

Hunter Benefits Consulting Group

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Attention: Mabel Echols/Desk Officer for Treasury mabel_e._echols@omb.eop.gov
Office of Information and Regulatory Affairs OIRA_Submission@OMB.EOP.gov
Office of Management and Budget
NEOB, Room 10235
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Treasury PRA Clearance Officer PRA@treasury.gov
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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:

In response to the new proposals to change Form 5500 Series by the IRS and DOL, we are again submitting our concerns for consideration. We urge you to ensure that all stakeholders, including industry representatives, are engaged in the process of updating the Form 5500 Series – and that no industry is more disadvantaged than another.

Hunter Benefits Consulting Group is a retirement plan consulting firm. We service the retirement plans of over 500 small and mid-sized employers throughout the country.

One of our services is the preparation and filing of the Form 5500 series for clients' plans. In that capacity, we have serious concerns about the effective date of these changes and the additional data requirements of Form 5500-SUP, which are also to be added to Forms 5500 and 5500-SF. Our concerns are:

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 retooling existing data gathering procedures, data sharing (among multiple service providers working on a single plan), programming, testing, staffing and implementation. System and process changes can't be changed retroactively - lead time BEFORE the effective date is needed. As 2016 is more than half passed, the new data required for 2016 would have to be compiled manually. It is also unlikely that system changes throughout the industry could be implemented before January 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 two 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). 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



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will face *three* major system and process makeovers in less than five years – a change to manual and automatic for 2016 and 2017, a change to automatic for 2018 and a complete revision of the 5500 for 2019. This results in an unreasonable burden on plan sponsors and service providers within the private retirement plan system. The costs of this burden will be shouldered by American workers who may not see any benefit from these changes.

In the March 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."

It would be substantially less burdensome on our firm, our industry as a whole, and plan sponsors if the Agencies could coordinate their efforts and timing, and certainly less confusing to plan administrators.

2. **Burden on clients' retirement plans.** The disruption caused by a three-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 two or three 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 12 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 redesign processes and systems on the spot to capture data that has never before been required. 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 and agree with 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. In fact, we were under the impression that this meta-data was already available to the Agencies. However, we do have a serious problem with our client list being made available to the public – TPAs are the only stakeholders subject to that penalty.

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 Agency proposed and explained that the mandatory preparer information would be made public. 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 target and compete fiercely against us with give-away pricing and other predatory tactics). The existence of our firm and the livelihood of our employees is jeopardized by releasing our client list to direct competitors. We are not aware

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of any other private business that is required to make their clients' names and contact information public.

Based on the concerns and burdens outlined above, we request the following actions from OMB:

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. Collect the prepare information in a way that it is not made public.
4. Verify the computation of burden for this and future Agency Submissions related to the Form 5500 series. It was very clear to stakeholders 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).
5. 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?
6. 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. The 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 the 2015 and 2016 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. It is our understanding, in fact, there were no such meetings.

We appreciate your consideration of our concerns and hope that the Agencies will work together to make any changes beneficial to all stakeholders in the process.

Sincerely,



Christopher Tipper, CEO