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To: Trustees, Waterfront Warehouses Local 1429 Pension Fund

From: Kimberly Bradley and Shauna Barnaskas

Date: February 12, 2021

Re: DOL Guidance on Lost and Missing Participants

Introduction

Several years ago the Employee Benefits Security Administration ("EBSA") division of the United States Department of Labor ("DOL") launched a nationwide compliance initiative related to payment of benefits to terminated vested participants in defined benefit pension plans. This was in part, a response to DOL audits of plans with millions of dollars of unclaimed pension benefits for participants who were older than normal retirement age. The initiative concerns a pension plan's practices in maintaining complete and accurate information, communicating benefits to participants and beneficiaries, and implementing plan procedures for locating and notifying participants that benefits are due and payable at normal retirement age. The initiative was launched in response to a growing concern that there is a widespread problem such that there could be billions of dollars of pension benefits due and payable to workers that have not been distributed. DOL had affirmed that failure to identify, locate, and distribute benefits to participants who are entitled to payment is a violation of the fiduciary duties of prudence and loyalty, but had not previously provided specific guidance regarding plan actions that would comply with its interpretation regarding missing participants.

Until recently, DOL guidance addressed lost and missing participants in the context of plan termination; it never provided guidance addressing the practical realities of resolving these issues in the context of an ongoing plan. However, due to the fact that many DOL plan audits were revealing inconsistent enforcement actions and varying positions on search methods, on January 12, 2021, DOL issued internal compliance guidance for its Regional Directors, as well as guidance on "best practices" for pension plans to follow in locating missing participants and ensuring that plan participants and beneficiaries receive their promised benefits at normal retirement age. This memorandum focuses on the recent "best practices" guidance from EBSA's Office of Regulations and Interpretations.

"Red Flags" Indicating a Missing Participant Issue

In its audits, DOL found that many times there are "red flags" or warnings that indicate a plan has a problem with lost or missing participants, but either fails to address it, or does not know how to resolve it. Two principal indicators of a missing participant issue include more than a small number of missing or nonresponsive participants, and more than a small number of terminated vested participants who have reached normal retirement age, but have not begun receiving their pension benefits. This often stems from missing, inaccurate, or incomplete contact information such as outdated physical addresses or email addresses, partial social security numbers, and missing spouse information. In addition, some plans do not have sound policies and procedures for handling returned mail or uncashed checks.

Conversely, plans with a low number of nonresponsive participants share the following common characteristics: ensuring plan records are complete, up to date, setting up methods to locate and document searches for missing participants, and taking proactive steps to ensure participants and beneficiaries are receiving their entitled benefits. DOL believes that those plans have established "best practices" in managing their plan and utilizing policies and procedures to continuously ensure it is minimizing the number of missing participants.

Best Practices

For the first time, DOL has issued "best practice" guidance for plan fiduciaries to consider in determining what steps are appropriate for their plan to reduce the number of lost and missing participants. This guidance is intended to help plans minimize the number of missing participants. In doing so, DOL provided four broad categories of areas that should be analyzed, including recommended practices to help reduce lost and missing participants in each category. It notes that the practices will not be appropriate for each plan; plans should consider the size of a participant's accrued benefit and account balance in comparison to the cost of search efforts in determining what steps to take. A plan's actions should be analyzed on a case-by-case basis.

1. <u>Maintaining Accurate Census Information</u>

To ensure participants and beneficiaries are receiving their proper benefits, a plan needs to continuously have the ability to contact them both now and once they retire. This starts with maintaining accurate contact information and continuously ensuring it is up to date. DOL recommends the following steps:

- Contact participants and beneficiaries on a periodic basis to confirm or update contact information.
- Include contact information change requests in plan communications along with a reminder to advise the plan of changes to contact information.
- Flag undeliverable mail and uncashed checks, and *follow up*.
- Maintain and monitor an online platform for participants to use to update contact information.
- Provide prompts for participants and beneficiaries to confirm contact information upon login to online platforms.
- Regularly request updated contact information for beneficiaries, if any.
- Regularly audit census information and correct data errors.

2. <u>Implement Effective Communication Strategies</u>

DOL recommends common-sense communication strategies that include using plain language, clearly indicating upfront about what any communication is about, and clearly marking envelopes and other correspondence with original plan or sponsor names so recipients can easily identify the communication as important. Additionally, DOL recommends that plans encourage contact through web sites and toll-free numbers.

3. Missing Participant Searches

If a plan already has an issue with lost or missing participants, this is arguably one of the most important steps (although plans with minor issues should still utilize these steps). DOL suggests utilizing some or all of the following steps on a regular basis:

- Checking with related plans, and employers, for any participant, beneficiary or next of kin information.
- Request updated contact information from designated plan beneficiaries (i.e. spouse and children) and the employee's emergency contacts.
- Tap into colleagues and coworkers of lost and missing participants by using the union's local offices and union communications.
- Utilize free online search engines, public record databases, obituaries and social media.
- Use a commercial locator service, credit-reporting agency, or proprietary internet search tool.
- Send mail with a tracking number such as USPS certified mail.
- Attempt contact through email, telephone, text and social media.
- Conduct a death search if a participant is nonresponsive over a period of time.
- Register missing participants on public and private pension registries with privacy and cyber security protections (i.e. National Registry of Unclaimed Retirement Benefits), and publicize the registry through correspondence and communications to existing participants and retirees.

4. Documenting Procedures and Actions

The final step DOL recommends is to make sure the plan has written policies and procedures clearly establishing consistent practices, and ensure the plan is following those procedures. Document key decisions and actions taken. Fiduciaries should make sure their service providers are following these procedures and should continue to identify any areas for improvement.

Impact on Waterfront Warehouses Local 1429 Pension Plan

DOL audits in recent years have consistently targeted a plan's consideration of lost and missing participants as well as timely payment of benefits to eligible terminated vested participants. This is why the Trustees implemented a "Policy on Location and Payment of Benefits to Missing and Terminated Vested Participants" in 2017. This policy already includes many of the DOL's recommendations, including but not limited to reviewing terminated vested employees who have reached normal retirement age, or are nearing normal retirement age, including a reminder in annual benefit statements to include a reminder to update contact information, and utilizing diligent efforts to locate missing participants, and keeping records of attempts to locate missing participants. We recommend that the Trustees of the Waterfront Warehouses Local 1429 Pension Plan review its current Policy, check for any "red flags," and determine if it desires to implement any of the DOL "best practices" into its existing policy.