

Missing Participants – Best Practices for Pension Plans



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Employees work hard and make sacrifices to earn and save for retirement. Sometimes, though, retirement plan participants don't apply for their pension benefits at retirement time because they don't know their pension is available or understand the consequences of failing to respond to plan communications. EBSA has undertaken a nationwide compliance initiative to help retirement plans focus 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. This document outlines best practices that the fiduciaries of defined benefit and defined contribution plans, such as 401(k) plans, can follow to ensure that plan participants and beneficiaries receive promised benefits when they reach retirement age.

The first step in addressing any problem often is knowing that there is one. EBSA has learned from its experience and from plan sponsors that the following "red flags" are often warnings or indicators of a problem with missing or nonresponsive participants.

- More than a small number of missing or nonresponsive participants.
- More than a small number of terminated vested participants who have reached normal retirement age but have not started receiving their pension benefits.
- Missing, inaccurate, or incomplete contact information, census data, or both (e.g., incorrect or out-of-date mail, email, and other contact information, partial social security numbers, missing birthdates, missing spousal information, or placeholder entries).
- Absence of sound policies and procedures for handling mail returned marked "return to sender," "wrong address," "addressee unknown," or otherwise, and undeliverable email.
- Absence of sound policies and procedures for handling uncashed checks (as reflected for example, by the absence of an accounting journal or similar record of uncashed checks, a substantial number of stale uncashed distribution checks, or failure to reclaim stale uncashed check funds in distribution accounts).

A common characteristic of plans with low numbers of missing and nonresponsive participants is that staff are committed to making sure that plan records are complete and up to date and to proactively taking steps to ensure that participants and beneficiaries get the benefits they have earned in a timely fashion. Those plans use "best practices" as part of their ongoing culture of fiduciary compliance rather than just as one-time or sporadic "fixes." Some of the practices used by well-run plans to connect participants and beneficiaries with their hard-earned benefits are listed below.

Not every practice below is necessarily appropriate for every plan. The examples are not listed by priority or in any other particular order. Responsible plan fiduciaries should consider what practices will yield the best results in a cost effective manner for their plan's particular participant population. In deciding what steps are appropriate, plan fiduciaries should also consider the size of a participant's accrued benefit and account balance as well as the cost of search efforts. The specific steps taken to locate a missing participant, or to obtain instructions from a nonresponsive participant, will depend on facts and circumstances particular to a plan and participant.

Examples of Best Practices.

In the course of its investigations, EBSA observed the missing participant processes and practices of several plans ranging from the poorly run to the well-run. Based on EBSA's experience working with plans, the following practices have proven effective at minimizing and mitigating the problem of missing or nonresponsive participants.¹

1. Maintaining accurate census information for the plan's participant population.

- Contacting participants, both current and retired, and beneficiaries on a periodic basis to confirm or update their contact information. Relevant contact information could include home and business addresses, telephone numbers (including cell phone numbers), social media contact information, and next of kin/emergency contact information. Well-run plans regularly reconfirm that the information in their possession is accurate.
- Including contact information change requests in plan communications along with a reminder to advise the plan of any changes in contact information.
- Flagging undeliverable mail/email and uncashed checks for follow-up.
- Maintaining and monitoring an online platform for the plan that participants can use to update contact information for themselves and their spouses/beneficiaries, if any, and incorporating such updates into the plan's census information.
- Providing prompts for participants and beneficiaries to confirm contact information upon login to online platforms.
- Regularly requesting updates to contact information for beneficiaries, if any.
- Regularly auditing census information and correcting data errors.
- In the case of a change in record keepers or a business merger or acquisition by the plan sponsor, addressing the transfer of appropriate plan information (including participant and beneficiary contact information) and relevant employment records (e.g. next of kin information and emergency contacts). EBSA has found that in the context of an

¹ ERISA's fiduciary obligations apply equally to defined benefit plans and defined contribution plans, and these best practice tips apply equally to both types of plans. The Department also stresses that ERISA's fiduciary obligations fully apply to missing participants whose accounts the plan purports to treat as "conditionally forfeited" under Treasury Regulation 1.411(a)-4(b)(6). Under Title I of ERISA, plan fiduciaries retain full responsibility for adhering to Title I's provisions with respect to such participants and their beneficiaries; these participants and beneficiaries remain fully entitled to all their promised benefits; and the fiduciaries have an obligation to keep accurate records and take appropriate steps to ensure that the participants and beneficiaries are paid their full benefits when due.

acquisition, merger, or divestiture, well-run plans make missing participant searches of plan, related plan (e.g., health plan) and employer records (e.g., payroll records) part of the collection and transfer of records.

2. Implementing effective communication strategies.

- Using plain language and offering non-English language assistance when and where appropriate.
- Stating upfront and prominently what the communication is about – e.g., eligibility to start payment of pension benefits, a request for updated contact information, etc.
- Encouraging contact through plan/plan sponsor websites and toll free numbers.
- Building steps into the employer and plan onboarding and enrollment processes for new employees, and exit processes for separating or retiring employees, to confirm or update contact information, confirm information needed to determine when benefits are due and to correctly calculate the amount of benefits owed, and advise employees of the importance of ensuring that the plan has accurate contact information at all times.
- Communicating information about how the plan can help eligible employees consolidate accounts from prior employer plans or rollover IRAs.
- Clearly marking envelopes and correspondence with the original plan or sponsor name for participants who separated before the plan or sponsor name changed, for example, during a corporate merger, and indicating that the communication relates to pension benefit rights.

3. Missing participant searches.

- Checking related plan and employer records for participant, beneficiary and next of kin/emergency contact information. While the plan may not possess current contact information, it is possible that the employer's payroll records or the records maintained by another of the employer's plans, such as a group health plan, may have more up-to-date information. If there are privacy concerns, the person engaged in the search can request that the employer or other plan fiduciary forward a letter from the plan to the missing participant or beneficiary.
- Checking with designated plan beneficiaries (e.g., spouse, children) and the employee's emergency contacts (in the employer's records) for updated contact information; if there are privacy concerns, asking the designated beneficiary or emergency contact to forward a letter to the missing participant or beneficiary.
- Using free online search engines, public record databases (such as those for licenses, mortgages and real estate taxes), obituaries, and social media to locate individuals.
- Using a commercial locator service, a credit-reporting agency, or a proprietary internet search tool to locate individuals.
- Attempting contact via United States Postal Service (USPS) certified mail, or private delivery service with similar tracking features if less expensive than USPS certified mail, to the last known mailing address.
- Attempting contact via other available means such as email addresses, telephone and text numbers, and social media.

- If participants are nonresponsive over a period of time, using death searches (e.g., Social Security Death Index) as a check and, to the extent such search confirms a participant's death, redirecting communications to beneficiaries.
- Reaching out to the colleagues of missing participants by, for example, contacting employees who worked in the same office (e.g., a small employer with one or two locations) or by publishing a list of "missing" participants on the company's intranet, in email notices to existing employees, or in communications with other retirees who are already receiving benefits. Similarly, for unionized employees, some have reached out to the union's local offices and through union member communications to find missing retirees.
- Registering missing participants on public and private pension registries with privacy and cyber security protections (e.g., National Registry of Unclaimed Retirement Benefits), and publicizing the registry through emails, newsletters, and other communications to existing employees, union members, and retirees.
- Searching regularly using some or all of the above steps.

4. Documenting procedures and actions

- Reducing the plan's policies and procedures to writing to ensure they are clear and result in consistent practices.
- Documenting key decisions and the steps and actions taken to implement the policies.
- For plans that use third party record keepers to maintain plan records and handle participant communications, ensuring the record keeper is performing agreed upon services, and working with the record keeper to identify and correct shortcomings in the plan's recordkeeping and communication practices, including establishing procedures for obtaining relevant information held by the employer.

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