DOL Announces Temporary Non-Enforcement Policy for the Transfer of Small Retirement Benefit Payments to State Unclaimed Property Funds

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On January 14, 2025, the DOL issued Field Assistance Bulletin 2025-01 (the "***FAB***") announcing an ERISA non-enforcement policy with respect to retirement plan benefit payments of $1,000 or less owed to missing participants or beneficiaries that a plan fiduciary voluntarily decides to transfer to a state unclaimed property fund.

As background, as we previously reported here and here, the issue of missing participants has been a focus of the DOL for several years. In 2021, the DOL released missing participant "best practices" for plan sponsors. Subsequently, pursuant to the SECURE 2.0 Act, the DOL created a national online searchable lost and found plan participant database. Further, as part of 2014 guidance here, the DOL identified individual retirement accounts as the preferred destination for a distribution from a retirement account or benefit owed to a missing participant or beneficiary from a terminated defined contribution plan. The DOL also suggested that a state unclaimed property fund might be appropriate under certain circumstances as an alternative distribution option, provided that the fiduciary prudently concludes that such distribution is appropriate despite the potential considerable adverse tax consequences to the plan participant.

In connection with state unclaimed property funds, the recent FAB provides that until the DOL issues formal guidance, the DOL will take no enforcement action if a participant's unclaimed nonforfeitable accrued benefit of $1,000 or less (including rollover contributions but disregarding any outstanding loan balances) is voluntarily transferred by a plan fiduciary to a state unclaimed property fund, provided that the plan fiduciary complies with the following conditions:

- The plan fiduciary determines that the transfer to a state unclaimed property fund is a prudent destination for the participant's or beneficiary's retirement benefit payments;
- The plan fiduciary has implemented a prudent program to find missing participants consistent with the DOL's Best Practices for Pension Plans (available here), and nevertheless has been unable to locate the participant or beneficiary;
- The plan fiduciary selects the state unclaimed property fund offered by the state of the last known address of the participant or beneficiary;
- The plan's SPD explains that retirement benefit payments of missing participants or beneficiaries may be transferred to an eligible state fund and identifies the name, address, and phone number of a plan contact for further information concerning the eligible state funds to which the retirement benefit payments are transferred; and
- The state unclaimed property fund qualifies as an "eligible state fund" as further provided in the FAB.

The FAB is available here.

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