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What to Do About Missing Participants: Practical Steps for Plan Sponsors

By Betsy A. Olson

Sponsors of qualified retirement plans often need to locate missing or unresponsive participants or beneficiaries. There are a number of steps a plan sponsor can take to do so, as well as a number of practices and procedures a plan sponsor can implement to minimize the occurrence of missing participants. Read on for background information on the issue and steps to take to keep your plan compliant.

Regulatory Requirements

Under ERISA, sponsors of qualified retirement plans have a fiduciary responsibility to make a reasonable effort to find missing or unresponsive participants. Missing participants are an area of focus for the Department of Labor (DOL), and having appropriate processes and procedures in place can help limit potential liability in an audit.

Search Efforts

The DOL and IRS have published guidance on locating missing participants that includes various steps to take in the search, including:

1. Sending notices to the participant's last known mailing address by certified mail.
2. Sending notices by appropriate means to any other contact information, such as email addresses and telephone numbers.
3. Checking the records of related plans and employers.
4. Checking with the participant's designated plan beneficiary.
5. Using free electronic search tools (such as internet searches and public record data sites).
6. Using a commercial locator service, a credit reporting agency, or a proprietary internet search tool for locating individuals.

As always, it is important to document the steps taken to locate a missing or unresponsive participant. Records of steps taken to actively search for missing participants can be used to defend against possible DOL claims.

Inability to Locate

If a participant remains missing after reasonable search efforts, there are several options permitted by the DOL in the case of a terminating plan. These include a rollover to an IRA, distribution to the Pension Benefit Guarantee Corporation (PBGC) missing participant program, transfer to FDIC-insured bank accounts in the missing participant's name, and escheat to an unclaimed property program. The PBGC recently expanded its missing participant program to include terminating defined contribution plans ([as discussed here](#)).

Practical Steps

Below are some practical steps a plan sponsor may wish to follow as part of its best practices in locating missing participants (and avoiding a loss of contact with participants):

1. Review with the plan's third-party administrator (TPA) the details of the plan's process for identifying and attempting to locate missing participants.
2. Ensure that the plan administrator understands when distributions are required (e.g., are participants required to receive distributions at age 65 or can they defer receipt until required minimum distributions must begin?).
3. Review the provisions in the plan document with respect to missing and non-responsive participants, as well any provisions related to uncashed checks (e.g., can the benefits be forfeited until the participant or beneficiary comes to the plan to request payment?).
4. Maintain multiple points of contact (mailing addresses, phone numbers, emails, etc.). This could also include, for example, soliciting a next of kin/emergency contact number from all participants who reach age 65. It could also include contacting co-workers of missing participants.
5. Regularly update contact information for current participants and include a reminder in the summary plan description and other participant communications to advise the plan sponsor of any changes.

6. Take advantage of any automatic lump sum distribution options as soon as possible after termination to limit issues that may arise due to the passage of time.
7. Keep good records and make a deliberate effort to update and keep records current. Make sure that in the case of a merger or acquisition or change in TPA, the appropriate records are passed along to the successor company and/or TPA.

Any processes or procedures that are implemented to locate missing participants should be followed and appropriate documentation should be retained.

Employee Benefits and Executive Compensation Team

Primary Contact



Elizabeth A. Olson

Associate

Los Angeles

(310) 203-4038

betsy.olson@dbr.com

Drinker Biddle

www.drinkerbiddle.com

CALIFORNIA | DELAWARE | ILLINOIS | NEW JERSEY | NEW YORK | PENNSYLVANIA | TEXAS | WASHINGTON DC | LONDON

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Jonathan I. Epstein and Andrew B. Joseph, Partners in Charge of the Princeton and Florham Park, N.J., offices, respectively.