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Form 8955-SSA is Now Available and the Deadline Has Been Extended

The IRS recently released the long-awaited 2009 Form 8955-SSA and instructions (<http://www.irs.gov/pub/irs-pdf/f8955ssa.pdf>, <http://www.irs.gov/pub/irs-pdf/i8955ssa.pdf>). This form is the successor to the Schedule SSA to the Form 5500. This form is used to report information about separated participants with deferred vested benefits under the plan. The Social Security Administration provides this information to the participants (and their current or former spouses) when they file for social security benefits to remind people about their private pension benefits. A summary of the key provisions and filing deadline information is set forth below.

The Form largely tracks the prior Schedule SSA, with a few notable exceptions: (1) it requires both the plan sponsor and the plan administrator sign the form under penalties of perjury, (2) it includes a "yes/no" box on whether or not the plan administrator provided an individual statement to each participant, and (3) it requires a "v" be added next to each participant that has incomplete records due to more than one employer contributing to the plan, or where, despite incomplete service records, there is a significant likelihood that the participant is vested in a benefit.

IRS Announcement 2011-21 explained that (1) in view of the delays, Form 8895-SSA need not be filed before August 1, 2011 (and may be filed later if the due date, generally seven months after the end of the plan year, is later), and (2) Schedule SSAs filed by April 20, 2011 will be considered to meet the applicable reporting rules even if Form 8895-SSA is not used. However, on June 22, the Service announced that the filing deadline for 2009 and 2010 was being extended until January 17, 2012 (or the regular due date for 2010 filings, if later). This deadline cannot be further extended, however, with Form 5558.

The IRS website <http://www.irs.gov/retirement/article/0,,id=238940,00.html> has a list of frequently asked questions that provide helpful information regarding the completion of the form. A plan sponsor can elect to report the 2009 and 2010 data on the 2009 Form (either separate or combined filing). Unfortunately, there appears to be no special relief for 403(b) providers that may be tracking this information for the first time. A few of the key questions include:

- *For a 2009 short plan year, when is the Form due?* January 17, 2012.
- *What should be signed if the plan administrator and plan sponsor are the same person?* Only a signature as plan administrator is needed. (The "plan sponsor" signature line was not required under the Schedule SSA.) It is unclear what signatures are needed, if any, for electronic filers.

- *With the due date for the 2009 and 2010 Forms extended, does that mean that the statement that is furnished to the separated participants is also delayed?* Yes, the individual statement must be furnished to the separated participant no later than the extended due date for the Form. Additional clarification is needed on whether a participant statement (following the PPA rules) is sufficient to meet this requirement (the applicable regulations have not changed since 1978).
- *Once the participant begins receiving a benefit, can a later report for him/her still be required?* Yes, when a participant stops receiving a benefit but is still entitled to a deferred vested benefit under the plan, the participant becomes a deferred vested participant and should be reported.

The Form can be filed either on paper (including a fillable form) or electronically (through the FIRE system).

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