Complying with the Required Minimum Distribution Rules When Participants Are Unresponsive or Uncooperative

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The Internal Revenue Code's (the "Code's") required minimum distribution (RMD) rules are a cornerstone of retirement plan compliance, ensuring that participants begin withdrawing benefits and paying applicable taxes once they reach their required beginning date (RBD). Maintaining compliance with the RMD rules is a core element of tax-qualified plan operations, which in practice often presents challenges for ERISA plan administrators (Plan Administrators) and their professional service providers (TPAs)—particularly when participants fail to respond, cannot be located, or ignore repeated communications. The issue of unresponsive and uncooperative participants creates significant administrative burdens, fiduciary risks and potential compliance failures for tax-qualified retirement plans. This article explores these compliance challenges, outlines relevant agency guidance and provides practical strategies for managing risk when participants due to commence distributions from a plan are unresponsive or uncooperative, for whatever reasons (the latter group is also referred to herein as "recalcitrant participants").

Overview of Required Minimum Distribution Rules

The RMD rules establish when and how retirement plan participants must begin taking distributions. Defined contribution plans (e.g., 401(k), profit sharing, 403(b) and 457(b) plans), and defined benefit plans are subject to RMD requirements, though the operational rules differ based on plan type. Compliance with these rules is critical for plan administrators, as failure to follow RMD requirements can result in plan qualification risks and significant tax penalties for impacted participants.

When Plan Participants Must Take RMDs. A participant must begin taking RMDs by their RBD, which is typically April 1 of the year following the calendar year in which the participant reaches the applicable RMD age (currently 73 for individuals born between 1951 and 1959, and 75 for those born in 1960 or later).

Plans may, however, provide that a participant who is not a 5% owner and who has not yet retired (i.e., is still working for the plan sponsor) can delay RMDs until April 1 of the year after retirement.

How RMDs Are Calculated. For defined contribution plans, RMDs must be paid annually by December 31 after the first RMD payment. The annual RMD amount is determined by dividing the participant's prior year-end account balance by the applicable life expectancy factor from the Internal Revenue Service (IRS) Uniform Lifetime Table.

For defined benefit plans, RMDs are generally satisfied once periodic annuity payments begin, provided those payments meet the Code's rules for lifetime or actuarially equivalent distributions. If a participant has not yet started receiving benefits by his or her RBD, the plan must begin minimum benefit payments by that date. The plan must ensure that the annuity starting date and payment form comply with the RMD distribution standards.

Unlike defined contribution plans, RMDs under defined benefit plans typically do not require separate annual calculations once payments begin, but Plan Administrators must still confirm that benefit commencement dates and actuarial assumptions align with Code requirements.

Challenges in Complying with the RMD Rules: Unresponsive Participants

Retirement plans often experience difficulties in complying with RMD rules due to frequent participant turnover, decentralized recordkeeping and generalized participant disengagement, all of which leads to participant unresponsiveness. Plans routinely lack current contact information for terminated participants, especially those who have been separated from the company for a long period of time. Returned mail, invalid email addresses and inactive online accounts complicate communication and hinder a plan administrator's ability to pay RMDs.

For a recalcitrant participant, a Plan Administrator may have no doubt as to the participant's whereabouts or how to contact them. In fact, the participant may be in contact with the Plan Administrator regarding matters other than distributions, for example, to initiate a change in investment allocation or to update a mailing address or telephone number. However, this participant fails to cooperate with the plan administrator when it comes to providing consent to an RMD (e.g., fails to return distribution election forms or provide needed documentation, such as proof of age or spousal consent). Without accurate data and participant cooperation, Plan Administrators and TPAs cannot issue timely RMD notices or properly calculate RMD amounts.

Failure to make timely RMDs can subject a plan to disqualification, and participants to excise tax on missed distributions. Untimely RMDs also lead to administrative complexities, especially if a participant experiences a life event after reaching their required beginning date—such as death, disability or divorce. Additionally, if a participant in a defined benefit plan later resurfaces, the plan must determine whether missed payments require actuarial increases or retroactive lump sums. These adjustments can be costly and administratively complex.

Strategies for Plan Administrators to Demonstrate Good-Faith Compliance with Government Agency "Missing" Participant Guidance

Even when participants are unresponsive or recalcitrant, Plan Administrators are expected to act in good faith, and document all reasonable efforts to comply with the RMD rules. The IRS has acknowledged that a plan will not be treated as failing to satisfy the RMD rules merely because a participant refuses or fails to accept a required distribution, provided the plan took timely and reasonable steps to comply with the rules.

To mitigate RMD compliance risks, Plan Administrators and their TPAs should establish administrative procedures for identifying, locating and engaging with participants about their RMDs. Best practices include:

» <u>Early Identification and Regular Data Audits</u>. The Plan Administrators and TPAs should, on a regular basis:

- Verify participant birthdates and employment status;

- Update addresses using payroll or HR data; and
- Flag individuals approaching RMD age.

» Coordination with Service Providers. Plan Administrators should coordinate with recordkeepers, TPAs and payroll providers to maintain accurate data and implement a consistent RMD compliance process (including a process for identifying participants who are nearing their RBDs, calculating RMD amounts and timely sending out distribution forms).

» Follow IRS Guidance on Missing Participants. In its Memorandum TE/GE-04-1017-0033 (Oct. 19, 2017), the IRS provided clear direction to examiners on how to address situations where retirement plans have failed to make RMDs to missing participants. Specifically, IRS examiners are directed not to challenge a plan for failing to pay RMDs to missing participants if the plan demonstrates that it has taken appropriate, reasonable search steps. These steps include:

- Searching for alternate contact information using records of the plan, the plan sponsor, any related plans and publicly available information. This includes addresses, phone numbers and email addresses.
- Using a commercial locator service, credit reporting agency or proprietary internet search tool.
- Sending a certified letter to the participant's last known mailing address and through any other appropriate communication channels, such as email.
- Documenting all steps taken to locate the missing person.

» Follow DOL Best Practices to Locate Missing Participants**.** The U.S. Department of Labor (DOL)'s Field Assistance Bulletin 2021-01 outlines best practices to help plan fiduciaries locate missing participants. These best practices are designed to help fiduciaries demonstrate prudence under the Employee Retirement Income Security Act of 1974 by taking reasonable steps to locate missing participants, pay out benefits and reduce the number of uncashed checks or unclaimed accounts. Best practices include:

- Maintaining Accurate Contact Information
  - Periodically confirming participant and beneficiary contact details.
  - Using plan enrollment, beneficiary designation and other forms to collect mailing addresses, phone numbers and email addresses.
  - Promptly updating records after returned mail, undeliverable notices or electronic delivery failures.
  - Coordinating data across service providers (recordkeepers, payroll and HR systems) to ensure consistency.
- Conducting Effective Communication and Outreach
  - Using multiple communication methods (mail, email, phone, text) to contact missing participants.
  - Attempting contact through both work and personal information.
  - Notifying participants regularly about the importance of keeping contact information current.
  - Including missing participant reminders in plan communications such as benefit statements.
- Searching for Missing Participants
  - Checking plan and employer records, and reaching out to designated beneficiaries or emergency contacts.
  - Using free online search tools, public databases or social media to locate individuals.

    - If internal efforts fail, using a commercial locator service, credit reporting agency or death index search.
    - Collaborating with related plans of the same employer (e.g., health or welfare plans) to locate individuals.
- Establishing and Documenting Policies and Procedures
    - Adopting written policies outlining steps for maintaining contact information, conducting searches and documenting outcomes.
    - Keeping detailed records of search efforts, communications and results.
    - Periodically reviewing and updating procedures based on experience and DOL guidance.
- Engaging in Ongoing Fiduciary Oversight
    - Ensuring that service providers follow consistent procedures to identify and locate missing participants.
    - Evaluating search efforts for cost effectiveness and reasonableness based on participant account balances.
    - Periodically auditing participant data and locator processes to improve accuracy.

For more information about DOL Best Practices, see "Missing Participants: The Search Continues (https://www.truckerhuss.com/2022/02/missing-participants-the-search-continues/)" (Trucker Huss, February 22, 2022).

» Adopt Default Distribution Policies. For defined contribution plans, the plan document should outline clear default procedures where a participant's whereabouts are known, but fails to respond to, or cooperate about, the timely distribution of his or her RMD. Options may include:

- Issuing a distribution check to the participant's last known address;
- Transferring small balances (typically under $5,000) to a rollover IRA; or
- Following applicable state unclaimed property laws if checks remain uncashed.

For defined benefit plans, the plan document should specify a default form of benefit that can be initiated without participant election, consistent with spousal protections.

» Enhance Participant Communication Strategies. Plan Administrators should ensure communications to participants about RMD requirements are clear and frequent. This includes:

- Sending early RMD notifications;
- Using email, text alerts and online portals in addition to mailed notices;
- Highlighting potential tax penalties for missed RMDs; and
- Including reminders in annual benefit statements.

» Maintain Comprehensive Documentation. Plan Administrators should maintain written evidence of:

- Search efforts and communication logs;
- RMD calculation records;
- Procedures for handling uncashed checks or missing participants; and
- Decisions made regarding default benefit initiation.

The strategies and procedures described above do not amount to an exhaustive list of the actions that can be taken to address unresponsive and recalcitrant participants, but it does provide an excellent framework from which to design a prudent process. Ultimately, plan administrators must take timely and reasonable approaches aimed at facilitating compliance with the Code's RMD rules, consistent with IRS and DOL guidance.

Conclusion

Unresponsive and uncooperative participants present persistent administrative challenges in retirement plan management. While plan administrators cannot compel participant cooperation, they can implement robust administrative procedures (i.e., accurate recordkeeping and diligent search efforts) to identify, locate and engage with participants about their RMDs and inform them of the penalties they may face if the Code's requirements in this regard are not met. And plan administrators should thoroughly document all actions taken to establish prudence and good-faith compliance with the RMD rules and agency guidance. These actions are essential to maintaining a plan's tax-qualified status and defending against related fiduciary breach claims.

If you have questions about compliance with the Code's RMD when participants fail to be responsive, please contact us.

PUBLICATION INFO:

The Trucker Huss Benefits Report is published monthly to provide our clients and friends with information on recent legal developments and other current issues in employee benefits. Back issues of the Benefits Report are posted on the Trucker Huss website (www.truckerhuss.com (https://www.truckerhuss.com))

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