

RMDs and “Lost” Participants: Steps to Comply with Your Fiduciary Duty

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Losing contact with former participants who have vested benefits remaining in your plan can be problematic for both the former participants and the plan sponsor. The issue becomes more urgent when it's time for them to begin receiving their required minimum distributions (RMDs) the year after they hit 70½. Here's a look at why it's a problem and what plan sponsors can do about it.

The Problem

From a sponsor perspective, incurring administrative charges for servicing lost participant accounts (whether RMDs are an issue or not) is surely a big negative. But keeping track of former participants before RMDs become an issue is important. The government is anxious to start taking its slice of taxable distributions. Sponsors who fail to take the job of tracking down lost participants seriously could face accusations of a fiduciary breach.

It's also a problem for participants themselves, who, perhaps unwittingly, are missing out on some income they're entitled to. Not to mention that they, too, face IRS penalties for their failure to take the distributions.

You might expect that retired former employees would be anxious to start receiving distributions and stay in touch. However, missing-in-action participants are all too common, even at the RMD stage. For example, a Retirement Clearinghouse survey found that 11% of records of terminated participants lack a current address. It also found that one-third of those polled have at some point learned of old retirement accounts they'd forgotten. And sometimes “lost” participants really aren't lost at all, but just don't respond to efforts to communicate with them. Curiously, 9% of respondents to the survey reported that they wouldn't verify their address if queried by a former employer, presumably anticipating some negative consequence.

The Pension Benefit Guaranty Corporation (PBGC) recently started a program in which defined contribution (DC) plans that are being terminated can offload lost participant accounts to the agency. It then assumes the burden of tracking down the account owners. But that initiative won't help you if your plan is still up and running, of course. (For the PBGC's definition of these participants, see “Defining missing participants.”)

EBSA Involvement

The Department of Labor's Employee Benefits Security Administration (EBSA) has reportedly stepped up investigations into plan sponsors that have dropped the ball in this area. The agency's interest originated in its Philadelphia regional office, focusing on defined benefit (DB) plan participants.

That effort led to the recovery of more than \$500 million in as-yet unpaid benefits to retired participants who had fallen off their former employers' radar screens. Six plans were faulted in that investigation. The broadening of EBSA's focus to include lost DC plan participants has spread from Philadelphia to other EBSA offices.

Steps to Compliance

So what steps must you take to stay out of trouble regarding former participants and RMDs? Experts say the key is not only to take all reasonable means to track down lost participants, but to be able to show that you've done so. And make sure you have an organized, consistent process in place.

An EBSA field assistance bulletin addressing plan terminations is instructive in the RMD context. It features the following search steps:

Use certified mail. This is a quick and inexpensive way to find out whether a participant can be located to distribute benefits.

Check related plan and employer records. Another of the employer's plans, such as a group health plan, may have more up-to-date information.

Check with a designated plan beneficiary. Presumably a spouse or child can lead you to a former plan participant, or at least let you know whether the individual is still alive.

Use free electronic search tools. As a plan fiduciary, you must make reasonable use of Internet search tools. This includes searching public record databases involving licenses, mortgages, real estate taxes, obituaries and social media.

If you don't have the time, you can hire a commercial service that specializes in these searches. A quick Google search using the phrase “locate missing retirement plan participants” yields a variety of such vendors.

Another possibility includes current employees who've kept in touch with "lost" participants and can supply current contact information. Even an old mobile phone number might still work.

Don't Give Up

Even if your efforts to find lost participants aren't bearing fruit, don't give up easily. Demonstrating persistence can also help establish that you're acting in good faith if your plan is audited. And remember: As plan sponsor you're always responsible for RMDs, even if you have a third-party administrator that handles your plan.

Defining Missing Participants

The Pension Benefit Guaranty Corporation (PBGC) defines a former participant as "missing" under one or more of the following situations:

- The plan doesn't know the former participant's location with "reasonable certainty."
- Under the plan's terms, the benefit is to be paid in a lump sum without the former participant's consent, and the former participant hasn't responded to a notice about the distribution of the lump sum.
- Under the plan's terms and any election made by the former participant, the benefit is to be paid in a lump sum, but the former participant doesn't accept the lump sum.

A lump sum paid by check isn't accepted if the check remains uncashed after a "cash-by" date (written on the check or in an accompanying notice) that's at least 45 days after the date on which the check is written — or if no such "cash-by" date is so prescribed, the check's stale date (typically after six months).