

Important Information Regarding New Form 5500 Schedule Form 8955-SSA

As readers may be aware, a qualified retirement plan or a Section 403(b) retirement plan is generally required to report information about separated participants with deferred vested benefits under the plan. The Internal Revenue Service has recently developed Form 8955-SSA to allow a plan administrator to fulfill its obligation to report this information. The following Alert discusses the Form 8955-SSA requirement, as well as the requirement to distribute an individual statement to a deferred vested participant, to which the issuance of the Form 8955-SSA has drawn renewed attention.

New Form 8955-SSA

Until recently, information regarding deferred vested participants was reported on a Schedule SSA (Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits) to a plan's Form 5500 annual return/report. However, in order to accommodate the U.S. Department of Labor's mandate to file Form 5500s electronically, the Schedule SSA was removed from the Form 5500 beginning with filings covering a plan year that began on/after January 1, 2009, and the requirement to file that information for plan years beginning in 2009 and 2010 was deferred.

The Form 8955-SSA replaces the Schedule SSA and must be used for plan years beginning on or after January 1, 2009. In general, if a Form 8955-SSA must be filed for a plan year, it must be filed by the last day of the seventh month following the last day of that plan year (plus extensions). However, in order to provide plan administrators with additional time to complete and file the new Form 8955-SSA, the IRS has announced an extension of time to file the Form 8955-SSA with respect to the 2009 and 2010 plan years. Forms related to these plan years have an extended due date to file until the later of (a) January 17, 2012 and (b) the due date that otherwise generally applies for filing the Form 8955-SSA. A plan sponsor need not file a Form 5558 (Application for Extension of Time to File Certain Employee Plan Returns) to take advantage of this extended due date, unless the plan year that began in 2010 ended on or after April 1, 2011 and it is desired to use a due date after January 17, 2012. (Further, no Form 5558 extensions are necessary or will be granted for the January 17, 2012 due date.) The January 17, 2012 deadline therefore applies to plan years beginning in 2009 and for 2010 plan years ending before April 1, 2011. The January 17, 2012 deadline also generally applies to 2010 plan years ending on or after April 1, 2011 and before June 1, 2011, unless a filer uses Form 5558 to delay the filing deadline.

With respect to a 2010 plan year ending on or after April 1, 2011 and later plan years, the IRS has advised that the rules that were applicable to the extension of time for filing a Schedule SSA are applicable to the Form 8955-SSA. Thus, for example, plan administrators may file a Form 5558 to obtain extensions of the time to file Form 8955-SSA with respect to a 2010 plan year ending on or after April 1, 2011 and plan years beginning in 2011 or later. A single Form 5558 can be used for an extension to file both the Form 5500 and the Form 8955-SSA. (However, please note that extending the Form 5500 deadline does not automatically extend the Form 8955-SSA; plan administrators must also request a deadline extension for the Form 8955-SSA.) In addition, plan administrators are granted an automatic extension of time to file Form 8955-SSA (without filing a Form 5558) until the due date of the federal income tax return of the employer if, among other things, the plan year and the employer's tax year are the same.

A copy of the Form 8955-SSA can be found at <http://www.irs.gov/pub/irs-pdf/f8955ssa.pdf>, and the instructions can be found at <http://www.irs.gov/pub/irs-pdf/i8955ssa.pdf>.¹ Although the IRS has not yet issued a Form 8955-SSA for the 2010 plan year, it has indicated that the 2009 Form 8955-SSA may be used for a 2010 plan year submission. In addition, the IRS has indicated that plan administrators may combine the information for the 2009 and 2010 plan years on a single 2009 8955-SSA.

The Form should be filed with the IRS, either in hard copy or electronically. If filed electronically, the Form should be filed through the Filing Information Returns Electronically (FIRE) System (but note that transmitters must satisfy certain FIRE System requirements in order to submit the Form electronically). Please note the Form should *not* be filed through the EFAST2 filing system (which is used for electronically filing the Form 5500 and related schedules)

The Internal Revenue Code imposes a penalty for failing to file a Form 8955-SSA of \$1 for each participant not reported and for each day multiplied by the number of days the failure continues, up to a maximum of \$5,000 per plan year. The penalty is imposed on the person failing to file unless it is shown the failure is due to reasonable cause.

Deferred Vested Individual Statement Requirement

The Internal Revenue Code requires a plan administrator to provide each deferred vested participant who separated from the service during the plan year with a statement identifying certain information such as the nature, amount and form of the deferred vested benefit to which the participant is entitled. Many plan administrators were unaware of the requirement prior to the issuance of the Form 8955-SSA. The Form has drawn plan administrators' attention to this requirement because it now includes a question asking a plan administrator to indicate whether it has distributed this statement. The deadline for providing this statement is the deadline for filing the Form 8955-SSA. A penalty of \$50 can be imposed for each willful failure to furnish the statement or a willful furnishing of a false statement. Please contact your Patterson Belknap relationship attorney if you would like more information on the individual statement requirement. ♦

Endnotes

¹ Please note the deadline for filing the Form which is identified in the Form 8955-SSA instructions has not yet been updated to reflect the IRS guidance providing for the January 17, 2012 extended filing due date described above.

If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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