



RETIREMENT PLAN ADMINISTRATION & CONSULTING SERVICES

July 27, 2016

Attention: Mabel Echols/Desk Officer for Treasury
Office of Information and Regulatory Affairs
Office of Management and Budget
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Treasury PRA Clearance Officer
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Re: Comment on Annual Return/Report of Employee Benefit Plan and Form 5500-SUP
OMB Control No: 1545-1610
ICR Reference No: 201606-1545-031

Dear Sir or Madam:

Noble-Davis Consulting, Inc. is a retirement plan consulting firm. We service the retirement plans of 500 in the Northeast Ohio area.

One of our services is the preparation and filing of the Form 5500 series for clients' plans. In that capacity, we have serious issues with the effective date of these changes and the additional data requirements contained in Form 5500-SUP (which are also to be added to Forms 5500 and 5500-SF), as follows:

1. Coordinated effective date and adequate lead time needed for substantive form and instruction changes. The IRS proposed changes for 2016 require the capture and reporting of information either never before reported or not reported since before 2005. This will require a major retooling of existing data gathering procedures, data sharing (among multiple service providers working on a single plan), programming, testing, staffing and implementation. In the absence of final forms and instructions, it's impossible to modify systems to track and capture the data that will be needed for these new items. System and process changes can't be changed retroactively - lead time BEFORE the effective date (first day of the first plan year) is needed. We're past the halfway point of 2016, so the new data required for 2016 would have to be compiled manually and it's unlikely that system changes could be implemented by 1/1/2017 in time to capture full-year new data for 2017. Thus we'd be forced to regress from efficient and automated processes to suffer at least 2 years of considerable manual compilation.

The Department of Labor recently submitted a proposed major makeover of the 5500 series (ICR Reference No: 201604-1210-001) - dubbed the "21st Century Initiative". DOL's proposed changes are sweeping and far-reaching. It's likely (but not absolutely certain) that the DOL changes would become effective for 2019. When viewed in conjunction with the IRS changes, the industry will face 2 major system and process makeovers in less than 5 years. This results in an unreasonable burden on plan sponsors, service providers and (most importantly) plan participants and beneficiaries who depend on the private retirement plan system to secure their futures. The costs of this burden will be shouldered by American

workers who may not see any benefit from these changes.

In the 3/10/2016 OMB Notice of Action for the IRS proposed 2015 Form 5500 series changes, OMB imposed the following Terms of Clearance: "OMB approves the collection with the following terms of clearance: Treasury/IRS must coordinate approval of any future renewal or revision to this collection with DOL and PBGC. Treasury, DOL and PBGC should seek approval of any revisions or renewals at the same time, so as to minimize any confusion to the public."

2. Burden on clients' retirement plans. The disruption caused by a 3 year period of Form 5500 changes (first IRS and then DOL) will result in confusion, a degradation of service levels and increased costs for the servicing of plans. In addition, changing data collection procedures 2 or 3 times over a relatively short period will increase the time expended by the staff of plan sponsors.

IRS has estimated that the 2016 changes will affect 806,500 plans. Historically over 80% of 5500 series filers are small businesses. Thus it follows that most of the burden of the proposed changes will fall squarely on the backs of small businesses.

3. Burden on our firm. Our firm would be considered a small business - we employ 23 employees. As a small business, we do not have the luxury of over-staffing to anticipate some hypothetical future need. Nor do we have the time or budget to instantly redesign processes and systems to capture data that has never before been required to be reported. As mentioned above, system and process changes require lead time before they can be implemented and operational on the effective date.
4. Mandatory sharing of our client list. Historically, providing Form 5500 series preparer information has been optional. We understand the desire to identify and eliminate incompetent or unethical practitioners. Accordingly, we have no problem making this information available to IRS or the Department of Labor for their use. However we have a serious problem with our client list being made available to the public.

EFAST2 (the electronic filing system for the 5500 series) has the ability to collect data but also to suppress certain data elements from public disclosure. Although IRS is aware of this capability, the mandatory preparer information would be made public (as proposed and explained by IRS). While other IRS tax forms collect preparer information, this data is not disclosed to the public. Such tax forms include:

- A. Tax Returns Reporting Tax Liability (e.g. Forms 1040, 706 and 1120)
- B. Information Returns That Report Information That is or May be Reported on Another Tax Return (e.g. Forms 1065, 1120-S and [under current rules] 5500 series)
- C. Other Information Returns (e.g. Forms W-2, 1099 series and 4137)

There are companies who make a business of collecting and reselling Form 5500 data. If our preparer information is disclosed publicly, our client lists would be available to competitors at the push of a button. Our industry is highly competitive - and spans the spectrum from small businesses such as ours to behemoth payroll companies (who often compete fiercely against us with give-away pricing and other predatory tactics).

Based on the burdens outlined above, we request that OMB do the following:

1. Delay implementation of the proposed 2016 IRS changes so that there is a single coordinated effective date for the IRS, DOL and PBGC changes. Although substantial changes in the Form 5500 series will result in the expenditure of time and money by stakeholders, a coordinated effective date with sufficient lead time will allow for implementation of the changes with minimal disruption. The lead time should include thoughtful dialogue between all stakeholders.
2. Eliminate the public disclosure of preparer information, so that our firm can remain in business providing quality service to our clients and so our employees will have jobs.
3. Verify the computation of burden of burden for this and future Agency Submissions related to the Form 5500 series. To stakeholders it was very clear that the IRS computation of burden in the 2015 filing (ICR Reference No: 201503-1545-020) was not accurate and very understated. With the 2016 filing, it's

impossible to determine the true burden, since figures submitted by IRS were based on the 2015 changes (which were never implemented).

4. Verify (in fact and in depth) the reduction of burden on small entities for this and future Agency Submissions related to the Form 5500 series. As part of the ICR filing process, agencies must complete a certification for OMB. Item (c) of the certification (checked in both the 2015 and 2016 filings) states "It reduces burden on small entities". However, for both filings, the IRS Supporting Statement (item 5) merely describes the current status quo and does not address the effect that the proposed changes will have on small entities. If the effect of changes on small entities is not addressed, how can this be certified?
5. Verify (in fact and in depth) the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported for this and future Agency Submissions. This need for this requirement is obvious. If an agency is charged with regulating an industry, they have a responsibility to understand that industry and the effect of their actions on industry stakeholders. The IRS Supporting statement for both filings is identical (cut and pasted) and states: "Periodic meetings are held between IRS personnel and representatives of the American Bar Association, the National Society of Public Accountants, the American Institute of Certified Public Accountants, and other professional groups to discuss tax law and tax forms. During these meetings, there is an opportunity for those attending to make comments regarding Form 5500 and schedules." While this statement may describe intent, there is no supporting documentation that such meetings occurred with respect to the proposed changes and, in fact, there were no such meetings regarding the changes.

In the 8/9/2012 OMB Memorandum for Heads of Executive Departments and Agencies, it is clearly stated "To the extent feasible and appropriate, especially for complex or lengthy forms, agencies shall engage in advance testing of information collections, including Federal forms, in order (1) to ensure that they are not unnecessarily complex, burdensome, or confusing, (2) to obtain the best available information about the likely burdens on members of the public (including small businesses), and (3) to identify ways to reduce burdens and to increase simplification and ease of comprehension. Such advance testing should occur either before proposing information collections to the public or during the public comment period required by the PRA." It is painfully evident that this directive was not followed for either the 2015 or 2016 filings. Rather, the approach was "let's throw this at the wall and see what sticks" - without benefit of advance testing before proposing the changes or during the comment period.

Thank you for your consideration of these comments. If you have any questions, please contact me.

Sincerely,

Jan Davis, President