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DOL Issues Guidance on Missing Participants and Transfers to State Unclaimed Property Funds



[Field Assistance Bulletin No. 2025-01, Missing Participants and Beneficiaries – Pension Plans’ Transfer of Small Retirement Benefit Payments to State Unclaimed Property Fund](#), announces a temporary enforcement policy applicable to small retirement benefit

payments owed to [missing participants](#) or beneficiaries that a responsible plan fiduciary voluntarily decides to pay over to a state unclaimed property fund from an ongoing defined contribution or defined benefit pension plan.

Pending further guidance, the Department of Labor (DOL) will not pursue violations under ERISA section 404(a) in connection with the voluntary decision 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 and the plan fiduciary complies with the applicable conditions set forth in Field Assistance Bulletin No. 2025-01.

Background

The central function of an ERISA-covered pension benefit plan is to provide promised retirement benefits to participants and beneficiaries. To assist plans in fulfilling this function,

the DOL has undertaken a nationwide compliance initiative focused on practices to maintain complete and accurate census information, communicate with participants and beneficiaries about their eligibility for benefits, and implement effective policies and procedures to locate missing participants and beneficiaries. In 2021, the DOL issued guidance to pension plan fiduciaries on best practices for ensuring that plan participants and beneficiaries receive promised benefits when they reach retirement age.

If a participant or beneficiary is missing, ERISA requires plan fiduciaries to exercise prudent and loyal judgment with respect to handling retirement benefit payments. In the past, the DOL has identified "individual retirement plans" (IRAs) as the preferred destination for a distribution from a retirement account or benefit owed to a missing participant or beneficiary from a terminated defined contribution plan. However, the DOL also recognized that an IRA may not always be available for a distribution and has provided fiduciaries of terminating defined contribution plans with the option of transferring distributions to a state unclaimed property fund or an interest-bearing federally insured bank account under certain circumstances. Before making such a decision, the fiduciary must prudently conclude that the distribution is appropriate despite the potential considerable adverse tax consequences to the participant or beneficiary

The DOL has continued to engage with a range of stakeholders on issues surrounding missing participants, including representatives of retirement plans, employers, financial services providers, consumers, and state unclaimed property funds. See, e.g., Report of the ERISA Advisory Council, "Locating Missing and Lost Participants" (November 2013); GAO, "Federal Action Needed to Clarify Tax Treatment of Unclaimed 401(k) Plan Savings Transferred to States," GAO-19-88 (January 2019); and Report of the ERISA Advisory Council, "Voluntary Transfers of Uncashed Checks from ERISA Plans to State

Unclaimed Property Programs” (November 2019).

In this regard, the ERISA Advisory Council 2019 report recommended that the DOL issue guidance on voluntary transfers of amounts attributable to missing participants’ uncashed benefit checks from pension benefit plans to state unclaimed property funds that meet certain minimum standards. The report, which was premised on the lack of a federal registry or clearinghouse for reporting or handling uncashed retirement checks at that time, concluded that state unclaimed property funds “have a number of features that may increase the likelihood that [m]issing [p]articipants will be reunited with their lost retirement savings.” Among other considerations, the report cited a 2014 GAO Report on mandatory distributions rolled over to IRAs that found that with respect to the IRAs analyzed, fees often outpaced returns and account balances decreased over time.

As compared to an IRA, state unclaimed property funds do not deduct fees from amounts returned to claimants. Additionally, the National Association of State Treasurers (NAST) has noted that the key purpose of state unclaimed property funds is returning lost assets to owners and that “states have collectively returned billions of dollars to claimants annually for a number of years.” NAST further stated that “states maintain robust unclaimed property operations, with staff – and budgeted funds – devoted to outreach, claims processing, IT development, fraud prevention, and marketing.”

Other considerations support the DOL’s decision to provide additional guidance on voluntary transfers of benefit payments to state unclaimed property funds. These include development of the “States’ Unclaimed Retirement Clearing House” or “SURCH,” designed, in part, to address the operational complexity for pension benefit plans sending money to multiple states. Additionally, the Internal Revenue Service has issued guidance identifying certain circumstances under which otherwise qualifying retirement distributions initially made

to state unclaimed property funds may be later rolled over to a qualified plan on a pretax basis.

Pursuant to the SECURE 2.0 Act the DOL has established the Retirement Savings Lost and Found, an online searchable database that will allow participants and beneficiaries of covered retirement plans to search for the contact information of their plan administrator in order to make a claim for benefits owing to the individual under the plan. The database will also allow the DOL to directly assist individuals in locating their respective plan administrator as well as make updates to plan contact information as necessary to keep that information current. As part of that project, the DOL 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 such activity, the DOL is establishing a temporary enforcement policy as described below.

Temporary Enforcement Policy

Pending further guidance, the DOL will not pursue violations under ERISA section 404(a) in connection with the voluntary decision 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 and the plan fiduciary complies with the applicable conditions set forth in Field Assistance Bulletin No. 2025-01. For purposes of determining the present value of the benefit, the fiduciary must disregard the amount of any outstanding plan loans but must include rollover contributions described in Internal Revenue Code section 411(a)(11)(D).

Conditions

1. 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;
2. The plan fiduciary has implemented a prudent program to find missing participants consistent with the DOL's Best Practices for Pension Plans, and nevertheless has been unable to locate the participant or beneficiary;
 3. The plan fiduciary selects the state unclaimed property fund offered by the state of the last known address of the participant or beneficiary;
 4. 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
 5. The state unclaimed property fund qualifies as an eligible state fund as defined below.

The term "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% 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 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.



Field Assistance Bulletin No. 2025-01 does not preclude the DOL from pursuing violations under ERISA sections 107, 209 and 404 for a failure to maintain records. Field Assistance Bulletin No. 2025-01 also does not affect the rights of other parties.



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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.

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