

From: Hunt, Kelly [KHunt@USChamber.com]

Sent: Wednesday, May 05, 2004 4:09 PM

To: 'efast2@dol.gov'

Subject: Request for Comment

Here are the comments from the U.S. Chamber of Commerce. I have included one in pdf format and one in Word format because your website did not specify which is the preferred method. If you have any problems with either of these, please contact me as soon as possible. Thanks.

<<EFAST Comments to EBSA 5-5-04.pdf>> <<EFAST - Comments to EBSA.doc>>

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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: Request for Comment on the ERISA Filing Acceptance System

Dear Sir/Madam:

On behalf of the U.S. Chamber of Commerce, we submit this letter in response to the Request for Comment on changes to the ERISA Filing Acceptance System (“EFAST”) proposed by the Department of Labor, the Employee Benefits Security Administration, the Internal Revenue Service (“IRS”), the Pension Benefits Guaranty Corporation, and the Social Security Administration (collectively, the “Agencies”). 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 changes.

Introduction

The Agencies have requested comments on several proposals that are aimed at encouraging more filers to file electronically and to improve the efficiency and accessibility of EFAST. The Chamber supports the effort to improve and expand the technological options of the Form 5500 filing process. As noted in the Request, 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. We find that some of the proposals articulated by the Agencies will increase such choice and flexibility while others may decrease these characteristics.

In the following comments, we have highlighted some of the major benefits and concerns of the proposed changes to EFAST. We hope that this will be an ongoing conversation and look forward to continued discussions and brainstorming surrounding EFAST.

Comments

Section 1 – Method of Filing

In this section, the Agencies articulate several alternatives for filing. The Chamber very much endorses a filing system that maintains several filing alternatives. It is important that such alternatives include options for all types of filers from the techno-savvy to the techno-wary. We believe that the inclusion of various alternatives creates a user-friendly filing environment for all filers.

The Chamber also supports certain proposed enhancements to the alternatives and encourages further development along these lines. In particular, the Chamber believes that direct filing via the Department of Labor web site could enhance EFAST and encourage more electronic filing. The feature allowing multiple sessions with input from multiple parties is an important feature for allowing full accessibility between all plan professionals and contributors to the filing process. We suggest, however, that additional features be added to this alternative. In addition to allowing input from multiple parties, this alternative should also allow multiple parties to actually file information. To ensure that the filing is authorized, the plan sponsor would maintain ultimate control over the filing through a validation process. Moreover, to simplify access by all parties, we recommend that a personal identification number (“PIN”) be used to access information

and that such a PIN relate to the employer identification number (“EIN”) of the plan sponsor. Thus, if a party needs to enter information, it can use either the PIN or the EIN. Filing and validation, however, could only be completed with the PIN. Allowing this extended capability would greatly expand the accessibility of electronic filing.

Recognizing that not all filers will be comfortable with electronic filing, the proposal maintains an option for paper filing. The Chamber believes that this option must be maintained and appreciates the Agencies’ recognition of this fact. We are concerned, however, about whether those filers who wish to file on paper will have adequate access to government printed forms. Machine and computer-generated forms have greatly simplified the most basic part of the filing process—getting the forms. Eliminating these options appears to be a step backward in terms of simplification. Also, it seems as though there would not be an undue burden on software developers to maintain this system in addition to further development of Internet filing solutions because the system for machine and computer-generated forms is already in place. At the very least, eliminating the option of machine and computer-generated forms should include additional options for making the government printed forms more accessible. For example, implementing a system to allow filers to get forms automatically through the mail and increasing the number of IRS paper forms distribution centers would be first steps toward maintaining the accessibility of paper forms.

Section 3 – Mandatory Electronic Filing

For a number of reasons, 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 Agencies should work toward increasing—not decreasing—these characteristics in the filing system.

Rather than mandating a particular type of filing, the Agencies 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.

Section 4 – Charging of Filing Fees

Again, the Chamber believes that the emphasis should be on expanding choice and flexibility in the filing requirements and not narrowing it. As it stands, plan sponsors expend significant resources on the administration of retirement plans that are in addition to the actual benefit provided. For example, maintaining a retirement plan often requires the use of professionals such as consultants, accountants, attorneys, and actuaries. Moreover, many plan sponsors need human resource professionals to oversee the day-to-day administration of the plan. In addition to the personnel required to maintain the plan, plan sponsors expend resources on providing plan documents, providing required notices, and completing required plan filings. Adding additional costs to the administrative and financial burdens that plan sponsors already face may cause some plan sponsors to leave the retirement plan system.

Section 6 – Improved Handling of Third-Party Attachments and Attestations

The Chamber supports the proposal to allow third-party attachments to be filed separately from the rest of the Form 5500. This proposal would greatly alleviate the dilemma of a plan sponsor that finds itself waiting for documents from a third-party to complete the Form 5500 filing. We recommend also including the Schedule A

(Insurance Information) and the Schedule P (Annual Return of Fiduciary of Employee Benefit Trust) as additional third-party attachments that could be filed separately.

Section 7 – Accelerated Deadline for Paper Filers

The Chamber is very concerned about the proposal to accelerate the filing deadline for paper filers. Section 7 begins by stating that the “Agencies are committed to minimizing and, where possible, eliminating difference [emphasis added] both in acceptance criteria for electronic and paper filings and in the overall treatment of paper and electronic filers.” And yet, the proposal would create a system that is drastically different between paper and electronic filers—paper filers would have a filing deadline that would be three months earlier than the deadline for electronic filers.

This accelerated deadline is not simply a matter of mailing a document earlier. Plan sponsors would be required to accumulate information earlier, process information earlier, and coordinate filing efforts among professionals earlier. Moreover, the proposed deadline would coincide with the April corporate and income tax deadlines, thus requiring plan sponsors to compete with even more entities for the services of accounting and other financial services professionals. In the current system, many filers take advantage of the two-month automatic extension because of the burdens of collecting and processing information on the current timeline. Shortening that timeline for paper filers will dramatically increase the filing burdens that they already face.

Furthermore, an accelerated deadline would place an onerous choice upon preparers and plan sponsors. The Schedule B and the Schedule R both require information pertaining to deposits and contributions made by the plan sponsor. Because these deposits and contributions may not be completed until more than four months after the end of the plan year, the plan sponsor and the preparer may be left with two equally burdensome options. Either the plan sponsor must make the contributions earlier than required by law or the preparer must complete the form based on good faith that the contributions and deposits will be made timely and accurately. Once again, the overall

effect here would be to narrow the choice and flexibility that is needed in the retirement plan 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 Agencies may put forth), we anticipate and look forward to a continued dialogue.

We appreciate your consideration of these comments.

Sincerely,



Randel K. Johnson
Vice President
Labor, Immigration & Employee
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