

October 17, 2017

Internal Revenue Service
Tax Forms and Publications Division
1111 Constitution Ave., NW
IR-6526
Washington, DC 20224

Re: Comments on 2017 Draft Instructions for Form 8955-SSA

Submitted by mail

The Pension Rights Center welcomes this opportunity to comment on the draft instructions for Form 8955-SSA. The Center is a nonprofit consumer organization that has been working since 1976 to protect and promote the retirement security of American workers, retirees, and their families.

The information collected by Form 8955-SSA, the “Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits,” is the basis for two statements required by the Internal Revenue Code that are critically important to retirement plan participants and beneficiaries, the “deferred vested statement” and the “Notice of Potential Private Benefits.”¹ These individualized statements are issued at different times. They help ensure that participants and their beneficiaries receive the benefits they have earned.

Deferred Vested Statement Statutory Requirements

Form 8955-SSA 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 also is the information required to be in the deferred vested statement under Section 6057(e) of the Code.²

Participants and beneficiaries who are entitled to deferred vested benefits often must rely on the deferred vested statement to verify their entitlement to benefits when, years later, they apply for

¹ The “Notice of Potential Private Benefits” is sent by the Social Security Administration to participants and beneficiaries when they apply for Social Security benefits. This notice alerts participants to benefits they may have earned years ago and provides beneficiaries the documentation they need to collect benefits owed after the death of a spouse.

² <https://www.law.cornell.edu/uscode/text/26/6057>

those benefits. It is necessary to have a deferred vested statement that was provided at the time of, or just after, leaving employment. It will show that the benefit was not paid before leaving employment.

The draft instructions for Form 8955-SSA are straightforward and follow the Code requirements. Under “Penalties” the instructions state “(T)he Code requires that each plan administrator required to file a registration statement must, before the expiration of the time prescribed for the filing of the form, also furnish to each affected participant an individual statement setting forth the information required to be contained in the form.”

Line 8 of the Form 8955-SSA asks the plan administrator whether a (deferred vested) statement was provided to each individual required to receive one. The instructions state that a penalty of \$50 will be imposed on the person required to provide the statement “for each willful failure to furnish the statement or a willful furnishing of a false statement.” Additionally, Form 8955-SSA includes a declaration, to be signed by the plan sponsor and plan administrator under penalty of perjury, that the information provided on the form is correct and complete.

Inconsistency of FAQ with Statutory Requirements

Although the draft instructions correctly reflect the statutory requirements, plan administrators could take the position that those requirements are superseded by *Question 21 of the FAQs issued by IRS on April 4, 2012, “Retirement Plan FAQs Regarding Form 8955-SSA.”*

Question 21 of the FAQ asks whether plan administrators can declare, in response to Line 8 of Form 8955-SSA, that they meet the requirement to furnish an individual deferred vested statement if they use “other notices such as benefit statements and distribution forms” that do not include “all the information on the Form 8955-SSA.” The FAQ response to Question 21 is “yes” if the required information is timely furnished to participants in other documentation. Furthermore, the FAQ states that “(A) separate statement designed specifically to satisfy this requirement is not required.” The FAQ does not define “timely.”³

Benefit statements and distribution forms furnished to participants prior to separation from service do not prove that the benefits listed were not paid out before the participant left employment. Such statements and forms can be challenged, and often are challenged, by employers who years later may not be the original employer. Many times succeeding employers do not have the complete records of participants who were employed by an earlier form of the company. A single document specifying the benefits due to an individual furnished at the time of separation from service is the documentation participants need to establish their rights to benefits.

³ “FAQs Regarding Form 8955-SSA”

<https://www.irs.gov/retirement-plans/faqs-regarding-form-8955-ssa>

As we noted in earlier comments,⁴ the requirement that plans furnish a *single statement* to vested participants leaving employment that includes *all* of the information required by IRC Section 6057(a) is a vitally important protection that helps ensure that participants receive the benefits they have earned. For this reason the Pension Rights Center recommends that Question 21 of the Form 8955-SSA FAQs be withdrawn and that the instructions to the Form 8955-SSA be modified to inform plan administrators about this change.

If you have any questions about these comments, please do not hesitate to contact Jane Smith at 202-296-3776 or jsmith@pensionrights.org.

Sincerely,



Jane T. Smith
Policy Analyst

⁴ See pages 4-6 of "Reporting and Notice Requirements for Deferred Vested Benefits Under Section 6057," September 24, 2012:
http://www.pensionrights.org/sites/default/files/docs/120924_pension_rights_center_deferred_vested_comments.pdf