



July 13, 2010

VIA E-Mail

Phyllis C. Borzi
Assistant Secretary, Employee Benefits Security Administration
U.S. Department of Labor

Monika Templeman
Acting Director, Employee Plans
Internal Revenue Service

Re: Extension of 2009 Form 5500 Filing Deadline

Dear Ms. Borzi and Ms. Templeman:

The American Benefits Council (Council) is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

The Council is writing to urge the Department of Labor and the Internal Revenue Service to extend the deadline for filing the Form 5500 and Form 5500-SF for the 2009 plan year until the later of (i) December 31, 2010 and (ii) 9-1/2 months after the end of the plan year.

As you know, the 2009 Form 5500 reflects the most substantial revisions to the annual reporting requirements affecting employee benefit plans in recent memory. The content of the Form 5500 has undergone dramatic revisions. The new Schedule C places the onus on employers to gather information about a wide range of direct and indirect plan services arrangements, and has generated a host of information-gathering challenges. Further, many employers will be filing a brand new form – the Form 5500-SF – and others, particularly employers that maintain section 403(b) plans, will effectively be filing the Form 5500 for the very first time. There has also been some confusion over the elimination of the Form SSA as a schedule to the Form 5500, and its transition to a filing requirement with the Service through the new Form 8955-SSA (which has not yet been released).

On top of the new substantive questions and the revised forms, the 2009 Form 5500 (other than the Form 5500-EZ) must for the first time be filed electronically using either EFAST2's web-based filing system or an EFAST2-approved vendor. Some of the EFAST2-approved vendors

have only very recently developed their systems and made the necessary software available. This has left very little time for service providers that offer Form 5500 preparation services to test the software and confirm that the e-filing process is free of problems. More generally, the delay has made it difficult for employers and plan service providers to develop systems and procedures for managing and delivering electronic filing services.

The Form 5500 is due by the end of the seventh month following the end of the plan year. For calendar year plans, this means the Form 5500 is due by August 2 (as July 31 is a Saturday). It is possible to request a 2-1/2 month extension by filing a Form 5558, which would extend the filing date to October 15, 2010 for calendar year plans. The deadline can also be extended if the employer receives an extension of time to file its federal income tax return, but that deadline cannot extend past 9-1/2 months after the close of the plan year. However, both processes place the burden on the employer to affirmatively obtain an extension, and even then the extension is only for a maximum period of 2-1/2 months.

Taken as a whole, we are concerned that many employers, particularly small employers, will file belatedly; others will meet the filing deadline but will file a defective Form 5500. Even for large employers, we can foresee substantial challenges arising, largely associated with the Schedule C. These problems are exacerbated by the limited assistance that is available as problems arise. The EFAST2 helpline is only open until 8 p.m. Eastern Time and we anticipate a deluge of requests for help as the deadline approaches, whether default or extended.

At a minimum, an automatic extension of 2-1/2 months would be fitting. That is, plan sponsor should be granted an extension without the need for each sponsor to affirmatively request the extension by filing a Form 5558.

We believe, however, that a broader delay in the filing deadline is the preferable solution. Even with an automatic 2-1/2 month extension, Form 5500 filings will be due October 15, 2010 for calendar year plans, and we are deeply troubled by the prospect of a chaotic and disjointed filing process. Accordingly, we recommend that the Department and the Service extend the filing deadline for all 2009 Form 5500s, including the Form 5500-SF, to the later of (i) 9-1/2 months after the end of the plan year and (ii) December 31, 2010. This extension should apply to all plans, including plans with non-calendar year plan years as well as terminated plans filing a final Form 5500. It should also be granted automatically.

If you have any questions about these comments, please contact me at 202-289-6700.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Jacobson", written in a cursive style.

Jan Jacobson
Senior Counsel, Retirement Policy