



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG-153627-08]

RIN-1545-B140

Reporting and Notice Requirements for Deferred Vested Benefits Under Section 6057

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would provide guidance relating to automatic extensions of time for filing certain employee plan returns by adding the Form 8955-SSA, "Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits," to the list of forms that are covered by the Income Tax Regulations on automatic extensions. The proposed regulations would also provide guidance on applicable reporting and participant notice rules that require certain plan administrators to file registration statements and provide notices that set forth information for deferred vested participants. These regulations would affect administrators of, employers maintaining, participants in, and beneficiaries of plans that are subject to the reporting and participant notice requirements.

DATES: Comments and requests for a public hearing must be received by **[INSERT DATE 90 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-153627-08), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington D.C. 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-153627-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC, 20224, or sent electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-153627-08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, William Gibbs, Sarah Bolen, or Pamela Kinard at (202) 622-6060; concerning the submission of comments or to request a public hearing, Oluwafunmilayo Taylor, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

**Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been approved by the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under 1545-2187 and 1545-0212. Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington D.C. 20503, with copies to the **Internal Revenue**

**Service**, Attn: IRS Reports Clearance Officer, SE:CAR:MP:T:T:SP; Washington DC 20224. Comments on the collection of information should be received by **[INSERT DATE 60 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in these proposed regulations is in §§301.6057-1 and 1.6081-11. This information is required in order to comply with the reporting and notice requirements of section 6057 and to provide automatic extensions of time for filing certain employee plan returns under section 6081. Information relating to these proposed regulations will be collected through Form 8955-SSA and Form 5558. This information relates to plan participants who separate from service covered under the plan and who are

entitled to deferred vested retirement benefits under the plan. Any burden relating to these proposed regulations will be included and reported in the next revisions of Form 8955-SSA and Form 5558, after these proposed regulations are accepted as final.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

## **Background**

Section 6057(a) of the Internal Revenue Code (Code) requires the administrator of a plan that is subject to the vesting standards of section 203 of the Employee Retirement Income Security Act of 1974 (ERISA) to file, within the time prescribed by regulations, a registration statement with the Secretary of the Treasury. The registration statement sets forth certain information relating to the plan, plan participants who separate from service covered by the plan and are entitled to deferred vested retirement benefits, and the nature, amount, and form of deferred vested retirement benefits to which the plan participants are entitled.

Section 6057(b) provides that any plan administrator required to register under section 6057(a) shall, within the time prescribed by regulations, also notify the Secretary of any change in the name of the plan or the name and address of

the plan administrator, the termination of the plan, or the merger or consolidation of the plan with any other plan or its division into two or more plans.

Section 6057(c) provides that, to the extent provided in regulations prescribed by the Secretary, the administrator of a plan not subject to the reporting requirements of section 6057(a) (including a governmental plan within the meaning of section 414(d) or a church plan within the meaning of section 414(e)) may at its option file such information as the plan administrator may wish to file with respect to the deferred retirement vested benefit rights of any plan participant separated from service covered by the plan.

Section 6057(d) requires the Secretary to transmit copies of any statements, notifications, reports, or other information obtained by the Secretary under section 6057 to the Commissioner of Social Security.

Section 6057(e) of the Code and section 105(c) of ERISA require each plan administrator that is subject to the reporting requirements of section 6057 to furnish to each deferred vested participant an individual statement setting forth the information required by section 6057(a)(2). The individual statement required by section 6057(e) must also notify each participant of any benefits that are forfeitable if the participant dies before a certain date. The individual statement must be furnished no later than the date for filing the registration statement required under section 6057(a).

Section 6057(f)(1) provides that the Secretary, after consultation with the Commissioner of Social Security, may issue such regulations as may be necessary to carry out the provisions of this section.

Since the enactment of ERISA, the Schedule SSA, a schedule to the Form 5500, "Annual Return/Report of Employee Benefit Plan," has been the form used by plan administrators to comply with the reporting requirements of section 6057. On July 21, 2006, the Department of Labor (DOL) published a final rule in the **Federal Register** (71 FR 41359) requiring electronic filing of the Form 5500 series for plan years beginning after January 1, 2008. On November 16, 2007, the DOL published a final rule in the **Federal Register** (72 FR 64710) postponing the effective date of the electronic filing mandate to apply to plan years beginning on or after January 1, 2009. See 29 CFR § 2520.104a-2.

In order to implement the DOL's mandate for electronic filing of the Form 5500, the IRS-only schedules to the Form 5500, including the Schedule SSA, were eliminated from the Form 5500. One result of the elimination of the Schedule SSA is that Form 5500 filings that include Schedule SSA information regarding participants are now subject to rejection (even for late or amended filings for plan years before 2009). The Schedule SSA was replaced by Form 8955-SSA, "Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits," an IRS-only stand-alone form. Announcement 2011-21 (2011-12 IRB 567), see §601.601(d)(2), designates Form 8955-SSA as the form to be used to satisfy the reporting requirements of section 6057 for plan years beginning on or after January 1, 2009. Announcement 2011-21 also established an annual due date for the filing of the Form 8955-SSA. In general, if a Form 8955-SSA must be filed for a plan year, it must be filed by the last day of the 7th month following the last day of that plan year (plus extensions).

Section 6081(a) provides that the Secretary may grant a reasonable extension of time for filing any required return, declaration, statement, or other document. Except for certain taxpayers, the extension of time shall not exceed 6 months.

Section 1.6081-1(a) of the Income Tax Regulations provides that the Commissioner is authorized to grant a reasonable extension of time for filing any return, declaration, statement, or other document that relates to any tax imposed under subtitle A of the Code. Under §1.6081-1(b), the application must be in writing, be signed by the taxpayer or his representative, and set forth the reason for requesting an extension.

Section 1.6081-11 of the regulations provides that a plan administrator or sponsor of an employee benefit plan required to file a Form 5500 will be allowed an automatic extension of the time to file the Form 5500. To receive an automatic extension of time to file, the plan administrator or sponsor must complete a Form 5558, "Application for Extension of Time to File Certain Employee Benefit Returns," and file the application with the Internal Revenue Service on or before the date that the Form 5500 series return must be filed.

Form 5558 is used to request an automatic extension of time to file a Form 5500 return or Form 8955-SSA. In accordance with §1.6081-11 and Form 5558 (including instructions), an application for an extension of time to file a Form 5500 series return need not be signed. However, in accordance with §1.6081-1, Form 5558 provides that an application for an extension of time to file Form 8955-SSA must be signed.

## **Explanation of Provisions**

After the current version of the Form 5558 was issued, several comments were received that questioned the need for a signature to extend the time for filing Form 8955-SSA, particularly since a signature is not required to extend the time to file a Form 5500 series return. The commentators noted that, like its predecessor, the Schedule SSA, the Form 8955-SSA is generally prepared in conjunction with the preparation of a plan's Form 5500. They also stated that a signature requirement for the Form 8955-SSA is likely to cause confusion and missed deadlines because of the different rule for the Form 5500. Finally, the commentators contended that the signature requirement is burdensome for both filers and the IRS because the requirement complicates the extension request process.

The proposed regulations would amend §1.6081-11, relating to automatic extensions of time for filing certain employee plan returns, by adding the Form 8955-SSA to the list of forms that are covered by the automatic 2 ½ month extension that applies by filing Form 5558. This will permit a plan administrator to receive an automatic extension of 2 ½ months by submitting, on or before the general due date of the Form 8955-SSA, a Form 5558 indicating that an extension is being requested for filing the Form 8955-SSA. Thus, under the proposed regulations, the same rules that apply to request an extension of time to file the Form 5500 series would also apply to request an extension of time to file Form 8955-SSA. In addition, the proposed regulations would amend §1.6081-11 to provide that a signature would not be required to request an

extension of time to file Form 5500 and Form 8955-SSA. It is anticipated that the Form 5558 and instructions will be revised to reflect this change for the Form 8955-SSA.

In addition, pursuant to section 6011(a), these proposed regulations would formally designate the Form 8955-SSA as the form used to satisfy the reporting requirements of section 6057. These proposed regulations would retain the general reporting requirements that applied to the Schedule SSA with certain minor modifications.

As discussed in the background section of this preamble, section 6057(a) requires the plan administrator (within the meaning of section 414(g)) of a plan that is subject to the vesting standards of section 203 of ERISA to file, within the time prescribed by regulations, a registration statement that sets forth certain information on deferred vested participants. Under existing §301.6057-1(c)(1) of the Procedure and Administration regulations, the plan administrator of an employee benefit plan described in §301.6057-1(a)(3), or any other employee retirement benefit plan (including a governmental or church plan), may at its option file on the Schedule SSA information relating to the deferred vested retirement benefit of any plan participant who separates at any time from service covered under the plan. These proposed regulations would retain the ability of such plans to report deferred vested information on a voluntary basis but require that the information be submitted to the IRS on Form 8955-SSA. The proposed regulations would also delegate authority to the Commissioner of the Internal Revenue Service to provide special rules under section 6057 (including

designating the form used to comply with section 6057) in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b) of this chapter). Finally, the proposed regulations would delete certain obsolete transition rules and update cross-references in §§1.6057-1 and 1.6057-2.

### **Proposed Effective Date**

These regulations are generally proposed to be effective on or after **[INSERT THE DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, the final regulations are more restrictive than the guidance in these proposed regulations, those provisions of the final regulations will be applied without retroactive effect.

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined that 5 U.S.C. 533(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that most small entities that maintain employee retirement income benefit plans use third party administrators to perform their recordkeeping function. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Office of Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business.

### **Comments and Requests for Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the “Addresses” heading. The IRS and Treasury Department request comments on all aspects of the proposed rules. All comments are available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the public hearing will be published in the **Federal Register**.

### **Drafting Information**

The principal authors of these regulations are Sarah R. Bolen and Pamela R. Kinard, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

### **List of subjects**

#### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### 26 CFR Part 301

Employment taxes, Estate taxes, Gift taxes, Income taxes, Penalties, Reporting and Recordkeeping requirements.

## Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

### Part 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.6081-11 is amended by:

1. Revising paragraph (a).
2. Adding paragraph (b)(3).
3. Revising the paragraph heading of paragraph (d) and adding paragraph (d)(2).
4. Revising the paragraph heading of paragraph (e) and adding paragraph (e)(2).

The revisions and additions read as follows:

#### §1.6081-11 Automatic extension of time for filing certain employee plan returns.

(a) In general. An administrator or sponsor of an employee benefit plan required to file a return under the provisions of subpart E of part III of chapter 61 or the regulations under that chapter on Form 5500 (series), “Annual Return/Report of Employee Benefit Plan” or Form 8955-SSA, “Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits,” will be allowed an automatic extension of time to file the return until the 15<sup>th</sup> day of the third month following the date prescribed for filing the return if the

administrator or sponsor files an application under this section in accordance with paragraph (b) of this section.

(b) \* \* \*

(3) A signature is not required for an automatic extension of time to file Form 5500 (series) and Form 8955-SSA.

\* \* \* \* \*

(d) Penalties--(1) Form 5500. \* \* \*

(2) Form 8955-SSA. See section 6652 for penalties for failure to file a timely and complete Form 8955-SSA.

(e) Effective/Applicability dates--(1) Form 5500. \* \* \*

(2) Form 8955-SSA. This section is applicable for applications for an automatic extension of time to file Form 8955-SSA filed after **[INSERT THE DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

#### Part 301--PROCEDURE AND ADMINISTRATION

Par. 3. The authority for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7508\* \* \*

Par. 4. Section 301.6057-1 is amended by:

1. Revising paragraphs (a)(4) and (a)(5)(ii).
2. Removing paragraph (b)(2)(iii) and redesignating paragraph (b)(2)(iv) as (b)(2)(iii).
3. Revising newly designated paragraph (b)(2)(iii).
4. Revising paragraphs (b)(3)(ii), (b)(3)(iii), (c), (d), (f), and (g).

The revisions read as follows:

§301.6057-1 Employee retirement benefit plans; identification of participant with deferred vested retirement benefit.

(a) \* \* \*

(4) Filing requirements--(i) In general. Information relating to the deferred vested retirement benefit of a plan participant must be filed on Form 8955-SSA, "Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits." Form 8955-SSA shall be filed on behalf of an employee retirement benefit plan for each plan year for which information relating to the deferred vested retirement benefit of a plan participant is filed under paragraph (a)(5) or (b)(2) of this section. There shall be reported on Form 8955-SSA the name and Social Security number of the participant, a description of the nature, form and amount of the deferred vested retirement benefit to which the participant is entitled, and such other information as is required by section 6057(a) or Form 8955-SSA and the accompanying instructions. The form of the benefit reported on Form 8955-SSA shall be the normal form of benefit under the plan, or, if the plan administrator (within the meaning of section 414(g)) considers it more appropriate, any other form of benefit.

(ii) General due date for filing. The forms prescribed by section 6057(a), including Form 8955-SSA, shall be filed in the manner and at the time as required by the forms and related instructions applicable to the annual period.

(iii) Delegation of authority to Commissioner. The Commissioner may provide special rules under section 6057 (including designating the form used to

comply with section 6057) in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b) of this chapter) that the Commissioner determines to be necessary or appropriate with respect to the filing requirements under section 6057.

(5) \* \* \*

(ii) Exception. Notwithstanding paragraph (a)(5)(i) of this section, no information relating to the deferred vested retirement benefit of a separated participant is required to be filed on Form 8955-SSA if, before the date such Form 8955-SSA is required to be filed (including any extension of time for filing granted pursuant to section 6081), the participant--

(A) Is paid some or all of the deferred vested retirement benefit under the plan;

(B) Returns to service covered under the plan; or

(C) Forfeits all of the deferred vested retirement benefit under the plan.

(b) \* \* \*

(2) \* \* \*

(iii) Exception. Notwithstanding paragraph (b)(2)(i) of this section, no information relating to a participant's deferred vested retirement benefit is required to be filed on Form 8955-SSA if, before the date such Form 8955-SSA is required to be filed (including any extension of time for filing granted pursuant to section 6081), the participant--

(A) Is paid some or all of the deferred vested retirement benefit under the plan;

(B) Accrues additional retirement benefits under the plan; or

(C) Forfeits all of the deferred vested retirement benefit under the plan.

(3) \* \* \*

(ii) Inability to determine correct amount of participant's deferred vested retirement benefit. The plan administrator must indicate on Form 8955-SSA that the amount of a participant's deferred vested retirement benefit showed therein may be other than that to which the participant is actually entitled if such amount is computed on the basis of plan records that the plan administrator maintains and such records--

(A) Are incomplete with respect to the participant's service covered by the plan (as described in paragraph (b)(3)(i) of this section); or

(B) Fail to account for the participant's service not covered by the plan which is relevant to a determination of the participant's deferred vested retirement benefit under the plan (as described in paragraph (b)(3)(i) of this section).

(iii) Inability to determine whether participant vested in deferred retirement benefit. Where, as described in paragraph (b)(3)(i) of this section, information to be reported on Form 8955-SSA is to be based upon records which are incomplete with respect to a participant's service covered by the plan or which fail to take into account relevant service not covered by the plan, the plan administrator may be unable to determine whether or not the participant is vested in any deferred retirement benefit. If, in view of information provided either by the incomplete records or the plan participant, there is a significant likelihood that the

plan participant is vested in a deferred retirement benefit under the plan, information relating to the participant must be filed on Form 8955-SSA with the notation that the participant may be entitled to a deferred vested benefit under the plan, but information relating to the amount of the benefit may be omitted. This paragraph (b)(3)(iii) does not apply in a case in which it can be determined from plan records maintained by the plan administrator that the participant is vested in a deferred retirement benefit. Paragraph (b)(3)(ii) of this section, however, may apply in such a case.

(c) Voluntary filing--(1) In general. The plan administrator of an employee retirement benefit plan described in paragraph (a)(3) of this section, or any other employee retirement benefit plan (including a governmental plan within the meaning of section 414(d) or a church plan within the meaning of section 414(e)), may, at its option, file on Form 8955-SSA information relating to the deferred vested retirement benefit of any plan participant who separates at any time from service covered by the plan.

(2) Deleting previously filed information. If, after information relating to the deferred vested retirement benefit of a plan participant is filed on Form 8955-SSA (or a predecessor to Form 8955-SSA), the plan participant is paid some or all of the deferred vested retirement benefit under the plan or forfeits all of the deferred vested retirement benefit under the plan, the plan administrator may, at its option, file on Form 8955-SSA (or such other form as may be provided for this purpose) the name and Social Security number of the plan participant with the notation

that information previously filed relating to the participant's deferred vested retirement benefit should be deleted.

(d) Filing incident to cessation of payment of benefits--(1) In general. No information relating to the deferred vested retirement benefit of a plan participant is required to be filed on Form 8955-SSA if before the date such Form 8955-SSA is required to be filed, some of the deferred vested retirement benefit is paid to the participant, and information relating to a participant's deferred vested retirement benefit which was previously filed on Form 8955-SSA (or a predecessor to Form 8955-SSA) may be deleted if the participant is paid some of the deferred vested retirement benefit. If payment of the deferred vested retirement benefit ceases before all of the benefit to which the participant is entitled is paid to the participant, information relating to the deferred vested retirement benefit to which the participant remains entitled shall be filed on the Form 8955-SSA filed for the plan year following the last plan year within which a portion of the benefit is paid to the participant.

(2) Exception. Notwithstanding paragraph (d)(1) of this section, no information relating to the deferred vested retirement benefit to which the participant remains entitled is required to be filed on Form 8955-SSA if, before the date such Form 8955-SSA is required to be filed (including any extension of time for filing granted pursuant to section 6081), the participant--

- (i) Returns to service covered by the plan;
- (ii) Accrues additional retirement benefits under the plan; or
- (iii) Forfeits the benefit under the plan.

\* \* \* \* \*

(f) Penalties. For amounts imposed in the case of failure to file the report of deferred vested retirement benefits required by section 6057(a) and paragraph (a) or (b) of this section, see section 6652(d)(1).

(g) Effective/applicability date--(1) In general. Except as otherwise provided in this paragraph (g), this section is applicable for filings on or after **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

(2) Special effective date rules for periods before the general effective date. Section 301.6057-1 of this chapter, as it appeared in the April 1, 2008 edition of 26 CFR part 301, applies for periods before the general effective date.

**§301.6057-1 [Amended]**

Par. 5. Section 301.6057-1 is amended by removing the language “schedule SSA” and adding “Form 8955-SSA” in its place.

Par. 6. Section 301.6057-2 is amended by revising paragraph (c) as follows:§301.6057-2 Employee retirement benefit plans; notification of change in plan status.

\* \* \* \* \*

(c) Penalty. For amounts imposed in the case of failure to file a notification of a change in plan status required by section 6057(b) and this

section, see section 6652(d)(2).

\* \* \* \* \*

Steven T. Miller

Deputy Commissioner for Services and Enforcement

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