

August 1, 2022

Via Email

Andres Garcia
Internal Revenue Service
Room 6526, 1111 Constitution Ave., NW
Washington, DC 20224

RE: OMB 1545–2187, Proposed Collection of Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits

Dear Mr. Garcia:

The Pension Rights Center welcomes this opportunity to comment on the proposed continued collection of Form 8955-SSA under the Paperwork Reduction Act.¹ The Center is a nonprofit consumer organization that has been working since 1976 to protect and promote the retirement security of American workers, retirees, and their families.

The information collected in Form 8955-SSA, the “Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits,” is the basis for two statements required by law that are critically important to retirement plan participants and beneficiaries: the “individual statement”² to be sent by plan administrators to separated participants regarding deferred vested benefits, and the “Notice of Potential Private Retirement Benefit Information” sent from the Social Security Administration (SSA) to applicants for Social Security benefits.³ These individualized statements are required to be sent to participants at different times, but both help ensure that participants and their beneficiaries receive the retirement benefits they have earned.

Individual Statements of Deferred Vested Benefits Are Vitaly Important to Participants

Individual statements of deferred vested benefits are one of the most important disclosures that retirement plan participants receive. This is because they are the one document that give participants a clear statement that they have indeed earned a vested legal right to a retirement benefit, the nature and form of that benefit (i.e., type of annuity, frequency of payment), and the benefit amount/account balance. Further, they are given to the participant soon after separation, at a time when participants can request clarifications and, if appropriate, recalculations, of benefits from a readily accessible employer with readily available records.

¹ IRS/Treasury, Notice and Request for Comments, “Proposed Collection; Comment Request for Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits,” 87 Fed. Reg. 32503 (May 31, 2022) [hereinafter *RFC*].

² I.R.C. § 6057(e).

³ 42 U.S.C. 1320b–1, available at https://www.ssa.gov/OP_Home/ssact/title11/1131.htm. See Form SSA-L99-C1 (03-20) at [https://secure.ssa.gov/apps10/public/pomsimages.nsf/gfx_num/G-RM_03253.002A/\\$File/G-RM_03253.002A.pdf](https://secure.ssa.gov/apps10/public/pomsimages.nsf/gfx_num/G-RM_03253.002A/$File/G-RM_03253.002A.pdf). It is the information reported on the 8955-SSA that equips SSA to remind participants, once they file for Social Security benefits perhaps many years later, that they have a vested right to private retirement benefits earned earlier in their careers, and includes information they may be able to use to track down and claim those benefits.

These statements provide legal documentation, enabling participants and their families to *prove* the fact and amount of their entitlement many years, even decades, after separation from service. Deferred vested statements are only sent to those with a vested right to benefits⁴ and they are only sent to those “with respect to whom retirement benefits were not paid under the plan during such plan year.”⁵ As such, they constitute presumptive evidence *from the plan* of the fact and amount of the entitlement and, should any dispute later arise, that the vested benefits are indeed *deferred* – upon separation, the benefits had not yet been paid in that plan year. The six regional Pension Counseling and Information Projects with whom the Pension Rights Center closely works, and to whom we provide technical and legal guidance, are on the frontlines of providing free assistance to individuals who experience problems with their retirement plan, and serve as an invaluable source of information on the real-life experiences of participants and beneficiaries. The Projects have consistently reported to us that these deferred vested statements are often the key to finding long lost plans and the lever for proving the retiree’s or beneficiary’s right to benefits.

As such, in response to the first inquiry posed in the Request for Comments (RFC),⁶ the 8955-SSA is indeed absolutely “necessary for the proper performance” by the Treasury/IRS and SSA to ensure this critically important information makes its way to participants at two critical times – upon separation (while everything is still fresh in everyone’s memories and records), and again upon retirement. The information that is *supposed to be* generated from this form is also of the utmost “practical utility” for participants and beneficiaries to help document and claim their legal entitlement to benefits. SSA appears to be properly performing its job. The problem is, misguidance from the IRS allows plan administrators to evade their statutory responsibility to provide these critical individual statements to former employees upon their separation from the employer.

Ill-Considered IRS Guidance Is Inconsistent with Law and Fails to Protect Participants

Form 8955-SSA mirrors the statute. It clearly states not only that plans must report all participants who have separated from employment with a deferred vested right to benefits, they must also declare under penalty of perjury that they have sent to each of those deferred vesteds “an individual statement”⁷ that contains all of the individualized information reflected in the registration form. Section 6057 requires the provision of “an individual statement;” the form requires “an individual statement;” and the instructions for completing the form refer to “the individual statement.”⁸ All speak of the statement in the *singular* form – one, single statement, “setting forth” all of the participant’s individualized information⁹ required to be included in that single individual statement.

⁴ I.R.C. § 6057(a)(2)(C)(ii).

⁵ I.R.C. § 6057(a)(2)(C)(iii).

⁶ RFC, *supra* n.1.

⁷ Dept. of Treasury/IRS, Form 8955-SSA, Line 8, at 1 (2021).

⁸ Dept. of Treasury/IRS, Instructions for Form 8955-SSA, at 6 (2021).

⁹ I.R.C. § 6057(e).

Unfortunately, in 2012, in response to requests from industry advocates,¹⁰ the IRS issued guidance – FAQ #20¹¹ – that is contrary to the plain language of the statute and Form 8955. This FAQ, which was issued shortly thereafter without participant advocates’ input, declared that only the “*information required to be contained* in the Form” need be furnished to participants, and that it could be done so in a piecemeal fashion, dispersed in “other documentation.... A separate statement designed specifically to satisfy this requirement is *not* required.”¹²

This is not only inconsistent with the statute, it is wholly inadequate from a participant protection point of view. Our concerns are multifold. First, if portions of the deferred vested statement are buried within other disclosures being sent for other purposes, it makes the information less noticeable to the participant. If the information is not noticed, it cannot be understood and used to help plan for retirement. Moreover, if pieces of required information are scattered about in different notices, that information is less likely to be noticed or retained for future reference, creating gaps in the participant’s legal documentation. Finally, when a participant lacks one coherent statement of their deferred vested benefit, and only has benefit statements furnished prior to separation from service, this leaves the door open for the employer (who may not even be the original employer) to challenge the claim and assert that benefits were already paid out before the participant left employment. Having the relevant information to prove one’s entitlement to benefits, and the type and amount of those benefits, all in one place, on one piece of paper, without having to try and reassemble it from multiple disclosures, is absolutely critical to enabling retirees to track down and claim their benefits.

The Status Quo Imposes a Paperwork Burden on Participants and Beneficiaries

The RFC asks for ways to minimize the burden of the collection of information on respondents. However, the real problem here is that FAQ #20 *shifts the paperwork burden* from plans to participants and their families, who are compelled to try and sift through multiple notices and documents in order to piece together their rights to deferred vested benefits. It also impermissibly imposes on participants and their families the *legal risk and burden* of not being able to prove they are owed retirement benefits. It is these burdens that the agency should be concerned with minimizing.

The RFC also asks for comments on how to “enhance the quality, utility, and clarity of the information to be collected.” Fortunately, the solution to this inquiry is simple: reverse FAQ #20. There is no need to wait for the scheduled upcoming rulemaking.¹³ Treasury/IRS can fix this using the same method it utilized when it adopted FAQ #20 – make a change in guidance, on its own initiative, adopted quickly and without any rulemaking. As we¹⁴ and other participant advocacy

¹⁰ Letter from Brian H. Graff, Executive Director/CEO, ASPPA, *et al.*, to Robert S. Choi, Director Employee Plans, IRS (Dec. 20, 2011), *available at* <https://www.asppa.org/sites/asppa.org/files/PDFs/Comment%20Letters/8955%20ssa%20notice%2012%2020%2011.pdf>.

¹¹ IRS, *FAQs Regarding Form 8955-SSA*, FAQ#20 (What are the requirements for answering “yes” to question 8 on Form 8955-SSA?), *at* <https://www.irs.gov/retirement-plans/faqs-regarding-form-8955-ssa#20> (Page Last Reviewed or Updated: 17-Mar-2022). (Now-FAQ #20 was originally numbered FAQ #21.)

¹² *Id.* (emphases added).

¹³ Treasury/IRS, Reporting and Notice Requirements for Deferred Vested Benefits Under Section 6057, *Spring 2022 Unified Agenda of Regulatory and Deregulatory Actions*, *at* <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=1545-BM21>.

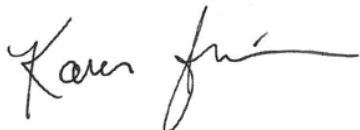
¹⁴ *See e.g.*, Comment Letter from Pension Rights Center to IRS, Re: REG-153627-08, Reporting and Notice Requirements for Deferred Vested Benefits Under Section 6057 (Sept. 24, 2012), *at* <https://www.pensionrights.org/wp->

organizations have been urging for the past 10 years, guidance and instructions for completing the registration statement need to make clear that a plan administrator is *not* permitted to answer Line 8 in the affirmative unless it has sent each deferred vested participant a separate, unified, “individual statement,” on paper, containing all of the necessary information required by statute, or else face penalties provided in the form and instructions. The revision should read:

A plan administrator may answer "yes" to question 8 if the required information was timely furnished to participants in a single, separate, paper statement designed specifically to satisfy this requirement, and the statement contains all of the information required by I.R.C. § 6057(e).

Treasury/IRS can and should use the opportunity presented by this Paperwork Reduction Act notice to issue guidance that safeguards important rights for workers and retirees. The Pension Rights Center appreciates this opportunity to provide input and welcomes any questions you may have.

Sincerely,



Karen Friedman
Executive Director



Jane T. Smith
Policy Analyst

CC: Arslan Malik, IRS
Pamela Kinard, IRS
William Evans, Treasury

[content/uploads/2022/02/120924_pension_rights_center_deferred_vested_comments.pdf](https://www.pensionrights.org/wp-content/uploads/2022/02/120924_pension_rights_center_deferred_vested_comments.pdf); Comment Letter from Pension Rights Center to IRS, Re: Proposed Information Collection Comments Form 8955-SSA (Jan. 21, 2014), *at* https://www.pensionrights.org/wp-content/uploads/2022/02/140122_form_8955_ssa_irs_info_collection.pdf; Comment Letter from Pension Rights Center to IRS, Re: Comments on 2017 Draft for Form 8955-SSA (Oct. 17, 2017), *at* https://www.pensionrights.org/wp-content/uploads/2022/02/prc_comments_on_2017_instructions_for_form_8955-ssa.pdf; Comment Letter from Pension Rights Center to IRS Re: Notice 2021-28, Recommendations on Agenda Items for the 2021-2022 Priority Guidance Plan, at 1-3 (filed May 28, 2021), *at* https://www.pensionrights.org/wp-content/uploads/2022/01/prc_pgp_comments_5-28-21_final_ltrhd.pdf.