Updated Missing Participants Guidance

The U.S. Department of Labor's Employee Benefits Security Administration recently posted new guidance on Missing Participants including:

Missing Participants – Best Practices for Pension Plans;

Field Assistance Bulletin No. 2021-01, Temporary Enforcement Policy Regarding the Participation of Terminating Defined Contribution Plans in the PBGC Missing Participants Program; and

Compliance Assistance Release No. 2021-01, Terminated Vested Participant Project Defined Benefit Pension Plans.

This guidance follows up on past guidance which encourages Plan sponsors to ensure they are making their best efforts to locate missing participants.

Missing Particpants – Best Practices

In the course of its investigations, EBSA observed the missing participant processes and practices of several plans ranging from the poorly run to the well-run. Based on EBSA's experience working with plans, the following practices have proven effective at minimizing and mitigating the problem of missing or nonresponsive participants.

1. **Maintaining accurate census information for the plan's**

participant population.

- Contacting participants, both current and retired, and beneficiaries on a periodic basis to confirm or update their contact information. Relevant contact information could include home and business addresses, telephone numbers (including cell phone numbers), social media contact information, and next of kin/emergency contact information. Well-run plans regularly reconfirm that the information in their possession is accurate.
- Including contact information change requests in plan communications along with a reminder to advise the plan of any changes in contact information.
- Flagging undeliverable mail/email and uncashed checks for follow-up.
- Maintaining and monitoring an online platform for the plan that participants can use to update contact information for themselves and their spouses/beneficiaries, if any, and incorporating such updates into the plan's census information.
- Providing prompts for participants and beneficiaries to confirm contact information upon login to online platforms.
- Regularly requesting updates to contact information for beneficiaries, if any.
- Regularly auditing census information and correcting data errors.
- In the case of a change in record keepers or a business merger or acquisition by the plan sponsor, addressing the transfer of appropriate plan information (including participant and beneficiary contact information) and relevant employment records (e.g. next of kin information and emergency contacts). EBSA has found that in

the context of an acquisition, merger, or divestiture, well-run plans make missing participant searches of plan, related plan (e.g., health plan) and employer records (e.g., payroll records) part of the collection and transfer of records.

2. **Implementing effective communication strategies.**
    - Using plain language and offering non-English language assistance when and where appropriate.
    - Stating upfront and prominently what the communication is about – e.g., eligibility to start payment of pension benefits, a request for updated contact information, etc.
    - Encouraging contact through plan/plan sponsor websites and toll free numbers.
    - Building steps into the employer and plan onboarding and enrollment processes for new employees, and exit processes for separating or retiring employees, to confirm or update contact information, confirm information needed to determine when benefits are due and to correctly calculate the amount of benefits owed, and advise employees of the importance of ensuring that the plan has accurate contact information at all times.
    - Communicating information about how the plan can help eligible employees consolidate accounts from prior employer plans or rollover IRAs.
    - Clearly marking envelopes and correspondence with the original plan or sponsor name for participants who separated before the plan or sponsor name changed, for example, during a corporate merger, and indicating that the communication relates to pension benefit rights.

3. **Missing participant searches.**

- Checking related plan and employer records for participant, beneficiary and next of kin/emergency contact information. While the plan may not possess current contact information, it is possible that the employer's payroll records or the records maintained by another of the employer's plans, such as a group health plan, may have more up-to-date information. If there are privacy concerns, the person engaged in the search can request that the employer or other plan fiduciary forward a letter from the plan to the missing participant or beneficiary.
- Checking with designated plan beneficiaries (e.g., spouse, children) and the employee's emergency contacts (in the employer's records) for updated contact information; if there are privacy concerns, asking the designated beneficiary or emergency contact to forward a letter to the missing participant or beneficiary.
- Using free online search engines, public record databases (such as those for licenses, mortgages and real estate taxes), obituaries, and social media to locate individuals.
- Using a commercial locator service, a credit-reporting agency, or a proprietary internet search tool to locate individuals.
- Attempting contact via United States Postal Service (USPS) certified mail, or private delivery service with similar tracking features if less expensive than USPS certified mail, to the last known mailing address.
- Attempting contact via other available means such as email addresses, telephone and text numbers, and social media.
- If participants are nonresponsive over a period of

time, using death searches (e.g., Social Security Death Index) as a check and, to the extent such search confirms a participant's death, redirecting communications to beneficiaries.

- Reaching out to the colleagues of missing participants by, for example, contacting employees who worked in the same office (e.g., a small employer with one or two locations) or by publishing a list of "missing" participants on the company's intranet, in email notices to existing employees, or in communications with other retirees who are already receiving benefits. Similarly, for unionized employees, some have reached out to the union's local offices and through union member communications to find missing retirees.
- Registering missing participants on public and private pension registries with privacy and cyber security protections (e.g., National Registry of Unclaimed Retirement Benefits), and publicizing the registry through emails, newsletters, and other communications to existing employees, union members, and retirees.
- Searching regularly using some or all of the above steps.

4. **Documenting procedures and actions**

- Reducing the plan's policies and procedures to writing to ensure they are clear and result in consistent practices.
- Documenting key decisions and the steps and actions taken to implement the policies.
- For plans that use third party record keepers to maintain plan records and handle participant communications, ensuring the record keeper is performing agreed upon services, and working with the record keeper to identify and correct

shortcomings in the plan's recordkeeping and communication practices, including establishing procedures for obtaining relevant information held by the employer.

Field Assistance Bulletin No. 2021-01, Temporary Enforcement Policy Regarding the Participation of Terminating Defined Contribution Plans in the PBGC Missing Participants Program

Pending further guidance, the DOL will not pursue violations under section 404(a) of ERISA against either responsible plan fiduciaries of terminating defined contribution plans or Qualified Termination Administrators (QTA) of abandoned plans in connection with the transfer of a missing or non-responsive participant's or beneficiary's account balance to the PBGC in accordance with the PBGC's missing participant regulations rather than to an IRA, certain bank accounts, or to a state unclaimed property fund, as specified in 29 CFR 2550.404a-3, if the plan fiduciary or QTA complies with the guidance in Field Assistance Bulletin No. 2021-01 and has acted in accordance with a good faith, reasonable interpretation of section 404 of ERISA.

However, this temporary enforcement policy does not preclude the DOL from pursuing violations under sections 404 or 406 of ERISA for a failure to diligently search for participants and beneficiaries prior to the transfer of their account balances to the PBGC or from pursuing violations under sections 107, 209 or 404 of ERISA for a failure to maintain plan and employer records.

Field Assistance Bulletin No. 2021-01 expresses a temporary enforcement policy; it does not address the rights or obligations of other parties. To the extent Field Assistance Bulletin No. 2021-01 conflicts with the distribution guidance of Field Assistance Bulletin 2014-01, Field Assistance Bulletin No. 2021-01 controls.

Compliance Assistance Release No. 2021-01, Terminated Vested Participant Project Defined Benefit Pension Plans

The purpose of Compliance Assistance Release No. 2021-01 is to ensure consistent investigative processes and case-closing practices among the Employee Benefits Security Administration's Regional Offices conducting Terminated Vested Participants Project (TVPP) audits and to facilitate voluntary compliance efforts by plan fiduciaries. The memorandum details our those processes and practices to be followed.

Torrillo & Associates
Benefit Plan Audit Specialists

Phone:

Email:

Address:

Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in 10 states including Pennsylvania, New Jersey, Delaware, New York and Florida. We are also able to practice in additional states that have passed firm mobility.

Recent Articles

- 2027 Contribution Limits
- EPCRS Updated and New ICRS Program Established for Correcting IRA Errors
- IRS Announces Cycle 4 Adoption Deadline for Defined Contribution Pre-Approved Plans
- IRS Issues, Rev. Proc. 2026-30, Application Procedures for Letter Rulings and Nonbank Trustee Approval Letters from IRS Employee Plans

Site Navigation

- Home
- About
- Services
- Careers
- Clients
- Videos
- Blog
- FAQs
- Contact Us
- Privacy Policy
- Terms of Use

Search The Site

Search for: Search

- RSS

© 2010 to 2026 Torrillo & Associates, LLC (Now LBMC Pennsylvania) - 36 Regency Plaza, Glen Mills, PA 19342 | Site Development and Marketing by Client by Design