

This is the initial edition of Milliman's new quarterly publication on pension administration topics.



DB digest

Best Practices for Pension Administration

UPCOMING KEY DATES

11/14/11

File Form 10 with PBGC, if the 10/15/11 required quarterly contribution was missed by more than 30 days, unless Form 200 was already filed (This filing may be waived for certain small plans).

12/31/11

Deadline to certify the 2011 plan year AFTAP, if the plan used a "range" certification (Note: A failure to certify the AFTAP by 12/31/11 will result in the AFTAP for the 2011 plan year being deemed under 60% retroactively to 10/1/11).

12/31/11

Deadline to amend plan for discretionary changes implemented during 2011.

12/31/11

Provide an annual notice about the availability of and the means to obtain the pension benefit statement for the 2011 plan year to participants, if the alternative notification approach will be used for 2011.

To download a PDF of the DB calendar, please go to:
<http://ow.ly/6XQhy>

Form 8955-SSA, Participant Statement: More Than Meets the Eye

David Benbow, OKA

Schedule SSA of Form 5500 has long been used by benefit plan administrators to report participants who are entitled to future benefits. However, this schedule has been replaced by the recently-released Form 8955-SSA in order to remove participant Social Security numbers from the Form 5500 filing package. Form 8955-SSA is much the same as the old Schedule SSA, but the devil may be lurking in the details. An esoteric rule regarding participant statements is mentioned more prominently in the new filing instructions and is causing some consultants and plan administrators to raise eyebrows.

History

The Form 5500 reporting requirement was created by ERISA as a way for the IRS, DOL, and other agencies to monitor benefit plan activity. Schedule SSA allowed the Social Security Administration to remind participants of potential pension benefits they may be entitled to. These Social Security Administration statements are notoriously unreliable because plan administrators have always been more diligent at listing participants on the Schedule SSA than removing them as single-sum benefits were paid or transferred to another plan.

Since 1978, Section 6057(e) of the Internal Revenue Code has required that plan sponsors send a statement by the

SSA filing date to participants listed on the Schedule SSA. The statement must provide the participant the information that is communicated on the SSA. Historically, practitioners and employers have taken the position that this statement requirement was satisfied by sending deferred vested letters to participants who terminate employment with a vested benefit. Some employers may have also considered benefit statements to active participants as sufficient.

In 2009, Schedule SSA was detached from Form 5500 because it contained participant Social Security numbers. To protect plan participants' confidential information, a new stand-alone form was created.

Introducing the NEW Form 8955-SSA

Rolled out in 2011, Form 8955-SSA must be filed for 2009 and 2010 plan years by the later of January 17, 2012, or the due date that applies to the plan's 2010 Form 5500 filing. It is currently required to be filed on paper because, to date, there is no SSA-approved software for electronic filing. It contains much of the same information as the Schedule SSA, but also has an enigmatic line item 8, which asks:

"Did the plan administrator provide an individual statement to each participant required to receive a statement?
. . . . Yes No"

The instructions do little to clarify this item. They read (as if Yes/No weren't clear enough), "Check the appropriate box as to whether the plan administrator provided the individual statement to each participant required to receive one. See *Penalties*."

Penalties? Sounds ominous. The old Schedule SSA was never this gloomy.

The *Penalties* instructions shed a bit more light, saying, "Each plan administrator must ... furnish to each affected participant an individual statement setting forth the information required to be contained in the form." The new instructions also mention a penalty to the plan administrator of \$50 for each participant who is not furnished a statement by the Form 8955-SSA filing deadline.

Although sample statements from various companies exist, there is no guidance about whether other mailings, such as deferred vested letters, would satisfy the requirement. There is also uncertainty about whether the statement must notify participants that information was sent to the IRS, instead of simply providing the information that was sent to the IRS. Additional details such as the EIN and plan number are included on Form 8955-SSA, but are typically not included on deferred vested statements. In addition, Section 6057(e) requires that the participant statement include information on any benefits that are forfeitable if the participant dies before a certain date, and

this information is often not included on deferred vested letters. Finally, some are speculating that the increased visibility of the statement requirement means that the IRS plans to vigorously enforce it, using the collected penalties to defray the costs associated with e-filing.

What should we do?

Talk to a Milliman consultant about this change and decide what's right for you. This is an ideal time to review the information you are providing to terminated vested participants.

A conservative approach would be to send out a special mailing to the individuals mentioned on the Form 8955-SSA. This would include all participants who will be reported on Form 8955-SSA that will be filed in January 2012. The IRS has communicated that penalties will not apply for prior years. A conservative approach might also include in this mailing those participants who are included on Form 8955-SSA because they should be removed from the SSA database, and not just those who are added. The statement requirement in Section 6057(e) does not appear to apply to this group, but requirements are not clear and there has been no additional guidance from the IRS.

The alternative approach is to assume that the statement requirement for past years has been satisfied by vested termination packets. This approach

appears to satisfy the intent of Section 6057(e) and associated regulations, and can be read to also satisfy the details. However, due to the uncertainty of the requirements and the significant penalties involved, sponsors should review this approach carefully and consult with legal counsel. Going forward, it may also be prudent to add language to the termination packet that includes all details shown on Form 8955-SSA, as well as a statement that information about the participant's benefit will be reported to the IRS. This may eliminate any need to provide a separate mailing in future years.

Summary

Plan administrators should decide soon how they intend to comply with Form 8955-SSA's statement requirement, both for 2009-2010 and for future years. Considering how long it took the IRS to release the final form, we shouldn't hold our collective breaths waiting for guidance on how to proceed. For most, the filing deadline is generally January 17, 2012, and no extensions are available.

Whether you intend to rely on your prior process, add language to your vested termination packets, or send out a special mailing, a Milliman consultant can help you understand the new rules and avoid costly penalties.

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