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Letter Regarding IRS Form 8955-SSA Participant Notice Requirement

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April 27, 2012

Mr. Robert S. Choi
Director Employee Plans
Internal Revenue Service
1750 Pennsylvania Ave, NW
Washington, DC 20006

Re: IRS Form 8955-SSA Participant Notice Requirement

Dear Mr. Choi:

The Pension Action Center is writing to comment on the letter sent to your office by the American Society of Pension Professionals and Actuaries (ASPPA), dated December 20, 2011. ASPPA requested clarification of the Internal Revenue Code's notice requirement for separated plan participants who are listed on IRS Form 8955-SSA. ASPPA argued that plans should not have to provide separate notices of deferred vested pensions to plan participants because plans already satisfy this notice requirement with "benefit statements and other documents." The Pension Action Center strongly disagrees with ASPPA's interpretation and we hope that the IRS will as well.

The Pension Action Center houses the New England Pension Assistance Project (NEPAP), which represents workers and retirees in their claims for benefits. NEPAP is a pension counseling project funded by the U.S. Administration on Aging. Since its inception in 1993, NEPAP has advised and represented over 5,900 people with pension problems. The Pension Action Center, which is part of the Gerontology Institute at the University of Massachusetts Boston, focuses on the experience of participants in retirement plans throughout its work. Because of its clear focus, the Pension Action Center is a one-of-a-kind organization in New England and is in a unique position to appreciate the importance of deferred vested pension notices.

Background

Section 6057(e) of the Internal Revenue Code requires plan administrators to send an individual statement to every plan participant who has separated from service and earned a deferred vested pension that has not been paid. This individual statement must include information about the participant's benefits that must also be reported to the IRS on Form 8955-SSA. Generally, the notice includes the participant's name, social security number, codes indicating the type of annuity that the participant has earned and frequency of payment, and the amount of the deferred vested benefit.

The latest version of the Form 8955-SSA requires plan administrators to certify, under penalty of perjury, that they have provided a deferred vested pension notice to each plan

participant who was required to receive it.¹ The penalty for willfully failing to furnish this statement or for willfully furnishing a false statement is \$50 for each affected plan participant.

ASPPA has requested clarification from the IRS that strict compliance with this notice requirement is not necessary. Rather, ASPPA argued in their letter, plan administrators should be able to satisfy this notice requirement by providing plan participants with benefit statements and other documents. According to ASPPA, these other documents should collectively be deemed sufficient to constitute good faith compliance with Section 6057(e) of the Internal Revenue Code.

Discussion

The Pension Action Center respectfully disagrees with ASPPA's recommendations. Having worked on behalf of plan participants since 1993, we have learned about the vital importance of deferred vested pension notices. The IRS should not excuse plan administrators from strictly complying with their legal obligation to provide these notices to each plan participant.

Deferred vested pension notices help plan participants in three important ways: (1) they identify plans where the participant has earned a pension and thereby ensure that pension income will not become "lost"; (2) they provide evidence that a plan has deemed a participant entitled to a pension; and (3) they help workers plan for their retirement by clearly stating their entitlement to a pension.

Deferred vested pension notices are especially relevant in the context of "lost" pensions, a frequently encountered problem in the Pension Action Center's work. Lost pensions are a potentially serious problem for plan participants who work in more than one job prior to reaching retirement. According to the U.S. Bureau of Labor Statistics, in 2010 the average tenure of an American worker was 4.4 years.² This indicates that the average American worker is likely to work in several jobs prior to retiring. In turn, workers who leave a job where they have earned a deferred vested pension benefit may be unable to locate their benefit when they retire and decide to apply for it.

There are many reasons why plan participants might have difficulty in finding their pension benefits. In some instances, the employer who sponsored the pension may have been taken over, may have gone out of business, or may be doing business under a different name. In other instances, the pension plan may have been taken over by a new company or it may have been terminated. Consequently, plan participants may have difficulty locating the entity that is responsible for paying their benefits.

Deferred vested pension notices help to alleviate the "lost pension" problem faced by plan participants who change jobs and later have to prove their entitlement to a pension.

¹ Internal Revenue Service, <http://www.irs.gov/pub/irs-pdf/f8955ssa.pdf> (last visited Apr. 26, 2012).

² U.S. Bureau of Labor Statistics, <http://www.bls.gov/news.release/pdf/tenure.pdf> (last visited Apr. 26, 2012).

While pension plans have a legal duty under ERISA to pay vested pension benefits, this becomes impossible unless participants can locate the appropriate plan administrator and apply for their benefits. Deferred vested pension notices fill this informational gap by identifying to plan participants the name and address of their plan, the type of annuity they will receive, the frequency of payment, and the amount of their vested benefit.

Next, because the deferred vested pension notice is only provided to plan participants who have earned a right to a pension, it constitutes presumptive evidence that a plan has deemed a participant entitled to benefits. In our experience, plan participants who have deferred vested pension notices generally have an easier time tracking down their pension plans and proving their entitlement to benefits. One recent case handled by the New England Pension Assistance Project (NEPAP) illustrates this point clearly.

NEPAP was contacted by a 65-year old woman who had worked for a small supermarket chain that appeared to be headquartered in New Hampshire. The woman's annual income was under \$20,000. She had a deferred vested pension notice showing that she was entitled to a monthly pension of about \$140 when she turned 65, but she could not find the company or the plan administrator. She had last worked for the company in 2002. Relying on the deferred vested pension notice, NEPAP discovered that although the company and its corporate successors were out of business, no one had ever legally terminated the defined benefit plan in which our client was vested. We brought this matter to the attention of the Pension Benefit Guaranty Corporation (PBGC), which ultimately moved to terminate and trustee the plan, paying our client (as well as a number of others who benefitted from the work we did on our client's behalf) the monthly benefit she was owed – \$140.86 per month for her lifetime.

The importance of deferred vested pension notices is even more apparent in view of the estimated amount of unclaimed pension benefits. In 2010, the Pension Benefit Guaranty Corporation reported that it held \$197 million in unclaimed pension benefits for over 36,000 participants in terminated defined benefit plans that were sponsored by private sector employers.³ This figure excludes unclaimed benefits from defined contribution accounts and other types of retirement plans. Therefore, the total amount of unclaimed benefits is likely to be even higher.

In light of these numbers, it is clear that the proper way to help plan participants recover their retirement income is not by reducing plans' legal obligations. Deferred vested pension notices serve a vital purpose by keeping American workers informed about retirement benefits which will be essential to their financial security later in life. For these reasons, we urge the IRS to maintain its existing notice rule requiring plan administrators to provide participants with separate deferred vested pension notices.

Nonetheless, as important as these notices are to the average plan participant, ASPPA argues that plans should not be required to provide them. Instead, ASPPA contends that plans can meet their notice obligations equally well by providing plan participants with

³ Pension Benefit Guaranty Corporation, <http://www.pbgc.gov/news/press/releases/pr10-43.html> (last visited Apr. 26, 2012).

benefit statements and other documents. We disagree because ASPPA's recommendation is highly burdensome to plan participants. To allow plans to ignore deferred vested pension notices would deprive plan participants of a clear and simple document telling them exactly what benefits they will receive in retirement. Under ASPPA's proposal, plan participants would bear the burden of piecing together information about their benefits from numerous other documents. Finally, ASPPA's suggested form of notice would not provide participants with the plan's assessment that the participant is entitled to a benefit.

ASPPA's suggested alternative to the deferred vested pension notice consists of "benefit statements and other documents" that plans are required to provide to plan participants. However, anecdotal evidence based on the Pension Action Center's work suggests that many smaller plans do not consistently provide participants with all the required documents. Therefore, to reduce plans' legal obligations even further by excusing them from providing deferred vested pension notices risks damaging participants' rights to receive information about their benefits. The Pension Action Center believes that ASPPA's recommendation is not in the best interests of plan participants and should not be adopted.

Recommendation

For all of the foregoing reasons, the Pension Action Center strongly recommends that the IRS maintain its existing notice requirement for separated plan participants under Section 6057(e) of the Internal Revenue Code. Deferred vested pension notices are of vital importance to American workers who need to know where and how to apply for their pensions in order to remain financially secure later in life.

Thank you for your time and consideration.

Sincerely,



Mia Midenjak
Legal Fellow
New England Pension Assistance Project



Ellen A. Bruce, J.D.
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Director, Gerontology Institute