

MEMO# 35998

January 27, 2025

DOL Provides Relief for Transfer of Small Retirement Accounts of Missing Participants to State Unclaimed Property Funds

[35998]January 27, 2025TO:ICI Members

Pension Committee

Pension Operations Advisory CommitteeSUBJECTS:Abandoned Property and Escheatment
PensionRE:DOL Provides Relief for Transfer of Small Retirement Accounts of Missing
Participants to State Unclaimed Property Funds

On January 14, 2025, the Department of Labor (DOL) issued Field Assistance Bulletin (FAB) No. 2025-01, announcing a temporary enforcement policy related to the transfer of small accounts of missing participants to state unclaimed property funds.[\[1\]](#) Under the new enforcement policy, DOL will not take action under the fiduciary duty provisions of ERISA against fiduciaries who transfer entire benefit payments owed to missing participants of \$1,000 or less to state unclaimed property funds, if certain conditions are met.

Background

Prior to 2021, DOL's positions regarding the obligation of plan fiduciaries to locate missing defined contribution (DC) plan participants and repatriate unclaimed accounts was limited to terminated DC plans and had not included guidance for ongoing plans.[\[2\]](#) After much advocacy from a joint trade group,[\[3\]](#) DOL issued a package of guidance on January 12, 2021 applicable to missing participants in ongoing retirement plans.[\[4\]](#) The package included guidance designed to help plan fiduciaries meet their obligations under ERISA to locate and distribute retirement benefits to missing or nonresponsive participants, including a document describing best practices for retirement plans ("Best Practices Guidance").[\[5\]](#)

In 2019, the ERISA Advisory Council studied the topic "Permissive Transfers of Uncashed Checks from ERISA Plans to State Unclaimed Property Funds" and provided recommendations to DOL (including a recommendation that DOL should issue guidance stating that a transfer of amounts attributable to a missing participant's uncashed check to a state unclaimed property program constitutes a payment of benefits under ERISA.[\[6\]](#) The Council's stated objective was 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." In connection with the Council's hearings on this topic, ICI submitted a letter.[\[7\]](#) While we supported the idea of

DOL issuing guidance facilitating the voluntary use of state unclaimed property funds, we also suggested that 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.

More recently, as directed by section 303 of the SECURE 2.0 Act, DOL has established the Retirement Savings Lost and Found, an online searchable database to enable retirement savers to search for benefits owed to them.[\[8\]](#) DOL notes in the new FAB that as part of the Retirement Savings Lost and Found project, it intends to consider more formal guidance related to voluntary transfer of retirement benefit payments from ongoing pension benefit plans to state unclaimed property funds. In anticipation of that guidance, DOL is issuing this temporary enforcement policy.

As it did in the documents related to the Retirement Savings Lost and Found, DOL again takes the opportunity to tout the enforcement effort that it began several years ago regarding missing participants (the Terminated Vested Participants Project).[\[9\]](#)

Temporary Enforcement Policy

Pending further guidance, DOL will not pursue violations of ERISA's fiduciary duties, when a plan fiduciary voluntarily decides to transfer retirement benefit payments (including uncashed checks) owed to a missing participant or beneficiary from an ongoing pension benefit plan to a state unclaimed property fund, provided the present value of the participant's or beneficiary's nonforfeitable accrued benefit is \$1,000 or less[\[10\]](#) (disregarding any outstanding plan loans, but including rollover contributions) and the plan fiduciary complies with the applicable conditions listed below. This guidance is limited to transfers from an ongoing DC or defined benefit pension plan.[\[11\]](#)

The conditions are:

- The plan fiduciary determines that the transfer to a state unclaimed property fund is a prudent destination for the participant's or beneficiary's retirement benefit payments;
- The plan fiduciary has implemented a prudent program to find missing participants consistent with DOL's Best Practices Guidance,[\[12\]](#) and nevertheless has been unable to locate the participant or beneficiary;
- The plan fiduciary selects the state unclaimed property fund offered by the state of the last known address of the participant or beneficiary;
- The plan's summary plan description explains that retirement benefit payments of missing participants or beneficiaries may be transferred to an eligible state fund and identifies the name, address, and phone number of a plan contact for further information concerning the eligible state funds to which the retirement benefit payments are transferred; and
- The state unclaimed property fund qualifies as an eligible state fund as defined below.

An eligible state fund means a state unclaimed property fund that:

1. acts as the custodian of the funds for the benefit of the affected participants, beneficiaries, and their heirs and allows for claims to be made and paid in perpetuity regardless of when unclaimed property was received by the state;
2. does not reduce the transfer amount by any fees or other charges (i.e., pays the approved claimant not less than 100 percent of the amount reported and remitted by the fiduciary);
3. maintains or causes to be maintained a searchable website that reliably shows, at no

charge, the name of the missing participant or beneficiary and the name of the plan in the results page of a search and permits an electronic claims process;

4. provides the public with the ability to make inquiries concerning unclaimed property by physical mail, electronic mail and telephone;
5. participates in the National Association of Unclaimed Property Administrators (NAUPA) MissingMoney.com website or similar non-commercial unclaimed property database operated under the auspices of the National Association of State Treasurers, Inc.;
6. provides streamlined processing for small claims (e.g., claims of \$1,000 or less);
7. diligently searches at least annually for an updated address for missing participants and beneficiaries for amounts in excess of \$50, and, upon obtaining an updated address, notifies the owner in writing that the state fund is holding the owner's money;
8. permits a plan whose fiduciary has transferred the unclaimed property to the state to pay a reappearing participant or other payees directly, and then obtain reimbursement from the state; and
9. participates in the States' Unclaimed Property Clearing House, as operated by the National Association of State Treasurers, Inc.

Absent actual knowledge to the contrary, the plan fiduciary may rely on a representation by a State Treasurer that the state operates an unclaimed property fund that meets all of the above conditions.

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Notes

[1] FAB 2025-01 is available at <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2025-01>. DOL's news release on the FAB, dated January 14, 2025, is available at <https://www.dol.gov/newsroom/releases/ebsa/ebsa20250114-0>.

[2] Field Assistance Bulletin (FAB) 2014-01 (Fiduciary Duties and Missing Participants in Defined Contribution Plans). For a description of FAB 2014-01, see ICI Memorandum No. 28318, dated August 18, 2014, available at <https://www.ici.org/memo28318>.

[3] ICI engaged DOL on these issues jointly with a group of other retirement industry trade organizations ("joint trade group"). In a 2018 letter and a February 2020 meeting with DOL staff, the joint trade group explained to DOL that, not only is guidance needed to help fiduciaries understand what steps are expected of them, but also that more transparency and consistency in audit guidelines would help manage expectations and speed the regional offices' review of plan procedures. See ICI Memorandum No. 31288, dated July 16, 2018, available at <https://www.ici.org/memo31288>.

[4] For a summary of the guidance, issued in three pieces, see ICI Memorandum No. 33043, dated January 14, 2021, available at <https://www.ici.org/memo33043>.

[5] The Best Practices Guidance (titled Missing Participants - Best Practices for Pension Plans) covers a range of best practices that plan fiduciaries should consider taking to help reduce missing participant issues, and is available at <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compli>

[ance/retirement/missing-participants-guidance/best-practices-for-pension-plans](#). The Best Practices Guidance does not include any type of safe harbor for distributions from ongoing plans.

[6] The other two recommendations were that (1) DOL should issue guidance clarifying that uncashed distribution checks are "plan assets" within the meaning of ERISA section 3(42) and reaffirming that ERISA preempts state unclaimed property laws to the extent of such assets, and (2) DOL should issue guidance stating that (A) a plan fiduciary will be viewed as having satisfied its fiduciary responsibility under ERISA to the extent the fiduciary transfers amounts attributable to a missing participant's uncashed check to a state unclaimed property program that meets minimum standards, as determined by DOL, and that (B) in connection with any such transfer, a plan fiduciary may rely on a state program's representation that it meets such minimum standards. For an overview of the recommendations, see ICI Memorandum No. 32039, dated November 6, 2019, available at <https://www.ici.org/memo32039>. The Council's full report is available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/employee-advisory-council-voluntary-transfers-uncashed-checks.pdf>.

[7] For a summary of the letter, see ICI Memorandum No. 31921, dated August 28, 2019, available at <https://www.ici.org/memo31921>.

[8] The database will contain information on tax-qualified retirement plans to enable retirement savers to search for the contact information of their plan administrator and locate the benefits they have earned. For more information about the Lost and Found Database, see ICI Memorandum No. 35935, dated November 25, 2024, available at <https://www.ici.org/memo35935>.

[9] For several years, ICI has engaged DOL on these issues (including DOL's investigative efforts). See footnote 3 above.

[10] Because the relief is limited to payments where the present value of the participant's or beneficiary's nonforfeitable accrued benefit is \$1,000 or less, the relief does not appear to apply in the case of an uncashed check in an amount that is \$1,000 or less (e.g., a \$500 payment representing required minimum distribution payment) if the participant also continues to have an account balance, and the uncashed check plus the remaining account balance in the plan total more than \$1,000. This may be a point that could be confirmed or clarified with DOL.

[11] Guidance already exists permitting a transfer of funds of terminated DC plans. See footnote 2 above.

[12] See footnote 5 above.