From: Deanna Keim [djkeim@abcstaff.org]
Sent: Wednesday, May 05, 2004 12:57 PM
To: efast2@dol.gov
Cc: Jan Jacobson
Subject: American Benefits Council comment letter regarding EFAST RFC

Good Afternoon:

Attached please find the American Benefits Council's comment letter regarding proposed changes to the EFAST program. The same letter is attached both as a Word document and as a pdf file.

If you have any questions concerning the letter's content, please contact Jan Jacobson, Council director, **retirement policy, at jjacobson@abcstaff.org or by the phone numbers below. Should you have difficulty opening either document, you are welcome to contact me by any of the means below.**

Thank you in advance for your attention in this matter.

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VIA EMAIL
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May 5, 2004

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

RE: EFAST RFC

Dear Ladies and Gentlemen, including Ronald Allen:

The American Benefits Council (the "Council) enjoyed meeting with you on March 29. Based upon that meeting, we appreciate the opportunity to comment in writing on potential changes to the Employee Retirement Income Security Act of 1974 (ERISA) Filing Acceptance System (EFAST), an automated document processing system that uses computer-scanable forms and electronic filing technologies to process Form 5500 Annual Return/Report of Employee Benefit Plan and the Form 5500-EZ Annual Return of One-Participant Retirement Plan (Form 5500 series). The 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 understands the Department of Labor's (DOL's) desire to receive more filings electronically both to save money and to expedite the availability of information. We commend the DOL for its efforts to simplify and improve the process to encourage electronic filing. However, the Council is concerned that some of the proposals intended to discourage paper filings will unduly complicate the process and result in wide-spread incomplete and late submissions. The Council believes that it would be more effective for the DOL to take steps to encourage electronic filing rather than discourage paper filings.

Currently, the biggest hurdles to electronic filing are the signature requirements and the need for paper attachments. By solving these two problems, most plans would willingly switch to electronic filing. Paper filing options may need to continue, however, to be available to smaller plan sponsors that may not be as computer savvy as their larger counterparts.

This comment letter discusses ways in which the DOL could encourage electronic filing of the Form 5500 series and makes some suggestions regarding signatures and attachments. The Council's concerns are also outlined that some of the DOL's proposals designed to discourage paper filings may be counterproductive.

Encourage Electronic Filing

Many of our members are very interested in electronically submitting the Form 5500 series but find the current system actually discourages electronic filing. The Council recommends that the DOL reevaluate the electronic requirements, including the current application process, with the intent to make it simple and cost effective for plans to file electronically.

The Council understands that one of the current drawbacks to electronic filing is that any error in the process will result in rejection of the entire filing. Realistically speaking, many plans file on or near the deadline and in many cases, employers receive an extension on their corporate tax returns and then fund their plans near the end of the extension period (September 15). For defined benefit plans, the plan's actuary will provide the Schedule B after the plan is funded. If the 5500 is filed close to the extended deadline (October 15 for calendar year plans) and has errors, there may be insufficient time to clear up last minute issues. The plan is then subjected to penalties for failure to timely file the Form 5500 series.

Contrast this with a paper filing. If a paper form with errors is filed, the entire submission is not considered late. The plan is allowed time to correct the errors. The Council recommends that the DOL apply a similar process to the electronic version/program – giving credit to the plan for filing on time (a good faith filing) but requiring that errors be cleared up within a specified period of time.

The DOL can also simplify the electronic filing application process and authorize a long transition period. Providers have invested large amounts of time and money to comply with the current EFAST system. The anticipated changes will cause significant disruptions to workflows as well as vast systems changes for service providers. Not only must providers scrap their current system if the proposed changes are implemented, they will be understandably concerned that another total reconfiguration will be needed again in another four years when the program is again reviewed. Changes should be gradual and build on previous versions of EFAST.

In order to encourage electronic filing, plan sponsors and fiduciaries must receive a tangible benefit from the process. Clearly negating this benefit is the potential requirement that forms with non-public information be filed (on paper) directly with the Internal Revenue Service (IRS). Even if these forms are submitted with another IRS form required to be filed by the sponsoring employer, this will likely accelerate the deadline for filing these forms. There will be different deadlines based on the type of filing entity, and service providers who coordinate the plan's filing will have to work with others to ensure some of the schedules are appropriately submitted. In addition, the plan year may differ from the corporation's (or other entity's) fiscal year causing even more confusion. The Council would not recommend separating some plan schedules to be filed at a different time in a different way.

A better solution to encourage electronic filing would require the DOL to encrypt the nondisclosable information and then electronically forward it to the IRS rather than placing an extra burden on plan sponsors and fiduciaries to send information to two agencies by differing means. Requiring paper forms of any type under this proposed regime would give both plan sponsors and the two agencies in question additional administrative burdens and would increase the likelihood that the two filings (electronic and paper) would never come together. In addition, electronic filing is discouraged by requiring that the plan sponsor keep signed paper copies of various attachments.

Other methods will encourage electronic filing such as making the electronic forms a lot simpler and/or making the EFAST system similar to software currently being used by many providers (Relius was used by the two providers represented in our meeting; others use Blaze SSI). During the Council's meeting with you on March 29, you mentioned the possibility of patterning EFAST after the electronic filing system recently rolled out for the PBGC filing process for premium payments. Members indicated that the new system was rolled out so recently they have not had a chance to use it, so the Council is unable to comment at this time on the feasibility of a similar system for Form 5500 Series filings. The Council recommends a thorough review of the experience of the PBGC filing process and how it might differ from the 5500 filing process before you consider using something similar for EFAST.

Signatures and Attachments

As indicated above, signature requirements and attachments are among the biggest hurdles to electronic filing. Particular obstacles arise with multiple attachments, mergers, spin-offs, attachments containing additional commentary, and forms reporting data divided among multiple plan service or product providers.

For attachments, all of the separate schedules and documents must be coordinated by someone. If the DOL uses the "shoebox" concept discussed during our meeting (with attachments filed in the "shoebox" by the service provider that is later accessed by the coordinator), it is clear the EFAST system must contemplate providing access to the "shoebox" not only by the plan's fiduciary, but also by the service provider actually coordinating the filing.

The electronic filing system must provide the coordinator with some method to track and number the schedules in the "shoebox." This can be quite complex when, for example, the plan has 400 different insurers. In addition, the system must take into account when one insurance contract covers multiple plans (e.g., Schedule A is filed in the "shoebox" as applicable to plans ABC and XYZ). The system will also need a method for amendment or correction of a submitted form and a fallback (scanning into PDF files, for example) if the coordinator is unable to obtain some of the attachments electronically. In addition, the system needs to assure some schedule providers (such as actuaries) that the documents they submit cannot be amended by the filing coordinator or the plan sponsor.

Although it would appear to simplify filings to require that all plans be identified by individual employer identification numbers, service providers have dedicated a significant amount of programming to identify employers with multiple plans by the employer's identification number and the plan number. Requiring individual employer identification numbers for plans would cause administrative delay while the plans obtain these numbers (which, as we discussed in our meeting with you, might be partially alleviated by having the DOL assign IDs to the plan) but would also instigate extensive expenses for service providers in the significant redesign of their processing systems to recognize by their EIN multiple plans from one employer. The Council recommends keeping the current identification system. To the extent the DOL decides to require identifying numbers, these numbers should be assigned by the DOL or be a number that could already be determined. For example, the identifying number could be the employer's identification number coupled with the old plan number so that plan 001 from employer 12-3456789 would become 123456789001.

Electronic signatures are another impediment under the current electronic system for electronic filing. As previously indicated, 5500s are often filed close to the deadline. The plan sponsor in many cases does not know who will sign the forms until the day it is submitted. Generally, multiple people at the plan sponsor retain the authority to make the filing and it would involve considerable cost and effort to obtain electronic signature authorization for everyone who could possibly sign. The Council recommends that electronic signatures be assigned on a corporate basis, with a select group of people authorized to use the approved electronic signature. For example, the DOL could provide the number of PINs requested (which matches the number of potential signators) and simply invalidate a particular PIN when notified that an authorized signer has left the company. The Council also recommends that the EFAST system address electronic signatures for service providers so that plan sponsors can keep electronic, rather than paper copies of appropriate schedules. For some service providers such as actuaries, this would require individual electronic signatures.

Discourage Paper Filings

A number of the DOL's proposals are designed to discourage paper filings. As mentioned above, the Council believes efforts to steer more plans to electronic filing will succeed if the DOL *encourages* electronic filing instead of *discourages* paper filings. In addition, we harbor concerns about some of the specific proposals.

One published suggestion would require paper filings to be made by the end of the fourth month after the end of the plan year (instead of the seventh month). Under the current system, this deadline would be impossible to meet. Insurance companies and banks, for example, have 120 days after the end of the plan year to provide information to the plans (Schedule A and financials). Actuaries generally will not provide the Schedule B for a defined benefit plan until after the contribution is made, which can occur as late as September 15 for calendar year plans. If the actuary provides the Schedule B prior to the funding, the plan's Funding Standard Account may show a deficiency (which would be "cured" by September 15). Then an amended Schedule B would need to be filed after the contribution is made. In the meantime, government agencies may have been unnecessarily alarmed.

In addition, allowing government printed forms to be the only acceptable back-up paper filing is significantly more inefficient than the current computer-generated machine-print method. The computer-generated forms technology is generally built into the software program that stores and produces data for plan administration, allowing the system to directly generate the 5500 Forms. Required use of government-printed forms for paper filings would be grossly inefficient for plan service providers and would result in higher costs for plans. The Council recommends encouraging electronic filing based upon current technology used for paper filings rather than discouraging paper filing by forcing companies to scrap current technology.

If only government-printed forms are allowed, the forms need to be visually easy to work with. The Council would appreciate the opportunity to comment on any proposed form changes. In the current version of Form 5500, the boxes tend to fade out and service providers and plan sponsors have difficulty reading them. The Council would recommend that the printed form be revised to look more like the machine-printed forms.

The Council also predicts considerable antagonism toward paying a filing fee to file mandated IRS/DOL forms and recommends that this option not be considered by the DOL. Council members indicate this would be tantamount to charging taxpayers for filing a paper form 1040. Since plans are required to make this submission and arguably receive little or no benefit from the filing (other than the non-imposition of penalties for failure to file), it does not make sense to charge plans to file. Charging a fee for paper filings could even discourage small plan sponsors from implementing or maintaining a plan as discussed below.

Small Plans

Finally, the Council recommends the DOL continue to allow many small plans to continue paper filings. Small employers are not mandated to file other tax returns electronically and should not be required to file the Form 5500 by a different means. Many small employers are not knowledgeable about electronic filing and may not be able to afford the necessary systems or outside assistance. Increasing their burden or complicating the submission process will add another barrier to the voluntary adoption of new retirement plans and the retention of existing plans. If electronic filing becomes mandatory or payment is required for paper filings, some small plan sponsors may terminate the plans and roll them over into IRAs. Many system difficulties may be alleviated by allowing, for example, small plan sponsors with less than 100 employees to file Form 5500EZ. Although this form is currently only used for non-ERISA plans, it may make sense to expand the number of plans that can file this simple paper form to include all small plans. At the very least, it makes sense to have less onerous rules for smaller plans with as many as 500 participants.

In summary, to encourage electronic filing of the Form 5500 Series, the Council recommends that the DOL take steps to make the process run more smoothly and provide an appreciable benefit to the plan sponsors.

We appreciate the opportunity to provide further input to the development of the new EFAST system and to comment on these proposals. The American Benefits Council is honored to share with the DOL our unique perspective on this issue. If additional information from the Council or meetings with our staff or members would be helpful, please contact Jan Jacobson, director, retirement policy, at (202) 289-6700.

Sincerely,

James A. Klein

James A. Klein
President