

Intersector Group Meeting with the Internal Revenue Service and U.S. Department of Treasury Excerpt From Notes on Form 5500 Schedule H/I Line 4L

September 14, 2016

Twice a year the Intersector Group meets with representatives of the U.S. Department of Treasury (Treasury Department) and the Internal Revenue Service (IRS) to discuss regulatory and other issues affecting pension practice. The Intersector Group is composed of two delegates from each of the following actuarial organizations: American Academy of Actuaries, Conference of Consulting Actuaries, Society of Actuaries and ASPPA College of Pension Actuaries. Attending from the Intersector Group at this meeting were Tom Finnegan, Ted Goldman, Eli Greenblum, Eric Keener, Judy Miller, Heidi Rackley, Maria Sarli, and Josh Shapiro. Matthew Mulling, Academy staff member supporting the Intersector Group, also attended.

These meeting notes are not official statements of the Treasury Department or the IRS and have not been reviewed by their representatives who attended the meeting. The notes merely reflect the Intersector Group's understanding of Treasury Department/IRS representatives' views expressed at the meeting, and are not to be construed in any way as establishing official positions of the Treasury Department, the IRS, or any other government agency. The notes cannot be relied upon by any person for any purpose. Moreover, the Treasury Department and the IRS have not in any way approved these notes or reviewed them to determine whether the statements herein are accurate or complete.

Pending review of complete meeting notes, we are publishing this excerpt dealing with Form 5500 filings due in October for most calendar-year plans. As background, the 2015 Instructions for Form 5500 Schedule H/I line 4L were amended by adding the text below (in italics):

Line 4L. You must check "Yes" if any benefits due under the plan were not timely paid or not paid in full. *This would include minimum required distributions to 5% owners who have attained 70½ whether or not retired and/or non-5% owners who have attained 70½ and have retired or separated from service, see section 401(a)(9) of the Code. Include in this amount the total of any outstanding amounts that were not paid when due in previous years that have continued to remain unpaid.*

IRS subsequently clarified in a July 29 posting on its [website](#) that participants who could not be located despite the administrator's reasonable efforts—or whom the plan was attempting to locate at plan year-end—did not need to be reported.

The discussion topic shown in regular typeface was submitted to the IRS in advance of the meeting. The discussion summary is in italics.

Instructions for 2015 Form 5500 Schedule H/I line 4L and Form 5500-SF line 10f—Thanks for the website clarification of instructions, but we still have questions:

- a. Scope of reporting and amount to report—questions have arisen in a variety of situations where benefits may have been paid late, including:
 - i. Reasonable administrative delay
 - ii. Missing participant located and "caught up" by plan year-end (e.g., required beginning date was April 1, 2015, but due to delay locating participant, benefits actually started October 1, 2015, and participant received six months' back payments with interest)
 - iii. Plan requires terminated vested participants to start benefits at normal retirement date

- iv. Plan requires automatic de minimis cashouts
- v. Operational errors that resulted in underpayment of benefits have been discovered but not yet corrected
- vi. Qualified domestic relations order requires alternate payee to start benefits at a specified date

Of the six scenarios presented, IRS representatives indicated that only number (v.)—an operational error resulting in underpayment of benefits has been discovered but not corrected at plan year-end—would trigger reporting.

- b. Reasonable estimates of “total amount”

IRS representatives indicated plan administrators should “make their best guess” as to the total underpaid amounts. The only consequence of reporting an incorrect number would likely be a request to file an amended Form.

- c. What does the agency plan to do with plans that answer “Yes” and report an amount? Do “compliance checks” automatically trigger audits?

IRS representatives stated that answering “Yes” will not automatically trigger an audit. It may trigger a “compliance check” letter from the [Employee Plans Compliance Unit](#) asking whether the failure was corrected. The plan administrator’s failure to respond to the compliance check letter may trigger an audit.

- d. Reasonable efforts to locate missing participants—proposed 2019 instructions would require plans to use *all* the methods listed in Field Assistance Bulletin (FAB) 2014-01, but many large plans go straight to commercial locator services. Also, the recent IRS guidance indicated that a sponsor can apparently currently satisfy the Schedule H, Line 41 “reasonable efforts” standard for locating missing participants without strictly following FAB 2014-01. In particular, it appears that using only **one** of the search methods in the FAB might be acceptable.

IRS representatives agreed that using only one of the search methods in the DOL Field Assistance Bulletin would be sufficient. They noted [Revenue Procedure 2013-12](#) states the IRS position on locating missing participants. The IRS representatives also noted the Department of Labor would be concerned if search costs are charged to the participant.

Supplemental Note: Revenue Procedure 2013-12 provides:

“Reasonable actions must be taken to find all current and former participants and beneficiaries to whom additional benefits are due, but who have not been located after a mailing to the last known address. In general, such actions include, but are not limited to, a mailing to the individual’s last known address using certified mail, and, if that is unsuccessful, an additional search method, such as the use of the Social Security letter forwarding program, a commercial locator service, a credit reporting agency, or Internet search tools. Depending on the facts and circumstances, the use of more than one of these additional search methods may be appropriate. A plan will not be considered to have failed to correct a failure due to the inability to locate an individual if reasonable actions to locate the individual have been undertaken in accordance with this paragraph; provided that, if the individual is later located, the additional benefits are provided to the individual at that time.”