From: Johnson, Clements [ccjohnson@USChamber.com]

Sent: Friday, October 28, 2005 2:35 PM

To: EBSA, E-ORI - EBSA

Subject: Form 5500 E-Filing Regulation (RIN 1210-AB04)

Attachments: EFAST - Comments on mandatory electronic filing.doc

Clements Johnson
Staff Assistant
Labor, Immigration & Employee Benefits
U.S. Chamber of Commerce
P: (202) 463-5522
F: (202) 463-5901

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October 31, 2005

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5669
US Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: **Form 5500 E-Filing Regulation** (RIN 1210-AB04)

Dear Sir/Madam:

On behalf of the U.S. Chamber of Commerce, we submit this letter in response to the proposed regulations on the electronic filing of annual reports issued by the Employee Benefits Security Administration ("EBSA") of the Department of Labor ("DOL"). The U.S. Chamber of Commerce is the world's largest business federation representing more than three million businesses and organizations of every size, sector, and region, with substantial membership in all 50 states. These comments have been developed with the input of member companies who would be impacted by the proposed regulations.

Introduction

The EBSA has requested comments on a proposed regulation that would establish an electronic filing requirement for the Form 5500. The Chamber supports the effort to improve and expand the technological components of the Form 5500 filing process. In May of 2004, the Chamber submitted comments on several proposed changes to the filing of the Form 5500, including the imposition of a mandatory electronic filing requirement. As noted in our previous comments, many government agencies are following a trend—also seen in the business community—of moving toward paperless systems, and many retirement plan filers could benefit from the continued trend. Nevertheless, the Chamber urges caution as this process moves forward. We are concerned that some of the proposed actions could have unintended negative consequences for the employer-provided retirement plan system. The core of the employer-provided retirement system is that it is a voluntary system from which plan sponsors may withdraw at any time. Therefore, when making changes, it is important to maintain choice and flexibility within the system that will encourage continued participation. Mandating an electronic filing requirement does not meet this goal for several reasons. As a policy matter, mandates in a voluntary employee benefits system are troubling. Moreover, the proposed regulations themselves state that the requirement may be a significant burden on small plans. And, finally, if a mandate is imposed, it should not be effective until after all changes to the system have finalized and tested. These reasons are explained in detail below.

The Regulations Should Maintain Alternate Filing Options.

The Chamber does not believe that mandating electronic filing is appropriate. From a policy standpoint, the Chamber believes that choice and flexibility in the employer-provided plan system is paramount. Therefore, electronic filing should not be mandatory for any part of the filer population because it removes choice and flexibility from the system.

Currently, filers may choose between paper and electronic filing according to which system best fits with their administration, record-keeping, and financial situations. We see no policy or practical reason to deny this option. Mandating electronic filing could require some plan sponsors to implement new systems and procedures that would require additional training, costs and management. Again, we reiterate that choice and flexibility are vital to the success of the employer-provided retirement system and the EBSA and DOL should work toward increasing—not decreasing—these characteristics in the filing system.

Rather than mandating a particular type of filing, the EBSA should focus on policies that encourage filers to use a particular type of filing. For example, simplifying the electronic filing system is a definite incentive to using that form. Moreover, educating filers about the ease and security of the system could go a long way towards encouraging the use of an electronic system.

Mandatory Electronic Filing May Impose a Significant Burden on Small Plans.

In the regulatory impact analysis, the proposed regulation states that "this regulation may have a significant impact on a substantial number of small plans." The proposed regulation also states that EBSA considered an exception for small plans that are currently hand-filers, but ultimately rejected this alternative. We would ask that the EBSA reconsider this alternative. At the very least, small plan sponsors should be given an extended transition period over which they can spread implementation costs and familiarize themselves with the changes. We would recommend a period of no less than 5 years.

An Electronic Filing Mandate Should Not Be Effective Until After All Changes in the System Are Finalized.

We understand that the EBSA is considering many changes to the annual filing system including changes to the text of the Form 5500 and changes to the current electronic filing system. We very much appreciate the agency's efforts to modernize and simplify the filing system. However, it seems that, in this instance, the cart has been put before the horse. The agency is mandating the use of a system that has not yet been proposed – not to mention implemented or tested.

The agency continues to work on changes to the electronic filing system and to the text of the forms, but has not yet issued proposals for discussion. Given the amount of time that the process of proposing, discussing, and finalizing changes will take, it is entirely possible that plan sponsors will have to educate themselves and implement the new designs at the same time that the mandates will take affect. As such, there will be no time for flaws and inconsistencies to be worked out. Rather than imposing a hard date now on a mandatory transition, we suggest making the effective date two years after the finalization of changes to the Form 5500 and the electronic filing system.

Conclusion

The Chamber applauds the efforts of the Agencies to expand the efficiency and accessibility of EFAST. We do not, however, think that such efforts should in any way narrow or eliminate current filing options that now exist. As our members further consider these proposals (and others that the agency may put forth), we anticipate and look forward to a continued dialogue. We appreciate your consideration of these comments.

Sincerely,

Signed
Randel K. Johnson
Vice President
Labor, Immigration & Employee Benefits
U.S. Chamber of Commerce

Signed
Aliya Wong
Director of Pension Policy
Labor, Immigration & Employee Benefits
U.S. Chamber of Commerce