Management Alert

Missing Participants and Beneficiaries and Required Minimum Distributions

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Seyfarth Synopsis: *The Internal Revenue Service released guidance detailing specific procedures qualified retirement plans may utilize to satisfy required minimum distribution standards for missing participants and beneficiaries.*

Internal Revenue Code section 401(a)(9) establishes required minimum distribution ("RMD") standards for qualified retirement plans. Generally, these standards require a participant's benefit payments to begin no later than April 1 of the calendar year after the participant attains the age 70½ or retires. In the case of a deceased participant, RMD payments must generally be made to a non-spouse beneficiary within five calendar years after the year of the participant's death. The Internal Revenue Service ("IRS") has released administrative guidance regarding how qualified retirement plans may satisfy RMD standards when the participant or beneficiary to whom the payment is due cannot be located.

A qualified retirement plan that cannot locate a participant or beneficiary will be treated as satisfying RMD standards if the plan: (1) searches plan and publically available records for the participant's contact information; (2) uses a commercial locator service, credit reporting agency or proprietary internet search tool to locate the participant or beneficiary; and (3) attempts to contact the participant or beneficiary via United States Postal Service certified mail to the last known mailing address and any other appropriate means of contact, such as by email or telephone.

Implications for Employers

Prior to this guidance, qualified retirement plans that did not make RMDs to missing participants or beneficiaries risked being considered in violation of the RMD requirements, and different IRS regions could apply different standards on audit. Now, qualified retirement plans that cannot locate a participant or beneficiary will be treated as not violating the RMD standards if in compliance with the procedures above.

Although this new guidance is very helpful to plan sponsors, note that the Department of Labor ("DOL") also audits retirement plans to assure that a plan maintains a prudent process for locating participants and paying benefits. The IRS's guidance does not necessarily reflect what efforts the DOL may require a plan to make to locate lost participants.

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