



4245 North Fairfax Drive, Suite 750  
Arlington, VA 22203  
P 703.516.9300 F 703.516.9308  
[www.asppa.org](http://www.asppa.org)

October 1, 2010

Ms. Phyllis C. Borzi  
Assistant Secretary/EBSA  
US Department of Labor  
200 Constitution Avenue, NW, Ste S-2524  
Washington, DC 20210

Mr. Michael Julianelle  
Director, Employee Plans  
Internal Revenue Service  
1750 Pennsylvania Avenue, NW  
Washington, DC 20006

**Re: Urgent Request for Extension of 2009 Form 5500 Filing Deadline**

Dear Phyllis and Michael:

The American Society of Pension Professionals & Actuaries (ASPPA) is writing to request an extension of time to file the Form 5500 series reports for 2009 plan years that are due on or before October 15, 2010. Specifically, we ask that the deadline be extended until December 31, 2010. ASPPA acknowledges that the EFAST2 system itself is operating essentially as expected; however, plan sponsors and practitioners are finding that the volume of filings that remain outstanding at this time are substantial and result from circumstances that could not reasonably have been anticipated. For this reason we believe an extension is both merited and critical in this first year of EFAST2 submissions.

ASPPA is a national organization of more than 7,300 members who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines, including consultants, investment professionals, administrators, actuaries, accountants and attorneys. Our large and broad-based membership gives ASPPA a unique insight into current practical applications of ERISA and qualified retirement plans, with a particular focus on the issues faced by small-to-medium-sized employers. ASPPA's membership is diverse but united by a common dedication to the employer-sponsored retirement system.

## Discussion

As noted in our previous letter to you of April 23, 2010, the new mandatory EFAST2 electronic filing system for the 2009 Form 5500 represents the greatest change in qualified plan reporting since the inception of the Form 5500. While every effort is being made to meet filing deadlines, the following experiences are hampering the best of efforts by plan sponsors and retirement plan practitioners:

- Filing signers are not properly completing the registration process when applying for EFAST2 credentials by creating a password;
- Filing signers are selecting a *User Role* other than “filing signer” when applying for EFAST2 credentials;
- Sponsors and practitioners are experiencing difficulty with properly including attachments in EFAST2 filings;
- Sponsors and certified public accounts are experiencing difficulty with data collection and completion of first-time audits under the new expanded reporting obligations for 403(b) plans;
- Significant changes to Schedule C as well as other 2009 revisions have required more time for data collection and form preparation than could not have reasonably been anticipated;
- Practitioners are finding that amended filings are necessary in a significant number of cases after receiving EFAST2 error messages resulting from lack of familiarity with the new system and inadvertent errors (e.g., a failure to properly include an attachment); and
- Practitioners have been hampered in the development of timely procedures due to delays in the delivery of fully functional third-party software.

Nearly all of these issues apply only to this transition year and are primarily due to the learning curve being compressed into an extremely short time frame. The expectation is that next year will go much more smoothly after all concerned parties have had the benefit of the prior year’s worth of experience. It is for this reason we believe the extension we are requesting should be viewed as necessary and exceptional because of the unprecedented changes in the filing requirements that took effect this year.

Additionally, we believe that some plan sponsors will be unable to meet the deadline, with or without the extension we are recommending. Certainly, if our request is granted, there will be far fewer sponsors missing the deadline. In any case, we believe that many plan sponsors are making a diligent good faith effort to comply, but will be late due to problems associated with the unprecedented

changes made to Form 5500 and the EFAST filing system. In such cases, we strongly believe that waivers of late filing penalties for “reasonable cause” should be liberally granted.

## Summary of Recommendations

1. **ASPPA recommends** the filing deadline for any 2009 Form 5500 series reports due on or before October 15, 2010, be extended until December 31, 2010.
2. **ASPPA also recommends** that if a plan sponsor otherwise acts diligently and in good faith and, due to difficulties associated with the new 2009 filing requirements, is unable to meet its filing deadline, as extended pursuant to the above recommendation or otherwise, the plan sponsor should be granted relief from late filing penalties on the basis of “reasonable cause”.

These comments were prepared by ASPPA’s Reporting and Disclosure Subcommittee of the Government Affairs Committee, Peter Gould, CPC, Chair. Please contact Craig Hoffman, General Counsel and Director of Regulatory Affairs at ASPPA, at (703) 516-9300 ext. 128, if you have any comments or questions regarding the matters discussed above. Thank you for your consideration of this request.

Sincerely,

/s/  
Brian H. Graff, Esq., APM  
Executive Director/CEO

/s/  
Judy A. Miller, MSPA  
Chief of Actuarial Issues

/s/  
Craig P. Hoffman, Esq., APM  
General Counsel

/s/  
David M. Lipkin, MSPA, Co-chair  
Government Affairs Committee

/s/

Robert M. Richter, Esq., APM, Co-chair  
Government Affairs Committee

/s/

Peter Gould, Chair Reporting and  
Disclosure Sub-committee

/s/

James C. Paul, Esq., APM, Co-chair  
Government Affairs Committee

Courtesy Copies:

Michael Davis  
Deputy Assistant Secretary  
200 Constitution Ave, NW  
Room S2524  
Washington, DC 20210

Alan Lebowitz  
Deputy Assistant Secretary for Program Operations  
200 Constitution Ave NW  
Room N-5677  
Washington, DC 20210-0001

Robert Doyle  
Director, Office of Regulations & Interpretations  
200 Constitution Avenue NW Room N5665, P-420  
Washington, DC 20210

Ian Dingwall  
Chief Accountant  
200 Constitution Avenue NW, Ste 400  
Washington, DC 20210

John J. Canary  
Deputy Director, Office of Regulations & Interpretations  
200 Constitution Ave NW, Room N5665

Washington, DC 20210

Mark Iwry  
Deputy Assistant Secretary for  
Retirement and Health Policy  
Department of the Treasury  
1500 Pennsylvania Ave NW  
Office of Tax Policy, Rm. 1000  
Washington, DC 20220-0001

George Bostick  
Benefits Tax Counsel  
Office of Tax Policy  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Andrew Zuckerman  
Director, EP Rulings & Agreements  
Internal Revenue Service  
1750 Pennsylvania Avenue NW  
Washington, DC 20006

Lisa Mojiri-Azad  
Office of Chief Counsel  
Internal Revenue Service  
1111 Constitution Ave NW  
Washington, DC 20224-0001

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