SLAVIC 401k
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December 3, 2014

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
US Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Attn: RIN 1210-AB66

Re: Revisions to Annual Return/Report - Multiple-Employer Plans

Dear Assistant Secretary Borzi:

Slavic401k, Inc. (Slavic) is pleased to submit the following comments to the US Department of Labor's Employee Benefits Security Administration (EBSA) interim final rule (IFR), *Revisions to Annual Return/Report - Multiple-Employer Plans* (MEPs). Since 1995, Slavic has served as a third party plan administrator for Professional Employer Organizations (PEOs) sponsored MEPs. Today, we serve more than 100 MEPs giving us an in-depth knowledge of this industry. PEOs provide human resource services to their small business clients, paying wages and taxes and assuming responsibility and liability for compliance with myriad state and federal laws and regulations. In addition, PEOs often provide workers with access to 401(k) plans, health, dental and life insurance, dependent care, and other benefits not typically provided by small businesses. We are concerned that EBSA may use the IFR as the basis for public disclosure of lists of participating employers in a MEP as part of their Form 5500 and 5500-SF filings; we are not opposed to the regulation, but the procedure that requires public disclosure.

We are not opposed to submitting lists of participating employers, along with a good faith estimate of the percentage of total contributions made by such participating employers, to EBSA, the Pension Benefit Guaranty Corporation (PBGC), and the Internal Revenue Service (IRS). We also acknowledge that regulations require disclosure of this information to participating employers, plan participants, and beneficiaries upon request. 29 C.F.R. § 2520.102-3(b)(3)(i). However, public disclosure of this proprietary information was not envisioned by Congress when it enacted the Cooperative and Small Employer Charity Pension Flexibility Act (Pub. L. No.

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113-97). Further, public disclosure poses unnecessary risks to businesses like ours that necessarily rely upon the confidentiality of client lists, as well as tax, benefits, and other information. Publicly disclosing these participating employer lists will significantly damage the PEO industry by revealing critical information to competitors that we believe to be proprietary and protected. Additionally, public disclosure of PEO client lists would not further any public policy objective to enhance plan compliance, nor would it provide participating employers, participants, or beneficiaries with access to information they would not otherwise be entitled to.

We urge EBSA to clarify in the IFR that lists of participating employers and contribution percentages provided to EBSA, PBGC, and the IRS will not be publicly disclosed. If EBSA makes this change, we are open to working with EBSA to address any legitimate compliance concerns related to the participating employer lists and to provide assurances that the PEO industry, and Slavic401k in particular, are serving participating employers, participants, and beneficiaries in a manner that is consistent with ERISA and its implementing regulations.

Background

IRS Revenue Procedure 2002-21 requires PEOs sponsoring a 401k retirement plan to utilize the MEP plan design. MEPs pool costs among related employers to provide cost-effective and efficient pension benefits to the employers' employees. PEOs assume full fiduciary and administrative responsibility for the plan. By "pooling" liability and costs, participating employers are able to enjoy the benefits often afforded only to larger companies. In turn, as costs are reduced, small and mid-sized employers are more likely to offer pension and health care benefits to their employees.

In September 2012, the Government Accountability Office (GAO) issued a report on private-sector pensions (GAO-12-665). The report recommended that the Department of Labor collect data on the employers that participate in MEPs, along with coordinating oversight and guidance with the IRS. The GAO examined the history of MEPS, their benefits, and concerns raised about them. However, the GAO did not recommend that the lists of participating employers and their contribution percentages be publicly disclosed. In 2014, Congress enacted legislation that implemented the GAO recommendation by requiring the reporting of participating employer information to EBSA. Specifically, the Cooperative and Small Employer Charity Pension Flexibility Act provides that MEPs "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 the Form 5500 and Form 5500-SF that MEPs annually submit to Labor.

Specific Comments to Interim Final Rule

Access to Lists Already is Available to Those Who Need It. As the IFR notes, MEPs currently are required to maintain a list of participating employers and records of the contributions made by each participating employer. The list of participating employers may be obtained by participants and beneficiaries upon request. 29 C.F.R. § 2520.102-3(b)(3)(i). Participants and beneficiaries also are entitled to request a complete copy of a plan's annual report (Forms 5500, 5500-SF). 29 C.F.R. § 2520.102-3(t). We strongly support the laudable goals of ensuring that participating employers, participants, and beneficiaries have access to the list of participating employers. Informing all parties with a vested financial interest in the operations of a MEP helps to ensure that plan fiduciaries and service providers will be more responsive to their customers and safeguard their assets. For the same reason, participating employers, participants, and beneficiaries can be trusted to handle this information responsibly because they have a strong self-interest in ensuring sound, cost-effective management of the plan and its assets.

However, if EBSA publicly discloses these lists, it will put confidential client information in the hands of competitors, thereby providing them with the same access to this proprietary information as is available to participating employers, participants, and beneficiaries. Competitors do not have the same interest in the sound, cost-effective management of others' MEPs. Their strongest interest is in stealing away clients. The result could be the weakening of existing MEPs or, at best, disruption in the MEP community. In a piece of legislation almost exclusively dedicated to the soundness and success of pension plans sponsored by charities, we see no evidence and no reason to believe that Congress sought to facilitate aggressive, unregulated, and disruptive competitive practices among service providers that could destabilize the PEO industry and the plans they manage.

Government's Ordinary Practice is Not to Publicly Disclose Client Lists in Its Possession. Federal and state laws, regulations, and rules of professional conduct protect against the disclosure of confidential information, such as client lists. As accountants, administrators of MEPs, like Slavic401k, maintain confidential client information. In the business community at large, client lists are considered trade secrets that directly impact the competitive position of the MEP. Public disclosure of client lists under the IFR would be inconsistent with the general thrust of federal and state law and regulations, and could require organizations like Slavic401k to violate applicable professional conduct rules.

- The Freedom of Information Act (FOIA) exempts from disclosure trade secrets and commercial or financial information obtained from a person that is privileged or confidential. 5 U.S.C. § 552(b)(4). Commercial or financial information is confidential if disclosure of the information is likely to cause substantial harm to the competitive position of the submitter.

- The American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct Rule 301 prohibits the disclosure of "any confidential client information without the specific consent of the client." Participating employers sign agreements with MEPs (often referred to as Joinder Agreements) identifying plan terms. These agreements contain confidentiality provisions that will be violated if MEPs are required to publicly disclose their participating employers.

- The Uniform Trade Secrets Act (UTSA), enacted in some form by almost every state including Florida, protects against the disclosure of the trade secrets of a corporation. A client list, from which another person would obtain economic value if publicly disclosed, is a trade secret protected by the UTSA.

- The federal government's own standards of ethical conduct prohibit a federal employee from allowing the improper use of nonpublic information to further the interest of another party. 5 U.S.C. § 2653.703. Nonpublic information includes information: (i) routinely exempt under FOIA; (ii) protected from disclosure by statute or regulation; or (iii) that has not been publicly disclosed and is not authorized to be made available to the public on request. Id. Client lists fall under this federal statutory protection, which would be violated if EBSA publicly discloses these lists of participating employers.

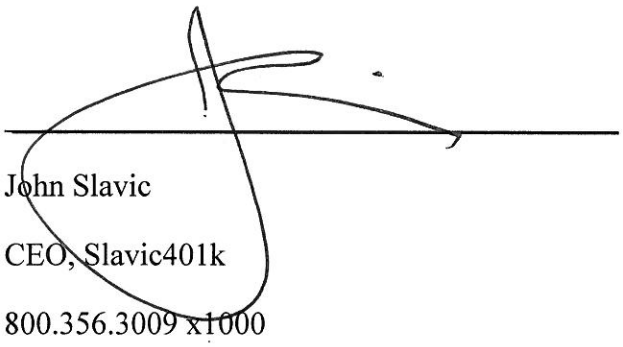
GAO Concerns Are Not Met By Public Disclosure of Lists. GAO noted Labor Department officials' concerns that the potential for inadequate employer oversight of the MEP is greater because employers have passed along so much responsibility to the entity controlling the MEP. These abuses might include layering of fees, misuse of assets, and falsification of billing statements. MEPs also may discriminate against rank-and-file workers to the advantage of highly-compensated employees. For these reasons, we agree completely that EBSA has a legitimate interest in obtaining MEPs' lists of participating employers and related information. As MEPs' regulator, EBSA can use this information to protect against potentially problematic

practices including those specified by GAO and the proliferation of fraudulent or mismanaged MEPs and multiple employer welfare arrangements (MEWAs). However, it is essential to note that publicly disclosing client lists does not enhance EBSA's enforcement efforts. EBSA is uniquely qualified to police illegal behavior in the MEP community. The public is neither qualified nor sufficiently informed to participate in that process. We encourage EBSA to use whatever tools are necessary to prevent bad apples from harming participating employers, participants, and beneficiaries; however, public disclosure of participating employers in MEPs is not a helpful or appropriate tool in this regard.

The GAO also noted that MEPs are touted as a way for small employers to centralize administration and reduce pension plan costs. GAO claims that pension experts and agency officials cannot determine how employers utilize MEPs or how beneficial the MEP design is given that data on participating employers is not collected. We think it is very important, however, that GAO did not recommend that this data be publicly disclosed: "To identify ways to assess, mitigate, and monitor risks of MEPs in the future, Labor needs comprehensive and more current information about MEPs and their designs." GAO-12-665. Again, we agree. EBSA needs this information. The public, and competitors, do not.

Conclusion

On behalf of Slavic401k and the PEOs that sponsor MEPs to reduce pension costs for all employers, we appreciate the Department of Labor's consideration of our comments. We stand ready to work with the department to ensure that MEPs continue to provide value to participating employers, participants, and beneficiaries. We encourage the department to modify the IFR to clarify that the additional information required pursuant to the IFR will not be made available for public disclosure.



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