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PENSION ANALYST COMPLIANCE BULLETIN



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Department of Labor provides guidance for locating missing participants

Recently, the Department of Labor (DOL) provided updated guidance for locating missing participants. While [Field Assistance Bulletin 2014-01 \(FAB 2014-01\)](#) was specifically directed at the issues encountered when attempting to terminate defined contribution plans and distribute all plan assets in a timely manner, much of the guidance may also be applied to non-plan termination situations. In addition, it may be applied to defined benefit plans, 403(b) plans, and governmental 457(b) plans where missing participant accounts and benefits are an issue. The DOL notes that actions taken to locate missing participants are considered a fiduciary responsibility under ERISA.

“Missing participants” include participants and beneficiaries who are either unresponsive to requests sent by the plan or whose mail is returned to the sponsor as undeliverable.

Participant search steps

Initial participant and beneficiary notification should be made via

- First class mail, or
- Electronic notification (e.g., e-mail).

In the context of FAB 2014-01, this notification would be of a pending plan termination. However, administrators of ongoing plans may need to notify participants or beneficiaries of pending required distributions (for example, due to attainment of normal retirement age, required beginning date, or death benefit distributions), and these methods of notification would be standard for those situations as well.

Required search steps

If the individual does not respond to this notification or the mail is returned as undeliverable, the DOL feels that certain search steps are so cost-effective that they should always be used before abandoning efforts to find the individual. Failure to use these search methods would violate the fiduciary obligations of prudence and loyalty.

These required search steps are:

- **Using certified mail.** For terminating defined contribution plans, the DOL has even provided a [model notice](#) that may be used for such mailings, but is not required.
- **Checking related plan and employer records.** For example, the employer's health plan may have more current information for the participant or beneficiary. If there are privacy concerns, the sponsor or administrator of the retirement plan can ask the fiduciary of the other plan to simply contact or forward a letter to the individual, asking him to contact the sponsor or administrator of the retirement plan.
- **Checking with a designated beneficiary.** If the missing participant has beneficiary information on file with the plan, the plan sponsor or administrator may be able to contact designated beneficiaries to obtain contact information for the missing individual. Again, if there are privacy concerns, the sponsor or administrator of the plan can ask the designated beneficiary to simply contact or forward a letter to the individual, asking him to contact the sponsor or administrator of the retirement plan.
- **Using free electronic search tools.** If previous efforts fail, plan sponsors must also use Internet search tools that do not charge a fee. These tools include search engines, public record databases (e.g., for licenses, mortgages and real estate taxes), obituaries, and social media sites.

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Optional search steps

If these efforts fail to locate missing participants, the plan sponsor must decide if additional searches are appropriate. In making this decision, the sponsor should take into consideration both the size of a participant's account balance or accrued benefit and the cost of additional search efforts.

The DOL lists the following potential optional search steps, which may involve fees for use:

- Internet search tools;
- Commercial locator services;
- Credit reporting agencies;
- Information brokers; and
- Investigation databases.

A defined contribution plan [may charge](#) missing participants' accounts reasonable expenses for the efforts taken to contact them. Such charges must be reasonable and the allocation method must be consistent with the plan's terms.

Options when all search efforts fail

If a plan sponsor is unsuccessful in its attempts to locate missing participants, it must then determine what to do with the missing participants' accounts or benefits.

In the case of a **defined contribution plan termination**, all assets must be distributed as soon as administratively feasible in order for the termination to be completed.

- If the plan is a money purchase plan, the plan sponsor will have to **purchase annuities** for accounts that exceed \$5000. If a 401(k) or profit sharing plan holds old money purchase assets, the sponsor may need to purchase annuities for just those assets. A 401(k) or profit sharing plan that voluntarily offers annuity options [may be amended](#) before the plan termination date so the plan sponsor may use the distribution options described below.
- In all other situations, the DOL's preferred distribution option per FAB 2014-01 is to make a **direct rollover** of the missing participant's account balance **to an individual retirement plan** (individual retirement account or annuity, an "IRA"). If the plan sponsor cannot find an IRA provider that is willing to accept missing participant assets, the DOL suggests two other less-desirable options.
- Opening interest-bearing **federally insured bank accounts** in the names of the missing participants.
- Transferring the account balances to **state unclaimed property funds** (i.e., escheating the assets) in the state of each participant's last known residence or work location.

Of course, a **terminating single employer defined benefit plan** that is **covered by the Pension Benefit Guaranty Corporation (PBGC)** may turn over missing participant assets to the PBGC, following the completion of a diligent search. To be considered a diligent search, the PBGC requires the plan to hire a commercial locator service. Alternatively, the plan may purchase irrevocable commitments from an insurer to pay the benefits.

A **terminating multiemployer defined benefit plan** or a **defined benefit plan that is not covered by the PBGC** should follow the process described above for defined contribution plan terminations.

In the case of **ongoing plans**, most defined contribution plans contain a provision allowing for the forfeiture of missing participant account balances on the condition that the plan sponsor restore those amounts if the participants or beneficiary ever comes forward and makes a claim for benefits. Some defined benefit plans contain a similar provision, which operates to remove the missing participants from the plan's headcount for PBGC premium purposes.

Finally, the DOL stresses that 100% income tax withholding is not an acceptable distribution option.

Compliance Bulletin by Prudential Retirement

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