



IRS Releases New Form For Extension Of Time

By Callan Carter (San Francisco) and Pat Harris (Atlanta)

Last month, the IRS released an updated version of Form 5558, “Application for Extension of Time to File Certain Employee Plan Returns.” In prior versions, the Form 5558 was used to provide either a one-time extension of the due date for the filing of a Form 5500 Series Return for a plan (meaning a Form 5500, a Form 5500-SF or a Form 5500-EZ Return), or to request an extension of time for filing of a Form 5330 to report excise taxes associated with an employee benefit plan.

As was the case in prior versions, no signature is required if the Form 5558 is used to extend the due date for filing of a Form 5500 Series Return. For a Form 5330 extension request, however, a signature is still required. You must also still provide an explanation on the Form 5558 as to why you need an extension of time.

It’s worth mentioning that the Form 5558 *does not* extend the due date for the payment of any excise taxes due; only the reporting of the excise taxes. Once a Form 5558 is submitted, the IRS will grant only a reasonable extension of time (not to exceed 6 months) for filing of the Form 5330, and only if you are unable to file the Form 5330 timely due to circumstances beyond your control.

The instructions to the Form 5558 indicate that a request for an extension of time to file Form 5330 should be filed “in sufficient time for the IRS to consider and act on it before the return’s normal due date.” It’s also worth noting that in an effort to go paperless, the instructions indicate that the IRS will no longer return stamped copies of the Form 5558 in connection with a Form 5330 to filers who request an extension of time to file. Instead you will be sent a computer-generated notice confirming whether the extension was approved or denied. For that reason, the IRS is asking that a photocopy of the computer-generated notice be attached to the Form 5330 when filed.

What’s Visibly Different?

The form itself has not changed dramatically, but can now also be used to extend the due date for the filing of the new Form 8955-SSA. Now, as has been the case if using the Form 5558 to extend the due date for filing of a Form 5500 Series Return, the IRS will grant an automatic one-time, two and one-half month extension of the time for filing of the Form 8955-SSA. This means that if a Form 5558 is filed on or before the last day of the seventh month following the plan year end being reported, the Form 5500 or Form 8955-SSA will be provided with an automatic

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Change To Medicare Part D Enrollment Period Impacts Notices Of Coverage

By Callan Carter (San Francisco)

The annual Medicare Part D enrollment period has been moved to October 15 through December 7, beginning with enrollment for 2012. This change will require plan sponsors to update their Medicare Part D Notices of Creditable or Non-creditable Coverage and most likely will require plan sponsors to provide the notices to Medicare eligible participants by October 15 of this year.

Background

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 requires group health plans that provide prescription drug coverage to disclose to individuals eligible for Medicare Part D whether the plan’s coverage is “creditable” (i.e., whether it is at least actuarially equivalent to the Medicare Part D coverage) or not.

Individuals who do not enroll in Medicare Part D when first eligible and who go 63 days or longer without creditable coverage will have to pay higher premiums permanently when they subsequently enroll in Medicare Part D. Thus, Medicare-eligible individuals need to know the status of their plan’s prescription coverage in order to make an informed decision about enrolling in Medicare Part D.

Notices to Part D-eligible individuals regarding whether prescription drug coverage is creditable or non-creditable must, at a minimum, be provided prior to the start of the annual Part D enrollment period which used to be November 15 through December 31 of each year. Most plan sponsors use model notices issued by the Center for Medicare and Medicaid Services (CMS) that refer to those specific dates.

Change to the Part D Annual Enrollment Period

The Patient Protection and Affordable Care Act amended the Social Security Act to move the Medicare Part D annual enrollment period to October 15 through December 7. This change is effective for 2012 Part D enrollment, which will occur in the Fall of 2011. As a result, references to the November 15 through December 31 annual enrollment period in the notices of creditable or non-creditable coverage are no longer accurate.

CMS has issued revised model forms which can be found at www.cms.gov. Click on the link for “creditable coverage,” then “model notice letters.” Notices must be provided by October 15, 2011.

For more information contact the author at ccarter@laborlawyers.com or 415.490.9000.

Filing Due Date Extended For Form 8955-SSA

By Callan Carter (San Francisco) and Pat Harris (Atlanta)

Many of you who are familiar with the Form 5500 will remember the Schedule SSA. The Schedule SSA was formerly part of the annual Form 5500, used to notify the Social Security Administration about separated plan participants who retain vested benefits in a pension or retirement plan. Ideally, when a participant retires and applies for Social Security, the Social Security Administration then alerts the individual that she or he might still be owed pension or retirement money from the plan.

When the Department of Labor released the new electronic Form 5500 filing requirements (effective for 2009 and later plan years), one of the changes included the removal of the Schedule SSA (as we knew it) from the Form 5500. Instead, we were alerted that going forward for 2009 and future plan years, information about separated participants with deferred, vested benefits would be reported on a new standalone form to be submitted directly to the IRS, and so, the new Form 8955-SSA was born!

The New Dates

So when must plan sponsors submit the Form 8955-SSA for the 2009 and 2010 plan years? Well originally the IRS indicated that the due date for filing of both the 2009 and 2010 forms would be the later of 1) the unextended due date of the 2010 Form 5500, or 2) August 1, 2011. But at the time that guidance was issued, neither the 2009 nor 2010 Form 8955-SSA had yet been released.

On June 18, 2011, the IRS released the final version of the 2009 Form 8955-SSA, and indicated that the 2010 version is expected to be released soon, although as of this writing that has not happened.

And what about the due dates, which (for a 2010 calendar plan) would have required that the Form 8955-SSA be submitted by August 1, 2011? Well, the IRS has now extended the due date for filing of both the 2009 and 2010 Form 8955-SSA to “the later of 1) January 17, 2012 or 2) the date that generally applies for filing of the Form 8955-SSA for 2010.”

That means that for a calendar year plan that would otherwise have a filing due date of August 1, 2011, or October 15, 2011 (if a proper Form 5558 extension was filed), the plan will have until January 17, 2012 to “timely file.” Note that the IRS has cautioned that *no Form 5558 extensions will be granted* to extend the filing due date beyond the January 17, 2012 due date.

For more information regarding how this extension may impact your plan, please visit the IRS website at www.irs.gov/retirement/article to view their Frequently Asked Questions or contact any member of the Employee Benefits Practice Group.

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extension until the 15th day of the third month following the normal due date for the filing. To which you say ... example please!

Okay, say your plan is operated on a calendar year basis, and you want to file the Form 5500 and Form 8955-SSA for the 2010 Plan Year. Provided you file a Form 5558 to request an extension of the due date for these forms on or before July 31, 2010 (or actually, August 1 since the normal due date falls on a weekend), you will be granted an automatic extension for these forms until October 17, 2011 (again, it should be October 15, but that's a weekend!).

The Form 5558 instructions do outline two additional important points pertinent to the filing of the new Form 8955-SSA. First, they note that the Form 5558 *cannot* be used to extend the due date of the Form 8955-SSA for the 2009 and 2010 plan years if the 2010 plan year ends before April 1, 2011 because these returns have already been granted an automatic extension of the due date until January 17, 2012. Second, while the IRS will automatically grant a request for extension of the filing due date for a Form 8955-SSA, a plan sponsor must sign and date the Form 5558. This bears repeating. Again, a Form 5558 filed to extend a Form 8955-SSA due date must be signed and dated, but a Form 5558 used to extend a Form 5500 Series Return does not have to be signed.

If you have questions regarding the updated Form 5558, or how and when to complete it, please contact any member of the Employee Benefits Practice Group.

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“MUST HAVE BEEN A MESSY DIVORCE.”