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Comments

EFAST RFC

June 4, 2004

EFAST Program Office, Room N-5459
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

SUBMITTED ELECTRONICALLY: efast2@dol.gov

Re: EFAST RFC

Dear DOL/EBSA:

The American Society of Pension Actuaries (ASPPA) offers these comments in response to the Request for Comments (RFC) on the ERISA Filing Acceptance System (EFAST) by the Department of Labor (DOL), the Internal Revenue Service (IRS), the Pension Benefit Guarantee Corporation (PBGC) and the Social Security Administration (SSA) (collectively referred to as the "Agencies")

ASPPA is a national organization of over 5,000 members who provide actuarial, consulting, administrative, legal and other services to sponsors of qualified plans, especially for small to mid-size employers. ASPPA's mission is to educate pension professionals and to preserve and enhance the private pension system.

GENERAL COMMENTS

ASPPA commends the Agencies for encouraging the use of electronic filing and on the extensive research that took place prior to issuing the RFC. ASPPA supports the efforts of the Agencies to improve the electronic filing process and encourages its use. Specific comments on each of the items in the RFC are included below. Certain issues are considerably more important to ASPPA than others and these critical concerns are summarized below to emphasize their importance.

ASPPA Is Strongly Opposed To Any Acceleration Of The Filing Deadlines.

The preparation of the Form 5500 and any required attachments is a very lengthy process and often involves input from multiple professional disciplines and sources. There are numerous regulatory and statutory deadlines that must be considered, many of which impact but are not otherwise directly tied to the preparation of the Form 5500 report (e.g., the deadline for filing individual federal income tax-returns). Accelerating the filing deadline, even with applicability of this accelerated deadline to paper filings only, would put a significant strain on the system and would likely result in a degradation of the quality of data being submitted. This, in turn, would further lengthen the Agencies' processing time. (See Section 7 of this comment letter.)

ASPPA Is Opposed To A System Whereby Filings Are Rejected If All Edit Tests And Data Validation Tests Are Not Satisfied.

Experience with the current system has shown that there are situations where a submission can be completed correctly yet the edit and data validation tests are not passed. Implementing a system under which a technically correct submission is rejected would require that there be immediate solutions to problems as they arise. This would not be in the best interests of the Agencies or preparers. (See Section 7 of this comment letter.)

ASPPA Is Opposed To Mandatory Electronic Filing Of Form 5500. However, If Mandatory Filing Is Implemented, Such Implementation Must Be Performed Gradually.

ASPPA is opposed to a system that mandates electronic filing for all practitioners, as this would put a burden on sponsors and administrators of small retirement plans. Not all sponsors or administrators are able to accommodate electronic filing and should not be forced to do so.

Nonetheless, ASPPA acknowledges that, through educational outreach and simplification of the electronic signature process, electronic submissions can ultimately become the standard filing option for many practitioners. ASPPA encourages the Agencies to focus on encouraging voluntary implementation of electronic filing.

If the Agencies decide to mandate electronic filing, ASPPA favors a process that gradually implements mandatory electronic filing by market segments.

Furthermore, ASPPA opposes "discouraging" non-electronic filing through the imposition of penalties (e.g., filing fees, earlier deadlines and the ability to use only government printed forms) on those who choose not to file electronically. If the Agencies go forward with this concept, these penalties should be implemented gradually, only after there has been a reasonable period of time for phasing in mandatory electronic filing for certain market segments and only after comments as to the efficacy of electronic filing are solicited from those market segments. Until then, the imposition of penalties or additional burdens would increase costs and make plan administration more complex for plan sponsors. While theoretically electronic filing reduces the costs to the various Agencies of processing the filings (a legitimate concern), increasing the cost and burden of annual filing requirements to practitioners (and, therefore, to plan sponsors) can in turn discourage the establishment and maintenance of employee benefit plans. This is contrary to the public policy (and the DOL's goal) of encouraging and fostering the private retirement system. (See Section 3 of this comment letter.)

SPECIFIC COMMENTS

The numbered comments below correspond to the paragraph numbers of each of the items as contained in Section C of the RFC ("Changes Under Consideration").

1. Methods of Filing.

Agencies' Proposal

The Agencies have proposed three distinct ways in which the Form 5500 series may be filed.

Direct filing electronically on the Web

Plan administrators would be able to fill out and file their Form 5500 series electronically on a DOL Web site.

Filing on the Web using software developed by third parties

The DOL [through the Employee Benefit Security Administration (EBSA)] would provide support to software vendors in developing their electronic filing products and would require these products to permit only electronic filing using the Internet as the transmission vehicle. (In other words, a client of the vendor using this system would not be able to elect between filing electronically and filing on paper.) The Agencies do not propose to interfere with the delivery of value-added services and strongly believe that these service providers play an important role in ensuring that Form 5500 filings are correct.

Direct filing on paper using government printed forms

The Agencies would eliminate computer-generated print versions of the Form 5500 series. Only paper filings on government printed forms would be accepted. The purpose of this alternative is to reduce the burden on software developers to maintain the computer-generated forms, freeing them to concentrate on Internet filing products and solutions. This option preserves direct filing for those plan sponsors who do not need value-added services and who do not want to file electronically.

ASPPA Recommendations

ASPPA agrees that the ability of plan sponsors to be able to file directly through the DOL Web site is necessary to ensure that all plan sponsors have access to an electronic filing process. Nonetheless, it is expected that software companies, whose sole job is to create and maintain good computer programs, will develop excellent systems for this process. A government-maintained system may have limitations on how quickly problems can be fixed and/or enhancements can be made to the system.

It would be detrimental to the Agencies if the only paper submissions that will be accepted are those prepared using government-printed forms. The inability to use computer-generated machine print and hand print forms will result in a dramatic decrease in the quality of submissions because the completion of these forms will be by hand and not subject to computer generated editing and data validity checks. This will increase the burden on the Agencies in their review of the forms, as well as on practitioners and plan sponsors in their preparation.

Furthermore, one of the stated purposes of accepting only paper submissions using government printed forms is that it will reduce the burden on software developers. This will not be the case. A plan sponsor is required to have (and generally will want) an original paper copy of the submission on file. Therefore, software developers will still be required to ensure that there is a streamlined and efficient process for preparing paper copies of submissions made electronically.

ASPPA supports the immediate elimination of the computer-generated handprint form; however, the 2-D bar-code form should be retained, as well as the government printed form.

2. Simplification of the Electronic Signature and Authentication Procedure.

Agencies' Proposal

The ERISA Advisory Council Working Group identified the current electronic signatures procedure as being cumbersome and a significant barrier to filing electronically. The Agencies have solicited comments on an approach that would be more user-friendly than the current procedure, but secure enough to significantly reduce or eliminate the risk associated with the transactions. Specifically, the proposal provides that revisions to the signature and authentication procedure would be intended to:

1. Shorten the cycle time for issuing PINs, possibly by taking applications and issuing PINs electronically;
2. Ensure that there is no potential for compromise of the integrity of PINs and signer IDs;
3. Make electronic signature authentication carry the same benefit and costs as paper signature authentication by not requiring filers to pay for electronic credentials or validation of such credentials;
4. Ensure that the electronic signature and authentication approach applies to documents prepared by third parties, such as Schedules B and accountants' opinions; and
5. Ensure that the signature and authentication approach is appropriate to the risk of repudiation for filings.

ASPPA Recommendations

ASPPA agrees that simplification of the signature and authentication process is desirable and recognizes that security concerns with regard to Form 5500 filings are different from other filings (e.g., IRS tax forms, PBGC Forms, SEC filings). Nonetheless, these security concerns exist regardless whether the filing is electronic or by paper. As a result, it is difficult to ascertain whether the current electronic signature and authentication process provides any added security measures when compared to paper filings.

In any event, the process of obtaining (and maintaining records of) both a signer ID and a separate (and inordinately lengthy) PIN seems unnecessarily cumbersome.

ASPPA recommends that a transmitter-based process be considered. Under such a process, once a transmitter code is obtained, the transmitter would be able to file electronically on behalf of a plan sponsor. As part of this process, the transmitter would be certifying that it has the authority to submit on behalf of the plan sponsor. This method avoids the more complex process of obtaining and filing separate PINs and signer IDs.

ASPPA supports procedures that would allow the transmitter number to be obtained electronically. The procedure could be similar to the IRS online EIN application process (Form SS-4). Under this process, the EIN applicant signs a Form SS-4 that the practitioner keeps on file. Then, the practitioner applies for and immediately obtains an EIN for the client online. The IRS then sends the applicant a written confirmation that the number was assigned.

3. Mandatory Electronic Filing.

Agencies' Proposal

The ERISA Advisory Council Working Group recommended that the Agencies make electronic filing of the Forms 5500 mandatory as the most direct way to have paper filers make the transition to electronic reporting. The Agencies' proposal solicits comments on the appropriateness of making electronic filing mandatory for the entire population of filers or only for certain groups, such as plans of publicly traded companies.

ASPPA Recommendations

ASPPA generally opposes universal mandatory electronic filing of Forms 5500. Such a requirement would place a burden on some plan sponsors and plan administrators, particularly those of small plans. Not everyone has easy access to computerized systems, even those on the Web (e.g., those who lack high-speed Internet access in rural locations or are subject to file size limitations that are imposed by many Internet Service Providers) and it is not reasonable to demand electronic filing from those who do not have this access or ability. Furthermore, the imposition of penalties for paper filings would place an inequitable burden on these smaller plans and could hinder their establishment by smaller plan sponsors.

If mandatory electronic filing is adopted by the Agencies, ASPPA proposes that it be phased in gradually by market segments. Some suggested market segments are listed below. These are in descending order based on market segments where electronic filing may be more feasible because these segments are already subject to other electronic filing requirements.

1. All plans subject to filing SEC Form 11-K
2. DFE filings
3. Funded welfare plans that require an audit
4. Welfare plans with over 5 Schedule As
5. Large defined contribution plans
6. Large defined benefit plans

7. All other welfare plans
8. Small defined contribution plans
9. All other small pension plans
10. Form 5500-EZ filers

Mandatory filing could be phased in over a period of time (e.g., five years). For example, mandatory filing could be first imposed on groups 1 and 2, then groups 3 and 4, etc. until all groups are phased in. This would afford sponsors and practitioners time to become familiar and comfortable with electronic filing, and would avoid the mass hysteria and frustration caused by early "bugs" in the system.

4. Charging of Filing Fees.

Agencies' Proposal

The Agencies sought comments on the imposition of filing fees for paper filings to pay the additional cost of processing non-electronic forms.

ASPPA Recommendations

ASPPA does not support the imposition of a filing fee for paper filings; however, if this option is considered, it should be put into practice only after there has been a reasonable transition period for electronic filing. At that point, the savings from electronic filings may be sufficient to offset the costs associated with continuing to process paper filings and filing fees will not be needed.

5. Use of Internet Filing Data Standards Such As XML.

Agencies' Proposal

The Agencies are considering creating a new detailed specification for EFAST that describes how the government should accept filings submitted over the Internet. The Agencies are considering replacing the current E-filing proprietary data exchange technology with technology based on Extensible Mark-up Language (XML) and XML Schema standards.

ASPPA Recommendations

ASPPA does not have concerns with changes to the filing data standards, provided that there is no restriction on the ability to provide unstructured attachments in the manner in which they are currently provided (e.g., as a pdf or Word file). The continued ability to provide attachments in such a manner—which is familiar and available to most practitioners and sponsors—is critical to ensuring the success of the new system.

6. Improved Handling of Third-Party Attachments and Attestations.

Agencies' Proposal

Another reported barrier to electronic filing is the need for the plan administrator to include information it receives from certain third parties, such as actuaries and accountants, in Form 5500 filings. Perhaps more important, these third parties would be required to sign certain portions of the filing. The participation of these third parties would complicate the electronic filing process. These third parties would need to ensure that any information they develop and is to be included in the Form 5500 filing is not altered after it leaves their control.

The Agencies' proposal solicits comments on three alternative approaches to handling third-party attachments and attestations.

- Option 1 (electronic attachment). The third-party would issue two copies of the document to be submitted: an electronic version of the document and the same document printed on paper and signed. The plan administrator would keep the paper document in the plan's records as provided for in the existing ERISA requirements. The Form 5550

preparer would attach the electronic document to the electronic filing and "sign" the electronic filing, declaring that the document is true, correct, and complete.

- Option 2 (transcription). The third-party would issue a signed document. The plan administrator would keep this document in the plan's records as provided for in the existing ERISA requirements. The plan administrator or Form 5500 preparer would transcribe the information included in the document onto an electronic form, and include that form in the electronic filing. The plan administrator would "sign" the electronic filing and, under penalty of perjury and other applicable penalties, declare that the transcribed document is true, correct and complete.
- Option 3 (scanned document). The third-party would issue a signed document to the plan administrator. The report would remain in the plan's books and records for the required period of time. The plan administrator or Form 5500 preparer would scan the report as an image into a portable electronic document format such as a pdf file. The plan administrator would attach this file to the Form 5500 series being filed electronically.

ASPPA Recommendations

The handling of third-party attachments and attestations is most likely viewed as a barrier to electronic filing due to a lack of understanding on the part of the benefits community. This perceived barrier likely would disappear once the third parties are accustomed to providing documents and reports in an electronic format.

Of the three alternative methods suggested, ASPPA supports Option 1 (electronic attachment) and Option 3 (scanned document), as long as the transmitter could choose either method. However, the proposal suggests that the preparer certify, under penalties of perjury, that the attachments are true, correct and complete. This is not a viable alternative where the preparer is merely transmitting an attachment that was prepared by a third-party. The preparer would only be in a position to certify that the attachment is unaltered.

ASPPA is not in favor of Option 2 (transcription). Currently, transcription is necessary to file electronically when the items comprising the single submission have been generated using multiple software packages. For example, if Form 5500 is being prepared using one software package and the actuary completing the related Schedule B uses another software package, the Schedule B must be transcribed because the two different formats cannot be submitted together as one filing. Rather than permitting or encouraging the use of Option 2, ASPPA encourages EBSA to develop enhancements to EFAST that would enable multiple system formats to be accepted within a single electronic filing.

7. Improved Consistency of Treatment for Paper and Electronic Filings.

Agencies' Proposal

The proposal states that the Agencies are committed to minimizing and, where possible, eliminating differences both in acceptance criteria for electronic and paper filings and in the overall treatment of paper and electronic filers. In this regard, the Agencies have two proposals:

(1) The Agencies are considering requiring paper filings to be submitted no later than four months after the close of the plan year (April 30 for a calendar year paper filing). The purpose of the earlier deadline for paper submissions is to build in enough processing time for these submissions to enable them to be accepted and finalized by the Agencies at about the same time as electronic filings.

(2) The Agencies intend to re-examine the role of "edit tests" to make sure the electronic filings are subjected to the same level of testing and validity checking as are applied to paper filings.

ASPPA Recommendations

(1) ASPPA is fundamentally and strongly opposed to any acceleration of the current deadlines, regardless of whether it applies only to paper filings. The preparation of the Form 5500 is an extremely labor intensive process. It requires the use of numerous resources and professionals. Accelerating the filing deadline will create an undue burden on the entire system and will ultimately have a detrimental impact on plan sponsors, providers and the Agencies. Costs to all parties will be increased and there will be little, if any, benefit to the Agencies due to the compromised quality of the data they will receive.

The United States General Accounting Office (GAO) researched this issue with respect to defined benefit pension plans in GAO-04-395 (March 2004) and noted:

There are several difficulties in making the filing of Form 5500 reports more timely. According to actuaries we spoke with, collecting and preparing the necessary information is time-consuming and resource intensive for plan sponsors. Large companies' human resource data are often not well organized for this purpose, according to two pension experts we spoke with. Common problems include merging information from different databases, dealing with retiree data that may not be computerized, and identifying vested participants who have left the company. The data collection and analysis becomes much more complicated when companies go through mergers, acquisitions, or divestitures. According to one senior pension actuary we spoke with, data preparation efforts can consume as much as 75 percent of the time involved in preparing the Form 5500 filing. Other issues include scheduling the work of auditors and actuaries who must review and work with the information once it has been assembled.

The GAO concluded:

However, there appear to be few opportunities to improve the timeliness of Form 5500 information under the current statutory reporting requirements. One challenge to improving the timeliness of this information on pensions will be to find a solution that does not impose undue burdens on plan sponsors. Resolving this challenge will prove crucial to providing policy makers, plan participants, and investors with more timely and transparent information on the financial condition of defined benefit plans.

Some of the specific reasons why accelerating the deadline is not a viable option are identified below.

(a) The current deadlines are intertwined with numerous other deadlines. These include:

- Under IRC §404(a)(6), the deadline for contributions for a particular year is generally tied to the due date, including extensions, of the plan sponsor's tax return for such year. If the plan year and the tax year of the plan sponsor are the same, the sponsor has 8½ months after the year ends to make the relevant contribution. For example, a sponsor of a calendar year profit sharing plan may not determine or contribute the year's contribution until September 15, but the related Form 5500 would be due the prior April 30.
- Under IRC §412(c)(10) and ERISA §302(d)(10), for minimum funding purposes, a contribution may generally be made up to 8½ months after the close of a plan year. Again, the calendar year sponsor must meet the minimum funding rules by September 15, but the actuary would need to certify as to the funded status back in April (before the contribution is likely to occur).
- Under Treas. Reg. §1.401(a)(4)-11(g), a plan may correct any coverage or nondiscrimination violations up to 9½ months after the end of the plan year. This enables the correction to be made

and timely reflected on Schedule T of Form 5500. For a calendar year plan, the correction could be made as late as October 15, but the related Form 5500 would have to be filed by April 30, when the resolution of the issue is unknown.

- Under ERISA §103(a)(2), certain providers have 120 days after the end of a plan year to provide information to the plan administrator. How can a calendar year plan sponsor provide a Form 5500 at the end of April when some of the information needed is in process until April 30?

(b) The data needed to complete the Form 5500 filing is not available to plan sponsors to enable compliance with an earlier filing deadline.

- Data that is necessary to complete contributions and allocations for a particular year is tied to corporate, partnership and individual tax returns.
- Payroll information is typically not available until several months after the end of the plan year.
- Satisfying the independent audit requirement necessitates the retention by the plan of CPAs. An accelerated filing deadline would require that audits on calendar year plans begin prior to April 15. This would put an undue burden on the accounting profession, resulting in increased costs to plan sponsors.
- The receipt of the outside data by the Form 5500 preparer does not end the process. In most cases, data must be reconciled before it can be submitted. The preparer must be able to control its workflow and perform year-end tasks (e.g., participant statements and nondiscrimination tests).

Imposing an earlier deadline will also require legislative and regulatory changes to numerous other deadlines. This will result in increased costs that will be incurred by plan sponsors and may result in a deterioration of the data received by the Agencies which may result in an even longer processing time.

Rather than discouraging paper filings by accelerating their filing deadline, ASPPA recommends an approach that would reward electronic filers by providing an automatic extension of time to file Form 5500 without filing Form 5558. Currently sponsors requesting an extension of time to file Form 5500 must file Form 5558 with the IRS. Form 5558 may not be transmitted electronically. The Agencies can incentivize practitioners to use electronic filing by granting an automatic 2½ month extension of time (without any Form 5558 filing) to file Form 5500 if it is filed electronically. This change would have two benefits for electronic filers: it makes obtaining the extension easier and it eliminates the need to have an unstructured attachment (i.e., an approved Form 5558) with an electronic Form 5500 filing. If there is no statutory authority to grant an automatic extension of time to file, then an alternative means of accomplishing the same result would be to establish a policy of waiving late filing penalties when an electronic filing is made within 2½ months of the normal deadline. Both the IRS and DOL have the authority to waive penalties for reasonable cause.

(2) ASPPA also opposes the proposal to reject filings if all edit tests and data validation tests are not satisfied. While the proposal does not elaborate on how extensive these tests will be, ASPPA is concerned that a filing could be rejected due to an error in the edit checking process or due to a misinterpretation of a particular question or response. Requiring that all tests be satisfied before a filing would be accepted would require that:

1. The rejection clearly identify why the filing was rejected;
2. The edit checks are available for public inspection;
3. Agencies' personnel must be available to practitioners and plan sponsors to help resolve rejected returns; and
4. There is a process to resolve situations where there is an error in the edit checking process preventing a correct return

from being filed.

For these reasons, ASPPA does not support this proposal.

8. Centralized Web-Based Dissemination and Public Disclosure of Form 5500 Series Data.

Agencies' Proposal

One of the stated goals of the Agencies is to have all end-user data consolidated in a single "data mart" that would be accessible on the Web with access controls appropriate to the intended use of the data. This would enhance public disclosure and data dissemination over the Web.

ASPPA Recommendations

ASPPA has no objection to the approaches suggested in the proposal.

9. Require Each Plan Filing Form 5500 Series to Obtain a Unique EIN.

Agencies' Proposal

The Agencies have asked for comments on an approach whereby a unique EIN is established for each plan. This is intended to eliminate the potential for mismatching plan numbers. Mismatching happens when employers have numerous plans, each of which files Form 5500 annual reports using the same plan numbers, thus making it difficult to track plans. The situation is further complicated by plan sponsors that are bought, sold or merged during the year.

ASPPA Recommendations

ASPPA does not support obtaining a unique EIN for each plan.. Even if the process of obtaining a separate EIN could be performed electronically and, therefore, streamlined, the burden of these additional numbers outweighs their benefit. If plan sponsors and preparers cannot accurately track 3-digit plan numbers currently, it is unlike they will be able to track 9-digit plan numbers. Thus, the proposal will not solve the problem of mixed-up numbers.

10. Separation of Certain Information from the Form 5500 Series Package.

Agencies' Proposal

The DOL is considering asking the IRS to remove Schedule E, Schedule SSA, and, when attached to the Form 5500-EZ, Schedule B from the Form 5500 series. The reason is that these Schedules are being submitted solely for purposes of other Agencies and are not subject to public disclosure. Numerous security requirements apply to the handling and processing of non-disclosable tax information and the amount of non-disclosable information currently being received by the DOL is more than the amount of disclosable information.

ASPPA Recommendations

ASPPA does not support separation of certain information from the Form 5500 series package. Requiring separate filings would cause a significant hardship to both filers and the government. The ability to remove the non-disclosable information from a single filing should not require significant software development. EBSA should focus on developing enhancements to EFAST to allow the separation of the filings in a more efficient manner through the use of the EFAST software.

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ASPPA's Reporting and Disclosure Subcommittee of the Government Affairs Committee prepared these comments. Please contact us if you have any comments or questions regarding the matters discussed above.

Sincerely,

Robert M. Richter, Esq., APM, Chair Reporting and Disclosure Subcommittee	Brian Graff, Esq. Executive Director
Jeffrey C. Chang, Esq., APM, Co-Chair Government Affairs Committee	Sal L. Tripodi, Esq., APM, Co-Chair Government Affairs Committee
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