PENSION RIGHTS CENTER
PROTECTING AND PROMOTING RETIREMENT SECURITY
1350 Connecticut Ave., NW, Suite 206 | Washington, DC 20036-1739
P: 202-296-3776 | F: 202-833-2472 | www.pensionrights.org

June 10, 2014

The Honorable Phyllis C. Borzi
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor, Suite S-2524
200 Constitution Avenue, N.W.
Washington, DC 20210

Dear Phyllis:

We read the Employee Benefits Security Administration Spring 2014 regulatory agenda with great interest but also with some concern.

We are pleased that EBSA will be focusing on the fiduciary rule, lifetime income disclosure, and target date funds for 401(k) plans next year. The rulings that result will be very helpful in protecting the retirement security of 401(k) participants and beneficiaries. But we are concerned that the Spring 2014 regulatory agenda does not include initiatives to address the equally pressing needs of participants and beneficiaries in defined benefit pension plans. Specifically, there is nothing in the agenda about four priority issues that are vital to the retirement security of current and future pensioners and their spouses.

Updated claims and appeals procedures for pension plans

The Department of Labor revised the claims procedures in 2000, but most of the new rules apply only to health plans. Detailed revisions of the claims rules for retirement plans were left for another day. New claims procedure rules similar to those that apply to health plans, covering the timing of appeals, standards of review, and disclosure would greatly benefit retirement plan participants. Additionally, in light of the recent Supreme Court case, *Heimeshoff v. Hartford Life and Accident Insurance Company*, it is critical that the Department issue guidance on what constitutes a "reasonable" statute of limitations that can be included in pension plan documents. If participants are to be able to enforce their rights, they must be able to fully exhaust their plans' claims and appeals procedures, and also have time to find a lawyer to file a lawsuit on their behalf.

Retention of records

Too many participants are denied benefits because their former employers no longer have the work records or plan documents necessary to establish their years of service, to accurately calculate their benefits, or to document that they have received a lump sum distribution. This is especially true for deferred vested participants who have left a company and apply for benefits many years later. Additionally, in mergers and acquisitions, the purchasing company often does not receive or retain the complete records accompanying the pension plan. Despite the express language of ERISA Section 209(a) requiring plan sponsors to maintain records

"sufficient to determine the benefits due or which may become due," some plan sponsors and third party administrators take the position that since the Labor Department has never issued regulation 29 C.F.R. 2530.209-(d), originally proposed in 1979, they can dispose of documents within six years of an employee's termination of employment (as permitted under Section 107 for reports filed with the government). There is an urgent need for the Department address this unfinished business and issue guidance on the obligation of plan sponsors to retain documents that are the basis of benefits determinations until they are no longer needed.

Recoupment of overpayments

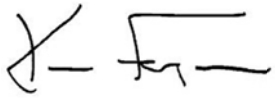
When plan fiduciaries have paid out incorrect benefit amounts, they typically seek to recover the overpayments from retirees. In some instances, the mistakes may be discovered after the pensioners have been retired 20, 30, or more years. In addition to correcting the errors going forward, many fiduciaries also demand repayments plus interest from the date of error (at the plan's interest rate). The repayments may take the form of future benefit reductions of 10, 25, or even 100 percent, and if the retiree is not expected to live long enough to recover the full amount, there may also be a demand for payment of an immediate lump sum. There are no standards for recouping overpayments or for issuing hardship waivers. In fact, some plan administrators do not even offer hardship waivers. There are also no requirements for advance notice or the right to appeal before a benefit is reduced to recover an overpayment. Rules are needed, similar to those in many other federal statutes, to establish reasonable standards for recoupment of benefit overpayments, including standards for hardship waivers, statutes of limitations, limits on benefit reductions and interest, and notice and appeal procedures.

Individual benefit statements for pension plan participants

The Pension Protection Act of 2006 specified the information to be included in individual benefit statements. However, Congress left to future regulation the parameters for determining reasonable estimates of benefits accrued and vested, and for explaining the impact of permitted disparity. The PPA also directed the Department of Labor to write model benefit statements in language that can be understood by the average participant. Improving the clarity and accuracy of individual benefit statements is essential. In addition, it is important for the Department to clarify that participants can reasonably rely on benefits statements to plan for their retirement.

In this 40th anniversary year of ERISA, we very much hope that you will consider adding these critically important items to the EBSA Spring 2014 regulatory agenda. We would be pleased to meet with you to discuss these issues.

Sincerely,



Karen W. Ferguson
Director

Jane T. Smith
Policy Analyst