



AMERICAN BENEFITS
COUNCIL

November 4, 2013

Internal Revenue Service
CC:PA:LPD:PR
1111 Constitution Avenue, NW
Washington, DC 20044

**Re: Employee Retirement Benefit Plan Returns Required on Electronic Media
(REG-111837-13)**

Dear Sir or Madam:

The American Benefits Council (the “Council”) appreciates this opportunity to comment on the proposal by the Internal Revenue Service (the “Service”) and the Department of the Treasury (“Treasury”) to require filing of Form 8955-SSA electronically. The Council consistently supports efforts to move retirement plan administration and disclosure to electronic media, which is less costly and more effective for Americans saving for retirement. Thus, our comments focus on issues the Service and Treasury should keep in mind to make implementation of this requirement proceed smoothly and with appropriate time for plan sponsors and their service providers to adjust to this new requirement.

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council’s members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

THE COUNCIL SUPPORTS ELECTRONIC PLAN ADMINISTRATION AND DISCLOSURE IN MANY AREAS

The Council believes that appropriate electronic administration and disclosure is more user-friendly, efficient, and cost-effective than paper. This is particularly true for

plan participants, who increasingly prefer electronic communication because it is dynamic, easy to keep up-to-date and to search, and available in more formats and at lower cost. The Council has repeatedly urged the Service and Treasury, and their partner regulator the Department of Labor (“DOL”), to enhance rules allowing electronic communication to serve as the default method of disclosure, while ensuring that participants that wish to receive paper are entitled to do so upon request.

THE SERVICE AND TREASURY SHOULD TAKE INTO ACCOUNT IMPLEMENTATION CHALLENGES

The new requirement is proposed to apply to plan years beginning on or after January 1, 2014, for filings due after December 31, 2014. Because the new proposal would mandate electronic filing of Form 8955-SSA for certain plan administrators, we urge the Service and Treasury to proceed taking into account that there may be implementation challenges that plan sponsors face, and to adjust the timeline for the effective date of these new rules with these challenges in mind. We mention a few of these challenges below.

Systems programming for administrative changes typically takes 1-2 years. While the Form 8955-SSA can currently be filed on a voluntary basis through the Service’s Filing Information Returns Electronically (“FIRE”) system, many plan sponsors and service providers do not currently use the FIRE system. This is because most of the information returns that may be filed using the FIRE system relate to payments by financial institutions like Forms 1099 and 5498. Systems related to the annual report (Form 5500) are generally adapted for the DOL’s EFAST2 system. Thus, significant programming will be required to marry these recordkeeping systems with the FIRE system. In addition the Service does not have a free filing system like EFAST2, which forces plan sponsors either to purchase a software package or pay for access to a filing service.

Form 8955-SSA is not typically released prior to the year to which it applies. Because Form 8955-SSA is a relatively new form, the Service has not been releasing new versions of the form until well into each year. Revisions to Form 8955-SSA for 2013 are not yet available and we do not expect to see the final 2013 version of Form 8955-SSA until later in 2014. Programming for electronic filing cannot begin until the form is available. (The Form 8955-SSA has typically been released in March of the following year. This allows only *four* months to program systems before the July 31 deadline.)

Employers with more than 250 W-2 returns still have only a single plan or a few plans. We are pleased that the Service and Treasury propose to limit mandated use of electronic filing of Form 8955-SSA to plan administrators that file at least 250 returns during the calendar year that includes the first day of the plan year. This will be helpful to small employers. While large employers and their payroll providers typically file

hundreds or thousands of Form W-2s, they will only file a single Form 5500 for each plan, and will only file Form 8955-SSA for participants in the retirement plan who terminate service in that year with a vested benefit. They simply do not file Form 8955-SSAs in the same volume as Form W-2s.

Final regulations and layout specifications may not be completed until well into 2014. We think it is likely that final regulations, and changes to the programming and layout specifications, will not be issued until 2014. This further limits the time that plan sponsors and their service providers will have to implement the systems changes to be ready to file electronically for the 2014 plan year.¹

SIGNIFICANT LEAD TIME SHOULD APPLY FOR ANY NEW QUESTIONS

In the proposal, the Service states that it is coordinating with DOL to add *new* items to the Form 5500 and Form 5500-SF relating solely to Internal Revenue Code requirements. If new information will be required (even if it relates to information that previously applied before EFAST2), the Service and DOL will need to give plans lead time to reprogram their systems to *collect* the information during a plan year. This applies to adding any new information to the Form 5500, not just the Code-related information described in the proposal. Capturing new information cannot be done at the end of the plan year or during the Form 5500 filing season. Thus, any new requirement must apply to plan years *that begin at least 12 months after* final rules are issued.²

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We share the goal of bringing retirement plan administration into the 21st century and stand ready to work with regulators on this goal. We hope this project is another step to making electronic administration and disclosure – not just to the government but also to plan participants – the gold standard, while protecting those who wish to continue to receive paper.

¹ Many service providers space out their filings throughout the year to avoid a rush right at the deadline. They try to complete as many filings as they can early in the filing season. In thinking about the effective date of any changes, the Service cannot simply assume that filings will be made at the absolute last minute.

² One member pointed out that the proposal could be read to imply that the Form 8955-SSA will be added back to the Form 5500 through EFAST2. Form 5500 is filed through EFAST2, and the Form 8955-SSA is, currently, filed through FIRE, not EFAST2. If Form 8955-SSA will be filed through EFAST2, or if this is an option, we see a host of issues because the two systems – and the entities required to use them – are distinct. We are assuming that the instant proposal simply mandates filing of the Form 8955-SSA through the FIRE system. If that assumption is incorrect, we believe further discussions are necessary.

Our comments above are aimed at making this project a success. The Service and Treasury should keep these implementation challenges in mind as they move forward. We very much appreciate your consideration of our views.

Sincerely,

A handwritten signature in black ink that reads "Lynn D. Dudley". The signature is written in a cursive style with a large, prominent initial "L".

Lynn D. Dudley
Senior Vice President
Retirement and International Benefits Policy