



AMERICAN BENEFITS COUNCIL

May 28, 2019

The Honorable Alex Acosta
Secretary of Labor US Department of Labor
200 Constitution Ave., NW
Washington, D.C., 20210

Dear Secretary Acosta:

The American Benefits Council (the Council) commends the Department of Labor (DOL) for its work in interpreting and implementing current law to increase transparency in Form 5500 filings for purposes of its enforcement activities. However, the Council is concerned about the automatic publication of a Professional Employer Organization (PEO)-sponsored plan's participating employer information as part of the 5500 filings without offering the plan sponsor PEO the ability to file that information in a confidential manner with the DOL. The Council believes that transparency is very important but that there are potential adverse consequences for plan participants and beneficiaries of the publication of the participating employer information.

The Council is a national nonprofit organization dedicated to protecting and fostering privately sponsored employee benefit plans. The Council's approximately 440 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.

Companies that use the services of a PEO have a relationship that goes beyond participation in the PEO's multiple employer plan (MEP). PEOs provide tax reporting, workers compensation and many other employment related services to their clients. They often package these services with those being provided with respect to the sponsor's retirement plan such as participation in a MEP. Publication of participating employer information in the MEP may cause plan sponsors to be drawn away from a

PEO they are using based on incentives unrelated to the retirement program and thus causing inappropriately frequent changes in the participation in the MEP. Frequent changes spurred by such unnecessary required public disclosure could lead to adverse consequences for participants and beneficiaries from more orphaned plans and blackout periods.

It is our understanding that the DOL has leeway under ERISA to adopt alternative reporting rules in this situation and that the Freedom of Information Act provides safeguards against the disclosure of confidential information or trade secrets which would encompass the PEO-sponsored plan's participating employer information. We urge you to consider exercising your discretion under the law to allow PEOs to elect to keep their client lists confidential.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Jacobson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jan Jacobson
Senior Counsel, Retirement Policy

cc: Preston Rutledge, Assistant Secretary of Labor, Employee Benefits Security Administration
Jeanne Klinefelter Wilson, Deputy Assistant Secretary for Policy
Tim Hauser, Deputy Assistant Secretary for Program Operations
Joe Canary, Director of the Office of Regulations and Interpretations