

Department of Labor Releases Additional Guidance on Missing Retirement Plan Participants

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Published January 21, 2020 - Continuing its focus on missing participants in retirement plans, the Department of Labor (DOL) recently released updated guidance on this topic. Included in the DOL guidance is a memorandum describing best practices to prevent, identify, and locate missing participants in pension plans. As examples of best practices, the DOL cites the following:

- 1) Maintaining accurate census information for the plan's participant population, including implementing procedures to provide participants with the opportunity (and reminders) to update their contact information. This would also include establishing procedures to identify and address potentially out-of-date participant information through such means as monitoring mail that is returned to sender.
- 2) Implementing effective communication strategies, including clearly identifying plan-related communications and using language that is understandable to participants.
- 3) Conducting missing participant searches, with a number of search methods described.
- 4) Documenting procedures and actions, including documenting policies, procedures, and key decisions in writing, and ensuring that third party record keepers are properly performing agreed-upon procedures.

The full memorandum, including additional detail on these best practices, is available at [Missing Participants – Best Practices for Pension Plans | U.S. Department of Labor \(dol.gov\)](#). We remind plan fiduciaries that the fiduciary's responsibility extends to making every attempt possible to locate missing participants. Failing to do so not only constitutes a breach of this responsibility, as determined by the DOL, but may also jeopardize the plan's tax-exempt status if those participants do not receive distributions in accordance with the plan document.

The DOL also released Field Assistance Bulletin No. 2021-01 (FAB 2021-01), which announces a temporary policy allowing terminating defined contribution plans to use the Pension Benefit Guaranty Corporation (PBGC) Defined Contribution Missing Participants Program. Specifically, the DOL announced that it will not enforce regulations requiring the transfer of missing or non-responsive participants' or beneficiaries' account balances to an IRA, certain bank accounts, or to a state unclaimed property fund, if the funds are instead transferred to the PBGC and certain additional guidance is followed. That additional guidance primarily relates to modifications to required notices to participants and beneficiaries, as well as the treatment of uncashed benefit checks. The PBGC does charge a flat fee for certain accounts transferred to the Missing Participants Program, which may be deducted from the participant's account, unless otherwise prohibited by the terms of the plan.

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