

FIELD ASSISTANCE BULLETIN NO. 2025-1

DATE:

MEMORANDUM FOR: COLLEEN MCKEE, DIRECTOR OF ENFORCEMENT
REGIONAL DIRECTORS

FROM: JEFFREY TURNER
ACTING DIRECTOR OF REGULATIONS AND INTERPRETATIONS

SUBJECT: MISSING PARTICIPANTS AND BENEFICIARIES – PENSION PLANS’
TRANSFER OF SMALL RETIREMENT BENEFIT PAYMENTS TO STATE
UNCLAIMED PROPERTY FUNDS

This memorandum announces a temporary enforcement policy under the Employee Retirement Income Security Act of 1974, as amended (ERISA), 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.

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 Department of Labor 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 Department issued guidance to pension plan fiduciaries on best practices for ensuring that plan participants and beneficiaries receive promised benefits when they reach retirement age.¹

If a participant or beneficiary is missing, ERISA requires plan fiduciaries to exercise prudent and loyal judgment with respect to handling retirement benefit payments.² In the past, the Department 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.³ However, the Department 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.⁴

¹ Missing Participants – Best Practices for Pension Plans, <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/retirement/missing-participants-guidance/best-practices-for-pension-plans>.

² This document uses the term “missing” to also refer to participants and beneficiaries who are nonresponsive.

³ See Field Assistance Bulletin (FAB) 2014-01, <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2014-01>.

⁴ *Id.* See also 29 CFR 2550.404a-3 (permitting qualified termination administrators to distribute amounts to an interest-bearing federally insured bank or savings association or to a state unclaimed property fund). The

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.⁵

The Department 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);⁶ GAO, “Federal Action Needed to Clarify Tax Treatment of Unclaimed 401(k) Plan Savings Transferred to States,” GAO-19-88 (January 2019);⁷ and Report of the ERISA Advisory Council, “Voluntary Transfers of Uncashed Checks from ERISA Plans to State Unclaimed Property Programs” (November 2019).⁸

In this regard, the ERISA Advisory Council 2019 report recommended that the Department 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.⁹ 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.”¹⁰ 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.¹¹

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

Department has also provided a temporary enforcement policy available to fiduciaries of terminating defined contribution plans and qualified termination administrators of abandoned individual account plans who transfer accounts of missing participants to the Pension Benefit Guaranty Corporation’s Defined Contribution Missing Participants Program. *See* Field Assistance Bulletin 2021-01, available at <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2021-01>. This program is not available for transfers from ongoing plans.

⁵ FAB 2014-01 at 5.

⁶ Available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/2013-locating-missing-and-lost-participants.pdf>.

⁷ Available at <https://www.gao.gov/assets/d1988.pdf>.

⁸ Available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/2019-eac-voluntary-transfers-to-state-programs.pdf>.

⁹ The Department has consistently taken the position that ERISA section 514 preempts state unclaimed property laws and precludes a state from requiring a fiduciary of an ERISA employee pension benefit plan to distribute or transfer the accrued benefits of a missing participant to the state. Advisory Opinion 94-41A (December 7, 1994); Advisory Opinion 79-30A (May 14, 1979); Advisory Opinion 78-32A (Dec. 22, 1978); Information Letter to Mr. Willis E. Sullivan, III Chair, Drafting Committee to Revise Uniform Unclaimed Property Act National Conference of Commissioners on Uniform State Laws (March 3, 1995).

¹⁰ Voluntary Transfers of Uncashed Checks from ERISA Plans to State Unclaimed Property Programs at 39, available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/2019-eac-voluntary-transfers-to-state-programs.pdf>.

¹¹ *Id.* at 26 (citing GAO, 401(k) Plans, Greater Protections Needed for Forced Transfers and Inactive Accounts, GAO-15-73 (2014) (recommending that DOL expand the default investment options available for small sum cash-outs beyond money market funds)).

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.”¹² 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.”¹³

Other considerations support the Department’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.¹⁴ 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.¹⁵

Pursuant to the SECURE 2.0 Act the Department 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.¹⁶ The database will also allow the Department 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 Department 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 Department is establishing a temporary enforcement policy as described below.

TEMPORARY ENFORCEMENT POLICY

Pending further guidance, the Department 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 this memorandum. 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).¹⁷

¹² See comment of the National Association of State Treasurers on the Department’s Interim Final Rule amending its Abandoned Plan Program regulations, 89 FR 43636 (May 17, 2024), available at <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AC04/00001.pdf>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Rev. Proc. 2020-46, 2020-45 I.R.B. 995.

¹⁶ ERISA section 523, added by Secure 2.0 Act section 303.

¹⁷ This Field Assistance Bulletin does not address any issue regarding federal income tax withholding under section 3405 of the Internal Revenue Code, which are within the jurisdiction of the Department of the Treasury/Internal Revenue Service.

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 Department's Best Practices for Pension Plans,¹⁸ 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.¹⁹

This memorandum does not preclude the Department from pursuing violations under ERISA sections 107, 209 and 404 for a failure to maintain records. This memorandum also does not affect the rights of other parties.

FOR FURTHER INFORMATION

¹⁸ See *supra* n. 1.

¹⁹ If the state's unclaimed property fund does not fall under the authority of the State Treasurer, the representation may be signed by the head of the state's executive department responsible for administering the unclaimed property fund.

Questions concerning this memorandum may be directed to EBSA's Office of Regulations and Interpretations at (202) 693-8500.

PAPERWORK REDUCTION ACT

This memorandum revises the collections of information approved under Office of Management and Budget (OMB) Control Numbers 1210-0039, which currently is scheduled to expire on September 30, 2026. The Department is planning to submit a no material or nonsubstantive change request to the information collection.

According to the Paperwork Reduction Act of 1995 (Pub. L. 104-13) (PRA), no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. See 44 U.S.C. 3507. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. See 44 U.S.C. 3512.

The public reporting burden for this addition to the SPD collection of information is estimated to average approximately 10 minutes per respondent for each collection. Interested parties are encouraged to send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Office of Research and Analysis, Attention: PRA Clearance Officer, 200 Constitution Avenue, N.W., Room N-5718, Washington, DC 20210 or email ebsa.opr@dol.gov and reference the OMB Control Number.