

MISSING PLAN PARTICIPANTS: WHAT'S THE PROBLEM?

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Who Are “Missing Participants”?

- Bad contact information
- Unresponsive participant
- Deceased participants without a designated beneficiary on file



How Big Is This Problem?

- Estimated that 11% of separated participants have stale addresses
- Estimated more than 3 million separated participants are “missing”
- Estimated that DC plan participants will hold an average of 9.9 jobs over their career

What Are The Problems Created By Missing Participants?

- Costs of maintaining accounts
- Possible plan disqualification:
 - Failure to meet RMD requirements
 - Failure to distribute benefits in accordance with plan provisions



What Are The Problems Created By Missing Participants?

- Potential fiduciary liability
 - Fiduciaries must act solely in the interest of plan participants and beneficiaries
 - Fiduciaries must act in accordance with plan provisions
 - Fiduciaries continue to have fiduciary responsibility over plan investments

What Are The Problems Created By Missing Participants?

- Under EPCRS, plan correction often entails additional distributions to former plan participants
- IRS and DOL audits are increasingly focusing on missing participants



What Are The Problems Created By Missing Participants?

- For the affected participants
 - Unaware of investment changes
 - Unaware of plan changes
 - Missing distributions
 - Forgetting about their benefits



What Can We Learn From Published Guidance?

- DOL Field Assistance Bulletin No. 2014-01 (“FAB 2014-01”)
 - Limited to terminating DC plans
 - Minimum steps
 - Certified mail
 - Check other records



What Can We Learn From Published Guidance?

- Minimum steps (continued)
 - Check with designated beneficiaries
 - Use internet search tools
 - If prudent use locator services, investigators, etc.



What Can We Learn From Published Guidance?

- If those fail
 - Roll to IRA
 - Pay over (net of taxes) to an insured bank account
 - Pay over to the state's unclaimed property fund



What Can We Learn From Published Guidance?

- IRS Website
- Section 6.02(5)(d) of Rev. Proc. 2018-52
 - Procedures under EPCRS
 - Similar to FAB 2014-01

What Can We Learn From Published Guidance?

- PBGC's Missing Participant Program ("MPP")
 - Only covers terminating DC and DB plans
 - Funds may be sent directly to the PBGC with participant information
 - Alternatively information may be sent about the disposition of the benefits

What Can We Learn From Published Guidance?

- 2018 IRS Memorandum to its field agents concerning missed RMDs
 - Generally follows FAB 2014-01
 - If followed, protects plan's qualified status

Alleviating the Problem: Cash Out When Possible

- The plan document must authorize cash-outs
- Establish a rollover IRA for participants with balances of \$5,000 or less
- Send them a check for balances of \$1,000 or less



What To Do When There Are No Designated Beneficiaries

- Look at the plan document
 - Spouses
 - Children
 - Estate



What To Do When There Are No Designated Beneficiaries

- Competing Death Beneficiaries
 - Don't guess which is the proper beneficiary
 - If all else fails, the benefits should be interpleaded into federal court
- Best practice is to make certain that current beneficiary designation forms are on file for all participants

What Are The Best Practices For Dealing With Missing Participants

- Be diligent in maintaining good contact information during active participation
- At the time of termination of employment
 - Update contact information
 - Remind the participant of their benefits
 - Let them know when they are available and how to apply for them

What Are The Best Practices For Dealing With Missing Participants

- Monitor mailings (SARs, Benefit Statements, and other notices) to determine if contact information is still good
- When benefits finally must be paid follow FAB 2014-01 or pay over benefits to the PBGC if eligible for MPP