

DOL's Newly Announced Investigation into Defined Benefit Plans for Failure to Pay Participants

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On January 22, 2016, during a panel discussion (which included Brad Huss) at the Los Angeles Advanced Pension Conference, Elizabeth Hopkins, Counsel for Appellate and Special Litigation, Office of the Solicitor, Plan Benefits Security Division, United States Department of Labor ("DOL"), stated that the DOL has initiated an investigation into large defined benefit plans to determine whether their plan sponsors are locating and paying terminated vested participants who are retirement-eligible.

Ms. Hopkins stated that some of the apparently noncompliant plans have no procedures in place to ensure timely payment of employees' retirement benefits and that other plans have failed to follow their own procedures. These failures may involve breaches of the fiduciary duties owed by plan sponsors and administrators to their participants and thereby might expose them to liability for any adverse tax consequences suffered by the participants.

The DOL's investigation has already uncovered more than half a billion dollars in unpaid benefits owed by just six large pension plans, and its scope is expanding. Ms. Hopkins noted that even some plans with "really good written procedures" could run into compliance problems if they fail to follow these procedures and thereby fail to provide vested benefits to former employees, some of whom may have terminated employment years previously.

It is important that plans create adequate written procedures and that they follow these procedures in the disbursement of retirement benefits. It is also incumbent upon plan sponsors and plan administrators to ensure that any third party administrators upon whom they rely to ensure proper payments to their beneficiaries are compliant with the details of their plan as well as with the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 requirements. An internal review of all covered plans is the first step in ensuring this compliance.

If this review reveals any problems with either the written procedures or their implementation, rapid voluntary correction of any noncompliance is crucial in order to avoid potential liability. If you have questions regarding these issues, please contact the Trucker Huss attorney with whom you normally work.

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