

10 Ways to Manage With Terminated



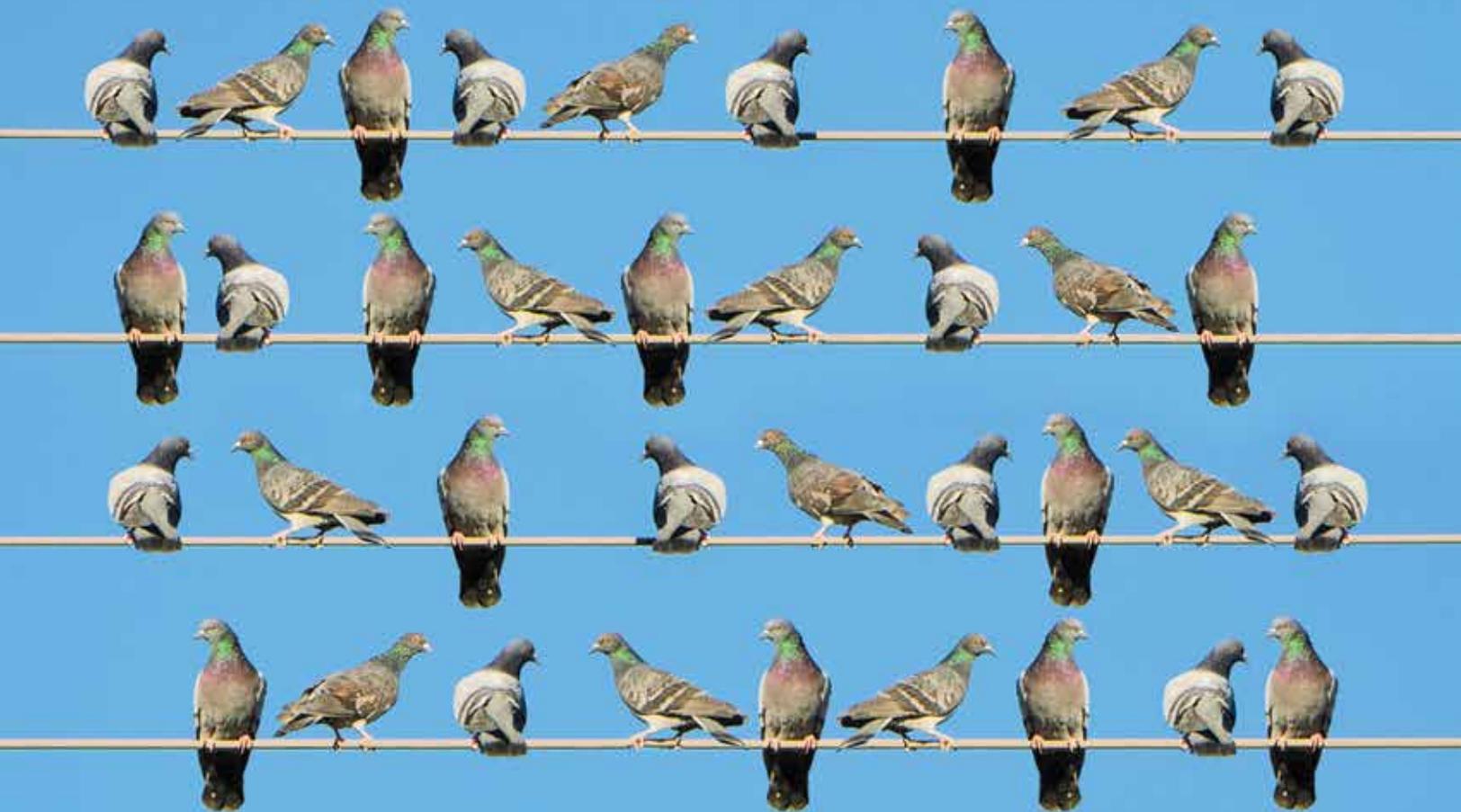
education | research | information
benefits
MAGAZINE

Reproduced with permission from *Benefits Magazine*, Volume 54, No. 12, December 2017, pages 34-38, published by the International Foundation of Employee Benefit Plans (www.ifebp.org), Brookfield, Wis. All rights reserved. Statements or opinions expressed in this article are those of the author and do not necessarily represent the views or positions of the International Foundation, its officers, directors or staff. No further transmission or electronic distribution of this material is permitted.

Retirement plan sponsors are responsible for identifying, locating and notifying terminated vested participants of their rights to benefits. In light of an investigation by the Department of Labor into timely disbursement of these benefits, the author offers ten strategies for managing these responsibilities.

Responsibilities Vested Participants

by | Zane Dalal



As many plan sponsors already know, there is an ongoing nationwide investigation by the Department of Labor (DOL) into large defined benefit (DB) plans. This investigation focuses particularly on the timely disburse-

ment of pensions to terminated vested participants. The policing arms of the Employee Retirement Income Security Act (ERISA), the DOL and the Internal Revenue Service (IRS) hold plan sponsors and their fiduciaries responsible for identifying, locating and notifying

participants who have earned the right to benefits.

In the past, the Social Security Administration (SSA) tracked vested participants who were entitled to benefits. Their notification to potential recipients that benefits were due, based on SSA

records, generated an increase in benefit inquiries at the DOL. As a result, the DOL began its investigations to determine if these reported benefits were being paid out. What began as a regional probe in 2016 has now reached nationwide proportions and has rigorous objectives in making sure that DB plans are doing their duty under ERISA.

Last year, the DOL publicized its heightened enforcement of these measures and its investigation into plan procedures. The department's focus was in three areas: (1) locating missing participants, (2) informing terminated vested participants that a retirement benefit was due and (3) beginning benefit payments when the participant reached the age of 70½.¹

While DB plans are the current focus, it is likely that defined contribution (DC) plans will be included in future investigation. The DOL, using SSA information along with filed Forms 5500, has already found that significant numbers of terminated vested participants eligible for payment have not been paid. Early in the investigation, the amount of unpaid benefits exceeded half a billion dollars in just six large DB

plans, proving that plans needed to do much more than they were.

Unless specified to the contrary in plan documents, IRS rules state that a required minimum distribution (RMD) must be applied by April 1 of the year following the year in which a participant turns 70½. For example, participants who turned 70½ in December 2013 would have been required to make an RMD by April 1, 2014. However, if the participant turned 70½ in January 2014, the RMD would not be due until April 1, 2015.

RMDs are a concern not only for the plan but for the participants who must pay tax penalties if they are late making RMDs. The late mandatory withdrawal, or RMD, can accrue an excise tax penalty of up to 50%, which is assessed to the participant, so it's something plan sponsors want to keep a good handle on for the benefit of their members.

The issue of paying benefits to terminated vested participants is closely tied to plan responsibilities for locating lost or missing participants. Recommendations for best practices in finding lost or missing participants were contained in a 2013 report of the Advisory Council on Employee Welfare and

Pension Benefit Plans to then Labor Secretary Tom Perez.² However, these recommendations were scant in their scope. Witnesses who testified before the council said participants should be more communicative in sharing their data and demographic information.

The council found that there was a lack of coordination between the DOL, the Pension Benefit Guaranty Corporation (PBGC) and the SSA in defining and publishing a proper centralized regime to address overlapping issues related to lost participants, and it asked the DOL to share the findings of the report to "promote inter-agency cooperation."

The council felt plans should take measures to maintain and update information and that participants should be responsible for keeping plans informed of their contact information. The council recognized that no single step would solve all lost participant problems; however, it hoped that combined efforts of plans, participants and governmental programs would decrease the incidents of lost participants and reduce the administrative burdens associated with finding those participants.

There is still a lack of guidance on many issues, and plan sponsors are left in the position of constructing, documenting and implementing best practices of their own. However, not having good policies in this regard is considered by the DOL to be "dereliction of duty" under the provisions of ERISA. The recommendations in the report are included in these ten tips that plans should consider when managing their responsibilities to terminated vested participants.

1. **Set internal procedures.** Plan sponsors and administrators

learn more

Education

Essentials of Multiemployer Trust Fund Administration

June 4-8, 2018, Brookfield (Milwaukee), Wisconsin

Visit www.ifebp.org/essentialsmc for more information.

Accounting and Auditing Institute for Employee Benefit Plans

June 25-27, 2018, Las Vegas, Nevada

Visit www.ifebp.org/accountants for more details.

From the Bookstore

Trustee Handbook: A Guide to Labor-Management Employee Benefit Plans

Lawrence R. Beebe. International Foundation. 2017.

Visit www.ifebp.org/trusteehandbook for more information.

must set proper internal procedures to identify, locate and notify terminated vested participants. The DOL has already identified that plan procedures are either missing in this regard or, if in place, are not used frequently or effectively enough.

2. **Maintain accurate participant data.** The IRS and the SSA have ceased operation of their programs for locating missing participants, which means plans must rely on their own records. Every plan should make sure steps are in place to track, record and retrieve detailed, accurate and complete information on any participant, including correspondence, notifications, benefit rate changes and chronological events. Most plans have policies in place, but they may require checking. Proper recordkeeping is a crucial step in paying out a benefit, especially date-of-birth data. This includes maintaining best practices for record retention and making sure that all participant data is adequately retrievable. Plans should consider complete electronic scanning of documentation so that data is easily indexed and retrievable.
3. **Use all available data tools.** These include paid research services or databases such as postal services, obituary searches, national change of address database, Social Security Death Index, etc., that might identify and locate missing or lost persons. In some cases, it is appropriate to use credit reporting bureaus. Guidance from the PBGC, DOL and IRS on making use of all these data tools has been scant. Filing an IRS Form 8955 in conjunction with Social Security registration allows for identifying a terminated vested participant and satisfies federal reporting requirements. However, this form alone does not cover the notification requirement in regard to the participant. The DOL also considers the practice of making benefit payments only as a result of receiving applications as inadequate.
4. **Conduct database searches systematically.** When using a database, it is preferable to conduct these searches in an ongoing, systematic, proactive and frequent manner. Plans should define demonstrable procedures that determine why and how frequently searches are performed. They should make sure searches are not sporadic or reactive to events and should consider setting regular dates within the year to support accurate federal filings. Plans also should make sure their search parameters define the information they are requesting.

takeaways

- The Department of Labor (DOL) has launched a nationwide investigation of large defined benefit pension plans on plan efforts to timely disburse pension benefits to terminated vested participants.
- The Internal Revenue Service (IRS) requires that required minimum distributions (RMDs) from a pension plan must be taken annually by April 1 of the year following the year in which the year a participant turns 70½.
- A recent report from the Advisory Council on Employee Welfare and Pension Benefit Plans to former Labor Secretary Tom Perez found that there was a lack of coordination between the DOL, the Pension Benefit Guaranty Corporation (PBGC) and the Social Security Administration (SSA) in defining and publishing a proper centralized regime to address overlapping issues related to lost participants.
- The IRS and the SSA have ceased operation of their programs for locating missing participants, so every plan should make sure steps are in place to track, record and retrieve detailed, accurate and complete information on any participant, including correspondence, notifications, benefit rate changes and chronological events.
- Plans should use all available data tools, including paid research services or databases—postal services, obituary searches, national change of address database, Social Security Death Index, etc.—that might identify and locate missing or lost persons.

Some search databases have different criteria, so plans should ensure that those criteria match the specifics of their searches. There are variances in cost, but plan sponsors must assume reasonable costs for due diligence required under ERISA.

5. **Clearly define lost and missing participants.** Organizations must set up proper internal procedures to define the difference between a *lost* or a *missing* participant. This is an important step to deciding what action is necessary. In the case of a missing participant, the search efforts must continue. In the case of a lost participant, the possibility of funding a rollover account might be the next step. Plans should make sure that uncashed checks, undeliverable notices, unpaid contributions, etc., are duly noted.
6. **Ensure accuracy of active participant data.** In continuing a proactive stance while participants are still active, plans should consider making a monthly request of participating employers as part of the contri-

bution cycle to correct bad information such as addresses and Social Security numbers. They should consider making a similar monthly request of local unions to ensure the accuracy of participant data.

7. **Demonstrate recurring notification efforts.** The DOL requires demonstrable “recurring efforts” to notify participants, including the recurring annual notifications—especially notifications after the age of 70½—of the vested right to a pension. Plans should make sure that these recurring efforts are regularly noted at board of trustees meetings. The IRS requires plan sponsors to remind terminated vested participants over the age of 70½ that their payments should begin and to initiate those payments in a timely manner.
8. **Remind participants to update information.** Trustees might consider using language in plan documents and/or regular participant notifications that warns of the possible delay or loss of benefit resulting from incorrect or incomplete demographic data, to encourage participants to be proactive in sharing their information with the administrative office. However, the responsibility of notification still lies with plan fiduciaries, and adding language alone is more of a caveat than a legal protection.
9. **Roll over benefits for lost participants into individual retirement accounts (IRAs).** Plans are prohibited from keeping money that is intended for benefits without disbursement. Plans should consider rolling over benefit payments for lost participants into IRAs. Typically, trustees can establish a dollar threshold, where an identified but unlocated beneficiary is assigned an account. In most cases, this will relieve the plan of any further notification responsibility and allow the participant to come off the plan rolls in accordance with DOL regulations and safe harbor rules.

bio



Zane Dalal is executive vice president of Benefit Programs Administration (BPA). BPA is a technology-driven third-party administrator for Taft-Hartley and other benefit plans and has been in operation since 1948. Dalal holds master’s degrees from the University of Oxford in England and Indiana University.

Demonstrate best efforts to locate lost participants. There may be cases in which location and notification of a beneficiary, even a terminated vested participant, is impossible. Certain sectors of the workforce are more prone to relocation, repatriation and immigration uncertainties and/or are at a disadvantage with formal communication or understanding their rights. However, the DOL would like to see plan sponsors do everything they can to locate these participants and communicate these rights. Devising plans to satisfy this responsibility, even when success might be unlikely, is a DOL requirement.

In an October 17, 2017 memorandum, the IRS directed its employee plans examiners not to challenge a qualified plan as failing to satisfy the RMD standards of IRC 401(a)(9)—if that plan has also made efforts cited in this article—to locate lost or missing participants. Namely, the plan must have searched its records and those of related plans/sponsors and publicly available information; it must have exercised a data search through a recognized data tracking system, a credit reporting bureau or other online database; and it must have gone through a U.S. Postal Service search of last known address, etc. The IRS has emphasized that although this memorandum is a directive to its examiners, it does not yet hold the force of law and will not be incorporated into the *Internal Revenue Manual* until 2019.

Conclusion

The points above are not intended to be exhaustive. Plan sponsors must always seek to improve methods and procedures in the service of their members. This DOL investigation shows that responsibilities for plan sponsors—especially issues of compliance under ERISA—require due diligence, regardless of whether the federal government has given adequate guidance.

The process of good plan administration should be under constant review and is best served by a cooperative, synergistic and reciprocal stance amongst plan sponsors, their professionals and the federal government. 📌

Endnotes

1. “DOL Focuses Attention on Benefit Payment practices of DB Plans,” ML Benefits blog, Morgan, Lewis & Bockius LLP, February 12, 2016. Available at www.morganlewis.com/blogs/mlbenefits/2016/02/dol-focuses-attention-on-benefit-payment-practices-of-db-plans. Also see www.segalco.com/publications-videos/update/dol-investigating-timely-payment-of-pensions-to-terminated-vested-participants-nationwide/#Multiemployer.

2. See www.dol.gov/sites/default/files/ebsa/about-ebsa/about-us/erisa-advisory-council/2013ACreport3.pdf.