

MINIMUM REQUIRED DISTRIBUTIONS – IRS GUIDANCE FOR HANDLING MISSING PARTICIPANTS

Hodgson Russ Employee Benefits Newsletter
October 19, 2017

Practices & Industries

Employee Benefits

Missing participants and beneficiaries, as well as issued but uncashed distribution checks, present administrative challenges that add to the time and expense of administering qualified retirement plans. The inability to timely satisfy the required minimum distribution (RMD) rules (i.e., the rule that generally require the commencement of benefit payments by April 1 of the calendar year following the later of the year in which the participant attains age 70½ or the year in which the participant retires from employment) is just one of the problems plan administrators confront when participants cannot be located. The fact that plan examinations by both the Internal Revenue Service (IRS) and the Department of Labor (DOL) include a focus on whether retirement plans are following proper distribution procedures and are making RMDs compounds the pressure felt by plan sponsors to have adequate missing participant procedures in place. However, the lack of coordinated and comprehensive DOL and IRS guidance on the handling of missing participants and uncashed distribution checks, despite industry urgings, has left plan administrators uncertain as to exactly what those procedures should be.

The good news for plan administrators is that the IRS has recently provided some helpful guidance in the form of a memorandum to its plan examiners instructing the examiners *not* challenge a qualified plan for violation of the RMD standards where there is a failure to commence or make a distribution to a missing participant or beneficiary to whom a payment is due, as long as the plan administrator has taken the following steps:

- Searched plan and related plan, sponsor, and publicly-available records or directories for alternative contact information;
- Used any of the following search methods:
 - A commercial locator service;
 - A credit reporting agency; or
 - A proprietary internet search tool for locating individuals; and
- Attempted contact via United States Postal Service (USPS) certified mail to the last known mailing address and through appropriate means for any address or contact information (including email addresses and telephone numbers).

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This guidance obviously helps plan administrators to understand what they need to do to avoid an RMD compliance problem, and plan administrators will want to be certain their missing participant procedures fall into line with this new guidance. However, this is not the comprehensive missing participant guidance many were hoping for, and this guidance does not represent a statement as to what missing participant procedures the DOL will find acceptable.

The IRS memorandum referenced in this article can be found at <https://www.irs.gov/pub/foia/ig/spder/tege-04-1017-0033.pdf>).