



U.S. Department of Labor Issues Missing Participant Guidance

On January 12, 2021, the US Department of Labor's Employee Benefits Security Administration (EBSA) announced guidance to plan fiduciaries regarding their obligation to locate and distribute retirement benefits to missing or nonresponsive participants. This guidance comes in three sub-sections:

Missing Participants - Best Practices for Pension Plans

The EBSA has categorized these best practices into several areas. The first is maintaining accurate census information for the plan's participant population. This includes such things as contacting current and retired participants on a periodic basis to confirm contact information, flagging undeliverable mail/e-mail for follow-up, providing various ways for participants to provide contact information updates to the plan sponsor among other suggested tips. The second is to implement effective communication strategies. Examples include using plain language and non English when appropriate and including contact information confirmation in the onboarding and exit processes. The third is the search for missing participants. They have identified several steps to assist in this area. These steps including using free data base searches like obituaries, death searches or social media, contacting former fellow employees who worked with the participant, publishing a list of missing participants on a private intranet or registering the list on the National Registry of Unclaimed Retirement Benefits or pension registries. The last step is to document in writing the procedures and actions that the plan's fiduciaries have taken to ensure they are clear and result in consistent practices.

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The purpose of this release is to ensure consistent investigative processes among the EBSA offices who are conducting Terminated Vested Participants Project audits. The purpose of the project is to ensure that plans are maintaining an adequate census, that plans have appropriate procedures for advising participants with vested benefits of their eligibility to apply and that plans have implemented search procedures such as those listed above in the best practices. This memorandum provides a summary of information that may be requested during one of these audits as well as errors they may look for during their investigation.

Field Assistance Bulletin No. 2021-01

This bulletin provides a temporary enforcement policy allowing fiduciaries of a terminating defined contributions plan, under some circumstances, to make use of the Pension Benefit Guaranty Corporation's Missing Participant Program rather than transferring the funds of missing participants to an IRA or a state unclaimed property fund (as previously required under a safe harbor in the DOL regulations). The temporary enforcement policy states that the DOL will not pursue violations against plan fiduciaries who forward funds of missing participants to the PBGC's missing participant program, provided that the fiduciaries comply with guidance in the memorandum. Note that this guidance includes the requirement to "diligently search" for missing participants and beneficiaries before utilizing the PBGC program. The guidance further indicates that fiduciaries must follow similar requirements of the safe harbor regulations, which include notices to participants indicating the balance is being submitted to the Pension Benefit Guaranty Corporation's Missing Participant Program and include the PGBC's website

address and customer contact number.

This guidance is meant to reflect the importance of plan fiduciaries ensuring that their plan participants and beneficiaries are receiving the benefits that they are entitled to. ■