

The **DOL-Approved** Way to Handle Missing Participant Accounts



Avoid risk, penalties, increased costs and frustration by keeping current with DOL guidelines.

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Company-sponsored retirement plans, such as 401k and other defined contribution plans, would be much easier to administer without missing plan participants. But with the high mobility of today's workforce and the fact that many former employees simply forget about their retirement accounts at their previous companies—it **doesn't seem likely the problem will go away any time soon**.

Lately, the Department of Labor (DOL) has exhibited growing concerns about the vast amount of unclaimed retirement funds and has increased its scrutiny of plan sponsors' efforts to locate missing participants. Accordingly, interested parties need to keep current with the latest DOL guidance and recommendations to avoid adverse findings in an audit/investigation.

The **biggest problems** with missing participants stem from the inability to properly service their accounts and meet the requirements of proper plan administration.

Possible **challenges** missing participants may pose ›

- Fiduciary responsibility if the participant is not actively monitoring/managing their account and investment choices.
- Inability to serve required plan notices to all participants regarding benefits and plan updates.
- Inability of plan to distribute required minimum distributions (RMDs) to participants who cannot be located.
- Uncashed checks can become an administrative hassle and interfere with plan terminations.
- Left unaddressed for long periods of time, missing participant accounts can accumulate, creating more operational and fiduciary challenges and risk. The longer participants are missing, the harder it is to find them.

These issues increase plan costs, create frustration for plan administrators, and put plan sponsors and trustees at risk for breach of fiduciary duty which can lead to DOL penalties and possible sanctions.

History About Missing Participants ››

For years plan sponsors and trustees were left on their own to determine what was the proper management of, and best practices for, missing participant accounts. This led to inconsistent treatment and varying solutions being deployed. Companies came up with everything from setting up separate individual bank savings accounts to distributing entire participant balances to the IRS in the form of 100% federal tax withholding.

Obviously, this lack of direction was suboptimal for the industry as it created challenges for plan sponsors as well as former plan participants who were looking for their old retirement accounts.

In September of 2004, the DOL released [Field Assistance Bulletin \(FAB\) 2004-02](#) which identified what a plan fiduciary needed to do in order to fulfill its fiduciary obligations under ERISA with respect to 1) Locating a missing participant and 2) Distributing an account when efforts to locate a missing participant failed.

This was a **big step forward** for the industry as, for the first time, consistent and unified guidance on this issue was addressed directly by the DOL.

This new guidance from the DOL identified specific, minimum search standards that all plan fiduciaries needed to employ. The guidance also identified specific options for distributing a missing participant's account and tied this to the safe harbor standard in section 404(a) of ERISA.

The Department issued this guidance specifically with respect to terminated plans, but the industry largely accepted these standards as general best practices for all plans, and it served them well.

Ten years later in 2014, due to advances in technology and the elimination of both the IRS and SSA Letter Forwarding Programs (formerly required activities in FAB 2004-02), the DOL issued [FAB 2014-01](#) that updated and replaced the guidance offered in FAB 2004-02.

The new guidance clearly identified rollovers to an IRA to be the “**preferred distribution option**” for missing participants that could not be located.

The DOL acknowledged that “alternative distribution options” still existed, but there would have to be a compelling reason to select one because these alternative options would subject a participant's account to “potential considerable adverse tax consequences.”

The DOL even went so far as to say that “in most cases, a fiduciary would violate ERISA section 404(a)'s obligations of prudence and loyalty by causing such negative consequences rather than making an individual retirement plan rollover distribution.”

That's probably just about the **strongest language** that you'll ever get out of the DOL in a FAB. The DOL even labeled the old 100% federal tax withholding idea as an "unacceptable distribution option."

Finally, sponsors and service providers had very clear guidance that helped grow and develop meaningful solutions for this industry-wide problem.

Another seven years later and the DOL is aiming to keep up with continuing changes in the industry and working to combat the challenge of missing participants.

In January of 2021, the DOL issued a series of additional guidance publications related to missing participants – most notably, a list of "best practices for pension plans."

It's worth noting that although the DOL titled this guidance for "pension plans," they specifically clarified that this document applies to **defined benefit** and **defined contribution** plans alike.

Missing Participant Best Practices ››

Although not considered formal guidance, the DOL's "[Missing Participants – Best Practices for Pension Plans](#)", identifies prudent considerations for plan administration that can **minimize** and **mitigate** the problems associated with missing participants while providing evidence of a company's efforts to comply with Safe Harbor standards.

This guidance is less aimed at the solutions available once a participant is determined to be missing. Rather, it is intended to provide advice on ways plan sponsors can minimize or eliminate their incidences of missing participants to begin with.

Red flags identified by the DOL ›

- More than a small number of missing or nonresponsive participants
- More than a small number of terminated participants who have reached Normal Retirement Age (NRA) but have not begun taking distributions

- Missing, inaccurate, or incomplete contact information
- Absence of sound policies and procedures for handling returned mail
- Absence of sound policies and procedures for handling uncashed checks

The following is a condensed list of the key DOL-recommended practices. View the [entire list](#) on the DOL website.

Maintain accurate census information for the plan's participant population ›

- Periodically contact current and retired participants and their beneficiaries to confirm or update contact information.
- Include contact information change reminders and requests in all plan communications.
- Flag undeliverable mail/email and uncashed checks for follow-up.
- Provide prompts for participants and beneficiaries to confirm contact information upon login to online platforms.

Implement effective communication strategies ›

- Use plain language and offer non-English language assistance when needed.
- Clearly state the purpose of each plan communication.
- Encourage contact through plan/plan sponsor websites and toll-free numbers.
- Remind employees of the importance of always providing up-to-date contact information.
- Build steps into employment and plan onboarding, enrollment, and exit processes for confirming or updating contact information.

Missing participant searches ›

- Check related plan and employer records for participant, beneficiary and next of kin/emergency contact information.
- Use free online search engines, public record databases, and social media to locate individuals.
- Use a commercial locator service, credit-reporting agency, or proprietary internet search tool to locate individuals.
- Attempt contact to the last known address via United States Postal Service certified mail, private delivery services, email addresses, telephone and text numbers.
- Reach out to the colleagues of missing participants.
- Register missing participants on secure public and private pension registries, such as the [National Registry of Unclaimed Retirement Benefits](#).
- Search regularly, using some or all the above steps.

Document procedures and actions ›

- Put plan policies and procedures in writing to ensure clear, consistent practices.
- Document the decisions, steps and actions taken to implement the policies.
- If used, ensure third-party record keepers properly maintain plan records, handle participant communications, and perform all agreed upon services.
- Work with the record keeper to identify and correct shortcomings in the plan's recordkeeping and communication practices.
- Establish procedures for the record keeper to obtain relevant information from the employer.

As the DOL becomes increasingly concerned about protecting the vested benefits of terminated participants, properly managing missing participant accounts becomes more important for your plan and your business.

Having written procedures for following DOL guidance and documenting the steps you take to implement them may help avoid costly penalties while providing the best opportunity to reunite former employees with their hard-earned retirement funds.

These new best practices do not have the force and effect of law but it's a good bet that they will be widely viewed as the new yardstick by which plan sponsors will now be measured.

You won't be required to employ all these techniques, but you'd better be certain to engage in at least some of them. Individual facts and circumstances will vary, of course, but it's clear the DOL has set an expectation.

About the Author ››

Spiro Preovolos is President and CEO of PenChecks Trust[®], a leading outsourced provider of employee benefit distribution processing. PenChecks Trust[®] is the industry pioneer and original provider of automatic rollover IRAs for missing participants and commercial solutions for uncashed checks and abandoned plans.

Spiro is an expert on missing participant solutions and a frequent industry speaker and contributor on the topic.

Got **missing** terminated participants?
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