

## Tracking down your missing participants

If you have terminated participants with balances in your 401(k) plan, some of whom you can't locate, you're not alone; missing participants are an industry-wide problem.



What is a missing participant? A missing participant is a former employee who has left funds in a qualified retirement plan (ex. 401(k) plan) at their former employer but has failed to keep their contact information current and is no longer actively managing their plan account.

A 2018 survey by Boston Research Technologies and the Retirement Clearinghouse estimates that 11% of terminated employees have stale addresses in their plans and one of five relocations result in a missing plan participant; their research also suggested an excess of three million missing participants.<sup>1</sup>

### **The Problem of Missing Participants**

There are two main reasons why participants disappear. The first is frequent job-hopping, and the second is not keeping plan contact information up-to-date. Boston Research Technologies found another reason—one-third of their respondents didn't know they had an account with a previous employer.<sup>1</sup>

Missing participants have become a big enough problem that it has caught the attention of the Internal Revenue Service (IRS) and Department of Labor (DOL), who are

stepping up plan audits to see if you're making the requisite effort to find your plan's missing participants.

It's important to find your missing participants; they cost you money and increase your fiduciary liability. Plus, it's much easier to administer a plan with clean data:

- TPAs and recordkeepers typically charge by the number of participants in the plan so terminated participants present an increased administrative cost.
- 401(k) plans are required to be audited when the number of participants, including the terminated ones, exceeds 100.
- Terminated employees with vested account balances who leave their accounts in the plan for more than a year must be reported to the IRS on Form 8955-SSA.
- Terminated participants with balances must be mailed benefit statements and other required plan notices, which increases administrative costs.
- Uncashed distribution checks increase your fiduciary liability, as does the failure to locate the missing participants to whom the money belongs.
- The DOL is stepping up its enforcement efforts, such

as plan audits, to hold plan sponsors responsible for finding their missing participants.

- Your plan could be disqualified if you haven't made a genuine effort to find your missing participants.
- The SECURE Act of 2019 charges a penalty of \$10 per day – maximum of \$10,000 – for failing to file or mail a required notice of a plan change.

## Plan Sponsor Responsibilities

As a plan fiduciary, you are required under the Employee Retirement Income and Security Act of 1974 (ERISA) to make every reasonable effort to find your plan's missing participants. However, you have a couple of challenges facing you, says David Kaleda of the Groom Law Group:<sup>2</sup>

- First, identifying who is missing, discovered chiefly through returned mail or emails, unanswered phone calls or uncashed checks.
- Secondly, if there are uncashed benefit checks, you and your financial institution/trustee should work together to find the missing participants. Uncashed checks are still plan assets and if unclaimed, represent a serious fiduciary liability.

But it's not easy and there's a lot of uncertainty around how to go about it. The most recent guidance is from the DOL, [Field Assistance Bulletin \(FAB 2014-01\)](#), but it only addresses the missing participants of terminated plans. The guidance can be useful to ongoing plans; however, some plan sponsors are using it as a roadmap to find their missing participants.

FAB 2014-01 recommends taking the following steps:<sup>3</sup>

- Send a notice via certified mail to the participant's last known address
- Check related plan and employer records
- Contact the designated plan beneficiary
- Use free electronic search tools
- Use additional methods if the above does not produce a correct address:
  - Proprietary electronic search tools
  - Commercial locator services
  - Credit reporting agencies

Finally, document everything! It's important to have a written policy in place detailing the steps to be taken to identify missing participants. Conduct an annual review to identify these participants. Document the methods used and the results of each search. The DOL will want to know this information if they ever audit your plan.

<sup>1</sup> Boston Research Technologies and Retirement Clearinghouse. "[The Mobile Workforce's Missing Participant Problem.](#)" March 13, 2018.

<sup>2</sup> David Kaleda. "[Lost Participants: It is sponsors' duty to locate their terminated 'missing persons.'](#)" PLANSPONSOR. January/February 2019.

<sup>3</sup> U. S. Department of Labor. "[Field Assistance Bulletin No. 2014-01.](#)" EBSA. August 14, 2014.

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