

The Swan Song of Schedule SSA to Form 5500 (and a new filing requirement for plan administrators)

BY STEPHEN HARRIS & ERIC KELLER

Plan administrators of 401(k), pension and other retirement plans subject to ERISA section 203's vesting requirements have long been required to file Schedule SSA (identifying separated participants having deferred vested benefits) with their Form 5500s in order to satisfy their reporting obligations under Internal Revenue Code (Code) section 6057(a). In particular, Schedule SSA required plan administrators to report if an employee separated from employment with vested benefits, no part of which were paid during that year, transferred into the plan during the plan year with vested benefits under another plan that become payable under the plan (e.g., a plan merger), no part of which were paid during that year, or previously was reported on a Schedule SSA, but is no longer entitled to those deferred vested benefits. The Department of Labor recently amended Form 5500 to eliminate the requirement to include Schedule SSA with the 5500 for plan years commencing after December 31, 2008.

In just issued Announcement 2011-21, however, the IRS clarified that while plan administrators are no longer required to file Schedule SSA for plan years commencing after December 31, 2008, they will be required to file a stand-alone Form 8955-SSA, either in paper copy or electronically (electronic filing is voluntary). The IRS plans to release the 2009 Form 8955-SSA shortly and is developing the 2010 Form 8955-SSA (although plan administrators will be able to use the 2009 Form for 2010 plan year reporting purposes if they choose to do so).

Plan administrators are required to file Form 8955-SSA on the same timeline as Forms 5500 (e.g., no later than seven months after the last day of a plan year (plus extensions, which can be obtained either by requesting it on the same Form 5558 plan administrators use to request Form 5500 filing extensions or automatically under certain situations that parallel the automatic Form 5500 extension provisions)). With respect to plan years 2009 and 2010, however, the IRS is providing a grace period to file Form 8955-SSA until August 1, 2011.

To further alleviate transition issues, the IRS announced that plan administrators will not be required to file a Form 8955-SSA for either the 2009 or 2010 plan year to the extent that they file a Schedule SSA for the relevant plan year by April 20, 2011.

Practice Pointers:

- Plan administrators should keep an eye out for issuance of Form 8955-SSA by the IRS and ensure that the forms are timely filed.

- Plan administrators wishing to avoid filing a Form 8955-SSA for the 2009 and 2010 plan years must ensure that they file a Schedule SSA for each of those years no later than April 20, 2011.
- Plan administrators should ensure that they are satisfying Code section 6057(e), providing (no later than the Form 8955-SSA filing deadline) each participant (i) who, during the relevant plan year, separated from the service covered by the plan, (ii) who is entitled to a deferred vested benefit under the plan as of the end of such plan year, and (iii) with respect to whom retirement benefits were not paid under the plan during such plan year, with an individual statement setting forth the information for such participant required to be contained in Form 8955-SSA.



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

Los Angeles

Stephen H. Harris
1.213.683.6217
stephenharris@paulhastings.com

Ethan Lipsig
1.213.683.6304
ethanlipsig@paulhastings.com

Washington, DC

Eric R. Keller
1.202.551.1770
erickeller@paulhastings.com

J. Mark Poerio
1.202.551.1780
markpoerio@paulhastings.com