Retirement Spotlight

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Missing Participants: Prevention is the Best Cure

When employers start a retirement plan, they may ask *who should be eligible to participate*, *what kind of contributions should be made*, and *how and when can employees access their account balances*? Unfortunately, many employers don't consider how to handle missing participants' account balances—or more importantly—how to prevent losing track of participants in the first place.

The DOL did provide guidance for locating missing participants in 2014 with the issuance of Field Assistance Bulletin (FAB) 2014-01. Although FAB 2014-01 is helpful, it deals mainly with *terminated* defined contribution plans.

In January 2021, the DOL released three pieces of new guidance: Missing Participants – Best Practices for Pension Plans, Compliance Assistance Release No. 2021-01, and FAB 2021-01. The first piece in this package gives practical guidance on concerns to watch out for and actions to consider. The second piece sheds some light on the DOL investigative process for defined benefit plans. And the third piece gives temporary enforcement relief for terminating defined contribution plans that transfer missing participant benefits to the PBGC. This article will focus on the main points of this guidance and the steps that a plan fiduciary (typically the employer) can take to address concerns related to missing and unresponsive participants.

Tips for reducing missing participant issues

The DOL's *Missing Participants – Best Practices for Pension Plans* identifies practical steps that plan fiduciaries can take to resolve problems created by missing participants. Plan fiduciaries should determine which reasonable, cost-effective practices will yield the best results considering the circumstances—such as the amount of accrued benefits and the cost of various search methods.

- **Maintain accurate census information.** Although plan fiduciaries may obtain accurate contact information for new employees, there may be little follow-up afterwards. This often leads to inaccurate contact information, which makes it harder to distribute plan assets once the participant incurs a distributable event. The DOL lists several steps that fiduciaries can take to help ensure that participants' information is up-to-date.
    - Periodically contact current participants, retired participants, and beneficiaries to verify that the correct contact information is on file. This information may include individuals' home and business phone numbers and addresses, social media contact information, and emergency contact information.
    - Provide a contact information change request form when sending out other plan communications. Use these communications to encourage participants to notify the plan fiduciary when there is a change in contact information.

- Offer a secure online portal that participants can use to update their contact information. In addition to offering an online portal, have messages or prompts appear when individuals log into the plan's website. These messages or prompts should be linked to the online portal and should ask participants and beneficiaries to verify their contact information.
- Identify uncashed checks and undeliverable mail or email. Once these items are identified, consider how to address and prevent these occurrences in the future.
- During a merger, acquisition, or the hiring of a new record keeper, ensure that relevant employment records are provided to appropriate parties.

In addition to taking these steps, plan fiduciaries should also continually monitor census information and promptly correct any errors.

- **Create good communication procedures.** The DOL suggests that plan fiduciaries take the following steps to ensure that participants are fully informed of their rights and benefits under the plan.
  - When sending correspondence to participants, include the plan sponsor's name within the communication, and if delivered by mail, on the envelope that it's delivered in. Clearly state why the participant is receiving the information. Plan fiduciaries should also ensure that their non-English-speaking participants get help in interpreting the correspondence.
  - Provide specific communications to new employees and to participants who are retiring or leaving the company. These communications should stress the importance of providing correct contact information. For example, the communications should explain that this information helps determine when participants can receive their benefits and what amount they're eligible to receive.
  - Inform participants about their options to consolidate accounts from other employer plans and IRAs.
  - Make it easy for participants to ask questions about their plan benefits by explaining how to access the plan sponsor's toll-free phone number and website.
- **Use reliable, extensive search methods.** Sometimes, despite having good communication and audit procedures in place, plan fiduciaries lose track of their participants. When this happens, plan fiduciaries need to demonstrate that they've regularly taken sufficient measures to locate the missing individual, including these DOL-approved search methods.
  - Search all employer records (e.g., payroll records or group health plan records) for more accurate contact information, including email addresses, phone numbers, and social media.
  - Ask the participant's beneficiaries, emergency contacts, or former colleagues for updated contact information.
  - Try to locate the participant through free online search engines, public databases, social media, commercial locator services, certified mail, or private delivery services.
  - Add participants to pension registries, such as the National Registry of Unclaimed Retirement Benefits, and publicize the registries (e.g., through email or newsletters) to current and former employees and union members.
- **Document steps taken to locate missing individuals.** To help with compliance, plan fiduciaries should adopt clear, concise policies—and follow them. And they should document everything they do to locate the missing participant. For example, fiduciaries may develop a checklist of search methods that captures the result of each attempt to find a participant. Plan fiduciaries that use third-party administrators (TPAs) should identify and remedy any communication or recordkeeping concerns and should ensure that the TPA is performing all services that it has agreed to perform.

The DOL emphasizes that, when missing participants' assets are forfeited under the terms of the plan, plan fiduciaries must still keep records of these participants' accounts in order to distribute their benefits when due.

Issues the DOL Looks for During an Investigation

Several years ago, the DOL's Employee Benefits Security Administration's Regional Offices started a compliance initiative called the "Terminated Vested Participants Project (TVPP)." While this project is aimed at identifying *defined benefit* plan compliance problems, the DOL may look for similar problems in *defined contribution* plans. Similar fiduciary obligations apply regardless of the plan type. The *Compliance Assistance Release No. 2021-01* (the second piece of the DOL's guidance package) explains which types of noncompliance may cause the DOL to investigate a defined benefit plan. The DOL also explains that this guidance will help ensure a consistent investigative process for TVPP audits. For example, the DOL considers certain problems (such as missing or incorrect data, undeliverable mail, or uncashed benefit checks) "red flags" that could hint at more serious systemic failures. This guidance may help plan fiduciaries develop a checklist to formalize procedures that help keep track of participants.

- **Reasons for defined benefit plan investigations.** The DOL may investigate a plan that appears to have systemic administration problems—especially those related to plan distributions and terminated participants' vested benefits. Such problems increase with business bankruptcies or with mergers or acquisitions that result in the loss of participant data.
- **Information the DOL may ask for during an investigation.** Once a defined benefit plan investigation starts, the DOL will typically seek documents that
  - relate to the plan's distribution requirements;
  - contain demographic and participant information, such as actuarial reports, participants' contact information, and employment status; and
  - describe communication and locating procedures: specifically, how the plan fiduciary communicates to individuals who are entitled to benefits and how internal policies dictate the steps taken to locate missing or unresponsive terminated participants.
- **Errors the DOL looks for during an investigation.** Inadequate procedures, especially those used to identify and contact missing participants and their beneficiaries, will likely be on the DOL's radar. For example, when reviewing plan communications, the DOL may examine whether the fiduciary repeatedly sends communications to a known "bad address" without seeking the correct address. Incomplete census data, including the use of placeholders (such as 01/01/1900 birth dates or "John Doe participants") may also indicate procedural deficiencies.

Once the DOL completes the investigation, it will work with the plan fiduciary to correct any identified issues.

Don't Forget About the PBGC

DOL regulations provide a safe harbor both to plan fiduciaries of terminating defined contribution plans and to qualified termination administrators (QTAs) of abandoned plans. This safe harbor generally permits plan fiduciaries and QTAs to roll over missing participants' and beneficiaries' assets to an IRA. And in certain cases, the assets can be placed in a federally insured bank account or a state's unclaimed property fund.

In December 2017, the Pension Benefit Guaranty Corporation (PBGC) created a new program for terminating defined contribution plans. This program allows fiduciaries of terminating defined contribution plans to transfer missing participants' and beneficiaries' assets to the PBGC. This option helps plan fiduciaries complete the termination process—while making the plan assets accessible to missing individuals.

The DOL envisions expanding the safe harbor to include the transfer of missing individuals' assets to the PBGC. FAB 2021-01 (the third piece of the DOL's guidance package) states that, pending the expansion of the safe harbor, the DOL will not penalize plan fiduciaries of terminating defined contribution plans or QTAs of abandoned plans if they transfer plan assets to the PBGC. This temporary DOL policy provides another option when handling abandoned assets. Before transferring plan assets, however, the plan fiduciary or QTA must take all necessary steps to identify and locate the missing individual.

The DOL released FAB 2021-01 in part because it believes that the coronavirus pandemic may make it harder for plan fiduciaries and QTAs to stay in contact with former employees and their beneficiaries. Transferring assets to the PBGC could be a reasonable alternative to moving plan assets to an IRA, transferring the assets to a federally insured bank account, or escheating the account to the state.

The Takeaway

Plan fiduciaries should develop, document, and regularly review procedures that integrate best practices relative to missing participants. Taking decisive steps now may help prevent problems later—and may ensure that plan participants and their beneficiaries receive their proper benefits.

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