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Issue: # 5

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## Form 8955-SSA, Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits (formerly Schedule SSA (Form 5500))

The Schedule SSA (Form 5500), which was used to report separated participants with deferred vested benefits, was eliminated for the 2009 and subsequent plan years as a schedule of the Form 5500 annual return/report. It has currently been replaced with Form 8955-SSA. The information reported on the new form is similar to the information previously required for Schedule SSA. The IRS delayed Form 8955-SSA filing deadlines once electronic filing of 5500 forms became required. Beginning with returns for the 2009 plan year, plan administrators must now file this new form with the IRS and not through the EFAST2 filing system. The form *cannot* be filed electronically under current DOL electronic filing procedures because it discloses participant social security numbers and other information that cannot be made available to the public.

The IRS recently issued the new 2009 8955-SSA form and guidance for its usage. The 2010 Form 8955-SSA is anticipated to be released soon. Until the 2010 version is released, the 2010 filing should be filed using the 2009 form. Rev. Proc. 2011-31 provides technical specifications for filing Form 8955-SSA electronically utilizing the IRS's Filing Information Returns Electronically (FIRE) system, including record layouts and the need to obtain an IRS-assigned Transmitter Control Code. The Form 8955-SSA can also be submitted on paper. Paper Form 8955-SSAs must have the plan administrator and plan sponsor sign the bottom of page one. If the plan administrator and plan sponsor is the same person, then only the plan administrator needs to sign.

The filing deadline is generally the last day of the seventh month after the plan year-end (plus extensions), but 2009 and 2010 filings, which were initially not due before Aug. 1, 2011, have been once again extended to the later of: January 17, 2012 or the due date that generally applies for filing the Form 8955-SSA for 2010. The IRS will not grant an additional extension past the January 17th date.

## Potential Penalties

Adhering to the requirements of filing a Form 8955-SSA will avoid several potential penalties. The Internal Revenue Code imposes a penalty for failure to include all required participants. The penalty is \$1 for each participant not reported and for each day multiplied by the number of days the failure continues. The penalty, up to a maximum of \$5,000, is imposed on the person failing to file unless it is shown the failure is due to reasonable cause.

In addition to the new filing requirements, the new 2009 form includes an additional question regarding participant statements. Line 8 asks, "Did the plan administrator provide an individual statement to each participant required to receive a statement?". The 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. The statements are required to be mailed to the participant's last known address. An additional requirement, generally only applicable to defined benefit plans, is that the "statement shall also include a notice to the participant of any benefits which are forfeitable if the participant dies before a certain date". A penalty of \$50 is imposed on the person required to furnish the statement to each affected participant for each willful failure to furnish the statement or a willful furnishing of a false statement. Therefore, the IRS may very likely start enforcing a long existing requirement for plan sponsors to mail statements to participants for whom it is required to report on Form 8955-SSA.

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