

October 5, 2010

The Honorable Phyllis Borzi  
Assistant Secretary/EBSA  
Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

The Honorable Michael Mundaca  
Assistant Secretary  
Department of the Treasury  
1500 Pennsylvania Ave., NW  
Washington, DC 20220

The Honorable Douglas H. Shulman  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Mr. Joshua Gotbaum  
Director  
Pension Benefit Guaranty Corporation  
1200 K Street, NW  
Washington, DC 20005

**RE: Extension of Filing Deadline  
Form 5500, Annual Return/Report of Employee Benefit Plan  
Form 5500-SF, Short Form Annual Return/Report of Small Employee Benefit Plan**

Dear Ms. Borzi and Messrs Mundaca Shulman and Gotbaum :

The American Institute of Certified Public Accountants (AICPA) is very concerned about the filing process and fast approaching October 15 final filing deadline for 2009 calendar year Forms 5500, Annual Return/Report of Employee Benefit Plan, and Forms 5500-SF, Short Form Annual Return/Report of Small Employee Benefit Plan. As professional tax preparers, we were aware that this year would have special challenges. Our members proactively took actions to ensure timely filings (i.e., hired additional staff, accelerated work to the extent possible, etc.); however, as further described below, some delays were beyond our reasonable ability to manage in advance.

The AICPA is the national professional organization of certified public accountants comprised of approximately 360,000 members. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized business, as well as America's largest businesses. It is from this perspective that we strongly urge you to extend the filing deadline of Form 5500/5500-SFs for plans commencing on or after January 1, 2009 and before January 1, 2010. Specifically, we suggest an extension of two months to December 15, 2010 for calendar year 2009 benefit plans.

Employers, plan sponsors, recordkeepers, mutual fund companies, and practitioners are all experiencing a challenging transition year with the new Employee Retirement Income Security

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Act (ERISA) Filing Acceptance System (EFAST2) requirements. As you know, EFAST2 is a system designed by the Department of Labor, Internal Revenue Service, and Pension Benefit Guaranty Corporation to simplify and expedite the submission, receipt, and processing of the Form 5500 and Form 5500-SF. These forms must be filed each year by employee benefit plans to satisfy annual reporting requirements under ERISA and the Internal Revenue Code. As you are aware, this is the first year the Forms 5500/5500-SF and related schedules must be electronically submitted. While we recognize that the new processing system is operating as described, the new procedures are requiring more time to execute this first filing season than was anticipated.

After the Forms 5500/5500-SF were released, there were significant delays in the preparers' access to the forms as software developers coded the programs to process the new forms and schedules. Once completed, there was additional time spent for distribution of the software, installation by users, and becoming acclimated with the program. Many practitioners were in the final stages of completing the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) restatements until April 30, 2010. This caused substantial reallocations of resources that delayed the early stages of the Form 5500/5500-SF preparation process (i.e., discussions with employers and plans sponsors, information gathering, engagement planning). For many small employee benefit plans, this process left only a very short time before the initial due date of the return. In essence, these issues caused an effective shortening of the preparation period (even with an extension to October 15) to less than four months. In addition, the May release of the 2009 Form 5500-EZ, Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan, was later than usual, contributing to a very late start on this year's filing season.

The new EFAST2 process is not the only significant change for the 2009 filing season. As you know, the limited financial reporting exemption for Internal Revenue Code section 403(b) plans was eliminated. For plan years commencing on or after January 1, 2009, section 403(b) plans are subject to the annual reporting rules that apply to other ERISA-covered pension plans. This is the first time many section 403(b) plans were subject to this more detailed filing. For these employers, the entire experience is new and in many cases quite daunting. Their filing process includes securing records from prior periods, and for larger plans, having audits conducted that involve the audit of financial records for multiple years. These issues, combined with the fact that the first time an ongoing plan is audited often requires additional procedures, have delayed CPA firms' release of financial statements for many of these plans well beyond the time that will be required in subsequent years. Furthermore, once the return is completed, the employer is presented with an unfamiliar form which requires a higher level of review and consideration before execution.

Although practitioners are frequently required to adapt to changes in business, we feel that with respect to the filing deadline, employers and plan sponsors should be granted consideration by

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you as they have been required to venture into a process that is substantially different from prior filing methodology. Many of the plan sponsors are not familiar with using web-based applications and electronic communications in their everyday business and must rely on their retirement plan professionals for assistance. This causes significant increases in the time required to assist signers through the process of obtaining their EFAST2 credentials and electronically executing the form. One specific challenge that presented confusion to many employers was their initial enrollment on the EFAST2 site for credentials (specifically, the proper role that they should select). Many problems and delays were caused by their selecting a role other than "filing signer." Because practitioners and preparers had to take time assisting employers in identifying and remedying such mistakes, time and resources were redirected from ongoing production efforts, slowing down returns for other clients.

Another significant challenge for the 2009 filing season relates to the changes to Schedule C, Service Provider Information. These changes have been very challenging for employers and practitioners. The Schedule C was revised to require expanded reporting of receipt by service providers of indirect compensation. The "top 40" reporting scheme has been eliminated and employers must now report information regarding all service providers who receive \$5,000 or more in direct or indirect compensation. These detailed requirements are requiring considerably more data collection and analysis. As a result, retirement plan professionals are devoting more time to understanding the new form and the subtleties involved in the variety of fees, their collection methodologies and classification. In addition, an equally if not more time consuming process is the interface with plan sponsors and vendors in order to accumulate the data regarding fees, relationships and the interplay of funds necessary to accurately report this information on the schedule.

An extension of the due date of Form 5500/5500-SF also benefits the Department of Labor and Internal Revenue Service. If employers, plan sponsors and practitioners have a sufficient amount of time to accurately complete the form, you will receive a higher quality filing and the DOL will send fewer letters regarding what appear to be inconsistencies in the filings. In addition, you will receive significantly fewer amended returns to correct material errors, and the returns filed will have fewer instances of minor errors. Additionally, the number of late filed returns under the correction program will be significantly reduced. As a result, your employees can continue to focus on their normal workflow rather than spending time reacting to these other matters. Furthermore, the extension of the due date of the Forms 5500/5500-SF extends the deadline for the performance of the associated audits of financial statements accompanying the filings, which reduces correspondence regarding filings with no audits attached and late filings under the correction program for audits that could not be completed by the due date.

Accordingly, we strongly urge you to provide an automatic extension of two months for filing 2009 Forms 5500/5500-SF. The extension would be a one-time special extension due to the changes in the implementation of new electronic filing requirements, the late release of forms,

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the first-time applicability of many filing requirements to section 403(b) plans, and the increased reporting requirements on Schedule C. All of these factors were beyond the control of employers, plan sponsors and practitioners. Alternatively, should you decide not to extend the due date of the returns, we strongly request the adoption of a lenient policy for late filed returns. Specifically, we suggest that a reasonable cause exception be made available and that items beyond the control of the employer or preparer be deemed to be reasonable cause.

These comments were developed by the AICPA Form 5500 Task Force and approved by our Employee Benefits Tax Technical Resource Panel and Tax Executive Committee.

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If you have any questions or would like to discuss these comments in more depth, please contact Chris W. Shankle, Chair of the AICPA, Form 5500 Task Force at (318) 674-3791 or [chris.shankle@capitalonebank.com](mailto:chris.shankle@capitalonebank.com); or Melissa M. Labant, AICPA Technical Manager, at (202) 434-9234 or [mlabant@aicpa.org](mailto:mlabant@aicpa.org).

Sincerely,



Alan R. Einhorn  
Chair, Tax Executive Committee

cc: Steven Miller, Deputy Commissioner for Services and Enforcement, IRS  
Sarah Hall Ingram, Commissioner of Tax Exempt & Government Entities Division, IRS  
Michael Julianelle, Director, Employee Plans, IRS  
Andrew Zuckerman, Employee Plans Director of Office of Rulings & Agreements, IRS  
Lisa Mojiri-Azad, Office of Chief Counsel, IRS  
Mark Iwry, Deputy Asst. Secretary for Retirement and Health Policy, Dept. of the Trsy.  
George Bostick, Benefits Tax Counsel, Department of the Treasury  
Helen Morrison, Deputy Benefits Tax Counsel, Department of the Treasury  
Michael Davis, Deputy Assistant Secretary, Department of Labor  
Ian Dingwall, Chief Accountant, Department of Labor  
Vincent Snowbarger, Deputy Director of the Pension Benefit Guaranty Corporation