

Response to Request for Comments on Form 8955-SSA and Instructions

December 30, 2010

**Internal Revenue Service
Department of Treasury**

The American Society of Pension Professionals & Actuaries (ASPPA) appreciates the opportunity to comment on Form 8955-SSA, *Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits*, and the accompanying instructions.¹ ASPPA strongly supports the initiative to improve Form 8955-SSA reporting compliance and administration. With the baby boomer generation reaching retirement age, the Social Security Administration's burden of notifying participants and beneficiaries of possible benefits will increase exponentially and the opportunity to enhance data collection, maintenance, and reporting is critical.

ASPPA is a national organization of more than 7,500 retirement plan professionals who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines including consultants, administrators, actuaries, accountants, and attorneys. The large and broad-based ASPPA membership gives it unusual insight into current practical problems with the Employment Retirement Income Security Act and qualified retirement plans with a particular focus on the issues faced by small- to medium-sized employers. ASPPA membership is diverse and united by a common dedication to the private retirement plan system.

Summary of Recommendations

ASPPA supports the efforts of the Internal Revenue Service (IRS) to replace Schedule SSA to the Form 5500 with the Form 8955-SSA and to provide valuable information to participants with the assistance of the Social Security Administration. However, we have identified some issues with the current draft of the Form 8955-SSA and its instructions that we believe warrant additional attention by the IRS. The following is a summary of ASPPA's recommendations, which are described in greater detail in the Discussion of Issues section below.

¹ This comment letter is filed in response to the Internal Revenue Service's Comment Request for Form 8955-SSA published in the Federal Register at 75 Fed. Reg. 67163 (Nov. 1, 2010).

I. Who Must File

- A. **Combination of 2009 and 2010 Filings** - *ASPPA recommends that the IRS* eliminate inconsistencies in the Instructions to the Form 8955-SSA and provide ongoing plans with the option to submit combined 2009 and 2010 information on the 2010 Form 8955-SSA.
- B. **No Annual Filing Should Be Required** - *ASPPA recommends* that the filing of the Form 8955-SSA only be required for years in which there is data to report. No annual or final filing should be necessary.
- C. **Use of Code D is Voluntary** - *ASPPA recommends* that the instructions be clarified to reflect that the reporting of participants using Code D is voluntary and that such participants voluntarily reported should be included in the figure reported on line 6a.
- D. **Definition of Employer** - *ASPPA recommends* that the IRS clarify that the information reported at lines 2 and 3 of Form 8955-SSA should mirror data reported on the Form 5500 and therefore only one Form 8955-SSA should be filed for any plan that files a Form 5500.

II. How and When to File

- A. **Provide Adequate Time for Filings** - *ASPPA recommends* that the due date for 2009 and 2010 filings take into consideration the time it will take software vendors to program for both paper and electronic filings. We recommend that the due date be no sooner than October 15, 2011 or, if later, 180 days after the FIRE system is available to receive Form 8955-SSA filings. ASPPA also requests that the procedures required to be considered “approved software” be clarified.
- B. **Signature Requirement for Electronic Submissions** - *ASPPA recommends* that the electronic filing option provide the assurance that the requirement to have the plan sponsor and plan administrator sign Form 8955-SSA is waived and that use of the Transmitter Control Code or similar mechanism by the service provider is sufficient to submit the filing.

III. What to File/Report

- A. **Code Section 403(b) Filers** - *ASPPA recommends* that Code Section 403(b) plans be relieved from filing Form 8955-SSA information for participant benefits where the contract or certificate meets the “pre-2009 contract” relief outlined in the DOL’s Field Assistance Bulletin 2009-02.
- B. **Reporting of the Value of Participants’ Accounts** - *ASPPA recommends* that for defined contribution plans, the value reported in column (g) of line 9 may be either (i) the account value at the employee’s date of termination, or (ii) the

account value at the end of the plan year to which the Form 8955-SSA relates.

- C. Circular 230 PTIN Rules - ASPPA recommends** that Circular 230 PTIN rules do not apply to Form 8955-SSA, as no tax liability is reported on this form.

Discussion of Issues

I. Who Must File

A. Submission of 2009 and 2010 Filings

The draft instructions have conflicting statements concerning the ability to submit a combined 2009 and 2010 filing. Page one of the instructions states:

The 2009 plan year information cannot be combined with the 2010 plan year information and filed on 2010 Form 8955-SSA. You must use different form for each year.

However, a *Note* on page three of the instructions provides:

Plan administrators of non-termination plans may, but are not required to, file Form 8955-SSA for the 2009 plan year. See What's New. Plan administrators who do not file a 2009 Form 8955-SSA must include the 2009 plan year information on their 2010 Form 8955-SSA.

The latter portion of the instructions indicates that ongoing plans may report combined 2009 and 2010 information on the 2010 Form 8955-SSA. ASPPA agrees that the instructions on page three should control. Since both the 2009 and 2010 forms will be due at the same time, monitoring that participants are reported on the correct form will add complexity and cost to the filing process.

ASPPA recommends that ongoing plans have the ability to submit combined 2009 and 2010 information on the 2010 Form 8955-SSA.

B. Requirement for Annual/Final Filing

The draft instructions do not clearly state whether an annual and/or final filing is required. However, the instructions suggest that an annual and/or final filing is required by describing the due date for a Form 8955-SSA filing for terminated plans which filed a final Form 5500 for the 2009 plan year. Previously, the instructions to Form 5500 provided that a Schedule SSA was required only when there was data to report.

Other IRS filings, such as Forms 945 and 5500-EZ, require a final report even when no data has previously been filed. There is some concern within the service provider community that by not filing a final Form 8955-SSA or not filing for years when there is no data to report may cause IRS to generate a missed filing notice to the plan sponsor. Time and resources are then spent responding to the notice inquiry.

ASPPA recommends that the Form 8955-SSA instructions clearly indicate that a filing is required only for the years in which there is data to report. However, in the event that an annual filing is required, a check-box should be added to the first page of the Form 8955-SSA to indicate that there is no data to report.

C. Code “D” Reporting

Each month, the Social Security Administration checks the name and social security number of each new claimant for social security benefits or for hospital insurance coverage to see whether the claimant is listed in its electronic pension benefit record. This record contains information reported to the IRS on the Form 8955-SSA. The Social Security Administration sends a notice to each new claimant for whom it has pension benefit information. While current regulations require plan administrators to report persons who must be added to the list, it is optional for plan administrators to remove an individual’s name (for example, when benefit payments have commenced) using a code “D.”²

The draft instructions, however, seem to indicate that reporting code “D” participants is mandatory, resulting in inconsistency between the instructions and applicable law. In addition, line 6a of the form is to be completed by indicating the number of persons *required* to be reported, which would not include code “D” participants. Following this rationale, the total number of persons reported on the Form 8955-SSA may not equal the total reported at line 7 (which is the sum of lines 6a and 6b).

ASPPA recommends that the Form 8955-SSA instructions be clarified to reflect that code “D” reporting is not required under Treasury Regulations §301.6057-1(c)(2)(ii).

ASPPA further recommends that participants voluntarily reported on Form 8955-SSA be included in the figure reported at line 6a.

D. Definition of Employer

The draft instructions appear to modify the definition of Employer. In prior years, the instructions for Schedule SSA did not separately define Employer, but instead utilized definitions provided in the general instructions to the Form 5500.

Page three of the draft instructions states in the first paragraph of the definition of Employer that a *single-employer plan, controlled group plan, multiemployer plan, and multiple-employer plan* are defined for Form 8955-SSA purposes in the same manner that they are defined for Form 5500 purposes. However, the second and third paragraphs then go on to differentiate *single employer plans* and *plans to which more than one employer contributes* for Form 8955-SSA purposes. The purpose of this distinction is unclear. For example, one interpretation would be that the IRS intends for more than one Form 8955-SSA to be filed for plans maintained by *plans to which more than one employer contributes*. The third paragraph then proceeds to state that “A separate Form 8955-SSA must be filed by each employer participating in a plan or program of

² Treas. Reg. §301.6057-1(c)(2)(ii).

benefits in which the funds attributable to each employer are available to pay benefits only for that employer's employees, even if the plan is maintained by a controlled group." This could lead filers to submit multiple Forms 8955-SSA for the same plan. However, the instructions imply that this interpretation may not be accurate as the instructions also state on page three that "One Form 8955-SSA is generally filed for each plan or entity described in these instructions."

An alternative, and more likely, interpretation is that the references to *single employer plans* and *plans to which more than one employer contributes* is merely for purposes of identifying the date by which a terminated participant must be reported on the Form 8955-SSA. The *When to Report a Separated Participant* section that begins on page two of the instructions provides different rules for reporting participants based upon whether the plan is a single employer plan or a plan to which more than one employer contributes.

ASPPA recommends that the instructions be clarified to show that no more than one Form 8955-SSA would be filed for any year by any Form 5500 filer.

ASPPA further recommends that the instructions be made clear that, to the extent Form 5500 is filed by the plan, lines 2 and 3 should mirror the Form 5500 information.

II. How/When to File

A. Electronic Filing and Proposed Due Date

The *Fall 2010 SSA Reporter* indicated that the Form 8955-SSA would be filed electronically using the FIRE (Filing Informational Returns Electronically) system. ASPPA supports the option to submit SSA data electronically, as this provides for more efficient and accurate submission and processing of the information. The draft instructions reference the use of "approved software" to complete the filing; however, currently there is no information available concerning the process for software vendors or proprietary software systems to meet this requirement.

Service providers will most likely rely on their current software vendors or proprietary software systems to facilitate both the electronic and paper filing options. It is critically important that sufficient time be provided between the date the form and instructions are finalized and the date the 2009 and 2010 filings are first due so that software vendors and proprietary software developers will have adequate time to update their systems to comply.

ASPPA recommends that the initial due date for filing take into consideration the time it will take software vendors to program for electronic submission through FIRE or to incorporate the paper filing option into their system. The initial due date should be no earlier than October 15, 2011 or, if later, 180 days after the FIRE system is fully adapted to submit SSA data.

ASPPA also recommends that the procedures required to be considered approved software be clarified.

B. Signature Requirement for Electronic Submissions

The draft Form 8955-SSA requires the signatures of both a plan administrator and plan sponsor. The electronic filing option should allow the service provider to facilitate the filing on behalf of the plan sponsor. Similar to Form 1099-R submission under FIRE, the use of the Transmitter Control Code (TCC) or similar mechanism should stand in place of any required plan sponsor and plan administrator signature.

ASPPA recommends that the electronic filing option permit use of the TCC or similar mechanism by the service provider to submit the filing.

III. What to File / Report

A. Code Section 403(b) Filers

The 2009 Form 8955-SSA filing will be the first SSA report for most Code section 403(b) plans. As with Form 5500, there are unique challenges that face these plans. The DOL released Field Assistance Bulletin (“FAB”) 2009-02 to provide some relief for Form 5500 purposes for certain “pre-2009 contracts.”

In order to qualify for that relief: (1) the contract must have been issued to a current or former employee before January 1, 2009; (2) the employer must have ceased to have any obligation to make contributions (including employee salary reduction contributions), and in fact ceased making contributions to the contract or account before January 1, 2009; (3) all of the rights and benefits under the contract or account must be legally enforceable against the insurer or custodian by the individual owner of the contract or account without any involvement by the employer; and (4) the individual owner of the contract must be fully vested in the contract or account.

Code section 403(b) plans would benefit from the same relief with respect to Form 8955-SSA filings. These plans will have significant difficulties in identifying and obtaining information about certain pre-2009 contracts and custodial accounts to which the employer is no longer making employer contributions or forwarding employee deferrals. As the Department noted in the FAB, the compliance efforts involved with respect to pre-2009 contracts could be substantial and expensive.

ASPPA recommends that Code section 403(b) plans have the option to not report participant benefits on the Form 8955-SSA where the contract or arrangement meets the “pre-2009 contract” relief outlined in FAB 2009-02.

B. Reporting of the Value of Participants' Accounts

The Form 8955-SSA reports the value of participants' accounts at the time of separation.³ Although this has always been the rule, as a practical matter, preparers have commonly reported the value of the account as of the last day of the plan year to which the filing relates. The reporting of the value as of the last day of the plan year is consistent with the operation of most recordkeeping software systems.

Participants would not be harmed by this approach as the dollar amount reported on the Form 8955-SSA is only an estimated value of the benefits a participant may see at retirement due to the fluctuating nature of the value of defined contribution accounts.

ASPAA recommends that the instructions to the Form 8955-SSA allow reporting of either (a) the value of the participant's account at the date of separation, or (b) the value of the account at the end of the plan year to which the Form 8955-SSA relates as long as a plan consistently reports participants using the same methodology.

C. Application of Circular 230 PTIN Requirements

The IRS has recently issued final regulations requiring the registration of tax return preparers who, for compensation, prepare all or substantially all of a tax return or claim for refund after December 31, 2010. Although the Form 8955-SSA is an "information return," no tax liability is reported on this form.

The data reported on the Form 8955-SSA has no specific impact on a tax return or claim for refund by the plan sponsor, plan administrator, or participant. Electronically generated reports are typically the source for gathering this information, which may then be entered on the form by clerical support staff or administrators. In most instances, the information is electronically transferred directly to the Form 8955-SSA with no human intervention. ASPPA believes that such activity does not constitute tax return preparation.

Furthermore, submission of Form 8955-SSA data would be similar to submission of Form 1099-R, which is specifically exempted from the PTIN requirements.

ASPPA recommends that application of the paid preparer registration and Circular 230 rules should not be applied in context of the Form 8955-SSA.

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These comments were prepared by ASPPA's Reporting and Disclosure Subcommittee of the Government Affairs Committee and were primarily authored by Kizzy M. Gaul. We welcome the opportunity to discuss these issues with you. If you have any questions regarding the matters discussed herein, please contact Debra Davis, Director of Government Affairs at (703) 516-9300.

³ Line 9, column (g), of Form 8955-SSA asks "For defined contribution plans, enter the value of the participant's account at the time of separation."

Thank you for your time and consideration.

Sincerely,

/s/

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/s/

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