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TIPS FOR LOCATING "MISSING" PLAN PARTICIPANTS

Efficient and economical retirement plan administration includes managing the payment of vested benefits to former employees. Plan administrators strive to minimize the number of these individuals, particularly those with relatively small benefits, because associated recordkeeping and periodic disclosures are costly. In addition, some plans are required to retain an independent auditor simply because these inactive participants swell the plan participant count. If a plan administrator cannot locate a former employee, sound administrative practice dictates that this situation be remedied sooner, rather than later. In fact, as pointed out in the Department of Labor's new Field Assistance Bulletin (FAB-2014-01), plan sponsors must make "reasonable" efforts to locate "missing" participants in accordance with their fiduciary duties. The following represent some helpful tips to plan administrators for locating former employees with vested benefits:

- If a letter is returned, send a second letter by certified mail, return receipt requested.
- Check the former employee's personnel file to identify persons who may know the employee's whereabouts. This includes the named beneficiary in the worker's retirement plan file and or his/her group insurance paperwork, the employee's emergency contact, or spouse. Letters or phone calls to these individuals may produce the answer.
- Check with other employees at your company to see if the individual's co-workers have information about the former employee's location.
- If you think the individual may have moved, call directory assistance to get a telephone number.
- Check such public "social media" sites as Facebook, or LinkedIn, or public record data bases for real estate owned by the individual or even private websites such as a credit reporting agency.
- Contact the Department of Motor Vehicles.
- If none of the above resources prove successful, and the balance is significant, a private investigator can be retained. Some will perform this service for as little as $50.
- The Department of Labor has recognized this effort may require some time and money, so their FAB 2004-02 states that the participant's account balance may be charged for reasonable expenses of locating him/her, provided such reimbursements are consistent with the terms of the plan document.

Please note, what the plan fiduciary can *not* do is merely issue a distribution with a 100% federal income tax withholding in an attempt to transfer the balance and the responsibility to the IRS. Nor can the plan sponsor utilize the IRS/Social Security "letter forwarding" program, as both of these programs have been discontinued.

Many plans provide that if the benefit is over $1,000 and not over $5,000, the benefit is automatically transferred to an IRA if the participant does not specify an alternative. Since missing participants do not specify an alternative distribution, their benefits can be transferred to an IRA under this provision.

Although retirement plan participants have the protected legal right to defer receipt of benefits that exceed $5,000, prudent plan administration practices can be implemented that eliminate or minimize the number of former participants with small benefits. Diligent address maintenance management is an important part of this process.

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DEFINED BENEFIT PLANS: THE HIGHWAY AND TRANSPORTATION FUNDING ACT

On August 8, 2014, the Congress's need for Highway funding collided with the defined benefit pension plan world, and its corporate/employer sponsors, holding billions of dollars of available funds. The result was the Highway and Transportation Funding Act, ("HATFA" or the "Act"). Simply put, the Act provides added tax revenue to the IRS by increasing employer's income tax liability due to decreased (minimum required) deductible pension contributions. For the business owner, and the corresponding enrolled actuary, who together determine the required employer contribution to their employee pension plan, the timing of the minimum funding relief is brought about by the retroactive nature of the Act's provisions.

The minimum funding amount is determined by a number of important assumptions, with one of the important assumptions being the interest rate used to determine how fast the pension plan's assets will grow. A key mathematical relationship holds that when the required interest rates rise, the pension plan's required contribution by the employer (conversely) falls. HATFA dictates the use of higher interest rates and so this results in lower required minimum funding amounts.

While the HATFA interest rate change will decrease the minimum employer contribution to the pension plan, it will not change the maximum deductible contribution, or the calculation of any employee lump sum benefits, nor the Pension Benefit Guaranty Corporation's insurance premiums.

Since the Act is *retroactively* effective for 2013 tax years, the Act does give the employer the option of electing out of the Act's provisions for the 2013 income tax year. However, the Act's increase in interest rates will be required in 2014. Employers interested in having their actuary use the higher rates for 2013 have only until September 15, 2014 to determine and fund the lower required 2013 minimum funding amount if their Plan Year ended December 31, 2013. A number of pension plan actuaries have already performed the 2014 valuation. In the absence of guidance to the contrary which may be forthcoming from the government, these valuations must be revised in order to reflect the new interest rates and associated minimum employer contribution.

Ultimately, the plan sponsor should temper its recognition of higher (HATFA) interest rates, and the resulting lower minimum, annual employer pension contribution, with the fact that the *ultimate cost* of the pension plan has not changed, merely the short term budgeting of such a long term deductible investment.

SMALL RETIREMENT PLANS SCRUTINIZED BY DOL

The Department of Labor's Inspector General is looking at how the department's Employee Benefits Security Administration monitors plans that claim the "small plan" exemption from the annual independent audit requirement.

As part of this initiative, the Inspector General recently began sending out letters to sponsors of small plans, who claimed an audit waiver, requesting:

- A copy of [the] plan's Summary Annual Report showing all qualifying investments and regulated financial institution certification(s) for the plan's investments, trust statements and associated detailed asset schedules; and

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- Documentation used to calculate the number of participants at the beginning and end of the year on forms 5500-SF.

Normally, small plans (generally plans with fewer than 100 participants) are exempt from the audit requirement if certain requirements are met. If you receive such a letter from the DOL, please contact your Account Manager with questions or concerns.

REMINDERS FOR SEPTEMBER

September 15 – Defined contribution plan employer contributions are due for employer tax returns to be filed September 15 covering the fiscal year ending 06/30/2014 and for the calendar year ending 12/31/13 tax returns that are on extension to September 15.

September 15 – Defined benefit plan minimum 2013 contributions are due for calendar year plans.

September 15 – Form 5500 Series/8955-SSA – Forms are due for the Plan Year Ending 11/30/2013 that are on extension.

September 30 – Form 5500 Series/8955-SSA – Forms are due for Plan Year ending 02/28/14 that have not been placed on extension.

FOR MORE INFORMATION OR TO REQUEST A PROPOSAL, PLEASE VISIT OUR WEBSITE AT WWW.NRSERVICES.COM, OR FOR SALES SUPPORT, PLEASE CONTACT:

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