

September 24, 2012

Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20024

Re: REG-153627-08
Reporting and Notice Requirements for Deferred Vested Benefits Under Section 6057

Submitted electronically

The Pension Rights Center welcomes this opportunity to comment on proposed regulations relating to the reporting and notice requirements for deferred vested benefits under Section 6057 of the Internal Revenue Code. 26 C.F.R Sections 1.6081-11 and 301.6057-1. The Center is a nonprofit consumer organization that has been working since 1976 to protect and promote the retirement security of American workers and their families.

Background.

IRC Section 6057(a) requires that a registration statement be filed with the Internal Revenue Service listing all participants who left an employer's service during a plan year with a deferred vested benefit.¹ This "Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits" was Schedule SSA and was filed as an attachment to Form 5500. However, the transition to electronic filing of Form 5500 included a requirement that all Form 5500 filings be made available to the public online. Since Schedule SSA contained private information on separated participants, including the Social Security number, type of benefit owed and amount of the benefit due, the determination was made that a participant's personal information could not be included in Form 5500. The solution to that problem was to require the form to be filed directly with the IRS as a stand-alone form. This is now Form 8955-SSA.² This effectively protects the personal information of the participant.

IRC Section 6057(e) and ERISA Section 105(c)³ require a plan administrator to furnish "an individual statement" to each participant listed in the registration statement. The individual statement must set forth "the information with respect to such participant required to be contained in such registration statement." This individual statement is the "deferred vested statement." The individual statement is to be provided within the time period for filing the annual registration statement. We are submitting these comments because we believe that the transition to electronic filing of the Form 5500 should not cause these basic statutory requirements important to participants to be compromised.

¹ 26 U.S.C. Section 6057(a)

² Form 8955-SSA can be found at <http://www.irs.gov/uac/Form-8955-SSA,-Annual-Registration-Statement-Identifying-Separated-Participants-With-Deferred-Vested-Benefits>

³ 26 U.S.C. Section 6057(e), 29 U.S.C. 1025(c)

Overview of comments and request for a public hearing.

Proposed regulation 1.6081-11 would allow plan administrators to receive an automatic two and a half month extension of time to file the Form 8895-SSA with the IRS. This would be consistent with the Form 5500 requirements and for most plans would mean that they would have a full ten months to file the 8895-SSA, ample time to provide accurate information on the Form. The proposal would also waive the requirement that the plan administrator sign the request for the automatic extension. We support these proposed changes.

However, the proposal also includes amendments to Treasury regulation Section 301.6057-1.⁴ Proposed Section 301.6057-1(a)(4)(iii), “Delegation of authority to Commissioner,” provides that “The Commissioner may provide special rules under section 6057... in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin... that the Commissioner determines to be necessary or appropriate with respect to the filing requirements under Section 6057.”⁵ We are concerned that, if implemented, this proposal could allow the Commissioner to issue special rules without notice and opportunity for public comment that could eliminate statutory and other protections important to participants.

We are also concerned that this new delegation of authority to the Commissioner could be read to apply not only to future changes to the Form 8895-SSA but could also be construed to retroactively validate guidance issued in the past, specifically a Retirement Plan FAQ Regarding Form 8955-SSA issued on April 4, 2012.⁶ As we discuss more fully below, this guidance, issued without any notice and without any opportunity for public comment is contrary to express requirements of both the Internal Revenue Code and ERISA.

While we recognize that the IRS and retirement plan community, including participants, have a legitimate interest in streamlining filing requirements, we ask that any delegation of authority to the Commissioner that does not include an opportunity for public notice and comment be limited to guidance that would not adversely affect the critical protections that Congress expressly conferred on participants. Further, we request that that this regulatory proceeding be expanded, or that a new regulatory proceeding be initiated, to allow for notice and comment on behalf of participants and other interested persons on the April 4, 2012 FAQ, and also on a second issue, relating to the requirements in Sections 6057(b) that plans include in Form 8895-SSA information relating to the change of a plan’s name, address, or form, discussed below. We request a public hearing on both of these issues.

Comments

Form 8955-SSA, the “Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits,” is required by IRC Section 6057(a) to include the name of the plan, name and address of the plan administrator, name and tax identification number (Social Security number) of each participant who left the plan with an entitlement to a deferred vested benefit that was not paid during the plan year, and “the nature, amount, and form of the deferred vested benefit to which such participant is entitled.” This information in the Form 8895-SSA directly affects the information required to be given to participants by IRC Section 6057(e) in their “**deferred vested statements**,” and the information participants and beneficiaries receive

⁴ 26 C.F.R. Section 301.6057-1

⁵ See Section 301.6057-1(a)(4)(iii) of the proposed rule. 29 C.F.R. Section 301.6057-1(a)(4)(iii)

⁶ Retirement Plan FAQs Regarding Form 8955-SSA, See FAQ 21, <http://www.irs.gov/Retirement-Plans/Retirement-Plan-FAQs-Regarding-Form-8955-SSA>

as a result of IRC Section 6057(d) in their Social Security “**Notice of Potential Private Benefits**” statements. These individual statements, issued at different times, help ensure that participants and their beneficiaries receive the benefits they have earned.

Deferred Vested Statements. The information in the Form 8895-SSA which is filed with the IRS regarding entitlement to benefits must also be furnished directly to participants when they separate from service or terminate employment and have not received the benefits to which they are entitled at the time of separation or termination.⁷ This statement is the “deferred vested statement” and must be provided by the plan administrator to any separated participant who has a vested benefit that has not yet been paid. Section 6057(e) provides that the deferred vested statement be an “individual statement” “setting forth the information with respect to a participant “required to be contained in [the] registration statement.” Deferred vested statements are invaluable to participants. They tell separating participants what they have earned under a plan at a time when the participants can request clarifications and, if appropriate, recalculations, of benefits from a readily accessible employer with readily available records. Deferred vested statements can also be used by participants at a later time to establish their entitlement to benefits.

Notices of Potential Private Pension Benefits. Section 6057(d) requires the IRS to forward the information received from the plan administrator on the Form 8895-SSA to the Social Security Administration.⁸ The Social Security Administration stores the participant information until either the participant or a beneficiary of the participant applies for Social Security benefits. At that time the individual’s deferred vested information that was provided to IRS on the registration statement is sent to the participant or beneficiary on the Social Security “Notice of Potential Private Pension Benefits.”⁹ These Notices alert participants to benefits they may have earned years ago, and provide beneficiaries the documentation and data they need to collect benefits owed to them after the death of a spouse.

It is because of the critical importance to participants of the information contained in the Form 8895-SSA that we oppose the proposed blanket delegation of authority to the Commissioner to issue “special rules” related to the Form 8955-SSA through guidance. Rules that could materially affect information given to participants and beneficiaries should be considered through a formal regulatory proceeding under the Administrative Procedure Act.¹⁰

The term “special rules” is not defined in the proposal. Conceivably, the proposed authority could be exercised to allow the Commissioner to issue a special rule adding or eliminating an important requirement in the Form 8955-SSA without public notice or comment. This could be beneficial to participants as it is in the case of the new requirement in the Form that plan administrators declare “under penalties of perjury” that they have provided “an individual statement to each participant required to receive a statement” under IRC Section 6057(e) and ERISA Section 105. This modification of the Form is a very important measure designed to ensure that the statutory mandate to provide separating participants with deferred vested statements is fulfilled. But it would be detrimental to participants if, without public notice and comment, a special rule were issued eliminating this requirement.

⁷ ERISA Section 105(c) and IRC Section 6057(e).

⁸ IRC Section 6057(d).

⁹ https://secure.ssa.gov/apps10/poms/images/poms01/01032/G-RM_03270.016-1.pdf

¹⁰ 5 U.S.C. Section 553(b).

We are particularly concerned that the delegation of authority to issue special rules through guidance rather than regulatory proceedings could be construed to retroactively validate a very troubling FAQ issued on April 4, 2012 titled “Retirement Plan FAQs Regarding Form 8955-SSA – What are the requirements for answering “yes” to question 8 on Form 8955-SSA?”¹¹

The FAQ, Question 21, asks whether plan administrators can declare, in response to question 8 of the Form 8955-SSA, that they have met the requirements of Section 6057(e) to furnish an individual statement to separated participants with a deferred benefit if, rather than an individual statement, they used “other notices such as benefit statements and distribution forms.” and if they included notices that did not include “all the information on the Form 8955-SSA.” The IRS response was that a “plan administrator may answer “yes” to question 8 if the required information is 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.” No definition of “timely” was included in the answer.

The FAQ also lists the information required to be included in the documents. This includes the name of the plan, the name and address of the plan administrator, the name of the participant, and the “nature, amount, and form of the deferred vested benefit to which such participant is entitled.” The FAQ also stated that the Form does not need to include the participant’s Social Security number, or certain codes used to identify previously reported participants, or any information regarding any benefits which are forfeitable if the participant dies before a certain date.

Question 21 of the FAQ appears to be a response to a December 20, 2011 letter from ASPPA, the American Society for Pension Professionals and Actuaries.¹² In its letter ASPPA stated 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... **in the past many plan administrators have not provided a specific separate notice for compliance with Code section 6057(e).** (*emphasis added*) In addition, plan administrators may not always furnish a specific statement of benefits that may be forfeitable on the participants’ 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.

The letter goes on to ask clarification that the Section 6057(e) requirement could be satisfied by continuing the current practice of furnishing multiple documents to participants and that the requirement for providing a Social Security number be eliminated or satisfied by using the last four digits of participants’ Social Security numbers.

Despite the fact that the letter requested elimination of three express statutory requirements – the single “individual statement” requirement, the Social Security number requirement, and,

¹¹ Retirement Plan FAQs Regarding Form 8955-SSA, See FAQ 21, <http://www.irs.gov/Retirement-Plans/Retirement-Plan-FAQs-Regarding-Form-8955-SSA>

¹² See <http://www.asppa.org/Document-Vault/PDFs/GAC/2011/12302011-comment.aspx>

implicitly, the requirement that participants be notified if benefits could be forfeited as a result of death – there was no public notice of a proposed IRS action. While simplifying reporting requirements can be beneficial to all, a request of this nature goes beyond minor technical reporting requirements and should be open to the pros and cons of public discussion.

Some of the adverse consequences of these changes for participants were outlined in a letter sent to the IRS on April 27, 2012. The Pension Action Center of the Gerontology Institute, U Mass-Boston wrote to the IRS noting that ASPPA's proposal "is highly burdensome to participants."

To allow plans to ignore deferred vested pension notices would deprive plan participants of a clear and simple document telling them exactly what benefits they will receive in retirement. Under ASPPA's proposal plan participants would bear the burden of piecing together information about their benefits from numerous other documents. Finally, ASPPA's suggested form of notice would not provide participants with the plan's assessment that the participant is entitled to a benefit.¹³

The Pension Action Center's letter was based on its experience operating the New England Pension Assistance Project, a federally funded program that for nearly two decades has worked directly with thousands of participants and beneficiaries to help them receive the retirement benefits they have earned. The Center pointed out that the "individual statement" required by the statute helps participants in three important ways:

(1) they identify plans where the participant has earned a pension and thereby ensure that pension income will not become "lost"; (2) they provide evidence that a plan has deemed a participant entitled to a pension; and (3) they help workers plan for their retirement by clearly stating their entitlement to a pension.

Because the IRS did not provide notice that it was proposing to issue a FAQ modifying the statutory requirements and provide an opportunity to be heard, the Pension Action Center letter arrived after the IRS published the FAQs on April 4, 2012.

There may well be legitimate arguments for modifying – and even rarely eliminating – statutory requirements, but this should not be done without an opportunity for the perspectives of participants and others to be heard. Alleged industry-wide noncompliance with the law certainly should not be the basis for altering statutory requirements.

The reality is that a single deferred vested statement provided within ten months of leaving a plan is vital to the ability of participants to prove their entitlement to benefits at retirement. This is the document they keep, and years later are able to show to plan administrators to document their claim for benefits. It is simply unrealistic to assume that participants and their beneficiaries will be able to retain and reconcile multiple documents, and it would be directly contrary to the statute to require them to try to accurately calculate their benefits from summary plan documents (as suggested by ASPPA), particularly without access to work records.

There is no definition of "timely" in the FAQ, yet many pension plan participants receive benefit statements only every three years. Also, the value of profit sharing and 401(k) account balances

¹³ See http://scholarworks.umb.edu/pensionaction_pubs/6/

can fluctuate greatly in very short periods of time. The only relevant figure is the one calculated as of the date the individual separates from service.

A public examination of the requirements of Form 8955-SSA and the related requirements for Section 6507(e) deferred vested statements is long-overdue. Although the private retirement plan landscape has changed over the years, the need for accurate and timely information about deferred vested benefits is as great as ever. We ask that this regulatory proceeding be expanded to invite public comment on regulation 301.6057-1(e), or in the alternative that a new regulatory proceeding be initiated.

A related issue

An expanded or new regulatory proceeding would also provide an opportunity to solicit comments on ways that the information required by IRC Section 6057(b) and regulation 301.6057-1(b) can be shared with the public.

Section 6057(b) Notification of Change in Status, requires the plan administrator to give notice in the Form 8895-SSA of any change in the name of the plan, any change in name or address of the plan administrator, termination of the plan, or merger or consolidation of the plan with any other plan.

If made available to the public this information could be extremely helpful to participants and beneficiaries who are having difficulty locating a former employer. One of the most challenging problems facing participants and their advocates, including the Labor Department's Employee Benefits Security Administration's Office of Participant Assistance and the Administration on Aging's Pension Counseling and Information Program, is helping individuals track down their "lost" pension plans. Locating a company that has moved, changed names, or disappeared from sight because of a merger with another company, can be very difficult and time-consuming, and is not always successful. If the information reported in response to items 4 and 5 of the Form 8955-SSA, about changes in plan administrator and plan sponsor names, was posted on a government website, it would be very helpful to participants and those assisting them. Also, because it would ensure that more participants would be able to find their plans, it would also be helpful to plan administrators who are looking for missing participants to pay them their required age 70 ½ minimum required distributions.¹⁴

Conclusion

We urge the IRS to adopt procedures requiring public notice and comment if significant changes to Form 8955-SSA that would affect the information provided to participants and beneficiaries are considered in the future. Similarly, public input should be solicited when the IRS considers modifications to definitions and interpretations of requirements. While simplifying reporting procedures is a worthy goal, proposals that will materially affect the information provided to participants and beneficiaries should be considered in public. The above discussion demonstrates the importance to participants and beneficiaries of the information provided by employers on the IRS Form 8955-SSA.

¹⁴ The Pension Benefit Guaranty Corporation's Missing Participant webpages could be a model for "Lost Plan" webpages. See <http://search.pbgc.gov/mp/mp.aspx> These webpages could effectively constitute a "Lost Pension Plan Registry" similar to successful registries in other countries. See the Pension Rights Center's report on *Lost Pension Plan Registries in the U.K. and Australia*. http://www.pensionrights.org/sites/default/files/docs/pdf/lost_pension_plan_registries_in_uk_and_australia.pdf

We also urge the IRS to revisit the “Retirement Plan FAQs Regarding Form 8955-SSA,” particularly Question 21 concerning the content of the deferred vested benefit statement. Since this question directly affects plan participants and beneficiaries, the answer should be opened to public comment and then reconsidered in view of the comments received. The answer to this question determines the information to be included on a “deferred vested statement.”

Finally, we request that the IRS solicit public comment on the desirability of establishing an online registry that reproduces in accessible form the change of status information provided by employers on Form 8955-SSA as required by Section 6057(b) of the Internal Revenue Code. This information if made available to the public could be extremely helpful to participants and beneficiaries who have difficulty locating a former employer as well as to employers seeking missing participants.

We appreciate this opportunity to comment on the proposed regulations. Please do not hesitate to contact us if you have any questions about these comments at (202) 296-3776 or jsmith@pensionrights.org.

Sincerely,



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