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May 12,2025

The Honorable Russell T. Vought
Director, Executive Office of the President
Office of Management and Budget
725 17th Street NW
Washington, D.C. 20503

RE: Request for Information (RFI): Deregulation (90 Fed. Reg 15481)

Dear Director Vought:

I am writing on behalf of the National Association of Professional Employer Organizations (NAPEO), in response to the request for information regarding regulations that could be eliminated, revised or otherwise rescinded.

NAPEO represents the professional employer organization (PEO) industry, which plays a vital role in supporting the backbone of the American economy – small businesses. Today, the more than 500 PEOs in the U.S. enhance employment benefits for more than 4.5 million Americans whose employers rely on PEOs for payroll, benefits, HR, tax administration and regulatory compliance. Because PEOs take over the back-office tasks that consume time, energy and resources, it's no surprise that businesses working with a PEO grow two times faster, have employee turnover that is 12 percent lower and are 50 percent less likely to go out of business.

NAPEO remains very concerned with one specific rule promulgated by the Department of Labor (DOL) that continues to subject the PEO industry, the employers who contract for PEO services and their employees with significant and unfounded cybersecurity and fraud risks – specifically, the rule that requires multiple employer plans to publicly report and disclose specific information on each participating employer. As described in greater detail below, the rule is unnecessary and unlawful, as well as unduly burdensome and unsound. Rescission of the rule is not only good public policy but is protective of public interests and otherwise consistent with congressional mandate.

Reasons for Rescinding the Rule

The RFI indicates that the administration is seeking to eliminate rules and regulations "that are unnecessary, unlawful, unduly burdensome, or unsound." This rule is all of those, for the reasons explained below:

Unlawful:
As further explained below, when Congress revised section 103(g) of ERISA, it made it very clear that only multiple employer retirement plans should be under an obligation to report participating employer information on Form 5500. If Congress felt that it was important for the DOL to continue receiving such information from multiple employer welfare plans, it would have simply left the language in ERISA section 103(g) as it was. Alternatively, if Congress wanted to maintain this reporting requirement, but instead utilize the Form M-1 for such reporting, as the agencies are now proposing, Congress could have amended section 101(g) of ERISA (which effectively created the Form M-1 requirement) to specifically require MEWAs to report a list of their participating employers and an estimate of contributions by employer. But Congress did not do so. Continuing to require multiple employer welfare plans to report this information flouts the unambiguously expressed intent of Congress.

Unnecessary:
DOL has previously stated that it finds the information relating to participating employers in multiple employer health and welfare plans "useful… for its oversight functions," and "important for oversight of such arrangements."[1] However, nowhere has it indicated that it is necessary for this information to be reported on a Form 5500 or Form M-1. Certainly, DOL may use its investigatory authority to obtain this information (privately) from any plan in accordance with its general oversight authority. However, requiring reporting on publicly available documents serves no discernable benefit or purpose.

Unduly Burdensome:
Plans that are subject to this rule must currently submit an attachment to their Form 5500 with the label "Multiple-Employer Plan Participating Employer Information," and the name of the plan, EIN and plan number (PN) as found on the plan's Form 5500 and then include the name and EIN of each employer that is participating in the plan. Certain plans must also include a good faith estimate of each employer's percentage of the total contributions (including employer and participant contributions) made by all participating employers during the year.[2] Any errors on the attachment can be catastrophic, because the DOL

[1] 86 Fed. Reg. 51488 (Sep. 15, 2021) at 51498.

[2] Health and welfare plans that are unfunded, fully insured, or a combination of unfunded/insured and exempt from the obligation to file financial statements with their Form 5500 are not subject to this requirement.

currently has the authority to assess a penalty of $2,739 per day if a Form 5500 is inaccurate or deficient. Many impacted plans have hundreds of participating employers and must expend hours of time and considerable resources compiling the attachment to ensure that it is complete and accurate.

Unsound:
Both Form 5500 and the Form M-1 are publicly available documents. These forms must be filed electronically and, as a result of open government laws, anyone with access to the Internet may easily access and download the information contained therein. As a result, third parties can easily obtain the participating employer information. It is difficult to identify an entity other than DOL (which, as explained below, can always obtain this information from a plan on an as needed basis consistent with its general oversight authority) that will be able to use this information positively. For example, a plan participant could obtain information from one of these forms regarding the plan's operation and compliance with applicable federal law, but it is unclear why a plan participant would want to know, or care about, the names of the other employers that participate in the plan (or, for that matter, the estimated contributions).

To the contrary, the unnecessary public disclosure of participating employer information could create risks to participants and beneficiaries. It is easy to see how a cyber-criminal might use the information about the participating employer to target the smaller employers (with presumably less robust cybersecurity protocols) that typically participate in these plans. Nefarious individuals could target the employees of a small employer participating in such a plan, and then "spoof" either the plan itself, or the plan's health insurer, to generate a phishing attack. Employees who receive an email from an entity purporting to be the plan or their health insurer are likely to trust that the email is legitimate - because they would have no expectation that such information would be readily available on the Internet for anyone to access.[3]

Also, the participating employers in benefit plans have legitimate privacy interests in keeping their names, EINs and information regarding how much they may contribute to various benefit plans from being publicly disclosed. Members of associations are sensitive to disclosure of this information because of antitrust concerns, and employers do not want their competitors to have confidential human resource information.

[3] Workplace-related data privacy breaches are becoming an increasing concern for American workers. We direct your attention to the recent letters from Education and Workforce Committee Chairman Tim Walberg (R-MI) and Health, Employment, Labor, and Pensions Subcommittee Chairman Rick Allen (R-GA), sent on May 8, 2025 to labor unions inquiring about recent data breaches that exposed the personal information of hundreds of thousands of union members.

Background of ERISA Section 103(g)

Section 103 of ERISA and the regulations issued under that section, impose an annual reporting and filing obligation on employee benefit plans, which is generally satisfied by the filing of the Form 5500 or Form 5500-SF Annual Return/Report, along with the required schedules and attachments. *See generally* 29 CFR § 2520.103-1.

On April 7, 2014, the Cooperative and Small Employer Charity Pension Flexibility Act (CSEC Act) was enacted into law. The CSEC Act amended ERISA section 103 by adding a specific new section 103(g) that was applicable to multiple employer plans (i.e., plans maintained by two or more employers who are not related), which read as follows:

> *ADDITIONAL INFORMATION WITH RESPECT TO MULTIPLE EMPLOYER PLANS. - With respect to any multiple employer plan, an annual report under this section for a plan year shall include a list of participating employers and a good faith estimate of the percentage of total contributions made by such participating employers during the plan year.*

In 2014, the DOL issued an Interim Final Rule[4] implementing this amendment to ERISA section 103. The Interim Final Rule interpreted ERISA section 103(g) as applying not just to defined benefit pension plans (the plans that were the general subject of the CSEC Act), but also to defined contribution retirement plans and health and welfare plans. Specifically, the Interim Final Rule revised the Form 5500 Instructions to add the following:

> *Except as provided below, multiple employer pension plans and multiple employer welfare plans required to file a Form 5500 must include an attachment using the format below that (1) lists each participating employer in the plan during the plan year, identified by name and employer identification number (EIN), and (2) includes a good faith estimate of each employer's percentage of the total contributions (including employer and participant contributions) made by all participating employers during the year.*[5]

[4] 79 Fed. Reg. 66617 (Nov. 10, 2014).

[5] *Id. at* 66621.

The preamble to the Interim Final Rule explained the DOL's rationale for imposing this reporting requirement on all multiple employer plans, which was based on the statutory language of ERISA section 103(g):

> *Although the CSEC Act was focused on amendments to the funding rules for certain defined benefit pension plans, the annual reporting amendment to section 103 of ERISA did not limit the new reporting requirement to defined benefit pension plans. Rather, the new requirement applies generally to ''any multiple-employer plan.'' Accordingly, the interim final rule adds instructions for the Form 5500 and Form 5500–SF requiring all multiple-employer plans (defined benefit pension plans, defined contribution plans, and welfare plans) required to file the Form 5500 or Form 5500–SF to include with their annual report the new 'Multiple-Employer Plan Participating Employer Information'' attachment.*

As a result, after the Interim Final Rule was issued and for plan years beginning after December 31, 2013, any plan that checked the multiple-employer plan box on the Form 5500 was required to list each of its participating employers during the plan year by name and employer identification number (EIN) and include a good faith estimate of the

percentage of total contributions made by each participating employer during the plan year.

However, on December 20, 2019, the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) was enacted into law as Division O of the Further Consolidated Appropriations Act, 2020 (Pub. L. 116-94). The SECURE Act revised Section 103(g) of ERISA to read as follows:

> *ADDITIONAL INFORMATION WITH RESPECT TO POOLED EMPLOYER AND MULTIPLE EMPLOYER PLANS.-- An annual report under this section for a plan year shall include—*
>
> > *(1) with respect to any plan to which [ERISA] section 210(a) applies (including a pooled employer plan), a list of employers in the plan and a good faith estimate of the percentage of total contributions made by such employers during the plan year and the aggregate account balances attributable to each employer in the plan (determined as the sum of the account balances of the employees of such employer (and the beneficiaries of such employees)); and*

> *(2) with respect to a pooled employer plan, the identifying information for the person designated under the terms of the plan as the pooled plan provider*.

Section 210(a) of ERISA, as referenced in the revised Section 103(g)(1), only applies to multiple employer retirement plans. **Thus, when Congress passed the SECURE Act, they unequivocally eliminated any requirement for multiple employer health plans to continue reporting a list of participating employers and estimates of the percentage of total contributions made by each such employer, effective for plan years beginning after December 31, 2020. However, as described below, DOL chose to ignore this fact and seeks to continue to compel multiple employer health plans to report publicly information on each participating employer – information that can be used by unscrupulous and criminal third parties to engage in fraud against PEO clients, many of which are typically small employers, and their worksite employees.**

2021-2022: Department of Labor Refuses to Change Rule to Reflect Congressional Action

Based on the statutory history set forth above, Congress' intent with respect to this reporting requirement could not be clearer. After imposing an obligation on all multiple employer plans to annually report the list of their participating employers and estimate of contributions by employer (via the CSEC Act in 2014), Congress used its lawmaking authority (via the SECURE Act in 2019) to retain the reporting obligation only for multiple employer retirement plans, and specifically and expressly repealed the reporting obligation for multiple employer health and welfare plans.

Notwithstanding the clear congressional statement that the participating employer reporting requirement should not apply to multiple employer health plans, in September 2021, DOL (in conjunction with the Internal Revenue Service and Pension Benefit Guaranty Corporation) issued a proposed regulation regarding changes to the Form 5500 and other changes related to benefit plan reporting that provided that, effective for plan years beginning on or after January 1, 2022, multiple employer welfare plans that offer or provide coverage for medical benefits would be required to provide the participating employer information on a different DOL form, the Form M-1.[6] (The Form M-1 is specific to what are known as multiple employer welfare arrangements, or MEWAs, which generally encompass multiple employer welfare plans.) For the 2021 plan year, DOL indicated that multiple employer welfare plans would continue to be required to provide the participating employer information as an attachment to Form 5500.

[6] 86 Fed. Reg. 51488 (Sep. 15, 2021).

NAPEO and at least one other stakeholder submitted comments on the proposed regulation, pointing out that because of the clear Congressional action repealing the client reporting requirement with respect to multiple employer health plans, DOL lacked authority to maintain that requirement. However, DOL subsequently issued a final forms rulemaking at the end of 2021 and indicated their position was unchanged, and they intended to maintain the reporting requirement for multiple employer welfare plans regardless.[7]

In May of 2022, DOL issued a final form revision applicable to the Form 5500 which indicated that the shift of the reporting requirement for multiple employer health plans (from the Form 5500 to the Form M-1) would be indefinitely delayed while DOL evaluated other issues related to plan reporting.[8] For now, DOL continues to take the position that this information must be reported by multiple employer health plans on the Form 5500.

Conclusion

We appreciate your attention to our comments and hope you will seriously consider directing the DOL to take action to eliminate this reporting rule. We note that this particular rule could be easily eliminated by simply modifying the instructions to Form 5500 to clarify that there is no obligation for multiple employer health and welfare plans to report participating employer information as an attachment to the Form 5500[9], and abandoning any efforts to revise the Form M-1 to incorporate this information.

If you have any questions or if we can be of further assistance, please contact me or Thom Stohler, NAPEO's vice president of federal government affairs, at (703) 739-8167 or tstohler@napeo.org.

Sincerely,

Casey M. Clark
President and CEO

Submitted electronically via www.regulations.gov

[7] 86 Fed. Reg. 73976 (Dec. 29, 2021).

[8] 87 Fed. Reg. 31133 (May 23, 2022).

[9] Multiple employer retirement plans would still be subject to this requirement in accordance with Section 103(g) of ERISA, as amended by the SECURE Act.