

Reproduced with permission from Pension & Benefits Reporter, 39 BPR 1853, 10/02/2012. Copyright © 2012 by The Bureau of National Affairs, Inc. (800-372-1033) <http://www.bna.com>

## Forms

### **Pension Rights Advocates Urge Caution In Altering Rules on Deferred Vested Benefits**

**P**ension rights advocates are concerned that a proposed Treasury Department and Internal Revenue Service regulation would delegate authority to the IRS commissioner to create special rules for satisfying notice requirements related to deferred vested benefits.

Focusing on language in the proposed regulation (REG-153627-08) that would permit a circumvention of traditional rulemaking procedures, the Pension Rights Center, in a Sept. 24 comment letter, said “rules that could materially affect information given to participants and beneficiaries should be considered through a formal regulatory proceeding under the Administrative Procedure Act” and not be published through less formal procedures without notice and opportunity for public comment.

Offering similar comments on the proposed regulation, the Pension Action Center at the University of Massachusetts Boston, said that its comments were based on “17 years of experience representing clients who are trying to claim pension benefits stemming from former employment.”

**Automatic Extension for Filing.** In addition to the proposal to grant special rulemaking authority to the commissioner, REG-153627-08 would amend Treasury Regulation § 1.6081-11 to add IRS Form 8955-SSA to a list of employee plan forms eligible for an automatic 2 ½-month extension for filing (119 PBD, 6/21/12; 39 BPR 1206, 6/26/12). The new IRS Form 8955-SSA replaced Form 5500 Schedule SSA for reporting information on deferred vested benefits.

The proposed regulation also would eliminate a requirement that employers or plan administrators sign the extension request, Form 5558, when they apply for an automatic extension to file Form 8955-SSA. Groups representing employers had sought or endorsed both provisions as an administrative convenience (183 PBD, 9/21/12; 227 PBD, 11/28/11; 39 BPR 1810, 9/25/12; 38 BPR 2164, 11/29/11).

The Pension Rights Center said it supported those proposed changes.

**Form 8955-SSA.** Before the Department of Labor instituted mandatory electronic filing and disclosure, the Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits was filed with DOL as Schedule SSA attached to Form 5500. That statement is now submitted directly to IRS as Form

8955-SSA to protect the personal information contained on the form.

The Pension Rights Center said that tax code Section 6057(e) and Section 105(c) of the Employee Retirement Income Security Act require that retirement plan administrators furnish an individual statement to each plan participant listed on the Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits.

Commenting on the change to Form 8955-SSA, the Pension Rights Center said “the transition to electronic filing of the Form 5500 should not cause these basic statutory requirements important to participants to be compromised.”

Its letter expressed concern 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.’”

**Individual Statements.** The guidance, in frequently-asked-question and answer 21, seemed to give plan administrators a pass on providing timely individual statements of deferred vested benefits if they provided some, if not all, of the information required on Form 8955-SSA to participants in the form of benefits statements or distribution documents, the Pension Rights Center said in its letter.

The Pension Action Center said that individual statements of deferred vested benefits, as required by law, are preferable to benefit statements or other forms of notification because they:

- provide proof that the participant is entitled to a pension and state the amount and form of the benefit as determined by the plan administrator,
- identify plans in which the participant has earned a pension and thus provide information for claiming the pension in the future,
- help employees plan for their retirement by clearly stating their entitlement to a pension, and
- provide employees an opportunity to contest the amount at a time that documentation is more readily available than at the time of retirement, which could be years later.

*Full text of the letters are at: Pension Rights Center, <http://op.bna.com/pen.nsf/r?Open=foln-8yknrx>, and Pension Action Center, <http://op.bna.com/pen.nsf/r?Open=foln-8yknsj>. IRS’s FAQs on Form 8955-SSA are at <http://www.irs.gov/Retirement-Plans/Retirement->*

