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December 20, 2011

Mr. Robert S. Choi
Director Employee Plans
Internal Revenue Service
1750 Pennsylvania Avenue, NW
Washington, DC 2006

Re: IRS Form 8955-SSA Participant Notice Requirement

Dear Mr. Choi:

The American Society of Pension Professionals and Actuaries (“ASPPA”) is writing to request clarification of the notice requirement with respect to separated participants who are listed on IRS Form 8955-SSA and its predecessor, Schedule SSA to Form 5500. In the past, many plan sponsors have relied on benefit statements and other documents provided to participants, collectively, to satisfy this requirement. ASPPA requests clarification that these practices are sufficient and will continue to constitute good faith compliance in the absence of specific regulatory standards.

ASPPA is a national organization of more than 8,000 retirement plan professionals 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, administrators, actuaries, accountants, and attorneys. ASPPA is particularly focused on the issues faced by small- to medium-sized employers. ASPPA’s membership is diverse but united by a common dedication to the employer-based retirement plan system.

Background

Internal Revenue Code (“Code”) section 6057(e) requires plan administrators¹ to furnish each separated participant who has a deferred vested benefit that has not been paid with an individual statement setting forth the information required to be included on Form 8955-SSA. The statement must also include a description of any benefits which are forfeitable if the participant dies before a certain date. The participant information required to be reported on Form 8955-SSA includes the participant’s name, social security number, codes indicating the type of annuity and frequency of payment, and the amount of the deferred vested benefit. The Internal Revenue Service (the “Service” or “IRS”) issued regulations under Code section 6057 in 1978. Our

¹ As defined in Code § 414(g).

members report, however, that this requirement has not been reviewed or publicized in their interactions with IRS auditors.

The latest revision to Form 8955-SSA now requires the plan administrator to certify that the required statements have been provided to separated participants.² This certification is required to be made under penalties of perjury. In addition, Code section 6690 imposes a penalty of \$50 per participant if a plan administrator willfully provides a false or fraudulent statement or willfully fails to furnish the required statement.

Discussion

We understand that many plan administrators have relied on benefit statements, distribution forms, and related documents, as well as information available in summary plan descriptions, to provide the necessary information that is required for compliance with the Code section 6057(e) notice requirement. Collectively, these documents provide information about vested benefits, forms of payment, as well as the timing of distributions. We understand, generally, that in the past, many plan administrators have not provided a specific separate notice for compliance with Code section 6057(e). The documents that are furnished commonly provide all of the material information required, but may not include a participant's social security numbers or certain codes used on Form 8955-SSA. In addition, plan administrators may not always furnish a specific statement of benefits that may be forfeitable on the participant's death before a certain date. However, we believe that the necessary information is available to the participant from his or her benefit statement, which includes vesting information, together with materials provided in distribution/payment forms and information available in the summary plan description.

During the IRS Question and Answer session at the 2011 ASPPA Annual Conference, IRS officials indicated that the notice requirements could be satisfied by furnishing multiple documents to participants, such as a benefit statement and distribution/payment forms.

In view of the new requirement for plan administrators to certify (under penalty of perjury) compliance with these notice rules, ASPPA would like to confirm and clarify that the past practices described above will constitute acceptable good faith compliance for purposes of the certification. Specifically, we request clarification that:

1. A separate, specific notice containing participant information from Form 8955-SSA is not required; the notice requirement can be satisfied by furnishing the required information in one or more other documents.
2. Social security numbers are not required to be provided to participants. We believe this is appropriate in light of privacy concerns and the inherent risk of identity theft. In the alternative, we recommend that redacted social security numbers be permitted (e.g., the last four digits).

² The IRS's website (IRS.gov) indicates that the latest version of the Form 8955-SSA was posted on December 11, 2011.

3. Actual codes and other technical information required on Form 8955-SSA need not be provided to participants.

Recommendation

ASPPA recommends that the IRS confirm that good faith compliance with the terms of the statute and existing regulations as outlined above will be satisfactory pending further guidance for plan administrators.



These comments were prepared by ASPPA's Reporting and Disclosure Subcommittee of the Government Affairs Committee. We welcome the opportunity to discuss these issues with the Service. Please contact Craig Hoffman, General Counsel and Director of Regulatory Affairs at (703) 516-9300 with respect to any questions regarding the matters discussed herein.

Thank you for your time and consideration.

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/

Mark Dunbar, MSPA, Co-Chair
Gov't Affairs Committee

/s/

Ilene H. Ferenczy, Esq., APM, Co-Chair
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