

**MEMO# 31921**

August 28, 2019

# **ICI Submits Written Statement to ERISA Advisory Council on Permissive Transfers of Uncashed Checks from ERISA Plans to State Unclaimed Property Funds**

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August 28, 2019 TO: ICI Members  
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Abandoned Property and Escheatment  
Pension RE: ICI Submits Written Statement to ERISA Advisory Council on Permissive  
Transfers of Uncashed Checks from ERISA Plans to State Unclaimed Property Funds

ICI submitted the attached letter to the ERISA Advisory Council (the “Council”) on the topic “Permissive Transfers of Uncashed Checks from ERISA Plans to State Unclaimed Property Funds,” in connection with the Council’s August 27-29, 2019 meeting. The Council’s stated objective is to review the treatment and procedures utilized by state unclaimed property funds, which may vary significantly between states and “to explore whether there are circumstances in which voluntary transfers of uncashed distribution checks to a state unclaimed property fund advances the Department of Labor’s goal of reuniting Missing Participants with their retirement savings.”[\[1\]](#)

Our letter includes the following recommendations:

- DOL should clarify that a voluntary distribution to a state unclaimed property fund made in accordance with the express terms of the applicable plan document is a “settlor,” i.e., non-fiduciary, function.
- DOL should issue guidance facilitating the use of state unclaimed property funds as one of several permissible options for the handling of uncashed distribution checks. This guidance should be in the form of a safe harbor for the voluntary transfer of uncashed checks to a state unclaimed property fund and should provide blanket protection for a plan’s decision to remit an uncashed check to a state under the laws of the state where the participant last resided. In issuing such guidance, it is important that DOL also reaffirm its broad view of ERISA preemption of state unclaimed property and escheat laws.

- The Pension Benefit Guaranty Corporation's (PBGC) missing participant program should be further expanded to accept assets on behalf of any missing defined contribution plan participant, whether their plan is terminated or active. Such an expansion of the PBGC program is a preferable solution to the issue of missing participants (including the problems associated with uncashed distribution checks) because (1) a centralized repository for these assets would make it easier for participants and beneficiaries to locate and retrieve their retirement plan benefits and (2) the PBGC program would offer other advantages as compared to state programs, such as interest accrual, preservation of tax deferral where appropriate, and periodic searches for missing participants.

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## [Attachment](#)

### **endnotes**

[1] See 2019 ERISA Advisory Council Issue Statement, available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/2019-permissive-transfers-of-uncashed-checks-from%20erisa-plans-to-state-unclaimed-property-funds.pdf>. The Council also states that it will not address what steps are necessary or appropriate for ERISA plans to take in locating missing participants.

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