Form 8955-SSA Participant Statement: A Flurry of Activity

Schedule SSA of Form 5500 has been replaced by the recently released Form 8955-SSA, raising uncertainties for plan sponsors over how to understand and comply with the new rules in order to avoid costly penalties. This article reviews Form 8955-SSA and its history in order to help plan sponsors decide if their plan meets the statement requirement, review plan processes for participants ending employment, and examine whether defined contribution and defined benefit plan statements comply with requirements. Ultimately, whether the plan intends to rely on its existing process or add language to future deferred vested letters, plan sponsors should work with their consultants and legal counsel to ensure compliance with Form 8955-SSA statement requirements.

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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 However, this schedule has been replaced by the recently released Form 8955-SSA in order to remove participant Social Security numbers from the Form 5500 filing package.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 Employee Retirement Income Security Act (ERISA) created the Form 5500 reporting requirement as a way for the Internal Revenue Service (IRS), Department of Labor (DOL) and other agencies to monitor benefit plan activity. Schedule SSA, which is entitled the “Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits,” allowed the Social Security Administration (SSA) to remind participants of potential pension benefits they may be entitled to. These SSA 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 also may have 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 standalone form was created.1

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 or via the fire.irs.gov website because, to date, there is no SSA-approved third-party 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 not furnished a statement by the Form 8955-SSA filing deadline.

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

Is the Plan Meeting the Statement Requirement?

Because 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 IRS, instead of simply providing the information that was sent to IRS. Additional details such as the employee identification number and plan number are included on the 8955-SSA, but typically are not included in 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 in deferred vested letters.

In December 2011, the American Society of Pension Professionals and Actuaries (ASPPA) filed a letter with the IRS requesting clarification on the issue.2

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 that 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.

**Table**

**Important Information for Terminated Vested Participants**

**To satisfy the 8955-SSA statement requirements:**

- 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

**To reduce hassle in the future:**

- Who to call with questions about their benefits
- When to call (for example, when a participant dies)
- A plea to keep their address and beneficiary information up-to-date (and how to do it)
- Summary plan description (SPD) for defined benefit plans

**Take a Look at the Plan’s Processes for Participants Ending Employment**

This change is a great reason to review the information that is sent to participants ending employment. This group is often just a footnote in many organizations’ communication plans. However, getting them out the door with all of the right information can save headaches down the road. The table above lists information organizations should provide for terminated vested participants that will both satisfy the 8955-SSA statement requirements and reduce hassles in the future.

Review the information that is provided to terminated vested participants. Does the deferred vested letter provide all that’s required for the 8955-SSA statements? Some defined benefit plan administrators send deferred vested letters to inform participants of an existing benefit and to instruct them where to get additional information. However, the letters don’t provide all the required details for the 8955-SSA statement.

**Do the Plan’s Regular Benefit Statements Comply?**

If the plan is relying on regular benefit statements to meet the 8955-SSA statement requirement, it makes sense to review both the content and the processes.

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

Defined benefit plan statements may pose challenges. Plan sponsors have the option to provide pension plan statements once every three years, or they can provide an annual notice of availability of benefit statements. The challenges are:

- If a statement is provided every three years, the benefit amount listed on the last statement provided to the participant will likely not satisfy the Form 8955-SSA due date requirement and may not match the amount listed on the 8955-SSA.
- If an annual notice of availability is provided, the statement may have all the necessary content, but legal counsel should be asked to determine if it satisfies the Form 8955-SSA requirement in terms of distribution.
It's a good idea to discuss this change with the plan’s consultants and legal counsel to decide whether to change current content and procedures.

Summary

Because the 2009 and 2010 filings were 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 statement requirement for future years.

Whether the plan intends to rely on its existing process or add language to future deferred vested letters, plan sponsors should work with their consultants and legal counsel to understand the new rules and avoid costly penalties.

Endnotes


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