

Deadline For Reporting Deferred Vested Retirement Benefits Is Fast-Approaching

Thursday, January 5, 2012

Retirement Plans Subject to ERISA Vesting Standards Must File Form 8955-SSA by January 17, 2012

Section 6057(a) of the Internal Revenue Code (the "Code") requires plan administrators of retirement plans subject to the vesting standards under the Employee Retirement Income Security Act of 1974 ("ERISA") to report information regarding separated participants with deferred vested benefits that have not commenced. Plan administrators previously met this requirement by filing Schedule SSA as an attachment to the plan's Form 5500 annual return/report. The Department of Labor ("DOL") removed Schedule SSA from Form 5500 for plan years beginning on or after January 1, 2009.

The IRS, in coordination with the Social Security Administration, developed Form 8955-SSA as a stand-alone form that is to be used to comply with Code Section 6057(a) for plan years beginning on or after January 1, 2009. Plan administrators of plans, including 403(b) plans, subject to the ERISA vesting standards must file Form 8955-SSA. In addition, plan administrators of government, church, and other plans that are not subject to ERISA's vesting standards may elect to voluntarily file the Form 8955-SSA.

Generally, the due date for filing a Form 8955-SSA is the last day of the seventh month following the end of the plan year (the same as the due date for a Form 5500). Plans required to file Form 8955-SSA for the 2009 and/or 2010 plan years, however, have until the later of January 17, 2012 or the due date for filing the Form 8955-SSA for the 2010 plan year to do so. A plan sponsor may not obtain an extension of the January 17, 2012 due date. For subsequent plan years, plan administrators may file Form 5558 to obtain a 2-1/2 month extension of the time to file a Form 8955-SSA.

Plan administrators may either combine the data for the 2009 and 2010 plan years on the 2009 Form 8955-SSA or file separate Forms 8955-SSA to report data for the 2009 and 2010 plan years. A plan administrator may file a Form 8955-SSA with the IRS either in paper form or electronically using the IRS Filing Information Returns Electronically ("FIRE") system.

A plan administrator must also furnish each separated participant with deferred benefits an individual statement describing the participant's benefits and certify on the Form 8955-SSA that the plan has met this requirement. The IRS has not previously required plan administrators to make this certification, and commentators have noted that many plan administrators had not been aware of the individual statement requirement in the past. Plan administrators must furnish the individual statements no later than the due date for filing the Form 8955-SSA.

Failure to file a timely Form 8955-SSA may result in a penalty of \$1 per participant not reported per day, up to a maximum of \$5,000. Failure to provide the individual statements may result in a penalty of \$50 for each failure to furnish the statement. The IRS has indicated in informal guidance that a plan's quarterly or annual benefit statements and distribution forms may be used to satisfy the individual statement requirement if the statements and/or forms include all of the information required by the Treasury Regulations. Plan administrators should review their forms and procedures to ensure that their plans comply with the individual statement requirement.



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