



Managing **Missing Participant Accounts** and **Fiduciary Responsibility**



By Spiro Preovolos, APR

Managing missing participant funds can be a complex and time-consuming process for plan sponsors and trustees. Attempting to locate missing participants often seems like a fruitless and frustrating task. Appropriately managing missing participant accounts requires choosing from a number of different options, many of which are problematic. And terminating a retirement plan with missing participants increases the complexity of the process and the fiduciary risk to the trustee.

For years, managing missing participant funds has been somewhat of a gray area within the retirement plan industry. But over the last decade, the U.S. Department of Labor (DOL) has been providing more direct guidance in terms of how to manage missing or unresponsive retirement plan participants and their funds. And now, the DOL has decided to increase its scrutiny of benefit payment practices¹ – including the way plan sponsors and trustees search for missing participants and manage their unclaimed accounts – to ensure that retirement plan trustees fulfill their fiduciary responsibilities to plan participants.

¹ Report: *DOL Launching Focus on Benefit Payment Practices*; NAPA Net Staff, 2/8/16



For example, the DOL Field Assistance Bulletin (FAB) 2014-01 clearly requires plan sponsors to make a **reasonable effort to locate all missing participants** when terminating a retirement plan.

Specifically, it mandates **four location steps**, and suggests “**reasonable additional steps**” to satisfy your fiduciary responsibilities when missing participants with larger balances can’t be found.

The mandated steps include:

- 1) Using certified mail
- 2) Checking related plan and employer records
- 3) Checking with designated beneficiary/ies
- 4) Using free electronic search tools

If these fail to locate the missing participant, FAB 2014-01 suggests plan sponsors use **paid electronic search tools**, such as commercial locator services, credit reporting agencies or fee-based databases.

MISSING PARTICIPANT DISTRIBUTION OPTIONS

The DOL also provides specific guidance when making distributions to missing plan participants. Specifically, DOL regulation 2550.404a-3 outlines a process plan sponsors can take for Safe Harbor distributions that protect participant assets while fulfilling plan sponsor fiduciary responsibility.

The first step involves notifying missing participants of their available distribution options. Again, the DOL requires that plan sponsors make “reasonable” attempts to locate the participant.

However, if the participant fails to respond or make an election within 30 days, the DOL considers the distribution notice to have been delivered.

At this point, plan sponsors and trustees have several options. In most cases, the first and best option involves transferring the assets to an individual retirement account (IRA), such as a Missing Participant IRA.

These types of IRA accounts are simple to establish and offer several benefits, including:

- Maintaining the favorable tax treatment of the participants’ accounts
- Reducing fiduciary exposure to plan sponsors and trustees
- Relatively low administrative costs
- Can be administered by third-party vendors to reduce the workload of plan sponsor staff

However, fiduciaries need to make sure that both the IRA administration and its underlying investment(s) comply with the DOL safe harbor requirements, which is no easy task. What often makes this task more difficult is the fact that many IRA vendors will not take account balances of less than \$1,000 – a common occurrence with missing participant accounts.

THE PROBLEM WITH CASHING OUT PLAN PARTICIPANTS

When plan sponsors can’t find a vendor willing to take a small account, they will sometimes write a check and mail it to the participant’s last known address, thinking that this “cash out” approach will satisfy their fiduciary obligations. However, this approach can lead to significant problems for plan sponsors and trustees.

As we discussed in a previous article, **Uncashed Checks: More Than Just An Accounting Problem** ([Download Now](#)) plan sponsors and trustees face a host of tax, legal and fiduciary responsibilities when dealing with uncashed retirement plan checks. These can range from complying with DOL Safe Harbor regulations to determining how uncashed checks can impact administration of the plan. Furthermore, the IRS and DOL don’t always provide clear guidance on how to properly administer these assets.

Meanwhile, the cash-out approach can present problems for plan participants as well. If the participant has not reached age 59½, the retirement funds become subject to income taxation, mandatory tax withholding, and a 10% penalty tax for premature distribution.



Most important, when a check does not get cashed – and the smaller the amount, the more likely it will go uncashed – the plan sponsor or trustee is still responsible for managing the funds.

The fiduciary responsibility in this situation is not just to pay out participants; it's to make sure they receive their money. Or, in the absence of accepted payment, appropriately manage the funds.

NON-IRA OPTIONS

Clearly, establishing a Missing Participant IRA offers a better option than cashing out the plan participant. However, if transferring the missing participant funds to an IRA doesn't suit the fiduciary, two other options are available for consideration.

The fiduciary can open an interest-bearing federally insured bank account, or they can place the assets in the unclaimed property fund of the state in which the participant's last known address is located. At first glance, these seem like relatively simple solutions, but both leave a lot to be desired, and can potentially put the fiduciary at risk.

As with the cash-out approach, both options subject the retirement funds to income taxation, mandatory income tax withholding, and possibly the 10% premature distribution penalty. All of which can erode the value of the assets and reduce the amount of money available for retirement.

However, DOL FAB 2014-01 states that “a prudent and loyal fiduciary would not voluntarily subject a missing participant's funds to such negative consequences in the absence of compelling offsetting considerations.” Given this warning by the DOL, no prudent fiduciary should take the chance.

Additionally, some plan trustees believe that withholding 100% of the benefit, which moves the entire benefit to the IRS, will eliminate that need for ongoing administration.

Again, the DOL is **very clear on its position that 100% withholding is not in the best interest of the participant and, in fact, violates fiduciary requirements.**

OUTSOURCED OPTIONS CAN PROVIDE A SOLUTION

Given the problems inherent in managing missing participant assets, it's not surprising that many plan sponsors and trustees are turning to third-party vendors who specialize in managing missing participants and uncashed checks.

These vendors typically offer a package of services ranging from performing the DOL-mandated steps required to locate missing participants to establishing **Missing Participant IRA accounts** to escheating the funds to the state after the prescribed amount of time. In doing so, these vendors provide plan sponsors and TPAs with a cost-effective solution that complies with the DOL-mandated steps.

When selecting an outsourced missing participant vendor, there are many criteria to consider, both from an administrative and fiduciary perspective.

For example, does the vendor:

- **Have a cost-effective process** for locating plan participants? If so, how quickly can they generate meaningful search results?
- **Send out benefit election notices** to the most current addresses available and offer plan participants the opportunity to claim their funds?
- **Offer an online benefit election system** that gives responsive plan participants a safe and convenient way to receive their money?
- **Provide Default and/or Missing Participant IRA solutions** to properly manage the funds in accordance with DOL Safe Harbor regulations? If so, does the vendor accept IRA accounts less than \$1,000?



- **Automatically register** missing plan participants in the National Registry of Unclaimed Retirement Benefits Database? This free service can be securely searched on the web by plan participants to find lost or forgotten retirement accounts.
- **Ensure that all fiduciary obligations** to the IRS are met by automatically paying taxes owed when plan participants reach the Required Minimum Distribution (RMD) age of 70½?
- **Have a track record** of reuniting plan participants with their retirement assets while making it easier for plan sponsors to make distributions, move unclaimed funds out of their plans, and terminate plans according to DOL and IRS regulations?

A qualified missing participant IRA vendor can save plan sponsors and trustees **time** and **money**, while freeing their staff up to focus on serving their clients. More important, when the vendor properly administers the missing participant process, **it reduces the fiduciary risk to the trustee.**

Ultimately, every plan sponsor and trustee must decide how to manage their missing participant accounts.

For those seeking a complete solution that protects the interests of plan participants while reducing their own fiduciary risk, **outsourcing to a third-party vendor presents a safe and cost-effective solution.**

Contact us or visit our website for more information:

Info@PenChecks.com | 800.541.3938

www.**PENCHECKS**.com



➤ ABOUT THE AUTHOR

Spiro Prevolos is Vice President of Business Development for PenChecks Trust, the largest independent provider of outsourced benefit distribution services and Default/Missing Participant IRAs in the U.S.

An Accredited Pension Representative (APR), Prevolos focuses on developing strategic partnerships and service offerings that help institutions, third party administrators, advisors, sponsors and trustees effectively manage a wide array of pension distribution related issues while upholding fiduciary obligations to their clients.

