



## Where Have You Gone, Joe Participant?





**Alison J. Cohen, J.D., APR**

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### Your Co-Hosts

- Joanne Pecina
- Maureen Pesek
- Tim McCutcheon











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## Your Presenter Today


**Alison J. Cohen, J.D., APR**  
**Ferenczy Benefits Law Center**







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## Agenda

- Quick Bit of History
- Optimizing Plan Design
- DOL Tip-Offs
- DOL Best Practices
- Helping Your Clients Establish Procedures





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## In The Beginning....

- There was a \$3,500 cash-out threshold
- IRS and SSA provided a letter forwarding program (for actual paper letters)
  - Success rate = Not so much
- Many folks tried escheating funds to the participant's state
- Another clever option – distribute the funds with 100% federal withholding



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## Let the FAB Begin

- Field Assistance Bulletin (FAB) 2004-02
  - Use Certified Mail
  - Check Related Plan Records (Employee files, health enrollment, etc.)
  - Check with Designated Plan Beneficiary
  - Use a Letter-Forwarding Service
- FAB 2014-01
  - Replace Letter-Forwarding for Fee
  - Electronic Search Tools
  - Also, stated that NO 100% income tax option is permissible





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## Automatic Rollovers are Born

- Effective March 28, 2005, IRC § 401(a)(31)(B) applies to mandatory distributions
  - Option #1 – Cash-out limit lowered to \$1,000
  - Option #2 – Auto Rollover to an IRA permitted for amounts up to \$5,000
- Pension Protection Act of 2006
  - PBGC charged with creating missing participant program
    - Took them 10 years to develop the program





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## Plan Design Options

- Why choose \$1,000 cash out?
  - Keeps more assets in the trust
  - As easy as drafting a letter of directive to force out
- Drawbacks of cash out
  - May create uncashed check problems
  - Increase in terminated participant accounts can lead to audit expenses
  - Re-hires may cause revolving door



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## Awesome Automatic Rollovers

- For amounts \$1,001 - \$5,000, funds can be rolled over to an IRA
  - There are numerous vendors that accept forced rollovers
  - Many RKs have automated process
  - Also have the ability to exclude Rollover Contributions in determining account balance



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## Awesome Automatic Rollovers

- **Example:** Sally terminates with \$1,000 in deferrals and \$6,000 in rollovers. Even with \$7,000, Sally can be rolled to an IRA anyway because we can potentially exclude the \$6,000.
- **Example:** Timothy has \$2,000 in rollovers and \$5,500 in deferrals. Without the rollovers, Timothy has more than \$5,000, so he can't be forced out with an automatic rollover.



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## WARNING

- Having either provision in the document makes it a plan provision
- Therefore, NOT an option to follow
- Failure to adhere to terms of the plan is an operational failure
  - Yes, folks, that can mean VCP could be the only solution



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## Benefits to Auto Rollovers

- Prevents participant from incurring taxable income
- Maintains retirement savings
- Reduces number of participants which may help reduce count for audit and costs for admin
- In either case – reduces number of notices, disclosures, SPDs, etc. to be distributed annually; also, less addresses/beneficiaries to keep track of (and lose)



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## DOL Red Flags



- Inadequate procedures for identifying and locating missing participants/beneficiaries
- Failures to contact TVPs for RMD or NRA payments
- Large numbers of uncashed distribution checks
- Large numbers of missing or nonresponsive participants
- Missing, inaccurate or incomplete contact information, census data, etc.



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### Where TPAs Can Help Spot Flags

- Determine overall percentage of terminated participant population in plan
- Review and identify terminated participants that should be forced out
  - Lists should be provided to Plan Sponsor annually with testing/valuation with guidance
- Identify unpaid mandatory RMD/NRA payments and notify Plan Sponsor



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### Examples of DOL Best Practices

- Maintaining Accurate Census Information
  - Contact TPAs periodically to confirm contact information
  - Include contact information change requests in all plan communications
  - Flag all undeliverable mail and follow-up promptly
  - Have prompts for TPAs to confirm contact information upon login for online platform



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### Examples of DOL Best Practices (cont.)

- Maintaining Accurate Census Information
  - Monitor online platform that TPAs can use and update internal records with new information
  - Regularly audit and correct census data
  - When changing RKs, engaging in merger or acquisition, etc. ensure that census data is retained from the original entity
  - Request updated beneficiary data annually



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## Examples of DOL Best Practices (cont.)

- Implementing Effective Communication Strategies
  - Use plain language and non-English language assistance where and when appropriate
  - State upfront what the communication is about (draw the attention)
  - Encourage contact through email and websites



example



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## Examples of DOL Best Practices (cont.)

- Implementing Effective Communication Strategies
  - Build steps into the hire/term process to confirm and update information, and identify possible emergency contacts
  - Communications to aid TPs in consolidation of assets to rollover IRAs
  - Clearly mark envelope with any original plan or sponsor name



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## Examples of DOL Best Practices (cont.)

- Missing Participant Searches
  - Check employer records for TP, beneficiary, next of kin, etc. with payroll or health plan providers
  - Check with designated plan beneficiaries or emergency contacts
  - Use fee online search engines, public records DBs, obituaries, social media
  - Ask other members of the same department as the former TP



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## Examples of DOL Best Practices (cont.)

just  
another  
example

- Missing Participant Searches
  - Use commercial locator services, credit-reporting agencies, or proprietary internet search tool
  - Use USPS certified mail, private delivery service, or other options
  - Attempt contact with email, telephone, text, and social media
    - How many enrollment forms ask for personal email addresses??



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## How Do You Clean-Up?



- Not all plans have stayed on the straight and narrow historically
  - May have TPs that terminated years ago, and records exist with valid contact information
  - Treat this like a project – ID steps, responsible parties, deadlines, etc.
  - Some automatic rollover vendors can provide assistance for location of TPs
  - Plan Sponsor may need to pay for a search vendor



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## Benefits of Using the PBGC

- Benefits of any size can be transferred
- Periodic active searches by the PBGC increases the likelihood of connecting TP with benefit
- Benefits are not diminished by maintenance fees or distribution charges
- Transferred amounts grow with interest
- Lifetime income options are available for balance transfers over \$5,000



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### TPAs Can Help Develop Client Processes

- Create model procedures for \$1,000 cash out election
  - Include timing for when initial cash out can be triggered by Plan Sponsor
  - Need process for monitoring uncashed checks
    - This should be customized based on specific RK reporting and procedures
  - Annual review of overall plan TP status (was anyone missed or newly eligible?)



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### TPAs Can Help Develop Client Processes (cont.)

- Create model procedures for \$5,000 Auto R/O
  - Find vendor that will take accounts and document why vendor selected (this is a fiduciary decision)
  - Set timing for trigger of Auto R/O by Plan Sponsor
  - Annual review of overall plan TP health (was anyone missed or newly eligible?)



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## Contact Information

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## For Further Study

Joanne Pecina will demonstrate how to find more information on today's topic from the ERISApedia.com resources.



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