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# FORM 8955-SSA PARTICIPANT STATEMENT: CLEARING UP THE CONFUSION

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Schedule SSA of Form 5500 has long been used by benefit plan administrators to report participants who are entitled to future benefits. However, this schedule has been replaced by the recently released Form 8955-SSA in order to remove participant Social Security numbers from the Form 5500 filing package.

The 8955-SSA is much the same as the old Schedule SSA, but an esoteric rule regarding participant statements is mentioned more prominently in the new filing instructions and has been causing some confusion among consultants and plan administrators.

#### **HISTORY**

The Form 5500 reporting requirement was created by the Employee Retirement Income Security Act (ERISA) as a way for the IRS, DOL, and other agencies to monitor benefit plan activity. Schedule SSA allowed the Social Security Administration

to remind participants of potential pension benefits they may be entitled to. These Social Security Administration statements are notoriously unreliable because plan administrators have always been more diligent at listing participants on the Schedule SSA than removing them as single-sum benefits were paid or transferred to another plan.

Since 1978, Section 6057(e) of the Internal Revenue Code has required that plan sponsors send a statement by the SSA filing date to participants listed on the Schedule SSA. The statement must provide to the participant the information that is communicated on the SSA. Historically, practitioners and employers have taken the position that this statement requirement was satisfied by sending deferred vested letters to participants who terminate employment with a vested benefit. Some employers may have also considered benefit statements to active participants as sufficient.

In 2009, Schedule SSA was detached from Form 5500 because it contained participant Social Security numbers. To protect plan participants' confidential information, a new stand-alone form was created.

### **INTRODUCING THE NEW FORM 8955-SSA**

Rolled out in 2011, Form 8955-SSA was required for the 2009 and 2010 plan years by the later of January 17, 2012, or the due date that applies to the plan's 2010 Form 5500 filing. It's currently required to be filed on paper because, to date, there is no SSA-approved software for electronic filing. It contains much of the same information as the Schedule SSA, but also has an enigmatic line item 8, which asks:

"Did the plan administrator provide an individual statement to each participant required to receive a statement? . . . . .  Yes  No"

The instructions do little to clarify this item. They read (as if Yes/No weren't clear enough), "Check the

appropriate box as to whether the plan administrator provided the individual statement to each participant required to receive one. See *Penalties*."

*Penalties*? Sounds ominous. The old Schedule SSA was never this gloomy.

The *Penalties* instructions shed a bit more light, saying, "Each plan administrator must . . . furnish to each affected participant an individual statement setting forth the information required to be contained in the form." The new instructions also mention a penalty to the plan administrator of \$50 for each participant who is not furnished a statement by the Form 8955-SSA filing deadline.

Some have speculated that the increased visibility of the statement requirement means that the IRS plans to vigorously enforce it, using the collected penalties to defray the costs associated with e-filing.

Because the IRS provided no guidance, many plan administrators scrambled to send out special mailings to the participants reported on their Form 8955-SSA by the January 17 deadline in an attempt to avoid penalties. Others maintained the traditional view that other mailings, such as deferred vested letters, would satisfy the requirement. There was also uncertainty about whether the statement must notify participants that information was sent to the IRS, instead of simply providing the information that was sent to the IRS. Additional details such as the employee identification number and plan number are included on the 8955-SSA, but are typically not included on deferred vested letters.

In addition, 6057(e) requires that the participant statement include information on any benefits that are forfeitable if the participant dies before a certain date, and this information is often not included on deferred vested letters.

In December 2011, ASPPA filed a letter with the IRS requesting clarification on the issue.

[www.asppa.org/Document-Vault/pdfs/GAC/2011/12302011-Comment.aspx](http://www.asppa.org/Document-Vault/pdfs/GAC/2011/12302011-Comment.aspx)

No one was holding their breath waiting for last-minute guidance, but in a rare display of promptness the IRS released a Q&A on January 11, 2012, which reads:

*What are the requirements for answering "yes" to question 8 on Form 8955-SSA? Question 8 on Form 8955-SSA asks whether the plan administrator provided an individual statement to each participant required to receive a statement. The instructions to the Form add that the plan administrator must, before the expiration of the time for the filing of the Form, furnish to each affected participant a statement setting forth the information required to be contained in the Form. May the plan administrator satisfy this requirement by using other notices such as benefit statements and distribution forms? Also, does this mean that the plan administrator must furnish a notice that includes all of the information on the Form 8955-SSA?*

A plan administrator may answer "yes" to question 8 if the required information was timely furnished to participants in other documentation such as benefit statements or distribution forms. A separate statement designed specifically to satisfy this requirement is not required.

A plan administrator may answer "yes" to question 8 if the statements or other documentation issued to the participants include the following information:

- Name of the plan
- Name and address of the plan administrator
- Name of the participant
- Nature, amount, and form of the deferred vested benefit to which such participant is entitled.

Thus, for purposes of completing Form 8955-SSA, the plan administrator's notice to the plan participant does not need to include the participant's social security number, the codes on page 2 of the Form 8955-SSA used to identify previously reported participants, or any information regarding any benefits which are forfeitable if the participant dies before a certain date.

#### WHAT SHOULD WE DO?

If you've already sent a special mailing to participants, don't worry. You're covered.

Defined benefit plan sponsors should discuss this change with their consultants and legal counsel

to decide whether to change current procedures. This is an ideal time to review the information you're providing to terminated vested participants. You may wish to add language to your deferred vested letters based on the bulleted list above.

Defined contribution plan statements would also seem to satisfy the new guidance as long as they're provided before the Form 8955-SSA due date, and include the listed items.

#### SUMMARY

Since the 2009 and 2010 filings are due on the later of January 17, 2012 or the due date for the 2010 Form 5500, plan administrators should review the language in their deferred

vested letters and benefit statements and decide whether it complies with Form 8955-SSA's statement requirement for future years.

Whether you intend to rely on your prior process or add language to your deferred vested letters, plan sponsors should work with their consultants and legal counsel to understand the new rules and avoid costly penalties. **PC**



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\*Chatham Partners' 2010 Client Satisfaction Analysis Survey, December 2010. Chatham Partners, LLC is an independent, third party research firm. Questions were asked of 732 Transamerica Retirement Services' clients. Quantitative questions were rated on a 7-point scale with "6" and "7" representing the highest levels of satisfaction. A "Best in Class" rating was received when over 85 percent of the respondents selected a "6" or "7" for a specific area. Transamerica received a total of 85 "Best in Class" ratings in Chatham's 2010 analysis. Transamerica or Transamerica Retirement Services refers to Transamerica Retirement Services Corporation, which is headquartered in Los Angeles, CA. TRSC 6186-1211