

The DOL Audit – Coming Soon to a Plan Near You...

When your number is up and the DOL comes knocking, will you be in the minority of DB plan sponsors with satisfactory responses to their inquiries, or might you be subject to a long and arduous audit process? Over the last couple years, the DOL has been focusing audit efforts on missing participants (and beneficiaries and QDRO alternate payees!) in defined benefit pension plans. And since they are finding most plans to be out of compliance in this area, this activity shows no signs of letting up. Indeed, the opposite is true.

Required Minimum Distributions (RMDs; shortly after age 70.5, generally) are often the initial focus of these audits, since participants who are past their RMD Required Beginning Date (RBD) and who have not commenced payments are easily identifiable problem indicators. And by definition, RMD violations are both operational (non-compliance with required plan terms) and legal (non-compliance with the law).

These audits typically delve into other areas where benefit notifications are required or advisable, including:

- ◆ Normal Retirement Date (NRD) – the usual required commencement date under the plan for vested terminated participants (VTs) [*Note: NRD notification is advisable even for plans that allow deferral up until RBD*]
- ◆ VT benefit notifications upon employment termination – due by the time the following year’s Form 5500 filing is submitted (so within about 2 to 2.5 years of employment termination)
- ◆ Participant’s NRD – usually the plan’s required commencement date for spouse beneficiaries
- ◆ Participant’s earliest Early Retirement Date (ERD) for spouse beneficiary commencement – usually analogous to NRD for spouse benefits (i.e., the plan’s default commencement date)

RMD Required Beginning Dates (RBDs) – in the typical case:

- ◆ Participants: April 1 following the calendar year containing the later of their age-70.5 date or employment termination date
- ◆ Spouse beneficiaries: Later of participant’s RBD or 12/31 of calendar year following the year of the participant’s death
- ◆ Non-spouse beneficiaries (if any): 12/31 of calendar year following the year of the participant’s death – ***NOT*** 12/31 of 5th calendar of year following the year of death for lump sums (unless the plan adopts this provision)

What is meant by a “diligent search”?

There isn’t a lot of guidance in this area, but there is some – and the DOL is expected to provide more guidance “in the near future”. Both the DOL and IRS have provided some criteria for what constitutes a diligent search in their eyes. (Yes, the DOL is making all the headlines, but the IRS audits these requirements too.) Unless and until further guidance is published, it is prudent to establish diligent-search processes that will satisfy both entities’ existing guidance. As this is a short article, we won’t delve into all the specifics, but suffice it to say that a diligent search typically includes using certified mail, searching online, sending an inquiry to the participant’s beneficiary, reviewing other data available to the employer, and utilizing a commercial locator service.

For More Information

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As mentioned above, the DOL is uncovering a plethora of non-compliance – participants and beneficiaries not paid their benefits, unidentified beneficiaries of deceased participants, inadequate or nonexistent processes, bad addresses, etc. They’ve found that many plans do not pursue participants or beneficiaries at all – only reacting when participants or beneficiaries come forward to claim (or inquire about) benefits. And while they have not been doling out many punitive monetary punishments, they are often requiring plans to go well beyond the existing diligent-search guidance (see above), requiring some plans to search for all missing participants at least annually, to use different search methods each year, to contact current or former employees who may have worked with the missing participant in the past, and to “do whatever it takes” to locate the missing participants! These audits can obviously be quite painful and drawn out.

What should you do BEFORE the DOL comes knocking?

- ◆ Establish ongoing processes for notifying participants of their benefits, identifying and locating beneficiaries of deceased participants, and paying benefits
- ◆ Decide which of these processes should include a “diligent search” component, and which will just utilize the most recent address on file
- ◆ Decide which diligent-search-related (and death search) services you want to outsource to a commercial locator service
- ◆ Incorporate all the various steps of these searches into the applicable processes, **including documenting all the diligent-search steps taken for each individual** (or at least those individuals not located)
- ◆ Decide what will be done about “missing” (unlocatable) participants and beneficiaries
- ◆ Develop a strategy for cleaning up your plan’s data and dealing with your past non-compliance... and follow through with it!

If you need any assistance with any of the topics touched on in this article, Curcio Webb can help.

As an independent employee benefit advisor, Curcio Webb works with clients to reduce risk, cost, and complexity of sourcing and managing employee benefit plans and providers.