council) regarding the proposed changes to the Form 5500 series for the 2015 plan year, including proposed changes to the Form 5500-SUP described in the Notice and Request for Comment published in the Federal Register on December 23, 2014, and the changes reflected in the draft Form 5500-EZ. We realize this letter may be received shortly before the release of the 2015 plan year Form 5500 series but the Council urges you to still provide the relief requested below in Frequently Asked Questions (FAQs) or other guidance.

The Council is a national nonprofit organization dedicated to protecting and fostering privately sponsored employee benefit plans. The Council's approximately 400 members are primarily large multistate U.S. employers that provide employee benefits to active and retired workers and their families. The Council's membership also includes organizations that provide employee benefit services to employers of all sizes. Collectively, the Council's members either directly sponsor or provide services to retirement and health plans covering virtually all Americans who participate in employer-sponsored benefit programs.

The Council appreciates that the Internal Revenue Service (the Service) has recommended changes in a desire to facilitate better use of the Form 5500 series. However, many of the changes described in the Notice and subsequent release of the draft Form 5500-EZ involve new or significantly changed questions and our members find many of them to be ambiguous. This ambiguity will require additional guidance before companies can implement the changes. Changes of this nature will need significant systems changes so it will be very difficult to implement them properly if required for the 2015 plan year. In fact, our members have indicated these thousands of forms will require development of a manual process after the additional guidance is issued, which will greatly increase the likelihood of mistakes as well as increase the costs.

In this letter, we have highlighted some of our concerns and we urge the Service and the Office of Management and Budget (OMB) to reconsider changing the forms for the 2015 plan year. Specifically, we request further review of the suggested changes to the forms and delayed implementation until EFAST3 is rolled out. Alternatively, the changes could be delayed until two years after the date on which they are finalized and made public, giving plans and their recordkeepers sufficient time to revise their systems. At the very least, new questions (and newly required entries which were formerly optional) should be made optional for the time period indicated above.

Below in summary form is a description of issues we have identified. We would be happy to discuss these further with you if you have any questions.

1. **Required preparer name:** This identification was previously optional and the Council's service provider members are concerned that this change will call into question previous guidance that preparing the 5500 does not make the preparer a "tax return preparer". Our service provider members are also concerned the change will subject 5500 preparers to additional liability and allow others to obtain client lists. The Council urges the Service and OMB to continue to make this optional or propose the change through the regulatory process instead of making changes in a form. If the purpose of the change is to identify someone the Service can speak with, the Service should propose a method where the plan sponsor has actually authorized someone to speak to the IRS.
2. **New information questions and other changes:** Some of the proposed questions are new questions and in some cases, the preparer does not currently have the information. For others, the information is not in a system that connects to the system that generates the Form 5500. Clarifying guidance is needed for many of the new questions and changes. Form 5500 preparation is currently systemized and any changes or additions will require programming, which requires significant resources and time. Some programming may need to be in place as of the first day of a reporting period for that reporting to be accurate. Requiring these changes for 2015 or even 2016 reporting will result in expensive manual

processing. The Council urges the Service and OMB to make any new or changed questions optional for two years after the final forms and clarifying guidance have been published.

The Council also has a number of concerns on individual questions and lines we would be happy to share with the Service and OMB. We look forward to discussing these issues with you as you move forward. Thank you for the opportunity to provide our views and suggestions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Jacobson". The signature is fluid and cursive, with the first name "Jan" being particularly prominent.

Jan Jacobson  
Senior Counsel, Retirement Policy

cc: Seth Tievsky