SEPTEMBER 2022 / WHITE PAPER

DOL Best Practices for Missing Participant Searches

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

By Spiro Preovolos ›
President & CEO, PenChecks Trust®

Nearly half a century ago, Congress passed the Employee Retirement Income Security Act of 1974 (ERISA). This groundbreaking law laid the foundation for the retirement plan industry as it exists today by setting minimum standards to protect participants of voluntarily established retirement and health plans in the private industry. For all the good intentions and undeniably positive impact ERISA has made over these past several decades, no one could have foreseen that it would also lead to a multi-billion dollar problem involving unclaimed retirement accounts.

Those who crafted the legislation did so with an eye to the future. But today's world is very different from the one in which ERISA was created. Back then it didn't occur to anyone that people might leave behind money they had put aside in a qualified ERISA retirement account. Today it happens on a regular basis, adding complexity and cost to privately sponsored retirement plans while depriving multitudes of America's workers of their hard-earned funds.

Employer-sponsored retirement funds can go unclaimed for many reasons. Believe it or not, the most common reason retirement funds go unclaimed (by far) is that people often forget about their plans. Employees who change jobs frequently can end up with several different accounts to the point that they lose track of one or more of them. If a new job involves moving to a different state, employees may forget about their plan in the midst of the stress of moving, finding a new home, new schools for the kids, etc.

Frequently, individuals fail to provide their new address or contact information to their former employer.

Retirement funds can also go unclaimed because they aren't known about. In an effort to increase plan participation and national savings rates, many defined contribution plans have a default nature where one must opt out or they are automatically opted in. New employees are then automatically enrolled in a company's retirement plan. However, if individuals don't take the time to review and understand their employee benefits and plan communications, they may not even realize they have an account. Regardless of the reason, unclaimed retirement accounts create an ongoing source of frustration for plan sponsors and fiduciaries.

How Missing Participants Can **Affect Your Plan** ›

Missing participants are former employees who have left funds in a qualified retirement plan, such as a 401(k), provided by their former employers. Under ERISA guidelines, employers are required to make a reasonable effort to transfer left-behind funds to former employees. When these employees can't be located through search services and don't respond to communications from the employer, they become missing participants.

At this point, **managing a missing participant's account becomes more time-consuming and costly** for the plan sponsor. In particular, it can prevent the plan sponsor or custodian from upholding some of their required fiduciary duties spelled out by ERISA. These can include failure to transfer the funds to the missing participant, failure to pay required minimum distributions (RMDs), and failure to meet plan disclosure requirements. Missing participants can also make it more difficult to terminate a qualified retirement plan as a plan cannot officially be terminated until every individual with a remaining account balance is paid out.

For decades, the Department of Labor (DOL) paid only passing attention to the missing participant issue. But as the amount of unclaimed retirement funds grew into the billions of dollars, the agency began to sit up and take notice.

Long-Awaited **DOL Guidance** ›

For many years **the proper steps for managing missing participant retirement accounts remained a gray area** for employers. DOL guidance often failed to address important issues, such as whether a missing participant account was still considered part of the plan. This resulted in a wide variety of approaches to managing unclaimed accounts, many of which didn't serve the participant's best interests. Accounts often lose value due to poor investment decisions and ongoing management fees. Many end up being escheated to the state.

The DOL issued its first guidance regarding unclaimed

accounts with Field Assistance Bulletin (FAB) 2004-02, which addressed fiduciary duties and missing participants in terminated defined contribution plans. Although a good start, it lacked formal guidance for fiduciaries with non-terminating plans. This publication was later updated in the form of FAB 2014-01 that included revised guidance to account for technological updates and removed provisions pertaining to retired government programs that no longer existed. For the first time in several years the DOL issued three new pieces of guidance in January 2021 to assist fiduciaries in meeting their obligations regarding missing participants in ongoing plans.

- **Field Assistance Bulletin 2021-01 /** FAB 2021-01 is a temporary enforcement policy affecting defined contribution plans such as a 401(k) or 403(b). It enables these types of plans to use the Pension Benefit Guaranty Corporation's (PBGC) expanded Missing Participant Program for the transfer of lost, missing or non-responsive participant account balances from a terminating plan.
- **Compliance Assistance Release 2021-01 /** CAR 2021-01 provides guidance to the DOL's regional offices for the opening, focus, and closing of investigations related to defined benefit plans that appear to have on-going issues related to plan administration. CAR 2021-01 also helps plan sponsors and their service providers understand what to expect during such investigations.
- **Missing Participants – Best Practices for Retirement Plans /** This document from the DOL Employee Benefits Security Administration provides clarity regarding existing requirements under the law or agency policies. It does not have the force and effect of law, and is not legally binding in any way. However, these best practices let plan fiduciaries know what the DOL would like to see with respect to plan administration and efforts to locate missing participants.

Missing Participant **Search Requirements** ›

DOL guidance states that, as part of their duties of prudence and loyalty, plan fiduciaries must make reasonable efforts to locate missing participants and beneficiaries. These reasonable search steps require plan sponsors to do the following:

- Perform a search for missing participants every year
- Use different search methods
- Contact current and former employees who may have worked for the employer at the same time as a missing participant
- Continue searching indefinitely for missing participants that don't respond
- "Do whatever it takes" to locate missing participants or to get participants to respond

Performing these steps, whether internally or with an outsourced provider like PenChecks that specializes in participant searches, won't guarantee all missing participants will be located. However, it will satisfy the DOL that you have made a good-faith effort to uphold your fiduciary responsibilities. In the event of a DOL auditory investigation, it can result in a finding of corrective measures rather than costly citations for ERISA violations or fiduciary breach.

Best Practices for Retirement Plans ›

It's not uncommon for retirement plans to have a small number of missing participants, especially with larger employers. However, when the numbers become excessive it may indicate a serious missing participant problem. Other red flags include:

- Increasing numbers of terminated vested participants at normal retirement age who are not receiving benefits
- Missing, inaccurate, or incomplete contact information or census data
- Absence of sound policies and procedures for handling return mail and uncashed checks

To minimize the number of missing participants in a plan, the DOL recommends best practices in four areas.

① Maintain Accurate **Census Information**

The **simplest way to avoid missing participants** is to keep in contact with former employees after they leave your company. This starts with periodically contacting current and retired participants and their beneficiaries to confirm or update their contact information. Including contact information change requests in all regular plan communications makes it easy for former employees to provide their updated information. Other best practices include:

- Maintaining an online platform participants can use to update contact information
- Providing prompts for participants and beneficiaries to confirm contact information upon login to online platforms
- Regularly requesting updates to contact information for beneficiaries
- Regularly auditing census information and correcting data errors
- Include missing participant searches as part of the process of an acquisition, merger, or divestiture, and flag undeliverable mail or email for follow-up.

② Implement Effective **Communications Strategies**

Make plan communication an ongoing process throughout an employee's tenure with your company. Use onboarding, enrollment, and exit processes to confirm contact and other necessary information. Clearly label all plan communications so participants know what they are about and explain how the plan can help employees consolidate accounts.

When communicating with former employees, use the original plan name. Encourage contact with those participants through websites and phone numbers. Most important, use plain language and offer non-English assistance to make plan communications easy to understand.

③ Conduct Missing Participant **Searches**

Check related plan and employer records for an up-to-date address, email or phone number, and contact designated plan beneficiaries. Then use one or more of the following search methods:

- Free online search engines
- Public record databases, obituaries and social media
- A commercial locator service, credit-reporting agency, or proprietary internet search tool

Alternative search options include using certified mail or a private delivery service to send communication to the last known mailing address. You can also conduct death searches and redirect communications to beneficiaries. Contacting colleagues of former employees and publishing a list of missing participants on your company's intranet can help locate them. Another good option is to register missing participants on public and private pension registries, such as the National Registry of Unclaimed Retirement Benefits, and publicize the registry through communications to employees and retirees.

Regular searches using some or all of these best practice suggestions **will improve your chances** of locating missing participants and will provide evidence to the DOL that you are employing reasonable efforts to find them.

4 Document Procedures and Actions

The DOL also recommends putting your missing participant strategies and actions in writing, including:

- Clear written policies and procedures
- Key decisions and steps taken to implement policies
- Documenting that your contract service providers are performing agreed upon services and following best practices

One of the most important responsibilities of plan fiduciaries is paying out the benefits to participants when they are due. Having procedures in place to maintain contact with all participants, whether current or former employees, plays a key role in fulfilling this responsibility. Determine which DOL best practices will be effective with your plan and whether the cost of a particular search process is appropriate for your plan, then make them part of your standard operating procedures. Former employees will be happy to reclaim their funds, locating and paying out participants will reduce plan costs, and you'll get peace of mind knowing your procedures comply with DOL guidance.

About PenChecks Trust ››

PenChecks Trust (www.penchecks.com) is a state-chartered, non-depository trust company and the largest independent provider of outsourced benefit distribution services and Automatic Rollover IRAs and Missing Participant IRAs in the country. We combine over 28 years of retirement benefits processing expertise, innovative new services and secure technologies that help you save time, money and serve your clients more effectively. Services include automated and branded solutions for benefit payments, election processing, missing participant searches, Automatic Rollover and Missing Participant IRAs, uncashed/stale-dated check solutions and Abandoned Plan/QTA Services. Customers include financial institutions, third-party administrators, plan advisors, and plan sponsors.

Got missing terminated participants?
PenChecks can help ››

Call the experts → 800.541.3938