

**From:** Donald, Camille [cdonald@MassMutual.com]  
**Sent:** Monday, October 31, 2005 4:40 PM  
**To:** EBSA, E-ORI - EBSA  
**Subject:** DOL Comment letter

**Attachments:** DOL efilng comments.doc



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October 31, 2005

Office of Regulations and Interpretations  
Employee Benefits Security Administration (EBSA)  
Room N-5669  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Attn: Form 5500 e-filing regulation (RIN 1210-AB04)

Dear Sir or Madam:

I am writing on behalf of Massachusetts Mutual Life Insurance Company (“MassMutual”) in response to the Employee Benefits Security Administration (EBSA), Department of Labor’s (DOL) request for comments with respect to the proposed regulation that would establish an electronic filing requirement for certain annual reports required to be filed with the Department of Labor (the Department) by plan administrators and other entities. As an insurance company, MassMutual is a Direct Filing Entity with respect to its Retirement Services’ pooled separate account and we implemented electronic filing for our 221 pooled separate accounts effective with the 2003 DFE year.

MassMutual is a life insurance company that was organized in 1851. It is a member of the MassMutual Financial Group, which is a global-diversified financial services organization with total assets under management of \$325 billion. Its family of companies serves the needs of over eleven (11) million clients including retirement plan sponsors by providing a broad-based portfolio of financial products and services such as retirement planning products, life insurance, annuities, disability income insurance, long term care insurance, mutual funds, money management, and other financial products and services.

MassMutual commends the Department’s Employee Benefits Security Administration (EBSA) for its efforts in use of an electronic filing processing system. MassMutual supports efforts that will, with improved scanning and error-detection systems, result in more accurate filings of the Form 5500 Annual Return/Report.

Our comments regarding your proposed regulations are discussed below. We also request that additional guidance be provided on certain topics, which we have outlined below.

### Response to your questions

(1) While MassMutual agrees that there are many benefits with electronic filing, we are concerned that it is not possible for the Department to provide full technical details at this time. When the 1999 Form 5500 and Schedules were modified, it took MassMutual approximately 15 work months (160 hours for a work month) to make the necessary changes to our various recordkeeping systems. MassMutual provides Form 5500 information to a diverse community; for clients with investment-only services; full-service clients with Form 5500 preparation using an approved software vendor and providing Form 5500-related information to third party administrators. In response to the Department's request for comments on how to best configure the new architecture, MassMutual would be happy to respond once additional information is provided, following or coincident with the release of suggested modifications to the Form 5500 and Schedules.

The Department has indicated that, along with the Internal Revenue Service and the Pension Benefit Guaranty Corporation, a thorough content review of the Form 5500 and Schedules is being undertaken which will be communicated (on a proposed basis) within the next few months. We are concerned about the coordination and timeframe by which these proposed revisions will be issued, given the Department's proposed 2007 plan year reporting implementation date.

(2) As a service provider who prepares computer-generated Form 5500 filing for our client's electing this service, MassMutual has dual concerns that the e-filing process, whereby information is saved to a secure Internet website that can then be reviewed, modified and amended could result in security breaches and, separately, create a system whereby the service provider assumes more fiduciary type duties.

The current EFast system is built on an imbedded Personal Identification Number. Since one of the concerns service providers have had regarding the current system is electronic signatures and the recordkeeping obligations connected with annual updating of information needed by service providers to provide accurate and secure information, we look forward to your modifications which will simplify this administrative burden yet maintain security.

MassMutual recommends that the transition year filing due date is automatically extended to October 15 for calendar year plans as development of a process which accommodates preparation, posting, review by administrators further modifications and sign-offs by independent accountants.

The educational needs of our clients will be significant in the transitional year and MassMutual will need adequate lead time to test systems and draft related educational material once procedures are implemented.

(3) As an insurer who provides Schedule A information, as a Direct Filing Entity who provides Schedule D information, and a financial institution who provides financial information (either on reports on computer-generated Schedules), MassMutual is concerned that any certified information we are required to provide could be changed by multiple other users accessing the secure Internet website. To that end, MassMutual understands that plan administrators may have plan monies invested in various products offered by insurance companies or banks, resulting in a plan administrator's Form 5500 needing to include multiple Schedules A, a Schedule D which reports on more than one insurance company's pooled separate accounts and a Schedule H/I which combines information provided by more than one source. The system created will need to develop a method by which certain information can only be modified by the agency providing the report and/or administrator-authorized users.

(4) As the proposed regulations explain, plan administrators must continue to retain the records needed to complete the Form 5500 Annual Return/Report. To that end, MassMutual will still have to provide back-up copies of all Form 5500 related financial information that is sent directly to clients as well as developing processes for 5500 creation that depend upon the type of services elected by our clients. While we know that the software companies will be charging increased fees for the distribution and modification to 5500s, that final cost is not yet known.

We cannot address the impact and transition costs for any processes and system upgrades that are needed for Form 5500 attachments and third party attestations (e.g., from actuaries and/or independent public accountants) until the Department provides this additional guidance. We recommend that an estimated timeframe be developed and released by the Department, which includes deliverables such as these items, proposed Form modifications, et cetera.

(5) In noting the transition costs, we agree that that costs will vary with previous filing methods. With one example, the proposed regulation notes that filers without access to computers could enter information directly at a local business center (for a fee) or at a public library (free of charge). Since the type of plan administrators that would follow this approach most likely has little computer experience, the filer might not know that the "cookies" left behind on the public computer provides information to other users. MassMutual recommends the Department address these types of security concerns and education needs with the next guidance issued.

(6) Traffic issues: As with April 15<sup>th</sup> and the increased use of the Internet by individual tax filers, MassMutual suggests that delivery and possible "down time" issues which could result in late filings be addressed both systemically and with additional guidance.

In addition to our comments above MassMutual believes as the Department look at the Form 5500 that the Department reevaluate the commissions and fee disclosure on the Schedule A. The schedule A requires insurance companies to disclose all fees and commissions paid. MassMutual believe that implementing a more effective fee disclosure regime should be one of the Department highest priorities and that this requirement should apply regardless of the type of financial institution.

MassMutual applauds the efforts of the Department to create greater efficiency to the Form 5500 filing system. We appreciate the opportunity to provide further input on the development of these electronic filing rules, modifications to the existing Form 5500 and Schedules and additional guidance concerning certain attachments and Schedules. We appreciate your consideration of these comments  
Sincerely,

Camille Donald  
Counsel