CURCIO ✦ WEBB

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 several years, the DOL has focused their 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.

Required Minimum Distributions (RMDs; shortly after age 72, 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).

The 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 72nd birthday 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 has adopted this provision)

What is meant by a "diligent search"?

Guidance on what constitutes a diligent search has long been sparse. In January 2021, the DOL published "Best Practices," but this did not include the clear roadmap for compliance many of us were expecting. So... the best strategy is to include in your search process as many of the DOL best practices that make prudent sense for your plan, being sure to include at a minimum all the steps included in the previous guidance (DOL FAB 2014-01 and IRS 10/19/17 EP Memo). As this is a short article, we will not delve into all the specifics, but a diligent search will typically include using certified mail, searching online, inquiring with potential beneficiaries, reviewing other data available to the employer, and utilizing commercial locator services.

For More Information

Joseph Penick, ASA, FCA, EA, MAAA
p. 415.743.5692
e. jpenick@curciowebb.com
w. curciowebb.com

As mentioned above, the DOL is uncovering a plethora of non-compliance – participants and beneficiaries who were not paid their benefits, unidentified beneficiaries of deceased participants, inadequate or nonexistent processes, bad addresses, etc. They have found that many plans do not pursue participants or beneficiaries at all – only reacting when participants or beneficiaries come forward to claim benefits.

Although the DOL has refrained from issuing 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.

Better to have sufficient processes in place before an audit! Moreover, since these processes will reduce your problematic populations (and the "red flags" the DOL looks for), you may even avoid the audit altogether. This is one area where an ounce of prevention is truly worth a pound of cure.

What should you do ***BEFORE*** the DOL comes knocking?

- Analyze ***all*** the plan's benefit-commencement events – NRD, RBD, small-payment cash-outs, joint & survivor continuance, death benefits for deceased vested terminated participants, etc. – for plan participants, beneficiaries, and QDRO alternate payees
- Decide which best-practice search steps are prudent for each event – and determine the shortcomings of the plan's current set of communications and processes
- Determine how to best implement the needed improvements – which events can be handled by the plan administrator's standard offerings, which ones may warrant customized processes, and whether any events or steps must be taken in-house
- Document all processes in detail, and ensure that those that purport to be a diligent search include documenting all the diligent-search steps taken for each individual (or at least those individuals not located)
- Develop a strategy for cleaning up your plan's data and dealing with your past non-compliance… and execute it!
- Ensure your compliance with other DOL best practices (not just payment-commencement events) – follow-up on returned mail and uncashed checks, aggressive focus on tracking participants, etc.

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