

Additional Extension Sought for Filing Form 5500 Series

April 5, 2000

John J. Canary
Chief, Division of Coverage, Reporting and Disclosure
Room N-5669
Pension and Welfare Benefits Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Additional Extension Sought for Filing Form 5500 Series
Guidance Needed for Filing Short Plan Year Return/Reports (5500)

Dear Mr. Canary:

This letter is being sent on behalf of the members of the American Society of Pension Actuaries (ASPPA) as a follow-up to our meeting on March 27, 2000.

ASPPA is a national organization of approximately 3,700 members who provide actuarial, consulting, administrative, legal and other professional services for about one-third of the qualified retirement plans in the United States, the majority of which are maintained by small businesses. ASPPA's mission is to educate pension actuaries, consultants, administrators and other benefits professionals and to preserve and enhance the private retirement system as part of the development of a cohesive and coherent national retirement income policy. Its large and broad based membership gives it unusual insight into current practical problems with ERISA and qualified retirement plans, with a particular focus on the issues faced by smaller employers.

EXTENSION OF FILING DEADLINE:

We appreciate the recent extension, which the PWBA granted for filing 1999 Form 5500 Series return/reports that are due on or before July 31, 2000. The extension provides welcome relief in this transition year, and we applaud the PWBA for reacting quickly towards alleviating this problem.

However, as we discussed at our meeting, a large majority of ASPPA's members provide services to plans with a calendar year end. As a result, a substantial proportion of the 5500s which our members prepare will need to be prepared in a compressed time period. This is occurring at the same time, as they are having to amend plans to comply with qualification requirements.

Given these factors and due to the later than expected release of the essential EFAST-approved software, we believe additional time will be needed to complete accurate forms.

Assuming that the EFAST-approved software is released and working by May 1, 2000 ASPPA members will have 5 ½ months or less in which to complete all of the calendar forms 5500 for 1999. And this assumes that there are no problems with the software and that data is available for completing the new forms. Accordingly, ASPPA proposes that the deadline for filing the 1999 or 2000 Form 5500 or 5500-EZ be extended to 12/31/2000 for any 1999 or 2000 return/report which would otherwise have been required to file at an earlier date. Form 5558 should not be required for this extension. Also, Form 5558 could not be used to further extend the 12/31/2000 deadline. This deadline will still give ASPPA members less time than they normally have for preparing the forms.

We understand that there may be contractual issues with the outside vendor, which will process the forms in granting such an extension. As an alternative, if a further extension cannot be granted, we propose that PWBA publish an announcement indicating that it will waive the late filing penalties for such forms (assuming they are filed by the year end) on a minimal showing of good cause, such as a showing of the date their software vendor released its software. We would be happy to work with you to develop other criteria, which might be imposed for obtaining the waiver.

SHORT PLAN YEARS:

There has been widespread confusion about how to handle short plan year return/reports. We discussed the following questions during our meeting. We have included answers to each question based on our understanding of your responses at the meeting. If these answers are incorrect, please let us know. The answer to question #2 is from our meeting with the IRS. You indicated that someone from EFAST needs to answer questions #3 and #5.

We believe it would be helpful if these questions could be answered publicly, for example, on the EFAST Website under the "Frequently Asked Questions" section and during the DOL's Educational Outreach programs or in other public announcements.

1. Is the extension to October 16, 2000 applicable to all filers of Form 5500 for short plan years that began in 1999, assuming the return would have otherwise been due on or before July 31, 2000? For example, the short plan year began January 1, 1999 and ended March 31, 1999. Does the extension of time to file until October 16, 2000 apply?

Ans: Yes

2. For plan sponsors who used the 1998 form to prepare the filing for a short plan year that began in 1999, is there any requirement to file again using the new 1999 format? Many plan sponsors have already mailed these (for 1999 plan years) on marked-up 1998 forms to IRS--as specified in the 1998 instructions for the Form 5500 Series. Many of these will have been final returns and the plan sponsor may no longer be in business.

Ans: No. The IRS will create a tape and send it to the PWBA.

3. For short plan years that begin in 2000, how can the filing requirement be met in a timely fashion? For example, a short plan year begins January 1, 2000 and ends January 31, 2000 and, therefore, the Form 5500 report is normally due by August 31, 2000. The current year form is not expected to be available by the filing deadline, including extensions. In this case, which forms should be filed?

Ans: We understand you will discuss with EFAST and provide guidance on this issue.

OTHER QUESTIONS:

We also need public guidance on two procedural issues related to those return/report forms which will be filed on time (with a valid postmark) by the extended filing deadline, but arrive in Kansas several days after the normal deadline or even after the extended deadline:

4. Should the filer check Box D on Form 5500 or Box B on 5500-EZ (which reads "If you filed for an extension of time to file, check the box and attach a copy of the extension application") when filing under the automatic extension granted by PWBA?

Ans: No. When filing under the PWBA's automatic extension, do not check Box D on Form 5500 (or Box B on Form 5500-EZ) and do not attach Form 5558.

5. When a Form 5500 or 5500-EZ is filed after the normal filing deadline but by the PWBA's automatically extended deadline, will EFAST be able to identify the form as having been filed on time or will it send out correspondence proposing a late filing penalty? This correspondence alarms plan sponsors and is costly to process. Is there any special identification, which must be put on a Form 5500 or 5500-EZ that relies on the PWBA's automatic extension? Or will the EFAST processing center be able to automatically identify these returns?

Ans: We understand you will discuss with EFAST and provide guidance on this issue.

Thank you, again, for meeting with our group and clarifying these important details.

Sincerely,

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Committee

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