

MEMO# 31126

March 12, 2018

New Developments Related to Missing Participants of Employer-Sponsored Plans

[31126]

March 12, 2018 TO: ICI Members
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: New Developments Related to Missing Participants of Employer-Sponsored Plans

There have been three recent developments relating to missing participants of employer-sponsored plans, including a newly released report from the US Government Accountability Office (GAO), new legislation to create a database to connect participants with their retirement accounts, and guidelines for IRS examiners regarding 403(b) plans and required minimum distributions payable to missing participants.

GAO Report on Missing Participants

In a recently released report, GAO examined challenges that plan participants face as they change jobs and attempt to keep track of multiple workplace retirement accounts over the course of their careers.[\[1\]](#) GAO found that plan accounts remain unclaimed for multiple reasons, affecting participants' retirement security, despite efforts by plan sponsors, regulators and the participants themselves.

According to GAO, the Department of Labor (DOL) has provided guidance to plan sponsors of **terminated** defined contribution (DC) plans about locating missing participants and unclaimed accounts, but has not provided similar guidance for ongoing plans. In the report, GAO recommends that DOL "issue guidance on the obligations under ERISA of sponsors of ongoing plans to prevent, search for, and pay costs associated with locating missing participants." DOL responded that it agreed with GAO's recommendations, noting that additional guidance may be helpful to plan sponsors and plan fiduciaries. DOL then briefly described the guidance it anticipates issuing[\[2\]](#) and its current enforcement initiative regarding failures to adequately search for missing participants.[\[3\]](#)

GAO also recommended that IRS take a number of actions. In 2012, IRS modified its letter forwarding program, and plan sponsors can no longer use the program to locate plan participants. GAO recommends that IRS "consider revising the letter forwarding program in a cost-effective manner to again provide information on behalf of plan sponsors on

unclaimed retirement accounts to participants.”[\[4\]](#) GAO also recommended that IRS review and clarify the rules relating to uncashed benefit checks and work with the Social Security Administration to take steps to improve the likelihood that the Notice of Potential Private Pension Benefit Information corresponds to actual retirement benefits in the future.[\[5\]](#)

Legislation to Create a “Lost and Found” for Plan Accounts

Senators Elizabeth Warren (D-MA) and Steve Daines (R-MT) reintroduced a bill to create a new database for retirement accounts, the Retirement Savings Lost and Found Act of 2018 (S. 2474).[\[6\]](#) The bill uses existing reporting systems[\[7\]](#) to create an online database that an individual could search to locate all of his or her former employer-sponsored retirement accounts.[\[8\]](#) When a participant locates an account, the database would provide only the contact information of the plan administrator for the plan.

The bill would make a number of changes to the current automatic cashout rules.[\[9\]](#) The bill would raise the current cashout limit from \$5,000 to \$6,000. For amounts transferred to an automatic rollover IRA, the bill modifies the acceptable investment options to include a target date or life cycle fund, a principal preservation investment with a reasonable rate of return, an IRA established by Treasury on behalf of the participant, or an account established by the director of the new database. For cashout amounts under \$1,000, if within six months the participant does not accept a direct payment or otherwise make a distribution election, the distribution must be transferred to the director of the database or to an IRA established by Treasury on behalf of the participant.

The bill creates a safe harbor under both ERISA and the Internal Revenue Code (Code) regarding the steps a plan should take to locate lost or missing participants.[\[10\]](#) The plan must have made at least one attempt to contact the individual by certified mail (or by electronic communication if the only address on record is an email address). The plan must try at least one additional measure (two, if the first attempt was to contact an email address), among the following options:

- Checking with the administrator of a related plan or checking the plan sponsor’s records for an updated address;
- Attempting to contact the individual’s designated plan beneficiary;
- Using a free electronic search tool; or
- Using a commercial locator service.

IRS Audit Guidelines for Missing Participants in 403(b) Plans

On February 23, 2018, the IRS issued a memorandum to its Employee Plans (EP) examiners entitled “Missing Participants and Beneficiaries and Required Minimum Distributions—403(b) Plans” (attached). The memorandum provides guidelines for IRS EP examiners when reviewing 403(b) plans’ compliance with required minimum distribution (RMD) standards under Code section 403(b)(10)[\[11\]](#) in the circumstance that the plan cannot locate participants or beneficiaries to whom an RMD payment is due. The guidelines are identical to ones issued to EP examiners in October 2017 regarding Code section 401(a)(9)’s application to qualified plans.[\[12\]](#)

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[Attachment](#)

endnotes

[1] GAO's report, entitled "Workplace Retirement Accounts: Better Guidance and Information Could Help Plan Participants at Home and Abroad Manage Their Retirement Savings" was published on January 31, 2018 and publicly released on March 5, 2018, and is available at <https://www.gao.gov/products/GAO-18-19>. The report also examines challenges US participants face with complying with US tax reporting requirements on their foreign retirement savings.

[2] DOL noted that it expects to revisit its guidance under 29 CFR §2550.404a-3 (Safe Harbor for Distributions from Terminated Individual Account Plans), 29 CFR §2578.1 (Termination of Abandoned Individual Account Plans), and Field Assistance Bulletin 2014-01 (Fiduciary Duties and Missing Participants in Defined Contribution Plans) to facilitate the use of the Pension Benefit Guaranty Corporation's (PBGC) newly expanded missing participants program. See Appendix IV of GAO's report for DOL's November 28, 2017 letter responding to GAO's draft report.

[3] DOL's November 28, 2017 letter describes the enforcement initiative as follows: "EBSA currently is engaged in a major enforcement initiative (the 'Terminated Vested Participant Project' to 'TVPP') examining whether plan officials are meeting their fiduciary obligations under section 404 of ERISA to find missing participants and pay them their benefits. As noted in the GAO report, the TVPP uncovered a number of failures to update addresses, maintain records, and adequately search for missing participants. As the result of the problems uncovered by the TVPP, EBSA is considering the need for additional guidance regarding the duty of plan fiduciaries to maintain updated addresses and other records."

[4] IRS disagreed with this recommendation, noting its limited staff and resources and commented that the IRS address of record for a participant would likely be of no greater value than addresses available through alternatives such as commercial locator services. See Appendix V of GAO's report for IRS's December 14, 2017 letter responding to GAO's draft report.

[5] Plan sponsors use the Form 8955-SSA to report to IRS when participants terminate employment with a vested benefit. IRS provides this information to SSA, and when an individual retires and claims Social Security benefits, SSA sends the individual a Notice of Potential Private Pension Benefit Information. By the time the participant receives the notice, the information is often outdated or incorrect.

[6] Senator Warren's News Release, which includes links to the bill text and to a summary of the bill, is available at <https://www.warren.senate.gov/newsroom/press-releases/warren-daines-re-introduce-bill-to-upgrade-americas-retirement-saving-system>. The bill was originally introduced in 2016 as the Retirement Savings Lost and Found Act of 2016 (S. 3078).

[7] The database would consist of the information reported on Form 8955-SSA. See footnote 5 above. The bill would also modify the information plans must report on the Form 8955-SSA, including requiring additional information for any participant whose benefits were fully paid during the plan year, whose account was cashed out under the automatic IRA rollover rules, or to whom a deferred annuity contract was distributed during the plan year.

[8] Note that the PBGC recently finalized regulations expanding its existing missing participant program to allow terminating DC plans to voluntarily transfer information and/or benefit amounts of missing distributes. PBGC also is creating a new unified pension search database. The database would be limited, however, to information provided voluntarily by terminating DC plans. See ICI Memorandum No. 31026, dated January 16, 2018, available here: https://www.ici.org/my_ici/memorandum/memo31026.

[9] Generally, under current rules, if a participant terminates employment with an account balance of \$5,000 or less, the plan may distribute the account to the participant without the participant's consent. If the participant does not elect otherwise, amounts exceeding \$1,000 must be rolled over into an IRA established in the participant's name.

[10] Note that the safe harbor requirements are similar to the step described by DOL in Field Assistance Bulletin 2014-1 with respect to terminated plans.

[11] Code section 403(b)(10) provides that a 403(b) contract must satisfy requirements similar to Code section 401(a)(9) in order to receive favorable tax benefits.

[12] See ICI Memorandum No. 30942, dated November 8, 2017, available here: https://www.ici.org/my_ici/memorandum/memo30942.