

Employee Benefit Plans Alert

Retirement Plan Missing Participants – DOL Guidance (Finally) and Action Plan

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A common problem for retirement plan administrators is the maintaining of current contact information of former employees during the period of time when they leave a company to the time they become eligible to receive benefits from the retirement plan. This situation has caught the attention of the Internal Revenue Service (IRS) and the Department of Labor (DOL) Employee Benefit Security Administration (EBSA) – the two (2) primary governmental agencies that regulate retirement and other employee benefit plans. Independently, or sometimes acting in unison – this issue has become an examination project.

A primary source used by the regulators in selecting examinations is the Form 5500, filed annually by the plan administrator. A line item on the Form 5500 provides information on the number of retired or separated participants entitled to future benefits. When the number reported is “high,” the plan can be selected for an examination.

It is our understanding that the DOL originally started to review defined benefit plans, and now has issued a [Field Assistance Bulletin \(FAB\)](#) discussing their temporary enforcement policy as it applies to fiduciaries of terminating defined contribution plans and qualified termination administrators (QTA) of abandoned individual account plans.

An earlier *Employee Benefit Plans Alert* discussing regulatory examination topics (and other employee benefit plan information) can be found [here](#).

Background

A plan sponsor has a fiduciary responsibility to maintain complete and accurate census information and communicate with participants and beneficiaries about their eligibility for benefits. To do this, the plan sponsor must implement effective policies and procedures to locate these missing participants and beneficiaries. This can be a challenge as many employees may not grasp the importance of responding to letters regarding the plan from the plan sponsor or may not be aware that they are eligible to apply for benefits from the plan.

Missing participants have become a growing problem for plans and the Employee Benefit Security Administration is routinely conducting audits under its terminated vested participants project to help ensure plan participants are getting the benefits they have earned.

Action Plan

The first step is to identify if your plan has a missing participant problem. Frequently there are warning signs that the plan sponsor should be on the lookout for. The warning signs include:

- Non-responsive participants
- Non-active employees with vested plan assets who have attained normal retirement age but have not initiated benefit payments from the plan
- Incomplete census data
- An unallocated plan account that is used by the record-keeper for uncashed returned checks
- A lack of policy regarding uncashed checks or returned mail

Based on our experience, there are steps that should be taken to not only resolve a missing participant issue, but to also mitigate it from happening in the first place. We have listed below some of the steps we believe are most important.

Census Data Maintenance

Completing accurate census data for the entire plan is very important. In order to maintain a good compilation of census data, the plan sponsor must be committed to staying in regular contact with plan participants who are active and separated from service. This will include maintaining contact information for next of kin and beneficiaries. It is important to find a way to make it easy for active and separated from service plan participants to update their contact information. The plan sponsor should ensure there is a follow-up process for undeliverable mail/email and uncashed checks. For events such as a change in record-keeper, or in the cases of mergers and acquisitions, there should be a process to ensure a complete and accurate transfer of census data.

Communication

Suggestions by the DOL regarding communication to plan participants include:

- communication with plan participants should be clear and concise;
- do not include unnecessary information, but clearly identify the reason for the communication;
- ensure the information is available in non-English languages;
- provide as many means as possible for plan participants to make contact with the plan sponsor;
- have procedures in-place during the onboarding and separation process to explain to plan participants how to obtain the benefits they are entitled to, and why providing and updating their contact information is so important.

Searches

Even a diligent plan sponsor will need to search for a missing participant. There are companies that the plan sponsor can hire who specialize in locating missing plan participants, but since there is a cost associated with this process the plan sponsor may want to first initiate a search.

The plan sponsor should look to other internal records for contact information such as payroll records or a health plan. Another option is to try and make contact with the beneficiary or emergency contact that the participant has listed. When contact means such as mail, email, telephone and text fail, other searches on popular social media platforms can be tried.

It is important to have an action plan/policy to document the details. This will help with finding missing participants, and with regulatory examinations.

Contact Us

If you are a plan sponsor that has a missing participant issue or wants to ensure it does not become an issue, reach out to the Employee Benefit Services Group at PKF O'Connor Davies.

The Employee Benefit Services Group at PKF O'Connor Davies is available to assist employers with the various compliance reporting and other requirements imposed by federal agencies. We also provide a full spectrum of compliance services for qualified retirement plans, non-qualified deferred compensation plans, and welfare plans. For more information, please contact your client services partner or either of the following:

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