

Response to Request for Comments on Employee Retirement Benefit Plan Returns Required on Magnetic Media

October 23, 2013

Internal Revenue Service

26 CFR Part 301 RIN 1545-BL54

The American Society of Pension Professionals & Actuaries (ASPPA) appreciates the opportunity to comment on the proposed rules that the Internal Revenue Service (IRS) is considering in relation to the filing of certain retirement plan statements, returns, and reports on magnetic media. ASPPA generally supports the use of electronic filing to reduce filing errors and improve timeliness and accuracy of data collection.

ASPPA is a national organization of more than 16,000 retirement plan professionals who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines, including consultants, investment professionals, administrators, actuaries, accountants and attorneys. Our large and broad-based membership gives ASPPA unique insight into current practical applications of ERISA and qualified retirement plans, with a particular focus on the issues faced by small- to medium-sized employers. ASPPA's membership is diverse but united by a common dedication to the employer-sponsored retirement plan system.

Summary

The following is a summary of ASPPA's recommendations, which are described in greater detail in the **Discussion** section which follows.

- I. **Use of Existing FIRE System** - The IRS should confirm that use of the existing Filing Information Returns Electronically (FIRE) system will satisfy the electronic filing requirement for the Form 8955-SSA through calendar year 2016.
- II. **FIRE System Improvements Needed** - The IRS should make system enhancements that include an efficient batch submission feature for the FIRE system as well as a free interface for use by employers or other filers of the Form 8955-SSA, inasmuch as both features would facilitate electronic filing by all filers.

- III. **Application of Proposed Rules to Certain One-Participant Plan Filers** – The IRS should clarify how the proposed regulations interact with existing filing requirements of the Form 5500-EZ for certain “one-participant” plans.
- IV. **Electronic Filing of the Form 5558** - The IRS should make available an electronic filing option for the Form 5558 when used to extend the filing deadlines for the Form 5500 series and/or the Form 8955-SSA.

Discussion

I. Use of Existing FIRE System

The IRS’s existing FIRE system is the only method currently available for electronic filing of the Form 8955-SSA. However, the proposed regulations do not identify the FIRE system as an acceptable alternative electronic method (while the proposal specifically cites the ERISA Filing Acceptance System (EFAST2) for submission of the Form 5500 series and their related schedules). ASPPA is concerned that any shift away from the FIRE system as an accepted alternative filing method will require expenditures of additional time and resources for software developers and practitioners alike. If the IRS anticipates any significant changes in the FIRE system, or anticipates a transition to another electronic system for filing the Form 8955-SSA before 2015, ASPPA believes that a transition period of at least 12 months beyond the proposed implementation date is warranted.

ASPPA recommends that the IRS confirm that use of the existing FIRE system will satisfy the electronic filing requirement for the Form 8955-SSA through calendar year 2016.

II. FIRE System Improvements Needed

While a growing number of retirement plan sponsors and service providers have begun using the existing FIRE system for submitting Form 8955-SSA data, it is clear that certain enhancements to the capabilities of the software would encourage more filers to adopt electronic filing.

- a. The current FIRE system’s design places undue hardships on service providers who are transmitting information on behalf of their clients because each Form 8955-SSA filing in the FIRE system may contain data for only one plan. A service provider transmitting Form 8955-SSA data for 600 clients could easily need to devote several hours simply to upload the individual files to the FIRE system. The lack of an efficient batch processing mechanism significantly limits the usefulness of the system.
- b. A feature that would increase use of the FIRE system is a no-cost “do-it-yourself” option (similar in concept to the Department of Labor’s (DOL) IFILE application under EFAST2). ASPPA believes that many more employers of all sizes would **voluntarily** use the FIRE system for the Form 8955-SSA if such an application would be made available by the IRS as an alternative to software purchased from a third-

party vendor. At present, the listing of approved third-party vendors for the FIRE system is very limited.

ASPPA recommends that the IRS make system enhancements that include an efficient batch submission feature for the FIRE system as well as a free interface for use by employers or other filers of the Form 8955-SSA, inasmuch as both features would facilitate electronic filing by all filers.

III. Application of Proposed Rules to Certain One-Participant Plan Filers

The plan administrator is responsible for filing the Form 5500 series reports (including Schedule MB or SB, if applicable) as well as the Form 8955-SSA. It is common for the plan administrator to be the plan sponsor. Internal Revenue Code Section 6011(e)(2) generally allows the IRS to require the filing of returns on magnetic media when 250 or more returns are filed by the same person; therefore, the proposed regulations would count all federal filings of the plan sponsor (who is also the plan administrator) toward the 250 threshold. In other words, the capacity in which the filer acts – as employer vs. plan administrator – is irrelevant.

Beginning with the 2009 plan year, the majority of Form 5500 series reports (including Schedule MB or SB, if applicable) have been required to be submitted electronically through DOL's EFAST2. Many filers also voluntarily submit the Form 8955-SSA electronically through the IRS's FIRE system.

Form 5500 series filers are of three types: large plan, small plan, and so-called one-participant plan filers. As such, it is clear to a plan sponsor which Form 5500 filing rules apply. The Form 8955-SSA is filed by plan administrators of plans subject to the vesting standards of Section 203 of the Employee Retirement Income Security Act of 1974, regardless of plan size.

The Form 5500-EZ is required to be filed on paper for certain one-participant retirement plans. The Form 5500-EZ does not require a Schedule SB or MB to be attached to the filing; instead, the plan administrator is required to maintain a copy of the schedule in its records.

It is reasonable to assume that many or even most so-called one-participant plans will not reach the 250-return threshold under the proposed regulations and will, therefore, generally be exempt from all electronic filing requirements. However, the definition of one-participant plans for purposes of the Form 5500-EZ also includes owner-only or partner-only plans (including spouses of owners or partners). Accordingly, it is possible that a "one-participant" plan could be maintained by an employer that files more than 250 returns.

Example. A partnership consisting of 125 partners and 175 non-partner employees maintains separate retirement plans for each group: Plan A for partners only and Plan B for non-partner employees. Under current rules presented in the Instructions for the Form 5500 series, Plan A is treated as a one-participant plan and, as such, must file the Form 5500-EZ on paper. If Plan A is a defined benefit plan, the plan administrator must maintain Schedule SB on file; that

is, the schedule is not filed with the Form 5500-EZ. On the other hand, Plan B is a large plan filer and must submit the Form 5500 electronically using EFAST2.

The proposed regulations appear to put both plans on a similar footing by requiring electronic filing of the Form 5500 series as well as Schedule SB or MB, although it is not clear whether both plans would become large plan filers. If so, the proposed regulation would impose on Plan A more than an electronic filing requirement but also the requirement to attach the report of an independent accountant.

ASPPA recommends that the IRS clarify how the proposed regulations interact with current filing requirement of the Form 5500-EZ for certain one-participant plans.

IV. Electronic Filing of the Form 5558

Over the past several years, ASPPA members have frequently expressed a need for an electronic method of filing the Form 5558 for purposes of extending the due date to file the Form 5500 series and/or the Form 8955-SSA. The current system of submitting the Form 5558 to the IRS in Ogden, Utah *on paper* is very labor intensive and expensive for filers and the IRS. In addition, the current manual intake system has been prone to data entry and other errors which have imposed significant additional effort and expense on plan sponsors to rectify.

In an increasingly computerized society, filers recognize the efficiencies and effectiveness of electronic filing. Because the proposal *requires* certain employers and service providers to electronically file other retirement benefit plan reports, it is a natural step for the IRS to *allow* those same filers to electronically file the Form 5558.

ASPPA recommends that the IRS make available an electronic filing option for the Form 5558 when used to extend the filing deadlines for the Form 5500 series and/or the Form 8955-SSA.



These comments were prepared by the Reporting and Disclosure Subcommittee of the Government Affairs Committee, Ross Solverud, Chair. Please contact Craig Hoffman, Esq., APM, General Counsel and Director of Regulatory Affairs, at (703) 516-9300 if you have any comments or questions on the matters discussed above.

Thank you for your time and consideration.

Sincerely,

/s/
Brian H. Graff, Esq., APM
Executive Director/CEO

/s/
Judy A. Miller, MSPA
Chief of Actuarial Issues

/s/

Craig P. Hoffman, Esq., APM
General Counsel

/s/

John R. Markley, FSPA, Co-Chair
Gov't Affairs Committee

/s/

Ilene H. Ferenczy, Esq., APM, Co-Chair
Gov't Affairs Committee

/s/

Robert M. Kaplan, CPC, QPA, Co-Chair
Gov't Affairs Committee