Required Minimum Distributions

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The aging of the baby boomer generation has increased the level of scrutiny with which the Department of Labor, Employee Benefits Security Administration ("EBSA") will review the efforts of pension plans to locate missing plan participants who did not receive reported benefits. The focus of the EBSA which began with a review of the efforts of defined benefit plans to find and pay benefits to participants has now expanded to include defined contribution plans.

Specifically, the EBSA is reviewing efforts of those plans to locate participants who reached age 70 ½ and failed to take a required minimum distribution ("RMD") as of April of the year after which they turned 70 ½.

There are three areas of review by the EBSA:

1. The locating of missing participants;

2. The informing terminated, vested participants that a retirement benefit was due to be taken; and

3. Beginning benefit payments when the participant attained the age of 70 ½.

Unlike most EBSA initiatives which begin with the hierarchy of the EBSA, the increased interest in retirees over the age of 70 ½ began in the Philadelphia regional office because social security advised new recipients of entitlement to possible benefits from long forgotten retirement plans. Those individuals were primarily, terminated participants who had left employment after vesting. More than half a billion dollars of unpaid retirement benefits were discovered in only six defined benefit plans.

The discovery of these long-forgotten pension entitlements was also a victory for the Internal Revenue Service. Distributions over the age of 70 ½ known as Required Minimum Distributions ("RMD's") are subject to taxation. Failure of a participant to take his RMD can expose that participant to penalties in addition to taxation.

The EBSA is intent on policing efforts to locate those participants. Ironically, despite the initiative, the EBSA, the PBGC, and the IRS have been reluctant to issue guidelines for locating participants. Plan

Sponsors have been left to their own devices to structure these programs. Programs which seem to have the greatest probability of approval are those that can demonstrate formal procedures, maintenance of accurate participant data, and continued efforts to find participants.

A plan must send a letter to a participant at age 70 ½ and each year thereafter until the participant takes a distribution. The EBSA is demanding proof that employers are sending the letters every year.

A plan must demonstrate efforts to use all available data tools. Several companies specialize in research services, databases for postal services, obituary searches, and social security death index. A plan must use those services regularly to reflect that the plan is moving in a pro-active manner.

It is important to understand that liability does not end with the participant. Recent efforts by the EBSA have resulted in the opening of investigations against trustees, plan administrators and Third Party Administrators. The focus is on the efforts made at age 70 ½ and each year thereafter until the participant takes the RMD. The proof must consist of "hard proof", such as the address of participant and proof of mailing that communications were regularly sent to terminated, vested participants.

The investigations by the EBSA are cumbersome because of a lack of guidance, thereby requiring an enormous amount of work by the plan and forcing the plan to incur professional fees.

The initiative which began on the east coast with the Philadelphia office has now migrated to west coast offices. Trustees, plan administrators, and TPAs should take these investigations seriously.

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