

MISSING PARTICIPANTS: WHAT PLAN SPONSORS NEED TO KNOW ABOUT THE DOL'S LATEST GUIDANCE

When workers change jobs and relocate, plan sponsors face several challenges, including locating former employees who have left funds in a qualified retirement plan and failed to keep their contact information current. The scope of the missing participants problem is enormous: A 2018 survey found that one out of every five job changes results in a missing participant.¹ Now that the COVID-19 pandemic has resulted in economic and physical dislocation of millions of employees, the issue has taken on even greater urgency: Some 5% of U.S. adults relocated due to the financial pressures of the pandemic, according to a poll by the Pew Research Center.²

In early 2021, the Department of Labor (DOL) issued a three-part package of sub-regulatory guidance related to missing participants that addresses the fiduciary responsibilities of plan sponsors related to these plan participants and beneficiaries.

DOL's Recommended Best Practices for Missing Participants

The DOL's "[Missing Participants — Best Practices for Pension Plans](#)" describes a range of steps that retirement plan fiduciaries should consider to locate missing or nonresponsive participants. Plan fiduciaries should determine which practices will be most effective for the plan's specific population.

Some examples of the DOL's recommended best practices include:

- Maintain accurate information by periodically contacting participants and their beneficiaries to confirm or update their information (i.e. home and business addresses, phone numbers, social media handles, and next of kin/emergency contact information)
- Implement effective communication strategies, including using plain language in all communications and building steps into plan onboarding, enrollment, and exit processes to confirm or update contact information
- Search for missing participants by performing the following:
 - Checking related plan and employer records for contact information
 - Attempt to contact them via email addresses, phone numbers, and social media
 - Use free online search engines, public record databases (such as those for licenses, mortgages and real estate taxes), obituaries, social media engines, certified mail, and/or a commercial locator services to locate individuals

¹ The mobile workforce's growing missing participant problem.

https://info.rch1.com/hubfs/Presentation_Decks/MWF_Missing_PPT_Survey.pdf

² <https://www.pewresearch.org/fact-tank/2021/02/04/as-the-pandemic-persisted-financial-pressure-became-a-bigger-factor-in-why-americans-decided-to-move/>

- Document all procedures, communications, and actions taken to implement policies. For plans using third-party recordkeepers to maintain plan records and handle participant communications, ensure that the recordkeeper is performing agreed-upon services and work with them to identify and correct shortcomings in the plan’s recordkeeping and communication practices.

Outlining EBSA’s Investigative Approach

The [Compliance Assistance Release 2021-01](#) outlines the general investigative approach that will guide the Employee Benefits Security Administration (EBSA) under the Terminated Vested Participants Project audits. It is also intended to facilitate voluntary compliance efforts on the part of plan fiduciaries. In opening an investigation, EBSA seeks to determine the scope of any potential problems a plan may have with recordkeeping or administration of benefits for terminated vested participants and beneficiaries.

Potential red flags that an EBSA investigator would look for are the following:

- Systemic errors in plan recordkeeping and administration, which may include missing and incomplete data, such as names, dates of birth, and social security numbers
- Inadequate procedures to identify and locate missing participants and beneficiaries
- Inadequate procedures to contact terminated vested participants (TVPs) nearing normal retirement age to inform them of their right to commence payment of their benefits
- Inadequate procedures for contacting TVPs and the beneficiaries of deceased TVPs who are not in pay status at or near the date that they must begin taking required minimum distributions (RMDs)
- Inadequate procedures for addressing uncashed distribution checks

Making Use of the PBGC Missing Participant Program

Additionally, the [Field Assistance Bulletin \(FAB\) 2021-01](#) announced a temporary enforcement policy applicable to terminating defined contribution plans. The DOL will not pursue Plan fiduciaries of such plans that use the PBGC Missing Participants Program as long as they satisfy certain conditions to qualify for the safe harbor by conducting a “diligent search.” Following the transfer of the assets, the PBGC will include participants’ information in a searchable database and take certain steps to locate the participants.

The guidance describes which participant accounts may be transferred to the PBGC and the rules for participant notices. The PBGC cites multiple benefits of the program, including:

- Benefits of any size can be transferred to the PBGC
- Periodic active searches by the PBGC increase the likelihood of connecting missing participants with their benefits
- Benefits aren’t diminished by ongoing maintenance fees or distribution charges
- Transferred amounts grow with interest

- Lifetime income options are available for balance transfers over \$5,000

Insight:

Meeting your fiduciary obligations with respect to missing participants

While the DOL's latest guidance on missing participants doesn't have the force and effect of the law, plan sponsors should carefully review this guidance and adjust their processes and procedures as necessary ahead of any potential missing participant investigations. Your representative is available to review your plan, address any red flags, and implement best practices in managing the challenges caused by missing participants.